

AMENDMENT TO RESOLUTION 02-04 ON THE ESTABLISHMENT OF A LIST OF IUU VESSELS

Submitted by EC

1. Background

In 2002, the IOTC adopted a resolution that provides for the identification of individual vessels engaged in IUU activities. This resolution lays down the process and procedures under which vessels would be put on the IUU list and the process to remove them from the list. Other Tuna regional fisheries organizations have also introduced such provisions.

Inevitably, with such a new management instrument, issues have arisen as we gain experience of the implementation of the resolution. The issues relate to the need to ensure full transparency in the examination of individual cases, the need to take decisions on de-listing in the inter-sessional period, and the removal of vessels from the list.

2. Content of the proposal

The proposal covers three essential elements:

- Ensure that throughout the process the vessel owners in question are kept fully informed by their Flag States
- Provide a procedure for the taking of decisions in the inter-sessional period, notably to de-list vessels
- Refine the timetable on the submission of information so that the IOTC can have a list which is up to date.

**PROPOSAL C: AMENDING IOTC RESOLUTION (02/04) ESTABLISHING A LIST OF
VESSELS PRESUMED TO HAVE CARRIED OUT ILLEGAL, UNREGULATED AND
UNREPORTED FISHING IN THE IOTC AREA**

THE INDIAN OCEAN TUNA COMMISSION (IOTC),

RECALLING that the FAO Council adopted on 23 June 2001 an International Plan of Action to prevent, to deter and eliminate illegal, unregulated and unreported fishing (IPOA). This plan stipulates that the identification of the vessels carrying out IUU activities should follow agreed procedures and be applied in an equitable, transparent and non discriminatory way,

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

RECALLING that IOTC has already adopted measures against IUU fishing activities and, in particular, against large-scale tuna longline vessels,

CONCERNED by the fact that IUU fishing activities in the IOTC area continue, and these activities diminish the effectiveness of IOTC conservation and management measures,

FURTHER CONCERNED that there is evidence of a large number of vessel owners engaged in such fishing activities which have re-flagged their vessels to avoid compliance with IOTC management and conservation measures,

DETERMINED to address the challenge of an increase in IUU fishing activities by way of counter-measures to be applied in respect to the vessels, 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 Organisation (WTO) Agreement,

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

Definition of IUU Activities

1. For the purposes of this resolution, the fishing vessels flying the flag of a non-Contracting Party are presumed to have carried out illegal, unregulated and unreported fishing activities in the IOTC Area, inter alia, when a Contracting Party or Co-operating non-Contracting Party presents evidence that such vessels:
 - a. Harvest tunas and tuna-like species in the IOTC Area and are not registered on the IOTC Record of Vessels authorised to fish for tuna and tuna-like species in the IOTC area, or
 - b. Harvest tuna and tuna-like species in the IOTC Area, whose flag state is without quotas, catch limit or effort allocation under IOTC conservation and management measures where appropriate, or
 - c. Do not record or report their catches made in the IOTC Area, or make false reports, or
 - d. Take or land undersized fish in contravention of IOTC conservation measures, or
 - e. Fish during closed fishing periods or in closed areas in contravention of IOTC conservation measures,
 - f. Use prohibited fishing gear in contravention of IOTC conservation measures,
 - g. Tranship with, or participate in joint operations such as re-supply or re-fuelling vessels included in the IUU list, or
 - h. Harvest tuna or tuna-like species in the waters under the national jurisdiction of the coastal States in the IOTC Area without authorisation and/or infringes its laws and regulations, without prejudice to the sovereign rights of coastal States to take measures against such vessels, or
 - i. Are without nationality and harvest tunas or tuna-like species in the IOTC Area, and/or
 - j. Engage in fishing activities contrary to any other IOTC conservation and management measures.

Information on Alleged IUU Activities

2. Contracting Parties and Co-operating non-Contracting Parties transmit every year to the Secretary at least 120 days before the Annual Meeting, the list of vessels flying the flag of a non-Contracting Party presumed to be carrying out IUU fishing activities in the IOTC Area during the current and previous year, accompanied by the supporting evidence concerning the presumption of IUU fishing activity.

