



## On Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

SUBMITTED BY: Somalia

### Explanatory Memorandum

The proposed amendments aim to strengthen Resolution 18/03 in order to further improve the IOTC's framework for combatting IUU fishing as well as to remove inconsistencies in legal drafting:

- The title is changed to “Resolution On Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing” as the CMM already contains provisions going beyond the IUU Vessel List, and as it can gradually be amended to incorporate the remaining CMMs concerning IUU fishing.
- The definitions are also amended to appear in alphabetical order, and a legally superfluous sub-paragraph (Para. 1(g)) has been removed. Finally, this proposal removes the footnote in Para. 4(h) in order to ensure that all substantive rules are in the text of the Resolution and to bring the definition of IUU fishing activities in line with international law, pursuant to which DFADs drifting in waters within national jurisdiction constitute “fishing”.
- Footnote 1 is removed to streamline the CMM with the sovereign rights and domestic fisheries legislation of coastal States in their Exclusive Economic Zones.
- Key obligations from Resolution 07/01 *To promote compliance by nationals of Contracting Parties and Cooperating Non-Contracting Parties with IOTC Conservation and Management Measures* are incorporated so that this proposal can supersede Resolution 07/01 as recommended by WPICMM02.<sup>1</sup>
- Noting that the legal scrubbing process has stalled (cf. Para. 10 of the Report of the 18th Session of the IOTC Compliance Committee, IOTC-2021-CoC18-R[E]), this proposal incorporates the non-substantive amendments proposed in the Legal Scrub of IOTC Resolutions and Recommendations to reflect best practices in legal drafting, taking into account comments made by CPCs as well as the Guidance and Recommendations for Preparing IOTC Resolutions and Recommendations (cf. IOTC-2020-WPICMM03\_Rev1). Moreover, the proposed amendments introduce terminology and definitions that reflect – with some modifications based on comments from CPCs – language from the proposed IOTC Glossary (cf. IOTC-2020-WPICMM03\_Rev1).

<sup>1</sup> IOTC-2019-WPICMM02-05b-Add1, page 6.

**RESOLUTION ~~1824/03XX~~**

**ON MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING ON ESTABLISHING A LIST OF VESSELS PRESUMED TO HAVE CARRIED OUT ILLEGAL, UNREPORTED AND UNREGULATED FISHING ACTIVITIES IN THE IOTC AREA OF COMPETENCE**

**Keywords:** IUU, illegal, unreported and unregulated fishing.

**The Indian Ocean Tuna Commission (IOTC),**

RECALLING that the FAO Council adopted on 23 June 2001 ~~an~~the International Plan of Action to ~~p~~Prevent, ~~to d~~eter and ~~e~~Eliminate ~~i~~llegal, ~~u~~nreported and ~~u~~nregulated ~~f~~ishing (IPOA-IUU), ~~which encouraged.~~ This plan stipulates that the ~~all~~ identifications of the vessels ~~carryin~~gaged in ~~out~~ IUU fishing activities ~~should to be made through follow~~ agreed procedures and be applied in an ~~equitable~~in a fair, transparent and non-discriminatory ~~manner way~~;

~~RECALLING that the IOTC adopted Resolution 01/07 Concerning the support of the IPOA-IUU [superseded by Resolution 14/01 on the removal of obsolete conservation measures] concerning its support of the IPOA-IUU;~~

~~RECALLING that IOTC has already adopted measures against IUU fishing activities;~~

~~RECALLING that the IOTC adopted Resolution 07/01 to promote compliance by nationals of Contracting Parties and Cooperating Non-Contracting Parties with IOTC Conservation and Management Measures (CMMs);~~

RECALLING ALSO that ~~the~~IOTC adopted Resolution ~~19/04~~07/02 ~~[superseded by Resolution 13/02, then by Resolution 14/04, then by Resolution 15/04, then by Resolution 19/04]~~ Concerning the IOTC Record of Vessels Authorised to operate in the IOTC area of competence to enhance the implementation of IOTC ~~CMMs~~onservation and Management Measures through establishing a Record of fishing vessels authorised to operate in the IOTC area of competence;

RECOGNISING that IUU fishing activities may be linked with serious and organised crime;

CONCERNED by the fact that IUU fishing activities in the IOTC area of competence continue, and these activities diminish the effectiveness of IOTC ~~CMMs~~onservation and Management Measures;

FURTHER CONCERNED that there is evidence of a large number of vessel owners engaged in such fishing activities who have re-flagged their vessels to avoid compliance with IOTC ~~CMMs~~onservation and Management Measures;

DETERMINED to address the challenge of an increase in IUU fishing activities by way of countermeasures to be applied in respect of the vessels engaged in IUU fishing, without prejudice to further measures adopted in respect of flag States under the relevant IOTC instruments;

CONSCIOUS of the need to address, as a matter of priority, the issue of large-scale fishing vessels conducting IUU fishing activities;

NOTING that the situation must be addressed in the light of all relevant international fisheries instruments and in accordance with the relevant rights and obligations established in the World Trade Organizsation (WTO) Agreements;

TAKING INTO ACCOUNT the basic principles for adopting measures for cross-listing vessels listed as IUU Vessels by other RFMOs endorsed in the recommendations of the ~~Third~~<sup>3<sup>rd</sup></sup> Joint Meeting of Tuna Regional Fisheries Management Organisations (RFMOs)of the Tuna RFMO, held in La Jolla, California in 2011;

ACKNOWLEDGING the need to preserve the decision-making authority of IOTC in any cross-listing decision by ensuring that members have the opportunity to consider each vessel on a case-by-case basis prior to its inclusion in the IOTC IUU ~~v~~Vessel ~~H~~List;

~~CONCERNED that vessels that carry out activities in the IOTC area of competence which do not comply with~~

