

Recommendation GFCM/44/2021/19

on the establishment of a list of vessels presumed to have carried out illegal, unreported and unregulated fishing, repealing Recommendation GFCM/33/2009/8

The General Fisheries Commission for the Mediterranean (GFCM),

CONSIDERING that the objective of the Agreement for the establishment of the General Fisheries Commission for the Mediterranean (GFCM Agreement) is to ensure the conservation and sustainable use, at the biological, social, economic and environmental level, of marine living resources in the GFCM area of application;

RECALLING that the Council of the Food and Agriculture Organization of the United Nations (FAO) adopted, on 23 June 2001, an International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, which stipulates that the identification of the vessels carrying out illegal, unreported and unregulated (IUU) fishing activities should follow agreed procedures and be made in a fair, transparent and non-discriminatory manner;

RECALLING the GFCM 2030 Strategy for sustainable fisheries and aquaculture in the Mediterranean and the Black Sea, in particular its Output 2.1 “Full compliance with GFCM recommendations achieved”;

CONCERNED by the fact that IUU fishing activities in the GFCM area of application continue, and that these activities diminish the effectiveness of the GFCM conservation and management measures;

FURTHER CONCERNED that there is evidence that a high number of vessel owners engaged in such fishing activities have re-flagged their vessels to avoid compliance with GFCM conservation and management measures;

DETERMINED to address the challenge of increasing IUU fishing activities by way of countermeasures to be applied in respect of vessels without prejudice to further measures adopted in respect of flag states under the relevant GFCM instruments;

CONSIDERING the 2003 Declaration of the Ministerial Conference on the Sustainable Development of Fisheries in the Mediterranean;

CONSCIOUS of the need to address, as a matter of priority, the issue of large-scale fishing vessels conducting IUU fishing activities;

NOTING that IUU fishing activities shall be addressed in the light of all relevant international fisheries instruments and in accordance with the relevant rights and obligations established in the Agreement establishing the World Trade Organization;

NOTING the conclusions of the fourteenth session (online, May 2021) of the Compliance Committee (CoC);

ADOPTS, in conformity with Articles 5 b), 8 b), and 13 of the GFCM Agreement, the following recommendation:

PART I General objective and scope

1. For the purpose of this recommendation, fishing vessels flying the flag of a non-contracting party or fishing vessels flying the flag of a contracting party or cooperating non-contracting party (CPC), are presumed to have carried out IUU fishing activities in the GFCM area of application when , *inter alia*, a CPC presents evidence that such vessels have engaged in one or more of the following:

- a) undertaking any of the following activities in contravention of GFCM conservation and management measures:
 - i) harvesting fish in the GFCM area of application without being registered in the relevant GFCM list of vessels authorized to fish for the applicable species in the GFCM area of application;
 - ii) failing to report catches made in the GFCM area of application or providing false or misleading reports;
 - iii) catching or landing undersized fish, in contravention of GFCM conservation measures;
 - iv) fishing during closed fishing periods or in closed areas, in contravention of GFCM conservation measures;
 - v) using prohibited fishing gear or fishing methods, in contravention of GFCM conservation measures;
- b) transshipping or participating in joint operations such as re-supplying or refuelling with vessels included in the GFCM List of vessels presumed to have carried out IUU fishing in the GFCM area of application (GFCM IUU vessel list);
- c) harvesting fish in maritime waters under the national jurisdiction of a coastal state in the GFCM area of application without the permission of such state or in contravention of its laws and regulations;
- d) being without nationality and harvesting fish in the GFCM area of application;
- e) being without adequate vessel identification number and harvesting fish in the GFCM area of application; and/or
- f) engaging in fishing or fishing-related activities, in contravention of any other GFCM conservation and management measures.

2. The GFCM may review and, as appropriate, revise this recommendation in view of extending it to other types of IUU fishing activities.

PART II

Information on presumed IUU fishing activities

3. The CPCs shall transmit to the GFCM Secretariat every year, at least 120 days before the GFCM annual session, information on vessels flying the flag of a non-contracting party and on vessels flying the flag of a CPC and presumed to be carrying out IUU fishing activities, as defined in paragraph 1, during the previous year, accompanied by evidence reported by CPCs supporting the presumption of IUU fishing activity, including information on the identification of the concerned vessel.

4. Upon receipt of such information, the GFCM Secretariat shall promptly send it to all CPCs as well as to any non-contracting party concerned and request that, where appropriate, CPCs and any such non-contracting party investigate on the alleged IUU activity and/or monitor the relevant vessels.

