

31 May 2019

IOTC CIRCULAR 2019-25

Dear Sir/Madam

DRAFT INDIAN OCEAN TUNA COMMISSION IUU VESSELS LIST – ADDITIONAL INFORMATION

In accordance with Paragraph 12 of IOTC Resolution 18/03: *On establishing a list of vessels presumed to have carried out illegal, unregulated and unreported fishing in the IOTC Area*, please find attached a communication from the United Kingdom (OT) concerning the four Sri Lankan vessels listed in the 2019 Draft IOTC IUU Vessels List.

I encourage CPCs to refer to the text of IOTC Resolution 18/03 for more details on these matters. Please do not hesitate to contact the IOTC Secretariat should you require further information.

Yours sincerely



Christopher O'Brien
Executive Secretary

Attachment:

- Communication from the United Kingdom (OT)

Distribution

IOTC Contracting Parties: Australia, Bangladesh, China, Comoros, Eritrea, European Union, France (Territories), Guinea, India, Indonesia, Iran (Islamic Rep of), Japan, Kenya, Rep. of Korea, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Oman, Pakistan, Philippines, Seychelles, Sierra Leone, Somalia, South Africa, Sri Lanka, Sudan, United Rep. of Tanzania, Thailand, United Kingdom (OT), Yemen. **Cooperating Non-Contracting Parties:** Liberia, Senegal.
Intergovernmental Organisations, Non-Governmental Organisations. Chairperson IOTC. Copy to: FAO Headquarters, FAO Representatives to CPCs.

This message has been transmitted by email only

Dr Chris O'Brien
Executive Secretary
Indian Ocean Tuna Commission
Mahe
Seychelles

30 May 2019

cc. Mr Hosea Gonza Mbilinyi, Chair of the Compliance Committee;
Ms Anne-France Mattlet, Vice Chair;
Mr Kumara, and Ms K Hewapathirana, DFAR, Sri Lanka

Dear Dr O'Brien,

Resolution 18/03 On establishing a list of vessels presumed to have carried out IUU fishing in the IOTC Area of Competence: Sri Lankan Flagged Vessels IMULA 0030 GLE; IMULA 0207 GLE; IMULA 0293 KLT; IMULA 0728 KLT

I refer to the 2019 Draft IUU vessels list circulated today, and four letters from UKOT to the IOTC Secretariat dated 28 March 2019 with evidence for the above referenced vessels flagged to Sri Lanka. Pursuant to paragraph 12 of Resolution 18/03 this letter contains additional information regarding these four vessels on the Draft IUU vessel List. Correspondence between the BIOT Administration and Sri Lanka since 28 March is attached (the evidence referred to by Sri Lanka is not attached, but was separately provided to the IOTC Secretariat in Sri Lanka's response pursuant to paragraph 10 of Resolution 18/03 at 15 days). For simplicity all four vessels are dealt with here rather than in separate correspondence.

IMULA 0030 GLE; IMULA 0207 GLE; IMULA 0293 KLT;

Based on the evidence provided by Sri Lanka, the BIOT Administration is now satisfied that the actions taken by Sri Lanka against the owners of these three vessels are of adequate severity and proportionate to the criminality engaged in within BIOT waters. We note the steps taken to monitor the location of the fishing vessels during the period of fine repayment and that they are permitted only to fish within the Sri Lankan EEZ, and consider that the level of monitoring of these vessels, on a trip by trip basis demonstrates appropriate oversight. We further note that if the owners stop paying their fine instalments the vessels will be impounded until the full fines are paid.

The BIOT Administration now withdraw our recommendation for IUU listing and revise our recommendation to a) 'Notification to the IOTC Secretariat only. No further Action is recommended'

IMULA 0728 KLT

Based on the evidence provided by Sri Lanka, the BIOT Administration consider that appropriate action was taken against the skipper of this vessel. Whilst we remain unsatisfied that sanctions of adequate severity have been taken in respect of the owner, we recognise that under Sri Lankan law that two separate investigations cannot be initiated for the same incident and consequently no further action can be taken by Sri Lanka against the owner.

