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**REVIEW OF OBJECTIONS RECEIVED UNDER ARTICLE IX.5 OF THE IOTC AGREEMENT**PREPARED BY: SECRETARIAT

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**PURPOSE**

To provide the Commission with an opportunity to review the 'Objections' received at previous Sessions of the Commission that remain in effect, and consider how such a review process should be carried out.

**BACKGROUND**

Article IX (paragraphs 5, 6 and 7) of the IOTC Agreement refers to the 'Objections' procedure for Conservation and Management Measures (CMMs) adopted by the Commission. Specifically:

*Para. 5. Any Member of the Commission may, within 120 days from the date specified or within such other period as may be specified by the Commission under paragraph 4, object to a conservation and management measure adopted under paragraph 1. A Member of the Commission which has objected to a measure shall not be bound thereby. Any other Member of the Commission may similarly object within a further period of 60 days from the expiry of the 120-day period. A Member of the Commission may also withdraw its objection at any time and become bound by the measure immediately if the measure is already in effect or at such time as it may come into effect under this article.*

*Para. 6. If objections to a measure adopted under paragraph 1 are made by more than one-third of the Members of the Commission, the other Members shall not be bound by that measure; but this shall not preclude any or all of them from giving effect thereto.*

*Para. 7. The Secretary shall notify each Member of the Commission immediately upon receipt of each objection or withdrawal of objection.*

Advice of the FAO Legal Office on this issue was that IOTC Resolutions adopted by the Commission are considered as self-standing instruments, which enter into force according to the relevant provision of the IOTC Agreement (Article IX, para. 1), and, therefore, the previous version of the objected Resolution, where applicable, would be binding on the party making the objection. The same would apply to a Resolution, which supersede the objected Resolution, if an objection is not registered.

***History of Objections received:*****India**

In 2013, pursuant to Article IX.5 of the IOTC Agreement, the IOTC received formal objections from India to four CMMs adopted during the 17<sup>th</sup> Session of the Commission, as follows:

- **Resolution 13/02** *Concerning the IOTC record of vessels authorised to operate in the IOTC area of competence* (This Resolution superseded three previous Resolutions, 01/02, 05/02 and 07/02)
- **Resolution 13/03** *On the recording of catch and effort by fishing vessels in the IOTC area of competence* (This Resolution superseded Resolution: 12/03)
- **Resolution 13/06** *On a scientific and management framework on the Conservation of sharks species caught in association with IOTC managed fisheries* (This was a new Resolution)
- **Resolution 13/07** *Concerning a record of licensed foreign vessels fishing for IOTC species in the IOTC area of competence and access agreement information* (This Resolution superseded Resolution 12/07)

Noting the above legal advice, this resulted in none of these four Resolutions being legally binding on India.

However, since 2013, Resolutions 13/02, 13/03 and 13/07 have been superseded. As India did not object to the three superseding resolutions, India is legally bound to the new variants of the above-mentioned three resolutions. Resolution 13/06 remains active since its adoption in 2013, and therefore, India is not bound by this Resolution.

### **Australia**

In 2016, following the 20th Session of the Commission, pursuant to Article IX.5 of the IOTC Agreement, the IOTC received an objection from Australia on:

- **Resolution 16/02** *On harvest control rules for skipjack tuna in the IOTC area of competence (this was a new Resolution).*

In 2019, this Resolution remains non-binding for Australia:

### **Pakistan**

In 2017, following the 21<sup>st</sup> Session of the Commission, pursuant to Article IX.5 of the IOTC Agreement, the IOTC received an objection from Pakistan on:

- **Resolution 17/07** *On the prohibition to use large-scale driftnets in the IOTC Area (This superseded Resolution 12/12).*

In 2019, noting the above legal advice, Resolution 12/12 remains binding for Pakistan, while (the new variant) Resolution 17/07 remains non-binding.

## **DISCUSSION**

Although paragraph 7 of Article IX of the IOTC Agreement indicates that Members may withdraw an *Objection*, via notification to the IOTC Secretariat, there is no clear review process for the Commission to review/discuss previous objections received. As such, the Commission may wish to review existing objections to Conservation and Management Measures, and consider developing a formal annual review and potential withdrawal process for Members to follow.

## **RECOMMENDATION/S**

That the Commission

- a) **NOTE** paper IOTC–2019–S23–09, which provides the Commission with an opportunity to review the '*Objections*' received at previous Sessions of the Commission, and consider how such a review process should be carried out;
- b) **CONSIDER** discussing and developing a process to annually review any objections received under Article IX of the IOTC Agreement.