

ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING IN THE CONVENTION AREA

8.1 The Commission considered the Proposed IUU Vessel List of Contracting Party Vessels and the Proposed IUU Vessel List of non-Contracting Party Vessels and SCIC's recommendations in respect of the IUU Vessel Lists for 2003/04.

8.2 The Commission agreed that all vessels included on the IUU Vessel Lists for 2003/04 be retained. France advised that the vessel *Eternal* had reflagged to Madagascar and had been converted to a passenger vessel. Nevertheless, France was of the view that the vessel should be retained on the IUU Vessel List for the time being.

8.3 The Commission agreed that the vessels *Maya V* and *Sherpa Uno* be included on the 2004/05 IUU Vessel List for Contracting Parties (Annex 5, Appendix III).

8.4 The Commission agreed that the vessels *Amorinn*, *Apache I*, *Champion-1*, *Golden Sun*, *Hammer*, *Koko*, *Lucky Star*, *Piscis*, *Ross*, *Sargo* and *Thule* be included on the 2004/05 IUU Vessel List for Non-Contracting Parties (Annex 5, Appendix III).

8.5 The Commission noted that a number of other vessels had been discussed by SCIC and considered information in respect of the Ukrainian-flagged vessels *Mellas* and *Simeiz*. It also noted that the *Simeiz* had been notified as intending to participate in the exploratory fisheries in Subarea 88.1 and Divisions 58.4.1 and 58.4.2 in the 2004/05 fishing season (Annex 5, paragraphs 2.35 to 2.48).

8.6 South Africa referred to the acceptance at ATCM-XXVII of Ukraine as a Consultative Party to the Antarctic Treaty and quoted the following from the statement made by the Minister of Education and Science of Ukraine at ATCM-XXVII. In particular,

'Ukraine would like to express its deepest regret and apologise in view of the concern raised by a number of Consultative Parties over the position of the Ukrainian Delegate at CCAMLR-XXII with respect to some Ukrainian-flagged vessels engaged in toothfish fishing in the Convention Area. Ukraine assures the ATCM that the case would be thoroughly investigated. In fact, the investigation has already started, and preliminary data indicate that the vessels in question may be delicensed. The Ukrainian Government will take all necessary actions to prevent any violations in the future.'

South Africa, supported by New Zealand, noted that a number of issues still remained unanswered despite a report by Ukraine submitted to SCIC.

8.7 Ukraine assured the Commission that it fully acknowledged the importance of the issue, had considered it carefully and had made every effort to investigate all circumstances. Ukraine stressed that it has completely fulfilled its undertaking to examine the matter concerning the vessels *Mellas* and *Simeiz*. Ukraine advised the Commission that it believed that there was no justifiable basis for denying the vessels *Mellas* and *Simeiz* permission to participate in exploratory fisheries during the 2004/05 fishing season.

8.8 Ukraine noted that some Members had expressed concern with respect to the possible beneficial ownership of these vessels and stated that it could guarantee a genuine link as required by UNCLOS, between the abovementioned vessels, the Flag State and the Ukrainian vessel owners.

8.9 Ukraine also brought to the attention of the Commission that the CAMLR Convention and current conservation measures are based on Flag State responsibility, i.e. on a genuine link between vessel and Flag State, and that the concept of beneficial ownership has not yet been developed either in national and international legislation, nor does existing national and international legislation make any provision for denying fishing rights to a vessel on the basis of the beneficial ownership of that vessel.

8.10 Ukraine expressed the belief that the concept of beneficial ownership is important in terms of the CCAMLR efforts to eliminate IUU fishing in the Convention Area, but that it requires further attention and clarification. At the present time, CCAMLR has no criteria to identify beneficial ownership with any degree of certainty.

8.11 Ukraine further noted that, in respect of beneficial owners, it had proposed that the Commission identify a list of companies whose actions may have been detrimental to the objectives of the Convention and requested Members to ensure that their flag vessels avoid any business contacts with such companies in future. Ukraine noted that it has proposed amendments to conservation measures which aim to specifically address this issue.

8.12 Ukraine also drew the attention of the Commission to a letter it had submitted to the Secretariat explaining beneficial ownership in relation to Ukrainian legislation. In this letter Ukraine explained that its national legislation allowed it to flag only those vessels which were the property of the State or of a Ukrainian citizen or legal entity founded in, and operated from, Ukraine, or is a vessel which such entities might have under the conditions of a bare-boat charter. Ukraine is concerned with the approach to consider the situation around the Ukrainian vessel *Simeiz*, notified for a new and exploratory fishery, from any position other than that based on international law in force. Whilst demonstrating strict adherence to the principle of faithful fulfilment of obligations taken in accordance with international conventions, Ukraine insisted that the situation concerning the *Simeiz* notification should be regarded strictly in accordance with CCAMLR conservation measures in force.

