
ON ESTABLISHING A LIST OF VESSELS PRESUMED TO HAVE CARRIED OUT ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN THE IOTC AREA OF COMPETENCE**SUBMITTED BY: UNITED KINGDOM (OVERSEAS TERRITORIES), AUSTRALIA, AND SEYCHELLES 12 APRIL 2017**

Explanatory Memorandum

At S20 in 2016, ‘The Commission CONSIDERED a proposal (*Submitted by: United Kingdom (Overseas Territories) (UKOT), Australia, EU Indonesia, and Seychelles*) to strengthen the current resolution on establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC Area of competence (IOTC–2016–S20–Prop O). Revisions to the proposal (*Rev 2*) were made, based on feedback received during the meeting, although due to lack of consensus the revised proposal was deferred until the next meeting of the Commission’ (Para 142 IOTC-2016-S20-RE)

IOTC–2016–S20–Prop O (Rev2) incorporated feedback received across the floor and in the margins of the S20 meeting. The current Proposal takes that Rev2 from 2016 as its starting point. Track changes in the current Proposal (a clean copy is also available) address the points raised at the end of the S20 by China, India, Japan and Mauritius, and includes further feedback received intersessionally from these CPCs, from co-sponsors and other CPCs.

We have amended Resolution 11/03 in order to address inconsistencies that became apparent through previous experience of its application, and to improve the logical flow of the text. We have also incorporated text from other RFMOs to ensure consistency in approach. The principal areas we have aimed to address are:

- Better defining the scope of application in terms of:
 - species covered (for species covered by the IOTC Agreement or by IOTC Conservation and Management Measures and within the IOTC area of competence);
 - what constitutes fishing and fishing activities (the definition is now consistent with Resolution 10/11, superseded by 16/11); and,
 - the vessels involved and those responsible for it (Owner, Operator, Master). Resolution 11/03 required information to be gathered on these persons/entities but they were not defined. As was the case in Resolution 11/03 however, details of the Master are not included in the IUU Vessel Lists (Annex II).
- To remove the option for an intersessional vessel listing process (i.e. vessels retained on the Provisional IUU vessels list). This represents the most substantive change to the proposal since Rev 2. Based on the experience of recent attempts by the Commission to implement the intersessional process it is clear that insufficient numbers of CPCs engage in the process to constitute a quorum. It can be concluded that the intersessional vessel listing process does not work and an alternative is required. Voting during the Commission meeting advances the decision, but we have retained the same basis as in 11/03 (two thirds majority).
Note that, the effect of this is that the Provisional IUU vessels list only exists temporarily after adoption by the Compliance Committee and acceptance or rejection of the recommendation of the CoC by the Commission. Therefore there is no need to include measures for removing vessels from the Provisional IUU vessels list intersessionally, which now only relates to those vessel on the IUU vessels list (Vessel delisting procedures).
- To provide the tools to the Compliance Committee and the Commission to enable them to more readily evaluate IUU cases at each stage of the process (these are the Annexes III and IV)
- To more clearly define the details that must be reported to the Compliance Committee for nomination of a vessel for inclusion on the draft IUU Vessels List, and the details to be reported and the responsibilities of the flag State.
- To adjust the timescales for reporting consistent with the dates of the Compliance Committee and ensure they are feasible for the actors concerned.
- To address ambiguities and improve the flow of the text.

RESOLUTION 17/XX**ON ESTABLISHING A LIST OF VESSELS PRESUMED TO HAVE CARRIED OUT ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN THE IOTC AREA OF COMPETENCE****The Indian Ocean Tuna Commission (IOTC),**

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 IUU activities should follow agreed procedures and be applied in an equitable, transparent and non-discriminatory way;

RECALLING that the IOTC adopted Resolution 01/07 [~~superseded by Resolution 14/01~~] concerning its support of the IPOA-IUU;

RECALLING that IOTC has already adopted measures against IUU fishing activities;

RECALLING that the IOTC adopted Resolution 07/01 to promote compliance by nationals of Contracting Parties and Cooperating Non-Contracting Parties with IOTC Conservation and Management Measures;

RECALLING ALSO that the IOTC adopted Resolution 07/02 [~~superseded by Resolution 13/02, then by Resolution 14/04, then by Resolution 15/04~~] to enhance the implementation of IOTC Conservation and Management Measures through establishing a Record of fishing vessels authorised to operate in the IOTC area of competence;

~~Recognising~~ **RECOGNISING** that IUU fishing activities may be linked with serious and organised crime;

CONCERNED by the fact that IUU fishing activities in the IOTC area of competence continue, and these activities diminish the effectiveness of IOTC Conservation and Management Measures;

FURTHER CONCERNED that there is evidence of a large number of vessel owners engaged in such fishing activities who have re-flagged their vessels to avoid compliance with IOTC Conservation and Management Measures;

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

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

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 Organisation (WTO) Agreement;

ADOPTS, in accordance with paragraph 1 of Article IX of the IOTC Agreement, that:

Use of terms

1. For the purpose of this Resolution:

a) 'Owner' means the natural or legal person registered as the owner of a vessel and includes any beneficial owner if distinct from the legal owner;

~~b) — i) 'Owner of record' means the Owner indicated on the IOTC Record of Authorised Vessels or if the vessel is not included on that record, the natural or legal person indicated on the vessel's national registration document;~~

~~ii) A vessel shall be considered to have the same owner(s) of record where one or more of the legal or natural person(/s) or entity/entities indicated on the IOTC Record of Authorised Vessels is the same;~~

~~iii) If a vessel is not on the IOTC Record of Authorised Vessels, then the owner(s) of record is/are the same where one or more of the legal or natural person/s or entity/entities indicated on the vessel's national registration document is/are the same;~~



