

Report for the 1st Technical Committee on Performance Review

Victoria, Mahé, Seychelles, 8-9 February 2018

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ACRONYMS

CPCs	Contracting Party and Cooperating Non-Contracting Party
FAO	Food and Agriculture Organization of the United Nations
IOTC	Indian Ocean Tuna Commission
IGO	Inter-governmental Organisation
ISSF	International Seafood Sustainability Foundation
IUU	Illegal, Unreported and Unregulated
NGO	Non-governmental organization
TCPR	Technical Committee on Performance Review

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EXECUTIVE SUMMARY

The 1st Session of the Technical Committee on Performance Review (TCPR01) was held Victoria, Mahé, Seychelles from 8 to 9 February 2018 and Chaired by Ms Riley Jung-re Kim. A total of 45 delegates attended the Session, comprised of delegates from 19 Contracting Parties (Members), 2 observer organisations, and 3 invited experts.

The TCPR reviewed progress on the implementation of the recommendations arising from the report of the 2nd Performance Review Panel, noting that seven were the responsibility of the TCPR. The status, timeline and priority of these seven actions were subsequently addressed [Appendix 4](#).

In 2016 the Commission requested the TCPR make a recommendation on whether the IOTC should remain within the FAO framework or become a separate legal entity. While some CPCs indicated that they had come to the meeting with the mandate to make the requested recommendation. Other CPCs indicated that they were not in a position to make such a recommendation; furthermore, these CPCs indicated that any decision to leave the current arrangement would require comprehensive internal/national consultations and procedures to be completed. The TCPR has requested the Secretariat to contact CPCs and indicate that maintaining/changing the institutional link with FAO will be discussed by the Commission in May 2018, and that the Commission will likely expect CPCs to have the mandate to discuss this matter.

The TCPR moved forward with the task of developing a new text of the IOTC Agreement, and to this end, agreed to convene a drafting group that would approach this task in a phased approach ([Appendix 5](#)).

The TCPR noted that it was already behind schedule on its current workplan due to the postponement of the February and October 2017 meetings. Due to this delay, it adopted a revised workplan and timeline extending the program of work until 2020 ([Appendix 6](#)).

The TCPR agreed that the next meeting would take place over two days before the end of March of 2019.

1. OPENING OF THE SESSION

1. The 1st Session of the Technical Committee on Performance Review (TCPR01) was held in Victoria, Mahé, Seychelles from 8 to 9 February 2018 and Chaired by the Vice Chair of the Commission, Ms Riley Jung-re Kim. A total of 45 delegates attended the Session, comprised of delegates from 19 Contracting Parties (Members), 2 observer organisations, and 3 invited experts. The list of participants is provided at [Appendix 1](#).
2. The Chair Ms Riley Jung-re Kim welcomed participants to the TCPR01.

2. LETTER OF CREDENTIALS

3. Letters of Credentials were received from 17 CPCs present at the meeting.

3. ADMISSION OF OBSERVERS

4. In accordance with Rule XIV of the IOTC Rules of Procedure (2014), the following observers attended the meeting:
 - a. *Intergovernmental Organisations (IGO)*
 - SWIOFish1 Project
 - b. *Non-governmental Organisations (NGO)*
 - International Sustainable Seafood Foundation (ISSF)
 - c. *Invited Experts*
 - Taiwan, Province of China.

4. ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION

5. The TCPR **ADOPTED** the Agenda provided at [Appendix 2](#). The documents presented to the TCPR are listed in [Appendix 3](#).

