

## **CMM 4.04**

# **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**

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### **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 (CMMs);

*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;

*RECALLING* Article 27 of the Convention, which calls on Members to address IUU fishing activities and to establish appropriate cooperative procedures for effective monitoring, control and surveillance of fishing and to ensure compliance with the Convention;

*ADOPTS* the following CMM in accordance with Articles 8 and 20 of the Convention:

### **DEFINITION OF IUU ACTIVITIES**

1. For the purposes of this CMM, the fishing vessels flying the flag of a non-Member, or a Member or a Cooperating non-Contracting Party (hereafter CNCP), are presumed to have carried out IUU activities in the Convention Area, *inter alia*, when a Member or a CNCP presents evidence that such vessels:
  - a) engage in fishing for fishery resources and are not registered on the SPRFMO list of vessels authorised to fish in the Convention Area;
  - b) engage in fishing for fishery resources whose flag State has exhausted or has no quotas, catch limit or effort allocation, including, if applicable, those received from another Member or CNCP under relevant SPRFMO CMMs;
  - c) do not record and/or report their catches or catch related data made in the Convention Area, or make false reports;
  - d) take on board, tranship or land undersized fish in a way that undermines SPRFMO CMMs;
  - e) engage in fishing during closed fishing periods or in closed areas, without or after exhaustion of a quota or beyond a closed depth, in contravention of SPRFMO CMMs;
  - f) use prohibited or non-compliant fishing gear in a way that undermines SPRFMO CMMs;
  - g) tranship with, or participate in joint operations such as re-supply or re-fuelling vessels included

- in the IUU vessels list;
- h) are without nationality and engage in fishing for fisheries resources in the Convention Area; and/or
  - i) engage in fishing activities contrary to any other SPRFMO CMMs.

#### **INFORMATION ON ALLEGED IUU ACTIVITIES**

2. Members and CNCPs 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 over the past two years<sup>1</sup>, accompanied by suitably documented evidence concerning the presumption of IUU fishing activity.

This list shall be based, *inter alia*, on reports by Members and CNCPs relating to SPRFMO CMMs in force, trade information obtained on the basis of relevant trade statistics such as Food and Agriculture Organization 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 Members and CNCPs should be provided in the SPRFMO Reporting Form of Illegal Activity (**Annex I**).

3. Before or at the same time as transmitting a list of presumed IUU vessels to the Executive Secretary, the Member or CNCP shall notify, either directly or through the Executive Secretary using the Reporting Form in Annex I, the relevant flag State of a vessel's inclusion on this list and provide a copy of the pertinent suitably documented information. The flag State shall promptly acknowledge receipt of the notification.

#### **DRAFT IUU LIST**

4. On the basis of the information received pursuant to paragraph 2 and any other suitably documented information at his/her 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 Members and CNCPs whose vessels are included on these lists at least 90 days before the annual meeting.
5. Members and CNCPs, shall transmit their comments, as appropriate, including evidence showing that the listed vessels have neither fished in contravention to SPRFMO CMMs, nor had the possibility of fishing for fishery resources in the Convention Area, at least 30 days before the annual meeting of SPRFMO.
6. The Commission shall request the flag State to notify the owner of the vessel of its inclusion in the Draft IUU List and of the consequences that may result from its inclusion being confirmed in the IUU List adopted by the Commission.

Upon receipt of the Draft IUU List, Members and CNCPs 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**

7. On the basis of the information received pursuant to paragraph 4 and 5, the Executive Secretary shall re-circulate to the Members and CNCPs two weeks in advance of the Commission meeting the Draft IUU list and the current IUU List, including any intersessional modifications to the current

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<sup>1</sup> Beginning with the entry into force of this CMM

IUU List in the sense of paragraphs 18-20, together with all suitably documented information provided pursuant to paragraph 5.

8. Members and CNCPs 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 official contacts together with all the evidence provided.
9. The Compliance and Technical Committee of the SPRFMO (CTC) shall examine each year the Draft IUU List and current IUU list, as well as the information referred to in paragraphs 5 and 8.

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

- a) the vessel did not take part in any IUU fishing activities described in paragraph 1, or
  - b) effective action has been taken in response to the IUU fishing activities in question, including, *inter alia*, prosecution and/or imposition of sanctions of adequate severity. Members and CNCPs will report any actions and measures taken to promote compliance by their flagged vessels with SPRFMO CMMs.
10. Following this examination, the CTC shall:
    - a) adopt a Provisional IUU List in conformity with **Annex II** following consideration of the Draft IUU List and information and evidence circulated under paragraphs 5 and 8. The Provisional IUU List shall be submitted to the Commission for approval.
    - b) recommend to the Commission which, if any, vessels should be removed from the current IUU List adopted at the previous SPRFMO annual meeting, following consideration of that List, of the information and evidence circulated under paragraph 8 and the information received in accordance with paragraph 18.

