

Feedback provided by CPCs and invited experts on the revised conservation and management measure proposal IOTC-2017-S21-PropN Rev_1.

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Australia

Email

From: Neil Gordon
 TO: secretariat@iotc.org
 CC: Howell Susan
 Date: Wed, 5 Jul 2017 06:37:50 +0000
 Subject: Allocation proposal [SEC=UNCLASSIFIED]

Dear Secretariat

Thank you for providing the latest version of IOTC-2017-S21-PropN Rev 1 for members' comment, as agreed by the Commission.

Australia wishes to again thank the proponents for their effort in bringing this important proposal to the Annual Session. We strongly support further consideration of this proposal at the next TCAC meeting; the TCAC needs to move forward from discussion on principles, to start looking at what allocations might be made, using what criteria, to give effect to those principles. We think this proposal provides this stepping stone.

Australia supported this proposal at the Annual Session in large part because it gives effect to the principles set out in Appendix VII of the TCAC03 report. We consider:

- Sustainability is at the forefront of the proposal, as it should be for all IOTC measures. Importantly, compliance with allocations is incentivised, which is critical for ensuring sustainability through allocation. In relation to sustainability, we suggest the proponents refer to management procedures as the primary method of setting catch limits, although recognise that in some cases catch limits might be derived from separate harvest control rules or otherwise agreed by the Commission.
- The proposal recognises the need for different treatment of maritime zones in an allocation system, to give effect to coastal States' rights and the right to fish on the high seas and, in turn, addresses both development goals and the need for sustainability of markets and other components of the value chain. This is done via a 'supplementary baseline allocation' for coastal States (para 10(a)), a 'high seas allocation' (para 14) and an allocation in respect of catch history that differentiates between zones and ensures catch history from within EEZ's is attributable to the coastal State (para 13-14). We think there is some scope to clarify, within the proposal, which allocations are being made and on what basis, to clearly demonstrate the links between the relevant principles and how they are being given effect.

-
- The special requirements of developing States and SIDS, as well as the need to consider the socio-economic importance of fisheries (including food security), are recognised via a potential additional allocation (para 11 of the proposal).
 - The proposal suggests a simple way of incentivising compliance through allocations. It provides room for the Commission to set a process here that is transparent and objective, which is critical.

Transferability is provided for, which will help optimise allocations and ensure product availability, again supporting existing value chains.

There is guidance for dealing with new entrants to the fishery, which is consistent with the UN Fish Stocks Agreement.

In general, we think there is scope to revise the proposal to clarify the types of allocations that are to be made, the criteria that need to be referred to in making them, and which principle/s they give effect to. This would help simplify the proposal and more clearly demonstrate how the principles in Appendix VII of the TCAC03 report are being connected to this proposal and the full allocation scheme the Commission develops from it.

Australia intends to continue working with the proponents on the proposal ahead of the 4th TCAC meeting. We look forward to seeing other members' comments and to moving forward on this important issue.

Yours sincerely

Gordon Neil

Gordon Neil

Assistant Secretary

Fisheries Branch

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[Attachment](#)

Nil

European Union

Email

From: Seppo.NURMI@ec.europa.eu

TO: secretariat@iotc.org

CC: Anders.JESSEN@ec.europa.eu, , Luis.MOLLEDO@ec.europa.eu,

Date: 5 July 2017 at 17:38

Subject: IOTC Circular 2017-062 - feedback

Dear colleagues,

Please find enclosed feedback from the European Union as requested in the above circular.

Best wishes,

Seppo

For Mr Anders Jessen, Head of EU Delegation to the IOTC

Seppo Nurmi

Deputy Head of Unit

Regional Fisheries Management Organisations B2

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EU comments on the IOTC proposal on allocation criteria by Maldives, South Africa and others

The EU takes note of proposal *IOTC-2017-S21-PropN Rev1 on the allocation of fishing opportunities for IOTC species* submitted by Maldives, South Africa, Mozambique, Thailand, Tanzania, Somalia, the Republic of Iran, Sri Lanka and Pakistan circulated by IOTC Circular 2017-062 of 7 June 2017.

The EU thanks the proponents for putting forward a revised version of the proposal, but regrets that the amended text does not reflect the comments made by the EU and others that expressed concerns about the proposal at the 21st annual session of IOTC. The comments below are while comprehensive not exhaustive and are made without prejudice. The EU consequently reserves its right to amend and supplement its comments at any time.

General comments

1. The EU is persuaded that a precondition for reaching consensus on a proposal on allocation criteria is to improve coherence with the UN Convention of the Law of the Sea (UNCLOS) and the Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA). This could be achieved if the proposal, notably in the operative part, reflects a more appropriate balance between the rights of coastal States to the exercise of their sovereign rights within a zone up to 200 nautical miles from the baselines and the related duties and, on the other hand, the right for all States for their nationals to fish on the high seas under Article 87 of UNCLOS and Article 7.1 of UNFSA.

This includes, but it is not limited to, reflecting the obligations of coastal States in Articles 61 and 62 of UNCLOS as well as the duty of cooperation under Articles 63 (2) on straddling stocks and Article 64 (1) of UNCLOS on highly migratory species both within and beyond the EEZs. Equally missing, including in Annex I, is any mention of the right to fish on the high seas and the duties foreseen in Articles 87 and 116 to 118 of UNCLOS. References to UNFSA are also largely absent, including on the compatibility of conservation and management measures and the duty of cooperation as envisaged in Articles 7 and 8 of UNFSA. In other instances, the references to the international law seem to be misquoted. A reference to the principles underpinned by Article V 2 a) and c) of the IOTC Agreement should also be included in Annex I.

Of particular concern to the EU is the fact that the proposal seems to uphold as its main principle an uneven allocation of fishing rights based on the differentiation between coastal States and other States fishing on the high seas in favour of the former. This distinction is established in contravention of the freedom of fishing for all States provided for in Article 87 UNCLOS.

Throughout the proposal States fishing on the high seas are not only deprived of the conditions guaranteed to coastal States in terms of allocation advantages¹ but they are also penalised with the withdrawal of allocations without any justification recognised by international law². Even for the case of new entrants, the bar and conditions are different for States fishing on the high seas under paragraph 11 a) of the proposal, than for new coastal State entrants in paragraph 11 b). This approach collides with Article 8 of UNFSA that requires that terms of participation of a State in a RFMO shall not be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.

¹ E.g. paragraph 7 e) foresees an initial baseline allocation that is not based on any historical catches to discriminate in favour of coastal states; paragraph 10 a) introduces a “supplementary baseline allocation” granted to coastal States only; paragraph 11 b) envisages the establishment and reallocation of the proportion set aside for new “coastal state entrants” only; paragraph 12 a) includes an, additional “supplementary baseline allocation” foreseen for developing coastal states under which is not foreseen for developing States fishing on the high seas. Paragraph 16 on the socio-economic factors is only applicable to coastal States and not to States fishing on the high seas. In addition to allocating catches in the EEZs to coastal States under the criterion of “historical fishing activity” (or “track record”), the “spatial allocation” criterion also allocates catches in the EEZ to coastal States. This results in the double-counting of the EEZ allocation, once as “track records” under paragraph 13 and later on as “spatial allocation” under paragraph 14. Another instance of double-counting in favour of coastal States is the allocation of baseline rights in paragraph 10 a) of the proposal as coastal States irrespective of the catches, and again as CPCs in paragraph 15 a) for the high seas.

² Paragraph 10 d) establishes greater reductions in allocation for States fishing on the high seas. Paragraph 15 c) foresees the gradual transfer of allocation rights from States fishing on the high seas to coastal States irrespective of the actual impact of the fleets/gears on the stocks and of any scientific advice.

International law establishes the duty of cooperation between coastal States and States fishing on the high seas. It does not recognise automatic preferential rights for allocation of quotas to coastal States as such and even less so for highly migratory species which are a shared resource. While the EU is itself a coastal State within the Indian Ocean, it would not be prepared to accept any allocation principles that do not fairly and accurately reflect the respective rights of coastal States and States fishing on the high seas within the region. All in all the proposal as currently conceived amounts to a programme for phasing out the current fishing practices of States fishing on the high seas in the Indian Ocean in violation of the freedom to fish on the high seas under Article 87 of UNCLOS.

2. All burdens and solidarity with developing coastal States would rest entirely on the shoulders of distant water fishing nations (DWFN), and would therefore exempt more advanced coastal States in the region from any burden sharing. This would create an unacceptable situation leading to conflict and would be in contradiction to cooperation principles that are carved in the UNFSA, notably concerning highly migratory species, and being the basis of a multilateral framework as IOTC.

Moreover, the proposal completely ignores the rights of those i) who have long standing investments in the region, ii) who discovered new fishing grounds and developed fisheries in the Indian Ocean, iii) who developed local processing and fishing industries in developing Indian Ocean coastal States, iv) who took financial and social risks and developed local employment, v) who have contributed to science and capacity building, vi) who have made significant efforts to develop IOTC legislation and comply with it, and vii) who have ensured and promoted responsible fisheries in the region. Certainly some DWFN are in this group and these countries would under the proposal receive no recognition for their efforts or encouragement to continue such efforts if these factors are not taken into account, which seems to be the case with this proposal.

3. The highly migratory characteristics of the related species that could be caught in many different fishing grounds across the Indian Ocean is also neglected as well as the capacity and efforts of the CPCs to comply with IOTC rules and invest in a sustainable manner in the Indian Ocean. In addition, compliance seems to give little consideration notwithstanding the fact that there is a poor compliance records within the IOTC and thus the proposal will offer little or no encouragement to States with important compliance shortcomings to improve their compliance record.

4. The way historical fishing activity of coastal States are treated under the proposal would also be very unfair to the aspirations of coastal States with meagre fishing history in IOTC and once again favours coastal States that already enjoy a lions' share of the catches.

5. The proposal should also be improved by strengthening elements that would improve the synergy between the allocation exercise and the performance of the organisation, notably by taking account in the allocation exercise of IOTC Members' contributions to scientific research and finances, record of compliance etc. in order to encourage good performance and practices. Another critical component of any allocation exercise, namely stability and predictability to ensure that those affected by possible changes have a reasonable amount of time to adapt, is also completely missing from the proposal. Without a reasonable degree of stability and predictability the investment climate for the fisheries industry in the region would be negatively affected.

6. Last but not least, discussion and understanding of the proposal would also be facilitated if clarifications were provided in the text regarding:

- the percentage of the allocation that is added or subtracted to the baseline allocation for developing coastal States in paragraph 12 a);
- the reference periods contemplated for the historical fishing activity and spatial allocation;
- the approximate size of the coastal State supplementary baseline allocation in paragraph 10, which is equal to all CPCs and its proportion to the high seas baseline allocation foreseen in paragraph 15 b);
- the approximate size of share reserved for new entrants in paragraph 11;
- the proposed "greater reduction" in catches for States fishing on the high seas in paragraph 11 d);
- how account would be taken of advice from the Scientific Committee;
- how to deal with allocation reductions;
- how to deal the specific situation of States that are both coastal States and States fishing on the high seas.

Comments on the text

A. On the background

7. The proposed Resolution clearly announces that its main objective is the protection of the sovereign rights of IOTC coastal States and the requirements of SIDS. We agree that the interests and rights of coastal States should be taken into account in the definition of allocation criteria. However, the main purpose of an allocation criteria system is normally the practical and sustainable implementation of a TAC in a balanced manner acceptable for all participants.

If the starting point is based on the assertion of the rights of only one side to the discussion we are unlikely to reach an outcome acceptable to all.

Moreover, the objective to protect the sovereign rights of IOTC coastal States that seems to be the central point of this proposal remains vague as to what it would mean in practical terms (vague as the references to the international law are) and would seem designed to benefit principally a restricted number of coastal States.

8. In addition, there is no basis in the IOTC agreement or in UNCLOS/UNFSA for introducing the notion of SIDS³ into a discussion of allocation principles within the IOTC. With regard to so-called "vulnerable economies", the notion is not found in the IOTC agreement which talks about developing countries and remains too imprecise to be introduced into the IOTC through a Resolution.

9. Although the proposal makes reference to the TCAC conclusions, notably the last one held in Iran, in reality it only relies on recommendations from the like-minded coastal States that were controversial and ignores the principles proposed in the TCAC 3 by other Contracting Parties which is not conducive to finding an outcome acceptable to all.

10. While the EU shares the desire of this discussion coming to conclusion within a reasonable timescale the calendar proposed is not realistic and risk creating unnecessary tensions. The issue is by its very nature hugely complicated and sensitive and artificially forcing the pace risks jeopardising a consensus outcome that could oblige a number of Contracting Parties to lodge objections against the resolution on allocation principles with the effect that it would not be applied by some major fishing Contracting Parties. This should be avoided and would run counter to one of the basic ideas underlying UNFSA, namely that involved countries should collaborate to find convenient and sustainable solutions to manage highly migratory fishing stocks.

