

# The Regulation of Maritime Fishing under the Algerian Law

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## ABSTRACT

The over exploitation of marine living resources has always aroused the interests of the international community; this has resulted in the development of rules and laws for the conservation and preservation of living marine resources. Although legal mechanisms are progressively set up in order to end the development of illegal, unreported and unregulated fishing (hereinafter IUU fishing), such activities still continue. In its turn, Algeria has adopted an approach for the protection of environment in the framework of sustainable development; thus making necessary amendments to the previous texts in order to include this approach in the new laws. Also, Algeria as a member of the international community, affected by the phenomenon of IUU fishing strives to reconcile the requirements of rational exploitation of its fishery resources with international demands of conservation of fish stocks and preservation of the Mediterranean Sea. To do so, it has adopted provisions organizing the activities of maritime fishing. At the same time, deterrent measures have been prescribed to ensure legal and sustainable fishing. However, national legislation still require the incorporation of certain provisions of the international conventions that Algeria are currently ratifying or require ratification; regarding tools and possibilities offered by them in the prospect of developing maritime fishing and fighting IUU fishing.

**Keywords:** Algerian law – Mediterranean Sea - Fisheries and aquaculture - foreign flag vessels - IUU fishing – international & regional instruments.

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# 1. Introduction

This manuscript set out the Algerian legal system related to fishing and aquaculture, a sector that has not been accorded the importance which it deserves in the policy of the State, view of the challenges that it confronts. The aim of this manuscript is to describe and analyze the Algerian fishing and aquaculture laws and regulations, expose their progress and highlight the contribution of amendments and new laws and their impact on the development of fishing and aquaculture, that allows to pinpoint the gaps and propose solutions. That explains why in Algeria, the maritime fishing sector has been abandoned for a long time because of several reasons such as : the insufficiency of qualified personnel<sup>1)</sup>, an old fleet and administrative difficulties. The main reason for this abandonment was that the department of maritime fishing in Algeria was not stable at the administrative level; it was supervised by different ministries in turn: (Ministry of Irrigation, Ministry of Transport, Agriculture e...), and at each time it was relieved of some prerogatives. In 1999, the Ministry of Fishing & Fishery Resources was established. During the period (1999-2016) the sector has known a restructuration on legislative, professional<sup>2)</sup> and material<sup>3)</sup> aspects, simultaneously with the creation of the National Agency for Sustainable Development of Fisheries and Aquaculture “ANDPA” in 2014. The board of directors of the agency is composed of representatives of various ministries in relation with maritime fishing activities. It aims to guarantee the coordination that will achieve the goals set. In 2016, the sector of maritime fishing was again placed under the supervision of the Ministry of Agriculture, Rural Development and Fisheries.

## 2. Overview of fisheries in the Mediterranean Sea

Before considering the regulation of maritime fishing under the Algerian law, it is important to recall that, in view of the particularity of the Mediterranean Sea which covers 2.51 million km<sup>2</sup>, it is one of the largest semi-enclosed seas. The Strait of Gibraltar connects it to the Atlantic Ocean, of which the Mediterranean Sea is a part, and the Suez Canal connects it to the Red Sea, and the Indian Ocean. The Mediterranean is generally considered a distinct sea from the Black Sea, to which it is connected via the Dardanelles and Bosphorus, though some regional treaties apply to both Seas (Irina Papanicolopulu, 2013).

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- 1) - The main future technical needs in Algeria were linked to the training of inspectors. Final report : Working group on illegal, unreported and unregulated (IUU) fishing in the GFCM area of application- Madrid, Spain, 19-21 April 2016; Compliance Committee (COC), General Fisheries Commission for the Mediterranean , FAO. p. 03.
  - 2) - A maritime population of 80,000 (direct and indirect jobs), statistics for the year 2013 given by the national statistical office. [www.ons.dz](http://www.ons.dz)
  - 3) - A fleet of 4778 registered gear, with a capacity of 69.711 GT, average age of construction in 1996, (report delivered in 2015). “The State of Mediterranean and Black sea fisheries 2016”; General Fisheries Commission for the Mediterranean, Food and Agriculture Organization of the United Nations Rome, 2016. p. 29.

In addition, the Mediterranean Sea has not large stocks of fish or species of special interest for the world trade, therefore fishing is practiced only by coastal countries; except Spain and Italy are interested in an advanced level of activities in the exploitation of Mediterranean fisheries<sup>4</sup>). Furthermore the risks of conflicts can arise from the establishment of the Exclusive Economic Zones (hereinafter EEZ) by the twenty one (21) coastal states of the Mediterranean, from the extent of the high seas and the restriction of rights related to this zone essentially the freedom of navigation, that lead Mediterranean States to establish an exclusive fishing zone in order to avoid the conflicts(Umberto Leanza, 1992; Irini Papanicolopulu, 2013)<sup>5</sup>).

