



25 March 2015/25 mars 2015

IOTC CIRCULAR 2015-031 / CTOI CIRCULAIRE 2015-031

Dear Sir/Madam,

SUBJECT: LEGAL ASSISTANCE TO IOTC CPCs – REPORT OF PHASE 1 AND “IOTC LEGISLATIVE FRAMEWORK”

At its 17th Session in 2013, the Commission agreed to further support capacity building activities among its Members by implementing adequate capacity building and support programmes, financially supported by Members through the Commission's budget, as well as through voluntary contributions by CPCs and other interested parties. As a result, the Secretariat has obtained funds from the Global Partnership for Oceans of the World Bank, managed by the Indian Ocean Commission (IOC), to provide assistance to beneficiary CPCs of the project to translate the relevant obligations in IOTC Resolutions into binding national legal instruments in order to enhance implementation and compliance. To undertake this work three international legal experts have been hired: Ms. Judith Swan, Ms. Teresa Amador and Mr. Philippe Ccaud (Company NFDS).

As you are aware, Article X of the IOTC Agreement focuses on the implementation of the decisions of the Members. With regards to implementation, paragraph 1) requests that “*Each Member of the Commission shall ensure that such action is taken, under its national legislation, including the imposition of adequate penalties for violations, as may be necessary to make effective the provisions of this Agreement and to implement conservation and management measures which become binding on it under paragraph 1 of Article IX.* In practice, the Members have the obligation to transpose the Conservation and Management Measures adopted by the Commission.

The project “**Review fisheries law and regulations to ensure that the legal framework is adequate to allow the Members to implement the Resolutions adopted by the Indian Ocean Tuna Commission**” is implemented over two years in 2015/2016.

Phase 1 of the project has been completed: During this first phase, a comprehensive review of the relevant active resolutions that have been adopted by the IOTC over the years has been undertaken in order to identify those that require domestication in national fisheries law and regulations. On the basis of this comprehensive review of IOTC Resolutions, an IOTC “Legislative Framework” has been prepared, and presents the specific obligations in IOTC Resolutions in legal drafting language for incorporation into national legislative frameworks.

You will find attached the final report of the phase 1 “*Review of active IOTC Resolutions and draft provisions for incorporation of IOTC Resolutions into national legislative frameworks*”.

The report also includes the IOTC legislative framework currently available only in English and is in the process of being translated into French and Portuguese. Once translated the IOTC legislative framework will be made available to the respective countries.

Please note that the Report and the IOTC legislative framework further include a comprehensive proposed legislative framework for the Resolution 10/11 on Port State Measures which has been developed with the financial and technical support of the FAO ABNJ project.

Phase 2 of the project is currently underway: During this 2nd phase, a detailed review of the fisheries and related national legislation of the beneficiary countries will be undertaken in order to identify legislative gaps and how these gaps can be filled using the IOTC “Legislative Framework”. On the basis of this detailed review, a report of the

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specific legislative amendments or draft legislation that would be required in order to give full effect to the IOTC “legislative Framework” is going to be produced.

Phase 3 is the implementation once Phase 2 has been completed.: During this 3rd phase, a country visit is planned during which she/he will provide tailored legal assistance as needed to beneficiary CPCs in order to ensure that the report prepared under Phase 2 is in accordance with the national legislative drafting practice and he will provide overall guidance on the process of transposing the IOTC “legislative framework” into the national legislation.

If there are any IOTC CPCs (non World Bank-GPO funding beneficiaries) interested to benefit for the Phase 2 and 3 of the project, the Secretariat would like to invite those CPCs to make a formal request to the IOTC Secretariat. Once the request has been received the Secretariat will seek external funding in order to implement Phase 2 and 3 for those CPCs.

If there is a need for clarification, please do not hesitate to contact the IOTC Secretariat.

Madame, monsieur

OBJET: ASSISTANCE JURIDIQUE AUX CPC DE LA CTOI - RAPPORT DE LA PHASE 1 ET “CADRE REGLEMENTAIRE DE LA CTOI ”

Lors de sa 17^e session en 2013, la Commission a convenu d’intensifier les activités de renforcement des capacités parmi ses Membres en mettant en œuvre des programmes d’appui et de renforcement des capacités, en bénéficiant de l’aide financière de ces derniers par le biais du budget de la Commission, et de contributions volontaires des CPC et d’autres parties intéressées. Par conséquent, le Secrétariat a obtenu un financement du Partenariat mondial pour les océans de la Banque mondiale, géré par la Commission de l’océan Indien (COI), dans le but de fournir une assistance aux CPC bénéficiaires du projet pour traduire les obligations des résolutions de la CTOI dans leur législation nationale en vue d’améliorer la mise en œuvre et l’application. Pour entreprendre ce travail trois experts juridiques internationaux ont été recrutés: Mme Judith Swan, Mme Teresa Amador et Mr. Philippe Cacaud (Société NFDS).

Comme vous le savez, l’article X de l’Accord de la CTOI se concentre sur la mise en œuvre des décisions des Membres. À ce sujet, le 1^{er} paragraphe exige que *«Chaque Membre de la Commission veille à ce que soient prises dans le cadre de sa législation nationale les mesures, y compris l'imposition de sanctions appropriées en cas d'infractions, qui peuvent être nécessaires pour donner effet aux dispositions du présent accord et mettre en œuvre les mesures de conservation et d'aménagement devenues contraignantes en vertu du paragraphe 1^{er} de l'article IX»*. Dans la pratique, les Membres ont pour obligation de transposer les mesures de conservation et de gestion adoptées par la Commission.

La mise en œuvre du projet **«Révision des lois et des réglementations de la pêche pour s’assurer que le cadre juridique soit adéquat pour permettre aux Membres de mettre en œuvre les résolutions adoptées par la Commission des Thons de l’océan Indien»** s’étend sur deux ans, soit en 2015 et 2016.

La 1^{re} phase du projet a été achevée: Pendant cette première phase, un examen complet des résolutions actives pertinentes qui ont été adoptées par la CTOI au fil des années a été entrepris dans le but d’identifier celles qui doivent être intégrées dans la loi et les réglementations nationales en matière de pêche. Sur la base de cet examen exhaustif, un « cadre règlementaire de la CTOI » a été préparé, lequel présentera les obligations spécifiques des résolutions de la CTOI dans une formulation juridique qui permettra de les incorporer dans les cadres législatifs nationaux.

Vous trouverez ci-joint le rapport final de la phase 1 " *Examen des résolutions actives de la CTOI et projets de dispositions pour l'incorporation des résolutions de la CTOI dans les cadres législatifs nationaux* ".

Le rapport comprend le «cadre règlementaire de la CTOI», disponible pour le moment en anglais et qui est maintenant en cours de traduction en français et portugais. Une fois traduit le «cadre règlementaire de la CTOI» sera fourni aux pays respectifs.

Veillez noter que le rapport et le «cadre règlementaire de la CTOI» comprennent un «cadre règlementaire» proposé pour la résolution 10/11 sur les mesures du ressort de l’État du port qui a été développé avec le soutien financier et technique du projet ABNJ FAO.

La 2^e phase du projet est actuellement en cours de mise en œuvre: Au cours de cette 2^e phase, un examen détaillé de la loi sur la pêche et de la législation nationale correspondante des CPC bénéficiaires sera entrepris afin d’identifier les lacunes juridiques et de déterminer comment les combler en employant le «cadre règlementaire de la CTOI». Sur la base de cet examen détaillé en découlera un rapport sur les amendements législatifs spécifiques, ou un projet de loi qui serait nécessaire afin de donner plein effet au « cadre règlementaire de la CTOI ».

CPC bénéficiaires pour veiller à ce que le rapport préparé au titre de la phase 2 soit conforme à la pratique rédactionnelle législative nationale, et fournira une orientation générale sur le processus de transposition du «cadre réglementaire de la CTOI » dans la législation nationale.

S'il y a des CPC de la CTOI (non bénéficiaires du financement du GPO de la Banque mondiale) intéressées à bénéficier des phases 2 et 3 du projet, le Secrétariat souhaite inviter ces CPC à formuler une demande officielle au Secrétariat de la CTOI. Lorsque la demande sera reçue, le Secrétariat sera en mesure de rechercher des fonds externes pour mettre en œuvre la phase 2 et 3 pour ces CPC.

Si vous avez besoin de précisions supplémentaires, n'hésitez pas à contacter le Secrétariat de la CTOI.

Yours sincerely/Cordialement.



Rondolph Payet
Executive Secretary

Attachments:

- Final report of the phase 1 "Review of active IOTC Resolutions and draft provisions for incorporation of IOTC Resolutions into national legislative frameworks" (English Only)
- IOTC legislative framework (being translated in French and Portuguese. (English only)

Beneficiary countries of the GPO: Comoros, Kenya, Madagascar, Mauritius, Maldives, Mozambique, Tanzania, Seychelles, Somalia and South Africa.

Pays bénéficiaires du GPO : Union des Comores, Kenya, Madagascar, Maurice, Maldives, Mozambique, Tanzanie, Seychelles, Somalie et Afrique du Sud.



Indian Ocean Tuna Commission
Commission des Thons de l'Océan Indien



Review of fisheries law and regulations to ensure that the legal framework is adequate to allow the Members to implement the Resolutions adopted by the Indian Ocean Tuna Commission

LEGISLATIVE FRAMEWORK

Review of active IOTC Resolutions and draft provisions for incorporation of IOTC Resolutions into national legislative frameworks

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The report has been prepared by Judith Swan, Philippe Cacaud and Teresa Amador (NFDS) under the supervision of the IOTC Secretariat with the financial support from the Development Grant Facility (DGF) to the Global Partnership for Oceans (GPO) of the World Bank. The grant is managed by the Indian Ocean Commission.

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EXECUTIVE SUMMARY

Implementing IOTC Resolutions through national Legislative Frameworks – including laws, regulations, orders, notices and other subsidiary instruments having the force of law – requires that an approach be identified concerning a number of aspects. They are described in Part I.

Most Resolutions do not define the key terms used, which could lead to inconsistent understanding, implementation and enforcement. A glossary is proposed to facilitate harmonized implementation of the Resolutions into a national Legislative Framework.

In Part II, the text of the IOTC Resolutions requiring implementation at national level is shown in tables. It is divided into three sections: (1) Fisheries Conservation and Management Measures (CMMs); (2) Monitoring, Control and Surveillance CMMs; and (3) Statistical CMMs.

The provisions which require legislative implementation are shown in the left column, while those which should be implemented through administrative or operational procedures or research are in the right column. Administrative or operational procedures are not addressed in this document.

Each table is accompanied by (a) explanatory notes and (b) a proposed Legislative Framework, which incorporate the approach described below.

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PART I - INTRODUCTION

This report is the output of Phase 1 of the project to review fisheries law and regulations to ensure that the legal framework is adequate to allow Members of the Indian Ocean Tuna Commission (IOTC) to implement the Resolutions adopted by IOTC.

It includes a comprehensive review of the relevant active resolutions adopted by the IOTC over the years in order to distill those that require domestication in national fisheries law and regulations of the beneficiary countries, and presents a “Legislative Framework” to present the specific obligations in IOTC Resolutions in legal drafting language for incorporation into national legislative frameworks.

The review is based on the Compendium of Active Conservation and Management Measures for the Indian Ocean Tuna Commission published on the IOTC website¹. While the Compendium contains all active Resolutions and Recommendations, this assignment focuses exclusively on all the Resolutions. They are binding on Members², thus creating legal obligations.

Each Resolution has been examined to identify provisions with legal implications that require Members to implement them in national legislation. In the process, three types of provisions were identified:

- (a) provisions with legal implications that should be included in the national legislative framework;
- (b) provisions with operational implications (i.e., procedural, reporting, administrative or research actions) that would be better placed in more flexible mechanisms such as standard operating procedures; and
- (c) provisions that require the IOTC Secretariat to take action.

For each Resolution, the provisions with legal implications are shown in the left column and those with operational implications and responsibilities to/of the IOTC Secretariat are shown in the right column.

The consultants will address both legal and operational issues during their visits to the selected Members with the aim of implementing requirements in the legislative framework and making recommendations on operational issues as appropriate.

Rather than referring to the term “Regulation Framework”, as provided in the project terms of reference, it was felt more appropriate to use the term “Legislative Framework” as it is more encompassing and refers to all instruments having the force of law in each country, including laws, regulations, orders, notices and other subsidiary instruments. It allows flexibility so the provisions can be implemented in the best possible instrument for a given country.

In considering the body of active Resolutions, it became evident that certain approaches should be taken in drafting legal provisions in order to ensure they are as robust as possible. They address such areas as use of terms throughout the Resolution, and the benefits of taking a broader, more

¹ For the purpose of this assignment, it was made use of the Compendium published on 8 October 2014.

² Note that any Member State may object to a resolution. None of the Member States covered by this study has objected to any of the active Resolution.

global approach (applicable to fisheries activities under and beyond IOTC Resolutions) in implementing requirements. The approaches are described below.

A major weakness in the Resolutions is use of terms inconsistently, lack of definition of key terms and use of terms that are not “terms of legal art”. This is described below and could lead to inconsistent understanding, implementation and enforcement.

A glossary is proposed to facilitate harmonized implementation of the Resolutions into a national Legislative Framework and ensure correct usage of terms. It may also be used as a basis for a glossary agreed by IOTC Members.

In Part II, the text of the IOTC Resolutions requiring implementation at national level is shown in tables. It is divided into three sections: (1) Fisheries CMMs; (2) MCS CMMs; and (3) Statistical CMMs.

Each table is accompanied by (a) explanatory notes and (b) a proposed Legislative Framework, which incorporate the approach described below.

1. APPROACH

1.1 Interpretation of Resolution

There are apparent legal drafting errors in some Resolutions (e.g. Resolution 13/04). These are explained and corrected in the proposed Legislative Framework, taking into account the broader intent and context of the Resolution.

1.2 Application of Resolution

The Resolutions are applicable variously and inconsistently to:

- the IOTC Area of Competence;
- vessels on the Record of Fishing Vessels;
- flag vessels of CPCs;
- fishermen;
- purse seine vessels;³
- operators;
- masters;
- high seas;
- EEZs;
- other.

In many cases, it could be counterproductive to confine implementation to, e.g, requirements for the flag vessel as stated in the Resolution when the purpose of the Resolution would be better served by extending the same requirements to the national Fisheries Waters. Considering the intent and context of each Resolution:

- should the national legislation be applicable to flag vessels only on the high seas areas when countries should authorize their vessels to fish in the waters “beyond areas of national jurisdiction”, including in waters of other countries?

³ This should be described as fishing vessels equipped with purse seine gear. Similar considerations are applied for other gear types used – e.g. vessels equipped with longline gear rather than longline vessels.

- should the national legislation implement similar measures for activities in their fisheries waters, especially where the provisions of the Resolution would support sustainable fisheries globally?
- where certain actions must be taken, e.g. in respect of reporting or landing specific species, should they be mandatory for any vessel in the Fisheries Waters of a CPC as well as their flag vessels?

It is therefore recommended that countries consider including universally-applicable provisions in their legislation as appropriate. To assist in the decision, the option to restrict the provisions to the IOTC criteria are included in the proposed Legislative Framework in [square brackets] and as appropriate the implementing Legislative Framework takes a globally-oriented approach.

1.3 Specific reference to requirements of IOTC or RFMOs generally

Where the IOTC Resolution addresses broadly-based topics that could also apply in the case of other RFMOs – such as implementation of CMMs generally – the Legislative Framework refers more broadly to sub-regional or regional organizations or arrangements to which the [country] is party or cooperating non-party and does not focus on IOTC specifically. This avoids the implication that applicable CMMs of other RFMOs are excluded (e.g. Resolution 14/02).

1.4 Incorporation of Technical Schedules by Reference

Where complex technical Schedules are referenced in a Resolution, they are generally incorporated by reference in the Legislative Framework, rather than reproduced in legislation. This will allow for their use as a minimum standard, and also for flexibility where they are superseded. For example, Resolution 13/04 refers to Fish Aggregating Device designs that reduce the incidence of entanglement, according to Annex III of Resolution 13/08 (or any subsequent revision).

It may be useful for IOTC to consider developing and maintaining a compendium of technical schedules.

1.5 Resolution in context of national law

Many Resolutions require a Legislative Framework broader than the specific provisions in the Resolution in order for the latter to be properly implemented.

For example, where the requirement is to implement an action plan, and implementation of the plan refers to an allocation system (Resolution 14/02), the Legislative Framework should also include a framework for a management/allocation system in the event it is not already in legislation.

The broader approach is taken in this document to ensure that there is adequate legislative context for the Resolutions' requirements.

1.6 Fines, penalties

The Legislative Framework does not specify any fines or penalties to be attached to each requirement, as it is a matter for national law. Some requirements in Resolutions may already fall within the scope of a broader national law, including fines/penalties. However, the levels of fines/penalties for the same or similar offences should be harmonized among CPCs to the extent possible. If the project allows adequate time, this could be added after preliminary review of the framework.

1.7 Use of terms

Some language is in [square brackets]. This denotes either:

- the need for each country to complete the specific word, for example [country] would be the name of that country, [relevant national laws] would require specific reference to relevant national laws, [legislation] means reference to the instrument being drafted e.g. law, regulation, and [senior operational fisheries official] means the official who, under national law, should have the responsibility for carrying out the law; or
- as noted above, an option for consideration by the country whether to specifically include reference to IOTC requirements or to take a more generic approach and make the provision applicable globally.

For each Resolution, this report proposes a section with a title. References are made to “section” (e.g. “for purposes of this section”) and “subsections”, (the numbered paragraphs in the section). However, the elements of the section could be drafted in national laws under separate sections or in a separate “part”. Cross-references would need to be aligned.

There are a number of concerns with the use of terms in the Resolutions, including lack of definition, inconsistent use throughout various Resolutions and inconsistency with some CPCs’ legislation.

As an example, the Resolutions establishing the IOTC Record of Fishing Vessels⁴ use the term “Record of Fishing Vessels”. This term is not used consistently throughout the other Resolutions, which also refer variously to the:

- “Record of Authorized Vessels”
- “Record of Licensed Vessels” and
- “IOTC Record”.

A Record of Carrier Vessels authorised to receive transshipments is established separately.⁵

To complicate matters, the IOTC website refers to a “Record of Authorized Vessels” (and a Record of Active Vessels).⁶ “Record of authorized vessels” is translated into French as “registre des navires autorisés”. The French equivalent of “record” is “fichier” not “registre” (which is register in English).

For consistency with the establishing Resolutions, the terms “authorised fishing vessel” or AFV and “Record of Fishing Vessels” are used throughout in the Legislative Framework, even though this may differ from inconsistent references in the Resolutions. Those terms are defined in the Glossary.

Another concern in Resolution 06/03 is the apparent interchangeable use of the words “satellite tracking device”, “vessel monitoring device” and “satellite monitoring device”. None of them is defined. This could cause some confusion, and mindful that the Resolution was adopted some years ago and that the current best practices technical term is “Mobile Transceiver Unit”. It is recommended that the latter be used and defined as shown in the Glossary. The option to use this term is shown in square brackets in the Legislative Framework.

It will be especially important to ensure that the following terms are defined in national laws as suggested in the Glossary and are used as indicated in the Legislative Framework:

⁴ Resolutions 14/04 and 13/02).

⁵ Resolution 12/05.

⁶ <http://www.iotc.org/vessels>

[Country]⁷ fishing vessel: Each country should have clear legislation defining its flag vessels including reference to relevant legislation.

Fisheries Waters: This term would replace varying references to EEZ in the Resolutions (not all countries declare EEZs as such, some are fisheries zones etc.) and more generically describes areas under national jurisdiction (see below for proposed full definition).

Fishing outside an “EEZ”: A legal problem arises where CMMs are applied to flag vessels “fishing outside their country’s EEZs”. If a CPC actually has declared an EEZ rather than another type of zone, this would include fishing on the high seas, in other countries’ waters and *in other zones of the flag country – e.g. the territorial sea*. Where a Resolution refers to an EEZ, in most cases the measure should instead apply in “all areas under national jurisdiction” or “beyond national jurisdiction” as may be the case, unless a country specifically objects.⁸

Master, Operator: The Resolutions usually apply to “flag vessels” or “masters” and sometimes “operators”, and there is often inconsistency in the use of these terms. It is recommended that national laws impose requirements on “operators” (which include masters, as defined in the Glossary in accordance with best practices) in order to ensure that owners, charterers and others are also responsible/liable. A separate section of the legislation may provide for joint and several liability for more than one of the operators of a vessel (e.g. the owner and master could both be responsible). This would cater for situations where the master may not be able to satisfy the amount of any fine, but the owner could do so.

2. GLOSSARY

It will be essential for national legislation to contain identical or at least harmonized definitions of a wide range of key terms in order to achieve common understanding and harmonized implementation and enforcement. A glossary is provided for use as a reference that provides a Best Practices basis for reviewing and as appropriate amending the use of terms in national laws.⁹

Some of the terms/interpretation are only applicable in the context of national laws, and others may be used at regional level and possibly form the basis for a glossary to be developed by IOTC for use in future CMMs.

⁷ This refers to a vessel that is registered in, and flies the flag of the country as required under applicable national fisheries and/or maritime law (to be cited). Applicable laws vary, with some including a requirement for ownership or part ownership by nationals of the country and others simply registration. The vessel is considered a “national” of the country, so terminology used in national laws could vary from, e.g. “Seychelles vessel” to “national” vessel to “local” vessel. However, the term “local” vessel should, if possible, be avoided because it signifies a relatively small area and is often used in relation to community management.

⁸ The explanation reflects best legal practices. However, if it is intended to make a distinction between national waters and high seas, and not the IOTC Area generally (including national waters of other countries), the Resolution should state this.

⁹ Note the approach towards use of definitions may differ among English, French and Portuguese speaking countries. The glossary will be used to provide guidance as appropriate where, after reviewing the use of these terms in national laws, inconsistencies or gaps are identified.

There is an overlap in the definitions of “fishing vessel” and “vessel”; these terms are sometimes used interchangeably. Many Resolutions refer to “fishing vessel”, while Resolution 10/11 on Port State Measures uses and defines “vessel” as including a boat, ship etc. used for fishing or related activities. Many countries also refer to “fishing vessel” as a vessel used for fishing or related activities, as it captures requirements to hold authorizations for transshipments and other related activities.

“aircraft” means any craft capable of self-sustained movement through the atmosphere, and includes helicopters and unmanned or remotely operated airborne devices.

“authorised fishing vessel”, or AFV, is a fishing vessel on the IOTC Record of Fishing Vessels (defined below) that is:

- (a) larger than 24 metres in length overall; or
- (b) in case of vessels less than 24m, those operating in waters outside the economic exclusive zone of the flag state,¹⁰ and authorised to fish for tuna and tuna-like species in the IOTC Area. For the purposes of the establishing Resolution 14/04, vessels that are not entered into the record are deemed not to be authorised to fish for, retain on board, tranship or land tuna and tuna-like species.

“conservation and management measures” means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law, including the 1982 United Nations Convention on the Law of the Sea and the 1995 United Nations Fish Stocks Agreement;¹¹

“[Country] fishing vessel” means any fishing vessel that is registered, entitled to be registered or required to be registered in [country] pursuant to the [relevant law of country], and that does not hold a registration from or fly the flag of another State unless expressly permitted under the laws of the [country];¹²

“electronic logbook system” means a computerised record of information and data relating to fishing or related activities and in such template as may be required, including pursuant to any international conservation and management measure(s),¹³ transmitted by the operator of a fishing vessel to the [required authorities];

“fish” means any water-dwelling aquatic or marine animal or plant, alive or not, and includes their eggs, spawn, spat and juvenile stages, and any of their parts, and includes all organisms belonging to sedentary species;

“fish aggregating device” means an object or group of objects of any size, whether drifting, anchored or deployed or not, that is natural, manufactured or a combination of both and includes inter alia buoys, floats, netting, webbing, plastics, metals, bamboo, logs and objects with electronic devices affixed floating or designed to float on or near the surface of the water with which fish may associate, and any natural floating object on which a device has been placed to facilitate its location;

¹⁰ This is the official definition, but as noted above it could be problematic because “operating in waters outside the eez of the flag State” would include the territorial waters of the flag State.

¹¹ From the UN Fish Stocks Agreement, this by implication refers to RFMO/As. See also “IOTC conservation and management measure”.

¹² See explanation in section 1.7, above.

¹³ See Resolution 13/03 paragraph 4.

“Fisheries Waters” means all waters over which [country] exercises sovereignty, jurisdiction and/or sovereign rights as declared in [relevant national laws- cite laws declaring maritime zones] or as are consistent with international law;

“fishery” or “fisheries” means:

- (a) one or more stocks of fish, or parts thereof, which can be treated as a unit for the purposes of conservation and management, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics; or
- (b) any fishing for such stocks;

“fishing” means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish, and includes the deployment, monitoring and retrieving of (drifting) Fish Aggregating Devices;

“fishing vessel” means any vessel used for, equipped to be used for, or of a type that is normally used for, fishing or related activities;

“gear” in relation to fishing means any equipment, implement or other item that can be used in the act of fishing, including any net, rope, line, float, trap, hook, fish aggregating device, winch, boat, or craft or aircraft carried on board a vessel, or aircraft or vehicle used in association with the act of fishing;

“IOTC” means the Indian Ocean Tuna Commission established in 1993 at the 105th Session of the Council of the Food and Agriculture Organization of the United Nations (FAO) under Article XIV of the FAO Constitution;

“IOTC area of competence” means the area designated in Article III and Annex A of the IOTC Agreement, based on FAO statistical areas 51 and 57 and including the Indian Ocean and adjacent seas, north of the Antarctic Convergence, insofar as it is necessary to cover such seas for the purpose of conserving and managing stocks that migrate into or out of the Indian Ocean.¹⁴

“IOTC Conservation and Management Measure” means any measure adopted in accordance with Article IX of the IOTC Agreement;

“IOTC Record of Fishing Vessels” means the IOTC record of vessels authorised to operate in the IOTC area established under Resolution 14/04 Concerning the establishment of an IOTC Record of Fishing Vessels;

“large scale tuna vessels”, or “LSTVs”, has the meaning given by IOTC from time to time, and unless otherwise amended shall mean fishing vessels 24 metres in length overall or above and which are engaged in or equipped to engage in fishing or related activities in relation to tuna and tuna-like species and sharks caught in association with tuna and tuna-like fisheries [in the IOTC area of competence];¹⁵

¹⁴ Note: The Commission, at its 4th Session in 1999 agreed to modify the western boundary of the IOTC area of competence from 30oE to 20oE, thus eliminating the gap between the areas covered by IOTC and ICCAT.

¹⁵ As appropriate, these two definitions may be introduced within the framework of specific provisions rather than in the interpretation section of national legislation. If these terms are used only in one place in the legislation (e.g. transshipment), it would be preferable to include definitions in the text rather than in the part

“law” includes the national principal statute, law, act or other instrument in a country’s legislative system;

“legislation” includes laws, regulations, orders, notices and other instruments having the force of law in a country or regional economic integration organization;

"master", in relation to a vessel, aircraft or vehicle, means the person in command or charge, or for the time being in charge, or apparently in command or in charge of the vessel, aircraft or vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;

“mobile transceiver unit” or “MTU” means a device approved by the [senior operational fisheries officer], which is installed on board a fishing vessel and is designed to automatically transmit, whether independently or in conjunction with another device or devices, information or data concerning position, fishing, catch and such other activities as may be required, and allows detection and identification of the fishing vessel at all times;

“national fishing logbook”, or “fishing logbook” means a any permanently bound I logbook issued by the flag State of a vessel and required for any purpose relating to fishing or related activities, with irremovable pages, each of which is consecutively numbered and printed with an applicable serial number;

"operator" means any person who is in charge of, responsible for the operations of, directs or controls a vessel, including the owner, charterer, master and the beneficiary of the economic or financial benefit of the vessel’s operations;

“related activities”, in relation to fishing, or “fishing related activities” includes any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;

“vessel" means any boat, ship, hovercraft or other watergoing craft, and includes fishing vessels.

on definitions. However if they are used in two or more places (e.g. licensing, MCS) the definition should appear in the interpretation section.

PART II -DRAFT LEGISLATIVE FRAMEWORK

Section 1 – Fisheries conservation and management measures

RESOLUTION 14/02 FOR THE CONSERVATION AND MANAGEMENT OF TROPICAL TUNA STOCKS IN THE IOTC AREA OF COMPETENCE

<p><u>Paragraph 1:</u> CPCs shall implement the following action plan:</p> <p>(a) Establishment of an allocation system (Quota) or any other relevant measures based on the IOTC Scientific Committee recommendations for the main targeted species under the IOTC competence.</p>	<p><u>Paragraph 1:</u> CPCs shall implement the following action plan:</p> <p>(b) Advise on the best reporting requirement of the artisanal tuna fisheries and implementation of an appropriate data collection system.</p>
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(a) Explanatory notes

Resolution 14/02 refers to the implementation of an IOTC action plan and relevant measures based on IOTC Scientific Committee recommendations. This is somewhat different from other IOTC CMMs which involve *inter alia* specific management measures, reporting and prohibitions.

Relevant legislation should provide authority and a general process for fisheries management at national level (including establishment of allocation systems or other relevant measures) and for implementing RFMO CMMs and action plans.

Implementation of a generally-framed action plan such as that stated in this Resolution, which refers to non-binding recommendations of the Scientific Committee, should allow for flexibility and an element of discretion.

This proposed framework broadly states the requirement to implement RFMO CMMs, and does not focus on IOTC in order to avoid the implication that applicable CMMs of other RFMOs are excluded.

A full section addressing the need for a management system and implementation of CMMs, action plans and non-binding recommendations of relevant RFMOs appears below, and subsection (3) specifically implements Resolution 14/02.

