

Review of the final draft of the glossary of terms and definitions which should be used by Members when drafting proposals for Resolutions for the Commission.

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PURPOSE

To assist participants at the Working Party on the Implementation of Conservation and Management Measures (WPICMM) to review the final draft of the glossary and propose a glossary of Terms and Definitions which should be used by Members when drafting proposals for Resolutions for the Commission.

BACKGROUND

The glossary was prepared by taking into account: the proposed definitions considered at CoC13; the review in document IOTC-2018-WPICMM01-04 of the inconsistent use of terms, lack of definition of key terms and use of terms that are not “terms of legal art” in IOTC Resolutions; the IOTC Scientific Glossary; definitions in IOTC Resolutions, international fisheries instruments or guidelines, the FAO Fisheries Glossary and best practices.

At its 2nd session the WPICMM made the following recommendation:

WPICMM02.08 (Para. 38): The WPICMM02 RECOMMENDED that the remaining 32 definitions be deferred to further work or be considered under the “legal scrubbing”, as appropriate.

The CoC16 has reviewed the Recommendation of the WPICMM02:

IOTC–2019–CoC16–R, paragraph 99. The CoC ENDORSED the recommendations of the WPICMM02

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DISCUSSION

This paper presents the glossary of terms and definitions as revised and prepared under the legal scrubbing of IOTC Resolutions, as extracted from the consultant’s report on the legal scrubbing of IOTC Resolutions.

A draft Glossary has been prepared to provide a set of generally agreed definitions to be drawn upon when drafting new IOTC CMMs.

In this draft, comments and suggestions for defining the terms that were provided at WPICMM02 (IOTC–2019–WPICMM02–11a) were considered and as appropriate integrated into the definitions. Explanations for the proposed definitions draw on comments provided at WPICMM02 and appear in footnotes, together with any recommendations for further review or agreement.

Terms accepted by WPICMM02, for which no explanations are given, are High Seas, IOTC or “Commission”, IOTC Agreement, IOTC Area of Competence, IOTC Record of Authorised Vessels, Legislation and IOTC Observer.

Key terms	Definitions
Aircraft	Any machine or craft capable of self-sustained movement through the atmosphere that can derive support from the atmosphere from the reactions of the air, other than

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Key terms	Definitions
	reactions of the air against the earth’s surface, including helicopters and unmanned or remotely operated airborne devices. ²
Authorised vessel	Any vessel that is: a) 24 meters in length overall or above; or b) in the case of vessels less than 24 meters in length overall, those operating outside areas under the national jurisdiction of the flag State, and is authorised by the flag State to fish for tuna and tuna-like species or to carry out fishing related activities in the IOTC Area of Competence.” ³
Bycatch	All species, other than the species listed in Annex B of the IOTC Agreement (IOTC Species), caught or interacted with by fisheries for tuna and tuna-like species in the IOTC Area of Competence. Bycatch species includes those non-IOTC species which are (a) retained, (b) incidentally taken in a fishery and returned to the sea; or (c) incidentally affected by interacting with fishing equipment in the fishery, but not taken. ⁴
Coastal fisheries or fishery	Any fishery, including artisanal fisheries, where the fishing activity is undertaken by a vessel that is not required to be registered on the IOTC Record of Authorised Vessels, targets or catches tuna and tuna-like species and operates exclusively in the waters under the jurisdiction of the flag State, but does not include any vessel of 24 metres in length overall or above operating exclusively in the waters under the jurisdiction of the flag State. ⁵
CPCs	Contracting Parties and Cooperating Non-Contracting Parties of IOTC
Discards	That portion of catch which is returned to the sea, which may be comprised of single or multiple species and may be alive or dead. ⁶
Exclusive Economic Zone	An area beyond and adjacent to the territorial sea, subject to the specific legal regime established in the United Nations Convention on the Law of the Sea, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by its relevant provisions, and which provides that it is not to extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. ⁷

² Amended to align the definition with that used in Annex 7 of the ICAO Chicago Convention. To replace definition in preamble of Res. 16/08 (prohibition on use of aircraft etc as fishing aids).

