

PROPOSAL TO AMEND RESOLUTION 07/01 TO PROMOTE COMPLIANCE BY NATIONALS OF CONTRACTING PARTIES AND COOPERATING NON-CONTRACTING PARTIES WITH IOTC CONSERVATION AND MANAGEMENT MEASURES

(Submitted by the United Kingdom, Oman and Korea)

NOTE ON REV 1

Further to the feedback received from CPCs, this Rev1 includes the following new changes, highlighted in yellow in the text:

- In the preamble, references added to ‘Contracting Parties and Cooperating Non-Contracting Parties’ and to ‘IOTC’ where appropriate;
- In paragraphs 1, additional text to clarify that CPCs shall only be obliged to take appropriate measures in accordance with their *existing* applicable laws and regulations *or the relevant laws and regulations to be developed* (the same text as used in ICCAT Rec. 22-14);
- In paragraph 1.ii), replacement of the word ‘appropriate’ with the word ‘proportionate’;
- Addition to the end of paragraph 1 to encourage CPCs to cooperate with one another;
- Correction to paragraph 3 (date applicable replaced with ‘supersedes’ language);
- Minor typographical errors corrected.

EXPLANATORY MEMORANDUM

This proposed Resolution would extend the scope of the requirements set out in *IOTC Resolution 07/01 To Promote Compliance by Nationals of Contracting Parties and Cooperating Non-Contracting Parties with IOTC Conservation and Management Measures*, to enhance the ability of IOTC CPCs to contribute to the global fight to eliminate Illegal, Unreported and Unregulated (IUU) fishing activities. These activities threaten the precious environments of our oceans and the livelihoods and legitimate economic interests of those that depend on them.

IUU fishing activities typically do not happen in isolation and may be facilitated and/or supported by a much wider network of actors. For example, IUU operators (including owners and beneficial owners) may employ or utilise international corporate structures such as insurance providers and other financial arrangements to limit their liability and avoid regulation. However, the scope of the requirements of Resolution 07/01 is currently limited to investigating allegations and/or reports concerning the alleged involvement of nationals (defined as persons naturally or legally subject to the jurisdiction of an IOTC CPC) directly involved in IUU fishing.

The amendments to Resolution 07/01 that are being proposed seek to ensure that such wider networks of actors are also subject to investigation. To do this, the proposal extends the scope of requirements set out in Resolution 07/01 to undertake such investigations, so that they cover not only nationals alleged or reported to be directly involved with such activities, but also those nationals alleged or reported to be responsible for, benefitting from or supporting such activities.

RESOLUTION**0724/01XX****TO PROMOTE COMPLIANCE BY NATIONALS OF CONTRACTING PARTIES AND COOPERATING
NON-CONTRACTING PARTIES WITH IOTC CONSERVATION AND MANAGEMENT MEASURES****The Indian Ocean Tuna Commission (IOTC),**

CONVINCED that illegal, unreported and unregulated (IUU) fishing compromises the objectives of the Agreement for the Establishment of the IOTC;

CONCERNED that some Contracting Parties and Cooperating Non-Contracting Parties (CPCs)² ~~flag States~~ do not comply with their obligations regarding jurisdiction and control according to international law in respect of fishing vessels entitled to fly their flag that carry out their activities in the IOTC area of competence, and that as a result these vessels are not under the effective control of such ~~flag States~~ CPCs;

CONSCIOUS that, without prejudice to the primacy of the responsibility of the flag State, taking action in accordance with existing domestic law against individuals who engage in, or support, IUU fishing and fishing-related activities is essential to combat such activities;

AWARE that the lack of effective control facilitates fishing by these vessels in the IOTC area of competence in a manner that undermines the effectiveness of IOTC Conservation and Management Measures, and can lead to IUU fishing activities;

CONCERNED that vessels that carry out activities in the IOTC area of competence which do not comply with the IOTC Conservation and Management Measures are benefiting from the 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 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 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;

RECALLING that CPCs should cooperate in taking appropriate action to deter any activities which are not consistent with the objectives of the IOTC Agreement;

DESIRING, as a first step, to enhance cooperation between CPCs through facilitating measures being taken against natural or legal persons, subject to their jurisdiction, that have engaged in IUU fishing activities;

MINDFUL of the fact that international corporate structures, insurance providers and other financial arrangements are often employed by IUU operators (including owners and beneficial owners) to limit their liability and avoid regulation, and aware of the need for CPCs to encourage and support investigation of such practices;

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

1. Without prejudice to the primacy of the responsibility of the flag State, the CPCs shall take appropriate measures, subject to and in accordance with their existing applicable laws and regulations or the relevant laws and regulations to be developed:
 - i) to investigate and to verify any allegations and/or reports concerning the engagement of any natural or legal persons subject to their jurisdiction in the activities described, *inter alia*, in paragraph ~~44~~ of the Resolution ~~06/01~~ 18/03 *on Establishing a List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated Fishing in the IOTC Area.*



- i bis) to investigate and to verify allegations and/or reports that natural or legal persons subject to their jurisdiction are responsible for, benefiting from or supporting the activities referred to in point i) above (for example e.g. as operators, owners, including beneficial owners, logistics and service providers, including insurance providers and other financial services providers);
- ii) to take proportionate appropriate, effective and deterrent actions in response to any verified activities referred to in paragraph 1 i) and 1 i) bis); and
- iii) to cooperate for the purpose of implementing the measures and actions referred to in paragraph 1 i) and 1 i) bis);

To this end, relevant agencies of CPCs should cooperate to implement IOTC Conservation and Management Measures and CPCs shall seek the cooperation of the industries within their jurisdiction. CPCs are also encouraged to cooperate with each other in carrying out the actions and measures set out in this paragraph.

2. To assist with the implementation of this Resolution, CPCs shall submit reports subject to the national laws of confidentiality to the IOTC Secretariat and other CPCs on the actions and measures taken in accordance with paragraph 1, in a timely fashion.
3. Resolution 07/01 To Promote Compliance by Nationals of Contracting Parties and Cooperating Non-Contracting Parties with IOTC Conservation and Management Measures is superseded by this Resolution. These provisions shall be applicable from 1 July 2008. CPCs may voluntarily decide to implement these provisions prior to this date.