(b) Proposed Legislative Framework

CONSERVATION AND MANAGEMENT MEASURES

- 1) In giving effect to its responsibilities for fisheries conservation and management pursuant to this [legislation], the [official authority] shall develop, recommend to the [Minister], implement, monitor and enforce conservation and management measures necessary to ensure the long-term sustainable use of fisheries resources.
- 2) The [Minister] shall determine the conservation and management measures taking into account the recommendations of the [competent authority]. Such measures may include the total allowable catch and/or total applied effort to be allocated in any year to any fisheries sub-sector and the means of implementation of such measures.

- 3) Without prejudice to the jurisdiction and sovereign rights of the [country] over resources in the Fisheries Waters, conservation and management measures shall:
- a. implement conservation and management measures adopted by a sub-regional or regional organization or arrangement to which the [country] is party or cooperating non-party as applicable in respect of its Fisheries Waters and vessels entitled to fly its flag; and
 - b. to the extent possible, implement action plans of such sub-regional or regional organizations or arrangements [including relevant recommendations of a subsidiary scientific body].
- 4) Conservation and management measures shall be developed, to the extent possible, taking into account consultations with stakeholders, and may be implemented *inter alia* through Fisheries Management Plans, regulations, public notice, as a condition of licence, in writing, or otherwise as provided in this Law.

RESOLUTION 13/04 ON THE CONSERVATION OF CETACEANS

<p><u>Paragraph 1:</u> This measure shall apply to all fishing vessels flying the flag of a CPC and on the IOTC Record of Fishing Vessels or authorised to fish tuna and tuna-like species managed by the IOTC on the high seas. The provisions of this measure do not apply to artisanal fisheries operating exclusively in their respective EEZ.</p> <p><u>Paragraph 2:</u> Contracting Parties and Cooperating Non-Contracting Parties (collectively, CPCs) shall prohibit their flagged vessels from intentionally setting a purse seine net around a cetacean in the IOTC area of competence, if the animal is sighted prior to the commencement of the set.</p> <p><u>Paragraph 3:</u> CPCs shall require that, in the event that a cetacean is unintentionally encircled in a purse seine net, the master of the vessels shall:</p> <ol style="list-style-type: none"> (a) take all reasonable steps to ensure the safe release of the cetacean, while taking into consideration the safety of the crew. These steps shall include following the best practice guidelines for the safe release and handling of cetaceans developed by the IOTC Scientific Committee; (b) report the incident to the relevant authority of the flag State with the following information: <ol style="list-style-type: none"> i. the species (if known); ii. the number of individuals; iii. a short description of the interaction, including details of how and why the interaction occurred, if possible; iv. the location of the encirclement; v. the steps taken to ensure safe release; vi. an assessment of the life status of the animal on release, including whether the cetacean was released alive but subsequently died. <p><u>Paragraph 4:</u> CPCs using other gear types fishing for tuna and tuna-like species associated with cetaceans shall report all interactions with cetaceans to the relevant authority of the flag State and include all the information outlined in paragraph 3b(i–vi).</p>	<p><u>Paragraph 7:</u> CPCs shall report the information and data collected under paragraph 3(b) and paragraph 4, through logbooks, or when an observer is onboard through observer programs, and provide to the IOTC Secretariat by 30 June of the following year and according to the timelines specified in Resolution 10/02 (or any subsequent revision).</p> <p><u>Paragraph 8:</u> CPCs shall report, in accordance with Article X of the IOTC Agreement, any instances in which cetaceans have been encircled by the purse seine nets of their flagged vessels.</p> <p><u>Paragraph 9:</u> For CPCs having national and state legislation for protecting these species shall be exempt from reporting to IOTC, but are encouraged to provide data for the IOTC Scientific Committee consideration. The IOTC Scientific Committee will analyse the situation concerning the availability of data and will</p>
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<p><u>Paragraph 5:</u> CPCs shall adopt Fish Aggregating Device designs that reduce the incidence of entanglement, according to Annex III of Resolution 13/08 (or any subsequent revision).</p>	<p>advise the Commission to undertake support measures to developing CPCs to overcome this situation.</p>
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(a) Explanatory notes

This Resolution is almost identical to Resolution 13/05 on the Conservation of Whale Sharks, shown below. A combined provision for the Legislative Framework is shown after Resolution 13/05.

RESOLUTION 13/05 ON THE CONSERVATION OF WHALE SHARKS

<p><u>Paragraph 1:</u> This measure shall apply to all fishing vessels flying the flag of a CPC and on the IOTC Record of Fishing Vessels or authorised to fish for tuna and tuna-like species managed by the IOTC on the high seas. The provisions of this measure do not apply to artisanal fisheries operating exclusively in their respective EEZ.</p> <p><u>Paragraph 2:</u> Contracting Parties and Cooperating Non-Contracting Parties (collectively, CPCs) shall prohibit their flagged vessels from intentionally setting a purse seine net around a whale shark in the IOTC area of competence, if it is sighted prior to the commencement of the set.</p> <p><u>Paragraph 3:</u> CPCs shall require that, in the event that a whale shark is unintentionally encircled in the purse seine net, the master of the vessel shall:</p> <p>(a)</p> <p>(a) take all reasonable steps to ensure its safe release, while taking into consideration the safety of the crew. These steps shall follow the best practice guidelines for the safe release and handling of whale sharks developed by the IOTC Scientific Committee;</p> <p>(b) report the incident to the relevant authority of the flag State, with following information:</p> <p>i. the number of individuals;</p> <p>ii. a short description of the interaction, including details of how and why the interaction occurred, if possible;</p> <p>iii. the location of the encirclement;</p> <p>iv. the steps taken to ensure safe release;</p> <p>v. an assessment of the life status of the animal on release, including whether the whale shark was released alive but subsequently died.</p> <p><u>Paragraph 4:</u> CPCs using other gear types fishing for tuna and tuna-like species associated with a whale shark shall report all interactions with whale sharks to the relevant authority of the flag State and include all the information outlined in paragraph 3b(i–v).</p> <p><u>Paragraph 5:</u> CPCs shall adopt Fish Aggregating Device designs that reduce the incidence of entanglement, according to Annex III of Resolution 13/08 (or any subsequent revision).</p>	<p><u>Paragraph 7:</u> CPCs shall report the information and data collected under paragraph 3(b) and paragraph 4 through logbooks, or when an observer is onboard through observer programs, and provide to the IOTC Secretariat by 30 June of the following year and according to the timelines specified in Resolution 10/02 (or any subsequent revision).</p> <p><u>Paragraph 8:</u> CPCs shall report, in accordance with Article X of the IOTC Agreement, any instances in which whale sharks have been encircled by the purse seine nets of their flagged vessels.</p> <p><u>Paragraph 9:</u> For CPCs having national and state legislation for protecting the species shall be exempt from reporting to IOTC, but are encouraged to provide data for the IOTC Scientific Committee consideration. The IOTC Scientific Committee will analyse the situation concerning the availability of data and will advise the Commission to undertake support measures to developing CPCs to overcome this situation.</p>
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(a) Explanatory notes

Paragraph 1 of both Resolutions applies to all flag vessels that are:

- flying the flag of a CPC; and
- on the IOTC Record of Fishing Vessels; or
- authorised to fish tuna and tuna-like species managed by the IOTC on the high seas (paragraph 1).

They do not apply to “artisanal fisheries operating exclusively in their respective EEZ”.

There is an inconsistency in the application to flag “vessels” and exception for artisanal “fisheries”. The latter do not “operate”, and reference to “their EEZ” is incorrect because (a) artisanal fisheries as such do not have EEZs and (b) EEZ should be plural to reflect the use of the word “their”. It can be assumed from the context that the Resolution does not apply to “CPC artisanal vessels that operate exclusively in artisanal fisheries within their respective national EEZs”.

The reference to “on the high seas” should follow the first phrase, so the Resolutions are applicable to flag vessels authorised to “fish tuna and tuna-like species on the high seas that are managed by the IOTC. Authorisations would be issued specifically to fish “on the high seas”, not to fish “species managed by IOTC”.

The Resolutions refer to cetaceans and whale sharks as the “animal” when they would more properly be defined as a fish. In the context, it is not necessary to refer to either.

The Resolutions refer to actions to be taken by the master. The Best Practices definitions of “master” and “operator” are not included, but proposed in the Glossary in part 1.2 above; “operator” is broader and includes “master”. Attributing responsibility to the operator would ensure responsibility/liability of the owner of the vessel as well as the master, and would facilitate satisfaction of judgment or settlement.

It is recommended that:

- as appropriate, the Resolution be amended to reflect the proposed clarifications, which are included in the draft framework below, or at least note should be taken of them;
- the term “operator” be used consistently as appropriate and the terms “master” and “operator” be defined in national legislation as recommended in the explanatory notes.

(b) Proposed Legislative Framework

CONSERVATION OF CETACEANS AND WHALE SHARKS (*Rhincodon typus*)

- 1) The operator of a [country] fishing vessel [that is included on the IOTC Record of Fishing Vessels, or is authorized to fish tuna and tuna-like species on the high seas managed by the IOTC], except any [country] fishing vessel that is exclusively engaged in artisanal fisheries in the Fisheries Waters, shall not intentionally cause or allow a purse seine net to be set around any cetacean or whale shark [in the IOTC area of competence] if it is sighted prior to the commencement of the set.
- 2) Where any cetacean or whale shark is unintentionally encircled in a purse seine net, the operator referred to in subsection (1) shall:

- a. take all reasonable steps to ensure the safe release of any cetacean or whale shark, while taking into consideration the safety of the crew, in accordance with best practice guidelines for the safe release and handling of cetaceans or whale shark developed by the IOTC Scientific Committee;
 - b. report the incident to the [relevant authority of the flag State] with the following information:
 - i. in respect of a cetacean, the species (if known);
 - ii. the number of individuals;
 - iii. a short description of the interaction, including details of how and why the interaction occurred, if possible;
 - iv. the location of the encirclement;
 - v. the steps taken to ensure safe release; and
 - vi. an assessment of the life status of the animal on release, including whether the cetacean or whale shark was released alive but subsequently died.
- 3) The operator of [country] fishing vessels using gear types other than purse seiners for fishing tuna and tuna-like species associated with cetaceans or whale shark shall report all interactions with cetaceans and whale sharks to the [relevant authority of the flag State] and include all the information required pursuant to subsection 2(b)(i-vi).

FISH AGGREGATING DEVICES

Legislation should require Fish Aggregating Devices to be licensed, and as appropriate require that licenses are only issued to those devices that are designed to reduce the incidence of entanglement, in accordance with Annex III of Resolution 13/08 (or any subsequent revision).

RESOLUTION 13/06 ON A SCIENTIFIC AND MANAGEMENT FRAMEWORK ON THE CONSERVATION OF SHARK SPECIES CAUGHT IN ASSOCIATION WITH IOTC MANAGED FISHERIES

<p><u>Paragraph 3:</u> Notwithstanding paragraphs 1 and 2, CPCs shall prohibit, as an interim pilot measure, all fishing vessels flying their flag and on the IOTC Record of Authorised Vessels, or authorised to fish for tuna or tuna-like species managed by the IOTC on the high seas to retain onboard, tranship, land or store any part or whole carcass of oceanic whitetip sharks with the exception of paragraph 7. The provisions of this measure do not apply to artisanal fisheries operating exclusively in their respective Exclusive Economic Zone (EEZ) for the purpose of local consumption.</p> <p><u>Paragraph 4:</u> CPCs shall require fishing vessels flying their flag and on the IOTC Record of Authorised Vessels or authorised to fish for tuna and tuna-like species managed by the IOTC on the high seas to promptly release unharmed, to the extent practicable, of oceanic whitetip sharks when brought alongside for taking onboard the vessel. However, CPCs should encourage their fishers to release this species if recognised on the line before bringing them onboard the vessels.</p> <p><u>Paragraph 5:</u> CPCs shall encourage their fishers to record incidental catches as well as live releases of oceanic whitetip sharks...</p> <p><u>Paragraph 7:</u></p>	<p><u>Paragraph 5:</u> ... These data shall be kept at the IOTC Secretariat.</p> <p><u>Paragraph 6:</u> CPCs shall, where possible, implement research on oceanic whitetip sharks taken in the IOTC area of competence, in order to identify potential nursery areas. Based on this research, CPCs shall consider other measures, as appropriate.</p> <p><u>Paragraph 8:</u> The CPCs, especially those targeting sharks, shall submit data for sharks, as required by IOTC data reporting procedures.</p>
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Scientific observers shall be allowed to collect biological samples (vertebrae, tissues, reproductive tracts, stomachs, skin samples, spiral valves, jaws, whole and skeletonised specimens for taxonomic works and museum collections) from oceanic whitetip sharks taken in the IOTC area of competence that are dead at haulback, provided that the samples are a part of a research project approved by the IOTC Scientific Committee (SC)/the IOTC Working Party on Ecosystems and Bycatch (WPEB).	
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(a) Explanatory notes

There appears to be a gap in this Resolution because it does not prohibit clearly direct fishing for whitetip sharks, yet this is implied throughout. Section 1(a) below includes the prohibition.

In paragraph 4 of the Resolution, the meaning of the last sentence does not seem to differ from the first sentence, unless there are subtle technical differences. An attempt was made to include this apparent distinction in section 1(c) below, but it would benefit from technical input.

Paragraph 5 requires CPCs to “encourage” fishers to record incidental catches and live releases of whitetip sharks. The proposed language in section 1(d) takes a stricter approach and requires such recording, as well as any directed catches.

Paragraph 7 relates to the authority of observers and the duty of the operator and crew members to assist, facilitate and comply with observers’ work and requests. It is also restrictive because it only refers to “scientific” observers and legal best practices assign to observers “scientific, monitoring and compliance” functions so that observers can, *inter alia*, undertake experiments, monitor catches and activities and report the outcomes to enforcement authorities. Reference to “scientific” observer has therefore been dropped to allow observers who have been given broader functions to operate within their mandates.

Paragraph 7 also only allows the observer to collect such samples “provided they are a part of a research project approved by the IOTC Scientific Committee (SC)/the IOTC Working Party on Ecosystems and Bycatch (WPEB)”. It would be restrictive to include this in the Legislative Framework so more generic language was used: “and to take such other actions as may be identified in a research program of a sub-regional or regional organization or arrangement to which the [country] is party or cooperating non-party”.

Text to implement paragraph 7 is provided in subsection 1(e) below, but each country’s law should be reviewed more generally to ensure it has provisions for appointment, functions, authority and duties of observers and duties of the master and crew members towards observers.

(b) Proposed Legislative Framework

REQUIREMENTS RELATING TO OCEANIC WHITETIP SHARKS (*Carcharhinus longimanus*)

- 1) The operator of a [country] fishing vessel [that is included on the IOTC Record of Fishing Vessels, or is authorized to fish tuna and tuna-like species on the high seas managed by the IOTC], shall:
 - a. not engage in or allow fishing for oceanic whitetip sharks;
 - b. not allow or cause to be retained onboard, tranship, land or store any part or whole carcass of oceanic whitetip sharks with the exception of subsection (2);

- c. promptly release unharmed, to the extent practicable, oceanic whitetip sharks when brought alongside the fishing vessel for the purpose of taking onboard, including where they are identified on the line before bringing them onboard;
 - d. keep in the fishing logbook of the relevant vessel, full, complete and accurate records of all catches, incidental catches and live releases of oceanic whitetip sharks;¹⁶
 - e. allow and assist an observer to collect biological samples (vertebrae, tissues, reproductive tracts, stomachs, skin samples, spiral valves, jaws, whole and skeletonised specimens for taxonomic works and museum collections) from oceanic whitetip sharks [taken in the IOTC area of competence] that are dead when the fishing gear is hauled back to the vessel, and to take such other actions as may be identified in a research program of a sub-regional or regional organization or arrangement to which the [country] is party or cooperating non-party.
- 2) Subsection 1 does not apply to operators of a [country] fishing vessel operating exclusively in artisanal fisheries in the Fisheries Waters for the purpose of local consumption.

RESOLUTION 13/08 PROCEDURES ON A FISH AGGREGATING DEVICES (FADS) MANAGEMENT PLAN, INCLUDING MORE DETAILED SPECIFICATIONS OF CATCH REPORTING FROM FAD SETS, AND THE DEVELOPMENT OF IMPROVED FAD DESIGNS TO REDUCE THE INCIDENCE OF ENTANGLEMENT OF NON-TARGET SPECIES

<p><u>Paragraph 1:</u> This Resolution shall apply to CPCs having purse seine vessels and bait boats fishing on Fish Aggregating Devices (FADs), for the purpose of aggregating tuna target species, in the IOTC area of competence.</p> <p><u>Paragraph 5:</u> All CPCs shall ensure that all fishing vessels as referred to in paragraph 1 shall record fishing activities in association with FADs using the specific data elements found in Annex I (DFAD) and II (AFAD) in the section of the “FAD-logbook”.</p> <p><u>Paragraph 8:</u> From January 2015, CPCs shall require all artificial FADs deployed or modified by their flagged fishing vessels in the IOTC area of competence to be marked in accordance with a detailed marking scheme, e.g. including FAD marking or beacon ID.</p>	<p><u>Paragraph 2:</u> CPCs having vessels fishing on FADs shall submit, to the Commission, by the end of 2013, Management Plans for the use of FADs by their purse seiners and bait boat/vessels. The Plans shall at a minimum meet the Suggested Guidelines for Preparation for FAD Management Plans by each CPC as provided for DFADs in Annex I and AFADs in Annex II.</p> <p><u>Paragraph 4:</u> Starting in 2015, CPCs shall submit the data elements prescribed in Annex I and II to the Commission, consistent with the IOTC standards for the</p>
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¹⁶ This could be linked to the requirement to keep a logbook and keep it up to date “as required in section...” [see Resolution 14/04, paragraph 16 and proposed draft section 7 below]

7.a. ... keep a bound fishing national logbook with consecutively numbered pages, including an applicable serial number, on board the fishing vessel and continuously up to date, and keep the original recordings contained in the fishing logbooks on board for a period of at least 12 months.

	<p>provision of catch and effort data, and these data shall be made available for analysis to the IOTC Scientific Committee on the aggregation level set by Resolution 10/02 (or any subsequent superseding Resolution), and under the confidentiality rules set by Resolution 12/02 (or any subsequent superseding Resolution).</p> <p><u>Paragraph 6:</u> From 2015 on, CPCs shall submit to the Commission, 60 days before the Annual Meeting, a report on the progress of the management plans of FADs, including reviews of the initially submitted Management Plans, and including reviews of the application of the principles set out in Annex III.</p>
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(a) Explanatory notes

This Resolution is highly technical and more information may be added to subsections (a) and (b), as shown at <http://www.iotc.org/cmm/resolution-1308-procedures-fish-aggregating-devices-fads-management-plan-including-more-detailed>.

(b) Proposed Legislative Framework

- 1) The operator of a [country] fishing vessel equipped with purse seine gear or used as a bait boat that use Fish Aggregating Devices (FADs) for the purpose of aggregating tuna target species [in the IOTC area of competence] shall:
 - a. maintain and keep current on board the fishing vessel at all times a FAD logbook which includes information on all activities relating to the FADs;
 - b. record fishing activities in association with FADs using the specific data elements found in IOTC Resolution 13/08 Annex I (DFAD) and II (AFAD) in the section of the “FAD-logbook”.
 - c. mark all artificial FADs deployed or modified by their vessels [in the IOTC area of competence] to be marked in accordance with such detailed marking scheme as may be required by the [fisheries authority/legal instrument such as Notice, Gazette etc].

RESOLUTION 13/11 ON A BAN ON DISCARDS OF BIGEYE TUNA, SKIPJACK TUNA, YELLOWFIN TUNA, AND A RECOMMENDATION FOR NON-TARGETED SPECIES CAUGHT BY PURSE SEINE VESSELS IN THE IOTC AREA OF COMPETENCE

<p><u>Paragraph 1:</u> Contracting Parties and Cooperating Non-Contracting Parties shall require all purse seine vessels to retain on board and then land all bigeye tuna, skipjack tuna, and yellowfin tuna caught, except fish considered unfit for human consumption.</p> <p><u>Paragraph 2:</u> Procedures for the implementation of full retention requirements are outlined.</p>	<p><u>Paragraph 3:</u> Contracting Parties and Cooperating Non-Contracting Parties should encourage all purse seine vessels to retain on board and then land all non-targeted species as far as the vessel can ensure appropriate fishing operation (including but not limited to other tunas, rainbow runner, dolphinfish, triggerfish, billfish, wahoo, and barracuda) except fish considered unfit for human consumption (as defined in paragraph 2 b) i). A single exception shall be the final set of a trip, when there may be insufficient well space remaining to accommodate all the non-targeted fish caught in that set.</p>
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(a) Explanatory notes

Paragraph 3 of the Resolution urges CPCs to encourage purse seine vessels to retain other species onboard as well, but this is discretionary so it is not included in the Legislative Framework.

(b) Proposed Legislative Framework

RETENTION ON BOARD OF BIGEYE TUNA, SKIPJACK TUNA AND YELLOWFIN TUNA

- 1) For the purposes of this section, “tuna” refers to bigeye tuna, skipjack tuna and yellowfin tuna.
- 2) The operator of a [country] fishing vessel equipped with purse seine gear shall retain on board and then land all tuna caught, except fish considered unfit for human consumption.
- 3) No tuna caught by purse seine vessels may be discarded after the point in the set when the net is fully pursed and more than one half of the net has been retrieved. If equipment malfunctions affect the process of pursing and retrieving the net in such a way that this rule cannot be complied with, the master must ensure that the crew makes efforts to release the tuna as soon as possible.
- 4) The requirements of subsection (2) do not apply where:
 - a. the master of the vessel determines that tuna caught are unfit for human consumption, including where the tuna are:
 - i. meshed or crushed in the purse seine;
 - ii. damaged due to depredation;
 - iii. dead and spoiled in the net where a gear failure has prevented both the normal retrieval of the net and catch, and efforts to release the fish alive,

- but not where the tuna are:
- iv. considered undesirable in terms of size, marketability, or species composition; or
 - v. spoiled contaminated as the result of an act or omission of the crew of the fishing vessel; or
- b. the master of a vessel determines that tuna was caught during the final set of a trip and there is insufficient well space to accommodate all tuna caught in that set. This fish may only be discarded if:
- i. the captain and crew attempt to release the tuna alive as soon as possible; and
 - ii. no further fishing is undertaken after the discard until the tuna on board the vessel has been landed or transhipped.

RESOLUTION 12/04 ON THE CONSERVATION OF MARINE TURTLES

Paragraph 2:

Contracting Parties and Cooperating Non-Contracting Parties will implement, as appropriate, the FAO Guidelines.

Paragraph 6:

CPCs shall require fishermen on vessels targeting species covered by the IOTC Agreement to bring aboard, if practicable, any captured marine turtle that is comatose or inactive as soon as possible and foster its recovery, including aiding in its resuscitation, before safely returning it to the water. CPCs shall ensure that fishermen are aware of and use proper mitigation, identification, handling and de-hooking techniques and keep on board all necessary equipment for the release of marine turtles, in accordance with handling guidelines in the IOTC Marine Turtle Identification Cards.

Paragraph 7:

CPCs with gillnet vessels that fish for species covered by the IOTC Agreement shall require that operators of such vessels record all incidents involving marine turtles during fishing operations in their logbooks and report such incidents to the appropriate authorities of the CPC.

Paragraph 8:

CPCs with longline vessels that fish for species covered by the IOTC Agreement shall:

- a) Ensure that the operators of all longline vessels carry line cutters and de-hookers in order to facilitate the appropriate handling and prompt release of marine turtles caught or entangled, and that they do so in accordance with IOTC Guidelines. CPCs shall also ensure that operators of such vessels follow the handling guidelines in the IOTC Marine Turtle Identification Cards;
- b) Where appropriate, encourage the use of whole finfish bait;
- c) Require that operators of such vessels record all incidents involving marine turtles during fishing operations in their logbooks and report such incidents to the appropriate authorities of the CPC.

Paragraph 9:

CPCs with purse seine vessels that fish for species covered by the IOTC Agreement shall:

- a) Ensure that operators of such vessels, while fishing in the IOTC area:
 - i. To the extent practicable, avoid encirclement of marine turtles, and if a marine turtle is encircled or entangled, take practicable

Paragraph 3: CPCs shall collect (including through logbooks and observer programs) and provide to the IOTC Secretariat no later than 30 June of the following year all data on their vessels' interactions with marine turtles. The data shall include the level of logbook or observer coverage and an estimation of total mortality of marine turtles incidentally caught in their fisheries.

Paragraph 4: CPCs shall report to the IOTC Scientific Committee information on successful mitigation measures and other impacts on marine turtles in the IOTC area, such as the deterioration of nesting sites and swallowing of marine debris.

Paragraph 5: CPCs shall report to the Commission in the annual implementation report, in accordance with Article X of the IOTC Agreement, their progress of implementation of the FAO Guidelines and this Resolution.

Paragraph 10:
All CPCs are requested to:

<p>measures to safely release the turtle in accordance with the handling guidelines in the IOTC Marine Turtle Identification Cards;</p> <ul style="list-style-type: none"> ii. To the extent practicable, release all marine turtles observed entangled in fish aggregating devices (FADs) or other fishing gear; iii. If a marine turtle is entangled in the net, stop net roll as soon as the turtle comes out of the water; disentangle the turtle without injuring it before resuming the net roll; and to the extent practicable, assist the recovery of the turtle before returning it to the water; iv. Carry and employ dip nets, when appropriate, to handle marine turtles. <ul style="list-style-type: none"> b) Encourage such vessels to adopt FAD designs that reduce the incidence of entanglement of marine turtles according to international standards; c) Require that operators of such vessels record all incidents involving marine turtles during fishing operations in their logbooks and report such incidents to the appropriate authorities of the CPC. 	<ul style="list-style-type: none"> a) Where appropriate undertake research trials of circle hooks, use of whole finfish for bait, alternative FAD designs, alternative handling techniques, gillnet design and fishing practices and other mitigation methods which may improve the mitigation of adverse effects on marine turtles; b) Report the results of these trials to the IOTC Scientific Committee, at least 30 days in advance of the annual meetings of the Scientific Committee.
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(a) Explanatory notes

Paragraph 2 encourages CPCs to implement the FAO Guidelines, which are voluntary only, but does not specify the title of the Guidelines (it could be the Guidelines to reduce sea turtle mortality in fishing operations). Because this is discretionary and non-specific, as well as the wide-ranging matters covered by the Guidelines, it is not included in the Legislative Framework.

The obligations are not specifically directed at flag vessels or controlling fishing in the Fisheries Waters. They variously refer to CPCs requiring fishermen, or CPCs with vessels that fish certain species. The proposed Legislative Framework has therefore been drafted broadly to encompass activities in the Fisheries Waters as well as flag vessels in areas beyond national jurisdiction.

Similarly, paragraph 3 refers more generally to the Guidelines without specifying any specific priority for implementation.

Paragraph 6 requires CPCs shall ensure that fishermen are aware of and use proper mitigation, identification, handling and de-hooking techniques and keep on board all necessary equipment for the release of marine turtles, in accordance with handling guidelines in the IOTC Marine Turtle Identification Cards. This is an awareness-raising matter that should be handled outside the Legislative Framework.

Paragraphs 8(a) and 9(a)(i) require CPCs to ensure operators take specified actions in accordance with IOTC Guidelines and/or the handling guidelines in the IOTC Marine Turtle Identification Cards. The Legislative Framework does not incorporate the voluntary Guidelines but indicates that the CPC will supply them to the operators separately. This allows for flexibility in updating the Guidelines or developing further Guidelines.

Paragraph 9(a)(iv) requires the CPC to encourage vessels to adopt FAD designs that reduce the incidence of entanglement of marine turtles according to international standards. It is recommended that this be addressed in a FAD licensing scheme.

(b) Proposed Legislative Framework

CONSERVATION OF MARINE TURTLES

- 1) The operator of any fishing vessel in the Fisheries Waters, or of any [country] fishing vessel fishing [within the IOTC area of competence][beyond areas of national jurisdiction] shall:
 - a. ensure that any captured marine turtle that is comatose or inactive is brought aboard, if practicable, as soon as possible and foster its recovery, including aiding in its resuscitation, before safely returning it to the water.
 - b. where such fishing vessel is equipped with gillnet gear, record or caused to be recorded all incidents involving marine turtles during fishing operations in their logbooks and report such incidents to [the appropriate authorities of the country];
 - c. where such fishing vessel is equipped with longline gear:
 - i. carry line cutters and de-hookers on board the fishing vessel in order to facilitate the appropriate handling and prompt release of marine turtles caught or entangled, which shall be done in accordance with any Guidelines that may be provided by the [country];
 - ii. where appropriate, encourage the use of whole finfish bait;
 - iii. record all incidents involving marine turtles during fishing operations in their logbooks, including the species of the marine turtle(s), and report such incidents to [the appropriate authorities of the country].
 - d. where such fishing vessel is equipped with purse seine gear:
 - i. to the extent practicable, avoid encirclement of marine turtles, and if a marine turtle is encircled or entangled, take practicable measures to safely release the turtle in accordance with such guidelines as may be provided by [country];
 - ii. To the extent practicable, release all marine turtles observed entangled in fish aggregating devices or other fishing gear;
 - iii. If a marine turtle is entangled in the net, stop net roll as soon as the turtle comes out of the water, disentangle the turtle without injuring it before resuming the net roll and, to the extent practicable, assist the recovery of the turtle before returning it to the water;
 - iv. carry and employ dip nets, when appropriate, to handle marine turtles;
 - v. record all incidents involving marine turtles during fishing operations in their logbooks and report such incidents to [the appropriate authorities of the country].

