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Joint NGO priorities on the revision of the EU Fisheries Control System

NOVEMBER 2019

We call on decision-makers to support the Commission's proposal to:

- Introduce Remote Electronic Monitoring (REM) requirements to enable fully documented fisheries (Article 1(23) of the proposal);
- Allow for a better implementation of the enforcement provisions of the Control Regulation (Article 1 (69), Annexes III and IV);
- Mandate the use of tracking devices and electronic reporting of catches and fishing operations for small-scale fishing vessels (Articles 1 (6), 1 (11) and 1 (12));
- Improve the control of recreational fisheries by introducing licencing and reporting systems (Article 1 (44));
- Strengthen current traceability provisions to ensure the effective tracking of fishery products via electronic traceability systems, covering both lots of EU and imported seafood along the supply chain (Articles 1 (11), 1 (46), 1 (54) and 1 (56));
- Require full documentation of all catches and discards (Article 1 (11));
- Improve the control of fishing capacity, notably by mandating the continuous monitoring of engine power for certain categories of vessels (Articles 1 (33) to 1 (37));
- Enlarge the scope of the current provisions on the control of fishing restricted areas to cover all vessels and areas in the high seas and in third countries' waters (Article 1 (43));
- Replace the paper-based catch certificate scheme with an electronic scheme under the European Union's Regulation to prevent, deter and eliminate illegal, unreported and unregulated fishing (EU IUU Regulation) (Article 4 (6)).

We call on decision-makers to amend the Commission's proposal to:

- Mandate the use of REM on board of vessels and extend the possible use of REM to other monitoring needs, such as gathering information on bycatch;
- Introduce measures that would allow the effective control of technical measures, in particular measures set out to minimise the impact of fishing activities on the marine environment;
- Complete the list of serious infringements of the rules of the Common Fisheries Policy (CFP);
- Provide a clear definition of traceability and include key data elements that are missing from the EU IUU Regulation catch certificate;
- Improve data management and sharing, including for data on catches, landings, vessel positions and enforcement actions; and establish an EU Fisheries Control Data Centre;
- Introduce transparency requirements by making information on the implementation of the Control Regulation, such as audit reports, infringements and sanctions, publicly available;

- Strengthen EFCA's mandate, in particular concerning the implementation of the external dimensions of the CFP; and ensure EFCA has the resources to fulfil this mandate.

1. Introduce mandatory Remote Electronic Monitoring requirements

Remote Electronic Monitoring (REM) is key to ensure fully documented fisheries. Indeed, data and video footage using GPS, sensors and CCTV cameras enable the effective control and monitoring of transparent and traceable fisheries. REM has already been introduced in some Member States (e.g. Denmark, Spain and the U.K.); and the revision of the Control Regulation presents a unique opportunity to establish it EU-wide. **We recommend to further expand the legal basis for the use of REM in the EU or by EU vessels to ensure that it could also be consistently implemented by operators for other purposes than the control and monitoring of the Landing Obligation (for example, to improve bycatch management or data collection).**

In addition, REM allows for the monitoring and control of the Landing Obligation. In this regard, it is worth recalling that around 1.7 million tonnes of fish and marine life were discarded in EU fisheries annually before 2011.¹ The reformed CFP introduced the Landing Obligation to eliminate this wasteful practice of discarding unwanted catches. However, despite the serious environmental need and very broad public support for this policy, the lack of effective monitoring and control at sea is leading to a great degree of non-compliance including substandard catch reporting.² **We therefore support the Commission's proposal to introduce Remote Electronic Monitoring (REM) to allow for the monitoring and control of the Landing Obligation's effective implementation. In addition, we recommend increasing the monitoring capacity and powers of inspectors at sea to quantify the amount of discards and gather clear evidence on compliance, or the lack thereof, with the Landing Obligation.**

2. Adapt the general control framework to the control of technical measures

The EU fishing fleet needs to apply all technical rules laid down in the Technical Measures Regulation.³ This applies, for example, to acoustic devices, streamers, spatial-temporal restrictions and gear modifications, which have been introduced to minimise the impact of fisheries on the environment - such as via accidental catches of marine mammals, marine reptiles and seabirds. Indeed, the survival of several species including the critically endangered Balearic shearwater and the vulnerable Loggerhead sea turtle depend on the strict implementation of fishing rules.⁴