3. This list shall be based on the information collected by Contracting Parties and Cooperating non-Contracting Parties, entities and fishing entities, *inter alia*, under:

- *Resolution 99/02 Calling for Action Against Fishing Activities by Large-Scale Flag of Convenience Longline Vessels;*
- *Resolution 01/02 Relating to Control of Fishing Activities;*
- *Resolution 01/03 Establishing a Scheme to Promote Compliance by Non-Contracting Party Vessels with Resolutions Adopted by IOTC;*
- *Resolution 01/06 Concerning the IOTC Bigeye Tuna Statistical Document Programme;*
- *Resolution 02/01 Relating to the Establishment of an IOTC Programme of Inspection in Port;*
- *Resolution 05/02 Concerning the Establishment of an IOTC Record of Vessels over 24 Metres Authorised to Operate in the IOTC Area*
- *Resolution 05/04 Concerning Registration And Exchange Of Information On Vessels, Including Flag Of Convenience Vessels, Fishing For Tropical Tunas And Swordfish In The IOTC Area Of Competence*

Draft IUU List

4. On the basis of the information received pursuant to paragraph 2, the Secretary shall draw up a draft IUU list. This list shall be drawn up in conformity with Annex I. The Secretary shall transmit it together with the current IUU List as well as all the evidence provided to Contracting Parties and Co-operating non-Contracting Parties, Entities and Fishing Entities, and to non-Contracting Parties whose vessels are included on these lists before at least 90 days before the Annual Meeting. Contracting Parties, Co-operating non-Contracting Parties and non-Contracting Parties will transmit their comments, as appropriate, including evidence showing that the listed vessels have neither fished in contravention to IOTC conservation and management measures nor had the possibility of fishing tuna and tuna-like species in the IOTC Area, at least 30 days before the Annual Meeting to IOTC.

The Flag State shall notify the owner of the vessels of its inclusion in the Draft IUU List and of the consequences that may result from their inclusion being confirmed in the IUU List adopted by the Commission.

5. Upon receipt of the draft IUU list, Contracting Parties and Co-operating non-Contracting Parties shall closely monitor these vessels included in the draft IUU list in order to determine their activities and possible changes of name, flag and or registered owner.

Provisional IUU List

6. On the basis of the information received pursuant to paragraph 3, the Secretary shall draw up a provisional list which he will transmit 2 weeks in advance to the Commission Meeting to the Contracting Parties and Co-operating non-Contracting Parties and to the non-Contracting Parties concerned together with all the evidence provided. This list shall be drawn up in conformity with Annex I.

7. Contracting Parties and Co-operating non-Contracting Parties may at any time submit to the Secretary any additional information, which might be relevant for the establishment of the IUU list. The Secretariat shall circulate the information, at latest before the annual meeting, to the Contracting Parties and Co-operating non-Contracting Parties and to the non-Contracting Parties concerned, together with all the evidence provided.

8. The Compliance Committee shall examine each year the provisional list, as well as the information referred to in paragraphs 3, 4 and 6.

9. The Compliance Committee shall remove a vessel from the provisional list if the flag State demonstrates that:

- a) The vessel did not take part in any IUU fishing activities described in paragraph 1, or
- b) It has taken effective action in response to the IUU fishing activities in question, including, inter alia, prosecution and imposition of sanctions of adequate severity.

10. Following the examination referred to in paragraph 8, at each IOTC Annual meeting, the IOTC Compliance Committee shall:

- a) adopt a Provisional IUU Vessel list following consideration of the Draft IUU list and information and evidence circulated under paragraphs 4, 6 and 7. The Provisional IUU Vessel list shall be submitted to the Commission for approval.
- b) recommend to the Commission which, if any, vessels should be removed from the IUU Vessel List adopted at the previous IOTC Annual meeting, following consideration of that List, of the information and evidence circulated under paragraph 7 and the information requested to Flag State in paragraph 16.

IUU LIST

11. On adoption of the list, the Commission shall request non-Contracting Parties, whose vessels appear on the IUU list,

- a) to notify the owner of the vessel identified on the IUU list of its inclusion on the list and the consequences which result from being included on the list, as referred to in paragraph 12
- b) to take all the necessary measures to eliminate these IUU fishing activities, including if necessary, the withdrawal of the registration or of the fishing licences of these vessels, and to inform the Commission of the measures taken in this respect.

12. Contracting Parties and Co-operating non-Contracting Parties shall take all necessary measures, under their applicable legislation:

- a) So that the fishing vessels, the mother-ships and the cargo vessels flying their flag do not participate in any transshipment with vessels registered on the IUU list;
- b) So that IUU vessels that enter ports voluntarily are not authorized to land, tranship re-fuelling or re-supply, or other commercial transactions ;
- c) To prohibit the chartering of a vessel included on the IUU list;
- d) To refuse to grant their flag to vessels included in the IUU list, except if the vessel has changed owner and the new owner has provided sufficient evidence demonstrating the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel, or having taken into account all relevant facts, the flag State determines that granting the vessel its flag will not result in IUU fishing;
- e) To prohibit the imports, or landing and/or transshipment, of tuna and tuna-like species from vessels included in the IUU list;
- f) To encourage the importers, transporters and other sectors concerned, to refrain from transaction and transshipment of tuna and tuna-like species caught by vessels included in the IUU lists;
- g) To collect and exchange with other Contracting Parties or Co-operating non-Contracting Parties any appropriate information with the aim of searching, controlling and preventing false import/export certificates regarding tunas and tuna-like species from vessels included in the IUU list.