- b) ‘Operator’ means the natural or legal person who is responsible for taking commercial decisions regarding the management and operation of a vessel and includes:
- i. ~~(a)~~ a charterer of the vessel;
 - ii. ~~(b)~~ any natural or legal person that manages an operating pool in which the vessel is included; and who decides how and where that asset is employed;
- c) ‘Master’ means any person holding the most responsible position at any given time on-board a fishing vessel;
- d) ‘fishing’ means searching for, attracting¹, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, taking or harvesting of fish;
- e) ‘fishing related activities’ means any operation in support of, or in preparation for, fishing, including landing, packaging, processing, transshipment or transport of fish and/or fish products that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear, food and other supplies at-sea;
- ~~f) ‘to the satisfaction of the Compliance Committee / Commission’ or variants thereof means: according to established practices of the IOTC including Rule IX of the Rules of Procedure;~~
- ~~g)~~ f) the singular also includes the plural.

Application of this measure

2. This Resolution applies to vessels, together with their Owners, Operators and Masters that undertake fishing and fishing related activities, for species covered by the IOTC Agreement, or by IOTC Conservation and Management Measures, within the IOTC area of competence (IOTC Area).

Objective

3. This Resolution sets out rules and procedures for the maintenance and updating by the Commission of the system of lists of vessels considered to be involved in illegal, unreported and unregulated and unreported (IUU) fishing activities ~~within the IOTC Area~~ and which comprises:
- a) ~~(a)~~ the Draft IOTC IUU Vessel List (Draft IUU Vessel List);
 - b) ~~(b)~~ the Provisional IOTC IUU Vessel List (Provisional IUU Vessel List); and
 - ~~a)~~ c) ~~(e)~~ the IOTC IUU Vessel List (IUU Vessel List).

Definition of IUU Fishing Activities

- ~~3.4.~~ For the purposes of this Resolution a vessel is presumed to have engaged in IUU fishing activities ~~within the IOTC Area~~ when a Contracting Party or Cooperating Non-Contracting Party (hereinafter referred to as “CPCs”) has provided suitably documented information and/or evidence that such a vessel has, within the IOTC Area and in relation to species covered by the IOTC Agreement or by IOTC Conservation and Management Measures:
- a) ~~has~~ engaged in fishing or fishing related activities ~~within the IOTC Area in respect of species covered by the IOTC Agreement or by IOTC Conservation and Management Measures~~ and ~~are~~ is neither registered on the IOTC Record of Authorised Vessels in accordance with Resolution 15/04; nor recorded in the Active list of vessels; or

¹ FADs drifting subsequent to deployment from a vessel on the IOTC Authorised Fishing Vessel List are not IUU.

- b) ~~has~~ engaged in fishing or fishing related activities ~~within the IOTC Area in respect of species covered by the IOTC Agreement or by IOTC Conservation and Management Measures~~, when ~~their~~ ~~its~~ flag State is without sufficient quota, catch limit, or effort allocation under IOTC Conservation and Management Measures where applicable; or
- c) ~~has~~ failed to record or report its catches in accordance with IOTC Conservation and Management Measures or has made false reports; or
- d) ~~has~~ taken or landed undersized fish ~~within the IOTC Area~~ in contravention of IOTC Conservation and Management Measures; or
- e) ~~has~~ engaged in fishing or fishing related activities ~~within the IOTC Area~~ during closed fishing periods or in closed areas in contravention of IOTC Conservation and Management Measures; or
- f) ~~has~~ used prohibited fishing gear ~~within the IOTC Area~~ in contravention of IOTC Conservation and Management Measures; or
- g) ~~has~~ transhipped fish to, or otherwise participated in joint operations with, support or re-supply vessels that are:
 - i. ~~(i)~~ not included on the IOTC Record of Authorised Vessels; or
 - ii. ~~(ii)~~ included in a list of vessels engaged in IUU fishing by any regional fisheries management organisation or arrangement (RFMO); or
- g)h) ~~has~~ engaged in fishing or fishing related activities ~~for species covered by the IOTC Agreement or by IOTC Conservation and Management Measures~~ in waters ~~within the IOTC Area~~ that are under the national jurisdiction of a coastal State without the permission or authorisation of that State or in contravention of the laws and regulations of that State (without prejudice to the sovereign rights of the State concerned to undertake enforcement measures against such a vessel); or
- h)i) ~~is without nationality and has~~ engaged in fishing or fishing related activities ~~within the IOTC Area whilst being without nationality of Competence~~; or
- i)j) ~~has engaged in fishing or fishing related activities having~~ intentionally falsified or concealed its markings, identity or registration; or
- j)k) ~~has~~ engaged in fishing ~~or fishing related~~ activities ~~within the IOTC Area~~ in contravention ~~with of~~ any other IOTC Conservation and Management Measures.;

Submission of information on IUU Fishing Activities

4.5. A CPC ~~holding in possession of suitably documented~~ information ~~and/or evidence~~ that one or more vessels has engaged in IUU fishing activities within the IOTC Area within a previous 24 month period ~~may shall~~ submit a list of such vessels to the IOTC Executive Secretary. ~~Such submission shall be made~~ at least 70 days before the annual meeting of the Compliance Committee using the IOTC Reporting Form for Illegal Activity (**Annex I**).

