

REC.MCS-GFCM/33/2009/8

on the establishment of a list of vessels presumed to have carried out IUU fishing in the GFCM area repealing recommendation GFCM/30/2006/4

The General Fisheries Commission for the Mediterranean (GFCM),

RECALLING that the FAO Council adopted on June 23, 2001 an International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), which stipulates that the identification of the vessels carrying out IUU fishing activities should follow agreed procedures and be made in a fair, transparent and non-discriminatory manner;

CONCERNED by the fact that IUU fishing activities in the GFCM Area continue, and that these activities diminish the effectiveness of the GFCM conservation and management measures;

FURTHER CONCERNED that there is evidence of a high number of vessel owners engaged in such fishing activities which have re-flagged their vessels to avoid compliance with GFCM conservation and management measures;

DETERMINED to address the challenge of an increase in IUU fishing activities by way of counter-measures to be applied in respect of vessels without prejudice to further measures adopted in respect of flag States under the relevant GFCM instruments;

CONSIDERING the Declaration of the Third Ministerial Conference on the Sustainable Development of Fisheries in the Mediterranean which was held in Venice from 25 to 26 November 2003;

CONSCIOUS of the need to address, as a matter of priority, the issue of large-scale fishing vessels conducting IUU fishing activities;

NOTING that the IUU fishing activities must be addressed in the light of all relevant international fisheries instruments and in accordance with the relevant rights and obligations established in the World Trade Organization (WTO) Agreement;

ADOPT,S in accordance with paragraph 1 (h) of Article III and Article V of the GFCM Agreement that:

Application

1. For the purposes of this Recommendation the fishing vessels flying the flag of a non Contracting Party, Contracting Party or Cooperating non-Contracting Party are presumed to have carried out illegal, unreported and unregulated fishing activities in the GFCM Area, inter alia, when a Contracting Party or Cooperating non-Contracting Party, presents evidence that such vessels have engaged in one or more of the following activities:

- a) aundertake any of the following activities in contravention of GFCM conservation and management measures:
 - i) harvest fish in the GFCM Area;
 - ii) fail to report the catches or make false or misleading reports;

- iii) take or land undersized fish;
 - iv) fish during closed fishing periods or in closed areas;
 - v) use prohibited fishing gear; or
 - vi) engage in fishing activities contrary to any other GFCM conservation and management measure.
- b) tranship or participate in joint operations such as re-supply or refuelling with vessels included in the GFCM IUU Vessel List;
 - c) harvest fish in maritime waters under the national jurisdiction of a coastal State in the GFCM Area, without the permission of that State or in contravention of its laws and regulations; and
 - d) being without nationality, harvest fish in the GFCM Area.

2. The Commission may review and, as appropriate, revise this Recommendation with a view to its extension to other types of IUU fishing activities.

Information on presumed IUU fishing activities

3. Contracting Parties and Cooperating non-Contracting Parties shall transmit every year to the Executive Secretary, at least 120 days before the annual GFCM Session, information on vessels flying the flag of a non-Contracting Party, and vessels flying the flag of a Contracting Party or Cooperating non-Contracting Party, presumed to be carrying out IUU fishing activities as defined in paragraph 1 in the GFCM Area during the previous year, accompanied by evidence reported by Contracting Parties and Cooperating non-Contracting Parties supporting the presumption of IUU fishing activity.

Draft IUU Vessel List

4. On the basis of the information received pursuant to paragraph 3, the Executive Secretary shall draw up a Draft IUU Vessel List which shall include information required in Annex I. The Executive Secretary shall transmit it, together with the evidence supporting the presumption of IUU fishing activity provided in accordance with paragraph 3, together with the current IUU Vessel List, to Contracting Parties and Cooperating non-Contracting Parties, as well as to non-Contracting Parties whose vessels are included on either list at least 90 days before the GFCM annual Session. Contracting Parties and Cooperating non-Contracting Parties and relevant non-Contracting Party flag States may transmit their comments to the GFCM Secretariat as appropriate, including evidence showing that the listed vessels have not fished in contravention to GFCM conservation and management measures or had the possibility of fishing in the GFCM Area, at least 30 days before the annual Session.

5. Upon receipt of the Draft IUU Vessel List, Contracting Parties and Cooperating non-Contracting Parties shall closely monitor the vessels included in the draft IUU Vessel List in order to determine their activities and possible changes of name, flag and/or registered owner.

6. Where a vessel appears on a Draft IUU Vessel List drawn up in accordance with paragraph 4, the flag State shall notify the owner of the vessel flying its flag of its inclusion in the Draft IUU Vessel List and of the consequences that may result from being confirmed in the IUU Vessel List to be adopted by the Commission.

