

ILLEGAL, UNREPORTED AND UNREGULATED
FISHING IN THE CONVENTION AREA

5.1 The Commission considered the evidence of illegal, unreported and unregulated fishing in the Convention Area advised by Members in accordance with Articles X and XXII of the Convention and with the System of Inspection, and also presented by the Chairman of the Scientific Committee as part of his report to the Commission (see paragraph 4.10 above). Deliberations of the Standing Committee on Observation and Inspection (SCOI) on the matter are given below in paragraphs 8.7 to 8.14.

5.2 The European Community considered that CCAMLR faced a major challenge resulting from the blatantly illegal and/or non-notified fishing activities. The progress accomplished by the organisation over the last fifteen years is consequently at risk, not only of being undermined, but irreparably damaged by these activities. In its view, CCAMLR must take decisive measures to address this fundamental threat to Antarctic fish stocks and bird populations. Concerted and sustained cooperation by Members was required to ensure the effective application of these measures and the development of additional measures in the intersessional period.

5.3 The Delegation of Norway said that reading the report of the Scientific Committee was a chilling experience. It left it with an alarming picture, in particular with regard to the drastic decimation of the stocks of the Patagonian toothfish and the threatening of the collapse of seabird populations killed off as by-catch.

5.4 Norway shared with other delegations the acute concern over this situation which gave to this Sixteenth Meeting of CCAMLR a note of urgency and crisis.

5.5 Overfishing, illegal, unregulated and unreported at this moment constitutes a most serious challenge to the reputation and credibility of CCAMLR as an intergovernmental organisation for rational management of living marine resources on a sustainable basis.

5.6 Norway takes pride in CCAMLR as unique in the context of the Antarctic Treaty System in that it combines the twin aims of preservation and rational utilisation of marine resources in the vast area of the Southern Ocean. With its precautionary and ecosystem approach CCAMLR was a pioneer in designing procedure for rational, sustainable and balanced harvesting of marine resources.

5.7 The situation now before the Commission added up to a serious question as to whether this was still a feasible basis and approach, whether the Commission at this critical moment shall have the political will, and practical ability to take decisions which are commensurate with the challenge, and thus break with alarming trends and rectify the situation.

5.8 The situation is aggravated by the fact – and the Commission cannot close its eyes to this sad fact – that illegal, unregulated fisheries and unreported catches today exceed reported fishing by a factor several times over. No less aggravating is the fact that more than half of the vessels presumed to engage in illegal, unregulated and unreported fishing fly the flags of CCAMLR Member States. That underlines the urgent need for CCAMLR and CCAMLR Member States to bring their own house in order. This, of course, in no way reduced the equally urgent need to bring non-Contracting Parties into compliance with CCAMLR conservation measures as well as regulations of fisheries within zones of national jurisdiction.

5.9 In short, the situation called for collective efforts within CCAMLR, measures by Coastal States and steps vis-a-vis non-Contracting Parties to enhance enforcement and compliance with existing and new measures for the conservation and utilisation of living resources in the Convention Area.

5.10 Norway was satisfied that work last week in the committees under the Commission was permeated by a shared perception of the gravity of the situation facing the Commission. There was a constructive atmosphere and will to share in the formulation of new measures to rectify the situation. In this work the Commission could benefit from the experience and work in other regional organisations as NAFO and draw on important international instruments as the 1995 Agreement on Straddling Stocks, the FAO Compliance Agreement – in particular as regards reflagging of vessels – and the FAO Code of Conduct.

5.11 Norway is convinced of the usefulness in particular of the 1995 Agreement on Straddling Stocks and the FAO Compliance Agreement for the efforts that the Commission now undertakes and Norway would like to take the opportunity to urge CCAMLR Member States to join these two instruments so that they may take effect as soon as possible.

5.12 New Zealand commented that CCAMLR faced the most serious challenge in its existence. It was grateful for the work of WG-FSA and the Scientific Committee, and also for information supplied by State Parties in building up a picture of illegal, unregulated and unreported toothfish fishing. It noted that there was a lot of other information available which added further detail to the picture by naming companies and individuals behind these operations. New Zealand knew who they were – but the information could not be tabled at the Commission. New Zealand was concerned and disappointed to learn that so much of this fishing was being carried out by flag vessels, companies or nationals associated with Contracting Parties. CCAMLR must get its own house in order. Urgent action was needed; some existing toothfish stocks would be fished out in 12 to 18 months.

5.13 New Zealand was encouraged by the very good progress made in the first week of CCAMLR-XVI, particularly by SCOI. The Commission now faced important political considerations. It needed to recognise that its reaction to the toothfish challenge would be judged in the court of public opinion.

5.14 New Zealand did not want to see the Commission's attention distracted from the problem of illegal fishing. State Parties could ensure that no vessels flying their flags were involved in the toothfish fishery – but the stocks could still be cleaned out by non-Contracting Party vessels. New Zealand believed that the Commission must pay proper attention to the needs of the legitimate fishing industry – those companies which were prepared to abide by the rules and conservation measures needed to be recognised. New Zealand was committed to the ecosystem management approach which was a fundamental principle of the Antarctic Treaty System as a whole, including the soundest way to manage all the resources of the Antarctic. The challenge for the Convention was to take timely and effective action to curb illegal toothfish fishing.