Because of the earlier reasons that make the Mediterranean unique, it is the fact that several Coastal States, instead of proclaiming an EEZ extended their jurisdiction up to two hundred (200) nautical miles (hereinafter nm) from their coasts, have created sui generis jurisdictional zones, which are not explicitly provided in the United Nations Convention on the Law of the Sea (hereinafter UNCLOS). These zones are known as “fisheries zones”, where States exercise exclusive rights and jurisdiction with regard to fisheries. Their width is established according to different criteria, and their extension is sometimes reduced so as to avoid delimitation issues with neighbouring States; their names also vary(Irini Papanicolopulu, 2013). This practice is inspired by the European Convention on Fisheries signed in London in 1964 by twelve States, which in its turn is inspired by the joint Canada / United States project(Umberto Leanza, 1992).

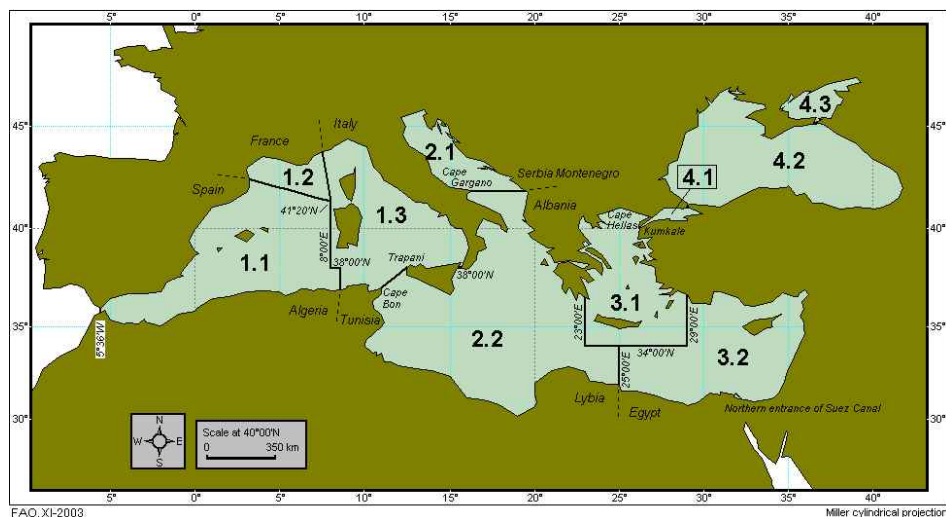
In fact, the evolution of fishing techniques and the increase in catches have led several States to establish fisheries zones(Umberto Leanza, 1992), these areas remain reduced comparing to the whole zone subjected to the regime of the high seas in the Mediterranean Sea(Anne-Paule GOUIN, 2007).

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4) - The marine capture production of the Mediterranean and Black Sea is estimated at 1.111 776 tonnes in 2014, less of 10, 6 per cent of 2013.

5) - An exclusive economic zone has been claimed by Morocco (1980), Syria (2003), Cyprus (2004), Tunisia (2005), Libya (2009), Lebanon (Decree No 6433 of 1 October 2011) and France (Decree No 2012-1148 of 12 October 2012). Albeit no legislation is available.

Figure 1. FAO fishing area, Area 37: Mediterranean and Black Sea.



Source: UN Atlas of the Oceans

### 3. The Algerian fishing zone

Algerian territorial sea extends to (12) nm measured from straight baselines; adjacent to it, a (12) nm contiguous zone was established in 2004 in order for the enforcement of customs, fiscal, immigration, and sanitary laws and regulations. About the EEZ, Algeria in its turn, as a geographically disadvantaged country<sup>6)</sup>, preferred reserved a fishing zone along the Algerian coast called “reserved fishing zone” than establishing an EEZ. The reserved fishing zone is created by legislative Decree N° 94-13 (1994), and was maintained in Law N° 01-11(2001) on fisheries and aquaculture<sup>7)</sup>. The reserved fishing zone is located beyond the national territorial waters, and is adjacent to them. The extent of this zone is calculated from the baselines to (32) nm between the western maritime boundary (with Morocco) and RasTénés<sup>8)</sup>, and to (52) nm from RasTénés to the eastern maritime boundary (with Tunisia)<sup>9)</sup>, so as not to reach the equidistance line with Spain and Italy.

Such zone is not provided in UNCLOS ratified by Algeria<sup>10)</sup> that raises the question of its legal regime. In order to answer to this question, it is first necessary to expose the rights of national and foreign flag vessels in the zone under the law

6) - According to article 70 of the UNCLOS, the concept of a geographically disadvantaged State extends to coastal States, including States bordering an enclosed or semi-enclosed sea.

7) - Article 104 of Law N° 01-11, of 03 July 2001, amended and supplemented by Law N°15-08, of 02 April 2015, has been issued in order to repeal the legislative Decree N° 94-13, of 28 May 1994 laying down general rules for fisheries.

