



Serial No. N6379

NAFO/FC Doc. 14/14
(Adopted)

Proposed Changes to NAFO's Conservation and Enforcement Measures
Editorial Drafting Group

Introduction

This working paper proposes revisions to Chapter VIII (non-Contracting Party measures) of the NAFO Conservation and Enforcement Measures (CEM). This is part of an ongoing effort by the Editorial Drafting Group (EDG) to revise the existing CEM to enhance article organization, structure, and format; eliminate redundancy; and clarify ambiguous or unclear measures to more accurately reflect the original intent of such measures.

This revised working paper includes revisions to the original EDG proposal (STACTIC WP 14/7 (rev)) based on comments provided by several Contracting Parties following the May 2014 STACTIC intersessional meeting.

A brief description of the proposed revisions to the existing CEMs is provided below. The proposed revisions to the CEMs are organized based on their current structure. Cross-references to the corresponding article and paragraph, based on the 2014 CEMs, and a brief description of any changes have been placed in the right column of the attached addendum for ease of reference.

Proposed Changes to Existing CEMs:

- Article 1.11 – Revised “IUU List” to “IUU Vessel List” to use term consistently
- Article 26.2(d) – Eliminated “activities” to reflect use of “IUU Fishing” throughout
- Article 48.1 – Deleted reference to “RA” and added reference to IUU
- Article 48.2(b) – Replaced “investigation” with “inspection” for consistency with FAO
- Article 48.3(a) – Deleted reference to UNCLOS and WTO
- Article 49 – Revised formatting and for clarity, and title to reference IUU activity
- Article 49.1(c) – Removed unnecessary justification to integrate the NEAFC IUU list
- Article 50 – Reorganized and reformatted
- Article 51 – Reorganized and reformatted
- Article 53.1 – Merged several other paragraphs and reference updated from GC to FC
- Article 54 – Reorganized and reformatted
- Article 55 – Reorganized and reformatted

Paragraph	Text	Old reference/ comments
	Article 1 - Definitions	
11	"IUU Vessel List" means the list, established in accordance with Articles 52 and 53;	Revised "IUU List" to "IUU Vessel List" for consistent use of terms.
		STACTIC notes that while the current definition of "IUU fishing" in Article 1.10 does not explicitly refer to other activities such as transhipments referenced in the term "Fishing Activities" in Article 1.5, STACTIC interprets "IUU fishing" to also include transhipments.
	CHAPTER III - VESSEL REQUIREMENTS AND CHARTERING	
	Article 26 - Chartering Arrangements	
2	(d) the authorized vessel is not a vessel that has previously been identified as having engaged in IUU fishing.	Article 26.2(d) revised to remove reference to "activities" per STACTIC's interpretation of the definition of "IUU fishing" in Article 1.10.
	CHAPTER VIII - NON-CONTRACTING PARTY SCHEME	

	Article 48 - General Provisions	
1	The purpose of this Chapter is to promote compliance with non-Contracting Party vessels with recommendations established by NAFO and to prevent, deter and eliminate IUU fishing by non-Contracting Party vessels (hereinafter referred to as "NCP" vessels) that undermine the effectiveness of the CEM established by the Organization.	Article 48.1 revised include reference to IUU.
2	Nothing in this Chapter shall be construed to:	
	(a) affect the sovereign right of any Contracting Party to take additional measures to prevent, deter and eliminate IUU fishing by NCP vessels or, where evidence so warrants, take such action as may be appropriate, consistent with international law; or	Articles 48.2 + 50.2 merged and reformatted Replaced "IUU fishing activities" with "IUU fishing" throughout to reflect consistent use of term.
	(b) prevent a Contracting Party from allowing an NCP vessel entry into its ports for the purpose of conducting an inspection of, or taking appropriate enforcement action against the vessel.	Article 48.3 Reformatted, changed "investigation" to "inspection" as per the FAO PSMA (article 9.5)
3	This Chapter shall be:	
	(a) interpreted in a manner consistent with international law, including the right of port access in case of <i>force majeure</i> or distress; and	Article 48.4 revised to remove duplicative reference to UNCLOS and WTO
	(b) applied in a fair and transparent manner.	Article 48.4
4	Each Contracting Party shall ensure that vessels entitled to fly its flag do not engage in joint fishing activities with NCP vessels referred to in Article 49, including receiving or delivering transshipments of fish to or from a NCP vessel.	Article 52.1
	Article 49 - Presumption of IUU fishing	Revision of title for congruence with existing concept in 53.2 Replaced "IUU fishing

