



CONCERNING THE IOTC PROVISIONAL IUU VESSELS LIST

Prepared by IOTC Secretariat, 19 April, 2015

In accordance with Paragraph 8 of IOTC Resolution 11/03 *On establishing a list of vessels presumed to have carried out illegal, unregulated and unreported fishing in the IOTC Area*, 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.

Additional information which has been received from the United Kingdom (OT) on the 19th April 2015 is provided for the consideration of the Compliance Committee at its 12th Session.

Mr Rondolph Payet
Executive Secretary
Indian Ocean Tuna Commission
Mahe
Seychelles

19 April 2015

cc. Mr Herminio Tembe, Chair of the Compliance Committee; Mr Hosea Gonza Mbilinyi Vice Chair

Dear Rondolph,

Resolution 11/03. On establishing a list of vessels presumed to have carried out illegal, unregulated and unreported fishing in the IOTC area – The cases of nine vessels flagged to India

In conformity with paragraph 8 of IOTC Resolution 11/03 this letter contains additional information to that submitted by the BIOT Administration to the Secretariat on 6th February 2015 that is relevant to the establishment of the IUU vessels list. We provide additional UK(OT) information and our analysis of the actions taken by India that were provided in IOTC Circular 2015-039 dated 13th April 2015 (their letter dated 23/3/15). We present our recommendation to the Compliance Committee.

Table 1 provides updated summary details for each vessel, including our recommendation.

Table 2 provides updated details of the correspondence between BIOT Administration and the Indian Authorities, with copies of the correspondence being included with the IOTC Provisional IUU list, Circular 2015-039

For clarity and to assist the deliberations of the Compliance Committee,

Table 3 provides a checklist of conformity with the requirements of Resolution 11/03

Table 4 provides a decision matrix for recommending IUU listing or otherwise

With reference to the interpretation of Tables 3 and 4 by the reader, we note that in respect of Resolution 11/03 some of the requirements are either met or not (e.g. the deadline for submission of evidence) whilst paragraph 10b requires the Compliance Committee to make a judgement as to whether *effective action* has been taken by the flag State including *inter-alia* prosecution and imposition of sanctions of *adequate severity*ⁱ.

In addition to our analysis of the flag State actions, we also draw to the attention of the Compliance Committee the following which has a bearing on these cases:

- Evidence presented in IOTC-2015-CoC-12-08b (Reporting of vessels in transit through BIOT waters for potential breach of IOTC Conservation and Management Measures (CMMs)) highlights that in addition to being in breach of BIOT law, none of these vessels were on the Authorised Fishing Vessel list. This is an additional factor that should be taken into consideration with respect to the IUU vessel list.
- With reference to the Compliance Questionnaire submitted by India (IOTC-2015-CoC12-CQ09[E]-India) we highlight that India is not correct in its reporting requirements by claiming in 5.1. that no nationals were identified in IUU activities in 2014 despite being in receipt of details of these nine cases, and they have thus indicated that they have neither taken nor reported on actions and measures taken.

In evaluating the evidence presented in the Draft and Provisional IUU lists circulated by the Secretariat, and the analysis of that evidence as presented in Tables 1 and 3 of this letter, we highlight that all nine vessels have or are suspected of having fished illegally in BIOT watersⁱⁱ. None of the vessels were on the IOTC Authorised Record of Fishing Vessels permitted to fish beyond India's EEZ. All nine vessels are therefore strongly suspected of being IUU. The onus is on the flag State either to prove that IUU has not occurred (Resolution 11/03 para 10a) or that it has fulfilled its flag State requirements. India has

presented no evidence that the vessels were not engaged in IUU in BIOT waters. Thus, the question that the Compliance Committee and subsequently the IOTC Commission must decide, is whether the flag State has undertaken all the actions required of it as defined in IOTC Resolutions 11/03 and 07/01 (summarised in Table 3) and that any actions taken are of adequate severity in order to justify not listing these vessels as IUU?