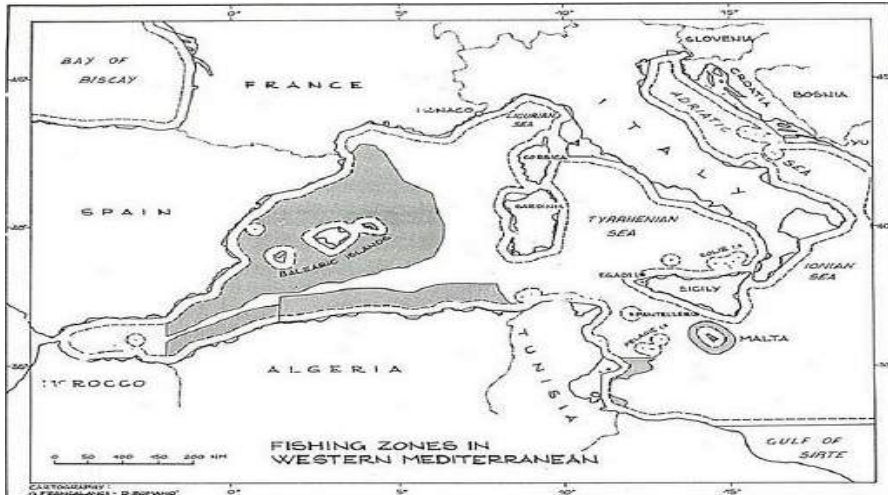
8) - A coastal city located to the west of the capital Algiers.

9) - Article 34 of Law 01-11.

10) - By the Presidential Decree of 22 January 1996 ratifying the United Nations Convention on the Law of the Sea, Official Journal of Republic of Algeria (O.J.R.A) n° 6 of 22 January 1996.

N°01-11 (2001), amended and completed by the law N° 15-08 (2015).

Figure 2. Fishing zones in western Mediterranean.



Source: Claudiane Chevalier from Pr. Scovazzi.

### 3.1 Rights of fishing under the law N°01-11

The fishing activity in Algeria is regulated by the Law N° 01-11, where article n° 02 provides that waters under national jurisdiction shall be understood to mean the internal waters, territorial waters and waters of the reserved fishing zone as defined by the legislation in force, as elucidated above. Moreover, the Algerian legislature reserves fishing in waters under national jurisdiction only to vessels flying Algerian flag in the broad sense, including vessels acquired in the form of credits, or chartered by Algerian natural or moral persons of Algerian law.

For the ships flying foreign flag operated by natural or moral person of foreign nationality, the Algerian law has taken two different positions. Under the Law N° 01-11, the article 23 provides that the Minister of Fisheries and Fishery Resources may temporarily authorizes ships flying foreign flag to carry out commercial fishing operations only in the reserved fishing zone. However, the article 24 of the same Law extends this right to the case of scientific fishing<sup>11)</sup> or commercial fishing of large migratory fish to waters under national jurisdiction including territorial sea, whilst the commercial fishing of highly migratory fishers can only be practiced Beyond the six (06) nm measured from the baselines to the outer limits of the reserved fishing zone(Umberto Leanza, 1992). As a result, Algeria didn't only open its reserved fishing zone for foreign ships; but also the half of its territorial sea estimated at twelve (12) nm.

The commercial fishing of highly migratory fishers is regulated by the Executive

11) - UNCLOS does not provide for this type of fishery, but organizes marine scientific research in Part XIII, which raises questions about the nature of scientific fisheries, is the legislature refers to the provisions of marine scientific research restricted to research only on marine biological resources?.

Decree N° 06-367 (2006). With regard to the conditions for the issuance of a fishing license to foreign vessels provided in, ship-owners must submit an application package about the individualisation of the vessel or vessels to put into operation; technical characteristics of the fishing gear to be used; list of the crew to be embarked; an official ship-owner's certificate issued by the country of origin and a document justifying the prior agreement of the flag State, endorsed by the competent authorities. The fishing license shall be issued by the Minister of Fisheries after consultation with the Minister of National Defence. The role of the Ministry of National Defence here is dominant regarding of its mission to ensure the security of the national territory; a mission translated by competences that have been procured as we will see hereafter, thus it is associated with the procedure for the issuance of a fishing license by exercising guardianship over the National Coast Guard Service(NCGS), a structure within the national naval police force.

In addition, the holder of fishing license for highly migratory fishers must embark two (02) inspectors from the fisheries administration and the national coastguard service<sup>12)</sup>. The fishing license is no transferable, its issuance is subject to the payment of fees lay down by the legislation in force and it is valid for one year. In its relationship with the national administration, the master of the authorized foreign vessel is obliged to communicate his different nautical positions to the territorially competent maritime administration and fisheries administration<sup>13)</sup>once a week and at the end of the campaign. In the case of non-compliance with the laws and regulations in force; the fishing license can be withdrawn by the competent administration<sup>14)</sup>.

### 3.2 Rights of fishing under the law N°15-08

In the second period, after the adoption of law N°03-10 (2010)<sup>15)</sup>relative to the protection of the environment in the frame of the sustainable development; the maritime fishing sector has been affected by the new national policy of the sustainable development, thereby Algeria has adopted a new fishing regulation. The law N° 15-08 (2015), amending and supplementing Law N°01-11, lays down the basis for the exploitation, conservation and the preservation of the living marine resources of waters under national jurisdiction, and the fundamentals essentially based on the concept of responsible fishing. The “*responsible fishing*” is one of the innovations introduced by the Law, defined in the article 02 as follow: “*responsible fishing means the rational exploitation of fishery resources so as to ensure their sustainability and minimize the impact of Fishing activity on the environment*”.

The new amendments in the frame the new policy have made possible for foreign

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12) - Article 08 of the Executive Decree N° 06-367. In addition and according to article 09, the holder of the fishing license is required to take a minimum of 10% of the crew, seamen and / or trainees of Algerian nationality.

