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## TERMS OF REFERENCE FOR THE SECOND PERFORMANCE REVIEW OF THE IOTC

PREPARED BY: IOTC SECRETARIAT, 24 APRIL 2014

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### PURPOSE

To inform the Commission the process undertaken since the last Session, by the small discussion group of interested CPCs to develop the draft *Terms of reference and criteria to conduct the Performance Review of the Indian Ocean Tuna Commission*.

### BACKGROUND

At the 17<sup>th</sup> Session of the Commission, Members requested that the Second Performance Review of the IOTC be undertaken in 2014, with draft Terms of Reference to be developed by interested CPCs, before being circulated for wider agreement. The Commission also agreed that once the draft Terms of Reference had been finalised, that it would be circulated to all Members for consideration and potential adoption at the 18<sup>th</sup> Session of the Commission.

In September 2013, Circular IOTC 2013-85 invited interested CPCs to constitute a discussion group for the development of the draft Terms of Reference. This was followed by Circular IOTC 2013-109 and IOTC 2014-09 which informed Members that Australia, the European Union, Maldives, Mozambique, India and Iran expressed interest in being part of the discussion group to develop the draft Terms of Reference.

### DISCUSSION

The small discussion group meet electronically throughout the first quarter of 2014, facilitated by the IOTC Secretariat and developed the draft Terms of Reference that were initially provided to all Members via Circular IOTC 2014-29 (March 2014). The final consolidated Terms of Reference are provided at [Appendix A](#) for the Commission's consideration.

### RECOMMENDATION

That the Commission consider the draft Terms of Reference and criteria to conduct the Second Performance Review of the IOTC and agree on a process to start undertaking the review in 2014.

### APPENDICES

[Appendix A](#): DRAFT: Terms of reference and criteria to conduct the Performance Review of the Indian Ocean Tuna Commission

## APPENDIX A

### **DRAFT: TERMS OF REFERENCE AND CRITERIA TO CONDUCT THE PERFORMANCE REVIEW OF THE INDIAN OCEAN TUNA COMMISSION**

#### **1. Terms of reference for the implementation of the second performance review of the Indian Ocean Tuna Commission**

##### *Composition of the Review Panel*

- a) A Chair with legal fisheries background and good understanding of Tuna Regional Fisheries Management Organisations (RFMO) not affiliated with the IOTC Membership to Chair the Review Panel and draft the report of the review.
- b) A science expert not affiliated with the IOTC Membership, and with expertise on tuna, tuna-like species and bycatch species caught by IOTC fisheries.
- c) [Number of] representatives of IOTC Members as follows: to be decided at the 18<sup>th</sup> Session of the Commission.
- d) One or two Non-Governmental Organisations (selected from the approved Observers list of the Commission).
- e) One or two members (not already Members of the IOTC) from other Tuna Regional Fisheries Management Organisations.

The IOTC Secretariat will not be a part of the Review Panel but it will act as a facilitator of its activities, providing access to information and facilities that the Review Panel will require to conduct its work. Review Panel meetings will take place in the Seychelles. Member countries will cover the costs associated with the participations of their representatives. However, the attendance of developing coastal countries to the Review Panel meetings may be funded under the Meeting Participation Fund or any special fund that the Commission may set up for this purpose.

##### *Scope of the review*

The review will evaluate progress made on the recommendations arising from the first performance review. In addition it will focus on the effectiveness of the Commission to fulfil its mandate, in accordance to the criteria set forth below. The review will not include an audit of the finances of the Commission.

In doing the review, the strengths, weakness, opportunities and risks to the organisation should be evaluated.

##### *Work schedule*

The report of the Review Panel will be completed and made available no later than 60 days prior to the 20<sup>th</sup> Session of the Commission (2016) and published on the IOTC website.