#### **IUU List**

11. At its annual meeting the Commission shall review the Provisional IUU 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 10 above, and adopt a new IUU list.
12. On adoption of the list, the Commission shall request Members, CNCPs and non-Members, whose vessels appear on the IUU List:
  - to notify the owner of the vessel identified on the IUU List of its inclusion on the List and the consequences which result from being included on the List, as referred to in paragraph 13;
  - 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.
13. Members and CNCPs shall take all necessary non-discriminatory measures, under their applicable legislation and international law:
  - to remove or withdraw any fishing authorisations for fisheries resources under the competence of SPRFMO granted to vessels on the IUU List and not to grant fishing licenses, permits or licenses to those 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 vessels on the IUU List are not authorised 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 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 Member or CNCP 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 Members and CNCPs 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.
14. The Executive Secretary will take any necessary measure to ensure publicity of the IUU 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 Executive Secretary will transmit the IUU List to the FAO and to appropriate regional fisheries organisations for the purposes of enhanced co-operation between SPRFMO and these organisations in order to prevent, deter and eliminate IUU fishing.
15. Upon receipt of the final IUU vessel list established by another Regional Fisheries Management Organisation (RFMO), and any other information regarding the list, including its modification, the Executive Secretary shall circulate it to the Members and CNCPs and shall place it on the SPRFMO web site.
16. Measures referred to in paragraph 13 shall apply *mutatis mutandis* to fishing vessels included in the final IUU list established by another RFMO and operating in the SPRFMO Convention Area.
17. Without prejudice to the rights of flag States and coastal States to take proper action consistent with international law, including applicable WTO obligations, Members and CNCPs shall not take any unilateral trade measures or other sanctions against vessels provisionally included in the Draft and Provisional IUU List, pursuant to paragraph 4 and 10, or which have been already removed from the IUU List, pursuant to paragraph 11 or paragraphs 18-20, on the grounds that such vessels are involved in IUU fishing activities.

#### **MODIFICATION OF THE IUU LIST**

18. A Member, CNCP or non-Member whose vessel appears on the IUU List may request the removal of this vessel from the list during the intersessional period by providing to the Executive Secretary suitably documented information demonstrating that:
- it has adopted measures so that this vessel conforms with SPRFMO CMMs; 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/or 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.
19. On the basis of the information received in accordance with paragraph 18, the SPRFMO Executive Secretary will transmit electronically the removal request, with all the supporting information to the official contacts of each member within 15 days following the notification of the removal request. The intersessional decision on the request to remove the vessel shall be made electronically in accordance with Rule 7, paragraphs 8 to 11 of the Rules of Procedure. In the event that a member objects to the removal request, the decision will be taken at the subsequent annual meeting of the Commission.
  20. The Executive Secretary will communicate the result of the decision to all Members and CNCPs.
  21. The Executive Secretary will take the necessary measures to remove the vessel concerned from the IUU 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 appropriate regional fisheries organisations.

**INFORMATION INDICATING A CHANGE OF CIRCUMSTANCES OF VESSELS APPEARING ON THE CURRENT IUU LIST**

22. A Member or CNCP with information indicating a change of name and/or an International Radio Call Sign (IRCS) of a vessel appearing on the SPRFMO IUU List shall, as soon as practicable, transmit such information to the Executive Secretary. The Executive Secretary shall communicate such information to all Members and CNCPs and, after verification<sup>2</sup>, update the current IUU list on the SPRFMO website to reflect such information.

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<sup>2</sup> If the Secretariat, after reasonable efforts, is unable to verify the information submitted by the Member or CNCP the vessel name or identifying number will not be updated.

## Annex I

**SPRFMO Reporting Form for Illegal Activity**

Recalling SPRFMO CMM 4.04 (IUU List; 2016) 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**

- (a) Name of vessel and previous names, if any;
- (b) Flag of vessel and previous flag, if any;
- (c) Name and address of owner of vessel and previous owners, including beneficial owners, if any, and owner's place of registration;
- (d) Operator of vessel and previous operators, if any;
- (e) Call sign of vessel and previous call sign;
- (f) IMO number;
- (g) Unique Vessel Identifier (UVI), or, if not applicable, any other vessel identifier;
- (h) Photographs of the vessel;
- (i) Date vessel was first included on the IUU List;
- (j) Position of alleged IUU fishing activities
- (k) Summary of alleged IUU activities (more detail in section 2)
- (l) Summary of any actions known to have been taken in respect of the alleged IUU fishing activities
- (m) Outcome of actions taken

**2. Details of elements contravened**

*(Indicate with an "X" the individual elements of CMM 4.04 (IUU List; 2016) 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	Engage in fishing for fishery resources and are not registered on the SPRFMO list of vessels authorised to fish in the SPRFMO Convention Area	
b	Engage in fishing for fishery resources, whose flag State has exhausted or has no quotas, catch limit or effort allocation, including, if applicable, those received from another Member or CNCP, pursuant to an agreement notified to the Executive Secretary under relevant SPRFMO CMMs	

c	Do not record and/or report their catches or catch related data made in the Convention Area, or make false reports	
d	Take on board, tranship or land undersized fish in a way that undermines SPRFMO CMMs	
e	Engage in fishing during closed fishing periods or in closed areas, without or after exhaustion of a quota or beyond a closed depth, in contravention of SPRFMO CMMs	
f	Use prohibited or non-compliant fishing gear in a way that undermines SPRFMO CMMs	
g	Tranship with, or participate in joint operations such as re-supply or refuelling vessels included in the IUU vessels list	
h	Are without nationality and engage in fishing for fishery resources in the SPRFMO Convention Area	
i	Engage in fishing activities that are contrary to any other SPRFMO CMMs	

### 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 and Final IUU Lists shall contain the following details, where available:

- (a) Name of vessel and previous names, if any;
- (b) Flag of vessel and previous flag, if any;
- (c) Name and address of owner of vessel and previous owners, including beneficial owners, if any, and owner's place of registration;
- (d) Operator of vessel and previous operators, if any;
- (e) Call sign of vessel and previous call sign;
- (f) IMO number;
- (g) Unique Vessel Identifier (UVI), or, if not applicable, any other vessel identifier;
- (h) Photographs of the vessel;
- (i) Date vessel was first included on the IUU List;
- (j) 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.