13) - Article 20a of Law N° 01-11 stipulates that vessels armed and equipped for fishing must have on board a positioning beacon under penalty of sanction prescribed in Art 79bis.

14) - Articles 15, 16 & 17.

15) - Chapter 03 of the law dedicated to the prescriptions of the protection of water and aquatic spaces. O.J.R.A n° 43 of 20 July 2010.

vessels complying with the conditions to benefit only from the scientific fishing license, and to carry out scientific fishing in all waters under national jurisdiction, including internal and territorial waters without specifying a specified distance as was provided in Law N° 01-11. About commercial fishing, the Algerian legislator is retreating from its previous position to authorise foreign vessels to carry out commercial fishing operations in the reserved fishing zone; he has not prescribed any provisions concerning the authorisation for foreign vessels to carry out commercial fishing operations in waters under national jurisdiction, including the reserved fishing zone (Abdeldjalil BELALA, 2004)<sup>16</sup>).

The banning of vessels flying the foreign flag from commercial fishing in waters under national jurisdiction appears inconsistent with Algeria's international commitments in this field. However, article 03 specifies that the Law “*defines the general rules for the management and development of fisheries and aquaculture, in accordance with the State's international commitments on the exploitation, conservation and preservation of biological resources of waters under national jurisdiction...*”. In this context, the Algerian authorities have a unilateral commitment to protect certain aquatic species threatened with extinction by ensuring “... the conservation of marine mammals, birds and sea turtles in accordance with international conventions” (article 16 paragraph 2), that justifies the ban of fishing<sup>17</sup>).

This change in the position of the Algerian legislation has influenced the text of the Law by inserting new expressions with new meanings, such as “*illegal fishing*” instead of “*fishing without authorization*” which was used to describe fishing practices by foreign vessels contrary to the provisions of the Law; but the use of the expression “*illegal fishing*” is the result of prohibiting these vessels from fishing.

### 3.3 *The legal regime of the reserved fishing zone in Algeria*

From the aforementioned, and with regard of the rights exercised by Algeria in the reserved fishing zone that are similar to the rights that the Coastal State could exercise over the EEZ as provided in UNCLOS, that is to say beyond the territorial waters justified by the obligation to ensure the conservation and management of marine resources, also to preserve and organize access to the fishing grounds of the area concerned or of the species concerned. The principal aim of the exercise of sovereign rights over there served fishing zone is to ensure optimum management of the fishery and, a fortiori, to ensure a constant optimum yield of the fishery.

This extent is noteworthy in Law 01-11 by the submission to the authorization of the fishing activities practiced by foreign vessels in the reserved fishing zone,

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16) - The article 23 provides the possibility for vessels flying the foreign flag to be authorized was repealed. This situation results from the redeployment of part of the fishing fleets of neighbouring countries due to restrictions imposed by the EU's Common Fisheries Policy as well as by Asian countries specializing in certain species.

17) - The situation in the Mediterranean and Black Sea is alarming, as catches have dropped by one-third since 2007, mainly attributable to reduced landings of small pelagic such as anchovy and sardine but with most species groups also affected. FAO. 2016. The State of World Fisheries and Aquaculture 2016. Contributing to food security and nutrition for all. Rome. p. 05.

then in Law N°15-08 by the prohibition of these vessels from all fishing activities, except of scientific fishing considering the changing circumstances. The extent of the exercise of sovereign rights over the reserved fishing zone is further confirmed by the procedures for prosecution of foreign vessels and penalties provided by law in the case of offenses, procedures and penalties that will elucidate with more details below.

According to Part V of UNCLOS devoted to the EEZ provisions, the Coastal State enjoys sovereign rights only for economic purposes in the zone - as indicated by the name of the zone - as set out in article 56 of the Convention, without being able to extend its national sovereignty. The comparison between the provisions on commercial fishing by foreign vessels in the Algerian fishing zone and the provisions of UNCLOS organizing fishing by these vessels in the EEZ reveals that the Algerian legislature in its drafting of Law N° 01-11 and Executive Decree N° 06-367, was based on the contents of the articles of Part V of the UNCLOS, in particular as regards the fixing of the conditions for issuing fishing licenses, the boarding of controllers, payment of fees, the indication of species authorized to fish and the setting of quotas, and the obligations of ship-owners and masters of fishing vessels.

Being satisfied with the rights granted to the Coastal State in the EEZ only in the fishing field, Algeria has lost the possibility of enjoying the other rights related to the EEZ if it were established, so it should have declared a ZEE in order to benefit from all the rights reserved for this zone including the width, a position that Algeria has never adopted (Umberto Leanza, 1992)<sup>18</sup>). It remains to be recalled that the establishment of the reserved or exclusive fishing zone belongs to customary law insofar as nearly twenty one Mediterranean States have preferred to establish this zone rather than an EEZ, which nevertheless, accession of Coastal States.

#### **4. General conditions for practicing fishing and aquaculture**

Fishing and aquaculture are practiced in Algeria within the framework of a national policy that ensures their development and makes them eligible for support from the State. Also a national scheme for the development of fishing and aquaculture activities was set up, that the conditions for elaboration and approval are regulated<sup>19</sup>). Within this national scheme, the State shall promote the integration of fishing and aquaculture activities, by promoting the concession of sites on the coast and inside the country for the purpose of the establishment of fishing ports, shelters and all other fishing and aquaculture facilities<sup>20</sup>). To accomplish the promotion of fishing and aquaculture products, other arrangements may, where appropriate, be laid down by regulation.