³ This term will apply to “vessels” as defined in this glossary, including those carrying out fishing or related activities; this is consistent with Res. 15/04 (Record of Authorised Vessels). Res. 15/04 provides “in case of vessels less than 24 meters, those operating in waters outside the Economic Exclusive Zone of the Flag State”. This is problematic because (a) waters outside the EEZ could include territorial waters of the flag State, so “areas beyond national jurisdiction” is preferable because it reflects more accurately the intent of the members; and (b) the correct term is Exclusive Economic Zone. WPICMM01-03 noted that the it is the flag State that must give the authorisation and this is included.

⁴ The full definition is reproduced from the IOTC Scientific Glossary for maximum clarity.

⁵ It was proposed that the definition should include artisanal fisheries, and that “coastal fisheries” should be used throughout resolutions rather than “artisanal fisheries”. The term ‘coastal fisheries’ is used only once in an operative paragraph of an IOTC Resolution (Res. 15/02, [4], Mandatory statistical reporting requirements). The far more commonly used term is ‘artisanal fishery’, but with different qualifications, e.g. “for subsistence” or ‘for the purpose of local consumption’, “operating exclusively in their respective EEZs”. The revised definition would include such fisheries but not be limited to them and in addition would clarify that a fishing activity undertaken by a vessel of 24 metres in length overall or above and operating exclusively in the waters under the jurisdiction of the flag State is NOT coastal fishery.

⁶ “Returned to the sea” added to replace “thrown away or slipped”.

⁷ Amended to more accurately reflect the provisions in UNCLOS.

Key terms	Definitions
Fish aggregating device	Anchored, drifting, floating or submerged objects deployed and/or tracked by vessels, including through the use of radio and/or satellite buoys, for the purpose of aggregating target tuna species for purse-seine fishing operations. ⁸
Fishery	A unit determined by an authority or other entity for purposes of conservation and management of fish, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics. The unit may be typically defined by the: people involved, species or type of fish, area of water or seabed, method of fishing, class of boats and/or purpose of the activities. ⁹
Fishing	<p>(a) the actual or attempted searching for, catching, taking or harvesting of fish or engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;</p> <p>(b) deployment, monitoring or searching for any fish aggregating device or associated equipment including radio beacons;</p> <p>(c) an operation at sea directly in support of or in preparation for an activity described in this definition; or</p> <p>(d) the use of an aircraft in relation to an activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a vessel.¹⁰</p>
Fishing logbook	<p>A fishing logbook required by the flag State for any purpose relating to fishing or fishing related activities that is:</p> <p>(a) a permanently bound 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; and/or</p> <p>(b) an electronic logbook, being a computerised record of information and data relating to fishing or related activities in such template as may be required and capable of being transmitted, including under any conservation and management measure.¹¹</p>

⁸ The definition in Res. 18/08 (Procedures on a FAD management plan) is: “For the purpose of this Resolution, the term Fish Aggregating Device means drifting (DFAD) or anchored floating or submerged objects (AFAD) deployed for the purpose of aggregating target tuna species”. However it does not refer to tracking, so the suggestion to use the ICCAT definition (Res. 18-05) is recommended: “Anchored, drifting, floating or submerged objects deployed and/or tracked by vessels, including through the use of radio and/or satellite buoys, for the purpose of aggregating target tuna species for purse-seine fishing operations.”

⁹ This reflects language suggested based on the definition of “fishery” in the FAO Fisheries Glossary. “Fisheries” is not expressly included but can be inferred; there is scope for inclusion if thought necessary. It was asked whether the definition should be applied to the Agreement, as well as CMMs. In the Agreement,

- “fishery” is only used once: “fishery resources” – it is used as an adverb and the term is defined as a noun so would not apply;
- “fisheries” use is connected with stocks – i.e. fisheries “of these stocks”, “based on the stocks”, “covered by this Agreement” and is consistent with the proposed definition of “fishery”.

