



## **TECHNICAL AND COMPLIANCE COMMITTEE**

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#### **IMPLEMENTING A PROCESS FOR COMPLIANCE REVIEW AND ENFORCEMENT WITH WCPFC CONSERVATION AND MANAGEMENT MEASURES AND OTHER DECISIONS OF THE COMMISSION**

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**WCPFC-TCC4-2008/25**

**10 September 2008**

#### **Paper prepared by the Secretariat**

#### **Introduction**

1. In 2006, the TCC considered procedures for deterring non-compliance (WCPFC-TCC2 2006/09). That paper outlined a process for monitoring, reviewing and reporting on compliance with the Convention, and decisions of the Commission, and provided an overview of the compliance activities of other RFMOs.

2. TCC2 adopted a compliance review and enforcement process as the basis for any future WCPFC mechanism (reproduced at Figure 1). During discussion on this matter, issues raised by CCMs included:

- Flag states have primary compliance responsibility and should be given opportunity to address non-compliance.
- Concerns that development of a compliance monitoring regime may be premature prior to the development of elements of the MCS regime, which is necessary to generate the required data for assessing compliance.
- Non compliance needs to be assessed on a case-by-case basis.
- Definitions of infractions is critical. Actions for non-compliance could be included as part of the text of conservation and management measures at the time of adoption by the Commission.
- Non-compliance could involve CCMs themselves or vessels.

3. TCC3, in 2007, requested that the Secretariat prepare a paper, for consideration at TCC4, on potential mechanisms to implement the compliance review and enforcement adopted by the Commission on the recommendation of TCC2 (see TCC3 Summary Report, paragraph 165). This paper has been prepared in response to that request to:

- present a further summary of compliance monitoring activities of other international organizations;
- support further consideration of a process for implementing a compliance review and enforcement mechanism adopted in 2006; and
- seek further guidance from the TCC as to a future work programme on this matter.

#### **Current issues for WCPFC**

4. The issues fall into two categories i) data reporting obligations to the Commission, and ii) reporting on substantive issues associated with implementation of CMMs and other decisions of the Commission.

5. The experience of the first three years of the Commission's operations demonstrates that many CCMs appear to be challenged by the data reporting requirements and obligations associated with the

decisions of the Commission<sup>1</sup>. This has adverse implications on the effectiveness of the Commission. This situation is not likely to ease as reporting obligations and requirements associated with an evolving suite of conservation and management measures increase.

6. With respect to reporting and implementation obligations associated with substantive matters in CMMs (e.g. implementation of a fishery closure), the Commission may, in the future, face additional issues associated with a need for strengthened monitoring of implementation of CMMs by CCMs and mechanisms for encouraging compliance under the provisions of Articles 23 and 25.

7. Where CCMs consistently fail to meet reporting commitments, or compliance obligations, question arises as to whether the Commission wishes to implement a more detailed process, based on Figure 1, for supporting the CCM to achieve compliance.

### **The practice in other multilateral organizations**

8. The 2006 paper set out a short review of actions taken by other RFMOs in promoting compliance amongst contracting parties. A similar short review was carried out in preparation for this paper and expanded to include other international organisations. The results are set out in Table 1.

9. Many international organizations implement a monitoring, review and enforcement process that involves some combination of:

- Data reporting obligations for contracting Parties;
- Identification of both vessel and CCM infractions by a compliance review committee supported by a Secretariat, with the Secretariat circulating reports on compliance performance;
- Opportunities for non-complying Parties to become compliant or to provide a response to the alleged infraction;
- Opportunities for non-complying Parties to seek technical and other assistance to achieve compliance;
- Data collection, analysis and recommendations for mechanisms to encourage compliance undertaken by a compliance committee, but final decisions taken by the full Commission.

10. Some RFMOs have provisions for the imposition of penalties and sanctions most commonly in the form of 'formal requests to comply', 'quota adjustments' or 'trade sanctions'. For example, ICCAT and the IATTC have adopted decisions setting out a clear process that may lead to recommendations to impose trade sanctions (applying to both contracting parties and non-parties) and/or quota adjustments (contracting parties).

11. Should CCMs wish to review, in more detail, examples of compliance decisions of other RFMOs, copies of compliance measures adopted, or under discussion, by ICCAT, NAFO and NEAFC are at Attachment A.

### **Issues to consider**

12. In discussing the potential further elaboration of Figure 1, the TCC may wish to consider a number of principles that could usefully guide the implementation of a review and compliance regime. These may include:

- Transparent, fair and ensure due process.
- Ensure information security and confidentiality, where appropriate, consistent with Commission rules regarding data sharing.