5.6. A list submitted by a CPC (~~hereafter the 'nominating CPC'~~) in accordance with paragraph 5, shall be accompanied by suitably documented information ~~and/or evidence~~ concerning the IUU fishing activity of each of the listed vessels including but not limited to:

- a) reports regarding the alleged IUU fishing activity from CPCs relating to IOTC Conservation and Management Measures in force;
- b) trade information obtained on the basis of relevant trade statistics such as those from the Food and Agriculture Organization of the United Nations (FAO) data, statistical documents and other national or international verifiable statistics;
- c) any other suitably documented information ~~and/or evidence~~ obtained from other sources and/or gathered from the fishing grounds such as:

- i) information gathered from inspections undertaken in port or at sea; or
- ii) information from coastal States including VMS transponder or AIS data, surveillance data from satellites or airborne or seaborne assets; or
- iii) IOTC programmes ~~including high seas boarding and inspection schemes where adopted,~~ except where such a programme stipulates that information gathered is to be kept confidential; or
- iv) information and intelligence collected by third parties either provided directly to a CPC or via the Executive Secretary pursuant to paragraph 7.

~~6.7.~~ When the IOTC Executive Secretary receives information and intelligence from third parties indicating alleged IUU fishing activities, the Executive Secretary shall transmit the information to the flag State of the vessel and any coastal State CPC ~~where such IUU fishing activities occurred within that CPC's waters affected.~~ ~~Where the flag State of the vessel is a CPC it shall~~ ~~may~~ investigate the allegation and ~~may~~ ~~shall~~ report the results to the IOTC Executive Secretary within 60 days. ~~Where the flag State is not a CPC it may investigate the allegation and report the results to the IOTC Executive Secretary within 60 days.~~ The IOTC Executive Secretary shall then, as soon as practicably possible, notify each CPC and the flag State of each vessel concerned together with such compiled information as has been received. Where the alleged IUU activities occurred in the waters of a coastal State CPC of IOTC the CPC concerned may seek to include the vessel on the draft IUU list (paragraph 6(c).iv). Where the alleged IUU activities occurred in areas beyond national jurisdiction within the IOTC Area any concerned CPC may seek to include the vessel on the draft IUU list.

Draft IOTC IUU Vessel List

~~7.8.~~ On the basis of the information received pursuant to paragraphs 5, ~~and 6 and 21(d).iv,~~ the IOTC Executive Secretary shall draw up a Draft IUU Vessel List incorporating ~~the~~ suitably documented information ~~and/or~~ ~~evidence~~ in the format set out in **Annex II**. The IOTC Executive Secretary shall then transmit the Draft IUU Vessel List together with the compiled information to each CPC and to the flag State of each vessel included on the Draft IUU Vessel List at least 55 days before the Annual Meeting of the Compliance Committee.

~~9.~~ The flag State of a vessel ~~from a CPC or non-CPC~~ included on the ~~draft~~ ~~Draft~~ IUU Vessel List shall be requested to:

- ~~a)~~ ~~(a)~~ notify the Owner, Operator and the Master of the vessel of the fact of its inclusion in the Draft IUU Vessel List and of the consequences that may result from ~~their~~ its inclusion being confirmed in the IUU Vessel List adopted by the Commission, and
- ~~a)b)~~ ~~(b)~~ closely monitor the vessels included in the Draft IUU Vessel List in order to determine their activities and possible changes of use, name, flag and or registered ~~owner~~ Owner.

~~8.10.~~ The flag State of a vessel included on the Draft IUU Vessel List may transmit to the IOTC Executive Secretary at least 15 days before the Annual Meeting of the Compliance Committee, any comments and suitably documented information ~~and/or~~ ~~evidence~~ about listed vessels and their activities, including information showing that the listed vessels have:

- a) conducted fishing activities in a manner consistent with IOTC Conservation and Management Measures in force; or
- b) conducted fishing activities in a manner consistent with the laws and regulations of a coastal State when fishing in the waters under the jurisdiction of that State, and with the law and regulations of the flag State and the Authorisation to Fish; or
- ~~e)~~ conducted fishing activities exclusively for species that are not covered by the IOTC Agreement or IOTC Conservation and Management Measures; ~~or~~
- ~~d)c)~~ ~~for those flag States with vessels that have been included on the Draft IUU Vessel List as a result of paragraph 21(d).iv this includes information pursuant to paragraph 22.~~

~~9.11.~~ The Executive Secretary shall add any new information received from CPCs and flag States regarding vessels on the Draft IUU Vessel List and, pursuant to paragraphs 22 and 23, those on the IUU Vessel List and circulate that information to all CPCs and to the flag States of vessels on the lists at least 10 days prior to the annual session of the Compliance Committee together with the completed checklist, **Annex III** and where applicable, **Annex IV**.

~~10.12.~~ A CPC may at any time submit to the IOTC Executive Secretary any additional suitably documented information **and/or evidence** regarding vessels on the ~~draft-Draft~~ IUU list, which might be relevant to the establishment of the IUU Vessel List. If the IOTC Secretariat receive this information after the Draft IUU Vessel List has been circulated to CPCs, it will circulate the information to all CPCs and to the flag States of listed vessels as soon as practicable.

Provisional IOTC IUU Vessel List

~~11.13.~~ The IOTC Compliance Committee shall each year at its Annual Meeting examine the Draft IUU Vessel List, as well as the suitably documented information **and/or evidence** submitted, any comments received from the flag State of a vessel included on the Draft IUU Vessel List together with any additional information submitted by ~~the~~ any CPC. If the IOTC Compliance Committee is satisfied that the documented information establishes that the vessel carried out IUU fishing activities, it shall include the vessel or vessels concerned in the Provisional IUU Vessel List.