FISH AGGREGATING DEVICES

Legislation should require Fish Aggregating Devices to be licensed, and as appropriate require that licenses are only issued to those devices that are designed to reduce the incidence of entanglement of marine turtles according to international standards.

RESOLUTION 12/06 ON REDUCING THE INCIDENTAL BYCATCH OF SEABIRDS IN LONGLINE FISHERIES

<p><u>Paragraph 2:</u> CPCs that have not fully implemented the provisions of the IOTC Regional Observer Scheme outlined in paragraph 2 of Resolution 11/04 shall report seabird incidental bycatch through logbooks, including details of species, if possible.</p> <p><u>Paragraph 4:</u> CPCs shall seek to achieve reductions in levels of seabird bycatch across all fishing areas, seasons, and fisheries through the use of effective mitigation measures, while giving due consideration to the safety of crew members and the practicability of mitigation measures.</p> <p><u>Paragraph 5:</u> In the area south of 25 degrees South latitude, CPCs shall ensure that all longline vessels use at least two of the three mitigation measures in Table 1.</p> <p><u>Paragraph 6:</u> Mitigation measures used pursuant to paragraph 5 shall conform to the minimum technical standards for these measures, as shown in Table 1.</p> <p><u>Paragraph 7:</u> The design and deployment for bird scaring lines should also meet the additional specifications provided in Annex I.</p>	<p><u>Paragraph 1:</u> CPCs shall record data on seabird incidental bycatch by species, notably through scientific observers in accordance with Resolution 11/04 and report these annually. Observers shall to the extent possible take photographs of seabirds caught by fishing vessels and transmit them to national seabird experts or to the IOTC Secretariat, for confirmation of identification.</p> <p><u>Paragraph 3:</u> CPCs shall provide to the Commission as part of their annual reports, information on how they are implementing this measure.</p>
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(a) Explanatory notes

Paragraph 2 requires CPCs that have not fully implemented the provisions of the IOTC Regional Observer Scheme outlined in paragraph 2 of Resolution 11/04 to report seabird incidental bycatch through logbooks, including details of species, if possible. A provision is suggested which would give the CPC flexibility to make logbook reporting mandatory at the direction from a senior authority; this would give flexibility for a determination as to whether it is in full compliance with the Regional Observer Scheme and therefore whether an observer would be recording this information rather than the operator.

Paragraph 4 requires CPCs to seek to achieve reductions in levels of seabird bycatch across all fishing areas, seasons, and fisheries through the use of effective mitigation measures, while giving due consideration to the safety of crew members and the practicability of mitigation measures. This is a matter for planning, policy and use of management tools and is difficult to legislate.

Paragraph 7 provides that the design and deployment for bird scaring lines should meet the additional specifications provided in Annex I, but there is no Annex I in the Resolution. If reference was erroneously made to “Annex” instead of “Table”, this provision appears to be redundant.

(b) Proposed Legislative Framework

INCIDENTAL BYCATCH OF SEABIRDS IN LONGLINE FISHERIES

- 1) The operator of any fishing vessel in the Fisheries Waters, or of any [country] fishing vessel fishing [within the IOTC area of competence][beyond areas of national jurisdiction] shall make such reports of incidental bycatch of seabirds as may be required by the [appropriate fisheries authority – e.g. Director, Minister].

- 2) The operator of any [fishing vessel in the Fisheries Waters, where such Fisheries Waters occur in the area south of 25 degrees South latitude - e.g. South Africa, Madagascar - or] [country] fishing vessel in the area south of 25 degrees South latitude shall use at least two of the three mitigation measures and shall comply with technical standards in Table 1 in relation to the incidental by-catch of seabirds.

Table 1
Mitigation methods and technical standards

Mitigation	Description	Specification: Technical standards
Night setting with minimum deck lighting	No setting between nautical dawn and before nautical dusk. Deck lighting to be kept to a minimum.	Nautical dusk and nautical dawn are defined as set out in the Nautical Almanac tables for relevant latitude, local time and date. Minimum deck lighting should not breach minimum standards for safety and navigation.
Bird-scaring lines (Tori lines)	Bird-scaring lines shall be deployed during the entire longline setting to deter birds from approaching the branch line.	<p>For vessels greater than or equal to 35 m:</p> <ul style="list-style-type: none"> • Deploy at least 1 bird-scaring line. Where practical, vessels are encouraged to use a second tori pole and bird scaring line at times of high bird abundance or activity; both tori lines should be deployed simultaneously, one on each side of the line being set. • Aerial extent of bird-scaring lines must be greater than or equal to 100 m. • Long streamers of sufficient length to reach the sea surface in calm conditions must be used. • Long streamers must be at intervals of no more than 5m. <p>For vessels less than 35 m:</p> <ul style="list-style-type: none"> • Deploy at least 1 bird-scaring line. • Aerial extent must be greater than or equal to 75 m. • Long and/or short (but greater than 1 m in length) streamers must be used and placed at intervals as follows: <ul style="list-style-type: none"> • Short: intervals of no more than 2 m. • Long: intervals of no more than 5 m for the first 55 m of bird scaring line.
Line weighting	Line weights to be deployed on the snood prior to setting.	Greater than a total of 45 g attached within 1 m of the hook; Greater than a total of 60 g attached within 3.5 m of the hook; or Greater than a total of 98 g weight attached within 4 m of the hook.

RESOLUTION 12/09 ON THE CONSERVATION OF THRESHER SHARKS (FAMILY ALOPIIDAE) CAUGHT IN ASSOCIATION WITH FISHERIES IN THE IOTC AREA OF COMPETENCE

<p><u>Paragraph 1:</u> This measure shall apply to all fishing vessels on the IOTC Record of Authorised Vessels.</p> <p><u>Paragraph 2:</u> Fishing Vessels flying the flag of an IOTC Member or Cooperating Non-Contracting Party (CPCs) are prohibited from retaining on board, transshipping, landing, storing, selling or offering for sale any part or whole carcass of thresher sharks of all the species of the family Alopiidae, with the exception of paragraph 7.</p> <p><u>Paragraph 3:</u> CPCs shall require vessels flying their flag to promptly release unharmed, to the extent practicable, thresher sharks when brought along side for taking on board the vessel.</p> <p><u>Paragraph 5:</u> Recreational and sport fishing shall release alive all caught animals of thresher sharks of all the species of the family Alopiidae. In no circumstances specimen shall be retained on board, transhipped, landed, stored, sold or offered for sale. The CPCs shall ensure that both recreational and sport fishermen carrying out fishing with high risk of catching thresher sharks are equipped with instruments suitable to release alive the animals.</p> <p><u>Paragraph 7:</u> Scientific observers shall be allowed to collect biological samples (vertebrae, tissues, reproductive tracts, stomachs, skin samples, spiral valves, jaws, whole and skeletonised specimens for taxonomic works and museum collections) from thresher sharks that are dead at haulback, provided that the samples are part of the research project approved by the IOTC Scientific Committee (or IOTC Working Party on Ecosystems and Bycatch (WPEB))...</p>	<p><u>Paragraph 4:</u> CPCs shall encourage their fishers to record and report incidental catches as well as live releases. These data will be then kept at the IOTC Secretariat.</p> <p><u>Paragraph 6:</u> CPCs shall, where possible, implement research on sharks of the species <i>Alopias</i> spp, in the Convention area in order to identify potential nursery areas. Based on this research, CPCs shall consider additional management measures, as appropriate.</p> <p><u>Paragraph 7:</u> ...In order to obtain the approval, a detailed document outlining the purpose of the work, number and type of samples intended to be collected and the spatio-temporal distribution of the sampling work must be included in the proposal. Annual progress of the work and a final report on completion of the project shall be presented to the IOTC WPEB and the IOTC Scientific Committee.</p> <p><u>Paragraph 8:</u> The Contracting Parties, Cooperating Non-Contracting Parties, especially those directing fishing activities for sharks, shall submit data for sharks, as required by IOTC data reporting procedures.</p>
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(a) Explanatory notes

The application of this Resolution is unclear: paragraph 1 refers to all fishing vessels on the IOTC Record of Fishing Vessels (erroneously referred to as Authorised Vessels), and paragraph 2 refers to fishing vessels flagged by an IOTC CPC. There could be vessels flagged by a CPC which are not on the IOTC Record but catch thresher sharks in the IOTC Area – including those on the IOTC IUU Vessel List. They should be covered under the Legislative Framework.

The Resolution also applies to recreational and sport fishing under paragraph 5. They are not defined, and it is assumed that the vessels used are not required to be on the IOTC Authorized Vessel List.

Paragraph 2 prohibits CPC fishing vessels from retaining on board, transshipping, landing, storing, selling or offering for sale any part or whole carcass of thresher sharks of all the species of the family Alopiidae, with the exception of paragraph 7. However, the aim of paragraph 7 is to allow observers to take samples, and in that context selling or offering for sale seems irrelevant – observers should not have to purchase the sharks.

This Resolution does not prohibit fishing for thresher sharks, although some countries have done so. This approach should be encouraged because it is consistent with the Resolution.

The sharks are referred to as “animals” in the Resolution. This will cause problems with interpretation and could create a serious loophole because they should fall within the definition of “fish” and consistently be referred to as such.

Paragraph 7 only allows the observer to collect such samples “provided they are a part of a research project approved by the IOTC Scientific Committee (SC)/the IOTC Working Party on Ecosystems and Bycatch (WPEB)”. It would be restrictive to include this in the Legislative Framework so more generic language was used: “and to take such other actions as may be identified in a research program of a sub-regional or regional organization or arrangement to which the [country] is party or cooperating non-party”.

Paragraph 7 also provides that “In order to obtain the approval, a detailed document outlining the purpose of the work, number and type of samples intended to be collected and the spatio-temporal distribution of the sampling work must be included in the proposal.” It is unclear as to what body must approve, and who must prepare the detailed document so this has been omitted from the Legislative Framework and can be considered an administrative matter.

(b) Proposed Legislative Framework

CONSERVATION OF THRESHER SHARKS (*Family Alopiidae*)

- 1) This section applies to all thresher sharks of all the species of the family *Alopiidae*.
- 2) The operator of any fishing vessel in the Fisheries Waters or any [country] fishing vessel that is included on the IOTC Record of Fishing Vessels shall:
 - a. not [engage in targeted fishing for,]¹⁷ retain on board, tranship, land, store, sell or offer for sale any part or carcass of any thresher shark, with the exception of the collection of biological samples described in subsection (4); and
 - b. release or cause to be released unharmed, to the extent practicable, all thresher sharks when brought alongside the vessel for taking on board.
- 3) Any person engaged in recreational or sport fishing shall:

¹⁷ The Resolution does not prohibit fishing for thresher sharks, and recognizes that they are caught as bycatch. It's a good idea to prohibit targeted fishing, but note that it goes beyond the language of the Resolution.

- a. release alive all thresher sharks caught during fishing;
 - b. under no circumstances retain on board, tranship, land, store, sell or offer for sale any part or carcass of thresher shark; and
 - c. carry on board such instruments suitable for releasing the sharks alive as the [senior fisheries authority] may direct.
- 4) The operator of any vessel and any person involved in fishing that results in the taking of thresher sharks shall allow and assist an observer to collect biological samples (including vertebrae, tissues, reproductive tracts, stomachs, skin samples, spiral valves, jaws, whole and skeletonised specimens for taxonomic works and museum collections) from thresher sharks that are dead when the fishing gear is hauled back to the vessel, and to take such other actions as may be identified in a research program of a sub-regional or regional organization or arrangement to which the [country] is party or cooperating non-party.

RESOLUTION 12/11 ON THE IMPLEMENTATION OF A LIMITATION OF FISHING CAPACITY OF CONTRACTING PARTIES AND COOPERATING NON-CONTRACTING PARTIES

<p>Note:</p> <p><u>Paragraph 6:</u> The ... CPCs which had the objective of developing their fleets following the provisions of IOTC Resolution 03/01, through the introduction to the IOTC of a fleet development plan, shall confirm, by 31 December 2009, <i>inter alia</i>, the type, size, gear and origin of the vessels included in the Fleet Development Plans and the programming (precise calendar for the forthcoming 10 years) of their introduction into the fisheries). All future fishing efforts shall be in accordance with such development Plans of the concerned CPCs.</p> <p><u>Paragraph 10:</u> This Resolution was applicable during the years 2012 and 2013. The Commission was supposed to review its implementation at the 2014 IOTC Session, but no decision was made. The intent is to replace that Resolution by a new one but this has not been done yet.</p> <p>This Resolution has expired but is still included in the list of active resolutions. Guidance from the IOTC Secretariat has been sought to determine whether or not it should be included in the review.</p>	<p>Note that for the purpose of the project, Mozambique has recently introduced a Fleet Development Plan. Comoros committed in writing to do so but has not yet complied with this requirement. Madagascar, Maldives, Mauritius, Seychelles, South Africa and Tanzania have provided a FDP to the IOTC Secretariat. There is no provision in this Resolution for new members joining the IOTC after the set deadlines.</p>
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(a) Explanatory notes

There is divided opinion with regard to the status of this Resolution. Differing views have been expressed at IOTC. For some, the entire resolution is obsolete and for others the provisions on Fleet Development Plans (FDPs) are not time bound.

Technically, it can clearly be argued that the Resolution has expired. However, limitation of fishing capacity within the IOTC area is still an objective of the Commission and so it does make sense that IOTC wishes to continue to apply provisions on FDPs (notably with respect to new members).

There is agreement that due to the uncertainty about the validity of this Resolution, no further work would be required at national level, unless requested by the individual country, if there is already something to that effect in their existing law.

Otherwise, Implementation of the FDP, as required in paragraph 6, in each country could be reviewed under Phase III.

RESOLUTION 12/12 TO PROHIBIT THE USE OF LARGE-SCALE DRIFTNETS ON THE HIGH SEAS IN THE IOTC AREA

<p><u>Paragraph 1:</u> The use of large-scale driftnets on the high seas within the IOTC area of competence shall be prohibited.</p> <p><u>Paragraph 2:</u> Each Contracting Party and Cooperating Non-Contracting party (hereinafter referred to as CPCs) shall take all measures necessary to prohibit their fishing vessels from using large-scale driftnets while on the high seas in the IOTC area of competence.</p> <p><u>Paragraph 3:</u> A CPC-flagged fishing vessel will be presumed to have used large-scale driftnets on the high seas in the IOTC area of competence if it is found operating on the high seas in the IOTC area of competence and is configured to use large-scale driftnets.</p> <p><u>Paragraph 4:</u> Paragraph 3 shall not apply to a CPC-flagged vessel duly authorised to use large-scale driftnets in their EEZs. While on the high seas in the IOTC area of competence all of such driftnets and related fishing equipment shall be stowed or secured in such a manner that they are not readily available to be used for fishing.</p> <p><u>Paragraph 7:</u> Nothing in this measure shall prevent CPCs from applying more stringent measures to regulate the use of large-scale driftnets.</p>	<p><u>Paragraph 5:</u> CPCs shall include in their Annual Reports a summary of monitoring, control, and surveillance actions related to large-scale driftnet fishing on the high seas in the IOTC area of competence.</p>
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(a) Explanatory notes

The Resolution provided definitions of terms, which are included in subsection (1).

The Resolution prohibits high seas use of large-scale driftnets, but the Legislative Framework extends this to the Fisheries Waters in accordance with Best Practices. Countries should be asked if they wish to extend this to their Fisheries Waters. If so, a provision should be added to state that the presumption in subsection 5 does not apply to duly authorized driftnet fishing within the Fisheries Waters.

While on the high seas in the IOTC area of competence all of such driftnets and related fishing equipment shall be stowed or secured in such a manner that they are not readily available to be used for fishing.

The Resolution is consistent with General Assembly Resolutions prohibiting the use of large-scale pelagic driftnets; ten such Resolutions were adopted between 1991 and 2002.¹⁸

¹⁸ The most recent were in 2002 and 2000 respectively (A/RES/57/142 and A/RES/55/8). Both were titled “Large-scale pelagic drift-net fishing, unauthorized fishing in zones of national jurisdiction and on the high seas/illegal, unreported and unregulated fishing, fisheries by-catch and discards, and other developments”.

(b) Proposed Legislative Framework

USE OF LARGE-SCALE DRIFTNETS PROHIBITED

- 1) For the purposes of this section:
 - a. “Large-scale driftnets” are defined as gillnets or other nets or a combination of nets that are more than 2.5 kilometers in length whose purpose is to enmesh, entrap, or entangle fish by drifting on the surface of, or in, the water column.
 - b. “Configured” to use large-scale drift-nets means having on board assembled gear that collectively would allow the vessel to deploy and retrieve large-scale driftnets.
- 2) The operator of any fishing vessel in the Fisheries Waters, or of any [country] fishing vessel [within the IOTC area of competence][beyond areas of national jurisdiction] shall not use large-scale driftnets.
- 3) A fishing vessel shall be presumed to have used large-scale driftnets on the high seas in the IOTC area of competence if it is found operating on the high seas in the IOTC area of competence and is configured to use large-scale driftnets unless:
 - a. it holds a valid and applicable authorization from its flag State to use large-scale driftnets in its EEZ; and
 - b. the operator of a fishing vessel configured to use large-scale driftnets shall ensure that such driftnets and related fishing equipment are stowed or secured in such a manner that they are not readily available to be used for fishing.

RESOLUTION 11/02 ON THE PROHIBITION OF FISHING ON DATA BUOYS

<p><u>Paragraph 1 (Definition):</u> For the purposes of this measure, data buoys are defined as floating devices, either drifting or anchored, that are deployed by governmental or recognised scientific organisations or entities for the purpose of electronically collecting and measuring environmental data, and not for the purpose of fishing activities.</p> <p><u>Paragraph 2:</u> Contracting Parties and Cooperating Non-Contracting Parties (CPCs) shall prohibit their fishing vessels from intentionally fishing within one nautical mile of or interacting with a data buoy in the IOTC area of competence, which includes, but is not limited to, encircling the buoy with fishing gear; tying up to or attaching the vessel, or any fishing gear, part or portion of the vessel, to a data buoy or its mooring; or cutting a data buoy anchor line. [<u>Paragraph 7:</u> Notwithstanding paragraph 2, scientific research programs notified to the Commission may operate fishing vessels within one nautical mile of a data buoy so long as they do not interact with those data buoys as described in paragraph 2.]</p> <p><u>Paragraph 3:</u> CPCs shall prohibit their fishing vessels from taking on board a data buoy while engaged in fishing for tuna and tuna-like species in the IOTC area of competence, unless specifically authorised or requested to do so by the Member or owner responsible for that buoy.</p>	<p><u>Paragraph 6:</u> CPCs shall encourage their fishing vessels to report to them regarding any data buoys observed to be damaged or otherwise inoperable along with the date of observation, buoy location, and any discernable identifying information contained on the data buoy. CPCs shall notify the IOTC Secretariat of all such reports.</p> <p><u>Paragraph 8:</u> CPCs are encouraged to communicate to the Commission, through the IOTC Secretariat, the location of data buoy assets that they have deployed throughout the IOTC area of competence.</p>
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Paragraph 4:

CPCs shall encourage their fishing vessels operating in the IOTC area of competence to keep watch for moored data buoys at sea and to take all reasonable measures to avoid fishing gear entanglement or directly interacting in any way with those data buoys.

Paragraph 5:

CPCs shall require their fishing vessels that become entangled with a data buoy to remove the entangled fishing gear with as little damage to the data buoy as possible.

(a) Explanatory notes

Paragraph 2 prohibits *intentional* fishing within one mile of, or interacting with a data buoy. It is recommended that the Legislative Framework set a higher standard of strict liability and simply prohibit fishing or interacting, without the element of *mens rea*.

The exception in paragraph 7 allows operation of a fishing vessel within one mile of a data buoy under a scientific program notified to the IOTC. It is captured in subsection 3, and could be unacceptable for some countries. Subsection 3 has a higher standard than paragraph 7 and makes it clear that the operations are for scientific programs only and do not include fishing.

(b) Proposed Legislative Framework

PROHIBITION OF FISHING ON DATA BUOYS

- 1) For the purposes of this section, “data buoys” mean floating devices, either drifting or anchored, that are deployed by governmental or recognised scientific organisations or entities for the purpose of electronically collecting and measuring environmental data, and not for the purpose of fishing activities.
- 2) The operator of any fishing vessel in the Fisheries Waters, or of any [country] fishing vessel [within the IOTC area of competence][beyond areas of national jurisdiction] shall not[intentionally] cause or allow fishing within one nautical mile of or interacting with a data buoy, which includes, *inter alia*:
 - a. encircling the buoy with fishing gear;
 - b. tying up to or attaching the vessel, or any fishing gear, part or portion of the vessel, to a data buoy or its mooring; or
 - c. cutting a data buoy anchor line.
- 3) Notwithstanding subsection 2, vessels operating under scientific research programs notified to the Commission may operate fishing vessels within one nautical mile of a data buoy on the condition that they do not fish or interact with those data buoys as prohibited in subsection 2.
- 4) The operator of any fishing vessel in the Fisheries Waters, or of any [country] fishing vessel [within the IOTC area of competence][beyond areas of national jurisdiction] shall:
 - a. not cause or allow to be taken on board a data buoy while engaged in fishing for tuna and tuna-like species in the IOTC area of competence, unless specifically authorised or requested to do so by the [country] or owner responsible for that buoy;

- b. keep watch keep watch for moored data buoys at sea and take all reasonable measures to avoid fishing gear entanglement or directly interacting in any way with those data buoys; and
- c. where the fishing vessels becomes entangled with a data buoy, remove the entangled fishing gear with as little damage to the data buoy as possible.

RESOLUTION 05/01 ON CONSERVATION AND MANAGEMENT MEASURES FOR BIGEYE TUNA

<p><u>Paragraph 1:</u> Contracting and Cooperating Non-Contracting Parties (CPCs) shall limit their catch of bigeye tuna to their recent levels of catch reported by the IOTC Scientific Committee.</p>	
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(a) Explanatory notes

This is a management measure, and an international obligation, and may be better left to a general provision giving authority on fisheries management, including setting catch levels. Also, note that it only relates to levels “reported by the IOTC Scientific Committee”, not as agreed by the Commission.

(b) Proposed Legislative Framework

Language along the following lines may be included in fisheries legislation as part of the general authority for fisheries management:

The (senior fisheries authority), in setting management measures, shall implement as a minimum standard catch levels and measures reported by sub-regional or regional organizations or arrangements to which [country] is a party or cooperating non-member.

RESOLUTION 05/05 CONCERNING THE CONSERVATION OF SHARKS CAUGHT IN ASSOCIATION WITH FISHERIES MANAGED BY IOTC

<p><u>Paragraph 3:</u> CPCs shall take the necessary measures to require that their fishermen fully utilise their entire catches of sharks. Full utilisation is defined as retention by the fishing vessel of all parts of the shark excepting head, guts and skins, to the point of first landing.</p> <p><u>Paragraph 4:</u> CPCs shall require their vessels to not have onboard fins that total more than 5 % of the weight of sharks onboard, up to the first point of landing. CPCs that currently do not require fins and carcasses to be offloaded together at the point of first landing shall take the necessary measures to ensure compliance with the 5 % ratio through certification, monitoring by an observer, or other appropriate measures.</p> <p><u>Paragraph 6:</u> Fishing vessels are prohibited from retaining on board, transshipping or landing any fins harvested in contravention of this Resolution.</p> <p><u>Paragraph 7:</u> In fisheries that are not directed at sharks, CPCs shall encourage the release of live sharks, especially juveniles and pregnant sharks, to the extent</p>	<p><u>Paragraph 1:</u> Contracting Parties, Cooperating Non-Contracting Parties (CPCs) shall annually report data for catches of sharks, in accordance with IOTC data reporting procedures, including available historical data.</p> <p><u>Paragraph 8:</u> CPCs shall, where possible, undertake research to identify ways to make fishing gears more selective (such as the implications of avoiding the use of wire traces).</p> <p><u>Paragraph 9:</u></p>
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<p>possible, that are caught incidentally and are not used for food and/or subsistence.</p> <p>Note: <u>Paragraph 11:</u> This Resolution applies only to sharks caught in association with fisheries managed by the IOTC.</p> <p>Note: <u>Paragraph 12:</u> This provision to apply without prejudice to many artisanal fisheries which traditionally do not discard carcasses.</p>	<p>CPCs shall, where possible, conduct research to identify shark nursery areas.</p>
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(a) Explanatory notes

The requirement relates to CPCs’ vessels, but it is suggested that this also apply to the Fisheries Waters.

(b) Proposed Legislative Framework

- 1) For the purposes of this section, “full utilisation” is defined as retention by the fishing vessel of all parts of the shark excepting head, guts and skins, to the point of first landing.
- 2) The operator of any fishing vessel in the Fisheries Waters, or of any [country] fishing vessel [within the IOTC area of competence][beyond areas of national jurisdiction] shall:
 - a. ensure that the entire catches of sharks by the vessels are fully utilised;
 - b. not cause or allow at any time on board the fishing vessel shark fins that total more than 5 % of the weight of sharks on board, up to the first point of landing.
 - c. ensure compliance with any requirement by the [senior operational fisheries authority, e.g. Director] to verify compliance with subsection (b) through certification, monitoring by an observer or other measures;
 - d. not cause or allow any shark fins harvested in contravention of this section to be retained on board, transhipped or landed;
 - e. in fisheries that are not directed at sharks, cause the release of live sharks, especially juveniles and pregnant sharks, to the extent possible, that are caught incidentally and are not used for food and/or subsistence.
- 3) This section applies without prejudice to artisanal fisheries which traditionally do not discard carcasses.

RESOLUTION 03/01 ON THE LIMITATION OF FISHING CAPACITY OF CONTRACTING PARTIES AND COOPERATING NON-CONTRACTING PARTIES

<p><u>Paragraph 1:</u> Contracting Parties and Cooperating Non-Contracting Parties (CPCs) which have more than 50 vessels on the 2003 IOTC Record of Vessels, shall limit in 2004 and following years, the number of their fishing vessels larger than 24 meters length overall (hereafter LSFVs) to the number of its fishing vessels registered in 2003 in the IOTC Record of Vessels.</p> <p><u>Paragraph 2:</u> This limitation of number of vessels shall be commensurate with the corresponding overall tonnage expressed in GRT (Gross Registered Tonnage) or in GT (Gross Tonnage) and, where vessels are replaced, the overall tonnage shall not be exceeded.</p>	
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Note: Paragraph 3:

Other CPCs which have the objective of developing their fleets above those authorisations currently foreseen under administrative processes, will draw up, a fleet development plan in accordance with the provisions of Resolution 02/05 [superseded by Resolution 05/02, then Resolution 07/02, then Resolution 13/02, then Resolution 14/04]. This Plan shall be submitted to the Commission for information and record at the 2004/05 Sessions and should define, inter alia, the type, size and origin of the vessels and the programming of their introduction into the fisheries.

(a) Explanatory notes

This is a management measure, and an international obligation, and may be better left to a general provision giving authority on fisheries management, including limiting vessel effort.

(b) Proposed Legislative Framework

Language along the following lines may be included in fisheries legislation as part of the general authority for fisheries management:

The (senior fisheries authority), in setting management measures, shall implement as a minimum standard vessel limitations agreed from time to time by a sub-regional or regional organizations or arrangements to which [country] is a party or cooperating non-member.