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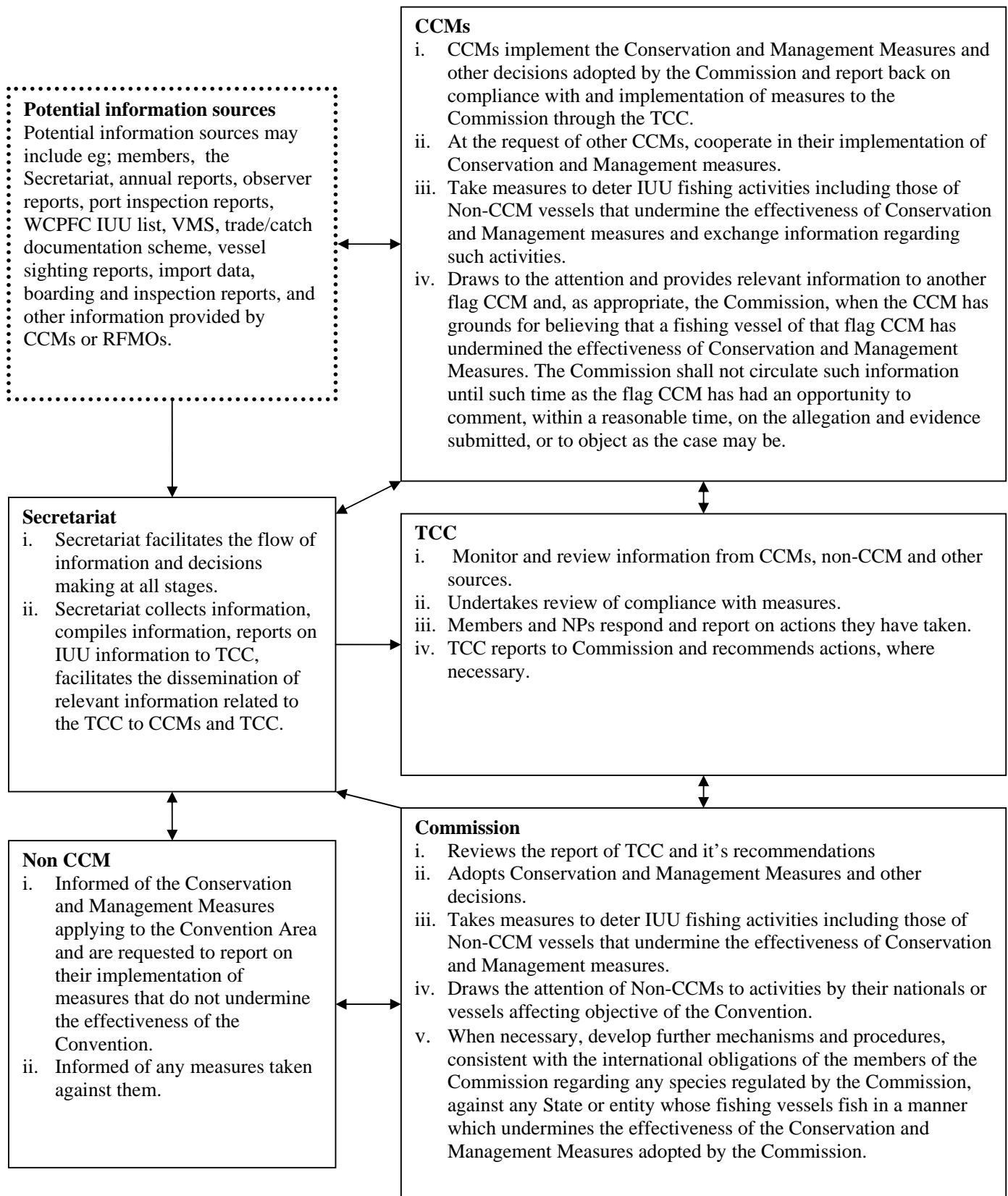
<sup>1</sup> For example, see paper WCPFC4/2007/13 *Information Paper to support the Commission's Review of Existing Conservation and Management Measures*, SC4/ST-WP01 *Interim report on causes of data gaps*, and WCPFC-TCC2 2006/09, WCPFC-TCC3-2007/10 and WCPFC-TCC4-2008/10 which provide an annual review of CCMs' implementation of, and compliance with, conservation and management measures and the decisions of the Commission.

- Differential treatment of CCMs and non-CCMs, taking into account, for non-CCMs, the particular issues associated with the application of the decisions of organizations to non-parties.
- A range of effective remedial actions to create both a ‘positive’ and ‘negative’ incentives to encourage compliance.
- Cost-effective to implement and not place a significant additional work burden on CCMs or the Secretariat.
- The special needs and requirements of developing island States.

### **Recommendation**

13. TCC4 is invited to further consider:
  - the potential elements and relationships of an enhanced scheme to monitor compliance and deter non-compliance in the Commission, and
  - consider and propose terms of reference for any future work that might be undertaken to further consider this matter in the Commission.