¹⁰ Based on comments received, the definition has been revised and as suggested the exception for emergencies in (d) was added based on WCPFC practice. It is broader than but consistent with the definition in Res. 16/11 (Port State Measures) and Res. 18/03 (IUU Vessel List): “searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, taking or harvesting of fish”. The definitions are made for the purposes of the Resolution and, unless otherwise decided, should not be changed but the recommended definition can be considered for future CMMs. A query arose whether FADs should be a “fishing related activity” noting that the deployment, monitoring or retrieving of FADs is carried out by support vessels. Although this is the case fishing vessels also may deploy FADs and deployment/searching for FADs (and aggregated fish) is commonly regarded as fishing. The technical aspects can be considered further.

¹¹ Revised to include comments concerning the use of language and to cater for information “and data capable of” being transmitted. Concerning the necessity of defining this term: although Res. 15/01 (Recording Catch and Effort Data) explains what logbook should be and provides templates, it does not define the term “fishing logbook” but other Resolutions do (e.g. Res. 15/04, Record of Authorised Vessels). It is also essential for common understanding in implementing CMMs in national legislation.

Key terms	Definitions
Fishing related activities, or related activities	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, and the provisioning of personnel, fuel, gear and other supplies at sea, as well as the retrieving of drifting Fish Aggregating Devices. ¹²
Fishing vessel	Any vessel used, equipped to be used, of a type normally used or intended to be used for fishing. ¹³
Flag State	The State which has granted to a vessel the right to fly its flag and has issued a registration to that effect, provided the vessel is only registered in one State. ¹⁴
Gear	In relation to fishing, any physical device or part thereof or combination of items that may be placed on or in the water or on the seabed with the intended purpose of capturing or controlling for subsequent capture or harvesting marine organisms. ¹⁵
Harvest control rule	A pre-determined rule that describes how harvest is to be controlled by management in relation to the state of indicators of the targeted stock's status. ¹⁶

¹² Res. 16/11 (Port State Measures) and 18/03 (IUU Vessel List) both define fishing related activities, but the principal difference is the reference in 18/03 to the transport of fish “and/or fish products” not previously landed at a port. This is included. The definition aligns with the proposed definition of “fishing” to delete deployment and monitoring of FADS. There was a suggestion to refer at the beginning to any operation “at sea”, but this would be inconsistent with the activity of “landing”; operations at sea are described at the end of the definition consistently with the Resolutions.

¹³ There is some inconsistency in the use of “fishing vessel” within and among different resolutions. The key issues are whether the various definitions includes vessels used for fishing or related activities and whether it is necessary to specify vessels used for commercial fishing. For example:

- Res. 15/04 (IOTC Record of Vessels authorised to operate in the IOTC Area): The title refers generically to Vessels, but the text refers to “fishing vessels” which, “for the purpose of the Resolution, include auxiliary, supply and support vessels”.
- Res. 16/07 (Use of artificial lights to attract fish) refers to “fishing vessels and other vessels including support, supply and auxiliary vessels”.
- Res. 16/11 (Port State Measures) does not use the term “fishing vessel”, and refers throughout to “vessel” which is defined as “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”.

It is recommended to use the terms:

- “vessel” where a resolution is to be applied to those used for fishing or fishing related activities (e.g. Res. 15/04).
- “fishing vessel” where a resolution applies only to vessels used for fishing
- “vessel used for related activities” where a resolution applies only to vessels used for related activities.

In this case the suggestions to include “vessel, ship of another type or boat” as suggested would be unnecessary because they are already in the definition of “vessel”. (This language was included in the FAO Port State Measures Agreement to align with IMO definitions.)

A suggestion to restrict the definition to “commercial” vessels, as distinct from those used for sport fishing, would be inconsistent with the mandate of IOTC, which does not exclude sport fishing. In fact Resolutions such as 12/09 and 03/03 include responsibilities relating to sport fishing.

