

COMMISSION IMPLEMENTING DECISION (EU) 2023/2051**of 25 September 2023****identifying Trinidad and Tobago as a non-cooperating country in fighting illegal, unreported and unregulated fishing**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1005/2008 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⁾ (the IUU Regulation), 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 to identify non-cooperating third countries, the *démarches* in respect of such countries, the establishment of a list of such countries, the removal from that list, the publicity of that list and any emergency measures.
- (3) Pursuant to Article 31 of the IUU Regulation, the Commission is to 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 under Article 31 of the IUU Regulation is to be based on the review of all information as set out under Article 31(2) of that Regulation. It shall be based on the review of all information obtained pursuant to the IUU Regulation or, as appropriate, any other relevant information, such as the catch data, trade information obtained from national statistics and other reliable sources, vessel registers and databases, catch documents or statistical document programmes and IUU vessel lists adopted by regional fisheries management organisations (RFMOs), as well as any other information obtained in the ports and on the fishing grounds.
- (5) In accordance with Article 33 of the IUU Regulation, the Council is to decide on a list of non-cooperating countries. The measures set out in Article 38 of the IUU Regulation apply to those countries.
- (6) According to Article 12(2) of the IUU Regulation, fishery products are only to be imported into the Union when accompanied by a catch certificate in conformity with that Regulation.
- (7) Pursuant to Article 20(1) of the IUU Regulation, the acceptance of validated catch certificates from third country flag States is subject to a notification from the flag State concerned to the Commission certifying the national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels and the empowerment of its public authorities to attest the veracity of the information contained in the catch certificates.
- (8) In accordance with Article 20(4) of the IUU Regulation, the Commission is to cooperate administratively with third countries in areas pertaining to the implementation of the provisions of that Regulation relating to catch certification.

⁽¹⁾ OJ L 286, 29.10.2008, p. 1.

- (9) The Republic of Trinidad and Tobago (hereinafter 'Trinidad and Tobago') has not submitted to the Commission its notification as a flag State pursuant to Article 20 of the IUU Regulation.
- (10) Based on the information referred to in Article 31(2) of the IUU Regulation, the Commission considered that there were strong indications that Trinidad and Tobago had failed to discharge the duties incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter or eliminate IUU fishing. These findings were confirmed during the visit of the Commission in November 2015.
- (11) In accordance with Article 32 of the IUU Regulation, the Commission therefore decided, by Decision of 21 April 2016 ^(?), to notify Trinidad and Tobago of the possibility of being identified as a non-cooperating third country in fighting IUU fishing pursuant to the IUU Regulation.
- (12) The Decision of 21 April 2016 included information concerning the essential facts and considerations underlying such possible identification.
- (13) The Decision was notified to Trinidad and Tobago together with a letter inviting Trinidad and Tobago to implement, in close cooperation with the Commission, an action plan proposed by the Commission in that Decision to rectify the identified shortcomings.
- (14) In particular, the Commission invited Trinidad and Tobago to take all necessary measures to implement the actions contained in the action plan suggested by the Commission and assess their implementation.
- (15) Trinidad and Tobago was given the opportunity to respond to the Decision of 21 April 2016 as well as to other relevant information communicated by the Commission, allowing it to submit evidence refuting or completing the facts stated in the Decision of 21 April 2016. Trinidad and Tobago was assured of its right to ask for, or to provide, additional information.
- (16) By its Decision of 21 April 2016, the Commission opened a dialogue process with Trinidad and Tobago.
- (17) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Trinidad and Tobago following the Decision of 21 April 2016 were considered and taken into account. Trinidad and Tobago was kept informed, either orally or in writing, of the Commission's considerations.
- (18) In light of the elements gathered, as shown in recitals (42) to (99), Trinidad and Tobago has not sufficiently addressed the areas of concern and shortcomings described in the Decision of 21 April 2016 and failed to implement the measures suggested in the action plan accompanying the Decision.

2. PROCEDURE WITH RESPECT TO TRINIDAD AND TOBAGO

- (19) On 21 April 2016, the Commission notified Trinidad and Tobago, pursuant to Article 32 of the IUU Regulation, that it considered the possibility of identifying Trinidad and Tobago as a non-cooperating third country.
- (20) The Commission invited Trinidad and Tobago to implement, in close cooperation with its services, an action plan to rectify the shortcomings identified in its Decision of 21 April 2016.

^(?) Commission Decision of 21 April 2016 on notifying the Republic of Trinidad and Tobago of the possibility of being identified as a non-cooperating third country in fighting illegal, unreported and unregulated fishing (OJ C 144, 23.4.2016, p. 14).