5. The GFCM Secretariat shall request the flag state to notify the owner of the vessel concerned regarding the submission of information on the vessel by CPCs for its inclusion in the draft GFCM IUU vessel list and regarding the consequences that may result should the vessel be included on the IUU vessel list adopted by the GFCM.

PART III

Draft GFCM IUU vessel list

6. On the basis of the information received pursuant to paragraph 3, the GFCM Secretariat shall draw up a draft GFCM IUU vessel list which shall include the required information listed in the annex. The GFCM Secretariat shall transmit this list, together with the evidence supporting the presumption of IUU fishing activities provided in accordance with paragraph 3, as well as the current GFCM IUU vessel list, to CPCs and non-contracting parties whose vessels are included in either list, at least 90 days before the annual session of the GFCM. The CPCs and relevant non-contracting party flag states may communicate their comments to the GFCM Secretariat as appropriate, including evidence showing that the listed vessels have not fished in contravention to GFCM conservation and management measures or had the possibility to fish in the GFCM area of application, at least 30 days before the annual session of the GFCM.

7. Upon receipt of the draft GFCM IUU vessel list, the CPCs shall closely monitor the vessels included therein list in order to determine their activities and possible changes of name, flag and/or registered owner.

8. When a vessel appears in a draft GFCM IUU vessel list drawn up in accordance with paragraph 6, the flag state shall notify the owner of the vessel flying its flag of its inclusion in the draft GFCM IUU vessel list and of the consequences that may result from being confirmed in the IUU vessel list to be adopted by the GFCM.

PART IV

Review and adoption of the provisional GFCM IUU vessel list

9. On the basis of the information received pursuant to paragraph 6, the GFCM Secretariat shall draw up a provisional GFCM IUU vessel list that shall include the required information listed in the annex and transmit it to CPCs, together with all the evidence provided, 15 days in advance of the annual session of the GFCM.

10. The CPCs may, at any time, submit to the GFCM Secretariat any additional information which may be relevant for the establishment of the GFCM IUU vessel list. The GFCM Secretariat shall circulate such information, together with all evidence provided, among the CPCs and the non-contracting parties concerned, before the annual session of the GFCM at the latest.

11. The CoC shall examine each year the provisional GFCM IUU vessel list as well as the information referred to in paragraphs 3 and 6. The CoC shall remove a vessel from the provisional GFCM IUU vessel list if the evidence provided clearly demonstrates that:

- a) the vessel did not take part in any IUU fishing activity described in paragraph 1, or
- b)
 - i) the flag CPC or non-contracting party has adopted measures so that the vessel conforms with GFCM conservation measures;
 - ii) the flag CPC or non-contacting party has assumed effectively its responsibilities with respect to this vessel, and will continue to do so, in particular as regards the monitoring

and control of the fishing activities executed by the vessel in the GFCM area of application; and

- iii) effective action has been taken in response to the IUU fishing activity or activities in question, including, inter alia, the prosecution and imposition of sanctions of adequate severity, or
 - c) the vessel has changed ownership and the new owner can establish that the previous owner no longer has any legal, financial or real interest in the vessel nor exercises control over it and the new owner has not participated in IUU fishing activities.
12. Following the review referred to in paragraph 11, the CoC shall:
- a) review and assess the provisional GFCM IUU vessel list together with information and evidence circulated pursuant to paragraphs 3 and 6;
 - b) review and propose the removal of vessels from the GFCM IUU vessel list adopted by the Commission at its previous annual session, following the consideration of such list and of the information and evidence circulated pursuant to paragraphs 3 and 6 as well as of any information provided pursuant to paragraph 16; and
 - c) submit the provisional GFCM IUU vessel list to the Commission, with recommendations for its adoption and for the removal of any relevant vessel from the current GFCM IUU vessel list.

PART V **Adopted GFCM IUU vessel list**

13. The GFCM shall consider for approval the provisional GFCM IUU vessel list and the removal of vessels from the current GFCM IUU vessel list, as recommended by the CoC.
14. Upon adoption of the GFCM IUU vessel list by the Commission, the GFCM Secretariat shall request the flag states whose vessels appear in the GFCM IUU vessel list to:
- a) notify the owner of the vessel identified in the GFCM IUU vessel list of its inclusion in this list and of the consequences that may result from being confirmed in the GFCM IUU vessel list, as described in paragraph 8; and
 - b) take all necessary measures to eliminate relevant IUU fishing activities including, as appropriate, cancelling the registration and/or the fishing licence(s) of the vessels, and inform the GFCM Secretariat of the measures taken.
15. The CPCs shall take all necessary measures to:
- a) ensure that the fishing vessels, support vessels, refuelling vessels, mother ships and cargo vessels flying their flag do not engage in fishing activities, fish processing operations nor participate in any transshipment or joint fishing operations with vessels included in the GFCM IUU vessel list, nor assist them in any way, except in case of force majeure;
 - b) ensure the inspection of vessels in the GFCM IUU vessel list if such vessels are otherwise found in their ports, to the extent practicable, and ensure the possibility to refuse port access to a ship that is in the GFCM IUU vessel list, except in the case of force majeure or for inspection purposes only;