However, these rules have been widely disregarded and neither the current Control Regulation nor the Commission's proposal ensure that they are sufficiently controlled and enforced. Indeed, inspectors on vessels will not need to check if vessels are complying with EU rules relating to minimising their impact on the marine environment. At the same time, no provisions are taken to ensure that inspectors have sufficient training, capacity and resources to conduct these verifications. Furthermore, the current legislation does not apply a fall-back option in emergency cases where sanctions are not sufficient to stop destructive fishing practices - such as empowering the Commission to close areas to some fisheries if a Member State does not respect its obligations to implement technical measures for these fisheries.

1 COM (2011). Commission Staff Working Paper Impact Assessment accompanying the document Commission proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy.

2 COM (2019). Commission Staff Working Document accompanying the document Communication from the Commission to the European parliament and the Council on the State of Play of the Common Fisheries Policy and Consulting on Fishing Opportunities for 2020.

3 Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures. For a list of the current legislation applicable, as of June 2018, see: https://ec.europa.eu/fisheries/cfp/fishing_rules/technical_measures_en. In addition, see also the proposal for a Regulation of the European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures, COM (2016) 134.

4 Cf. Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

Therefore, we **recommend** that:

- The regulation specifically includes control and enforcement provisions for EU vessels on the implementation of technical measures for conservation of fishery resources and the protection of marine ecosystems;
- The regulation explicitly states that inspectors shall be trained and well-resourced to ensure that they can enforce the rules, including mitigation rules applied to fishing vessels to limit accidental catches of sensitive species, placement of acoustic devices and streamers, as well as testing the sink rate of weighted hooks;
- A serious infringement is created to sanction licence holders and masters for not fulfilling the obligations to mitigate against the accidental catches of sensitive species;
- The Commission is empowered to prohibit fishing activities if technical rules have not been implemented and sanctions have not been sufficient to stop destructive fishing.

3. Maintain and improve the EU legal framework for enforcement and sanctions

Even though the Control Regulation has been in place since 2010, there are very few Member States that have issued effective and dissuasive sanctions. The number of sanctions imposed for infringements is low and the level of these sanctions does not meet the criteria set in the Control and IUU Regulations. Indeed, in 2017, the Commission itself recognised that *“enforcement, especially concerning sanctions and point system, follow up of infringements [...] are the areas that show the biggest shortcomings”*.⁵ The continuous lack of political will from Member States to implement the enforcement provisions of the Control and IUU Regulations, as well as the absence of concrete action from the Commission to address this issue, are the roots of the problem.

The Commission’s proposal moves the enforcement provisions of the IUU Regulation into the new Control Regulation, opening the current sanctioning system to revision. This has been done without a proper online public consultation, without a public impact assessment, and without a study on the effectiveness of the current sanctioning system.⁶ Moreover, it remains unclear how the Commission and the Member States will address the existing implementation gaps of the enforcement provisions of the IUU and Control Regulations.

In order to create a culture of compliance, it is key that the current provisions on the penalty point system, serious infringements, immediate enforcement measures and accompanying sanctions are further harmonised and strengthened, not weakened. **We therefore support these aspects of the enforcement regime proposed by the Commission.**

The proposal distinguishes between infringements that are serious by nature and other serious infringements of the CFP, whose seriousness should be assessed according to a list of criteria set in the Regulation. In addition, it proposes to use mandatory administrative sanctions in case of serious infringements, for which it sets minimum levels of fines. The proposal further clarifies the rules applicable within the penalty point system and makes explicit that any point assigned by the coastal State must be enforced by the flag State.

In addition to these provisions, we **recommend** changing the list of serious infringements as follows:

- Add *“turning off Automatic Identification System (AIS) transmitters”* to the list – if the AIS is turned off for a legitimate reason such as the risk of piracy, the captain of a vessel should notify the flag State and/or the coastal state;
- Amend the serious infringement *“supplying services to operators connected to a vessel engaged in*

⁵ Commission Staff Working Document SWD (2017) 134 Final, p.18.