- (21) The main shortcomings identified by the Commission were related to several failures to implement international law obligations, in particular relating to the adoption of an adequate legal framework, lack of efficient and adequate tools to ensure effective monitoring of fishing vessels, lack of an observer scheme and inspection programme and lack of fisheries port controls. Other identified shortcomings related to the lack of compliance with international obligations stemming from recommendations and resolutions of regional fisheries management organisations (RFMOs). A lack of implementation of non-binding recommendations and resolutions from relevant bodies such as the FAO International Plan of Action against Illegal, Unreported and Unregulated Fishing of the United Nations (IPOA-IUU) ⁽³⁾ and FAO Voluntary Guidelines for Flag State Performance ⁽⁴⁾ was also identified. However, the lack of implementation of these recommendations and resolutions was considered only as supporting evidence and not as a basis for the notification.
- (22) Through its letters dated 27 May 2016, 1 March 2017, 2 October 2017, 23 November 2021 and 18 November 2022, Trinidad and Tobago informed the Commission of its willingness to address the shortcomings identified in the Decision of 21 April 2016, to cooperate with the Commission and of its acceptance of the action plan.
- (23) Through its letter dated 27 May 2016, Trinidad and Tobago provided a draft national action plan, albeit without any timeframe for its adoption, a list of all fishing vessels flying the flag of Trinidad and Tobago, templates of a fishing licence, of a trip and exportation report for longliners, as well as information on the internal structure of the fisheries authorities.
- (24) On 5 December 2016 Trinidad and Tobago informed the Commission of internal organisational changes and on 25 February 2017 provided an update with regard to the actions taken, or intended to be taken, by its authorities to address the identified shortcomings. However, through that communication, the authorities announced that the finalisation and implementation of the action plan was to be completed at a later stage.
- (25) On 2 March 2017, the Commission and the authorities of Trinidad and Tobago met to discuss the progress made in the implementation of the action plan to rectify the shortcomings identified. During that meeting, the authorities of Trinidad and Tobago reiterated their willingness to address the identified shortcomings and cooperate with the Commission. However, no actions were taken in that regard after the meeting.
- (26) The Commission sent on 10 April 2017 a letter to the Prime Minister of Trinidad and Tobago welcoming the commitment of Trinidad and Tobago to improve its national policy in the fight against IUU fishing and respect Trinidad and Tobago's international obligations as a flag, coastal, port and market State. No reply to this letter was received.
- (27) On 7 September 2017, 17 September 2017 and 3 November 2017, the authorities of Trinidad and Tobago submitted to the Commission: (i) a draft copy of the inter-agency memorandum of understanding (MoU) for the purpose of collaboration in regulating fishing and fishing related activities and trade of fish and fish products; (ii) a template for an MoU to be signed by Trinidad and Tobago and third States to enhance collaboration to prevent, deter and eliminate IUU fishing; and (iii) a draft of the inter-agency standard operating procedures (SOPs) for the import of fish and fish products, fishing vessels' registration, port arrival and departure declarations of fishing vessels, importation of fishing vessels (less than 250 tonnes) to be used for fishing, export of fish and fish products, issuance of minister's licence for relief of customs duty, landing of fish and fish products, transshipment of fish and fish products, fish and fish products in-transit, monitoring of fishing vessels, inspection of fishing vessels at port.
- (28) On 7 November 2017, the Commission met remotely with the authorities of Trinidad and Tobago in order to discuss the ongoing actions of Trinidad and Tobago with regard to the fight against IUU fishing.

⁽³⁾ International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Food and Agriculture Organization of the United Nations, 2001.

⁽⁴⁾ Voluntary Guidelines for Flag State Performance, March 2014, retrieved from: <http://www.fao.org/3/a-i4577t.pdf>.

- (29) By means of written communication, Trinidad and Tobago submitted on 24 November 2017 a summary of actions intended to be taken to address IUU fishing as well as a list of non-artisanal fishing vessels flying the flag of Trinidad and Tobago. On 5 June 2018, the Commission received a copy of the draft Fisheries Management Bill.
- (30) On 8 February 2019, the Commission met remotely the Trinidad and Tobago authorities to discuss the progress of the country in addressing the shortcomings enumerated in the Decision of 21 April 2016. The meeting confirmed the lack of progress made in addressing the shortcomings identified in the Decision of 21 April 2016.
- (31) On 24 October 2019, Trinidad and Tobago acceded to the FAO Port State Measures Agreement (PSMA) and accepted the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas ⁽⁵⁾.
- (32) On 22 June 2020, by means of written communication, the authorities of Trinidad and Tobago provided an update on the activities to implement the action plan to fight IUU fishing. They submitted the revised version of the draft Fisheries Management Bill and enumerated the list of operational priorities, i.e. the intention to establish a Fisheries Inspectorate and the installation of Vessel Monitoring System (VMS) on non-artisanal fishing vessels flying the flag of Trinidad and Tobago.
- (33) On 21 September 2021 the Commission met with the authorities of Trinidad and Tobago in order to discuss the progress made with regard to the revision of the legal framework, the VMS installation on non-artisanal fishing vessels (with particular emphasis on the longliners operating in the International Commission for the Conservation of Atlantic Tunas (ICCAT) Convention area), as well as any progress as regards landings and inspections at port, the creation of the Fisheries Inspectorate and the status of the fleet. The videoconference confirmed the lack of progress made in the areas identified in the Decision of 21 April 2016.
- (34) On 24 September 2021, the authorities of Trinidad and Tobago submitted to the Commission (i) the finalised and signed copy of the interagency MoU for collaboration in regulating fishing, fishing related activities and relevant trade, along with standard operating procedures in force; (ii) the draft template for an MoU between Trinidad and Tobago and third countries (already shared with the Commission on 17 September 2017); and (iii) a copy of the report of the monitoring, control and surveillance review (including port assessment) in Trinidad and Tobago under the Port State Measures Support Project of FAO.
- (35) In addition, on 2 and 7 October 2021, the authorities of Trinidad and Tobago shared with the Commission a list of port calls of fishing vessels flying the flag of third countries between 2018 and 2020 and a list of fishing vessels flying the flag of Trinidad and Tobago authorised to fish in the ICCAT Convention area.
- (36) By letter dated 25 October 2021, the Commission highlighted its concerns as regards the development of the dialogue and the lack of progress from Trinidad and Tobago in addressing the recommendations included in the action plan accompanying the Decision of 21 April 2016.
- (37) The authorities of Trinidad and Tobago submitted on 9 November 2021 a progress report containing (i) information on the status of implementation of the national action plan; (ii) a report on the national strategy and roadmap to effectively implement the provisions of the PSMA and complementary international instruments and mechanisms to combat IUU fishing; and (iii) the draft work plan of the Committee established under the national plan of action mentioned in recital (23) to oversee, monitor and report on the implementation of the MoU for collaboration in regulating fishing, fishing related activities and relevant trade.
- (38) In response to the letter sent by the Commission, on 23 November 2021, Trinidad and Tobago reiterated the commitment of the country's authorities to fight IUU fishing. The Commission replied to this letter on 2 December 2021 emphasising the need to take effective actions to address the shortcomings identified in the control systems of Trinidad and Tobago to fight IUU fishing.