~~12.14.~~ The Compliance Committee shall not include a vessel in the Provisional IUU Vessel List if:

- a) the nominating CPC did not follow the provisions of paragraphs 5 and 6; or
- b) on the basis of the information available, the Compliance Committee is not satisfied that the presumption of IUU **fishing activities** referred to in paragraph 4 has been established; or
- c) the flag State of a vessel included in the Draft IUU Vessel List provides suitably documented information **and/or evidence** that demonstrates ~~to the satisfaction of the Compliance Committee~~ that the vessel has at all relevant times complied with the rules of the flag State and with its authorisation to fish and:
 - i. ~~(a)~~ that the vessel has conducted fishing activities in a manner consistent with the IOTC Agreement and Conservation and Management Measures; or
 - ii. ~~(b)~~ that the vessel has conducted fishing activities within the waters under the jurisdiction of a coastal State in a manner consistent with the laws and regulations of that coastal State; or
 - iii. ~~(c)~~ that the vessel has fished exclusively for species that are not covered by the IOTC Agreement or IOTC Conservation and Management Measures; or
- e)d) the flag State of a vessel included in the Draft IUU Vessel List provides suitably documented information **and/or evidence** that demonstrates ~~to the satisfaction of the Compliance Committee~~ that effective action has been taken in response to the IUU fishing activities in question, including prosecution and imposition of sanctions of adequate severity to be effective in securing compliance and deterring further infringements. Every CPC shall report any actions and measures that it has taken in accordance with [Resolution 07/01](#), in order to promote compliance with IOTC Conservation and Management Measures by vessels that fly its flag.

~~13.15.~~ In cases where a flag State has not demonstrated the matters referred to in Paragraphs 14.c) or 14.d) or where a flag State has not provided any information under paragraph 10 or during the Compliance Committee meeting, the IOTC Compliance Committee shall include the vessel on the Provisional IUU List and recommend to the Commission that the vessel be included on the IUU Vessel List.

~~14.16.~~ Following the examination referred to in paragraph 13 at each IOTC Annual meeting, the IOTC Compliance Committee shall submit the Provisional IUU Vessel List to the Commission for its consideration. **If the Compliance Committee cannot agree as to whether a certain vessel shall be included in the Provisional IUU**

Vessel List, the List shall include the vessel and the Commission shall decide whether the vessel shall be included in the IUU Vessel List.

IOTC IUU Vessel List

~~15.~~17. The IOTC Compliance Committee shall each year examine the IUU Vessel List and the information circulated under paragraph 11 (~~22 and 23~~) and shall recommend to the Commission which, if any, vessels should be added to or removed from the IUU Vessel List.

18. The Commission shall each year at its Annual Meeting review the IUU Vessel List as well as the Provisional IUU Vessel List, and the recommendations adopted by the IOTC Compliance Committee to amend the IUU Vessel List, together with the documented information provided under paragraphs 6, 10, 12, and 30. ~~and~~ Based on its review, the Commission may decide to amend the IUU Vessel List by:

a) adding or removing vessels; and/or accordingly.

~~a)~~b) rectifying any incorrect details, or inserting new details, about a vessel already included on the IUU Vessel List in accordance with paragraph 30.a).

~~16.~~19. The Commission, acting in accordance with paragraph 18, may amend the IUU Vessel List by consensus. In the absence of consensus, the Commission shall decide upon any proposed amendment by a vote. Voting may be conducted by a secret ballot if a member requests it and this request is seconded. If two thirds or more of the Contracting Parties present and voting support the proposed amendment it shall be considered approved and brought into effect. The outcome of any decision made by the Commission pursuant to this paragraph shall not affect any domestic prosecution or settlement of any sanctions by the nominating or flag States pursuant to Paragraphs 4 and 14.d). For any vessel for which the intersessional vessel listing procedures were applied in the previous year, except where the nominating or flag State has submitted documented information to the Commission to confirm that legal proceedings have commenced but have not yet concluded, the Commission shall not apply the intersessional vessel listing procedures (paragraphs 21-23) a second time. The default will be to include the vessel on the IUU Vessel List.

Inter-sessional Vessel Listing Procedures

~~17.~~ If during the course of one of its sessions the Commission is not able to determine whether or not a vessel should be included in the IUU Vessels List, it shall suspend its deliberations and request additional information from the nominating CPC, other CPCs and the relevant flag State so that a decision can be reached on the listing of the vessel during the period between the sessions of the Commission through an electronic exchange of documents (hereafter the 'Inter-sessional Vessel Listing Procedure') as follows:

a) ~~Relevant CPCs and the flag State are invited to submit supplementary suitably documented information to the IOTC Executive Secretary within a 90-day period;~~

b) ~~Immediately following this 90-day period, the IOTC Executive Secretary will transmit the proposal to put the vessel on the IOTC IUU Vessel List to all CPCs, along with all the supplementary suitably documented information received under paragraph 21(a);~~

c) ~~The Contracting Parties shall within 30 days examine the proposal and supplementary suitably documented information and shall notify the IOTC Executive Secretary in writing, whether or not they agree to the proposal;~~

d) ~~At the end of the 30 days period, the Executive Secretary shall ascertain the outcome of the Contracting Parties decision on the proposal in accordance with the following:~~

i) ~~an Inter-sessional Vessel Listing Procedure shall be deemed valid only if at least 50% of the Contracting Parties with voting rights respond to the proposal;~~

~~ii) — a proposal shall be considered to be approved if two thirds or more of the Contracting Parties with voting rights that respond indicate that they support the inclusion of the vessel concerned in the IUU Vessel List, and it shall be listed;~~

~~iii) — if fewer than 50% of the Contracting Parties with voting rights respond or if less than two thirds of the Contracting Parties with voting rights that respond indicate that they support the inclusion of the vessel concerned in the IUU Vessel List, that vessel shall remain included in the Provisional IUU Vessel List until 55 days before the following meeting of the Compliance Committee at which time the Executive Secretary shall include the vessel on the Draft IUU Vessel List for consideration at the following meeting of the Compliance Committee. The flag State shall continue to closely monitor any vessel to be included in the Draft or Provisional IUU Vessel Lists as a result of this subparagraph, in order to determine its activities and possible changes of name, flag and or registered owner.~~

