

RECOMMENDATION 03/05
CONCERNING TRADE MEASURES

The Indian Ocean Tuna Commission (IOTC),

RECALLING that the IOTC adopted Resolution 01/07 concerning its support of the IPOA-IUU Plan,

CONSIDERING the need for action to ensure the effectiveness of the IOTC objectives;

CONSIDERING the obligation of all Contracting Parties and Co-operating Non-contracting Parties (hereinafter CPCs) to respect the IOTC conservation and management measures;

AWARE of the necessity for sustained efforts by CPCs to ensure the enforcement of IOTC's conservation and management measures, and the need to encourage non-Contracting Parties (hereinafter NCPs) to abide by these measures;

NOTING that trade restrictive measures should be implemented only as a last resort, where other measures have proven unsuccessful to prevent, deter and eliminate any act or omission that diminishes the effectiveness of IOTC conservation and management measures;

ALSO NOTING that trade restrictive measures should be adopted and implemented in accordance with international law, including the principles, rights and obligations established in WTO Agreements, and be implemented in a fair, transparent and non-discriminatory manner.

Recommends, in accordance with the provisions of Article 9, paragraph 8 of the IOTC Agreement, that:

1. CPCs that import tuna and tuna-like fish products or in whose ports those products are landed, should collect and examine as much import or landing data and associated information as possible and submit the following information to the Commission each year:
 - (a) Names of the vessels that caught and produced such tuna or tuna-like species products,
 - (b) Flag States of those vessels,
 - (c) Species of tuna and tuna-like species of the products,
 - (d) Areas of catch (Indian Ocean, or other area),
 - (e) Product weight by product type,
 - (f) Points of export,
 - (g) Names and addresses of owners of the vessels,
 - (h) Registration
2. (a) The Commission, through the Compliance Committee should identify each year:
 - (i) The CPCs which have failed to discharge their obligations under the IOTC Agreement in respect of IOTC conservation and management measures, in particular, by not taking measures or exercising effective control to ensure compliance with IOTC conservation and management measures by the vessels flying their flag; and/or
 - (ii) The NCPs which have failed to discharge their obligations under international law to co-operate with IOTC in the conservation and management of tuna and tuna-like species, in particular, by not taking

measures or exercising effective control to ensure that their vessels do not engage in any activity that undermines the effectiveness of IOTC conservation and management measures.

(b) These identifications should be based on a review of all information provided in accordance with paragraph 1 or, as appropriate, any other relevant information, such as: the catch data compiled by the Commission; trade information on these species obtained from National Statistics; the IOTC statistical document programme; the list of the IUU vessels adopted by the IOTC, as well as any other information obtained in the ports and on the fishing grounds.

(c) In deciding whether to make identification, the Compliance Committee should consider all relevant matters including the history, and the nature, circumstances, extent, and gravity of the act or omission that may have diminished the effectiveness of IOTC conservation and management measures.

3. The Commission should request the CPCs and NCPs concerned to rectify the act or omission identified under Paragraph 2 so as not to diminish the effectiveness of the IOTC conservation and management measures. The Commission should notify identified CPCs and NCPs of the following:

- (a) the reason(s) for the identification with all available supporting evidence;
- (b) the opportunity to respond to the Commission in writing at least 30 days prior to the annual meeting of the Commission with regard to the identification decision and other relevant information, for example, evidence refuting the identification or, where appropriate, a plan of action for improvement and the steps they have taken to rectify the situation; and

in the case of an NCP, an invitation to participate as an observer at the annual meeting where the issue will be considered.

4. CPCs are encouraged jointly and individually to request the CPC/NCPs concerned to rectify the act or omission identified under Paragraph 2 so as not to diminish the effectiveness of the IOTC conservation and management measures

5. The Secretary should, by more than one means of communication, transmit the Commission's request to the identified CPC or NCP. The Secretary should seek to obtain confirmation from the CPC or the NCP that it received the notification.

6. The Compliance Committee should evaluate the response of the CPCs or NCPs, together with any new information, and propose to the Commission to decide upon one of the following actions:

- (a) the revocation of the identification;
- (b) the continuation of the identification status of the CPC or NCP; or
- (c) the adoption of non-discriminatory trade restrictive measures.

In the case of CPCs, actions such as the reduction of existing quotas or catch limits should be implemented to the extent possible before consideration is given to the application of trade restrictive measures. Trade measures should be considered only where such actions either have proven unsuccessful or would not be effective.

7. If the Commission decides upon the action described in paragraph 6 (c), it should adopt, pursuant to Article IX paragraph 1 of the IOTC Agreement, to take non-discriminatory trade restrictive measures, consistent with their international obligations. The Commission should notify the CPCs and NCPs concerned of the decision and the underlying reasons in accordance with the procedures specified in Paragraph 5.

8. CPCs should notify the Commission of any measures that they have taken for the implementation of the non-discriminatory trade restrictive measures adopted in accordance with Paragraph 7.

In order for the Commission to adopt the lifting of trade restrictive measures, the Compliance Committee should review each year all trade restrictive measures adopted in accordance with Paragraph 7. Should this review show

that the situation has been rectified, the Compliance Committee should recommend to the Commission the lifting of the non-discriminatory trade restrictive measures. Such decisions should also take into consideration whether the CPCs and/or NCPs concerned have taken concrete measures capable of achieving lasting improvements of the situation.

Where exceptional circumstances so warrant or where available information clearly shows that, despite the lifting of trade-restrictive measures, the CPC or NCP concerned continues to diminish the effectiveness of IOTC conservation and management measures, the Commission may immediately decide on action including, as appropriate, the imposition of trade-restrictive measures in accordance with Paragraph 7. Before making such a decision, the Commission should request the CPC or NCP concerned to discontinue its wrongful conduct and should provide the CPC or NCP with a reasonable opportunity to respond.

11. The Commission should establish annually a list of CPCs and NCPs that have been subject to a trade restrictive measure pursuant to Paragraph 7 and, with respect to NCPs, are considered as Non Cooperating Non Contracting Parties to IOTC.