⁽⁵⁾ Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, Food and Agriculture Organisation of the United Nations, 1993.

- (39) Between 14 and 16 December 2022, the Commission carried out a visit to Trinidad and Tobago with the objective to evaluate the progress achieved since the Decision of 21 April 2016. The visit confirmed that the identified shortcomings outlined in the Decision have not been addressed.

3. IDENTIFICATION OF TRINIDAD AND TOBAGO AS A NON-COOPERATING THIRD COUNTRY

- (40) Pursuant to Article 31(3) of the IUU Regulation, the Commission has reviewed the compliance of Trinidad and Tobago with its international obligations as flag, port, coastal or market State. For the purpose of this review, the Commission has taken into account the criteria laid down in Article 31(4) to (7) of the IUU Regulation.

3.1. Measures taken in respect of the recurrence of IUU fishing and trade flows of products stemming from IUU fishing (Article 31(4) of the IUU Regulation)

- (41) As highlighted in the Decision of 21 April 2016, the Commission established that Trinidad and Tobago had failed to discharge its duties under international law as flag, port, coastal and market State in respect of IUU fishing carried out or supported by vessels flying its flag or by its nationals, or by fishing vessels using its ports, and to prevent access of fisheries products stemming from IUU fishing into the market.
- (42) Pursuant to Article 18(3)(a) of the United Nations Fish Stocks Agreement (UNFSA), States are to control the vessels flying their flag on the high seas by means of fishing licences, authorisations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level. Further, recommendations set forth in point 45 of the IPOA IUU and paragraph 8(2)(2) of the FAO Code of Conduct for Responsible Fisheries (FAO Code of Conduct) ⁽⁶⁾ provide that flag States should ensure that each of the vessels entitled to fly their flag operating outside their waters holds a valid authorisation. A similar recommendation is also encompassed in points 29 and 30 of the FAO Voluntary Guidelines for Flag State Performance.
- (43) Recital (14) of the Decision of 21 April 2016 indicated that the fisheries management legal framework of Trinidad and Tobago, as established by the 1916 Fisheries Act ⁽⁷⁾ and the 1986 Archipelagic Waters and Exclusive Economic Zone (EEZ) Act ⁽⁸⁾ does not empower the authorities of Trinidad and Tobago to implement measures to effectively control fishing vessels flying its flag nor the use of its ports by fishing vessels.
- (44) The 1916 Fisheries Act does not establish a compulsory system of fishing licences. While the fisheries authorities have adopted the practice of issuing a fishing licence, this does not have any legal effect. According to the information in the possession of the Commission, the only control over licensing is carried out through a trade ordinance which requires every exporter to have an export licence in order to access the foreign markets. The period of validity of this export licence is 3 months, after which the exporter needs to reapply to the relevant authorities. Even though the fisheries authorities directly receive applications for the export licences from shipowners, they are not empowered to approve or deny them in cases of non-compliance. To the Commission's knowledge, no applications for export licences have been rejected to date. Further, the fishing vessels flying the flag of Trinidad and Tobago that do not export their catches to foreign markets fall outside the scope of this control.

⁽⁶⁾ FAO Code of Conduct for Responsible Fisheries, Food and Agriculture Organisation of the United Nations, 1995.

⁽⁷⁾ https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/67.51.pdf.

⁽⁸⁾ https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/51.06.pdf.