~~e) — The IOTC Executive Secretary shall communicate the result of every decision, along with a copy of the amended IUU Vessel List and a list of vessels to be included in the Draft or Provisional IUU Vessel Lists for the next Compliance Committee meeting as a result of paragraph 21(d)(iv), to all CPCs, the flag State of the vessels (if it is not a CPC), and any Non Contracting Party that may have an interest. The amended IUU Vessel List will have effect immediately after the IOTC Executive Secretary communicates the result of the decision. Contracting Party responses and votes will be anonymous and full details will only be circulated with the permission of the Contracting Party submitting the vote.~~

~~18. — The Commission shall not apply the intersessional vessel listing procedures to alleged IUU cases where the vessel or owner have been involved in IUU cases in the preceding five years. These vessels shall be considered at each Annual Meeting of the Compliance Committee and Commission.~~

Action against IUU Vessels

~~19-20.~~ Following the adoption of the IUU Vessel List, the IOTC Executive Secretary shall request the flag State of every vessel that is included in the list:

- a) to notify the Owner and Operator of the vessel of its inclusion on the list and the consequences which may result from its inclusion in the list;
- b) to take all the necessary measures to prevent the vessel from undertaking IUU fishing activities, including withdrawing its fishing licence or the de-registering of the vessel, and to inform the Commission of the measures taken in this respect.

~~20-21.~~ A CPC shall take all necessary measures, in accordance with its legislation:

- a) to ensure that no vessel flying its flag, including any fishing vessel, support vessel, refuelling (supply) vessel, mother-ship or cargo vessel, provides assistance to a vessel included in the IUU Vessel List in any way, or engages in fishing processing operations with such a vessel or participates in transshipment or joint fishing operations with such a vessel, except for the purpose of rendering assistance where such a vessel, or any person on that vessel, is in danger or distress;
- b) to refuse entry into its ports by any vessel included on the IUU Vessel List, except in case of force majeure or where the vessel, or any person on that vessel, is in danger or distress, unless vessels are allowed entry into port for the exclusive purpose of inspection and effective enforcement action;
- c) to consider giving priority to the inspection of vessels on the IUU Vessel List, if such vessels are otherwise found in their ports;
- d) to prohibit the chartering of a vessel included on the IUU Vessel List;
- e) to refuse to grant their flag to vessels included in the IUU Vessel List, except if the vessel has changed Owner and the new Owner has provided sufficient suitably documented information and/or 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 and documented all relevant facts, the flag

State determines that granting the vessel its flag will not result in IUU fishing;

- f) to prohibit the import, landing or transhipment, of tuna and tuna-like species from vessels included in the IUU Vessel List;
- g) to encourage importers, transporters and other sectors concerned, to refrain from engaging in transactions, including transhipments, relating to tuna and tuna-like species caught by vessels included in the IUU Vessel List;
- h) ~~To~~ collect and exchange with other Contracting Parties or Cooperating Non-Contracting Parties any appropriate information with the aim of detecting, controlling and preventing false import/export certificates for tunas and tuna-like species from vessels included in the IUU Vessel List.

Vessel Delisting Procedures

~~21.22.~~ The flag State of a vessel included in ~~the Provisional IUU Vessel List or~~ the IUU Vessel List may request the removal of the vessel from the list at any time, including during the inter-sessional period, by providing suitably documented information ~~and/or evidence~~ to the Executive Secretary to demonstrate that:

- a)
 - i) it has adopted measures such that vessel ~~O~~owners and all other nationals that engage in fishing and fishing related activities within the IOTC ~~A~~area of competence for species covered by the IOTC Agreement comply with all IOTC Conservation and Management Measures; and
 - ii) it is effectively assuming and will continue to effectively assume its flag State responsibilities with regard to the monitoring and control of the fishing activities of this vessel; and
 - iii) it has taken effective action against the ~~O~~owner, ~~O~~operator and ~~M~~master (where appropriate) in response to the IUU fishing activities that resulted in the vessel's inclusion in the IUU Vessel List including prosecution and imposition of sanctions of adequate severity; or
- b) The vessel has changed ownership and that the new ~~O~~owner can establish the previous ~~O~~owner no longer has any operational, legal, financial or real interests whether direct or indirect in the vessel or exercises control over it and that the new ~~O~~owner has not participated in any IUU fishing activities in the preceding 5 years; or
- c) The vessel has been sunk or scrapped; or
- d) ~~That judicial proceedings~~Any prosecution and sanctions –regarding the vessel that conducted IUU fishing activities has been concluded ~~to the satisfaction of~~by both the nominating CPC and the flag State of the vessel.

~~22.23.~~ If a request for the removal of a vessel from ~~the Provisional IUU Vessel List or~~ the IUU Vessel List is received within 55 days before the annual Compliance Committee meeting, the request shall be considered at that meeting. The Compliance Committee shall examine the request along with any suitably documented information ~~and/or evidence~~ provided under paragraph 22 and shall recommend to the Commission whether or not the vessel should be removed from ~~the Provisional IUU Vessel List or~~ the IUU Vessel List.

~~23.24.~~ If a request is received more than 55 days before the annual Compliance Committee meeting, the request will be considered in accordance with the intersessional procedure outlined in paragraphs 25-28.

~~24.25.~~ On the basis of the information received in accordance with paragraph 22, the IOTC Executive Secretary shall transmit the request for removal together with all the supporting information submitted and the checklist in **Annex IV** to all CPCs within 15 days following receipt of the request.

~~25.26.~~ The Contracting Parties shall examine the request to remove the vessel and shall notify the IOTC Secretariat of their conclusion to either remove the vessel from, or keep the vessel on, ~~the Provisional IUU Vessel List or~~ the IUU Vessel List, within 30 days following the notification by the IOTC Executive Secretary.

