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43rd ANNUAL MEETING OF NAFO - SEPTEMBER 2021

Measures Concerning Vessels Demonstrating Repeat Non-compliance of Serious Infringements in the NAFO Regulatory Area

Background

At the 2016 Annual Meeting, STACTIC launched discussions to find a mechanism to address the issue of vessels repeatedly being issued citations for serious breaches of the NAFO CEM.

At the following Annual Meeting, STACTIC WPs 17-37 and 17-43 were tabled, with WP 17-37 outlining the domestic legislation which could be applied to address the issue of repeat non-compliance as submitted by various Contracting Parties. STACTIC WP 17-43 proposed that vessels infringing the CEMs as per the infringements identified under then-Article 38.8 (as of 2019, Article 38.3.c.i) be listed in the compliance review in a “Contracting Party IUU list”. Upon discussion, 17-43 was withdrawn.

At the 2018 Intersessional Meeting, Canada provided an update to WP 17-37, incorporating submissions from other Contracting Parties. It was agreed that Canada would continue its review with the aim of developing a proposal for the 2018 Annual Meeting. Discussion was deferred from the 2018 Annual Meeting to the 2019 Intersessional, beyond Canada providing an update that there is no common mechanism across all Contracting Parties’ domestic legislation to address repeat non-compliance of serious infringements. At the 2019 Intersessional, Canada agreed to continue work on a proposal for addressing repeat non-compliance of serious infringements in the NAFO Regulatory Area and present it at the 2019 Annual Meeting. Canada presented STACTIC WP 19-59, a discussion paper, at the 2019 Annual Meeting and accepted comments from Contracting Parties.

At the 2020 Intersessional Meeting, Canada presented discussion paper STACTIC WP 20-04, proposing a definition of repeated non-compliance to be added to the vessel. Some Contracting Parties raised concerns regarding the definition being linked to issuance rather than confirmation of infringements, and regarding repeated non-compliance being linked to repetition of any serious infringement.

At the 2020 Annual Meeting, Canada presented STACTIC WP 20-29 for discussion. It was subsequently agreed that further revisions were needed to address Contracting Parties concerns, and that a revision would be brought to this meeting after reflection upon any comments provided.

In addition to the ongoing discussion within STACTIC, the NAFO Performance Review Panel 2018 included the recommendation that “NAFO [evaluate and adopt] appropriate measures to deter repeat serious non-compliance.”



Discussion

In light of Contracting Parties differing legislative mechanisms, and the expressed desire to link measures concerning repeated non-compliance with confirmation of infringements, and a more limited list of infringements, Canada presents for discussion the following concepts:

Article 39 – Follow-up to Infringements

Duties of the Flag State Contracting Party

1. In the case of an infringement by a vessel flying its flag, the flag State Contracting Party shall:

(a) investigate fully, including as appropriate, by physically inspecting the fishing vessel at the earliest opportunity;

(b) cooperate with the inspecting Contracting Party to preserve the evidence and the chain of custody in a form that will facilitate proceedings in accordance with its laws;

(c) take immediate judicial or administrative action in conformity with its national legislation against the persons responsible for the vessel; ~~and~~

(d) ensure that sanctions applicable in respect of infringements are adequate in severity to be effective in securing compliance, deterring further infringements or their repetition and depriving the offenders of the benefits accruing from the infringement; ~~and~~

(e) to the extent possible within domestic legislation, ensure that sanctions applicable in respect of repeated serious infringements, particularly those identified under Article 38.3.c.i.31-4, are adequate in severity to be effective in securing compliance, deterring further infringements or their repetition and depriving the offenders of the benefits accruing from the infringement.

2. The judicial or administrative action and sanctions referred to in paragraph 1(c), ~~and~~ (d) ~~and~~ (e) may include, but ~~is-are~~ not limited to, the following, depending on the gravity of the offence and in accordance with domestic law:

(a) fines;

(b) seizure of the vessel, illegal fishing gear and catches;

(c) suspension or withdrawal of authorization to conduct fishing activities; ~~and~~

(d) reduction or cancellation of any fishing allocations;

(e) increased or additional reporting requirements; inter alia, enhanced reporting frequency or additional data to be reported; and

(f) increased or additional monitoring requirements inter alia, deployment of an observer or an inspector on board or remote electronic monitoring.