- (45) Pursuant to Article 94(2)(b) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the flag State is required to ensure control over the vessels flying its flag, through the assumption of jurisdiction under its internal law over ships flying its flag. Furthermore, under Article 18(3)(g)(iii) of UNFSA, the flag State should control the vessels flying its flag through monitoring, control and surveillance measures, which should include, inter alia, the implementation of national inspection schemes, national observer programmes and vessel monitoring systems. Moreover, points 1 and 3 of ICCAT Recommendation 18-10 requires all vessels above 15 metres length overall operating in the ICCAT Convention area to be equipped with VMS and to transmit their location at least once every two hours. Similarly, point 31 of the FAO Voluntary Guidelines for Flag State Performance recommends that flag States to implement a control scheme over vessels flying their flag and point 24 of the IPOA-IUU adds that States should undertake comprehensive and effective monitoring, control and surveillance of fishing including by implementing a VMS, where appropriate.
- (46) On the basis of the observations made during the visits carried out in Trinidad and Tobago in November 2015 and in December 2022 and having reviewed all available information, the Commission concluded that the competent authorities of Trinidad and Tobago were not in a position to ensure adequate control of the activities carried out by their fishing fleet.
- (47) More specifically, the 1916 Fisheries Act does not contain any provisions on the control and surveillance of fishing vessels flying the flag of Trinidad and Tobago, including those operating outside waters under Trinidad and Tobago's jurisdiction. In this regard, the installation of a functioning device which allows Trinidad and Tobago to track and monitor the vessels flying its flag through VMS is only carried out on a voluntary basis.
- (48) Until December 2022, Trinidad and Tobago had 25 non-artisanal fishing vessels (longliners) flying its flag and authorised to operate in the ICCAT Convention Area, out of which only 21 were equipped on a voluntary basis with an operational VMS on board. In addition, during the visit of December 2022, the Commission observed that a fishing vessel, flying the flag of Trinidad and Tobago and authorised to operate in the ICCAT Convention area, had not transmitted a VMS signal for over 165 days.
- (49) During the same visit, the fisheries authorities of Trinidad and Tobago informed the Commission that the fishing vessels flying their flag are not authorised to carry out fishing activities in the waters under the jurisdiction of third countries. However, according to data generated from the platform for the management of the voluntarily installed VMS, the Commission identified a fishing vessel flying the flag of Trinidad and Tobago allegedly fishing in the EEZ of a third country.
- (50) In parallel, Article 18(3)(g)(ii) UNFSA requires parties to initiate measures to control the activities of the fishing vessels flying their flag, including the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant. Similarly, under ICCAT Recommendation 16-14, each contracting party is to ensure a minimum of 5 % observer coverage of fishing effort in each of the pelagic longline, purse seine, baitboat, traps, gillnet and trawl fisheries. However, the 1916 Fisheries Act neither establishes nor provides for an empowerment to establish a domestic observer programme (scientific or other). One trial observer-monitored trip was completed in September 2022 as a fact-finding mission. The authorities of Trinidad and Tobago confirmed that several non-artisanal longliners flying the flag of Trinidad and Tobago may not be equipped to accommodate observers.
- (51) Despite the lack of necessary legal framework and necessary operational means in place to control the fishing and fishing-related activities of vessels flying the flag of Trinidad and Tobago, the authorities of the country continued granting its flag and fishing authorisations to fishing vessels. For instance, a new fishing vessel was built in January 2022, registered and entitled to fly the Trinidad and Tobago flag and authorised to fish in the ICCAT Convention Area. During the visit of December 2022, the fisheries authorities of Trinidad and Tobago also informed the Commission of their intention to continue expanding their national industrial fishing fleet.

- (52) Consequently, the Commission cannot exclude that fishing vessels registered in and flying the flag of Trinidad and Tobago have carried out IUU fishing or fishing-related activities in areas beyond the national jurisdiction of Trinidad and Tobago, including in areas under jurisdiction of third countries and have used third countries' ports.
- (53) The Commission therefore considers that Trinidad and Tobago has failed to uphold its responsibilities as flag State to exercise control over its fleet and prevent its fleet from engaging in IUU fishing activities in waters outside its jurisdiction. This is in breach of Article 94(1) and (2) of UNCLOS, which provides that every State is to effectively ensure its jurisdiction and control over fishing vessels flying its flag. This is also in breach of Article 18 of UNFSA which requires States, whose vessels fish on the high seas, to take control measures to ensure that those vessels comply with RFMO rules. Trinidad and Tobago thus failed to discharge its due diligence obligation to deploy adequate means, to exercise best possible efforts and to do the utmost to prevent IUU fishing activities by ships flying its flag. This failure is also not in line with paragraphs 34 and 35 of the IPOA-IUU which provide that States should ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing activities and that also ensure that, before registering a fishing vessel, flag States can exercise their responsibility to ensure that such vessels do not engage in IUU fishing.
- (54) Under Article 31(4)(b) of the IUU Regulation, the Commission also examined the measures taken by Trinidad and Tobago in respect of access of fisheries products stemming from IUU fishing to its market.
- (55) Trinidad and Tobago's lack of control over fishing vessels flying its flag enables such vessels to land and/or tranship fishery products in national and third country ports and therefore cannot prevent the entry of fishery products stemming from IUU fishing into the markets.
- (56) Furthermore, on the basis of comparison of information provided by Trinidad and Tobago to the Commission during the visit of December 2022 and publicly available information, it seems that Trinidad and Tobago is not in a position to provide accurate and complete information on the highly migratory species caught by its high seas fishing fleet nor the fishery products landed or transhipped in its ports. This confirms that Trinidad and Tobago is not in position to trace fishery products when involved in national and international trade flows.
- (57) Under Article 5 of Annex I to UNFSA, each State is to ensure that vessels flying its flag send to the national fisheries administration fishing logbook data on catch and effort including data on fishing operations on the high seas, at sufficiently frequent intervals to meet national requirements and regional and international obligations. This is also reflected in point 51.5 of the IPOA-IUU, which recommends coastal States to ensure that each vessel fishing in their waters maintains a logbook recording its fishing activities where appropriate.
- (58) There are currently no legal national provisions for Trinidad and Tobago fishing vessels as regards use of fishing logbooks, landing declarations, transhipment declarations or sales notes. Instead, the fisheries authorities rely on a system of voluntary submission of catch and effort data for single fishing trips and export reports only for fishing vessels flying the flag of Trinidad and Tobago whose catches are intended to be exported to third countries' markets. While the fisheries authorities informed the Commission that such export reports need to be submitted after every fishing trip, there is no legal basis for their submission to the national fisheries authorities. Given the lack of legal provisions, the estimate of the trip and export coverage of the national fleet activities cannot be verified.
- (59) The above described trip reporting system is linked to the granting of export licences but, given the lack of legal provisions making the submission of a trip report mandatory, there is no legal obligation for national authorities to refuse the issuance of the export licence for not submitting the trip and export report. As regards fisheries products not destined for export, there is no mandatory recording mechanism in place.

