

IUU FISHING IN THE CONVENTION AREA

Current level of IUU fishing

9.1 The Commission reviewed advice from SCIC and the Scientific Committee on the current level of IUU fishing. Seven vessels had been reported to have engaged in IUU fishing in the Convention Area during 2009/10 and all were believed to be using gillnets.

9.2 The Commission noted advice from the Scientific Committee on the changing nature of IUU fishing in the Convention Area, including the increasing level of IUU activities close to the continent and the increasing uncertainty surrounding estimates of IUU catches by gillnets. The Scientific Committee reiterated its previous advice that CCAMLR was still not aware of the full impact of gillnet fishing (SC-CAMLR-XXIX, paragraph 6.5 and 6.6).

9.3 The Commission expressed its concern that the estimates of IUU catches had risen since 2009 and concluded that, despite progress in the control of nationals and the implementation of the CDS, IUU fishing did not appear to be significantly declining. Several Members expressed the view that CCAMLR appeared to be unable to further control IUU fishing and was therefore not fulfilling the objectives of Article II of the Convention and, in turn, the Antarctic Treaty.

9.4 The Commission agreed with the Scientific Committee that, given the uncertainty surrounding gillnet catch rates, future estimates of IUU should focus on the level of effort, rather than the level of catches. The Secretariat will also clarify, in future, whether zero IUU estimates in a specific area arise from a lack of information or confirmed zero IUU activity (SC-CAMLR-XXIX, paragraph 6.7).

9.5 Ukraine expressed the belief that there were many more IUU vessels operating in areas where there is no legal fishing. Ukraine urged all Members to task their vessels and aeroplanes with recording all sightings of fishing vessels and report all sightings to the Secretariat. Ukraine also urged the Secretariat to remove all Commission reports and conservation measures from the public access pages of the CCAMLR website, as these might be used by IUU operators.

9.6 New Zealand informed the Commission that it had recently taken delivery of two new ice-class patrol vessels which will be committed in future to implementing the System of Inspection in the Convention Area to supplement aerial surveillance already conducted by New Zealand.

9.7 The Commission expressed its appreciation for the efforts of Australia, France and New Zealand in respect of patrols in the Convention Area, and to the UK for its role in convening an IUU training workshop. Most Members believed, however, that further actions in respect of port measures, market measures and the control of nationals were required.

9.8 The Commission agreed that the Chair of the Commission would write to those non-Contracting Parties reported to be Flag States of IUU vessels fishing in the Convention Area to request their written permission to board and inspect these vessels within the framework of the System of Inspection.

9.9 The Commission also agreed to pursue all action in respect of IUU vessels flagged to non-Contracting Parties in accordance with CM 10-07.

Control of nationals (CM 10-08)

9.10 The Commission noted with satisfaction reports submitted by Spain with respect to actions it had taken against the fishing company Vidal Armadores following New Zealand's investigation of the *Paloma V* (now *Trosky*) in Auckland, New Zealand, in 2008. The Commission noted that Spain had imposed a fine and suspended all licences, loans and subsidies for a period of two years.

9.11 Several Members urged Spain to continue to take all possible action against its national involved in IUU activities and to proactively investigate possible links between Vidal Armadores and other vessels reported to be actively IUU fishing in the Convention Area, particularly the *Corvus*, *Draco-I* and *Trosky*.

9.12 Spain assured the Commission that it was prepared to act against IUU fishing and that it would continue to investigate all reports which implicated Spanish nationals in IUU activities. Spain requested the assistance of any Member which had any evidence of the involvement of Spanish nationals in IUU activities.

9.13 Many Members noted that, whilst information provided by Members might not be sufficient to conclude a full prosecution, the information should still provide a basis for Spain to undertake an investigation.

Diplomatic demarches

9.14 The EU advised the Commission of progress as a result of diplomatic actions with Togo and Equatorial Guinea during 2009/10. Equatorial Guinea had advised in a letter to the Commission Chair that it had deflagged a number of vessels including *Tropic* (now *Constant*), *Gold Dragon* (now *Carmela*), *Perseverance* (now *Challenge*) and *Red Lion 22* (since renamed *Sibley* and sunk). Equatorial Guinea had also informed CCAMLR that it granted permission for CCAMLR Members to board and inspect vessels claiming its flag.

9.15 The EU drew the Commission's attention to SCIC-10/4 which contained information on Togolese-flagged vessels which had been reported to have been deregistered by Togo but appeared to continue to claim Togolese flag. The EU advised that Togolese authorities were currently investigating these reports and that CCAMLR would be informed of any outcomes. The EU also noted that Togo had advised that it had deregistered the vessels *Aldabra* and *Amorinn*, which are included on the NCP-IUU Vessel List.

IUU Vessel Lists

9.16 The Commission noted advice from SCIC that no information had been received in respect of vessels which might be included on a Provisional CP or NCP-IUU Vessel List in 2010.