		activities” with “IUU fishing”.
1	An NCP vessel is presumed to have undermined the effectiveness of the CEM, and to have engaged in IUU fishing, if it has been:	Replaced “IUU fishing activities” with “IUU fishing”.
	(a) sighted or identified by other means as engaged in fishing activities in the Regulatory Area;	Article 49.1 revised for reformatting
	(b) involved in transshipment with another NCP vessel sighted or identified as engaged in fishing activities inside or outside the Regulatory Area; and/or	Article 49.1 revised for reformatting and clarity
	(c) included in the IUU list of the North East Atlantic Fisheries Commission (NEAFC).	Article 49.2 revised for formatting and eliminated unnecessary justification
	Article 50 - Sighting and Inspection of NCP Vessels in the NRA	
1	Each Contracting Party with an inspection and/or surveillance presence in the Regulatory Area authorized under the Joint Inspection and Surveillance Scheme that sights or identifies an NCP vessel engaged in fishing activities in the NRA shall:	Edits to reflect that not all Contracting Parties have an inspection presence.
	(a) transmit immediately the information to the Executive Secretary using the format of the surveillance report set out in Annex IV.A;	Article 49.3 Revised annex order and title
	(b) attempt to inform the Master that the vessel is presumed to be engaged in IUU fishing and that this information will be distributed to all Contracting Parties, relevant Regional Fisheries Management Organizations (RFMOs) and the flag State of the vessel;	Article 49.4 Replaced “IUU fishing activities” with just “IUU fishing”.
	(c) if appropriate, request permission from the Master to board the vessel for inspection; and	Article 50.1 revised for formatting
	(d) where the Master agrees to inspection:	Article 50.1 revised for

	(i) transmit the inspector's findings to the Executive Secretary without delay, using the inspection report form set out in Annex IV.B; and (ii) provide a copy of the inspection report to the Master.	formatting Revised annex order & title
	<i>Duties of the Executive Secretary</i>	
2	The Executive Secretary, within one business day, posts the information received pursuant to this Article to the secure part of the NAFO website and distributes it to all Contracting Parties, other relevant RFMOs, and to the flag State of the vessel as soon as possible.	Articles 49.3 merged with Article 50.1
	Article 51 - Port Entry and Inspection of NCP vessels	
	<i>Duties of the Master of a NCP vessel</i>	
1	Each Master of a NCP vessel shall notify the competent authority of the port State Contracting Party of its intention to call into a port in accordance with the provisions of Article 45.	Article 51.1 Revised to reinsert the first sentence of the original Article 51.1.
	<i>Duties of the Port State Contracting Party</i>	Added "Port State" for clarity
2	Each port State Contracting Party shall:	
	(a) forward without delay to the flag State of the vessel and to the Executive Secretary the information it has received pursuant to Article 45;	Article 51.1 revised for concision and formatting.
	(b) refuse port entry to any NCP vessel where: (i) the Master has not fulfilled the requirements set out in Article 45 paragraph 1; or (ii) the flag State has not confirmed the vessel's fishing activities in accordance with Article 44 paragraph 2;	Article 51.2 revised for formatting
	(c) inform the Master the flag State of that vessel, and the Executive Secretary of its decision to refuse port entry, landing or transshipment of any NCP vessel; and	Article 52.3 revised to clarify combination of Art 51 & 52
	(d) where it permits entry, ensure the vessel is inspected by duly authorized officials knowledgeable in the CEM and that the inspection: (i) includes an examination of log books, fishing gear, catch on board, and any other matter relating to the vessel's activities in the Regulatory Area; and (ii) is documented in the format set out in Annex IV.C; and	Article 51.3 revised for formatting