We draw to the attention of the Compliance Committee that:

- The flag State has failed to acknowledge that its nationals have engaged in IUU (IOTC-2015-CoC12-CQ09[E]-India)
- Until 17th April the flag State has failed to engage directly with the BIOT Administration in resolving these cases and has not responded to representations made in a Note Verbale (SAD/118/14 of 22/12/14 referring to all 9 Indian flagged IUU cases, see Draft IUU list, IOTC Circular 2015-023), nor has it engaged with BIOT representatives dealing with these cases and has not responded to any subsequent correspondence from them (see Table 2). Only since 17th April has it begun to cooperate with the BIOT Authorities to address these cases of IUU;
- The flag State response (IOTC Circular-2015-039, letter dated 23 March 2015) was to the effect that ‘instructions’ were issued to the fishermen not to engage in *future* IUU. There is no evidence provided that the flag State has taken action against the owner and Master of the vessel for the *existing* acts of IUU in BIOT waters.

The flag State has only since 17th April recognised its duty to cooperate with the BIOT administration to prevent IUU, and in respect of meeting the requirements of IOTC Resolutions 07/01 and 11/03 it is clear that the flag State actions in respect of all nine vessels has been inadequate to date.

In the cases of Greeshma I and Bosin the vessels were found guilty in the BIOT court of IUU. At the time of writing, the owners have not paid the fines due, which are outstanding. Bilateral work through diplomatic channels indicates to some extent that India is working to address our concerns, but this has been very slow, and we are therefore proposing an intersessional deadline after which, in the absence of satisfactory and much more significant engagement by India to fulfil its obligations under paragraphs 5, 6, and 10 of Resolution 11/03 (and 07/01), these cases that have been completed in the BIOT judicial system should be moved to the full IUU list. Thus, line 2 of Table 4 applies and we recommend retaining these vessels on the Provisional IUU list.

In the case of the remaining seven vessels (St Marys No; St Marys No2; King Jesus; Dignamol I; Dignamol II; Carmal Matha; Benaiah) not only were these vessels suspected of illegally fishing in BIOT, but the vessels had been detained, cautioned and requested by the SFPO to follow the BIOT Patrol Vessel to port for further investigation, as was his right under BIOT law, but these vessels hampered the attempts to bring them in to port and then fled. Thus the BIOT Principle Legal Advisor determined that there was sufficient evidence to additionally consider prosecutions for these seven vessels for obstructing the Senior Fisheries Protection Officer in performance of his duty which has complicated the conclusion of any proceedings against the owners of the vessels by the BIOT Court. The activities of these seven vessels thus remain under investigation prior to the commencement of proceedings. Consequently line 6 of Table 4 applies and we recommend retaining these vessels on the Provisional IUU list.

We propose that the Compliance Committee presents all nine Indian vessels on the Provisional IOTC list to the Commission and that it recommends retaining all nine vessels on the Provisional IUU List until the cases are satisfactorily concluded or that in the absence of satisfactory cooperation by India with UK(OT) to resolve these cases by 1 September 2015, they are reviewed intersessionally with the potential for IUU listing.

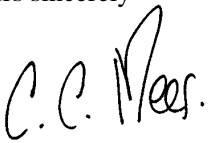
It is clear from the large number of vessels illegally fishing in BIOT waters that India has not exercised flag State control over its fleet, and nor, to date, has it implemented adequate flag State actions in response to evidence of IUU in BIOT waters that was presented by the BIOT Administration. We urge the Compliance Committee to take a firm line in recommending that India fully and properly respects its duties as a flag State. Specifically, on the basis of the information provided there is no evidence that the flag State has taken action to satisfy paragraphs 5, 6, 10a; and 10b of Resolution 11/03 in respect of any of the nine Indian flagged vessels and that subsequent to its cooperation of 17th April it now does so.

We propose that the Compliance Committee recommends to the Commission that it requires India to respect its flag State obligations both in respect of its duty to cooperate with other CPCs (UK(OT)) in order to resolve these cases, and in respect of meeting its obligations under Resolution 07/01 and 11/03 and 10/11 by September 2015.