The BIOT Administration now withdraw our recommendation for IUU listing and revise our recommendation to a) 'Notification to the IOTC Secretariat only. No further Action is recommended'

We shall be happy to present these revised recommendations to the IOTC Compliance Committee when the Draft IUU Vessel List is discussed.

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

Thank you.

Yours sincerely



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

Enclosed: Letter from DFAR to BIOT 29/03/19
Letter from BIOT to DFAR 24/04/19
Letter from DFAR to BIOT 17/05/19
Letter from BIOT to DFAR 30/05/19

කු. පෙ. }
த. பெட்டி } 531
P. O. Box }
දුරකථනය }
தொலைபேசி } 446183
Telephone } (3 lines)



මගේ අංකය }
எனது இல. } DFAR/FM/K/2019
My No. }
මගේ අංකය }
உமது இல. }
Your No. }

අධ්‍යක්ෂ ජනරාල් කාර්යාලය }
பணிப்பாளர் நாயகத்தின் அலுவலகம் } 449170
Office of Director General } 472187

ෆැක්ස් අංකය }
தொலை நகல் } 449170
Fax No. }

ධීවර හා ජලජ සම්පත් දෙපාර්තමේන්තුව

கடற்றொழில், நீரியல் வளத்துறை திணைக்களம்

DEPARTMENT OF FISHERIES & AQUATIC RESOURCES

E-mail : depfish@diamond.lanka.net
Web : www.fisheriesdept.org

නව මහලේකම් කාර්යාලය, මාලිගාවත්ත, කොළඹ 10
புதிய செயலகம், மாளிகாவத்த, கொழும்பு 10.
New Secretariat, Maligawatta, Colombo 10.

දිනය }
திகதி } 29.03.2019
Date }

Ms. Linsey Billing
Director of BIOT Administration
18, Queens Street
London W1J 5PN
United Kingdom

E-Mail: Linsey.Billing-Linsey.Billing@fco.gov.uk, Linsey.Billing@fco.gov.uk,
Samuel Bullen (Sensitive) -Samuel.Bullen@fco.gov.uk,
Denise Bradshaw (DEBradshaw@gmx.co.uk)-DEBradshaw@gmx.co.uk,
james@jwoodworld.com" <james@jwoodworld.com>,
John Pearce -j.pearce@mrag.co.uk,
Chris C Mees -c.mees@mrag.co.uk,

Reporting presumed IUU vessels to the IOTC Compliance Committee

This is reference to your letter dated 26th March 2019 on the above. Please find the following clarifications on your queries.

1. VMS to the multiday fishing vessels operating within EEZ of Sri Lanka – Last update

- (1) DFAR had a meeting with the bidder who has filed FR case in the presence of Minister and the Secretary of Ministry of Agriculture, Rural Economic Affairs, Livestock Development, Irrigation and Fisheries & Aquatic Resources Development.
 - The bidder who has filed FR case has agreed to withdraw the case No. FR 08/2017 in the Supreme Court .Further he has been instructed to submit the related documents to DFAR after settling the case in the Supreme Court.
 - The Minister instructed Secretary to prepare a Cabinet Paper for purchasing of 1500 numbers of vessel monitoring units for his signature by including the following facts.
 - (a)The mechanism adopted to collect monthly installments from fishing vessel
 - (b) Proposing to appoint a Cabinet Appointed Negotiating Committee to evaluate the financial proposal submitted by the said Company.

2. Action taken against skippers

Paragraph (i)

We asked for an appointment from the Attorney Generals Department to have a discussion to explain the reason, for DFAR to insist on amending of the current Act in an expedite manner to include legal provisions to act against the skipper process. The Department Legal officer attends on this matter. Once the consultation done we will be able to send the timelines for the process.

Paragraph (iii)

Please find herewith attached the legal procedure followed by DFAR Investigation unit for the vessels referred in the paragraph referred above.

