



Report of the 2nd IOTC Performance Review

Mahé, Seychelles, 2–6 February & 14–18 December 2015

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Acronyms

| | |
|----------|---|
| ACAP | Agreement for the Conservation of Albatrosses and Petrels |
| CCSBT | Commission for the Conservation of Southern Bluefin Tuna |
| COFI | Committee on Fisheries (FAO) |
| CPCs | Contracting Parties and Cooperating Non-Contracting Parties |
| EEZ | Exclusive Economic Zone |
| FAD | Fish Aggregating Device |
| FAO | Food and Agriculture Organization of the United Nations |
| GFCM | General Fisheries Commission for the Mediterranean |
| IATTC | Inter-American Tropical Tuna Commission |
| ICCAT | International Commission for the Conservation of Atlantic Tunas |
| IOC | Indian Ocean Commission |
| IOTC | Indian Ocean Tuna Commission |
| IPOA | International Plan of Action |
| IMO | International Maritime Organization |
| IUU | Illegal, Unreported and Unregulated |
| LOA | Length overall |
| LOSC | Law of the Sea Convention (United Nations) |
| MCS | Monitoring, Control and Surveillance |
| MOU | Memorandum of Understanding |
| PRIOTC01 | 1 st Performance Review of the IOTC |
| PRIOTC02 | 2 nd Performance Review of the IOTC |
| PSMA | Port State Measures Agreement (FAO) |
| RFMO | Regional Fisheries Management Organization |
| SIOFA | South Indian Ocean Fisheries Agreement |
| TCAC | Technical Committee on Allocation Criteria |
| UNSFA | United Nations Fish Stock Agreement |
| VMS | Vessel Monitoring System |
| WCPFC | Western and Central Pacific Fisheries Commission |

TABLE OF CONTENTS

| | |
|---|-----------|
| EXECUTIVE SUMMARY | 5 |
| 1. INTRODUCTION..... | 6 |
| 2. BACKGROUND AND BRIEF HISTORY OF THE IOTC | 7 |
| 3. ANALYSIS OF THE IOTC AGREEMENT AGAINST OTHER INTERNATIONAL INSTRUMENTS | 13 |
| 4. CONSERVATION AND MANAGEMENT | 23 |
| 5. COMPLIANCE AND ENFORCEMENT | 33 |
| 6. DECISION-MAKING AND DISPUTE SETTLEMENT | 38 |
| 7. INTERNATIONAL COOPERATION | 39 |
| 8. FINANCIAL AND ADMINISTRATIVE ISSUES..... | 44 |
| 9. FAO | 46 |
| 10. CONCLUSIONS | 46 |
| APPENDIX I TERMS OF REFERENCE AND CRITERIA TO CONDUCT THE SECOND PERFORMANCE REVIEW OF THE IOTC | 47 |
| APPENDIX II 2015: UPDATE ON PROGRESS REGARDING RESOLUTION 09/01 – ON THE PERFORMANCE REVIEW FOLLOW-UP | 52 |
| APPENDIX III SUMMARY OF A LEGAL ANALYSIS OF THE IOTC AGREEMENT AGAINST THE UNFSA | 70 |
| APPENDIX IV CONVENTION AMENDMENTS – THE ICCAT EXPERIENCE..... | 79 |
| APPENDIX V CONSOLIDATED RECOMMENDATIONS OF THE 2ND PERFORMANCE REVIEW OF THE INDIAN OCEAN TUNA COMMISSION | 81 |

EXECUTIVE SUMMARY

In 2013 the Commission agreed to undertake a 2nd performance review of the IOTC to:

- a) evaluate progress made on the recommendations arising from the 1st performance review;
- b) focus on the effectiveness of the Commission to fulfil its mandate, in accordance with the criteria set forth in [Appendix I](#);
- c) evaluate the strengths, weaknesses, opportunities and risks to the organisation (the review does not include an audit of the finances of the Commission).

As with the 1st performance review, the assessment criteria for the 2nd performance review closely follow those recommended by the 1st Kobe meeting in 2007, with some minor additions. The Panel has not addressed the detailed criteria point by point, but rather, used them as a basis for assessing progress against the general criteria. Thus the assessment of each general criteria is a combination of the detailed criteria and progress made in relation to recommendations by the 1st Performance Review Panel.

A table detailing the status of implementation (as of 12 December 2015) of each of the recommendations from the 1st performance review is provided at [Appendix II](#).

The following are a subset of the complete recommendations from the 2nd Performance Review of the Indian Ocean Tuna Commission (PRIOTC02), which are provided at [Appendix V](#).

Analysis of the IOTC Agreement against other international instruments

([para. 81](#)) **NOTING** [para 80](#), the PRIOTC02 **RECOMMENDED** that the Commission establish an ad-hoc Working Party on the Modernisation of the IOTC Agreement, based on the following scope:

- a) Develop proposed language for the IOTC Agreement that takes into account modern principles of fisheries management;
- b) Develop a multi-year Program of Work that outlines the specific priority issues to be discussed using the legal analysis contained in [Appendix III](#) of this report to inform the working party deliberations;
- c) Proposals to enable the participation of all fishing players with direct fishing interest in the IOTC;
- d) That all CPCs should participate in the Working Party and that funds be provided to support the participation of developing coastal States in the meetings;
- e) That the working group meet at least annually and to the extent possible progress its work inter-sessionally using electronic means.

FAO

([para. 233](#)) The PRIOTC02 **RECOMMENDED** that the IOTC would be more appropriate as an independent entity. As such, as a matter of the highest priority, the Commission should decide whether the IOTC should remain within the FAO framework or become a separate legal entity, and as necessary, begin consultations with the FAO on this matter.

The consolidated set of recommendations arising from the PRIOTC02 is provided at [Appendix V](#).

1. INTRODUCTION

1.1 *1st Performance Review of the IOTC (PRIOTC01)*

1. In response to calls from the international community for a review of the performance of Regional Fisheries Management Organisations (RFMOs), the Indian Ocean Tuna Commission (IOTC) agreed in 2007 to implement a process of Performance Review. The IOTC formed a Review Panel, consisting of an independent legal expert, an independent scientific expert, six IOTC Contracting Parties (Members) and a non-governmental organisations observer, which concluded its report to the Commission in January 2009. The 1st Performance Review of the Indian Ocean Tuna Commission (PRIOTC01) was based on the criteria developed as a result of a joint meeting of tuna RFMOs, Kobe, Japan, 2007 and concentrated on the following issues:
 - Adequacy of the Agreement for the Establishment of the Indian Ocean Tuna Commission (IOTC Agreement) relative to current principles of fisheries management;
 - Consistency between scientific advice and conservation and management measures adopted;
 - Effectiveness of control measures established by the IOTC; and
 - Efficiency and transparency of financial and administrative management.
2. In 2009, the IOTC performance review panel published a report outlining 81 recommendations to improve the functioning of the IOTC ([Anon 2009](#)). The Commission, at its 13th Session, held in Bali, Indonesia from 30 March to 3 April 2009, adopted Resolution 09/01 *On the performance review follow-up* to commence a process of implementing the recommendations arising from 1st performance review, thereby strengthening the effectiveness of the IOTC.
3. Since 2009 the Commission has annually received an update on the status of implementation for each of the recommendations arising from the report of the PRIOTC01. In subsequent years, the updates were supplemented with a work plan with proposed timelines and priorities for each recommendation by the IOTC Secretariat and each of the three main subsidiary bodies of the Commission (the Committees).

1.2 *2nd Performance Review of the IOTC (PRIOTC02)*

1.2.1 *Scope*

4. In 2013 the Commission agreed to undertake a 2nd Performance Review of the Indian Ocean Tuna Commission (PRIOTC02) to:
 - a) evaluate progress made on the recommendations arising from the 1st performance review;
 - b) focus on the effectiveness of the Commission to fulfil its mandate, in accordance with the criteria set forth in [Appendix I](#);
 - c) evaluate the strengths, weaknesses, opportunities and risks to the organisation (the review does not include an audit of the finances of the Commission).
5. As with the 1st performance review, the assessment criteria for the 2nd performance review closely follow those recommended by the 1st Kobe meeting in 2007, with some minor additions. The PRIOTC02 Panel has not addressed the detailed criteria point by point, but rather, used them as a basis for assessing progress against the general criteria. Thus, the assessment of each general criteria is a combination of the detailed criteria and progress made in relation to recommendations by the PRIOTC01.
6. A table detailing the status of implementation (as of 12 December 2015) of each of the recommendations from the PRIOTC01 is provided at [Appendix II](#).

1.2.2 *Composition of the Review Panel*

7. The PRIOTC02 Panel consisted of the following:
 - a) an independent Chairperson with legal fisheries expertise (Mr Terje Lobach)
 - b) six IOTC Contracting Parties (Members): European Union (Mr Orlando Fachada), Japan (Mr Haruo Tominaga), Maldives (Dr M. Shiham Adam), Mauritius (Mr Devanand Norungee), Oman (Mr Ahmed Al Mazrui) and Seychelles (Mr Roy Clarisse)
 - c) two non-government organisations: International Seafood Sustainability Foundation (ISSF: Ms Claire van der Geest) and Pew Charitable Trusts (PEW: Mr Henry Debey)
 - d) two other regional fisheries management organisations (RFMOs): the International Commission for the Conservation of Atlantic Tunas (ICCAT, Brazil: Dr Bárbara Boëchat de Almeida) and from the Western and Central Pacific Fisheries Commission (WCPFC, New Zealand: Mr Arthur Hore)

- e) a science expert not affiliated with the IOTC Membership, and with expertise on tuna, tuna-like species and bycatch species caught by IOTC fisheries (ISSF: Dr Jerry Scott).
8. In addition, a consultant (Mr Glenn Hurry) was hired to review the cost-benefit of IOTC's position as an Article XIV body within the FAO.
9. The IOTC Executive Secretary, Interim (Dr David Wilson), acted as facilitator of the Panels activities.

2. BACKGROUND AND BRIEF HISTORY OF THE IOTC

10. The tuna fisheries in the Indian Ocean are the second largest in the world. Like many other regions of the world, fishing for tuna and tuna-like species in the Indian Ocean region has been important to coastal communities for food and livelihoods throughout their history. Fleets from around the Indian Ocean rim, including developing coastal States such as the Maldives, Sri Lanka and Indonesia have long targeted these species. From the 1950's the regions tuna was also important to fishers from further afield. Since the early 1980's the region has seen a rapid expansion with the introduction of purse seine fishing vessels and increased participation from countries such as France and Spain. However, unlike other RFMOs, more than 50% of the catch is taken by small scale commercial and artisanal fishing fleets.
11. Prior to the commencement of negotiations for the establishment of the IOTC, the Food and Agriculture Organization of the United Nations (FAO) Council Resolution 2/48 established the Indian Ocean Fisheries Commission. The Indian Ocean Fisheries Commission, established under the FAO, acknowledged that there was limited governance in the Indian Ocean region and sought to improve fisheries management and conservation in the area. The specific mandate of the Indian Ocean Fisheries Commission were a) to promote, assist and coordinate national programs over the entire field of fishery development and conservation; b) to promote research and development activities in the area through international sources, and in particular international aid programs; c) to examine management problems with particular reference, because of the need to take urgent action, to those relating to the management of offshore resources.
12. Subsequently States began negotiations to agree the text of the Agreement for the Establishment of the Indian Ocean Tuna Commission. These negotiations were concluded in 1993 with the Agreement entering into force on 27 March 1996. The Agreement remains under the FAO framework, being an intergovernmental organisation established under Article XIV of the FAO Constitution. The Agreement was negotiated prior to the conclusion and entry into force of the 1995 United Nations Fish Stocks Agreement (UNFSA), which provide a global framework for the implementation of the provisions of the 1982 United Nations Convention on the Law of the Sea (LOSC) for straddling and highly migratory fisheries resources. Moreover, the IOTC is the only tuna-RFMO located with the FAO framework which has ramifications for the functioning of the Commission, from membership to financial governance and beyond.

2.1 Objective and responsibilities

2.1.1 Objectives

Article V: 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 the IOTC Agreement and encouraging sustainable development of fisheries based on such stocks.*

13. The multilateral IOTC Agreement seeks optimum utilisation of the fish stocks under its purview which is inconsistent with the UNFSA, which seeks to ensure the long-term sustainability of the fish stocks. Moreover, the Agreement does not require that the Commission take into account of the impact of fishing on the broader ecosystem, nor the ecosystem itself. Rather the Agreement sets out basic functions and responsibilities of the Commission that are more consistent with the LOSC, but do not take into account the additional details provided in UNFSA. Specifically, the Commission is only required to review the condition and trends of the stocks, gather and analyse scientific information (catch and effort data) relevant to the conservation and management of the stocks; undertake research and development activities (e.g. transfer of technology or training); adopt Conservation and Management Measures based on scientific evidence; and to keep under review the socio-economic aspects of the fisheries (Article 2, paragraph 2).

2.1.2 Species and fisheries covered

Article III: *The species covered by this Agreement shall be those set out in Annex B. The term "stocks" means the populations of such species which are located in the Area or migrate into or out of the Area.*

14. The IOTC Agreement is mandated to manage sixteen (16) tuna and tuna-like species ([Table 1](#)) in the IOTC area of competence, but does not cover all highly migratory fish stocks identified in Annex 1 of the LOSC, for example pelagic shark species. This limited scope of the IOTC Agreement means that there is incomplete fisheries management and conservation coverage in the Agreement's area of competence. However, despite the limited

scope of the Agreement text itself, the Commission has expanded its mandate, through a number of decisions, to other species, which the tuna fisheries impact upon, for example seabirds, marines turtles, marines mammals and sharks.

Table 1. IOTC species, as mandated within the IOTC Agreement

| |
|--|
| Tropical and temperate tuna |
| Albacore (<i>Thunnus alalunga</i>) |
| Bigeye tuna (<i>Thunnus obesus</i>) |
| Skipjack tuna (<i>Katsuwonus pelamis</i>) |
| Southern bluefin tuna (<i>Thunnus maccoyii</i>) – Managed by CCSBT |
| Yellowfin tuna (<i>Thunnus albacares</i>) |
| Billfish |
| Black marlin (<i>Makaira indica</i>) |
| Blue marlin (<i>Makaira mazara</i>) |
| Indo-Pacific sailfish (<i>Istiophorus platypterus</i>) |
| Striped marlin (<i>Tetrapturus audax</i>) |
| Swordfish (<i>Xiphias gladius</i>) |
| Neritic tuna and mackerel |
| Bullet tuna (<i>Auxis rochei</i>) |
| Frigate tuna (<i>Auxis thazard</i>) |
| Indo-Pacific king mackerel (<i>Scomberomorus guttatus</i>) |
| Kawakawa (<i>Euthynnus affinis</i>) |
| Longtail tuna (<i>Thunnus tonggol</i>) |
| Narrow-barred Spanish mackerel (<i>Scomberomorus commersoni</i>) |

15. There are four key fisheries in the Indian Ocean under the remit of the IOTC:
- Small scale fisheries: occur mainly within the EEZs of CPCs and account for more than 50% of all IOTC catches. These fisheries account for almost all neritic species and a share of tropical tunas, swordfish and albacore.
 - Industrial and semi-industrial fisheries (three main segments):
 - Purse seine fishery and the pole-and-line fishery: Targeting schools of skipjack tuna, but also catching yellowfin tuna and bigeye tuna bound for canneries for the European and American markets.
 - Longline fisheries: One component of the longline fishery targets adult bigeye tuna and yellowfin tuna bound for the sashimi markets, primarily in Japan. A second component of the longline fishery operates at higher latitudes targeting swordfish primarily in the western Indian Ocean, and albacore throughout the Indian Ocean (but increasingly in the eastern Indian Ocean).
 - Gillnet fleets: Including multi-gear fisheries mainly operating through Asia and the Middle East, with all species targeted.

2.1.3 IOTC Area of competence

Article II: *The area of competence of the Commission (hereinafter referred to as the “Area”) shall be the Indian Ocean (defined for the purpose of this Agreement as being FAO statistical areas 51 and 57 as shown on the map set out in Annex A to this Agreement) and adjacent seas, north of the Antarctic Convergence, insofar as it is necessary to cover such seas for the purpose of conserving and managing stocks that migrate into or out of the Indian Ocean.*

16. The IOTC area of competence ([Fig. 1](#)) is, consistent with the original Indian Ocean Fisheries Commission, the Indian Ocean and adjacent seas north of the Antarctic Convergence. In 1999, the Commission extended the western boundary of the IOTC statistical area from 30°E to 20°E, thus eliminating the gap between the areas covered by IOTC and ICCAT. An overlap with the Western and Central Pacific Fisheries Commission (WCPFC) between 140°E and 150°E (below Australia) remains following the entry into force of that Convention on 19 June 2004.

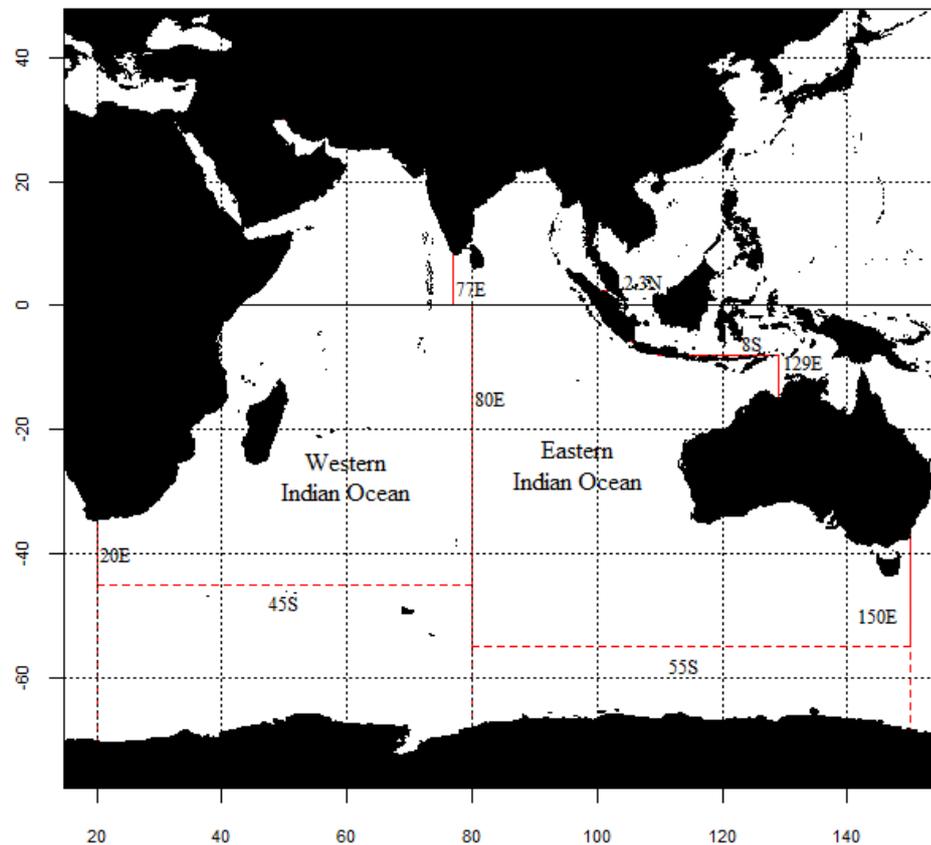


Fig. 1. IOTC area of competence

2.2 Structure of the Commission

Article IV:

1. Membership in the Commission shall be open to Members and Associate Members of FAO a) that are: i) coastal States or Associate Members situated wholly or partly within the Area; ii) States or Associate Members whose vessels engage in fishing in the Areas for Stocks covered nu this Agreement; or iii) regional economic integration organization of which any State referred to in subparagraphs i or ii above is a member and to which that State has transferred competence over matters within the purview of this Agreement; and b) that accept this Agreement in accordance with the provisions of paragraph 1 of Article XVII.

