

**Explanatory note for a Draft Recommendation by ICCAT amending Recommendation 21-13
on establishing a list of vessels presumed to have carried out
illegal, unreported and unregulated fishing activities**

(submitted by China (P.R.))

It is noted that it is the obligation of CPCs under international law and the ICCAT Convention to cooperate multilaterally, through ICCAT, for the conservation and sustainable use of ICCAT resources.

ICCAT has developed specific conservation measures to promote compliance by CPCs, such as Recommendation 08-09, Resolution 16-17, and the *Schedule of Compliance Issues and Corresponding Actions* (Ref. 22-18), which make clear that compliance assessments need to be conducted in a responsible, open, transparent and non-discriminatory manner. CPCs are obliged to provide relevant suspected non-compliance information to the ICCAT Secretariat in a timely manner for consideration by the Compliance Committee and, where appropriate, the PWG. Resolution 16-17 explicitly recognizes that all non-compliance actions are not of equal impact, and that for non-compliance of varying natures, appropriate measures to promote compliance with ICCAT conservation measures should be taken in a consistent, fair, and transparent approach, and that trade measures are only a last resort.

ICCAT has also developed conservation measures to combat IUU fishing, in particular Recommendation 21-13 on the establishment of a system of lists of vessels suspected of engaging in IUU fishing. Recommendation 21-13 clearly defines IUU fishing, the mechanism for the transmission and approval of information on suspected IUU fishing, and the process for consideration of the list of IUU fishing vessels. In doing so, the responsibilities of the ICCAT Secretariat, the PWG, ICCAT Commission and other bodies were clarified, as well as the involvement of the Compliance Committee in the consideration of related matters, where appropriate.

ICCAT has made big progress in promoting compliance with conservation measures and combating IUU fishing through the cooperation and efforts of CPCs by means of port measures, market measures and other important measures based on the principle of flag CPC jurisdiction. It is also important to note that many CPCs are developing countries, and their special requirements, including capacity-building, should be supported and assisted by other CPCs.

In recent years, it has been noted that there have been CPCs that unilaterally determined illegal fishing activities of other CPCs in the ICCAT Convention area and taken actions in relation to alleged fishing companies or vessels according to unverified information, before the flag CPCs have conducted an investigation or ICCAT has made a determination on the suspected violation, which is not in line with the open and transparent multilateral consultative mechanism advocated by the Commission.

In order to maintain the integrity of ICCAT, promote the consistent, fair and transparent implementation of ICCAT conservation measures, and strengthen the obligation of CPCs to co-operate under the ICCAT framework, it is proposed that ICCAT amend the *Recommendation by ICCAT amending Recommendation 18-08 on establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities* (Rec. 21-13) (see below).

**Draft Recommendation by ICCAT amending Recommendation 21-13
on establishing a list of vessels presumed to have carried out
illegal, unreported and unregulated fishing activities**

(Proposal submitted by China (P.R.))

RECALLING that the FAO Council adopted on 23 June 2001 an International Plan of Action to prevent, to deter and eliminate illegal, unreported and unregulated fishing (IPOA-IUU). This plan stipulates that the identification of the vessels carrying out Illegal Unregulated and Unreported (IUU) activities should follow agreed procedures and be applied in an equitable, transparent and non-discriminatory way;

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

FURTHER CONCERNED that there is evidence of a large number of vessel owners engaged in such fishing activities which have re-flagged their vessels to avoid compliance with ICCAT management and conservation measures, and to evade the ICCAT-adopted non-discriminatory trade measures;

DETERMINED to address the challenge of an increase in IUU fishing activities by way of counter-measures to be applied in respect to the vessels, without prejudice to further measures adopted in respect of flag States under the relevant ICCAT instruments;

CONSIDERING the results of the ICCAT *Ad Hoc* Working Group on Measures to Combat IUU Fishing, which was held in Tokyo from 27 to 31 May 2002;

CONSCIOUS of the urgent need to address the issue of large-scale fishing vessels as well as other vessels conducting IUU fishing and fishing related activities in support of IUU fishing;

NOTING that the situation must be addressed in the light of all relevant international fisheries instruments and in accordance with the relevant rights and obligations established in the World Trade Organization (WTO) Agreement, and

DESIRING to streamline and improve IUU listing procedures and requirements in previous ICCAT Recommendations and Resolutions.