⁶ As required by the Commission’s own *“Better Regulation Guidelines and Toolbox”*.

IUU fishing” to “benefitting from, supporting or engaging in IUU fishing including as operators, effective beneficiaries, owners, logistics and service providers, including insurance providers and other financial service providers”;

- Add a serious infringement for licence holders and masters of fishing vessels who are not fulfilling their obligations to mitigate against the accidental catches of sensitive species.

4. Mandate the use of cost-efficient tracking devices and the electronic reporting of catches and fishing operations for small-scale vessels

Small-scale fisheries are critical in supporting the livelihoods of coastal communities and play an important role in sustainable development, but they are not necessarily a synonym for low impact fisheries. Therefore, their operations need to be properly assessed, monitored and controlled to guarantee that their impacts are accurately accounted for, especially as 89% of the EU fleet – responsible for 25% of the EU’s total seafood catches – currently does not have a vessel monitoring system on board.⁷

In this context, the installation of tracking devices on board to automatically locate and identify small-scale (under 12 meters) vessels is essential. Recent advances in technology have made these devices small and cost-effective and they do not undermine the safe operation of the vessels and gears. **We therefore support the Commission’s proposal to extend the use of a vessel position data system to small-scale fishing activities.**

Under current legislation, vessels below 10m are not required to record fishing logbook data or complete a landing declaration indicating their catches. This poses a serious threat to the quality of stock assessments, as smaller vessels are also responsible for catching significant quantities of fish, and without the appropriate information on the amount of catches, it is not possible to achieve the objectives of the CFP. **We therefore support the Commission’s proposal to introduce an accurate and complete electronic fishing logbook to record small-scale vessel operations, including details of all catches by species, category, type and gear used.**

5. Improve the control of recreational fisheries

Recreational fishing can bring conservation and socioeconomic benefits when it is properly regulated. However, very few assessments have been undertaken on the socio-economic importance and environmental impact of recreational fishing activities – recent scientific studies have estimated that marine recreational fishing represents between 2% and 72% of total catches, depending on the stock and the region.⁸ This is why **we support the Commission’s proposal to introduce a registration or licencing system for recreational fishers and to collect data on their catches.** This licencing process should not only monitor the number of persons involved in recreational fishing activities, but also ensure that recreational fishers are well aware of the legislation in place, the species subject to a recovery plan and the scientific rationale behind these.

Moreover, the obligation to report catches when stocks are subject to conservation measures is an essential element to obtain greater accuracy on the status of fish stocks, as well as a clear assessment of the share of catches from recreational fisheries in relation to commercial fishing. Reporting of catches could be done in several different ways, but preference should be given to electronic methods; this is particularly relevant for those recreational vessels fishing species subject to a recovery plan. The fishing

⁷ European Court of Auditors, Special Report No 08/2017: *EU fisheries controls: more efforts needed*, p. 8.

⁸ Hyder, K., Radford, Z., Prellezo, R., Weltersbach, MS., Lewin, WC., Zarauz, L., Ferter, K., Ruiz, J., Twonhill, B., Mugerza, E., and Strehlow, HV., 2017, Research for PECH Committee, *Marine recreational and semi-subsistence fishing – Its value and its impact on fish stocks*, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels.

mortality data reported by recreational activities should then be taken into account when estimating the quota allocation for the commercial sector.

In addition, we **recommend** that decision-makers ensure that the Control Regulation clearly underlines that recreational catches require to be coherent with the multiannual and recovery plans. For this to be effective, some measures are required to control recreational mortality (e.g. minimum landing sizes, fishing gear and catch limitations, or restricted areas and times). This should take place in parallel with effective monitoring, control and surveillance schemes, which ensure that Member States are regularly monitoring the catch effort of recreational fisheries and incorporate this information in their fisheries resources management schemes.

6. Improve traceability requirements

Making fisheries products traceable from point-of-catch to final point-of-sale is a necessary pre-condition to combatting illegal, unreported and unregulated (IUU) fishing, achieving sustainable fisheries and healthy fish stocks, and safeguarding the livelihoods of fisheries-dependent communities worldwide. This holds particularly true for the EU, which is the leading seafood market in the world and imports over 60% of its seafood, mostly from developing countries.