2. The Commission may, by a two-thirds majority of its Members, admit to membership any other States that are not Members of FAO, but are Members of the United Nations, or of any of its Specialized Agencies or of the International Atomic Energy Agency, provided that such States: a) are: i) coastal States situated wholly or partially within the Area; or ii) State whose vessels engage in fishing in the Area for stocks covered by this Agreement; and b) have submitted an application for membership and a declaration made in a formal instrument that they accept this Agreement as in force at the time of acceptance in accordance with paragraph 2 of Article XVII.

3. With a view to furthering the objectives of this Agreement, the Members of the Commission shall cooperate with each other to encourage any State or regional economic integration organization which is entitled to become, but is not yet, a Member of the Commission, to accede to this Agreement.

4. If any Member of the Commission ceases to meet the criteria set out in paragraphs 1 or 2 above for two consecutive calendar years, the Commission may, after consultation with the Member concerned, determine that the Member is deemed to have withdrawn from this Agreement effective as from the date of that determination.

5. For the purposes of this Agreement, the term "whose vessels" in relation to a Member Organization means vessels of a Member State of such Member Organization.

6. Nothing in this Agreement, nor any act or activity carried out in pursuance of this Agreement, shall be interpreted as changing or in any way affecting the position of any party to this Agreement with respect to the legal status of any area covered by this Agreement.

17. The Commission is the governing body of the IOTC and composed of member countries according as set out in Article IV of the Agreement. Membership of the IOTC is open to Indian Ocean coastal countries and to countries or Regional Economic Integration Organisations, which are members of the United Nations or one of its specialised agencies and are fishing for tunas in the Indian Ocean. Parties eligible to accede to the Commission

may do so by depositing with the Director-General of FAO an instrument formally accepting to be bound by the conditions of the IOTC Agreement. There are currently 32 Contracting Parties (Members) and five (5) Cooperating Non-Contracting Parties to the IOTC Agreement (Table 2). However two Contracting Parties, Vanuatu and Belize, have withdrawn their membership, effective from 31 December 2015 and 31 December 2016, respectively. In addition, the Commission, at its 2015 annual session, has sought to consider that Sierra Leone and Guinea as having withdrawn from the Agreement; this situation is pending. Sessions of the Commission are normally held annually. The officers of the Commission are elected from the delegates or alternates present at Commission meetings and hold office for a two-year term which can be renewed for a further two years (one additional term).

Table 2. Structure of the Commission (<http://iotc.org/about-iotc/structure-commission>)

| CONTRACTING PARTY (MEMBER) | ACCESSION DATE |
|--|---------------------------|
| Australia | November 1996 |
| Belize | May 2007 ¹ |
| China | October 1998 |
| Comoros | August 2001 |
| Eritrea | August 1994 |
| European Union | October 1995 |
| France (Overseas Territories) | December 1996 |
| Guinea | January 2005 |
| India | March 1995 |
| Indonesia | July 2007 |
| Iran, Islamic Republic | January 2002 |
| Japan | June 1996 |
| Kenya | September 2004 |
| Korea, Republic of | March 1996 |
| Madagascar | January 1996 |
| Malaysia | May 1998 |
| Maldives | July 2011 |
| Mauritius | December 1994 |
| Mozambique | February 2012 |
| Oman | April 2000 |
| Pakistan | April 1995 |
| Philippines | January 2004 |
| Seychelles | July 1995 |
| Sierra Leone | July 2008 |
| Somalia | May 2013 |
| Sri Lanka | June 1994 |
| Sudan | December 1996 |
| Tanzania | April 2007 |
| Thailand | March 1997 |
| United Kingdom (Overseas Territories) | March 1995 |
| Vanuatu | October 2002 ² |
| Yemen | July 2012 |
| COOPERATING NON-CONTRACTING PARTIES | COOPERATING SINCE |
| Bangladesh | May 2015 |
| Djibouti | June 2014 |
| Liberia | May 2015 |
| Senegal | May 2006 |
| South Africa | June 2005 |

¹ On 15 March 2015, the Director-General received a notification of withdrawal from Belize. In accordance with Article XXI (1) of the Agreement, the withdrawal shall become effective on 31 December 2016.

² On 3 July 2014, the Director-General received a notification of withdrawal from Vanuatu. In accordance with Article XXI (1) of the Agreement, the withdrawal shall become effective on 31 December 2015.

2.3 Institutional Structure: Subsidiary Bodies

2.3.1 Scientific Committee

18. Article XII of the IOTC Agreement establishes the Scientific Committee, but the IOTC Agreement does not give any guidance on the functions or tasks of the Scientific Committee, nor does it establish any formal link between the Scientific Committee and the Commission. The functions and mode of operation of the Scientific Committee are provided in the Commission's Rules of Procedure (2014). The Scientific Committee was formally created at the 1st Session of the Commission. In practice the Scientific Committee advises the Commission on research and data collection, on the status of stocks and on management issues. Participants in the Scientific Committee are associated with the delegations from the Contracting Parties and Cooperating Non-Contracting Parties (CPCs), observer organisations and invited experts. In addition to the permanent Scientific Committee are a range of permanent working parties that work together to provide advice to the Commission ([Fig. 2](#)).

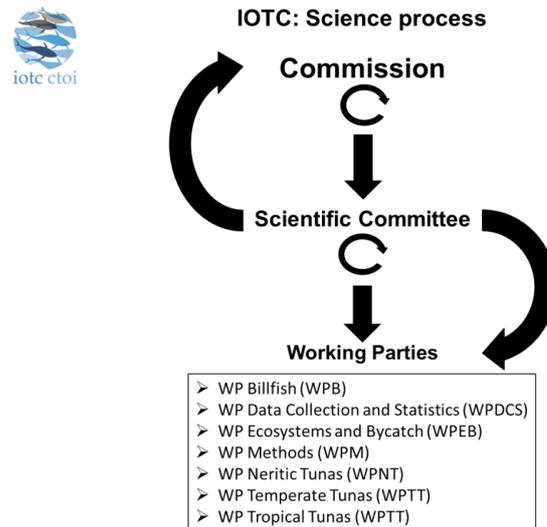


Fig. 2. IOTC Science processes

2.3.2 Working Parties (Science)

19. The primary function of the Scientific Committee's working parties is to analyse, in detail, technical issues related to the management goals of the Commission. For example, working parties related to the different species analyse the status of the stock and offer options to the Scientific Committee for management recommendations to the Commission. The Working Parties are open to interested and technically-competent participants and their reports are directed to the Scientific Committee. There are currently seven (7) Working Parties, mandated under the IOTC Rules of Procedure (2014) that meet annually:
- WP on Billfish (WPB)
 - WP on Data Collection and Statistics (WPDCS)
 - WP on Ecosystems and Bycatch (WPEB).
 - WP on Methods (WPM)
 - WP on Neritic Tunas (WPNT)
 - WP on Temperate Tunas (WPTmT)
 - WP on Tropical Tunas (WPTT)

2.3.3 Compliance Committee

20. Like the functions of the Scientific Committee, the functions of the Compliance Committee are now found in the IOTC Rules of Procedure (2014). However, they were included in the Rules of Procedure only following their adoption as a binding Resolution in 2009 and following the amendments to the IOTC Rules of Procedure in 2014. The Compliance Committee was established in 2003, but it has only been in the recent past that the Commission has taken a more active approach to compliance of its members. The Compliance Committee currently meets annually for three (3) days immediately prior to the Commission meeting to advise the Commission on compliance matters including reviewing CPCs implementation of, and compliance with, measures adopted by the Commission. At present, the Compliance Committee is not supported by any Working Parties.

2.3.4 Standing Committee on Administration and Finance

21. The Standing Committee on Administration and Finance is the subsidiary body that provides advice on administrative and financial matters and was established in 2003. The Commission adopted its Financial Regulations in 1999, and is guided by Article XIII of the Agreement. The Commission is required to adopt, by consensus, its own autonomous budget and apportion contribution payments according to the schedule adopted

by the Commission. The scaled contribution fee, payable to the FAO, consists of a fee base fee, a component based on per capita income and a third component based on a three year rolling average annual catch. Other basic financial governance arrangements exist, including undertaking independent audits, but ultimately the IOTCs financial rules are governed by the FAO’s rules.

2.3.5 *Technical Committees on Allocation Criteria*

22. The Technical Committee on Allocation Criteria was established in 2010 to provide advice to the Commission on what principles could be used in making a possible future allocation of the resources managed by the Commission. This Committee has met twice; in Nairobi, Kenya in 2011 and Muscat, Oman in 2012. Deliberations are ongoing.

2.4 *Distinctive features of IOTC compared to other tuna-RFMOs*

2.4.1 *Relationship to the United Nations via the FAO*

23. The IOTC is the only tuna-RFMO located within the United Nations framework, specifically under the FAO framework. It is established as an FAO body under article XIV of the FAO Constitution. Key consequences of being part of FAO is the specific requirements for membership (see Section 3.3) and related to finances (see Section 3.10). But, overall the IOTC functions according to a range of FAO rules and procedures, and the IOTC Rules of Procedure (2014), which fundamentally impact its day-to-day operations, for example:
- Administrative arrangement: the Executive Secretary and all secretariat staff are employees of the FAO, with the Executive Secretary elected by the Commission and appointed by the FAO Director-General. All secretariat staff are appointed by the Executive Secretary, though for administrative purposes, are responsible to the FAO Director-General.
 - Amendments to the Agreement or any of its foundation documents: any Contracting Party of the Commission or the FAO Director-General may make proposals for amending the IOTC Agreement. Any amendment to the Agreement may be disallowed by the Council of FAO if considered clearly inconsistent with the objectives and purposes of FAO or the provisions of the Constitution of FAO.

2.4.2 *High percentage of catch by artisanal fisheries*

24. In recent years, approximately 69% of the total catch of IOTC species is taken by small scale commercial and artisanal fisheries ([Table 3](#)). While not defined by the IOTC, for the purpose of this report, artisanal vessels are defined as those with length overall (LOA) less than 15 m and fishing within the EEZ (mechanized or Non-mechanized), while Industrial vessels are those with LOA greater than 15 m and fishing outside the EEZ (on the high seas). However, there is a high level of uncertainty with respect to the total catches reported. For example, in the case of tropical tunas, species such as bigeye tuna are caught mainly by the industrial fleets and the current catches are relatively well known. By contrast, a considerable amount of yellowfin tuna and skipjack tuna are caught by artisanal fleets and the catch estimates are less reliable ([Figs. 3 and 4](#)).

Table 3. Total catch of IOTC species taken by Industrial and artisanal fisheries operating in the IOTC area of competence from 2010–14. (Source: IOTC database, extracted 14 December 2015)

| IOTC species | Average catch 2010–14 (tonnes) | | Percentage in 2010–14 | |
|-----------------------|--------------------------------|------------------|-----------------------|------------|
| | Industrial | Artisanal | Industrial | Artisanal |
| Albacore | 33,563 | 3,618 | 90% | 10% |
| Bigeye tuna | 79,786 | 22,428 | 78% | 22% |
| Skipjack tuna | 153,496 | 248,733 | 38% | 62% |
| Yellowfin tuna | 185,462 | 188,362 | 50% | 50% |
| Swordfish | 22,653 | 5,842 | 79% | 21% |
| Marlins | 19,070 | 11,771 | 62% | 38% |
| Indo-Pacific sailfish | 3,076 | 26,067 | 11% | 89% |
| Neritic species | 3,949 | 611,787 | 1% | 99% |
| Total catch | 501,054 | 1,118,610 | 31% | 69% |

Note: While not defined by the IOTC, for the purpose of this report, artisanal vessels are those with LOA less than 15 m and fishing within the EEZ (mechanized or Non-mechanized), while Industrial vessels are those with LOA greater than 15 m and fishing outside the EEZ (on the high seas).

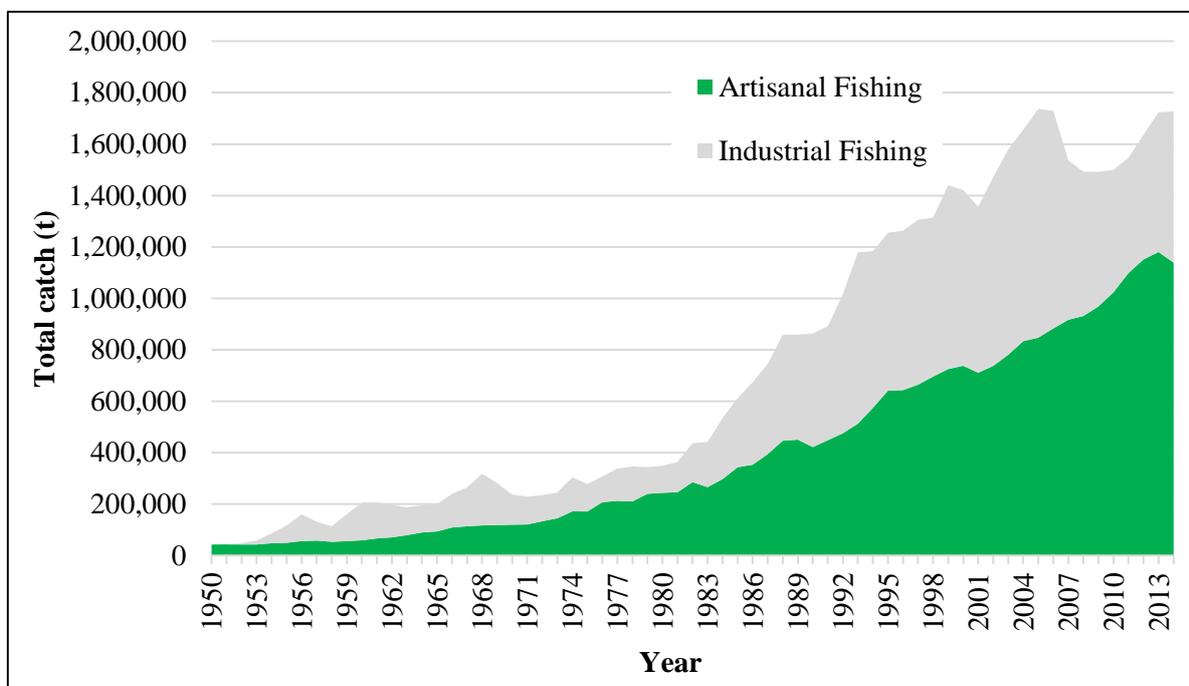


Fig. 3 Total annual catch (t) of IOTC species by artisanal and industrial fleets. **Note:** While not defined by the IOTC, for the purpose of this report, artisanal vessels are defined as those with length overall (LOA) less than 15 m and fishing within the EEZ (mechanized or Non-mechanized), while Industrial vessels are those with LOA greater than 15 m and fishing outside the EEZ (on the high seas).

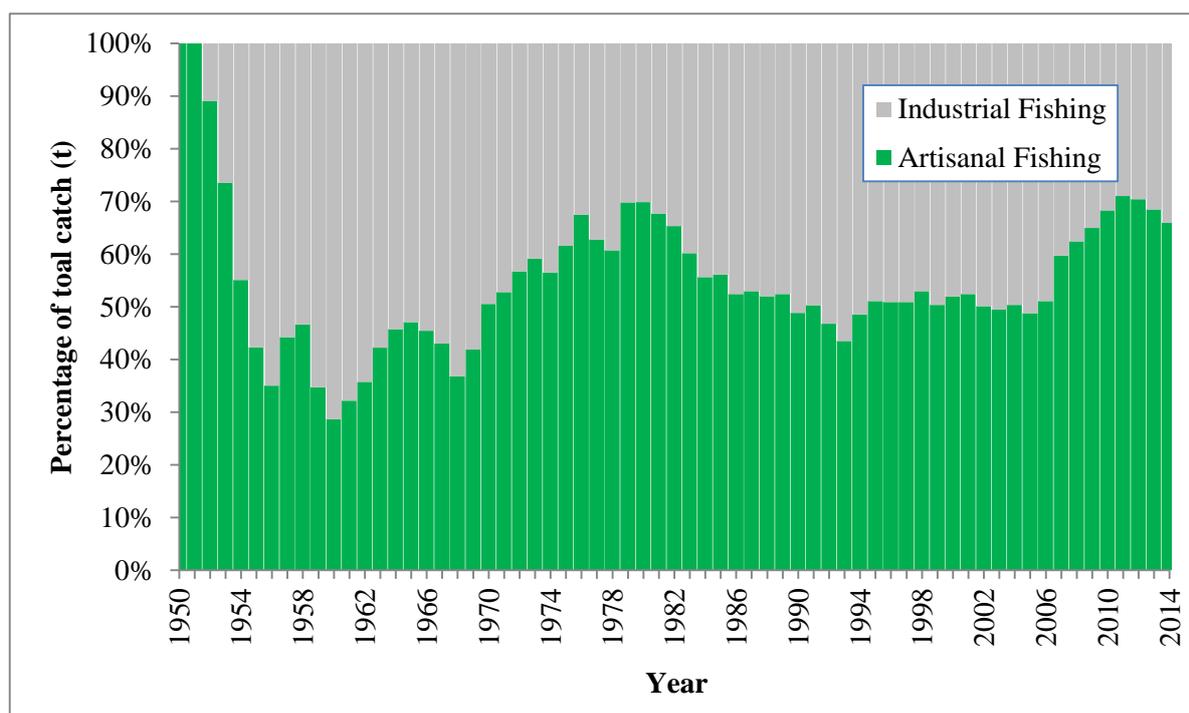


Fig. 4 Percentage of total annual catch (t) of IOTC species by artisanal and industrial fleets. **Note:** While not defined by the IOTC, for the purpose of this report, artisanal vessels are defined as those with LOA less than 15 m and fishing within the EEZ (mechanized or Non-mechanized), while Industrial vessels are those with LOA greater than 15 m and fishing outside the EEZ (on the high seas).