5. BACKGROUND TO THE FORMATION OF THE TCPR

6. The Executive Secretary made a brief presentation on the formation and terms of reference of the TCPR.

6. PROGRESS ON THE IMPLEMENTATION OF RECOMMENDATION ARISING FROM THE 2ND PERFORMANCE REVIEW PANEL REPORT

7. The TCPR **NOTED** document IOTC-2018-TCPR01-02 which outlined the progress on the implementation of the recommendations arising from the report of the 2nd Performance Review Panel.
8. The TCPR recalled that the second performance review made 24 recommendations, which proposes 63 actions. The responsibility for the implementation of these actions were allocated to several IOTC bodies. The TCPR **NOTED** that as of February 2018, 15 actions had not been started, 23 have started and are ongoing and 25 have been completed and of those completed activities, 21 have become ongoing activities for the IOTC.
9. The TCPR also **NOTED** that 21 of the 63 actions have not yet been prioritized, and of the 21 not yet prioritized actions, 7 were the responsibility of the TCPR. The status, timeline and priority of the 7 actions were subsequently addressed and is provided in [Appendix 4](#). This update will be included in the performance review update presented to the Commission in 2018.
10. The TCPR encouraged the other bodies responsible for implementing the other 14 actions, the Commission, the Scientific Committee, the Compliance Committee, and the Standing Committee on Administration and Finance, to address these actions as soon as possible.

7. REPORT ON THE COSTS AND BENEFITS OF MAINTAINING THE INSTITUTIONAL LINK WITH FAO

11. Professor Glenn Hurry presented the results of his report on the costs and benefits of IOTCs relationship with FAO (IOTC-2016-S20-05). This presentation (IOTC-2018-TCPR01-INF01) included information on the following:
 - What has changed over the last 3 years in IOTC and FAO
 - IOTC/FAO relationship
 - The legal views
 - A short history of the IOTC

- Lessons from a study of recommended agencies
 - Comparison of IOTC with other tuna RFMOs
 - FAO Costs Explained
 - Options for IOTC:
 - a. Stay with FAO
 - b. Stay with FAO but with increased autonomy
 - c. Leaving the FAO
12. The report included a commentary on the advantages and disadvantages for each of the three options.
13. The TCPR thanked Professor Hurry for his work, and **NOTED** that his report contained many useful historical documents that are relevant to this matter
14. A range of comments were made in the plenary on this report. These included the following:
- It would have also been useful to have more detailed information comparing the operations of IOTC and those of the other tuna-RFMOs;
 - The financial benefits estimated for the option of IOTC leaving FAO may have been underestimated; for example due to the fact that assumed services provided by the FAO were in reality often not available;
 - If the costs of an independent IOTC are going to be more than current costs (for Members) then there may be some additional disincentives for some Members to leave FAO;
 - There would be a transition cost of around USD1 million over 2-3 years to create an independent IOTC, however this would be offset by contributions from additional participants in the fishery, such as the long-term participating fishing fleet;
 - The impact of extra budgetary contributions to for example capacity building was reduced because of services charges levied by the FAO;
 - Given past experiences, the possibility of obtaining further concessions from FAO seem limited, therefore the option to stay with FAO with increased flexibility is not likely to be realistic; and
 - If IOTC was to leave FAO the two bodies would need to agree on how to deal with the current debt the Commission has (e.g. the debt related to arrears in contributions).

8. MAKING A RECOMMENDATION TO THE COMMISSION ON THE INSTITUTIONAL LINK WITH THE FAO

15. The TCPR **NOTED** that the Commission, in 2016, had requested the TCPR to make a recommendation on whether the IOTC should remain within the FAO framework or become a separate legal entity. However, a number of CPCs indicated that they were not in a position to make a recommendation at this meeting. Furthermore, these members highlighted that any decision to leave the current arrangement would require comprehensive internal/national consultations and procedures to be completed.
16. Other CPCs indicated that they had come to this meeting with the mandate to make the requested recommendation. These members expressed their regret that the meeting could not move forward on this important matter and urged CPCs to initiate the national processes required to obtain the mandate to enable them to make a decision on whether to maintain the institutional link with FAO.
17. The TCPR **REQUESTED** the Secretariat to write to CPCs reminding them about the Commission's intention to make a decision on whether the IOTC should remain within the FAO framework or become a separate legal entity. The letter should indicate that this matter will be discussed by the Commission in May 2018 and that the Commission will expect CPCs to have the mandate to discuss this matter. If CPCs are unable to obtain this authorization in advance of the meeting, they are requested to indicate how long it will take to do so.
18. The TCPR **NOTED** the report/presentation prepared by Professor Hurry would be available on the IOTC website for reference for the CPCs.
19. The TCPR did concur that it would move forward with the task of developing a new text of the IOTC Agreement (as per the TCPR Terms of Reference). To this end, the TCPR **AGREED** to convene a drafting group that would approach this task in a phased approach as follows:
- Phase I: To review, confirm, and further identify the gaps in the IOTC Agreement in order to take account of the principles of modern fisheries management using the report and supporting documents prepared in the context of the second performance review as a starting point;