#### **2. Criteria for the second performance review of the Indian Ocean Tuna Commission**

##### **CONSERVATION AND MANAGEMENT**

##### *Status of living marine resources*

- Status of fish stocks under the purview of the IOTC in relation to maximum sustainable yield or other relevant biological standards.
- Trends in the status of those stocks.
- Status of species that belong to the same ecosystems as, or are associated with or dependent upon, the IOTC species (hereinafter “non-target species”).
- Trends in the status of non-target species.

### ***Data collection and sharing***

- Extent to which the IOTC has agreed formats, specifications and timeframes for data submission, taking into account UNFSA Annex I.
- Extent to which IOTC Members and Cooperating Non-Contracting Parties, individually or through the IOTC, collect and share complete and accurate fisheries data concerning target stocks and non-target species and other relevant data in a timely manner.
- Extent to which fishing data and fishing vessel data are gathered by the IOTC and shared among Members and other RFMOs.
- Extent to which the IOTC is addressing any gaps in the collection and sharing of data as required.
- Extent to which the IOTC has set standards for the collection of socio-economic data from the fisheries, as specified in the IOTC Agreement; and extent to which this information is used to inform decisions from the Commission.
- Extent to which the IOTC has set security and confidentiality standards and rules for sharing of sensitive science and operational/compliance data.

### ***Quality and provision of scientific advice***

- Extent to which the IOTC receives and/or produces the best scientific advice relevant to the fish stocks and other living marine resources under its purview, as well as to the effects of fishing on the marine environment.
- Extent to which science data that impacts compliance processes is shared, discussed and utilised.

### ***Adoption of Conservation and Management Measures***

- Extent to which the IOTC has adopted Conservation and Management Measures for both target stocks and non-target species that ensure the long-term sustainability of the ecosystem as well as of such stocks and species and are based on the best scientific evidence available.
- Extent to which the IOTC has applied the precautionary approach as set forth in UNFSA Article 6 and the Code of Conduct for Responsible Fisheries Article 7.5, including the application of precautionary reference points and harvest control rules.
- Extent to which the IOTC has adopted and is implementing effective rebuilding plans for depleted or overfished stocks.
- Extent to which the IOTC has moved toward the adoption of Conservation and Management Measures for previously unregulated fisheries, including new and exploratory fisheries.
- Extent to which the IOTC has taken due account of the need to conserve marine biological diversity and minimise harmful impacts of fisheries on living marine resources and marine ecosystems.
- Extent to which the IOTC has adopted measures to minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.

### ***Capacity management***

- Extent to which the IOTC has identified fishing capacity levels commensurate with long-term sustainability and optimum utilisation of relevant fisheries.
- Extent to which the IOTC has taken actions to prevent or eliminate excess fishing capacity and effort, including the management and intentions expressed in the fleet development plans.

### ***Compatibility of management measures***

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

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***Fishing allocations and opportunities***

- Extent to which the IOTC agrees on the allocation of allowable catch or levels of fishing effort, including taking into account requests for participation from new Members or participants as reflected in UNFSA Article 11.

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**COMPLIANCE AND ENFORCEMENT**

***Flag State duties***

- Extent to which IOTC Members are fulfilling their duties as flag States under the treaty establishing the IOTC, pursuant to measures adopted by the IOTC, and under other international instruments, including, inter alia, the 1982 Law of the Sea Convention, the UNFSA and the 1993 FAO Compliance Agreement, as applicable.

***Port State measures***

- Extent to which the IOTC has adopted measures relating to the exercise of the rights and duties of its members as port States, as reflected in UNFSA Article 23 and the Code of Conduct for Responsible Fisheries Article 8.3 and the FAO Port State Agreement (yet to enter into force).
- Extent to which these measures are effectively implemented.

***Monitoring, control and surveillance (MCS)***

- Extent to which the IOTC has adopted integrated MCS measures (e.g., required use of VMS, observers, catch documentation and trade tracking schemes, restrictions on transshipment, boarding and inspection schemes).
- Extent to which these measures are effectively implemented.

***Follow-up on infringements***

- Extent to which the IOTC, its Members and Cooperating Non-Contracting Parties follow up on infringements to management measures.