¹⁴ It was noted that there are various types of registration, and the revised definition clarifies “registration” based on Article 91 of UNCLOS.

¹⁵ The revised definition draws on the 2019 FAO Voluntary Guidelines on Marking of Fishing Gear. However, it does not include the last phrase “in accordance with MARPOL Annex V”, because otherwise it would mean that any gear that does not conform to MARPOL would not be considered gear; this would make it impossible to regulate gear considered illegal under MARPOL. Also MARPOL Annex V does not relate directly to fishing gear. It generally prohibits the discharge of all garbage into the sea, except as provided otherwise, and applies to fishing vessels.

¹⁶ The term is defined in the preamble to Resolution 16/02 (Harvest Control Rules): “harvest control rule encompasses a set of well-defined, pre-agreed rules or actions used for determining a management action in response to changes in indicators of stock status with respect to reference points;”. It was revised based on suggestions provided, but another suggested option could also be considered: “A pre-agreed rule that determines management action in response to changes in indicators of stock status (or any other agreed) in relation agreed reference points.” It was suggested at WPICMM02 that Japan and the EU, who offered the suggestions, should consult.

Key terms	Definitions
High Seas	All parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. ¹⁷
IOTC, or “Commission”	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 under Article XIV of the FAO Constitution. ¹⁸
IOTC Agreement	The 1993 Agreement for the establishment of the Indian Ocean Tuna Commission.
IOTC Area of Competence	The area of competence of the Indian Ocean Tuna Commission as defined in Article II of, and Annex A to, the IOTC Agreement.
IOTC Conservation and Management Measure	Any measure adopted pursuant to Articles V(2)(c) and IX(1) in the IOTC Agreement. ¹⁹
IOTC Record of Authorised Vessels	The IOTC record of vessels authorised to operate in the IOTC Area of Competence established under Resolution 15/04 or any subsequent relevant Resolution.
IUU fishing activity	Any activity defined as an illegal, unreported or unregulated (IUU) fishing activity in Resolution 18/03 or any subsequent relevant Resolution. ²⁰
Landing	The transfer of fish or fish products from any vessel to land, including transfer to an artificial structure or a vessel at a port or shoreline where landing is recorded and reported, excluding transshipment. ²¹
Large-scale fishing vessel	Any fishing vessel 24 meters in length overall or above, or as defined in a relevant IOTC conservation and management measure. ²²
Large-scale longline vessel	Any large-scale fishing vessel equipped to deploy longline gear. ²³
Large-scale tuna vessel	Any large-scale fishing vessel equipped to deploy gear used for fishing for tuna. ²⁴

¹⁷ No Change, suggested to ensure compatibility with UNCLOS and this implements Article 86 of UNCLOS.

¹⁸ Added “or Commission” to the term.

¹⁹ Measure defined to refer exclusively to legally binding measures under Article IX(1) of the Agreement, and by implication exclude non-binding recommendations made under Article IX(8).

²⁰ IUU fishing “activity” is elaborated, mindful that Res. 18/03 (IUU Vessel List), paragraph 4 is titled “Definition of IUU Fishing Activities” and includes fishing and related activities. The definition explains the activities that give rise to a presumption of engaging in IUU fishing activities but it is not considered necessary to refer to “presumption” in the definition. The full term “IUU fishing activity” should therefore be used in Resolutions, rather than “IUU fishing”, because the former embraces related activities as well.

²¹ “Excluding transshipment” added to clarify that transfer to a vessel at port was for purposes of landing and not transshipment.

²² Amended to reflect concern that the length may change in the future. There is a problem with consistency amount CMMs in describing the length:

Res. 03/01 (Limitation of fishing capacity) referred to “*fishing vessels larger than 24 meters length overall (hereafter LSFVs)*”. In all other resolutions, the term is not defined and reference is made variously only to vessels “*24 meters in length overall and above*”, “*24 meters in length overall and over*”, etc.: Res. 11/04 (Regional Observer Scheme), Res. 15/03 (VMS Programme), 15/04 (Record of Authorised Vessels), 18/01 (Rebuilding Yellowfin Tuna).