THE INTERNATIONAL COMMISSION FOR THE CONSERVATION
OF THE ATLANTIC TUNAS (ICCAT) RECOMMENDS THAT:

Definition of IUU activities

1. For the purposes of this Recommendation, vessels are presumed to have carried out illegal, unreported and unregulated (IUU) fishing activities in the ICCAT Convention area when a Contracting Party or a Cooperating non-Contracting Party, Entity or Fishing Entity (hereinafter referred to as CPC), presents evidence that such vessels:
 - a) Harvest tuna and tuna-like species in the Convention area and are not registered on the relevant ICCAT list of vessels authorized to fish for tuna and tuna-like species in the ICCAT Convention area;
 - b) Harvest tuna and tuna-like species in the Convention area, and the vessel's flag State is without quota, catch limit or effort allocation under relevant ICCAT conservation and management measures;
 - c) Do not record or report their catches made in the ICCAT Convention area, or make false reports;
 - d) Take or land undersized fish in contravention of ICCAT conservation measures;
 - e) Fish during closed fishing periods or in closed areas in contravention of ICCAT conservation measures;
 - f) Use prohibited fishing gear or fishing methods in contravention of ICCAT conservation measures;

- g) Transship or participate in other operations, such as re-supplying or re-fueling, with vessels included in the IUU vessels list;
- h) Harvest tuna or tuna-like species in the waters under the national jurisdiction of the coastal States in the Convention area without authorization or infringe on that State's laws and regulations, without prejudice to the sovereign rights of coastal States to take measures against such vessels;
- i) Are without nationality and fishing or supporting fishing operations in the ICCAT Convention area; and/or
- j) Engage in fishing or fishing related activities contrary to any other ICCAT conservation and management measures.

Information on alleged IUU activities

2. CPCs shall transmit every year to the Executive Secretary, at least 70 days before the annual meeting, information on any vessels presumed to be carrying out IUU fishing activities within the last three years, accompanied by all available supporting evidence concerning the presumption of IUU fishing activity and vessel identification information.

This information on vessels shall be based on the information collected by CPCs, *inter alia*, under relevant ICCAT recommendations and resolutions. CPCs shall submit available information on the vessel and the IUU fishing activity in the format attached as **Addendum 1** of this Recommendation.

Upon receipt of such information, the Executive Secretary shall promptly send this information to all CPCs and to any non-CPC concerned and request that, where appropriate, CPCs and any such non-CPC investigate the alleged IUU activity and/or monitor the vessels.

Upon receipt of the notification from the Secretariat, the flag CPC shall, within 60 days, conduct an investigation and submit the investigation report or progress to the Secretariat, which shall immediately circulate it to all CPCs. For the cases circulated by the Secretariat that involve activity alleged to have been carried out on the high seas in the ICCAT Convention area, no CPCs shall unilaterally make a determination of IUU fishing on the basis of the initiation of the listing process under this paragraph until the Commission has reviewed the investigation report or progress report, if available, as well as any other information referred to in paragraph 2, 3, 4 and 5, and determined whether or not the vessel has been conducting IUU fishing in accordance with this Recommendation. This paragraph shall not affect the rights and obligations of CPCs to take action against IUU fishing activities in accordance with relevant domestic and international laws.

The Executive Secretary shall request the flag State to notify the owner of the vessel regarding the CPC's submission of the vessel for its inclusion in the Draft IUU List and of the consequences that may result if they are included on the Final IUU Vessel List adopted by the Commission.

Development of Draft IUU List

3. On the basis of the information received pursuant to paragraph 2, the ICCAT Executive Secretary shall draw up a Draft IUU List in conformity with **Addendum 2**. The ICCAT Executive Secretary shall transmit the Draft IUU List, together with all the information provided, to all CPCs, and to non-CPCs whose vessels are included on these lists, at least 55 days before the annual meeting. CPCs and non-CPCs shall transmit any comments, including any evidence showing that the listed vessels did not engage in any activity described in paragraph 1, or any actions taken to address such activity, at least 30 days before the annual meeting of ICCAT.

Upon receipt of the Draft IUU List, CPCs shall closely monitor the vessels on that List and shall promptly submit to the Secretariat any information they may have related to the vessels' activities and possible changes of name, flag, call sign or registered owner.

Development and adoption of Final IUU List

4. Two weeks in advance of the ICCAT annual meeting, the Executive Secretary shall recirculate to the CPCs and non-CPCs concerned the Draft IUU List, all information received pursuant to paragraphs 2 and 3, and any other information obtained by the Executive Secretary.