IOTC CMMs are benefiting from support provided by persons subject to the jurisdiction of Contracting Parties and Cooperating Non-Contracting Parties (CPCs), including, *inter alia*, through participation in transshipment, transport and trade of illegally harvested catches or engagement on board or in the management of these vessels;

NOTING that the IPOA-IUU calls on States to take measures to discourage nationals subject to their jurisdiction from supporting and engaging in any activity that undermines the effectiveness of international conservation and management measures;

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

### Use of terms

#### 1. For the purpose of this Resolution:

- (a) “fishing” means 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;
- (i) 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;
- (ii) deployment, monitoring or searching for any fish aggregating device (FAD) or associated equipment including radio beacons;
- (iii) an operation at sea directly in support of or in preparation for an activity described in this definition;  
or
- (iv) 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;
- (b) “fishing related activities” means 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 maintenance or retrieving of drifting FADs (DFADs); ~~any operation in support of, or in preparation for, fishing, including landing, packaging, processing, transshipment or transport of fish and/or fish products that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear, food and other supplies at sea;~~
- (c) “information” means suitably and sufficiently documented data which is capable of being presented as evidence to the IOTC Compliance Committee and/or Commission of any facts in issue,
- (d) “master” means any person 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; ~~holding the most responsible position at any given time on board a fishing vessel;~~
- (a) ‘Owner’ means the natural or legal person registered as the owner of a vessel;
- (e) “Operator”<sup>2</sup> means 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; ~~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;~~
- (b) —
- (e) ‘Master’ means any person holding the most responsible position at any given time on board a fishing vessel;
- (d)(a) — “fishing” means 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;
- (f) ‘fishing related activities’ means any operation in support of, or in preparation for, fishing, including landing, packaging, processing, transshipment or transport of fish and/or fish products that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear, food and other supplies at sea;

~~(g) “owner” means the natural or legal person 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 operation of the vessel from the owner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities registered as the owner of a vessel;~~

~~(h) “IOTC CMMs” means a conservation and management measures adopted in accordance with paragraph 1 of Article IX of the IOTC Agreement.~~

~~(e) 'Information' means suitably and sufficiently documented data which is capable of being presented as evidence to the Compliance Committee and/or Commission of any facts in issue,~~

~~(f) the singular also includes the plural.~~

### Application of this measure

2. This Resolution applies to vessels, together with their ~~O~~owners, ~~O~~operators and ~~M~~masters that undertake fishing and fishing related activities, for species covered by the IOTC Agreement, or by IOTC ~~CMM~~conservation and Management Measures, within the IOTC area of competence ~~(IOTC Area)~~.

### Objective

3. This Resolution sets out rules and procedures for the maintenance and updating by the Commission of the system of lists of vessels considered to be involved in ~~illegal, unreported and unregulated (IUU)~~ fishing activities and which comprises:

- (a) the Draft IOTC IUU Vessels List (Draft IUU Vessels List);
- (b) the Provisional IOTC IUU Vessels List (Provisional IUU Vessels List); and
- (c) the IOTC IUU Vessels List (IUU Vessels List).

### Definition of IUU Fishing Activities

4. For the purposes of this Resolution a vessel is presumed to have engaged in IUU fishing activities when an Contracting Party or Cooperating Non-Contracting Party (~~hereinafter referred to as “CPCs”~~) has provided information that such a vessel has, within the IOTC ~~Area~~area of competence and in relation to species covered by the IOTC Agreement or by ~~any~~ IOTC ~~CMM~~conservation and Management Measures:
- (a) engaged in fishing or fishing related activities and is neither registered on the IOTC Record of Authorised Vessels in accordance with Resolution ~~19/0415/04 [superseded by Resolution 19/04]~~, nor recorded in the ~~Active IOTC Record of Currently Authorised – list of v~~Vessels; ~~or~~
  - (b) engaged in fishing or fishing related activities when its flag State is without quota, catch limit, or effort allocation under IOTC ~~CMM~~conservation and Management Measures where applicable unless that vessel is flagged to a CPC; ~~or~~
  - (c) failed to record or report its catches in accordance with IOTC ~~Conservation and Management Measures~~CMMs or has made false reports; ~~or~~
  - (d) taken or landed undersized fish in contravention of IOTC ~~Conservation and Management Measures~~CMMs; ~~or~~
  - (e) engaged in fishing or fishing related activities during closed fishing periods or in closed areas in contravention of IOTC ~~Conservation and Management Measures~~CMMs; ~~or~~
  - (f) used prohibited fishing gear in contravention of IOTC ~~Conservation and Management Measures~~CMMs; ~~or~~
  - (g) transhipped fish to, or otherwise participated in joint operations with, support or re-supply vessels that are not included on the IOTC Record of Authorised Vessels or not on the Record of Vessels Authorised to Receive Transhipments At-Sea in the IOTC ~~Area~~area of competence; ~~or~~
  - (h) engaged in fishing or fishing related activities in waters that are under the national jurisdiction of a coastal State without the permission or authorisation of that State or in contravention of the laws and regulations of

that State (without prejudice to the sovereign rights of the State concerned to undertake enforcement measures against such a vessel)<sup>2</sup>; ~~or~~

- (i) engaged in fishing or fishing related activities while ~~est~~ being without nationality; ~~or~~
- (j) engaged in fishing or fishing related activities having intentionally falsified or concealed its markings, identity or registration; or
- (k) engaged in fishing or fishing related activities in contravention of any other ~~binding~~—IOTC ~~CMMs~~Conservation and Management Measures.