***Cooperative mechanisms to detect and deter non-compliance***

- Extent to which the IOTC has established adequate cooperative mechanisms to both monitor compliance and detect and deter non-compliance (e.g., compliance committees, vessel lists, sharing of information about non-compliance, joint patrols, common Minimum Terms and Conditions for access, harmonized regulatory mechanisms, boarding schemes, regional/compatible VMS equipment and operational criteria, observer schemes, with common training standards for inspectors and observers, intra-regional cooperation, etc.).
- Extent to which these mechanisms are being effectively utilised.
- Extent to which the IOTC has adopted new measures to foster (reward/penalise) compliance within IOTC and effectiveness of such measures.

***Market-related measures***

- Extent to which the IOTC has adopted measures relating to the exercise of the rights and duties of its Members as market States.
- Extent to which these market-related measures are effectively implemented.

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**DECISION-MAKING AND DISPUTE SETTLEMENT**

***Decision-making***

- Extent to which IOTC has transparent and consistent decision-making procedures that facilitate the adoption of Conservation and Management Measures in a timely and effective manner.

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***Dispute settlement***

- Extent to which the IOTC has established adequate mechanisms for resolving disputes.

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**INTERNATIONAL COOPERATION**

***Transparency***

- Extent to which the IOTC is operating in a transparent manner, as reflected in UNFSA Article 12 and the Code of Conduct for Responsible Fisheries Article 7.1.9.
- Extent to which IOTC decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.

***Relationship to Cooperating Non-Contracting Parties***

- Extent to which the IOTC facilitates cooperation between Members and Cooperating Non-Contracting Parties, including through the adoption and implementation of procedures for granting cooperating status.

***Relationship to Non-Cooperating Non-Members (Non-CPCs)***

- Extent of fishing activity by vessels of non-members that are not cooperating with the IOTC, as well as measures to deter such activities.

***Cooperation with other RFMOs***

- Extent to which the IOTC cooperates with other RFMOs, including through the network of Regional Fishery Body Secretariats.
- Extent to which IOTC works intra-regionally to adopt common regulatory principles, standards and operational schemes, and processes where appropriate, e.g., observer coverage, FADs management, access rules and appropriate financial mechanisms.

***Special requirements of developing States***

- Extent to which the IOTC recognizes the special needs of developing States and pursues forms of cooperation with developing States, including with respect to fishing allocations or opportunities, taking into account UNFSA Articles 24 and 25, and the Code of Conduct of Responsible Fisheries Article 5.
- Extent to which IOTC Members, individually or through the IOTC, provide relevant assistance to developing States, as reflected in UNFSA Article 26.

***Participation***

- Number of member coastal states / total number of coastal states.
- Number of member countries / total number of countries.
- Extent to which all fishing entities active in the area discharge their obligations in line with the UNFSA.

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**FINANCIAL AND ADMINISTRATIVE ISSUES**

***Availability of resources for IOTC activities***

- Extent to which financial and other resources are made available to achieve the aims of the IOTC and to implement the Commission's decisions, including analysis on the payment of servicing cost from annual and extraordinary/voluntary contributions **and the new Improved Cost Recovery Uplift that should be examined and evaluated in terms of any new support provided from FAO to IOTC.**

***Efficiency and cost-effectiveness***

- Extent to which the IOTC is efficiently and effectively managing its human and financial resources, including those of the Secretariat and eligibility of the staff to all entitlements paid to FAO.

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- Extent to which the IOTC is managing its budget as well as its capacity to monitor and audit annual and multiannual expenditures.

## **FAO**

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### ***Support to IOTC***

- Extent to which the FAO supports IOTC activities and fulfilment of the IOTC objectives, notably regarding its institutional and legal obligations.

## **FIRST PERFORMANCE REVIEW**

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### ***Recommendations***

- See paper IOTC–2014–S18–07 for the current state of play of the implementation of the first Performance Review recommendations.