Consideration and Adoption of the Provisional IUU Vessel List

7. On the basis of the information received pursuant to paragraph 4, the Executive Secretary shall draw up a Provisional IUU Vessel List which shall include information required in Annex I, and transmit it two weeks in advance of the GFCM annual Session to Contracting Parties and Cooperating non-Contracting Parties, together with all the evidence provided.

8. Contracting Parties and Cooperating non-Contracting Parties may at any time submit to the Executive Secretary any additional information which might be relevant for the establishment of the IUU Vessel List. The GFCM Executive Secretary shall circulate the information at the latest before the GFCM annual Session to the Contracting Parties and Cooperating non Contracting Parties, and to the non-Contracting Parties concerned, together with all the evidence provided.

9. The GFCM Compliance Committee shall examine the Provisional IUU Vessel List each year, as well as the information referred to in paragraphs 3 and 4. The Committee shall remove a vessel from the Provisional List if the evidence provided clearly demonstrates that:

- a) the vessel did not take part in any IUU fishing activity described in paragraph 1, or
- b) effective action has been taken in response to the IUU fishing activity or activities in question, including, *inter alia*, prosecution and imposition of sanctions of adequate severity.

10. Following the examination referred to in paragraph 9, the Compliance Committee shall:

- a) review and assess the Provisional IUU Vessel List together with information and evidence circulated under paragraphs 3 and 4;
- b) review and propose the removal of vessels from the IUU Vessel List adopted by the Commission at its previous annual Session, following consideration of such List together with the information and evidence circulated under paragraphs 3 and 4, and any information provided pursuant to paragraph 16; and
- c) submit the Provisional IUU Vessel List to the Commission, with recommendations for its adoption and for removal of any vessels from the current IUU Vessel List. .

IUU Vessel List

11. The Commission shall consider for approval the Provisional IUU Vessel List and the removal of vessels from the current IUU Vessel List recommended by the Compliance Committee.

12. On adoption of an IUU Vessel List by the Commission, the Secretariat shall request flag States whose vessels appear on the IUU Vessel List to:

- a) notify the owner of the vessel identified on the IUU Vessel List of its inclusion on the List and the consequences which result from being included on the List, as described in paragraph 11; and
- b) take all necessary measures to eliminate the relevant IUU fishing activities including, as appropriate, the cancellation of the registration and/or the fishing license(s) of these vessels, and inform the Secretariat of the measures taken.

13. Contracting Parties and Cooperating non-Contracting Parties shall take all necessary measures to:

- a) ensure that the fishing vessels, support vessels, refuelling vessels, mother ships and cargo vessels flying their flag do not engage in fishing activities, fish processing operations or participate in any transhipment or joint fishing operations with vessels included on the IUU Vessel List, or assist in any way, except in case of force majeure;
- b) prohibit the chartering of a vessel included on the IUU Vessel List; and
- c) encourage the importers, transporters and other sectors concerned, to refrain from transactions and transhipment of any fish caught by vessels included on the IUU Vessel List;

14. Contracting Parties and Cooperating non-Contracting Parties shall take all necessary measures in respect of vessels that do not fly their flag to:

- a) ensure that IUU vessels are not authorized to land, refuel, re-supply or engage in other commercial transactions;
- b) prohibit the entry into their ports of vessels included on the IUU Vessel list, except in case of force majeure;
- c) refuse to grant their flag to vessels included in the IUU Vessel List, except if the vessel has changed owner and/or operator; and the sufficient evidence has been provided that demonstrates that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel, or having taken into account all relevant facts, the flag Contracting Party or Cooperating non-Contracting Party, determines that granting the vessel its flag will not result in IUU fishing activities; and
- d) prohibit the imports, or landing and/or transhipment, of any fish from vessels included in the IUU Vessel List;

15. The Executive Secretary shall ensure publication of the IUU Vessel List in a manner consistent with any applicable confidentiality requirements, including through electronic means by placing it on the GFCM website. The Executive Secretary shall transmit the IUU Vessel List to other regional fishery bodies as appropriate for the purposes of enhanced cooperation between GFCM and these organizations in order to prevent, deter and eliminate illegal, unreported and unregulated fishing.