### Submission of information on IUU Fishing Activities

5. A CPC in possession of information that one or more vessels has engaged in IUU fishing activities within the IOTC ~~Area~~area of competence within a 24 month period prior to the annual meeting of the IOTC Compliance Committee shall submit a list of such vessels to the ~~IOTC~~ Executive Secretary. Such submission shall be made at least 70 days before the annual meeting of the IOTC Compliance Committee using the IOTC Reporting Form for Illegal Activity ~~in~~(Annex I).
6. A list submitted by a CPC (the nominating CPC) in accordance with paragraph 5, shall be accompanied by information concerning the IUU fishing activity of each of the listed vessel(s) including but not limited to:
  - (a) reports regarding the alleged IUU fishing activity from CPCs relating to IOTC ~~CMMs~~Conservation and Management Measures in force;
  - (b) trade information obtained on the basis of relevant trade statistics such as those from statistical documents and other national or international verifiable statistics;
  - (c) any other information obtained from other sources and/or gathered from the fishing grounds such as:
    - (i) information gathered from inspections undertaken in port or at sea; ~~or~~
    - (ii) information from coastal States including VMS transponder or AIS data, surveillance data from satellites or airborne or seaborne assets; ~~or~~
    - (iii) IOTC programmes, except where such a programme stipulates that information gathered is to be kept confidential; or
    - (iv) information and intelligence collected by third parties either provided directly to a CPC or ~~via~~through the ~~IOTC~~ Executive Secretary pursuant to paragraph 7.
7. When the ~~IOTC~~ Executive Secretary receives information and intelligence from third parties indicating alleged IUU fishing activities, the ~~IOTC~~ Executive Secretary shall transmit the information to the flag State of the vessel and each CPC. ~~Where the flag State of the vessel is a CPC, if requested by any other CPC through the IOTC Executive Secretary, it shall investigate the allegation and shall report the progress of the investigation to the IOTC Executive Secretary within 60 days. Where the flag State is not a CPC, if requested by any CPC the IOTC Executive Secretary shall request it to investigate the allegation and report the progress of the investigation to the IOTC Executive Secretary within 60 days. The IOTC Executive Secretary shall then, as soon as practicably possible, notify each CPC and the flag State of each vessel concerned, together with such compiled information as has been received. Where the alleged IUU activities occurred in the waters of a coastal State CPC~~of IOTC, the CPC concerned may seek to include the vessel on the ~~draft~~ IUU Vessels List (paragraph 6(c)-(iv)). Where the alleged IUU activities occurred in areas beyond national jurisdiction within the IOTC Areaarea of competence any concerned CPC may seek to include the vessel on the draft IUU Vessels List.

<sup>2</sup>~~For the purposes of this subparagraph, a vessel that is recorded on the IOTC Record of Authorised Vessels shall not be presumed to have engaged in IUU fishing activities when a Fish Aggregating Device (FAD) it has deployed has drifted into waters that are under the national jurisdiction of a coastal State without its permission or authorization. However, if the vessel retrieves or fishes on a FAD in a Coastal State's waters without its permission or authorization, the vessel is presumed to have engaged in IUU fishing activities~~



### Draft IOTC IUU Vessels List

8. On the basis of the information received pursuant to paragraphs 5, 6 and 7, the ~~IOTC~~ Executive Secretary shall draw up a Draft IUU Vessels List incorporating the information in the format ~~set out in Annex II~~. The ~~IOTC~~ Executive Secretary shall then transmit the Draft IUU Vessels List together with the compiled information to each CPC and to the flag State of each vessel included on the Draft IUU Vessels List at least 55 days before the ~~A~~ annual ~~Session~~ Meeting of the ~~IOTC~~ Compliance Committee.
9. The flag State of a vessel included on the Draft IUU Vessels List shall be requested to:
  - (a) notify the ~~O~~wner, ~~O~~perator and the ~~M~~aster of the vessel of the fact of its inclusion in the Draft IUU Vessels List and of the consequences that may result from its inclusion being confirmed in the IUU Vessels List adopted by the Commission; ~~;~~ and
  - (b) closely monitor the vessels included in the Draft IUU Vessels List in order to determine their activities and possible changes of use, name, flag and/or registered ~~O~~wner.
10. The flag State of a vessel included on the Draft IUU Vessels List may transmit to the ~~IOTC~~ Executive Secretary at least 15 days before the ~~A~~ annual ~~M~~Session meeting of the ~~IOTC~~ Compliance Committee, any comments and information about listed vessels and their activities, including information pursuant to ~~P~~aragraph 9(-a) and 9(-b) and information showing that the listed vessels either have or have not:
  - (a) conducted fishing activities in a manner consistent with IOTC ~~C~~MM~~s~~onservation and Management Measures in force; ~~or~~
  - (b) conducted fishing activities in a manner consistent with the laws and regulations of a coastal State when fishing in the waters under the jurisdiction of that State, and with the law and regulations of the flag State and the Authorisation to Fish; ~~-~~ or
  - (c) conducted fishing activities exclusively for species that are not covered by the IOTC Agreement or IOTC ~~C~~MM~~s~~onservation and Management Measures.
11. The ~~IOTC~~ Executive Secretary shall compile any new information received from CPCs and flag States regarding vessels on the Draft IUU Vessels List and, pursuant to paragraphs 22 and 23, those on the IUU Vessels List and circulate that information to all CPCs and to the flag States of vessels on the lists at least 10 days prior to the annual ~~s~~Session of the ~~IOTC~~ Compliance Committee together with the completed checklist, ~~Annex III~~ and where applicable, ~~Annex IV~~.
12. A CPC may at any time submit to the ~~IOTC~~ Executive Secretary any additional information regarding vessels on the Draft IUU ~~Vessels L~~ist, which might be relevant to the establishment of the IUU Vessels List. If the IOTC Secretariat receives this information after the Draft IUU Vessels List has been circulated to CPCs, it will circulate the information to all CPCs and to the flag States of listed vessels as soon as practicable.