**Figure 1. Process and structure for monitoring compliance and taking remedial action within the WCPFC adopted at TCC2.**



**Table 1. Review of compliance procedures in other international organisations**

<b>Organisation</b>	<b>Mechanism for Compliance Review and Enforcement</b>	<b>Process/Mandate for Compliance Mechanism</b>	<b>Response Options to Non-Compliance by Contracting Parties</b>
Regional Fisheries Management Organisations			
NAFO	Standing Committee on International Control (i.e. a compliance review committee)	Review and evaluate compliance by contracting parties, including inspection and surveillance activities, infringement follow-up etc.... Proposed by Canada: compilation of “Problem Vessel” List; request for contracting parties to investigate vessels on list; recommend impose trade measures if not effective action has been taken by Flag state of vessels on list.	Formal compliance assessment of both vessels and contracting parties Quota adjustment Summary report of compliance by vessels and by Contracting Parties Trade restrictions proposed
NEAFC	Permanent Committee on Control and Enforcement Has one scheme for contracting parties and another for non-contracting parties	Implementation of Control and Enforcement Scheme and report on Compliance Provide technical advice on control Monitor implementation of non-Contracting Parties Scheme	No sanctions available Formal requests to comply (under discussion) Trade sanctions for non-contracting parties
CCAMLR	Compliance Review Committee	Review, assess compliance of contracting and non-contracting parties Provide advice on promoting compliance/deter non-compliance Review, assess allegations of non-compliance and recommend potential responses	Formal requests to comply Trade measures against non-contracting parties
CCSBT	Compliance review committee	Monitor, review and assess compliance Exchange information on compliance activities by Members and non-members Report on implementation of compliance measures and make recommendations on new compliance measures, including addressing non-compliance.	Formal requests to comply Quota adjustments
IATTC	Permanent Working Group on Compliance	Review and monitor compliance Recommend measures/ means of promoting	Formal requests to comply Trade measures

		<p>compliance Analyse relevant information to determine compliance Report results to IATTC</p>	<p>Working group to consider 'positive incentives' for compliance by vessel captains under the AIDCP (dolphin safe programme) Has a definition of 'pattern of infractions' under the AIDCP</p>
ICCAT	Compliance Committee	<p>Review compliance of contracting parties, including domestic measures for implementation of Commission's recommendations Review implementation of Port Inspection Scheme and other enforcement activities including domestic programs Develop and recommend measures to promote compliance Develop and recommend measures to resolve identified problems with implementation (i.e. compliance with) measures</p>	<p>Quota adjustments (punitive quota reduction of 125% of over harvest amounts Trade sanctions on specific species</p>
IOTC	Compliance Committee	<p>Review compliance and make recommendations to promote compliance Review implementation of MCS measures Monitor, review activities of Non-Parties Consider effectiveness of Statistical Document Programme.</p>	
Other International Organisations			
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	Review of full organisation or 'standing committee'	<p>Monitoring and assessing overall compliance Advising and assisting Parties in achieving compliance Verifying compliance information Implementing compliance measures including imposition of compliance measures.</p>	<p>Provide advice, information, facilitate and/or recommend specific assistance or other appropriate capacity building mechanisms including in-country assistance Request special report from party Formal request to comply/issue warnings of non-compliance Notify other Parties that a non-compliance issue has not been addressed Request a compliance action plan to be submitted to the Standing Committee by the Party concerned identifying appropriate steps, a timetable for when those steps</p>

			should be completed and means to assess satisfactory completion.
World Trade Organisation	Dispute Settle Board and assessment Panels	<p>Parties are encouraged to negotiate an outcome.</p> <p>Dispute Settlement Board (DSB) makes rulings on cases following advice from a 'Panel' formed to review matter and make recommendations.</p> <p>Rulings/recommendations by DSB aimed at a 'mutually agreeable outcome'.</p> <p>Parties involved have rights of appeal to WTO appellate body.</p>	<p>Review panel seeks 'mutually positive' outcomes.</p> <p>If member does not comply with recommendations, then injured party can suspend trade commitments and concessions to that Party. Preference is suspension of trade privileges for that good, but other goods are allowed for.</p>

Compliance measures adopted or proposed by ICCAT, NAFO and NEAFC

ICCAT MEASURE GEN 06-13

RECOMMENDATION BY ICCAT CONCERNING TRADE MEASURES

NOTING that the objective of ICCAT is to maintain the populations of tuna and tuna-like species in the Atlantic at levels which will permit harvesting at maximum sustainable yield;

CONSIDERING the need for action to ensure the effectiveness of the ICCAT objectives;

CONSIDERING the obligation of all Contracting Parties and Cooperating non-Contracting Parties, Entities or Fishing Entities (hereinafter referred to as CPCs) to respect the ICCAT conservation and management measures;

AWARE of the necessity for sustained efforts by CPCs to ensure the enforcement of ICCAT's conservation and management measures, and the need to encourage non-Contracting Parties, Entities or Fishing Entities (hereinafter referred to as NCPs) to abide by these measures;

NOTING that trade restrictive measures should be implemented only as a last resort, where other measures have proven unsuccessful to prevent, deter and eliminate any act or omission that diminishes the effectiveness of ICCAT conservation and management measures;

ALSO NOTING that trade restrictive measures should be adopted and implemented in accordance with international law, including principles, rights and obligations established in World Trade Organization (WTO)

Agreements, and be implemented in a fair, transparent and non-discriminatory manner.