We further propose that the Compliance Committee recommends that India shall provide, no later than 31 July 2015, a detailed explanation of how it will implement control over its fleet including full implementation of VMS.

I would be grateful if you could circulate this material for the information of the Compliance Committee. Thank you.

Yours sincerely



Dr C.C. Mees
Head of UK(OT) Delegation to IOTC

ⁱ The BIOT administration has applied the following principles in evaluating ‘adequate severity’ that are reflected in our analysis presented in Table 1 and subsequent recommendation.

- To be considered adequate, actions taken must fulfil all other requirements of Resolution 11/03 (e.g. paras 4, 5, 6) Resolution 07/01 and any other IOTC Conservation Management Measure that may apply in a particular case.
- Effective action is required in respect of controlling the vessel AND any natural or legal persons engaged in IUU (Resolution 07/01 para 1.i; 1.ii) which will include *inter-alia* the vessel owner AND the vessel master.
- Where a vessel owner and/or Master has respected the decision of the BIOT Court and satisfied any sanctions set by that court then we would not anticipate that the owner would necessarily be prosecuted under Indian law but we would like to be informed of any actions taken in respect of both the owner and the master.
- Where a vessel owner and/or Master has not respected the decision of the BIOT Court and has not satisfied any sanctions set by that court then we require evidence that India has prosecuted the vessel owner (and master as appropriate) and that sanctions of equivalent severity to those imposed by the BIOT Court have been applied and satisfied. In seeking equivalence we note that each case may differ and, for example, *inter alia* where a vessel / master is a repeat offender, or where prohibited species are found on board (e.g. thresher sharks) sanctions of greater severity may be expected to apply. We would like to be informed of any actions taken in respect of both the owner and the Master.

ⁱⁱ As presented in the ‘IOTC Reporting forms for Illegal Activity’ for each vessel presented in the Draft IUU list (IOTC Circular 2015-029) updated in the provisional list (IOTC Circular 2015-039) the BIOT Principle Legal Advisor determined that there was sufficient evidence to consider prosecutions for all nine vessels for

- A) Fishing without a licence in BIOT waters contrary to Sections 7(1) & 7(2)(i) of the Fisheries (Conservation and Management) Ordinance 2007.
- B) Possession of Prohibited fishing gear contrary to Section 6 (2) of the Fisheries (Conservation and Management) Ordinance 2007.

For seven of the vessels (St Marys No; St Marys No2; King Jesus; Dignamol I; Dignamol II; Carmal Matha; Benaiah) the following also applies:

- C) Obstruction of Fisheries Protection Officers contrary to Section 16 of the Fisheries (Conservation and Management) Ordinance 2007.

Table 1: Summary details of the Indian vessels arrested in BIOT waters for presentation to IOTC under Resolution 11/03.

