

RESOLUTION 02/04
**ON 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;

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 list 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, or
 - f) Use prohibited fishing gear in contravention of IOTC conservation measures, or

- g) Tranship with 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.
2. Contracting Parties and Co-operating non-Contracting Parties transmit every year to the Secretary before 15th July, 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 non-Contracting co-operating Parties, entities and fishing entities, *inter alia*, under:
 - *Resolution 98/04 Concerning Registration and Exchange of Information on Vessels Including Flag of Convenience Vessels, Fishing for Tropical Tunas in the IOTC Area of Competence;*
 - *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 02/05 Concerning the Establishment of an IOTC Record of Vessels over 24 Metres Authorised to Operate in the IOTC Area;*
 4. On the basis of the information received pursuant to paragraph 2, the Secretary shall draw up a draft IUU list and shall transmit it together with all the evidence provided to Contracting Parties and Co-operating non-Contracting Parties, Entities and Fishing Entities, as well as to non-Contracting Parties whose vessels are included on these lists before 15 August of each year. 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, before 30 September to IOTC.
 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.

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.
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 and 5.
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 6, the Compliance Committee shall submit to the Commission for approval, the provisional list of the vessels identified as carrying out IUU fishing activities in the IOTC area.
11. On adoption of the list, the Commission shall request non-Contracting Parties, whose vessels appear on the IUU list, 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 or tranship therein;
 - 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 8, 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 2003, 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 3, or which have been already removed from the list, pursuant to paragraph 6, on the grounds that such vessels are involved in IUU fishing activities.