- c) prohibit the chartering of a vessel included in the GFCM IUU vessel list and encourage importers, transporters and other sector concerned to ban the transactions and the transshipment of any fish caught by vessels included in the GFCM IUU vessel list;
 - d) ensure that none of their nationals, whether a natural or legal person subject to their jurisdiction, benefit from supporting or engaging in IUU fishing activities (e.g. operators, effective beneficiaries, owners, logistic and service providers, including insurance providers and other financial service providers);
 - e) collect and exchange with other CPCs any appropriate information with the aim of searching for, controlling and preventing false documentation (including import/export certificates) from vessels included in the GFCM IUU vessel list; and
 - f) monitor vessels included in the GFCM IUU vessel list and promptly submit any information to the GFCM Secretariat related to their activities and possible changes of name, flag, call sign and/or registered owner.
16. The CPCs shall take all necessary measures in respect of vessels that do not fly their flag to:
- a) ensure that vessels included in the GFCM IUU vessel list are not authorized to land, refuel, re-supply or engage in other commercial transactions;
 - b) prohibit the entry into their ports to vessels included in the GFCM IUU vessel list, except in case of force majeure;
 - c) refuse to grant their flag to vessels included in the GFCM IUU vessel list, except if a vessel has changed owner and/or operator and sufficient evidence has been provided to demonstrate that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel, or if the flag CPC, after considering all relevant facts, determines that granting the vessel its flag will not result in any IUU fishing activity; and
 - d) prohibit the imports, landing and/or transshipment of any fish from vessels included in the GFCM IUU vessel list.
17. The GFCM Secretariat shall ensure the publication of the GFCM IUU vessel list through the online channels made available by the GFCM Secretariat, including the GFCM website, in a manner that is consistent with GFCM confidentiality policy and procedures. The GFCM Secretariat shall transmit the GFCM IUU vessel list to other regional fishery bodies, as appropriate, with a view to enhancing cooperation between the GFCM and these organizations in order to prevent, deter and eliminate IUU fishing.
18. Upon receipt of an IUU vessel list adopted by another regional fisheries management organization (RFMO) and of any information regarding such list, the GFCM Secretariat shall circulate this information to the contracting parties and ensure it appears on the GFCM website. Vessels that have been added or deleted from such list shall be incorporated into or deleted from the GFCM IUU vessel list as appropriate, unless any CPC objects within 30 days after the date of transmission by the GFCM Secretariat on the ground(s) that:
- a) there is satisfactory information to establish that the vessel did not engage in any IUU fishing activities or that effective action has been taken in response to the IUU fishing activities in question, including, *inter alia*, prosecution and imposition of penalties or sanctions of adequate severity;

- b) there is satisfactory information to establish that none of the requirements mentioned in subparagraph a) above have been met with regard to a vessel deleted from the respective lists; or
- c) there is insufficient information to make a determination pursuant to subparagraph a) or b) above, within 30 days. In the event of an objection to a vessel listed by another RFMO being incorporated into or deleted from the GFCM IUU vessel list, such vessel shall be placed on the provisional GFCM IUU vessel list.

19. In the case of vessels listed by another RFMO, the GFCM Secretariat shall implement the following procedures:

- a) The GFCM Secretariat shall maintain appropriate contacts with the Secretariats of other RFMOs in order to obtain copies of the IUU vessel lists of these RFMOs in a timely manner upon adoption or amendment, including by requesting a copy of these lists annually, upon the conclusion of the RFMOs' meetings at which their final IUU lists are adopted.
- b) As soon as possible after adoption or amendment of an IUU vessel list by another RFMO, the GFCM Secretariat shall collect all supporting documentation available from that RFMO regarding the listing/delisting determinations.
- c) Once the GFCM Secretariat has received/collected the information outlined in paragraphs a) and b), it shall promptly circulate to all CPCs, consistent with paragraph 10, the IUU vessel lists of the other RFMOs as well as supporting information and any other relevant information regarding the listing determination. The requisite circular shall clearly state the reason why such information is provided, explaining that the GFCM contracting parties have until 30 days from the date of the circular to object to the inclusion of the vessels in the GFCM IUU vessel list and that, absent any such objection, the vessel will be added to the final GFCM IUU vessel list at the expiration of the 30-day period.
- d) The GFCM Secretariat shall add any new vessels contained in the IUU vessel lists of other RFMOs to the adopted GFCM IUU vessel list at the end of the 30-day period, provided that no objection to such inclusion has been received from a contracting party pursuant to paragraph 10.
- e) Where a vessel has been included in the adopted GFCM IUU vessel list solely due to its inclusion in the IUU vessel list of another RFMO, the GFCM Secretariat shall immediately remove that vessel from the adopted GFCM IUU vessel list once it is deleted by the RFMO that originally listed it.
- f) Upon the addition or deletion of vessels from the adopted GFCM IUU vessel list, the GFCM Secretariat shall promptly circulate the adopted GFCM IUU vessel list, as amended, to all CPCs and non-contracting parties concerned.