3. ANALYSIS OF THE IOTC AGREEMENT AGAINST OTHER INTERNATIONAL INSTRUMENTS

3.1 Overview

25. The agreement for the establishment of IOTC was approved by the FAO Council in 1993, and entered into force in 1996. Since the IOTC legal framework was negotiated and entered into force, several international instruments concerning the management of world fishery resources have been agreed. Key global legally binding instruments are:
- the UN Fish Stocks Agreement (UNFSA)
 - the FAO Port State Measure Agreement (PSMA)
 - the FAO Compliance Agreement

Interestingly, the comparison of which IOTC Contracting Parties are party to these overarching international instruments, also highlights constraints limiting the ability of the IOTC to perform effectively and efficiently ([Table 4](#)).

26. The international community has adopted a range of voluntary soft law instruments. These soft laws serve to guide and/or provide tools to effectively manage fisheries, for example the FAO Code of Conduct for Responsible Fisheries (the Code) and its associated International Plans of Action (IPOAs), International Guidelines on Bycatch Management and Reduction of Discards, Guidelines for Securing Sustainable Small-scale Fisheries, and most recently Guidelines on Flag State Performance. There are a number of international bodies that provide high level guidance and dialogue on fisheries. For example the United Nations General Assembly's Sustainable Fisheries Resolution, the FAO Committee of Fisheries (COFI) and in relation to tuna specifically the five tuna-RFMOs – Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Inter-American Tropical Tuna Commission (IATTC), ICCAT, IOTC and WCPFC - have agreed to a Course of Action (the Kobe-process) that emphasizes actions required to improve performance by those RFMOs.
27. New and/or amended RFMO treaties build on these global instruments whose fisheries management principles overlap, particularly those in the UNFSA and the Code. Consequently, the most appropriate approach in undertaking an assessment of the IOTC Agreement is to compare it directly with the UNFSA and providing comparison with the two tuna-agreements developed most recently, namely the amended Antigua Convention for IATTC and *Convention on the Conservation and Management of Highly Migratory Fish Stock in the Western and Central Pacific Ocean* forming WCPFC, and the General Fisheries Commission for the Mediterranean (GFCM) as it, like IOTC, a regional fisheries body established under Article XIV of the FAO constitution. Amendments to the GFCM Agreement were approved by the FAO Council in November 2014. A summary of the legal analysis of the IOTC Agreement against the UNFSA is provided in [Appendix III](#). In particular, [Appendix III](#) highlights key articles that are most in need of alignment with the UNFSA and should help to prioritise amendments to, or replacement of the Agreement. As ratifications of a new or amended agreement by all Members may take a rather long time, the PRIOTC02 noted the interim solution by the North-East Atlantic Fisheries Commission, declaring that the amendments shall apply when interpreting and implementing the Convention until such time when the amendments have entered into force (<http://www.neafc.org/system/files/London-Declaration.pdf>). In addition, the PRIOTC02 noted the ICCAT experience concerning treaty amendments, which is provided in [Appendix IV](#).

Table 4. IOTC Contracting Parties and Cooperating Non-Contracting Parties and their status in relation to international instruments. Grey = ratification/accession/approval.

| Contracting Parties (Members) | UN Convention on the Law of the Sea (LOSC) | UN Fish Stocks Agreement (UNFSA) | FAO Compliance Agreement | FAO Agreement on Port State Measures (PSMA) |
|---------------------------------|--|----------------------------------|--------------------------|---|
| Australia | | | | |
| Belize* | | | | |
| China | | | | |
| Comoros | | | | |
| Eritrea | | | | |
| European Union | | | | |
| France (OT) | | | | |
| Republic of Guinea [^] | | | | |
| India | | | | |
| Indonesia | | | | |
| Islamic Republic of Iran | | | | |
| Japan | | | | |
| Kenya | | | | |
| Republic of Korea | | | | |
| Madagascar | | | | |
| Malaysia | | | | |
| Maldives | | | | |
| Mauritius | | | | |
| Mozambique | | | | |

* Belize and Vanuatu have submitted formal notification to withdraw from the IOTC Agreement. For Belize this will take effect from 31 December 2016. For Vanuatu this will take effect from 31 December 2015

[^] At the 19th Session of the IOTC, the Commission agreed that both Guinea and Sierra Leone were deemed to have withdrawn their membership of IOTC. The IOTC Secretariat is currently working to progress this Commission decision.

| | | | | |
|--|---|---|---------------------------------|--|
| Sultanate of Oman | | | | |
| Pakistan | | | | |
| Philippines | | | | |
| Seychelles | | | | |
| Sierra Leone [^] | | | | |
| Somalia | | | | |
| Sri Lanka | | | | |
| Sudan | | | | |
| Tanzania | | | | |
| Thailand | | | | |
| United Kingdom (OT) | | | | |
| Vanuatu [*] | | | | |
| Yemen | | | | |
| Cooperating Non-Contracting Parties | UN Convention on the Law of the Sea (LOSC) | UN Fish Stocks Agreement (UNFSA) | FAO Compliance Agreement | FAO Agreement on Port State Measures (PSMA) |
| Bangladesh | | | | |
| Djibouti | | | | |
| Liberia | | | | |
| Senegal | | | | |
| South Africa | | | | |

3.2 *Preamble of the IOTC Agreement*

28. For obvious reasons the preamble of the IOTC Agreement does not recognise key instruments highlighted above, including critically UNFSA. Referencing to these instruments reinforces the agreements made internationally to implement the principles and standards they contain, for example the precautionary approach, ecosystem based fisheries management and avoiding adverse impact on the marine environment. Moreover, the preambular language sets the overarching position that the treaty should be read in.
29. All three of the Antigua Convention, the WCPFC and the GFCM recognise, at least to some degree, the relevant provisions of the LOSC, the UNFSA, and the Compliance Agreement. Specifically, the amended preamble of the GFCM Agreement and the preamble of the WCPFC Convention note that effective conservation and management require the application of the precautionary approach and the best scientific information available, and to take into account ecosystem considerations as it recognises the need to avoid adverse impact on the marine environment, preserve biodiversity as well as to maintain the integrity of marine ecosystems.

3.3 *Use of terms*

30. The IOTC Agreement does not contain a provision on “definitions”/“use of terms”, but some terms are found in various provisions throughout the text. A single location that defines relevant terms is useful as it provides a uniform understanding of these terms in all work of the Commission. Article I of the IOTC Agreement introduces the terms “the Commission” and “FAO”, “the Area” is referred to in Article II and Article III defines “stocks” and Article IV, paragraph 5 refers to “whose vessels” and “Member Organization”, which presumably is meant to cover vessels flying the flag of a member of the European Union. “Member Organization” is not defined, but “regional economic integration organizations” is defined in sub-paragraph 1(a)(iii). Finally Article V, sub-paragraph 2(f) refers to “Director-General”, and Article VIII, paragraph 1 refers to “Secretary” (now referred to as the Executive Secretary of the Secretariat). Although the IOTC Agreement uses the terms “fishing” and “vessel”, these are not defined. All modern treaties contain definitions of “fishing”/“fishing activities”, “fishing vessel”/“vessel”, while the amended GFCM Agreement also define “fishing capacity”, “fishing effort” and “fishing related activities”.

3.4 *Membership (Article IV)*

31. Article IV of the IOTC Agreement contains details about who are entitled to become Contracting Parties (Members) of the organisation. In general membership is restricted to members and associate members of FAO. However, States that are not members of FAO, but members of the United Nations, including of any United Nations Specialized Agency or of the International Atomic Agency, might be admitted to become parties of IOTC, provided that their application receives support by two-thirds of the IOTC parties. In addition, both categories of applicants must either be a coastal State wholly or partly situated within the Agreement area or vessels flying their flag fishing for stocks covered by the IOTC Agreement. A regional economic integration organisation might also become a Member of IOTC, provided that a State which is a member of such an organisation has transferred competence of matters under purview of IOTC to the said organisation, cf. Article IV(1)(a)(iii). However, in

practice the IOTC has never been asked to consider a membership application, rather new members simply deposit an instrument of accession with the depositary – the FAO – and as such there are IOTC Contracting Parties who are not coastal States nor have these States fished in the IOTC area of competence historically or currently. It will be important for IOTC, in undertaking any review of the Agreement, to consider defining what constitutes a ‘real interest’ in the fishery and have this assessed by the Commission.

32. Article 8 of the UNFSA provides that membership should be open to those States with a real interest in the fisheries, which has caused consternation globally. Despite the term “real interest” is not defined, it seems to be understood that members of RFMOs at least should include coastal States situated within or facing the RFMO’s regulatory area and States fishing for stocks in the IOTC area of competence. Pursuant to article 1, UNFSA applies to States, to any entity referred to in article 305, paragraph 1(c), (d) and (e) of the LOSC which becomes a party to the agreement, and UNFSA applies mutatis mutandis to other fishing entities whose vessels fish on the high seas. Thus all that have a real interest in a fishery managed by an RFMO should be entitled to become members of that RFMO. However, a major fishing player in the IOTC area of competence is not entitled to become a Contracting Party or a Cooperating Non-Contracting Party as it is not a member of neither the FAO nor the United Nations, consistent with Article IV of the IOTC Agreement.
33. Both the Antigua Convention and the WCPFC Convention would allow all fishing players to participate in the work by their respective commissions. The WCPFC Convention lists those States who are entitled to become members by ratification, while others might become members by accession after the Convention entered into force given they have vessels and nationals wishing to conduct fishing in the Convention area for stocks covered by the Convention. Accession requires consensus. Only a few technical and clarifying changes are made to the membership provision of amended GFCM Agreement, which means that only members or associate members of the FAO and such non-member States of the United Nations may join the organisation. In contrast, parties to the previous IATTC Convention of 1949 are entitled to become party to the new Antigua Convention, and this entitlement further applies to States with a coastline bordering the Convention area and those who have a history of fishing for stocks covered by the Antigua Convention.

3.5 *Objective, functions and responsibilities of the Commission (Article V)*

3.5.1 *Objective*

34. According to article V(1) of the IOTC Agreement the objective is “*to promote cooperation among its members with the 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*”. The IOTC objectives are furthermore incorporated into a provision also setting out the functions and responsibilities of the Commission, and the promotion of “optimum utilisation” is referred to twice. In contrast, the legislative frameworks of other RFMOs have stand-alone provisions spelling out their objectives and separately the functions of the Commission.
35. The objective of UNFSA (Article 10) is “*to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention*” (meaning LOSC). None of the recently negotiated or amended RFMO instruments, unlike the IOTC Agreement, refers to “optimum utilisation of stocks” as an objective. In fact, ‘optimum utilisation’ and ‘long-term conservation and sustainable use’ can result in quite different management arrangements meaning different outcomes for the status of the stocks, particularly when considering and taking into account UNFSA principles such as the precautionary approach and ecosystem based fisheries management.
36. The objective of the Antigua Convention is “*to ensure the long-term conservation and sustainable use of fish stocks covered by the Convention, in accordance with relevant rules of international law*”, while the objective of the WCPFC Convention is “*to ensure, through effective management, the long-term conservation and sustainable and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the 1982 Convention and the Agreement*”. The objective of amended GFCM Agreement is “*to ensure the conservation and sustainable use, at the biological, social, economic and environmental level, of living marine resources...*”.

3.5.2 *General principles*

37. The IOTC Agreement does not contain general or management principles per se, but it could be argued that these principles might be found indirectly in Article V, that describes the functions of the Commission. However, the IOTC provisions are much less explicit than the relevant UNFSA Articles and really refer to the functions of the Commission rather than principles to guide the Commission. The IOTC provision does include a general reference to principles expressed in the relevant provisions of the LOSC, for example reviewing, analysing and disseminating scientific information and keeping under review economic and social aspects of the fishery. In Article V, paragraph 3 there is a saving clause, giving the Commission power to “*adopt decisions and*

recommendations, as required, with a view to furthering the objectives of this Agreement". But as highlighted these do not provide overarching principles to guide the work of the Commission.

38. In contrast, Article 5 of the UNFSA sets out the general principles to be applied by all States in respect of fishing for highly migratory fish stocks to conserve and manage these stocks and provide a range of explicit actions for States. Article 5 provides, among other things, that in order to conserve the stocks concerned, States are required to adopt measures to ensure their "long term sustainability" and promote the objective of their optimum utilisation, to ensure that such measures are based on the best scientific evidence available and to apply the precautionary approach in accordance with Article 6 of the UNFSA. Furthermore, it is recognised that fishing activities can affect the functioning and state of marine ecosystems. Article 5 of the UNFSA includes language regarding the ecosystem approach to fisheries management, for example promoting the protection of marine ecosystems and marine biodiversity; 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. These provisions, particularly on application of the precautionary approach and ecosystem approaches to fishing activities, are now often considered common standards for the conservation and management of living marine resources, as referred to in the relevant provisions of the LOSC.
39. The UNFSA Article 5 also includes measures shall be taken to prevent or eliminate over-fishing and excess capacity and to ensure that levels of fishing effort do not exceed those commensurate with sustainable use of fishery resources. Excess capacity is often caused by open access regimes, which often leads to a race by individual vessels to catch as much fish as possible, as quickly as possible. Consequently States are obliged to monitor their fishing capacity, and establish adequate schemes or measures to address excess capacity when needed. The IOTC Agreement is silent on these elements. However, the IOTC Agreement does include reference to collecting and sharing complete accurate data concerning fishing activities on, among other things, vessel position, catch and fishing effort, largely consistent with Annex I of the UNFSA, as well as information from national and international research programmes. As for the stocks concerned, it is clear that most data collection and sharing are carried out under the auspices of scientific bodies of relevant RFMOs or international institutions providing advice to RFMOs. These bodies are, however, dependent on data provided by national scientists and institutions, descending from both high seas and coastal State waters.
40. In order to protect the living marine resources and preserve the marine environment, Article 6 of the UNFSA requires States to apply the precautionary approach to conservation and management of straddling fish stocks and highly migratory fish stocks. Annex II of the UNFSA provides guidance for the application of precautionary reference points in conservation and management of the stocks concerned. The aim of the application of the precautionary approach to fisheries management is to reduce the risk of overexploitation and depletion of fish stocks. The use of precaution is required at all levels of the fishery system, including management decisions, research, technology development as well as institutional frameworks. None of these elements is included in the IOTC Agreement, although the Commission did adopt a resolution to give effect to the precautionary approach (Resolution 12/01 *On the implementation of the precautionary approach*).
41. All modern treaties include these elements either by cross-referencing the relevant parts of the Code and the UNFSA. Furthermore, the Antigua Convention implements the provisions of the UNFSA concerning the adoption of measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks; the adoption of measures to minimise waste, discards, catch by lost or abandoned gear, catch of non-target species, and impacts on associated or dependant species, in particular endangered species. The amended GFCM Agreement also focuses on similar principles, but includes additional points such as ensuring economic and social viability of fisheries, paying particular attention to the potential impacts on small-scale fisheries and local communities as well as combatting illegal, unreported and unregulated fishing (IUU) fishing.

3.5.3 Functions of the Commission

42. The functions of the Commission are described in Article V, paragraph 2 of the IOTC Agreement. As mentioned above, the provision includes a general reference to principles expressed in the relevant provisions of the LOSC and outlines that when carrying out the functions and responsibilities, the Commission shall i) review, analyse and disseminate scientific information and other data, ii) encourage, recommend and coordinate research and development activities, iii) adopt, on the basis of scientific evidence, conservation and management measures, iv) keep under review economic and social aspects and v) to carry out such other activities as may be necessary to fulfil the objectives. This is coupled with the general clause contained in Article V, paragraph 3 that gives the Commission power to "adopt decisions and recommendations, as required, with a view to furthering the objectives of this Agreement".
43. The WCPFC, the Antigua and the GFCM treaties correlate to the UNFSA, and also go further. For example the WCPFC Convention and the Antigua Convention require their respective Commission to i) determine the total allowable catch or total level of fishing effort, ii) adopt standards for collection, verification and timely exchange

and reporting of data, iii) apply the precautionary approach, iv) adopt conservation and management measures for non-target species and species dependent on or associated with target stocks, with a view to maintaining or restoring populations of such species above levels at which their populations may become seriously threatened, v) determine the extent to which the interests of new members might be accommodated, vi) adopt of measures related to fishing capacity, and vii) allocate the total allowable catch or the total level of fishing effort (capacity). In addition, the Antigua Convention also contains additional functions: i) adoption of appropriate measures to avoid, reduce and minimise waste, discards, catch by lost or discarded gear, catch of non-target species and impacts on associated or dependant species, in particular endangered species, ii) promotion of the development and use of selective, environmental safe and cost-effective fishing gear and techniques, and iii) promotion of the application of any relevant provision of the Code and its IPOAs. And the WCPFC is mandated to establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement, including a vessel monitoring system (VMS).

44. The amended GFCM Agreement focuses on the following specific functions, which are additional to those referred to in the IOTC Agreement: i) minimise impacts for fishing activities on living marine resources and their ecosystems, ii) adopt multiannual management plans applied in the totality of the relevant sub-regions based on an ecosystem approach, iii) establish fisheries restricted areas for the protection of vulnerable marine ecosystems, including but not limited to nursery and spawning areas, iv) take action to prevent, deter and eliminate IUU fishing, including mechanisms for effective monitoring, control and surveillance, v) resolve situations of non-compliance, including through an appropriate system of measures, vi) promote the development of institutional capacity and human resources, particularly through education, training and vocational activities, and vii) enhance communication and consultation with civil society concerned with fisheries.

3.6 Observers (Article VII)

45. Article VII of the IOTC Agreement deals with the role of observers, giving non-members, intergovernmental and non-governmental organisations the possibility to attend IOTC meetings. Article 12 of UNFSA requires transparency in the decision-making processes and other activities of RFMOs. All RFMOs, including the IOTC, have publicly accessible websites that include meeting minutes, reports and scientific information. Many RFMOs have amended their rules of procedures for commission meetings or agreed on specific guidelines and criteria for observer status in order to meet the obligations under article 12(2) of the UNFSA, including the IOTC. In the Antigua and the WCPFC Conventions provisions similar to article 12 of the UNFSA are incorporated.

