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## **PRINCIPLES FOR AN AMENDED PROCEDURE FOR THE SELECTION AND APPOINTMENT OF THE EXECUTIVE SECRETARY OF THE IOTC**

**SUBMITTED BY: AUSTRALIA, 24 APRIL 2017**

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This paper outlines proposed principles to underpin amendments to the existing procedure for the selection and appointment of Executive Secretaries of the Indian Ocean Tuna Commission (the Commission). This paper is intended for members' consideration ahead of the 21<sup>st</sup> Annual Session of the Commission and for discussion and endorsement at the 21<sup>st</sup> Annual Session under item 5.2 of the Provisional Agenda.

### **CONTEXT**

At its 155<sup>th</sup> Session in December 2016, the United Nations Food and Agriculture Organization (FAO) Council agreed that:

‘with immediate effect, the Independent Chairperson of the Council (ICC) and the FAO Secretariat will consult with the concerned Article XIV Bodies with a view to developing a proposal on procedures for the appointment of Secretaries of concerned Article XIV Bodies acceptable to the Bodies and to be submitted to the FAO Council by the end of 2018’.<sup>1</sup>

On 25 January 2017, the ICC wrote to the Commission Chairperson notifying an intention to send a proposal for a procedure for the implementation of the above decision.<sup>2</sup> To date, no further information has been received and the deadline for submitting proposals to amend the Rules of Procedure has passed.

The existing procedure for the selection and appointment of the IOTC Executive Secretary is set out in Appendix II of the IOTC Rules of Procedure (2014). To change the selection and appointment procedure, an amendment to the Rules of Procedure will need to be made in accordance with Rule XVIII. Under Rule XVIII a proposal must be submitted by a contracting party at least 60 days before an Annual Session of the Commission for consideration at that Annual Session. Amendments can only be adopted at Annual Sessions.

Based on the Rules of Procedure and the decision reached by the FAO Council, the steps involved in amending the existing selection and appointment procedure include:

- consultation among Commission members and between the Commission and the FAO Secretariat/ICC ahead of the 21<sup>st</sup> Annual Session
- discussion and consideration by the Commission of possible elements of a new procedure at the 21<sup>st</sup> Annual Session
- further consideration and consultation among members and the FAO Secretariat/ICC in the period between the 21<sup>st</sup> and 22<sup>nd</sup> Annual Sessions
- circulation of a proposal to amend the Rules of Procedure at least 60 days before the 22<sup>nd</sup> Annual Session, and
- Commission adoption of amendments to the Rules of Procedure at the 22<sup>nd</sup> Annual Session.

Taking into account the FAO Council's decision to have a proposed procedure submitted to the FAO Council by the end of 2018, it is important to begin this process immediately to ensure mutually acceptable procedures are in place to appoint the new Executive Secretary in 2019. Under the ‘exceptional process’ for the interim appointment of an Executive Secretary that is currently underway, an Executive Secretary will be appointed for two years, presumably

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<sup>1</sup> Report of the 155<sup>th</sup> Session of the FAO Council, paragraph 27(a), available at [http://www.fao.org/fileadmin/user\\_upload/en/XXX-1216-41/Unedited%20Report\\_en.pdf](http://www.fao.org/fileadmin/user_upload/en/XXX-1216-41/Unedited%20Report_en.pdf)

<sup>2</sup> see IOTC Circular 2017-019

until 2019.<sup>3</sup> If amendments to the Rules of Procedure can be adopted at the 22<sup>nd</sup> Annual Session of the Commission in 2018, a recruitment process using the amended selection and appointment procedure can be started in 2018, so that a new Executive Secretary can be appointed at the 23<sup>rd</sup> Annual Session in 2019.

**To assist the Commission to consider this issue, this paper proposes key principles that should underpin any new selection and appointment procedure.** It should be noted that many elements of the existing procedure may not need to be changed, given they were already agreed by the Commission (through the adoption of its Rules of Procedure) and endorsed by the FAO. However we note the concerns raised by the FAO Secretariat during the 20<sup>th</sup> Annual Meeting of the IOTC and we have developed this paper in a way that seeks to address those concerns. These principles have been drawn from the existing procedure in Appendix II of the Rules of Procedure and also take into account practice in other regional fisheries management organisations and other international bodies.