- Phase II: To propose language to modernize the text of the Agreement; and
 - Phase III: Once there is a decision made by the Commission on the institutional link with FAO, adapt the agreement, if necessary, seeking guidance from the TCPR as required.
20. The TCPR **ADOPTED** a Terms of Reference for the drafting group as provided in [Appendix 5](#). The workplan and timeline for the drafting group included in that of the TCPR ([Appendix 6](#))
21. The TCPR **AGREED** that a consultant would be recruited to support the work of the drafting group and requested the Secretariat to include this item in its 2019 budget to the Commission and to identify possible funding sources for 2018.

9. PREPARATION OF A PROGRAMME OF WORK

22. The TCPR **NOTED** that it was already behind schedule on the current workplan due to the postponement of the February and October 2017 meetings. Due to this delay, the TCPR **ADOPTED** a revised workplan and timeline extending the program of work until 2020 ([Appendix 6](#)).

10. CONSIDERATION OF MANAGEMENT MEASURES RELATED TO COMPLIANCE

23. The IOTC Secretariat made a presentation in response to the Commission's requested that the TCPR consider, sharing and cross-listing of IUU lists with other RFMOs in order to combat IUU activities globally.
24. The TCPR **NOTED** Japan's intention to submit a proposal on this matter to Commission this year.

11. OTHER BUSINESS

25. The TCPR **AGREED** that the next meeting would take place over two days around February or March of 2019, to be determined. The TCPR requested the Secretariat align this meeting with another existing meeting for cost saving purposes.

12. ELECTION OF THE CHAIRPERSON AND VICE-CHAIRPERSON FOR THE NEXT MEETING

26. Ms Riley Jung-re Kim was unanimously **ELECTED** as the Chair for the TCPR for the next two meetings.
27. The TCPR unanimously **ELECTED** Mr Sammy Malvas of the Philippines as its Vice Chair.

13. ADOPTION OF THE REPORT OF THE 1ST TECHNICAL COMMITTEE ON PERFORMANCE REVIEW (TCPR01)

28. The TCPR **ADOPTED** the report of the 1st Session of the Technical Committee on Performance Review (IOTC–2018–TCPR–R) on 9 February 2018.

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APPENDIX 2.
AGENDA OF THE 1ST TECHNICAL COMMITTEE ON PERFORMANCE REVIEW

Date: 8-9 February 2018

Venue: Savoy Hotel, Beau Vallon, Seychelles

Time: 9:00–17:00 daily

Chairperson: Ms Riley Jung-re Kim (IOTC Vice-Chairperson)

1. OPENING OF THE SESSION AND ENDORSEMENT OF THE CHAIRPERSON

2. LETTER OF CREDENTIALS

3. ADMISSION OF OBSERVERS

4. ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION

5. BACKGROUND TO THE FORMATION OF THE TCPR

Brief recap of Resolution 16/03 'On the second performance review follow-up and the creation of the TCPR' (no paper).

6. PROGRESS ON THE IMPLEMENTATION OF RECOMMENDATION ARISING FROM THE 2ND PERFORMANCE REVIEW PANEL REPORT

At S21, the Commission noted paper IOTC-2017-S21-08_Rev1 which outlined the progress on the implementation of the recommendations arising from the report of the 2nd Performance Review Panel (IOTC-2016-PR1OTC02-R) and recommended that this be discussed by the TCPR. Document 08-Rev1 has been updated and made available as IOTC-2018-TCPR01-02.