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18) - Algeria did not ratify the conventions of 1958. During the proceedings of the Third Law of the Sea Conference, Algeria declared itself expressly opposed to the establishment of the exclusive economic zone.

19) - Art 05.

20) - Art 06. Also many privileges are prescribed in other related laws as the law for the investment.



## 4.1 Fishing

The fishing in Algeria is a subject of an authorization issued by the territorially competent fisheries administration on payment of fixed fees. The fishing of highly migratory fishers is restricted to vessels flying Algerian flag only, armed and equipped in accordance with the legislation and regulations in force concerning fishing, safety and maritime navigation<sup>21</sup>). The exploitation of seaweeds and sponges shall be carried out on the basis of a concession established by the administration in charge of estates, and issued by the territorially competent fisheries administration after the payment of fees fixed by the law of finance<sup>22</sup>). High seas fishing is encouraged, but the national fleet have not an appropriate vessels to practice it.

## 4.2 Aquaculture

Aquaculture is directly affected by other sectoral laws such as the land law, including the use of public domains as the water law, environmental law, animal health and animal disease law, fisheries law and trade law. Many of the issues and concerns involved are not unique to aquaculture and may be regulated under a more general legislative regime. In addition, many of the laws and regulations in place may not even apply directly to aquaculture and are thus often applied to the sector in an inconsistent manner. Conflicts may arise within the range of legislation applicable to aquaculture or among the agencies and institutes involved (Patrice TallaTakoukam & Karine Erikstein, 2013).

It has especially become common to regulate capture fisheries and aquaculture in the same piece of legislation, even though aquaculture as an activity is closer to agriculture than capture fisheries. In countries where the aquaculture sector is being developed governments find it useful to have the same authority enforce and control both sectors. However, the two should be separated both legally and institutionally. From a legal point of view, existing fisheries legislation often does not form an adequate basis for regulating aquaculture (Patrice TallaTakoukam & Karine Erikstein, 2013)<sup>23</sup>).

In Algeria, aquaculture is regulated in the same law with capture fisheries, both are supervised by the Ministry of Agriculture, Rural Development and Fisheries. In the beginning there were some lacks when the law allowed to aquaculture farmers to deal only with the fisheries administration, without intervention of the estates administration that is involved. In the same time there was no collaboration between the two administrations, which create a blockade for farmers. Later, in order to avoid the previous situations, the amendment had integrated the administration in charge of estates in the administrative processes. In fact, the exercise of aquaculture is carried out on the basis of a concession established by the administration in charge

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21) - Art 35bis.

22) - Art 37.

23) - Numerous countries have enacted specific rules relating to aquaculture under aquaculture-specific legislative text, 1 basic fisheries law, 2 water law, 3 or another piece of legislation. 4 These laws tend to set up some principles on aquaculture and then invest the legitimate authority with the power to regulate aquaculture.

of estates; and issued by the territorially competent fisheries administration on payment of fixed fees<sup>24</sup>).

### 4.3 *The exploitation of coral*

The coral reefs in Algeria had suffered for a long time from illegal exploitation, which conducts the authorities to set up a new regulation to confront this practice. The amendments of the law 01-11 include new arrangement about the exploitation of coral. First a new definition was adopted about the coral in the finished state; the previous definition deal with coral only as a biological resource. The coral in the finished state means coral worked and transformed<sup>25</sup>); which must be carried out in a rational manner using the appropriate diving equipment and systems in identified exploited zones<sup>26</sup>). These exploited zones shall in all cases be subject to a public concession granted to natural or moral persons of Algerian nationality. The concession is established by the authority responsible for domains acting on behalf of the State, and issued by the territorially competent fisheries administration, on payment of fixed fees.

To benefit properly from the concession, the captain of the coral ship is required to maintain a dive register; complete a summary declaration of the coral caught and respect the annual quota authorized witch may be exceeded within the limit of the percentage fixed by regulation. The export of coral is authorized only in the finished state; its holding and circulation (raw or semi-finished coral) are subordinated to a document justifying its legal obtaining and the traceability related thereto<sup>27</sup>).

## 5. Prescribed measures for combating illegal fishing

For combating (IUU) fishing<sup>28</sup>) in accordance with the policy of the sustainable development, Algeria has adopted provisions considered more stringent than those envisaged in the international conventions ratified by it, in particular UNCLOS. These provisions are applied to Algerian nationals as well as to foreigners. The Law N° 01-11 provides penalties for non-compliance or infringement of the provisions governing fishing. In order to ensure compliance with these provisions, a fishery police agency has been set up, sea police inspectors are empowered to investigate and record infringements of the provisions in force<sup>29</sup>).

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24) - Aquaculture production in Northern Africa, excluding Egypt is estimated of 0.02 per cent of the world total production in 2014. *The State of World Fisheries and Aquaculture 2016*. p. 27.

