
Report of the Third Special Session of the Indian Ocean Tuna Commission

Goa, India, 17 – 19 May 2006

DISTRIBUTION:

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Members of the Commission
Other interested Nations and International Organizations
FAO Fisheries Department
FAO Regional Fishery Officers

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AS OF 19 MAY 2006

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EXECUTIVE SUMMARY

The Third Special Session of the Indian Ocean Tuna Commission (IOTC) was held in Goa, India, 17 – 19 May 2006. Representatives of 15 Members of the Commission and FAO attended.

The Commission explored ways to achieve a more effective and efficient organisation, notably through a change in the relationship between the IOTC and the FAO. To this end, the Members present at the 3rd Special Session reached consensus on the text of the amendments to the IOTC Agreement and the text of the Rules of Procedure. The Members also agreed to a list of actions to be undertaken inter-sessionally. To maintain a strong relationship between the FAO and the IOTC, the Members concurred on the need to establish a Cooperation Agreement.

1) OPENING OF THE SESSION

1. The Third Special Session of the Indian Ocean Tuna Commission (IOTC) was held in Goa, India, 17 – 19 May 2006. Representatives of 15 Members of the Commission and FAO attended the Session. The list of participants is attached as Appendix I.
2. Participants were welcomed by Mr Ajay Bhattacharya, Joint Secretary (Fisheries) to the Government of India.
3. On behalf of the Commission, the Chairperson of the Commission, Mr. John Spencer (European Community) thanked the Government of India for arranging and hosting the meeting in the beautiful State of Goa.

2) ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION

4. The Commission adopted the Agenda as presented in Appendix II to this report. The documents before the Commission are listed in Appendix III.

3) ADMISSION OF OBSERVER

5. This Special Session was open only to IOTC Members and FAO in accordance with Article VI.8 of the Agreement.

4) RELATIONSHIP BETWEEN IOTC AND FAO

6. The Chairperson reminded participants about the decisions made by the Commission at the Ninth Session which led to the calling of this meeting.
7. The Chairperson highlighted that the performance of regional fisheries management organisations (RFMOs) has been under review in international fora in recent years. In particular, there has been considerable interest in reviewing the RFMOs' effectiveness and efficiency with respect to achieving their respective management and conservation objectives. In this context, the Chairperson underlined the need for IOTC to take the necessary steps in order to be a modern, effective and efficient organisation fully capable of achieving its mandate.
8. The Commission noted the considerable work that had been carried out inter-sessionally by the Secretariat, and especially Prof. Bill Edeson (Legal Adviser), in providing the documents for the meeting.
9. The Commission recalled that at the Ninth Session it agreed to explore ways to achieve effectiveness and efficiency, notably through a change in the relationship between the IOTC and the FAO, in accordance with the provisions of Article XX of the Agreement. On this matter, the Commission recognised the important contribution of FAO in the formative years of IOTC and stressed the need for the Commission to continue and expand its cooperation with FAO in the future.
10. The Members present at the 3rd Special Session reached consensus on the text of the amendments as listed in Appendix IV to reflect the most appropriate way to achieve a more effective and efficient organisation.
11. Furthermore, the Members confirmed that a declaration will be adopted at the same time as the adoption of the amendments to the Agreement, stating that the amendments do not, in themselves, increase the financial contributions payable by each Member of the Commission.
12. To maintain a strong relationship between the FAO and the IOTC, the Members concurred on the need to establish a Cooperation Agreement, as listed in Appendix V.
13. France stated that it was in favour of the proposed amendments, noting that they will allow the IOTC to fully achieve its objectives concerning the conservation and management of the IOTC

resources, and its objectives concerning management and control of the tuna and tuna-like fisheries. Nevertheless, at the time of adoption of the text of the report, France showed concern regarding the procedure followed. France noted that due to internal legal reasons, the amendments agreed need to obtain parliamentary approval as stated in the French Constitution.

14. India also expressed a similar need for approval.

15. The Members furthermore reached a consensus on the text of the Rules of Procedure, as listed in Appendix VI.

16. The Members agreed that the following actions will be undertaken in the process of achieving a more efficient and effective organisation:

- a. The amendments to the IOTC Agreement (Appendix IV) are appropriate and proposed for adoption by Members at the 11th Session of the Commission. On behalf of the Member present at the Session, the Chairperson will forward the amendments to the Director-General of FAO for circulation to all Members in accordance with Article XX of the IOTC Agreement.
- b. The amendments to the Rules of Procedure (Appendix VI) are appropriate and proposed for adoption by Members at the 11th Session of the Commission immediately after adoption of the amendments to the IOTC Agreement.
- c. The Secretary, in consultation with the Chairperson, will explore with the Government of the Republic of Seychelles the appropriate amendments to the current Headquarters Agreement and prepare in draft an amended Headquarters Agreement;
- d. The Secretary is mandated to analyse the necessary legal, financial and administrative steps resulting from the change in the institutional framework between FAO and IOTC and to prepare draft Financial Regulations based on the draft available at this Session (listed in Appendix VII), draft Staff Regulations and a draft procedure for the appointment of the Executive Secretary.
- e. The results of the analysis in paragraph 16.d, together with the following documents will be circulated by the Secretary to Members three months before the 11th Session of the Commission:
 - draft Financial Regulations
 - draft Staff Regulations
 - draft Procedure for the appointment of the Executive Secretary
 - draft Headquarters Agreement.
- f. In the case of the draft Financial Regulations referred to in paragraph 16.e, Members are invited to submit views by email to the Secretary for circulation to all Members in advance of the 11th Session.
- g. Regarding the draft Staff Regulations, the Members present at the 3rd Special Session expressed a strong preference that the draft Regulations should contain staff terms and conditions equivalent to those currently applying.
- h. All documents circulated by the Secretary under paragraph 15.e will be considered by the Members at the 11th Session with the intention of adopting amended Financial Regulations (following consideration by the Standing Committee on Administration and Finance at the 11th Session), Staff Regulations, and an amended procedure for the appointment of the Executive Secretary, immediately following adoption of the amendments to the IOTC Agreement
- i. After adoption by the Commission of the amendments to the Agreement, the Chairperson is mandated to submit the draft Cooperation Agreement between FAO and IOTC, as listed in Appendix IV, to FAO for observations.

17. The Republic of Seychelles informed the meeting that it is prepared to revise the Headquarters Agreement maintaining, in principle, the privileges and immunities and other conditions as specified in the current Agreement.

5) ADOPTION OF THE REPORT

18. The Commission adopted the report of the Third Special Session of the Indian Ocean Tuna Commission on May 19th 2006 .

APPENDIX I

LIST OF PARTICIPANTS

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APPENDIX II
AGENDA OF THE THIRD SPECIAL SESSION OF THE COMMISSION

- 1. OPENING OF THE SESSION**
- 2. ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION**
- 3. ADMISSION OF OBSERVER**
- 4. RELATIONSHIP BETWEEN IOTC AND FAO**
 - (i) Analysis of the relationship between IOTC and FAO**
 - (ii) Draft Amendments to the Agreement for the Establishment of the IOTC.**
 - (iii) Draft amendments to the Rules of Procedure.**
 - (iv) Draft amendments to the Financial Regulations.**
 - (v) Cooperation Agreement between FAO and IOTC.**
 - (vi) Any other matters**
- 5. ADOPTION OF THE REPORT**

APPENDIX III

LIST OF DOCUMENTS

Reference / Référence	Title / Titre
IOTC-2006-SS3-01	[E] Provisional Agenda and timetable [F] Agenda Prévisionnel De La Commission 3ème Session Extraordinaire
IOTC-2006-SS3-02	[E + F] List of documents / Liste des documents
IOTC-2006-SS3-03	[E] Draft Amendments the IOTC Rules of Procedure [F] Proposition d'amendements du Règlement Intérieur de la CTOI
IOTC-2006-SS3-04	[E] Draft Financial Regulations [F] Proposition de Règlement Financier
IOTC-2006-SS3-05	[E] Draft Amendments the IOTC Agreement [F] Avant-projet d'amendements à l'accord portant création de la CTOI
IOTC-2006-SS3-06	[E] Agreement Between The Food And Agriculture Organization Of The United Nations And The Indian Ocean Tuna Commission (Draft) [F] Accord entre l'organisation des Nations Unies Pour L'alimentation Et L'agriculture Et La Commission Des Thons De L'océan Indien (Proposition)
IOTC-2006-SS3-07	[E] Note prepared by the FAO legal office on amendment, withdrawal, and termination of the agreement for the establishment of the Indian Ocean Tuna Commission (IOTC) [F] Note préparée par le bureau légal de la FAO sur l'amendement, le retrait et l'extinction de l'accord établissant la Commission des thons de l'océan Indien (CTOI)
IOTC-2006-SS3-08	[E] FAO Report on the audit of the IOTC - Fisheries Department Fishery Policy And Planning Division [F] Rapport de l'audit de la CTOI par la FAO Département des pêches - division des politiques et de la planification de la pêche
IOTC-2006-SS3-INF01	[E] Republic of Vanuatu. Official statements [F] République du Vanuatu. Déclarations officielles

APPENDIX IV

PROPOSED AMENDMENTS TO THE IOTC AGREEMENT

The Commission,

In conformity with Article XX, paragraphs 1 and 4, of the Agreement for the Establishment of the Indian Ocean Tuna Commission,

Agrees to amend the Agreement for the Establishment of the Indian Ocean Tuna Commission as follows:

- 1) In the last paragraph of the Preamble, the word “Considering” is replaced by the words “Previously considering”.
- 2) The following is inserted as the last paragraph of the Preamble:

“Now conscious that since the establishment of the Indian Ocean Tuna Commission, and taking account of the evolution of the fishing activities in the Area of competence of the Commission, it is appropriate to change the relationship between the Indian Ocean Tuna Commission and the Food and Agriculture Organization of the United Nations, to make the Indian Ocean Tuna Commission more efficient and effective in accomplishing its conservation and management objectives,”
- 3) In Article I, the words “within the framework of the Food and Agriculture Organization of the United Nations (hereinafter referred to as “FAO”)” are deleted.
- 4) In Article IV paragraph 1, the word “FAO” is replaced by the words “the Food and Agriculture Organization of the United Nations (hereinafter referred to as “FAO”)”.
- 5) In Article V paragraph 2 (e), the word “autonomous” is deleted.
- 6) Article V paragraph 2 (f) is deleted.
- 7) In Article VI paragraph 3, the words “or with the Constitution of FAO” are deleted.
- 8) In Article VI paragraph 7 is replaced by the following:

“The Commission may adopt and amend, as required, the Financial Regulations of the Commission by a two-thirds majority of its Members.”
- 9) Article VI paragraph 8 is replaced by the following:

“To establish a working relationship between the Commission and FAO, the Commission shall enter into negotiations with this Organization with a view to concluding a cooperation agreement. Such agreement should provide, *inter alia*, for the Director-General of FAO (hereinafter referred to as the “Director-General”) to appoint a Representative who would participate in all meetings of the Commission and its subsidiary bodies, but without the right to vote.”
- 10) Article VII paragraph 1 is deleted.
- 11) Article VII paragraph 2 is replaced by the following:

“States which, while not Members of the Commission, are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency may, upon request and subject to the concurrence of the Commission through its Chairperson, be invited to attend sessions of the Commission as observers.”
- 12) Article VIII paragraph 1 is replaced by the following:

“The Executive Secretary of the Commission (hereinafter referred to as the “Executive Secretary”) shall be appointed by the Commission, or in the event of appointment between regular sessions of the Commission, with the approval of the Members of the Commission. The staff of the Commission shall be appointed by the Executive Secretary and shall be under the Executive Secretary’s direct supervision. The Executive Secretary and staff of the Commission shall be appointed under terms and conditions as determined by the Commission.”
- 13) Article VIII paragraph 2 is replaced by the following:

“The Executive Secretary shall be responsible for implementing the policies and activities of the Commission and shall report thereon to the Commission. The Executive Secretary shall also act as Executive Secretary to other subsidiary bodies established by the Commission, as required.”

13) Article VIII paragraph 3 is replaced by the following:

“The expenses of the Commission shall be paid out of its budget.”

14) In Article IX paragraphs 3, 4 and 7 the word “Secretary” is replaced by “Executive Secretary” wherever occurring.

15) Article XII paragraph 6 is replaced by the following:

“The establishment by the Commission of any sub-commission which requires funding by the Commission, and of any committee, working party or other subsidiary body shall be subject to the availability of the necessary funds in the approved budget of the Commission. Before taking any decision involving expenditure in connection with the establishment of subsidiary bodies, the Commission shall have before it a report from the Executive Secretary on the administrative and financial implications.”

16) In Article XIII paragraphs 1 and 2 the word “autonomous” is deleted.

17) Article XIII paragraph 4 is deleted.

18) In Article XIII paragraph 5 the words “with the concurrence of the Director-General” are deleted.

19) Article XIII paragraph 7 is replaced by the following:

“Contributions and donations and other forms of assistance received shall be administered by the Executive Secretary in conformity with the Financial Regulations of the Commission.”

20) In Article XIV, the words “, after consultation with the Director-General,” are deleted.

21) The following Article is inserted after Article XIV:

“Article XIV bis

“The Commission may enter into agreements with Members of the Commission concerning privileges and immunities necessary for the functioning of the Commission.”

22) In Article XVII paragraph 3, the words “, all Members of FAO” are deleted.

23) Article XX paragraph 2 is replaced by the following:

“Proposals for amendments may be made by any Member of the Commission and shall be addressed to both the Executive Secretary and the Director-General, not later than 120 days before the Session of the Commission at which the proposal is to be considered. The Director-General shall immediately inform all Members of the Commission of all proposals for amendments.”

24) Article XX paragraph 3 is deleted.

25) In Article XX paragraph 4, the words “, subject to paragraph 3 above” are deleted.

26) In Article XX paragraph 5, the words “, subject to paragraph 3 above,” are deleted.

27) In Article XX paragraph 7, the words “, all members and Associate Members of FAO” are deleted.

28) In Article XXI paragraph 1, the words “and the members and Associate Members of FAO” are deleted.

29) Article XXI paragraph 3 is deleted.

30) In Article XXIV subparagraph (a), the words “and Associate Member of FAO and to such non-Member States as may become party to this Agreement” are replaced by the words “of the Commission”.

31) Article XXIV subparagraph (c) is replaced by the following:

“(c) inform each Member of the Commission of:

(i) any application for membership in the Commission;

(ii) proposals for the amendment of this Agreement or of the Annexes thereto.”

32) In Article XXIV subparagraph (d), the words “and Associate Member of FAO and any non-Member States as may become party to this Agreement” are replaced by the words “of the Commission”.