THE INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS (ICCAT) RECOMMENDS THAT:

1. CPCs that import tuna and tuna-like fish and/or fish products or in whose ports those products are landed, shall identify such products, collect and examine the relevant import, landing or associated data on such products, in order to submit the relevant information in a timely manner to the ICCAT Secretariat for distribution to the other CPCs to collect any additional element in order that the Commission can identify each year:
  - a) vessels that caught and produced such tuna or tuna-like species products,
    - i) name
    - ii) flag
    - iii) name and address of owners
    - iv) registration number
  - b) farming facilities



- i) name
  - ii) location
  - iii) name and address of owners
  - iv) registration number
  - c) species (of tuna and tuna-like species) of the products,
  - d) areas of catch (Atlantic Ocean, Mediterranean Sea, or other area),
  - e) product weight by product type,
  - f) points of export,
2. a) The Commission, through the Conservation and Management Measures Compliance Committee (hereinafter Compliance Committee) or the Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures (hereinafter PWG), shall identify each year:
- i. The CPCs that have failed to discharge their obligations under the ICCAT Convention in respect of ICCAT conservation and management measures, in particular, by not taking measures or exercising effective control to ensure compliance with ICCAT conservation and management measures by the vessels flying their flag, or farming facilities subject to their jurisdiction; and/or
  - ii. The NCPs that have failed to discharge their obligations under international law to co-operate with ICCAT in the conservation and management of tuna and tuna-like species, in particular, by not taking measures or exercising effective control to ensure that their vessels or their farming facilities do not engage in any activity that undermines the effectiveness of ICCAT conservation and management measures.
- b) These identifications should be based on a review of all information provided in accordance with paragraph 1 or, as appropriate, any other relevant information, such as: the catch data compiled by the Commission; trade information on these species obtained from national statistics; the ICCAT Bluefin Tuna Catch Documentation Programme, the ICCAT Bigeye Tuna and Swordfish Statistical Document Programmes; the list of the IUU vessels adopted by ICCAT, as well as any other relevant information.
- c) In deciding whether to make identification, the Compliance Committee or the PWG should consider all relevant matters including the history, and the nature, circumstances, extent, and gravity of the act or omission that may have diminished the effectiveness of ICCAT conservation and management measures.
3. The Commission should request CPCs and NCPs concerned to rectify the act or omission identified under paragraph 2 so as not to diminish the effectiveness of the ICCAT conservation and management measures.

The Commission should notify identified CPCs and NCPs of the following:

- a) the reason(s) for the identification with all available supporting evidence;
- b) the opportunity to respond to the Commission in writing at least 30 days prior to the annual meeting of the Commission with regard to the identification decision and other relevant information, for example, evidence refuting the

identification or, where appropriate, a plan of action for improvement and the steps they have taken to rectify the situation; and

- c) in the case of a NCP, an invitation to participate as an observer at the annual meeting where the issue will be considered.
4. CPCs are encouraged jointly and individually to request the CPC/NCPs concerned to rectify the act or omission identified under paragraph 2 so as not to diminish the effectiveness of the ICCAT conservation and management measures.
  5. The Executive Secretary should, by more than one means of communication, within 10 working days following the approval of the report of the Compliance Committee or the PWG, transmit the Commission's request to the identified CPC or NCP. The Executive Secretary should seek to obtain confirmation from the CPC or the NCP that it received the notification.
  6. The Compliance Committee or the PWG should evaluate the response of the CPCs or NCPs, together with any new information, and propose to the Commission to decide upon one of the following actions:
    - a) the revocation of the identification;
    - b) the continuation of the identification status of the CPC or NCP; or
    - c) the adoption of non-discriminatory trade restrictive measures.

Absence of response from the CPCs/NCPs concerned within the time limit shall not prevent action from the Commission.

In the case of CPCs, actions such as the reduction of existing quotas or catch limits should be implemented to the extent possible before consideration is given to the application of trade restrictive measures. Trade measures should be considered only where such actions either have proven unsuccessful or would not be effective.

