



14 June 2019

Mr. Karmenu Vella,  
Commissioner,  
Directorate-General for Maritime Affairs and Fisheries,  
European Commission  
1049 Bruxelles/Brussel  
Belgium

Dear Sir,

### **Indian Ocean Tuna Commission**

We, the Blue Marine Foundation, are concerned that the EU's negotiators at the Indian Ocean Tuna Commission (IOTC) meeting on Monday may not be fully aware of their responsibilities under EU law to support immediate conservation measures to enable overfished yellowfin tuna stocks to recover. We set out our understanding of those responsibilities here.

#### ***Introduction***

The Blue Marine Foundation has recently conducted a review into the operation of the Indian Ocean Tuna Commission.<sup>1</sup> The conclusions of the review are very clear:

*Scientists from the IOTC recommended in 2015 that a 20 per cent reduction in catches was necessary to give the stock a 50 per cent chance of recovery by 2024. In 2017, the first year this catch reduction was applied, the total catch actually increased by 3 per cent.*

*A 25 per cent reduction in catches is now required to save this important stock, but it looks highly unlikely that this will be implemented at the 23rd annual Session of the Commission in June.*

The European distant water fleet is the single largest fleet operating in the Indian Ocean, and **should** take a leading role in its management. The European fleet is represented and subsidised by European tax payers, in return EU negotiators represent not just the EU but all European citizens. They must therefore comply with EU law. They must look beyond narrow short term commercial interests and do all in their power to prevent stock collapse of the Indian Ocean yellowfin tuna.

#### ***Background***

The United Nations Convention on the Law of the Sea (UNCLOS) states: "*all States have the right for their nationals to engage in fishing on the high seas*".<sup>2</sup> However, the right is qualified with a duty:

*In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall: ..... take measures which are designed, on the*

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<sup>1</sup> Rattle, J. (2019) *A case study on the management of yellowfin tuna by the Indian Ocean Tuna Commission*. Blue Marine Foundation. Available at: <https://www.bluemarinefoundation.com/wp-content/uploads/2019/06/2019.06.09-IOTC-REPORT-FINAL.pdf>

<sup>2</sup> UNCLOS, Art. 116.

*best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors.*<sup>3</sup>

There is a provision for relevant economic factors to be taken into consideration, but it will not, in this context, permit state-sponsored over-allocation. Overfishing will, in the long term, lead to stock collapse, with all of its negative economic consequences, economics are therefore irrelevant in this context.

UNCLOS is clear: there is no right to fish beyond sustainable levels. **Doing so is illegal, it is either stealing fishing rights from other states or the next generation.** There is also an implicit obligation to restore depleted stocks.

The EU is a member of the Indian Ocean Tuna Commission, which is the body constituted to develop co-operation between states whose nationals fish the high seas on the Indian Ocean.<sup>4</sup> It is up to those states ultimately to implement appropriate rules against their flagged vessels. These rules are set out in the Basic Regulation of the Common Fisheries Policy (CFP)<sup>5</sup> and restated in a Council Decision:<sup>6</sup>

*The Union is to ensure that fishing and aquaculture activities are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies. It also provides that the Union is to apply the precautionary approach to fisheries management, and is to ensure that exploitation of marine biological resources restores and maintains population of harvested species above levels which can produce the maximum sustainable yield.*

Neither in UNCLOS, nor in the CFP is there any discretion for the EU to permit stock collapse of the Indian Ocean fishery.

### **Analysis**

There are built-in complexities with UNCLOS. The right to fish on the high seas extends to all fishers of all nations, yet it would be impractical if all nations exercised that right because of the duties of sustainability which come with the right. **The only way these right and duties can be reconciled is if there is self-restraint by those parties with fleets operating on the high seas.** Since no individual nation is in control of the high seas and the IOTC constitution is so weak, it is impossible for a higher authority to allocate limited fishing rights to any individual nation, without breaking the fundamental freedom to fish set out in UNCLOS. **Such allocation automatically restricts the freedom to fish, and no nation has the power to restrict other nations' fleets.**<sup>7</sup> This is further complicated by EU law, which **does not allow** unsustainable fishing.

In order to comply with their own rules, the position for EU negotiators is unenviable but clear:

Either, starting with its own fleet, it has to enforce the maintenance or restoration of yellowfin stocks immediately; or

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<sup>3</sup> UNCLOS, Art. 119 (1)(a)

<sup>4</sup> Indian Ocean Tuna Commission (2019) *IOTC Agreement*. Available from: [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)

<sup>5</sup> Regulation (EU) 1380/2013

<sup>6</sup> Council Decision (EU) 2019/860, Recital (3).

<sup>7</sup> UNCLOS, Art. 116.

In the absence of agreements regarding restraint on the stock, by all flag states, it must promote the closure of the high seas altogether, since no nation is able to comply with its duties of sustainability.

There is no middle way. Meaningful action cannot be delayed any further. Yellowfin stocks are in such a serious state there is no capacity to delay implementing meaningful measures.

When the South African Government<sup>8</sup> takes the unusual step of formally questioning the figures put forward by the EU, **it goes to the heart of the legitimacy of the operation of the EU flagged fleet.** In particular the South African Government makes the point:

*It raises questions on the practices of the EU Commission when the quotas continue to exceed in 2018 and when data are reported differently in different avenues.*

The EU fleet operates under EU laws, is supported by the European taxpayer and is potentially overexploiting a fishery on edge of collapse which is common to all mankind. It is a very serious matter. **This sort of allegation must be fully investigated and proper and accurate figures given, not just to the South Africans, but to the European public and the world at large.** We would be grateful for an open response to this as soon as possible and in any event within 7 days in view of the importance of this matter and the imminent discussions in Hyderabad.

Given the clear legal obligations on the EU and the absence of any discretion in the EU negotiators' position, the Blue Marine Foundation is **exploring all legal avenues** to ensure EU negotiators are no longer party to the illegal over-exploitation of this vitally important global resource.

Yours sincerely



**Charles Clover**  
**Executive Director**  
**Blue Marine Foundation**

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<sup>8</sup> Rattle (n1), Appendix 3.