~~26.27.~~ At the end of the 30 day period, the IOTC Executive Secretary shall ascertain the outcome of the CPCs' decision on the proposal in accordance with the following:

- a) ~~a-A~~ Vessel Delisting Procedure shall be deemed valid only if at least 50% of the Contracting Parties with voting rights respond to the proposal;
- b) ~~a-A~~ proposal shall be considered to be have been approved if two thirds or more of the Contracting Parties with voting rights that respond indicate that they support the delisting of the vessel concerned from ~~the Provisional IUU Vessel List or~~ the IUU Vessel List, and it shall be delisted;
- c) If fewer than two-thirds of the Contracting Parties with voting rights are in favour of delisting the vessel from ~~the Provisional IUU Vessel List or~~ the IUU Vessels List it shall not be delisted and the request for delisting shall be considered by the next annual meeting of the Compliance Committee in accordance with the procedure outlined in paragraph 23.

~~27.28.~~ The IOTC Executive Secretary shall communicate the result of every decision, along with a copy of the amended IUU Vessel List, to all CPCs, the flag State of the vessel (if not a CPC), and any Non-Contracting Party that may have an interest. The amended IUU Vessel List will have effect immediately after the result of the decision has been communicated.

Publication of the IUU Vessel List

~~28.29.~~ The IOTC Executive Secretary will take any necessary measures to ensure publicity of the IUU Vessel List adopted by IOTC pursuant to paragraph 18, or as amended pursuant to paragraphs ~~021 or~~ 22 to 27 or paragraph 30 in a manner consistent with any applicable confidentiality requirements, and through electronic means, including placing it on the IOTC website. Furthermore, the IOTC Executive Secretary shall transmit the IUU Vessel List as soon as possible to the FAO and to other regional fisheries management organisations for the purposes of enhanced co-operation between IOTC and these organisations in order to prevent, deter and eliminate IUU fishing.

Change of details of vessels included on the IUU Vessels List~~the owner of record~~

~~30.~~ ~~For the purposes of paragraphs 9, 21e, and 22b the owner or owners of record of a vessel will not be considered to have changed unless the flag State concerned provides suitably documented information demonstrating to the satisfaction of the Commission that the ownership of the vessel has changed and that no direct or indirect operational, legal, financial or real interests are held by the previous owner or owners of record in the vessel and that the new owner or owners of record has not participated in or supported any IUU fishing activities and has no any operational, legal, financial or real interests whether direct or indirect with the previous owner or owners.~~ A CPC with new or changed information for vessels on the IUU Vessel List in relation to the details in paragraphs 1 to 9 of Annex II shall, as soon as practicable, transmit such information to the Executive Secretary. The Executive Secretary shall communicate such information to all CPCs and:-

- a) ~~where the information indicates incorrect details were included at the time the vessel was added to the IUU Vessel List, refer the matter to the Commission for consideration pursuant to Paragraph 18.b);~~
- a)b) ~~where the information indicates a change in details since the vessel was added to the IUU Vessel List, seek to verify the information by reference to other suitably documented information and/or evidence and, after verification, update the relevant details in the IUU Vessel List and re-publicise it in accordance with paragraph 29. If the Secretariat, after reasonable efforts, is unable to verify the information submitted by the CPC the IUU Vessel List will not be updated.~~

General Provisions

~~29.31.~~ Without prejudice to the rights of flag States and coastal States to take action consistent with international law, CPCs shall not take any unilateral trade measures or other sanctions against vessels included in the Draft and/or Provisional IUU Vessel Lists, pursuant to paragraph 8 and 16; ~~or which have been already removed from the Provisional IUU Vessel List, pursuant to paragraphs 22,~~ on the grounds that such vessels are involved in IUU fishing activities, or those vessels removed from the IUU vessels list by the Commission.

~~30.32.~~ A summary of the timeframe for actions to be taken in respect of this Resolution is provided in **Annex V**



~~31.~~33. Resolution 11/03 *On Establishing A List Of Vessels Presumed To Have Carried Out Illegal, Unreported And Unregulated Fishing In The IOTC Area* is superseded by this Resolution.

ANNEX I
IOTC Reporting form for Illegal Activity

Recalling IOTC Resolution 17/XX *On establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC Area*, attached are details of illegal activity recorded by [name of CPC, third party] in [area in which the activity took place]

A. Details of Vessel

(Please detail the incidents(s) in the format below)

Item	Definition	Indicate
a	Current Name of Vessel (Previous name/s, if any)	
b	Current Flag (previous flag/s, if any)	
c	Date first included on IOTC IUU Vessel List (if applicable)	
d	Lloyds IMO Number, if available	
e	Photo	
f	Call Sign (previous call sign, if any)	
g	Owner / Beneficial Owner/s (previous Owner/s, if any)	
h	Operator (previous Operator/s, if any) and Master/Fishing Master	
i	Date of alleged IUU fishing activities	
j	Position of alleged IUU fishing activities	
k	Summary of alleged IUU activities (see section B for more detail)	
l	Summary of any Actions known to have been Taken in respect of the alleged IUU fishing activities	
m	Outcome of Actions taken	

B. Details of IOTC Resolution Elements Contravened

(Indicate with a "X" the individual elements of IOTC Resolution 16/XX contravened, and provide relevant details including date, location, source of information. Extra information can be provided in an attachment if necessary.)