7. If the Commission decides upon the action described in paragraph 6 c), it should recommend to the Contracting Parties pursuant to Article VIII of the Convention to take non-discriminatory trade restrictive measures, consistent with their international obligations. The Commission shall notify the CPCs and NCPs concerned of the decision and the underlying reasons in accordance with the procedures specified in paragraph 5.
8. CPCs shall notify the Commission of any measures that they have taken for the implementation of the non discriminatory trade restrictive measures adopted in accordance with paragraph 7.
9. In order for the Commission to recommend the lifting of trade restrictive measures, the Compliance Committee or the PWG shall review each year all trade restrictive measures adopted in accordance with paragraph 7. Should this review show that the situation has been rectified, the Compliance Committee or PWG shall recommend to the Commission the lifting of the non-discriminatory trade restrictive measures.

Such decisions should also take into consideration whether the CPCs and/or NCPs concerned have taken concrete measures capable of achieving lasting improvement of the situation.

10. Where exceptional circumstances so warrant or where available information clearly shows that, despite the lifting of trade-restrictive measures, the CPC or NCP concerned continues to diminish the effectiveness of ICCAT conservation and management measures, the Commission may immediately decide on action including, as appropriate, the imposition of trade-restrictive measures in accordance with paragraph 7.

Before making such a decision, the Commission shall request the CPC or NCP concerned to discontinue its wrongful conduct and shall provide the CPC or NCP with a reasonable opportunity to respond.

11. The Commission shall establish annually a list of CPCs and NCPs that have been subject to a trade restrictive measure pursuant to paragraph 7 and, with respect to NCPs, are considered as non-Cooperating non-Contracting Parties to ICCAT.
12. The *Resolution by ICCAT Concerning Trade Measures* [Res. 03-15] is repealed and replaced by the present Recommendation. For the purposes of this paragraph, CPCs and NCPs that are under sanction pursuant to Resolution 03-15 are deemed to be sanctioned under the present Recommendation, provided that this will not result in any greater level of sanction than that already imposed.

## **CANADIAN PROPOSAL TO NAFO**

### **Annex 3. Working Paper Presented by Canada (STACFAC/STACTIC W.P. 04/5)**

#### **TEXT TO ENHANCE COMPLIANCE BY CONTRACTING PARTIES WITH NAFO MEASURES**

##### **Article 35.1**

##### **Establishment of CP “Problem Vessel” List**

1. Each year, STACTIC shall examine the reports submitted pursuant to Article 35, together with any other information received, and any other information provided to it during its meeting.
2. STACTIC shall review the information referred to in paragraph 1 and shall identify those vessels in respect of which no effective action has been taken in response to infringements that have been notified.
3. Following this review, STACTIC shall submit to Fisheries Commission for approval a proposed CP “Problem Vessel” List (hereinafter “CPPV List”).
4. On approval of the CPPV list, Fisheries Commission shall request Contracting Parties whose vessels appear thereon to take effective action in respect of these vessels, including:
  - a) immediately and fully investigating the infringement and reporting back to STACTIC on the progress and outcome of the investigation;
  - b) where applicable, prosecuting and imposing sanctions adequate in severity to be effective in securing compliance and depriving the offending vessel of the benefits accruing from its non-compliant behaviour;
  - c) where applicable, seizure of illegal catch and/or gear; and,
  - d) where applicable, withdrawing or suspending the vessel’s fishing license.
5. The Secretariat shall place the CPPV List on a secure section of the NAFO website. The list shall include the name and flag state of the vessel and the radio call sign.

##### **Article 35.2**

##### **Annual Review of the CPPV List**

1. STACTIC shall undertake a review of the existing CPPV List each year and, as appropriate, recommend to the Fisheries Commission that vessels are maintained thereon or removed. STACTIC shall recommend that the Fisheries Commission remove a vessel from the CPPV List if:
  - a) the flag state of the vessel concerned provides satisfactory information to establish that:
    - i) it has taken effective action pursuant to paragraph 4 of Article 35.1;
    - ii) 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 flag state is satisfied that the new owner will not engage in non-compliant fishing activity; or,
    - iii) the vessel did not commit the infringement reported pursuant to Article 35; or,

- b) STACTIC otherwise determines that the vessel should be recommended for removal.
2. The Fisheries Commission shall review the recommendations made by STACTIC pursuant to this Article and shall amend the composition of the CPPV List as appropriate.

**Article 35.3**  
**Actions vis-a-vis Flag States**

1. Fisheries Commission identify, at subsequent annual meetings, as appropriate, those Contracting Parties that have repeatedly not taken effective action in respect of their vessels on the CPPV List.
2. Fisheries Commission may, in respect of those Contracting Parties whose vessels are identified pursuant to paragraph 2, recommend any other measures to ensure that effective action is taken.
3. Where Fisheries Commission determines that no effective action has been taken, and the Flag State has received notice of the consequences of its failure to take such action, Fisheries Commission may recommend that Contracting Parties adopt trade restrictive measures against the Flag State in question, consistent with their international obligations.
4. STACTIC shall review each year all trade restrictive measures that have been adopted and, where circumstances warrant, submit for the approval of Fisheries Commission, recommendations for the lifting of the measures.
5. This Article shall be interpreted in a manner consistent with international law, including the principles, rights, and obligations in WTO agreements, and be implemented in a fair and transparent manner.

