

Outcomes of the Working Groups Deliberations on Resolution 11/01 regarding consolidation of IOTC Resolutions and Recommendations

SUBMITTED BY THE COMPENDIUM WORKING GROUP: 3 APRIL 2013

Background

In 2011 the Commission adopted Resolution 11/01 *Regarding Consolidation of IOTC Resolutions and Recommendations*. This Resolution recognises the desirability of improving the coherence and accessibility of the IOTCs Resolutions and Recommendations (collectively termed Conservation and Management Measures, CMMs). The Resolution noted that work was likely to be complex and that it may have many implications, such as those of a legal, procedural or practical nature. The Resolution also created a Working Group (WG) that would guide the development of a Compendium of IOTC CMMs.

Following the 15th Session of the Commission the IOTC Secretariat called for interested members to nominate to participate in the WG. With funding from the European Union's Smartfish Programme, the WG, through the IOTC Secretariat, approached the Indian Ocean Commission (IOC) as the relevant implementing agency of the European Union SmartFish Programme to assist to undertake this work. Following some lengthy delays, two consultants were awarded the contract to complete this work in accordance with agreed terms of reference in February/March 2012.

In March 2012 the IOTC Secretariat prepared a document to inform the Commission and the Working Group of current CMMs which although they have not been revoked or superseded, may no longer be in use or applicable to the management of tuna and tuna-like species in the Indian Ocean.

Between April and May 2012, the consultants, via the IOC, provided the IOTC Secretariat and WG with a number of documents. The document concerning the structure of the Compendium was disseminated to the WG at the 16th Session of the Commission in April 2012. In a meeting held by the WG in the margins of the 16th Session of the Commission, the WG agreed that the documents produced by the Consultants provided useful background for the WG and on which recommendations relevant to the IOTC could be further developed and refined.

The WG has continued to progress this work throughout 2012 using electronic means. The WG has developed seven recommendations for the Commission's consideration as outlined below.

Summary of the Discussions

1. *Redundancies and inconsistencies in active IOTC Resolutions and Recommendations*

At the 16th Session of the Commission the IOTC Secretariat presented paper IOTC-2012-S16-07 which highlighted 17 CMMs (9 Resolutions and 8 Recommendations), which although they have not been revoked or superseded, may no longer be in use or applicable to the management of tuna and tuna-like species in the Indian Ocean. The suggested action was to revoke the 17 CMMs as they were either redundant, the work was complete or that they had been superseded with another CMMs without having superseded the original CMM.

Not all members of the WG provided feedback on this matter, but of those members that did, there was consensus that the following Resolutions and Recommendations were no longer valid and should be revoked:

Resolutions 98/03, 99/01, 99/03, 00/01, 00/02, 01/04, 01/07, 02/08, 03/01, 03/07, and

Recommendations 01/01, 02/06, 02/07, 03/04, 03/05, 03/06, 05/06.

It was also recognised that there were six CMMs that had been partially fulfilled or were partially redundant and that these CMMs should be integrated into more recent CMMs. The WG considered that the following CMMs should be integrated into existing CMM and then superseded or revoked:

Resolutions 01/02, 01/03, 03/03, 05/03, 07/01, and

Recommendation 05/07.

The WG also identified seven Resolutions and Recommendations of a procedural or administrative nature, including that Resolution 98/05 has been superseded by Resolution 03/02. The WG considered that these Resolutions may be

best placed within the IOTC's Rules of Procedure prior to revoking them as Resolutions; this would include amending 98/05 with 03/02 prior to incorporating it into the Rules of Procedure:

Resolutions 98/05, 02/09, 03/02, 10/05 and 10/09.

2. *Possible IOTC compendium structures*

a. Paper-based compendium for Resolutions and Recommendations

The WG noted that the idea for a compendium was that it was able to be printed if desired. Given this there were considered to be limited options for the structure of a paper-based compendium.

The WG noted that many CMMs adopted from earlier years have been subsequently revoked or amended and that therefore one option would be to structure the compendium in reverse chronological order.

Another option was to organise by theme (species, bycatch, gear, trade and market measures, reporting requirements, MCS and other) with each theme becoming a chapter heading for the CMMs that would be filed beneath it. This would then allow new CMMs to be added or removed as required while keeping similar CMMs together.

b. Online database for Resolutions and Recommendations

The WG noted other work being undertaken by the IOTC Secretariat, particularly related to the website update and the development of online database systems including one for the Commission's CMMs. The Secretariat undertook a project "Development of an online database for the IOTC Conservation and Management Measures" through the EU funded programme "Asia, Caribbean, Pacific (ACP) Fish II".

