Recommendation XII: 2009

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 TO ADOPT AMENDMENTS TO CHAPTER VII 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 VII – Measures to promote compliance by non-Contracting Party fishing vessels

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 fishing activities in the Regulatory Area, including transhipments, nominal catches, number/type of vessels, name of fishing vessels, fishing effort and fishing areas;

   b) Details on current fishing activities in the Regulatory Area, number of vessels and vessels characteristics;

   c) Details of research programmes it has conducted in the Regulatory 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 co-operation 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 co-operating 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 transhipment 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 without delay to the Secretary who shall put it on the inspectors' area of the NEAFC website and send a copy to the flag State of the vessel.

2. 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.

3. 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. 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. The Secretary shall also send copies of such inspection reports to the flag State of the vessel.

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 master of the vessel provides satisfactory evidence to the competent authorities proving 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 transhipment operation if the flag State of the vessel, or the flag State or States of donor vessels where the vessel has engaged in transhipment 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. 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 Non Contracting Parties activities

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

   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 transhipped 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 15 March each year, for the previous calendar year, 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 fishing activities took place in compliance with all relevant Recommendations established under the Convention..

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 provides satisfactory evidences that:

   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) 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) 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 activities, or

   d) the vessel did not take part in IUU fishing activities, or

   e) the vessel only had on board unregulated resources caught in the Regulatory Area at the time it was engaged in the fishing activities which led to its being placed on the IUU list in accordance with 44(1), or

   f) the vessel has sunk, been scrapped, or permanently reassigned for purposes other than for fishing activities.

   PECCOE may also recommend that a vessel be removed from the 'A' or 'B' list if a Contracting Party provides satisfactory evidence that the conditions under f) have been met.

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 Organization (SEAFO). The Secretary shall also circulate the IUU B-List to other Regional Fisheries Management Organisations (RFMO).

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 non-Contracting Party 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 its list.

7. The Secretary shall place the ‘A’ and ‘B’ lists on the NEAFC website without delay as well as updates.

Article 45 - Follow-up action

1. Contracting Parties shall take all the necessary measures, under their applicable legislation, in order that vessels appearing on the IUU lists:

   a) are inspected in accordance with the provisions of Article 40 when they enter their ports;

   b) are not authorised to land or tranship in the waters under their jurisdiction;

   c) are not given assistance by 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 transhipment or joint fishing operations with vessels registered on the IUU lists;

   d) are not supplied with provisions, fuel or other services.

   The provisions in b) to d) shall not be applied to vessels appearing on the IUU 'A' list where the PECCOE has recommended to the Commission that the vessel should be removed from the 'A' list.

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) prohibit importers, transporters and other sectors concerned, from transhipping and trading of fish caught by such vessels;

g) collect and exchange any appropriate information with other Contracting Parties or co-operating non-Contracting Parties with the aim of detecting, controlling and preventing false import/export certificates regarding fish from such vessels.

3. PECCOE may recommend to the Commission that Contracting Parties be permitted by way of derogation from paragraphs 1(d), 2(a) and 2(d) to supply provisions, fuel and/or other services or grant their flag to a vessel on the IUU list if a Contracting Party provides satisfactory evidence showing that the vessel is destined for scrapping or permanent reassignment for purposes other than for fishing activities.

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.