However, while the EU food safety regulations ensure a degree of traceability for health, safety and consumer purposes, they do not provide an adequate framework for ascertaining that products were caught legally. Similarly, the Control Regulation has fallen short of adequately providing for this framework.

We **support** the important steps taken by the Commission to rectify some of the traceability loopholes in their proposal, including:

- Mandating the electronic exchange of seafood traceability information along the supply chain via electronic traceability systems;
- Mandating the tracking of lots of seafood along the supply chain through product transformation, merging and transport, covering both EU-products as well as imported products;
- Ensuring that adequate information is passed along the supply chain to ascertain the legality of EU-caught products.

Some key loopholes remain and we recommend that the following are addressed:

- Providing a clear definition of traceability in the Regulation so that traceability requirements for control purposes can be distinguished from labelling requirements for transparency to the consumer;
- Ensuring that sufficient information is also passed along the supply chain to ascertain the legality of imported seafood products. This requires mandating the inclusion of key data elements for traceability purposes in the catch certificate, as required under the EU IUU Regulation, including the unique vessel identifier (IMO number) for all eligible vessels, the catching method, better definition of catch areas with a clear distinction between the EEZ and the high seas, and a link between catch areas and catch dates.

7. Improve data management and sharing

Many exceptions, gaps and discrepancies currently exist in the collection, sharing and reporting of EU fisheries data, compromising the scientific information available for stock assessments and the objective of achieving fully documented fisheries management as foreseen in Article 15 (1) of the Common Fisheries Policy.

For example, current catches under 50 kg do not need to be recorded – an exemption that seriously undermines the available fisheries information and reduces the controllability of adherence to the Landing Obligation at sea. Indeed, the Scientific, Technical and Economic Committee for Fisheries (STECF) has highlighted that the current scope of obligations needs to be expanded to improve resolution in terms of catch reporting, inclusion of vessels not currently covered, and information at an individual operational level, such as per haul.⁹

In addition, the data reported by Member States to the Commission is often of poor quality. For example, unexplained discrepancies exist between declared landings and the quantities recorded as sold. Moreover, in a 2017 report, the European Court of Auditors found that Member States do not sufficiently share and trace information concerning activities of EU-flagged vessels when fishing in the waters of another Member State.¹⁰

We support the Commission's proposal to tackle some of these data deficiencies and discrepancies by:

- Removing the exemptions for vessels under 15 metres which allow them to not declare their landings (vessels under 10 meters) and to provide their landing declarations on paper instead of in electronic format (vessels between 10 and 15 meters);
- Removing the exemption which allows vessels up to 15 meters to not have a Vessel Monitoring System (VMS) on board;
- Reducing the amount of catches that can be sold directly from vessels without a sales note from 50 euros to 5 kg;
- Requiring Member States to set up a system that allows the Commission as well as EFCA to access fishing activity data and enforcement information (i.e. national register of infringements) at all times and without prior notice, in a non-aggregated format;
- Allowing scientific bodies of Member States to have access to vessel position data;
- Establishing a direct electronic exchange system for Member States to exchange fisheries information (i.e. vessel position data, electronic logbooks, landing declarations, sales notes and inspection and surveillance reports);
- Mandating the weighing of fishery products to take place on landing, on systems and by operators approved by the competent authorities;
- Requiring information on utilised conversion factors to be included in logbooks as well as landing or transshipment declarations.

Another major problem identified is that the EFCA and the Commission do not have continuous and sufficient access to fisheries data. The Commission receives relevant data from the Member States, notably on catches, quota use, fishing effort and fishing fleet capacity, though it is not allowed to analyse this information without an authorisation from the relevant Member State. EFCA, on the other hand, receives information from Member States on the fleets engaged in the region covered by a Joint Deployment Plan, but not on a structural basis. Despite these structural communication issues, the Commission fails to propose the establishment of an EU-Fisheries Control Data Centre (FCDC), as suggested by the European Court of Auditors, for an integrated European information system for fisheries management. Indeed, the objective should be that data on fishing and enforcement activities is available in near real time in a digital database that would allow direct electronic exchange between Member States' authorities and Commission services. EFCA should also have access to this database for analysis and control purposes. In addition, non-

9 Scientific, Technical and Economic Committee for Fisheries (STECF) – 46th Plenary Meeting Report (PLEN-14-02). 2014. Publications Office of the European Union, Luxembourg, EUR 26810 EN, JRC 91540, 117pp.

