

ON THE ALLOCATION OF FISHING OPPORTUNITIES FOR IOTC SPECIES

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Last Updated: 21 November 2017

Explanatory memorandum

This proposal aims to:

- 1) Ensure a fair, equitable, and transparent system of allocation of fishing opportunities is developed in accordance with 2 and 3 below, and as shown in [Annex I](#) and [Annex II](#).
- 2) Taking into account the sovereign rights of IOTC coastal States, in accordance with the United Nations Convention on the Law of the Sea.
- 3) Support the long-term sustainability of the following IOTC species: albacore, bigeye tuna, skipjack tuna, yellowfin tuna, and swordfish.
- 4) Ensure the special requirements of IOTC developing coastal States, and Small Island Developing States (SIDS), are accommodated including food security and development aspirations, thereby promoting prosperity.
- 5) Clarify the intent and application of Allocation Principles developed at previous Sessions of the IOTC Technical Committee on Allocation Criteria.
- 6) Detail Allocation Criteria based on the Allocation Principles.
- 7) 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 2020.

The following text outlines the rationale for several 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: 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 Conservation and Management Measures whose application has a direct link to the needs of an allocation system.

Historical catches: The proponents of this proposal consider that, for the purpose of allocation of future fishing opportunities, all historical catches taken within an Exclusive Economic Zone, within the IOTC Area of Competence, shall be attributed solely to the coastal State with jurisdiction over that area, regardless of the flag State of the vessels that took such catches. Therefore, any catches made during previous renting of access to fisheries resources within an area under national jurisdiction (e.g. via access agreements or other arrangement) shall be attributed solely to the coastal State with jurisdiction over that area rather than to any other State. In the current proposal, the incorporation of temporary quota transferability (i.e. leasing) among Developing Coastal States and Small Island Developing States, has been incorporated to ensure market access.

The legal foundations of this proposal are drawn from a range of international legal instruments as detailed in [Annex III](#).

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RESOLUTION 18/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 IOTC 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, social and economic factors including the special requirements of developing States in the IOTC Area of Competence;

TAKING INTO ACCOUNT Parts V and VII of the UN Convention on the Law of the Sea (UNCLOS) and, inter alia, Articles 7 and 10(b) of the UN Fish Stocks Agreement (UNFSA);

TAKING INTO ACCOUNT Articles V and XVI of the IOTC Agreement;

RECALLING that Article 5(b) of the UNFSA requires the conservation and management of highly migratory fish stocks to be based on the best scientific evidence available;

FURTHER RECALLING that Article 6 of the UNFSA, and IOTC Resolution 12/01 *On the implementation of the precautionary approach*, requires States to apply the 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; including recommendation 5 which states that:

“Each tuna RFMO consider implementing where appropriate a freeze on fishing capacity on a fishery by fishery basis. 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; including recommendation 7 which states that:

“Kobe III participants recommend that developed fishing members freeze large-scale purse seine capacity under their flag. Based on the status of the stocks, each tRFMO 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.”;*

RECOGNIZING that the allocation scheme will be developed via a progressive, step-by-step approach, taking into consideration the conservation and sustainability concerns for each species;

RECOGNIZING that the special requirements of developing States are recognized in both UNCLOS, in Articles 61(3) and 119(1)(a), and UNFSA, in Articles 5(b) and 24, and that in relation to the conservation of the living resources of the high seas, a topic directly relevant to the IOTC, Article 119(1)(a) of UNCLOS, regarding the high seas, and Article 5(b) of UNFSA, regarding highly migratory fish stocks, require the special requirements of developing States to be taken into account;

ALSO RECOGNIZING that developing States, in particular the least-developed among them, and Small Island Developing States (SIDS), are addressed in various ways in Article 25 of UNFSA, which is especially relevant to the IOTC;

FURTHER RECOGNIZING that similar language which recognizes the special requirements of developing States and Small Island Developing States can also be found in Article 5 of the FAO Code of Conduct for Responsible Fisheries;