That a vessel has, within the IOTC Area and in relation to species covered by the IOTC Agreement or by IOTC Conservation and Management Measures:—

Item	Definition	Indicate
a.	has engaged in fishing or fishing related activities within the IOTC Area in respect of species covered by the IOTC Agreement or by IOTC Conservation and Management Measures and are is neither registered on the IOTC Record of Authorised Vessels in accordance with Resolution 15/04.; nor recorded in the Active list of vessels; or	
b.	has engaged in fishing or fishing related activities within the IOTC Area in respect of species covered by the IOTC Agreement or by IOTC Conservation and Management Measures , when their-its flag State is without sufficient quota, catch limit, or effort allocation under IOTC Conservation and Management Measures where applicable; or	

Item	Definition	Indicate
c.	has failed to record or report its catches in accordance with IOTC Conservation and Management Measures or has made false reports; or	
d.	has taken or landed undersized fish within the IOTC Area in contravention of IOTC Conservation and Management Measures; or	
e.	has engaged in fishing or fishing related activities within the IOTC Area during closed fishing periods or in closed areas in contravention of IOTC Conservation and Management Measures; or	
f.	has used prohibited fishing gear within the IOTC Area in contravention of IOTC Conservation and Management Measures; or	
g.	has transhipped fish to, or otherwise participated in joint operations with, support or re-supply vessels that are: (i) not included on the IOTC Record of Authorised Vessels; or (ii) included in a list of vessels engaged in IUU fishing by any regional fisheries management organisation or arrangement (RFMO); or	
h.	has engaged in fishing or fishing related activities for species covered by the IOTC Agreement or by IOTC Conservation and Management Measures in waters within the IOTC Area that are under the national jurisdiction of a coastal State without the permission or authorisation of that State or in contravention of the laws and regulations of that State (without prejudice to the sovereign rights of the State concerned to undertake enforcement measures against such a vessel); or	
i.	is without nationality and has engaged in fishing or fishing related activities within the IOTC Area whilst being without nationality ; or	
j	engaged in fishing or fishing related activities having intentionally falsified or concealed its markings, identity or registration ; or	
j-k	has engaged in fishing or fishing related activities within the IOTC Area in contravention with-of any other IOTC Conservation and Management Measures;	

C. Associated Documents

(List here the associated documents that are appended e.g. boarding reports, court proceedings, photographs)

D. Recommended Actions

Recommended Actions	Indicate
a	Notification to IOTC Secretariat only. No further action is recommended.
b	Notification of illegal activity to IOTC Secretariat. Recommend notification of activity to flag State.
c	Recommended for inclusion on IOTC IUU list



ANNEX II
Information to be included in all IOTC IUU vessels lists

The Draft IUU Vessel List, Provisional IUU Vessel List and the IUU Vessel List shall contain the following details:

1. Name of the vessel and previous name/s, if any;
2. Flag of the vessel and previous flag/s, if any;
3. Name and address of the Owner and Operator of the vessel and previous Owner and Operator, if any;
4. For legal entity the country of registration and registration number;
5. Operator of the vessel and previous Operator, if any;
6. Callsign of the vessel and previous callsign, if any;
7. IMO number, if any, or unique vessel identifier (UVID), or if not applicable, any other vessel identifier;
8. Recent photographs of the vessel, where available;
9. Vessel length overall;
10. Date the vessel was first included on the IOTC IUU Vessel List if applicable,
11. Summary of the alleged IUU fishing activities which justify inclusion of the vessel on the List, together with references to all relevant supporting documents and suitably documented information and/or evidence.
12. Summary of any actions known to have been taken in respect of the alleged IUU fishing activities and their outcomes.

Annex III
Checklist to be completed by the Secretariat for vessels to be included on the draft and Provisional IUU Lists

Vessel Name: _____

Action	Responsibility	Paragraph	Provided on time (Y/N)	Aide Memoire	Mark which applies	Comments
For the Draft IUU Vessel List						
IOTC Reporting form (Annex I) submitted at least 70 days before the Compliance Committee meeting with suitably documented information <u>and/or evidence</u>	Nominating CPC	5, 6, 7, 8		If No, do not include on the Provisional IUU list (Para 17)		
At least 15 days before the Compliance Committee Meeting, Flag State has provided suitably documented information <u>and/or evidence</u> that it has notified the <u>O</u> wners and <u>M</u> asters of a vessel of its inclusion on the Draft IUU Vessel List and the consequences thereof	Flag CPC	9				
At least 15 days before the Compliance Committee Meeting, Flag State has provided suitably documented information <u>and/or evidence</u> consistent with Paragraph 10	Flag CPC	10				
Additional suitably documented information <u>and/or evidence</u> has been submitted, relevant to IUU listing	Nominating CPC or flag CPC	12				
For Inclusion on the Provisional IUU Vessel List (note that Secretariat will indicate if suitably documented information <u>and/or evidence</u> has been provided, but will make no judgement as to its adequacy, which will be the responsibility of the Compliance Committee)						
Has the flag State of a vessel included in the Draft IUU Vessel List provided suitably documented information <u>and/or evidence</u> that demonstrates that the vessel has at all relevant times complied with the rules of the flag State and with its authorisation to fish and:	Flag CPC	14.c)		Aide Memoire to CoC: Only where para 14.c) or 14.d) are satisfied, do not include on Provisional IUU list.		
(a) that the vessel has conducted fishing activities in a manner consistent with the IOTC Agreement and Conservation and Management Measures	Flag CPC	14.c)				

Action	Responsibility	Paragraph	Provided on time (Y/N)	Aide Memoire	Mark which applies	Comments
(b) that the vessel has conducted fishing activities within the waters under the jurisdiction of a coastal State in a manner consistent with the laws and regulations of that coastal State; or	Flag CPC	14.c)				
(c) that the vessel has fished exclusively for species that are not covered by the IOTC Agreement or IOTC Conservation and Management Measures	Flag CPC	14.c)				
Has the flag State provided suitably documented information and/or evidence that demonstrates that effective action has been taken in response to IUU fishing activities (the CoC will decide if they are of adequate severity)	Flag CPC	14.d)				
Has the flag State provided suitably documented information and/or evidence to show that it has taken any actions in accordance with 07/01	Flag CPC	14.d)				