No.	Vessel Name	Identification Number Date of Incident	Outcome (evidence)	Response and action by Flag State (Circular 2015-039)	Adequate Severity? Measures to promote compliance with IOTC Conservation and Management Measures?	Recommendation for IUU listing
1	GREESHMA 1	Indian Registration number 3156 TN2/FV/10/01135/10 5 December 2014	Guilty in BIOT Court and fined (Letter to India dated 27/2/15) Fine due 26 March 2015. Representations from owners received and considered on 31 March. BIOT Court found no grounds to re-open or set aside previous judgement. Fines and costs still due to be paid. The fine is currently NOT paid. Letter sent to India on 9/4/15	The Indian Authorities have not responded directly to the UK(OT) in relation to representations made in a Note Verbale (SAD/118/14 of 22/12/14 referring to all 9 Indian flagged IUU cases, see Draft IUU list, IOTC Circular 2015-023) nor to the subsequent correspondence with India detailed in Annex 2 and boxes left) A letter from Government of India dated 23 March 2015 was sent to the IOTC Secretariat (IOTC Circular 2015-039) and indicates:	No evidence was provided of what instructions had been given. No indication that any action has been taken against the owner/master. Issuing instructions not to commit IUU in the future does not represent actions of adequate severity in respect of the extant cases of IUU. However bilateral work through diplomatic channels indicates to some extent that India is working to address our concerns, but this has been very slow	On the basis of the information provided there is no evidence that paras 5, 6, 10a; and 10b have been satisfied by the flag State. However as India has now indicated through diplomatic channels after 13 April that it will address these cases line 2 of Table 4 applies – retain on provisional IUU list.
9	BOSIN	Indian Registration TN14MFB-283; IND-TN-15-MM04086 14 December 2014	Guilty in BIOT Court and fined (Letter to India dated 27/2/15) Fine due 26 March 2015. Representations from owners received and considered on 31 March. BIOT Court found no grounds to re-open or set aside previous judgement. Fines and costs still due to be paid. The fine is currently NOT paid. Letter sent to India on 9/4/15	<i>‘Government of Tamil Nadu has issued necessary instructions to the Fishermen at District level for not involving Illegal Unreported and Unregulated (IUU) fishing in the waters of other countries’</i> No detail of what those ‘Instructions’ are, nor whether any specific action has been taken.	No evidence was provided of what instructions had been given or what actions had been taken. Issuing instructions not to commit IUU in the future does not represent actions of adequate severity in respect of the extant cases of IUU	On the basis of the information provided there is no evidence that paras 5, 6, 10a; and 10b have been satisfied - suggesting IUU listing. However as the BIOT case is not yet concluded line 6 of Table 4 applies –
2	St Marys No1	Indian Registration number TN2/FV/01644/09 11 December 2014	Evidence of IUU presented in Draft IUU list IOTC Circular 2015-023 Date for BIOT Court Case not yet established. In addition to IUU, offence includes obstruction of Senior Fisheries Protection Officer (SFPO)	The Indian Authorities have not responded directly to the UK(OT) in relation to representations made in a Note Verbale (SAD/118/14 of 22/12/14 referring to all 9 Indian flagged IUU cases, see Draft IUU list, IOTC Circular	No evidence was provided of what instructions had been given or what actions had been taken. Issuing instructions not to commit IUU in the future does not represent actions of adequate severity in respect of the extant cases of IUU	On the basis of the information provided there is no evidence that paras 5, 6, 10a; and 10b have been satisfied - suggesting IUU listing. However as the BIOT case is not yet concluded line 6 of Table 4 applies –

No.	Vessel Name	Identification Number Date of Incident	Outcome (evidence)	Response and action by Flag State (Circular 2015-039)	Adequate Severity? Measures to promote compliance with IOTC Conservation and Management Measures?	Recommendation for IUU listing
				2015-023) nor to the subsequent correspondence with India detailed in Annex 2 and boxes left)		retain on provisional IUU list
3	St Marys No2	Indian Registration number TN2/FV/00819/09 and TN/15/MFB 597 11 December 2014	Evidence of IUU presented in Draft IUU list IOTC Circular 2015-023 Date for BIOT Court Case not yet established. In addition to IUU, offence includes obstruction of SFPO	A letter from Government of India dated 23 March 2015 was sent to the IOTC Secretariat (IOTC Circular 2015-039) and indicates: <i>'Government of Tamil Nadu has issued necessary instructions to the Fishermen at District level for not involving Illegal Unreported and Unregulated (IUU) fishing in the waters of other countries'</i>	No evidence was provided of what instructions had been given or what actions had been taken. Issuing instructions not to commit IUU in the future does not represent actions of adequate severity in respect of the extant cases of IUU	On the basis of the information provided there is no evidence that paras 5, 6, 10a; and 10b have been satisfied - suggesting IUU listing. However as the BIOT case is not yet concluded review line 6 of Table 4 applies – retain on provisional IUU list
4	King Jesus	Indian Registration number TN-2/FV01606/12 detained on 11 December 2014	Evidence of IUU presented in Draft IUU list IOTC Circular 2015-023 Date for BIOT Court Case not yet established. In addition to IUU, offence includes obstruction of SFPO	No detail of what those 'Instructions' are, nor whether any specific action has been taken.	As above	As above, retain on provisional IUU list
5	Dignamol I	Indian Registration number IND-TN-15-MM-125 and TN-2/FV/00872/09 11 December 2014	Evidence of IUU presented in Draft IUU list IOTC Circular 2015-023 Date for BIOT Court Case not yet established. In addition to IUU, offence includes obstruction of SFPO		As above	As above, retain on provisional IUU list