- (60) With regard to landings of species managed by ICCAT fishing vessels flying the flag of third countries, the fisheries authorities of Trinidad and Tobago confirmed that, while they gather information on the use of national ports by third country fishing vessels engaged in landing and transshipping ICCAT species, they are unable to verify the accuracy of the data submitted by vessels' operators to port authorities nor are they able to separate data regarding transshipment and landing operations. In addition, the fisheries authorities stated that the information they gather concerning the use by foreign fishing vessels of national ports is limited to those engaged in landing and transshipping ICCAT species. Species not managed by ICCAT are not recorded nor subject to any reporting obligation.
- (61) Given the lack of established fisheries controls over activities of fishing vessels and over landing and transshipment operations, it is impossible for the fisheries authorities of Trinidad and Tobago to trace the fish landed or transhipped in its ports by vessels flying its flag or by fishing vessels flying the flag of third countries throughout the supply chain. This shortcoming does not allow Trinidad and Tobago authorities to confirm that fishery products destined for the national and third countries' markets do not stem from IUU fishing.
- (62) Pursuant to Article 18(3)(f) UNFSA, flag States are to put in place requirements to verify the catch of target and non-target species through such means as, inter alia, monitoring of landed catches. The IPOA-IUU provides guidance on internationally agreed market-related measures which support reduction or elimination of trade in fish and fisheries products derived from IUU fishing. It also suggests at point 71 that States should take steps to improve the transparency of their markets in order to allow the traceability of fish or fish products. Equally, Article 11 of the FAO Code of Conduct outlines good practices for post-harvest activities and responsible international trade and requests States to ensure that fish and fishery products are traded internationally and domestically in accordance with sound conservation and management practices through improving the identification of the origin of fish and fishery products.
- (63) On the basis of the information obtained during the on-spot visits, the Commission considers that Trinidad and Tobago is not in a position to guarantee the transparency on its market nor in relation to fishery products traded internationally as no traceability of fish or fisheries products is ensured. In that regard, Trinidad and Tobago fails to comply with Article 23 UNFSA, which requires port States to take action to promote the effectiveness of international conservation and management measures, including port inspections of documents, gears or catches and the prohibition to land or tranship where it has been established that the catch has been taken in a manner which undermines the effectiveness of international conservation and management measures.
- (64) In addition, the Commission is of the opinion that the practice of landing fish in private wharves and loading it directly to containers for further shipment to third countries without any appropriate fisheries control carried out at national level by the fisheries authorities of Trinidad and Tobago jeopardises the traceability of the fishery products concerned ⁽⁹⁾.
- (65) According to publicly available statistics collected by the Commission, there are strong indications of possible transit of fish allegedly stemming from IUU fishing activities from fishing vessels flying the flag of third countries through the ports of Trinidad and Tobago. For instance, import data reported by a third country indicate the export of more than 1 000 tons of frozen albacore tuna (*Thunnus alalunga*) exported from Trinidad and Tobago in 2021 ⁽¹⁰⁾. For that year, the ICCAT quota of Trinidad and Tobago for albacore tuna was 267 tons.
- (66) The authorities of Trinidad and Tobago are not empowered to carry out and fail to perform the necessary controls in order to prevent fishery products possibly stemming from IUU fishing from being landed in national ports, with the consequent risk that those products be introduced into the markets.

⁽⁹⁾ Sea Lots, which receives calls from vessels flagged to Taiwan, Ivory Coast, China and Venezuela.

⁽¹⁰⁾ However, given the lack of controls at port and the inadequate reporting obligations, it is difficult to prove that these catches did not stem from vessels flying the Trinidad and Tobago flag.

- (67) In view of the developments occurring after 21 April 2016, the Commission considers that, in accordance with Article 31(3) and (4) of the IUU Regulation, Trinidad and Tobago has failed to discharge its duties incumbent upon it under international law to take action to prevent, deter and eliminate IUU fishing, and pursuant to Article 31(3) and (4)(b) of the IUU Regulation, has not taken sufficient action to prevent access of fisheries products stemming from IUU fishing to the markets.