Section 2 – Monitoring, control and surveillance conservation and management measures

RESOLUTION 14/04 CONCERNING THE IOTC RECORD OF VESSELS AUTHORIZED TO OPERATE IN THE IOTC AREA OF COMPETENCE

<p><u>Paragraph 7:</u> The flag CPCs of the vessels on the record shall:</p> <ol style="list-style-type: none">a) authorise their vessels to operate in the IOTC area of competence only if they are able to fulfil in respect of these vessels the requirements and responsibilities under the IOTC Agreement and its Conservation and Management Measures;b) take necessary measures to ensure that their AFVs comply with all the relevant IOTC Conservation and Management Measures;c) take necessary measures to ensure that their AFVs on the IOTC Record keep on board valid certificates of vessel registration and valid authorisation to fish and/or tranship;d) ensure that their AFVs on the IOTC Record have no history of IUU fishing activities or that, if those vessels have such a history, the new owners have provided sufficient evidence demonstrating that the previous owners and operators have no legal, beneficial or financial interest in, or control over those vessels; the parties of the IUU incident have officially resolved the matter and sanctions have been completed; or that having taken into account all relevant facts, their AFVs are not engaged in or associated with IUU fishing;e) ensure, to the extent possible under domestic law, that the owners and operators of their AFVs on the IOTC Record are not engaged in or associated with tuna fishing activities conducted by vessels not entered into the IOTC Record in the IOTC area of competence;f) take necessary measures to ensure, to the extent possible under domestic law, that the owners of the AFVs on the IOTC Record are citizens or legal entities within the flag CPCs so that any control or punitive actions can be effectively taken against them. <p><u>Paragraph 9:</u></p> <ol style="list-style-type: none">a) CPCs shall take measures, under their applicable legislation, to prohibit the fishing for, the retaining on board, the transshipment and landing of tuna and tuna-like species by the vessels which are not entered into the IOTC Record.b) To ensure the effectiveness of the IOTC Conservation and Management Measures pertaining to species covered by Statistical Document Programs:<ol style="list-style-type: none">...ii. CPCs shall require that the species covered by Statistical Document Programs caught by AFVs in the IOTC area of competence, when imported into the territory of a Contracting Party, be accompanied by statistical documents validated for the vessels on the IOTC Record;... <p><u>Paragraph 13:</u> Each Contracting Party and Cooperating Non-Contracting Party with the IOTC shall:</p> <ol style="list-style-type: none">a) Ensure that each of its fishing vessels carry on board documents issued and certified by the competent authority of that Contracting Party or of that Cooperating Non-Contracting Party with IOTC, including, at a minimum, the outlined information.<ol style="list-style-type: none">i. License, permit or authorisation to fish and terms and conditions attached to the licence, permit of authorisation;ii. Vessel name;iii. Port in which registered and the number(s) under which registered;	<p><u>Paragraph 2:</u> Each Contracting Party and Cooperating Non-Contracting Party (hereinafter referred to as "CPC") shall submit electronically, where possible, to the IOTC Executive Secretary for those vessels referred to 1.a)[24 metres in length overall or above] and for those vessels referred to 1.b)[in case of vessels less than 24 meters, those operating in waters outside the Economic Exclusive Zone of the Flag State], the list of its AFVs that are authorised to operate in the IOTC area of competence. This list shall include the following information:</p> <ol style="list-style-type: none">a) Name of vessel(s), register number(s);b) IMO number (if eligible); <p>To allow the necessary time for CPCs to obtain an IMO number for eligible vessels that do not already have one, paragraph 2.b on IMO number is effective as of 1 January 2016. As of this date, CPCs shall ensure that all their fishing vessels that are registered on the IOTC Record of fishing vessels have IMO numbers issued to them. Paragraph 2.b on IMO number does not apply to vessels which are not eligible to receive IMO numbers.</p> <ol style="list-style-type: none">c) Previous name(s) (if any);d) Previous flag(s) (if any);e) Previous details of deletion from other registries (if any);f) International radio call sign(s) (if any);
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<p>iv. International call sign;</p> <p>v. Names and addresses of owner(s) and where relevant, the charterer;</p> <p>vi. Overall length;</p> <p>vii. Engine power, in KW/horsepower, where appropriate.</p> <p>b) Verify above documents on a regular basis and at least every year;</p> <p>c) Ensure that any modification to the documents and to the information referred to in 13.a) is certified by the competent authority of that Contracting Party or of that Cooperating Non-Contracting Party with the IOTC.</p> <p><u>Paragraph 14:</u> Each Contracting Party and Cooperating Non-Contracting Party with the IOTC shall ensure that its fishing vessels authorised to fish in the IOTC area of competence are marked in such a way that they can be really identified with generally accepted standards such as the FAO Standard Specification for the Marking and Identification of Fishing vessels.</p> <p><u>Paragraph 15:</u></p> <p>a) Each Contracting Party and Cooperating Non-Contracting Party with the IOTC shall ensure that each gear used by its fishing vessels authorised to fish in the IOTC area of competence is marked appropriately, e.g., the ends of nets, lines and gear in the sea, shall be fitted with flag or radar reflector buoys by day and light buoys by night sufficient to indicate their position and extent;</p> <p>b) Marker buoys and similar objects floating and on the surface, and intended to indicate the location of fixed fishing gear, shall be clearly marked at all time with the letter(s) and/or number(s) of the vessel to which they belong;</p> <p>c) Fish aggregating devices shall be clearly marked at all time with the letter(s) and / or number(s) of the vessel to which they belong.</p> <p><u>Paragraph 16:</u> Each Contracting Party and Cooperating Non-Contracting Party with the IOTC shall ensure that all their respective fishing vessels of 24 meters or above and vessels less than 24 meters if fishing outside their EEZ, and are registered on the IOTC Record of fishing vessels and authorised to fish in the IOTC area of competence, keep a bound fishing national logbook with consecutively numbered pages. The original recordings contained in the fishing logbooks shall be kept on board the fishing vessel for a period of at least 12 months.</p>	<p>g) Port of Registration;</p> <p>h) Type of vessel(s), length and gross tonnage (GT);</p> <p>i) Name and address of owner(s) and operator(s);</p> <p>j) Gear(s) used;</p> <p>k) Time period(s) authorised for fishing and/or transhipping.</p> <p><u>In assessing compliance with the paragraph above, the Commission shall take into account exceptional circumstances in which a vessel owner is not able to obtain an IMO number despite following the appropriate procedures. Flag CPCs shall report any such exceptional situations to the Secretariat.</u></p> <p><u>Paragraph 3:</u> All CPCs which issue authorisations to fish to their flag vessels to fish for species managed by the IOTC shall submit to the IOTC Executive Secretary, by 15 February of 2014, an updated template of the official authorisation to fish outside National Jurisdictions, and update this information whenever this information changes. This information includes:</p> <p>a) name of the Competent Authority;</p> <p>b) name and contact of personnel of the Competent Authority;</p> <p>c) signature of the personnel of the Competent Authority;</p> <p>d) official stamp of the Competent Authority.</p> <p><u>Paragraph 5:</u> Each CPC shall promptly notify, after the establishment of their initial IOTC Record, the IOTC Executive Secretary of any addition to, any deletion from and/or any modification of the IOTC</p>
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	<p>Record at any time such changes occur.</p> <p><u>Paragraph 8:</u> CPCs shall review their own internal actions and measures taken pursuant to paragraph 7, including punitive actions and sanctions and, in a manner consistent with domestic law as regards disclosure, report the results of the review to the Commission annually.</p> <p><u>Paragraph 9:</u></p> <p>b) To ensure the effectiveness of the IOTC Conservation and Management Measures pertaining to species covered by Statistical Document Programs:</p> <p>i. Flag CPCs shall validate statistical documents only for the vessels on the IOTC Record;</p> <p>iii. CPCs importing species covered by Statistical Document Programs and the flag States of vessels shall cooperate to ensure that statistical documents are not forged or do not contain misinformation.¹⁹</p> <p><u>Paragraph 10:</u> Each CPC shall notify the IOTC Executive Secretary of any factual information showing that there are reasonable grounds for suspecting vessels not on the IOTC Record to be engaged in fishing for and/or transshipment of tuna and tuna-like species in the IOTC area of competence.</p>
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¹⁹ This is a specific requirement relating to forgery and misinformation, and should form part of procedures.

(a) Explanatory notes

Paragraph 2 is not shown as a provision required to be implemented in law. It requires CPCs to report to IOTC certain information relating to its list of AFVs that are authorized to operate in the IOTC area of competence. However, it does have legal implications because the CPC will need to obtain the information from the vessels in order to submit it to IOTC. This is catered for in subsection (3) below.

A similar requirement exists in paragraph 2 of Resolution 14/05, below, and recommendations on amalgamating the requirements of the two Resolutions are made in the Explanatory Notes and Legislative Framework.

Paragraph 7 sets out duties of flag CPCs, most of which are procedural obligations to “ensure” (e.g. a decision to authorize vessels where the latter are able to fulfil IOTC requirements). Those duties to take “necessary measures” (b, c and f) have legislative implications, as well as the duty to “ensure, to the extent possible under domestic law...” and are catered for in subsection (2) below.

Paragraph 9 (b) (i) and (iii) are procedural, the other components have legislative implications and are catered for in subsection (2) below.

The meaning of paragraph 9(b)(ii) is obscure, an attempt has been made to understand and implement it in subsection 4 below. It is unclear who validates the statistical documents, and which fishing vessel must have validated documents (the importing vessel, if the import was effected on a vessel, or the catching vessel). It is assumed that “Statistical Document Programs” refers to the Bigeye Tuna Statistical Document Program. Reference may be made to Resolutions 01/06 and 03/03, but this Resolution does not specifically refer to them in the substantive text.

(b) Proposed Legislative Framework

REQUIREMENTS OF THE IOTC RECORD OF FISHING VESSELS

- 1) This section applies to fishing vessels that are 24 metres in length overall or above and, in case of vessels less than 24 meters, those operating in areas beyond national jurisdiction.
- 2) The operator of a [country] fishing vessel shall:
 - a. not cause or allow the fishing vessel to engage in fishing or related activities in the [Fisheries Waters or areas beyond national jurisdiction] [IOTC Area of Competence] without a valid and applicable authorisation issued by the [relevant national authority];
 - b. comply with all relevant IOTC Conservation and Management measures;
 - c. keep on board at all times valid certificates of valid and applicable vessel registration, licence, and authorisation to fish and/or tranship;
 - d. not engage in or associate with fishing [and related] activities in the IOTC area of competence conducted by vessels not included at the relevant time in the IOTC Record of Fishing Vessels;
 - e. not, being the operator of a vessel that is not included in the IOTC Record of Fishing Vessels, retain on board, tranship or land of tuna or tuna-like species;

- f. ensure all information required under this [legislation] is submitted promptly or when required and is true, complete and correct.
- 3) The following information, as a minimum, shall be submitted by the operator of a [country] fishing vessel to [relevant national licensing authority] to support its application for an authorization for fishing or related activities in [the IOTC area of competence] [the Fisheries Waters and/or areas beyond national jurisdiction]:
- a. proof that the fishing vessel owner(s) is/are citizens or legal entities within the [country] for purposes of effective discharge of legal and administrative action by [country];
 - b. name of vessel(s) and register number(s);
 - c. IMO number (if eligible);²⁰
 - d. previous name(s) (if any);
 - e. previous flag(s) (if any);
 - f. previous details of deletion from other registries (if any);
 - g. international radio call sign(s) (if any);
 - h. port of Registration;
 - i. type of vessel(s), length and gross tonnage (GT);
 - j. name and address of owner(s) and operator(s); and
 - k. gear(s) used.²¹
- 4) The operator of any fishing vessel that is included on the IOTC Record of Fishing Vessels shall, when importing into [country] any species covered by IOTC Statistical Document Programs which has been caught by any authorised fishing vessel in the IOTC area of competence, provide statistical documents validated for the authorized fishing vessel.
- 5) The operator of each [country] fishing vessel shall carry on board at all times documentation issued and certified by [country] including the following information, and submit such information to [operational fisheries official] for certification whenever such information is modified and for verification at least annually and at such other times as the [official] may direct:
- a. license, permit or authorisation to fish and terms and conditions attached to the licence, permit of authorisation;
 - b. vessel name;
 - c. port in which registered and the number(s) under which registered;
 - d. international call sign;
 - e. names and addresses of owner(s) and where relevant, the charterer;
 - f. overall length;
 - g. engine power, in KW/horsepower, where appropriate.
- 6) The operator of a [country] fishing vessel authorized to fish in [the IOTC area of competence][the Fisheries Waters and/or areas beyond national jurisdiction] shall ensure that:

²⁰ To allow the necessary time for CPCs to obtain an IMO number for eligible vessels that do not already have one, paragraph 2.b on IMO number is effective as of 1 January 2016. As of this date, CPCs shall ensure that all their fishing vessels that are registered on the IOTC Record of fishing vessels have IMO numbers issued to them. Paragraph 2.b on IMO number does not apply to vessels which are not eligible to receive IMO numbers.

²¹ See subsection (1) under the Legislative Framework for Resolution 14/05.

- a. the fishing vessel is marked in such a way that it can be readily identified with generally accepted standards such as the FAO Standard Specification for the Marking and Identification of Fishing vessels;²²
 - b. all gear used by the fishing vessel is marked appropriately, including by fitting the ends of nets, lines and gear in the sea with flag or radar reflector buoys by day and light buoys by night sufficient to indicate their position and extent;
 - c. marker buoys and similar objects floating and on the surface, and intended to indicate the location of fixed fishing gear, are clearly marked at all time with the letter(s) and/or number(s) of the vessel to which they belong; and
 - d. fish aggregating devices are clearly marked at all time with the letter(s) and/or number(s) of the fishing vessel.
- 7) The operator of a [country] fishing vessel authorized to fish in [the IOTC area of competence][the Fisheries Waters and/or areas beyond national jurisdiction] shall keep:
- a. in addition to any electronic logbook system that may be required,²³ a permanently bound national fishing logbook with irremovable pages, each of which is consecutively numbered and printed with an applicable serial number, on board the fishing vessel and continuously up to date; and
 - b. the original recordings contained in the national fishing logbooks on board for a period of at least 12 months.

RESOLUTION 14/05 CONCERNING A RECORD OF LICENSED FOREIGN VESSELS FISHING FOR IOTC SPECIES IN THE IOTC AREA OF COMPETENCE AND ACCESS AGREEMENT INFORMATION

<p>Private access agreements</p> <p><u>Paragraph 2:</u> This list shall contain the following information for each vessel:</p> <ul style="list-style-type: none"> a) IOTC Number; b) Name and registration number; c) IMO number (if eligible); <p>To allow the necessary time to obtain an IMO number for eligible vessels that do not already have one, paragraph 2.c on IMO number is effective as of 1 January 2016. As of this date, CPCs shall ensure that all the fishing vessels that are registered on the IOTC Record of licenced fishing vessels have IMO numbers issued to them. Paragraph 2.c on IMO number does not apply to vessels which are not eligible to receive IMO numbers.</p> <ul style="list-style-type: none"> d) The flag at the time of issuing the licence; e) International radio call sign (if any); f) Vessel type, length, and gross tonnage (GT); g) Name and address of owner, and/or charterer and/or operator; h) Main target species; and 	<p><u>Private access agreements</u></p> <p><u>Paragraph 1:</u> All CPCs which issue licenses to foreign flag vessels to fish in their EEZ for species managed by the IOTC in the IOTC area of competence (hereinafter referred to as “the Area”), shall submit to the IOTC Executive Secretary, by 15 February every year, a list of all foreign flag vessels to which such licences have been issued during the previous year.</p>
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²² It would be preferable to have a separate provision requiring vessel marking for all licensed or authorized vessels, including exact specifications as shown in the FAO standards. A similar approach could be taken for subsections (b), (c) and (d).

²³ This accommodates Resolution 13/03 Paragraph 3: All vessels shall keep a bound paper or electronic logbook to record data that includes, as a minimum requirement, the information and data in the logbook set forth in Annex I, II and III.

<p>i) Period of licence.</p>	<p><u>Paragraph 2:</u> This list shall contain the following information for each vessel ...</p> <p>In assessing compliance with the paragraph above, the Commission shall take into account exceptional circumstances in which a vessel owner is not able to obtain an IMO number despite following the appropriate procedures. The CPC which has issued the licence to this vessel shall report any such exceptional situation to the IOTC Secretariat.</p> <p><u>Government to government access agreements</u></p> <p><u>Paragraph 3:</u> In cases where coastal CPCs allow foreign-flagged vessels to fish in waters in their EEZ in the IOTC Area for species managed by IOTC through a Government to Government access agreement, CPCs involved in the referred agreement shall submit jointly to the IOTC Executive Secretary the information concerning these agreements, including:</p> <ul style="list-style-type: none"> a) The CPCs involved in the agreement; b) The time period or periods covered by the agreement; c) The number of vessels and gear types authorised; d) The stock or species authorised for harvest, including any applicable catch limits; e) The CPC's quota or catch limit to which the catch will be applied, where applicable;
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	<p>f) Monitoring, control, and surveillance measures required by the flag CPC and coastal CPC involved;</p> <p>g) Data reporting obligations stipulated in the agreement, including those between the parties involved, as well as those regarding information that must be provided to the Commission;</p> <p>h) A copy of the written agreement.</p> <p><u>Paragraph 4:</u> For agreements in existence prior to the entry into force of this Resolution, the information specified in paragraph 3 shall be provided, at the least, 60 days in advance of the 2013 Commission meeting.</p> <p><u>Paragraph 5:</u> When an access agreement is modified in a manner that changes any of the information specified in paragraph 3, these changes shall be promptly notified to the IOTC Executive Secretary.</p> <p><u>Common provisions for access agreements</u></p> <p><u>Paragraph 6:</u> The CPCs shall notify the ship owner and flag State concerning foreign flagged fishing vessels that requested a license under a private access agreement or under a government to government access agreement and for which the request of license was denied.</p> <p><u>Paragraph 7:</u> All CPCs which issue licenses to foreign flag vessels to fish in their EEZs for species managed by the IOTC in the IOTC Area, under a private access agreement or under a</p>
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	<p>government to government access agreement, shall submit to the IOTC Executive Secretary within two (2) months of the entry into force of this Resolution a template of the official coastal State fishing License and translated version in one of the official Languages of the IOTC, with:</p> <ul style="list-style-type: none"> a) The terms and conditions of the coastal State fishing license; b) The name of the Competent Authority; c) The name and contact of the personnel of the Competent Authority; d) The signature of the personnel of the Competent Authority; e) The official stamp(s) of the Competent Authority. <p><u>Paragraph 8:</u> When a coastal State fishing license is modified in a manner that changes the template, any of the information provided in it or the information provided in a) to e) of paragraph 7, these changes shall be promptly notified to the IOTC Executive Secretary.</p>
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(a) Explanatory notes

Paragraph 2 requires the CPC to submit a list of information to IOTC containing information on vessels fishing under a “private” access agreement. In international law, the word “private” denotes that the coastal State is not involved; this is probably an error and should be corrected.

The information required under this paragraph overlaps with information required to be submitted under Resolution 14/04, above, and required under subsection (3) of the proposed Legislative Framework. Resolution 14/04 concerns issuing authorisations to flag vessels, this Resolution relates to foreign vessels having access to fish IOTC species in the CPC coastal State’s waters.

However, it could be useful and simpler for CPCs to require all information required under both Resolutions to be submitted by all vessels applying for permission to fish.²⁴

Both resolutions require, in addition to information which is not submitted by the operator of the fishing vessel (e.g. details about the issuance/period of the license/authorisation by the CPC):

²⁴ Except for the flag at the time of licence issuance, which should only relate to foreign vessels.

- Name and registration number;
- IMO number (if eligible);
- International radio call sign (if any);
- Vessel type, length, and gross tonnage (GT);
- Name and address of owner, and/or operator;²⁵
- Type of vessel(s), length and gross tonnage (GT);
- Name and address of owner(s) and operator(s);
- Gear(s) used;
- International radio call sign(s) (if any).

Resolution 14/04 also requires:

- Previous name(s) (if any);
- Previous flag(s) (if any);
- Previous details of deletion from other registries (if any);
- Port of Registration.

This Resolution also requires:

- The flag at the time of issuing the licence;
- Name and address of charterer, if any;
- Main target species.

Under subsection (3) of the Legislative Framework for Resolution 14/04, above, the operator is required to provide much of the relevant information required under this Resolution. It would be preferable to develop license/authorisation application forms which require all information above, as a minimum standard, to be submitted by the vessel operator so the CPC could submit it to IOTC.

Otherwise, mindful of the redundancy, it is recommended that a provision be included along the lines of subsection (1), which requires information to be given by the operators of a foreign fishing vessel in their application for a foreign vessel fishing license. It is recommended that the asterisked items – in Resolution 14/04 but not this one – be included and in reviewing country’s legislation the broader approach be taken that includes both, if the country agrees. A similar approach could be taken in implementing Resolution 14/04.

It is also recommended that IOTC review information to be submitted by the CPC as coastal State and as flag State, and align/strengthen it wherever possible to ensure a complete database. This would involve cross-checking information to verify coherence, and requesting clarification where there are inconsistencies.

(b) Proposed Legislative Framework

- 1) The following information, as a minimum standard, shall be submitted by the operator of a foreign fishing vessel to [relevant national licensing authority] to support its application for a license or authorisation for engaging in fishing or related activities [in relation to tuna or tuna-like species in the Fisheries Waters]:

²⁵ This should be changed if the “operator” is defined as the owner, charterer, master etc. as suggested in the Glossary”.

- a. proof that the fishing vessel owner(s) is/are citizens or legal entities within the [country] for purposes of effective discharge of legal and administrative action by [country];*
- b. name of vessel(s) and register number(s);
- c. IMO number (if eligible);²⁶
- d. previous name(s) (if any);*
- e. flag;
- f. previous flag(s) (if any);*
- g. previous details of deletion from other registries (if any);*
- h. international radio call sign(s) (if any);
- i. port of Registration;*
- j. type of vessel(s), length and gross tonnage (GT);
- k. name and address of [owner, and/or charterer and/or operator] [owner(s) and operator(s)];²⁷
- l. main target species;
- m. gear(s) used;
- n. the flag at the time of licence issuance.

[* denotes information required under Resolution 14/04 and addressed in subsection 3 under the relevant Legislative Framework, but not this Resolution]

RESOLUTION 14/06 ON ESTABLISHING A PROGRAMME FOR TRANSHIPMENT BY LARGE-SCALE FISHING VESSELS

<p>General Rule: <u>Paragraph 1:</u> Except under the programme to monitor transshipments at sea outlined in Section 2, all transshipment operations of tuna and tuna-like species and sharks caught in association with tuna and tuna-like fisheries in the IOTC area of competence (hereinafter referred to as “tuna and tuna-like species and sharks”) must take place in port.</p> <p><u>Paragraph 2:</u> The flag Contracting Party, Cooperating Non-Contracting Party (CPCs) shall take the necessary measures to ensure that large scale tuna vessels (hereafter referred as the “LSTVs”) flying their flag comply with the obligations set out in Annex I when transshipping in port.</p> <p>Regarding Transshipments At Sea: <u>Paragraph 3:</u> The Commission hereby establishes a programme to monitor transshipment at sea which applies only to large-scale tuna longline fishing vessels (hereafter referred to as the “LSTLVs”) and to carrier vessels authorised to receive transshipments from these vessels at sea.²⁸ No at-sea transshipment of tuna and tuna-like species and sharks by fishing vessels other than LSTLVs shall be allowed.</p> <p><u>Paragraph 4:</u> The CPCs that flag LSTLVs shall determine whether or not to authorise their LSTLVs to tranship at sea. However, if the flag CPC authorises the at-sea transshipment by its flag LSTLVs, such transshipment shall be</p>	<p>Regarding Transshipments At Sea:</p> <p><u>Paragraph 6:</u> Each CPC shall submit, electronically where possible, to the IOTC Executive Secretary the list of the carrier vessels that are authorised to receive at-sea transshipments from its LSTLVs in the IOTC area of competence. This list shall include the information:</p> <ol style="list-style-type: none"> a) The flag of the vessel; b) Name of vessel, register number; c) Previous name (if any); d) Previous flag (if any); e) Previous details of deletion from other registries (if any); f) International radio call sign;
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²⁶ To allow the necessary time for CPCs to obtain an IMO number for eligible vessels that do not already have one, paragraph 2.b on IMO number is effective as of 1 January 2016. As of this date, CPCs shall ensure that all their fishing vessels that are registered on the IOTC Record of fishing vessels have IMO numbers issued to them. Paragraph 2.b on IMO number does not apply to vessels which are not eligible to receive IMO numbers.

²⁷ The former option is used in this Resolution, the latter in Resolution 14/04].

²⁸ Language added to original table, taken from Resolution.

<p>conducted in accordance with the procedures defined in Sections 3, 4 and 5, and Annexes II and III.</p> <p><u>Paragraph 9:</u> Carrier vessels authorised for at-sea transhipment shall be required to install and operate a Vessel Monitoring System (VMS).</p> <p><u>Paragraph 10:</u> Transhipments by LSTLVs in waters under the jurisdiction of the CPCs are subject to prior authorisation from the Coastal State concerned. CPCs shall take the necessary measures to ensure that LSTLVs flying their flag comply with the conditions set out in paragraphs 11 to 18.</p> <p><u>Paragraph 11:</u> LSTLVs are not authorised to tranship at sea, unless they have obtained prior authorisation from their flag State.</p> <p><u>Paragraph 12:</u> To receive the prior authorisation outlined in paragraph 11, the master and/or owner of the LSTLV must notify the following information to its flag State authorities at least 24 hours in advance of an intended transhipment:</p> <ol style="list-style-type: none"> The name of the LSTLV, its number in the IOTC Record of Vessels, and its IMO number, if issued; The name of the carrier vessel, its number in the IOTC Record of Carrier Vessels authorised to receive transhipments in the IOTC area of competence, and its IMO number, and the product to be transhipped; The tonnage by product to be transhipped; The date and location of transhipment; The geographic location of the catches. <p><u>Paragraph 13:</u> The LSTLV concerned shall complete and transmit to its flag State, not later than 15 days after the transhipment, the IOTC transhipment declaration, along with its number in the IOTC Record of Fishing Vessels, in accordance with the format set out in Annex II.</p> <p><u>Paragraph 14:</u> Before starting transhipment, the master of the receiving carrier vessel shall confirm that the LSTLV concerned is participating in the IOTC programme to monitor transhipment at sea (which includes payment of the fee in paragraph 13 of Annex III) and has obtained the prior authorisation from their flag State referred to in paragraph 11. The master of the receiving carrier vessel shall not start such transhipment without such confirmation.</p> <p><i><u>Paragraph 15:</u> The master of the receiving carrier vessel shall complete and transmit the IOTC transhipment declaration to the IOTC Secretariat and the flag CPC of the LSTLV, along with its number in the IOTC Record of Carrier Vessels authorised to receive transhipment in the IOTC area of competence, within 24 hours of the completion of the transhipment.</i></p> <p><i><u>Paragraph 16:</u> The master of the receiving carrier vessel shall, 48 hours before landing, transmit an IOTC transhipment declaration, along with its number in the IOTC Record of Carrier Vessels authorised to receive transhipment in the IOTC area of competence, to the competent authorities of the State where the landing takes place.²⁹</i></p> <p><u>Paragraph 17:</u> Each CPC shall ensure that all carrier vessels transhipping at sea have on board an IOTC observer, in accordance with the IOTC Regional Observer Programme in Annex III. The IOTC observer shall observe the</p>	<ol style="list-style-type: none"> Type of vessels, length, gross tonnage (GT) and carrying capacity; Name and address of owner(s) and operator(s); Time period authorised for transhipping. <p><u>Paragraph 7:</u> Each CPC shall promptly notify the IOTC Executive Secretary, after the establishment of the initial IOTC Record, of any addition to, any deletion from and/or any modification of the IOTC Record, at any time such changes occur</p> <p><u>Paragraph 17:</u> Each CPC shall ensure that all carrier vessels transhipping at sea have on board an IOTC observer, in accordance with the IOTC Regional Observer Programme in Annex III.</p> <p>General Provisions:</p> <p><u>Paragraph 19:</u> To ensure the effectiveness of the IOTC Conservation and Management Measures pertaining to species covered by Statistical Document Programs:</p> <ol style="list-style-type: none"> In validating the Statistical Document, flag CPCs of LSTLVs shall ensure that transhipments are consistent with the reported catch amount by each LSTLV; The flag CPC of LSTLVs shall validate the Statistical Documents for the transhipped fish, after confirming that the transhipment was conducted in accordance with this
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²⁹ Note that these paragraphs 15 and 16 are relevant primarily to the flag States of the receiving carrier vessels, which are not necessarily CPCs.

compliance with this Resolution, and notably that the transhipped quantities are consistent with the reported catch in the IOTC transhipment declaration.

Paragraph 18: Vessels shall be prohibited from commencing or continuing at-sea transshipping in the IOTC area of competence without an IOTC regional observer on board, except in cases of “force majeure” duly notified to the IOTC Secretariat.

General Provisions:

Paragraph 21: All tuna and tuna-like species and sharks landed or imported into the CPCs either unprocessed or after having been processed on board and which are transhipped, shall be accompanied by the IOTC transhipment declaration until the first sale has taken place.

Annex I (Conditions relating to in-port transhipment by LSTVs):

Paragraph 1: Transhipment operations in port may only be undertaken in accordance with the outlined procedures.

Paragraph 2.1: Prior to transshipping, the Captain of the LSTV must notify the following information to the port State authorities, at least 48 hours in advance:

- a) the name of the LSTV and its number in the IOTC record of fishing vessels;
- b) the name of the carrier vessel, and the product to be transhipped;
- c) the tonnage by product to be transhipped;
- d) the date and location of transhipment;
- e) the major fishing grounds of the tuna and tuna-like species and sharks catches.

Paragraph 2.2: The Captain of a LSTV shall, at the time of the transhipment, inform its Flag State of the following;

- a) the products and quantities involved;
- b) the date and place of the transhipment;
- c) the name, registration number and flag of the receiving carrier vessel;
- d) the geographic location of the tuna and tuna-like species and sharks catches.

Paragraph 2.3: The captain of the LSTV concerned shall complete and transmit to its flag State the IOTC transhipment declaration, along with its number in the IOTC Record of Fishing Vessels, in accordance with the format set out in Annex II not later than 15 days after the transhipment.

Paragraph 3: Not later than 24 hours before the beginning and at the end of the transhipment, the master of the receiving carrier vessel shall inform the port State authorities of the quantities of tuna and tuna-like species and sharks transhipped to his vessel, and complete and transmit the IOTC transhipment declaration, to the competent authorities within 24 hours.

Paragraph 4: The master of the receiving carrier vessel shall, 48 hours before landing, complete and transmit an IOTC transhipment declaration, to the competent authorities of the landing State where the landing takes place.

Annex III (IOTC Regional Observer Programme):

Paragraph 1: Each CPC shall require carrier vessels included in the IOTC Record of Carrier Vessels authorised to receive transhipments in the IOTC area of

Resolution. This confirmation shall be based on the information obtained through the IOTC Observer Programme;

- c) CPCs shall require that the species covered by the Statistical Document Programs caught by LSTLVs in the IOTC area of competence, when imported into the territory of a Contracting Party, be accompanied by statistical documents validated for the vessels on the IOTC record and a copy of the IOTC transhipment declaration.

Paragraph 20: The CPCs shall report annually before 15 September to the IOTC Executive Secretary:

- a) The quantities by species transhipped during the previous year;
- b) The list of the LSTLVs registered in the IOTC Record of Fishing Vessels which have transhipped during the previous year;
- c) A comprehensive report assessing the content and conclusions of the reports of the observers assigned to carrier vessels which have received transhipment from their LSTLVs.

Paragraph 23:

Upon receiving evidence indicating possible infraction of IOTC regulations by LSTLVs/carrier vessels flagged to that CPC, each CPC shall investigate the cases and report the results

competence and which tranship at sea, to carry an IOTC observer during each transshipment operation in the IOTC area of competence.