No.	Vessel Name	Identification Number Date of Incident	Outcome (evidence)	Response and action by Flag State (Circular 2015-039)	Adequate Severity? Measures to promote compliance with IOTC Conservation and Management Measures?	Recommendation for IUU listing
6	Dignamol II	Indian Registration number TN-2/FV01662/13 11 December 2014	Evidence of IUU presented in Draft IUU list IOTC Circular 2015-023 Date for BIOT Court Case not yet established. In addition to IUU, offence includes obstruction of SFPO	<i>As above</i>	As above	As above, retain on provisional IUU list
7	Carmal Matha	Indian Registration number TN-2/FV01675/13 11 December 2014	Evidence of IUU presented in Draft IUU list IOTC Circular 2015-023 Date for BIOT Court Case not yet established. In addition to IUU, offence includes obstruction of SFPO		As above	As above, retain on provisional IUU list
8	Benaiah	Indian Registration number TN-2/FV01699/13 11 December 2014	Evidence of IUU presented in Draft IUU list IOTC Circular 2015-023 Date for BIOT Court Case not yet established. In addition to IUU, offence includes obstruction of SFPO		As above	As above, retain on provisional IUU list

Table 2: Details of the Correspondence from BIOT to India since the submission of details included in the Draft IUU list sent to the Secretariat on 6 February 2015

Date	Subject / contents	Copied to Secretariat
26/2/15	Vessel Greeshma I, Copy of BIOT Court Proceedings and Copy of Certificate of Conviction.	Yes, on 26/2/15
26/2/15	Vessel Bosin, Copy of BIOT Court Proceedings and Copy of Certificate of Conviction.	Yes, on 26/2/15
30/3/15	Following India's communication to IOTC ES of 25/3/15, noting clarification needed on 'instructions'; reiterating request for assistance ; requesting ownership details	Yes on 30/3/15
9/4/15	Greeshma I, informing India that owner has not paid fine.	Yes, on 9/4/15
9/4/15	Bosin, informing India that owner has not paid fine.	Yes, on 9/4/15
16/4/15	To Indian High Commission seeking high level cooperation to combat IUU and to cooperate to address these 9 cases	No

Note, BIOT has received no reply to any of these communications except bilateral work through diplomatic channels since 16/04/15 indicates to some extent that India is now working to address our concerns, but this has been very slow. There have been two communications from India to the IOTC Secretariat:

Date	Subject / contents	Copied to UK(OT) by India
20/2/15	Re the Draft IUU list, Ministry has sought comments from Tamil Nadu	No
25/3/15	Re draft IUU list, Instructions issued to fishermen at district level not to engage in IUU.	No

Table 3. Resolution11/03 Checklist for IUU listing a vessel. Numbering in the header columns refers to the paragraph number in Resolution 11/03

