RESOLUTION 11/03
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–IUU). 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;

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

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;

RECALLING ALSO that the IOTC adopted Resolution 07/02 to enhance the implementation of IOTC conservation and management measures through establishing a Record of fishing vessels authorised to operate in the IOTC Area of competence;

CONCERNED by the fact that IUU fishing activities in the IOTC area of competence 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 who 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 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 Organisation (WTO) Agreement;

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

Definition of IUU Fishing Activities

1. For the purposes of this resolution, fishing vessels are presumed to have carried out illegal, unreported and unregulated fishing activities in the IOTC Area of competence, inter alia, when a Contracting Party or Cooperating non–Contracting Party (hereinafter referred to as "CPCs") presents evidence that such vessels:

   (a) Harvest tuna or tuna–like species in the IOTC Area of competence and are neither registered on the IOTC Record of Vessels authorised to fish for tuna and tuna–like species in the IOTC area of competence, in accordance with Resolution 07/02, nor recorded in the Active list of Vessels of IOTC, or

   (b) Harvest tuna or tuna–like species in the IOTC Area of competence, when their flag state is without sufficient quotas, catch limit or effort allocation under IOTC conservation and management measures where applicable, or

   (c) Do not record or report their catches made in the IOTC Area of competence in accordance with IOTC reporting requirements, 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, or participate in joint operations such as re–supplying or re–fuelling, vessels included in the IUU Vessels List, or

(h) Harvest tuna or tuna–like species in the waters under the national jurisdiction of a coastal State in the IOTC Area of competence without authorisation and/or infringe the coastal state's laws and regulations, (this is without prejudice to the sovereign rights of coastal States to take measures against such vessels), or

(i) Are without nationality and harvest tuna or tuna–like species in the IOTC Area of competence, or

(j) Engage in fishing, including transhipping, re–supplying or re–fuelling, contrary to any other IOTC conservation and management measures.

Information on Alleged IUU Fishing Activities

2. CPCs shall transmit every year to the Secretary at least 70 days before the Annual Meeting, a list of the vessels presumed to have been carrying out IUU fishing activities in the IOTC Area of competence during the current and previous year, accompanied by evidence supporting the presumption of IUU fishing activity. The IOTC Reporting Form for Illegal Activity (Annex I) shall be used.

3. This list and evidence shall be based on information collected by CPCs from all relevant sources including but not limited to:

(a) Relevant resolutions of the IOTC, as adopted and amended from time to time;

(b) Reports from CPCs Parties relating to IOTC conservation and management measures in force;

(c) Trade information obtained on the basis of relevant trade statistics such as Food and Agriculture Organization of the United Nations (FAO) data, statistical documents and other national or international verifiable statistics; and

(d) Any other information obtained from port States and/or gathered from the fishing grounds that is suitably documented.

Draft IUU Vessels List

4. On the basis of the information received pursuant to paragraph 2, the Secretary shall draw up a Draft IUU Vessels List. This list shall be drawn up in conformity with Annex II. The Secretary shall transmit it together with the current IUU Vessels List as well as all the evidence provided to CPCs and to non–Contracting Parties whose vessels are included on these lists at least 55 days before the Annual Meeting. CPCs and non–Contracting Parties will transmit any comments to the Secretary at least 15 days before the Annual Meeting of the IOTC, 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 of competence.

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

6. Upon receipt of the Draft IUU Vessels list, CPCs shall closely monitor the vessels included in the Draft IUU Vessels List in order to determine their activities and possible changes of name, flag and or registered owner.

Provisional IUU Vessels List

7. On the basis of the information received pursuant to paragraph 2, the Secretary shall draw up a Provisional IUU Vessels List and transmit it two weeks in advance of the Commission Meeting to the CPCs and to the non–Contracting Parties concerned together with all the evidence and any comments provided. This list shall be drawn up in conformity with Annex II.

8. CPCs and non–Contracting Parties may at any time submit to the Secretary any additional information, which might be relevant to the establishment of the IUU Vessels List. The Secretariat shall circulate the information before the annual meeting to CPCs concerned, together with all the evidence provided.

9. The Compliance Committee shall examine each year the Provisional IUU Vessels List, as well as the information referred to in paragraphs 2, 3, 4, 7 and 8.

10. The Compliance Committee shall remove a vessel from the Provisional IUU Vessels 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. CPCs will report any actions and measures they have taken in accordance with Resolution 07/01, in order to promote compliance by vessels of CPCs with IOTC conservation and management measures.