**Article 35.4**  
**Additional Measures by Contracting Parties**

Nothing in Articles 35.1 to 35.3 shall affect the sovereign rights of Contracting Parties to impose additional measures in accordance with international law.

## NEAFC 2008 CONTROL SCHEME

### CHAPTER VII – Measures to promote compliance by non-Contracting Party fishing vessels

#### Binding on Contracting Parties from February 2008

#### Article 34 - Co-operating non-Contracting Party status

1. A non-Contracting Party which seeks the status of a co-operating non-Contracting Party shall submit a request to the Secretary by 30 September, accompanied by a report containing the following information:
  - a) Full data on its historical fisheries in the NEAFC area, including nominal catches, number/type of vessels, name of fishing vessels, fishing effort and fishing areas;
  - b) Details on current fishing presence in the area, number of vessels and vessels characteristics;
  - c) Details of research programmes it has conducted in the NEAFC area, the results of which it shall share with NEAFC.

Furthermore, the non-Contracting Party concerned shall:

- Undertake to respect the provisions of this Scheme and all other Recommendations established under the Convention;
  - Inform NEAFC of the measures it takes to ensure compliance by its vessels, including *inter alia*, observer programmes, inspection at sea and in port, and VMS;
  - Communicate annually catch and effort data and size frequency distribution of the catches (when possible) in due time and appropriate format for scientific evaluation of the stocks.
2. On the basis of the request submitted according to the provisions of paragraph 1 as well as any other relevant information, PECCOE shall recommend to the Commission, if appropriate, that the status of co-operating non-Contracting Party be granted. Non-Contracting Parties accorded this status, which shall be decided by the Commission on a year-to-year basis, shall be invited to participate at plenary and scientific meetings, as an observer.

#### Article 35 - Communications by co-operating non-Contracting Parties

1. The co-operating non-Contracting Party shall ensure that its fishing vessels communicate by electronic means to their FMC the reports provided for in Articles 11, 12 and 13.
2. The co-operating non-Contracting Party shall communicate reports and messages pursuant to Articles 11, 12 and 13 to the Secretary without delay in accordance with the provisions of Article 14.
3. The co-operating non-Contracting Party shall provide reports to the Secretary in accordance with the provisions of Article 10.

### **Article 36 - Monitoring of fisheries by co-operating non-Contracting Parties**

1. Vessels of a co-operating non-Contracting Party shall only fish for regulated species if the flag state of the vessels notifies the Secretary by 31 October by registered letter, of its intention to fish on a co-operation quota during the following year. In the notification the co-operating non-Contracting Party shall give an undertaking to monitor the activities of its vessels and carry out inspections in port and at sea in order to ensure their compliance with the relevant recommendations established under the Convention.

This notification shall also include for all fishing vessels flying the flag of the co-operating non-Contracting Party concerned that intend to engage in fishing activities in the Regulatory Area the information listed and in the format of Annex II. The co-operating non-Contracting Party shall notify any modifications to this information without delay.

2. The Secretary shall notify without delay and by the most rapid electronic means available to all Contracting Parties and co-operating non-Contracting Parties the date on which the accumulated reported catch, the estimated unreported catch, the estimated quantity to be taken before the closure of the fishery and likely by-catches, equal 100 percent of the stock subject to the cooperation quota. Each co-operating non-Contracting Party concerned shall, within 7 days of the date of issue of such electronic notification by the Secretary, close its fishery in the Regulatory Area for that stock.

### **Article 37 - Sightings and identifications of non-Contracting Party vessels**

1. Contracting Parties shall transmit to the Secretary without delay any information regarding non-Contracting Party vessels sighted or by other means identified as engaging in fishing activities in the Convention Area. The Secretary shall transmit this information to all Contracting Parties within one business day of receiving this information according to the same procedure, and to the flag state of the sighted vessel as soon as possible.
2. The Contracting Party which sighted the non-Contracting Party vessel shall attempt to inform such a vessel without delay that it has been sighted or by other means identified as engaging in fishing activities in the Convention Area and unless its flag state has been accorded the status of cooperating non-Contracting Party provided for under Article 34, is consequently presumed to be undermining the Recommendations established under the Convention.
3. In the case of a non-Contracting Party vessel sighted or by other means identified as engaging in transshipment activities, the presumption of undermining conservation and enforcement measures applies to any other non-Contracting Party vessel that has been identified as having engaged in such activities with that vessel.