3.7 Administration (Article VIII)

46. As mentioned above, the IOTC is an organisation established under article XIV of the FAO Constitution, implying that FAO rules apply. This applies across the full breadth of the IOTC's administration from financial regulations (see 3.10) and employment arrangements including the salary packaging and hiring/firing of staff, to amendments to the Rules of Procedure or engaging external consultants for expert assistance.
47. In some instance being inside the FAO has little impact on the work of the Commission, for example that the Executive Secretary and all secretariat staff are employed by the FAO. In this instances the provisions concerning the duties of the Executive Secretary set out in article VII of the IOTC Agreement are quite similar to those of RFMOs outside the FAO framework. However, the UNFSA also highlights that for effective conservation and management of straddling and highly migratory fishery resources, that all those with a real interest be party to the treaty. Moreover, Article 13 of the UNFSA outlines the need to strengthen existing organisations and arrangements to improve their ability to establish and implement conservation and management measures for highly migratory fishery resources. The current administrative arrangements do not provide for the participation of all those with a real interest in the work of the Commission to be party to the treaty. Moreover, the administrative arrangements constrain the Commission's decision making and administrative autonomy.

3.8 Decision-making

48. Provisions concerning decision-making are found in four different articles of the IOTC Agreement: Article VI on sessions of the Commission, Article IX regarding procedures concerning Conservation and Management Measures, in the finances provision in Article XIII and in Article XX on amendments. Decisions and recommendations of the IOTC shall as a general rule be taken by a majority vote. Adoption of Conservation and Management Measures as well as the adoption and amendments of the IOTC Rules of Procedure requires, however, two-thirds majority. The budget shall be adopted by consensus, but if consensus cannot be reached, the budget shall be adopted by two-thirds majority. Amendments to the IOTC Agreement requires a three-quarters majority. But the decisions of the Commission are still subject to the approval of the Director-General of the FAO and in accordance with the FAO rules and the Agreement.
49. Article 10 of UNFSA sets out standards for decision-making in RFMOs whereby States shall cooperate by agreeing "on decision-making procedures which facilitate the adoption of conservation and management measures

in a timely and effective manner.” As a point of departure, all members of an RFMO should be entitled to take part in decision-making. In most RFMOs, however, members who are two years behind with their financial contributions to the budget lose their voting rights until the debt has been paid. Such a provision is also found in article XIII (8) of the IOTC Agreement.

50. Most other RFMO agreements contain stand-alone provisions for decision-making, underpinning their importance. Decision-making based on voting is the traditional process agreed to in most RFMOs. Some RFMOs require that decisions of substance shall be taken by consensus. The Antigua Convention intends to operate under consensus. Notwithstanding the formal procedures established by many RFMO, the practice in most RFMOs is to rely on decision-making based on consensus. The notion of “consensus” is typically defined as the adoption of a decision without any vote or formal opposition at the time of adoption. In the WCPFC Convention, a system of chambered voting exists in the sense that the three quarters majority must include three quarters of the members of the Forum Fisheries Agency and three quarters of the other members. Decisions on allocation and some other matters, such as budget and admission of new members require consensus. The WCPFC Convention provides that a decision cannot be defeated by two votes or a single vote.
51. An interesting element of the IOTC decision-making procedures is the objection procedures. Contracting Parties of the IOTC have an opportunity to object to adopted Conservation and Management Measures, irrespective of whether they are adopted by vote or consensus, and thereby not being bound by the measure in question. Unlike other RFMOs where the grounds for the right to object are restricted, the IOTC Agreement is silent on this: the objector does not have to provide any justification regarding the reasons for the objection and nor does the Commission have any way to assess the validity of the objection. The amended GFCM Agreement requests the objecting member in written form to explain the reasons for objecting, and where appropriate, proposals for alternative measures.

3.9 Implementation (Article X) and information (Article XI)

52. Although it is obvious that members of RFMOs shall implement decision to which they are bound, taking into account the decision-making process, most RFMO agreements make this very clear by including a provision on the obligation in the statutory document, the treaty. The IOTC Agreement contains references to Contracting Party duties in Article X about implementation and in Article XI about information to be provided. Article X includes a variety of topics relevant to implementation, such as adoption of national legislation, the duty of Contracting Parties for imposing adequate penalties for violations of IOTC measures and providing statements on actions taken in that regard. The provision also mandates the IOTC Contracting Parties, through the Commission, to establish a system for monitoring, control and surveillance as well as monitoring activities of non-members. Article XI deals with the Contracting Parties obligations to submit data and provide the Commission with copies of domestic legislation relevant to the implementation of the IOTC measures.
53. Other RFMO instruments contain similar provisions, but recent instruments are more extensive and explicit when referring to member, flag and port State duties and possible consequences of failing implementation. For example the amended GFCM Agreement requires parties to report on their implementation of adopted recommendations and their monitoring, control and surveillance activities. In addition, the GFCM will address non-compliance and shall define appropriate measures to be taken when parties are identified as being in prolonged and unjustified non-compliance. The Antigua Convention also put emphasis on the duty of one party to take actions when a vessel flying the flag of another party is suspected of being engaged in activities that undermines the effectiveness of applicable measures and there are some obligations concerning landing and processing of fish.
54. It should be noted, however, that many other agreements distinguish between measures for control and enforcement purposes and other obligations. The WCPFC Convention contains a stand-alone provision on obligations of members of the Commission, which include the duty to implement relevant decisions as well as the information required being submitted by parties. In addition, WCPFC members shall take measures to ensure that its nationals, and fishing vessels owned or controlled by its nationals comply with the provisions of the Convention.

3.10 Subsidiary bodies (Article XII)

55. Article XII of the IOTC Agreement requires the establishment of a permanent Scientific Committee. The Agreement does not give any guidance on functions or tasks of this permanent body. However, the Commission adopted terms of reference and rules of procedures for the Scientific Committee (provided in the IOTC Rules of Procedure (2014)). On the contrary, the Commission may establish sub-commissions to deal with one or more stocks covered by the IOTC Agreement, which are mandated to keep under review and gather information, assess and analyse conditions and trends as well as coordinate research and studies on the stocks concerned. Coordination of research is also explicitly referred to as the power of the Commission. Membership in those sub-committees is limited to those coastal States lying on the migratory path of the stocks concerned and States whose vessels fish on those stocks. A sub-commission shall report to the Commission on its findings, and shall make

recommendations on actions to be taken to obtain scientific information as well as proposals for conservation and management measures, putting a question-mark on the formal role the Scientific Committee.

56. Article 5 of the UNFSA requires parties to collect, share and complete accurate data concerning fishing activities on, inter alia, vessel position, catch and fishing effort, as set out in its Annex I, as well as information from national and international research programmes. Furthermore, Article 14 of the UNFSA sets out criteria for the collection and provision of such information, also through RFMOs, and cooperation in scientific research.
57. Both the Antigua Convention and the WCPFC Convention require the establishment of scientific committees, and contain specific provisions for their functions, including a formal linkage between the committees and their respective commissions. The Antigua Convention and the WCPFC Convention also contain provisions for the functions of scientific staff and scientific services, and unlike the IOTC Agreement, the scientific experts are given specific tasks and guidance through the basic documents. Of note is that the IOTC Agreement is silent on how the Commission receives advice on compliance and administration and financial matters. In contrast, the WCPFC Convention clearly articulates the role and function of Technical and Compliance Committee thereby providing clear arrangements for the provision of such advice to the Commission.

3.11 Finances (Article XIII)

58. The availability of adequate financial resources is critical to the effective functioning of an RFMO. Article XIII of the IOTC Agreement provides the framework for the financial arrangements. In essence the provision empowers the Commission to adopt a budget and to establish a contribution formula as well as obligations on members to contribute in accordance with that agreed formula. IOTC has adopted a scheme for calculation of contributions to the administrative budget of the Commission, which is an annex to the financial regulations. Formula commonly takes into account variable factors such as national wealth, the state of development of the member concerned and the amount of catch taken by each individual member. The IOTC Agreement states that in addition to an equal share, consideration shall be given to catches and landings as well as per capita income of each Contracting Party. It should be noted that the WCPFC Convention, in addition to considerations similar to those of the IOTC, also should take into account the ability of members to pay.
59. Many RFMOs have established permanent subsidiary bodies to deal with financial issues, which are responsible for reviewing the operation of the budget for the current year and examining the draft budget for the coming year. Financial committees are not, however, generally established through the conventions itself, but more likely in accordance with powers given to the Commission. The WCPFC Convention, for example, includes three specific articles related to the financial affairs of the Commission: Article 17 regarding funds of the Commission, Article 18 regarding the commission's budget, Article 19 regarding the annual audit of the Commissions finances.
60. Being an organisation set up under Article XIV of the FAO, the IOTC has relations to the FAO concerning financial issues. This is reflected in Article V about the objective, functions and responsibilities of the Commission requiring the accounts and autonomous budget to be transmitted to the Director-General of the FAO, and Article VI about sessions of the Commission stating that the financial regulations shall be consistent with principles embodied in the Financial Regulations of the FAO. The Finance Committee of the FAO has the power to disallow the IOTC financial regulations and any amendments thereto if it finds them inconsistent with the FAO Financial Regulations.
61. In all RFMOs, except for the IOTC, adoption of the budgets of the organisation require consensus. In the IOTC, voting may take place also on the budget if the efforts to achieve consensus fail.

3.12 Cooperation with other organizations and institutions (Article XV)

62. The need for enhanced cooperation between RFMOs arises from the fact that for example tuna and tuna-like species are wide-ranging and are found in the regulatory areas of more than one RFMO, and that fishing fleets may target similar stocks in different parts of the world. Active cooperation between RFMOs has become very important when addressing over-capacity, IUU fishing and other issues. An example in this regard is the Kobe process. Most RFMO treaties contain provisions on cooperation, also the IOTC Agreement. The UNFSA covers this concept in two separate articles Article 9(1)(c) and 12(2) and in other RFMOs some of the key regional or intergovernmental organisations are listed in the treaty itself. The amended GFCM Agreement has also specified suitable arrangements for consultation, cooperation and collaboration with relevant organisations and institutions, including entering into memoranda of understanding and partnership agreements.

3.13 Coastal States' rights (Article XVI)

63. The rights of the coastal States deriving from Part V of the LOSC are somewhat reflected in Article XVI of the IOTC Agreement. However it does not provide clear linkages regarding the need to implement compatible measures in waters under national jurisdiction consistent with Article 7 of the UNFSA and thereby providing for the effective management of the resources throughout their range. Similar references are incorporated into other

RFMO instruments, but in most cases as a separate clause in a provision dealing with application and/or a general stand-alone provision on relationship with other treaties.

64. Article 7 of the UNFSA obliges States to develop measures for highly migratory fish stocks that are compatible for the high seas and their national waters. To be effective, conservation measures shall apply throughout their migratory range, irrespective of the legal regimes applicable to the ocean areas in which the stocks migrate. Measures should therefore be concerned with the whole stock unit in its area of distribution, and should be harmonised among all States involved. Many RFMO instruments also contain a provision on the need for compatibility between management measures for the high seas and the national waters. Both the Antigua Convention and the WCPFC Convention contain specific provisions on the topic, the WCPFC being rather detailed by also referring to the elements to be taken into account when determining compatibility.

3.14 Interpretation and settlement of disputes (Article XXIII)

65. Article XXIII of the IOTC Agreement sets out how possible disputes shall be settled. Any dispute regarding the interpretation or application of the agreement shall be referred for settlement to a conciliation procedure to be adopted by the Commission. If a dispute is not settled by the conciliation procedure, it may be referred to the International Court of Justice, unless the involved members agree to another method of settlement.
66. International standards for dispute settlement in RFMOs are established by Part VIII of the UNFSA (Articles 27-30). Article 27 of the UNFSA provides that all disputes shall be settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means chosen by the parties to the dispute. The UNFSA emphasises that in order to prevent disputes, States shall cooperate with a view to agreeing on efficient and expeditious decision-making procedures within RFMOs and to strengthen existing ones as necessary.
67. Article 30 of the UNFSA provides the application of arrangements in Part XV of the LOSC also to disputes about the UNFSA, about RFMO instruments or about conservation and management measures taken by an RFMO, whether or not they are also parties to the LOSC. Part XV of the LOSC provides for mandatory procedures leading to a binding decision by the International Court of Justice or the International Tribunal on the Law of the Sea. It should be noted concerning RFMO measures, these mechanisms only apply to parties to the UNFSA, and many recent RFMO agreements consequently have adopted their own specific arrangements.
68. Articles 28 and 29 of the UNFSA provide for the prevention of disputes by efficient and expeditious decision-making procedures and for the prompt resolution of technical disputes by ad hoc expert panels. In the WCPFC, a member may go along with a consensus and then lodge an objection or request a review by a panel. Details about review panels are set out in the WCPFC Convention and in the amended GFCM Agreement.
69. The dispute procedures in the Antigua Convention requires members to consult to find a quick solution and if this fails, parties to a dispute shall settle the dispute through peaceful means they may agree upon, in accordance with international law. A dispute on technical nature may be referred to a non-binding ad hoc expert panel constituted within the framework of the Commission. A similar approach is taken in the amended GFCM Agreement with the only point of departure is to seeking solutions by negotiations, mediation, inquiry or any other peaceful means of their choice. If parties concerned cannot reach agreement, they may jointly refer the matter to a committee whereby its findings, while not binding, shall constitute a basis for renewed consideration by the parties. Any dispute not resolved by these alternatives may, with the consent of the parties, be referred for binding settlement by arbitration under a tribunal constituted as provided to an annex to the agreement. In contrast, the WCPFC Convention makes it simple by stating that provisions related to disputes set out in the UNFSA part VIII apply, *mutates mutandis*, to any dispute between its members whether or not they are parties to the UNFSA.

3.15 Special requirements of developing States

70. Pursuant to article V (2) (b) of the IOTC Agreement, the Commission shall have due regard to the special interests and need of members in the region that are developing States when it comes to transfer of technology, training and enhancement as well as participation in fishing. Developing States are also indirectly recognised concerning financial contribution as a contribution formula shall take into account per capita income of each member. However, the Article is quite limited and provides only limited guidance to the Commission.
71. The UNFSA acknowledges that lack of/ or limited capacity in many developing States is a serious impediment to the implementation of the agreement, and emphasises the need to build capacity and provide technical assistance to developing countries, including financial assistance, assistance relating to human resource development, technical assistance, transfer of technology and advisory and consultative services. Specifically Articles 25 and 26 of Part VII set out the forms of cooperation and the ways that the RFMOs shall assist developing States.
72. Both the Antigua Convention and the GFCM Agreement contains a provision recognising the special requirements of developing States including enhancing their ability to develop fisheries. But it is the WCPFC Convention that

contains extensive provisions relating to the requirements of developing States; mirroring the relevant provisions of UNFSA. It requires the Commission to give full recognition to the special requirements of developing States Parties in relation to conservation and management of fish stocks and development of fisheries for such stocks. In addition to the UNFSA requirements, the WCPFC Convention goes one step further by then imposing a specific requirement on the Commission to establish a fund to facilitate the effective participation of developing States parties in the work of the Commission. In addition to the fund, the Convention goes on to specify that cooperation with developing States for the purposes set out in the Article may include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology and advisory and consultative services. The provision further sets out some examples of the areas in which such assistance may be directed, including towards improved conservation and management, stock assessment and scientific research and compliance and enforcement.

3.16 Non-members

73. The UNFSA Article 8(3) provides that when an RFMO has the competence to establish conservation and management measures for highly migratory fish stocks, States fishing for such stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organisation or by agreeing to apply the conservation and management measures of such organisations. Pursuant to Article 17(1) of the UNFSA, a non-member of an RFMO is not discharged from the obligation to cooperate, in accordance with the LOSC and the UNFSA, in conservation and management of fish stocks, while Article 8(4) of the UNFSA provides that only those States which are members of an RFMO or which agree to apply the conservation and management measures shall have access to the resources to which those measures apply. The UNFSA provides that RFMO-members shall request non-members, which have fishing vessels in the relevant area to cooperate fully with such RFMOs in implementing their conservation and management measures. Moreover, Members of RFMOs shall according to Article 17(4) of the UNFSA exchange information with respect to activities of fishing vessels flying the flags of non-members, which are engaged in fishing operations for the relevant stocks, and shall take measures to deter activities that undermine the effectiveness of conservation and management measures.
74. Pursuant to article IV(1)(3) of the IOTC Agreement, members of the Commission are encouraged to take initiatives towards States which are entitled to become members to accede to the Agreement. The Agreement does not contain any guidance on how to deter activities by non-members that undermine the effectiveness of applicable conservation and management measures and/or negatively affects the implementation of the objective of the agreement. Moreover, unlike the UNFSA, the Agreement does not provide a clear role for Contracting Parties to agree on the mechanism to provide for the fishing interests of new members or new participants in the treaty. In contrast, the UNFSA provides that participatory fishing rights need to take into account the status of the resources and the level of interest of the party, their contributions to the conservation and management of the stock and the needs of coastal fishing communities and developing States.
75. It is recognised that RFMOs have a key role as the appropriate medium through which States cooperate to implement and enforce management and conservation of highly migratory fisheries resources on the high seas and, through compatible measures, in waters under national jurisdiction. According to article 17 of the UNFSA non-members of RFMOs is not discharged from the obligation to cooperate, in accordance with the LOSC and the UNFSA, in conservation and management of fish stocks. Members of RFMOs shall exchange information on activities of non-members, and shall take measures to deter activities, which undermine the effectiveness of conservation and management measures. It should also be noted that members of RFMOs are encouraged to request all fishing players to cooperate fully with the RFMO concerned in implementing relevant conservation and management measures, and fishing players shall enjoy benefits commensurate with their compliance commitments.
76. The Antigua Convention, the WCPFC as well as the amended GFCM Agreement contain stand-alone provisions on the RFMOs relationship to non-members, reflecting the content of the UNFSA provisions.

3.17 Compliance and enforcement

77. Global organisations and many regional bodies, including IOTC, have taken initiatives to ensure flag State control, ensure member compliance with conservation and management measures and to combat IUU fishing. The IOTC Agreement address compliance and enforcement issues in Article X. It sets out the basic requirements of flag State duties such as reporting the actions taken to implement measures and impose adequate penalties in the case of violations. It calls for the establishment of a system to monitor members implementation of the measures adopted. The IOTC has adopted a series of measures related to MCS and to counteract IUU fishing, both binding conservation and management measures as well as non-binding resolutions. However, the IOTC Agreement, due to its age and unlike other RFMOs, is silent on regarding the specific monitoring, control and surveillance (MCS) tools and the functions and role of the Compliance Committee and does not provide for those elements outlined

in the UNFSA. Moreover, the IOTC Agreement does not specify, consistent with Article 18 of the UNFSA, the duties of flag States.