11. Where Flag State evidence provided to support the details referred to in paragraphs 10a or 10b is submitted after the 15 day deadline referred to in paragraph 4 (including any submission of evidence made during the Compliance Committee's annual meeting) the vessel shall remain on the Provisional IUU List to allow consideration to occur by the relevant authorities inter–sessionally as described in paragraph 14. In cases where no evidence has been provided by the Flag State, the Compliance Committee shall recommend to the Commission that the vessel be included on the IOTC IUU Vessel list.

12. Following the examination referred to in paragraph 9, at each IOTC Annual meeting, the IOTC Compliance Committee shall:

    a) Adopt a Provisional IUU Vessels List following consideration of the Draft IUU Vessels List and information and evidence circulated under paragraphs 4, 7 and 8.

    b) Recommend to the Commission which, if any, vessels should be removed from the IUU Vessels List adopted at the previous IOTC Annual meeting, following consideration of that List, of the information and evidence circulated under paragraph 8 and the information supplied by Flag States in accordance with paragraph 19.

IUU Vessels List

13. Taking into account the recommendations and the Provisional IUU Vessels List adopted by the Compliance Committee, and the information provided under paragraph 2, 3, 4, 7 and 8, the Commission shall adopt the IOTC IUU Vessels List.

14. If the Commission is unable to decide, on the basis of the information provided under paragraphs 2, 3, 4, 7 and 8, whether or not a vessel should be included on the IOTC IUU Vessels List, the Commission may suspend its decision and request that supplementary information or evidence be submitted both by the relevant States, including the CPC that transmitted evidence on presumed IUU fishing activities by that vessel and he the Flag State. The consideration of that vessel's inclusion on the IOTC IUU Vessels List shall continue inter sessionally by electronic means as follows:

    a) Relevant CPC and the Flag State are invited to submit supplementary information or evidence to the IOTC Secretary within 90 days;

    b) Immediately following this period of 90 days, the Secretary will transmit the proposal to put the vessel on the IOTC IUU Vessels list to all CPCs, along with all the supplementary information or evidence received under paragraph 14(a);

    c) The CPCs will examine the proposal and supplementary information or evidence to put the vessel on the IOTC IUU Vessels List and notify the Secretary, within 30 days following this transmission, <u>whether or not they support the vessel being included</u> on the IOTC IUU Vessels List;

    d) At the end of the 30 days period, the Chairperson shall ascertain the outcome of the CPC's decision on the proposal in accordance with the following:

        i) A majority of the Members of the Commission shall constitute the quorum.

ii) if A two–thirds majority of the Members of those which have expressed their position and cast affirmative or negative votes are in favour of putting the vessel on the IOTC IUU Vessels List, the vessel shall be included on this list.

iii) If the two–thirds majority of the Members of those which have expressed their position and cast affirmative or negative votes is not met, the vessel should remain in the Provisional IUU Vessels List.

e) The Secretary shall communicate the result of the decision, along with a copy of the amended IOTC IUU Vessels List or the confirmed Provisional IOTC Vessel List, to all CPCs, the Flag State of the vessels (if is not a CPC), and any non–Contracting Party that may have an interest. The amended IOTC IUU Vessels List will have effect immediately after the Secretary communicates the result of the decision.

15. On adoption of the IOTC IUU Vessels List, the Secretary shall request CPCs, whose vessels appear on the list:

a) To notify the owner of the vessel identified on the IUU Vessels List of its inclusion on the list and the consequences which result from being included on the list, as referred to in paragraph 16;

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.

16. CPCs 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 transhipment with vessels on the IUU Vessels list;

b) So that IUU vessels that enter ports voluntarily are not authorized to land, tranship, refuel, re–supply, or engage in other commercial transactions;

c) to prohibit the chartering of a vessel included on the IUU Vessels List;

d) To refuse to grant their flag to vessels included in the IUU Vessels 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, landing or transhipment, of tuna and tuna–like species from vessels included in the IUU Vessels List;

f) To encourage the importers, transporters and other sectors concerned, to refrain from transaction and transhipment of tuna and tuna–like species caught by vessels included in the IUU Vessels List;

g) To collect and exchange with other Contracting Parties or Co–operating 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 List.

17. The Secretary will take any necessary measure to ensure publicity of the IUU Vessels List adopted by IOTC pursuant to paragraph 12, in a manner consistent with any applicable confidentiality requirements, and through electronic means, including placing it on the IOTC website. Furthermore, the Secretary will transmit the IUU Vessels List to other regional fisheries management 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.