APPENDIX V

AGREEMENT BETWEEN THE FOOD AND AGRICULTURE ORGANISATION OF THE UNITED NATIONS AND THE INDIAN OCEAN TUNA COMMISSION

Preamble

Whereas the Constitution of the Food and Agriculture Organization of the United Nations (hereinafter referred to as FAO) provides that the Organization may enter into agreements with other intergovernmental organizations with related activities in order to define methods of cooperation; and

Whereas Article VI.8 of the Agreement for the Establishment of the Indian Ocean Tuna Commission (hereinafter referred as IOTC) provides for the establishment of a working relationship between the IOTC and FAO,

FAO and IOTC have agreed as follows:

Article 1 - Purpose of the Agreement

The purpose of the Agreement is to ensure cooperation between FAO and IOTC by consultation, coordination of effort, mutual assistance and joint action in fields of common interest in accordance with the objectives and principles of FAO and IOTC, in particular in regard to the collection and analysis of statistics, stock assessment and the formulation of conservation and management measures relating to tuna and tuna-like species of the Indian Ocean.

Article 2 - Reciprocal representation

1. IOTC shall be invited to send Observers to sessions of the FAO Committee on Fisheries and its subsidiary bodies, and to sessions of the FAO Conference and FAO Council and other meetings of FAO when they deal with matters relating to conservation and management of the living resources of the sea.
2. FAO shall be invited to send a representative to all meetings of IOTC and its subsidiary bodies. Such representative, who may be accompanied by experts and advisers, shall not have the right to vote.

Article 3 - Exchange of information and documents

1. Subject to such arrangements as may be necessary for the safeguarding of confidential material, FAO and IOTC shall arrange for the fullest exchange of information and documents concerning matters of common interest, including reports on activities and programmes.
2. The Director-General of FAO and the Executive Secretary of IOTC, or their authorized representatives, shall, upon the request of either Party, consult with each other regarding the provision by either Party of such special information as may be of interest to the other Party.

Article 4 - Cooperation and consultation

FAO and IOTC agree that with a view to facilitating the effective attainment of the objectives set forth in the Constitution of FAO and the Agreement for the Establishment of IOTC, they will act in close cooperation with each other and will consult each other regularly in regard to matters of common interest. In particular, each Party shall inform the other at an early stage of any plans for the development of its activities whenever this is required to secure effective coordination and to avoid duplication of effort.

Article 5 - Technical cooperation

1. Whenever desirable, FAO and IOTC may each seek other's technical cooperation with a view to promoting the development of activities in fields of mutual concern.
2. Every effort shall be made to meet any request for technical cooperation. Any such technical cooperation shall be provided in a manner to be agreed between the Parties.

Article 6 - Joint action

1. FAO and IOTC may, through their competent organs, conclude special agreements or arrangements for joint action with a view to attaining objectives of common interest.
2. These agreements or arrangements shall define the manner and extent of participation by each Party and shall specify the financial commitment, if any, that each is to assume.
3. FAO and IOTC may set up joint committees or working parties to consider matters of mutual interest.

Article 7 - Proposals for the inclusion of agenda items

Subject to such preliminary consultation as may be necessary, IOTC may propose the inclusion of items on a provisional agenda of the FAO Committee on Fisheries or of its subsidiary bodies. FAO may propose the inclusion of items on the provisional agenda of the meetings of IOTC and of its subsidiary bodies. Proposals for the inclusion of items shall be accompanied by an explanatory memorandum.

Article 8 - Entry into Force

This Agreement shall enter into force upon signature by both Parties.

Article 9 - Amendments and Termination

1. This Agreement may be amended, in writing, by mutual agreement of the Parties on request by either Party. No amendment shall have effect unless signed by both Parties.
2. Either of the Parties may terminate this Agreement by giving six months' written notice to the other Party.

In witness whereof the undersigned, being duly authorized thereto, have signed this Agreement.

Done in duplicate at [place], this [] day of [], two thousand and [], in the English and French languages, both texts being equally authentic.

For the FAO

[]

Signature

For the IOTC

[]

Signature

APPENDIX VI

PROPOSED AMENDMENTS TO THE IOTC RULES OF PROCEDURE

The Commission,

In conformity with Rule XVI of the Rules of Procedure of the Indian Ocean Tuna Commission,
Agrees to amend the Rules of Procedure of the Indian Ocean Tuna Commission as follows:

- 1) Rule I is replaced by the following:

“Rule I: Definitions

For the purpose of these rules, the following definitions apply:

Agreement: the Agreement for the Establishment of the Indian Ocean Tuna Commission, approved by the FAO Council at its Hundred-and-Fifth Session in November 1993, and entered into force on 27 March 1996, as amended.

Commission: the Indian Ocean Tuna Commission.

FAO: the Food and Agriculture Organization of the United Nations.

Director-General: the Director-General of the FAO.

Scientific Committee: the permanent committee provided for in Article XII.1 of the Agreement.

Delegate: the representative of a Member as specified in Article VI.1 of the Agreement.

Delegation: the delegate and his alternate, experts and advisers.

Members: Members of the Commission.

Executive Secretary: the Executive Secretary of the Commission.

Observer States: States which are not members of the Commission, but are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency, attending sessions of the Commission as observers in accordance with Article VII, paragraph 2 of the Agreement.