FURTHER RECOGNIZING that specific provisions for developing States can also be found in Article VII of the 1993 FAO Compliance Agreement, in paragraph 10 of the 1999 FAO International Plan of Action for the Management of Fishing Capacity, in Part V of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, and in Part 6 of the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, and that recognition of the needs of developing States has also been included in several resolutions of the United Nations General Assembly on sustainable fisheries, such as A/68/L.19 (paragraph 89) and A/RES/71/123 (paragraphs 40 and 41);

CONSIDERING the call upon States by the United Nations General Assembly in A/RES/71/123 to increase the reliance on scientific advice in developing, adopting and implementing Conservation and Management Measures (paragraph 11);

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:*** means coastal fisheries as defined by the IOTC in Resolution 15/02, or any superseding Resolution.
2. ***Distant Water Fishing Nation (DWFN):*** means a State which is acting in the capacity of a flag State within the IOTC Area of Competence and which does not have a coastline, partly or wholly, within the IOTC Area of Competence.
3. ***Coastal State:*** means a State whose coastline, partly or wholly, occurs within the IOTC Area of Competence.
4. ***Developing Coastal State (DCS):*** means a Coastal State whose development status is considered to be in the low, medium or high human development index (HDI) categories by the United Nations Development Programme (UNDP). Therefore, the term 'Developing Coastal State' excludes those Coastal States whose development status is considered to be in the very high HDI category.
5. ***Small Island Developing States (SIDS):*** means Coastal States that tend to share similar sustainable development challenges, including small but growing populations, limited resources, remoteness, susceptibility to natural disasters, vulnerability to external shocks, excessive dependence on international trade, and fragile environments. Their growth and development is also held back by high communication, energy and transportation costs, irregular international transport volumes, disproportionately expensive public administration and infrastructure due to their small size, and little to no opportunity to create economies of scale. The United Nations Department of Economic and Social Affairs and the OECD currently (Nov 2017) list the following IOTC Coastal States as SIDS: Comoros, Maldives, Mauritius, and Seychelles.
6. ***Total Allowable Catch (TAC):*** means for a fishery, a catch limit set as an output control on fishing. The term 'global' is applied to TACs that cover fishing mortality from all fleets.
7. ***Conservation and Management Measure (CMM):*** means a conservation and management measure adopted by the IOTC pursuant to Article IX(1) of the IOTC Agreement.

II. Allocation Principles

8. The following are the Allocation Principles that shall form the basis for developing, and assessing the performance of, the IOTC's allocation scheme, thereby ensuring that the allocation is applied in a fair, equitable, and transparent manner, and with the goal of ensuring opportunities for all eligible participants:
- a) **Eligibility:** The allocation of fishing opportunities by the IOTC shall be limited to IOTC Contracting Parties (CPs) and IOTC Cooperating Non-Contracting Parties (CNCs), collectively termed CPCs. The allocation criteria should be applied in a manner that encourages CNCs to become CPs, where they are eligible to do so. New entrant DWFN shall not be eligible for an allocation.
 - b) **Sustainability:** The allocation scheme will support the long-term sustainability of fishing for albacore, bigeye tuna, skipjack tuna, yellowfin tuna, and swordfish, and indirectly the status of non-targeted, associated and dependent species, by giving effect to catch limits set in accordance with any relevant management procedure or other agreed management framework, and by complementing other CMMs to ensure sustainability of fishing. Gear sustainability ratios may be developed and applied, such as the yellowfin tuna gear sustainability ratio's detailed in IOTC Resolution 17/01, or any subsequent superseding resolution.
 - c) **Coastal States' rights:** The allocation scheme shall not prejudice the exercise of the sovereign rights of a Coastal State in accordance with Article 55 of the UNCLOS 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. A Coastal State shall be eligible for a Baseline Coastal State Allocation irrespective of whether or not that coastal State has a history of catching a particular species in the IOTC Area of Competence, though the initial allocation shall be limited to those with a recent catch history.
 - d) **Special requirements (aspirations) of DCSs and SIDS:** The allocation scheme shall integrate the special requirements of DCSs and SIDS including their development aspirations. No DCS or SIDS Contracting Party shall be worse off under the allocation for any given species, based upon recent catch history detailed in [Table 1](#).
 - e) **Historical catches:** The allocation scheme shall recognise historical catches of bigeye tuna, skipjack tuna, yellowfin tuna, albacore, and swordfish, by eligible participants as an element in determining allocations. For the purpose of allocation of future fishing opportunities, all historical catches taken within an area under national jurisdiction shall be attributed solely to the Coastal State with jurisdiction over that area, regardless of the flag State of the vessels that took such catches. Therefore, any catches made during previous renting of access to fisheries resources within an area under national jurisdiction (e.g. via access agreements or other arrangement), shall be attributed solely to the coastal State with jurisdiction over that area rather than to any other State. This attribution will be given effect in a way that is without prejudice to the responsibilities of flag States to report catch under international law, including under UNFSA. Historical catches may include those estimated by the IOTC Secretariat, approved by the IOTC Scientific Committee and endorsed by the IOTC.
 - f) **High seas:** The allocation scheme shall not prejudice the international legal framework for the high seas, including the rights and responsibilities of States in respect of fishing on the high seas under UNCLOS and UNFSA.
 - g) **Transferability:** With some exceptions, the allocation scheme shall provide for temporary transfers of CPC allocations, or parts thereof, to and among DCS and SIDS only, should a CPC wish to make such transfers, thereby ensuring availability of fisheries products is maintained to markets and allocation use is optimised.