78. The UNFSA places a series of obligations on flag States concerning compliance and enforcement, including immediate and full investigation of alleged violations, prompt reporting on the progress and outcome of the investigation to the relevant RFMO, and if a serious violation has been proven, the requirement not to allow the vessel to fish on the high seas until such time as imposed sanctions have been complied with. Furthermore, the flag State must ensure that applicable sanctions are adequate in severity to secure compliance and to discourage violations and deprive offenders of the benefits accruing from non-compliance. The UNFSA makes specific provisions for high seas boarding and inspection (Article 21, 22) port State measures (Article 23), regional observer programs (Article 18(3)(f)(g)(ii)), transshipment (Article 18(3)(f)); the IOTC Agreement itself makes no provision for these elements, although as highlighted above some issues have been address through the adoption of binding Resolutions. Moreover, modern treaties such as the Antigua Convention and the WCPFC Convention contain numerous provisions on monitoring, control, surveillance and enforcement. All these instruments contain specific provisions on member’s duties, which include elements on compliance, building on principles set out in the Code, the Compliance Agreement and the UNFSA. Furthermore, the responsibilities of members as flag States are described in detail in specific provisions, and all of them, except for the Antigua Convention, include specific provisions on members as port States. The Antigua Convention, however, includes a duty to cooperate concerning landings of fish, including through adoption of cooperative measures and schemes. The WCPFC Convention contain provisions on the establishment on specific committees mandated to monitor and review compliance. The WCPFC is by far the most detailed instrument also concerning compliance issues, and contains also specific and rather extensive provisions also on a regional observer programme and the regulation of transshipment.

3.18 *Final clauses*

79. Articles XVII, XVIII, XIX, XX, XXI, XXII and XXIV of the IOTC Agreement deal with so-called housekeeping issues such as acceptance, entry into force, reservations, amendment, withdrawal, termination and depositary. For RFMOs within the framework of the FAO, these provisions are common standards.

3.19 *Panel Recommendations*

80. The PRIOTC02 **AGREED** that the IOTC Agreement needs to be amended or replaced in order to incorporate modern fisheries management principles, such as the precautionary approach, ecosystem based approaches, inclusion of highly-migratory species caught in IOTC fisheries, protection of marine biodiversity, reducing the harmful impacts of fishing on marine environment and to allow the full participation of all fishing players. The weaknesses and gaps are, or have a potential to be, major impediments to the effective and efficient functioning of the Commission and its ability to adopt and implement measures aimed at long-term conservation and sustainable exploitation of stocks, according to model fisheries management instruments. More fundamentally, these deficiencies are likely to prevent the Commission from achieving its basic objectives.
81. **NOTING** [para 80](#), the PRIOTC02 **RECOMMENDED** that the Commission establish an ad-hoc Working Party on the Modernisation of the IOTC Agreement, based on the following scope:
- a) Develop proposed language for the IOTC Agreement that takes into account modern principles of fisheries management;
 - b) Develop a multi-year Program of Work that outlines the specific priority issues to be discussed using the legal analysis contained in [Appendix III](#) of this report to inform the working party deliberations;
 - c) Proposals to enable the participation of all fishing players with direct fishing interest in IOTC;
 - d) That all CPCs should participate in the Working Party and that funds be provided to support the participation of developing coastal States in the meetings;
 - e) That the working group meet at least annually and to the extent possible progress its work inter-sessionally using electronic means.

4. CONSERVATION AND MANAGEMENT

4.1 *Status of living marine resources*

82. The PRIOTC02 noted that the IOTC uses comprehensive and data poor stock assessment methods for the majority of species under its mandate. For species with limited data available, the Scientific Committee makes use of more qualitative scientific methods that are less data intensive. Data poor approaches are already being applied to a number of stocks of billfish and neritic tunas and plans have been developed to consider options to rank stock status determinations for data-poor stocks using a ‘Tier’ approach to assist in the interpretation of the level of uncertainty in the evaluation methods applied.

83. The PRIOTC02 noted that since the PRIOTC01, the IOTC Scientific Committee and its Working Parties have commenced the use of the ‘*Weight-of-Evidence*’ approach to determine stock status for data poor fisheries, as an addition to the approach of relying solely on fully quantitative stock assessment techniques. The ‘*Weight-of-Evidence*’ approach to determine stock status for data poor species is currently being used in a number of countries to routinely determine stock status for data poor fisheries. The approach involves developing and applying a decision-making framework by assembling an evidentiary base to support status determination. Specifically, the framework aims to provide a structured, scientific process for the assembly and review of indicators of biomass status and levels of fishing mortality. Arguments for status determination are based upon layers of partial evidence. Ideally there would be independence between these layers which will be developed with a mixture of quantitative and qualitative reasoning. The framework provides guidance with which to interpret those indicators, and aims to provide a transparent and repeatable process for status determination. The framework includes elements to describe attributes of the stock and fishery; documentation of lines of evidence; and documentation of status determination. For some IOTC stocks, only a subset of the types of evidence are likely to be available and/or useful. As a result, expert judgment has an important role in status determination, with an emphasis on documenting the key evidence and rationale for the decision, via the IOTC species Executive Summaries.
84. The transparency and associated supporting information in the form of the IOTC species executive summaries have been substantially improved since the PRIOTC01 which is highly commendable and are easily accessible for interested stakeholders via the IOTC website (see <http://iotc.org/science/status-summary-species-tuna-and-tuna-species-under-iotc-mandate-well-other-species-impacted-iotc>). These status pages, combined with the user-friendly scientific reports from the Working Parties and the Scientific Committee place the IOTC Science Process in-line with ‘best-practice’ from the Kobe Process. Improvements in the way uncertainty in stock status and future prospects under different management approaches are characterised for the Commission are regularly considered by the Scientific Committee, and incorporated within the IOTC Scientific Committee’s “*Guidelines for the presentation of CPUE standardisations and stock assessment models*” (see <http://iotc.org/documents/guidelines-presentation-cpue-standardisations-and-stock-assessment-models-3>).
85. The PRIOTC02 noted that the IOTC Scientific Committee and its subsidiary bodies are well structured and generally function in a way that produces the best scientific advice possible with the information available, and is generally in line with the “Best Practices” identified in the Kobe Process. However, advice is often based on limited information, due to the failure of CPCs in meeting data collection and reporting obligations and, in some cases, due to limited involvement of developing coastal States in the science processes. Some adjustments and enhancements could be considered to further improve the certainty of the science advice provided to the Commission.

4.1.1 Panel Recommendations

86. The PRIOTC02 **RECOMMENDED** that:
- a) while continuing to work on improving data collection and reporting, the Scientific Committee should continue to utilise qualitative stock assessment methodologies for species where there is limited data available, including ecological risk based approaches, and support the development and refinement of data poor fisheries stock assessment techniques to support the determination of stock status.
 - b) confidentiality provisions and issues of accessibility to data by the scientists involved needs to be clearly delineated, and/or amended if necessary, so that stock assessment analysis can be replicated.
 - c) chairpersons and Vice-Chairpersons of the Scientific Committee and respective Working Parties, in conjunction with the IOTC Secretariat, develop guiding principles for the provision of papers to ensure that they are directly related to the Program of Work of the respective Working Party and/or Scientific Committee, as endorsed by the Commission, while still encouraging for new and emerging issues to be presented.
 - d) ongoing peer review and input by external scientific experts should be incorporated as standard best practice for Working Parties and included in the Commission’s regular budget.

4.2 Data collection and reporting

87. States are, in accordance with Article 5(j) of the UNFSA, required to collect and share complete and accurate data concerning fishing activities on, among other things, vessel position, catch and fishing effort, as set out in Annex I of the UNFSA, as well as information from national and international research programmes. The UNFSA stipulates that data should be collected through agreed formats and in a timely manner, and should include catch and effort statistics by fishery and fleet, catch by species for target and non-target species, discards by species, the time and location of fishing and at-sea transshipment, as well as identification and the characteristics of the capacity and gear of vessels. Most data collation and sharing are carried out under the auspices of scientific bodies of relevant RFMOs or international institutions providing advice to RFMOs. These bodies are, however, dependent

on data provided by national scientists and institutions regarding the fisheries activities of their flag vessels on both high seas and in coastal State waters.

88. Effective provisions and mechanisms for the collection and reporting to the IOTC of data are important for the monitoring and management of fishery operations and the status of resources and ecosystems. Pursuant to Article XI of the IOTC Agreement, members shall, on the request of the Commission, provide such available and accessible statistical and other data and information as the Commission may require for the purposes of the Agreement. The Commission shall decide the scope and form of such statistics and the intervals at which they shall be provided. The Commission shall also endeavour to obtain fishing statistics from fishing states or entities that are not members of the Commission.
89. The IOTC has adopted a wide range of measures concerning collection of fisheries data and vessel information. CPC duties concerning fisheries and other relevant data are two-fold. Firstly, CPCs shall ensure that vessels flying their flag comply with measures applicable when conducting fishing operations in the IOTC area of competence, i.e. in particular recording of catch and effort data (Resolution 15/01), and detailed specifications of catch reporting from fish aggregating devices sets (FADs) (Resolution 15/08). A range of other Resolutions have either been amended or are newly adopted since the first performance review including the record of authorised vessels (Resolution 15/04), record of active vessels Resolution (10/08), record of carrier vessels (Resolution 14/06), list of IUU vessels (Resolution 11/03), flag state authorisation to fish (Resolution 15/04), access agreement - record of licensed foreign vessels and coastal State license (Resolution 14/05), port control (Resolutions 10/11 and 05/03), VMS (Resolution 15/03), at-sea transshipment programme (Resolution 14/06), regional observer scheme (Resolution 11/04), FADs (Resolution 15/08), marine turtles (Resolution 12/04), seabirds (Resolution 12/06), cetaceans (Resolution 13/04), whale sharks (Resolution 13/05) and markets (Resolution 10/10).
90. Secondly, that statistical data are submitted by CPCs to the IOTC Secretariat the following year on an aggregated basis (Resolution 15/02). To facilitate data and information reporting, the IOTC Secretariat has developed template reports concerning all reporting requirements that form part of the resolutions adopted by the Commission. In addition, the IOTC Secretariat has created comprehensive guidelines for reporting of fisheries statistics, which covers the major data categories, i.e. annual catches, fishing craft statistics, catch-and-effort data, length frequency data, observer data and socio-economic data. On the socio-economic data, the IOTC has not set standards for its collection. The IOTC Secretariat has produced forms to facilitate reporting of fish prices by members, but the level of submissions have been very low.
91. Since the PRIOTC01, the IOTC has modified the timing of and deadlines for reporting as well as scheduling of meetings of the Scientific Committee and Working Parties. The PRIOTC02 noted that the timeliness of data provision from CPCs remains a key issue facing the IOTC. CPC's are now encouraged to use electronic means, but it is noted that real time reporting is not currently possible for most CPCs, which the PRIOTC02 noted limits the ability of the Commission to implement newer fisheries management and monitoring, control and surveillance technologies. A Working Party on Data Collection and Statistics has been established and measures for addressing reporting requirements of flag and coastal States related to access agreements have been adopted (Resolution 14/05).
92. The IOTC has established a regional observer scheme as recommended. It is based on national implementation through Resolution 11/04 and is now operational. All non-Member States identified in the PRIOTC01 have acceded to the IOTC Agreement, including important coastal States such as the Maldives, Somalia and Yemen. Importantly, Taiwan Province of China attends IOTC meetings, despite not being able to actively participate due to the legal structure, and provides some fisheries data required through a specially developed relationship.
93. Finally, the PRIOTC01 recommended exploration of innovative or other means of data collection, and avenues to collect data from non-CPCs. This work continues within the IOTC Secretariat through collective sampling programs and it is noted that some relevant projects are not limited to IOTC Contracting Parties.
94. A major strength of the IOTC Secretariat has been its ability to cope with work required based on Scientific Committee recommendations and Commission-adopted policies regarding data reporting obligations, and the PRIOTC02 commended the work undertaken since the PRIOTC01. Amongst these notable strengths has been the IOTC Secretariat's focus on data gap and quality assessments, which is amongst the best, if not the best, of all of the tuna RFMOs. Demands for reviewing the quality of the statistics available, the status of collection, processing, and reporting of data have been increasing over time and the complexity of the Commission which imposes a tremendous work-load required in order to assist CPCs in data collection and implementation of monitoring systems.
95. The PRIOTC02 noted that the broader IOTC membership have substantially benefitted from extra-budgetary funds in addressing the failings of data collection and fishery monitoring, but the full process of acquiring such funding (proposal, deliverables, follow-up, etc.) and organising missions in the field places a heavy burden on the IOTC Secretariat. Should the IOTC remain mostly dependent upon external funding for these activities, or even

if the Commission decides to fully fund such activities, the IOTC Secretariat staffing dedicated to such activities will need to be increased. The IOTC Secretariat currently includes 3 full-time staff dedicated to data collection and data capacity building activities, but needs to be increased.

4.2.1 *Panel Recommendations*

96. The PRIOTC02 **RECOMMENDED** that:

- a) the Commission make further investments in data collection and targeted capacity building, which is necessary for further improvement in the provision and quality of data in support of the Commission's objectives, as well as to identify the sources of the uncertainty in data and work towards reducing that uncertainty.
- b) while there are budgetary implications, the IOTC Secretariat staffing dedicated to data collection and data capacity building activities should be increased from 3 to 5 full-time data staff.
- c) the IOTC Secretariat should facilitate discussions with coastal State non-CPCs and other non-CPCs fishing within the IOTC area of competence to formalise long-term strategies for data submission to the IOTC Secretariat, including all relevant historical data sets.
- d) steps to gain access to fine-scale data to be used in joint analysis, with sufficient protection of confidentiality, should be taken.
- e) where budgets and other resources permit, to encourage data preparatory meetings preceding stock assessment review meetings (Working Parties).
- f) innovative and/or alternative means of data collection and reporting should be explored and, as appropriate, implemented, including a move towards electronic data collection and reporting for all fleets.

4.3 *Compliance with data collection and reporting requirements*

97. The IOTC Secretariat coordinates data submissions, stores and manages the data. As the timeliness, completeness and accuracy of data submissions by CPCs varies, the IOTC Secretariat interacts with CPCs by providing guidance for data reporting and sending reminders for data submissions. The IOTC Secretariat undertakes considerable work to check and validate data. While the IOTC Secretariat's ability to correct data errors and fill gaps are limited, the IOTC databases are subject to an ongoing review process, including using national statistical bulletins, national reports presented at scientific meetings, various scientific publications and data from the FAO statistical yearbook. All corrections are made in consultation with the relevant authority in the country in question.
98. The IOTC Secretariat produces annual reports to the Commission based on data submitted in accordance with applicable Resolutions. More detailed reports are provided to the Scientific Committee and IOTC Working Parties that contain uncertainty assessments concerning the data submitted to the IOTC Secretariat for each tuna and tuna-like species and the main species of sharks. The assessments are based on information gathered on retained catches, discard levels, catch-per-unit-effort, trends in average weight and catch-at-size.
99. Addressing the compliance related recommendations is ongoing. The PRIOTC02 noted that the terms of reference of the Compliance Committee were revised to provide for an assessment of a Contracting Party compliance with IOTC Conservation and Management Measures. CPCs compliance is reviewed annually by the Compliance Committee and addressed at Working Parties and the Scientific Committee. The IOTC Secretariat maintains contact with national officers to determine reasons for non-compliance and has conducted compliance support missions in several countries, and the established market measures provides a framework for taking action against non-compliant CPCs (Resolution 10/10). The PRIOTC02 commended the implementation of a transparent process for reviewing each member's compliance. However, the PRIOTC02 noted that in practice, the compliance review process undertaken by the Compliance Committee during the meeting does not assess a CPCs compliance against individual obligations and relies on the assessment made the IOTC Secretariat rather than using this assessment as the starting point for in depth discussions with the Contracting Party regarding the reasons for the non-compliance and developing a plan (e.g. capacity building) to rectify the non-compliance. As such the Compliance Committee may not be adequately assessing and identifying non-compliance and further may not be in a position to be effectively identifying the causes of the non-compliance. The current approach used by the Compliance Committee has very little engagement by CPCs in the process, which the PRIOTC02 considered was likely to be further exacerbated by the lack of consequences for repeated or ongoing non-compliance.
100. The PRIOTC02 also examined the report by an IOTC regional workshop (March 2014) to support compliance with data requirements. The workshop assessed the timeliness and completeness of data for catches of target species, sharks, marine turtles and seabird bycatch, discards and fishing craft statistics and list of active vessels. The PRIOTC02 noted that a number of issues were identified, in particular poor levels of reporting of fisheries data, especially catch-and effort, size frequency and discard levels for the majority of coastal and industrial

fisheries in developing coastal States, poor implementation of the IOTC Regional Observer Scheme, and insufficient understanding of the IOTC data requirements and procedures by most coastal States.

101. IOTC amended its data confidentiality policy and procedures in 2012 (Resolution 12/02). These procedures describe standard stratification, which are data considered to be in the public domain and thus placed on the IOTC website or made available to the public by requests. Data release for finer level stratification requires specific permission of the Executive Secretary. As the IOTC area of competence overlaps with the WCPFC and shares jurisdiction with the CCSBT, the secretariats have in place Memorandum of Understanding (MOU) and established data exchange procedures respectively, and southern bluefin tuna is managed in accordance with the decisions of CCSBT.

4.3.1 Panel Recommendations

102. The Commission, through its Compliance Committee, needs to strengthen its compliance monitoring in relation to the timeliness and accuracy of data submissions. To that end, the PRIOTC02 **RECOMMENDED** that:
- a) the Commission review its compliance monitoring program conducted by the Compliance Committee, including identification of priority obligations (e.g. timely and accurate data reporting, catch and effort limits, accuracy of the supplied registered fishing vessel information, etc.).
 - b) the compliance monitoring program review all priority obligations and undertake the compliance review by obligation and by CPCs and that the Commission publish a report of each CPCs compliance by obligation and CPC. The reports of all Compliance Missions should be appended to the compliance report of that relevant CPC and where the CPC has identified an action plan, that they not be assessed for that obligation.
 - c) the Commission develop a scheme of responses (in accordance with the IOTC Rules of Procedure (2014) Appendix V, para. 3b (iv)) to priority non-compliance areas, including the preparation of CPC Implementation Action Plans that outline how the CPC will, over time, implement its obligations and alternative responses to serious violations of IOTC CMMs taking into account the FAOs Voluntary Guidelines for Flag State Performance. Reforms to the compliance monitoring program should include the ability of developing CPCs to identify (through the preparation of an Implementation Action Plan) and seek assistance for obligations that they are currently non-compliant with, including for example requesting capacity assistance, capacity building, resources, etc., to enable it, over time, to implement its obligations.
 - d) to facilitate thorough reviews of compliance, the Commission should invest in the development and implementation of an integrated electronic reporting program. This should include automatic integration of data from CPCs into the IOTC Secretariat's databases and automatic cross-referencing obligations and reports for the various obligations, in particular related to the provision of scientific data.