5.15 South Africa wished to strongly associate its delegation with concerns expressed by early speakers.

5.16 It expressed satisfaction with progress made last week.

5.17 As a developing nation, South Africa aspires to the sustainable utilisation of natural resources in the pursuit of economics and political empowerment for all its people. To this end, it strives to implement the ‘conservation’ and ‘rational use’ principles embodied in Article II of the CCAMLR Convention.

5.18 It is therefore with grave concern that South Africa viewed the proliferation on an unprecedented scale of unregulated and illegal fishing in the waters adjacent to the Prince Edward Islands. Not only does South Africa see these developments as a threat to CCAMLR’s very existence, it also sees them as seriously undermining South Africa’s efforts to ensure sustainable utilisation of the islands’ resources as well as its efforts to conserve the unique biomes for which we are responsible.

5.19 Consequently, South Africa remains actively committed to cooperate with this Commission and all Members here present in the urgent development of measures to effectively curb unregulated fishing in the Convention Area. In this context, South Africa believes that the presence of regulated and responsible operators in waters close to its islands constitutes an important deterrent to unregulated and illegal fishers.

5.20 Finally, subject to South Africa’s national aspirations already outlined, it is also committed to developing a process where its needs as a developing nation may be aligned with those necessary to meet the Convention’s objectives.

5.21 Statements reflecting similar views were made by France, Australia, UK, Japan, Russia, USA, Italy, Chile, Argentina, Brazil and the Republic of Korea.

5.22 There was general agreement among Members of CCAMLR that:

- (i) the evidence of large-scale illegal, unreported and unregulated fishing in the Convention Area advised by CCAMLR Members during 1996/97 and in the beginning of the 1997/98 season, has seriously undermined the work of CCAMLR on achieving of the Convention’s objective;
- (ii) the extent of existing illegal, unreported and unregulated fishing poses a serious threat to the conservation of stocks of *Dissostichus* spp. in the immediate future and also to the survival of several species of seabirds in the Southern Ocean taken as incidental by-catch in longline fishing operations;
- (iii) not only vessels of non-Contracting Parties to CCAMLR but also vessels of CCAMLR Contracting Parties were reported fishing in the Convention Area contrary to the CCAMLR conservation measures in force;
- (iv) all information received points to a blatant disregard by non-Contracting Parties of the CCAMLR conservation regime and of the sovereign rights of Coastal States¹ in the Convention Area; and
- (v) the situation calls for collective efforts within CCAMLR, measures by Flag States and Coastal States and steps vis-a-vis non-Contracting Parties to enhance

¹ Argentina, according to what was stated by them under Agenda Item 13 of CCAMLR-XV, reserves its position in the sense that references to Coastal States or sovereign rights of such States should be interpreted as applying where a state sovereignty is recognised by all Contracting Parties.

enforcement and compliance with conservation measures regarding living resources in the Convention Area.

5.23 In addition, many Members expressed concern with illegal fishing activities by nationals of CCAMLR States contrary to CCAMLR conservation measures.

5.24 The Commission expressed its appreciation of the progress achieved at this year's meeting of SCOI in developing an integrated set of political and legal measures for dealing with this complex situation (see paragraphs 8.9 to 8.11). These measures include, *inter alia*, new conservation measures (see Annex 5 and section 9), amendments to the text of the System of Inspection and mechanisms to address actions of non-Contracting Parties.

5.25 Several measures were drawn from the experience of other organisations, in particular of NAFO and ICCAT. Other measures took into account recent developments in international law, in particular the 1995 UN Straddling Stocks Agreement and the 1993 FAO Compliance Agreement. The Commission encouraged all Members of CCAMLR to become Parties to these agreements as soon as possible. The Commission also urged Members to effectively implement and follow up measures recommended by SCOI.

5.26 New Zealand supported by Australia, South Africa, France, Russia, Chile and Ukraine drew the attention of the Commission to the necessity of protecting legitimate fishing operations in the Convention Area. These Members were also of the opinion that the presence of vessels fishing in full accordance with conservation measures constitute an important deterrent to unregulated and illegal fishing.

5.27 Some Members questioned whether the available evidence supported this view. They noted that extending the time that vessels could fish legally in the Convention Area could result in an increase in the by-catch of seabirds. In response, other Members noted that, with the mortality of seabirds in the unregulated fishery probably two orders of magnitude greater than in the regulated fishery (see e.g. paragraphs 6.52 and 6.53), the elimination of the unregulated fishery (to which extending the fishing season of the regulated fishery would contribute) was the priority task.