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- h) ***Socio-Economics***: The allocation scheme shall consider the dependency of DCSs and SIDS on fisheries in the IOTC Area of Competence (all IOTC species combined), measured by the contribution of those fisheries to social, economic, and cultural needs.
 - i) ***Compliance activities***: The allocation scheme shall take into account compliance by eligible participants with CMMs, but with the focus being on CMMs whose application has a direct link to the needs of the allocation system.

III. Allocation criteria

9. ***Scope***:

- a) Any allocation, or part thereof, may be taken either within or beyond areas of national jurisdiction within the IOTC Area of Competence, without prejudice to the sovereign rights of coastal States as referred to in paragraph 8(c) above. Fishing access to any area under the national jurisdiction of a CPC shall remain at the sole discretion of the coastal State.

10. ***Eligibility***:

- a) A State eligible to receive an allocation must be either a CP or a CNCP.
- b) At the commencement of the allocation scheme, each CPC shall receive a baseline allocation and may be eligible to receive a supplementary allocation.
- c) The baseline allocation shall consist of two components: Coastal State allocation and historical catch allocation.
- d) The supplementary allocation shall consist of three components: High seas allocation, DCS allocation and SIDS allocation.

11. ***Stocks to which the allocation would apply***:

- a) Allocations are to be applied to albacore, bigeye tuna, skipjack tuna, yellowfin tuna, and swordfish.

12. ***Global Total Allowable Catch***:

- a) Allocations are to be made in relation to species-specific catch limits set under relevant management procedures. Where no relevant management procedure exists, an allocation may be made in relation to a species-specific catch limit that has otherwise been determined by the IOTC on the advice of the IOTC Scientific Committee.

13. ***Baseline Coastal State allocation***

- a) Each Coastal State CPC with a history of catching the species being allocated within the IOTC Area of Competence, as detailed in [Table 1](#), shall receive a baseline Coastal State allocation. The Baseline Coastal State allocation may be made by reference to factors including, but not limited to, the size of the EEZ within the IOTC Area of Competence, and the size and historical significance of the fishery of the Coastal State concerned. Coastal State CPCs who do not have a catch history for a particular species, as detailed in [Table 1](#), may request in writing to the IOTC Secretariat, to receive a Baseline Coastal State allocation for the next allocation period for that species.
- b) The baseline Coastal State allocation for any Coastal State CNCP shall be no more than 50% of that of the lowest Baseline Coastal State allocation for any Coastal State CP.