9.17 China advised the Commission that since 2006 it had applied severe sanctions to the *North Ocean* and *West Ocean*, which include, in particular, withdrawing their licences and preventing subsequent fishing. China stated that the vessels had remained under constant

surveillance by port authorities for nearly four years. China had also urged the owner to sell the vessels so as to ensure that the ownership is changed which is an effective solution against IUU fishing. The owner had subsequently signed a sale contract with the Insung Corporation of Korea and a 25% deposit had been paid. China provided copies of the sale contract and deposit payment documents.

9.18 China therefore proposed an arrangement under which the *North Ocean* and *West Ocean* should be removed from the CP-IUU Vessel List within 10 working days once China informed the Commission via a Commission Circular that the vessels had been sold to the Insung Corporation of Korea and provided copies of the Bill of Sale, Commercial Invoice and the Protocol of Delivery and Acceptance.

9.19 China emphasised that its proposal fully followed the decision taken by the Commission last year in respect of delisting the *East Ocean* and *South Ocean* (CCAMLR-XXVIII, paragraph 9.18).

9.20 The USA made the following statement:

'China has asked the Commission to agree to remove the *West Ocean* and *North Ocean* from the CP-IUU Vessel List intersessionally once they are sold to Insung Corporation of Korea. After careful consideration, the US Delegation continues to have some difficulties with reaching a conclusion that the Commission's rules with respect to delisting have been met.'

As noted in our intervention earlier this week, CM 10-06 provides for deleting a vessel from the CP-IUU Vessel List if the Contracting Party proves that one of the criteria for delisting has been met. Information relevant to a proposed listing or delisting is required to be submitted to the Secretariat no later than 30 days before the start of the annual meeting in order for all Members to have adequate time to consider the proposal and supporting documentation.

It has been difficult to adequately consider the proposed delisting of the *West Ocean* and *North Ocean* because the procedures set forth in CM 10-06 were not followed. No delisting proposal or supporting information was provided to Members prior to this meeting. Rather, limited information was provided halfway through SCIC in support of a request to delist the vessels intersessionally on the basis of their future sale. This information only related to the first element of paragraph 14(iii). Under this subparagraph, the Contracting Party must prove, not only that the vessel *has* changed ownership, but also that the *new owner* can establish that the previous owner no longer has any interest in, nor exercise any control over, the vessel and that the *new owner* has not participated in IUU fishing. These elements have not been proven.

Some Members will recall the information provided by the Marshall Islands (SCIC-08/10) when they came before this Commission in 2008 seeking delisting of the *Seed Leaf* based on its sale to Eastern Reefer. The Marshall Islands provided complete documentation establishing that all of the elements of CM 10-07, paragraph 18(iii), had been met and its effort can serve as a useful guide for Contracting Parties and non-Contracting Parties seeking delisting on this basis in the future.

Some Members have noted this week that the Commission agreed in 2008 and 2009 to the delisting of these vessels during the intersessional period on the basis of their future sale. However, as was noted in the 2008 report of the Commission, these agreements were not intended to establish an intersessional delisting process under CM 10-06. As was noted in paragraph 10.11 of the report from CCAMLR-XXVII, “a few Members acknowledged the exceptional circumstances leading to the decision to delist the ... vessels and ... requested the deletion of vessels from the IUU Vessel Lists should be done strictly in accordance with the criteria set forth in Conservation Measure 10-06, paragraph 14, in future.”

The flexibility demonstrated by this Commission in 2008 was intended to provide assistance to a new Member on an exceptional basis and in response to a unique set of circumstances. The USA does not think it is reasonable to treat these circumstances as unique when they have been repeated in each of the last two years. The compromise agreed to in 2008 was not intended to become a routine manner of seeking delisting and the USA does not support continuing with ad hoc procedures for intersessional delisting.

Thus, the USA believes that the Commission should apply its procedures as they exist, which may mean that Insung should be allowed to complete the sale, and then Korea can make the case next year for delisting pursuant to CM 10-06.

If the Commission wants to allow for intersessional delisting, we should agree a process that would be fair, transparent and applicable to all Contracting and non-Contracting Parties with vessels on the IUU Lists. In fact, the EU has put forward a proposal to establish intersessional delisting procedures. If such a procedure is agreed at this meeting, China would need to meet the requirements of that process.’

9.21 China noted the position of the USA and expressed its regret to that. China emphasised that the Commission’s decision with regard to delisting the *East Ocean* and *South Ocean* was made by consensus and that it was not an exception to, but an application of, CM 10-06.

9.22 China further indicated that the Commission had made decisions by consensus on the procedure to delist the *North Ocean* and *West Ocean* at its previous meeting (CCAMLR-XXVII, paragraph 10.10; CCAMLR-XXVIII, paragraph 9.19), according to which the vessels should be deemed removed from the CP-IUU Vessel List once China informed the Commission that the vessels had been sold to the Insung Corporation of Korea and that the sales were final. China emphasised that the proposal made by China was consistent with the said decisions.

9.23 China is of the view that the US Delegation was not in the position to reverse the decision agreed by the Commission by consensus on delisting the two vessels from the CP-IUU Vessel List. What China asked the Commission to do this year in its proposal was just a technical arrangement to clarify the meaning of the term ‘sales are final’ in the view to make the application of CM 10-06 in a non-controversial manner.

