

REVIEW OF OBJECTIONS RECEIVED UNDER ARTICLE IX.5 OF THE IOTC AGREEMENT

PREPARED BY: IOTC SECRETARIAT, 12 APRIL 2016

PURPOSE

To provide the Commission with an opportunity to review the '*Objections*' received at previous Sessions of the Commission that remain in effect, and consider how such a review process should be carried out.

BACKGROUND

Article IX (paragraphs 5, 6 and 7) of the IOTC Agreement refers to the '*Objections*' procedure for Conservation and Management Measures adopted by the Commission. Specifically:

Para. 5. Any Member of the Commission may, within 120 days from the date specified or within such other period as may be specified by the Commission under paragraph 4, object to a conservation and management measure adopted under paragraph 1. A Member of the Commission which has objected to a measure shall not be bound thereby. Any other Member of the Commission may similarly object within a further period of 60 days from the expiry of the 120-day period. A Member of the Commission may also withdraw its objection at any time and become bound by the measure immediately if the measure is already in effect or at such time as it may come into effect under this article.

Para. 6. If objections to a measure adopted under paragraph 1 are made by more than one-third of the Members of the Commission, the other Members shall not be bound by that measure; but this shall not preclude any or all of them from giving effect thereto.

Para. 7. The Secretary shall notify each Member of the Commission immediately upon receipt of each objection or withdrawal of objection.

History of Objections received:

2013: At the 17th Session of the Commission, pursuant to Article IX.5 of the IOTC Agreement, the IOTC received the 1st formal objection from a Member (India) of the Commission, for four (4) Conservation and Management Measures adopted during the 17th Session of the Commission, as follows:

- **Resolution 13/02** *Concerning the IOTC record of vessels authorised to operate in the IOTC area of competence (This Resolution superseded two previous Resolutions, 01/02 and 07/02)*
- **Resolution 13/03** *On the recording of catch and effort by fishing vessels in the IOTC area of competence (This Resolution superseded Resolution: 12/03)*
- **Resolution 13/06** *On a scientific and management framework on the Conservation of sharks species caught in association with IOTC managed fisheries (This was a new Resolution)*
- **Resolution 13/07** *Concerning a record of licensed foreign vessels fishing for IOTC species in the IOTC area of competence and access agreement information (This Resolution superseded Resolution 12/07)*

This meant that none of these four (4) new Resolutions were legally binding on India. However, the previous versions of these Resolutions (if any), remained binding on India, as follows:

- **Resolution 12/03** *On the recording of catch and effort by fishing vessels in the IOTC area of competence*
- **Resolution 12/07** *Concerning a record of licensed foreign vessels fishing for IOTC species in the IOTC area of competence and access agreement information*

-
- **Resolution 07/02** *Concerning the establishment of an IOTC record of vessels authorised to operate in the IOTC area*
 - **Resolution 01/02** *Relating to control of fishing activities*
-

2014: At the 18th Session of the Commission, the following Conservation and Management Measures were adopted which superseded the previously objected to CMMs, with no further Objections received:

- **Resolution 14/04** *Concerning the IOTC record of vessels authorised to operate in the IOTC area of competence. (superseded Resolution 13/02)*
 - **NOTE:** Resolution 01/02 and Resolution 07/02 were superseded by Resolution 13/02 in 2013 and Resolution 14/04 in 2014. As no Objections were received on 14/04 it is now binding on all Members.
 - **Resolution 14/05** *Concerning a record of licensed foreign vessels fishing for IOTC species in the IOTC area of competence and access agreement information*
 - **NOTE:** Resolution 12/07 was superseded by Resolution 13/07 in 2013 and Resolution 14/05 in 2014. As no Objections were received on 14/05 it is now binding on all Members.
-

2016: Noting the above sequence, the following active Resolution remains non-binding for India:

- **Resolution 13/06** *On a scientific and management framework on the Conservation of sharks species caught in association with IOTC managed fisheries*
-

DISCUSSION

Although paragraph 7 of Article IX of the IOTC Agreement indicates that each Member may withdraw its **Objection**, via notification to the IOTC Secretariat, there is no clear review process for the Commission to review/discuss previous objections received. As such, the Commission may wish to review existing objections to Conservation and Management Measures, and consider developing a formal annual review and potential withdrawal process for Members to follow.

On 9 July 2014, the IOTC Secretariat communicated via letter IOTC Ref: 5416 ([Appendix I](#)) that the Objection received by India came into effect on 14 November 2013.

On 2 October 2014, the IOTC Secretariat communicated via letter IOTC Ref: 5551 ([Appendix II](#)) the FAO legal advice which indicated that IOTC Resolutions adopted by the Commission are considered as self-standing instruments, which enter into force according to the relevant provision of the IOTC Agreement (Article IX, para. 1). At the coming into force of the Resolutions 14/05 and 14/04, India's objection became redundant, as India has not objected to the revisions of Resolutions 13/07 and 13/02, but to the revisions of Resolutions 07/02 and 12/07. No further communication has been received on the matter.

RECOMMENDATION/S

That the Commission

- 1) **NOTE** paper IOTC–2016–S20–12 which provided the Commission with an opportunity to review the 'Objections' received at previous Sessions of the Commission, and consider how such a review process should be carried out;
 - 2) **CONSIDER** discussing and developing a process to annually review any objections received under Article IX of the IOTC Agreement.
-