14. ***Baseline historical catch allocation (within the EEZ and on the high seas)***:

- a) Historical catches of eligible participants in a given reference period, shall be used to calculate a baseline historical catch allocation for each CPC, for each IOTC species, as provided in [Table 1](#). All historical catches taken within an area under national jurisdiction shall be attributed solely to the coastal State with jurisdiction over that area, regardless of the flag State of the vessels that took such catches, and determined using the methodology described in para 14(b).

Table 1. IOTC species and their respective historical catch reference periods.

Common name	Scientific name	Code	Reference period
<i>Tropical tunas</i>			
Bigeye tuna	<i>Thunnus obesus</i>	BET	yyyy-yyyy
Skipjack tuna	<i>Katsuwonus pelamis</i>	SKJ	yyyy-yyyy
Yellowfin tuna	<i>Thunnus albacares</i>	YFT	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

- b) Initially, the spatial separation of historical catches as between areas within and beyond national jurisdiction shall be made on the following basis:
- i. Catches reported for 5x5 or 1x1 degree grid squares that:
 - wholly fall within areas under national jurisdiction are to be considered as being taken in areas under national jurisdiction;
 - wholly fall within the high seas are to be considered as being taken in the high seas;
 - overlap an area under the national jurisdiction of a coastal State shall be considered as being taken on the high seas, unless otherwise requested by the fishing flag State or the 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 (e.g. catch record by flag) for consideration by the IOTC Compliance Committee.
 - ii. Catches reported or estimated without associated spatial 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 DCS and SIDS fisheries, will be assumed to have been taken within the area under the national jurisdiction of the coastal State, irrespective of whether effort data is available.
- c) The baseline historical catch allocation for any CNCP shall be no more than 50% of that of the lowest Baseline historical catch allocation for any CP.

15. ***Supplementary high seas allocation***

- a) Each CPC, with a history of catching the species being allocated within the IOTC Area of Competence, as detailed in [Table 1](#), with the exception of new entrant DWFN as described in para.

17(b), shall be allocated a supplementary high seas allocation (in addition to any part of the baseline historical catch allocation that relates to the high seas).

- b) The supplementary high seas allocation shall be equal among all CPs. CNCPs shall receive half of that which a CP receives. If a CPC does not intend to fish, or transfer (in accordance with para. 18), its supplementary high seas allocation in a given allocation period, or does not respond to the allocation issuance by the designated time (to be determined by the Commission), its supplementary baseline high seas allocation shall automatically be reallocated to Coastal State CPs based on the allocation formula adopted by the Commission and applied on an annual basis.
- c) A CPC who does not have a catch history for a particular species, as detailed in [Table 1](#), may request in writing to the IOTC Secretariat, to receive a Supplementary high seas allocation for the next allocation period for that species.
- d) Future fishing opportunities for DCSs, whether CPs or CNCPs, shall be facilitated by a gradual transfer of the supplementary high seas allocation from DWFNs, commencing three (3) years after the commencement of the allocation scheme. The details of this gradual transfer shall be developed by the Commission.

16. ***Supplementary DCS allocation and Supplementary SIDS allocation***

- a) The interests and aspirations of DCSs and SIDS shall be further recognised via a supplementary allocation for DCSs and SIDS, if that CPC has a catch history for a particular species, as detailed in [Table 1](#). Where available, and recognizing the following is not exhaustive and that there is a need for additional consultation, information about the following may be taken into account for the purposes of applying for and approving allocations:
 - i. the social dependency of the relevant DCSs or SIDS on IOTC fisheries (which may include employment, food security needs, etc.);
 - ii. the economic dependency of the relevant DCSs or SIDS on IOTC fisheries (which may include export value and fisheries as a proportion or rank of GDP etc.);
 - iii. the cultural dependency of the relevant DCSs or SIDS on IOTC fisheries (criteria for which will be determined); and
 - iv. the development status of the DCSs or SIDS.
- b) A DCS or SIDS who does not have a catch history for a particular species, as detailed in [Table 1](#), may request in writing to the IOTC Secretariat, to receive a Supplementary DCS and/or SIDS allocation for the next allocation period for that species.

