

March 2001



Intersessional Meeting on the Establishment on a Control and Inspection Scheme

Yaizu, Japan, 27 - 29 March 2001

PRINCIPLES UNDERPINNING THE ESTABLISHMENT AND OPERATION OF AN INTEGRATED IOTC CONTROL AND INSPECTION SCHEME

Submitted by Australia

Introduction

1. This paper outlines the key principles that should underpin the establishment of an integrated IOTC Control and Inspection Scheme.
2. Resolution 99/03 – On the Elaboration of a Control and Inspection Scheme for IOTC – from IOTC 4 called on Members to engage in the elaboration of a control and inspection scheme. Such a scheme was envisaged to contain all the necessary elements to ensure adequate control and enforcement of management measures for both Contracting Parties and Cooperating Non-Contracting Parties. The Resolution outlined a schedule of activities including, amongst other things, convening an inter-sessional meeting in 2001 to advance the definition of the scheme.
3. At IOTC 5 Members considered the paper IOTC/00/08 – Proposal for the Establishment of an Integrated Control Scheme – that outlined the European Union's proposals for the main elements that, in its view, should constitute an integrated IOTC Control and Inspection Scheme.
4. IOTC 5 agreed to convene an inter-sessional meeting, as envisaged in Resolution 99/03 and referred the paper IOTC/00/08 to that meeting for further consideration.
5. Taking account of the chapeaux of Resolution 99/03, an important first step in the development of integrated IOTC Control and Inspection Scheme is the agreement by IOTC to the principles upon which such a scheme is to be based.
6. Accordingly, this paper sets out the key principles underpinning the establishment and operation of an integrated IOTC Control and Inspection Scheme.
7. The Commission is invited to take note and comment on these principles.

Principles

Duty to cooperate

8. Contracting Parties and Cooperating Non-Contracting Parties shall, in giving effect to their duty to cooperate in accordance with the IOTC Agreement, implement and enforce conservation and management measures within the IOTC Area of Competence through effective monitoring, control and surveillance.

Due reference to relevant international law

9. Contracting Parties and Cooperating Non-Contracting Parties whose nationals fish within the Area of Competence for the IOTC shall give full effect to the relevant norms of international law, in particular as reflected in the 1982 UN Convention.

10. Contracting Parties and Cooperating Non-Contracting Parties shall implement fully and effectively all relevant international fisheries instruments that they have ratified, accepted or acceded to, in particular the 1995 UN Fish Stocks Agreement and 1993 FAO Compliance Agreement. Those Contracting Parties / Cooperating Non-Contracting Parties that have not ratified, accepted or acceded to the aforementioned international instruments shall not act in a manner inconsistent with the provisions of these instruments.

11. Contracting Parties and Cooperating Non-Contracting Parties shall take all steps necessary, consistent with international law, to give effect to the International Plan of Action on Illegal, Unreported and Unregulated Fishing.

Measures to be taken in respect of flagged vessels

12. A Contracting Party / Cooperating Non-Contracting Party whose vessels fish in the IOTC Area of Competence shall take such measures as may be necessary to ensure that vessels flying its flag comply with IOTC conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

13. All fishing activities within the IOTC Area of Competence by Contracting Parties / Cooperating Non-Contracting Parties shall be authorised by the flag State or fishing entity, in accordance with applicable IOTC conservation and management measures.

14. All fishing by authorised vessels of Contracting Parties / Cooperating Non-Contracting Parties shall adhere to regulations, developed and applied by the flag State or fishing entity, in accordance with applicable IOTC conservation and management measures.

Maintenance of register of flagged Vessels

15. Contracting Parties and Cooperating Non-Contracting Parties shall maintain accurate and up to date national records of fishing vessels authorised to fish within the IOTC Area of Competence and provide access to this information in accordance with Resolution 98/04.

Marking of vessels and fishing gear

16. Fishing vessels of Contracting Parties and Cooperating Non-Contracting Parties shall apply standardised vessel and gear marking in accordance with uniform and internationally recognisable vessel and gear marking systems, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.

Data collection, catch reporting and verification

17. Contracting and Cooperating Non-Contracting Parties shall ensure that all vessels authorised for fishing in the IOTC Area of Competence adhere to the IOTC requirements for the collection and reporting of catch and effort data in accordance with Resolution 98/01.