(a) IMUL- A- 0728 KLT

As I mentioned in the previous letter dated 21.03.2019, the wordings in the paragraph (v) of the letter dated 15th November 2018 has misled the investigation officers of Sri Lanka that this vessel has entered in to BIOT waters due to an engine failure, which it was tally with the statements given by them after arrival to Sri Lanka.

As such, the owner has not charged and the skipper has administratively penalized taking the gravity of obstructing to the SFPO of BIOT authorities, for one year skipper license cancellation. When we receive your letter dated 15th of March we have already taken the actions. In accordance with the Criminal Procedure Act (No. 15 of 1979) section 314, *two separate investigations cannot be initiated for the same incident.*

(b) IMUL-A- 0030GLE, IMUL-A- 0207GLE and IMUL-A- 0297KLT

Please refer the investigation reports provided by Assistant Director, Investigation Division of DFAR for above the investigations.

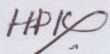
Note: Further clarification for your understanding

- There is a procedure of having an administrative fine for fisheries violation in current fisheries law. Accordingly, those who convicted for his/her first violent of the fisheries law, can apply for the above admin fine. However, they have to accept the guilty of the related violent and Director General of DFAR can impose admin penalty. However imposing admin penalty without initiating court case should be recommended by a special committee and the Minister of Fisheries should take policy decision on not to proceed with courts procedures. Since most of the vessels related to crossing BIOT waters without permits are first-time violators of the fisheries law, the above procedure was adopted. Relevant vessel have been imposed administrative penalty after the approval of the Ministers.

- In the special case of IMUL 0728 KLT vessel, the case was filed investigation carried out. One of the evidence used for the investigations were the report provided by you on 20th November 2018, which indicates that the vessel may be entered in to BIOT waters due to an engine failure. This proves, that the vessel might not entered in to the BIOT waters with an intent of fishing. Since the boat is having the international/ high seas licenses and there is no conclusive evidences to prove they fished or intended to fish in side another territory, the action against the owner was not taken. In Sri Lankan law, two separate investigations cannot be initiated for the same incident. However administrative actions were taken against the skipper considering the fact that he was not provided the support for an investigation.
- We are still in a doubt that whether we can take further action in respect of skippers under the provisions of current act for obstruction for **authorized officers for other state** which is not define. We hope to discuss this matter in the forthcoming consultation with the Attorney General.

Thank You.

Yours Sincerely,



Kalyani Hewapathirana

Director (operation)

For Director General

Kalyani Hewapathirana

Direct: (operation) duty cover up

Dep. Fisheries & Aquatic Resources

For Director General

Ginigie Prasanna Janaka Kumara
Director General
Department of Fisheries and Natural Resources
No. 10 New Secretariat
Maligawatta, Colombo 10

24 April 2019

E-Mail: Director General dgdgar@gmail.com
Cc: Kalyani Hewapathirana hewakal2012@gmail.com
Geethamali Chandrasiri ip@fisheriesdept.gov.lk
Janak Pushpakumara kumara84janaka@gmail.com
Nuwan Gunawardana nuwan54@gmail.com;

Dear Mr. Kumara,

Reporting presumed IUU vessels to the IOTC Compliance Committee (CoC)

Thank you for the letter submitted on your behalf by Kalyani Hewapathirana, dated 29 March 2019 responding to that dated 26 March from BIOTA. We thank you for your feedback on VMS on multiday vessels, and that timelines for changing the Fisheries Act in respect of skippers will be provided in due course.

IOTC IUU vessel listing

As you are aware, by the 70 day reporting deadline to IOTC Compliance Committee, in respect of four vessels flagged to Sri Lanka, the BIOT Administration were unable to conclude on the information provided that actions of adequate severity had been or shall be taken by Sri Lanka. The vessels are now on the IOTC draft IUU vessels list.