5. CPCs may at any time, and preferably before the annual meeting, submit to the Executive Secretary any additional information that might be relevant for the establishment of the Final ICCAT IUU Vessel List. The ICCAT Executive Secretary shall promptly circulate any such additional information to all CPCs and to the non-CPCs concerned.
6. The Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures (PWG) shall examine, each year, the Draft IUU List, as well as the information referred to in paragraphs 2, 3, 4, and 5. The results of this examination may, if necessary, be referred to the Conservation and Management Measures Compliance Committee.

The PWG shall propose to remove a vessel from the Draft IUU List if it determines that:

- a) The vessel did not take part in any IUU fishing activities described in paragraph 1, or
 - b)
 - i) The flag CPC or non-CPC has adopted measures so that this vessel conforms with ICCAT conservation measures, and
 - ii) The flag CPC or non-CPC has and will continue to assume effectively its responsibilities with respect to this vessel in particular as regards the monitoring and control of the fishing activities executed by this vessel in the ICCAT Convention area, and
 - iii) Effective action has been taken in response to the IUU fishing activities in question, including, *inter alia*, prosecution and imposition of sanctions of adequate severity, or
 - c) The vessel has changed ownership and that 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 that the new owner has not participated in IUU fishing.
7. Following the examination referred to in paragraph 6, at each ICCAT annual meeting, the PWG shall develop a Proposed IUU Vessel List, noting which, if any, vessels are proposed for removal from the ICCAT IUU Vessel List adopted at the previous annual meeting and the reasons therefor, and submit it to the Commission for adoption as the Final ICCAT IUU Vessel List.

Actions following adoption of Final IUU Vessel List

8. On adoption of the Final IUU Vessel List, the Executive Secretary shall request CPCs and non-CPCs whose vessels appear on the Final ICCAT IUU Vessel List to:
 - notify the owner of the vessel identified on the Final IUU Vessel List of its inclusion on the list and the consequences which result from being included on the list, as referred to in paragraph 9;
 - take all the necessary measures to eliminate these IUU fishing activities, including if necessary, the withdrawal of the registration or of the fishing licenses of these vessels, and to inform the Commission of the measures taken in this respect.
9. CPCs shall take all necessary measures, under their applicable legislation to:
 - ensure that the fishing vessels, support vessels, refuelling vessels, the mother-ships and the cargo vessels flying their flag do not assist in any way, engage in fishing processing operations or participate in any transshipment or joint fishing operations with vessels included on the IUU Vessels List;
 - ensure that IUU vessels are not authorized to land, tranship re-fuel, re-supply, or engage in other commercial transactions; prohibit the entry into their ports of vessels included on the IUU list, except in case of *force majeure*, unless vessels are allowed entry into port for the exclusive purpose of inspection and effective enforcement action;

- ensure the inspection of vessels on the IUU list, if such vessels are otherwise found in their ports, to the extent practicable;
 - prohibit the chartering of a vessel included on the IUU vessels list;
 - refuse to grant their flag to vessels included in the IUU list, except if the vessel has changed owner and the new owner has provided sufficient evidence demonstrating the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel, or having taken into account all relevant facts, the flag CPC determines that granting the vessel its flag will not result in IUU fishing;
 - prohibit the import, or landing and/or transshipment, of tuna and tuna-like species from vessels included in the IUU list;
 - encourage the importers, transporters and other sectors concerned, to refrain from transaction and transshipment of tuna and tuna-like species caught by vessels included in the IUU list;
 - collect and exchange with other CPCs any appropriate information with the aim of searching for, controlling and preventing false documentation (including import/export certificates) regarding tunas and tuna-like species from vessels included in the IUU list; and
 - monitor vessels included in the IUU list and promptly submit any information to the Executive Secretary related to their activities and possible changes of name, flag, call sign and/or registered owner.
10. The Executive Secretary will ensure publicity of the Final IUU Vessel List adopted by ICCAT pursuant to paragraph 8, in a manner consistent with any applicable confidentiality requirements, and through electronic means, by placing it, along with any additional supporting information on the vessels and IUU activities, on a dedicated portion of the ICCAT website, to be updated as information changes or additional relevant information becomes available. Furthermore, the ICCAT Executive Secretary will transmit the Final IUU Vessel List and supporting information on newly added vessels promptly to other RFMOs for the purposes of enhanced co-operation between ICCAT and these organizations in order to prevent, deter and eliminate IUU fishing.