18. Contracting Parties and Cooperating Non-Contracting Parties shall cooperate in catch verification, which shall be achieved by means including, catch reporting, monitoring of landed catch, supervision of transshipments, observer programs, inspection schemes and market statistics.

19. The IOTC shall develop a regional observer program to collect verified catch data, other scientific data and additional information related to fishing in the IOTC Area of Competence and to monitor the implementation of the IOTC conservation and management measures.

Vessel monitoring

20. Vessels of Contracting Parties / Cooperating Non-Contracting Parties shall use vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with IOTC-agreed programs.

Trade information and trade related measures

21. Contracting Parties and Cooperating Non-Contracting Parties shall develop and implement, consistent with international law, IOTC-agreed trade information and other trade related measures in support of IOTC conservation and management measures.

Establishment of an IOTC Control and Inspection Committee

22. The IOTC shall establish an IOTC Control and Inspection Committee to provide advice to the IOTC on the development, implementation and review of an integrated IOTC Control and Inspection Scheme. [NB. A draft terms of reference for the IOTC Control and Inspection Committee is provided at **Attachment A.**]

Investigation of violations

23. Contracting Parties and Cooperating Non-Contracting Parties shall develop and apply IOTC-agreed procedures for the investigation of violations of IOTC conservation and management measures.

Ensuring compliance by flagged vessels

24. Contracting Parties and Cooperating Non-Contracting Parties shall ensure compliance by vessels flying its flag with IOTC conservation and management measures. To this end Contracting Parties and Non-Contracting Parties shall:

- enforce such measures irrespective of where violations occur;
- investigate immediately and fully any alleged violation of IOTC conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the Contracting Party / Cooperating Non-Contracting Party alleging the violation and the IOTC on the progress and outcome of the investigation;
- require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;
- if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and
- ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations within the IOTC Area of Competence until such time as all outstanding sanctions imposed by the flag State or fishing entity in respect of the violation have been complied with.

25. A serious violation means:

- (a) Fishing without a valid licence, authorisation or permit issued by the flag State of a Contracting Party / Cooperating Non-Contracting Party.
- (b) Failing to maintain accurate records of catch and catch-related data, as required by the relevant IOTC conservation and management measures, or serious misreporting of catch, contrary to the IOTC catch reporting requirements.
- (c) Fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the IOTC.
- (d) Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited.
- (e) Using prohibited fishing gear.
- (f) Falsifying or concealing the markings, identity or registration of a fishing vessel.
- (g) Concealing, tampering with or disposing of evidence relating to an investigation.
- (h) Multiple violations, which together constitute a serious disregard of IOTC conservation and management measures.
- (i) Such other violations as may be specified in procedures established by the IOTC.

26. Action taken by Contracting Parties and Cooperating Non-Contracting Parties other than the flag State in respect of vessels having engaged in activities contrary to IOTC conservation and management measures shall be proportionate to the seriousness of the violation.

Provision of assistance

27. A Contracting Party / Cooperating Non-Contracting Party conducting an investigation of an alleged violation of IOTC conservation and management measures may request the assistance of any other Contracting Parties / Cooperating Non-Contracting Parties whose cooperation may be useful in the conduct of that investigation. All Contracting Parties and Cooperating Non-Contracting Parties shall endeavour to meet reasonable requests made by a Contracting Party / Cooperating Non-Contracting Party in connection with such investigations.

28. A Contracting Party / Cooperating Non-Contracting Party may undertake such investigations directly, in cooperation with other interested Contracting Parties / Cooperating Non-Contracting Parties or through the IOTC. Information on the progress and outcome of the investigations shall be provided to all Contracting Parties and Cooperating Non-Contracting Parties having an interest in, or affected by, the alleged violation.

29. Contracting Parties and Cooperating Non-Contracting Parties shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of IOTC conservation and management measures.

30. Contracting Parties and Cooperating Non-Contracting Parties shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities of other Contracting Parties / Non Contracting Parties evidence relating to alleged violations of IOTC conservation and management measures.

Expediting investigations and judicial proceedings

31. Contracting Parties and Cooperating Non-Contracting Parties shall ensure that all investigations and judicial proceedings shall be carried out expeditiously.

