

Recommendation XI

RECOMMENDATION BY THE NORTH EAST ATLANTIC FISHERIES COMMISSION IN ACCORDANCE WITH ARTICLE 8 OF THE CONVENTION ON FUTURE MULTILATERAL COOPERATION IN NORTH-EAST ATLANTIC FISHERIES AT ITS ANNUAL MEETING IN NOVEMBER 2008 AMENDMENTS TO CHAPTER VI OF THE “SCHEME OF CONTROL AND ENFORCEMENT IN RESPECT OF FISHING VESSELS FISHING IN AREAS BEYOND THE LIMITS OF NATIONAL FISHERIES JURISDICTION IN THE CONVENTION AREA” AS FOLLOWS:

CHAPTER VI - Infringements

Article 28 - Infringement procedures

1. If the inspectors find that there are clear grounds for believing that a fishing vessel flying the flag of another Contracting Party has engaged in any activity contrary to this recommendation or other NEAFC recommendations they shall:
 - a) note the infringement in the report referred to in Articles 17, 18 or 27;
 - b) take all necessary measures to ensure security and continuity of the evidence for subsequent dockside inspection. An identification mark may be affixed securely to any part of the fishing gear which appears to the inspector to have been in contravention of applicable measures;
 - c) in order to facilitate Contracting Party action on the infringement, immediately attempt to communicate with an inspector or designated authority of the flag State of the inspected fishing vessel.
2. The Contracting Party inspecting a fishing vessel shall communicate in writing the details of an infringement to the designated authorities of the Contracting Party of the inspected vessel within the working day following the inspection whenever possible.
3. An original of the surveillance or inspection report with any supporting documentation, shall be forwarded without delay to the appropriate authorities of the Contracting Party of the inspected fishing vessel as well as a copy to the Secretary.
4. The appropriate authorities of a Contracting Party notified of an infringement committed by a fishing vessel of that Party shall take prompt action to receive and consider the evidence of the infringement and, conduct any further investigation necessary for the follow up to the infringement and, whenever possible, inspect the fishing vessel concerned. Each Contracting Party shall designate the appropriate authorities mandated for receiving evidence of infringement and shall inform the

Secretary of the address of those authorities. The Secretary shall subsequently inform all other Contracting Parties.

5. Each Contracting Party shall consider and act on reports from inspectors of other Contracting Parties under the Scheme on the same basis as reports from its own inspectors. Contracting Parties shall co-operate in order to facilitate judicial or other proceedings arising from a report submitted by an inspector under the Scheme.

Article 29 - Serious infringements

The following infringements shall be considered to be serious:

- a) fishing without a valid authorisation issued by the flag Contracting Party;
- b) fishing without or after attainment of a quota;
- c) use of prohibited fishing gear;
- d) serious mis-recording of catches;
- e) repeated failure to comply with the provisions of Articles 11, 12, and, as appropriate, 13;
- f) landing or transshipping in a port not designated in accordance with the provisions of Article 21;
- g) failure to comply with the provisions of Article 22;
- h) landing or transshipment without authorisation of the port State as referred to in Article 23;
- i) preventing an inspector from carrying out his duties;
- j) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- k) falsifying or concealing the markings, identity or registration of a fishing vessel;
- l) concealing, tampering with or disposing of evidence relating to an investigation;
- m) multiple violations which together constitute a serious disregard of conservation and management measures;
- n) engaging in transshipment or joint fishing operations with vessels of a non-Contracting Party which has not been accorded the status of a co-operating non-Contracting Party in accordance with Article 34;

o) supplying any provisions, fuel or other services to vessels that have been placed on the IUU lists established in accordance with Article 44(3).

Article 30 - Follow up in the case of serious infringements

1. If an inspector considers that there are clear grounds for believing that the master of a fishing vessel has committed a serious infringement, he shall promptly notify the Secretary, the flag Contracting Party of the vessel, and the flag Contracting Party or Parties of donor vessels where the inspected vessel has engaged in transshipment operations, of that infringement in accordance with Article 28(3).
2. The flag Contracting Party shall respond to the notification without delay and shall ensure that the fishing vessel concerned is inspected within 72 hours by an inspector duly authorised by that Contracting Party.
3. In order to preserve the evidence, the inspector shall take all necessary measures to ensure security and continuity of the evidence whilst minimising interference with and inconvenience to the operation of the vessel.
4. The inspector is entitled to remain on board the fishing vessel for the period necessary to provide information to the duly authorised inspector concerning the infringement or until the response of the flag Contracting Party is to require the inspector to leave the fishing vessel.
5. The flag Contracting Party shall, if evidence so warrants, require the fishing vessel to proceed immediately to a port designated by that Contracting Party for a thorough inspection under its authority and in the presence of a NEAFC inspector from any other Contracting Party that wishes to participate.
6. The flag Contracting Party may authorise the inspecting Contracting Party to bring the fishing vessel without delay to a port designated by the flag Contracting Party.
7. If the fishing vessel is not called to port, the flag Contracting Party must provide due justification in a timely manner to the Secretary and to the inspecting Contracting Party. The Secretary shall make such justification available on request to any Contracting Party.
8. Where a fishing vessel is required to proceed to port for a thorough inspection pursuant to paragraph 5 or 6, a NEAFC inspector from another Contracting Party may, subject to the consent of the Contracting Party of the fishing vessel, board the fishing vessel as it is proceeding to port, may remain on board the fishing vessel as it proceeds to port and may be present during the inspection of the fishing vessel in port.
9. Each Contracting Party shall report, without delay, any serious infringement as listed in Article 29 to the Secretary.

Article 31 - Measures taken by Contracting Parties

1. Each Contracting Party shall ensure that the appropriate measures be taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where NEAFC measures have not been respected.
2. The proceedings initiated pursuant to paragraph 1 shall, in accordance with the relevant provisions of national law, be capable of effectively depriving those responsible of the economic benefit of the infringements or of providing sanctions proportionate to the seriousness of such infringements, thus effectively discouraging future infringements.

Article 32 - Reports on surveillance and inspection activities

Each Contracting Party shall report to the Secretary by 1 March each year for the previous calendar year:

- a) the number of inspections conducted by it under Articles 17, 18 and 25 the Scheme specifying the number of inspections on the vessels of each Contracting Party and, in the case of infringement, the date and position of the inspection of the individual vessel and the nature of infringement, ;
- b) the number of hours flown and the number of days at sea on NEAFC patrols, the number of sightings (Contracting Party vessels and non Contracting Party vessels) and the list of individual vessels for which a surveillance report has been completed.

Article 33 - Reporting of infringements and follow up

1. Each Contracting Party shall report to the Secretary by 1 March of each year for the previous calendar year the status of the proceedings relative to infringements of NEAFC measures. The infringements shall continue to be listed on each subsequent report until the action is concluded in accordance with the relevant provisions of national laws.
2. The report required in paragraph 1 above shall indicate the current status of the case (i.e. case pending, under appeal, still under investigation, etc) and any sanctions or penalties imposed shall be described in specific terms (i.e. level of fines, value of forfeited fish and/or gear, written warning given, etc.) and shall include an explanation if no action has been taken.