

## IUU FISHING IN THE CONVENTION AREA

### Current level of IUU fishing

9.1 The Commission noted the following advice from SCIC (Annex 5, paragraphs 2.2 and 2.4):

- (i) the total estimated IUU catch of *Dissostichus* spp. in the Convention Area during the 2005/06 season was 3 080 tonnes;
- (ii) the overall estimated IUU catch has decreased over the past three years, but it had increased in Divisions 58.4.1, 58.4.2 and 58.4.3b, with the estimated IUU catch from these areas accounting for almost 90% of the total estimated IUU catch for the Convention Area;
- (iii) approximately 13 IUU fishing vessels have been reported to be regularly engaging in IUU activities in Division 58.4.3b (BANZARE Bank).

9.2 The Commission endorsed SCIC's recommendation that Members be requested to increase surveillance efforts in the Convention Area and particularly in the areas identified in paragraph 9.1(ii).

### Procedure for the estimation of IUU catches

9.3 The Commission noted that a new methodology for estimating IUU catches has been developed by JAG. This had been considered by SCIC and the Scientific Committee (Annex 5, paragraph 2.17; SC-CAMLR-XXV, paragraphs 11.12 to 11.14) and when fully developed and tested, would provide WG-FSA with estimates of IUU catches that take into account the range of uncertainties attached to such estimates.

9.4 It also noted that WG-FSA had conducted a preliminary trial of this new methodology (SC-CAMLR-XXV, Annex 5, paragraphs 8.14 and 8.15) and that the matrix designed by JAG aims to determine the level of confidence associated with an IUU activity report when estimating IUU catches (Annex 6, paragraph 4.4).

9.5 The Commission further noted that the matrix was subsequently revised by SCIC (Annex 5, paragraph 2.20). It requested that the Secretariat test both the JAG and SCIC-revised matrices to compare the resultant outputs.

9.6 In response to a recommendation on increasing surveillance coverage (Annex 5, paragraph 3.37), SCIC had proposed a revision to Conservation Measure 10-02 in order to include requiring licensed fishing vessels to report sightings of other fishing and support vessels within the Convention Area (see paragraph 12.9).

9.7 The Co-convenor of JAG, Dr D. Agnew (UK) advised the Commission that all the points raised in the JAG report and its recommendations had been presented to and discussed by both SCIC and the Scientific Committee. While the Commission had discussed the advice and recommendations received from both bodies, it still had not considered advice on JAG's future or on organisation of any future work (Annex 6, paragraphs 7.3 and 7.4).

9.8 JAG had reported that it saw no need for regular meetings. However, it had recommended that any future meeting(s) should be contingent on particular work outcomes or work identified by SCIC, WG-FSA and the Secretariat. On the basis of such work the Commission may then decide to reconvene JAG, on an ad hoc basis, perhaps in three to five years' time.

9.9 JAG also recommended that, for the time being, no changes should be made to its terms of reference and that any review of these terms should be undertaken if and when the Commission should decide to reconvene JAG.

9.10 The Commission endorsed both the above JAG recommendations, i.e. on future work and any review of the terms of reference.

#### IUU Vessel Lists

9.11 The Commission considered advice from SCIC and agreed to:

- (i) adopt the Proposed NCP-IUU Vessel List for 2006 provided by SCIC;
- (ii) remove the Russian-flagged vessel *Muravyev Amurskiy* (ex Equatorial Guinea-flagged *Sea Storm*) from the NCP-IUU Vessel List adopted in 2005;
- (iii) move three People's Republic of China-flagged vessels, *North Ocean*, *East Ocean* and *South Ocean*, from the adopted NCP-IUU Vessel List to the adopted CP-IUU Vessel List in light of the fact that the vessel Flag State had recently become a Contracting Party.

9.12 During the Commission's deliberations, the People's Republic of China reminded the Commission of the statement it had made in SCIC (Annex 5, paragraph 4.3) and to the footnotes relating to its flag vessels contained in Appendices IV and V of the SCIC Report.

9.13 Following the Commission's decision, the People's Republic of China expressed regret that four of its flag vessels had been included on the IUU Vessel List and assured the Commission that it would make every effort to fulfil its obligations under CCAMLR in future.

9.14 Argentina drew the Commission's attention to the fact that, unless enough evidence to the contrary is provided, an official statement of the Flag State at a Commission meeting should be duly taken into account when taking a decision to include a vessel on an IUU list.