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

- (68) As described in recitals (19) to (26) of the Decision of 21 April 2016, the Commission analysed whether Trinidad and Tobago cooperated effectively with the Commission on investigations concerning IUU fishing and related activities. This analysis established that, pursuant to Article 31(3) and 31(5) of the IUU Regulation, there are strong indications that Trinidad and Tobago failed to discharge its duties under international law as flag State in respect of cooperation and enforcement efforts.
- (69) After the Decision of 21 April 2016, Trinidad and Tobago fisheries authorities continued to be cooperative with the Commission in responding and providing feedback to requests for information.
- (70) However, the replies submitted by the national authorities of Trinidad and Tobago were circumscribed by the outdated legal fisheries framework, which does not provide for the implementation of fisheries control at national level and has been under revision for the past eight years with no specific timeline for its adoption. This lack of legal framework hampered any effective cooperation with the Commission. Commitments and actions announced in the responses of the Trinidad and Tobago authorities kept being postponed, thus depriving the IUU dialogue from reaching its purpose.
- (71) Article 19(1) UNFSA requires, States to ensure compliance by vessels flying their flag with regional and subregional conservation and management measures. It further specifies that sanctions applicable in respect of violations should be adequate in severity to be effective in securing compliance to discourage violations wherever they occur and should deprive offenders of the benefits accruing from their illegal activities. Similar wording is contained in point 21 of the IPOA-IUU and point 38(a) of the FAO Voluntary Guidelines for Flag State Performance.
- (72) However, as described in recital (21) of the Decision of 21 April 2016, the outdated legal framework of Trinidad and Tobago does not include a definition of IUU fishing activities nor serious infringements and does not establish a comprehensive list of serious infringements to be addressed with effective, proportionate and dissuasive sanctions. The treatment of infringements and serious infringements is not adequate to secure compliance, to discourage violations wherever they occur, and to deprive offenders of the benefits accruing from their illegal activities. As a result, the sanctioning system of Trinidad and Tobago in its current form is not comprehensive and inadequate to achieve its deterrent function.
- (73) In relation to cooperation and coordination of control activities at sub-regional and regional level as provided in Article 6 PSMA, Trinidad and Tobago fails to cooperate with third countries whose vessels use its ports for the purposes of landing or transshipping, in order to prevent, deter and eliminate IUU fishing as provided for in point 28 of the IPOA IUU. Furthermore, Trinidad and Tobago has not entered into agreements or arrangements with other States to cooperate for the effective enforcement of applicable laws and conservation and management measures adopted at a national, regional or global level, as provided for in point 31 of the IPOA IUU.
- (74) The above shortcomings of Trinidad and Tobago prevent it from complying with Articles 63, 64, 117 to 119 of UNCLOS establishing the duty to cooperate for all states in the conservation and management of marine living resources, including straddling stocks and highly migratory species. Articles 7, 8 and 20 of UNFSA further develop the obligation of States to cooperate, respectively in setting compatible conservation and management measures and in ensuring compliance and enforcement with such measures. That is further specified in points 28 and 51 of the IPOA IUU, setting out detailed practices for direct cooperation between States, including the exchange of data or information available to coastal States.

- (75) As highlighted in recitals (34) to (36) of the Decision of 21 April 2016, the level of development of Trinidad and Tobago cannot be considered as a factor undermining the capacity of the competent authorities to discharge its duties as flag, coastal, port and market State.
- (76) In view of recitals (34) to (36) of the Decision of 21 April 2016 and the developments after 21 April 2016, the Commission remains of the view, in accordance with Article 31(3) and (5) of the IUU Regulation that Trinidad and Tobago has failed to discharge the duties incumbent upon it under international law in respect of cooperation and enforcement.

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

- (77) As described in the recitals (27) to (33) of the Decision of 21 April 2016, the Commission carried out an analysis on the information deemed relevant with respect to the status of Trinidad and Tobago as contracting party to UNCLOS, UNFSA and the ICCAT Convention. This analysis established that pursuant to Article 31(3) and (6) of the IUU Regulation, there are strong indications that Trinidad and Tobago failed to discharge the duties incumbent upon it under international law with respect to international rules, regulations and conservation and management measures
- (78) It is to be noted that the industrial fishing fleet of Trinidad and Tobago targets tuna and other highly migratory species in the ICCAT Convention area. In doing so, Trinidad and Tobago should cooperate with ICCAT, the RFMO competent in that area and for those species, and with all relevant States concerned. However, even though Trinidad and Tobago is a contracting party to ICCAT, it is not fulfilling its duty, under Article IX of the ICCAT Convention, to take all action necessary to ensure the enforcement of this Convention.
- (79) Trinidad and Tobago is also breaching the obligation incumbent upon it as a flag State in accordance with Article 117 of UNCLOS, to adopt, with respect to its nationals, measures for the conservation of the living resources of the high seas.
- (80) As described in recital (31) above, Trinidad and Tobago acceded to the PSMA in October 2019. However, the obligations and measures laid down in the international instrument related to the fight against IUU fishing have not yet been implemented by means of national legislation.
- (81) According to Article 7 PSMA, each Party shall designate and publicise the ports to which foreign fishing vessels may request entry and shall have sufficient capacity to conduct inspections.
- (82) Despite the lack of legal basis arising from the absence of implementation of PSMA obligations through national legislation, Trinidad and Tobago notified to the FAO Secretariat three designated ports under the PSMA (including private wharves). However, the authorities of Trinidad and Tobago are not in position to ensure that fishing vessels flying the flag of third countries do not call at non-designated ports as no related national legislation is in place. During the visit carried out in December 2022, the Commission received documentation showing that a fishing vessel flying the flag of a third country was holding a fishing licence authorising it to call at two of the three designated Trinidad and Tobago ports, but also to a non-designated one. Moreover, during the same visit, the Commission was informed that it is the customs authorities of Trinidad and Tobago that are empowered to designate approved ports and sufferance wharves for customs purposes. Such ports (forty-five in total) are however not the same as the ones designated by the fisheries authorities and submitted to the FAO Secretariat. Finally, open-based databases indicate a significant number of fishing vessels flying the flag of third countries calling at non-designated ports in Trinidad and Tobago.
- (83) The two main designated ports include several private wharves which fall outside the control of the fisheries authorities. The latter do not have free access to port facilities nor are any of their representatives stationed in the ports on a permanent basis. The fisheries authorities only have access to ports in cooperation with other agencies involved. For instance, they may be able to participate to port inspections, but only under the jurisdiction of other agencies (e.g. customs or port authorities).