17. ***New Entrants***

- a) **Coastal States.** Each Coastal State new entrant shall receive an allocation in the year following their acceptance of the IOTC Agreement for one or more species upon application to, and approval by, the Commission. If a new entrant does not intend to fish its allocation, it shall notify the IOTC Secretariat, for potential reallocation to other Coastal States based on the allocation formula adopted by the IOTC and applied on an annual basis.
- b) **Distant Water Fishing Nations.** Any DWFN new entrant shall not be eligible for an allocation under this Resolution.

18. ***Transferability:***

- a) Any given CP allocation, or part thereof, shall be able to be temporarily transferred to and among DCS/SIDS only, at the sole discretion of the originating CP. Temporary transfers shall expire at the end of the calendar year in which the temporary transfer was made (i.e. at 23:59 hrs on 31 December).
- b) CNCPs shall not be eligible to temporarily transfer to, or receive a temporary transfer from, another CPC.

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

- a) The IOTC may agree to rules whereby non-compliance by a CPC with IOTC CMMs may result in a reduction in that CPC's Allocation in the subsequent allocation period, but with a sole focus on CMMs whose application has a direct link to the needs of the allocation system.
- b) Mechanisms to reconcile catch against CPC allocations shall be developed by the IOTC, that would permit the implementation of a corrective actions policy to be agreed by the IOTC, which will take account of the special requirements and capacity building needs of developing Coastal States.
- c) Over-catch by any CPC of its allocation shall be deducted from that CPC's allocation in future. The default deduction shall be at a ratio of 1:1 for the following allocation period, or at the request of the CPC, increased to 1.5:1 for the deduction to be deferred to the subsequent allocation period.

IV. Weighting of allocation criteria

20. A weighting scheme shall be developed for the allocation categories for consideration by the IOTC at its 23rd Annual Session in 2019, and shall consider the special requirements of DCS or SIDS including their development aspirations. Specifically, no DCS or SIDS Contracting Party shall be worse off under this Resolution for any given species, based upon the recent catch history detailed in [Table 1](#).
 - a) Baseline allocations:
 - i. Coastal State: **XX%**
 - ii. Historical catch (within the Exclusive Economic Zone and on the high seas): **XX%**
 - b) Supplementary allocations:
 - i. High seas: **XX%**
 - ii. Developing Coastal States: **XX%**
 - iii. Small Island Developing States: **XX%**

V. Allocation formula

21. An allocation formula, with associated weighting for each CPCs (Section IV) for each IOTC species detailed in [Table 1](#) shall be developed for consideration by the IOTC at its 23rd Annual Session in 2019.
22. When the Total Allowable Catch (TAC) for an IOTC species decreases from the previous allocation period, DWFN's shall receive a greater reduction in catches than coastal States, at a ratio of 75:25, consistent with principles enunciated in the Kobe process.
23. For any CPC, the total initial allocation for a given species shall not be more than double the historical catch history as detailed in [Table 1](#). Excess allocation shall be redistributed among **remaining** Developing Coastal States in accordance with the Supplementary DCS allocation formula, noting any additional ineligible DCS.

VI. Implementation

24. The IOTC Secretariat shall provide final estimates of CPC historical catch, in accordance with Section 13, to the 23rd Annual Session in 2019. The historical catch estimates shall be provided for each year from **YYYY** to **YYYY**.
25. The implementation of an allocation scheme is expected to take effect on 1 January 2020.
26. This Resolution shall be reviewed and revised as necessary, no later than at the annual Session of the Commission in 2025, with the intent of incorporating the latest scientific information on areas including but not limited to species biological distribution and spawning grounds, as well as areas of biological-ecological significance.
27. This Resolution supersedes Resolution 14/02 *For the conservation and management of tropical tunas stocks in the IOTC area of competence.*

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ANNEX I
Allocation key
Species #1

Step 1: Eligibility:

- a) Flag State is not a Contracting Party or a Cooperating Contracting Party (collectively CPC) at the Commencement date of this Resolution – No allocation for the fishing period.
- b) Flag State is a Contracting Party or a Cooperating Non-Contracting Party at the Commencement date of this Resolution – Go to Step 2.
- c) Flag State is a new entrant Contracting Party or a Cooperating Non-Contracting Party after the Commencement date of this Resolution – Go to Step 6.