B. On the preambles

11. The references to the UNFSA wrongly seem to suggest that sustainability is primarily achieved by establishing allocation principles aimed at protecting and benefitting coastal States rather than by for example respecting the limits of a possible TAC, enforcing IOTC conservation and management measures, or adopting responsible fishing practices.

12. Also in the preambles, conclusions from the Kobe process are selectively quoted and taken out of their context in the interests of coastal States, when the main objectives of Kobe process focused on sustainability and good management.

C. Main text

13. With regard to definitions, "artisanal fisheries" remains vague and too broad in the sense that it seems to be mixing up fisheries with different purposes and sizes, including some with important effects on the ecosystems and on the species that will be subject to the allocation principles. The idea of treating such distinct fisheries - livelihoods/subsistence fisheries, small scale, semi-industrial, exclusively fishing in EEZ, etc. - in a similar fashion is dangerous and a potential source of maladministration. It would be necessary to have a factual and tangible definition of artisanal, subsistence and small scale fisheries and not remain in the very general and vague understanding used in IOTC.

14. The "bycatch" definition is incomplete in the sense that some IOTC species are also by-catch in certain contexts. The use of the FAO definitions of bycatch would be more appropriate⁴.

15. The introduction, without a precise definition of notions of "optimum sustainable yield" and "maximum economic yield" could also be dangerous and lead to falling key conservation goals. In the same context, the use of the "total allowable commercial catch" would also require a clear definition.

16. On the allocation principles there is also some confusion, notably concerning historical fishing activities and historical spatial allocation. At the same time these are based on a discriminatory treatment of DWFN that runs counter to rights these enjoy under UNCLOS and UNFSA, notably in relation to highly migratory species. Moreover, these definitions would give a particular advantage to some coastal States that would be receive additional allocations

³ Contrary to what the fourth recital indicates, there is no reference to Small Island Developing States (SIDS) in Article 24 of UNFSA. This is also relevant in relation with paragraph 7 d) which seems to duplicate the concept with the reference to both SIDS and vulnerable economies.

⁴ There are plenty of definitions of by-catch, for facility you find some references below:

- In 1994, there is a definition proposed in the document "A global assessment of fisheries bycatch and discards."
<http://www.fao.org/docrep/003/T4890E/T4890E02.htm#ch1.1.2>
- In 2011, we have the "International Guidelines on Bycatch Management and Reduction of Discards",
<http://www.fao.org/docrep/015/ba0022t/ba0022t00.pdf>, see page 4 for some comments on bycatch.
- <http://www.fao.org/docrep/w6602e/w6602E03.htm>, from the document "A STUDY OF THE OPTIONS FOR UTILIZATION OF BYCATCH AND DISCARDS FROM MARINE CAPTURE FISHERIES"

based on fishing activities of foreign fleets in their EEZs whereas coastal States that have no foreign fleets fishing in their waters would receive no such allocation notwithstanding the fact that the same highly migratory species pass through their EEZs.

17. As regards the allocation criteria it would be important to ensure that the system conceived (eligibility, sustainability, coastal State rights) offers the greatest recognition to development aspirations of the least developed coastal States rather than the current proposal which is aimed principally at offering supplementary allocations to coastal States that already enjoy the most important share of the catches.

As said, all burdens and solidarity with developing coastal States would rest entirely on the shoulders of DWFN. In fact, while everyone receives an initial baseline allocation as per paragraph 8 (b) that is not based on any historical catches, all other allocation principles discriminate DWFN in favour of coastal States. Coastal States are, for example, entitled to a supplementary baseline allocation irrespective of whether or not that coastal State has a history of catching particular species (paragraph 10 (a)) and when there is a necessity to decrease the TACs, DWFNs shall suffer a greater reduction in catches than coastal States (paragraph 10 (d)).

There is an initial historical fishing activity allocation provided for in paragraph 13 (a) where all recent historical catches taken in an EEZ of coastal States shall be attributed solely to that coastal State. It is not entirely clear what happens to historical fishing activity on the high seas because pursuant to paragraphs 15 (a) and (b) each CPC shall be allocated a baseline high seas allocation and that high seas allocation shall be equal among all CPCs which suggests that historical fishing activity on the high seas is not taken into account, despite the clear rights of all nations to fish in high seas as described in the Article 7.1 of the UNFSA.

Furthermore, to accommodate future high seas fishing opportunities for developing coastal States paragraph 15 (c) create a mechanism through which their aspirations are accommodated over a gradual transfer of fishing rights from DWFN's, commencing 3 years after the initial baseline allocation (a kind of "development aspirations allocation"). In other words, to accommodate development aspirations of developing coastal States the proposal not only foresees a mechanism whereby additional allocations are immediately offered to them but the proposal adds an additional element through the so-called development aspirations allocation. In addition, the development aspirations are also accommodated by paragraph 12 (a) which again foresees an additional allocation each year.

In conclusion, the development aspirations of developing coastal States are factored in not once but three times. Moreover, development aspiration by their very nature take time to achieve and any mechanism to accommodate such aspirations have to be gradual in nature and not as here an immediate transfer of rights that leaves no time for adaptation whether on the part of the beneficiaries or those who stand to lose.

18. Compliance, capacity to monitor fishing activities, the need to ensure a level playing field and investments made are ignored and not accounted for. This leads not only to discrimination against those who are making efforts to implement sustainable and responsible fisheries but compensates those who are not complying with IOTC legal framework and not ensuring the responsible management of their fisheries.

19. With regard to new entrants, it would also be opportune to quantify the proposed principle that would create a set-side for new entrants so as to avoid major surprises when figures are shown. Otherwise, any "catch set aside" for new entrants risks to be "appropriated" by existing CPCs when quotas will be calculated.

20. When there are any potential divergent views between two or more CPCs on spatial allocation/catches, it is proposed that any disputes on the attribution of catches should be resolved by the CoC. However, the CoC has nothing to do with the bilateral relations of CPC and is not equipped or competent to arbitrate in such matters. The involvement of the CoC in such disputes could favour outcomes reflecting the majority views in the CoC rather than the legal merits of the respective positions and would not necessarily be the most fair in all circumstances.

21. Regarding high-seas access it would also be important to quantify baseline allocations and also take into consideration the capacity and ability to fish in high-seas. There is no legal basis for the idea that any reduction of high-seas fisheries would only apply to DWFN as set out in paragraph 15(c) and it contradicts the rights recognised in the Art 7.1 of UNFSA. Any mechanism to accommodate the development aspirations of developing coastal States on the high seas should be based on the principle that all developed States or developing emerging economies with important fleets, notably those with fleets fishing thousand miles away from their coast lines, should contribute and that the mechanism should particularly favour the least developed among the developing coastal States.

22. The Socio-economic factors proposed are extremely vague and more precise definitions and criteria will be needed before meaningful discussions can take place. We should also consider markets and places where tuna and tunalike species are consumed as socio-economic factors for the purpose of the allocation principles. In the TCAC 3 there were some criteria proposed that could be appropriate to use here, notably i) dependency of Indian Ocean coastal State economies, consumption for the livelihood of the local communities and investments made in the tuna sector and

employment created, and ii) the weight of trade of tuna products in economies and in the global consumption of tuna products in the Contracting Parties.

23. On the eligible qualifying participants, the definition of 50% compliance is too subjective and erroneous and could lead to inaccurate compliance grades/CPC favouring States with poor compliance records.

This is for example illustrated by the fact that the current criteria used by the IOTC secretariat on compliance equates critical measures with measures of less importance just as it doesn't quantify the level of partial compliance. In fact, the table on compliance prepared by the secretariat only reflects an incomplete quantitative analysis of CPCs compliance, which gives a wrong impression of general state by suggesting a relative good compliance status in IOTC.

Compliance continues to be a matter of considerable concern in IOTC. Some countries repeatedly commit to improve their compliance status, but it is yet to be seen how this will actually translate into practice in the future as some countries with poor compliance records already committed to improved compliance last year and the year before. In fact, the number of countries that systematically are in a situation of general non-compliance is worrying.

24. The principle of over-catch of allocation and its application is unclear and we are therefore not able to provide any comments at this stage.

Conclusions

The EU is currently planning to submit a revised proposal on allocation criteria that takes into account different interests and seeks a balanced way to accommodate these interests in a manner that could pave the way for consensus.

Japan

Email

From: chiaki_yamada060@maff.go.jp
TO: Secretariat
CC: ryo_omori330@maff.go.jp
Date: 6 July 2017 at 01:17
Subject: [Submission] Japan's comments on the latest Prop. N

Dear Mr Christopher O'Brien,

Upon the instruction of the Japanese Commissioner, Mr. Shingo OTA, I am writing this email to you.

Japan would like to submit the provisional comments on the proposal "On the Allocation of Fishing Opportunities for IOTC species (IOTC-2017-S21-PropN Rev1)" according to the IOTC CIRCULAR 2017-062.

Please kindly refer to the attached file.

Best regards,

Chiaki YAMADA

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Provisional Comments by JAPAN

[Comment 1: Japan's basic stance is that this proposal has to be discussed in the TCAC in a cooperative and constructive manner.]

RECOMMENDATION ~~SOLUTION~~ XX47/XX

ON THE ALLOCATION PRINCIPLES OF FISHING OPPORTUNITIES FOR IOTC SPECIES

[Comment 2: This document should provide a principle for allocation criteria, not bind CPCs and is only effective when applied in CMMs. Japan considers that we should try to reach a consensus on the "principles" at the next TCAC as the first step.]

Keywords: Allocation principles; allocation criteria; sustainability; sovereign rights.

The Indian Ocean Tuna Commission (IOTC),

~~CONSIDERING the objectives of the Commission to maintain stocks in perpetuity and with high probability, at levels not less than those capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors including the special requirements of developing States in the IOTC area of competence;~~

[Comment 3: We are discussing allocation, not TAC. The Argument on sustainability of stocks shall be separated from distribution of TAC.]

~~BEING MINDFUL of Article XVI of the IOTC Agreement regarding the rights of Coastal States within their EEZ and of Article 87 and 116 of the UN Convention of the Law of the Sea regarding the right to fish on the high seas;~~

[Comment 4: Article 16 specifies the rights of a coastal State within a zone of up to 200 nautical miles under its jurisdiction. These Articles of UNFSA apply to all States and it is meaningless to refer to them here.]

RECOGNISING the special requirements of the developing states, particularly Small Island developing states in Article 24, of the Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA);

~~RECALLING that Article 5, of UNFSA, entitles the conservation and management of highly migratory fish stocks are based on best scientific evidence available and with special reference to Resolution 15/10 for a stock where the assessed status places it within the red quadrant, and with an aim to end overfishing with a high probability and to rebuild the biomass of the stock in as short time as possible.~~

[Ditto Comment 3 above]

~~FURTHER RECALLING that Article 6, of UNFSA, requires the states to be cautious during the application of precautionary approach when information is uncertain, unreliable or inadequate and this should not be a reason for postponing or failing to take conservation and management measures;~~

[Ditto Comment 3 above]

~~CONSIDERING the recommendations adopted by the KOBE II, held in San Sebastian, Spain, June 23—July 3 2009; implementing where appropriate a freeze on fishing capacity on a fishery by fishery basis and such a freeze should not constrain the access to, development of, and benefit from sustainable tuna fisheries by developing coastal States.~~

[Comment 5: There is no direct linkage between this paragraph and allocation.]

~~FURTHER CONSIDERING the recommendations adopted by the KOBE III, held in La Jolla, California, 11—15 July 2011; considering the status of the stocks, each RFMO should consider a scheme for reduction of over capacity in a way that does not constrain the access to, development of, and benefit from sustainable tuna fisheries, including on the high seas, by developing coastal States, in particular small island developing States, territories, and States with small~~

and vulnerable economies; and Transfer of capacity from developed fishing members to developing coastal fishing members within its area of competence where appropriate.

[Ditto Comment 5 above]

~~FURTHER CONSIDERING the report by International Council for the Exploration of Sea and FAO Working Group on Fishing Technology and Fish Behaviour (2006), Gillnets are considered to be one of the least catch-controllable and least environmentally sustainable gears;~~

[Ditto Comment 5 above]

~~FURTHER CONSIDERING the recommendations of the 18th IOTC Scientific Committee held in Bali, Indonesia, 23–27 November 2015 that the catches of yellowfin tuna have to be reduced by 20% of the 2014 levels to recover the stocks to levels above the interim target reference points with 50% probability by 2024, and subsequent recommendations by the IOTC Scientific Committee.~~

[Ditto Comment 5 above]

MINDFUL that ~~no allocation criteria has been adopted despite the extensive discussion on the three meetings of the Technical Committee on Allocation Criteria is taking longer than expected to reach agreement on allocation criteria, while some IOTC stocks are being overfished and are subject to overfishing;~~

[Comment 6: Japan's insertion is the fact and Japan believes that stocks can be managed even with no allocation criteria.]