8.13 New Zealand said that the circumstances surrounding the *Florens-1 (Simeiz)* and *Eva-1 (Mellas)* presented a serious challenge to the Commission, particularly as the *Simeiz* had been notified by Ukraine for CCAMLR's exploratory fisheries. The continuing link between the vessel and the beneficial owners it had when engaged in suspected IUU fishing activities had been well documented by New Zealand, the European Community, France and the UK. Many Members had expressed a strong view that the vessel should be prevented from participating in exploratory fisheries in the future. The Chair of SCIC had reminded Ukraine that if any new information concerning ownership of the *Simeiz* was obtained this should be made available to the Commission. New Zealand had recently shared with Ukraine confidential information which conclusively proved the ownership and control of the vessels *Simeiz*, *Mellas* and *Sonrisa* was with Sunhope Investments, subsidiary of Pacific Andes International Ltd, which was implicated in much of the IUU fishing effort in the Convention Area. New Zealand asked Ukraine in the light of such information to substitute another vessel for the *Simeiz* in its notification for CCAMLR exploratory fisheries and not put the Commission's credibility at risk.

8.14 France expressed disappointment that it had sent documents to Ukraine which indicated links between the current and previous owners of the vessels *Mellas* and *Simeiz* and that, whilst these documents did not constitute legal proof of such a link, France believed that Ukraine's response had not been entirely satisfactory. France expressed its disappointment with Ukraine's response in regard to the question of the beneficial owners of the vessels *Simeiz* and *Mellas*. Taking into account the confidential information obtained by New Zealand implicating the owner of the *Simeiz* in IUU fishing in the Convention Area, France asked Ukraine to withdraw this vessel from the list of notifications for exploratory fisheries pending further clarification.

8.15 The European Community agreed with the view of France that the information submitted by Ukraine in respect of the vessel owners did not specifically address the questions which had been raised intersessionally. The European Community noted that the information provided by Ukraine did not seem to address the queries raised by SCIC or those raised during the intersessional period relating to the ownership of the vessels. The Ukrainian letter of 29 October 2004 did not provide any factual information relating to the ownership of the vessels, but only information on Ukraine's current registration provisions. In following up paragraph 8.60 of CCAMLR-XXII, the European Community had conducted investigations which indicated that the Ukrainian company reported to be the owner of the vessels was incorporated in 2003, the year in which the vessels were registered under the Ukrainian flag. The investigations indicated that this company had no employees. The European Community expressed the view that it would seem difficult for a newly incorporated company to purchase three vessels, of which two were quite new. The European Community investigations had also indicated that the three vessels were operated by a Taiwanese manager.

8.16 Norway informed the Commission that it had a long history of listing those vessels with a history of engaging in IUU fishing. According to Norwegian national legislation adopted in 1994, all black-listed vessels were perpetually prohibited from fishing in the Norwegian EEZ and will not be entitled to fly the Norwegian flag, irrespective of changes in their ownership. Norway advised that the vessels *Eva-1* and *Florens-1* had been included on the Norwegian black-list and would remain so listed in perpetuity. Norway also pointed out that it would not be consistent with Norwegian policy to allow the vessels *Mellas* and *Simeiz* to participate in future new and exploratory fisheries.

8.17 Australia noted that Ukraine's letter outlined elements which should be adopted by all Flag States before flagging a vessel, however Australia also noted that background checks that underlie such legislation were crucial to ensuring its integrity. Further, Australia noted all Members flagging vessels were responsible for those vessels and ensuring they did not have any links with companies known, or suspected, to engage in IUU fishing.

8.18 Chile agreed with Australia, but noted that CCAMLR does not make provision for excluding vessels where there had been no recorded breach of a conservation measure. Chile believed that it was important not to discriminate between Members and non-Contracting Parties and recalled that two categories of IUU Vessel Lists had been created by the Commission because Contracting Parties should have both a greater obligation to comply with CCAMLR measures and a better means of defence. Chile asked Ukraine to make every effort to investigate the matter as it believed that recent changes in flagging practices were undermining the objectives of the Convention.

8.19 Ukraine thanked the Commission for enabling it to clarify some of the difficulties it had experienced with its own national legislation and reiterated that it is fully open to future cooperation.

8.20 In discussing other vessels, the Commission also noted that the Vanuatu-flagged vessel *Atlantic Navigator* had fished for krill during 2004 but had submitted, after considerable delay, incomplete data required in accordance with Conservation Measure 23-06.

8.21 The Commission noted with some concern the level of fishing (60 000 tonnes) of krill anticipated by Vanuatu next season. The Commission endorsed the recommendation of SCIC (Annex 5, paragraphs 2.23 to 2.30) and accordingly requested that the Executive Secretary write to Vanuatu expressing serious concerns over its future fishing plans in the Convention Area and urging Vanuatu as a matter of priority to consider applying for membership of the CCAMLR Commission.