Step 2: Baseline Coastal State allocation

- a) Flag State is not a Coastal State – Go to Step 3.
- b) Flag State is a Coastal State – Go to Step 2(c).
- c) Receive a Baseline Coastal State allocation (by reference to factors including, but not limited to, the size of the EEZ within the IOTC Area of Competence, and the size and historical significance of the fishery of the Coastal State concerned (to be developed). – Go to Step 2(d).
- d) Coastal State CPCs who do not have a catch history for a particular species, as detailed in [Table 1](#), may request in writing to the IOTC Secretariat, to receive a Baseline Coastal State allocation for the next allocation period for that species. – Go to Step 2(e).
- e) Coastal State is a Contracting Party – Go to Step 3.
- f) Coastal State is a Cooperating Non-Contracting Party – Go to Step 2(g).
- g) Reduce the Baseline Coastal State allocation to 50% of that of the lowest Baseline Coastal State Allocation for any Contracting Party – Go to Step 3.

Step 3: Baseline historical catch allocation (EEZ and the high seas):

- a) The historical catch by the eligible CPC for the species reference period shall be applied as a proportion of the total Baseline Historical Catch Allocation of all CPCs – Go to Step 3(b).
- b) Flag State is a Contracting Party – Go to Step 4.
- c) Flag State is a Cooperating Non-Contracting Party – Go to Step 3(d).
- d) The baseline historical catch allocation for any CNCP shall be no more than 50% of that of the lowest Baseline historical catch allocation for any CP – Go to Step 4.

Step 4: Supplementary high seas allocation

- a) Each CP, with a history of catching the species being allocated within the IOTC Area of Competence, as detailed in [Table 1](#), with the exception of new entrant DWFN as described in para. 17(b), shall be allocated a supplementary high seas allocation (in addition to any part of the baseline historical catch allocation that relates to the high seas). – Go to Step 4(b).
- b) Flag State is a new entrant DWFN – Go to Step 5.

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- c) Flag State is a Contracting Party – Go to Step 4(e).
 - d) Flag State is a Cooperating Non-Contracting Party – Go to Step 4(f).
 - e) Receive 100% of a Supplementary High Seas allocation – Go to Step 5.
 - f) Receive 50% of a Supplementary High Seas allocation – Go to Step 5.

Step 5: Supplementary DCS allocation and Supplementary SIDS allocation

- a) Flag State is not a Developing Coastal State, and/or a Small Island Developing Coastal State – Commence fishing.
- b) Flag State is a Developing Coastal State, and/or a Small Island Developing Coastal State – Go to Step 5(c).
- c) Developing Coastal State, and/or a Small Island Developing Coastal State shall receive a Supplementary DCSs and/or SIDS Allocation based on criteria to be adopted by the Commission (**to be developed**) – Commence fishing.

Step 6: New Entrants

- a) Flag State is not a Coastal State – Go to Step 7(d).
- b) Flag State is a Coastal State – Go to Step 7(c).
- c) Each Coastal State new entrant shall receive an allocation in the year following their acceptance of the IOTC Agreement for one or more species upon application to, and approval by, the Commission. If a new entrant does not intend to fish its allocation, it shall notify the IOTC Secretariat, for potential reallocation to other Coastal States based on the allocation formula adopted by the IOTC and applied on an annual basis.
- d) Any DWFN new entrant shall not be eligible for an allocation under this Resolution.

ANNEX II
Allocation of fishing opportunities: Flow chart

To be developed

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ANNEX III 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.*

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