9.15 Australia and the European Community welcomed the People's Republic of China's statement regarding its future intention to fully comply with CCAMLR measures. The European Community expressed faith that the People's Republic of China would be able to attain these objectives and would be in a position to redress its situation in future.

9.16 The Commission noted SCIC's advice that it had been unable to forward a Proposed List of CP-IUU Vessels to the Commission for approval. Whilst SCIC had agreed that the People's Republic of China-flagged *West Ocean* should be included on the Proposed CP-IUU

List, it had been unable to reach consensus on the inclusion of the Russian-flagged *Volna*. SCIC had therefore forwarded the Provisional CP-IUU Vessel List to the Commission for further consideration.

9.17 Russia made the following statement in relation to the Provisional CP-IUU Vessel List:

‘The Delegation of the Russian Federation wishes to commend the Commission and its Committees for their productive work aimed at the conservation and rational use of Antarctic marine living resources. The Commission’s decisions have always been impartial and based on a balanced consideration of the various Parties’ views.

As a Party to the 1980 Convention on the Conservation of Antarctic Marine Living Resources, the Russian Federation has conscientiously carried out its obligations under this Convention for over 25 years. The issue of environmental protection and maintaining the integrity of ecosystems in the Antarctic seas is extremely important to us. Our country has always consistently supported CCAMLR’s efforts in combating IUU fishing. Thus, we are especially sensitive to the current situation concerning the Russian-flagged vessel *Volna*.

In the opinion of the Russian Delegation the issue of including the Russian fishing vessel *Volna* in the list of IUU vessels has been misrepresented from the very beginning. From 22 January to 2 February 2006 the *Volna* was fishing for Antarctic toothfish in SSRUs 881L and 881K in accordance with Conservation Measure 41-09. We are surprised that the case, which is not based on any clear breaches of conservation measures, has caused so much concern among some Parties.

First of all, the fact that attracts the most attention is that the information submitted by the UK regarding the vessel *Volna* was not obtained in accordance with the CCAMLR System of Inspection. Nevertheless, in order to investigate the incident regarding the *Volna* entering the SSRU 882A which was closed to fishing, the Federal Agency for Fisheries established a special commission which thoroughly analysed the circumstances and documents pertinent to this case.

A comparison of the satellite monitoring data and the coordinates of longline settings indicated that the *Volna*, while working in SSRUs 881L and 881K, entered SSRU 882A, which was closed to fishing, on several occasions. These visits were short and took place when the vessel had to manoeuvre to approach the starting point for longline setting. During the abovementioned period of time the *Volna* set 13 longlines in total. Furthermore, no part of the longline was set in the closed SSRU 881A. However some of the longlines drifted from their setting point, plus one line was broken and part of it was lost and later found in the adjoining SSRU 882A which was closed to fishing.

Drift, breakage and loss of longlines are quite common in fisheries, particularly when longlines are deployed at a depth of over 1 000 m, as is the case in the Antarctic toothfish fishery. Rocky bottom can be one possible reason for a longline breakage, and bottom currents, tidal currents or drifting ice – all reasons for such a drift. The special commission has analysed the chart of the Ross Sea currents based on the data collected during Russian oceanographic research in Antarctica and summarised in the

publication *Climatic Fluctuations and Antarctic Marine Ecosystem* (V. Maslennikov, 2003). According to the chart, circulation in the Ross Sea is dominated by a cyclonic gyre, the northern boundary of which is located over the inner edge of the continental shelf and flows in a southeasterly direction. Within individual areas (SSRUs), the general system of currents combines with strong tidal currents, which are in turn influenced by the bottom topography.

Having analysed these features of the hydrological regime for the Ross Sea, the Russian commission came to the conclusion that bottom longlines deployed by the *Volna* could indeed have drifted a considerable distance. The Russian commission recognised that the drift of the longline deployed by the *Volna* from SSRU 881L into closed SSRU 882A was related to *force majeure*.

The Russian Delegation would like to draw CCAMLR's attention to the fact that at present there is no conservation measure in force to direct a vessel's actions should fishing gear deployed in the area open to fishing drift into areas closed to fishing. In this situation, which is not provided for in the conservation measures, the captain of the *Volna*, governed by common sense, decided to haul the lost longline.

