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# ENSURING COMPANIES ADDRESS ADVERSE ENVIRONMENTAL IMPACTS IN THEIR VALUE CHAINS: THE CASE OF ILLEGAL FISHING

## Briefing

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### Summary

The EU's Corporate Sustainability Due Diligence Directive (CSDDD)<sup>1</sup> will introduce obligations on companies to conduct environmental and human rights due diligence in relation to their operations, subsidiaries, and value chains. This briefing calls for the definition of adverse environmental impacts within CSDDD to sufficiently cover a broad range of impacts, in line with other relevant EU legislation and international standards, including the Corporate Sustainability Reporting Directive<sup>2</sup> and 2023 OECD Guidelines<sup>3</sup>. It uses the case of illegal, unreported and unregulated (IUU) fishing to demonstrate that a definition of adverse environmental impacts that is limited in scope or lacking precision can lead to a situation where impacts, which cause significant pressure on nature and biodiversity, are absent from a company's due diligence processes.

## 1 Environmental impacts of the fisheries sector

While the fisheries sector is vital to billions of people in terms of jobs and food security, it can have significant negative impacts on the environment<sup>4</sup>. According to the Food and Agriculture Organisation (FAO), the proportion of fishery stocks fished within biologically sustainable levels decreased from 90 percent in 1974 to 64.6 percent in 2019<sup>5</sup>. Destructive fishing practices have also contributed to the decline of non-target fish stocks, the mortality of cetaceans, marine mammals and seabirds, and exacerbated marine ecosystem degradation<sup>6</sup>.

IUU fishing acts as a multiplier of these environmental impacts. The systematic overexploitation of fisheries and damage to marine habitats associated with IUU fishing exacerbates the decline of fish stocks and jeopardises conservation and management efforts.

It is estimated that IUU fishing accounts for about 20 per cent of wild-caught ocean fish each year<sup>7</sup> and the General Assembly of the United Nations agreed to end IUU fishing by 2020 (under Goal 14 of the SDGs, 'life below water')<sup>8</sup>. Being the world's largest market for fisheries and aquaculture products and largely depending on imports to meet internal consumption levels,<sup>9</sup> the EU is at high risk of importing products obtained from IUU fishing<sup>10</sup>. Inconsistencies in import controls across the EU could mean significant amounts of IUU fishing products are still finding their way onto the EU market despite existing legislation to prevent this<sup>11</sup>.

## Box 1: What is IUU fishing?

IUU fishing broadly refers to activities that breach national laws, the conservation and management measures of Regional Fishery Management Organisations (RFMOs), and applicable international law. This can include activities such as fishing without a valid licence, misreporting catch data, falsifying or concealing a fishing vessel's identity or itinerary, or obstructing the work of inspectors or enforcers. IUU fishing can occur in any fishery, from shallow coastal or inland waters to the high seas<sup>12</sup>.

IUU fishing directly harms fish populations through overfishing which reduces the resilience of fish populations and marine ecosystems, making them more vulnerable to the impacts of climate breakdown. It includes the use of illegal and destructive fishing practices and gear, which can damage the marine environment (e.g., through the destruction of coral and other habitats)<sup>13</sup>. Furthermore, failing to report catches undermines efforts to accurately assess the status of exploited stocks and ecosystems, therefore having a negative knock-on effect on conservation efforts<sup>14</sup>.

## 2 Why should the adverse impacts of IUU fishing be covered by the CSDDD?

Some companies active in the seafood industry have already started adopting voluntary best practice tools to mitigate the risks of IUU fishing in their seafood value chains,<sup>15</sup> indicating that there is a recognition in parts of the sector of the immense pressure of illegal fishing practices on the marine environment. However, voluntary measures do not go far enough. By introducing a corporate due diligence duty, companies would be required to conduct due diligence to avoid the environmental and human rights impacts associated with IUU fishing. As noted above, IUU fishing has severe environmental impacts. It is therefore vital that these impacts are considered by companies as part of any new due diligence obligations. By mandating that all in-scope companies identify and address these specific impacts, the EU will ensure a level playing field across the fisheries sector and EU Member States, will help protect the planet's ocean, and will make a meaningful contribution to achieving SDG 14.

## 3 Defining adverse environmental impacts

The approach chosen to define adverse environmental impacts in the CSDDD will be decisive in clarifying the perimeter within which companies must fulfil their due diligence obligations, and therefore mitigate their financial and legal risks. The Directive must remove the potential for loopholes, which could allow the fisheries and aquaculture sector to turn a blind eye to certain environmental impacts, including those related to IUU fishing. It is therefore crucial that the definition of adverse environmental impacts is not overly restrictive, while ensuring legal clarity.

The Commission and Council proposals (which propose including only adverse environmental impacts resulting from the violation of prohibitions and obligations under listed international environmental conventions<sup>16</sup>) run contrary to a risk-based approach and are insufficient in addressing the breadth of environmental and biodiversity impacts of IUU fishing. Reference to the Convention on Biological Diversity (CBD), specifically Article 10(b), is key as it forms part of the international legal framework and establishes important benchmarks for understanding impacts arising from unsustainable uses of natural resources. However, other important marine conventions and international fisheries instruments<sup>17</sup> are omitted from these proposals.