- (84) In addition, Trinidad and Tobago does not implement the requirements set out by Article 8 PSMA regarding the obligation of fishing vessels flying the flag of third countries to submit specific information before entry into port, and by Article 9 PSMA regarding the port entry authorisation or denial. In particular, the current national legal framework of Trinidad and Tobago does not require fishing vessels flying the flag of third countries to submit the information included in Annex A to the PSMA. This impedes the national authorities from determining whether the vessels requesting entry into the ports of Trinidad and Tobago have engaged in IUU fishing or fishing related activities in support of such fishing. Moreover, the national legislation does not empower the authorities to grant or deny entry to fishing vessels flying the flag of third countries calling to port in Trinidad and Tobago in case there is sufficient proof that they have engaged in IUU fishing or fishing related activities in support of such fishing. The only applicable provisions in relation to the issuance of port entry authorisation or denial are contained in maritime and customs legislation which are applicable to all vessels and for the sole purpose of such legislation.
- (85) Since 2022, the fisheries authorities of Trinidad and Tobago have been cooperating with the national customs and maritime authorities in order to partially access the information on port calls and the fishery products on board of fishing vessels flying the flag of third countries calling to port in Trinidad and Tobago submitted for the purpose of complying with national maritime and customs requirements. This cooperation is being conducted on the basis of interagency arrangements. Acquisition of information is however only partial and no enforcement actions are performed due to lack of adequate provisions transposing the obligations of the PSMA Agreement into national law of Trinidad and Tobago.
- (86) As an example, two fishing vessels ⁽¹¹⁾ that are not included in the ICCAT record of authorised vessels might have engaged in unauthorised fishing activities in the ICCAT Convention Area. These vessels called at and used a private wharf part of a port of Trinidad and Tobago on 10 and 20 September 2019 and on 4 and 18 October 2019. The fisheries authorities stated that they were not in possession of any information concerning the fish on board of these vessels which may have been landed or transhipped at the private wharf.
- (87) Pursuant to Article 12 PSMA, each Party is to inspect the number of vessels in its ports required to reach an annual level of inspections sufficient to achieve the objective of the Agreement.
- (88) Under Article 28 of the 1986 Archipelagic Waters and Exclusive Economic Zone (EEZ) Act, the fisheries authorities have the power to conduct inspections of fishing vessels flying the flag of third countries only in the archipelagic waters, territorial sea and the EEZ, not at ports. This deprives the authorities of the empowerment to conduct inspections in designated ports as required by Article 7 of PSMA, which in turn does not meet the objective set out in Article 12 of PSMA.
- (89) As described in recitals (28) to (30) of the Decision of 21 April 2016, the Commission analysed information deemed relevant from available data published by RFMOs, in particular ICCAT.
- (90) ICCAT has officially communicated to Trinidad and Tobago authorities that the country has not fully and effectively complied with its obligations in accordance with certain ICCAT Recommendations. Trinidad and Tobago was therefore identified as non-compliant in 2016 ⁽¹²⁾ and has received a compliance letter from ICCAT every year since then ⁽¹³⁾.

⁽¹¹⁾ These vessels have since reflagged to a third country and were listed as IUU vessels in ICCAT on 24 November 2021 for harvesting tuna or tuna like species within the Convention Area without authorisation. The vessels were then cross-listed to IOTC, SIOFA, CCSBT, IATTC and NEAFC IUU lists in early 2022.

⁽¹²⁾ ICCAT Doc. No COC-308_Appendix 2, 2016.

⁽¹³⁾ ICCAT Doc. No COC-308_APP_1/2021.