COGNIZANT that concurrence of an entire allocation process (principles, criteria, weighting and formula) may take much longer and CONSEQUENTLY a more pragmatic approach would be to adopt the principles first and criteria thereon through a progressive approach;

[Ditto Comment 2 above]

~~FURTHER CONSIDERING the call by the United Nations General Assembly Resolution 70/75 upon the states to increase the reliance on scientific advice in developing, adopting and implementing conservation and management measures and to take into account the special requirements of developing states, including Small Island Developing States (SIDS) as highlighted in the SIDS Accelerated Modalities of Action (SAMOA) Pathway;~~

[Ditto Comment 5 above]

ADOPTS, in accordance with the provisions of Article IX, paragraph ~~8~~⁺ of the IOTC Agreement, the following:

[Ditto Comment 2 above]

I. Definitions *[Comment 7: Definitions should be clear and precise.]*

1. **Artisanal, subsistence and small scale developing coastal State and Small Island Developing State fisheries:**
Coastal fisheries as defined by the IOTC.

2. **Bycatch:** All species, other than the 16 species listed in Annex B of the IOTC Agreement, caught or interacted with by fisheries for tuna and tuna-like species in the IOTC area of competence. A bycatch species includes those non-IOTC species which are (a) retained (byproduct), (b) incidentally taken in a fishery and returned to the sea (discarded); or (c) incidentally affected by interacting with fishing equipment in the fishery, but not taken. *[Comment 8: It is almost impossible to define "bycatch" and there is no need to do so in this measure.]*
3. **Harvest Control Rules (HCR):** Agreed responses that management must make under pre-defined circumstances regarding stock status. Also called 'control rules' and 'decision rules'.
[Comment 9: This is different from allocation matter.]
4. **Optimum sustainable yield:** The yield for a particular species which the Commission, under advice from the Scientific Committee, has agreed is the target yield for that species. This may be the maximum sustainable yield (MSY), maximum economic yield (MEY), or any other variant as agreed by the Commission.
[Ditto Comment 9 above]
5. **Target Reference Points (TRP):** A state of a fishery and/or a resource which is considered desirable.
[Ditto Comment 5 above]
6. **Total allowable catch (TAC):** For a fishery, a catch limit set as an output control on fishing. ~~Where resource sharing arrangements are in place between commercial and recreational fishers, the term total allowable commercial catch (TACC) may apply. When deciding TACs, the term 'global' is applied to all sources of TACs that cover fishing mortality caused by the fishing activities for each IOTC species are to be applied from all fleets.~~
[Comment 10: Japan considers that mortality by all fishing activities should be applied.]

II. Allocation principles

7. The following are the *Allocation Principles* that ~~should~~^{shall} form the basis for developing and assessing the performance of prospective *Allocation Criteria* ~~(Section III)~~. *[Ditto Comment 2 above]* *[Comment 11: Section III is not a complete criteria at present.]*
 - a) **Eligibility:** The allocation of fishing opportunities by the IOTC shall be limited to IOTC Contracting Parties and IOTC Cooperating Non-Contracting Parties (collectively termed CPC's).
 - b) **Sustainability:** ~~Any allocation criteria should not undermine~~ ~~(The long-term sustainability of each IOTC species and non-targeted, associated and dependent species is to be achieved through appropriate catch limits in accordance with the agreed management framework, including any relevant management procedure. Additional management measures may also be used in tandem with catch limits to ensure sustainability of each species. The degree of negative ecosystem impact of main fishing gear to the IOTC species and non-targeted, associated and dependent species will be considered.~~ *[Comment 12: Japan does not find any relationship between the suggested text and allocation. And "non-targeted, associated and dependent" need to be defined under "I. Definitions".]*
 - c) **Coastal State rights:** The exercise of the sovereign rights of Indian Ocean coastal States, in accordance with the United Nations Convention on the Law of the Sea, UNFSA and the conservation and management of straddling fish stocks and highly migratory fish stocks, for the purposes of exploring and exploiting, conserving and managing the living resources, including highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction, shall not be prejudiced in accordance with Article XVI of the IOTC Agreement. ~~Guiding legal text for ensuring coastal State~~

~~rights are upheld are provided at Annex I.~~ [Comment 13: The relevant legal text and article should be specified.]

- d) **Special requirements (aspirations) of developing coastal States:** The special requirements of Indian Ocean developing coastal States, including Small Island Developing States (SIDS) and vulnerable economies, including aspirations, are to be accommodated.

[Comment 14: The definition of “vulnerable economies” is unclear.]

- e) **Historical fishing activity:** Historical catches, for a time period to be decided, by eligible participants shall be used as an element in determining ~~an initial~~ allocation. ~~Historical catches taken within an EEZ shall be solely attributable to the respective coastal State, for the purposes of allocation, regardless of the flag of the fishing vessel(s) that took the catches. This attribution will be given effect in a way is without prejudice to the duties and responsibilities of flag States to report catch under international law, including the UN Fish Stocks Agreement~~

[Comment 15: The consideration on historical fishing activity should not be limited to an initial stage. And since there is no legal ground for this argument, it is not acceptable to Japan.]

- f) ~~**Historical spatial allocation:** Allocations shall be determined in a way that reflects the different international legal rights applicable within and outside the EEZs of coastal States by separating historical catches [and where known, species specific biological ranges] on a spatial basis.~~

[Ditto Comment 15 above]

- g) ~~**High seas access:** In accordance with the international legal framework for the high seas, all CPCs shall be provided with a baseline fishing opportunity in respect of high seas fishing, irrespective of whether they have a history of fishing on the high seas.~~

[Comment 16: Freedom of the high sea is a basic principle in the international law. The word “High sea access” is not appropriate. If necessary, Article 87 of the UNCLOS should be referred in full. And if allocation is made on a flag state basis, coastal states could use it on the high sea.]

- h) **Transferability:** National Allocations or part thereof may be temporarily ~~or permanently~~ transferable, thereby ensuring product availability is maintained to markets and allocations are optimised.

[Comment 17: It would depend on a mutual agreement between a provider and recipient.]

- i) **Socio-Economics:** Allocations ~~should~~ consider the dependency of each eligible participant on fisheries in the IOTC Area of Competence (all species combined), measured by the contribution of those fisheries to social, economic, and cultural needs.

- j) **Compliance activities:** Allocations ~~should~~ take into account the records of compliance ~~and/or cooperation~~ by eligible participants with the IOTC Agreement, Conservation and Management Measures and other binding ~~requirement decisions, including data submission.~~

[Comment 18: Japan does not understand the necessity to include “cooperation” and believes that right to receive allocation necessarily entail responsibility for data submission.]

III. **The elements to be incorporated into Allocation criteria** [Comment 19: Further inputs could be added from the past discussions in TCAC or other perspectives.] [Ditto Comment 11 above]

8. **Eligibility:**

- a) States eligible to receive an allocation ~~should~~must be a Contracting Party or Cooperating Non-Contracting Party (collectively termed CPCs) of the IOTC.

[Comment 20: The interest of the invited expert should be addressed.]

- b) Each CPC ~~may~~shall receive a baseline allocation. ~~The baseline allocation for each Cooperating Non-Contracting Party (CNCNCP) shall be no more than that of Contracting Parties (Member).~~

[Comment 21: It depends on a situation, since not all CPs would receive allocation.]

9. **Sustainability:**

- a) ~~The total amount of a~~Allocations ~~should not be larger than are~~TACs to be made in relation to species specific optimum sustainable yield, determined by Commission on the advice of the IOTC Scientific Committee.

[Comment 22: TAC should be determined based on scientific advice, but allocation has no relation to science discussion.]

- c) ~~The relative impact of the primary fishing gear used to target an IOTC species, by CPC shall be considered.~~

[Comment 23: Japan understands the intention, but it would be practically impossible to do so. Also, the discussion on which gear is more sustainable will be really controversial, adding more uncertainty.]

10. **Coastal State rights:**

- a) All Indian Ocean Coastal State CPC²s ~~may~~shall receive a supplementary ~~baseline~~ allocation, where applicable irrespective of whether or not that coastal State has a history of catching a particular species in the IOTC Area of Competence according to their interest and capacity.

[Comment 24: Supplementary allocation should be distinguished from a baseline allocation. Japan could consider such supplementary allocation to coastal States, but it would depend on the final picture of the scheme and does not want to prejudge it at this stage.]

- b) The supplementary ~~baseline~~ allocation for each Cooperating Non-Contracting Party (CNCNCP) shall be no more than that of Contracting Parties (Members).

- c) ~~The supplementary baseline allocation shall be allocated irrespective of whether or not a coastal State has a history of catching that species in the IOTC Area of Competence.~~

[Comment 25: The elements of this sub-paragraph has been already described in (a) of this paragraph.]

- d) When the TAC for an IOTC species decreases from the previous allocation period, consideration should be given to the possibility of DWFN's ~~should~~shall receive a greater reduction in catches by Distant Water Fishing Nations (DWFNs) than coastal States, ~~consistent with principles enunciated in the Kobe process.~~

[Comment 26: Japan could consider such an element, but it would depend on the final picture of the scheme and does not want to prejudge it at this stage.]

11. **New Entrants:**

a) New entrants ~~Distant Water Fishing Nations~~ that join the IOTC as a Contracting Party or a cooperating non-Contracting Party ~~should~~ not automatically be eligible for allocations under this Recommendation. Eligibility will be considered by the Commission with particular reference to Article 11 of the UNFSA ~~Fish Stocks Agreement~~ and taking into account the principles set out in this Recommendation. *[Comment 27: Eligibility of all new entrants should be considered by the Commission on a case-by-case.]*

~~b) A proportion of the TAC available for allocation shall be 'Set Aside' for new coastal state entrants. The level of the catch to be 'Set Aside' for new entrants will be agreed by the Commission at the start of the quota allocation system and will be reviewed and adjusted as appropriate prior to the commencement of the next allocation period.~~

~~1) New entrant coastal States of the IOTC area of competence shall be allocated a baseline allocation from the 'Set Aside' each year for individual species, upon application to, and approval by the Commission.~~

~~2) A new entrant baseline allocation shall be in proportion to individual CPC allocations in the preceding year in which the new entrant joined the IOTC. The baseline allocation from the 'Set Aside' shall not exceed the lowest allocation of any CPC in the previous year.~~

~~3) 1) Unused 'Set Aside' shall be reallocated to coastal State Contracting Parties based on a formula to be decided by the Commission. However, in years where the stock biomass is determined by the IOTC Scientific Committee to be less than the level capable of producing optimum sustainable yield (e.g. $SB < SB_{msy}$), no reallocation of the 'Set Aside' shall occur.~~

[Comment 28: Japan does not support that a certain portion of TAC is reserved for new coastal comers. Article 11 of UNFSA should be a basis.]

~~e) b) Cooperating Non-Contracting Parties who do not intend to fish their supplementary baseline allocation, shall be able to return any unused supplementary baseline allocation amount to the Commission's 'set aside' at any time during the quota year for potential reallocation to other coastal States in equal portions.~~

[Comment 29: Whether that allocation should be returned to the Commission for use by others or should not be used depends on the stock status. If the stock is in a bad shape, it should not be used by others.]

12. **Special requirements of Small Island Developing coastal States and Developing Coastal States:**

a) The interests and aspirations of developing coastal State and Small Island Developing States ~~should~~ be recognised via an allocation for SIDS and DCS each year, upon application to, and approval by the Commission.

13. **Historical fishing activity:**

a) Historical catches of eligible participants in a given reference period, ~~where all recent historical catches taken in an Exclusive Economic Zone (EEZ) of a coastal state shall be solely attributed to that coastal state and~~ ~~should~~ be used to calculate an ~~initial~~ historical fishing activity allocation for each CPC, for each IOTC species, ~~as provided in Table 1.~~

[Ditto Comment 15 above] [Comment 30: Reference period should be considered on a species by species basis in the future.]

Table 1. IOTC species and its respective historical catch reference period.