### Provisional IOTC IUU Vessels List

13. The IOTC Compliance Committee shall each year at its ~~A~~ annual ~~Meeting~~ Session examine the Draft IUU Vessels List, as well as the information submitted, ~~and~~ any comments received from the flag State of a vessel included on the Draft IUU Vessels List together with any additional information ~~-~~ submitted by any CPC. If the IOTC Compliance Committee is satisfied that the documented information establishes that the vessel carried out IUU fishing activities, it shall include the vessel or vessels concerned in the Provisional IUU Vessels List.
14. The ~~IOTC~~ Compliance Committee shall not include a vessel in the Provisional IUU Vessels List if:
  - (a) the nominating CPC did not follow the provisions of paragraphs 5 and 6; ~~or~~
  - (b) on the basis of the information available, the ~~IOTC~~ Compliance Committee is not satisfied that the presumption of IUU fishing activities referred to in paragraph 4 has been established; ~~or~~

- (c) the flag State of a vessel included in the Draft IUU Vessel List provides information that demonstrates that the vessel has at all relevant times complied with the rules of the flag State and with its authorisation to fish and:
- (i) that the vessel has conducted fishing activities in a manner consistent with the IOTC Agreement and ~~IOTC CMMs Conservation and Management Measures~~; or
  - (ii) that the vessel has conducted fishing activities within the waters under the jurisdiction of a coastal State in a manner consistent with the ~~legislation laws and regulations~~ laws and regulations of that coastal State; or
  - (iii) that the vessel has fished exclusively for species that are not covered by the IOTC Agreement or IOTC ~~CMMs Conservation and Management Measures~~; or
- (d) the flag State of a vessel included in the Draft IUU Vessels List provides information that demonstrates that effective action has been taken in response to the IUU fishing activities in question, including prosecution and imposition of sanctions of adequate severity to be effective in securing compliance and deterring further ~~violations~~ infringements. Every CPC shall report any actions and measures that it has taken in accordance with Resolution 07/01, in order to promote compliance with IOTC ~~CMMs Conservation and Management Measures~~ by its flag vessels ~~that fly its flag~~.

15. In cases where a flag State has not demonstrated the matters referred to in ~~P~~paragraphs 14-(c) or ~~14~~-(d) or where a flag State has not provided any information under paragraph 10 or during the annual Session of the IOTC Compliance Committee ~~meeting~~, the IOTC Compliance Committee shall include the vessel on the Provisional IUU Vessels List and recommend to the Commission that the vessel be included on the IUU Vessels List.
16. Following the examination referred to in paragraph 13 at each IOTC ~~A~~annual Session ~~meeting~~, the IOTC Compliance Committee shall submit the Provisional IUU Vessels List to the Commission for its consideration. If the IOTC Compliance Committee cannot agree as to whether a certain vessel shall be included in the Provisional IUU Vessels List, the List shall include the vessel and the Commission shall decide whether the vessel shall be included in the IUU Vessels List.

#### **IOTC IUU Vessels List**

17. The IOTC Compliance Committee shall each year examine the IUU Vessels List and the information circulated under paragraph 11 and shall recommend to the Commission which, if any, vessels should be added to or removed from the IUU Vessels List.
18. The Commission shall each year at its ~~A~~annual Session Meeting review the IUU Vessels List as well as the Provisional IUU Vessels List, and the recommendations adopted by the IOTC Compliance Committee to amend the IUU Vessels List, together with the documented information provided under paragraphs 6, 10, 12, and 30. Based on its review, the Commission may decide to amend the IUU Vessels List by:
- (a) adding or removing vessels; and/or
  - (b) rectifying any incorrect details, or inserting new details, about a vessel already included on the IUU Vessels List in accordance with paragraph 30-(a).
19. The Commission, acting in accordance with paragraph 18, may amend the IUU Vessels List by consensus. ~~—~~ In the absence of consensus, the Commission shall decide upon any proposed amendment by a vote. ~~—~~ Voting may be conducted by a secret ballot if a member requests it and this request is seconded. ~~—~~ If two thirds or more of the Contracting Parties present and voting support the proposed amendment it shall be considered approved and brought into effect. ~~—~~ The outcome of any decision made by the Commission pursuant to this paragraph shall not affect any domestic prosecution or settlement of any sanctions by the nominating or flag States pursuant to paragraphs 4 and 14-(d).

#### **Action against IUU Vessels**

20. Following the adoption of the IUU Vessels List, the IOTC Executive Secretary shall request the flag State of every vessel that is included in the list:

- (a) to notify the **O**wner and **O**perator of the vessel of its inclusion on the list and the consequences which may result from its inclusion in the list;
- (b) to take all the necessary measures to prevent the vessel from undertaking IUU fishing activities, including withdrawing its fishing licence or the de-registering of the vessel, and to inform the Commission of the measures taken in this respect.

21. ~~A CPC<sub>s</sub> shall take all necessary measures, in accordance with its legislation:~~

- (a) ~~to ensure that no flag vessel flying its flag, including any fishing vessel, support vessel, refuelling (supply) vessel, mother-ship or cargo vessel, provides assistance to a vessel included in the IUU Vessels<sub>s</sub> List in any way, or engages in fishing processing operations with such a vessel or participates in transshipment or joint fishing operations with such a vessel, except for the purpose of rendering assistance where such a vessel, or any person on that vessel, is in danger or distress;~~
- (b) ~~to refuse entry into its ports by any vessel included on the IUU Vessels<sub>s</sub> List, except in case of *force majeure* or where the vessel, or any person on that vessel, is in danger or distress, unless vessels are allowed entry into port for the exclusive purpose of inspection— and effective enforcement action;~~
- (c) ~~to consider giving priority to the inspection of vessels on the IUU Vessels<sub>s</sub> List, if such vessels are otherwise found in their ports;~~
- (d) ~~to prohibit the chartering of a vessel included on the IUU Vessels<sub>s</sub> List;~~
- (e) ~~to refuse to grant their flag to vessels included in the IUU Vessels<sub>s</sub> List, except if the vessel has changed **O**wner and the new **O**wner has provided sufficient information demonstrating the previous **O**wner or **O**perator has no further legal, beneficial or financial interest in, or control of, the vessel; or having taken into account and documented all relevant facts, the flag State determines that granting the vessel its flag will not result in IUU fishing;~~
- (f) ~~to prohibit the import, landing or transshipment, of tuna and tuna-like species from vessels included in the IUU Vessel List;~~
- (g) ~~to encourage importers, transporters and other sectors concerned, to refrain from engaging in transactions, including transshipments, relating to tuna and tuna-like species caught by vessels included in the IUU Vessels<sub>s</sub> List;~~
- (h) to collect and exchange with other CPC<sub>s</sub> contracting Parties or Cooperating Non-Contracting Parties any appropriate information with the aim of detecting, controlling and preventing false import/export certificates for tunas and tuna-like species from vessels included in the IUU Vessels<sub>s</sub> List;
- (i) take all necessary measures to ensure that any natural or legal persons subject to their jurisdiction do not participate in IUU fishing. In particular, CPC<sub>s</sub> shall:

i. investigate allegations and/or reports concerning the engagement of any natural or legal persons subject to their jurisdiction in IUU fishing activities;

ii. take actions in response to any verified activities referred to in subparagraph (i)(i); and

iii. cooperate with respect to the investigations referred to in subparagraph (i)(i) and subsequent actions referred to in subparagraph (i)(ii).

### **Vessel Delisting Procedures**

22. The flag State of a vessel included in the IUU Vessels<sub>s</sub> List may request the removal of the vessel from the list at any time, including during the inter-sessional period, by providing information to the ~~IOTC~~ Executive Secretary to demonstrate that:

(a) it:

- (i) has adopted measures such that the vessel **O**wner and all other nationals employed on that vessel that engage in fishing and fishing related activities within the IOTC ~~Area~~ area of



- competence for species covered by the IOTC Agreement comply with all IOTC ~~CMMs~~onservation and Management Measures; and
- (ii) ~~it~~ is effectively assuming and will continue to effectively assume its flag State responsibilities with regard to the monitoring and control of the fishing activities of this vessel; and
  - (iii) has taken effective action against the ~~O~~owner, ~~O~~operator and ~~M~~master (where appropriate) in response to the IUU fishing activities that resulted in the vessel's inclusion in the IUU Vessels List including prosecution and imposition of sanctions of ~~–~~adequate severity; or
- (b) ~~T~~he vessel has changed ownership and that the new ~~O~~owner can establish that the previous ~~O~~owner no longer has any operational, legal, financial or real interests whether direct or indirect in the vessel or exercises control over it and that the new ~~O~~owner has not participated in any IUU fishing activities in the preceding 5 years; ~~or~~
  - (c) ~~T~~he vessel has been sunk or scrapped; or
  - (d) ~~A~~ny prosecution and/or sanctions regarding the vessel that conducted IUU fishing activities has been concluded by both the nominating CPC and the flag State of the vessel.
23. If a request for the removal of a vessel from the IUU Vessels List is received within 55 to 15 days before the annual Session of the IOTC Compliance Committee ~~meeting~~, the request shall be considered at that Session~~meeting~~. The IOTC Compliance Committee shall examine the request along with any information provided under paragraph 22 and shall recommend to the Commission whether or not the vessel should be removed from the IUU Vessels List.
24. If a request is received more than 55 days before the annual Session of the IOTC Compliance Committee ~~meeting~~, the request will be considered in accordance with the intersessional procedure ~~outlined~~provided in paragraphs 25-28.
25. On the basis of the information received in accordance with paragraph 22, the ~~IOTC~~ Executive Secretary shall transmit the request for removal together with all the supporting information submitted and the checklist in **Annex IV** to all CPCs within 15 days following receipt of the request.
26. The Contracting Parties shall examine the request to remove the vessel and shall notify the IOTC Secretariat of their conclusion to either remove the vessel from, or keep the vessel on, the IUU Vessels List, within 30 days following the notification by the ~~IOTC~~ Executive Secretary.
27. At the end of the 30 day period, the ~~IOTC~~ Executive Secretary shall ascertain the outcome of the CPCs' decision on the proposal in accordance with the following:
- (a) ~~A~~ Vessel Delisting Procedure shall be deemed valid only if at least 50% of the Contracting Parties with voting rights respond to the proposal;
  - (b) ~~A~~ proposal shall be considered to have been approved if two thirds or more of the Contracting Parties with voting rights that respond indicate that they support the delisting of the vessel concerned from the IUU Vessels List, and it shall be delisted;
  - (c) ~~I~~f fewer than two-thirds of the Contracting Parties with voting rights that respond are in favour of delisting the vessel from the IUU Vessels List it shall not be delisted and the request for delisting shall be considered by the next annual Session~~meeting~~ of the IOTC Compliance Committee in accordance with the procedure outlined in paragraph 23.
28. The ~~IOTC~~ Executive Secretary shall communicate the result of every decision, along with a copy of the amended IUU Vessels List, to all CPCs, the flag State of the vessel (if not a CPC), and any Non-Contracting Party that may have an interest. The amended IUU Vessels List ~~shall~~will have effect immediately after the result of the decision has been communicated.

### Publication of the IUU Vessels List

29. The ~~IOTC~~ Executive Secretary will take any necessary measures to ensure publicity of the IUU Vessels List adopted by ~~the Commission~~~~IOTC~~ pursuant to paragraph 18, or as amended pursuant to paragraphs 22 to 27, 30, 34, 35 or 36 in a manner consistent with any applicable confidentiality requirements, and through electronic means, including placing it on the IOTC website. Furthermore, the ~~IOTC~~ Executive Secretary shall transmit the IOTC IUU Vessels List as soon as possible to the FAO and to the organisations ~~as~~ set out in ~~P~~paragraph 31 for the purposes of enhanced co-operation between IOTC and these organisations in order to prevent, deter and eliminate IUU fishing activities.