Intersessional modification of ICCAT's Final IUU Vessel List

Incorporation of IUU Vessel Lists of other RFMOs

11. Upon receipt of the final IUU vessel list established by another RFMO¹ and supporting information considered by that RFMO, and any other information regarding the listing determination, such as relevant sections of the RFMO's meeting report, the Executive Secretary shall circulate this information to the CPCs and to any relevant non-CPC. Vessels that have been included on the respective lists shall be included on the Final ICCAT IUU Vessel List, unless any Contracting Party objects to the inclusion on the Final ICCAT IUU List within 30 days of the date of transmittal by the Executive Secretary on the grounds that:
- a) there is satisfactory information to establish that:
 - i. The vessel did not engage in the IUU fishing activities identified by the other RFMO, or
 - ii. That effective action has been taken in response to the IUU fishing activities in question, including, *inter alia*, prosecution, and imposition of sanctions of adequate severity that have been complied with,
 - b) There is insufficient supporting information and other information regarding the listing determination to establish that none of the conditions in sub-paragraph 11.a) above have been met.

¹ The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the General Fisheries Commission for the Mediterranean (GFCM), the Indian Ocean Tuna Commission (IOTC), the Inter-American Tropical Tuna Commission (IATTC), the North Atlantic Fisheries Organization (NAFO), the North-East Atlantic Fisheries Commission (NEAFC), the South East Atlantic Fisheries Organization (SEAFO), and the Western and Central Pacific Fisheries Commission (WCPFC).

Or

- c) In the case of vessels listed by a non-tuna RFMO, there is an insufficient nexus to the conservation and management of ICCAT species to warrant cross-listing.

In the event of an objection to a vessel listed by another RFMO being included on the Final ICCAT IUU Vessel List pursuant to this paragraph, such vessel shall be placed on the Draft IUU Vessel List and considered by the PWG pursuant to paragraph 6.

- 12. The ICCAT Executive Secretary shall implement paragraph 11 in accordance with the following procedures:
 - a) The ICCAT Secretariat shall maintain appropriate contacts with the Secretariats of other RFMOs in order to obtain copies of these RFMOs' IUU vessel lists in a timely manner upon adoption or amendment, including by requesting a copy of these RFMOs' IUU vessel lists annually upon conclusion of the RFMO's meeting at which its final IUU list is adopted.
 - b) As soon as possible after adoption or amendment of an IUU vessel list by another RFMO, the ICCAT Secretariat shall collect all supporting documentation available from that RFMO regarding the listing/delisting determinations.
 - c) Once the ICCAT Secretariat has received/collected the information outlined in paragraphs (a) and (b), it shall, consistent with paragraph 11 of this Recommendation, promptly circulate the other RFMO's IUU vessel list, supporting information, and any other relevant information regarding the listing determination to all CPCs. The requisite circular shall clearly state the reason the information is being provided, explain that ICCAT Contracting Parties have 30 days from the date of the circular to object to the inclusion of the vessels on the ICCAT IUU vessel list, and that absent any such objection the vessel will be added at the expiration of the 30-day period to the Final IUU Vessel List.
 - d) The ICCAT Secretariat shall add any new vessels contained in the other RFMOs' IUU vessel list to the Final ICCAT IUU Vessel List at the end of the 30-day period provided no objection to such inclusion is received from a Contracting Party pursuant to paragraph 11 of this Recommendation.
 - e) Where a vessel has been included on the ICCAT Final IUU Vessel List solely due to its inclusion on another RFMO's IUU Vessel List, the ICCAT Secretariat shall immediately remove that vessel from the Final ICCAT IUU Vessel List when it has been deleted by the RFMO that originally listed it.
 - f) Upon the addition or deletion of vessels from the Final ICCAT IUU Vessel List pursuant to paragraph 11 or 12(e) of this Recommendation, the ICCAT Secretariat shall promptly circulate the Final ICCAT IUU Vessel List as amended to all ICCAT CPCs and non-CPCs concerned.

Intersessional removal from the Final IUU Vessel List

- 13. A CPC or non-CPC whose vessel appears on the Final IUU Vessel List that wishes to request the removal of its vessel from the Final IUU Vessel List during the intersessional period shall submit this request to the ICCAT Executive Secretary no later than 15 July of each year accompanied by information to demonstrate that it meets one or more of the grounds for removal specified in paragraph 6.
- 14. On the basis of the information received by the 15 July deadline, the Executive Secretary will transmit the removal request, with all supporting information to the Contracting Parties within 15 days following receipt of the removal request.
- 15. The Contracting Parties shall examine the request to remove the vessel and reply within 30 days following the notification by the Executive Secretary if they object to the removal of the vessel from the Final IUU Vessel List.

