

1st Meeting of the Commission, Auckland, New Zealand: 28 January - 1 February 2013

COMM-01-INF-10

EU proposal for

SPRFMO CONSERVATION AND MANAGEMENT MEASURE ESTABLISHING A LIST OF VESSELS PRESUMED TO HAVE CARRIED OUT ILLEGAL, UNREPORTED AND UNREGULATED FISHING ACTIVITIES IN THE SPRFMO CONVENTION AREA

The Commission of the South Pacific Regional Fisheries Management Organisation,

RECALLING that the FAO Council adopted on 23 June 2001 an International Plan of Action to prevent, to deter and eliminate illegal, unreported and unregulated fishing (IPOA-IUU). This plan stipulates that the identification of the vessels carrying out Illegal Unreported and Unregulated (IUU) activities should follow agreed procedures and be applied in an equitable, transparent and non-discriminatory way.

CONCERNED by the fact that IUU fishing activities in the Convention area diminish the effectiveness of SPRFMO 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 to the vessels, without prejudice to further measures adopted in respect of flag States under the relevant SPRFMO instruments.

NOTING that efforts to prevent, deter and eliminate IUU fishing must be addressed in the light of all relevant international fisheries instruments and in accordance with other relevant international obligations, including the rights and obligations established under the World Trade Organization (WTO) Agreement.

ADOPTS the following conservation and management measure in accordance with article 16 of the Convention:

Definition of IUU Activities

1. For the purposes of this conservation and management measure, the fishing vessels flying the flag of a non-Contracting Party, or a Cooperating non-Contracting Party (CNCP), Entity or Fishing Entity, or a Contracting Party are presumed to have carried out illegal, unreported and unregulated fishing activities in the SPRFMO Convention area, *inter alia*, when a Contracting Party or a Cooperating non-Contracting Party, (hereafter referred to as CPC) presents evidence that such vessels:
 - a) Harvest species under the competence of the Organisation and are not registered on the SPRFMO list of vessels authorized to fish in the SPRFMO Convention area;
 - b) Harvest species under the competence of the Organisation, whose flag State has exhausted or has no quotas, catch limit or effort allocation, including those received from another CPC or CNCP pursuant to an agreement notified to the Executive

Secretary, under relevant SPRFMO conservation and management measures;

- c) Do not record and/or report their catches or catch related data made in the SPRFMO Convention area, or make false reports; or
- d) Take on board, tranship or land undersized fish in a way that undermines SPRFMO conservation measures; or
- e) Fish during closed fishing periods or in closed areas, without or after exhaustion of a quota or beyond a closed depth, in contravention of SPRFMO conservation measures;
- f) Use prohibited or non-compliant fishing gear in a way that undermines SPRFMO conservation measures;
- g) Transship with, or participate in joint operations such as re-supply or re-fuelling vessels included in the IUU vessels list;
- h) Harvest species under the competence of the Organisation in the waters under the national jurisdiction of the coastal States in the Convention area without authorization and/or infringes its laws and regulations, without prejudice to the sovereign rights of coastal States to take measures against such vessels;
- i) Are without nationality and harvest species under the competence of the Organisation in the SPRFMO Convention area, and/or
- j) Engage in fishing activities that undermine or are contrary to any other SPRFMO conservation and management measures.

Information on alleged IUU activities

2. CPCs shall transmit every year to the Executive Secretary at least 120 days before the annual meeting, their list of vessels presumed to be carrying out IUU fishing activities in the Convention Area during the current or previous year, accompanied by suitably documented evidence concerning the presumption of IUU fishing activity.

This list shall be based, *inter alia*, on reports by CPCs relating to SPRFMO conservation measures in force, trade information obtained on the basis of relevant trade statistics such as Food and Agriculture Organisation of the United Nations (FAO) data, statistical documents and other national and international verifiable statistics, as well as any other information obtained from port states and/or gathered from the fishing grounds that is suitably documented. Information from CPCs should be provided in the SPRFMO Reporting Form of Illegal Activity (**Annex I**).