Ensuring that sanctions deter violations of IOTC conservation and management measures

32. Sanctions applicable in respect of violations of IOTC conservation and management measures shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of Masters and other officers of fishing vessels shall include provisions, which may permit, amongst other things, refusal, withdrawal or suspension of authorisations to serve as Masters or officers on such vessels.

Unauthorised fishing an area under the jurisdiction of a Contracting Party / Cooperating Non-Contracting Party

33. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorised fishing within an area under the jurisdiction of a Contracting Party / Cooperating Non-Contracting Party, the flag State Contracting Party / Cooperating Non-Contracting Party of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases.

Cooperation in deterring violations

34. Contracting Parties and Cooperating Non-Contracting Parties may take action in accordance with international law, including through recourse to IOTC conservation and management measures, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate IOTC conservation and management measures from fishing on the high seas in the IOTC Area of Competence until such time as appropriate action is taken by the flag State or fishing entity.

Cooperation in boarding and inspection

35. Contracting Parties and Cooperating Non-Contracting Parties shall cooperate in the development and implementation of boarding and inspection arrangements for authorised vessels. The IOTC shall give due publicity to procedures established relating to boarding and inspection.

36. The IOTC boarding and inspection arrangements for authorised vessels shall observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimise

interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board.

37. Contracting Parties and Cooperating Non-Contracting Parties shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

Vessels without nationality

38. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a Contracting Party / Cooperating Non-Contracting Party may board and inspect the vessel. Where evidence so warrants, the Contracting Party / Cooperating Non-Contracting Party may take such action as may be appropriate in accordance with international law.

Measures taken by a port State Contracting Party / Cooperating Non-Contracting Party

39. A port State Contracting Party / Cooperating Non-Contracting Party has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of IOTC conservation and management measures. When taking such measures a port State Contracting Party / Cooperating Non-Contracting Party shall not discriminate in form or in fact against the vessels of any State or fishing entity.

40. A port State Contracting Party / Cooperating Non-Contracting Party may, amongst other things, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

41. Contracting Parties and Cooperating Non-Contracting Parties may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of IOTC conservation and management measures.

42. IOTC conservation and management measures in no way affect the exercise by Contracting Parties / Cooperating Non-Contracting Parties of their sovereignty over ports in their territory in accordance with international law.

ATTACHMENT A

Terms of Reference for an IOTC Control and Inspection Committee

The functions of the IOTC Control and Inspection Committee shall be to:

1. Provide the Commission with information, technical advice and recommendations relating to the implementation of, and compliance with, IOTC conservation and management measures.
2. Monitor and review compliance with conservation and management measures adopted by the Commission and make such recommendations to the Commission as may be necessary.
3. Review the implementation of cooperative measures for monitoring, control, surveillance and enforcement adopted by the Commission, as well as other regional fisheries management organisations and arrangements and make such recommendations to the Commission as may be necessary, including in relation to cooperation between the Commission and other regional fisheries management organisations and arrangements.

In carrying out its functions, the Committee shall:

1. Provide a forum for exchange of information concerning the means by which Contracting Parties and cooperating non-Contracting Parties are applying the conservation and management measures adopted by the Commission on the high seas and complementary measures in waters under national jurisdiction.
2. Receive reports from Contracting Parties and cooperating non-Contracting Parties relating to measures taken to monitor, investigate and penalise violations of provisions of the IOTC Agreement and its conservation and management measures.
3. Consult with the Scientific Committee, as appropriate, on development, implementation and review of the co-operative measures for monitoring, control, surveillance and enforcement adopted by the Commission.
4. Consider and investigate such other matters as may be referred to it by the Commission, including developing and reviewing measures to provide for the verification and validation of fisheries data.
5. Make recommendations to the Commission on technical matters such as fishing vessel and gear markings.
6. In consultation with the Scientific Committee, make recommendations to the Commission on the fishing gear and technology that may be used.
7. Report to the Commission its findings or conclusions on the extent of compliance with conservation and management measures.
8. Make recommendations to the Commission on matters relating to monitoring, control, surveillance and enforcement.

The Committee may establish, with the approval of the Commission, such subsidiary bodies as may be necessary for the performance of its functions.

The Committee shall exercise its functions in accordance with such guidelines and directives as the Commission may adopt.