18. Without prejudice to the rights of Flag States and coastal states to take proper action consistent with international law, the CPCs should not take any unilateral trade measures or other sanctions against vessels provisionally included in the Draft IUU Vessels List, pursuant to paragraph 4, or which have been already removed from the IUU Vessels List, pursuant to paragraph 10, on the grounds that such vessels are involved in IUU fishing activities.

Deletion from the IUU Vessels List

19. A CPC whose vessel appears on the IUU Vessels List may request the removal of this vessel from the list during the inter–sessional period by providing the following information and supporting evidence:

a) It has adopted measures such that the vessel conforms with all IOTC conservation measures;

b) It is and will continue 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 Area of competence;

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 removal of vessels from the IUU Vessels List

20. The CPC shall send its request for the removal of a vessel from the IUU Vessels List to the IOTC Secretary accompanied by the supporting information referred to in paragraph 19.

21. On the basis of the information received in accordance with paragraph 19, the Secretary will transmit the removal request, with all the supporting information to all CPCs within 15 days following the notification of the removal request.

22. The CPCs will examine the request to remove the vessel and notify the Executive Secretary of their conclusion to either remove the vessel from, or keep the vessel on, the IUU Vessels List, by mail within 30 days following the notification by the Secretary. <u>At the end of the 30 day period, the Chairperson shall ascertain the outcome of the CPCs' decision on the proposal in accordance with the following</u>:

    i) A majority of the Members of the Commission shall constitute the quorum.

    ii) if a two–thirds majority of the Members of those which have expressed their position and cast affirmative or negative votes are in favour of removing a vessel from the IOTC IUU Vessels List, the vessel shall be removed from this list.

    iii) if the two–thirds majority of the Members of those which have expressed their position and cast affirmative or negative votes is not met, the vessel remains in the IOTC IUU Vessels List.

23. The Secretary shall communicate the result of the decision, along with a copy of the amended IOTC IUU Vessels List, to all CPCs, the Flag State of the vessels (if is not a CPC), and any non–Contracting Party that may have an interest. The amended IOTC IUU Vessels List will have effect immediately after the Secretary communicates the result of the decision.

24. Where the Commission decides to remove a vessel from the IUU Vessels list pursuant to paragraph 23, the Secretary 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 will forward the decision of removal of the vessel to other regional fishery management organisations.

25. Resolution 09/03 *On Establishing A List Of Vessels Presumed To Have Carried Out Illegal, Unregulated And Unreported Fishing In The IOTC Area* is superseded by this Resolution.

ANNEX I

IOTC REPORTING FORM FOR ILLEGAL ACTIVITY

Recalling IOTC Resolution 11/03 *On establishing a list of vessels presumed to have carried out illegal, unregulated and unreported fishing in the IOTC area*, attached are details of illegal activity recorded in .....

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 / Beneficial Owner/s (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 elements of IOTC Resolution 11/03 contravened, and provide relevant details including date, location, source of information. Extra information can be provided in an attachment if necessary.)

Item	Definition	Indicate
a	Harvest tuna or tuna–like species in the IOTC Area of competence and are not registered on the IOTC Record of Vessels authorised to fish for tuna and tuna–like species in the IOTC Area of competence	
b	Harvest tuna or tuna–like species in the IOTC Area of competence, when their flag state is without sufficient quotas, catch limit or effort allocation under IOTC conservation and management measures where applicable	
c	Do not record or report their catches made in the IOTC Area of competence in accordance with IOTC reporting requirements, or make false reports	
d	Take or land undersized fish in contravention of IOTC conservation measures	
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–supplying or re–fuelling, vessels included in the IUU Vessels List	
h	Harvest tuna or tuna–like species in the waters under the national jurisdiction of a coastal State in the IOTC Area of competence without authorisation and/or infringes the coastal state's laws and regulations	
i	Are without nationality and harvest tuna or tuna–like species in the IOTC Area of competence	
j	Engage in fishing or fishing related activities contrary to any other IOTC conservation and management measures	

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 IOTC Secretariat only. No further action is recommended.	
b	Notification of illegal activity to IOTC Secretariat. Recommend notification of activity to flag state.	
c	Recommended for inclusion on IOTC IUU list	

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

The Draft, Provisional and Final IUU Vessels Lists 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. owner of the vessel and previous owner/s, including beneficial owners, if any;
4. operator of the vessel and previous operator/s, if any;
5. call sign of the vessel and previous call sign/s, if any;
6. Lloyds/IMO number, if available;
7. photographs of the vessel, where available;
8. date the vessel was first included on the IOTC IUU Vessels List;
9. summary of the activities which justify inclusion of the vessel on the List, together with references to all relevant supporting documents and evidences.