IMUL A 0030 GLE; IMUL0207 GLE; and IMUL 0293 KLT

We remain unable to conclude on the information currently provided up to and including your above referenced letter, that actions of adequate severity have or shall be taken and maintain our recommendation for IUU listing.

We note that Sri Lankan Law permits an administrative process rather than a Court process for first-time violations. We would be grateful if you would please provide the following details, with supporting evidence, to help our determination of the adequacy of actions taken by Sri Lanka:

- What was the administrative penalty imposed for each of the owners of these vessels?
- Has that penalty been implemented, and have the penalties been settled?
- Are the vessels still detained in port? If not please provide details of the periods for which the vessels were detained.

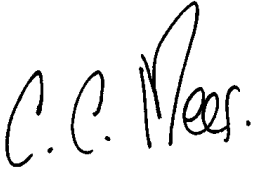
IMUL 0728 KLT.

Thank you for the further details relating to this vessel and its owner. We welcome the action taken against the skipper of this vessel, but remain unsatisfied that sanctions of adequate severity have been taken in respect of the owner. However, we recognise that under Sri Lankan law that two separate investigations cannot be initiated for the same

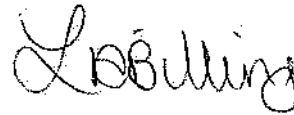
incident and consequently no further action can be taken by Sri Lanka. We will therefore withdraw our IUU listing for this vessel.

If you have any questions or require assistance please do not hesitate to contact Chris Mees (c.mees@mrag.co.uk) or James Moir Clark (j.clark@mrag.co.uk). We look forward to your continued cooperation.

Yours Sincerely



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



Linsey Billing
BIOT Administration, Director of Fisheries

වැ. ප. } 531
த. பெட்டி }
P. O. Box }

දුරකථන } 446183
தொலைபேசி }
Telephone } (3 lines)

අධ්‍යක්ෂ ජනරාල් කාර්යාලය } 449170
பணிப்பாளர் நாயகத்தின் அலுவலகம் }
Office of Director General } 472187



මගේ අංකය }
எனது இல. } DFAR/DFO/IOTC/2019
My No. }
ඔබේ අංකය }
உமது இல. }
Your No. }
449170 }
මුකුත් අංකය }
தொலை நகல் }
Fax No. }

ධීවර හා ජලජ සම්පත් දෙපාර්තමේන්තුව

கடற்றொழில், நீரியல் வளத்துறை திணைக்களம்

DEPARTMENT OF FISHERIES & AQUATIC RESOURCES

E-mail : depfish@diamond.lanka.net

Web : www.fisheriesdept.org

Ms. Linsey Billing –BIOTA/Director Fisheries

Dr. Mees- Head of UK (OT) Delegate to IOT

Mr. John Pears - Principal Consultant – MRAG Ltd,

නව මහලේකම් කාර්යාලය, මාලිගාවත්ත, කොළඹ 10
புதிய செயலகம், மாளிகாவத்த, கொழும்பு 10.
New Secretariat, Maligawatta, Colombo 10.

දිනය }
திகதி } 17/05/2019
Date }

Reporting Presumed IUU vessels to the IOTC compliance Committee

This is in reference to your letter dated 24th April 2019 on the above.

Responding for your queries on the Sri Lanka fishing vessels on the IOTC draft IUU vessels list, the latest state of the actions taken as per the provisions of FARA Act no 2 of 1996 is as follows.