Observer Intergovernmental Organizations: Intergovernmental Organizations attending sessions of the Commission as observers in accordance with Article VII, paragraph 3 of the Agreement.

Observer Non-governmental Organizations: Non-governmental Organizations attending sessions of the Commission as observers in accordance with Article VII, paragraph 3 of the Agreement.

Observer: the representative of an Observer State, Observer Intergovernmental Organization or Observer Non-governmental Organization.

- 2) References to the “Secretary” are replaced by the “Executive Secretary” wherever occurring.
- 3) In Rule II paragraph 2, the word “pursuance” is deleted and is replaced with “accordance”.
- 4) Rule II paragraph 3 is replaced by the following:

“The date of the sessions shall be determined by the Commission. Regular sessions and special sessions of the Commission shall normally be held at the seat of the Commission. Sessions may, however, be convened elsewhere in accordance with a decision taken by the Commission.”
- 5) In Rule II paragraph 4 the words “the Director-General, in accordance with the provisions of Rule XXXVII.4 of the General Rules of the Organization,” are replaced by the word “Commission”; the words “and of the Secretariat of the Organization” are deleted.
- 6) In Rule IV paragraph 1 the words “Observer Nations and Observer Associate Members” are replaced by the words “Observer States”.
- 7) In Rule IV paragraph 2 the words “Observer Non-member States of FAO” are replaced by the words “Observer States”.
- 8) In Rule IV paragraph 4 e) the words “this Agreement” are replaced by the words “the Agreement”.
- 9) In Rule IV paragraph 4 j) the semi-colon at the end of the sentence is replaced with a full stop.

- 10) Rule IV paragraph 4 k) is deleted.
- 11) Rule V paragraph 2 is replaced by the following:

“The Executive Secretary of the Commission shall be appointed by the Commission, in accordance with the procedure determined by the Commission, taking into account the Agreement as amended.”.
- 12) In Rule V paragraph 5 the words “as well as with the FAO Secretariat at all levels” are deleted.
- 13) In Rule V paragraph 6 e) the full stop at the end of the sentence is replaced by a semi-colon.
- 14) In Rule V paragraph 6 f) the semi-colon at the end of the sentence is replaced by a full stop.
- 15) Rule IX paragraph 4 is replaced by the following:

“Unless the Commission decides otherwise, voting on matters relating to individuals, including the election of the Chairperson, Vice Chairpersons and the Executive Secretary of the Commission, shall be by secret ballot.”
- 16) Rule IX paragraph 7 is replaced by the following:

“If the Commission is equally divided when a vote is taken on a question other than an election for the position of the Executive Secretary, a second vote and a third vote may be taken at the current session at the request of the proposer. Except for the election of the Executive Secretary, if the Commission remains equally divided, the proposal shall not be further considered at the current session.”
- 17) Rule IX paragraph 8 is deleted.
- 18) In Rule X paragraph 8 the words “and the Director General” are deleted.
- 19) Rule X paragraph 10 f) is replaced by the following:

“consider any matter referred to it by the Commission.”
- 20) Rule X paragraph 10 g) is replaced by the following:

“carry out any other technical activities of relevance to the Commission.”
- 21) Rule XIII paragraph 2 is deleted.
- 22) Rule XIII paragraph 3 is replaced by the following:

“States which are not Members of the Commission, but that are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency, may, upon request and subject to the concurrence of the Commission through its Chairperson, be invited to attend sessions of the Commission in an observer capacity.”
- 23) Rule XIII paragraph 7 is replaced by the following:

“The Commission may establish guidelines, criteria or conditions governing the participation of regional economic integration organizations which are not Members of the Commission.”
- 24) Rule XIII paragraph 8 is replaced by the following:

“Unless the Commission expressly determines otherwise, observers may attend the plenary meetings of the Commission. Observer States, Observer Intergovernmental organizations, Observer Non-governmental organizations, States whose vessels engage in fishing in the area for stocks covered by the Agreement, and other States and international organizations that were represented at the previous session, may participate in the plenary sessions on such conditions as the Commission may determine.”
- 25) Rule XIV paragraph 3 is replaced by the following:

“At the closure of each session, the report as well as the decisions and recommendations, together with the schedule for their implementation by the Members of the Commission, shall be circulated by the Executive Secretary to the Members. The Executive Secretary shall also circulate them to non-members of the Commission, which are coastal States situated wholly or partly within the area defined in Article II of the Agreement or are States whose vessels engage in fishing in the area for stocks covered by the Agreement, as well as to other States and international organizations that were represented at the session.”

26) Rule XIV paragraph 4 is deleted.

27) In Rule XIV paragraph 5 the words “or the Director-General” are deleted.

28) Rule XV paragraph 1 is replaced by the following:

“As provided for in Article XX.2 of the Agreement, proposals for the amendment of the Agreement may be made by any Member of the Commission and shall be addressed to the Executive Secretary and to the Director-General not later than 120 days before the session of the Commission at which the proposal is to be considered. The Director-General shall immediately inform all Members of the Commission of all proposals for amendments.”

APPENDIX VII
DRAFT AMENDED IOTC FINANCIAL REGULATIONS

The square brackets highlight matters identified by the 3rd Special Session as areas for further analysis.