Common name	Scientific name	Code	Reference
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			period
<i>Tropical tunas</i>			
Yellowfin tuna	<i>Thunnus albacares</i>	YFT	yyyy-yyy
Skipjack tuna	<i>Katsuwonus pelamis</i>	SKJ	yyyy-yyy
Bigeye tuna	<i>Thunnus obesus</i>	BET	yyyy-yyy
<i>Temperate tunas</i>			
Albacore	<i>Thunnus alalunga</i>	ALB	yyyy-yyy
<i>Billfish</i>			
Swordfish	<i>Xiphias gladius</i>	SWO	yyyy-yyy

14. ***Spatial allocation:*** *[Ditto Comment 15 above]*

- a) ~~Historical catches for each species and reference period, as provided in **Table 1**, shall be separated spatially, as catches within areas under national jurisdiction and catches on the high seas.~~
- b) ~~Initially, the spatial separation of catches shall be made on the following basis:~~
- ~~i. Catches reported for 5x5 or 1x1 degree grid squares that overlap an EEZ, shall be considered as being taken on the high seas, unless otherwise requested by the fishing flag State or the EEZ coastal State, and agreed to by both. In cases where the coastal State is in disagreement with the fishing flag State, the applicable access agreement shall be produced, along with other supporting evidence for consideration by the IOTC Compliance Committee.~~
 - ~~ii. Catches reported or estimated without associated effort data (as required by IOTC Resolution 15/02), shall be considered as being taken on the high seas. In cases where the flag State is in disagreement, supporting evidence shall be provided for consideration by the IOTC Compliance Committee.~~
 - ~~iii. Artisanal, subsistence and small scale fisheries from developing coastal State and Small Island Developing State fisheries, will be assumed to have been taken within the national jurisdiction of the coastal State, irrespective of whether effort data is available.~~

15. ***High seas access:*** *[Ditto Comment 16 above]*

- a) ~~Each CPC shall be allocated a baseline high seas allocation (separate from the initial historical fishing activity baseline allocation for the high seas).~~
- b) ~~The baseline high seas allocation shall be equal among all CPCs.~~
- e)a) ~~Quota allocation in respect of future high seas fishing opportunities for IOTC developing coastal States shall be facilitated by a gradual transfer of fishing rights from Distant Water Fishing Nations, commencing three (3) years after the initial baseline allocation. The details of this gradual transfer shall be developed by the Commission.~~

16. ***Transferability:***

- a) National Allocation, or part thereof, ~~may~~shall be able to be temporarily or permanently transferred among Contracting Parties. ~~The right to fish that quota shall last for a maximum of one year and shall expire at the end of a calendar year (i.e. 24:00 on 31 December).~~

[Comment 31: Allocation periods, namely fishing year, should be determined by each CPC while taking account of each domestic system.]

- b) ~~Cooperating Non-Contracting Parties (CNCP) shall not be eligible to receive any allocation via transfer from another CPC.~~

[Comment 32: Japan considers that there is no reason to limit transferability among CPs.]

- c) ~~New entrant Distant Water Fishing Nations (DWFN) that join the IOTC as a Contracting Party (Member) shall be permitted to lease temporary transfers (para. 16(a)) of quota for individual species from an existing CPC.~~

[Comment 33: They are determined by the Commission on a case-by-case basis.]

- d) ~~A new entrant DWFN that joins the IOTC as a Cooperating Non-Contracting Party (CNCP) shall not be eligible to receive any allocation via transfers from another CPC.~~

[Ditto Comment 33 above]

- e) ~~Unused allocations shall not be rolled over to the next allocation period.~~

[Comment 34: To what extent carry forward should be permitted will depend on the stock status.]

17. **Socio-Economics:**

- a) The social dependency of each eligible participant on fisheries in the IOTC Area of Competence (which may include livelihood opportunities, employment in fisheries, post-harvest, and formal and informal supply chain activities, female work opportunities, seafood consumption per capita, and average number of family members supported per fisher), will be considered.
- b) The economic dependency of each eligible participant on fisheries in the IOTC Area of Competence (which may include economic vulnerability, export value, processing capacity, and fisheries as a proportion or rank of GDP), will be considered.
- c) The cultural dependency of each eligible participant on fisheries in the IOTC Area of Competence (criteria for which will be determined), will be considered.

18. **Compliance by eligible qualifying participants:**

- a) In order to remain eligible for allocations, CPCs must ~~m~~Maintain active programs to implement IOTC Conservation and Management Measures (CMMs), with an IOTC compliance score of ~~50~~% or greater for CMMs considered by the Commission to be relevant for the purposes of this Resolution.

[Comment 35: 50% is too low. Given the low level of compliance by CPCs, IOTC should be more ambitious.]

- b) ~~Over-catch of allocation from any CPC shall be deducted from that CPCs future quota in accordance with a corrective actions policy to be agreed by the Commission, which will take account of the special requirements and capacity building needs of developing States. In the absence of demonstrated capacity constraints, the default deduction shall be at a ratio of 1:1 for the following year, or 1.5:1 if deducted from the subsequent year at the request of the CPC.~~

[Comment 36: Japan considers that a specific formula of the deduction of over catch should be considered on a case-by-case basis.]

- c) Mechanisms to reconcile catch against allocated National Allocation ~~should~~shall be developed by the Commission that would permit the introduction of a system of quota allocation penalties to be introduced.

IV. ~~Weighting of allocation criteria~~

19. ~~A weighting scheme shall be developed for the allocation criteria for consideration by the Commission at its 22nd Annual Session in 2018.~~

V. ~~Allocation formula~~

20. ~~An allocation formula, with associated weighting (Section IV) for each IOTC species detailed in **Table 1**, shall be developed for consideration by the Commission at its 22nd Annual Session in 2018.~~

[Comment 37: These items, paragraph 19 and 20, would be the subject of the future discussion, including its necessity.]

VI. Future Consideration and Implementation

21. The Commission ~~should~~all, at or after its 23~~2~~rdnd Session in 2019~~8~~, consider revisions to the allocation principles ~~and criteria~~, as well as the addition of a criteria, weighting scheme, allocation formula and implementation timeline for the future allocation of fishing opportunities for IOTC species.
22. ~~The implementation of a system of allocation is expected to take effect on 1 January 2019.~~
23. ~~This Resolution supersedes Resolution 14/02 For the conservation and management of tropical tunas stocks in the IOTC area of competence.~~

ANNEX I

GUIDING LEGAL TEXT

Article V, paragraphs 1 and 2d, and Article XVI of the IOTC Agreement.

Article V. Objectives, Functions and Responsibilities of the Commission

1. *The Commission shall promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks.*
2. *In order to achieve these objectives, the Commission shall have the following functions and responsibilities, in accordance with the principles expressed in the relevant provisions of the United Nations Convention on the Law of the Sea:*
 - (d) *to keep under review the economic and social aspects of the fisheries based on the stocks covered by this Agreement bearing in mind, in particular, the interests of developing coastal states;*

Article XVI Coastal States' Rights

This Agreement shall not prejudice the exercise of sovereign rights of a coastal state in accordance with the international law of the sea for the purposes of exploring and exploiting, conserving and managing the living resources, including the highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction.

Part V of the Convention of the Law of the Sea on Exclusive Economic Zones; Articles 55, 56, 62, 63 and 64.

Article 55 Specific legal regime of the exclusive economic zone.

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56 Rights, jurisdiction and duties of the coastal State in the exclusive economic zone.

1. *In the exclusive economic zone, the coastal State has:*
 - (a) *sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superadjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;*
 - (b) *jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment;*
 - (c) *other rights and duties provided for in this Convention.*
2. *In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.*
3. *The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.*

Article 62 Utilization of the living resources

1. *The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.*
 2. *The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.*
 3. *In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70,*
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- the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.*
4. *Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate inter alia, to the following:*
- (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;*
 - (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;*
 - (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;*
 - (d) fixing the age and size of fish and other species that may be caught;*
 - (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;*
 - (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;*
 - (g) the placing of observers or trainees on board such vessels by the coastal State;*
 - (h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;*
 - (i) terms and conditions relating to joint ventures or other cooperative arrangements;*
 - (j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;*
 - (k) enforcement procedures.*
5. *Coastal States shall give due notice of conservation and management laws and regulations*

Article 63 Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it.

- 1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.*
- 2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.*

Article 64 Highly migratory species.

- 1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.*
 - 2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.*
-

Republic of Korea

Email

From: riley1126@korea.kr

TO: IOTC Secretariat

CC: ikna@kosfa.org, =?UTF-8?B?IuuwleywrOyImCI=?=

Date: 5 July 2017 at 09:42

Subject: Korea's response to Circular 2017-062 requesting CPC's feedback on the proposal on the allocation of fishing opportunity.

Dear IOTC Secretariat,

Greetings from Korea.

I am writing on this occasion to respond to Circular 2017-062 requesting CPC's feedback on the proposal on the allocation of fishing opportunity.

Although Korea prefers to discuss this matter based on the agreed principle, not based on the proposal, Korea has attached some comments and feedback to the proposed texts.

Korea's underlying position on this issue remains the same since IOTC 21:

Korea is very concerned that the proposal is quite lopsided and does not fully capture what was agreed at TCAC 3 in terms of the balance between coastal states and DWFNs, and it lacks the spirit of fairness and equitability.

Also, Korea finds that it would be inappropriate if the Commission takes a different approach to the EEZs and high seas areas when it comes to the conservation and management of highly migratory stocks, and strongly believes that any fishing opportunity to be allocated should encompass both areas as a whole and with the same references.

Korea hopes that CPCs can address this issue in a constructive manner and come up with a fair and equitable solution that both coastal states and DWFNs can find satisfactory.

For Korea's feedback on the proposal, please find attached the MS word file.

Thank you for your kind assistance.

Best Regards,

Jung-re Riley Kim

Policy Officer (international fisheries affairs)/ Multilateral Fisheries Negotiator

Distant Water Fisheries Division

Ministry of Oceans and Fisheries of Korea

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Note: The feedback provided by Korea is about the original version of Proposal N, not its Revision 1.

ON THE ALLOCATION OF FISHING OPPORTUNITIES FOR IOTC SPECIES

SUBMITTED BY: MALDIVES AND SOUTH AFRICA; 21 APRIL 2017

Explanatory memorandum

This proposal aims to:

- 1) Protect the sovereign rights of IOTC coastal States, in accordance with the United Nations Convention on the Law of the Sea, and the conservation and management of straddling fish stocks and highly migratory fish stocks, for the purposes of exploring and exploiting, conserving and managing the living resources, including highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction.
- 2) Ensure the special requirements of IOTC developing coastal States, including Small Island Developing States (SIDS) and vulnerable economies, are accommodated including food security and development aspirations.
- 3) Ensure a fair, equitable, and transparent system of fishing rights allocation is developed in accordance with 1 and 2 above.
- 4) Clarify the intent and application of Allocation Principles developed at previous Sessions of the IOTC Technical Committee on Allocation Criteria.
- 5) Detail Allocation Criteria based on the Allocation Principles.
- 6) Set forth a program of work for the next two (2) years that will result in the adoption of a sequence of IOTC Resolutions, ending in an operational system for allocation in 2019.

The following text outlines the rationale for several additional key elements being included or excluded from this proposal:

Allocation principles: The allocation principles contained within this proposal are based on those developed at the 3rd Session of the Technical Committee on Allocation Criteria (TCAC03). Where the proponents of this proposal deemed it necessary, the intent and application of the TCAC03 Allocation Principles have been further clarified.

Biomass distribution: At this time, the IOTC is not in a position to determine the distribution of stock biomass for any IOTC species at a fine scale (i.e. by EEZ). However, there may be an opportunity for some stocks to be differentiated between coastal and high seas distribution (e.g. neritic tunas). Where possible, efforts could be made to determine biomass distribution for potential incorporation into a system of allocation in the future when those species are considered. Additionally, bio-ecological significance may also be considered with biomass distribution.

Compliance assessments: Although the proponents of this proposal believe that the record of compliance and/or cooperation by eligible participants with the IOTC's Conservation and Management Measures should be an element of an allocation system, this should be limited to a single multiplying factor based on the overall compliance scorecard developed by the IOTC Secretariat annually, but focused on CMMs whose application have a direct link to the needs of an allocation system.

Historical fishing activity: For the purposes of allocation, the proponents of this proposal consider it their default position that all historical catches taken in an Exclusive Economic Zone (EEZ) of a coastal state shall be solely attributed to that coastal state. The previous renting of access to fisheries resources caught within an EEZ (e.g. via access agreements or other arrangement), should in no way provide ongoing access to the resource. In the current proposal, the incorporation of temporary quota transferability (leasing) has been introduced to ensure market access, pending suitable compensation to quota holders.

Commenté [u1]: TCAC agreed that further discussions would be based on the paper (Appendix VII of the TCAC meeting record) that both addressed the positions of coastal states and DWFNs. However, this proposal only takes up the parts that are favorable to coastal states, devoiding of other important parts, especially paragraphs (g) and (h) of the Appendix.

Commenté [JRK2]: This issue is subject to more extensive discussions at the TCAC.

Commenté [JRK3]: Korea is opposed to the idea of attributing catches to the coastal states, and catch attribution issues are also subject to discussions at the TCAC.

