

COMPATIBILITY OF MANAGEMENT MEASURES

PREPARED BY: IOTC SECRETARIAT, 15 JANUARY 2015

REVIEW AREA: *Conservation and management*

GENERAL CRITERION: *Compatibility of management measures*

DETAILED CRITERIA:

- 1) Extent to which measures have been adopted as reflected in UNFSA Article 7.

SUPPORTING INFORMATION

The IOTC Agreement and current practices appear to conform with the principals outlined in UNSFA Article 7 (provided in full in [Appendix I](#)), although the actual adoption and implementation of effective measures to ensure the sustainable utilisation of IOTC species may be considered to be limited.

Article 7: Compatibility of Conservation and management Measures

1. Without prejudice to the sovereign rights of coastal States 'or the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas areas;

(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the **appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.**

The IOTC is the mechanism for cooperation among relevant coastal States and other States fishing for tuna and tuna-like species in the Indian Ocean.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, **coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks.** In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures adopted and applied in **accordance with article 61 of the Convention** in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;

Given the highly migratory nature of tuna and tuna-like species, the Conservation and Management Measures that are put in place by IOTC are, necessarily, designed to apply to both the high seas and EEZs in order to be effective. This requires the Indian Ocean coastal state Members and Cooperating Non-Contacting Parties to manage the fisheries in their respective EEZs in a manner that is consistent with the IOTC Conservation and Management Measures in place.

With respect to Article 61 UNCLOS ([Appendix II](#)), many of the roles listed for coastal States such as determining allowable catch, taking to account best scientific evidence, stock targets, associated and dependent species, and exchange of information, are assumed under the IOTC in collaboration with the coastal States as Members.

(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;

(c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

IOTC is the original management body for tuna and tuna-like species in the Indian Ocean.

(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

Article V.2 of the IOTC Agreement...*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:*

(a) *to keep under review the conditions and trends of the stocks and to gather, analyse and disseminate scientific information, catch and effort statistics and other data relevant to the conservation and management of the stocks and to fisheries based on the stocks covered by this Agreement;*

(c) *to adopt, in accordance with Article IX and on the basis of scientific evidence, conservation and management measures, to ensure the conservation of the stocks covered by this Agreement and to promote the objective of their optimum utilization throughout the Area;*

(e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

The IOTC provides a forum for the consideration of matters of concern to all States.

Article V.2 of the IOTC Agreement...*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;*

(f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

The IOTC has implemented a Working Party on Ecosystems and Bycatch (WPEB) to provide advice on such matters. The WPEB meeting page, and associated reports may be accessed via the IOTC website:

<http://iotc.org/science/wp/working-party-ecosystems-and-bycatch-wpeb>

3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may submit the dispute, for the purpose of obtaining provisional measures, in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

Article X.2 of the IOTC Agreement (Procedures Concerning Conservation and Management Measures)

The Commission may, adopt binding conservation and management measures by a two-thirds majority of its Members present and voting compared to a situation where unanimity is required. This can expedite the adoption of conservation and management measures that might not be agreed to by a minority of members.

Conservation and management measures adopted by the Commission become binding on Members 120 days from the date of notification or on such other date as may be specified by the Commission.

Any Member of the Commission may object to a conservation and management measure adopted and not be bound by it. If objections to a measure adopted are made by more than one-third of the Members of the Commission, the other Members shall not be bound by that measure; but this shall not preclude any or all of them from giving effect thereto.

Article XXIII of the IOTC Agreement (Interpretation and settlement of disputes) provides a mechanism for the settlement of disputes regarding the interpretation or application on the IOTC Agreement.

7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

Article X.2 of the IOTC Agreement (Implementation)

1. *Each Member of the Commission shall ensure that such action is taken, under its national legislation, including the imposition of adequate penalties for violations, as may be necessary to make effective the provisions of this Agreement and to implement conservation and management measures which become binding on it under paragraph 1 of Article IX.*
2. *Each Member of the Commission shall transmit to the Commission an annual statement of the actions it has taken pursuant to paragraph 1. Such statement shall be sent to the Secretary of the Commission not later than 60 days before the date of the following regular session of the Commission.*

APPENDIX I

ARTICLE 7: AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS (source <http://www.oceanlaw.net/texts/>)

Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States 'or the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:
 - (a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas areas;
 - (b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.
2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:
 - (a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;
 - (b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;
 - (c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;
 - (d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;
 - (e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and
 - (f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.
3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.
4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.
5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may

submit the dispute, for the purpose of obtaining provisional measures, in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.
7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.
8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

APPENDIX II**Article 61 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**(source <http://www.oceanlaw.net/texts/>)**CONSERVATION OF THE LIVING RESOURCES**

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.
2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall co-operate to this end.
3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.
4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.