- (91) More specifically, ICCAT Recommendation 18-09 sets, among others, a minimum of 5 % port inspections of fishing vessels flying the flag of third countries annually ⁽¹⁴⁾. Given that the number of port calls of such third country fishing vessels declared by the fisheries authorities in Trinidad and Tobago in 2022 surpassed 1 200 and, as mentioned in recital (82), there is no national legislation in place implementing PSMA requirements for specific information to be submitted before entry into national ports, it is presumed that the real number of port calls is far greater. In the last five years (2018–2022), fisheries authorities of Trinidad and Tobago carried out only four inspections of fishing vessels flying the flag of third countries on a voluntary basis and with explicit agreement of the shipowners.
- (92) In addition, as mentioned in recital (50) above, ICCAT Recommendation 16-14 introduces the obligation to ensure a minimum of 5 % observer coverage of fishing effort in each of the pelagic longline, purse seine, baitboat, traps, gillnet and trawl fisheries. Trinidad and Tobago fails to comply with this requirement, as the 1916 Fisheries Act or any related subordinate legislation does not establish a domestic observer programme (scientific or other) ⁽¹⁵⁾.
- (93) As was mentioned in recital (45) above, Trinidad and Tobago also fails to implement ICCAT Recommendation 18-10, which mandates all vessels above 15 metres length overall operating in the Convention Area to be equipped with VMS and to transmit their location at least once every two hours.
- (94) The facts described in recitals (90) to (93) prevent Trinidad and Tobago from fulfilling its cooperation and conservation obligations, which is not in accordance with the duty to cooperate and the obligation to take, or to cooperate to take measures necessary for the conservation of marine living resources in the high seas as required by Articles 117 and 118 of UNCLOS.
- (95) In accordance with Article 31(6)(c) of the IUU Regulation, the Commission analysed whether Trinidad and Tobago might have been involved in any acts or omissions that may have diminished the effectiveness of applicable laws, regulations or international conservation and management measures.
- (96) As indicated in recital (31) of the Decision of 21 April 2016, Trinidad and Tobago does not fulfil its cooperation and conservation obligations as flag State under Articles 117 to 119 of UNCLOS.
- (97) In combination with the facts described in recitals (48) and (49), Trinidad and Tobago also fails to fulfil Article 18 of UNFSA which requires States, whose vessels fish on the high seas, to take control measures to ensure that those vessels comply with RFMO rules.
- (98) As indicated in recitals (73), (82), (83), (84), (85) and (88), Trinidad and Tobago fails to fulfil Articles 6, 7, 8, 9, 12 and other Articles of Part 4 of PSMA which require States to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures.
- (99) In view of recitals (28) to (32) of the Decision of 21 April 2016 and the subsequent developments mentioned above, the Commission considers, pursuant to Article 31(3) and (6) of the IUU Regulation, that Trinidad and Tobago 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.

3.4. Specific constraints of developing countries (Article 31(7) of the IUU Regulation)

- (100) It is recalled that according to the United Nations Human Development Index (UNHDI), in 2021 Trinidad and Tobago was considered as a very high human development country, ranked 57 out of 191 countries ⁽¹⁶⁾.

⁽¹⁴⁾ Point 29 <https://www.iccat.int/Documents/Recs/compendiopdf-e/2018-09-e.pdf>.

⁽¹⁵⁾ ICCAT Doc. No COC-308_Appendix 2, 2022, Doc. No COC-308_Appendix 2, 2021, Doc. No COC-308_Appendix 2, 2020, Doc. No COC-308_Appendix 2, 2019, Doc. No COC-308_Appendix 2, 2018, Doc. No COC-308_Appendix 2, 2017.

⁽¹⁶⁾ Information retrieved from <https://hdr.undp.org/data-center/specific-country-data#/countries/TTO>.

- (101) As described in recital (36) of the Decision of 21 April 2016, no evidence has been found to suggest that the failure of Trinidad and Tobago to discharge its duties under international law is the result of development constraints.
- (102) Moreover, the nature of the established shortcomings of Trinidad and Tobago, such as absence of specific provisions in the national legal framework referring to the management of its fishing fleet and to combat, deter and eliminate IUU fishing activities, the lack of mandatory procedures ensuring proper verification of the registration of fishing vessels under its flag, the lack of a compulsory system to control landings and inadequate port inspections cannot be correlated to the level of development of Trinidad and Tobago and the specific constraints it may have.
- (103) Furthermore, the authorities of Trinidad and Tobago received support to strengthen the national actions to fight against IUU fishing from the Food and Agriculture Organisation of the United Nations (FAO) ⁽¹⁷⁾.
- (104) In view of recitals (34), (35), and (36) of the Decision of 21 April 2016 and the developments after this date, the Commission takes the view, pursuant to Article 31(7) of the IUU Regulation, that the development level of Trinidad and Tobago does not impair its overall performance as flag, port, coastal or market State with respect to fisheries and therefore cannot excuse or otherwise justify the insufficiency of its actions to prevent, deter and eliminate IUU fishing.

4. CONCLUSION ON THE IDENTIFICATION AS A NON-COOPERATING THIRD COUNTRY

- (105) In view of the conclusions reached with regard to Trinidad and Tobago's failure to discharge its duties under international law as flag, port, coastal or market State and to take action to prevent, deter and eliminate IUU fishing, this country should be identified, in accordance with Article 31 of the IUU Regulation, as a non-cooperating third country in fighting against IUU fishing.
- (106) Having regard to Article 18(1)(g) of the IUU Regulation, the competent authorities of the Member States are bound to refuse 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 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 of that Regulation.
- (107) It should be stated that the identification of Trinidad and Tobago as a country the Commission considers to be non-cooperating does not preclude any potential subsequent step taken by the Council for the purpose of establishing a list of non-cooperating countries in accordance with Article 31 of the IUU Regulation.

5. COMMITTEE PROCEDURE

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

HAS ADOPTED THIS DECISION:

Article 1

The Republic of Trinidad and Tobago is identified as a third country that the Commission considers as a non-cooperating third country in fighting illegal, unreported and unregulated fishing.

⁽¹⁷⁾ <https://www.fao.org/iuu-fishing/capacity-development/en/>

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 25 September 2023.

For the Commission
The President
Ursula VON DER LEYEN