Some of the fundamental foundations of this position paper are drawn from Article V, paragraphs 1 and 2d, and Article XVI of the IOTC Agreement, as well as Part V of the United Nations Convention on the Law of the Sea (UNCLOS) on Exclusive Economic Zones; in particular Articles 55, 56, 62, 63 and 64, as well as the UNCLOS Implementing Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (see [Annex I](#) of the proposal).

RESOLUTION 17/XX

ON THE ALLOCATION OF FISHING OPPORTUNITIES FOR IOTC SPECIES

Keywords: Allocation principles; allocation criteria; sustainability; sovereign rights.

The Indian Ocean Tuna Commission (IOTC),

CONSIDERING the objectives of the Commission to maintain stocks in perpetuity and with high probability, at levels not less than those capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors including the special requirements of developing States in the IOTC area of competence;

BEING MINDFUL of Article XVI of the IOTC Agreement regarding the rights of Coastal States and of Article 87 and 116 of the UN Convention of the Law of the Sea regarding the right to fish on the high seas;

RECOGNISING the special requirements of the developing states, particularly Small Island developing states in Article 24, of the Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA);

RECALLING that Article 5, of UNFSA entitles the conservation and management of highly migratory fish stocks are based on best scientific evidence available and with special reference to Resolution 15/10 for a stock where the assessed status places it within the red quadrant, and with an aim to end overfishing with a high probability and to rebuild the biomass of the stock in as short time as possible.

FURTHER RECALLING that Article 6, of UNFSA, requires the states to be cautious during the application of precautionary approach when information is uncertain, unreliable or inadequate and this should not be a reason for postponing or failing to take conservation and management measures;

CONSIDERING the recommendations adopted by the KOBE II, held in San Sebastian, Spain, June 23 – July 3 2009; implementing where appropriate a freeze on fishing capacity on a fishery by fishery basis and such a freeze should not constrain the access to, development of, and benefit from sustainable tuna fisheries by developing coastal States.

FURTHER CONSIDERING the recommendations adopted by the KOBE III, held in La Jolla, California, 11- 15 July 2011; considering the status of the stocks, each RFMO should consider a scheme for reduction of over capacity in a way that does not constrain the access to, development of, and benefit from sustainable tuna fisheries, including on the high seas, by developing coastal States, in particular small island developing States, territories, and States with small and vulnerable economies; and Transfer of capacity from developed fishing members to developing coastal fishing members within its area of competence where appropriate.

FURTHER CONSIDERING the report by International Council for the Exploration of Sea and FAO Working Group on Fishing Technology and Fish Behaviour (2006), Gillnets are considered to be one of the least catch controllable and least environmentally sustainable gears;

FURTHER CONSIDERING the recommendations of the 18th IOTC Scientific Committee held in Bali, Indonesia, 23–27 November 2015 that the catches of yellowfin tuna have to be reduced by 20% of the 2014 levels to recover the stocks to levels above the interim target reference points with 50% probability by 2024, and subsequent recommendations by the IOTC Scientific Committee.

MINDFUL that Technical Committee on Allocation Criteria is taking longer than expected to reach agreement on allocation criteria, while some IOTC stocks are being overfished and are subject to overfishing;

COGNIZANT that concurrence of an entire allocation process (principles, criteria, weighting and formula) may take much longer and CONSEQUENTLY a more pragmatic approach would be to adopt the principles and criteria through a progressive approach;

FURTHER CONSIDERING the call by the United Nations General Assembly Resolution 70/75 upon the states to increase the reliance on scientific advice in developing, adopting and implementing conservation and management measures and to take into account the special requirements of developing states, including Small Island Developing States (SIDS) as highlighted in the SIDS Accelerated Modalities of Action (SAMOA) Pathway;

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

I. Definitions

1. **Artisanal, subsistence and small scale developing coastal State and Small Island Developing State fisheries:** Fisheries other than longline or surface, also called coastal fisheries, as defined by the IOTC.
2. **Bycatch:** All species, other than the 16 species listed in Annex B of the IOTC Agreement, caught or interacted with by fisheries for tuna and tuna-like species in the IOTC area of competence. A bycatch species includes those non-IOTC species which are (a) retained (byproduct), (b) incidentally taken in a fishery and returned to the sea (discarded); or (c) incidentally affected by interacting with fishing equipment in the fishery, but not taken.
3. **Harvest Control Rules (HCR):** Agreed responses that management must make under pre-defined circumstances regarding stock status. Also called ‘control rules’ and ‘decision rules’.
4. **Optimum sustainable yield:** The yield for a particular species which the Commission, under advice from the Scientific Committee, has agreed is the target yield for that species. This may be the maximum sustainable yield (MSY), maximum economic yield (MEY), or any other variant as agreed by the Commission.
5. **Target Reference Points (TRP):** A state of a fishery and / or a resource which is considered desirable.
6. **Total allowable catch (TAC):** For a fishery, a catch limit set as an output control on fishing. Where resource sharing arrangements are in place between commercial and recreational fishers, the term total allowable commercial catch (TACC) may apply. The term ‘global’ is applied to TACs that cover fishing mortality from all fleets.

II. Allocation principles

7. The following are the *Allocation Principles* that shall form the basis for developing and assessing the performance of prospective *Allocation Criteria* ([Section III](#)):
 - a) **Eligibility:** Fishing access shall be limited to IOTC Contracting Parties and IOTC Cooperating Non-Contracting Parties (collectively termed CPC’s).
 - b) **Sustainability:** The long term sustainability of each IOTC species to be achieved through appropriate catch limits in accordance with the agreed management framework for an IOTC species (e.g. involving Target Reference Points (TRP) and managed via species specific Harvest Control Rules (HCR)). Additional management measures may also be used in tandem with catch limits to ensure sustainability of each species. When IOTC species are determined to be overfished and/or subject to overfishing, **eligible** participants are encouraged to apply catch reduction mechanisms to fisheries/gears, which may include non-targeted fisheries, that have a greater negative impact on that species.
 - c) **Coastal State rights:** The exercise of the sovereign rights of Indian Ocean coastal States, in accordance with the United Nations Convention on the Law of the Sea, and the conservation and management of straddling fish stocks and highly migratory fish stocks, for the purposes of exploring and exploiting, conserving and managing the living resources, including highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction, shall not be prejudiced. Guiding legal text for ensuring coastal State rights are upheld are provided at [Annex I](#). Coastal States shall be eligible for a baseline

Commenté [JRK4]: All relevant participants with fishing opportunities

allocation irrespective of whether or not that coastal State has a history of catching a particular species in the IOTC Area of Competence.

Commenté [JRK5]: This needs further discussions at the TCAC.

- d) **Special requirements (aspirations) of developing coastal States:** To ensure the special requirements of Indian Ocean developing coastal States, including Small Island Developing States (SIDS) and vulnerable economies, are accommodated including aspirations.
- e) **Historical fishing activity:** Historical catches, for a time period to be decided, by eligible participants shall be used as an element in determining an initial allocation. Historical catches taken within an EEZ shall be solely attributable to the respective coastal State, regardless of the flag of the fishing vessel(s) which took the catches. Additional benefits may be applied if catches, or part thereof, are taken by the coastal State. Historical catches may include those estimated by the IOTC Secretariat, approved by the IOTC Scientific Committee and endorsed by the Commission.
- f) **Historical spatial allocation:** Allocations shall be separated based on historical catches [and where known, species specific biological ranges], both within and outside the EEZs of coastal States. Historical catches may include those estimated by the IOTC Secretariat, approved by the IOTC Scientific Committee and endorsed by the Commission.
- g) **High seas access:** All CPCs shall be provided with a baseline fishing opportunity on the high seas, irrespective of whether they have a history of fishing on the high seas.
- h) **Transferable quota:** Allocations or part thereof, may be temporarily transferable, thereby ensuring product availability is maintained to markets and allocations are optimised. This could be achieved by establishing mechanisms to ensure that initial and subsequent quota allocations are temporarily transferable among existing or new entry, eligible participants.
- i) **Socio-Economics:** Allocations shall consider the dependency of each eligible participant on fisheries in the IOTC Area of Competence (all species combined), measured by the contribution of those fisheries to social, economic, and cultural needs.
- j) **Compliance activities:** The record of compliance and/or cooperation by eligible participants with the IOTC's Conservation and Management Measures.

Commenté [JRK6]: Korea is opposed to this idea for the reasons mentioned earlier.

Commenté [JRK7]:

Taking a different approach to the management of highly migratory stocks between EEZs and high seas areas goes against the principle of compatibility set out in UNCLOS. If any catch limits are to be set based on the catch history, there should not be any separation between EEZs and high seas in terms of the historical catches.

Commenté [u8]: In order to ensure that each CPC is allocated with the fishing opportunities commensurate with the capacity to utilize them, this should be revised as "A baseline fishing opportunity shall be provided to all fishing vessels of CPCs that have the capacity to fish on the high seas."

Commenté [JRK9R8]:

III. Allocation criteria

8. Eligibility:

- a) Be a Contracting Party or Cooperating Non-Contracting Party (collectively termed CPCs) of the IOTC.
- b) Each CPC shall receive a baseline allocation. The baseline allocation for each Cooperating Non-Contracting Party (CNCP) shall be weighted less than that of Contracting Parties (Member).

9. Sustainability:

- a) Allocation to be made in relation to species specific optimum sustainable yield, via an agreed biological Target Reference Point (TRP), determined by the IOTC Scientific Committee.
- b) The total allowable catch (TAC) shall be set for a time period of relevance to the species, fisheries, stock assessment and/or Management Strategy Evaluation process, and revised accordingly.
- c) The relative sustainability for the primary fishing gear used to target an IOTC species, by CPC shall be considered.

10. Coastal State rights:

- a) All Indian Ocean Coastal State CPC's shall receive a supplementary baseline allocation. The baseline allocation for each Cooperating Non-Contracting Party (CNCP) shall be weighted less than that of Contracting Parties (Member). The supplementary baseline allocation shall be allocated irrespective of whether or not a coastal State has a history of catching that species in the IOTC Area of Competence.

Commenté [u10]: Where are distant water fishing nations' rights?

DWFNs should also be assured of their rights, considering their contribution to the development of coastal states' fisheries. Also, CPCs with yellowfin catch limits less than 10,000 tonnes should be assured of a baseline fishing opportunity for the viability of their operation.

Commenté [JRK11]:

Commenté [u12]:

Commenté [JRK13]: This needs further discussions at the TCAC, but Korea is concerned about imbalances between DWFNs and coastal states in fishing opportunities, which undermine the fairness and equitability.

- b) A proportion of the total annual allocation shall be ‘Set Aside’ for new coastal state entrants. The level of the catch to be ‘Set Aside’ for new entrants will be agreed by the Commission at the start of the quota allocation system and will be reviewed and adjusted as appropriate prior to the commencement of the next allocation period.
- New entrant coastal States of the IOTC area of competence shall be allocated a baseline allocation from the ‘Set Aside’ each year for individual species, upon application to, and approval by the Commission.
 - A new entrant baseline allocation shall be in proportion to individual CPC allocations in the preceding year in which the new entrant joined the IOTC. The baseline allocation from the ‘Set Aside’ shall not exceed the lowest allocation of any CPC in the previous year.
 - Unused ‘Set Aside’ shall be reallocated to coastal State Contracting Parties based on a formula to be decided by the Commission. However, in years where the stock biomass is determined by the IOTC Scientific Committee to be less than the level capable of producing optimum sustainable yield (e.g. $SB < SB_{msy}$), no reallocation of the ‘Set Aside’ shall occur.
- c) Cooperating Non-Contracting Parties who do not wish to fish their baseline quota allocation, shall be able to return any unused baseline allocation to the Commission’s ‘set aside’ at any time during the quota year for potential reallocation to other coastal States in equal portions.
- d) When IOTC species are determined to be overfished and/or subject to overfishing, DWFN’s shall receive a greater reduction in catches than coastal States, consistent with international standards agreed to in the Kobe process.

Commenté [JRK14]: Why only coastal state new entrant?

Commenté [JRK15]: Why only coastal states?

Commenté [JRK16]: The management of resources is a shared responsibility and it is difficult for Korea to grasp why DWFNs should receive greater reduction in catches when the stocks decline. Korea is concerned about imbalances between DWFNs and coastal states in fishing opportunities, which undermine the fairness and equitability.

Commenté [JRK17]: Korea is concerned about imbalances between DWFNs and coastal states in fishing opportunities, which undermine the fairness and equitability.

Commenté [JRK18]: This issue needs further discussions at the TCAC.

11. *Special requirements of developing coastal States:*

- a) The interests and aspirations of developing coastal State and Small Island Developing States shall be recognised via a supplementary baseline allocation each year, upon application to, and approval by the Commission.