The WG was asked to provide feedback at the commencement of the development of an online IOTC database. The advice from the WG suggested that an online database should be organised by theme, be searchable and include Resolutions in multiple locations to ensure cross-referencing where Resolutions cover a number of issues or have multiple functions. The WG endorsed the suggested themes developed by the consultants who completed the compendium work. These themes for grouping the CMMs were: species, bycatch, gear, trade and market measures, reporting requirements, MCS and 'other'.

3. *Other issues*

The WG noted a number of other issues that the Commission should continue in relation to the review of the CMMs.

a. Rules of Procedure

As noted above the WG identified a number of CMMs of an administrative nature. The WG considered that it would be best if these administrative CMMs be incorporated in to the IOTC Rules of Procedure. Furthermore, it was noted that the Rules of Procedure were developed and adopted many years ago and that they may or may not adequately reflect the nature of the contemporary IOTC.

The WG also noted rule XVI of the Rules of Procedure which outlines the methods for amending the rules. Rule XVI states that *amendments or additions to the Rules may be adopted on the motion of any delegation by a two-thirds majority of the members of the Commission at any plenary meeting of the Commission provided that copies of the proposal s for amendment or addition have been distributed or circulated to the delegations at least 60 days before the session of the Commission.*

The WG agreed that the relevant administrative measures be incorporated into the Rules of Procedure and that the Members consider a review of the Rules of Procedure to ensure their continued relevance to the contemporary IOTC and, where necessary, take account of international best practices. The WG, with the support of the Secretariat, undertook to consider initial draft amendments to the Rules of Procedure. This draft can be made available to the Commission for further consideration of the matter.

b. Legal advice

The WG noted that the Consultants employed by IOC to undertake a review of the CMMs failed to provide conclusive advice on any legal inconsistencies or redundancies within the IOTC CMMs, with the IOTC Agreement and with relevant international law.

The WG noted that this work should be conducted as a matter of urgency and ideally be undertaken by a professional with experience in multilateral treaties and international fisheries law.

Recommendations to the Commission:

1. That the Commission **NOTE** the paper prepared by the WG.
2. That the Commission **ENDORSE** the proposal to supersede the following: Resolutions 98/03, 99/01, 99/03, 00/01, 00/02, 01/04, 01/07, 02/08, 03/01, 03/07, and Recommendations 01/01, 02/06, 02/07, 03/04, 03/05, 03/06 and 05/06.
3. That the Commission **NOTE** that the following Resolutions: 01/02, 01/03, 03/03, 05/03, 07/01, and Recommendation 05/07, should be integrated into existing Resolutions before then being superseded/ revoked and that the Commission **TASK** the Secretariat to undertake to amend the CMMs with existing relevant Resolutions for the consideration of the Commission at the 18th Session of the Commission in 2014.
4. That the Commission **CONSIDER** a proposal to revise the IOTC Rules of Procedure, to include at a minimum, the following administrative Resolutions 98/05, 02/09, 03/02, 10/05 and 10/09.
5. That the Commission **CONSIDER** tasking a working group of interested CPCs to further revise the IOTC Rules of Procedure, by ensuring that the rules accurately reflect the contemporary nature of the Commission's activities, and for the working group to provide a report of its recommendations no later than 90 days before the next Commission meeting, so that, as per rule XVI of the Rules of Procedure, that *amendments or additions to the Rules may be adopted on the motion of any delegation by a two-thirds majority of the members of the Commission at any plenary meeting of the Commission provided that copies of the proposals for amendment or addition have been distributed or circulated to the delegations at least 60 days before the session of the Commission.*
6. That the Commission **CONSIDER** and **ADOPT** a revised structure of a paper-based compendium, noting the two structures identified by the WG:
 - i. reverse chronological order of active CMMs
 - ii. organised by theme of active CMMs
7. That the Commission **REQUEST** that the IOTC Secretariat facilitate a legal review of the CMMs specifically to identify any inconsistencies between the remaining CMMs and the Agreement, the revised Rules of Procedure and relevant international laws in advance of the 18th Annual Session of the IOTC. In order to undertake this task, the Commission will need to allocate budgetary funds in the IOTC budget for 2013 and 2014.