5.28 The UK expressed concern about the massive scale of illegal fishing which is seriously endangering both stocks of toothfish, and, through incidental mortality, populations of seabirds. The importance of the obligations of Article II can not be overstressed. The various new measures to eradicate illegal fishing to be adopted at this meeting are welcome, but their effectiveness will depend upon the good faith of each Member to implement them in full. Means should be devised to monitor the effectiveness of those measures in reducing the scale of illegal fishing. The UK recommended that the issue of illegal, unregulated and unreported fisheries remains on the Commission's agenda for the foreseeable future.

5.29 As a CCAMLR Member and a Coastal State affected by the problem, Australia is extremely concerned about the impact of illegal fishing. Australia is very pleased with the positive response of SCOI and other CCAMLR Members to take strong and immediate action to combat illegal fishing; including adoption of vessel monitoring systems (VMSs). Australia is particularly concerned about the impact of illegal fishing on the Southern Ocean ecosystem and on the operations of legal fishers who work within the requirements of CCAMLR conservation measures.

5.30 The Australian Government has committed itself to expensive national action to combat this problem as exemplified by the recent apprehension of vessels allegedly fishing illegally in the EEZ around Australia's Heard and McDonald Islands. The message to illegal fishers is that if you fish in the Australian EEZ you will get caught. Australia points out, however, that such action can result in the displacement of illegal fishing to other CCAMLR areas and that the combating of illegal fishing can only be fully effective through the action and cooperation of all Members. Australia considers that the presence of legal fishers can provide essential information required to take effective enforcement action.

5.31 Australia estimates the total wholesale value of the illegal, unreported and unregulated catch of toothfish to be of the order of half a billion dollars (A\$) and that it is likely that over 100 vessels are involved in illegal fishing activities. Given the economic value to fishers, Australia emphasises that an integrated set of measures, which builds on those considered by SCOI, including defining and implementing market control measures, is essential and that urgent action is required.

5.32 Australia encourages all CCAMLR Members to promptly ratify the 1995 UN Straddling Stocks Agreement to provide an improved basis for controlling illegal fishing. In the meantime Australia welcomes the SCOI initiative to bring forward elements of that agreement as part of the Commission's response to illegal fishing.

5.33 Australia has taken action on a bilateral basis with both CCAMLR Members and non-Contracting Parties to combat illegal fishing and has provided the Commission with the evidence that Australia has about these activities. Australia considers it a high priority for the Commission to make strenuous efforts to involve non-Contracting Parties and seek their accession to the Convention or cease actions which undermine the effectiveness of CCAMLR conservation measures. Australia also suggests that the Commission consider inviting as observers to its next meeting, some States known to be providing, perhaps unwittingly, port access and other services to vessels implicated in illegal and unregulated fishing in the Convention Area. Australia suggests that Mauritius and Namibia could be invited as two such States.

5.34 In summary, Australia seeks urgent, integrated and coordinated action by all CCAMLR nations to address the issue of illegal fishing, which is driven by the high economic value of the fish and is doing so much damage to the Southern Ocean ecosystem and to the legitimate interests of legal fishers working in accordance with CCAMLR requirements.

5.35 Chile stressed the importance of Port State control and acknowledged that market control measures might be necessary, but advised caution in their use.

5.36 It was agreed that the Commission consider inviting as observers to its next meeting, some States known to be providing, perhaps unwittingly, port access and other services to vessels implicated in illegal and unregulated fishing in the Convention Area. Members noted two such States, namely Mauritius and Namibia.

5.37 The Commission requested the Chairman of the Commission to write to the governments of these States and invite them to participate in the Seventeenth Meeting of CCAMLR as observers. The text of the agreed letter to these Governments is given in Annex 6 (Letter II).

5.38 Argentina stated that it is currently taking action against illegal fishing in order to ensure full compliance with the objectives of the Convention and its conservation measures. It also noted that the issue is complex and could only be resolved if CCAMLR takes a global approach.

5.39 Russia believed the effort of CCAMLR would be more effective if all Members adopted specific legal measures at a national level to combat non-authorised fishing in the Convention Area.

5.40 Italy also noted that the limited knowledge of the ecology of *Dissostichus* spp. and the extent of fishing suggest that more attention should be given to unregulated fishing and that strong actions should be taken to avoid long-term implications of this fishing on the marine ecosystem in the Convention Area.

5.41 The Delegation of Brazil supports and shares the opinion initially expressed by Norway and then by many other delegations.

5.42 Brazil hopes that CCAMLR as such and each one of its Member States will take serious action in order to eliminate as soon as possible the problem of illegal, unreported and unregulated fisheries.

5.43 As was pointed out in the Scientific Committee report, there is a concentrated fishing activity on toothfish, a species whose biology is still poorly known, therefore bringing a great risk to its extinction. At the same time this fishery brings a great risk to some seabirds.

5.44 Therefore, Brazil hopes for the approval of the recommendations of SCOI and their serious implementation by all Member States.

5.45 With regard to the matters under discussion, Chile and Argentina referred to the merit in maintaining in the Commission agenda the item 'The Consideration of the Implementation of the Objective of the Convention'.