4.4 Capacity building (Data Collection)

103. The PRIOTC01 recommended enhancing the capacity within the IOTC Secretariat in relation to data collection. Improving the dissemination and quality assurance is an ongoing activity and has been enhanced through the appointment of a Fisheries Officer (Statistics) and access to datasets via the new IOTC website (<http://iotc.org/>). The IOTC Secretariat also maintains and facilitates ongoing capacity building, including through external funding mechanisms, to provide support to developing States. There are currently numerous ongoing capacity building projects, workshops and collaboration with other regional initiatives, and budget allocations as well as financial support through the capacity building fund (Resolution 10/05) being undertaken by the IOTC Secretariat and supported by the Commission. The PRIOTC02 noted the success of the Compliance Missions in relation to developing capacity at a national government level including increased understanding by CPCs of their obligations and the need to give effect to the Resolutions as adopted. The increased engagement by developing CPCs, and in particular by developing coastal States, was likely a direct result of this capacity building initiative.

4.4.1 Panel Recommendations

104. The PRIOTC02 **RECOMMENDED** that:
- a) the Commission expand its current data support and data compliance missions and that the IOTC Secretariat should be granted increased autonomy to seek and attract external donor funds to support the work approved by the Commission, including supporting actions and/or capacity building initiatives from Compliance Missions that are applicable to more than two CPCs.
 - b) the IOTC should continue the workshop series aimed at Connecting the IOTC Science and Management processes. The aims of the workshop series should be to: 1) improve the level of comprehension among IOTC CPCs on how the scientific process informs the management process for managing of IOTC species and ecosystem-based management; 2) increase the awareness of IOTC Contracting Parties to their obligations, as stipulated in the Commissions' Conservation and Management Measures which are

based on rigorous scientific advice; 3) improve the decision making process within the IOTC; and 4) to provide direct assistance in the drafting of proposals for Conservation and Management Measures.

4.5 *Non-target species*

105. In relation to non-target species, the PRIOTC01 recommended to expand the list of shark species to be recorded by fishing vessels, which has partly been incorporated in the relevant measure (Resolution 15/01). Additional duties apply in relation to seabird bycatch (Resolution 10/06), marine turtle bycatch (Resolution 12/04) and shark bycatch (Resolutions 13/05 and 13/06 together with the existing Resolution 05/05). Overall the PRIOTC02 noted the ongoing non-compliance by CPCs regarding the submission of accurate and timely bycatch data despite it being required in a range of Resolutions.

4.5.1 *Panel Recommendations*

106. The PRIOTC02 **RECOMMENDED** that the Commission should continue to improve upon the requirements of data collection and reporting mechanisms of non-IOTC species that interact with IOTC fisheries.

4.6 *Quality and provision of scientific advice*

107. The PRIOTC02 noted several approaches to the provision of scientific advice have been adopted by the tuna RFMOs. At one end of the spectrum, IATTC makes use of a full-time scientific and data management/collection staff to carry out all scientific analysis and development of scientific advice to the Commission. ICCAT mainly relies upon a Scientific Committee comprised of national scientific delegations and working groups focused on different species or fisheries groupings, which meet during the intercessional period to conduct stock status evaluations and draft scientific advice for review and adoption by the Scientific Committee at its annual meeting, supplemented by a smaller number (than the IATTC) of scientific experts and data management personnel on the ICCAT staff, for this purpose. The WCPFC is intermediate to the IATTC and ICCAT cases, making use of a Scientific Committee to annually review the assessment work of a science and data management service provider with a relatively large staff, the Secretariat of the Pacific Community's Oceanic Fisheries Program (SPC-OF), which conducts analysis used for formulating draft scientific advice for the Commission. CCSBT also utilises a Scientific Committee comprised of national delegations, supplemented by an Advisory Panel to provide external input to its stock assessment and scientific processes. It has also appointed an independent chairperson for the Scientific Committee to facilitate gaining consensus amongst the national scientific delegations in developing scientific advice for southern bluefin tuna and ecologically related species impacted by those fisheries.
108. The IOTC formulation is closer to the ICCAT model than the others, although the staff dedicated to the stock assessment theme is too small given the complexity of the fisheries and the demands of the Commission for stock status advice for the substantial number of stocks. The IOTC Secretariat currently includes 2 full-time staff wholly or partly dedicated to scientific analysis, but needs to be increased. The use of consultants and invited scientific experts to address assessment and/or other quantitative issues of concern is moving in the direction of a WCPFC 'service provider' approach and should be continued or intensified, at least in the near term.
109. At present, some IOTC CPCs have much greater scientific capacity and engagement than others, which can lead to a real or perceived loss of objectivity in the advice produced. External non-scientific influences may also politicise the advice provided. It is important to take steps to assure a high level of objectivity and independence, both through application of transparent processes and in the frequent use of independent peer review of process. It is critically important to maintain a clear separation between scientific advice and management influences.
110. There is a need to further improve the Scientific Committee's functioning so that there is broader understanding amongst national scientists and managers of what is being recommended each year to the Commission. At issue is the need to further involve developing CPCs in IOTC Science and in implementing Scientific Committee Recommendations. The PRIOTC02 considers fostering more engagement by developing coastal state scientists into the science process through the activities instituted in the past few years is likely to improve the scientific process and outcomes.
111. The PRIOTC02 noted the progress made since the PRIOTC01 and that the IOTC website now provides public access to the data used in stock assessments as a matter of best practice policy. The IOTC website, which is perhaps the best amongst the tRFMO websites includes the input and output streams for assessment model runs (and software) used for supporting stock status evaluations where feasible.

4.6.1 *Panel Recommendations*

112. The PRIOTC02 **RECOMMENDED** that:
- a) the Scientific Committee should continue the good work undertaken since the PRIOTC01 and strive to make further improvements in the way it communicates information about stock status and future prospects for the stocks to the Commission.

- b) an independent peer review process (and budgeting mechanism) for stock assessments should be implemented if IOTC science is to be considered to be in line with best practice and to maintain a high standard of quality assurance.
- c) the Scientific Committee, through its Working Party on Ecosystems and Bycatch should pursue the application of ecosystem modelling frameworks.
- d) continue to develop and adopt robust target and limit reference points, and species or fishery specific harvest control rules through management strategy evaluations, noting that this process has commenced for several species and is specified in IOTC Resolution 15/10 *on target and limit reference points and a decision framework*. The mandated Resolution 14/03 *on enhancing the dialogue between fisheries scientists and managers*, will benefit from having communication between the Scientific Committee and the Commission more formally structured, facilitated dialogue to enhance understanding and inform decision making.
- e) the Commission and its subsidiary bodies continue to ensure that meeting schedules and activities are rationalised so that the already heavy workload of those involved, and budgeting constraints, are taken into account.
- f) the Commission fully implements Resolution 12/01 *On the implementation of the precautionary approach*, so as to apply the precautionary approach, in accordance with relevant internationally agreed standards, in particular with the guidelines set forth in the UNFSA, and to ensure the sustainable utilisation of fisheries resources as set forth in Article V of the IOTC Agreement, including ensuring that a lack of information or increased uncertainty in datasets/stock assessment, is not used as a justification to delay taking management actions to ensure the sustainability of IOTC species and those impacted by IOTC fisheries.
- g) while there are budgetary implications, the IOTC Secretariat staffing dedicated to scientific analysis should be increased from 2 to 4 full-time science staff.

4.7 *Adoption of Conservation and Management Measures*

113. Article 5 of the UNFSA sets out the general principles to be applied by coastal States and States fishing on the high seas in order to conserve and manage straddling fish stocks and highly migratory fish stocks. Article 5 provides, among other things, that in order to conserve the stocks concerned, States are required to adopt measures to ensure their “long term sustainability” and promote the objective of their optimum utilisation, to ensure that such measures are based on the best scientific evidence available and to apply the precautionary approach in accordance with Article 6 of the UNFSA. Annex II of the UNFSA provides guidance for the application of precautionary reference points in conservation and management, aiming at reducing the risk of overexploitation and depletion of fish stocks. States are further called upon 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 this regard, it should be noted that the FAO has adopted an IPOA for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds), an IPOA for the Conservation and Management of Sharks (IPOA-sharks) and International Guidelines on Bycatch Management and Reduction of Discards. Moreover, FAO has also developed guidelines for the management of fishing capacity (IPOA-Capacity) and in relation to IUU fishing (IPOA-IUU).
114. According to Article V(1) of the IOTC Agreement the objective is “*to promote cooperation among its members with the 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*”. In order to meet its objective, the IOTC shall pursuant to Article V, among other things, adopt, on the basis of scientific evidence, conservation and management measures to ensure conservation of stocks covered by the IOTC Agreement. However, no further guidance is provided.
115. Since the PRIOTC01, the IOTC has commenced work to establish a system of catch limits any other relevant measures for the main target species (Resolution 14/02). That PRIOTC01 also advised to consider a framework to take action in the face of uncertainty in the scientific advice, to which the Scientific Committee has responded by initiating a development of a management strategy evaluation process. It was further recommended to use the full range of available decision-making processes under the IOTC Agreement, and it is noted that voting was used for adopting a Conservation and Management Measures for the first time in 2014. Despite the ongoing legal constraints related to the IOTC Agreement, the IOTC has adopted several Conservation and Management Measures to give effect to modern fisheries management principles such as the precautionary approach and ecosystem based fisheries management. The Commission adopted Resolution 12/01 on the application of the precautionary approach consistent with the UNFSA Article 6, and reinforced some elements through the measure on reference points and decision framework (Resolution 1510). In relation to the ecosystem based fisheries

management, IOTC has adopted measures concerning bycatch of seabirds (Resolution 12/06), marine turtles (Resolution 12/04), large-scale driftnets (Resolution 12/12), cetaceans (Resolution 13/04) and whale sharks (Resolution 13/05) all aimed at encouraging fishing practices that protect marine biodiversity and reducing harmful fishing on the marine environment.

116. In relation to the key fisheries species, the PRIOTC02 noted that in general, effective fisheries management measures are lacking. The Commission has adopted some species-specific Conservation and Management Measures related to albacore (Resolution 13/09), in relation to bigeye tuna (Resolutions 14/02, plus the existing Resolutions 01/06, 05/01) and related to the three marlin species (15/05). The PRIOTC02 noted that despite the Scientific Committee advice there are no specific Conservation and Management Measures for longtail tuna or swordfish. Importantly the Commission has adopted Resolution 15/06 which prohibits the discard of species such as bigeye tuna, skipjack tuna and yellowfin tuna from purse seine vessels and two Resolutions to manage fishing capacity through limitations (Resolutions 15/11 and 03/01) applicable to tropical tunas and swordfish.
117. The key management measure for the three key tuna species is covered in Resolution 14/02. The PRIOTC02 noted that earlier iterations of this measure included a time-area closure and that despite the scientific advice highlighting that it was ineffective as a conservation and management tool, the Commission only altered the measure due to conflict regarding the spatial extent of the measure. The measure now simply calls on the Commission to develop an allocation system or developing other management measures for these stocks and as such does not provide any real management of these stocks.
118. Concerning albacore, a specific measure has been adopted requesting the Scientific Committee to advise the Commission on target reference points and limit reference points used when assessing the stock and when establishing the Kobe plot and matrices and on potential management measures having been examined through the management strategy evaluation process (Resolution 13/09).
119. The Commission in 2005 agreed to freeze catches of bigeye tuna to current levels, while catches by Taiwan Province of China was limited to 35,000 tons (Resolution 05/01) and has established a statistical document programme for bigeye tuna requiring most of the frozen fish when imported into the territory of CPCs be accompanied by a statistical document or a re-export certificate (Resolution 01/06).
120. On marine turtles, the Commission has adopted a measure that removes the loophole related to the application of the measure to leatherback turtles and requiring the careful handling and aiding of any marine turtle captured and return it safely to the water (Resolution 12/04). CPCs shall ensure that their vessels use mitigation measures, identification, handling and de-hooking techniques and keep on board equipment for that purpose. On seabirds, the Commission has adopted a measure aimed at reducing the incidental bycatch of seabirds in longline fisheries, requiring described mitigation measures to be used in the area south of 25 degrees south latitude (Resolution 12/06). This measure is consistent with international best practices. Moreover the PRIOTC02 noted that there have been a range of trials conducted by IOTC CPCs regarding seabird bycatch mitigation measures.
121. The Commission has adopted four different measures concerning sharks, on whale shark (Resolution 13/05), on oceanic whitetip shark (Resolution 13/06), on thresher shark (Resolution 12/09) and a general shark mitigation bycatch measure (Resolution 05/05). CPCs shall prohibit their vessels setting a purse seine net around a whale shark, with the exception of artisanal fisheries in the Exclusive Economic Zones (EEZs). CPCs shall prohibit to retain on board, transship, land or store any part or whole carcass of oceanic whitetip sharks and of thresher sharks, for the latter also including a ban on selling and offering for sale. The provisions of this measure for oceanic whitetip shark do not apply to artisanal fisheries operating exclusively in their respective EEZ for the purpose of local consumption. CPCs are further required to ensure that any thresher shark captured through recreational and sport fishing is released alive. In association with other fisheries, CPCs are required to ensure that their vessels retain all parts of the shark excepting head, guts and skins, and that vessels do not have on board fins that total more than 5% of the weight of sharks onboard. Although there are four measures in place for sharks caught in association with IOTC fisheries, the PRIOTC02 noted the ongoing paucity of data collected and submitted. The PRIOTC02 noted that the Commission has not adopted measures taking into account the advice of the Scientific Committee.
122. Overall, the PRIOTC02 noted that the Commission has not given effect to the advice of its Scientific Committee and the associated Working Parties. There are inadequate management measures implemented for most species and the ongoing paucity of scientific data continues to hamper the ability to make informed management decisions. Finally, the PRIOTC02 noted that the Commission continues to use the data paucity as a reason not to implement the advice of the Scientific Committee despite their adoption of the precautionary approach (Resolution 12/01).

4.7.1 *Panel Recommendations*

123. The PRIOTC02 **RECOMMENDED** that:

- a) the Commission acknowledge the inherent difficulty in managing small scale and data poor fisheries and continue efforts to adopt adequate fisheries management arrangements and to assist developing coastal States to overcome constraints to implement the CMMs.
- b) as the IOTC has faced the management of the main targeted stock under its purview only through a regulation of the fishing effort; other approaches should be explored, such as those envisioned in Resolutions 05/01 and 14/02, including catch limits, total allowable catch (TAC) or total allowable effort (TAE).
- c) the Science-Management Dialogue is strengthened to improve understanding of modern approaches to fisheries management, including the implementation of Harvest Strategies through the use of Management Strategy Evaluation. The Commission adopt a formal process of developing and implementing Harvest Strategies within a prescribed timeframe.

4.8 *Fishing capacity management*

124. According to Article 5(h) of the UNFSA, measures shall be taken to prevent or eliminate over-fishing and excess capacity and to ensure that levels of fishing effort do not exceed those commensurate with sustainable use of fishery resources. Management of fishing capacity serves the aim of a stable and enduring balance between the fishing capacity of the fleets and the fishing opportunities over time. Overcapacity is addressed in many ways, by input regulations (fishing seasons/days, area closures, gears and vessel-related restrictions), as well as by output regulations, such as right-based measures. Coordinated efforts are, however, essential. The FAO adopted the IPOA-Capacity with the objective for States and RFMOs to achieve an efficient, equitable and transparent management of fishery capacity. IPOA-Capacity specifies actions to be taken for assessing and monitoring capacity, preparing and implementing national plans, international considerations and immediate actions for major international fisheries requiring urgent measures.
125. The PRIOTC02 noted that the IOTC has still not been able to identify fishing capacity levels that are commensurate with long-term sustainability and optimum utilisation of relevant fisheries. Any estimate of overall fishing capacity requires assessment of the relative effects of different categories of vessels and gear on the various stocks. The information required to generate reliable estimates of vessel-specific fishing capacity is not available. This is due to the fact that fishing capacity changes constantly as vessels are replaced, new and more effective equipment are introduced and there are various combinations of numbers and types of vessels. The Scientific Committee has indicated that the IOTC fisheries should not be managed exclusively by fishing capacity limitations (input controls: e.g. vessel numbers, size), as they are inherently difficult to manage and highly uncertain due to variations in fishing power over time and among vessels.
126. Notwithstanding the difficulties estimating the optimal fishing capacity, the Scientific Committee has regularly provided advice on bigeye tuna, yellowfin tuna, albacore and swordfish and to a lesser degree skipjack tuna and recommends the need to limit fishing effort to specific levels. The IOTC has over the years implemented a series of measures to limit fishing capacity and effort by trying to control the numbers and tonnages of vessels. The first attempt at limiting fishing capacity was in 2003 when the Commission agreed to freeze the capacity of those Contracting Parties with 50 or more vessels over 24 meters to the current level, but allowed those Contracting Parties with less than 50 vessels over 24 meters to develop their fleets through a fisheries development plan (Resolution 03/01). In essence, this was designed to afford developing coastal States the opportunity to develop their fisheries and fishing fleets, consistent with the LOSC and the UNFSA, through that plan. Subsequent measures have been introduced several times, the latest one in 2015 (Resolution 15/11), all of them also making cross-references to the fisheries development plan from 2003. The current measures include limitations of fishing capacity of fleets targeting tropical tuna to the capacity measured in gross tonnage of active vessels in 2006 and to the 2007 level for those fleets actively targeting albacore and swordfish. However, to date these measures have not resulted in strong control on fishing capacity. In fact since the adoption of this measure there is a sustained trend increasing the global fishing capacity.
127. The PRIOTC02 noted that the PRIOTC01 recommended that the IOTC should establish a stronger policy to prevent and eliminate excess fishing capacity. The IOTC Secretariat is involved in developing a global record for vessels fishing for tuna and tuna-like species that would contribute to the assessment of existing fishing capacity. The PRIOTC01 further recommended to close the loophole created by the fisheries development plans, which has not happened, and to create a working group on fishing capacity. A Working Party on Fishing Capacity was convened in 2009, but in 2010 it was amalgamated into the Working Group on Tropical Tunas as a theme session as no new documents were presented.