### Change of details of vessels included on the IUU Vessels List

30. A CPC with new or changed information for vessels on the IUU Vessels List in relation to the details in paragraphs 1 to 8 of Annex II shall, as soon as practicable, transmit such information to the ~~IOTC~~ Executive Secretary. The ~~IOTC~~ Executive Secretary shall communicate such information to all CPCs and:
- (a) where the information indicates incorrect details were included at the time the vessel was added to the IUU Vessels List, refer the matter to the Commission for consideration pursuant to paragraph 18~~(b)~~;
  - (b) where the information indicates a change in details since the vessel was added to the IUU Vessels List, seek to verify the information by reference to other information and, after verification, update the relevant details in the IUU Vessels List and re-publish it in accordance with paragraph 29. If the ~~Executive Secretary~~~~Secretariat~~, after reasonable efforts, is unable to verify the information submitted by the CPC the IUU Vessels List will not be updated.

### Cross-Listing of vessels included on the IUU Vessels List

31. The IOTC Executive Secretary shall maintain appropriate contacts, *inter alia*, with the Secretariats of the following organisations in order to obtain their latest IUU vessel lists and any other relevant information regarding the list in a timely manner upon adoption or amendment: the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the South East Atlantic Fisheries Organisation (SEAFO), the Southern Indian Ocean Fisheries Agreement (SIOFA), the South Pacific Regional Fisheries Management Organisation (SPRFMO) and the Western and Central Pacific Fisheries Commission (WCPFC).
32. Notwithstanding paragraph 2, IUU vessels listed by the organisations set out in paragraph 31 may be added to or deleted from the IOTC IUU Vessels List, provided that the procedures specified in paragraphs 33 to 38 are followed.
33. In addition to the organisations set out in paragraph 31, the Executive Secretary shall transmit the IOTC IUU Vessels List to a relevant organisation that has expressed an interest to receive such List,
34. Upon receipt of the information outlined in paragraphs 31, the ~~IOTC~~ Executive Secretary shall promptly circulate it to all CPCs for the purpose of amending the IOTC IUU Vessels List.
35. Vessels that have been included in the IUU ~~Vessels~~ ~~L~~ists of the organisations set out in paragraph 31 shall be included in the IOTC IUU Vessels List, unless any CPC objects to the inclusion in writing within 30 days of the date of transmittal by the Executive Secretary. The objecting CPC shall explain the reason for the objection.
36. In the event of an objection to the inclusion pursuant to paragraph 35, the case shall be brought to the following session of the ~~IOTC~~ Compliance Committee for its examination. The ~~IOTC~~ Compliance Committee shall provide a recommendation to the Commission on the inclusion of the relevant vessel/s in the IUU Vessels List.
37. Vessels that have been listed under the procedures specified in paragraphs 34 and 35 and that have been removed from the IUU ~~Vessels~~ ~~L~~ists of the relevant organisations ~~set out~~ in paragraph 31 shall be removed from the IOTC IUU Vessels List.
38. Upon the change of the IOTC IUU Vessels List pursuant to paragraphs 34 or 36, the ~~IOTC~~ Executive Secretary shall circulate the amended IOTC IUU Vessels List to all CPCs.

## General Provisions

39. Without prejudice to the rights of flag States and coastal States to take action consistent with international law, CPCs shall not take any unilateral trade measures or other sanctions against vessels included in the Draft and/or Provisional IUU Vessels Lists, pursuant to paragraphs 8 and 16 on the grounds that such vessels are involved in IUU fishing activities, or against those vessels removed from the IUU ~~V~~vessels ~~L~~List by the Commission.
40. A summary of the timeframe for actions to be taken in respect of this Resolution is provided in **Annex V**.
41. Resolution ~~17~~18/03 *On Establishing A List of Vessels Presumed to Have Carried Out Illegal, Unreported And Unregulated Fishing in the IOTC Area of Competence and Resolution 07/01 To promote compliance by nationals of Contracting Parties and Cooperating Non-Contracting Parties with IOTC Conservation and Management Measures* ~~is~~ are superseded by this Resolution.

Conservation and Management Measures linked to Resolution 18/03 or return to the <a href="#">Table of Contents</a>			
Links from within this CMM		Links from other CMMs	
<del><a href="#">Resolution 07/01</a></del>	<del><a href="#">Resolution 14/01</a></del>	<a href="#">Resolution 19/07</a>	
<a href="#">Resolution 19/04</a>			

ANNEX I

IOTC REPORTING FORM FOR ILLEGAL ACTIVITY

Recalling IOTC Resolution ~~1824/03~~ **XX** *on Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* ~~On establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC Area~~, attached are details of illegal activity recorded by [name of CPC, third party] in [area in which the activity took place] .....

**A. Details of Vessel**

(Please detail the incidents(s) in the format below)

Item	Definition	Indicate
a	Current Name of Vessel (Previous name/s, if any)	
b	Current Flag (previous flag/s, if any)	
c	Date first included on IOTC IUU Vessel List (if applicable)	
d	Lloyds IMO Number, if available	
e	Photo	
f	Call Sign (previous call sign, if any)	
g	Owner (previous Owner/s, if any)	
h	Operator (previous Operator/s, if any) and Master/Fishing Master	
i	Date of alleged IUU fishing activities	
j	Position of alleged IUU fishing activities	
k	Summary of alleged IUU activities (see section B for more detail)	
l	Summary of any actions known to have been taken in respect of the alleged IUU fishing activities	
m	Outcome of actions taken	

## B. Details of IOTC Resolution Elements Contravened

(Indicate with a "X" the individual element(s) of IOTC Resolution ~~1824/03-XX~~ contravened, and provide relevant details including date, location, source of information. Extra information can be provided in an attachment if necessary.)