12. *Historical fishing activity:*

- a) Recent historical catches of eligible participants, where all recent historical catches taken in an Exclusive Economic Zone (EEZ) of a coastal state shall be solely attributed to that coastal state, shall be used to calculate an initial historical fishing activity allocation for each species and time period, as provided in [Table 1](#).

Table 1. IOTC species and its respective historical catch reference period.

Common name	Scientific name	Code	Reference period
<i>Tropical tunas</i>			
Yellowfin tuna	<i>Thunnus albacares</i>	YFT	yyyy-yyyy
Skipjack tuna	<i>Katsuwonus pelamis</i>	SKJ	yyyy-yyyy
Bigeye tuna	<i>Thunnus obesus</i>	BET	yyyy-yyyy
<i>Temperate tunas</i>			
Albacore	<i>Thunnus alalunga</i>	ALB	yyyy-yyyy
<i>Billfish</i>			
Swordfish	<i>Xiphias gladius</i>	SWO	yyyy-yyyy

13. *Spatial allocation:*

- a) Historical catches for each species and time period, as provided in [Table 1](#), shall be separated spatially, as catches within areas under national jurisdiction and on the high seas.
- b) Initially, the spatial separation of catches shall be made on the following basis:

- i. Catches reported for 5x5 or 1x1 degree grid squares that overlap an EEZ, shall be considered as being taken on the high seas, unless otherwise requested by the fishing flag State or the EEZ coastal State, and agreed to by both. In cases where the coastal State is in disagreement with the other flag State, the applicable access agreement shall be produced, along with other supporting evidence for consideration by the IOTC Compliance Committee.
- ii. Catches reported or estimated without associated effort data (as required by IOTC Resolution 15/02), shall be considered as being taken on the high seas. In cases where the flag State is in disagreement, supporting evidence shall be provided for consideration by the IOTC Compliance Committee.
- iii. Artisanal, subsistence and small scale fisheries from developing coastal State and Small Island Developing State fisheries, are assumed to be operating fully within the EEZ of the coastal State, irrespective of whether effort data is available.

Commenté [JRK19]: Zone-based management is a contentious issue in other RFMOs, and careful consideration is needed.

14. **High seas access:**

- a) Each CPC shall be allocated a baseline high seas allocation (separate from the initial historical fishing activity baseline allocation for the high seas).
- b) The baseline high seas allocation shall be equal among all CPCs.
- c) Quota allocation in respect of future high seas fishing opportunities for IOTC developing coastal States shall be facilitated by a gradual transfer of fishing rights from Distant Water Fishing Nations, commencing three (3) years after the initial baseline allocation. The details of this gradual transfer shall be developed by the Commission.

Commenté [u20]: In order to ensure that each CPC is allocated with the fishing opportunities commensurate with the capacity to utilize them, this should be revised as "A baseline fishing opportunity shall be provided to all fishing vessels of CPCs that have the capacity to fish on the high seas."

Commenté [JRK21]: Korea is concerned about imbalances between DWFNs and coastal states in fishing opportunities, which undermine the fairness and equitability.

With this and all the other preferential arrangements for coastal states, the DWFNs will end up being phased out from the IOTC fisheries.

15. **Transferable quota:**

- a) Quota, or part thereof, shall be temporarily transferable among Contracting Parties. The right to fish that quota shall last for a maximum of one year and shall expire at the end of a calendar year (24:00 on 31 December).
- b) Cooperating Non-Contracting Parties (CNCP) shall not be eligible to receive any quota via transfer from another CPC.
- c) New entrant Distant Water Fishing Nations (DWFN) to the IOTC as a Contracting Party (Member) shall not be eligible to receive a baseline allocation, but shall be permitted to lease temporary transfers (para. 15(a)) of quota for individual species from an existing CPC.
- d) New entrant DWFN to the IOTC as a Cooperating Non-Contracting Party (CNCP) shall not be eligible to receive a baseline allocation, nor any temporary transfers of quota, thus only allowing DWFN CNCPs to participate as supply or transshipment fleets.
- e) Unused quota shall not be rolled over to the next quota year.

Commenté [JRK22]: This needs further discussions.

16. **Socio-Economics:**

- a) The social dependency of each eligible participant on fisheries in the IOTC Area of Competence (which may include livelihood opportunities, employment in fisheries, post-harvest, and formal and informal supply chain activities, female work opportunities, seafood consumption per capita, and average number of family members supported per fisher), will be considered.
- b) The economic dependency of each eligible participant on fisheries in the IOTC Area of Competence (which may include economic vulnerability, export value, processing capacity, and fisheries as a proportion or rank of GDP), will be considered.
- c) The cultural dependency of each eligible participant on fisheries in the IOTC Area of Competence (criteria for which will be determined), will be considered.

17. **Compliance by eligible qualifying participants:**

- a) Maintain active programs to implement IOTC Conservation and Management Measures (CMMs), with an IOTC compliance score of 50% or greater, for CMMs which are relevant to Allocation.

- b) Over-catch of quota from any CPC shall be deducted from that CPC's future quota at a ratio of 1:1 for the following year, or 1.5:1 if deducted from the subsequent year at the request of the CPC.
- c) Mechanisms to reconcile catch against allocated quota shall be developed by the Commission that would permit the introduction of a system of quota allocation penalties to be introduced.

IV. Weighting of allocation criteria

18. A weighting scheme shall be developed for the allocation criteria for consideration by the Commission at its 22nd Annual Session in 2018.

Commenté [JRK23]: This may require more realistic timeframe.

V. Allocation formula

19. An allocation formula, with associated weighting ([Section IV](#)) for each IOTC species detailed in [Table 1](#), shall be developed for consideration by the Commission at its 22nd Annual Session in 2018.

VI. Implementation

20. The Commission shall, at its 22nd Session in 2018, consider revisions to the allocation principles and criteria, as well as the addition of a weighting scheme, allocation formula and implementation timeline for the allocation of fishing opportunities for IOTC species.

Commenté [JRK24]: This may require more realistic timeframe.

21. The implementation of a system of allocation is expected to take effect on 1 January 2019.

22. This Resolution supersedes Resolution 14/02 *For the conservation and management of tropical tunas stocks in the IOTC area of competence*.

Commenté [u25]: This proposal only deals with allocation criteria and does not address any other elements in relation to the management and conservation of tropical tuna stocks. Therefore, this paragraph should be deleted.

ANNEX I
GUIDING LEGAL TEXT

Article V, paragraphs 1 and 2d, and Article XVI of the IOTC Agreement.

Article V. Objectives, Functions and Responsibilities of the Commission

1. *The Commission shall promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks.*
2. *In order to achieve these objectives, the Commission shall have the following functions and responsibilities, in accordance with the principles expressed in the relevant provisions of the United Nations Convention on the Law of the Sea:*
 - (d) *to keep under review the economic and social aspects of the fisheries based on the stocks covered by this Agreement bearing in mind, in particular, the interests of developing coastal states;*

Article XVI Coastal States' Rights

This Agreement shall not prejudice the exercise of sovereign rights of a coastal state in accordance with the international law of the sea for the purposes of exploring and exploiting, conserving and managing the living resources, including the highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction.

Part V of the Convention of the Law of the Sea on Exclusive Economic Zones; Articles 55, 56, 62, 63 and 64.

Article 55 Specific legal regime of the exclusive economic zone.

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56 Rights, jurisdiction and duties of the coastal State in the exclusive economic zone.

1. *In the exclusive economic zone, the coastal State has:*
 - (a) *sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superadjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;*
 - (b) *jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment;*
 - (c) *other rights and duties provided for in this Convention.*
2. *In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.*
3. *The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.*

Article 62 Utilization of the living resources

1. *The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.*
2. *The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.*
3. *In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.*
4. *Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate inter alia, to the following:*

- (a) *licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;*
 - (b) *determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;*
 - (c) *regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;*
 - (d) *fixing the age and size of fish and other species that may be caught;*
 - (e) *specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;*
 - (f) *requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;*
 - (g) *the placing of observers or trainees on board such vessels by the coastal State;*
 - (h) *the landing of all or any part of the catch by such vessels in the ports of the coastal State;*
 - (i) *terms and conditions relating to joint ventures or other cooperative arrangements;*
 - (j) *requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;*
 - (k) *enforcement procedures.*
5. *Coastal States shall give due notice of conservation and management laws and regulations*

Article 63 Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it.

1. *Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.*
2. *Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.*

Article 64 Highly migratory species.

1. *The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.*
2. *The provisions of paragraph 1 apply in addition to the other provisions of this Part.*

Thailand

Email

From: DOF | Overseas Fisheries and Transshipment Control Division

TO: secretariat@iotc.org

CC: Chumnarn Pongsri, Sarayoot boonkumjad, Arpita Karmokar, mirose.govinden@iotc.org, florian.giroux@iotc.org, lucia.pierre@iotc.org, spanjarat@yahoo.com, Pattira Lirdwitayaprasit, chirat nu, Chonticha Khamyu

Date: 4 July 2017 at 06:53

Subject: Agreement on a proposal

Dear Sir/Madam,

Kindly refer to IOTC Circular 2017-062 dated 7 June 2017, consideration of management measures related to all IOTC species.

Department of Fisheries, Thailand would like to inform you that we are agreed on a proposal On the Allocation of Fishing Opportunities for IOTC species.

We are looking forward to receiving your reply of acknowledgement.

Best regard,

Overseas Fisheries and Transshipment Control Division,

Department of Fisheries (DOF)

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Lat Yao, Chatuchak

Bangkok, THAILAND 10900

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No. 0527.2/ 7685



Department of Fisheries
Kaset Klang, Chatuchak
Paholyothin Road,
Bangkok 10900 Thailand
Tel/Fax: 662 558 0187

3 July B.E. 2560 (2017)

Dear Sir,

Subject: Agreement on a proposal

Kindly refer to IOTC Circular 2017-062 dated 7 June 2017, consideration of management measures related to all IOTC species.

In this connection, the Department of Fisheries, Thailand would like to inform you that we are agreed on a proposal *On the Allocation of Fishing Opportunities for IOTC species*.

Please be assured of our fullest cooperation.

Yours sincerely,

(Dr. Adisorn Promthep)
Director - General

Mr. Christopher O' Brien
Executive Secretary, Indian Ocean Tuna Commission
IOTC Secretariat Le Chantier Mall (2nd floor)
PO Box 1011, Victoria, Seychelles.
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Overseas Fisheries and Transshipment Control Division
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Dr. Christopher O'Brien
Executive Secretary
Indian Ocean Tuna Commission

Dear Dr. O'Brien,

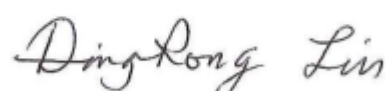
Firstly, let me express our congratulations to you for your assuming the position of the Executive Secretary of IOTC. We believe that the Secretariat will function well under your guidance and hope that Taiwan and the Secretariat will keep a good cooperative relationship as before.

Secondly, I am writing to provide our comments as attached on the revised proposal regarding "On the Allocation of Fishing Opportunities for IOTC Species" tabled during the 21st session of the Commission Meeting held in Indonesia in May 2017. Please relay this letter and the attachment to the proponents of the said proposal.

Taking this opportunity, I would like to reiterate our position as already stated in the meeting. Our longline fishing fleet has been operating in the Convention area for a very long period of time, and we have been participating in IOTC by complying with the adopted resolutions and making contributions to scientific research on stock assessment in a voluntary manner. It is our belief that any proposal regarding allocation of fishing opportunity or catch quota shall be developed by treating us in the same way as the Contracting Parties. In addition, we are ready to make financial contributions to IOTC in a way acceptable to both us and IOTC.

As for other comments on the revised proposal, please refer to the attachment. Since this proposal is of great importance to us and all other fishing fleets operating in the IOTC area of competence, we will keep reviewing this proposal and provide our further comments if necessary.

Yours sincerely,

A handwritten signature in cursive script that reads "Ding-Rong Lin".

Ding-Rong LIN
Deep Seas Fisheries Division



IOTC-2017-S21-PropN Rev1[E]
25/05/2017@09:20

ON THE ALLOCATION OF FISHING OPPORTUNITIES FOR IOTC SPECIES

SUBMITTED BY: MALDIVES, SOUTH AFRICA, MOZAMBIQUE,
THAILAND, TANZANIA, SOMALIA,

I. R. IRAN, SRI LANKA and PAKISTAN; 25 MAY 2017

Explanatory memorandum

This proposal aims to:

- 1) Protect the sovereign rights of IOTC coastal States, in accordance with the United Nations Convention on the Law of the Sea, and the conservation and management of straddling fish stocks and highly migratory fish stocks, for the purposes of exploring and exploiting, conserving and managing the living resources, including highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction.
- 2) Ensure the special requirements of IOTC developing coastal States, including Small Island Developing States (SIDS) and vulnerable economies, are accommodated including food security and development aspirations.
- 3) Ensure a fair, equitable, and transparent system of fishing rights allocation is developed in accordance with 1 and 2 above.
- 4) Clarify the intent and application of Allocation Principles developed at previous Sessions of the IOTC Technical Committee on Allocation Criteria.
- 5) Detail Allocation Criteria based on the Allocation Principles.
- 6) Set forth a program of work for the next two (2) years that will result in the adoption of a sequence of IOTC Resolutions, ending in an operational system for allocation in 2019.