	(e) send a copy of the inspection report and details of any subsequent action it has taken to the Executive Secretary without delay.	Article 51.4 revised for formatting
3	Each Contracting Party shall ensure that no NCP vessel engages in landing or transshipment operations in its ports unless the vessel has been inspected by its duly authorized officials knowledgeable in the CEM and the Master establishes that the fish species on board subject to the NAFO Convention were harvested outside the Regulatory Area or in compliance the CEM.	Article 51.3 & Article 52.2 revised for formatting
	<i>Duties of the Executive Secretary</i>	
4	The Executive Secretary without delay posts the information received pursuant to this Article to the secure part of the NAFO website, and distributes it to all Contracting Parties, relevant RFMOs, and the flag State of the vessel.	Article 51.4 revised for formatting
	Article 52 – Provisional IUU Vessel List	
1	In addition to information submitted from Contracting Parties in accordance with Articles 49 and 51, each Contracting Party may, without delay, transmit to the Executive Secretary any information that may assist in the identification of any NCP vessel that might be carrying out IUU fishing in the Regulatory Area.	Article 53.2 revised for concision
2	If a Contracting Party objects to a NEAFC IUU-listed vessel being incorporated into or deleted from the NAFO IUU Vessel List in accordance with Article 53, such vessel shall be placed on the Provisional IUU Vessel List.	Article 54.8
	<i>Duties of the Executive Secretary</i>	
3	The Executive Secretary:	
	(a) establishes and maintains a list of NCP vessels presumed to have engaged in IUU fishing in the Regulatory Area referred to as the Provisional IUU Vessel List;	Replaced “IUU fishing activities” with just “IUU fishing”.
	(b) upon receipt, records the information received pursuant to paragraph 1, including, if available, the name of the vessel, its flag State, call sign and registration number, and any other identifying features, in the Provisional IUU Vessel List;	Article 53.1 revised for clarity
	(c) posts the Provisional IUU Vessel List and all updates to the secure part of the NAFO website; and	Article 53.1
	(d) advises the flag State of the NCP vessel listing, including:	Article 53.3
	(i) the reasons and supporting evidence;	Article 53.3a

	(ii) a copy of the CEM and a link to its place on the NAFO website;	Article 53.3(b) with new text regarding electronic copy of CEM
	(e) requests that the flag State of the NCP vessel:	
	(i) take all measures to ensure that the vessel immediately ceases all fishing activities that undermine the effectiveness of the CEM;	Article 53.3c revised for formatting; fishing added for clarity
	(ii) report within 30 days from the date of the request on the measures it has taken with respect to the vessel concerned; and	Article 53.3d moved to Article 52.2(d)
	(iii) state any objections it may have to including the vessel in the IUU Vessel List;	New paragraph to establish congruence with existing 53.6
	(f) transmits to the flag State of the NCP vessel any additional information received pursuant to Articles 49-51 in respect of vessels flying their flag that have already been included in the Provisional IUU Vessel List;	Articles 53.2 + 53.4 combined and revised
	(g) distribute any information received from the flag State to all Contracting Parties;	Article 53.5
	(h) advises the flag State of the NCP vessel of the dates STACTIC and the General Council will consider listing the vessel in the IUU Vessel List, and invites the flag State to attend the meeting as an observer where it will be given the opportunity to respond to the report submitted in accordance with paragraph 2(e)(ii);	Article 53.3e revised for formatting and insert reference to NCP vessel
	(i) transfers the vessel from the Provisional IUU Vessel List to the IUU Vessel List in accordance with Article 53 if the flag State does not object; and	Article 53.6
	(j) places all vessels included in the NEAFC IUU List on the IUU Vessel List unless a Contracting Party objects to such inclusion, in which case it places the vessel on the Provisional IUU Vessel List. Article 53 shall not apply to vessels placed on the Provisional IUU Vessel List in accordance with this paragraph.	Article 54.8
	Article 53 - IUU Vessel List	
	<i>Listing a Vessel on the IUU Vessel List</i>	Revised for clarity
1	STACTIC recommends to the Fisheries Commission whether each vessel listed in the Provisional IUU Vessel List should be: (a) deleted from the Provisional IUU Vessel List; (b) retained in the Provisional IUU Vessel List, pending receipt of further information from the flag State,	Articles 54.1 + 54.2 + 54.4 are merged, with reference updated from GC to FC and

	or (c) transferred to the IUU Vessel List only upon expiration of the period referred to in Article 52.2(e)(ii).	include the expiration of the comment period to reflect when STACTIC may act following the timing of the report required under the current Article 52.2(e)(ii).
		Article 54.4 moved to Article 53.3
	<i>Deleting a Vessel from the IUU Vessel List</i>	
2	STACTIC may advise that the Fisheries Commission recommend that General Council delete a vessel from either the Provisional IUU Vessel List or the IUU Vessel List where it is satisfied that the flag State of a vessel concerned has provided sufficient evidence to establish that:	Article 54.3 revised for formatting and for clarity
	(a) it has taken effective action to address the IUU fishing of such vessel, including prosecution and imposition of sanctions of adequate severity;	Article 54.3a
	(b) it has taken measures to prevent such vessel from engaging in further IUU fishing under its flag;	Article 54.3b Replaced “IUU fishing activities” with just “IUU fishing”.
	(c) such vessel has changed ownership, and (i) the previous owner no longer has any legal, financial or real interest in such vessel, or exercises no control over it; or (ii) the new owner has no legal, financial or real interest in, nor exercises control over, another vessel listed in the IUU Vessel List or any similar IUU list maintained by an RFMO;	Article 54.3c revised for formatting
	(d) such vessel did not take part in IUU fishing; or	Article 54.3d Replaced “IUU fishing activities” with just “IUU fishing”.
	(e) such vessel has sunk, been scrapped or been permanently reassigned for purposes other than fishing activities.	Article 54.3(e) revised for clarity.