~~That a~~ vessel has, within the IOTC ~~Area~~ area of competence and in relation to species covered by the IOTC Agreement or by IOTC ~~Conservation and Management Measures~~ CMMs:

Item	Definition	Indicate
a.	engaged in fishing or fishing related activities and is neither registered on the IOTC Record of Authorised Vessels in accordance with <del>Resolution 15/04</del> <u>[superseded by Resolution 19/04]</u> , nor recorded in the <u>IOTC Record of Currently Authorised Active list of</u> <del>Vessels</del> ; <del>or</del>	
b.	engaged in fishing or fishing related activities when its flag State is without quota, catch limit, or effort allocation under IOTC <del>Conservation and Management Measures</del> <u>CMMs</u> where applicable; <del>or</del>	
c.	failed to record or report its catches in accordance with IOTC <del>Conservation and Management Measures</del> <u>CMMs</u> or has made false reports; <del>or</del>	
d.	taken or landed undersized fish in contravention of IOTC <del>Conservation and Management Measures</del> <u>CMMs</u> ; <del>or</del>	
e.	engaged in fishing or fishing related activities during closed fishing periods or in closed areas in contravention of IOTC <del>Conservation and Management Measures</del> <u>CMMs</u> ; <del>or</del>	
f.	used prohibited fishing gear in contravention of IOTC <del>Conservation and Management Measures</del> <u>CMMs</u> ; <del>or</del>	
g.	transhipped fish to, or otherwise participated in joint operations with, support or re-supply vessels that are not included on the IOTC Record of Authorised Vessels or not on the Record of Vessels Authorised to receive transshipments at-sea in the IOTC <del>Area</del> <u>area of competence</u> ; <del>or</del>	
h.	engaged in fishing or fishing related activities in waters that are under the national jurisdiction of a coastal State without the permission or authorisation of that State or in contravention of the laws and regulations of that State (without prejudice to the sovereign rights of the State concerned to undertake enforcement measures against such a vessel); <del>or</del>	
i.	engaged in fishing or fishing related activities whilst being without nationality; <del>or</del>	
j.	engaged in fishing or fishing related activities having intentionally falsified or concealed its markings, identity or registration; <del>or</del>	



Item	Definition	Indicate
k.	engaged in fishing or fishing related activities in contravention of any other binding IOTC <del>Conservation and Management Measures</del> <u>CMMs</u> ;	

### C. Associated Documents

*(List here the associated documents that are appended e.g. boarding reports, court proceedings, photographs)*

### D. Recommended Actions

	Recommended Actions	Indicate
a	Notification to <del>Executive Secretary</del> <u>IOTC Secretariat</u> only. No further action is recommended.	
b	Notification of illegal activity to <del>Executive Secretary</del> <u>IOTC Secretariat</u> . Recommend notification of activity to flag State.	
c	Recommended for inclusion on IOTC IUU <u>Vessels</u> <u>List</u>	

**ANNEX II**  
**INFORMATION TO BE INCLUDED IN ALL IOTC IUU VESSELS LISTS**

The Draft IUU Vessels List, Provisional IUU Vessels List and the IUU Vessels List shall contain the following details:

1. Name of the vessel and previous name/s, if any.
2. Flag of the vessel and previous flag/s, if any.
3. Name and address of the Owner and Operator of the vessel and previous Owner and Operator, if any.
4. For legal entity, the country of registration and registration number.
5. Call sign of the vessel and previous call sign, if any.
6. IMO number, if any, or unique vessel identifier (UVI), or if not applicable, any other vessel identifier.
7. Recent photographs of the vessel, where available.
8. Vessel length overall.
9. Date the vessel was first included on the IOTC IUU Vessel List, if applicable.
10. Summary of the alleged IUU fishing activities which justify inclusion of the vessel on the IUU Vessels List, together with references to all relevant supporting documents information.
11. Summary of any actions known to have been taken in respect of the alleged IUU fishing activities and their outcomes.
12. Name of the organization, if the vessel has been listed or is proposed to be listed based on the information from another organization.



ANNEX III

CHECKLIST TO BE COMPLETED BY THE SECRETARIAT FOR VESSELS TO BE INCLUDED ON THE DRAFT AND PROVISIONAL IUU- VESSELS LISTS

Vessel Name: \_\_\_\_\_

Action	Responsibility	Paragraph	Provided on time (Y/N)	Aide Memoire	Mark which applies	Comments
<b>For the Draft IUU Vessels List</b>						
IOTC Reporting form (Annex I) submitted at least 70 days before the <u>IOTC</u> Compliance Committee meeting with documented information.	Nominating CPC	5,6,7,8		If No, do not include on the Provisional IUU <u>Vessels</u> list (Para 17)		
At least 15 days before the <u>IOTC</u> Compliance Committee Meeting, Flag State has provided information that it has notified the <u>O</u> wners and Masters of a vessel of its inclusion on the Draft IUU Vessels List and the consequences thereof.	Flag CPC	9,10				
At least 15 days before the <u>IOTC</u> Compliance Committee Meeting, <u>F</u> lag State has provided information consistent with <u>P</u> aragraph 10.	Flag CPC	10				
Additional information— <u>  </u> has been submitted, relevant to IUU listing.	Nominating CPC or flag CPC	12				
<b>For <del>Inclusion on</del> the Provisional IUU Vessel List</b> (note that Secretariat will indicate if information has been provided, but will make no judgment as to its adequacy, which will be the responsibility of the <u>IOTC</u> Compliance Committee)						
Has the flag State of a vessel included in the Draft IUU Vessels List provided information that demonstrates that the vessel has at all relevant times complied with the rules of the flag State and with its authorisation to fish and:	Flag CPC	14c		<b>Aide Memoire to CoC:</b> Only where paragraph 14(c) or 14(d) are satisfied, do not include on Provisional IUU <u>Vessels List</u> .		