The following text outlines the rationale for several additional key elements being included or excluded from this proposal:

Allocation principles: The allocation principles contained within this proposal are based on those developed at the 3rd Session of the Technical Committee on Allocation Criteria (TCAC03). Where the proponents of this proposal deemed it necessary, the intent and application of the TCAC03 Allocation Principles have been further clarified.

Biomass distribution: At this time, the IOTC is not in a position to determine the distribution of stock biomass for any IOTC species at a fine scale (i.e. by EEZ). However, there may be an opportunity for some stocks to be differentiated between coastal and high seas distribution (e.g. neritic tunas). Where possible, efforts could be made to determine biomass distribution for potential incorporation into a system of allocation in the future when those species are considered. Additionally, bio-ecological significance may also be considered with biomass distribution.



IOTC-2017-S21-PropN Rev1[E]
25/05/2017@09:20

Compliance assessments: Although the proponents of this proposal believe that the record of compliance and/or cooperation by eligible participants with the IOTC's Conservation and Management Measures should be an element of an allocation system, this should be limited to a single multiplying factor based on the overall compliance scorecard developed by the IOTC Secretariat annually, but focused on CMMs who's application have a direct link to the needs of an allocation system.

IOTC-2017-S21-PropN Rev1[E]
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Historical fishing activity: For the purposes of allocation, the proponents of this proposal consider it their default position that all historical catches taken in an Exclusive Economic Zone (EEZ) of a coastal state shall be solely attributed to that coastal state. The previous renting of access to fisheries resources caught within an EEZ (e.g. via access agreements or other arrangement), should in no way provide ongoing access to the resource. The aspirations of Indian Ocean coastal states, including to develop their fishing opportunities according to the principles of sustainable and responsible fisheries, giving priority to the most disadvantage nations (small islands developing States and Least Developed States) shall be taken into account. At the same time, the rights of Indian Ocean distant water fishing nations shall also be recognized. By so doing, fishing opportunities will be allocated in a fair and equitable way to all participants, and transparency, predictability and progressiveness will be ensured. In the current proposal, the incorporation of temporary quota transferability (leasing) has been introduced to ensure market access, pending suitable compensation to quota holders.

Rationale: In accordance with the document titled "Possible Principles for Allocation", Appendix VII of Final Report of TCAC03, held in Kish Island, Iran, in February 2016, no consensus has been reached regarding the fact that the historical catches in EEZ should solely be attributed to the coastal state regardless of the flag of the vessel which harvested the catches. Instead, the rights of distant water nations should also be recognized with the aspirations of coastal states taken into account. Therefore, it is inappropriate to attribute the historical catches in EEZ solely to the coastal state regardless of the vessel flag.

Some of the fundamental foundations of this position paper are drawn from Article V, paragraphs 1 and 2d, and Article XVI of the IOTC Agreement, as well as Part V of the United Nations Convention on the Law of the Sea (UNCLOS) on Exclusive Economic Zones; in particular Articles 55, 56, 62, 63 and 64, as well as the UNCLOS Implementing Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (see [Annex I](#) of the proposal).

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RESOLUTION 17/XX**ON THE ALLOCATION OF FISHING OPPORTUNITIES FOR IOTC SPECIES**

Keywords: Allocation principles; allocation criteria; sustainability; sovereign rights.

**The Indian Ocean Tuna
Commission (IOTC),**

CONSIDERING the objectives of the Commission to maintain stocks in perpetuity and with high probability, at levels not less than those capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors including the special requirements of developing States in the IOTC area of competence;

BEING MINDFUL of Article XVI of the IOTC Agreement regarding the rights of Coastal States and of Article 87 and 116 of the UN Convention of the Law of the Sea regarding the right to fish on the high seas;

RECOGNISING the special requirements of the developing states, particularly Small Island developing states in Article 24, of the Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA);

RECALLING that Article 5, of UNFSA entitles the conservation and management of highly migratory fish stocks are based on best scientific evidence available and with special reference to Resolution 15/10 for a stock where the assessed status places it within the red quadrant, and with an aim to end overfishing with a high probability and to rebuild the biomass of the stock in as short time as possible.

FURTHER RECALLING that Article 6, of UNFSA, requires the states to be cautious during the application of precautionary approach when information is uncertain, unreliable or inadequate and this should not be a reason for postponing or failing to take conservation and management measures;

CONSIDERING the recommendations adopted by the KOBE II, held in San Sebastian, Spain, June 23 – July 3 2009; implementing where appropriate a freeze on fishing capacity on a fishery by fishery basis and such a freeze should not constrain the access to, development of, and benefit from sustainable tuna fisheries by developing coastal States.

FURTHER CONSIDERING the recommendations adopted by the KOBE III, held in La Jolla, California, 11- 15 July 2011; considering the status of the stocks, each RFMO should consider a scheme for reduction of over capacity in a way that does not constrain the access to, development of, and benefit from sustainable tuna fisheries, including on the high seas, by developing coastal States, in particular small island developing States, territories, and States with small and vulnerable economies; and Transfer of capacity from developed fishing members to developing coastal fishing members within its area of competence where appropriate.

FURTHER CONSIDERING the report by International Council for the Exploration of Sea and FAO Working Group on Fishing Technology and Fish Behaviour (2006), Gillnets are considered to be one of the least catch controllable and least environmentally sustainable gears;

FURTHER CONSIDERING the recommendations of the 18th IOTC Scientific Committee held in Bali, Indonesia, 23– 27 November 2015 that the catches of yellowfin tuna have to be reduced by 20% of the 2014 levels to recover the stocks to levels above the interim target reference points with 50% probability by 2024, and subsequent recommendations by the IOTC Scientific Committee.

MINDFUL that Technical Committee on Allocation Criteria is taking longer than expected to reach agreement on allocation criteria, while some IOTC stocks are being overfished and are subject to overfishing;

COGNIZANT that concurrence of an entire allocation process (principles, criteria, weighting and formula) may take much longer and CONSEQUENTLY a more pragmatic approach would be to adopt the principles and criteria through a progressive approach;

FURTHER CONSIDERING the call by the United Nations General Assembly Resolution 70/75 upon the states to increase the reliance on scientific advice in developing, adopting and implementing conservation and management measures and to take into account the special requirements of developing states, including Small Island Developing States (SIDS) as highlighted in the SIDS Accelerated Modalities of Action (SAMOA) Pathway;

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

i. Definitions

1. Artisanal, subsistence and small scale developing coastal State and Small Island Developing State fisheries:

Coastal fisheries as defined by the IOTC.

2. **Bycatch:** All species, other than the 16 species listed in Annex B of the IOTC Agreement, caught or interacted with by fisheries for tuna and tuna-like species in the IOTC area of competence. A bycatch species includes those non-IOTC species which are (a) retained (byproduct), (b) incidentally taken in a fishery and returned to the sea (discarded); or (c) incidentally affected by interacting with fishing equipment in the fishery, but not taken.
3. **Harvest Control Rules (HCR):** Agreed responses that management must make under pre-defined circumstances regarding stock status. Also called 'control rules' and 'decision rules'.
4. **Optimum sustainable yield:** The yield for a particular species which the Commission, under advice from the Scientific Committee, has agreed is the target yield for that species. This may be the maximum sustainable yield (MSY), maximum economic yield (MEY), or any other variant as agreed by the Commission.
5. **Target Reference Points (TRP):** A state of a fishery and / or a resource which is considered desirable.
6. **Total allowable catch (TAC):** For a fishery, a catch limit set as an output control on fishing. Where resource sharing arrangements are in place between commercial and recreational fishers, the term total allowable commercial catch (TACC) may apply. The term 'global' is applied to TACs that cover fishing mortality from all fleets.

ii. Allocation principles

7. The following are the *Allocation Principles* that shall form the basis for developing and assessing the performance of prospective *Allocation Criteria* ([Section III](#)):

a) **Eligibility:** The allocation of fishing opportunities by the IOTC shall be limited to IOTC Contracting Parties and IOTC Cooperating Non-Contracting Parties (collectively termed CPC's); and the non-CPC which has been participating in IOTC in the capacity of "Invited Expert" and whose longline fishing fleet has

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been operating in the IOTC area of competence for over four decades (hereinafter referred to as “longterm participating non-CPC”).

Rationale: Despite a non-CPC of the IOTC, Taiwanese longline fishing fleet has been operating in the Convention area for a very long period of time, and Taiwan has been in a good cooperative status with CPCs and IOTC, particularly in the provision of its fisheries data, the contribution it has made to scientific research, and its high compliance with relevant conservation and management measures. In addition, Taiwan’s long existing fishing operation in the Indian Ocean is also noted by the TCAC during its 3rd meeting held in Iran in February 2016. Paragraph 32 of the final report of TCAC03 stated that “The TCAC NOTED that the interest of one very important fleet operating in the IOTC area of competence is not being considered due to the inability of the fleet to fully and equitably engage in the work of the Commission towards developing an allocation criteria system.” Therefore, Taiwan is eligible to receive the allocation of fishing opportunities in the Indian Ocean.

b) _____

a) _____

b) **Sustainability:** The long-term sustainability of each IOTC species and non-targeted, associated and dependent species is to be achieved through appropriate catch limits in accordance with the agreed management framework, including any relevant management procedure. Additional management measures may also be used in tandem with catch limits to ensure sustainability of each species. The

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degree of negative ecosystem impact of main fishing gear to the IOTC species and non-targeted, associated and dependent species will be considered.

- c) **Coastal State rights:** The exercise of the sovereign rights of Indian Ocean coastal States, in accordance with the United Nations Convention on the Law of the Sea, and the conservation and management of straddling fish stocks and highly migratory fish stocks, for the purposes of exploring and exploiting, conserving and managing the living resources, including highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction, shall not be prejudiced. Guiding legal text for ensuring coastal State rights are upheld are provided at [Annex I](#).
- d) **Special requirements (aspirations) of developing coastal States:** The special requirements of Indian Ocean developing coastal States, including Small Island Developing States (SIDS) and vulnerable economies, including aspirations, are to be accommodated.

e) **Historical fishing activity:** Historical catches, for a time period to be decided, by eligible participants shall be used as an element in determining an initial allocation. Historical catches taken within an EEZ shall be solely attributable to the respective coastal State, for the purposes of allocation, regardless of the flag of the fishing vessel(s) that took the catches. The aspirations of Indian Ocean coastal states, including to develop their fishing opportunities according to the principles of sustainable and responsible fisheries, giving priority to the most disadvantage nations (small islands developing States and Least Developed States) shall be taken into account. At the same time, the rights of Indian Ocean distant water fishing nations shall also be recognized. By so doing, fishing opportunities will be allocated in a fair and equitable way to all participants, and transparency, predictability and progressiveness will be ensured. This attribution will be given effect in a way is without prejudice to the duties and responsibilities of flag States to report catch under international law, including the UN Fish Stocks Agreement

e) **Rationale:** stated as above.

f) **Historical spatial allocation:** Allocations shall be determined in a way that reflects the different international legal rights applicable within and outside the EEZs of coastal States by separating historical catches {and where known, species specific biological ranges} on a spatial basis.

g) **High seas access:** In accordance with the international legal framework for the high seas, all CPCs shall be provided with a baseline fishing opportunity in respect of high seas fishing, irrespective of whether they have a history of fishing on the high seas.

h) **Transferability:** National Allocations or part thereof may be temporarily transferable, thereby ensuring product availability is maintained to markets and allocations are optimised.

i) **Socio-Economics:** Allocations shall consider the dependency of each eligible participant on fisheries in the IOTC

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Area of Competence (all species combined), measured by the contribution of those fisheries to social, economic, and cultural needs.

h) Compliance activities: Allocations shall take into account the records of compliance and/or cooperation by eligible participants with the IOTC Agreement, Conservation and Management Measures and other binding decisions.

iii. Allocation criteria

8. Eligibility:

a) Those States eligible to receive an allocation must be either a Contracting Party or Cooperating Non-Contracting Party (collectively termed CPCs) of the IOTC or the longterm participating non-CPC.

