



PROPOSED RESOLUTION ON VESSELS WITHOUT NATIONALITY

SUBMITTED BY: AUSTRALIA, 22 APRIL 2016

Explanatory Memorandum

This proposal clarifies that vessels without nationality that are undertaking fishing in the IOTC Area of Competence are engaged in illegal, unreported and unregulated (IUU) fishing and encourages Members and Cooperating Non-Contracting Parties (CNCs) to take action against those vessels.

Vessels without nationality operate without governance or oversight. They are vessels that are not flying the flag of any State, or vessels that are flying the flag of two or more States and therefore cannot claim the nationality of any of those States in accordance with Article 92 of UNCLOS.

This proposal addresses the concern of Australia and many other States that vessels without nationality undermine global efforts to conserve and manage fish stocks and contribute to the problem of IUU fishing. IUU fishing continues to be a significant global issue that poses a serious risk to the sustainability of fish stocks and marine environments, and undermines the work of legitimate fishers and cooperative efforts of States in organisations such as this to effectively regulate fishing.

Fishing activity by vessels without nationality in the IOTC Area of Competence undermine the objectives of the IOTC and the conservation and management measures the IOTC has put in place.

This proposal gives effect to the FAO International Plan of Action (IPOA) to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing (the IPOA-IUU), which recommends States take measures consistent with international law against vessels without nationality (Article 20). Similar measures have been agreed by the Western and Central Pacific Fisheries Commission (CMM 2009-09), the Commission for the Conservation of Antarctic Marine Living Resources (Resolution 35/XXXIV) and the South Pacific Regional Fisheries Management Organisation (CMM 4.15) and will be considered by members of the Regional Plan of Action to Promote Responsible Fisheries Practices Including Combating Illegal, Unreported and Unregulated Fishing later in 2016.

The proposed resolution has two main objectives. First, the proposal makes it clear that vessels without nationality that are fishing in the IOTC Area of Competence are engaged in IUU fishing. Under international law, flag State jurisdiction is the primary means for regulating the activities of fishing vessels on the high seas, including through implementation of States' obligations as members of RFMOs. A vessel without nationality is not subject to the regulation of any flag State regulation and is, by definition, unregulated. The proposed resolution will affirm this.

Second, the proposed resolution encourages Members and CNCs to take effective action against vessels without nationality. This may include:

- sharing information about vessels that are or are suspected to be without nationality
- prohibiting landing and transshipment and preventing access to port services;
- the adoption of measures, including through domestic legislation, that allow Members and CNCs to deter vessels without nationality from fishing in the IOTC Area of Competence and to enable them to take effective enforcement actions against such vessels.

Australia considers this proposal complements existing IOTC measures that are focused on combating IUU fishing and other fishing activities that may undermine the IOTC's objectives. These include Resolution 99/02 *Calling for actions*



against fishing activities by large scale flag of convenience longline vessels, Resolution 01/02 Establishing a scheme to promote compliance by Non-Contracting Party vessels with Resolutions established by the IOTC, and Resolution 11/03 On establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC area of competence.

Adoption of this proposed resolution furthers our efforts as individual States and through the IOTC to ensure that vessels without nationality do not undermine the objectives and measures of the IOTC or other regional and international efforts to manage fish stocks and combat IUU fishing.

RESOLUTION 16/XX
ON VESSELS WITHOUT NATIONALITY

Keywords: Vessels without nationalit; stateless vessels; IUU fishing; enforcement; transshipment; port access.

The Indian Ocean Tuna Commission (IOTC),

RECOGNISING that vessels without nationality operate without governance and oversight;

CONCERNED that fishing in the IOTC area of competence by vessels without nationality undermines the objective of the IOTC Agreement and the work of the Commission;

RECALLING that the FAO Council has adopted an International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing (IUU fishing) and has recommended that States adopt measures consistent with international law in relation to fishing vessels without nationality involved in IUU fishing on the high seas;

REAFFIRMING IOTC Resolution 11/03 paragraph 1(i), which states that fishing vessels without nationality harvesting tuna or tuna-like species in the IOTC area of competence are presumed to have carried out IUU fishing;

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

1. Vessels determined under international law to be vessels without nationality that are fishing in the IOTC area of competence undermine the IOTC Agreement and the Conservation and Management Measures adopted by the Commission and are engaged in IUU fishing.
2. Contracting Parties (Members) and Cooperating Non-Contracting Parties (CNCs) are encouraged to take effective action in accordance with international law, including, where appropriate, enforcement action, against vessels without nationality that are engaging, or have engaged, in fishing or fishing related activities in the IOTC area of competence, and to prohibit the landing and transshipment of fish and fish products, and access to port services, by such vessels, except where such access is essential to the safety or health of the crew or the safety of the vessel.
3. Members and CNCs are encouraged to adopt necessary measures, including, where relevant, domestic legislation, to allow them to take the effective action referred to in paragraph 2 to prevent and deter vessels without nationality from engaging in fishing or fishing related activities in the IOTC area of competence.
4. Members and CNCs are encouraged to share information about vessels suspected to be without nationality to assist in clarifying the status of such vessels, and about the activities of vessels without nationality to inform action to prevent and deter such vessels from engaging in fishing or fishing related activities in the IOTC area of competence. Any sightings of fishing vessels that are suspected of, or confirmed as being, without nationality that may be fishing in the high seas of the IOTC area of competence shall be reported to the IOTC Secretariat as soon as possible by the appropriate authorities of the Member or CNC whose vessel or aircraft made the sighting. The IOTC Secretariat will circulate such information to all Members and CNCs as soon as practicable, and will provide a report to the Annual Session of the Compliance Committee of all such information provided.
5. Members and CNCs are encouraged to cooperate with Non-Contracting Party flag States to strengthen their legal, operational and institutional capacity to take action against their flagged vessels that have engaged in fishing or fishing related activities in the IOTC area of competence, including the imposition of adequate sanctions, as an alternative to de-registering such vessels, thereby rendering such vessels without nationality.