Action	Responsibility	Paragraph	Provided on time (Y/N)	Aide Memoire	Mark which applies	Comments
(a) <del>(a)</del> that the vessel has conducted fishing activities in a manner consistent with the IOTC Agreement and Conservation and Management Measures;	Flag CPC	14c				
(b) <del>(b)</del> that the vessel has conducted fishing activities within the waters under the jurisdiction of a coastal State in a manner consistent with the laws and regulations of that coastal State; or	Flag CPC	14c				
(c) <del>(c)</del> that the vessel has fished exclusively for species that are not covered by the IOTC Agreement or IOTC <del>Conservation and Management Measures</del> CMMs.	Flag CPC	14c				
Has the flag State provided information that demonstrates that effective action has been taken in response to IUU fishing activities (the <del>IOTC Compliance Committee CoC</del> will decide if they are of adequate severity)?	Flag CPC	14d				
Has the flag State provided information to show that it has taken any actions in accordance with <del>Resolution 07/01</del> ?	Flag CPC	14d				

ANNEX IV

CHECKLIST TO BE COMPLETED BY THE SECRETARIAT FOR POTENTIAL REMOVAL OF VESSELS FROM THE IOTC IUU VESSELS LIST

(Aide Memoire for the Commission for delisting a vessel: note that the Secretariat will indicate if information has been provided, but will make no judgement as to its adequacy, which will be the responsibility of the IOTC Compliance Committee / Commission, Paragraphs 17 and 27)

Vessel Name: \_\_\_\_\_

Para 22, sub para	Action	Responsibility	Information Provided (Y/N)	Comments	Aide Memoire
a)	(i) <del>ii</del> It has adopted measures such that the vessel, Owner and all other nationals comply with all <del>IOTC Conservation and Management Measures</del> CMMs; and	Flag CPC			If paragraph (a), <del>or</del> (b) or (c) is satisfied, the vessel may be removed from the IUU Vessels List pursuant to paragraph 27, or else the vessel will remain on the list for re-examination by the IOTC Compliance Committee and Commission at its next Annual Session.
	(ii) <del>ii</del> it is effectively assuming and will continue to effectively assume its flag State responsibilities with regard to the monitoring and control of the fishing activities of this vessel; and	Flag CPC			
	(iii) <del>iii</del> it has taken effective action against the <del>O</del> owner and crew in response to the IUU fishing activities that resulted in the vessel's inclusion in the IUU Vessels List including prosecution and imposition of sanctions of adequate severity; or	Flag CPC			
b)	The vessel has changed ownership and that the new <del>O</del> owner can establish the previous <del>O</del> owner no longer has any operational, legal, financial or real interests whether direct or indirect in the vessel or exercises control over it and that the new <del>O</del> owner has not participated in any IUU fishing activities in the preceding 5 years; or	Flag CPC			
c)	The vessel has been sunk or scrapped.	Flag CPC			
d)	Any prosecution and sanctions regarding the vessel that conducted IUU fishing activities has been concluded by both the nominating CPC and the flag State of the vessel.	Flag CPC			



## ANNEX V

## A SUMMARY OF THE TIMEFRAME FOR ACTIONS TO BE TAKEN IN RESPECT OF THIS RESOLUTION

Step	Timeframe	Actions to be taken	Responsibility	Paragraph
1	70 days before <del>annual IOTC Compliance Committee (CoC) Session meeting</del> (minimum)	Information transmitted to the IOTC Executive Secretary.	CPCs	5,6
2	55 days before CoC <del>Meeting Session</del>	Compilation of all information received on the alleged IUU fishing activities into the Draft IUU Vessels List together with the IUU Vessel List.  Transmit the Draft IUU Vessels List to all CPCs and to flag States with vessels on the list (if not CPCs).	IOTC Executive Secretary	8
3	15 days before CoC <del>Session meeting</del>	Provide any information to the <del>IOTC</del> Executive Secretary regarding the alleged IUU fishing activities.	Flag States	10
4	10 days before CoC <del>Session meeting</del>	Transmit the Draft IUU Vessels List, and any additional information on vessels on the IUU Vessels List pursuant to paragraph 22 to all CPCs and to flag States with vessels on the list (if not CPCs).	IOTC Executive Secretary	11
5	Any time	Submit to the <del>IOTC</del> Executive Secretary any additional information—__relevant to the establishment of the IUU Vessels List.	CPCs and flag States	12
6	As soon as practicable prior to CoC <del>Session</del>	Circulate additional information pursuant to paragraph 12.	IOTC Executive Secretary	12
7	CoC <del>Session Meeting</del>	Review the Draft IUU Vessels List including the information provided by the nominating CPC and the flag State, including information/clarification provided by either party during the meeting.  Submit a Provisional IUU Vessel List and provide recommendations to the Commission.	All CPCs, except the flag State and nominating CPC	13-15
8	CoC <del>Session Meeting</del>	Examine the IUU <del>v</del> Vessels List and provide recommendations to the Commission regarding the removal of any vessels.	All CPCs, except the flag State and nominating CPC	17

Step	Timeframe	Actions to be taken	Responsibility	Paragraph
9	Commission <del>annual</del> <del>Session</del> <del>meeting</del>	Review the Provisional IUU Vessels List, including any new information/clarification provided by the nominating CPC and flag State during the <del>session</del> <del>sesión</del> <del>Session</del> ; Review the IUU Vessels List. – Adopt the Final IUU Vessels List.	All CPCs, except the flag State and nominating CPC	17,19
10	Immediately following the annual <del>s</del> Session	Publish the IUU Vessel List on the IOTC website and transmit the IUU Vessels List to the FAO, the organisations set out in paragraph 31 and 32, CPCs and the flag State (if not a CPC).	IOTC Executive Secretary	29