REGULATION 1

APPLICABILITY

1.1 These Regulations shall govern the financial administration of the Indian Ocean Tuna Commission (hereafter referred to as the Commission"), the Scientific Committee and any subsidiary bodies respectively established under Article XII of the Agreement for the Establishment of the Indian Ocean Tuna Commission) (hereinafter referred to as "the Agreement").

REGULATION 2

FINANCIAL YEAR

2.1 The financial year shall be for 12 months commencing [1 January and ending 31 December], both dates inclusive.

REGULATION 3

THE BUDGET

3.1 A draft budget comprising estimates of receipts by the Commission and of expenditures by the Commission, the Scientific Committee and any subsidiary bodies established pursuant to Article XII of the Agreement shall be prepared by the Executive Secretary for the ensuing financial year.

3.2 The draft budget shall include a statement of the significant financial implications for subsequent financial years in respect of any proposed work programs presented in terms of administrative, recurrent and capital expenditure.

3.3 The draft budget shall be divided by functions into items and, where necessary or appropriate, into sub-items.

3.4 The draft budget shall be accompanied by details both of the appropriations made for the previous year and estimated expenditure against those appropriations, together with such information and annexures as may be required by Members of the Commission or deemed necessary or desirable by the Executive Secretary. The precise form in which the draft budget is to be presented shall be prescribed by the Commission.

3.5 The Executive Secretary shall submit the draft budget to all Members of the Commission at least 60 days prior to the annual meeting of the Commission. At the same time, and in the same form as the draft budget, the Executive Secretary shall prepare and submit to all Members of the Commission a forecast budget for the subsequent financial year.

3.6 The draft budget and the forecast budget shall be presented in [United States dollars].

3.7 At each annual meeting, the Commission shall decide upon its annual budget and the budget of the Scientific Committee and any subsidiary bodies.

REGULATION 4

APPROPRIATIONS

4.1 The appropriations adopted by the Commission shall constitute an authorization for the Executive Secretary to incur obligations and make payments for the purposes for which the appropriations were adopted.

4.2 Unless the Commission decides otherwise, the Executive Secretary may also incur obligations against future years before appropriations are adopted when such obligations are necessary for the continued effective functioning of the Commission, provided such obligations are restricted to administrative requirements of a continuing nature not exceeding the scale of such requirements as authorized in the budget of the current financial year. In other circumstances the Executive Secretary may incur obligations against future years only as authorized by the Commission.

4.3 Appropriations shall be available for the financial year to which they relate. At the end of the financial year all appropriations shall lapse. Commitments remaining undischarged against previous appropriations at the end of a financial year shall be carried over and be included in the budget for the next financial year, unless the Commission otherwise decides.

4.4 The Chair may authorize the Executive Secretary to make transfers of up to 10 per cent of appropriations between items. The Executive Secretary may authorize the transfer of up to 10 per cent of appropriations between sub-items of an item. All such transfers must be reported by the Executive Secretary to the next annual meeting of the Commission.

4.5 The Commission shall prescribe the conditions under which unforeseen and extraordinary expenses may be incurred.

REGULATION 5

PROVISION OF FUNDS

5.1 Each Member of the Commission shall contribute to the budget in accordance with Article XIII of the Agreement. The Executive Secretary shall calculate the contribution for each Member according to the procedure agreed by the Commission as presented in Annex.

[5.2 Staff Assessment Levy paid by an employee of the Commission shall be regarded by the Commission as payment towards the annual budget contribution for the year following payment of levy.]

5.3 On approval of the budget for a financial year, the Executive Secretary shall send a copy thereof to all Members of the Commission notifying them of their contributions and requesting them to remit their contributions due. A Member of the Commission that fails to pay its contributions for two consecutive years shall not, until it has fulfilled its payment obligations, enjoy the right to participate in the decision-making process in the Commission, unless the Commission decides otherwise.

5.4 All contributions shall be made in [United States dollars].

5.5 (a) a new Member of the Commission whose membership becomes effective during the first six months of the financial year shall be liable to pay the full amount of the annual contribution which would have been payable had it been a Member of the Commission when assessments were made pursuant to Article XIII of the Agreement. A new Member whose membership becomes effective during the last six months of the financial year, shall be liable to pay half of the amount of the annual contribution referred to above. A Member whose membership becomes effective during the last three months of the first financial year shall be liable to pay half the amount of the first annual contribution;

(b) Where contributions are received from new Members the contributions of existing Members shall be adjusted in accordance with Regulation 6.1 (d).

5.6 Contributions shall be due for payment on the first day of the financial year (i.e. the due date) and shall be paid in full not later than 150 days after that date. Notwithstanding the foregoing, a Member may elect to pay its contribution in 4 equal quarterly installments, in which case each such installment payment shall be made no later than the last day of each quarter of the financial year. However, in the case referred to in

Regulation 5.5(a), contributions by a new Member shall be paid in full within 90 days following the date on which its membership becomes effective.

5.7 The Executive Secretary shall report to each meeting of the Commission on the receipt of the contributions and the position of arrears.