128. Six of the developing coastal States have not presented plans to the Commission and it seems like presented plans have not been realised by them due to economic constraints. The PRIOTC02 noted that some developed CPCs have also submitted Fleet Development Plans. Current reported active fishing capacity (2014) for tropical tunas is 28% below the reported baseline capacity (in the reference year of 2006), and 19% below for albacore and swordfish (in the reference year of 2007). The PRIOTC02 noted the study on the potential effects of fleet development plans over future levels of input fishing capacity presented to the Commission in 2014. The study indicates that if the current reported active fishing capacity (2014), and the Fleet Development Plans are implemented in the proposed timeline, the fleets fishing for tuna and tuna-like species in the Indian Ocean by the year 2020, could be more than 250% over baseline capacities if realised, with consequent negative impacts on the fisheries resources. Fleet Development Plans submitted to the IOTC Secretariat indicate a large increase in future fishing capacity, incompatible with sustainable exploitation of fishery resources in the IOTC area. The current effort (capacity) limitation mechanisms in the IOTC are not effective, primarily due to the existing capacity combined with the Fleet Development Plans submitted to the IOTC being well in excess of assumed sustainable levels. The PRIOTC02 recognised the limitation of the capacity limit, as previously noted by the Scientific Committee, because of its generic nature and the challenges in differentiating across gear types and fisheries.

4.8.1 *Panel Recommendations*

129. The PRIOTC02 **RECOMMENDED** that:

- a) the IOTC should establish a stronger policy on fishing capacity to prevent or eliminate all excess fishing capacity, including options to freeze capacity levels as an interim measure, while alternative management measures are considered. As current capacity limits are generic and apply across all fleets and their ability to control catch of particular species is limited, therefore alternative management measures should be considered which may include spatial-temporal area closures, quota allocation, etc.
- b) the Commission undertake a formal process to develop transfer mechanisms to developing coastal States, and in particular the least developed among them, with a view to realising their fleet development aspirations within sustainable levels.

4.9 *Compatibility of management measures*

130. Article 64 of the LOSC provides that the coastal State and other States whose nationals fish in the region for highly migratory species shall cooperate with the view to ensuring conservation and promoting the objective of optimum utilisation of such species throughout the region, both within and beyond the EEZs. Article 7 of the UNFSA repeats this requirement and elaborates on issues to be taken into account in determining compatible measures.

131. The rights of the coastal States deriving from Part V of the LOSC are reflected in Article XVI of the IOTC Agreement. Similar references are incorporated into other RFMO instruments, but in most cases as a clause in a provision dealing with application and/or a general stand-alone provision on relationship with other treaties. The IOTC has not taken any particular measure aimed at ensuring compatibility between Conservation and Management Measures adopted by the coastal State with respect to national waters and those adopted by the Commission. It seems, however, that measures established by the Commission are designed to apply throughout the migratory range of the stocks with coastal States implementing compatible measures in waters under their jurisdiction.

132. The PRIOTC01 recommended that CPCs should be invited to promptly implement IOTC Conservation and Management Measures. The PRIOTC02 recognised that this is an ongoing requirement of Contracting Parties and that they are reminded annually about the responsibility of integrating adopted measures in their national legislation. The PRIOTC02 noted a range of initiatives undertaken by the IOTC Secretariat to assist in this endeavour including for example the Compliance Missions, increased circulars regarding deadlines and reporting obligations, through the compliance assessment process, and by assisting in the assessment of the legal needs to effectively implement IOTC CMMs. The PRIOTC02 noted that strengthening the compliance assessment process is likely to enhance the mutual understanding among members regarding the actions taken by each CPCs to ensure there is effective management throughout the range of the IOTC stocks.

4.9.1 *Panel Recommendations*

133. The PRIOTC02 **RECOMMENDED** that if needed, CPCs request assistance from other CPCs or the IOTC Secretariat to assist in the assessment of the legal needs to effectively implement IOTC CMMs, noting that this process has already commenced with a number of IOTC Contracting Parties.

4.10 *Fishing allocations and opportunities*

134. Noting that the IOTC Agreement has no provisions or principles to guide the allocation of the resources, the PRIOTC01 recommended that the IOTC should explore the advantages and disadvantages of implementing an

allocation system of fishing quota. This work is now in progress as the IOTC has adopted an action plan for the establishment of an allocation system (quota) or any other relevant measures for the main target species (Resolution 14/02), but has not yet agreed on a process for allocation. To date there has been two meetings of the Technical Committee on Allocation Criteria, however the PRIOTC02 noted that the meetings were not able to progress the discussion very far.

135. In relation to fishing opportunities, the Commission, through Resolution 15/11 (formerly Resolutions 12/11, and 09/02), has provided the opportunity for CPCs to submit a Fleet Development Plan. The Fleet Development Plans afford primarily developing coastal State CPCs the opportunity to exercise their legitimate rights enshrined in the LOSC to develop their fisheries. However the PRIOTC02 noted that if all development aspirations were realised, without a commensurate reduction in fishing capacity, that the total level of fishing capacity would be well in excess of sustainable levels. In addition the PRIOTC02 noted that the IOTC has not addressed the nature and extent of participatory rights of new Contracting Parties.

4.10.1 Panel Recommendations

136. The PRIOTC02 **RECOMMENDED** that the IOTC develop allocation criteria or any other relevant measures as a matter of urgency through the established Technical Committee on Allocation Criteria (TCAC) process, and that it include consideration of how catches by current non-CPCs would be accounted for. This process should not delay the development and adoption of other management measures, based on the advice of the Scientific Committee.

5. COMPLIANCE AND ENFORCEMENT

5.1 Flag State duties

137. Articles 91-94 of the LOSC provides a flag State the legal basis to exercise effective jurisdiction and control over vessels flying its flag. At the core of these duties is the obligation to provide a genuine link between a fishing vessel and the flag State - a link that makes it possible to exercise effective jurisdiction. Concerning fishing vessels in particular, article 18 of the UNFSA provides specific obligations the State must fulfil before allowing its vessels to conduct fishing operations on the high seas, including in areas under the competence of RFMOs. Improvement of flag State performance has been a topic on the international agenda for several years, and the FAO in 2014 adopted Voluntary Guidelines for Flag State Performance. They contain an extensive set of assessment criteria, which include detailed criteria about how a flag State handles fisheries management, authorisations, information, registration and records as well as MCS and enforcement. The guidelines also contain procedures for carrying out assessments, encouraging compliance and deterring non-compliance, and assistance to developing countries with a view to capacity development.
138. Given that there is no provision found in the IOTC Agreement on flag State duties, the PRIOTC01 recommended that any amendment to or replacement of the IOTC Agreement should include specific provisions on Member's duties as flag States, drawing on the relevant provisions of the UNFSA, as discussed in Section three above. Although there has been no change in the IOTC Agreement, IOTC measures cover many points contained in the LOSC, the UNFSA and the Compliance Agreement. The PRIOTC02 noted that many of these existing Resolutions have been amended since the PRIOTC01, including on the recording of catch and effort data and mandatory statistical requirements (Resolutions 15/01 and 15/02 respectively) which updates the minimum catch, effort and size frequency data to be collected and submitted to the IOTC Secretariat. And on the IOTC record of authorised vessels (Resolution 15/04), which contains authorisation requirements, documents to be carried on board, vessel and gear marking, and transshipment obligations. In addition, the PRIOTC02 noted that the IOTC Secretariat has developed Guidelines for the Reporting of Statistical Data to the Commission which is available from the IOTC website (<http://iotc.org/data/reporting-data-iotc>) and provide clear advice regarding how CPCs should provide data to the Commission.

5.1.1 Panel Recommendations

139. The PRIOTC02 **RECOMMENDED** that any amendment to or replacement of the IOTC Agreement should include specific provisions on Member's duties as flag States, drawing on the relevant provisions of the UNFSA and take due note of the FAO Voluntary Guidelines on Flag State Performance.

5.2 Port State measures

140. Article 23 of the UNFSA recognises the wide discretion of States to exercise jurisdiction over vessels voluntarily present in their ports. The underlying principle formulated in Article 23(1) is "the right and the duty" of a port state to take non-discriminatory measures in accordance with international law, in order to promote the effectiveness of sub-regional, regional and global conservation and management measures. This has been made explicit through the adoption of the PSMA.

141. Due to the age of the IOTC Agreement, there is no provision made in the IOTC Agreement regarding port State measures. Consistent with the advice from the PRIOTC01, the IOTC adopted Resolution 10/11 *On port state measures to prevent, deter and eliminate illegal, unreported and unregulated fishing*, only one year after the adoption of the PSMA. The Resolution incorporates the relevant provisions of that agreement into a regional context. However, it is noted that application of those measures is limited to ports within the IOTC area of competence, but ports situated outside the IOTC area of competence are exempted from the measure but are known to receive IOTC catch in those ports. In addition the IOTC has two existing management measures, one concerning a programme for inspection in port (Resolution 05/03 *Relating to the establishment of an IOTC programme of inspection in port*) and the second regarding the establishment of the IUU List (Resolution 11/03 *Establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC area of competence*) which includes actions by CPCs in relation to port inspections of IUU listed vessels.
142. The measures to combat IUU fishing establishes a step by step process for the port State to allow or deny the entry to and the use of its port. Advance notification must be required before access to port is granted. Based on the notification as well as other information it may require to determine whether the vessel has engaged in IUU fishing, the port State shall decide whether to authorise or to deny entry into its port. A port State shall, however, deny access if it has sufficient proof that a vessel has engaged in IUU fishing, and in particular if the vessel is on an IUU vessel list established by an RFMO. Furthermore, a vessel that has entered a port shall not be permitted to use that port if the vessel does not have a fishing authorisation required by the flag State or a coastal State, or if there is clear evidence that the fish on board was taken in contravention with coastal State measures. Use of port shall also be denied if the flag State, on request, fails to confirm that the fish on board was taken in accordance with requirements of the IOTC or the port State has reasonable grounds to believe that IUU fishing had taken place, unless the vessel can establish otherwise. The measure lists a series of duties on port States in carrying out inspections, including qualification of inspectors, identity cards, examination, cooperation and communication and an obligation to minimise interference and inconvenience. Where, following an inspection, there are clear grounds for believing that a vessel has engaged in IUU fishing, use of port shall be denied, and the flag State and the Secretariat shall be promptly notified.
143. On implementation, most of the CPCs have not translated their obligations as port States into domestic legislation, as required by the IOTC Agreement. To assist in more effective implementation, the IOTC Secretariat has provided training on most of the major ports in the IOTC area of competence, focusing on procedures in order to implement the measures and on interagency coordination and regional cooperation. Furthermore, a template on regulations is currently developed in order to assist members to transpose the IOTC measures into domestic legislation. To strengthen implementation, CPCs are also involved in the development of an information system accessible through the IOTC website, facilitating cooperation between the port State, the flag State and the coastal State. The PRIOTC02 noted that these measures combined with the adoption of the Resolution 11/03 provides a good basis in relation to port State measures, but the lack of regional capacity and resources to implement and manage the requirements of the measure at a national level may reduce the functionality of the measures.

5.2.1 Panel Recommendations

144. The PRIOTC02 **RECOMMENDED** that:
- a) since port State measures are critical for the control of fishing in the IOTC area and beyond, CPCs should take action to ratify the FAO Agreement on Port State Measures, and the Commission explore possible ways of including ports situated outside the IOTC area known to be receiving IOTC catches in applying port State measures established by the IOTC.
 - b) the Commission, through its port State measures training, support the implementation, including support from FAO and other donors, of the requirements of the FAO PSMA and the IOTC Resolution 10/11 *On port state measures to prevent, deter and eliminate illegal, unreported and unregulated fishing*.

5.3 Monitoring, control and surveillance (MCS)

145. The UNFSA Article 18(g) describes some MCS tools to be implemented either at national level or through RFMOs including boarding and inspection schemes, observer programmes and VMS and Article X of the IOTC Agreement requires the establishment of a system for monitoring, control and surveillance. The PRIOTC01 recommended the IOTC to develop a comprehensive MCS system through the implementation of the measures already in force, and through the adoption of new measures and tools such as a possible on-board regional observer scheme, a possible catch documentation scheme as well as a possible system on high seas boarding and inspection.
146. Since the PRIOTC01, the IOTC has implemented MCS measures including amending existing Resolutions. These include mandatory VMS for all vessels of 24 meters or greater, and those less than 24 meters operating in areas beyond national jurisdiction (Resolution 15/03 *On the vessel monitoring system (VMS) programme*), thereby removing the existing size restriction for vessels on the high seas. The measure contains agreed plans for phasing

into the system vessels of those CPCs that yet has not implemented previous requirements. Information to be submitted by the vessels to the respective monitoring centres every four hours by VMS shall include vessel identification, geographical position and time.

147. The IOTC has established a programme for transshipment by large-scale fishing vessel (Resolution 14/06), which applies to longline vessels and to carrier vessels authorised to receive transshipments from these vessels at sea. This means that only longline vessels 24 meters or greater are allowed to be involved in transshipment. The system requires authorisation by the flag State, the maintenance of records of vessels authorised to receive transshipments, and that the flag State of a receiving vessels shall ensure that an IOTC transshipment observer is on board, who is required to identify and report possible infractions, including verification of documents and logbooks. CPCs shall report annually on the quantities by species transhipped and which of their long-line vessels have been involved in transshipment during the previous year as well as an assessment report based on the content and conclusions by observers assigned to receiving vessels. In addition, the Commission amended Resolution 14/05 *Concerning a record of licensed foreign vessels fishing for IOTC species in the IOTC area of competence and access agreement information*.
148. The PRIOTC02 also noted that there are also sub-regional initiatives being undertaken in the region including for example by the Indian Ocean Commission (IOC). IOC is managing a regional surveillance plan aiming at coordinating regional patrols for the detection of IUU fishing. Under this plan, five IOTC Contracting Parties have declared bans on at-sea transshipments in their national waters, which is not implemented in its entirety. The PRIOTC02 also discussed a deferred proposal from 2014 to implement a Working Party on Compliance (WPC) (IOTC–2014–S18–PropP). The proponents highlighted the need for the IOTC to consider and discuss a range of existing and emerging technologies available to the Commission for MCS purposes including how to integrate these tools into a strong regional MCS system. The PRIOTC02 noted that these initiatives highlight the increasing concern of coastal CPCs including their understanding of the need to use MCS to protect their fishing interests and for the effective management of the resource at a regional level.

5.3.1 Panel Recommendations

149. The PRIOTC02 **RECOMMENDED** that:
- a) the IOTC should continue to develop a comprehensive MCS system through the implementation of the measures already in force, and through the adoption of new measures and tools such as a possible catch documentation scheme, noting the process currently being undertaken within the FAO.
 - b) as a matter of priority review the IOTC MCS measures, systems and processes, with the objective of providing advice and guidance on improving the integration of the different tools, identification of gaps and recommendations on how to move forward, taking into consideration the experiences of other RFMOs, and that the review should be used as a basis for strengthening MCS for the purpose of improving the ability of the Commission to deter non-compliance and IUU fishing.

5.4 Follow-up on infringements

150. In addition to the flag State duties highlighted above (5.1), the UNFSA Article 19 also places duties on flag States concerning follow-up on infringements. This includes immediate and full investigation of alleged violations, prompt reporting on the progress and outcome of the investigation to the relevant RFMO, and if a serious violation has been proven, the requirement not to allow the vessel to fish on the high seas until such time as imposed sanctions have been complied with. Furthermore, the flag State must ensure that applicable sanctions are adequate in severity to secure compliance and to discourage violations and deprive offenders of the benefits accruing from non-compliance.
151. The PRIOTC01 recommended that provisions for follow-up on infringements should be included in any amended/replacement of the IOTC Agreement, which is pending and that IUU vessels flagged to CPCs should be in the IUU Vessel List, which has been resolved with the adoption of Resolution 11/03 *Establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC area of competence*. That PRIOTC01 further recommended that the IOTC should explore options to address the possible lack of follow-up by CPCs by establishing a sanction mechanism and to develop a structured approach for cases of infringements. The terms of reference of the Compliance Committee has been revised and is now included in the IOTC Rules of Procedure (2014). It provides the Compliance Committee with better means for undertaking compliance assessments of CPCs implementation of IOTC measures. It also contains a mandate to establish a scheme of incentives and sanctions. The PRIOTC02 noted that, like other RFMOs, there has been no work undertaken on this element to date.
152. The IOTC has adopted amendments to the record of authorised vessels (Resolution 15/04 *Concerning the IOTC record of vessels authorised to operate in the IOTC area of competence*) obliging CPCs to ensure that vessels

with a history of IUU fishing is not authorised or that any IUU fishing incident has been officially resolved and sanctions have been completed, which shall then be reported to the Commission.

5.4.1 Panel Recommendations

153. The PRIOTC02 **RECOMMENDED** that:

- a) the IOTC should establish a scheme of responses to non-compliance in relation to CPCs obligations, and task the Compliance Committee to further develop a structured approach for cases of infringement.
- b) further develop an online reporting tool to facilitate reporting by CPCs and to support the IOTC Secretariat through the automation of identification of non-compliance.
- c) reasons for the non-compliance should be identified, including whether it is related to the measure itself, a need for capacity assistance or whether it is wilful or repeated non-compliance, and that the Compliance Committee provide technical advice on obligations where there are high level of CPCs non-compliance.

5.5 Cooperative mechanisms to detect and deter non-compliance

154. Article 20 of the UNFSA requires States to cooperate, directly, or through RFMOs, to ensure compliance and enforcement of regional measures. Actions to be taken include to assist other States in identifying vessels engaged in activities undermining the effectiveness of the regional measures and to deter vessels that have undermined or otherwise violated such measures from fishing in the relevant RFMO area until such time as appropriate action is taken by the flag State.
155. The IOTC Agreement does not include any reference to compliance issues. Thus mechanisms established by the Commission are most likely pursuant to the general mandate to adopt Conservation and Management Measures provided in Article V(2)(c) and/or the saving clause in paragraph 3, giving the Commission the power to “*adopt decisions and recommendations, as required, with a view to furthering the objectives of this Agreement*”.
156. Noting the issues related to the outdated legal framework, the PRIOTC01 noted that the sense of accountability seemed very low and that greater accountability was required. As such they recommended the development of a structured and integrated approach to evaluate compliance of each CPC against the IOTC CMMs. As highlighted previously this is now an ongoing exercise within the Compliance Committee and is governed by the Terms of Reference for the Compliance Committee in the IOTC Rules of Procedure (2014). The main objectives of the Compliance Committee are to provide a structured forum for discussion of all problems related to effective implementation of, and compliance with the IOTC Conservation and Management Measures, and to identify and discuss related problems and make recommendations to the Commission on how to address these problems. In order to meet these objectives, the committee shall review the individual CPC’s compliance with the IOTC measures, with particular focus on reporting and data reporting, conformity with Conservation and Management Measures, conformity with fishing capacity schemes and the status of implementation of monitoring, control and surveillance (MCS) and enforcement obligations.
157. Other actions taken by the IOTC include annual reminders to CPCs through IOTC Circulars regarding their responsibility to implement the measures into domestic legal frameworks. The progress of implementation of measures into domestic frameworks is monitored through reports on implementation which are then submitted to the Compliance Committee for review. On national implementation reports, a template has been developed to facilitate CPCs preparation of such reports and with the introduction of country-based compliance reports this reporting requirement has improved. In addition, there is a project to develop a model legal framework to facilitate CPCs to effectively transpose measures adopted by the Commission into their national legal frameworks. In relation to the establishment of formal MCS mechanisms as recommended in the PRIOTC01 the IOTC has partly addressed this through Resolution 11/04 *On a regional observer scheme* and port sampling of artisanal fisheries, and the observer requirements related to at-sea transshipment (Resolution 14/06 *On establishing a programme for transshipment by large-scale fishing vessels*).
158. With regard to cooperative mechanisms to deter non-compliance, IOTC has adopted a wide range of measures, notably record of authorised vessels (Resolution 15/04), record of active vessels (Resolution 10/08), record of carrier vessels (Resolution 14/06), list of IUU vessels (Resolution 11/03), access agreements – record of licensed foreign vessels and coastal State license (Resolution 14/05), port control (Resolutions 10/11 and 05/03), at-sea transshipment programme (Resolution 14/06), VMS (Resolution 15/03), bigeye tuna statistical document programme (Resolution 01/06) and market (Resolution 10/10).