20. Without prejudice to the rights of flag CPCs and coastal states to take action consistent with international law, the CPCs shall not take any unilateral trade measures nor other sanctions against vessels provisionally included in the draft GFCM IUU vessel list pursuant to paragraph 6, or that have been already removed from the provisional GFCM IUU vessel list, pursuant to paragraph 11, on the ground that such vessels are involved in IUU fishing activities.

PART VI

Deletion from the GFCM IUU vessel list

21. A flag state whose vessel appears on the GFCM IUU vessel list may request, during the intersessional period, the removal of the vessel from the list providing the following information:

- a) the actions or measures it has taken to ensure that the vessel complies with GFCM conservation and management measures;
- b) the actions or measures it has taken to effectively discharge its responsibilities with respect to the vessel, including the monitoring and control of the vessel's fishing activities in the GFCM area of application;
- c) the actions it has taken against the vessel in response to the relevant IUU fishing activities, including the prosecution and imposition of sanctions of adequate severity, if relevant; and, as appropriate
- d) the vessel has changed ownership and 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 the new owner has not participated in IUU fishing, if relevant.

PART VII

Intersessional modification of the GFCM IUU vessel list

22. A flag state may send a request for the removal of its vessel from the GFCM IUU vessel list to the GFCM Secretariat, accompanied by the supporting information referred to in paragraph 21.
23. The GFCM Secretariat shall transmit the removal request received in accordance with paragraph 22, with all the supporting information, to the CPCs and the CoC Bureau within 15 days following the notification of the request.
24. The CPCs shall review the removal request and notify their opinion to the GFCM Secretariat, by electronic means or not, within 30 days following the notification by the GFCM Secretariat, on whether the vessel should be removed from or maintained in the GFCM IUU vessel list. The GFCM Secretariat, in close coordination with the CoC Bureau, shall review the responses within 30 days following the last day of their receipt. If a CPC does not respond within the required period, it will be considered as an abstention from the vote and part of the quorum for decision-making.
25. The GFCM Secretariat shall communicate to all CPCs the outcome of the review of the removal request at the end of the 30-day period following the date of the notification referred to in paragraph 24.
26. If the result indicates that there is a two-third majority of the CPCs in favour of the removal of the vessel from the GFCM IUU vessel list, the GFCM Chairperson shall communicate the result to all CPCs and to the non-contracting party or flag state that requested the removal of its vessel from the GFCM IUU vessel list. In the absence of a two-third majority, the vessel will be maintained in the GFCM IUU vessel list and the GFCM Secretariat shall inform the non-contracting party accordingly.
27. The GFCM Secretariat shall remove the vessels referred to in paragraph 26 from the GFCM IUU vessel list as published on the GFCM website. Moreover, the GFCM Secretariat shall communicate to other RFMOs the decision to remove the vessel.
28. Recommendation GFCM/33/2009/8 on the establishment of a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the GFCM area of application, repealing Recommendation GFCM/30/2006/4 is replaced by this recommendation.

Information to be included in the GFCM IUU vessel lists (draft, provisional and final)

The draft GFCM IUU vessel list, provisional GFCM IUU vessel list and adopted GFCM IUU vessel list shall contain the following details, where available:

- name of vessel and previous name(s);
- flag of vessel and previous flag(s);
- name and address of the vessel owner and previous owners, including beneficial owners;
- owners' place of registration;
- vessel operator and previous operator(s);
- vessel call sign and previous call sign;
- Lloyds/IMO number;
- maritime, mobile service identity (MMSI) number;
- length overall;
- photographs of the vessel;
- date on which the vessel was first included in the GFCM IUU vessel list;
- date of alleged IUU fishing activity;
- position of alleged IUU fishing activity;
- summary of activities justifying the inclusion of the vessel in the GFCM IUU vessel list, together with references to all relevant documents informing and evidencing such activities;
- outcome of any action undertaken; and
- any other information.