

Recommendation GFCM/33/2009/8
on the establishment of a list of vessels presumed to have carried out IUU
fishing in the GFCM area of application
repealing Recommendation GFCM/30/2006/4

The General Fisheries Commission for the Mediterranean (GFCM),

RECALLING that the Food and Agriculture Organization of the United Nations (FAO) Council adopted on 23 June 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 illegal, unreported and unregulated (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 of application 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 who 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 2003 Declaration of the Ministerial Conference on the Sustainable Development of Fisheries in the Mediterranean (2003 Venice Declaration);

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

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

ADOPTS, in conformity with Articles 5 b), 8 b) and 13 of the Agreement for the establishment of the General Fisheries Commission for the Mediterranean, the following recommendation:

Application

1. For the purpose 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 IUU fishing activities in the GFCM area of application, *inter alia*, when a contracting party or cooperating non-contracting party (CPC) presents evidence that such vessels have engaged in one or more of the following:

- a) undertake any of the following activities in contravention of GFCM conservation and management measures:
 - i) harvest fish in the GFCM area of application;
 - 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) transship 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 of application, 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 of application.
2. The Commission may review and, as appropriate, revise this recommendation in view of its extension to other types of IUU fishing activities.

Information on presumed IUU fishing activities

3. CPCs shall transmit every year to the GFCM Executive Secretary, at least 120 days before the GFCM annual session, information on vessels flying the flag of a non-contracting party, and vessels flying the flag of a CPC, presumed to be carrying out IUU fishing activities as defined in paragraph 1 in the GFCM area of application during the previous year, accompanied by evidence reported by CPCs supporting the presumption of IUU fishing activity.

Draft IUU vessel list

4. On the basis of the information received pursuant to paragraph 3, the GFCM Executive Secretary shall draw up a draft IUU vessel list which shall include information required in Annex 1. The GFCM Executive Secretary shall transmit it, together with the evidence supporting the presumption of IUU fishing activities provided in accordance with paragraph 3, together with the current IUU vessel list, to CPCs, as well as to non-contracting parties whose vessels are included in either list at least 90 days before the GFCM annual session. CPCs 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 of application, at least 30 days before the GFCM annual session.

5. Upon receipt of the draft IUU vessel list, CPCs 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. When 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 GFCM Executive Secretary shall draw up a provisional IUU vessel list which shall include the information required in Annex 1, and transmit it to CPCs, together with all the evidence provided, two weeks in advance of the GFCM annual session.

8. CPCs may at any time submit to the GFCM 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 CPCs, and to the non-contracting parties concerned, together with all the evidence provided.
9. The Compliance Committee (CoC) shall examine the provisional IUU vessel list each year, as well as the information referred to in paragraphs 3 and 4. The CoC shall remove a vessel from the provisional IUU vessel 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 CoC 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.

Adopted 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 as recommended by the CoC.
12. Upon adoption of an IUU vessel list by the Commission, the GFCM 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 GFCM Secretariat of the measures taken.
13. CPCs 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 transshipment 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 transshipment of any fish caught by vessels included on the IUU vessel list.
14. CPCs 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 that 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 CPC determines that granting the vessel its flag will not result in IUU fishing activities; and
- d) prohibit the imports, or landing and/or transshipment, of any fish from vessels included in the IUU vessel list;

15. The GFCM Executive Secretary shall ensure publication of the IUU vessel list to be made available through the online channels established by the GFCM Secretariat, including the GFCM website, in a manner consistent with any the GFCM confidentiality policy and procedures. The GFCM Executive Secretary shall transmit the IUU vessel list to other regional fishery bodies as appropriate for the purpose of enhanced cooperation between the GFCM and these organizations in order to prevent, deter and eliminate IUU fishing.

16. Upon receipt of an IUU vessel list adopted by another regional fisheries management organization (RFMO) and any information regarding such list, the GFCM 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 CPC objects within 30 days of the date of transmission by the GFCM 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 subparagraph 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 subparagraph 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.

1. Without prejudice to the rights of flag CPCs and coastal states to take action consistent with international law, CPCs 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

2. 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 fishing activities of the vessel in the GFCM area of application;
- 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 GFCM Executive Secretary, accompanied by the supporting information referred to in paragraph 18.

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

21. The CPCs 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 GFCM Executive Secretary within 30 days following the notification by the GFCM Executive Secretary. The GFCM 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 CPC 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 GFCM 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 21 to all CPCs.

23. If the result indicates that there is a two-third majority of the CPCs in favour of removal of the vessel from the IUU vessel list, the GFCM chairperson shall communicate the result to all CPCs 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-third majority, the vessel will be maintained on the IUU vessel list and the GFCM Executive Secretary shall inform the non-contracting party accordingly.

24. The GFCM Executive Secretary shall remove the vessel referred to in paragraph 23 from the IUU vessel list, as published on the GFCM website. Moreover, the GFCM Executive Secretary shall forward the decision to remove the vessel to other RFMOs.

25. Recommendation GFCM/30/2006/4 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.

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. Vessel name of 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 at which the vessel was first included in 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