This term is used in conjunction with tuna and longline vessels, and is not defined in the FAO fisheries glossary.

²³ The definition was revised to refer to a vessel “equipped to deploy” gear, rather than just transporting (carrying) it.

²⁴ The definition was revised to refer to a vessel “equipped to deploy” gear, rather than just transporting (carrying) it.

Key terms	Definitions
Legislation	Includes laws, regulations, orders, notices and any other instrument having the force of law in a country or regional economic integration organisation. ²⁵
Limit reference points	An indicator of the limit beyond which the state of a fishery and / or a resource is not considered desirable; otherwise, it is considered that it might endanger the capacity of self-renewal of the stock or the reproductive capacity. ²⁶
Master	In relation to a vessel, aircraft or vehicle, means the person in command or charge in accordance with any relevant licence or authorisation, or for the time being or apparently in command or charge, but does not include a pilot on board a vessel solely for the purpose of navigation. ²⁷
Mobile transceiver unit	A device approved by the competent authority of the flag State 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. ²⁸
IOTC Observer	An observer appointed pursuant to the IOTC Regional Observer Scheme.
Operator	Any natural or legal person in charge or control of a vessel and responsible for taking decisions and giving direction to such vessel for management, operational and/or commercial matters related to fishing and fishing related activities, including the owner, beneficial owner, charterer and master. ²⁹
Owner	Includes the registered and legal owner of the vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for

²⁵ The definition is based on best practices, and includes all instruments having the force of law. It is a generic term that covers the use of various terms from country to country, such as “Act”, “Law” “Decree” etc and requires as a bottom line that the instrument has the *force of law*.

²⁶ Revised to add the phrase beginning “otherwise”, as recommended.

²⁷ This term is used throughout CMMs, and is defined in Res 18/03 (IUU Vessel List) as “any person holding the most responsible position at any given time on-board a fishing vessel”. Japan suggested this definition.

It is recommended to expand to all vessels (used for fishing or related activities), aircraft or vehicles as all may be involved in fishing operations.

Reference to the “most responsible” position does not necessarily indicate that the person is in charge and issues commands/directs the operations.

It is important to define this term for purposes of implementation of obligations and enforcement and to address situations where the master does not identify himself to obstruct enforcement or otherwise attempts to evade responsibilities.

²⁸ VMS Steering Group to revise; includes some suggested amendments.

²⁹ This definition is necessary to identify the person (natural or legal) who has responsibilities assigned under various CMMs (e.g. Res. 12/04 on marine turtles, 18/08 on FADS), and is therefore answerable/liable where a contravention of CMMs occurs. Res. 18/03 (IUU Vessel List) defines “operators” as “the natural or legal person who is responsible for taking commercial decisions regarding the management and operation of a vessel and includes a charterer of the vessel”. The reference to taking “commercial decisions” may be too restrictive for general application. For example, the operator may direct vessel activities for purposes of compliance (e.g. escaping enforcement, or complying with costly requirements) rather than for strict commercial reasons concerning fishing opportunities and markets.

Suggestions to include reference to “any natural or legal person” were incorporated, and prompted the recommendation to define this term in the glossary.

A key consideration in defining “Operators” for IOTC purposes is that they are always linked to vessels in the CMMS; there was a proposal to extend the definition to persons carrying out activities relating to any stage of production, processing, marketing, distribution etc for fisheries and aquaculture products, but this would exceed the mandate of the Commission under the IOTC Agreement. However the definition is extended to fishing related activities as proposed.

The operator in best practices includes any person in a position to give direction to a vessel, including the owner, beneficial owner, charterer and master. The CMMs requiring the “operator” to undertake specific fishing techniques are clearly directed at the master, so this was included in the definition.