Paragraph 9: The responsibilities regarding observers of the flag States of the carrier vessels and their captains shall include the following, notably:

- a) Observers shall be allowed access to the vessel personnel and to the gear and equipment;
- b) Upon request, observers shall also be allowed access to the following equipment, if present on the vessels to which they are assigned, in order to facilitate the carrying out of their duties set forth in paragraph 5:
 - i. Satellite navigation equipment;
 - ii. Radar display viewing screens when in use;
 - iii. Electronic means of communication.
- c) Observers shall be provided accommodation, including lodging, food and adequate sanitary facilities, equal to those of officers;
- d) Observers shall be provided with adequate space on the bridge or pilot house for clerical work, as well as space on deck adequate for carrying out observer duties; and
- e) The flag States shall ensure that captains, crew and vessel owners do not obstruct, intimidate, interfere with, influence, bribe or attempt to bribe an observer in the performance of his/her duties.

Annex III, sections 3-8:

This covers the duty of observers, see explanatory notes below. It should be included in the Table.

of the investigation back to the IOTC Secretariat three months prior to the IOTC Compliance Committee meeting.

Annex I

Paragraph 5: The port State and the landing State shall take the appropriate measures to verify the accuracy of the information received and shall cooperate with the flag CPC of the LSTV to ensure that landings are consistent with the reported catches amount of each vessel. This verification shall be carried out so that the vessel suffers the minimum interference and inconvenience and that degradation of the fish is avoided.

Paragraph 6: Each flag CPC of the LSTVs shall include in its annual report each year to IOTC the details on the transshipments by its vessels.

Annex III (IOTC Regional Observer Programme):

Paragraph 13: The costs of implementing this program shall be financed by the flag CPCs of LSTLVs wishing to engage in transshipment operations. The fee shall be calculated on the basis of the total costs of the program. This fee shall be paid into a special account of the IOTC Secretariat.

(a) Explanatory notes

This Resolution regulates transshipments at sea. An option should be presented to countries to implement this Resolution or to prohibit all transshipments at sea by its flag LSLTVs and LSTVs, including within and beyond areas of national jurisdiction.³⁰

³⁰ For IOC Members, this would be in line with the IOC Declaration on IUU Fishing (2008).

Legislation should target all vessels involved in fishing and fishing related activities, i.e. fishing vessels and carrier vessels, noting that many of the latter are not flagged in CPCs.

There is a slight anomaly between the title and text of the Resolution; the former refers to large-scale “fishing vessels” and the text refers to “tuna vessels” - LSTLVs and LSTVs. There is no definition of either in the text, although in practice these vessels are 24 metres length overall and above. As a related matter, ISSF recommended in 2012 that IOTC sharpen its definition of large-scale tuna longline vessels (LSTLVs) in order to better enforce Resolution 11-05, which limits the occurrence of at-sea transshipments for LSTLVs and requires reporting of transshipments in port.³¹

Paragraph 3 applies to carrier vessels “authorised to” receive at-sea transshipments. However, national law would have more clout if the requirements were also applied simply to “carrier vessels that receive transshipments”, where there may be some difficulty in establishing the authorisation. Options for drafting are given in subsection (1) below.

Paragraph 4 provides that the CPCs that flag LSTLVs shall determine whether or not to authorise their LSTLVs to tranship at sea. However, if the flag CPC authorises the at-sea transhipment by its flag LSTLVs, such transhipment shall be conducted in accordance with the procedures defined in Sections 3, 4 and 5, and Annexes II and III. “Sections 3, 4 and 5” refer to paragraphs 5-24 of the Resolution, and the Legislative Framework takes them into account.

The above table does not include Sections 3-8 of Annex III, which designate rules for the appointment and duties of observers. This should be included in the national fisheries legislation in order to clarify the legal authority of the observers and protect them against obstruction.

(b) Proposed Legislative Framework

TRANSHIPMENT IN THE IOTC AREA OF COMPETENCE BY LARGE-SCALE TUNA VESSELS AND CARRIER VESSELS

1) This section applies to:

- a. in respect of at-sea transshipments, all [country] fishing vessels that are:³²
 - i. large-scale tuna longline fishing vessels (“LSTLVs”); and
 - ii. carrier vessels [authorised to] [that] receive transshipments from these vessels at sea; and

- b. in respect of in-port transshipments, as appropriate:
 - i. all [country] fishing vessels that are large scale tuna vessels (“LSTVs”) or carrier vessels, in any port within or beyond the jurisdiction of [country] where the fish were caught within the IOTC area of competence;
 - ii. all fishing vessels, including carrier vessels in relation to transhipment in a port of [country].

³¹ <http://iss-foundation.org/2012/04/17/support-for-tuna-catch-limits-in-the-indian-ocean/>

³² Although the IOTC Resolution applies the requirements to the specified class of vessels, note that a country (in its flag State capacity) may opt to prohibit transhipment at-sea by all its flag vessels in or beyond areas under national jurisdiction.

- 2) The operator of a fishing vessel other than an LSTLV shall not conduct or be authorized to conduct at-sea transshipment of tuna and tuna-like species and sharks caught in association with tuna and tuna-like fisheries in the IOTC area of competence (for purposes of this section, “tuna and tuna-like species and sharks”).
- 3) Where the transshipment takes place in a port of [country], the operator of a fishing vessel shall:
- a. at least 48 hours prior to transshipping in a port in [country], notify the following information to [senior operational fisheries authority]:
 - i. the name of the fishing vessel and its number in the IOTC record of fishing vessels;
 - ii. the name of the carrier vessel, and the product to be transhipped;
 - iii. the tonnage by product to be transhipped;
 - iv. the date and location of transshipment; and
 - v. the major fishing grounds of the tuna and tuna-like species and sharks catches.
 - b. where the vessel is a receiving carrier vessel involved in the transshipment in a port in [country], not later than 24 hours before the beginning and at the end of the transshipment:
 - i. inform the [senior operational fisheries authority] of the quantities of tuna and tuna-like species and sharks transhipped to such vessel; and
 - ii. complete and transmit the transshipment declaration required by IOTC to [competent authorities] within 24 hours.
 - c. where the vessel is a receiving carrier vessel landing a transshipment at a port in [country], 48 hours before landing, complete and transmit an IOTC transshipment declaration required by IOTC to [competent authorities].
- 4) Where transshipment takes place at a port beyond national jurisdiction, the operator of a [country] fishing vessel shall:
- a. at the time of the transshipment, inform [senior operational fisheries authority] of the following:
 - i. the products and quantities involved;
 - ii. the date and place of the transshipment;
 - iii. the name, registration number and flag of the receiving carrier vessel; and
 - iv. the geographic location of the tuna and tuna-like species and sharks catches.
 - b. complete and transmit to [country] the IOTC transshipment declaration, along with its number in the IOTC Record of Fishing Vessels, in accordance with the format set out in [below, should be in an Annex] not later than 15 days after the transshipment.

IOTC Transshipment declaration	
Carrier Vessel	Fishing Vessel
Name of the Vessel and Radio Call Sign: Flag: Flag State license number: National Register Number, if available: IOTC Register Number, if available:	Name of the Vessel and Radio Call Sign: Flag: Flag State license number: National Register Number, if available: IOTC Register Number, if available:

LSTV: Day Month Hour Year |2_|0_|_|_| Agent's name: Master's name of
 Master's name of Carrier:

Departure |_|_| |_|_| |_|_| from |_____|

Return |_|_| |_|_| |_|_| to |_____| Signature: Signature:
 Signature:

Transhipment |_|_| |_|_| |_|_| |_____|

Indicate the weight in kilograms or the unit used (e.g. box, basket) and the landed weight in kilograms
 of this unit: |_____| kilograms

LOCATION OF TRANSHIPMENT

Species	Port		Sea	Type of product											
				Whole	Gutted	Headed	Filletted								

If transhipment effected at sea, IOTC Observer Name and Signature:

- 5) The operator of a [country] LSTLV fishing vessel shall not conduct at-sea transhipments of tuna and tuna-like species and sharks in the IOTC area of competence:
- except in accordance with a valid and applicable authorisation issued by [country] for at-sea transhipment in the Fisheries Waters and by a relevant coastal State for at-sea transhipments in waters under its national jurisdiction;
 - unless the relevant carrier vessel is entered on the IOTC Record of Carrier Vessels and authorised to receive tuna an tuna-like species and sharks at sea in the IOTC area of competence;
 - except in accordance with the requirements of this [legislation] and relevant requirements in Resolutions of the IOTC;
 - unless a vessel monitoring system is installed on the vessel and is fully operational and in compliance with relevant legislation of [country] and any relevant coastal State; and

- e. unless an IOTC observer on board the carrier vessel, in accordance with the IOTC Regional Observer Programme in Annex III of Resolution 14/06 (as amended or superseded), except in cases of “force majeure” notified to the IOTC Secretariat and where the observer is allowed to board the LSTLV the operator shall grant the observer access to personnel and areas of the vessel necessary to carry out his/her duties, in accordance with the duties of the operator of the carrier vessel in subsection 12.
- 6) For the purposes of this [legislation], carrier vessels not entered on the IOTC Record of Carrier Vessels are deemed not to be authorised to receive tuna and tuna-like species and sharks in at-sea transshipment operations.
 - 7) A carrier vessel that is entered on the IOTC Record of Carrier Vessels and designated to receive at-sea transshipments from the [country] LSTLVs in the IOTC area of competence shall provide the following information to the [senior operational fisheries authority] prior to an authorization being granted:
 - a. flag State;
 - b. name of vessel, register number;
 - c. previous name (if any);
 - d. previous flag (if any);
 - e. previous details of deletion from other registries (if any);
 - f. international radio call sign;
 - g. type of vessels, length, gross tonnage (GT) and carrying capacity; and
 - h. name and address of owner(s) and operator(s).
 - 8) The operator of an LSTLV shall request an authorization to tranship at sea from [senior operational fisheries official], together with the following information, at least 24 hours in advance of an intended transshipment:
 - a. name of the LSTLV, its number in the IOTC Record of Vessels, and its IMO number, if issued;
 - b. name of the carrier vessel, its number in the IOTC Record of Carrier Vessels authorised to receive transshipments in the IOTC area of competence, and its IMO number, and the product to be transhipped;
 - c. tonnage by product to be transhipped;
 - d. date and location of transshipment; and
 - e. geographic location of the catches.
 - 9) The operator of an LSTLV shall, not later than 15 days after each transshipment at sea, complete and transmit to [senior operational fisheries officer], the IOTC transshipment declaration, along with its number in the IOTC Record of Fishing Vessels, in accordance with the format set out in [a designated Annex as referenced in subsection 4(b), above, or Annex II of Resolution 14/04].
 - 10) The operator of a receiving carrier vessel shall, prior to the commencement of any transshipment at sea:
 - a. confirm that the LSTLV concerned is participating in the IOTC programme to monitor transshipment at sea, including payment of any required fee as determined under any IOTC Resolution, [specifically IOTC Resolution 14/06, paragraph 13 of Annex III, (as amended or superseded)] and has obtained the prior authorisation from its flag State;
 - b. not commence such transshipment without such confirmation;

- c. not commence such transshipment without an IOTC observer on board, in accordance with the IOTC Regional Observer Programme in Annex III of Resolution 14/06 (as amended or superseded); and
- d. ensure that the IOTC observer observes the compliance of the transshipment with this [legislation], including that the transhipped quantities are consistent with the reported catch in the IOTC transshipment declaration.

11) The operator of a receiving carrier vessel shall, after transshipment at sea:

- a. within 24 hours of completion of transshipment, complete and transmit the IOTC transshipment declaration [in a designated Annex as referenced in subsection 4(b), above, or Annex II of Resolution 14/04], along with its number in the IOTC Record of Carrier Vessels authorised to receive transshipment in the IOTC area of competence, to the IOTC Secretariat and the flag State of the LSTLV;
- b. 48 hours before landing, transmit an IOTC transshipment declaration [in a designated Annex as referenced in subsection 4(b), above, or Annex II of Resolution 14/04], along with its number in the IOTC Record of Carrier Vessels authorised to receive transshipment in the IOTC area of competence, to the competent authorities of the State where the landing takes place.³³

12) The operator of a [receiving carrier][fishing] vessel shall not commence transshipment without an IOTC observer on board, in accordance with the IOTC Regional Observer Programme in Annex III of Resolution 14/06 (as amended or superseded), except in cases of “force majeure” notified to the IOTC Secretariat, and shall:

- a. allow observers access to the vessel personnel, gear and equipment;
- b. upon request, allow observers access to the following equipment, if present on the vessels to which they are assigned, in order to facilitate the carrying out of their duties:
 - i. Satellite navigation equipment;
 - ii. Radar display viewing screens when in use;
 - iii. Electronic means of communication.
- c. provide observers accommodation, including lodging, food and adequate sanitary facilities, equal to those of officers;
- d. provide observers with adequate space on the bridge or pilot house for clerical work, as well as space on deck adequate for carrying out observer duties; and
- e. allow the observer to visit the fishing vessel, if weather conditions permit it.

13) No person, including any operator and crew member, shall obstruct, intimidate, interfere with, influence, bribe or attempt to bribe an observer in the performance of his/her duties.

14) No operator of a fishing vessel, including a carrier vessel, or other person shall land or import tuna and tuna-like species and sharks, either unprocessed or after having been processed on board and which are transhipped, until the first sale has taken place, unless it is accompanied by the IOTC transshipment declaration.

³³ Note that these paragraphs are relevant primarily to the flag States of the receiving carrier vessels, which are not necessarily CPCs.

OBSERVERS³⁴

- 1) An observer appointed to perform duties in relation to the IOTC Observer programme shall:
 - a. in relation to a fishing vessel intending to tranship to the carrier vessel and before any transshipment takes place:
 - i. check the validity of the fishing vessel's authorisation or licence to fish tuna and tuna-like species and sharks in the IOTC area of competence;
 - ii. check and note the total quantity of catch on board, and the quantity to be transferred to the carrier vessel;
 - iii. to the extent possible, check that the VMS is functioning;
 - iv. examine the logbook;
 - v. verify whether any of the catch on board resulted from transfers from other vessels, and check documentation on such transfers;
 - vi. in the case of an indication that there are any violations involving the fishing vessel, immediately report the violations to the carrier vessel's master; and
 - vii. report the results of these duties on the fishing vessel in the observers report.
 - b. in relation to any carrier vessel receiving the transshipment, monitor the carrier vessel's compliance with the relevant Conservation and Management Measures adopted by the IOTC, and in particular:
 - i. record and report upon the transshipment activities carried out;
 - ii. verify the position of the vessel when engaged in transshipping;
 - iii. observe and estimate products transhipped;
 - iv. verify and record the name of the LSTLV concerned and its IOTC number;
 - v. verify the data contained in the transshipment declaration;
 - vi. certify the data contained in the transshipment declaration;
 - vii. countersign the transshipment declaration;
 - viii. issue a daily report of the carrier vessels transshipping activities;
 - ix. establish general reports compiling the information collected in accordance with this paragraph and provide the captain the opportunity to include therein any relevant information;

³⁴ This should be in a separate section on observers.

x. submit to the IOTC Secretariat the aforementioned general report within 20 days from the end of the period of observation; and

xi. exercise any other functions as defined by the Commission.

c. treat as confidential all information with respect to the fishing operations of the LSTLVs and of the LSTLVs owners and accept this requirement in writing as a condition of appointment as an observer.

d. comply with requirements established in the laws and regulations of the flag State which exercises jurisdiction over the vessel to which the observer is assigned.

e. respect the hierarchy and general rules of behaviour which apply to all vessel personnel, provided such rules do not interfere with the duties of the observer under this program, and with the obligations of vessel personnel described in subsection 2, below.

2) No person, including any operator and crew member, shall obstruct, intimidate, interfere with, influence, bribe or attempt to bribe an observer in the performance of his/her duties.

RESOLUTION 11/03 ON ESTABLISHING A LIST OF VESSELS PRESUMED TO HAVE CARRIED ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN THE IOTC AREA OF COMPETENCE

Paragraph 1 (Definition of IUU fishing):

For the purposes of this Resolution, fishing vessels are presumed to have carried out illegal, unreported and unregulated fishing activities in the IOTC area of competence, inter alia, when a Contracting Party or Cooperating Non-Contracting Party (hereinafter referred to as "CPCs") presents evidence that such vessels:

- a) Harvest tuna or tuna-like species in the IOTC area of competence and are neither registered on the IOTC Record of Vessels authorised to fish for tuna and tuna-like species in the IOTC area of competence, in accordance with Resolution 07/02 [superseded by Resolution 13/02, then by Resolution 14/04], nor recorded in the Active list of Vessels of IOTC; or
- b) Harvest tuna or tuna-like species in the IOTC area of competence, when their flag State is without sufficient quotas, catch limit or effort allocation under IOTC Conservation and Management Measures where applicable;
- c) Do not record or report their catches made in the IOTC area of competence in accordance with IOTC reporting requirements, or make false reports; or
- d) Take or land undersized fish in contravention of IOTC Conservation and Management Measures; or
- e) Fish during closed fishing periods or in closed areas in contravention of IOTC Conservation and Management Measures; or
- f) Use prohibited fishing gear in contravention of IOTC Conservation and Management Measures; or
- g) Tranship with, or participate in joint operations such as re-supplying or re-fuelling, vessels included in the IUU Vessels List; or
- h) Harvest tuna or tuna-like species in the waters under the national jurisdiction of a coastal State in the IOTC area of competence without authorisation and/or infringe the coastal State's laws and regulations, (this is without prejudice to the sovereign rights of coastal States to take measures against such vessels); or
- i) Are without nationality and harvest tuna or tuna-like species in the IOTC area of competence; or
- j) Engage in fishing, including transshipping, re-supplying or re-fuelling, contrary to any other IOTC Conservation and Management Measures.

Paragraph 2: CPCs shall transmit every year to the IOTC Executive Secretary at least 70 days before the Annual Meeting, a list of the vessels presumed to have been carrying out IUU fishing activities in the IOTC area of competence during the current and previous year, accompanied by evidence supporting the presumption of IUU fishing activity. The IOTC Reporting Form for Illegal Activity (Annex I) shall be used.

Paragraph 3: This list and evidence shall be based on information collected by CPCs from all relevant sources (includes a list of potential sources).]

Paragraph 5: The Flag State shall notify the owner of the vessels of their inclusion in the Draft IUU Vessels List and of the consequences that may result from their inclusion being confirmed in the IUU Vessels List adopted by the Commission.

Paragraph 16: CPCs shall take all necessary measures, under their applicable legislation:

- a) So that the fishing vessels, the mother-ships and the cargo vessels flying their flag do not participate in any transshipment with vessels on the IUU Vessels list;
- b) So that IUU vessels that enter ports voluntarily are not authorized to land, tranship, refuel, re-supply, or engage in other commercial transactions;
- c) To prohibit the chartering of a vessel included on the IUU Vessels List;
- d) To refuse to grant their flag to vessels included in the IUU Vessels 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 State determines that granting the vessel its flag will not result in IUU fishing;
- e) To prohibit the imports, landing or transshipment, of tuna and tuna-like species from vessels included in the IUU Vessels List;
- f) To 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 Vessels List;
- g) 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 Vessels List.

Paragraph 6: Upon receipt of the Draft IUU Vessels list, CPCs shall closely monitor the vessels included in the Draft IUU Vessels List in order to determine their activities and possible changes of name, flag and or registered owner.

Paragraph 8: CPCs and Non-Contracting Parties may at any time submit to the IOTC Executive Secretary any additional information, which might be relevant to the establishment of the IUU Vessels List.

Paragraph 15: On adoption of the IOTC IUU Vessels List, the IOTC Executive Secretary shall request CPCs, whose vessels appear on the list:

- a) To notify the owner of the vessel identified on the IUU Vessels List of its inclusion on the list and the consequences which result from being included on the list, as referred to in paragraph 16;
- b) To take all the necessary measures to eliminate these IUU fishing activities, including if necessary, the withdrawal of the registration or of the fishing licences of these vessels, and to inform the Commission of the measures taken in this respect.

Note: Paragraphs 20 to 22 were not included as they refer to a specific procedure under this Resolution and will have not an impact on the national legal framework.

(a) Explanatory notes

No comment, other than some of the measures may overlap with others, e.g. port State measures. This should be taken as reinforcement, as they are mutually complementary.

(b) Proposed Legislative Framework

**MEASURES TO IMPLEMENT THE IOTC
LIST OF ILLEGAL, UNREPORTED AND UNREGULATED FISHING VESSELS (IUU VESSELS LIST)**

- 1) The [national fisheries authority/Minister/senior operational fisheries official] shall discharge its obligations to cooperate with IOTC in preventing, deterring and eliminating illegal, unreported and unregulated (IUU) fishing activities in the IOTC area of competence, *inter alia*, by providing information and evidence to the IOTC Secretariat that any fishing vessel has engaged in an activity that is presumed to involve IUU fishing, [including that such fishing vessels:
 - a. harvest tuna or tuna-like species in the IOTC area of competence and are not registered on the IOTC Record of Vessels authorised to fish for tuna and tuna-like species in the IOTC area of competence, nor recorded in the Active list of Vessels of IOTC;
 - b. harvest tuna or tuna-like species in the IOTC area of competence, when their flag State is without sufficient quotas, catch limit or effort allocation under IOTC applicable Conservation and Management Measures;
 - c. do not record or report their catches made in the IOTC area of competence in accordance with IOTC reporting requirements, or make false reports;
 - d. take or land undersized fish in contravention of IOTC Conservation and Management Measures;
 - e. fish during closed fishing periods or in closed areas in contravention of IOTC Conservation and Management Measures;
 - f. use prohibited fishing gear in contravention of IOTC Conservation and Management Measures;
 - g. tranship with, or participate in joint operations such as re-supplying or re-fuelling, vessels included in the IUU Vessels List;
 - h. harvest tuna or tuna-like species in the waters under the national jurisdiction of a coastal State in the IOTC area of competence without authorisation and/or infringe the coastal 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 harvest tuna or tuna-like species in the IOTC area of competence; or
 - j. engage in fishing or related activities, including transshipping, re-supplying or re-fuelling, in contravention of any other IOTC Conservation and Management Measures.]

- 2) The operators of any [country] fishing vessels, cargo vessels and other ships shall not, in relation to vessels that are entered in an IUU Vessels List of a subregional or regional organisation or arrangement participate in any transshipment activities with such vessels.
- 3) The following shall be prohibited in respect of vessels entered in an IUU Vessels List of a subregional or regional organisation or arrangement List:
 - a. when in port, landing, transshipment, refuelling, re-supplying, or engaging in other commercial transactions;
 - b. chartering;
 - c. granting the flag, 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 [Minister/other authority] determines that granting the vessel its flag will not result in IUU fishing; and
 - d. importing, landing or transshipment of tuna and tuna-like species.
- 4) The [senior operational fisheries official] shall collect and exchange with other IOTC 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 IOTC IUU Vessels List.

RESOLUTION 11/04 ON A REGIONAL OBSERVER SCHEME

<p><u>Paragraph 2:</u> In order to improve the collection of scientific data, at least 5 % of the number of operations/sets for each gear type by the fleet of each CPC while fishing in the IOTC area of competence of 24 meters overall length and over, and under 24 meters if they fish outside their Exclusive Economic Zone (EEZ) shall be covered by this observer scheme. For vessels under 24 meters if they fish outside their EEZ, the above mentioned coverage should be achieved progressively by January 2013.</p> <p><u>Paragraph 3:</u> When purse seiners are carrying an observer as stated in paragraph 1, this observer shall also monitor the catches at unloading to identify the composition of bigeye tuna catches. The requirement for the observer to monitor catches at unloading is not applicable to CPCs already having a sampling scheme, with at least the coverage set out in paragraph 2.</p> <p><u>Paragraph 4:</u> The number of the artisanal fishing vessels landings shall also be monitored at the landing place by field samplers.</p> <p><u>Paragraph 10:</u> Observers shall:</p> <ol style="list-style-type: none"> a. Record and report fishing activities, verify positions of the vessel; b. Observe and estimate catches as far as possible with a view to identifying catch composition and monitoring discards, by-catches and size frequency; c. Record the gear type, mesh size and attachments employed by the master; 	<p><u>Paragraph 5:</u> CPCs shall:</p> <ol style="list-style-type: none"> a) Have the primary responsibility to obtain qualified observers. Each CPC may choose to use either deployed national or non-national of the flag State of the vessel on which they are deployed; b) Endeavour that the minimum level of coverage is met and that the observed vessels are a representative sample of the gear types active in their fleet; c) Take all necessary measures to ensure that observers are able to carry out their duties in a competent and safe manner; d) Endeavour to ensure that the observers
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<p>d. Collect information to enable the cross-checking of entries made to the logbooks (species composition and quantities, live and processed weight and location, where available); and</p> <p>e. Carry out such scientific work (for example, collecting samples), as requested by the IOTC Scientific Committee.</p>	<p>alternate vessels between their assignments. Observers are not to perform duties, other than those described in paragraphs 10 and 11 below;</p> <p>e) Ensure that the vessel on which an observer is placed shall provide suitable food and lodging during the observer's deployment at the same level as the officers, where possible. Vessel masters shall ensure that all necessary cooperation is extended to observers in order for them to carry out their duties safely including providing access, as required, to the retained catch, and catch which is intended to be discarded.</p> <p><u>Paragraph 9:</u> CPCs shall provide to the IOTC Executive Secretary and the IOTC Scientific Committee annually a report of the number of vessels monitored and the coverage achieved by gear type in accordance with the provisions of this Resolution.</p> <p><u>Paragraph 11:</u> The observer shall, within 30 days of completion of each trip, provide a report to the CPCs of the vessel. The CPCs shall send within 150 days at the latest each report to the IOTC Executive Secretary.</p>
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(a) Explanatory notes

The provisions largely require actions by the authorities, particularly in appointment and assignment of observers and field samplers and coverage, and depend on capacity. This is better left to procedures. Statistical requirements applicable to reporting by CPCs are in Resolution 10/02, and it should be made clear to the countries that they should be used under the observer/sampler programmes in order that the country will fulfil its obligations under IOTC.

(b) Proposed Legislative Framework

IOTC OBSERVER SCHEME

- 1) This section applies to activities under the IOTC observer scheme and the collection of verified catch data and other scientific data related to the fisheries for tuna and tuna-like species in the IOTC area of competence.
- 2) For purposes of this section, “observer” refers to a person whose duties are on board fishing vessels and “field sampler” refers to a person who collects information on land during the unloading of fishing vessels, including landings of artisanal vessels.
- 3) An observer assigned to a purse seiner shall monitor the catches at unloading³⁵ to identify the composition of bigeye tuna catches. [Unless the country already has a sampling scheme with at least the coverage set out in paragraph 2 of the Resolution.³⁶ If so, this provision should not be included.]
- 4) An observer shall, *inter alia*:
 - a. record and report fishing activities, verify positions of the vessel;
 - b. observe and estimate catches as far as possible with a view to identifying catch composition and monitoring discards, by-catches and size frequency;
 - c. record the gear type, mesh size and attachments employed by the master;
 - d. collect information to enable the cross-checking of entries made to the logbooks (species composition and quantities, live and processed weight and location, where available); and
 - e. carry out such other scientific work as requested by the IOTC Scientific Committee.
- 5) Field samplers shall monitor catches at the landing place with a view to estimating catch-at-size by type of boat, gear and species, or carry out such scientific work as requested by the IOTC Scientific Committee.
- 6) The IOTC confidentiality rules set out in the Resolution 98/02 [superseded by Resolution 12/02] Data confidentiality policy and procedures for fine-scale data shall apply.

RESOLUTION 10/08 CONCERNING A RECORD OF ACTIVE VESSELS FISHING FOR TUNAS AND SWORDFISH IN THE IOTC AREA

	Paragraph 1: All IOTC Contracting Parties and Cooperating Non-Contracting Parties (CPCs) with vessels fishing for tunas and swordfish in the IOTC
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³⁵ This should be read with the previous paragraph – the observer’s duties are “on board” fishing vessels – and the next paragraph. So, from the fishing vessel, he/she monitors catches at unloading. The field sampler works from land and can collect information where the unloading is in port. Both can work at the same time.

³⁶ At least 5 % of the number of operations/sets for each gear type by the fleet of each CPC while fishing in the IOTC area of competence, for vessels of 24 meters overall length and over, and for vessels under 24 meters if they fish outside their Exclusive Economic Zone (EEZ) shall be covered by this observer scheme. For vessels under 24 meters if they fish outside their EEZ, the above mentioned coverage should be achieved progressively by January 2013.

	<p>area of competence (hereinafter referred to as “the Area”), shall submit to the IOTC Executive Secretary by 15 February every year a list of their respective vessels that were active in the Area during the previous year and that are:</p> <ol style="list-style-type: none"> a) larger than 24 metres in length overall; or b) in case of vessels less than 24m, those operating in waters outside the economic exclusive zone of the flag state. <p><u>Paragraph 2:</u> The lists shall contain the following information for each vessel:</p> <ul style="list-style-type: none"> • The IOTC number; • Name and registration number; • IMO number, if available; • Previous flag (if any); • International radio call sign (if any); • Vessel type, length, and gross tonnage (GT); • Name and address of owner, and/or charterer, and/or operator; • Main target species, • Period of authorisation
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(a) Explanatory notes

None needed, this is administrative/operational/reporting.

(b) Proposed Legislative Framework

None needed, this is administrative/operational/reporting.

RESOLUTION 10/10 CONCERNING MARKET RELATED MEASURES

	<p><u>Paragraph 1:</u> CPCs that import tuna and tuna-like fish products, from the IOTC area of competence, or in whose ports those products</p>
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	<p>are landed or transhipped, should, as much as possible, collect and examine all relevant data on import, landing or transshipment and associated information and submit the following information to the Commission each year at least 60 days prior to the annual meeting of the Commission:</p> <ul style="list-style-type: none"> i. Names of the vessels that caught, landed and/or transhipped such tuna or tuna-like species products; ii. Flag States of those vessels; iii. Species of tuna and tuna-like species of the products; iv. Areas of catch (Indian Ocean, or other area); v. Product weight by product type; vi. Points of export; vii. Names and addresses of owners of the vessels; viii. Registration number.
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(a) Explanatory notes

None needed, this is administrative/operational/reporting.