13. The Secretary will take any necessary measure to ensure publicity of the IUU vessels list adopted by IOTC pursuant to paragraph 10, in a manner consistent with any applicable confidentiality requirements, and through electronic means, by placing it on the IOTC website. Furthermore, the Secretary will transmit the IUU

vessels list to other regional fisheries organisations for the purposes of enhanced co-operation between IOTC and these organisations in order to prevent, deter and eliminate illegal, unreported and unregulated fishing.

14. This recommendation shall apply initially to large-scale fishing vessels flying the flag of non-Contracting Parties. The Commission shall, at its annual meeting in 2007, review and, as appropriate, revise this recommendation with a view to its extension to other types of IUU fishing activities of non-Contracting Party vessels and, to Contracting Party, Co-operating non-Contracting Party vessels.

15. Without prejudice to the rights of flag states and coastal states to take proper action consistent with international law, the Contracting Parties and Co-operating non-Contracting Parties should not take any unilateral trade measures or other sanctions against vessels provisionally included in the draft IUU list, pursuant to paragraph 4, or which have been already removed from the list, pursuant to paragraph 9, on the grounds that such vessels are involved in IUU fishing activities.

Deletion from the IUU List

16. A non-Contracting Party whose vessel appears on the IUU list may request the removal from the list of this vessel from the list during the inter-sessional period by providing the following information:

- a) It has adopted measures so that this vessel respects all IOTC conservation measures
- b) It will be able to assume effectively its responsibilities with respect to this vessel in particular as regards the monitoring and control of the fishing activities executed by this vessel in the IOTC Agreement Area
- c) it has taken effective action in response to the IUU fishing activities in question including prosecution and imposition of sanctions of adequate severity.
- d) the vessel has changed ownership and that the new owner can establish the previous owner no longer has any legal, financial or real interests in the vessel or exercises control over it and that the new owner has not participated in IUU fishing.

Inter Sessional Modification of the IUU List

17. The non-Contracting Party shall send its request for the removal of the identified vessel from the IUU list to the IOTC Executive Secretary accompanied by the supporting information referred to in paragraph 16.

18. On the basis of the information received in accordance with paragraph 16, the Secretary will transmit the removal request, with all the supporting information to the Contracting Parties within 15 days following the notification of the removal request.

19. The Contracting Parties will examine the request to remove the vessel and arrive at a conclusion on either the removal from, or the maintenance of the vessel on the IUU list by mail within 30 days following the notification by the Secretariat. The result of the examination of the request by mail will be checked by the Secretary at the end of the 30-day period following the date of the notification by the Secretary referred to in paragraph 18. If a Contracting Party does not reply the notification from the Secretary, it will be considered as an abstention from the vote and form part of the quorum for the decision-making.

20. The Secretary will communicate the result of examination of the removal request as of the end of the 30-day period following the date of the notification referred to in paragraph 17 to all Contracting Parties.

21. If the result of the exercise indicates that there is a two-thirds majority of the Contracting Parties in favour of removal of the vessel from the IUU list, the Chairperson of the IOTC, on behalf of the IOTC, will communicate the result to all the Contracting Parties and to the non-Contracting Party which requested the removal of its vessel from the IUU list. In the absence of a two-thirds majority, the vessel will be maintained on the IUU list and the Secretary will inform the non-Contracting Party accordingly.

22. The Secretary of the IOTC will take the necessary measures to remove the vessel concerned from the IOTC IUU vessels list, as published on the IOTC website. Moreover, the Secretary of the IOTC will forward the decision of removal of the vessel to other regional fishery organisations.

ANNEX I

Information to be included in all IUU Lists (Draft, Provisional and Final)

The Draft IUU List, as well as the Provisional IUU List, shall contain the following details:

- a. name of vessel and previous names, if any;
- b. flag of vessel and previous flag, if any;
- c. owner of vessel and previous owners, including beneficial owners, if any;
- d. operator of vessel and previous operators, if any;
- e. call sign of vessel and previous call sign, if any;
- f. Lloyds/IMO number;
- g. photographs of the vessel, where available;
- h. date vessel was first included on the IUU List;
- i. summary of activities which justify inclusion of the vessel on the List, together with references to all relevant documents informing of and evidencing those activities