Key terms	Definitions
	operation of the vessel from the owner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities. ³⁰
Person	Includes natural and legal persons, unless otherwise stated. ³¹
Port	Includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or resupplying. ³²
Support vessel	Any vessel used, equipped to be used or intended to be used for fishing related activities, including any vessel other than a craft carried on board a fishing vessel that is not equipped with operational fishing gear and that facilitates, assists or prepares fishing activities including by supplying a fishing vessel. ³³
Target reference points	A benchmark which assesses the performance of management in achieving one or more operational management objectives and indicates the desirable status of a fishery or a resource.
Transshipment	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 any land-based facility such as containers or freezing or storing facilities but not landed, exclusively for purposes of promptly onloading to another vessel, without being subject to importation into the country where the land-based facility is located. ³⁴
Tuna and tuna-like species	Unless otherwise specified, this refers to the species defined in Article II and listed in Annex B of the IOTC Agreement. ³⁵
Vessel	Any vessel, ship of another type or boat used, equipped to be used, or intended to be used for fishing or fishing related activities. ³⁶
Vessel monitoring system	Includes a satellite based reporting system capable of monitoring the position and activities of vessels. ³⁷

³⁰ The definition was revised as proposed, based on the Recruitment and Placement of Seafarers Convention, 1996 (No. 179). The addition of an additional phrase is recommended: “Includes the registered and legal”. It is consistent with shipping practice to acknowledge and distinguish registered/legal owners and elaborates Res. 18/03 (IUU Vessel List) which defines “owner” as “the natural or legal person registered as the owner of a vessel”.

³¹ This is a new term, based on comments in relation to the proposed definition of “operator”.

³² Revised as suggested to implements definition in Res. 16/11 (Port State Measures).

³³ Revised to include a proposed definition. The following introductory language added for clarification and consistency with the definitions of fishing vessel and related activities: “Any vessel used, equipped to be used or intended to be used for fishing related activities, including...”

For clarity, “a fishing vessel” was added: “...other than a craft carried on board *a fishing vessel* that is not equipped with operational fishing gear...”.

³⁴ Language added as suggested to clarify the possibility of transshipment - but not landing - via a land based facility.

³⁵ Language clarified as suggested to indicate exceptions (“otherwise specified”).

³⁶ Minor amendments as suggested (deletion of used “for”). This adopts the definition of “vessel” in Res. 16/11 (Port State Measures), which applies to vessels used for fishing or related activities. As noted under the definition of “fishing vessel”, reference can be made more specifically to “fishing vessel” or “vessel used for related activities” as the context requires. This will address the errors made by referring to “fishing vessel” when the context relates to vessels used for fishing or related activities. e.g. Res. 18/03 (IUU Vessel List) defines “master” in relation to a fishing vessel, but the resolution covers vessels used for fishing or related activities.

³⁷ VMS Steering Group to revise and consider as an alternative:

“A satellite-based system capable of automatically transmitting to the relevant authorities data at regular intervals on the location, course, activities and speed of vessels for purposes of monitoring the position and activities of vessels.” This is based on a suggested definition (as amended): “A satellite-based fishing vessel monitoring system automatically transmitting to the fisheries authorities data at regular intervals on the location, course, activities and speed of vessels”

It was amended because: “vessel monitoring system” is tautological, and cannot be used to define the same term; “fishing vessels” would not include vessels used for related activities; “automatically transmitting” indicates that the system would not fall within the definition if it is not transmitting information at any time”;

“fisheries authorities” should be broader in to accommodate interagency cooperation in receiving VMS information.

RECOMMENDATIONS

That the WPICMM03:

- 1) **NOTE** paper IOTC-2020-WPICMM03-06, which present the final draft glossary of terms and definitions which should be used by Members when drafting proposals for Resolutions for the Commission,
- 2) **REVIEW AND FINALISE** the glossary,
- 3) **RECOMMEND** the final Glossary, with a proposal on the implementation process, to the Compliance Committee for its consideration and potential endorsement.