REGULATION 6

FUNDS

6.1 (a) There shall be established a [General Fund] for the purpose of accounting for the income and expenditure of the Commission, the Scientific Committee and any subsidiary bodies established pursuant to Article XII of the Agreement;

(b) Contributions paid by Members under Regulation 5.1 and miscellaneous income to finance general expenditure shall be credited to the [General Fund];

(c) Any cash surplus in the [General Fund] at the close of a financial year that is not required to meet undischarged commitments in terms of Regulation 4.3 shall be divided in proportion to the contributions made by existing Members under Regulation 5.1 in the current financial year and used to offset such Members' contributions for the ensuing financial year. This provision shall not apply at the end of the [first financial year] when surplus funds other than those resulting from contributions by new Members may be carried over into the following financial year;

(d) Where contributions are received from new Members after the commencement of the financial year and such funds have not been taken into account in formulating the budget, appropriate adjustment shall be made to the level of the assessed contributions of existing Members and such adjustments recorded as advances made by such Members;

(e) Advances made by Members shall be carried to the credit of the Members which have made such advances.

6.2 [Trust and Special funds] may be established by the Commission for the purpose of receiving funds and making payments for purposes not covered by the regular budget of the Commission.

REGULATION 7

OTHER INCOME

7.1 All income other than contributions to the budget under Regulation 5 and that referred to in Regulation 7.3 below, shall be classified as Miscellaneous Income and credited to the [General Fund]. The use of Miscellaneous Income shall be subject to the same financial controls as activities financed from regular budget appropriations.

7.2 Voluntary contributions above and beyond Members' budget contributions may be accepted by the Executive Secretary provided that the purposes for which the contributions are made are consistent with the policies, aims and activities of the Commission. Voluntary contributions offered by non-Members may be accepted, subject to agreement by the Commission that the purposes of the contribution are consistent with the policies, aims and activities of the Commission.

7.3 Voluntary contributions shall be treated as [Trust or Special Funds] under Regulation 6.2.

REGULATION 8

CUSTODY OF FUNDS

8.1 The Executive Secretary shall designate a bank or banks in which the funds of the Commission shall be kept and shall report the identity of the bank or banks so designated to the Commission.

8.2 (a) The Executive Secretary may make short-term investments of moneys not needed for the immediate requirements of the Commission. Such investments shall be restricted to securities and other investments

issued under government guarantee and approved by the Commission's auditor. The details of investment transactions and income derived shall be reported in the documents supporting the budget;

(b) With regard to moneys held in [Trust or Special Funds] for which use is not required for at least 12 months, longer-term investments may be authorized by the Commission provided such action is consistent with the terms under which the moneys were lodged with the Commission. Such investments shall be restricted to securities and other investments issued under government guarantee and approved by the Commission's auditor.

8.3 Income derived from investments shall be credited to the [Fund] from which the investment was made.

REGULATION 9

INTERNAL CONTROL

9.1 The Executive Secretary shall:

- (a) establish detailed financial rules and procedures after consultation with the external auditor to ensure effective financial administration and the exercise of economy in the use of funds;
- (b) cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the goods or services have been received and that payment has not previously been made;
- (c) designate officers who may receive moneys, incur obligations and make payments on behalf of the Commission; and
- (d) maintain and be responsible for internal financial control to ensure:
 - (i) the regularity of the receipt, custody and disposal of all funds and other financial resources of the Commission;
 - (ii) the conformity of obligations and expenditures with the appropriations adopted by the annual meeting; and
 - (iii) the economic use of the resources of the Commission.

9.2 No obligations shall be incurred until allotments or other appropriate authorizations have been made in writing under the authority of the Executive Secretary.

9.3 The Executive Secretary may propose to the Commission, after full investigation by him or her, the writing off of losses of assets, provided that the external auditor so recommends. Such losses shall be included in the annual accounts.

9.4 Tenders in writing for equipment, supplies and other requirements shall be invited by advertisement, or by direct requests for quotation from at least three persons or firms able to supply the equipment, supplies, or other requirements, if such exist, in connection with all purchases or contracts, the amounts of which exceed [US\$1000]. For amounts exceeding [US\$500, but up to US\$1000], competition shall be obtained either by the above means or by telephone or personal enquiry. The foregoing rules, shall, however, not apply in the following cases:

- (a) where it has been ascertained that only a single supplier exists and that fact is so certified by the Executive Secretary;
- (b) in case of emergency, or where, for any other reason, these rules would not be in the best financial interests of the Commission, and that fact is so certified by the Executive Secretary.

REGULATION 10

THE ACCOUNTS

10.1 The Executive Secretary shall ensure that appropriate records and accounts are kept of the transactions and affairs of the Commission and shall do all things necessary to ensure that all payments out of the Commission's moneys are correctly made and properly authorized and that adequate control is maintained

over the assets of, or in the custody of, the Commission and [over the incoming of] liabilities by the Commission.