Draft IUU List

3. On the basis of the information received pursuant to paragraph 2 and any other suitably documented information at his disposal, the SPRFMO Executive Secretary shall draw up a Draft IUU List. This list shall be drawn up in conformity with **Annex II**. The Secretary shall transmit it together with the current IUU List, including any inter-sessional amendments, as well as all the supporting evidence provided, to CPCs, and to non-Contracting Parties whose vessels are included on these lists at least 90 days before the annual meeting.
4. CPCs and non-Contracting Parties, shall transmit their comments, as appropriate, including evidence showing that the listed vessels have neither fished in contravention to SPRFMO conservation and management measures or the laws and regulations of a State

when fishing in waters under the jurisdiction of that state, nor have fished exclusively species covered by the Convention, at least 30 days before the annual meeting of SPRFMO.

5. The Commission shall request the flag State to notify the owner of the vessels of its inclusion in the Draft IUU List and of the consequences that may result from their inclusion being confirmed in the IUU list adopted by the Commission.

Upon receipt of the Draft IUU List, CPCs shall closely monitor these vessels included in the Draft IUU List in order to determine their activities and possible changes of name, flag and/or registered owner.

Provisional and current IUU List

6. On the basis of the information received pursuant to paragraph 3 and 4, the Executive Secretary shall re-circulate the Draft IUU list and the current IUU List, together with all suitably documented information provided pursuant to paragraph 4 two weeks in advance of the Commission meeting to the CPCs and to the non-Contracting Parties concerned.
7. CPCs may at any time submit to the Executive Secretary any additional information, which might be relevant for the establishment of the IUU list. The Executive Secretary shall circulate the information, at the latest before the annual meeting, to the CPCs and to the non-Contracting Parties concerned, together with all the evidence provided.
8. The Compliance and Technical Committee (CTC) of the SPRFMO shall examine each year the Draft IUU List and current IUU list, as well as the information referred to in paragraphs 4 and 7.

The CTC shall remove a vessel from the Draft IUU list if the flag State demonstrates that:

- i) The vessel did not take part in any IUU fishing activities described in paragraph 1, or
 - ii) Effective action has been taken in response to the IUU fishing activities in question, including, *inter alia*, prosecution and imposition of sanctions of adequate severity. CPCs will report any actions and measures taken to promote compliance by their flagged vessels with SPRFMO conservation and management measures.
9. Following this examination, the CTC shall:
 - i) Adopt a Provisional IUU Vessel List in conformity with **Annex II** following consideration of the Draft IUU List and information and evidence circulated under paragraphs 4 and 7. The Provisional IUU Vessel List shall be submitted to the Commission for approval.
 - ii) Recommend to the Commission which, if any, vessels should be removed from the current IUU Vessel List adopted at the previous SPRFMO annual meeting, following consideration of that List, of the information and evidence circulated under paragraph 7 and the information received in accordance with paragraph 16.

IUU List

10. At its annual meeting the Commission shall review the Provisional IUU Vessel List, taking into account any new suitably documented information related to vessels on the Provisional IUU list, and any recommendations to amend the current IUU list made by CTC pursuant to paragraph 9 above, and adopt a new SPRFMO IUU list.
11. On adoption of the list, the Commission shall request non-Contracting Parties, whose vessels appear on the IUU List:

- To notify the owner of the vessel identified on the IUU Vessels List of its inclusion on the list and the consequences which result from being included on the list, as referred to in paragraph 12.
 - To take all the necessary measures to eliminate these IUU fishing activities, including if necessary, the withdrawal of the registration or of the fishing licenses of these vessels, and to inform the Commission of the measures taken in this respect.
12. CPCs shall take all necessary non-discriminatory measures, under their applicable legislation and international law:
- To remove or withdraw any fishing authorizations for species under the competence of SPRFMO granted to IUU fishing vessels and not to grant fishing licenses, permits or licenses to IUU fishing vessels;
 - So that the fishing vessels, support vessels, refueling vessels, the mother-ships and the cargo vessels flying their flag do not assist in any way, engage in fishing processing operations or participate in any transshipment or joint fishing operations with vessels included on the IUU Vessels List;
 - So that IUU vessels are not authorized to land, tranship re-fuel, re-supply, or engage in other commercial transactions in their ports, except in case of *force majeure*;
 - To prohibit the entry into their ports of vessels included on the IUU list, except in case of *force majeure*;
 - To prohibit the chartering of a vessel included on the IUU vessels list;
 - To refuse to grant their flag to vessels included in the IUU list, except if the vessel has changed owner and the new owner has provided sufficient evidence demonstrating 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;
 - To prohibit the imports, or landing and/or transshipment, of species covered by the Convention from vessels included in the IUU list;
 - To encourage the importers, transporters and other sectors concerned, to refrain from transaction, transshipment and processing of species covered by the Convention caught by vessels included in the IUU list;
 - To collect and exchange with other CPCs any appropriate information with the aim of searching for, controlling and preventing false import/export certificates regarding species covered by the Convention from vessels included in the IUU list.
13. The SPRFMO Executive Secretary will take any necessary measure to ensure publicity of the IUU vessels list adopted by SPRFMO, in a manner consistent with any applicable confidentiality requirements, and through electronic means, by placing it on the SPRFMO web site. Furthermore, the SPRFMO Executive Secretary will transmit the IUU Vessels List to the FAO and to appropriate regional fisheries organizations for the purposes of enhanced co-operation between SPRFMO and these organizations in order to prevent, deter and eliminate illegal, unreported and unregulated fishing.
14. Upon receipt of the final IUU vessel list established by another regional fisheries management organization (RFMO), and any other information regarding the list, including its modification, the Executive Secretary shall circulate it to the CPCs and shall place it on the SPRFMO web site.

15. Measures referred to in paragraph 12 shall apply *mutatis mutandis* to fishing vessels included in the final IUU list established by another RFMO and operating in the SPRFMO Convention area.
16. Without prejudice to the rights of flag States and coastal States to take proper action consistent with international law, including applicable WTO obligations, CPCs shall not take any unilateral trade measures or other sanctions against vessels provisionally included in the Draft and Provisional IUU List, pursuant to paragraph 3 and 9, or which have been already removed from the SPRFMO IUU list, pursuant to paragraph 10, on the grounds that such vessels are involved in IUU fishing activities.

Modification of the IUU Vessels List

17. A CPC or a non-Contracting Party whose vessel appears on the IUU List may request the removal of this vessel from the list during the inter-sessional period by providing to the Executive Secretary suitably documented information demonstrating that:
 - It has adopted measures so that this vessel conforms with SPRFMO conservation measures, and
 - It is and will continue to assume effectively its responsibilities with respect to this vessel in particular as regards the monitoring and control of the fishing activities executed by this vessel in the SPRFMO Convention area, and
 - It has taken effective action in response to the IUU fishing activities in question including prosecution and imposition of sanctions of adequate severity; and/or
 - The vessel has changed ownership and that 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 that the new owner has not participated in IUU fishing.
18. On the basis of the information received in accordance with paragraph 16, the SPRFMO Executive Secretary will transmit the removal request, with all the supporting information to the official contacts of each Contracting Party within 15 days following the notification of the removal request. The decision on the request to remove the vessel shall be made in accordance with Rules 7.8, 7.9, 7.10, 7.11 of the Rules of Procedure.
19. The Executive Secretary will communicate the result of examination to all Contracting Parties.
20. If the result of the exercise indicates that a three-fourth majority of the Contracting Parties as provided for in Article 16 of the Convention is in favor of removal of the vessel from the IUU List, the Chairperson of SPRFMO, on behalf of SPRFMO, will communicate the result to all the Contracting Parties and to the non-Contracting Party which requested the removal of its vessel from the IUU list. In the absence of a majority, the vessel will be maintained on the IUU List and the Executive Secretary will inform the non-Contracting Party accordingly.
21. The Executive Secretary will take the necessary measures to remove the vessel concerned from the SPRFMO IUU Vessels List, as published on the SPRFMO web site. Moreover, the Executive Secretary will forward the decision of removal of the vessel to the FAO and other regional fishery organizations.