25) - Art 02: The coral in the finished state means coral worked and transformed: 1- in the shape of a pierced ball and mounted on a wire; 2 - drilled barrel-shaped and mounted on wire; 3- in the form of a nugget pierced and mounted on a wire; 4- in the form of a cabochon; 5- shaped and carved.

26) - Art 36.

27) - Arts 36bis, ter&quart.

28) - IUU fishing represents some 26 million tons of fish per year, or more than 15 percent of the total catch production in the world. *The State of World Fisheries and Aquaculture 2016*. p. 06.

29) - All infringements detected were typically recorded in an information system at the disposal of relevant na-

For national vessels, penalties for infringements are generally related to fishing without registration or without an appropriate authorisation, non-compliance with fishing provisions in places and times limited, use of prohibited instruments and substances, the hindrance of the smoothness of fishing operations and the lack of communication and submission requirements<sup>30)</sup>.

For foreign vessels, the law provides that any fishing vessel flying the foreign flag that has carried out illegal fishing in waters under national jurisdiction will be arrested and taken to an Algerian port and detained by the verbalizing agent until the final decision is pronounced from the competent court<sup>31)</sup>. For this purpose, and in its mission to protect marine living resources in waters under national jurisdiction, the fisheries police enjoy important prerogatives, as the boarding of a vessel flying the foreign flag may take place beyond the waters under national jurisdiction when the pursuit has started within the national waters. The right of pursuit as inspired from article 111 of UNCLOS; shall cease as soon as the vessel pursued enters the territorial waters of the country to which it belongs or in that of a third State. If the foreign ship refuses to stop or tries to flee, the Algerian vessel in charge of the fishing police will fire a warning shot; if the foreign fishing vessel refuses to comply and in case of absolute necessity, real projectiles shall be used taking all precautions to avoid touching people on board<sup>32)</sup>.

The penalties provided in the aforementioned infringements vary between imprisonment and / or fines for nationals, so for foreigners Algeria literally adopts - although it is a reserved fishing zone and not an EEZ - the provisions of The UNCLOS prohibiting the coastal State from resorting to imprisonment or other corporal punishment as a sanction for violations of fisheries laws and regulations in the EEZ, unless the States concerned agree otherwise<sup>33)</sup>. In this regard, in the case of an offense and in accordance with the provisions of UNCLOS, in addition to the fines that foreign-flag vessels must pay<sup>34)</sup>, they may be arrested, detained, seized, brought to court or confiscated; without prejudice to the criminal liability of the legal person in accordance with the rules laid down by the criminal code.

Concern the illegal exploitation of coral, the amendment of the law 01-11 had included new chapter with five articles (from Art 102 ter to Art 102 nonies) devoted

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tional administrations.

30) - With regard to national fishing vessels, recent developments were described in the establishment of VMS by Algeria, based on VHF transmission (AIS), which was expected to be installed on roughly 1 000 units over 15 m. At the same time, work was still under way to establish a FMC, as some technical problems were hampering the completion of this task.

Final report : *Working group on illegal, unreported and unregulated (IUU) fishing in the GFCM area of application*. p. 03.

31) - Article 94 of law 01-11.

32) - Article 96 of law 01-11. In 2015, no cases of IUU fishing concerning foreign fishing vessels had been detected in Algerian waters. FAO: Final report on *working group on illegal, unreported and unregulated (IUU) fishing in the GFCM area of application*. p. 03.

33) - Article 73 paragraph 03. Although this is not an EEZ, Algeria wishes to respect its international commitments in accordance with the conventions it has ratified.

34) - Estimated heavy fines between 5.000.000 and 8.000.000 DA (45.300 to 72.500 USD), in case of recidivism, the fines can be increased between 10.000.000 and 20.000.000 DA (97.700 to 181.400 USD); arts 98 and 99 of Act 15-08.

to this infringement. The penalties for illegal exploitation of coral without concession, contrary to the law or without documents justifying its legal obtaining and the traceability; vary between imprisonment<sup>35)</sup> and / or payment of fine<sup>36)</sup>; in addition to confiscation of the product exported in its raw or semi-finished state, contrary to the provisions subscribed in the Law in force. Furthermore, without prejudice to these provisions, any offense related to coral shall give rise to the seizure of the vessel and fishing gear and to the withdrawal of the maritime master's fascicle from the master of the vessel and its removal from the sea.

If a foreign person convicted of illegal fishing of coral in waters under national jurisdiction, he shall be punished with imprisonment of three (3) to five (5) years and a fine of ten million dinars (10.000.000 DA) to twenty million dinars (20.000.000 DA). The competent court shall order the seizure of the vessel and confiscation of the gear found on board or prohibited and the coral caught and the destruction of the prohibited craft, if any. In the case of a subsequent offense, he shall be punished with imprisonment of three (3) to five (5) years and a fine of thirty million dinars (30.000.000 DA) to sixty million dinars (60.000.000 DA) in addition to requisitioning the vessel that was used to commit the offense<sup>37)</sup>.