16. Upon receipt of an IUU vessel list adopted by another RFMO and any information regarding such list, the Executive Secretary shall circulate this information to the Contracting Parties and ensure it appears on the GFCM website. Vessels that have been added or deleted from such lists shall be incorporated into or deleted from the GFCM IUU Vessel List as appropriate, unless any Contracting Party objects within 30 days of the date of transmittal by the Executive Secretary on the ground(s) that:

- a) there is satisfactory information to establish that the vessel did not engage in any IUU fishing activities or that effective action has been taken in response to the IUU fishing activities in question, including, *inter alia*, prosecution and imposition of penalties or sanctions of adequate severity;
- b) there is satisfactory information to establish that none of the requirements mentioned in a) above has been met with regard to a vessel deleted from the respective lists; or
- c) there is insufficient information to make a determination pursuant to sub-paragraph a) or b), above, within 30 days. In the event of an objection to a vessel listed by another RFMO being incorporated into or deleted from the GFCM IUU Vessel List, such vessel shall be placed on the Provisional IUU Vessel List.

17. Without prejudice to the rights of flag Contracting Parties or Cooperating non Contracting Parties, and coastal States to take action consistent with international law, Contracting Parties and Cooperating non-Contracting Parties shall not take any unilateral trade measures or other sanctions against vessels provisionally included in the Draft IUU Vessel List pursuant to paragraph 4, or which have been already removed from the Provisional IUU Vessel List, pursuant to paragraph 9, on the ground that such vessels are involved in IUU fishing activities.

Deletion from the IUU Vessel List

18. A flag State whose vessel appears on the IUU Vessel List may request the removal of the vessel from the list during the intersessional period by providing the following information:

- a) the actions or measures it has taken to ensure that the vessel complies with GFCM conservation

- and management measures;
- b) the actions or measures it has taken to effectively discharge its responsibilities with respect to the vessel, including the monitoring and control of the vessel's fishing activities in the GFCM Area;
 - c) the actions it has taken against the vessel in response to the relevant IUU fishing activities, including the prosecution and imposition of sanctions of adequate severity, if relevant; and, as appropriate
 - d) the vessel has changed ownership and the new owner can establish the previous owner no longer has any legal, financial or real interests in the vessel or exercises control over it and the new owner has not participated in IUU fishing, if relevant.

Intersessional modification of the IUU Vessel List

19. A flag State may send a request for the removal of its vessel from the IUU Vessel List to the Executive Secretary, accompanied by the supporting information referred to in paragraph 18.

20. The GFCM Executive Secretary will transmit the removal request received in accordance with paragraph 19, with all the supporting information, to the Contracting Parties and the COC Bureau within 15 days following the notification of the request.

21. The Contracting Parties shall review the removal request and notify their opinion on whether the vessel should be removed from, or maintained on the IUU Vessel List by electronic means to the Executive Secretary within 30 days following the notification by the Executive Secretary. The Executive Secretary, in close coordination with the COC Bureau, shall review the responses within 30 days following the last day for receipt of the responses. If a Contracting Party does not respond within the given period, it will be considered as an abstention from the vote and part of the quorum for the decision-making.

22. The Executive Secretary shall communicate the outcome of the review of the removal request at the end of the 30 day period following the date of the notification referred to in paragraph 20 to all Contracting Parties.

23. If the result indicates that there is a two-thirds majority of the Contracting Parties in favour of removal of the vessel from the IUU Vessel List, the Chairperson shall communicate the result to all Contracting Parties and to the non-Contracting Party or flag State which requested the removal of its vessel from the IUU Vessel List. In the absence of a two-thirds majority, the vessel will be maintained on the IUU Vessel List and the Executive Secretary shall inform the non-Contracting Party accordingly.

24. The Executive Secretary shall remove the vessel referred to in paragraph 23 from the IUU Vessel List, as published on the GFCM website. Moreover, the Executive Secretary shall forward the decision to remove the vessel to other regional fishery organisations.

Final Provision

25. Recommendation GFCM/2006/4 *on the establishment of a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities in the GFCM Area* is replaced by this Recommendation.

ANNEX 1

Information to be included in all IUU Vessel Lists

The Draft IUU Vessel List, Provisional IUU Vessel List and Adopted IUU Vessel List shall contain the following details, where available:

1. Name of vessel and previous name(s), if any
2. Flag of vessel and previous flag(s), if any
3. Name and address of owner(s) of vessel and previous owner(s), including beneficial owner(s), and owner's place of registration
4. Operator of vessel and previous operator(s)
5. Call sign of vessel and previous call sign, if any
6. Lloyds/IMO number
7. Photographs of the vessel
8. Date vessel was first included on the IUU Vessel List
9. Summary of activities which justify inclusion of the vessel on the IUU Vessel List, together with references to all relevant evidence