

Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999

CHAPTER V

IDENTIFICATION OF FISHING VESSELS ENGAGED IN IUU FISHING

Article 25

Alleged IUU fishing

- 1 The Commission, or a body designated by it, shall compile and analyse:
 - a all information on IUU fishing obtained in accordance with Chapters II, III, IV, VIII, X and XI; and/or
 - b any other relevant information, as appropriate, such as:
 - (i) the catch data;
 - (ii) trade information obtained from national statistics and other reliable sources;
 - (iii) vessel registers and databases;
 - (iv) regional fisheries management organisation catch documents or statistical document programmes;
 - (v) reports on sightings or other activities of fishing vessels presumed to be engaged in IUU fishing as referred to in Article 3 and IUU vessel lists reported or adopted by regional fisheries management organisations;
 - (vi) reports under the terms of Regulation (EEC) No 2847/93 on fishing vessels presumed to be engaged in IUU fishing as referred to in Article 3;
 - (vii) any other relevant information obtained, *inter alia*, in the ports and on the fishing grounds.
- 2 Member States may, at any time, submit to the Commission any additional information which might be relevant for the establishment of the Community IUU vessel list. The Commission, or a body designated by it, shall circulate the information, together with all the evidence provided, to the Member States and to the flag States concerned.
- 3 The Commission, or a body designated by it, shall keep a file in respect of each fishing vessel reported as allegedly involved in IUU fishing which shall be updated as new information is obtained.

Article 26

Presumed IUU fishing

1 The Commission shall identify fishing vessels for which sufficient information has been obtained in accordance with Article 25 to presume that such fishing vessels may be engaged in IUU fishing, warranting an official enquiry with the flag State concerned.

2 The Commission shall notify flag States whose fishing vessels are identified pursuant to paragraph 1 of an official request for an enquiry into the alleged IUU fishing of their flagged vessels concerned. The notification shall:

- a provide all information gathered by the Commission on alleged IUU fishing;
- b issue an official request to the flag State that it takes all the necessary measures to investigate the alleged IUU fishing and share the results of this investigation with the Commission on a timely basis;
- c issue an official request to the flag State to take immediate enforcement action should the allegation formulated against the fishing vessel concerned be proven to be founded, and to inform the Commission of the measures taken;
- d ask the flag State to notify the owner and, where appropriate, the operator of the fishing vessel concerned of the detailed statement of reasons for the intended listing and of the consequences which would result should the fishing vessel be included in the Community IUU vessel list, as laid down in Article 37. Flag States shall also be requested to provide information to the Commission as to the fishing vessel's owners and, where appropriate, operators so as to ensure that such persons can be heard, in accordance with Article 27(2);
- e advise the flag State on the provisions in Chapters VI and VII.

3 The Commission shall notify flag Member States whose fishing vessels are identified pursuant to paragraph 1 of an official request for an enquiry into the alleged IUU fishing of their flagged vessels concerned. The notification shall:

- a provide all information gathered by the Commission on alleged IUU fishing;
- b include an official request to the flag Member State to take all the necessary measures, in accordance with Regulation (EEC) No 2847/93 to investigate the alleged IUU fishing or, where appropriate, to report on all the measures already taken to investigate it and to share the results of this investigation with the Commission on a timely basis;
- c issue an official request to the flag Member State to take timely enforcement action should the allegation formulated against the fishing vessel concerned be proven to be founded, and to inform the Commission of the measures taken;
- d ask the flag Member State to notify the owner and, where appropriate, the operator of the fishing vessel concerned of the detailed statement of reasons for the intended listing and of the consequences which would result should the vessel be included in the Community IUU vessel list, as laid down in Article 37. Flag Member States shall also be requested to provide information to the Commission as to the fishing vessel's owners and, where appropriate, operators so as to ensure that such persons can be heard, in accordance with Article 27(2).

4 The Commission shall circulate the information on fishing vessels presumed to be engaged in IUU fishing to all Member States in order to facilitate the implementation of Regulation (EEC) No 2847/93.

Article 27

Establishment of the Community IUU vessel list

1 The Commission shall, in accordance with the procedure referred to in Article 54(2), establish a Community IUU vessel list. The list shall include the fishing vessels in relation to which, further to the measures taken pursuant to Articles 25 and 26, the information obtained in accordance with this Regulation establishes that they are engaged in IUU fishing and whose flag States have not complied with the official requests referred to in Article 26(2)(b) and (c) and Article 26(3)(b) and (c), in response to such IUU fishing.

2 Before placing any fishing vessel on the Community IUU vessel list, the Commission shall provide the owner and, where appropriate, the operator of the fishing vessel concerned with a detailed statement of reasons for the intended listing and with all elements supporting the suspicion that the fishing vessel has carried out IUU fishing. The statement shall mention the right to ask for or to provide additional information, and give the owner, and, where appropriate, the operator the possibility of being heard and to defend their case, leaving them adequate time and facilities.