7. REPORT THE ON COSTS AND BENEFITS OF MAINTAINING THE INSTITUTIONAL LINK WITH FAO

Recap of reports on the costs and benefits of IOTC's relationship with FAO. IOTC-2016-S20-05 will be presented by Mr Glenn Hurry (IOTC consultant); and IOTC-2016-S20-INF01 will be presented by the EU.

8. MAKING A RECOMMENDATION TO THE COMMISSION ON THE INSTITUTIONAL LINK WITH FAO

The TCPR's terms of reference (attached to this agenda) calls on the TCPR to make a recommendation to the Commission to decide whether the IOTC should remain within the FAO framework or become a separate legal entity. If necessary and appropriate in order to adopt an Agreement as an independent legal identity, the Technical Committee can propose to terminate the IOTC Agreement in accordance to the Article XXII of the of the current Agreement.

9. PREPARATION OF A PROGRAMME OF WORK

The TCPR's terms of reference calls on the TCPR to prepare a Work Plan with concrete actions on the recommendations of the Performance Review Panel Report, including priorities, proposed timelines, budgets.

10. CONSIDERATION OF MANAGEMENT MEASURES RELATED TO COMPLIANCE

At S21 the Commission requested that the TCPR consider, sharing and cross-listing of IUU lists with other RFMOs in order to combat IUU activities globally; and report back to the Commission this matter (the Secretariat will make a short presentation on this matter).

11. OTHER BUSINESS

12. ELECTION OF THE CHAIRPERSON AND VICE-CHAIRPERSON FOR THE NEXT MEETING

13. ADOPTION OF THE REPORT

APPENDIX 3.
LIST OF DOCUMENTS

Document number and link	Title
IOTC-2018-TCPR01-01	Draft: Agenda for the 1 st Technical Committee on Performance Review
IOTC-2018-TCPR01-02	Update on the implementation of PR2 recommendations
<i>Information papers</i>	
IOTC-2018-TCPR01-INF01	Cost and benefit report on the IOTC – a PowerPoint presentation
IOTC Resolution 16/03	Resolution 16/03 on the second performance review
IOTC-2016-S20-INF01	EU input to FAO cost benefit study
IOTC-2017-S21-08-Rev1	Performance review update (Resolution 16/03 – on the second performance review follow-up)
IOTC-2016-PR1OTC02-R[E]	Report on the 2 nd IOTC Performance Review
IOTC-2016-S20-05[E]	Cost and benefit of the Indian Ocean Tuna Commission (IOTC) within and outside of the Food and Agriculture Organisation (FAO)