(b) Proposed Legislative Framework

None needed, this is administrative/operational/reporting.

RESOLUTION 10/11 ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

<p><u>Paragraph 1 (Use of terms):</u> For the purposes of this Resolution:</p> <ul style="list-style-type: none"> (a) “fish” means all species of highly migratory fish stocks covered by the IOTC Agreement; (b) “fishing” means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish; (c) “fishing related activities” means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea; (d) “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 1 of the Resolution 2009/03; 	<p><u>Paragraph 4:</u> Each CPC shall, to the greatest extent possible:</p> <ul style="list-style-type: none"> a) integrate or coordinate fisheries related port State measures with the broader system of port State controls; b) integrate port State measures with other measures to prevent, deter and eliminate IUU fishing and fishing related activities in support of such fishing,
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(e) "port" includes offshore terminals and other installations for landing, transshipping, packaging, processing, refueling or resupplying; and
 (f) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

Paragraph 3.1: Each CPC shall, in its capacity as a port State, apply this Resolution in respect of vessels not entitled to fly its flag that are seeking entry to its ports or are in one of its ports, except for:

- a) vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing; and
- b) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.

Paragraph 5.1: Each CPC shall designate and publicise the ports to which vessels may request entry pursuant to this Resolution.

Paragraph 6.1: Each CPC shall require the information requested in Annex I to be provided before granting entry to a vessel to its port.

Paragraph 6.2: Each CPC shall require the information referred to in point 6.1 to be provided at least 24 hours before entering into port or immediately after the end of the fishing operations, if the time distance to the port is less than 24 hours. For the latter, the port State must have enough time to examine the above mentioned information.

Paragraph 7.2: In the case of authorisation of entry, the master of the vessel or the vessel's representative shall be required to present the authorisation for entry to the competent authorities of the CPC upon the vessel's arrival at port.

Paragraph 7.4: Without prejudice to point 7.1, when a CPC has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a regional fisheries management organisation in accordance with the rules and procedures of such organisation and in conformity with international law, the CPC shall deny that vessel entry into its ports.

Paragraph 7.5: Notwithstanding points 7.3 and 7.4, a CPC may allow entry into its ports of a vessel referred to in those points exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing.

Paragraph 7.6: Where a vessel referred to in points 7.4 or 7.5 is in port for any reason, a CPC shall deny such vessel the use of its ports for landing, transshipping, packaging, and processing of fish and for other port services including, inter alia, refueling and resupplying, maintenance and drydocking. Points 9.2 and 9.3 of section 9 apply mutatis mutandis in such cases. Denial of such use of ports shall be in conformity with international law.

taking into account as appropriate the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and

- c) take measures to exchange information among relevant national agencies and to coordinate the activities of such agencies in the implementation of this Conservation and Management Resolution.

Paragraph 5.2: Each CPC shall, to the greatest extent possible, ensure that every port designated and publicised in accordance with point 5.1 has sufficient capacity to conduct inspections pursuant to this Resolution.

Paragraph 5.1: Each CPC shall provide a list of its designated ports to IOTC Secretariat before 31 December 2010, which shall give it due publicity on the IOTC website.

Paragraph 7.1: After receiving the relevant information required pursuant to section 6, as well as such other information as it may require to determine whether the vessel requesting entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, each CPC shall decide whether to authorise or deny the entry of the vessel into its port and shall communicate this decision

Paragraph 9.1: Where a vessel has entered one of its ports, a CPC shall deny, pursuant to its laws and regulations and consistent with international law, including this Conservation and Management Resolution, that vessel the use of the port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, inter alia, refueling and resupplying, maintenance and drydocking, if:

- a) the CPC finds that the vessel does not have a valid and applicable authorisation to engage in fishing or fishing related activities required by its flag State;
- b) the CPC finds that the vessel does not have a valid and applicable authorisation to engage in fishing or fishing related activities required by a coastal State in respect of areas under the national jurisdiction of that State;
- c) the CPC receives clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;
- d) the flag State does not confirm within a reasonable period of time, on the request of the port State, that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organisation; or
- e) the CPC has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of such fishing, including in support of a vessel referred to in point 7.4, unless the vessel can establish:
 - i. that it was acting in a manner consistent with relevant IOTC Resolutions; or
 - ii. in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel referred to in point 4 of paragraph 7.

Paragraph 9.2: Notwithstanding point 9.1, a CPC shall not deny a vessel referred to in that point the use of port services:

- a) essential to the safety or health of the crew or the safety of the vessel, provided these needs are duly proven; or
- b) where appropriate, for the scrapping of the vessel.

Paragraph 9.4: A CPC shall withdraw its denial of the use of its port pursuant to point 9.1 in respect of a vessel only if there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply.

Paragraph 11.2 Each CPC shall implement the requirements outlined in this paragraph in carrying out inspections in its ports
[Note mostly procedural but four are considered necessary to implement in the legislation if not implemented elsewhere in the legislation, see subsection 9 below.]

Paragraph 12: Each CPC shall, as a minimum standard, include the information set out in Annex III in the written report of the results of each inspection.

Paragraph 15.1: Where, following an inspection, there are clear grounds for believing that a vessel has engaged IUU fishing or fishing related activities in support of such fishing, the inspecting CPC shall:

- a) promptly notify the flag State, the IOTC Secretariat and, as appropriate, relevant coastal States, and other regional fisheries

to the vessel or to its representative.

Paragraph 7.3: In the case of denial of entry, each CPC shall communicate its decision taken pursuant to point 7.1, to the flag State of the vessel and, as appropriate and to the extent possible, relevant coastal States and IOTC Secretariat.

Paragraph 9.3: Where a CPC has denied the use of its port in accordance with this paragraph, it shall promptly notify the flag State and, as appropriate, relevant coastal States, IOTC or other regional fisheries management organisations and other relevant international organisations of its decision.

Paragraph 9.5: Where a CPC has withdrawn its denial pursuant to point 9.4, it shall promptly notify those to whom a notification was issued pursuant to point 9.3.

Paragraph 10.1: Each CPC shall carry out inspections of at least 5% of landings or transshipments in its ports during each reporting year.

Paragraph 10.2: Inspections shall involve the monitoring of the entire discharge or transshipment and include a cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped. When the landing or transshipment is completed, the inspector shall verify and note the quantities by species of fish remaining on board.

<p>management organisations, and the State of which the vessel's master is a national of its findings.</p> <p>b) deny the vessel the use of its port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, inter alia, refueling and resupplying, maintenance and drydocking, if these actions have not already been taken in respect of the vessel, in a manner consistent with this Conservation and Management Resolution.</p> <p><u>Paragraph 15.2:</u> Notwithstanding point 15.1, a CPC shall not deny a vessel referred to in that point the use of port services essential for the safety or health of the crew or the safety of the vessel.</p> <p><u>Paragraph 17.1:</u> Each CPCs shall require the vessels entitled to fly its flag to cooperate with the port State in inspections carried out pursuant to this Resolution.</p>	<p><u>Paragraph 10.3:</u> National inspectors shall make all possible efforts to avoid unduly delaying a vessel and ensure that the vessel suffers the minimum interference and inconvenience and that degradation of the quality of the fish is avoided.</p> <p><u>Paragraph 11.1:</u> Each CPC shall ensure that its inspectors carry out the functions set forth in Annex II as a minimum standard.</p> <p><u>Paragraph 11.2:</u> Each CPC shall implement the requirements outlined in this paragraph in carrying out inspections in its ports [Note mostly procedural but four are considered necessary to implement in the legislation, see subsection 9 below].</p> <p><u>Paragraph 13.1:</u> The port State CPC shall, within three full working days of the completion of the inspection, transmit by electronic means a copy of the inspection report and, upon request, an original or a certified copy thereof, to the master of the inspected vessel, to the flag State, to the IOTC Secretariat and, as appropriate, to:</p> <ul style="list-style-type: none"> a) the flag State of any vessel that transhipped catch to the inspected vessel; b) the relevant CPCs and States, including those States for which there is evidence through inspection that the vessel has engaged in IUU fishing, or fishing related activities in support of such fishing, within waters under
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	<p>their national jurisdiction; and</p> <p>c) the State of which the vessel's master is a national.</p> <p><u>Paragraph 14:</u> Each CPC shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex V. CPC shall seek to cooperate in this regard.</p> <p><u>Paragraph 16.1:</u> A CPC shall maintain the relevant information available to the public and provide such information, upon written request, to the owner, operator, master or representative of a vessel with regard to any recourse established in accordance with its national laws and regulations concerning port State measures taken by that CPC pursuant to sections 7, 9, 11 or 15, including information pertaining to the public services or judicial institutions available for this purpose, as well as information on whether there is any right to seek compensation in accordance with its national laws and regulations in the event of any loss or damage suffered as a consequence of any alleged unlawful action by the CPC.</p> <p><u>Paragraph 16.2:</u> The CPC shall inform the flag State, the owner, operator, master or representative, as appropriate, of the outcome of any such recourse. Where other Parties, States or international organisations have been informed of the prior decision pursuant to sections 7, 9, 11 or 15, the</p>
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	<p>CPC shall inform them of any change in its decision.</p> <p><u>Paragraph 17.2:</u> When a CPC has clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, it shall, as appropriate, request that State to inspect the vessel or to take other measures consistent with this Resolution.</p> <p><u>Paragraph 17.3:</u> Each CPC shall encourage vessels entitled to fly its flag to land, tranship, package and process fish, and use other port services, in ports of States that are acting in accordance with, or in a manner consistent with this Resolution.</p> <p><u>Paragraph 17.4:</u> Where, following port State inspection, a flag State CPC receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations.</p> <p><u>Paragraph 17.6:</u> Each CPC shall ensure that measures applied to vessels entitled to fly its flag are at least as effective in preventing, deterring, and eliminating IUU fishing and fishing</p>
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	<p>related activities in support of such fishing as measures applied to vessels referred to in point 3.1.</p> <p><u>Paragraph 17.5:</u> Each CPC shall, in its capacity as a flag State, report to other CPCs, relevant port States and, as appropriate, other relevant States, regional fisheries management organisations and FAO on actions it has taken in respect of vessels entitled to fly its flag that, as a result of port State measures taken pursuant to this Resolution, have been determined to have engaged in IUU fishing or fishing related activities in support of such fishing.</p>
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(a) Explanatory notes

The use of terms in paragraph 1 of the Resolution has been included in subsection 1 below, with some minor differences.

- The definition of “fish” reflects the definition in the FAO Agreement. It covers all species of fish, whereas the Resolution’s definition is – for purposes of the Resolution - limited to “all species of highly migratory fish stocks covered by the IOTC Agreement”. The broader option is encouraged, together with a review of the definition of “fish” in the national legislation..
- The term “use of port” is not defined in the Interpretation section of either instrument, but instead it is used consistently throughout the instrument, each time listing the many uses of port which must be denied. The advantage of including it as a definition is to promote ease of understanding.

It is recommended that the legislation be reviewed to ensure that other relevant terms are defined to support the implementation of this Resolution, even though they do not appear in the Resolution. They are of broader application and may already be included in the legislation. They are shown in the box below and reflect best practices.

<p style="text-align: center;">Optional terms to include in legislation</p> <p>“conservation and management measures” means legally binding measures to conserve and manage living marine resources adopted by a regional fisheries management organization;</p> <p>“container vessel” means self-propelled ocean-going vessel constructed or adapted primarily to carry ocean freight containers;</p>

"[country] vessel" means any vessel that is entitled to fly the flag of [country];

"FAO" means the Food and Agriculture Organization of the United Nations;

"fish product" means any product or part thereof (including oil) obtained by fish processing;

"foreign vessel" means any vessel that is not a [country] vessel;

["inspector" (or other applicable designation(s) for person(s) who exercise enforcement/inspection functions – e.g. authorized officer) means any person appointed pursuant to (refer to applicable legislation)];

"international agreement" includes any treaty, agreement or other instrument legally binding upon [country], including bilateral or multilateral instruments;

"IUU listed vessel" means a vessel that is included in a list of vessels, adopted by a regional fisheries management organization, that have engaged in IUU fishing or fishing-related activities in support of IUU fishing;

"landing" means to begin to offload fish or to offload fish from any vessel in port or at a dock, berth, beach seawall or ramp, but does not include transshipment;

"operator" means any person who is in charge of, responsible for the operations of, directs or controls a vessel, including the owner, charterer and master and includes the beneficiary of the economic or financial benefit of the vessel's operations;

"master" in relation to a vessel means the person in command or in charge or apparently in command of the vessel, but does not include a pilot on board a vessel solely for the purpose of navigation;

"person" means any individual whether or not a citizen or national of [country], corporation, partnership, association or other entity whether or not organized or existing under the laws of any State and any government of or in [country] or foreign government or any entity of any government;

"previously landed" means landed in a port or at a dock, berth, beach seawall or ramp and subsequently loaded onto a container or other carrier vessel;

"processing" in relation to fish means the preparation or packaging of fish to render the fish suitable for, *inter alia*, human consumption, retail sale, industrial uses, export or long-term storage, and includes cutting up, cleaning, dismembering, sorting, cooking, canning, smoking, slating, drying, filleting, packaging, icing, freezing or rendering into meal or oil, or any other action taken to alter the shape, appearance or form of fish from that when first taken from its natural habitat;

"regional fisheries management organization", or RFMO, means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures;

"transshipment" means the transfer of fish or fish products to or from any vessel, and may include the transfer of fish or fish products from a vessel to a land-based facility exclusively for purposes

of promptly onloading to another vessel, without being subject to importation into the country where the land-based facility is located.

Subsection 3 of the framework describes the application of the section. It imports the requirements of the Resolution regarding vessels in ports, and extends application beyond areas under national jurisdiction to enable implementation of the Resolution's flag State requirements.

Subsection 6(b)(i) of the framework provides a minimum time for a request to be made to enter port. This time can be greater (e.g. 48 hours) to align with general port entry requirements of the country, or in consultation with the country.

Subsection 6(b)(ii) of the framework has added language not in paragraph 6.2 of the Resolution (i.e. that the proposed entry time submitted must be approved) in order to allow time to determine whether there is enough time to examine the information given in the request for entry.

Paragraphs 9.2 and 15.2 of the Resolution provide that the use of port shall not be denied where it is essential to the safety and health of the crew or the safety of the vessel. Only paragraph 9.2 requires the needs to be proven, but in the Legislative Framework, which implements these paragraphs in subsections 14 and 23, it is suggested that both should require the needs to be proved.

Subsection 11 of the framework addresses *force majeure* and distress. They are not a right of the vessel under international law; it is the sovereign right of the port State to decide whether they may enter port. This protects the country's right to self-defense, as well as port safety and other concerns.

Subsection 11(a)-(d) makes it clear that the vessel claiming *force majeure* or distress must submit to the control of the port State, and that relevant claims must not be contrived, untrue or otherwise intentionally created, or made to avoid liability. These provisions are not explicit in the instruments, which already recognize that it is the decision of the port State to allow entry on such grounds. They aim to protect the sovereignty of the port State against false claims of *force majeure* or distress, based on best practices.

Paragraph 11.2 of the Resolution requires CPCs to implement requirements in carrying out inspections in ports. Most of them are procedural but four were considered necessary to implement in the Legislative Framework if they are not already implemented elsewhere in national legislation. They are in subsection 12.

Subsection 24 creates an offence for any person to supply or otherwise assist a vessel denied use of port. This is not in the Resolution, but is needed for purposes of enforcement.

Annexes to the Resolution are not reproduced in this framework, and should be sourced directly from the Resolution.

A number of countries have included port State measures in the legislation, but on the whole it is patchy and not comprehensive, and should be reviewed to ensure adequate implementation and avoid duplication of related requirements such as inspections.

(b) Proposed Legislative Framework

PORT STATE MEASURES

Interpretation

1) For the purposes of this section:

- a. ["fish", in addition to any other definition given in this [legislation] means all species of living marine resources, whether processed or not, [and for purposes of application to the IOTC area of competence, means all species of highly migratory fish stocks covered by the IOTC Agreement];]
- b. "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- c. "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- d. "illegal, unreported and unregulated fishing" includes the activities described in an applicable international agreement or conservation and management measure [including paragraph 1 of IOTC Resolution 09/03, superseded by Resolution 11/03];
- e. "port" includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or resupplying;
- f. "use of port" means use for landing, transshipping, packaging, or processing of fish or for other port services including, inter alia, refuelling and resupplying, maintenance and dry docking; and
- g. "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

Objective

- 2) The objective of this section is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems.

Application

3) This section applies to:

- a. vessels not entitled to fly the flag of [country] that are seeking entry to a port or are in a port of [country], except for:
 - i. vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that there is cooperation between [country] and such neighbouring State to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing ; and

- ii. container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.
- b. persons, vessels, vehicles, aircraft, export facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this legislation;
- c. All fishing and fishing related activities in support of such fishing:
 - i. in areas over which [country] exercises jurisdiction or sovereign rights;
 - ii. in areas beyond national jurisdiction:
 - 1. by [country] nationals, including vessels and persons and all persons on board such vessels or dealing with them or having any relevant relationship to them or to persons on them, to the extent that it does not conflict with the jurisdiction of another State;
 - 2. as required pursuant to this [legislation], international agreement or conservation and management measures;
 - 3. otherwise in relation to illegal, unreported and unregulated fishing and fishing related activities in support of such fishing consistent with international law.

4) This section shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.

Designation of ports

- 5) The [Minister] shall:
- a. designate and publicise the port or ports to which vessels may request entry; and
 - b. provide a list of each port designated pursuant to paragraph (a) to FAO and to any RFMO pursuant to an applicable conservation and management measure.

Prerequisites for entry or use of port

- 6) The operator of a vessel shall not enter or use a port in [country] unless:
- a. where ports have been designated and publicised in accordance with subsection (5), such port has been so designated and publicised;
 - b. the operator has requested entry into port and provided the information in [Annex ** of the legislation, which should incorporate Annex 1 of the Resolution]:
 - i. at least 24 hours before entering into port; or

- ii. immediately after the end of the fishing operations, if the time distance to the port is less than 24 hours [and the time of submission is provided to, the [official] [at least [XX] hours before entering into port]; and
- c. the [senior operational fisheries official] has authorized entry of such vessel into port and communicated such authorization to the master of the vessel and any lawful representative of the vessel in [country]; and
- d. Upon the vessel's arrival at port, the master of the vessel or the vessel's representative has presented the authorization for entry into the port to [official].

Denial of entry into port and use of port

- 7) The [official], where there is sufficient proof that a vessel seeking entry into a port of [country] has engaged in IUU fishing or fishing related activities in support of such fishing, in particular where it is an IUU listed vessel:
- a. shall not authorise such vessel to enter port, and shall deny entry to such vessel; or
 - b. notwithstanding paragraph (a), may allow such vessel to enter a port exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing; and
 - c. shall communicate any decision taken pursuant to paragraphs (a) or (b) to the vessel or its representative.
- 8) Where a vessel has been allowed entry pursuant to subsection (7)(b), it shall not use, or be authorized to use the port.
- 9) The [official] may deny entry into and use of a port to any vessel that the [official] has reasonable grounds to believe has violated this [legislation].
- 10) Where entry is denied under subsection (7)(a), (8) or (9), the [official] shall notify the decision to the flag State of the vessel and, as appropriate, to each relevant coastal State, RFMO and other international organization.

Force majeure or distress

- 11) Nothing in this [legislation] affects the entry of a vessel to port in accordance with the laws of [country] for reasons of *force majeure* or distress, providing:
- a. a claim of *force majeure* or distress shall not apply where:
 - i. it is contrived, untrue or otherwise intentionally created; or
 - ii. its objective is to avoid liability,
- and any person who makes an inapplicable claim commits an offence;

- b. the burden of proof that a claim of *force majeure* or distress is valid and does not fall within prohibitions in paragraph (a) shall be on the vessel operator;
- c. an [official – e.g. authorized officer] may board and inspect the vessel at any time for the purpose of verifying the claim of *force majeure* or distress; and
- d. a vessel that claims *force majeure* or distress shall be subject to the direction of [official].

12) The [relevant official, and if not a fisheries official then in consultation with a designated fisheries official] may grant a vessel that falls within the scope of this [legislation] entry into port for reasons of *force majeure* or distress, provided that:

- a. the vessel may enter port under its claim of *force majeure* or distress for such period of time necessary to remedy such claim; and
- b. the vessel is permitted entry exclusively for the purpose of rendering assistance to persons or vessels in danger or distress.

Denial of use of port after entry

13) Where a vessel that has been authorized to enter port pursuant to subsection 6(c) has entered a port, the [official] shall deny such vessel the use of port if:

- a. the vessel does not have a valid and applicable authorisation to engage in fishing or fishing related activities required by:
 - i. its flag State; or
 - ii. a coastal State in respect of areas under its national jurisdiction;
- b. there is clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;
- c. the flag State does not confirm within a reasonable period of time, on the request of the [senior operational fisheries official], that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization; or
- d. there are reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of IUU fishing unless the operator or charterer of the vessel can establish:
 - i. that it was acting in a manner consistent with relevant conservation and management measures, including IOTC conservation and management measures; or
 - ii. in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel that had engaged in IUU fishing as described in subsection (6).

14) Notwithstanding subsection (13), the [official] shall:

- a. not deny a vessel the use of port services:
 - i. where such services are essential to the safety and health of the crew or the safety of the vessel, provided these needs are duly proven; or
 - ii. as appropriate, for the scrapping of the vessel; and
- b. where the use of port has been denied, notify the decision to the flag State of the vessel and, as appropriate, to each relevant coastal State, RFMO and other international organization.

15) Where the use of port has been denied pursuant to subsection (13), such denial may be withdrawn [by – identify consultative process as appropriate, e.g. [official] on the advice of Attorney General) shall:

- a. withdraw such denial in respect of a vessel only if there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply; and
- b. promptly notify the withdrawal to each person that was notified pursuant to subsection 14(b).

Conduct of inspections of vessels in port

16) The [official(s) responsible for the lead agency/agencies that will be conducting inspections] shall conduct vessel inspections as necessary for the purposes of this [legislation].

17) The [official] shall prioritize vessel inspections based on:

- a. vessels that have been denied entry or use of a port in accordance with the Agreement and/or an applicable conservation and management measure;
- b. a request from another State or RFMO to inspect a certain vessel, particularly where the request is supported by evidence of IUU fishing or fishing-related activities in support of IUU fishing by the vessel in question; and
- c. whether there are clear grounds for suspecting that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing.

18) The [official] shall, to the extent possible, ensure inspection of a level of vessels as may be required by an applicable conservation and management measure.

19) During inspections of a vessel in port, inspectors shall carry out inspection in conformity with such procedures as may be determined, and complete a written report of the inspection in the form provided in [Annex ** of the legislation, or otherwise refer to the requirements of Annex III of the Resolution] and submit it to [official].

20) The master of the vessel shall, in relation to inspection of the vessel, give inspectors all necessary assistance and information, and present relevant material and documents as may be required, or certified copies thereof.

21) The [official] shall transmit the results of an inspection under this [legislation] to:

- a. the flag State of the inspected vessel;
- b. as appropriate, [relevant Party to the Agreement];
- c. relevant coastal State and the State of which the vessel master is a national;
- d. relevant RFMO(s); and
- e. FAO and other relevant international organizations.

Denial of use of port after inspection

22) Where, following an inspection, there are clear grounds for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the [official] shall:

- a. promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel's master is a national of the findings; and
- b. deny the vessel the use of its port, if these actions have not already been taken in respect of the vessel.

23) Notwithstanding paragraph 22(b), the [official] shall not deny a vessel the use of port services, where such services are essential to the safety and health of the crew or the safety of the vessel, provided these needs are duly proven.

Prohibited to use or assist, etc in the use of port in absence of authorization or after denial

24) Where a vessel:

- a. is in port in contravention of:
 - i. the requirements in subsection 6;
 - ii. an applicable denial of authorization to enter port pursuant to subsection 7(a);
- b. has been permitted to enter port exclusively for the purpose of:
 - i. inspection pursuant to subsection 7(b);
 - ii. rendering assistance to persons or vessels in danger or distress pursuant to subsection 11; ** or
- c. has been denied the use of port pursuant to subsection 13 or 22(b);

no person, including the operator or crew member of such vessel or any person that is acting directly or indirectly in relation to the vessel, shall:

- d. engage in the use of such port or cause such port to be used; or

- e. allow or assist, directly or indirectly, the use of port by such vessel,

unless the [official] permits in writing services to be used for the safety or health of the crew or the safety of the vessel in accordance with this [legislation] and port is used exclusively for such purposes.

Requirements for [country] vessels

25) The operator of each [country] vessel shall:

- a. cooperate fully with inspections carried out in the ports of other States in accordance with their laws and procedures; and
- b. not land, transship, package and process fish, and use other port services, in a port State identified by a relevant RFMO as not acting in accordance with, or in a manner consistent with, applicable international or regional instruments relating to port State measures.

26) Where there are clear grounds to believe that a [country] vessel has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, [official] shall, as appropriate request such State to inspect the vessel or take other measures consistent with applicable international or regional instruments.

27) Where, following port State inspection, there are clear grounds to believe that a [country] vessel has engaged in IUU fishing or fishing related activities in support of such fishing, [official] shall cause the matter to be immediately and fully investigated and, upon sufficient evidence enforcement action to be taken without delay in accordance with [legislation].

RESOLUTION 06/03 ON ESTABLISHING A VESSEL MONITORING SYSTEM PROGRAMME

<p><u>Paragraph 1:</u> Each Contracting Party and Cooperating Non-Contracting Party (CPC) shall adopt a satellite-based vessel monitoring system (VMS) for all vessels greater than 15 metres in length overall registered on the IOTC Record of Vessels which operate in the IOTC Area and which fish on the high seas (outside the fisheries jurisdiction of any coastal state) for species covered by the IOTC Agreement by 1 July 2007.</p> <p><u>Paragraph 3:</u> Information collected shall include:</p> <ul style="list-style-type: none"> a) the vessel identification; b) the current geographical position of the vessel (longitude, latitude) with a position error which shall be less than 500 metres, at a confidence level of 99%; and c) the date and time (expressed in UTC) of the fixing of the said position of the vessel. <p><u>Paragraph 5:</u> Each CPC shall ensure that the information in paragraph 3 is transmitted to the FMC at least once every 4 hours. Each CPC shall ensure the masters of fishing vessels flying its flag ensure that the satellite tracking device(s) are at all times fully operational.</p> <p><u>Paragraph 6:</u> Each CPC as a Flag State shall ensure that the vessel monitoring device(s) on board its vessels are tamper resistant, that is, are of a type and configuration that prevent the input or output of false positions, and that they</p>	<p><u>[Note, paragraph 2 was not included in the original table, but is referenced in the Annex]</u></p> <p><u>Paragraph 2.</u> The Commission may establish guidelines for the registration, implementation and operation of VMS in the IOTC Area with a view to standardising VMS adopted by CPCs.</p> <p><u>Paragraph 4:</u> Each CPC shall take the necessary measures to ensure that their land-based national Fisheries Monitoring Center (FMC) receives through the VMS the information required in paragraph 3, and that the FMC is equipped</p>
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are not capable of being over-ridden, whether manually, electronically or otherwise. To this end, the on-board satellite monitoring device must:

- a) be located within a sealed unit; and
- b) be protected by official seals (or mechanisms) of a type that will indicate whether the unit has been accessed or tampered with.

Paragraph 7: The responsibilities concerning the satellite-tracking devices and requirements in case of technical failure or non-functioning of the satellite-tracking devices are established in Annex I.

Annex I (B): Masters and owners/licensees of fishing vessels subject to VMS shall ensure that the vessel monitoring device(s) on board their vessels within the IOTC Area are at all times fully operational. Masters and owners/licensees shall in particular ensure that:

- a) VMS reports and messages are not altered in any way;
- b) the antennae connected to the satellite monitoring device(s) are not obstructed in any way;
- c) the power supply of the satellite monitoring device(s) is not interrupted in any way; and
- d) the vessel monitoring device(s) are not removed from the vessel.

Annex I (C): A vessel monitoring device shall be active within the IOTC Area. It may, however, be switched off when the fishing vessel is in port for a period of more than one week, subject to prior notification to, and approval of, the Flag State, and if the Flag State so desires also to the IOTC Secretariat, provided that the first position report generated following the re-powering (activating) shows that the fishing vessel has not changed position compared to the last report.

Annex I (D): In the event of a technical failure or non-operation of the satellite tracking device fitted on board a fishing vessel, the device shall be repaired or replaced within one month. After this period, the master of a fishing vessel is not authorised to commence a fishing trip with a defective satellite tracking device. Furthermore, when a device stops functioning or has a technical failure during a fishing trip lasting more than one month, the repair or the replacement has to take place as soon as the vessel enters a port; the fishing vessel shall not be authorised to commence a fishing trip without the satellite tracking device having been repaired or replaced.

Annex I (E): In the event of a technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, the master or the owner of the vessel, or their representative, shall communicate immediately to the FMC of the Flag State, and if the Flag State so desires also to the IOTC Secretariat, stating the time that the failure or the non-functioning was detected or notified in accordance with paragraph F of this Annex. In the event of a technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, the master or the owner of the vessel, or their representative, shall also communicate to the FMC of the Flag State the information required in paragraph 3 of the Resolution every four hours, by email, facsimile, telex, telephone message or radio.