In our opinion, the actions of the captain of the *Volna* contained an element of risk as regards setting longlines near the border of SSRU 882A, which was closed to fishing, but were justified insofar as hauling the longline which drifted into this SSRU is concerned. Abandoning the fishing gear in SSRU 882A would have produced a much greater adverse effect on the marine ecosystem than hauling it, as the lost longline would act as "ghost fishing gear" for an indefinite period of time in the environment. The non-hauling of a lost longline, or part of it, might be seen as a failure to act and a clear non-compliance with obligations related to the conservation of marine living resources.

In our opinion, verbal statements and written information submitted by some Parties during the discussions in SCIC do not provide a basis of evidence on which to classify the *Volna*'s actions in the Convention Area as illegal, unreported and unregulated fishing.

In the opinion of the Russian Delegation, attempts by some Parties to include the *Volna* in the list of IUU vessels are unfounded and subjective. We assume that sanctions for IUU fishing could only be imposed if it is proven that a vessel did not comply with the provisions of the 1980 Convention and conservation measures to the extent that it undermines the effectiveness of the CCAMLR system.

The situation with the *Volna* should be seen within the context of assessing a vessel's compliance with conservation measures, not as a question of whether its actions contained elements of IUU fishing. It is regretful that an opportunity for a constructive discussion and development of objective criteria for the assessment of compliance with conservation measures has been lost in the interpretation of the actions of the *Volna* and *Argos Georgia* presented to SCIC.

The Delegation of the Russian Federation is confident that CCAMLR makes its decisions on the basis of comprehensive consideration of the issues discussed, while taking into account objective and unbiased analysis of reliable facts.'

9.18 In response, the UK indicated that it was highly regrettable that yet again one Member of CCAMLR – the Russian Federation – had blocked consensus on the issue of blacklisting one of its own flag vessels. Russia appeared to be in a state of self-denial over the illegal activities of the *Volna*.

9.19 The UK rejected the statement by Russia that it had conscientiously abided by the rules of the Commission throughout its past 25-year history. The UK recalled the situation of three years ago at CCAMLR-XXII when Russia, despite compelling evidence, had refused point blank to see its vessels *Strela* and *Zarya* blacklisted under Conservation Measure 10-06. What was now occurring was a most unfortunate repeat of that situation.

9.20 The UK rejected the notion that the procedures of the System of Inspection had not been complied with. The matter of the *Volna* had nothing to do with that system. Instead, all due process of reporting in accordance with paragraphs 2 and 3 of Conservation Measure 10-06 had been stringently complied with. What was unusual about the case of the *Volna* was that more detailed data and information on the illegal activities of this particular vessel had been placed before SCIC and the Commission than had been the case for any other vessel. From whatever angle that evidence was viewed the only logical conclusion that could be reached was that the *Volna* was indeed fishing illegally and should be placed on the IUU list for Contracting Parties.

9.21 In view of the compelling information on the activities of the *Volna*, the Provisional CP-IUU Vessel List should now be adopted. Recognising the importance of consensus decision-making, the UK urged that the Commission develop its procedures in a way that enabled it to move this issue forward.

9.22 Lastly, the UK believed that Russia's attempt to bring the *Argos Georgia* into this particular debate was entirely inappropriate.

9.23 New Zealand considered the statement by Russia to be regrettable, although not unexpected. The evidence that *Volna* had engaged in illegal fishing operations inside Subarea 88.1 between 22 January and 1 February 2006 was overwhelming and compelling.

9.24 In New Zealand's view, there had never been a clearer case of IUU fishing presented to the Commission either in regard to the CP-IUU Vessel List or the NCP-IUU Vessel List. The evidence included the VMS positions for the *Volna* which showed it to have been inside SSRU 882A for almost half the period between 22 January and 1 February 2006, and to have been carrying out manoeuvres consistent with fishing operations rather than searching for a phantom drifting longline.

9.25 New Zealand wished to make clear it regarded the *Volna* as satisfying the criteria for inclusion in the CP-IUU Vessel List and would treat the vessel accordingly.

9.26 New Zealand expressed particular concern that Russia had included the *Volna* in its notification for the exploratory fisheries in Subareas 88.1 and 88.2 for the 2006/07 season.