## PRINCIPLES FOR A NEW SELECTION AND APPOINTMENT PROCEDURE

### *1. The Commission should have the final say on who is to be appointed as the Executive Secretary.*

- The Commission operates as an independent, specialised and regionally-focused body, which is entirely funded and driven by its members. Bodies established by a convention under Article XIV of the FAO Constitution are given this autonomy under the FAO Constitution, so that they are able to deliver the specialised technical functions required by their members.
- In addition, the responsibility of the Executive Secretary is to implement the policies and activities of the Commission, which are agreed by Commission members to give effect to their international obligations.
- Consistent with this, the Commission (as the collective of its members) must be able to select its own Executive Secretary.
- The formality of technically appointing the Executive Secretary needs to be done by the FAO Director-General, but members' approval of the appointment, as demonstrated by its selection of the person to be appointed, is a pre-requisite to the Director-General's appointment.<sup>4</sup>
- This is consistent with the existing procedure.<sup>5</sup>

### *2. The FAO Secretariat should have an opportunity to consider candidates for the Executive Secretary position and provide advice or recommendations to the Commission on those candidates.*

- Because the Commission is established by a convention under Art XIV of the FAO Constitution and because the Executive Secretary is, for administrative purposes, responsible to the FAO Director-General, the FAO bears some responsibility for ensuring the Executive Secretary is suitable for the role.
- The FAO Secretariat's role might include conducting background or reference checks and considering the suitability of candidates by reference to the qualifications and competencies set out in the Rules of Procedure.

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<sup>3</sup> Report of the 155<sup>th</sup> Session of the FAO Council, paragraph 27(b) and (c). Note that the FAO Council's agreement to a process whereby an Executive Secretary is to be appointed in 2017 for the coming two years inconsistently with the Rules of Procedure is an 'exceptional' process, which does not set any precedent and therefore does not alter the application of the IOTC Rules of Procedure to Executive Secretary recruitment processes in all other cases.

<sup>4</sup> Appendix O of the FAO Basic Texts sets out the '*Principles and Procedures which should Govern Conventions and Agreements Concluded under Articles XIV and XV of the Constitution, and Commission and Committees Established under Article VI of the Constitution*'. Under the *Principles* it is open to the Commission to specify that its Executive Secretary shall be 'appointed by the Director-General after consultation with, or with the approval or concurrence of, the members of the [Commission]' (paragraphs 32 and 33). The Commission's selection of an Executive Secretary, using a selection procedure set out in the Rules of Procedure, can constitute this 'approval or concurrence', thereby fulfilling the prerequisite in the *Principles* so that the selected candidate can be appointed by the Director-General.

<sup>5</sup> Rules of Procedure, Appendix II, clause 6; see also IOTC Agreement, Article VIII.

- This could occur at the shortlisting stage (i.e. at the same time as Commission members consider all applications and rank their preferred candidates), or at the interview stage (i.e. for consideration at the same time as interviews are being conducted), or both if desired. However this process should not replace a Commission process to shortlist or interview candidates.
- Any such involvement by the FAO Secretariat must be as transparent as possible and the FAO Secretariat's advice should be shared with all Commission members (subject to any legal requirements for privacy or confidentiality).
- This type of role is not provided for in the existing procedure, but would address concerns raised by the FAO Secretariat about bearing liabilities, including reputational risks, arising from the activities of the Commission.<sup>6</sup>

*3. All Commission members should be able to view all applications received and should be able to take part in the ranking process.*

- It follows from the principle that the Commission should have the final say in selecting an Executive Secretary that Commission members need to be closely involved in the selection process. This begins with receiving all of the applications that are submitted and being able to participate in the ranking process.
- As is already the case, applications could be received by the Commission Secretariat and distributed directly to members. Members could transmit their rankings back to the Secretariat. Members might consider whether to enlist the aid of an independent human resources consultant to undertake this process.
- If necessary, applications could also be distributed to the FAO Secretariat (for example, to give effect to principle 2 above).
- This is consistent with the existing procedure.<sup>7</sup>

*4. Interviews should take place in conjunction with Annual Sessions of the Commission to ensure all Commission members have the opportunity to participate.*

- In order for the Commission to reach its decision, it is important that members are fully engaged in the process. The most effective way to ensure this is to conduct interviews at, or immediately prior to, the Annual Session, and at the same location.
- Interviews should be conducted by Heads of Delegation of Commission members. The FAO Secretariat may be provided with an opportunity to participate in the interview process, whether as an observer or with the same involvement as Heads of Delegation.
- This is consistent with the existing procedure,<sup>8</sup> although FAO Secretariat involvement would be a modification.