Annex I(F): When the Flag State has not received for 12 hours data transmissions referred to in paragraphs 5 of the Resolution and E of this Annex, or has reasons to doubt the correctness of the data transmissions under paragraphs 5 of the Resolution and E of this Annex, it shall as soon as possible notify the master or the owner or the representative thereof. If this situation occurs more than two times within a period of one year in respect of

with computer hardware and software enabling automatic data processing and electronic data transmission. Each CPC shall provide for backup and recovery procedures in case of system failures.

Paragraph 7: The responsibilities concerning the satellite-tracking devices and requirements in case of technical failure or non-functioning of the satellite-tracking devices are established in Annex I.

Paragraph 9: CPCs that cannot fulfil the obligations as outlined in this Resolution shall report to the IOTC Secretariat (i) the systems and infrastructure and capabilities existing with respect to the implementation this Resolution, and (ii) the hindrances for implementation of such a system and (iii) requirements for implementation.

Paragraph 10: Each CPC shall provide to the IOTC Secretariat, by 30 June each year, a report on the progress and implementation of its VMS programme in accordance with this Resolution.

Annex I(A): In the event that a CPC has information to suspect that on-board vessel monitoring device(s) do not meet the requirements of paragraph 2, or have been tampered with, it shall immediately notify the IOTC Executive Secretary and the vessel's Flag State.

Annex I(G): With regard to paragraphs E and F of this

a particular vessel, the Flag State of the vessel shall investigate the matter, including having an authorised official check the device in question, in order to establish whether the equipment has been tampered with. The outcome of this investigation shall be forwarded to the IOTC Secretariat within 30 days of its completion.

Annex, each CPC shall, as soon as possible but no later than two working days following detection or notification of technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, forward the geographical positions of the vessel to the IOTC Secretariat, or shall ensure that these positions are forwarded to the IOTC Secretariat by the master or the owner of the vessel, or their representative.

(a) Explanatory notes

The words “satellite tracking device” and “vessel monitoring device” and “satellite monitoring device” appear to be used interchangeably in the Resolution.³⁷ None of them is defined. This could cause some confusion, and mindful that the Resolution was adopted some years ago and that the current best practices technical term is “Mobile Transceiver Unit”, it is recommended that the latter be used and defined as shown in the Glossary. If “satellite tracking device” is used, this term should be defined in the glossary, using the same definition given for “Mobile Transceiver Unit”. The option to use this term is shown in square brackets.

This section should be compared with any existing requirements for VMS in a country’s legislation, and as appropriate extended to cover fishing vessels in the Fisheries Waters.

(b) Proposed Legislative Framework

VESSEL MONITORING SYSTEM

- 1) This section applies to [country] fishing vessels greater than [15 meters] in length overall registered on the IOTC Record of Vessels which operate in the IOTC area of competence and which fish on the high seas for species covered by the IOTC Agreement [and to any vessel greater than 15 meters in length overall licensed to fish in the Fisheries Waters].
- 2) A land-based national Fisheries Monitoring Center shall be established to receive information transmitted through a vessel monitoring system as required in this section, in accordance with requirements of a sub-regional or regional organization or arrangement to which [country] is party or cooperating non-contracting party.
- 3) The operator of each fishing vessel shall:

³⁷ Note definitions in EC Control Regulation: “vessel monitoring system” (VMS) means a satellite-based fishing vessel monitoring system providing to the fisheries authorities data at regular intervals on the location, course and speed of vessels; “satellite-tracking device” means a device installed on board of a fishing vessel that transmits position and related data automatically to the fisheries monitoring centre according to the legal requirements and that allows detection and identification of the fishing vessel at all times. The Regulation does not define “satellite monitoring device”.

- a. install and maintain a [mobile transceiver unit] [satellite tracking device] on board the fishing vessel and ensure it is fully operational at all times;
 - b. ensure that the [mobile transceiver unit] [vessel monitoring device(s)] on board its vessels is tamper resistant, that is, of a type and configuration that prevent the input or output of false positions, and not capable of being over-ridden, whether manually, electronically or otherwise, and is:
 - i. located within a sealed unit; and
 - ii. protected by official seals (or mechanisms) of a type that will indicate whether the unit has been accessed or tampered with.
 - c. transmit the following information to the [Fisheries Monitoring Center] at least once every four hours:
 - i. the vessel identification;
 - ii. the current geographical position of the vessel (longitude, latitude) with a position error which shall be less than 500 metres, at a confidence level of 99%; and
 - iii. the date and time (expressed in UTC) of the fixing of the said position of the vessel.
- 4) The responsibilities concerning the [mobile transceiver unit] [satellite-tracking devices] and requirements in case of technical failure or non-functioning of the satellite-tracking devices are in Annex [**].

ANNEX **

RESPONSIBILITIES CONCERNING THE [MOBILE TRANSCEIVER UNITS] [SATELLITE-TRACKING DEVICES] AND REQUIREMENTS IN CASE OF THEIR TECHNICAL FAILURE OR NON-FUNCTIONING³⁸

- 1) In the event that [senior operational fisheries officer] has information to suspect that an on-board [mobile transceiver unit] [vessel monitoring device(s)] does not meet the requirements of subsection 2, or have been tampered with, he/she shall immediately notify the [relevant regional fisheries management organization or arrangement] [IOTC Executive Secretary] and the vessel's Flag State.
- 2) Operators, including masters and owners/licenseses of fishing vessels subject to VMS shall ensure that the [mobile transceiver unit] [vessel monitoring device(s)] on board their vessels [within the IOTC area of competence] is at all times fully operational and shall, in particular, ensure that:
 - a. VMS reports and messages are not altered in any way;
 - b. the antennae connected to the satellite monitoring device(s) are not obstructed in any way;

³⁸ It is proposed to incorporate this in an annex of Regulations. Although it is an IOTC requirement, countries may prefer that the requirements be universally applicable, using this as a minimum standard. To cater to the latter, references to IOTC are placed in square brackets. Alternatively, subsection 4 could refer specifically to this Annex as fulfilling IOTC requirements and other provisions could be drafted to apply globally.

- c. the power supply of the satellite monitoring device(s) is not interrupted in any way; and
 - d. the [mobile transceiver unit] [vessel monitoring device(s)] is not removed from the fishing vessel.
- 3) A [mobile transceiver unit] [vessel monitoring device] shall be active at all times [, including within the IOTC area of competence]. It may, however, be switched off when the fishing vessel is in port for a period of more than one week, subject to prior notification to, and approval of, the [senior operational fisheries officer], and as he/she may direct [, also to the IOTC Secretariat,] provided that the first position report generated following the re-powering (activating) shows that the fishing vessel has not changed position compared to the last report.
 - 4) In the event of a technical failure or non-operation of the [mobile transceiver unit] [satellite tracking device] fitted on board a fishing vessel, the device shall be repaired or replaced within one month. After this period, the master of a fishing vessel is not authorised to commence a fishing trip with a defective [mobile transceiver unit] [satellite tracking device]. Furthermore, when a device stops functioning or has a technical failure during a fishing trip lasting more than one month, the repair or the replacement shall take place as soon as the vessel enters a port; the fishing vessel shall not be authorised to commence a fishing trip without the [mobile transceiver unit] [satellite tracking device] having been repaired or replaced.
 - 5) In the event of a technical failure or non-functioning of the [mobile transceiver unit] [vessel monitoring device] on board the fishing vessel, the operator, including the master or the owner of the vessel, or their representative, shall communicate immediately to the FMC of [country], [and as directed by the [senior operational fisheries officer] also to the IOTC Secretariat,] stating the time that the failure or the non-functioning was detected or notified in accordance with paragraph 6 of this Annex. In the event of a technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, the master or the owner of the vessel, or their representative, shall also communicate to the FMC of [country] the information required in paragraph 3 of IOTC Resolution 06/03, as may be amended, at least every four hours by email, [facsimile, telex,] or telephone message[or radio].
 - 6) When the [Fisheries Monitoring Center, where it has legal status and authority under legislation, otherwise a designated fisheries official] has not received for 12 hours data transmissions referred to in subparagraph 3(c) of the [legislation] and paragraph 5 of this Annex, or has reasons to doubt the correctness of such data transmissions, he/she shall as soon as possible notify the master or the owner or the representative thereof. If this situation occurs more than two times within a period of one year in respect of a particular vessel, the [senior operational fisheries officer] shall investigate the matter, including having an authorised official check the device in question, in order to establish whether the equipment has been tampered with. [The outcome of this investigation shall be forwarded to the IOTC Secretariat within 30 days of its completion.]
 - 7) [Where there has been a technical failure or non-functioning of the [mobile transceiver unit] [vessel monitoring device], the [senior operational fisheries officer] shall, as soon as possible but no later than two working days following detection or notification of technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, forward the geographical positions of the vessel to the IOTC Secretariat, or shall ensure that these positions are forwarded to the IOTC Secretariat by the master or the owner of the vessel, or their representative.]

RESOLUTION 05/03 RELATING TO THE ESTABLISHMENT OF AN IOTC PROGRAMME OF INSPECTION IN PORT

Paragraph 3: Each Contracting Party and Cooperating Non-Contracting Party (hereinafter referred to as CPC"s) may, *inter alia*, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals. Inspections shall be carried out so that the vessel suffers the minimum interference and inconvenience and that degradation of the quality of the fish is avoided.

Paragraph 4: Each CPC shall, in accordance with the Resolution 01/03 establishing a Scheme to promote compliance by Non-Contracting Party vessels with Resolutions established by the IOTC, adopt regulations in accordance with international law to prohibit landings and transshipments by Non-Contracting Party vessels where it has been established that the catch of the species covered by the Agreement establishing the IOTC has been taken in a manner which undermines the effectiveness of Conservation and Management Measures adopted by the Commission.

Paragraph 8: Each CPC shall submit electronically to the IOTC Executive Secretary by 1 July of each year, the list of foreign fishing vessels which have landed in their ports tuna and tuna-like species caught in the IOTC area in the preceding year. This information shall detail the catch composition by weight and species landed.

Paragraph 5: In the event that a Port State considers that there has been evidence of a violation by a Contracting Party or a Non-Contracting Party vessel of a Conservation and Management Measure adopted by the Commission, the Port State shall draw this to the attention of the Flag State concerned and, as appropriate, the Commission. The Port State shall provide the Flag State and the Commission with full documentation of the matter, including any record of inspection. In such cases, the Flag State shall transmit to the Commission details of actions it has taken in respect of the matter.

Paragraph 6: Nothing in this recommendation affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

Paragraph 7: While recognising that inspection in port should be carried out in a non-discriminatory basis, in a first place, priority should be given to inspection of vessels from Non-Contracting Parties.

(a) Explanatory notes

The legal requirements of this Resolution have been superseded by Resolution 10/11 on Port State Measures, so no further action is required. However, the requirements in paragraph 8 to make reports to IOTC are still applicable, but this is an administrative/procedural matter and does not require implementation in legislation.

Note: This Resolution allows inspection of vessels “voluntarily” in port. This requirement had been included in older international instruments, but more recently – including in the IPO A-IUU and the FAO and IOTC Port State Measures instruments, international law has evolved and the port State has the right to inspect whether or not vessels are “voluntarily” in port. This recognizes the sovereignty of the port State over its internal waters. It is therefore recommended that national law reflect current international law and omit the word “voluntarily”, mindful also that RFMO Resolutions set a minimum standard.

In this regard it would be useful to review national legislation and as appropriate delete any requirement that vessels must be “voluntarily” in port as a prerequisite to inspection.

(b) Proposed Legislative Framework

Legislative Framework not required, as noted in the Explanatory Notes.

RESOLUTION 03/03 CONCERNING THE AMENDMENT OF THE FORMS OF THE IOTC STATISTICAL DOCUMENTS

<p><u>Note that:</u> The sample forms of the statistical documents and instruction sheets in the Resolution 01/06 <i>Recommendation by IOTC concerning the IOTC bigeye tuna statistical document programme</i> shall be replaced by the attached forms and instructions respectively (contained in Annexes 1 to 4).</p> <p><u>Annex I(3):</u> Only complete and valid documents will guarantee that shipments of bigeye tuna will be allowed to enter the territory of Contracting Parties.</p> <p>[<u>Annex I(5):</u> The import of fish parts other than the meat, i.e., head, eyes, roe, guts, tails may be allowed without the Document.]</p> <p><u>Annex I(4):</u> Shipments of bigeye tuna that are accompanied by improperly documented Bigeye Tuna Statistical Documents (i.e., improperly documented means that the Bigeye Tuna Statistical Document is either missing from the shipment, incomplete, invalid or falsified) will be considered illegitimate shipments of bigeye tuna, that are contrary to IOTC conservation efforts, and their entry will be suspended (PENDING RECEIPT OF A PROPERLY COMPLETED DOCUMENT) into the territory of a Contracting Party or subject to administrative or other sanction.</p> <p>Note: Annex II outlines the requirements concerning the IOTC bigeye tuna re-export certificate. The provisions outlined above for the bigeye statistical document all are replicated in Annex II, only with the term “re-export certificate” substituted for “statistical document.” Additionally, there are two added provisions:</p> <p><u>Annex II(6):</u> IOTC Contracting Parties that validate Re-export Certificates in accordance with the procedure set forth in paragraph 4 shall require from the re-exporting bigeye tuna dealer necessary documents (e.g. written sales</p>	<p><u>Annex I(2):</u> Customs or other appropriate government officials will request and inspect all import documentation including the IOTC Bigeye Tuna Statistical Document for all bigeye tuna in the shipment. Those officials may also inspect the content of each shipment to verify the information on the document. [Annex I(1): The sample form of the IOTC Bigeye Tuna Statistical Document shall be as in the Appendix.]</p> <p><u>Annex II (4):</u> A Contracting Party shall be free to validate IOTC Bigeye Tuna Re-export Certificates for bigeye tuna imported by that Contracting Party, to which IOTC Bigeye Tuna Statistical Documents or IOTC Bigeye Tuna Re-export Certificates are attached. IOTC Bigeye Tuna Re-export Certificates shall be</p>
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contracts) which are to certify that the bigeye tuna to be re-exported corresponds to the imported bigeye tuna.

validated by government organisations or by recognised institutions which are accredited by a Contracting Party's government to validate the IOTC Bigeye Tuna Statistical Document. A copy of the original Bigeye Tuna Statistical Document accompanying the imported bigeye tuna must be attached to an IOTC Bigeye Tuna Re-export Certificate. The copy of the original Bigeye Tuna Statistical Document so attached must be verified by that government organisation or by that recognised institution accredited by a government which validated the IOTC Bigeye Tuna Statistical Document. When re-exported bigeye tuna is again re-exported, all copies of documents, including a verified copy of a Statistical Document and Re-export Certificate which accompanied that bigeye tuna upon importation, must be attached to a new Re-export Certificate to be validated by a re-exporting Contracting Party. All copies of the Documents to be attached to that new Re-export Certificate must be also be verified by a government organisation or a recognised institution accredited by a government which validated the IOTC Bigeye Tuna Statistical Document.

Annex II(6): Contracting Parties which validate Re-export Certificates shall provide flag states and importing states with evidence of this correspondence upon their request.

(a) Explanatory notes

This Resolution should also be referenced under CMMs containing Statistical Requirements. It replaces Resolution 01/06. The relevant legislative framework under that Resolution (see below under 01/06) is incorporated in this Resolution, but the sample forms in the latter should be replaced as noted below.

The statistical documents in the Annexes of the Resolution are not reproduced in the Legislative Framework for reasons of space, and may be copied from the website [<http://www.iotc.org/cmm/resolution-0303-concerning-amendment-forms-iotc-statistical-documents>] for purposes of incorporating them in national legislation.

The sample forms of the statistical documents and instruction sheets in the Resolution 01/06 *Recommendation by IOTC concerning the IOTC bigeye tuna statistical document programme* shall be replaced by the forms and instructions contained in Annexes 1 to 4. National legislation should be reviewed to verify that replacement has been effected where necessary.

Annex II, paragraph 4 provides that a Contracting Party (i.e. not CPCs) “shall be free to validate IOTC Bigeye Tuna Re-export Certificates for bigeye tuna imported by that Contracting Party”. This is therefore discretionary and the country should be consulted.

There is a concern that the document relates to “re-export” when there is no indication in the context of the Resolution that the fish has been exported before. It seems that the fish is imported, then exported – not imported, exported, re-imported and re-exported. To ensure all circumstances are covered the Legislative Framework refers to “export or re-export”.

Annex III and Annex IV contain, respectively, the following documents but there is no instruction in the text of the Resolution on the responsibility for completing and submitting them, so there is no corresponding provision in the Legislative Framework:

- REPORT OF THE IOTC BIGEYE TUNA STATISTICAL DOCUMENT
- INFORMATION ON VALIDATION OF IOTC STATISTICAL DOCUMENTS

(b) Proposed Legislative Framework

DOCUMENTATION FOR BIGEYE IMPORT AND EXPORT OR RE-EXPORT

- 1) IOTC Statistical documentation requirements for Bigeye Tuna do not apply to such species caught by fishing vessels equipped with purse seine or pole and line (bait) gear and equipment and are destined principally for the canneries in the IOTC area of competence.
- 2) Any person who imports, causes to import or intends to import bigeye tuna into [country] shall submit with the shipment a complete and valid Bigeye Tuna Statistical Document as required under Annex ** (Annex 1 of Resolution).
- 3) The Bigeye Tuna Statistical Document shall be validated by a government official or other authorised individual or institution of the flag State of the vessel that harvested the tuna, or, if the vessel is operating under a charter arrangement, by a government official or other authorised individual of the exporting state.
- 4) The IOTC Bigeye Tuna Re-export Certificate shall be validated by a government official or other authorised individual or institution of the State that re-exported the tuna.

- 5) The statistical documents for bigeye tuna caught by fishing vessels flying the flag of a Member State of the European Community may be validated by the competent authorities of the Member State whose flag the vessel flies or by those of a different Member State where the products are landed, provided the corresponding quantities of bigeye tuna are exported outside the Community from the territory of the Member State of landing
- 6) Any shipment of bigeye tuna shall be considered illegitimate and in contravention of subsection (2), where it is:
 - a. not accompanied by the Document referred to in subsection (2); and
 - b. improperly documented, including where it is either missing from the shipment, incomplete, invalid or falsified.
- 7) The entry into [country] of any illegitimate shipment of bigeye tuna shall be:
 - a. suspended pending receipt of a properly completed document; and/or
 - b. subject to administrative of other sanctions,
 as may be determined by the [relevant authority/official].
- 8) A person who exports, causes to export or intends to export or re-export bigeye tuna from [country] shall:
 - a. submit a complete and valid Bigeye Tuna Re-Export Certificate in relation to the shipment as required under Annex ** [Annex II of Resolution. Note: This is the essentially same document as shown in Annex I, except that the term “re-export certificate” is substituted for “statistical document” and paragraphs 4 and 6 are added];
 - b. submit such other documents that may be required by [the competent authority], including as appropriate written sales contracts;
 - c. not export or re-export bigeye tuna unless the [competent authority] validates the Re-Export Certificate in accordance with any applicable procedures agreed by a sub-regional or regional organisation or arrangement to which [country] is party or cooperating non-party.

RESOLUTION 01/03 ESTABLISHING A SCHEME TO PROMOTE COMPLIANCE BY NON-CONTRACTING PARTY VESSELS WITH RESOLUTIONS ESTABLISHED BY IOTC

<p><u>Paragraph 1:</u> Any observation by a Contracting Party vessel or aircraft of Non-Contracting Party, Entity or fishing Entity vessels, indicating that there are grounds for believing that these vessels are fishing contrary to IOTC Conservation or Management Measures, shall be reported immediately to the appropriate authorities of the flag-State making the observation. The Contracting Party shall then notify immediately the appropriate authorities of the flag-State of the vessel fishing. Each Contracting Party making the observation shall also immediately notify the IOTC Secretariat, which, in turn, shall notify the other Contracting Parties.</p> <p><u>Paragraph 2:</u> A vessel flying the flag of a Non-Contracting Party, Entity or fishing Entity, which has been sighted in the IOTC Area, in conformity with the conditions of paragraph 1, is presumed to be undermining IOTC Conservation and Management Measures.</p> <p><u>Paragraph 3:</u> When a vessel of a Non-Contracting Party, Entity or fishing Entity referred to in paragraph 2 enters voluntarily a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials knowledgeable of</p>	<p><u>Paragraph 5:</u> Information on the results of all inspections of vessels of Non-Contracting Parties, Entities or fishing Entities, conducted in the ports of Contracting Parties, and any subsequent action, shall be transmitted immediately to the Commission. The IOTC Secretariat shall transmit this information to all Contracting Parties and to the relevant flag-State(s).</p>
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IOTC measures and shall not be allowed to land or tranship any fish until this inspection has taken place. Such inspections shall include the vessel's documents, logbooks, fishing gear, catch on board and any other matter relating to the vessel's activities in the IOTC Area.	
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<p>Paragraph 4: Landings and transhipments of all fish from vessels of a Non-Contracting Party, Entity or fishing Entity which have been inspected pursuant to paragraph 3 shall be prohibited in all Contracting Party ports if such inspection reveals that the vessel has onboard species subject to IOTC Conservation or Management Measures, unless the vessel establishes that the fish were caught outside the IOTC Area or in compliance with the relevant IOTC Conservation and Management Measures and requirements under the Agreement.</p>	
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(a) Explanatory notes

The language used in this Resolution does not exempt fishing vessels of cooperating non-contracting parties from the presumption of IUU fishing. Accordingly, reference has not been made in the Legislative Framework, but countries may wish to include it.

Notes relating to Resolution 05/03 above refer to the use of the word “voluntarily” in relation to vessels being in port;³⁹ it is recommended that consideration be given to not using this language in national law as it is no longer used in international instruments.

(b) Proposed Legislative Framework

FISHING VESSELS PRESUMED TO BE UNDERMINING IOTC CONSERVATION AND MANAGEMENT MEASURES

- 1) This section applies to fishing vessels:
 - a. that do not fly the flag of a Contracting Party of IOTC;
 - b. that have been observed by a Contracting Party vessel or aircraft in the IOTC area of competence; and
 - c. there are grounds for believing that these vessels are fishing contrary to IOTC Conservation or Management Measures; and
 - d. where:
 - i. the observing vessel or aircraft reports the circumstances immediately to the appropriate authorities of its the flag State;
 - ii. the flag State of the observing vessel or aircraft immediately notifies the appropriate authorities of the flag-State of the fishing vessel;
 - iii. the flag State of the fishing vessel immediately notifies the IOTC Secretariat; and
 - iv. the IOTC Secretariat notifies other Contracting Parties.

³⁹ The note explains: This Resolution allows inspection of vessels “voluntarily” in port. This requirement had been included in older international instruments, but more recently – including in the IPOA-IUU and the FAO and IOTC Port State Measures instruments, international law has evolved and the port State has the right to inspect whether or not vessels are “voluntarily” in port. This recognizes the sovereignty of the port State over its internal waters. It is therefore recommended that national law reflect current international law and omit the word “voluntarily”, mindful also that RFMO Resolutions set a minimum standard.

- 2) A fishing vessel referred to in subsection (1) shall be presumed to be undermining IOTC Conservation and Management measures.
- 3) Notwithstanding section [the section implementing Resolution 10/11 on port State measures] a fishing vessel referred to in subsection (1), upon entry into a port of [country], shall be:
 - a. inspected by [authorized inspectors knowledgeable of IOTC measures], including the vessel's documents, logbooks, fishing gear, catch on board and any other matter relating to the vessel's activities in the IOTC area of competence;
 - b. prohibited from landing or transshipping any fish:
 - i. until such inspection has taken place; and
 - ii. where the inspection reveals that the vessel has onboard species subject to IOTC Conservation or Management Measures, unless the vessel establishes that the fish were caught outside the IOTC area of competence or in compliance with the relevant IOTC Conservation and Management Measures and requirements under the Agreement.

RESOLUTION 01/06 CONCERNING THE IOTC BIGEYE TUNA STATISTICAL DOCUMENT PROGRAMME

Paragraph 1:

Contracting Parties, by July 1, 2002 or as soon as possible thereafter, require that all bigeye tuna, when imported into the territory of a Contracting Party, be accompanied by an IOTC Bigeye Tuna Statistical Document which meets the requirements described in Annex I or an IOTC Bigeye Tuna Re-export Certificate which meets the requirements described in Annex II (Note: newer Resolution regulating these documents). Bigeye tuna caught by purse seiners and pole and line (bait) vessels and destined principally for the canneries in the Convention Area are not subject to this statistical document requirement. The Commission and the Contracting Parties importing bigeye tuna shall contact all the exporting countries to inform them of this Programme in advance of the implementation of the Programme.

Paragraph 2:

1) The IOTC Bigeye Tuna Statistical Document must be validated by a government official or other authorised individual or institution of the flag State of the vessel that harvested the tuna, or, if the vessel is operating under a charter arrangement, by a government official or other authorised individual of the exporting state, and;

2) The IOTC Bigeye Tuna Re-export Certificate must be validated by a government official or other authorised individual or institution of the state that re-exported the tuna.

Note: Paragraph 14:

The statistical documents for bigeye tuna caught by fishing vessels flying the flag of a Member State of the European Community may be validated by the competent authorities of the Member State whose flag the vessel flies or by those of a different Member State where the products are landed, provided the corresponding quantities of bigeye tuna are exported outside the Community from the territory of the Member State of landing

Note: The sample forms of the statistical documents and instruction sheets attached to this Resolution (in Annexes 1 to 4) are replaced by those contained in Resolution 03/03 concerning the amendment of the forms of the IOTC statistical documents

Paragraph 3:

Each Contracting Party shall provide to the IOTC Executive Secretary sample forms of its statistical document and re-export certificate required with bigeye tuna imports and information on validation in the format specified in Annex IV, and inform him/her of any change in a timely fashion.

Paragraph 4: The Contracting Parties which export or import bigeye tuna shall compile data from the Programme.

Paragraph 5: The Contracting Parties which import bigeye tuna shall report the data collected by the Programme to the IOTC Executive Secretary each year by April 1 for the period of July 1 – December 31 of the preceding year and October 1 for the period of January 1 – June 30 of the current year, which shall be circulated to all the Contracting Parties by the IOTC Executive Secretary. The formats of the report are attached as Annex III.

	<p><u>Paragraph 6:</u> The Contracting Parties which export bigeye tuna shall examine export data upon receiving the import data mentioned in paragraph 5 above from the IOTC Executive Secretary, and report the results to the Commission annually.</p> <p><u>Paragraph 13:</u></p> <p>At the initial stage of the programme, the statistical documents and the re-export certificates will be required for frozen bigeye tuna products. Prior to implementing this Programme for fresh products, several practical problems need to be solved, such as guidelines to ensure procedures to handle fresh products at customs.</p>
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(a) Explanatory notes

See Resolution 03/03 above, which replaces the forms and instructions in this Resolution. It would be useful to consider combining the two in national legislation.

The same comments apply to this Resolution, especially those relating to the term “Re-export”.

Note that in 03/03, Annex II, paragraph 4 provides that a Contracting Party (i.e. not CPCs) “shall be free to validate IOTC Bigeye Tuna Re-export Certificates for bigeye tuna imported by that Contracting Party”. The reason for reference to Contracting Parties is that this Resolution (01/06) was adopted before 03/03, which itself was adopted in the same year as 03/02 which created the cooperating non-contracting status. Applicability of the Resolution to CPCs is therefore discretionary and the country should be consulted.

This Resolution requires validation by the exporting country (not the importing country, which may be why paragraph 4 is discretionary). Because it was adopted prior to Resolution 03/03, this requirement has not been included.

It would be useful to discuss this process with the country. Some indicative language is provided below.

Because they are similar, the legislative framework for this Resolution is adapted and included in the proposed framework for Resolution 03/03. There is therefore no need to consider the framework below separately.

[(b) Proposed Legislative Framework (appears under Resolution 03/03)]

- 1) IOTC Statistical documentation requirements for Bigeye Tuna do not apply to such species caught by fishing vessels equipped with purse seine or pole and line (bait) gear and equipment and are destined principally for the canneries in the IOTC area of competence.
- 2) The IOTC Bigeye Tuna Statistical Document shall be validated by a government official or other authorised individual or institution of the flag State of the vessel that harvested the tuna, or, if the vessel is operating under a charter arrangement, by a government official or other authorised individual of the exporting state.
- 3) The IOTC Bigeye Tuna Re-export Certificate must be validated by a government official or other authorised individual or institution of the state that re-exported the tuna.
- 4) The statistical documents for bigeye tuna caught by fishing vessels flying the flag of a Member State of the European Community may be validated by the competent authorities of the Member State whose flag the vessel flies or by those of a different Member State where the products are landed, provided the corresponding quantities of bigeye tuna are exported outside the Community from the territory of the Member State of landing.

RESOLUTION 99/02 CALLING FOR ACTIONS AGAINST FISHING ACTIVITIES BY LARGE SCALE FLAG OF CONVENIENCE LONGLINE VESSELS

	<p><u>Paragraph 1:</u> The Contracting Parties and Non-Contracting Parties Cooperating with the IOTC shall ensure that large-scale tuna longline vessels under their registry do not engage in IUU fishing activities (e.g. by means of denying such vessels a license to fish).</p> <p><u>Paragraph 2:</u> The Contracting Parties and Cooperating Non-Contracting Parties of the IOTC shall refuse landing and transhipment by FOC vessels which are engaged in fishing activities diminishing the effectiveness of measures adopted by IOTC.</p> <p><u>Paragraph 3:</u> The Contracting Parties and Cooperating Non-Contracting Parties of the IOTC shall take every possible action, consistent with their relevant laws,</p> <ul style="list-style-type: none">• to urge their importers, transporters and other concerned business people to refrain from transacting in and
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	<p>transshipping tunas and tuna-like species caught by vessels carrying out FOC fishing activities;</p> <ul style="list-style-type: none"> • to inform their general public of FOC fishing activities by tuna longline vessels which diminish the effectiveness of IOTC Conservation and Management Measures and urge them not to purchase fish harvested by such vessels; and • to urge their manufacturers and other concerned business people to prevent their vessels and equipment/devices from being used for FOC longline fishing operations.
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(a) Explanatory notes

This Resolution does not define “Flag of Convenience”, and is therefore not possible to implement in national law. In the preamble, it alludes to the fact that most of the so-called “Flag of Convenience” vessels are owned and operated by Taiwan, Province of China (TPC) entities while almost all of their products are being exported to Japan.