Annex I**SPRFMO Reporting Form for Illegal Activity**

Recalling SPRFMO conservation and management measure XX/XX on *Establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities in the SPRFMO Convention Area*, attached are details of illegal activity recorded in

1. Details of Vessel

- i) Name of vessel and previous names, if any;
- ii) Flag of vessel and previous flag, if any;
- iii) Name and address of owner of vessel and previous owners, including beneficial owners, if any, and owner's place of registration;
- iv) Operator of vessel and previous operators, if any;
- v) Call sign of vessel and previous call sign;
- vi) IMO number;
- vii) Unique Vessel Identifier (UVI), where applicable;
- viii) Photographs of the vessel;
- ix) Date vessel was first included on the IUU List;
- x) Position of alleged IUU fishing activities
- xi) Summary of alleged IUU activities (more detail in section 2)
- xii) Summary of any actions known to have been taken in respect of the alleged IUU fishing activities
- xiii) Outcome of actions taken

2. Details of elements contravened

(Indicate with a "X" the individual elements of conservation and management measure XX contravened, and provide relevant details including date, location, source of information. Additional information can be provided in an attachment, if necessary, and listed under section 3).

Item	Definition	Indicate
a	Harvest species under the competence of the Organisation and are not registered on the SPRFMO list of vessels authorized to fish in the SPRFMO Convention area	

b	Harvest species under the competence of the Organisation, whose flag State is without quotas, catch limit or effort allocation under relevant SPRFMO conservation and management measures	
c	Do not record or report their catches made in the SPRFMO Convention area, or make false reports	
d	Take or land undersized fish in a way that undermines SPRFMO conservation measures	
e	Fish during closed fishing periods or in closed areas in contravention of SPRFMO conservation measures	
f	Use prohibited fishing gear in a way that undermines SPRFMO conservation measures	
g	Transship with, or participate in joint operations such as re-supply or re-fuelling vessels included in the IUU vessels list	
h	Harvest species under the competence of the Organisation in the waters under the national jurisdiction of the coastal States in the Convention area without authorization and/or infringes its laws and regulations, without prejudice to the sovereign rights of coastal States to take measures against such vessels	
i	Are without nationality and harvest species under the competence of the Organisation in the SPRFMO Convention area	
j	Engage in fishing activities that undermine or are contrary to any other SPRFMO conservation and management measures	

3. Associated documents

(List here the associated documents that are appended e.g. boarding reports, court proceedings, photographs)

4. Recommended actions

Item	Recommended actions	Indicate
a	Notification to SPRFMO Executive Secretary only. No further action is recommended.	
b	Notification of illegal activity to SPRFMO Executive Secretary. Recommend notification of activity to flag State.	
c	Recommended for inclusion on SPRFMO IUU list	

Annex II

Information to be included in all IUU Lists (Draft, Provisional and Final)

The Draft IUU List, as well as the Provisional IUU List shall contain the following details, where available:

- i) Name of vessel and previous names, if any;
- ii) Flag of vessel and previous flag, if any;
- iii) Name and address of owner of vessel and previous owners, including beneficial owners, if any, and owner's place of registration;
- iv) Operator of vessel and previous operators, if any;
- v) Call sign of vessel and previous call sign;
- vi) number;
- vii) Unique Vessel Identifier (UVI), where applicable
- viii) Photographs of the vessel;
- ix) Date vessel was first included on the IUU List;
- x) Summary of activities which justify inclusion of the vessel on the List, together with references to all relevant documents informing of and evidencing those activities