Vessel	Prior to Compliance Committee meeting						At Compliance Committee Meeting			At Commission Meeting			
	List of presumed IUU vessels and evidence reported at least 70 days before IOTC (9 February 2015)	Flag State evidence reported at least 15 days before IOTC (12 April 2015)	Additional info, relevant to IUU listing at any time	Flag State actions required	Remove the vessel from the Provisional list if:		Retain the vessel on the provisional IUU list if:	CoC to submit a Provisional IUU list to the Commission recommending IUU listing if:	Commission to adopt IUU vessel list if:	Commission to suspend decision (i.e. retain on a Provisional IUU list) if:			
	2, 3 BIOT	4. Flag State	8 BIOT or Flag State	5. Flag State has notified owner of inclusion on draft IUU list	6. Flag state has monitored vessels on the draft IUU list	10a Flag State shows Vessel not committed IUU	10b. Flag State taken effective action: prosecution & sanctions of adequate severity	10b Report actions in accordance with 07/01 - i.e. investigate and take adequate actions against PERSONS (Master and owner) engaged in IUU	11. Flag state evidence provided AFTER 15 day deadline (4)	11. Flag State has provided no evidence	12a. Based on consideration of evidence in 4, 7, 8. [i.e. Evidence does not satisfy 10a, 10b; (and by default 5,6)]	13. It accepts the recommendation of the CoC in the provisional list (12a)	14. Insufficient evidence provided under 2,3,4,7 and 8 (to determine if 10a, 10b satisfied) (or if evidence submitted late inc. at meeting)
Greeshma 1	Yes (6/2/15)	Response 23 March 2015, but no detail or evidence of any actions taken provided.	Yes, Guilty in BIOT Court and fined (Letter to India dated 27/2/15) Fine due 27 March 2015. Representations from owners received and considered on 31 March. BIOT Court found no reason to change decision. Fine not paid, letter sent to India 04/4/15	NO (No evidence provided)	NO (No evidence provided)	No	No evidence was provided of what instructions had been given. No indication that any action has been taken against the owner/master; Instructions not to commit IUU in the future does not represent actions of adequate severity	NO (No evidence provided)	India engaged bilaterally with BIOT AFTER the 15 day deadline and has committed to cooperate with BIOT Authorities	As of 13/4/15 re Circular 2015-039 Applies: no evidence was provided of what instructions had been given. No indication that any action has been taken against the owner/master. However at 11th hour India has committed to cooperate with BIOT	On basis of information provided there is no evidence that paras 5, 6, 10a; and 10b have yet been satisfied - pending bilateral engagement with India		
BOSIN	Yes (6/2/15)	as above	as above	as above	as above	No	as above	as above	as above	as above	as above		
St Mary's No 1	Yes (6/2/15), BIOT court case not yet heard, presumed IUU; Guilty of obstruction	as above		as above	as above	No	as above	as above		as above	as above		
St Mary's No 2	as above	as above		as above	as above	No	as above	as above		as above	as above		
King Jesus	as above	as above		as above	as above	No	as above	as above		as above	as above		
Dignamol I	as above	as above		as above	as above	No	as above	as above		as above	as above		
Dignamol II	as above	as above		as above	as above	No	as above	as above		as above	as above		
Carma Matha	as above	as above		as above	as above		as above	as above					
Benaiah	as above	as above		as above	as above	No	as above	as above		as above	as above		

Table 4: Decision matrix for IUU listing

	Complete BIOT evidence submitted?	Flag State Evidence submitted by 12 April	Flag state evidence relates to both owner and master	Adequate severity	Recommendation prior to meeting	Flag State evidence after 13 April including during meeting	Revised recommendation during meeting
1	Yes	No			Vessel to go on provisional IUU list	No	Vessel to be IUU listed
2	Yes	No			Vessel to go on provisional IUU list	Yes	Vessel to be retained on provisional IUU list inter-sessionally?
3	Yes	Yes	No	By default, 'No' as does not apply to both owner and master	Vessel to go on provisional IUU list		Vessel to be IUU listed
4	Yes	Yes	Yes	No (may differ if fine paid/not paid and by vessel)	Vessel to go on provisional IUU list		Vessel to be IUU listed
5	Yes	Yes	Yes	Yes (may differ fine paid/not paid and by vessel)	Vessel (on draft IUU list) may be removed from provisional IUU list		Not to be IUU listed
6	No ¹				Vessel to go on provisional IUU list		Vessel to be retained on provisional IUU list inter-sessionally

1. This can be at any point that the BIOT case is not complete, i.e. court case pending (i.e. not heard before the meeting so no supplementary evidence provided as per para 8 of 11/03); had court case, found guilty but fine pending or an appeal made)