
PROPOSAL ON VESSEL CHARTERING IN THE IOTC AREA OF COMPETENCE

SUBMITTED BY:
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Explanatory memorandum

Neither the collection of IOTC Conservation and Management Measures, nor the Basic Texts of the Commission (IOTC Agreement/Rules of Procedure), provide clear guidance on the management of “Vessel Chartering” within the IOTC Area of Competence.

Noting that there has been Contracting Parties that have Chartering Agreements with other Contracting Party Flag states and that the Chartering Contracting Parties have been submitting the Observer and catch data. Further noting that in light of not having a clear guidance on the management of “Vessel Chartering”, the IOTC Secretariat attributes the catches and the Observer data mainly to the Flag state.

Other tuna Regional Fisheries Management Organisations have in place clear definitions on Chartering measures with associated notification and catch attribution schemes.

The Scientific Committee, at its 20th Session made the following statement (IOTC-2017-SC20-R, para 194):

“194. The SC also noted that the issue in the attribution of captures and observer coverage to either Japan or South Africa, where a joint-venture agreement between private companies (the foreign vessel owner and the fishing rights holder), is mostly a compliance issue and that as such it should be addressed during the Compliance Committee. ”

Charter agreements shall be allowed, both as an initial step in the development of a Contracting Party fishery, and also as a subsequent expansion of the chartering Contracting Party fishery.

RESOLUTION 18 /XX
PROPOSAL ON VESSEL CHARTERING IN THE IOTC AREA OF COMPETENCE

Keywords: Charter, Conservation, Data.

The Indian Ocean Tuna Commission (IOTC),

RECOGNIZING that, under the IOTC Agreement, Contracting Parties shall desire to cooperate with a view to ensuring the conservation of tuna and tuna-like species in the Indian Ocean and promoting their optimum utilization;

RECALLING that, according to Article 92 of the United Nations Convention on the Law of the Sea, of 10 December 1982, ships shall sail under the flag of one State only and shall be subject to its exclusive jurisdiction on the high seas except as otherwise provided in relevant international instruments;

ACKNOWLEDGING the needs and interests of all States to develop their fishing fleets so as to enable them to fully utilize the fishing opportunities available to them under relevant IOTC Conservation and Management Measures;

ACKNOWLEDGING the important contribution of chartered vessels to sustainable fisheries development in the Indian Ocean;

MINDFUL that the practice of charter agreements, whereby fishing vessels do not change their flag, might seriously undermine the effectiveness of Conservation and Management Measures established by the IOTC unless properly regulated;

CONCERNED with ensuring that charter agreements do not promote IUU fishing activities or undermine IOTC Conservation and Management Measures;

REALIZING that there is a need for IOTC to regulate charter agreements with due regard to all relevant factors;

REALIZING that there is a need for the IOTC to establish procedures for charter agreements;

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

Part I: Definitions

1. Chartering of vessels: means an agreement or an arrangement by which a fishing vessel flying the flag of Contracting Party is contracted for a defined period of time by an operator in another Contracting Party without the change of flag. For the purpose of this Resolution, the “chartering CP” refers to the CP that holds the quota allocation or fishing possibilities and the “flag CP” refers to the CP in which the chartered vessel is registered. ~~contract between two privately owned companies, legally established under Contracting Parties and Cooperating Non-Contracting Parties of the IOTC. The agreement of contract for the chartering of the vessel includes all the provisions or crew.~~

Part II: Objective

~~1.2.~~ Charter agreements may be allowed, predominantly as an initial step in the fishery development of the chartering nation. The period of the chartering arrangement shall be consistent with the development schedule of the chartering nation.

Part III: General provisions

3. The chartering agreement of fishing vessels, shall observe contain the following provisions conditions:

3.1 The flag CP has consented in writing to the chartering agreement;

3.2 the duration of the fishing operations under the chartering agreement does not exceed 12 months

cumulatively in any calendar year;