## **6. The commitment of Algerian fishing regulation with international instruments**

### *6.1 At the international level*

So far, Algeria has not been a party to the FAO Agreement of 1993 to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, neither to the UN Fish Stocks Agreement from 1995<sup>38)</sup>, but within the policy of encouraging High Seas fishing (article 06 of law 01-11), it is expected that Algeria accept the FAO Compliance Agreement from 1993<sup>39)</sup>. Concerning the FAO Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing from 2009 (PSMA hereinafter)<sup>40)</sup>, that aims to intensify the global collaboration between governments, port authorities, coast guards, navies and other stakeholder institutions with the ultimate goal is to eliminate IUU fishing. The rational and sustainable management was needed, the effective management of fish stocks required regional cooperation. In this meaning, Algeria even is not yet a party to the PSMA participated to a regional workshop that serves the regional cooperation, which will be the cornerstone of effective enforcement of the application of the PSMA and to limit the impacts of IUU fishing on

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35) - From six (6) months to years (5) years.

36) - From 10.000.000 to 60.000.000 DA (97.700 to 543.900 USD).

37) - Articles 102 octies&nonies.

38) - Entered into force on 11 December 2001.

39) - Entered into force on 24 April 2003.

40) - Entered into force on 5 June 2016.

the long-term sustainability of fisheries, on food security, and on biodiversity conservation<sup>41)</sup>. It's important to note down that Algeria even is not a party in some international fishing instruments<sup>42)</sup>, has adopted its national legislation in accordance with no ratified instruments rules.

About the non-obligatory instruments, such as the Global Code of Conduct for Responsible Fisheries, which was unanimously adopted by the FAO Conference on 31 October 1995, provides the framework needed for national and international efforts to ensure sustainable Bio aquatic resources in an environmentally friendly way. Also, the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (hereinafter IPOA-IUU), that was developed as an optional instrument within the framework of the Code of Conduct; nothing deters Algeria to inspire from the content of these instruments its national legislation, that makes it consist with principles and standards applicable to the conservation and development of all fisheries.

## 6.2 *At the regional level*

There are two main fisheries organizations have competence on Mediterranean fisheries. The first one is the General Fisheries Commission for the Mediterranean (hereinafter GFCM); witch is a Regional Fisheries Management Organization (RFMO). The GFCM initially started its activities as a Council in 1952, when the agreement for its establishment came into force and became a Commission in 1997; Algeria joined the GFCM since December 11th, 1967. The main objective of the GFCM is to ensure the conservation and the sustainable use, at the biological, social, economic and environmental level, of living marine resources as well as the sustainable development of aquaculture in the Mediterranean and in the Black Sea and connecting waters. The GFCM is currently composed of 24 members (23 member countries and the European Union)<sup>43)</sup> who contribute to its autonomous budget to finance its functioning, in addition of the 23 members, there are 3 Cooperating non Contracting Parties (Bosnia and Herzegovina, Georgia and Ukraine). Though the main threat for

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41) - For this purpose a FAO Workshop on Implementing the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the Agreement) that was held in Tirana, Albania, from 29 February to 4 March 2016. The workshop was attended by 42 participants from 16 coastal countries of the Mediterranean and Black Sea (including Algeria), in addition to representatives from one non-governmental organization (NGOs), one intergovernmental organization, one regional fishery management organizations (RFMO) and the European Commission.

This workshop is one of a series of regional workshops being held globally. He highlighted that the objectives of this workshop were to: raise awareness on the negative effects of IUU fishing and the benefits of developing and integrating strengthened and coordinated port State measures into existing Monitoring, Control and Surveillance (MCS) tools; inform relevant stakeholders of the provisions and requirements of the PSMA; and identify the needs and challenges for the implementation of the PSMA at national and regional levels.

42) - For illustrative purpose, Algeria is not yet party in the International Convention for the Regulation of Whaling of 1946.

43) - FAO Major Fishing Areas, MEDITERRANEAN AND BLACK SEA (Major Fishing Area 37), CWP Data Collection. In: *FAO Fisheries and Aquaculture Department* [online]. Rome, Updated 1 October 2004. <http://www.fao.org/fishery/area/Area37/en>

Mediterranean fisheries is over-fishing, the GFCM does not determine quotas, due also to the wide variety of species present and fished in Mediterranean waters. It has however taken a number of measures on fishing gear and methods, minimum size and closed areas (Irimi Papanicolopulu, 2013).

The second fishery organization has competence on Mediterranean fisheries is the **International Commission for the Conservation of Atlantic Tunas** (hereinafter ICCTA), which is an inter-governmental fishery organization responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and its adjacent seas. The ICCAT determines catch quotas and other conservation and management measures for Bluefin tuna stocks and other species, including swordfish, and has adopted measures to specifically combat IUU fishing including trade sanctions. ICCAT recommendations specifically applying to the Mediterranean are regularly endorsed by the GFCM compliance with them however is still far from satisfactory (Irimi Papanicolopulu, 2013). Algeria joined the ICCTA since February 16th, 2001.

Furthermore the two fishery organizations have competence on Mediterranean fisheries; the 1996 Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean and the Contiguous Atlantic area (hereinafter ACCOBAMS); entered into force on the 1st of June 2001, aims at the protection of cetaceans and has been ratified by most Mediterranean States including Algeria that became a party since 2007<sup>44</sup>).