		STACTIC notes that the last sentence of Article 54.3 is included in the chapeau for this paragraph.
3	The Fisheries Commission may recommend to the General Council any changes to listings in the IUU Vessel List. The General Council determines the final composition of the IUU Vessel List.	Article 54.4 moved from Article 53.2.
	<i>Duties of the Executive Secretary</i>	
4	The Executive Secretary:	
	(a) posts the IUU Vessel List on the NAFO website, including the name and flag State and, if available, the call sign, hull number, IMO number, previous name(s) and flag(s) or any other identifying features for each vessel;	Article 54.5 revised to include "hull number" as another ID. This is consistent with the Provisional IUU Vessel List in Article 52.3(b).
	(b) notifies the flag State of the name of each vessel entitled to fly its flag listed in the IUU Vessel List;	Article 54.7
	(c) transmits the IUU Vessel List and any relevant information, including the reasons for listing or de-listing each vessel, to other RFMOs, including, in particular, the NEAFC, the South East Atlantic Fisheries Organisation (SEAFO), and the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR);	Article 54.6 revised for clarity and to insert "de-listing."
		Article 54.6 deleted to integrate "de-listing" into Article 53.4(c).
	(d) transmits the amendments to the NEAFC IUU list, upon receipt, to all Contracting Parties and amends the IUU Vessel List consistent with amendments to the NEAFC IUU List, within 30 days of such transmittal; unless within the 30 days the Executive Secretary receives from a Contracting Party a written submission establishing that: <ul style="list-style-type: none"> (i) any of the requirements in paragraph 3 have been met with regard to a vessel placed on the NEAFC IUU List; or (ii) none of the requirements in paragraph 3 have been met with regard to a vessel taken off the NEAFC IUU List; and 	Article 54.8 reformatted and revised for clarity.
	(e) advises STACTIC of any action taken pursuant to this Article.	

Article 54 - Action against vessels listed in the IUU Vessel List		
1	Each Contracting Party shall take all measures necessary to deter, prevent, and eliminate IUU fishing, in relation to any vessel listed in the IUU Vessel List, including:	Article 55
	(a) prohibiting any vessel entitled to fly its flag, from, except in the case of force majeure, participating in fishing activities with such vessel, including but not limited to joint fishing operations;	Added paragraph numbering to maintain consistency of format.
	(b) prohibiting the supply of provisions, fuel or other services to such vessel;	
	(c) prohibiting entry into its ports of such vessel, except in the case of force majeure;	
	(d) prohibiting change of crew, except as required in relation to force majeure;	
	(e) refusing to authorize such vessel to fish in waters under its national jurisdiction;	
	(f) prohibiting chartering of such vessel;	
	(g) refusing to entitle such vessels to fly its flag;	
	(h) prohibiting landing and importation of fish from onboard or traceable to such vessel;	
	(i) encouraging importers, transporters and other sectors concerned, to refrain from negotiating transshipment of fish with such vessels; and	
	(j) collecting and exchanging any appropriate information regarding such vessel with the other Contracting Parties, non-Contracting Parties and RFMOs with the aim of detecting, deterring and preventing the use of false import or export certificates in relation to fish or fish product from such vessels.	
Article 55 – Action Against Flag States		
1	Contracting Parties shall, jointly and/or individually request the cooperation of the flag State of each NCP vessel listed in the IUU Vessel List with a view to prevent, deter and eliminate future IUU activities by such vessel.	Article 56.1
2	The Fisheries Commission shall review annually the actions taken by the flag States referred to in paragraph 1 with a view to identifying for follow-up action any that has not taken action sufficient to prevent deter and eliminate IUU activities by any vessel entitled to fly its flag listed in the IUU Vessel List.	Article 56.2
3	Each Contracting Party should, to the extent possible and consistent with its international obligations and in accordance with applicable legislation, restrict the export and transfer of any fishing vessel entitled to fly its flag to any State identified pursuant to paragraph 2.	Article 56.3