*5. The new Executive Secretary should be selected by Heads of Delegation of Commission members by consensus if possible, or through a voting procedure.*

- The principle that the Commission should have the final say in selecting an Executive Secretary requires that only Commission members participate in the process to make that selection.
- In all cases, the decisions of Heads of Delegation, and therefore the Commission, to select an Executive Secretary should be made by reference to the qualifications, requirements and competencies outlined in Appendix II of the IOTC Rules of Procedure (including any modification thereof). Candidates that do not meet

<sup>6</sup> See IOTC Circular 2016-049; Report of the 20<sup>th</sup> Session of the Commission, paragraph 86.

<sup>7</sup> Rules of Procedure, Appendix II, clauses 2-3.

<sup>8</sup> Rules of Procedure, Appendix II, clause 4.

these should not be selected and the Commission should take into account all information available, including any advice or recommendations provided by the FAO Secretariat, in determining this.

- Noting the Commission's strong practice of seeking to make decisions by consensus, it would be appropriate to require Heads of Delegation to endeavour to make their selection by consensus. However, as this may not always be possible, it is appropriate to retain a voting mechanism.
- The Commission might consider clarifying the method by which votes will be taken, the majority that is required and processes for dealing with ties or changes in the availability or interest of candidates, in order to reduce any perceived politicisation of the selection process.
- This is consistent with the existing procedure.<sup>9</sup>

*6. The terms of reference for the Executive Secretary should make it clear that the Executive Secretary's core responsibility is that owed to the Commission for implementing the Commission's policies and activities.*

- As noted, the Commission operates as an independent, specialised and regionally-focused body, which is entirely funded and driven by its members. It requires an Executive Secretary whose focus will be on implementing the policies and activities of the Commission, as decided by its members.
- Noting the Executive Secretary is also responsible, for administrative purposes, to the FAO Director-General, the Commission might consider whether it would be useful to clarify what this responsibility entails to help avoid any potential conflict with the Executive Secretary's responsibility to the Commission.
- This is consistent with the existing procedure.<sup>10</sup>

## **OTHER CONSIDERATIONS**

The Commission may wish to take this opportunity to consider other modifications or clarifications to the selection and appointment procedure, drawing from the practice of other international and regional fisheries management bodies. For example:

- Whether a procedure is required for deciding to either renew the appointment of an incumbent Executive Secretary, or to move to a new selection and appointment procedure.
- Whether the qualifications, benefits, requirements or competencies set out in the existing procedure need updating.
- Whether to include details about the format for interviews, such as specifying that all candidates will be asked the same questions.
- Whether to out-source the administration of the selection and appointment procedure, or a shortlisting process, to an independent agency.

## **NEXT STEPS**

Noting item 5.2 of the Provisional Agenda, Commission members should be prepared to consider and discuss these issues at the 21<sup>st</sup> Annual Session. Australia will be pleased to discuss these issues with members before and in the margins of the Annual Session.

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<sup>9</sup> IOTC Agreement, Article VI; Rules of Procedure, Appendix II, clause 5.

<sup>10</sup> Rules of Procedure, Appendix II, *Terms of reference*



From these principles and taking into account discussions on these issues at the 21<sup>st</sup> Annual Session, amendments to the Rules of Procedure will need to be drafted.

The Commission might consider establishing an informal drafting group to develop draft amendments in the intersessional period. The group could work through the Chairperson, consult with the FAO Secretariat or ICC and communicate its progress to members via Circulars.

The aim would be to have amendments prepared for submission by a member 60 days before the 22<sup>nd</sup> Annual Session of the Commission in 2018.