Concerning the relation of the marine living resources with the environmental protection; it is important to recall that the Mediterranean States have concluded one of the first regional treaties for the protection of the marine environment, the Barcelona Convention, originally adopted in 1976 and modified and renamed in 1995. The Convention is further implemented by protocols dealing with specific types of pollution, and other tools to protect and preserve the marine environment. The Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, apart from providing rules for the creation of national protected areas, it created also a List of Specially Protected Areas of Mediterranean Importance (SPAMI List). The SPAMI list includes a number of protected areas created in the maritime zones of coastal States as well as one protected area that includes also portions of the high seas<sup>45</sup>). For this purpose two areas were created along the Algerian coast, it's about *Banc des Kabyles Marine Reserve* at east of the Capital, and *Habibas Islands* at the west. The most important protected area of Mediterranean is the *Pelagos Sanctuary* for the Conservation of Marine Mammals, created by the 1999 Agreement concerning the Creation of a Marine Mammal Sanctuary in the Mediterranean, concluded between France, Italy, and Monaco for the protection of an area containing habitat suitable for the breeding and feeding needs of all cetacean species regularly found in the Mediterranean Sea (Irimi Papanicolopulu, 2013).

On the trade aspect, an EURO-MEDITERRANEAN AGREEMENT was signed on 22 April 2002, establishing an association between Algeria and the European Community and its member States<sup>46</sup>). This agreement aims among other things to

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44) - Presidential Decree n° 07-95 of 19 mars 2007 ratifying the agreement on the conservation of cetaceans of the black sea, Mediterranean Sea and contiguous Atlantic area, O.J.R.A n° 20 of 25 mars 2007.

45) - It includes 34 sites (as per last update of the SPAMI List in February 2016).

promote trade and the expansion of harmonious economic and social relations between the parties and establish the conditions for the gradual liberalisation of trade in goods, services and capitals. According to the chapter 2 of this agreement titled “*agricultural, fisheries and processed agricultural products*”, parties should apply provisions indicated in the agreement to products originating in the Community and Algeria falling within chapters 1 to 24 of the Combined Nomenclature and of the Algerian Customs tariff. Algeria and the Community shall progressively establish a greater liberalisation of their reciprocal trade in agricultural, fisheries and processed agricultural products of interest to both Parties<sup>47)</sup>. For that purpose, two protocols were attached listing the products falling under the agreement; the protocol N°3 and the protocol N° 4 on the arrangements applying to imports into the community of fishery products originating in Algeria and vice versa. According to the EU standards, this agreement impose to Algerian and European exporters to deal with fisheries products with respect with international instrument rules and recommendations.

## 7. Conclusion

The legal system of Algerian fisheries helps the sustainable fisheries in Algeria by encouraging and improving the scientific fishing in all waters under national jurisdiction, including internal and territorial waters even by national or foreign vessels, further, by the restriction of the right of fishing only for vessels flying Algerian flag in the purpose to preserve the marine living resources from the overexploitation and from the extinction of some species. Also the prescribed measures for practice fishing and aquaculture, and the penalties provided for combating IUU fishing or non-compliance fishing seem satisfying so far.

The legal system of Algerian fishing and aquaculture knows several gaps that the law N°15-08 refer to the executive authority to adopt other arrangements may, where appropriate, be laid down by regulation in order to accomplish the promotion of fishing and aquaculture. Unfortunately a large part of these arrangements are till now not issued, that obviates the good execution of laws and regulations.

To improve the Algerian legal system concerning the resource management including fish stocks assessment, Algeria has to make efforts by adopting rules that organize clearly the scientific fishing conducted by national or by foreign vessels, and by the insertion of new technologies systems in both scientific fishing and the fishing operations, and also by cooperating with neighbouring states and involved international and regional organisations to exchange databases for the benefit of all.

The current framework of Algerian fisheries legislation is not even completed and needs to be more detailed as shown above, provides a platform for the construction

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46) - This Agreement replaces the Cooperation Agreement between the European Economic Community and Algeria; and the Agreement between the Member States of the European Coal and Steel Community and Algeria, both of which were signed in Algiers on 26 April 1976.

Official Journal of the European Union; 10.10.2005.

47) - Article 13 of the Agreement.

of a full maritime, legislative and institutional structure in accordance with the national, regional and international perspectives. So the government has to adopt an appropriate maritime policy to make better by reforming and strengthening the legislation in force.

Today, Algeria is facing two challenges, on one hand, the obligation to supply the population estimated at 40.4 million inhabitants<sup>48)</sup> with the necessary fish food needs, especially since the average of fish consumption is less than the world one<sup>49)</sup>. On the other hand, it should fulfil this obligation within a responsible supply; while respecting the marine environment and sustainable development, the sustainability of the exploitation of marine resources is guaranteed.

Even if Algeria has not ratified some international or regional conventions, or has not acceded to international or regional organizations related directly or indirectly to the organization and conservation of sea fishing; it remains obliged to comply with its provisions in order to fulfil its obligations under the UNCLOS that refers to these conventions and organizations.

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48) - Official statistics of 01st January 2016. Statistics National Office.

49) - The average fish consumption as food per capita fish supply is 2–5 kg/year (in live weight equivalent), (AVERAGE 2011–2013); while World per capita fish supply reached high of 20 kg in 2014. The State of World Fisheries and Aquaculture 2016. p. 74.



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