10 European Court of Auditors, Special Report No 08/2017: *EU fisheries controls: more efforts needed*, p. 8.

EU countries should obtain access to parts of this EU-wide database if a Sustainable Fisheries Partnership Agreement to which they are a contracting party mandates this.

To strengthen the Commission's proposal, we therefore **recommend** to:

- Establish an EU Fisheries Control Data Centre or an EU-wide database accessible to Member States, the Commission and EFCA;
- Ensure that the Commission and/or EFCA has access to real time vessel position data;
- Improve the standardisation of time intervals for communication of data, as well as other relevant data fields, between Member States;
- Grant access to relevant vessel position data from the EU-wide database to non-EU countries if this is mandated by a Sustainable Fisheries Partnership Agreement to which they are a contracting party;
- Establish harmonised and EU-wide guidelines and systems that assist authorities in the cross-checking of catch and landing data, including standardised conversion factors.

8. Ensure the monitoring and control of fleet capacity

Monitoring and control of fleet capacity is essential to ensure that national capacity ceilings laid out in Annex II of the CFP are respected.¹¹ The ceilings found in Annex II are expressed in both gross tonnage (GT) and kilowatts (kW). The current Control Regulation obliges Member States to control these fishing capacity elements, though the system in place has proven to be ineffective. Indeed, in its 2017 report, the European Court of Auditors noted that “the Member States we visited did not sufficiently verify the accuracy of their fleets’ capacity and of the information on the vessels in the fleet register”;¹² and a recent Commission study found that the measured engine power exceeded the certified engine power during 51% of the undertaken verifications.¹³

We therefore **support** the Commission's proposals to improve the control of fishing capacity, notably by mandating the continuous monitoring of engine power on board vessels that use trawls, seines and surrounding nets.

9. Effectively control fishing restricted areas and marine protected areas

In order to secure and restore favourable conservation status in marine sites affected by fishing activities, including marine Natura 2000 areas, Article 11 of the CFP gives the right to propose restrictions, such as spatial or temporal closures, to an “initiating Member State” that has a “potential fisheries management interest” in a site. In addition, the different EU fisheries technical measures regulations, as well as agreements made under Regional Fisheries Management Organisations (RFMOs) subsequently transposed into EU legislation, set out certain area closures aimed at biodiversity conservation. To control and monitor fishing activities in these restricted areas, the current Control Regulation establishes that vessels of 12 meters’ length or greater that enter into these areas shall be controlled by Member States with a Vessel Monitoring System (VMS) that detects and records their transit through the area. The frequency of data transmission shall be at least once every 30 minutes when a fishing vessel enters a fishing-restricted area.

While we **support** the Commission's proposal to extend the scope of Article 50 of the current Control Regulation to all vessels - irrespective of their size - and to fishing areas located in the high seas or in third countries’ waters, we **recommend** to shorten the current 30-minute interval for the frequency of data transmission in order to guarantee an effective protection of marine sites.

11 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy.

12 European Court of Auditors, Special Report No 08/2017: EU fisheries controls, more efforts needed, p. 7.

13 DG MARE, Final report on the study of engine power verification by Member States of 14 June 2019.

10. Introduce transparency requirements

Transparency is essential to assess if the Control Regulation is to be effectively implemented across the EU. Having access to up-to-date, public and reliable data on this topic will help to inform consumers, civil society organisations and decision-makers, as well as foster a culture of trust and compliance.

However, access to data on the implementation of the Control Regulation is difficult: Member States only have to submit a report to the Commission every five years, in which they provide details on the steps they have taken to implement the rules (including aggregated data on sanctions and penalty points), but these reports are not public. This has not always been the case: before 2009 and the entry into force of the current Control Regulation, the Commission reported regularly to the European Parliament and to the Council, and the information contained in these annual communications was public. Similarly, at the national level, data on infringements and sanctions are currently kept in non-public national registers of infringements of the rules of the CFP that Member States are obliged to maintain. The Commission's proposal improves the scope and quality of the data that has to be recorded in the national registers of infringements, though it fails to remedy the lack of transparency.