3 When a decision is taken to place a fishing vessel on the Community IUU vessel list, the Commission shall notify that decision, and the reasons for it, to the owner and, where appropriate, the operator of the fishing vessel.

4 The obligations imposed on the Commission by paragraphs 2 and 3 shall apply without prejudice to the primary responsibility of the flag State over the fishing vessel, and only in so far as the relevant information on the identification of the fishing vessel owner and operator is at the disposal of the Commission.

5 The Commission shall notify the flag State of the inclusion of the fishing vessel on the Community IUU vessel list and shall provide the flag State with the detailed reasons for listing.

6 The Commission shall request flag States with fishing vessels on the Community IUU vessel list to:

- a notify the owner of the fishing vessel of its inclusion on the Community IUU vessel list, of the reasons justifying this inclusion and of the consequences resulting from it, as laid down in Article 37; and
- b take all the necessary measures to eliminate IUU fishing, including, if necessary, the withdrawal of the registration or the fishing licences of the fishing vessels concerned, and to inform the Commission of the measures taken.

7 This Article shall not apply to Community fishing vessels if the flag Member State has taken action in accordance with paragraph 8.

8 Community fishing vessels shall not be included in the Community IUU vessel list if the flag Member State has taken action pursuant to this Regulation and Regulation (EEC) No 2847/93 against breaches constituting serious infringements as laid down in Article 3(2), without prejudice to the action taken by regional fisheries management organisations.

Article 28

Removal of fishing vessels from the Community IUU vessel list

1 The Commission shall remove a fishing vessel from the Community IUU vessel list, in accordance with the procedure referred to in Article 54(2), if the fishing vessel's flag State demonstrates that:

- a the vessel did not engage in any of the IUU fishing activities for which it was placed on the list; or
- b proportionate, dissuasive and effective sanctions have been applied in response to the IUU fishing activities in question, notably for the fishing vessels flying the flag of a Member State in accordance with the Regulation (EEC) No 2847/93.

2 The owner or, where appropriate, the operator of a fishing vessel placed on the Community IUU vessel list may submit a request to the Commission to review the status of that vessel in case of inaction by the flag State under paragraph 1.

The Commission shall only consider removing the fishing vessel from the list if:

- a the owner or the operator provides evidence as to the fact that the fishing vessel is no longer engaged in IUU fishing; or
- b the listed fishing vessel has sunk or has been scrapped.

3 In all other cases, the Commission shall only consider removing the fishing vessel from the list if the following conditions are fulfilled:

- a at least two years have elapsed since the fishing vessel's listing during which no further reports of alleged IUU fishing by the vessel have been received by the Commission in accordance with Article 25; or
- b the owner submits information relating to the current operation of the fishing vessel that demonstrates that it is operating in full conformity with laws, regulations and/or conservation and management measures that apply to any fisheries in which it is participating; or
- c the fishing vessel concerned, its owner or operator, maintain no operational or financial links, whether direct or indirect, with any other vessel, owner or operator presumed or confirmed to be engaged in IUU fishing.

Article 29

Content, publicity and maintenance of the Community IUU vessel list

1 The Community IUU vessel list shall contain the following details for each fishing vessel:

- a name and previous names, if any;
- b flag and previous flags, if any;
- c owner and where relevant previous owners, including beneficial owners, if any;
- d operator and where relevant previous operators, if any;
- e call sign and previous call signs, if any;
- f Lloyds/IMO number, where available;
- g photographs, where available;
- h date of first inclusion on it;

- i summary of activities which justify inclusion of the vessel on it, together with references to all relevant documents informing of and evidencing those activities.
- 2 The Commission shall publish the Community IUU vessel list in the *Official Journal of the European Union* and shall take any measure necessary to ensure its publicity, including by placing it on its website.
- 3 The Commission shall update every three months the Community IUU vessel list and shall provide for a system to automatically notify updates to Member States, regional fisheries management organisations and any member of the civil society that should so request. Furthermore, the Commission shall transmit the list to the FAO and to regional fisheries management organisations for the purposes of enhancing cooperation between the Community and these organisations aimed at preventing, deterring and eliminating IUU fishing.

Article 30

IUU vessel lists adopted by regional fisheries management organisations

- 1 In addition to the fishing vessels referred to in Article 27, fishing vessels included in the IUU vessel lists adopted by regional fisheries management organisations shall be included in the Community IUU vessel list, in accordance with the procedure referred to in Article 54(2). Removal of such vessels from the Community IUU vessel list shall be governed by the decisions taken with regard to them by the relevant regional fisheries management organisation.
- 2 The Commission shall each year, on receiving from regional fisheries management organisations the lists of fishing vessels presumed or confirmed to be involved in IUU fishing, notify them to the Member States.
- 3 The Commission shall notify promptly to the Member States any addition to, any deletion from and/or any modification of the lists referred to in paragraph 2 of this Article at any time such changes occur. Article 37 shall apply in respect of the vessels appearing on the regional fisheries management organisations IUU vessel lists so modified as of the time of their notification to Member States.