APPENDIX 4.
UPDATE ON PROGRESS REGARDING RESOLUTION 16/03 – ON THE SECOND PERFORMANCE
REVIEW FOLLOW-UP

REFERENC E #	RECOMMENDATION	RESPONSIBILITY	UPDATE/STATUS	TIMELIN E	PRIORITY
PRIOTC02. (para. 81)	<i>Analysis of the IOTC Agreement against other international instruments</i> NOTING para 80, the PRIOTC02 RECOMMENDED that the Commission establish an ad-hoc Working Party on the Modernisation of the IOTC Agreement, based on the following scope: a) Develop proposed language for the IOTC Agreement that takes into account modern principles of fisheries management;	<i>Commission & TCPR</i>	A drafting group under the TCPR has been formed and work has commenced on the IOTC Agreement text.	2018-2020	High
	b) Develop a multi-year Program of Work that outlines the specific priority issues to be discussed using the legal analysis contained in Appendix III of this report to inform the working party deliberations;	<i>Commission & TCPR</i>	The TCPR has adopted a work program for 2018-2020.	2018-2020	High
	c) Proposals to enable the participation of all fishing players with direct fishing interests in IOTC;	<i>Commission & TCPR</i>	The TCPR is focusing in a first phase on modernizing and adapting the IOTC Agreement text, while seeking direction from the Commission on matters related to the institutional linkages between FAO and IOTC.	Pending the Commissions direction	Medium
	d) That all CPCs should participate in the Working Party and that funds be provided to support the participation of developing coastal States in the meetings;	<i>Commission & ad-hoc Working Party</i>	The meeting participation fund is operating to support participation at TCPR meetings	Ongoing	High
	e) That the working group meet at least annually and to the extent possible progress its work inter-sessionally using electronic means.	<i>Commission & ad-hoc Working Party</i>	An annual meeting and intersessional work using electronic means is reflected in the TCPR work plan	2018-2020	High
PRIOTC02. 12 (para. 139)	Flag State duties The PRIOTC02 RECOMMENDED that any amendment to or replacement of the IOTC Agreement should include specific provisions on Member's duties as flag States, drawing on the relevant provisions of the UNFSA and take due note of the FAO Guidelines on flag State performance.	<i>Commission and TCPR</i>	A drafting group under the TCPR has been formed and work has commenced in the IOTC Agreement text.	2018-2020	High
PRIOTC02. 23 (para. 228)	Availability of resources for IOTC activities & Efficiency and cost-effectiveness. The PRIOTC02 RECOMMENDED that: c) the Commission, as a matter of urgency, decide whether remaining inside the FAO structure (as an Article XIV body) provides the most suitable means to effectively deliver upon the IOTC Objectives.	<i>Commission, TCPR</i>	In 2018 the TCPR was unable to meet the Commission request on making a recommendation, and requested the Commission to make a decision on this matter	Ongoing	High

APPENDIX 5.
TERMS OF REFERENCE FOR THE DRAFTING GROUP TO MODERNIZE AND ADAPT THE IOTC AGREEMENT TEXT

Under the direction of the Technical Committee on Performance Review, in accordance with sections 2a, 2c and 3 of the TCPR Terms of Reference, and in alignment with the agreed program of work, a drafting group is established with the following Terms of Reference:

1. To Develop proposed language for the IOTC Agreement that takes into account modern principles of fisheries management.
2. The group is open to all CPCs willing to participate and the group will operate electronically between TCPR meetings.
3. To work in a phased approach as follows:
 - Phase I: To review, confirm, and further identify the gaps in the IOTC Agreement in order to take account of the principles of modern fisheries management using the report and supporting documents prepared in the context of the second performance review as a starting point.
 - Phase II: To propose language to modernize the text of the Agreement; and
 - Phase III: Once there is a decision made by the Commission on the institutional link with FAO, adapt the agreement, if necessary, seeking guidance from TCPR as required.
4. To prepare a report (including text) for the Technical Committee on Performance Review presenting the results of the each work phase — in accordance with the TCPR workplan and timeline.

APPENDIX 6.
TCPR REVISED WORKPLAN AND TIMELINE

This timeline includes the work of the TCPR and its drafting group which is tasked with modernizing and adapting the IOTC Agreement text.

2018	2019	2020
1. Secretariat engagement of a Consultant by end of March.	8. Approved proposed text sent to TCPR for comment by end of January.	17. TCPR approves the proposed text by end of January.
2. Consultant completes Phase I and delivers outputs to the Drafting group end of May.	9. Consultant compiles comments and amends proposed text received from the TCPR by end of February.	18. Proposed text submitted to the Commission by the end of March.
3. Drafting group approves the analysis by end of June.	10. TCPR meets by the end of March.	
4. Consultant completes phase II and delivers draft outputs to the drafting group by end of September.	11. TCPR reports to Commission mid-May.	
5. Drafting group reviews the proposed outputs by end of October.	12. TCPR meets on the margins of S23 to give directions as needed to the consultant for Phase III.	
6. Consultant completes phase II and delivers final outputs to the drafting group by end of November.	13. Consultant completes phase III and delivers draft output to the drafting group by end of August.	
7. Drafting group approves the output by end of December.	14. Drafting group reviews and comments on the draft outputs by end of October.	
	15. Consultant completes phase III and delivers final outputs to the drafting group by end of November.	
	16. Drafting group approves the output by end of December.	