### **Article 38 - Inspections at sea**

1. NEAFC inspectors shall request permission to board and inspect non-Contracting Party vessels sighted or by other means identified by a Contracting Party as engaging in fishing activities in the Convention Area. If the vessel consents to be boarded the inspection shall be documented by completing an inspection report as set out in Annex XIII. The inspectors shall transmit a copy of the inspection report to the Secretary without delay. The master of the non-Contracting Party vessel which is boarded shall be provided with a copy of the inspection report. Where evidence so

warrants, a Contracting Party may take such action as may be appropriate in accordance with international law. Contracting Parties are encouraged to examine the appropriateness of domestic measures to exercise jurisdiction over such vessels.

2. If the master does not consent for his vessel to be boarded and inspected or does not fulfil any one of the obligations laid down in Article 19(a) to (e), the vessel shall be presumed to have engaged in IUU activities.

#### **Article 39 - Entry into port**

1. 1. Masters of non-Contracting Party vessels intending to call into a port shall notify the competent authorities of the port state in accordance with the provisions of Article 22. The port state shall forward this information without delay to the flag state of the vessel, to the Secretary and to relevant Contracting Parties.
2. The port state shall prohibit the entry into its ports of vessels that have not given the required prior notice of landing or provided the information referred to in paragraph 1.

#### **Article 40 - Inspections in port**

1. When a non-Contracting Party vessel enters a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials knowledgeable of Recommendations established under the Convention and shall not be allowed to land or tranship any fish until this inspection has taken place. Each inspection shall be documented by completing an inspection report as provided for in Article 27.
2. Where the master of the vessel has failed to fulfil any one of the obligations set down in Article 19 (a) to (e), the vessel shall be presumed to have engaged in IUU activities.
3. Information on the results of all inspections of non-Contracting Party vessels conducted in the ports of Contracting Parties, and subsequent action, shall immediately be transmitted to the Secretary. The Secretary shall put copies of the inspection reports on the inspectors' area of the NEAFC website without delay.

#### **Article 41 - Landings, transhipments and joint fishing operations**

Landings and transhipments of all fish from a non-Contracting Party vessel which has been inspected pursuant to Article 40, shall be prohibited in the ports and waters of all Contracting Parties if such an inspection reveals that the vessel has species onboard which are subject to Recommendations established under the Convention unless the vessel establishes to the satisfaction of the competent authorities that the fish were caught outside the Regulatory Area or in compliance with all relevant Recommendations established under the Convention.

The vessel shall not be authorised to land or engage in a transshipment operation if the flag State of the vessel, or the flag State or States of donor vessels where the vessel has engaged in transshipment operations, does not provide the confirmation in accordance with the provisions of Article 23. Furthermore, landings and transhipments shall be prohibited where the master of the vessel has failed to fulfil any one of the obligations as set down in Article 19 (a) to (e).

#### **Article 42 - Notification of presumed IUU activities**

1. 1. The Secretary shall transmit all information received pursuant to Articles 37, 38 and 40 to all Contracting Parties and other relevant Regional Fisheries Management Organisations within one business day of receiving this information, and as soon as



possible to the flag state of the vessel identified as being engaged in fishing activities in the Convention Area.

2. When transmitting the information to the flag state concerned, the Secretary shall, in consultation with the President of the Commission, request that it take measures in accordance with its applicable legislation to ensure that the vessel or vessels in question desist from any activities that undermine the effectiveness of NEAFC Recommendations, including if necessary, the withdrawal of the registration of these vessels or their authorisation to engage in fishing activities.
3. The President shall request the flag state(s) to report back to NEAFC on the results of enquiries and/or on the measures it has taken in respect of the vessel or vessels concerned. The President shall also provide the flag state with a copy of this Scheme, advise of the dates when PECCOE will be considering the composition of the IUU lists and encourage the flag state to communicate any relevant information to the Secretary in an expeditious manner. The Secretary shall promptly distribute any information received to all Contracting Parties.

#### **Article 43 - Reports on IUU activities**

1. Each Contracting Party shall report to the Secretary by 15 September each year for the period 1 July to 30 June:
  - a) the number of inspections of non-Contracting Party vessels it conducted under this Scheme at sea or in its ports, the names of the vessels inspected and their respective flag state, the dates and as appropriate, the ports where the inspection was conducted, and the results of such inspections; and
  - b) where fish are landed or transshipped following an inspection pursuant to this Scheme, the report shall also include the evidence presented pursuant to Article 41.
2. In addition to surveillance reports and information on inspections Contracting Parties may at any time submit to the Secretary any further information, which might be relevant for the identification of non-Contracting Party vessels that might be carrying out IUU fishing activities in the Convention Area.

3. The Secretary shall prepare a report by 1 October each year, for the period 1 July to 30 June, based on the reports and information received from the Contracting Parties.