- ~~3.13.3~~ Fishing vessels to be chartered shall be registered to responsible Contracting Parties and Cooperating Non-Contracting Parties, which explicitly agree to apply IOTC Conservation and Management Measures and enforce them on their vessels. All flag Contracting Parties or Cooperating Non-Contracting Parties, concerned shall effectively exercise their duty to control their fishing vessels to ensure compliance with IOTC Conservation and Management Measures.
- ~~3.23.4~~ Fishing vessels to be chartered shall be on the IOTC record of vessels authorized to operate in the IOTC Area of Competence, in accordance with IOTC Resolution 15/04 *Concerning the IOTC record of vessels authorised to operate in the IOTC Area of Competence* (or any subsequent superseding revision).
- ~~3.5~~ Without prejudice to the duties of the chartering CP, the flag CP shall ensure that the chartered vessel complies with the ~~Both the chartering Contracting Party and the flag Contracting Party or Cooperating NonContracting Party shall ensure compliance by chartered vessels with~~ relevant Conservation and Management Measures established by IOTC, in accordance with their rights, obligations and jurisdiction under international law. This does not nullify the obligations of the chartering CP to which the quota or fishing possibilities has been allocated originally. If the chartered vessel is allowed by the chartering CP to go and fish in the high seas, the chartering CP shall provides express authority for the flag CP to board and inspect the vessel on the high seas and requires the chartered vessel to report VMS and catch data to both the CPs (chartering and flag) and to the IOTC Secretariat. The flag CP is then responsible for controlling the high seas fishing conducted pursuant to the charter arrangement.
- ~~3.6~~ All Catches, including bycatch and discards, taken pursuant to the chartering agreement, ~~as well as the observer coverage of vessels that operate under these provisions~~ shall be counted against the quota or fishing possibilities of the chartering Contracting Party.
- ~~3.7~~ The chartering Contracting Party shall ~~report be responsible for all reporting~~ to the IOTC, ~~including all catches, including bycatch and discards,~~ and other information required by the IOTC, and as per the Charter Notification Scheme detailed in **Part III** of this Resolution.
- ~~3.8~~ Vessel Monitoring Systems (VMS) and, as appropriate, tools for differentiation of fishing areas, such as fish tags or marks, shall be used, according to the relevant IOTC Conservation and Management Measures, for effective fishery management.
- ~~3.9~~ There shall be observer coverage of at least 5% of fishing effort, as measured in the manner specified in paragraph 2 of Resolution 11/04 (or any subsequent superseding resolution), for chartered vessels. All other provisions of Resolution 11/04 apply *mutatis mutandis* in the case of chartered vessels.
- ~~3.10~~ The chartered vessels shall have a fishing license issued by the chartering Contracting Party, and shall not be on the IOTC IUU list as established by IOTC Resolution 17/03 *On Establishing a List of Vessels Presumed to Have Carried out Illegal, Unreported, and Unregulated Fishing Activities in the IOTC Area of Competence* (or any subsequent superseding resolution), and/or IUU list of other Regional Fisheries Management Organisations.
- ~~3.11.~~ When operating under charter agreements, the chartered vessels shall not, to the extent possible, be authorized to use the quota (if any) or entitlement of the flag Contracting Parties or Cooperating Non-Contracting Parties. In no case, shall the vessel be authorized to fish under more than one chartering agreement at the same time.
- ~~3.12.~~ Unless specifically provided in the chartering agreement, and consistent with relevant domestic law and regulation, the catches of the chartered vessels shall be unloaded exclusively in the Ports of the chartering Contracting Party or under its direct supervision in order to assure that the activities of the chartered vessels do not undermine IOTC Conservation and Management Measures.
- ~~3.13~~ The chartered vessel shall at all times carry a copy of the documentation referred to in paragraph

45.1.**Part IVH: Charter notification scheme**

4. Within 15 days, or, in any case, within-prior to 72 hours before commencement of fishing activities under a Charter agreement:

~~534.1~~ The chartering ~~Contracting Party~~ shall notify the IOTC Executive Secretary of any vessel to be identified as chartered in accordance with this Resolution by submitting electronically where possible ~~to the IOTC Executive Secretary~~ the following information with respect to each chartered vessel:

- a) the name (in both native and Latin alphabets) and registration of the chartered vessel, and International Maritime Organization (IMO) ship identification number (if eligible);
- b) the name and contact address of the beneficial owner(s) of the vessel;
- c) the description of the vessel, including the length overall, type of vessel and the type of fishing method(s) to be used under the charter;
- e)d) a copy of the chartering arrangement agreement and any fishing authorization or license it has issued to the vessel, including in particular the quota allocation(s) or fishing possibility assigned to the vessel; and the duration of the chartering arrangement;
~~species of fish covered by the charter and quota allocated (if any) to the chartering Party;~~
- d) ~~the duration of the chartering agreement;~~
- e) its consent to the chartering agreement; and
- f) the measures adopted to implement these provisions;

43.2 The flag ~~Contracting Party~~ or Cooperating Non-Contracting Party, shall provide the following information to the IOTC Executive Secretary:

- a) its consent to the chartering agreement;
- b) the measures adopted to implement these provisions; and
- c) its agreement to comply with IOTC Conservation and Management Measures.

5. Upon receipt of the information required in paragraph 3, the IOTC Executive Secretary shall circulate all the information within 5 business days to all Contracting Parties or Cooperating Non-Contracting Parties, via an IOTC Circular.

6. Both the chartering ~~Contracting Party~~ and the flag ~~Contracting Party~~ or Cooperating Non-Contracting Party shall immediately inform the IOTC Executive Secretary of the start, suspension, resumption and termination of the fishing operations under the chartering agreement.

7. The IOTC Executive Secretary shall circulate all the information pertaining to termination of a chartering agreement within 5 business days to all Contracting Parties or Cooperating Non-Contracting Parties, via an IOTC Circular.

8. The chartering ~~Contracting Party~~ shall report to the IOTC Executive Secretary by 28 February each year,

and for the previous calendar year, the particulars of charter agreements made and carried out under this Resolution, including information of catches taken and fishing effort deployed by the chartered vessels as well as the level of observer coverage achieved on the chartered vessels, in a manner consistent with IOTC data confidentiality requirements.

9. Each year the IOTC Executive Secretary shall present a summary of all the chartering agreements undertaken in the previous year, to the Commission which, at its annual meeting, shall review compliance with this Resolution under advice of the IOTC Compliance Committee.