16. The result of the examination of the request by mail will be checked by the Executive Secretary at the end of the 30-day period following the date of the notification by the Executive Secretary referred to in paragraph 15.

If a Contracting Party objects to the removal request, the Executive Secretary shall maintain the vessel on the Final ICCAT IUU List and the removal request shall be forwarded to the PWG for consideration at the annual meeting, if requested by the CPC seeking intersessional removal. If no Contracting Party objects to request to remove the vessel, the Executive Secretary shall promptly remove the vessel concerned from the Final ICCAT IUU Vessel List, as published on the ICCAT website.

17. The Executive Secretary shall promptly communicate the result of the delisting process to all CPCs as well as non-CPCs concerned. Moreover, the ICCAT Executive Secretary shall forward the decision to remove the vessel to other RFMOs.

General dispositions

18. This Recommendation shall apply *mutatis mutandis* to fish processing vessels, tug and towing vessels, vessels engaged in transshipment, and support vessels, and other vessels engaged in fishing related activities managed by ICCAT.
19. This Recommendation repeals and replaces the *Recommendation by ICCAT amending Recommendation 18-08 on establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities* (Rec. 21-13).

ICCAT reporting form for IUU activity

Pursuant to paragraph 2 of this Recommendation, attached are details of alleged IUU activity and available vessel information.

A. Details of vessel

(Please detail information on the vessel and the incidents(s) in the format below, where such information is applicable and available)

<i>Item</i>		<i>Available Information</i>
A	Name of vessel and previous names	
B	Flag and previous flags	
C	Owner and previous owners, including beneficial owner	
D	Owner's place of registration	
E	Operator and previous operators	
F	Call sign and previous call signs	
G	IMO number	
H	Unique Vessel Identifier (UVI), or, if not applicable, any other vessel identifier	
I	Length overall	
J	Photographs	
K	Date first included on the ICCAT IUU list	
L	Date of alleged IUU fishing activities	
M	Position of alleged IUU fishing activities	
N	Summary of alleged IUU activities (see also section B)	
O	Summary of any actions known to have been taken in response to the activities	
P	Outcome of any actions taken	
Q	Other relevant information, as appropriate (e.g., possible false flags or vessel names used, <i>modus operandi</i> , etc.)	

B. Details of alleged IUU activity

(Indicate with an "X" the applicable elements of the activity and provide relevant details including date, location, source of information. Extra information can be provided in an attachment if necessary.)

Rec. 23-XX para 1	Vessel fished for species covered by the ICCAT Convention within the Convention area and:	Indicate and provide details
a	Harvest tunas and tuna-like species in the Convention area and are not registered on the relevant ICCAT list of vessels authorized to fish for tuna and tuna-like species in the ICCAT Convention area	
b	Harvest tuna and tuna-like species in the Convention area, and the vessel's whose flag State is without quotas, catch limit or effort allocation under relevant ICCAT conservation and management measures	
c	Do not record or report their catches made in the ICCAT Convention area, or make false reports	
d	Take or land undersized fish in contravention of ICCAT conservation measures	
e	Fish during closed fishing periods or in closed areas in contravention of ICCAT conservation measures	
f	Use prohibited fishing gear or fishing methods in contravention of ICCAT conservation measures	
g	Transship or participate in other operations, such as re-supplying or re-fueling, with vessels included in the IUU vessels list;	
h	Harvest tuna or tuna-like species in the waters under the national jurisdiction of the coastal States in the Convention area without authorization or infringe on that State's laws and regulations, without prejudice to the sovereign rights of coastal States to take measures against such vessels;	
i	Are without nationality and fishing or supporting fishing operations in the ICCAT Convention area	
j	Engage in fishing or fishing related activities contrary to any other ICCAT conservation and management measures	

Information to be included in all IUU Lists (Draft and Final)

The Draft IUU List shall include information on vessels listed on ICCAT's Final IUU List as well as information on new vessels submitted by CPCs for listing. The Draft IUU List shall contain the following details, where applicable and available:

- i) Name of vessel and previous name(s);
- ii) Flag of vessel and previous flag(s);
- iii) Name and address of owner of vessel and previous owners, including beneficial owners, and owners' place of registration;
- iv) Operator of vessel and previous operator(s);
- v) Call sign of vessel and previous call sign;
- vi) Lloyds/IMO number;
- vii) Photographs of the vessel;
- viii) Date vessel was first included on the IUU List;
- ix) Summary of activities which justify inclusion of the vessel on the List, together with references to all relevant documents informing of and evidencing those activities;
- x) Other relevant information.