Vessel name	Offence/Section violated	Penalty imposed
IMUL-A-0293-KLT	(i) Engage in high seas fishing without valid license. - 14 (a) (ii) Engage fishing in BIOT waters without a valid license- 14 (f) (iii)Keep detached shark fins on board	(i)As per the amendment 52(B)Act No. 35 of 2013 of FARA Act no. 2 of 1996, A penalty is imposed not exceeding 1/3 of the optimum penalty of each violation. (ii)The total penalty imposed was 1,000,000 SLR. (See Annex- i)
IMUL-A-0207-GLE	(i)Engage in high seas fishing without valid license. - 14 (a) (ii) Engage fishing in BIOT waters without a valid license- 14 (f)	(i)As per the amendment 52(B)Act No. 35 of 2013 of FARA Act no. 2 of 1996, A penalty is imposed not exceeding 1/3 of the optimum penalty of each violation. (ii)The total penalty imposed was 750,000 SLR. (See Annex-ii)
IMUL-A-0030-GLE	(i)Engage in high seas fishing without valid license. - 14 (a) (ii) Engage fishing in BIOT waters without a valid license- 14 (f)	(i)As per the amendment 52(B)Act No. 35 of 2013 of FARA Act no. 2 of 1996, A penalty is imposed not exceeding 1/3 of the optimum penalty of each violation. (ii)The total penalty imposed was 750,000 SLR. (See Annex- iii)

NOTE: The relevant Acts are attached for your reference.

The penalty is being paid in monthly installments and the owners have granted fishing within EEZ, under per trip approval basis. However if the owner breach the paying of monthly installment, DFAR suspend the fishing operations of the vessel and detain the vessel at the harbor until completion of the payment of fine imposed. Fixing of VMS onboard is made compulsory for the above three vessels. Since it takes some time to find a VMS transponders, carrying a data recording Tablet (e-Log book) is made mandatory, which records the position of the vessel automatically.

This is for your attention to prevent the above vessels be listed in IUU list of IOTC at the COC meeting. In the meantime I would like to inform you that Sri Lanka will still in the process of strengthening the vessel monitoring system and will able to implement VMS for all multiday fishing vessels those operate within EEZ and high seas by latter part of this year resolving most of the issues at present.

Your understanding and corporation on this matter is highly appreciated.

Thank You

Yours Sincerely



Kalyani Hewapathirana
Head of Delegate to IOTC

Kalyani Hewapathirana
Head of Delegation to IOTC
Department of Fisheries and Natural Resources
No. 10 New Secretariat
Maligawatta, Colombo 10

30 May 2019

E-Mail: Kalyani Hewapathirana hewakal2012@gmail.com
Cc: Director General dgdgar@gmail.com
Geethamali Chandrasiri ip@fisheriesdept.gov.lk
Janak Pushpakumara kumara84janaka@gmail.com
Nuwan Gunawardana nuwan54@gmail.com;

Dear Ms Hewapathirana,

Reporting presumed IUU vessels to the IOTC Compliance Committee (CoC)

Thank you for your letter dated 17 May 2019 responding to that dated 24 April from BIOTA.

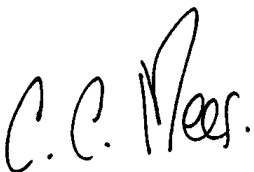
IOTC IUU vessel listing: IMUL A 0030 GLE; IMUL0207 GLE; and IMUL 0293 KLT

We note the further actions taken by Sri Lanka against the owners of these three vessels. On the basis of the evidence and information provided the BIOT Administration is now satisfied that the actions taken are of adequate severity and proportionate to the criminality engaged in within BIOT waters. We note the steps taken to monitor the location of the fishing vessels during the period of fine repayment and that they are permitted only to fish within the Sri Lankan EEZ, and consider that the level of monitoring of these vessels, on a trip by trip basis demonstrates appropriate oversight. We further note that if the owners stop paying their fine instalments the vessels will be impounded until the full fines are paid.

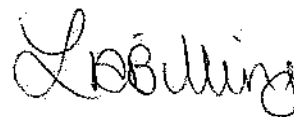
The BIOT Administration will write separately to the IOTC Secretariat for the information of the Compliance Committee indicating that we are now content to change the recommendation to a) 'Notification to the IOTC Secretariat only. No further Action is recommended'.

If you have any questions or require assistance please do not hesitate to contact myself (c.mees@mrag.co.uk) or James Moir Clark (j.clark@mrag.co.uk). We look forward to your continued cooperation.

Yours Sincerely



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



Linsey Billing
BIOT Administration, Director of Fisheries