9.27 Finally, New Zealand asked the Russian Delegation not to prevent the consensus adoption of the CP-IUU Vessel List.

9.28 Australia noted that its experts had concluded that data provided to SCIC clearly indicated that the *Volna* had contravened CCAMLR measures, pointing out that 49 polls had

been recorded in the closed SSRU 882A over a 10-day period compared with 52 polls recorded from the adjacent open SSRU 881L over a 12-day period. Australia also pointed out discrepancies between VMS and fine-scale data provided for the same time period but noted that VMS data, which should be regarded as more authentic, indicated active fishing rather than retrieval of a lost line. Australia expressed the view that the vessel was eligible to be included on the IUU Vessel List.

9.29 The European Community also supported the UK proposal (paragraph 9.21) and observed that an extraordinary amount of evidence had been presented. Whilst the European Community respected the rule of consensus, it expressed its belief that new and improved solutions were required in respect of the process of adopting IUU Vessel Lists in accordance with Conservation Measure 10-06.

9.30 France expressed regret that the discussion regarding the inclusion of the *Volna* on the Provisional CP-IUU Vessel List should hark back to the Commission's discussions of three years ago regarding several vessels; such discussions give the unfortunate impression that no progress whatsoever had been made during the intervening period.

9.31 France indicated that all delegations, with the exception of one, were convinced that the *Volna* had been involved in illegal fishing. France specified that it was the conduct of a vessel that was implicated here, and not that of a government. France regretted that this State should refuse to acknowledge the delinquent behaviour of the vessel and the operators involved, since no Party is immune from having a 'black sheep' among its flag vessels.

9.32 France consequently indicated its support for maintaining the vessel *Volna* on the Provisional CP-IUU Vessel List. It also supported the UK's proposal that a vessel should not be withdrawn from the provisional list of IUU vessels except by consensus.

9.33 The USA advised that it had considered both arguments carefully and had concluded that evidence of the *Volna* having participated in IUU activities was compelling. The USA expressed regret that Russia had not agreed to the vessel being included on the IUU Vessel List and observed that a practice of Members inappropriately protecting their own vessels would undermine the objectives of the Convention.

9.34 Russia advised the Commission that it had voluntarily cooperated with SCIC in providing all data requested and that the suggestion that Russia was protecting its vessel was unfounded and unhelpful. Russia pointed out that its actions in respect of the *Volna* were based on a report prepared by a special governmental commission which had been set up in order to investigate the case. Russia reiterated that it had complied with all CCAMLR measures since 1980 and expressed the view that the only difference between its vessels and others was that Russian vessels had been detected and others had not. It also reminded the Commission that the *Volna* had not previously been considered for inclusion on an IUU Vessel List.

9.35 As a point of order, the UK objected to Russia's attempt to bring in matters not relevant to the agenda item under discussion. The UK recalled that the Chair of SCIC had ruled on three occasions that issues relating to the *Argos Georgia* were not relevant to the determination of the CP-IUU Vessel List.

9.36 The UK reiterated that in respect of the *Volna* the Commission was facing a situation of a vessel caught in the act of fishing illegally in a closed area (SSRU 882A). That was the primary factor that should see the *Volna* listed as an IUU vessel. That Russia should defend the actions of this vessel by suggesting that it was innocently retrieving a line that had inadvertently drifted into SSRU 882A was both objectionable and implausible. The UK rejected this explanation. What was evident from the VMS records of the *Volna* was that the vessel had spent some 8 to 10 days in SSRU 882A. The VMS position plots indicated a vessel actively engaged in fishing, and therefore acting illegally. Add to this the detailed information on the deliberate offal and by-catch discharge and the UK saw activities by a Member State's flag vessel which shows no regard whatsoever to the obligations adopted by this Commission.

9.37 The UK was of the view that if Russia again opted to block consensus on the issue of Conservation Measure 10-06 it would send a very negative signal to the wider community as to CCAMLR's ability to deal with illegal vessels. Here the vessel at stake was flagged to a Contracting Party. The UK stressed that if Members of the Commission were not prepared to face up to their moral responsibility under Conservation Measure 10-06, then that measure was fatally flawed. Its provisions were emasculated by the irresponsible actions of one Party. The UK believed that the Commission would need, as a matter of urgency, to reconsider whether there was now any semblance of effectiveness in dealing with the IUU vessels of Contracting Parties.