Rationale: stated as above.

b) Each CPC and the longterm participating non-CPC shall receive a baseline allocation. The baseline allocation for each Cooperating Non-Contracting Party (CNCP) shall be no more than that of Contracting Parties (Member) or the longterm participating non-CPC.

Rationale: In light of the fact that Taiwan is nearly the Contracting Party in a practical manner when it comes to the obligations Taiwan has been fulfilling within the framework of IOTC, that Taiwan shall be treated in the same way as the Contracting Parties in the allocation of fishing opportunities and quota. Of course, Taiwan is ready to make financial contributions to IOTC in a way acceptable to both Taiwan and IOTC.

9. Sustainability:

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- a) Allocations are to be made in relation to species specific optimum sustainable yield, determined by Commission on the advice of the IOTC Scientific Committee.
- c) The relative impact of the primary fishing gear used to target an IOTC species, by CPC shall be considered.

10. Coastal State rights:

- a) All Indian Ocean Coastal State CPC's shall receive the a supplementary baseline allocation as referred to in paragraph 8, subparagraph b) irrespective of whether or not that coastal State has a history of catching a particular species in the IOTC Area of Competence.

⇒b)

- b) A proportion of the TAC available for allocation shall be reserved in case that Coastal State CPCs exhausts the baseline allocations received. The level of the catch to be reserved and the distribution mechanism among Coastal State CPCs will be agreed by the Commission at the start of the quota allocation system and will be reviewed and adjusted as appropriate prior to the commencement of the next allocation period. The supplementary baseline allocation for each Cooperating Non-Contracting Party (CNCP) shall be no more than that of Contracting Parties (Members).

Rationale: The rights of the Indian Ocean Coastal State CPCs can be duly recognized and protected through a proportion of the TAC reserved for them.

c)

- d) Unused 'reserved catch' shall be reallocated to all Contracting Parties and the longterm participating non-CPC based on a formula to be decided by the Commission. However, in years where the stock biomass is determined by the IOTC Scientific Committee to be less than the level capable of producing optimum sustainable yield (e.g. $SB < SB_{msy}$), no reallocation shall occur. The supplementary baseline allocation shall be allocated irrespective of whether or not a coastal State has a history of catching that species in the IOTC Area of Competence.

Rationale: It is vital to reallocate the unused reserved catch to all Contracting Parties and the longterm participating non-CPC in a fair and equitable way to be decided to the Commission. Besides, reallocation should be done only when the stock status indicates a good condition of the species.

- d) When the TAC for an IOTC species decreases from the previous allocation

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period, DWFN's shall receive a greater reduction in catches than coastal States, consistent with principles enunciated in the Kobe process further deduction in catches of the species shall be made in a fair and equitable way among DWFNs and coastal States.

Rationale: This issue should be dealt with at a later stage in a fair and equitable way among DWFNs and coastal States.

11. New Entrants:

- a) New entrant Distant Water Fishing Nations that join the IOTC as a Contracting Party shall not automatically be eligible for allocations under this Resolution. Eligibility will be considered by the Commission with particular reference to Article 11 of the UN Fish Stocks Agreement and taking into account the principles set out in this Resolution.
- b) A proportion of the TAC available for allocation shall be 'Set Aside' for new coastal state entrants. The level of the catch to be 'Set Aside' for new entrants will be agreed by the Commission at the start of the quota allocation system and will be reviewed and adjusted as appropriate prior to the commencement of the next allocation period.
 - 1) New entrant coastal States of the IOTC area of competence shall be allocated a baseline allocation from the 'Set Aside' each year for individual species, upon application to, and approval by the Commission.
 - 2) A new entrant baseline allocation shall be in proportion to individual CPC allocations in the preceding year in which the new entrant joined the IOTC. The baseline allocation from the 'Set Aside' shall not exceed the lowest allocation of any CPC in the previous year.
 - 3) Unused 'Set Aside' shall be reallocated to coastal State Contracting Parties based on a formula to be decided by the Commission. However, in years where the stock biomass is determined by the IOTC Scientific Committee to be less than the level capable of producing optimum sustainable yield (e.g. $SB < SB_{msy}$), no reallocation of the 'Set Aside' shall occur.

c) Cooperating Non-Contracting Parties who do not intend to fish their supplementary baseline allocation, shall be able to return any unused supplementary baseline allocation amount to the Commission's 'set aside' at any time during the quota year for potential reallocation to other coastal States in equal portions.

Rationale: stated as above.

12. Special requirements of Small Island Developing coastal States and Developing Coastal States:

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- a) The interests and aspirations of developing coastal State and Small Island Developing States shall be recognised via an allocation for SIDS and DCS each year, upon application to, and approval by the Commission.

13. Historical fishing activity:

- a) Historical catches of eligible participants in a given reference period, where all recent historical catches taken in an Exclusive Economic Zone (EEZ) of a coastal state shall be solely attributed to that coastal state and shall be used to calculate an initial historical fishing activity allocation for each CPC, for each IOTC species, as provided in Table 1.

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Table 1. IOTC species and its respective historical catch reference period.

Common name	Scientific name	Code	Reference period
Tropical tunas			
Yellowfin tuna	<i>Thunnus albacares</i>	YFT	yyyy-yyyy
Skipjack tuna	<i>Katsuwonus pelamis</i>	SKJ	yyyy-yyyy
Bigeye tuna	<i>Thunnus obesus</i>	BET	yyyy-yyyy
Temperate tunas			
Albacore	<i>Thunnus alalunga</i>	ALB	yyyy-yyyy
Bilfish			
Swordfish	<i>Xiphias gladius</i>	SWO	yyyy-yyyy

14. Spatial allocation:

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- a) Historical catches for each species and reference period, as provided in Table 1, shall be separated spatially, as catches within areas under national jurisdiction and catches on the high seas.
- b) Initially, the spatial separation of catches shall be made on the following basis:
- Catches reported for 5x5 or 1x1 degree grid squares that overlap an EEZ, shall be considered as being taken on the high seas, unless otherwise requested by the fishing flag State or the EEZ coastal State, and agreed to by both. In cases where the coastal State is in disagreement with the fishing flag State, the applicable access agreement shall be produced, along with other supporting evidence for consideration by the IOTC Compliance Committee.
 - Catches reported or estimated without associated effort data (as required by IOTC Resolution 15/02), shall be considered as being taken on the high seas. In cases where the flag State is in disagreement, supporting evidence shall be provided for consideration by the IOTC Compliance

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Committee.

- iii. Artisanal, subsistence and small scale fisheries from developing coastal State and Small Island Developing State fisheries, will be assumed to have been taken within the national jurisdiction of the coastal State, irrespective of whether effort data is available.

15. High seas access:

- a) Each CPC shall be allocated a baseline high seas allocation (separate from the initial historical fishing activity baseline allocation for the high seas).
- e) The baseline high seas allocation shall be equal among all CPCs.

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4) Quota allocation in respect of future high seas fishing opportunities for IOTC developing coastal States shall be facilitated by a gradual transfer of fishing rights from Distant Water Fishing Nations, commencing three (3) years after the initial baseline allocation. The details of this gradual transfer shall be developed by the Commission taking into account the rights of Indian Ocean distant water fishing nations.

Rationale: We believe that this issue should be dealt with at a later stage in a fair and equitable way among DWFNs and coastal States.

16.14. Transferability:

a) National The Allocation, or part thereof, shall be able to be temporarily transferred among Contracting Parties and the longterm participating non-CPC. The right to fish that quota shall last for a maximum of one year and shall expire at the end of a calendar year (i.e. 24:00 on 31 December).

b) **Rationale:** stated as above.

c) Cooperating Non-Contracting Parties (CNCP) shall not be eligible to receive any allocation via transfer from another CPC.

d) New entrant Distant Water Fishing Nations (DWFN) that join the IOTC as a Contracting Party (Member) shall be permitted to lease temporary transfers (para. 16(a)) of quota for individual species from an existing CPC.

e) A new entrant DWFN that joins the IOTC as a Cooperating Non-Contracting Party (CNCP) shall not be eligible to receive any allocation via transfers from another CPC.

f) Unused allocations shall not be rolled over to the next allocation period.

17.15. Socio-Economics:

- The social dependency of each eligible participant on fisheries in the IOTC Area of Competence (which may include livelihood opportunities, employment in fisheries, post-harvest, and formal and informal supply chain activities, female work opportunities, seafood consumption per capita, and average number of family members supported per fisher), will be considered.
- The economic dependency of each eligible participant on fisheries in the IOTC Area of Competence (which may include economic vulnerability, export value, processing capacity, and fisheries as a proportion or rank of GDP), will be considered.
- The cultural dependency of each eligible participant on fisheries in the IOTC Area of Competence (criteria for which will be determined), will be considered.

18.16. Compliance by eligible qualifying participants:

a) In order to remain eligible for allocations, CPCs must Maintain active programs to implement IOTC Conservation and Management Measures (CMMs), with an IOTC compliance score of 50% or greater for CMMs considered by the Commission to be relevant for the purposes of this Resolution.

b) Over-catch of allocation from any CPC and the longterm participating non-CPC shall be deducted from that CPC's or the longterm participating non-CPC's future quota in accordance with a corrective actions policy to be agreed by the Commission, which will take account of the special requirements and capacity

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building needs of developing States. In the absence of demonstrated capacity constraints, the default deduction shall be at a ratio of 1:1 for the following year, or 1.5:1 if deducted from the subsequent year at the request of the CPC.

⇒ Rational: stated as above.

- c) Mechanisms to reconcile catch against allocated ~~National~~ Allocation shall be developed by the Commission that would permit the introduction of a system of quota allocation penalties to be introduced.

IV. Weighting of allocation criteria

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~~19-17.~~ A weighting scheme shall be developed for the allocation criteria for consideration by the Commission at its 22nd Annual Session in 2018.

v. **Allocation formula**

~~20-18.~~ An allocation formula, with associated weighting ([Section IV](#)) for each IOTC species detailed in [Table 1](#), shall be developed for consideration by the Commission at its 22nd Annual Session in 2018.

vi. **Implementation**

~~21-19.~~ The Commission shall, at its 22nd Session in 2018, consider revisions to the allocation principles and criteria, as well as the addition of a weighting scheme, allocation formula and implementation timeline for the allocation of fishing opportunities for IOTC species.

~~22-20.~~ The implementation of a system of allocation is expected to take effect on 1 January 2019.

~~23-21.~~ This Resolution supersedes Resolution 14/02 *For the conservation and management of tropical tunas stocks in the IOTC area of competence*.

ANNEX I
GUIDING LEGAL TEXT

**POSSIBLE PRINCIPLES FOR ALLOCATION, APPENDIX VII of IOTC-
2016-TCAC03**

Rationale: Because it is adopted during the TCAC03 as working paper for further discussion, the document shall be included as one of the Guiding Legal Text.

Article V, paragraphs 1 and 2d, and Article XVI of the IOTC Agreement.

Article V. Objectives, Functions and Responsibilities of the Commission

1. *The Commission shall promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks.*
2. *In order to achieve these objectives, the Commission shall have the following functions and responsibilities, in accordance with the principles expressed in the relevant provisions of the United Nations Convention on the Law of the Sea:*
 - (d) *to keep under review the economic and social aspects of the fisheries based on the stocks covered by this Agreement bearing in mind, in particular, the interests of developing coastal states;*

Article XVI Coastal States' Rights

This Agreement shall not prejudice the exercise of sovereign rights of a coastal state in accordance with the international law of the sea for the purposes of exploring and exploiting, conserving and managing the living resources, including the highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction.

Part V of the Convention of the Law of the Sea on Exclusive Economic Zones; Articles 55, 56, 62, 63 and 64.

Article 55 Specific legal regime of the exclusive economic zone.

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56 Rights, jurisdiction and duties of the coastal State in the exclusive economic zone.

1. *In the exclusive economic zone, the coastal State has:*
 - (a) *sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superadjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;*
 - (b) *jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment;*
 - (c) *other rights and duties provided for in this Convention.*
2. *In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.*

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3. *The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.*

Article 62 Utilization of the living resources

1. *The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.*
2. *The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.*
3. *In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the*

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- economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.*
4. *Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate inter alia, to the following:*
- (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;*
 - (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;*
 - (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;*
 - (d) fixing the age and size of fish and other species that may be caught;*
 - (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;*
 - (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;*
 - (g) the placing of observers or trainees on board such vessels by the coastal State;*
 - (h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;*
 - (i) terms and conditions relating to joint ventures or other cooperative arrangements;*
 - (j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;*
 - (k) enforcement procedures.*
5. *Coastal States shall give due notice of conservation and management laws and regulations*

Article 63 Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it.

- 1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.*
- 2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.*

Article 64 Highly migratory species.

- 1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.*
- 2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.*