#### **Article 44 - IUU vessel lists**

1. Unless their flag State has been accorded the status of co-operating non-Contracting Party provided for under Article 34, vessels which have been sighted or by other means identified according to information received pursuant to Articles 37, 38 and 40 as engaging in fishing activities in the Convention Area are presumed to be undermining the effectiveness of Recommendations established under the Convention. The Secretary shall place such vessels on a provisional list of IUU vessels ('A' list).
2. A vessel of a co-operating non-Contracting Party shall immediately be added to the 'A' list by the Secretary if it is revealed that it has failed to establish that the fish were caught in compliance with all relevant Recommendations established under the Convention and, in the case of a vessel fishing within the framework of a co-operation quota:

- a) it is sighted engaging in fishing activities in the Regulatory Area after the fishery has been closed, or
  - b) it is sighted engaging in fishing activities in the Regulatory Area without being notified in accordance with Article 36(1), or
  - c) it fails to comply with the provisions of Article 35.
3. Each year, on the basis of the reports drawn up pursuant to Article 42(3) and Article 43 as well as any other relevant information the Permanent Committee for Control and Enforcement (PECCOE) shall consider the 'A' list and as appropriate recommend to the Commission that the vessels be removed or transferred to a confirmed IUU list ('B' list).
  4. At the same time PECCOE shall undertake a review of the 'B' list and as appropriate recommend to the Commission that vessels are added or removed. PECCOE shall only recommend that the Commission remove a vessel from either the 'A' or 'B' list if the flag state of the vessel concerned satisfies the Commission that:
    - a) a) it has taken effective action in response to the IUU fishing activities in question, including prosecution and imposition of sanctions of adequate severity, or
    - b) b) it has taken measures to ensure the granting of the right to the vessel to fly its flag will not result in IUU fishing activities, or
    - c) c) 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, or
    - d) d) the vessel did not take part in IUU fishing activities, or
    - e) e) the vessel only had on board unregulated resources caught in the Regulatory Area, or
    - f) f) the vessel was fishing on a co-operation quota and fulfilled all relevant obligations as set out in Article 34.
  5. The Secretariat shall transmit the IUU B-List and any amendments thereto as well as any relevant information regarding the list, to the Secretariats of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Northwest Atlantic Fisheries Organization (NAFO) and the South East Atlantic Fisheries Organisation (SEAFO). The Secretary shall also circulate the IUU B-List to other Regional Fisheries Management Organizations.
  6. After having been notified by CCAMLR, NAFO and SEAFO of vessels that have been confirmed as having been engaged in IUU fisheries, the Secretary shall without delay place the NCP vessels on the NEAFC IUU B-List. Vessels placed on the IUU B-List in accordance with this paragraph may only be removed if the RFMO which originally identified the vessels as having engaged in IUU fishing activity has notified the NEAFC Secretary of their removal from the list.
  7. The Secretary shall place the 'A' and 'B' lists on the NEAFC website without delay.

**Article 45 - Follow-up action**

1. Contracting Parties shall take all the necessary measures, under their applicable legislation, in order that:

- a) vessels appearing on the IUU 'A' list that enter ports are not authorised to land or transship therein but are inspected in accordance with the provisions of Article 40;
  - b) fishing vessels, support vessels, refuel vessels, the mother-ships and cargo vessels flying their flag do not in any way assist IUU vessels or participate in any transshipment or joint fishing operations with vessels registered on the IUU lists;
  - c) the supply of provisions, fuel or other services to vessels registered on the IUU lists is prohibited.
2. Further to the measures under paragraph 1 Contracting Parties shall take the following additional measures, under their applicable legislation, with regard to vessels on the 'B' list:
- a) prohibit the entry into their ports of such vessels;
  - b) prohibit the authorisation of such vessels to fish in waters under their national jurisdiction;
  - c) prohibit the chartering of such vessels;
  - d) refuse the granting of their flag to such vessels;
  - e) prohibit the imports of fish coming from such vessels;
  - f) encourage importers, transporters and other sectors concerned, to refrain from negotiating and from transshipping of fish caught by such vessels;
  - g) collect and exchange any appropriate information with other Contracting Parties or cooperating non-Contracting Parties with the aim of detecting, controlling and preventing false import/export certificates regarding fish from such vessels.

#### **Article 46 - Action vis-à-vis Flag States**

1. Contracting Parties shall jointly and/or individually request non-Contracting Parties whose vessels appear on the IUU lists to co-operate fully with the Commission in order to avoid undermining the effectiveness of the Recommendations that it has adopted.
2. The Commission shall review, at subsequent annual meetings as appropriate, actions taken by such non-Contracting Parties and identify those which have not rectified their fishing activities.
3. The Commission shall decide appropriate measures to be taken in respect of non-Contracting Parties identified under paragraph 1. In this respect, Contracting parties may co-operate to adopt appropriate multilaterally agreed non-discriminatory trade related measures, consistent with the World Trade Organisation (WTO), that may be necessary to prevent, deter, and eliminate the IUU fishing activities identified by the Commission.