The Parliament's approach<sup>18</sup> (which proposes the introduction of categories of impacts to create a framework for assessing environmental impacts by companies) is more appropriate. Introducing categories such as 'biodiversity loss' or 'the degradation of marine ecosystems' would ensure due diligence processes cover most of the environmental and biodiversity adverse impacts of the fisheries sector, including those related to IUU fishing. Moreover, these categories create clear, concrete and understandable boundaries that will help companies to identify and map their impacts. Inspiration for such an approach can be drawn from relevant EU laws, such as the Corporate Sustainability Reporting Directive and the Taxonomy Regulation. However, the reference to the CBD has been deleted in the Parliament's proposal, removing a crucial instrument to interpret the fisheries sector's obligations in relation to biodiversity loss. It is important that the final CSDDD text includes a reference to the CBD, as proposed by the Commission and Council.

## Recommendations

For the CSDDD to bring the necessary clarity, ensure a level playing field, and help seafood companies mitigate financial risks associated with biodiversity loss, it is crucial that the environmental scope of due diligence obligations refers cumulatively to:

- A) A list of categories of environmental impacts, including climate change; biodiversity loss; air, water and soil pollution; degradation of terrestrial, marine and freshwater ecosystems; deforestation; and over-consumption of materials, water, energy and other natural resources); and
- B) A list of all relevant international environmental conventions, including the Paris Agreement, the Convention on Biological Diversity, and relevant international marine and fisheries instruments, which will serve as a specification of the environmental scope wherever relevant and possible.

Additionally, the Commission, in consultation with relevant stakeholders, could be mandated to prepare guidelines to further support companies' compliance with their due diligence obligations and how these apply with regards to the environmental impact categories listed in the Directive. This approach would ensure that the worst environmental impacts of the fisheries sector – impacts which themselves create risks that jeopardise the long-term feasibility of the fisheries industry – including the impacts of IUU fishing, are included and avoided while also ensuring legal clarity – and greater sustainability – for companies engaged in the fisheries industry.

## References

- 1 Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.
- 2 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022.
- 3 OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, <https://doi.org/10.1787/81f92357-en>.
- 4 WWF (2015) Living Blue Planet Report. Species, Habitats and Human Well-Being: [https://files.worldwildlife.org/wwfcomprod/files/Publication/file/5dqysd8gh6\\_Living\\_Blue\\_Planet\\_Report\\_2015\\_Final\\_LR.pdf?\\_ga=2.92096410.1644477694.1698132185-1430725317.1698132185](https://files.worldwildlife.org/wwfcomprod/files/Publication/file/5dqysd8gh6_Living_Blue_Planet_Report_2015_Final_LR.pdf?_ga=2.92096410.1644477694.1698132185-1430725317.1698132185) p.26.
- 5 FAO (2022). The State of World Fisheries and Aquaculture: Towards Blue Transformation: The State of World Fisheries and Aquaculture 2022 (fao.org).
- 6 UNEPFI (2021): Turning the Tide: How to Finance a Sustainable Ocean Recovery: Turning the Tide: How to Finance a Sustainable Ocean Recovery – United Nations Environment – Finance Initiative (unepfi.org).
- 7 Agnew, D., Pearce, J., Pramod, G., Peatman, T., Watson, R., Beddington, J. and Pitcher, T. (2009). Estimating the Worldwide Extent of Illegal Fishing. PLoS ONE, 4(2), p.e4570.
- 8 SDG Indicator 14.6.1: 14.6.1 Illegal, unreported unregulated fishing | SDG Indicators Data Portal | Food and Agriculture Organization of the United Nations (fao.org).
- 9 European Market Observatory for Fisheries and Aquaculture Products (EUMOFA) (2022). The EU Fish Market: 5dbc9b7d-b87c-a897-5a3f-723b369fab08 (eumofa.eu).
- 10 European Court of Auditors (2022). EU Action to Combat Illegal Fishing: Control Systems in Place but Weakened by Uneven Checks and Sanctions by Member States: Special Report 20/2022: EU action to combat illegal fishing (europa.eu).
- 11 EJF, Oceana, Pew, WWF (2018). The Impact of the EU IUU Regulation on Seafood Trade
- 12 International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (wto.org), pages 2-3.
- 13 International Maritime Organization. Illegal, Unreported and Unregulated (IUU) Fishing
- 14 Report of the FAO/UNEP Expert Meeting on Impacts of Destructive Fishing Practices, Unsustainable Fishing, and Illegal, Unreported, and Unregulated (IUU) Fishing on Marine Biodiversity and Habitats, Rome 23-25 September 2009: untitled (fao.org).
- 15 See, for example, EJF, Oceana, Pew, WWF (2017). PAS 1550:2017: Exercising due diligence in establishing the legal origin of seafood products & marine ingredients: PAS 1550:2017 (PAS) and the Implementation Guide – IUU Watch.
- 16 Article 3(b) and (c) and Annex Part I and II to the proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937:1\_2\_183888\_annex\_dir\_susta\_en.pdf (europa.eu).
- 17 Including the 1982 United Nations Convention on the Law of the Sea; the 1993 FAO Compliance Agreement; the 1995 UN Fish Stock Agreement; the 1995 FAO Code of Conduct for Responsible fisheries; RFMO's binding conservation and management measures; and the Agreement on Port State Measures (PSMA).
- 18 Amendments adopted by the European Parliament on 1 June 2023 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence: Texts adopted - Corporate Sustainability Due Diligence - Thursday, 1 June 2023 (europa.eu).