We therefore **recommend** that:

- **Just as for the IUU Regulation, Member States report on the implementation of the Control Regulation every two years, based on aggregated data from their national registers of infringements. These reports should be automatically published on the Commission's website. In addition, we recommend that the Commission uses the information submitted by the Member States to prepare bi-annual communications to the European Parliament and to the Council on the implementation of the enforcement provisions of the Control Regulation;**
- **Member States annually publish aggregated data on the number and types of inspections, number of infringements detected and reported, and type of follow-up actions (simple warnings, administrative sanctions, criminal sanctions, immediate enforcement measures, and number of penalty points administered).**

Moreover, the audit reports of the Member States' control systems carried out by the Commission under Title X of the current Control Regulation are not made public. In other areas of EU law, such as in the area of food law, animal health and animal welfare, reports from audits in both Member States and third countries are available on the Commission's website.¹⁴ **We recommend that audits carried out by the Commission of the control systems of Member States are made public on the Commission's website.**

Lastly, Article 113 of the current Control Regulation contains provisions that severely undermine the right of the public to have access to environmental information under the Aarhus Convention; and the EU regulations implementing this Convention.¹⁵ In particular, Article 113 gives Member States the right to veto any decision taken by the European Commission to grant access to fisheries control data to persons other than the competent control authorities of that Member State. This is in clear contradiction of well-established jurisprudence from the European Court of Justice on access to information matters, which says that Member States do not have the power to veto a decision from the Commission to release their environmental data. **We therefore recommend that paragraphs 2 and 3 of Article 113 of the Control Regulation are either amended or deleted, in order to align the fisheries control data transparency regime with the one set up under the Aarhus Convention on access to information, public participation in decision making and access to justice in environmental matters.**

¹⁴ See: http://ec.europa.eu/food/audits-analysis/audit_reports/index.cfm.

11. Minimise the amendments to the EU IUU Regulation by staying within the scope of the Commission's proposal and by strengthening only those provisions opened for review

The EU IUU Regulation is the most progressive anti-IUU legislation of its kind globally. It is widely recognised as one of the most important and effective tools in driving fisheries reforms worldwide and improving fisheries governance in non-EU countries; it therefore contributes to global fish stock health, food security, and the livelihoods of vulnerable coastal communities.

Regrettably, the Commission has taken the decision to propose changes to the IUU Regulation without holding a proper consultation or carrying out an impact assessment on the subject. These changes are limited to articles that deal with the catch certificate and sanctions for infringements, but the hasty revision process poses a real and significant risk to the Regulation. It is therefore key that amendments to the EU IUU Regulation strengthen this piece of legislation and do not weaken it.

We **support** the digitalisation of the catch certification system. Electronic catch certificates as well as the introduction of an EU-wide IT system for their processing, as these will provide decisive means to improve seafood import controls and verifications, harmonise these practices among Member States and bring added transparency to supply chains in a cost, labour and time-effective manner.

We recommend the mandated use of the new IT tool. The Commission has already launched the new IT tool (called CATCH), which is currently voluntary to use. The mandated use of the new IT tool is required to ensure the effectiveness and success of the tool. As few Member States already have systems in place to analyse catch certificates, the Commission should provide support to ensure the interoperability of the IT system with existing national systems.

12. Revise the European Fisheries Control Agency mandate

EFCA has an important role to play in the implementation of the external dimension of the CFP, especially relating to the IUU Regulation. We would therefore support the revision of EFCA's mandate in order to fully incorporate this international dimension into its activities. EFCA is also key to ensure the effective implementation of the Control Regulation and its activities related to data analysis, exchange and coordination between Member States should be expanded.

We call on decision-makers to ensure that EFCA is given the appropriate resources to fulfil its mandate. In addition, we **recommend** that the following activities are included in EFCA's mandate:

- A more defined and active role in dialogues with third countries on IUU fishing, by way of increased and more steady support to DG MARE missions and an extended capacity-building programme for third country officials;
- An expansion of EFCA's role in research and data analysis carried out prior to missions in third countries, as well as data analysis for EU waters.

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