9.38 The Russian Delegation noted that the position of the Russian Federation on the *Volna* remains unchanged. However, the Russian Federation indicated that, in the course of deliberations at the Commission, it had received additional information concerning the activities of the vessel *Volna* and that it wished to take further note of the information presented by several delegations. Such information included the record of VMS positions for the *Volna* throughout the period between 22 January and 1 February 2006, haul-by-haul data for longlines deployed by the *Volna* during such period, an analysis of oceanographic and ice conditions in the area and documented by-catch composition reported by the *Volna* and other vessels. The Russian Federation indicated that its fisheries authorities would take into account this information in determining whether to issue fishery licences to the *Volna* for the 2006/07 season.

9.39 Recognising the imminent start of the upcoming fishing season, Russia indicated that it would communicate to the Commission in a timely fashion the actions that it would now take to bring this issue to an acceptable resolution.

9.40 Given these circumstances, the Commission decided to postpone a decision regarding the inclusion of the *Volna* on the IUU Vessel List until, or before, CCAMLR-XXVI.

9.41 Whilst the Commission generally agreed with this compromise, some Members made a number of observations described in the paragraphs below.

9.42 The UK indicated that it could accept the compromise as set out in paragraph 9.38, and that the matter of the status of the *Volna* would remain open before the Commission. The UK believed that a response from Russia was needed sooner rather than later particularly given the opening of the exploratory fisheries on 1 December 2006.

9.43 The UK indicated that until such time as a resolution acceptable to the Commission was notified by Russia, the UK would continue to regard the *Volna* as an illegal vessel. The UK would consider all steps open to it under national and international law to deny facilities to the *Volna* and prevent it from receiving support for its IUU activities.

9.44 Furthermore, the UK indicated that if the matter had not been concluded in a satisfactory fashion by the time of ATCM-XXX, then the UK would wish to call for censure of Russia at that Consultative Meeting.

9.45 New Zealand urged Russia not to license the *Volna* for CCAMLR's exploratory fisheries in view of the compelling evidence that the vessel had conducted illegal fishing operations in SSRU 882A in the previous season. New Zealand expressed the view that the issuing of a licence to the *Volna* would damage the credibility of the Commission and thereby the Antarctic Treaty System of which CCAMLR is an integral part. It therefore reserved its right to address the matter further at the ATCM-XXX in New Delhi, India, next May.

9.46 Australia associated itself with the views expressed by New Zealand.

9.47 Italy reiterated its wish that a solution be found sooner rather than later given the high stakes involved in a matter of extreme importance for the credibility and positive impact of the CCAMLR. Italy therefore hoped that Russia would provide the necessary help in order to find a responsible and satisfactory outcome in a quick time line.

9.48 The European Community expressed its serious concerns on the *Volna* issue. The European Community stressed that the reached compromise is not satisfactory to the European Community Delegation.

9.49 The European Community shared the views of all other delegations that spoke, except Russia, on the Contracting Parties IUU list and the presence of the vessel *Volna* on this list. At the same time, the European Community Delegation drew the attention of the CCAMLR Members to the urgent need to improve the functioning and effectiveness of the procedures contained in the Conservation Measure 10-06 on the CP-IUU Vessel List, in order to avoid that a Member with vested interest in this issue could seriously undermine the decision making process of the Commission by blocking consensus.

9.50 South Africa indicated that it accepted the compromise, however, like Australia and New Zealand, South Africa strongly urged that the *Volna's* status be resolved as a matter of priority given its importance to CCAMLR's effective implementation of the Convention and attached conservation measures. It also indicated that it would wish to reserve South Africa's right in respect of providing access to port facilities to the *Volna* in the future if its status cannot be resolved.

9.51 Russia stressed that the consensus reached on the vessel *Volna* would not necessarily mean that its fishing licence be withdrawn. Russia further stressed that the Russian Delegation was not presently in a position to undertake any commitment regarding exact time-frames or measures in respect of the *Volna*, but indicated that it could be presented in a timely fashion due to the fact that an additional study of the issue would be required in accordance with internal procedures. Once these procedures were completed, the



Commission would be informed of the results. Russia summarised its current position that it continued to believe that the *Volna* could not be included on the IUU Vessel Lists at that particular time.

9.52 The Commission thanked Norway for its efforts in mediating discussions on this matter.

9.53 The Commission approved a Final Contracting Party IUU Vessel List for 2006 (Annex 7) and, as a result, the People's Republic of China-flagged vessel *West Ocean* was added to the Combined IUU Vessel List for all years. The matter of the *Volna* remained open before the Commission until CCAMLR-XXVI.