9.24 China is of the view that the objection of the US Delegation may block China's proposal at this meeting, but it cannot reverse the decision agreed by the Commission by consensus. China stated that the previous decision remains in force until a new decision to replace it is agreed by the Commission by consensus.

9.25 The Republic of Korea advised that the purchase procedure was under way according to the relevant clauses of CCAMLR-XXVIII that were agreed by Members. It noted that when the ownership changes of the vessels were completed and the vessels are deleted from the CP-IUU Vessel List, Korea could grant its national registration and fishing licences to the vessels. Before delisting it is not possible for Korea to register the vessels to the Korean vessel registry. Korea requested clarification on the continuation of the validity of the clauses of CCAMLR-XXVIII, paragraphs 9.18 and 9.19, because if those clauses cannot be applied to the current purchase arrangement, the impact and damage would be significant to the arrangement engaged by the companies. Korea stated that, when the ownership change is completed, it will notify the Commission and request delisting of those vessels.

9.26 Australia made the following statement:

'With regard to the two Chinese-flagged vessels, *North Ocean* and *West Ocean* which the Chinese Delegation is seeking to have removed from the CP-IUU Vessel List during the intersessional period between this meeting and the 2011 meeting, we have been informed that the basis for the removal of the vessels from the list is their pending sale to Insung Corporation of Korea. Australia would like to thank our colleagues from the Chinese Delegation for the copy of the Memorandum of Agreement for this sale which was provided to SCIC on Wednesday 27 October.

However, Australia is disappointed that China and Korea have not managed to comply with CM 10-06 in time for this meeting. The exceptional circumstances in 2008 and 2009 were the result of Members being flexible and demonstrating understanding for the position of a new Member. However, ongoing exceptions to the rule weaken our efforts to sustainably manage the harvesting of Antarctic marine living resources and threaten the integrity of our conservation measures and potentially, the Convention.

To this end, Australia looks forward to full compliance by China and Korea with CM 10-06, noting that Korea also has obligations under paragraph 14(iii) of CM 10-06.

As the USA has spoken about, the Marshall Islands provided a comprehensive information package at the 2008 meeting which satisfied all of the aspects of paragraph 14(iii) and resulted in the delisting of the *Seed Leaf*. In that case, SCIC noted that the Marshall Islands had provided a comprehensive and thorough analysis that clearly demonstrated the requirements of the conservation measure. Australia strongly encourages all Members to follow the example set by the Marshall Islands.

CMs 10-06 and 10-07 provide a level playing field for all Contracting Parties and non-Contracting Parties seeking the removal of a vessel from an IUU Vessel List. To not apply these conservation measures consistently in all cases leads to perverse environmental outcomes and is unfair to other countries that fully comply with them.'

9.27 Uruguay made the following statement:

'With respect to the issue of the IUU Vessel Lists under discussion, the Uruguayan Delegation must state that just as it was never in agreement with treating the addition of vessels to IUU Vessel Lists lightly, without sound evidence of contraventions, now, by the same token, it does not agree either with the simple elimination of vessels from the lists without observance of the main points established by existing rules.

Uruguay has considered the views expressed by other delegations during the discussions on this subject, and understands that if on another occasion exceptions were accepted, it does not allow for continuance of this action when rules have not yet been modified.

Therefore, Uruguay understands that the procedure requested must follow existing rules.'

9.28 Argentina was of the view that China was in the process of adequately completing all required steps to be able to delist the two vessels from the IUU Vessel List, and was in favour of doing so as soon as the announced documentation is circulated among Members. Argentina also stated that consistency with previous decisions adopted by the Commission was essential, and that a proactive and cooperative approach was required regarding this matter so as not to undermine the timely operation of the scheme of conservation measures and the mutual trust expected from all Members.

9.29 Some Members supported the position of Argentina.

9.30 ASOC said that it shared the position to not delist the vessels as in its view the criteria for delisting had not been met. CCAMLR Members needed to comply with their own conservation measures and any exception set an unfortunate precedent as the strength of CCAMLR relies on Member countries abiding by the conservation measures.

9.31 Based on Rule of Procedure 34, China objected to an Observer's intervention on an issue reserved for CCAMLR Members being reflected in the meeting report.

9.32 Members expressed a range of views on the procedural issue. Some Members expressed the view that this situation should not be considered as a precedent.

9.33 China requested the Chair of the Commission to make a clarification on how the rules of consensus worked and what are its implications on decision-making in reference to the issues of delisting the *North Ocean* and *West Ocean* from the CP-IUU Vessel List included in the CCAMLR-XXVIII report. Also, in the case that Members failed to agree on a new decision by consensus at this Commission, what is the status of the previous decision.

9.34 The Chair explained that it was correct that decisions were taken by consensus, and consensus decisions could only be changed by consensus, but noted from the debate that the issue here appeared to be whether the decision continued to apply in temporal and other terms, and delegations had expressed differing views on that point.

9.35 China reiterated that it would continue to combat IUU fishing in the Convention Area and fully implement all of CCAMLR's conservation measures and decisions made by the Commission by consensus.