10.2 The Executive Secretary shall submit to the Members of the Commission, not later than [1 March] immediately following the end of the financial year, annual financial statements showing, for the financial year to which they relate:

- (a) the income and expenditure relating to all funds and accounts;
- (b) The situation with regard to budget provisions, including:
 - (i) The original budget provisions;
 - (ii) The approved expenditure in excess of the original budget provisions;
 - (iii) Any other income;
 - (iv) The amounts charged against these provisions and other income;
- (c) the financial assets and liabilities of the Commission;
- (d) details of investments;
- (e) losses of assets proposed in accordance with Regulation 9.3.

10.3 The Executive Secretary shall also give such other information as may be appropriate to indicate the financial position of the Commission. These financial statements shall be prepared in a form approved by the Commission after consultation with the external auditor.

10.4 The accounting transactions of the Commission shall be recorded in the currency in which they took place but the annual financial statements shall record all transactions in [United States dollars].

10.5 Appropriate separate accounts shall be kept for all [Special and Trust Funds].

10.6 The annual financial statements shall be submitted by the Executive Secretary to the external auditor at the same time as they are submitted to Members of the Commission under paragraph 2 of this Regulation.

REGULATION 11

EXTERNAL AUDIT

11.1 The Commission shall appoint an external auditor who shall be the Auditor-General or equivalent statutory authority from a Member of the Commission or an external auditor from an internationally recognized firm and shall serve for a term of two years with the possibility of re-appointment. The Commission will ensure respect for the external auditor's independence of the Commission, the Scientific Committee, any subsidiary bodies established pursuant to the Agreement and the Commission's staff, fix the terms of office, appropriate funds to the external auditor and may consult him or her on the introduction or amendment of any financial regulations or detailed accounting methods as well as on all matters affecting auditing procedures and methodology.

11.2 The external auditor or a person or persons authorized by him or her shall be entitled at all reasonable times to full and free access to all accounts and records of the Commission relating directly or indirectly to the receipt or payment of moneys by the Commission or to the acquisition, receipt, custody or disposal of assets by the Commission. The external auditor or a person or persons authorized by him or her may make copies of or take extracts from any such accounts or records.

11.3 If required by the Commission to perform a full audit, the external auditor shall conduct his or her examination of the statements in conformity with generally accepted auditing standards and shall report to the Commission on all relevant matters, including:

- (a) whether, in his or her opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether, in his or her opinion, the income, expenditure and investment of moneys and the acquisition and disposal of assets by the Commission during the year have been in accordance with these Regulations; and

- (d) observations with respect to the efficiency and economy of the financial procedures and the conduct of business, the accounting system, internal financial controls and the administration and management of the Commission.

11.4 If required by the Commission to perform a review audit, the external auditor shall review the statements and accounting controls in operation. He or she shall report to the Commission whether anything has come to his or her attention which would cause him or her to doubt whether:

- (a) the statements are based on proper accounts and records;
(b) the statements are in agreement with the accounts and records; or
(c) the income, expenditure and investment of moneys and the acquisition and disposal of assets by the Commission during the year have been in accordance with these Regulations.

11.5 The Executive Secretary shall provide the external auditor with the facilities he or she may require in the performance of the audit.

11.6 The Executive Secretary shall provide to the Members of the Commission a copy of the audit report and the audited financial statements within 30 days of their receipt.

11.7 The Commission shall, if necessary, invite the external auditor to attend discussions on any item under scrutiny and consider recommendations arising out of his or her findings.

REGULATION 12

ACCEPTANCE OF ANNUAL FINANCIAL STATEMENTS

12.1 At each annual meeting the Commission shall, following consideration of the audited annual financial statements and audit report submitted to its Members under Regulation 11.6 of these Regulations, signify its acceptance of the audited annual financial statements of the previous financial year or take such other action as it may consider appropriate.

REGULATION 13

INSURANCE

13.1 The Commission may take out suitable insurances with a reputable financial institution against normal risks to its assets.

REGULATION 14

GENERAL PROVISION

14.1 Subject to the provisions of the Agreement, these Regulations may be amended by the Commission in accordance with its Rules of Procedure.

[14.2 Where the Commission, the Scientific Committee or any subsidiary body is considering matters which may lead to a decision which has financial or administrative implications, it shall have before it an evaluation of those implications from the Executive Secretary.]

ANNEX I

SCHEME FOR CALCULATION OF CONTRIBUTIONS TO THE ADMINISTRATIVE BUDGET OF THE COMMISSION

1. Ten percent of the total budget of the Commission shall be divided equally among all the Members.
2. Ten percent of the total budget shall be divided equally among the Members having fishing operations in the Area targeting species covered by the Commission.
3. Forty percent of the total budget shall be allocated among the Members on the basis of per caput GNP for the calendar year three years before the year to which the contributions relate, weighted according to the economic status of the Members in accordance with the World Bank classification as follows and subject to change in the classification thresholds: high income Members shall be weighted by the factor of 8; middle income Members by the factor of 2; low-income Members by the factor of 0.
4. Forty percent of the total budget shall be allocated among the Members in proportion to their average catch in the three calendar years beginning with the year five years before the year to which the contributions relate, weighted by a coefficient reflecting their development status. The coefficient of OECD members and EC shall be 1, and the coefficient of other Members shall be one-fifth.