Annex IV

Checklist to be completed by the Secretariat for potential removal of vessels from the IOTC ~~Provisional IUU List and~~ IUU Vessel List

(Aide Memoire for the Commission for delisting a vessel: note that the Secretariat will indicate if suitably documented information and/or evidence has been provided, but will make no judgement as to its adequacy, which will be the responsibility of the Compliance Committee / Commission, Paragraphs 17 and 27)

Vessel Name: _____

Para 22, sub para	Action	Responsibility	Information Provided (Y/N)	Comments	Aide Memoire
a)	i) It has adopted measures such that the vessel, O owner and all other nationals comply with all IOTC Conservation and Management Measures; and	Flag CPC			If paragraph a) or b) or c) or d) is satisfied, the vessel may be removed from the Provisional IUU list Pursuant to Paragraph 21, or the IUU Vessels List pursuant to paragraph 27, else the vessel will remain on the list for re-examination by the Compliance Committee and Commission at its next Annual Session.
	ii) it is effectively assuming and will continue to effectively assume its flag State responsibilities with regard to the monitoring and control of the fishing activities of this vessel; and	Flag CPC			
	iii) it has taken effective action against the O owner and crew in response to the IUU fishing activities that resulted in the vessel's inclusion in the IUU Vessel List including prosecution and imposition of sanctions of adequate severity; or	Flag CPC			
b)	The vessel has changed ownership and that the new O owner can establish the previous O owner no longer has any operational, legal, financial or real interests whether direct or indirect in the vessel or exercises control over it and that the new O owner has not participated in any IUU fishing activities in the preceding 5 years; or	Flag CPC			
c)	The vessel has been sunk or scrapped. ; or	Flag CPC			
d)	That judicial proceedings Any prosecution and sanctions regarding the vessel that conducted IUU fishing activities has been concluded to the satisfaction of by both the nominating CPC and the flag State of the vessel.	Flag CPC			

Annex V
A summary of the timeframe for actions to be taken in respect of this Resolution

Step	Timeframe	Actions to be taken	Responsibility	Paragraph
1	70 days before CoC meeting (minimum)	Information including all suitably documented information <u>and/or evidence</u> transmitted to the Executive Secretary	CPCs	5, 6
2	55 days before CoC Meeting	Compilation of all information received on the alleged IUU fishing activities into the Draft IUU Vessel List together with the IUU Vessel List. Transmit the Draft IUU Vessel List to all CPCs and to flag States with vessels on the list (if not CPCs).	Executive Secretary	8
3	15 days before CoC meeting	Provide any suitably documented information <u>and/or evidence</u> to the Executive Secretary regarding the alleged IUU fishing activities.	Flag States	10
4	10 days before CoC meeting	Transmit the Draft IUU Vessel List, and any additional information on vessels on the IUU Vessel List pursuant to paragraph 22 to all CPCs and to flag States with vessels on the list (if not CPCs).	Executive Secretary	11
5	Any time	Submit to the IOTC Executive Secretary any additional suitably documented information <u>and/or evidence</u> relevant to the establishment of the IUU Vessels List	CPCs and flag States	12
6	As soon as practicable prior to CoC	Circulate additional information pursuant to paragraph 12.	Executive Secretary	12
7	CoC Meeting	Review the Draft IUU Vessel List including the information provided by the nominating CPC and the flag State, including information/clarification provided by either party during the meeting. Submit a Provisional IUU Vessel List and provide recommendations to the Commission.	All CPCs, except the flag State and nominating CPC	13-14
8	CoC Meeting	Examine the IUU vessel List and provide recommendations to the Commission regarding the removal of any vessels	All CPCs, except the flag State and nominating CPC	17
9	Commission meeting	Review the Provisional IUU Vessel List, including any new information/clarification provided by the nominating CPC and flag State during the session; Review the IUU Vessel List. Adopt the Final IUU Vessel List: <u>—Retain any vessels on the Provisional IUU List for consideration inter-sessionally where insufficient information is available to reach a decision.—</u>	All CPCs, except the flag State and nominating CPC	17, 18 24
10	Immediately following the annual session	Publish the IUU Vessel List on the IOTC website and transmit the IUU Vessel List to the FAO, other RFMOs, CPCs and the flag State (if not a CPC).	Executive Secretary	29
11	90 days after Commission Meeting	<u>For vessels retained on the Provisional IUU list, submit supplementary information</u>	CPCs and flag States	24a
12	Immediately after 90 days from Commission Meeting	<u>Transmit a proposal to place vessels on IUU list, with supplementary information.</u>	Executive Secretary	24b

Step	Timeframe	Actions to be taken	Responsibility	Paragr
13	30 days after receipt of supplementary information	CPCs notify Executive Secretary of decision on IUU listing or removal from Provisional IUU list	All CPCs, except the flag State and nominating CPC	21e
14	After receipt of CPCs decision on Provisional IUU listing	Communicate the result of the decision on the Provisional IUU list and update the IOTC IUU Vessels List and Provisional IUU List.	Executive Secretary	21e
15	After receipt of CPCs decision on Provisional IUU listing	If a decision is not made on the status of the vessels on the Provisional IUU List they will remain on the Provisional IUU List until 55 days before the next Compliance Committee Meeting at which point they will be placed on the draft IUU Vessel List. The nominating and flag States have the option to provide additional information (Steps 3 and 5) for review by the next Compliance Committee and Commission (Steps 7-9)	CPCs and flag States	21d.(i)