Another major concern is that the term “Flag of Convenience” has been politically incorrect for over a decade because many countries in fact exercise flag State responsibility over the non-national vessels that they flag. The proper term is “Flag of non-Compliance”.

Paragraph 1 obligates CPCs to ensure that large-scale tuna longline vessels under their registry do not engage in IUU fishing activities (e.g. by means of denying such vessels a license to fish). This is vague and has been overtaken by international instruments including the port State measures Agreement/Resolution and the FAO Voluntary Guidelines on Flag State Performance.

It could be recommended that national legislation includes a provision in the “Licensing” part requiring mandatory denial or withdrawal of licenses for all fishing vessels that have been presumed or proven to have been involved in IUU fishing in the area of competence of an RFMO/A to which [country] is a party or cooperating non-party for species under its mandate where all the required fines, penalties or other determinations have not been fully satisfied.

It is recommended that this be considered an administrative/procedural matter.

(b) Proposed Legislative Framework

None, for reasons given under (a).

Section 3 - Statistical Conservation and Management Measures

RESOLUTION 13/03 ON THE RECORDING OF CATCH AND EFFORT DATA BY FISHING VESSELS IN THE IOTC AREA

Paragraph 1:

Each flag CPC is required to ensure that all purse seine, longline, gillnet, pole and line, handline and trolling fishing vessels flying its flag and authorized to fish species managed by IOTC is subject to a data recording system.

Paragraph 2:

The measure applies to all purse seine, longline, gillnet, pole and line, handline and trolling fishing vessels over 24 metres LOA and those under 24 metres if they fish outside the EEZs of their flag States within the IOTC area of competence. The data recording systems for developing CPCs vessels less than 24 metres operating within the EEZ of coastal States is subject to a special program to be developed by the Commission. The vessels of less than 24 metres operating within the EEZ of developed CPCs shall apply this measure.

Paragraph 3:

All vessels shall keep a bound paper or electronic logbook to record data that includes, as a minimum requirement, the information and data in the logbook set forth in Annex I, II and III.

Paragraph 9:

The logbook shall be completed by the Master of the fishing vessel and submitted to the flag State administration, as well as to the coastal State administration where the vessel has fished in that coastal State's EEZ. Only the part of the logbook corresponding to the activity deployed in the coastal State EEZ shall be provided to the coastal State administration where the vessel has fished in that coastal State's EEZ.

Paragraph 4:

Each flag CPC shall submit to the IOTC Executive Secretary by 15 February 2014 a template of its official logbooks to record data in accordance with Annex I, II and III, for publishing on the IOTC website to facilitate MCS activities. For CPCs that use electronic logbook systems, a copy of the applicable regulations implementing the electronic logbook system in that CPC, a set of screen captures and the name of the certified software may be provided. If changes are made to the template after 15 February 2014, an updated template shall be submitted.

Paragraph 5:

Where the logbook is not in one of the two languages of the IOTC, CPCs shall provide a complete field description of the logbook in one of the two languages of the IOTC together with the submission of the sample of the logbook.

Paragraph 10:

The Flag State and the States which receive this information shall provide all the data for any given year to the IOTC Secretariat by June 30th of the following year on an aggregated basis. The confidentiality rules set out in Resolution 12/02 *Data Confidentiality Policy and Procedures* for fine-scale data shall apply.

Paragraph 11:

	<p>Noting the difficulty in implementing a data recording system on fishing vessels from developing CPCs, the data recording systems for vessels less than 24 metres of developing CPCs operating inside the EEZ shall be implemented progressively from 1 July 2014.</p>
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(a) Explanatory notes

The data recording systems for developing CPCs vessels less than 24 metres operating within the EEZ of coastal States is subject to a special program to be developed by the Commission. The vessels of less than 24 metres operating within the EEZ of developed CPCs shall apply this measure. It will be necessary to adjust this provision accordingly under any program that has been developed by the Commission, especially subsection (1)(c).

(b) Proposed Legislative Framework

DATA RECORDING SYSTEM

- 1) This section applies to all [country] fishing vessels:
 - a. equipped with purse seine, longline, gillnet, pole and line, handline and trolling gear and equipment; and
 - b. over 24 metres length overall; or
 - c. less than 24 metres if they fish outside areas of national jurisdiction of [country] within the IOTC area of competence.

- 2) The operator of each fishing vessel shall keep a national fishing logbook or electronic logbook to record data that includes, as a minimum requirement, the information and data in the logbook required in Annex I, II and III.

- 3) The master of the fishing vessel shall complete the logbook required pursuant to subsection (2) and submit:
 - a. the logbook to the flag State administration;
 - b. that part of the logbook corresponding to the activity carried out in a coastal State's [EEZ] [areas under national jurisdiction] where the vessel has fished.

ANNEX I, II AND III

ANNEX I Record once per trip (unless gear configuration changes)

1.1 REPORT INFORMATION

1. Date of the submission of logbook
2. Name of reporting person

1.2 VESSEL INFORMATION

1. Vessel name and/or registration number
2. IMO number, where available
3. IOTC number
4. Call sign: if call sign is not available, other unique identifying code such as fishing licence number should be used
5. Vessel size: gross tonnage and overall length (meters)

1.3 CRUISE INFORMATION

For multiday fishing operations record the:

1. Departure date (at your location) and port
2. Arrival date (at your location) and port

1.4 OTHER REQUIRED INFORMATION

Longline (Gear Configuration):

1. Average branch line length (meters): straight length in meters between snap and hook (Figure 1)
2. Average float line length (meters): straight length in meters from the float to the snap
3. Average length between branch (meters): straight length of main line in meters between successive branch lines
4. Main line material classified into four categories:
 - a) Thick rope (Cremona rope)
 - b) Thin rope (Polyethylene or other materials)
 - c) Nylon braided
 - d) Nylon monofilament
5. Branch line material classified into two categories:
 - a) Nylon
 - b) Other (such as wire)

Purse Seine:

(Gear configuration):

1. Length of the purse seine net
2. Height of the purse seine net
3. Total number of FADs deployed per trip: refer to the Resolution 13/08 Procedures on a fish aggregating devices (FADs) management plan, including more detailed specification of catch reporting from FAD sets, and the development of improved FAD designs to reduce the incidence of entanglement of non-target species

(Search information):

1. Days searched

2. Spotter plane used (Yes/No)
3. Supply vessel used (Yes/No), if yes what is the name and registration number of the supply vessel

Gillnet (Gear Configuration):

1. Overall length of net (metres): record the total overall length of the net onboard
2. Mesh size of net (millimetres): record the size of the mesh size used during the trip
3. Depth of assembled net (meters): height of assembled net in meters
4. Netting material: e.g. nylon braid, nylon monofilament, etc

Pole and line (Gear Configuration):

1. Number of fishermen

ANNEX II Record once per set/shot/operation

Note: for all gears in this annex use the follow format for date and time

For date: when recording date of the set/shot/operation: record the YYYY/MM/DD

For time: record 24hr time as either the local time, GMT or national time and clearly specify which time has been used.

2.1 OPERATION

For longline:

1. Date of set
2. Position in latitude and longitude: either position at noon or position of start of gear or area code of operation (e.g. Seychelles EEZ, High seas, etc) may be optionally used
3. Time of starting setting the gear
4. Number of hooks between floats: if there are different hooks counts between floats in a single set then record the most representative (average) number
5. Total number of hooks used in the set
6. Number of light-sticks used in the set
7. Type of bait used in the set: e.g. fish, squid, etc
8. Optionally, sea surface temperature at noon with one decimal point (XX.XoC)

For purse seine:

1. Date of set
2. Type of event: fishing set or deployment of a new FAD
3. Position in latitude and longitude and time of event, or if no event during the day, at noon
4. If fishing set: specify if the set was successful, nil, well; type of school (free swimming school or FAD associated. If FAD associated, specify the type (e.g. log or other natural object, drifting FAD, anchored FAD, etc.). Refer to the Resolution 13/08 Procedures on a fish aggregating devices (FADs) management plan, including more detailed specification of catch reporting from FAD sets, and the development of improved FAD designs to reduce the incidence of entanglement of non-target species
5. Optionally, sea surface temperature at noon with one decimal point (XX.XoC)

For gillnet:

1. Date of set: record the date for each set of day at sea (for days without sets)
2. Total length of net (meters): length floatline used for each set in meters
3. Start fishing time: record the time when starting each set
4. Start and end position in latitude and longitude: record start and end latitude and longitude that represent the area that your gear is set between or, if no set, record the latitude and longitude at noon for days without sets
5. Depth at which net is set (meters): approximate depth at which the gillnet is set

For Pole and Line:

1. Date of operation: record the day
2. Position in latitude and longitude at noon
3. Number of fishing poles used during that day
4. Start fishing time (record the time immediately after bait fishing is complete and the vessel heads to the ocean for fishing. For multiple days, the time at which search starts should be recorded) and end fishing time (record the time immediately after fishing is complete from the last school). On multiple days this is the time fishing stopped from the last school
5. Type of school: FAD associated and/or free school

2.2 CATCH

1. Catch weight (kg) or number by species per set/shot/fishing event for each of the species and form of processing in section 2.3:

- a) For longline by number and weight
- b) For purse seine by weight
- c) For gillnet by weight
- d) For pole and line by weight or number

2.3 SPECIES

For Longline:

Primary Species	FAO code	Other Species	FAO code
Southern bluefin tuna (<i>Thunnus maccoyii</i>)	SBF	Shortbill spearfish (<i>Tetrapturus angustirostris</i>)	SSP
Albacore (<i>Thunnus alalunga</i>)	ALB	Blue shark (<i>Prionace glauca</i>)	BSH
Bigeye tuna (<i>Thunnus obesus</i>)	BET	Mako sharks (<i>Isurus</i> spp.)	MAK
Yellowfin tuna (<i>Thunnus albacares</i>)	YFT	Porbeagle shark (<i>Lamna nasus</i>)	POR
Skipjack tuna (<i>Katsuwonus pelamis</i>)	SKJ	Hammerhead sharks (<i>Sphyrna</i> spp.)	SPN
Swordfish (<i>Xiphius gladius</i>)	SWO	Other bony fishes	

Striped marlin (<i>Tetrapturus audax</i>)	MLS	Other sharks	SKH
Blue marlin (<i>Makaira nigricans</i>)	BUM	Seabirds (in number)	
Black marlin (<i>Makaira indica</i>)	BLM	Marine Mammals (in number)	
Indo–Pacific sailfish (<i>Istiophorus platypterus</i>)	SFA	Marine turtles (in number)	
		Thresher sharks (<i>Alopias</i> spp.)	THR
		Oceanic whitetip shark (<i>Carcharhinus longimanus</i>)	OCS
		Optional species to be recorded	
		Tiger shark (<i>Galeocerdo cuvier</i>)	TIG
		Crocodile shark (<i>Pseudocarcharias kamoharai</i>)	PSK
		Great white shark (<i>Carcharodon carcharias</i>)	WSH
		Mantas and devil rays (<i>Mobulidae</i>)	MAN
		Pelagic stingray (<i>Pteroplatytrygon violacea</i>)	PSL
		Other rays	

For purse seine:

Primary Species	FAO code	Other species	FAO code
Albacore (<i>Thunnus alalunga</i>)	ALB	Marine turtles (in number)	
Bigeye tuna (<i>Thunnus obesus</i>)	BET	Marine mammals (in number)	
Yellowfin tuna (<i>Thunnus albacares</i>)	YFT	Whale sharks (<i>Rhincodon typus</i>) (in number)	RHN
Skipjack tuna (<i>Katsuwonus pelamis</i>)		Thresher sharks (<i>Alopias</i> spp.)	THR
Other IOTC species		Oceanic whitetip shark (<i>Carcharhinus longimanus</i>)	OCS

SKJ	Optional species to be recorded	FAO code
	Silky sharks (<i>Carcharhinus falciformis</i>)	FAL
	Mantas and devil rays (<i>Mobulidae</i>)	MAN
	Other sharks	SKH
	Other rays	
	Other bony fish	

For gillnet:

Primary Species	FAO code	Other Species	FAO code
Albacore (<i>Thunnus alalunga</i>)	ALB	Shortbill spearfish (<i>Tetrapturus angustirostris</i>)	SSP
Bigeye tuna (<i>Thunnus obesus</i>)	BET	Blue shark (<i>Prionace glauca</i>)	BSH
Yellowfin tuna (<i>Thunnus albacares</i>)	YFT	Mako sharks (<i>Isurus</i> spp.)	MAK
Skipjack tuna (<i>Katsuwonus pelamis</i>)	SKJ	Porbeagle shark (<i>Lamna nasus</i>)	POR
Longtail tuna (<i>Thunnus tonggol</i>)	LOT	Hammerhead sharks (<i>Sphyrna</i> spp.)	SPN
Frigate tuna (<i>Auxis thazard</i>)	FRI	Other sharks	SKH
Bullet tuna (<i>Auxis rochei</i>)	BLT	Other bony fish	
Kawakawa (<i>Euthynnus affinis</i>)	KAW	Marine turtles (in number)	
Narrow barred Spanish mackerel (<i>Scomberomorus commerson</i>)	COM	Marine mammals (in number)	
Indo-Pacific king mackerel (<i>Scomberomorus guttatus</i>)	GUT	Whale sharks (<i>Rhincodon typus</i>) (in number)	RHN
Swordfish (<i>Xiphias gladius</i>)	SWO	Seabirds (in number)	
Indo-Pacific sailfish (<i>Istiophorus platypterus</i>)	SFA	Thresher sharks (<i>Alopias</i> spp.)	THR

Marlins (Tetrapturus spp, Makaira spp.)	BIL	Oceanic whitetip shark (Carcharhinus longimanus)	OCS
Southern bluefin tuna (Thunnus maccoyii)	SBF	Optional species to be recorded	
		Tiger shark (Galeocerdo cuvier)	TIG
		Crocodile shark (Pseudocarcharias kamoharai)	PSK
		Mantas and devil rays (Mobulidae)	MAN
		Pelagic stingray (Pteroplatytrygon violacea)	PSL
		Other rays	

When a CPC is fully implementing the observer program the provision of seabird data is optional

For pole-and-line:

Primary Species	FAO code	Other Species	FAO code
Albacore (Thunnus alalunga)	ALB	Other bony fish	
Bigeye tuna (Thunnus obesus)	BET	Sharks	
Yellowfin tuna (Thunnus albacares)	YFT	Rays	
Skipjack tuna (Katsuwonus pelamis)	SKJ	Marine turtles (in number)	
Frigate and bullet tuna (Auxis spp.)	FRZ		
Kawakawa (Euthynnus affinis)	KAW		
Longtail tuna (Thunnus tonggol)	LOT		
Narrow barred Spanish mackerel (Scomberomorus commerson)	COM		
Other IOTC species			

2.4 REMARKS

1. Discard of tuna, tuna-like fish and sharks to be recorded by species in weight (kg) or number for all gears should be recorded in the remarks
2. Any interactions with whale sharks (*Rhincodon typus*), marine mammals, and seabirds should be recorded in the remarks
3. Other information is also written in the remarks

Note: The species included in the logbooks are regarded as minimum requirement. Optionally other frequently caught shark and/or fish species should be added as required across different areas and fisheries.

Figure 1. Longline (Gear Configuration): Average branch line length (meters): straight length in meters between snap and hook.

ANNEX III Specifications for handline and trolling

Note: for all gears in this annex use the follow format for date and time

For date: when recording date of the set/shot/operation: record the YYYY/MM/DD

For time: record 24hr time as either the local time, GMT or national time and clearly specify which time has been used.

I - HANDLINE

All logbook information shall be recorded by day; where more than one fishing event is recorded for the same day, it is advisable to record each fishing event separately

Record once in one cruise, or month where daily operation

1.1 REPORT INFORMATION

1. Fishing day (or Date of submission of the logbook, where multiple fishing days)
2. Name of reporting person

1.2 VESSEL INFORMATION

1. Vessel name and registration number and IMO number, where available
2. IOTC number, where available
3. Fishing License number
4. Vessel size: Gross tonnage and/or length overall (in metres)

1.3 CRUISE INFORMATION

1. Departure date and port
2. Arrival date and port

2.1 OPERATION

1. Date of fishing

Record the date of fishing. Each fishing day should be recorded separately

2. Number of fishermen

Record the number of fishermen on the boat by fishing day

3. Number of Fishing Gear

Record the number of fishing lines used during the fishing day. If the exact number is not available a range may be used i) 5 or less lines, ii) 6–10 lines; iii) 11 or more lines

4. Number and type of school (Anchored or drifting FAD, marine mammal, free, other) fished

Record the number and type of school fished (i.e. anchored FAD, drifting FAD, marine mammal associated or free) fished during the day

5. Position of the catch

Position in latitude and longitude: either position at noon or position of start of gear or area code of operation (e.g. Seychelles EEZ, High seas, etc) may be optionally used. Record the latitude and longitude at noon for non-fishing days, where not in port

Where information is recorded by day, record the 1° x 1° area(s) where fishing took place

6. Bait

Record the type of bait used (e.g. fish, squid), where applicable

2.2 CATCH

Catch in number and/or weight (kg) by species

1. Catch number and/or Weight

For each species shown in section 2.3 caught and retained, record the number and estimated live weight (kg), per fishing day

2. Discard number and/or Weight

For each species shown in section 2.3 caught and not retained record the number and estimated live weight (kg) discarded, per fishing day

2.3 SPECIES

Primary Species	FAO code
Yellowfin tuna (<i>Thunnus albacares</i>)	YFT
Bigeye tuna (<i>Thunnus obesus</i>)	BET
Skipjack tuna (<i>Katsuwonus pelamis</i>)	SKJ
Indo-Pacific sailfish (<i>Istiophorus platypterus</i>)	SFA
Black marlin (<i>Makaira indica</i>)	BLM
Other billfish	
Longtail tuna (<i>Thunnus tonggol</i>)	LOT
Kawakawa (<i>Euthynnus affinis</i>)	KAW
Frigate tuna/Bullet tuna (<i>Auxis</i> spp.)	FRZ

Narrow barred Spanish mackerel (*Scomberomorus commerson*)

COM

Indo-Pacific king mackerel (*Scomberomorus guttatus*)

GUT

Sharks

Other fishes

Rays

Marine turtles (by number)

2.4 REMARKS

1. Other relevant information is also written in the remarks

Note: These species included in the logbook are regarded as minimum requirement. Optionally other species should be added as species may differ depending on the area fished and type of fishery

II - TROLLING VESSELS

All logbook information shall be recorded by day; where more than one fishing event is recorded for the same day, it is advisable to record each fishing event separately

Record once in one cruise

1.1 REPORT INFORMATION

1. Fishing day (or Date of submission of the logbook, where multiple fishing days)

2. Name of reporting person

1.2 VESSEL INFORMATION

1. Vessel name and registration number and IMO number, where available

2. IOTC number, where available

3. Fishing License number

4. Vessel size: Gross tonnage and/or length overall (in metres)

1.3 CRUISE INFORMATION

1. Departure date and port

2. Arrival date and port

2.1 OPERATION

1. Date of fishing

Record the date of fishing. Each fishing day should be recorded separately

2. Number of fishermen

Record the number of fishermen on the vessel by fishing day

3. Number of Fishing Gear

Record the number of lines used during the fishing day. If the exact number is not available a range may be used i) 3 or less lines, ii) more than 3 lines

4. Number and type of school (Anchored or drifting FAD, marine mammal, free, other) fished

Record the number and type of school fished (i.e. anchored FAD, drifting FAD, marine mammal associated or free) fished during the day

5. Position of the catch

Position in latitude and longitude: either position at noon or position of start of gear or area code of operation (e.g. Seychelles EEZ, High seas, etc) may be optionally used. Record the latitude and longitude at noon for non-fishing days, where not in port

Where information is recorded by day, record the 1° x 1° area(s) where fishing took place

6. Bait

Record the type of bait or indicate if lures are used

2.2 CATCH

Catch in number and/or weight (kg) by species

1. Number and/or Weight of fish retained

For each species shown in section 2–3 caught and retained, record the number or estimated live weight (kg), per fishing day

2. Discard number and/or Weight

For each species shown in section 2–3 caught and not retained record the number and estimated live weight (kg) discarded, per fishing day

2.3 SPECIES

Primary Species	FAO code
Yellowfin tuna (<i>Thunnus albacares</i>)	YFT
Bigeye tuna (<i>Thunnus obesus</i>)	BET
Skipjack tuna (<i>Katsuwonus pelamis</i>)	SKJ
Albacore (<i>Thunnus alalunga</i>)	ALB
Swordfish (<i>Xiphias gladius</i>)	SWO
Blue marlin (<i>Makaira nigricans</i>)	BUM
Black marlin (<i>Makaira indica</i>)	BLM
Striped marlin (<i>Tetrapturus audax</i>)	MLS
Indo-Pacific sailfish (<i>Istiophorus platypterus</i>)	SFA

Other billfish	
Longtail tuna (<i>Thunnus tonggol</i>)	LOT
Kawakawa (<i>Euthynnus affinis</i>)	KAW
Frigate tuna/Bullet tuna (<i>Auxis</i> spp.)	FRZ
Narrow barred Spanish mackerel (<i>Scomberomorus commerson</i>)	COM
Indo-Pacific king mackerel (<i>Scomberomorus guttatus</i>)	GUT
Sharks	
Other fishes	
Rays	
Marine turtles	

RESOLUTION 10/02 MANDATORY STATISTICAL REQUIREMENTS FOR IOTC MEMBERS AND COOPERATING NON-CONTRACTING PARTIES (CPCS)

Paragraph 1: CPC's shall provide the outlined information (including nominal catch data, catch and effort data, size data, and supply vessel/FAD data) to the IOTC Secretariat according to the timelines specified in paragraph 6

Paragraph 2:
Nominal catch data:
Estimates of the total annual catch by species and gear for all species under the IOTC mandate.

Paragraph 3:
Catch and effort data:
For surface fisheries: catch weight by species and fishing effort shall be provided by 1° grid area and month strata. Purse seine fishery data shall be stratified by fishing mode (e.g. free swimming schools or schools in association with floating objects). The data shall be extrapolated to the total national monthly catches for each gear. Documents describing the extrapolation procedures (including raising factors corresponding to the logbook coverage) shall also be submitted routinely.
Longline fisheries: catch by species, in numbers or weight, and effort as the number of hooks deployed shall be provided by 5° grid area and month strata. Documents describing the extrapolation procedures (including raising factors corresponding to the logbook coverage) shall also be submitted routinely. For the work of relevant working parties under the IOTC Scientific Committee, longline data should be of a resolution of 1° grid area and month or finer. These data would be for the exclusive use of IOTC scientists, subject to the approval of the data owners and IOTC Resolution 98/02 [superseded by Resolution 12/02] Data confidentiality policy and procedures, and

	<p>should be provided for scientific use in a timely fashion.</p> <p>For coastal fisheries: available catch by species, fishing gear and fishing effort shall be submitted frequently and may be provided using an alternative geographical area if it better represents the fishery concerned. These provisions, applicable to tuna and tuna-like species, shall also be applicable to the most commonly caught shark species and, where possible, to the less common shark species. CPC's are also encouraged to record and provide data on species other than sharks and tunas taken as bycatch.</p> <p><u>Paragraph 4:</u> Size data: Size data shall be provided for all gears and for all species covered by the IOTC mandate according to the guidelines set out by the IOTC Scientific Committee. Size sampling shall be run under strict and well described random sampling schemes which are necessary to provide unbiased figures of the sizes taken. Sampling coverage shall be set to at least one fish measured by ton caught, by species and type of fishery, with samples being representative of all the periods and areas fished. Alternatively, size data for longline fleets may be provided as part of the Regional Observer Scheme where such fleets have at least 5% observer coverage of all fishing operations. Length data by species, including the total number of fish measured, shall be submitted by a 5° grid area by month, by gear and</p>
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	<p>fishing mode (e.g. free swimming schools or schools in association with floating objects for the purse seiners). Documents covering sampling and raising procedures shall also be provided, by species and type of fishery.</p> <p><u>Paragraph 5:</u> Given that the activities of supply vessels and the use of Fish Aggregating Devices (FAD) are an integral part of the fishing effort exerted by the purse seine fleet, the following data shall be provided: The number and characteristics of supply vessels: (i) operating under their flag, (ii) assisting purse seine vessels operating under their flag, or (iii) licensed to operate in their exclusive economic zones, and that have been present in the IOTC Area; Number of days at sea by supply vessels by 1° grid area and month to be reported by the flag state of the supply vessel; The total number and type of FADs set by the supply vessel and purse seine fleet per quarter. Types of FADs are defined as 1) drifting log or debris, 2) drifting raft or fad with a net, 3) drifting raft or fad without a net, 4) other (e.g. Payao, dead animal etc). All types monitored by a tracking system. These data would be for the exclusive use of IOTC scientists, subject to the approval of the data owners and Resolution 98/02 [superseded by Resolution 12/02] Data confidentiality policy and procedures, and should be provided in a timely fashion.</p>
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	<p><u>Paragraph 6:</u> Timeliness of data submission to the IOTC Secretariat: Longline fleets operating in the high seas shall provide provisional data for the previous year no later than 30 June. Final data shall be submitted no later than 30 December; All other fleets (including supply vessels) shall submit their final data for the previous year no later than 30 June; In case where the final statistics cannot be submitted by that date, at least preliminary statistics should be provided. Beyond a delay of two years, all revisions of historical data should be formally reported and duly justified. These reports should be made on forms provided by the IOTC Secretariat and reviewed by the IOTC Scientific Committee. The IOTC Scientific Committee will advise the IOTC Secretariat if revisions are then accepted for scientific use.</p>
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(a) Explanatory notes

The statistical requirements are to be fulfilled by CPCs, and do not involve requirements for fishing or related activities except reporting, in order that the countries have the basic statistics with which to work. However, in some cases the CPCs are only required to give estimates, e.g. of the total annual catch by species and gear. This can be extrapolated from licensing and other data.

Other statistics are required by gear, grid area and month, and methods of calculation or extrapolation need to be reported.

It should be brought to the country's attention that they should integrate into procedures for observers under Resoluton 11/04 requirements for information and data to enable them to discharge their responsibilities to IOTC . For example, minimal coverage for length data (1 fish per metric ton), which is defined here.

(b) Proposed Legislative Framework

IOTC STATISTICAL REQUIREMENTS

- 1) In this section, nominal catch data shall mean the estimates of the total annual catch by species and gear for all species under the mandate of the Indian Ocean Tuna Commission.
- 2) The [official] shall provide the following information and data to the Secretariat of the Indian Ocean Tuna Commission at such time or times as may be agreed by the Commission:
 - a. Catch and effort data shall be submitted:
 - i. for surface fisheries, catch weight by species and fishing effort by 1° grid area and month strata;
 - ii. for purse seine fisheries, stratified data by the fishing mode (e.g. free swimming schools or schools in association with floating objects), extrapolated to the total national monthly catches for each gear, including a description of extrapolation procedures including raising factors corresponding to the logbook coverage;
 - iii. for longline fisheries, catch by species, in numbers or weight, and effort by the number of hooks deployed in a 5° grid area and month strata, including a description of extrapolation procedures including raising factors corresponding to the logbook coverage, except for purposes of relevant IOTC working parties longline data should be of a resolution of 1° grid area and month or finer; and
 - iv. for coastal fisheries for tuna and tuna-like species, the most commonly caught shark species and, where possible, to the less common shark species and bycatch, the available catch by species, fishing gear and fishing effort, which may be provided using an alternative geographical area if it better represents the fishery concerned.
 - b. Size data shall be provided for all gears and for all species covered by the IOTC mandate according to the guidelines set out by the IOTC Scientific Committee, and the [official] shall ensure that size sampling:
 - i. shall be run under strict and well described random sampling schemes which are necessary to provide unbiased figures of the sizes taken;
 - ii. shall be based on coverage that shall be set to at least one fish measured by ton caught, by species and type of fishery;
 - iii. shall be representative of all the periods and areas fished;
 - iv. may, for longline fleets, alternatively be based on size data provided as part of the IOTC Regional Observer Scheme where such fleets have at least 5% observer coverage of all fishing operations;

- v. shall include length data by species, including the total number of fish measured, which shall be submitted by a 5° grid area by month, by gear and fishing mode (e.g. free swimming schools or schools in association with floating objects for the purse seiners); and
 - vi. shall, where documents cover sampling and raising procedures, be provided, by species and type of fishery.
- c. The [official] shall ensure that the following information and data is submitted on the purse seine fleet to the IOTC Secretariat at such times as may be required by the Commission:
- i. the number and characteristics of supply vessels that have been present in the IOTC Area:
 - 1. operating under their flag;
 - 2. assisting purse seine vessels operating under their flag; or
 - 3. licensed to operate in their exclusive economic zones;
 - ii. the number of days at sea by supply vessels by 1° grid area and month to be reported by the flag state of the supply vessel; and
 - iii. the total number and type of FADs set by the supply vessel and purse seine fleet per quarter.⁴⁰

⁴⁰ The following requirements are in the Resolution, but may not need to be in national law: Types of FADs are defined as 1) drifting log or debris, 2) drifting raft or fad with a net, 3) drifting raft or fad without a net, 4) other (e.g. Payao, dead animal etc). All types monitored by a tracking system.