5.5.1 Panel Recommendations

159. The PRIOTC02 **RECOMMENDED** that the Commission considers strengthening the intersessional decision making processes in situations where CPCs have not transmitted a response such that a decision can be taken for

effective operational cooperative mechanisms and that the Commission encourages the CPCs to be more involved in decision making and for the Commission to collaborate to the greatest extent possible with other RFMOs.

5.6 *Market-related measures*

160. There are no references per se to market-related measures as means of ensuring compliance with RFMO Conservation and Management Measures in neither the LOSC or the UNFSA. The UNFSA includes in Article 33 a general rule requiring States Parties to take measures consistent with the UNFSA and international law to deter activities of vessels flying the flag of non-parties that undermine the effective implementation of the UNFSA. However, the IPOA-IUU contains references to trade-related measures, the latter providing descriptions of procedures, application and implementation.
161. Consistent with the recommendations of the PRIOTC01, and despite that there are no provisions on market-related measures in the IOTC Agreement, the IOTC has adopted binding market-related measures (Resolution 10/10 *Concerning market related measures*), seemingly using the general mandate provided in Article V(2)(c) and/or the saving clause in Article V(3). However, the recommendation to consider the establishment of catch documentation scheme for target species of high commercial value has still not gained traction. Although CPCs have submitted proposals for the development of a such a scheme it has so far not been endorsed. In addition that panel advised that the bigeye statistical document programme should be applied to all bigeye tuna products, thereby removing the exclusion for fresh bigeye tuna.
162. The IOTC has in place both measures targeting trade and measures that may affect trade. The authorised vessel list enables market States to identify whether vessels offering tuna or tuna-like species from the Indian Ocean is legally entitled to do so (Resolution 15/04 *Concerning the IOTC record of vessels authorised to operate in the IOTC area of competence*). States may accept or reject shipments on this basis. Any shipment of frozen bigeye tuna must be accompanied by fully completed IOTC bigeye statistical documentation or bigeye tuna re-export certificate that shall include shipment details, authorised signatures and seals (Resolution 01/06 *Concerning the IOTC bigeye tuna statistical document programme*). States may accept or reject shipments on this basis. Also the port measures to counteract IUU fishing may affect trade, as landings or transshipments shall be denied for a number of reasons, including following an inspection (Resolution 10/10 *Concerning market related measures*). IOTC has further adopted measures that outlines a process for identification of States failing to discharge their obligations under the IOTC Agreement, and to impose trade restrictive measures as a last resort if other measures to encourage conformity with the agreement are not successful (Resolution 10/10 *Concerning market related measures*). The PRIOTC02 noted however, that there has never been any use of these measures in practice.

5.6.1 *Panel Recommendations*

163. The PRIOTC02 **RECOMMENDED** that:
- a) the Commission considers strengthening the market related measure (Resolution 10/10 *Concerning market related measures*) to make it more effective.
 - b) the Commission considers to invite key non-CPCs market States that are the main recipient of IOTC catches as observers to its meetings with the aim of entering into cooperative arrangements.

5.7 *Fishing capacity*

164. Fishing capacity remains a considerable issue facing the IOTC. Although the Commission agreed in 2003 to freeze the capacity of those CPCs with 50 or more vessels over 24 meters to the current (2003) level, affecting six CPCs (Resolution 03/01), by the end of 2014, some of those CPC had increased the number of vessels, while the others had reduced. Those CPCs with less than 50 vessels over 24 meters were allowed to develop their fleets through a Fleet Development Plan.
165. The IOTC Scientific Committee has repeatedly concluded that providing advice on optimal fishing capacity is difficult, and unreliable. Any estimate of overall fishing capacity needs to be able to estimate the relative effects of different vessels and gear on the stock (e.g. to estimate relative fishing power or what the fishing mortality rate for a specific combination of vessel types and number would generate). The information required to generate reliable estimates of vessel-specific fishing power are not available. Fishing power often changes markedly over time, with an increasing trend and, as such, fishing capacity, if measured in terms of number of vessels, will not be a static quantity. In addition, different combinations of number and types of vessels can have comparable effects on the stock (in terms of the effect of their removals on the dynamics of the stock). As such, when a variety of vessel types and sizes exist in a fishery, there is no unique combination of vessels that would yield “optimal” performance in terms of normal stock assessment performance criteria (e.g. MSY, F_{MSY} , risk statistic). Other criteria (often economic and social) also come into consideration.
166. In relation to the three tropical tunas (bigeye tuna, skipjack tuna and yellowfin tuna), the monitoring of the fishing capacity indicates that the active capacity in 2013 (516,000 tons) has decreased relative to the baseline capacity

of 2006 (576,000 tons), and it was about half of the reference limit capacity that was expected for 2013 (994,000 tons). The lower than expected value is the result of reductions in capacity in many fleets, and also the fact that the majority of CPCs planning to develop their fleets have not been able to do so. The level of capacity in fisheries for swordfish and albacore has over recent years been relatively low compared the baseline capacities. Three CPCs that have not recorded a baseline capacity for this fishery have indicated that they will introduce vessels in this fishery in the coming years.

167. Subsequent measures have been introduced several times, the latest one in 2015 (Resolution 15/11 *On the implementation of a limitation of fishing capacity of Contracting Parties and Cooperating Non-Contracting Parties*), all of them also making cross-references to that plan from 2003. Twenty-two CPCs have indicated their aspirations to add vessels to their existing fleets or to build new fishing fleets that will participate in the fisheries for tropical tunas and/or albacore and swordfish. The PRIOTC02 noted that this includes CPCs who are already non-compliant with Resolution 03/01 *On the limitation of fishing capacity of Contracting Parties and Cooperating Non-Contracting Parties*. The PRIOTC02 also noted that the IOTC Secretariat has been diligently analysing and producing reports comparing the baseline and current fishing capacity to highlight the extent of the issue to CPCs and as such the PRIOTC02 noted the probable issues related to the implementation and compliance of this measure, particularly as it related to the ongoing discussions of the IOTC regarding the management of fishing capacity.
168. If the fleet development plans are implemented in the proposed timeline, and the countries already fishing in the area keep their baseline capacity, the fleets fishing for tuna and tuna-like species in the Indian Ocean by the year 2020, will be more than 250% over the baseline capacities; obviously an untenable position for stocks of tuna and tuna-like species in the IOTC area of competence.

5.7.1 Panel Recommendations

169. The PRIOTC02 **RECOMMENDED** that the Commission consider non-compliance with fishing capacity related measures as a priority in the scheme of responses to non-compliance, in order to ensure the sustainable exploitation of the relevant IOTC species.

6. DECISION-MAKING AND DISPUTE SETTLEMENT

6.1 Decision-making

170. At the Commission sessions, Contracting Parties generally adopt Conservation and Management Measures by consensus, either as Resolutions which are binding, having due regard to the objection procedures (i.e. those measures adopted pursuant to Article IX of the IOTC Agreement), or Recommendations which are non-binding and thus subject to voluntary implementation.
171. As some Contracting Parties require mandates based on examination by relevant authorities prior to Commission sessions, it has been agreed that only proposals received at the latest 30 days before the session shall be considered. Proposals for Conservation and Management Measures are also made publically available on the IOTC website 30 days in advance of the session. The PRIOTC02 noted that a consequence of this practice is that if the Commission has during a session asked for advice by its subsidiary bodies, including for example from the Compliance Committee which meets immediately prior to the Commission meeting, on a particular proposal, but due to the 30 day deadline the adoption of this proposal is typically postponed until the next session thereby often delaying the adoption of important measures. The PRIOTC02 noted that this deadline also has implications for the IOTCs annual meeting schedule with all meetings needing to be held well in advance of the Commission meeting such that issues can be addressed promptly.
172. The PRIOTC02 noted that there continues to be issues related to the objection procedure in the IOTC. The practice in most RFMOs is to rely on decision-making based on consensus, whereby the notion of “consensus” is typically defined as the adoption of a decision without any vote or formal opposition at the time of adoption. Contracting Parties of IOTC have an opportunity to object to Conservation and Management Measures, and thereby not being bound by the measure in question. Again the PRIOTC02 noted that the grounds for the right to object in the IOTC are not restricted, which is inconsistent with international best practice. Overall the PRIOTC02 noted that although the IOTC Agreement follows an adequate general approach for adopting measures, compared to other RFMOs it contains a rather weak objection procedure. Many other regulatory frameworks require the objector to give reasons for its objection and the permissible grounds being restricted, such as that a decision discriminates in any form against a member or is inconsistent with the legal instrument, and/or obligations to take equivalent measures. The IOTC Agreement allows Contracting Parties to opt out of any measure with no justification and consequences. This has the potential to weaken the implementation and compliance mechanisms, in particular as the Agreement does not provide a due process by which an objection is validated nor a process for reviewing objections.

173. The PRIOTC02 noted and endorsed the views of the PRIOTC01, that in order to improve the IOTC practices of decision-making and adoption of measures, when every effort to achieve consensus has been exhausted, invoking the procedure of voting should be explored, and to amend the objection procedures so that it is more rigorous, and in line with other RFMO rules, featuring restricted grounds for the basis to object. On voting, the Commission adopted a Resolution by voting for the first time in 2010. Any amendment or replacement of the IOTC Agreement is pending.
174. On this topic the PRIOTC02 further refers to the analysis in Section 3 and the recommendation therein.

6.1.1 Panel Recommendations

175. The PRIOTC02 **RECOMMENDED** that intersessional processes be utilised (e.g. via formal or informal subsidiary bodies, or through facilitated electronic working groups) such that proposals brought to the Commission have been subject to debate and consideration by all CPCs.

6.2 Dispute settlement

176. As described in Section 3, Article XXIII of the IOTC Agreement provides that any dispute regarding the interpretation or application of the agreement shall be referred for settlement to a conciliation procedure to be adopted by the Commission. If a dispute is not settled by the conciliation procedure, it may be referred to the International Court of Justice, unless the involved members agree to another method of settlement.
177. The dispute settlement procedure in Article XXIII of the IOTC Agreement represents a significant gap in the IOTC Agreement as there is no reference to a compulsory/binding dispute settlement mechanism. This conflicts with the UNFSA that places an obligation on RFMOs to either introduce compulsory and binding dispute settlement procedures or to agree to apply dispute settlement procedures laid down in Part VIII of the UNFSA. This aspect of the IOTC Agreement requires an amendment in order to have in place a comprehensive system drawing on the provisions of the UNFSA.
178. On this topic the PRIOTC02 further refers to the analysis in Section 3 and the recommendation therein.

7. INTERNATIONAL COOPERATION

7.1 Transparency

179. The issue of transparency is two-folded; participation as observers in meetings and timely public availability of relevant information and documents.
180. On the issue of participation in the work of the IOTC, Article VII of the IOTC Agreement provides a mechanism for the participation of non-members, and gives the Commission a mandate to specify the possibility for intergovernmental and non-governmental organisations to attend IOTC meetings. Such a mechanism has been included in rule XIV of the Rules of Procedure (2014), and meetings of all subsidiary bodies of the Commission are open to observers under the same rules as the Commission. At the Commission meeting in 2012, Members agreed that meetings of the Commission and its subsidiary bodies shall be open to participation by observers from all those who have attended current and/or previous sessions of the Commission. Thus there is a pre-approved list of observers that contains four intergovernmental organisations, four countries that are not CPCs, 18 non-governmental organisations and one invited expert. Approval of new observers organisations continues to follow the application mechanism outlined in the IOTC Rules of Procedure (2014).
181. The PRIOTC02 noted the recommendations made by the PRIOT01, including for example that the active vessel list should be made available on the IOTC website, and that the Scientific Committee should review the availability of data sets critical for the development of scientific advice, take steps to ensure that these data are held at the IOTC Secretariat and available for validation of analyses, subject to the appropriate confidentiality requirements. The PRIOTC02 noted the vastly improved IOTC website that has been completed since the PRIOTC01. There is now a plethora of vessel and scientific data publically available through the website, albeit subject to the confidentiality rules and requirements. The PRIOTC02 also noted that the validation of scientific data is ongoing but has also undergone significant improvement in the past five years.
182. Concerning availability of relevant information and documents, again the PRIOTC02 noted the improvements made to the IOTC website. The website now makes publically available the vast majority of historical and current documents, meeting papers, meeting reports and materials underpinning the Commissions decisions. Prior to commencement of meetings, all IOTC meetings, including the Commission, Standing Committee on Finance and Administration, Compliance Committee, Scientific Committee and all Working Parties, all documents, technical papers and reports, and proposals from Contracting Parties are made public through the relevant meeting page. In addition to reports and papers, all aggregated datasets used in CPUE series and stock assessment, scientific papers and reports are also made available.

183. The PRIOTC02 noted that as scientific assessments are carried out by national scientists, there was a need for the Scientific Committee to adopt guidelines for the presentation of CPUE standardisation and stock assessment models. These guidelines (see [Section 4.1](#)) call upon scientists to provide to the IOTC Secretariat a copy of all input and output files, and they are encouraged to freely share the source code of the methods used so as to ensure transparency in the scientific process. Also publicly available are all current and historical Conservation and Management Measures (<http://iotc.org/cmms>), the IUU Vessel List (<http://iotc.org/vessels>), the lists of authorized and active vessels (<http://iotc.org/vessels/current>), updated documents describing the status of fish stocks (<http://iotc.org/science/status-summary-species-tuna-and-tuna-species-under-iotc-mandate-well-other-species-impacted-iotc>), fisheries data (<http://iotc.org/data/datasets>) and all circulars to CPCs (<http://iotc.org/documents/circulars>).
184. However, the PRIOTC02 noted that the information concerning access agreements provided to the Executive Secretary pursuant to Resolution 14/05 *Concerning a record of licensed foreign vessels fishing for IOTC species in the IOTC area of competence and access agreement information*, is not yet publicly available. Although coastal States have sovereign rights in respect to their natural resources, the nature of the fishery for highly migratory species would require that all information concerning the actions taken in relation to such stocks also are shared among others. Further the drafting of the annual Compliance Reports can involve clarifying discussions between the Secretariat and a specific CPCs, as is the case in other RFMOs, these discussions are not made public and nor are the letters of compliance that are drafted following the annual Compliance Committee meeting. The PRIOTC02 commended the IOTC for its transparent approach to the compliance assessment process noting that other RFMOs hold these discussions in closed sessions and noted that the letters of compliance become publically available at the commencement of the following Compliance Committee session.
185. The PRIOTC02 recognised that data sets for replicating much of the analysis of the Scientific Committee and its Working Parties (catch, effort, size frequency, stock assessment input and output files) are available through the IOTC website via the respective Working Party meeting pages.
186. However, high-resolution catch-effort and size frequency are frequently not made available to the IOTC (consistent with Resolution 12/02 *Data confidentiality policy and procedures*), which prevents replication of the work of national scientists, and thus result in diminished transparency in the process of developing scientific advice if based upon the work of national scientists rather than the IOTC Secretariat or consultants.
187. On this topic the PRIOTC02 further refers to the analysis in Section 3 and the recommendation therein.

7.2 Relationship to Cooperating Non-Contracting Parties

188. As well noted, the PRIOTC01 recommended that the legal framework of the IOTC be amended or replaced in order to enable fishing entities active in the area to discharge their rights and obligations in line with UNFSA. Any amendment or replacement of the IOTC Agreement is pending.
189. The PRIOTC02 noted that the IOTC has established a mechanism allowing States with a real interest in the IOTC fisheries to participate in the IOTC processes under the category of a Cooperating Non-Contracting Party. This status is granted for a period of one year, upon request from the State. Cooperating Non-Contracting Parties are not obliged to pay financial contributions, do not enjoy voting rights, but are subject to the same regulations as the full members. There are currently (2015) five States granted the said status: Bangladesh, Djibouti, Liberia (only for carrier vessels), Senegal and South Africa.
190. The PRIOTC02 noted that such a mechanism is now being questioned in other RFMOs as this status might create an unbalance between benefits and obligations. Moreover the PRIOTC02 noted the second key issues related to defining a ‘real interest’, particularly in relation to non-coastal States in light of the current fishing capacity and fishing mortality levels. Vessels flagged to Cooperating Non-Contracting Parties may harvest considerable quantities of fishery resources managed by the relevant RFMO, but are not obliged to contribute budgets. It is recognised that the IOTC has partly addressed this issue as Cooperating Non-Contracting Parties shall not benefit from the Meeting Participation Fund as they do not contribute financially to the organisation. The PRIOTC02 noted that South Africa been a Cooperating Non-Contracting Party to the IOTC since 2005, and Senegal since 2006. Although a State has to apply for this status annually, it should be considered to limit number of renewals, and regard this status more as a transition into full membership. The PRIOTC02 noted that the issue of membership of the IOTC is a key issue that the Commission need to address in its entirety given its implications for the long-term sustainability of the resources under the IOTC remit.
191. On this topic the PRIOTC02 further refers to the analysis in Section 3 and the recommendation therein.

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

192. The IOTC Agreement does provide any guidance on how to deter activities by non-members that undermine the effectiveness of applicable Conservation and Management measures and/or negatively affect the implementation

of the objective of the Agreement. A non-cooperating non-CPC typically operates in a manner that is not consistent with the IOTC Conservation and Management Measures; does not participate at the IOTC meetings and/or does not participate at the IOTC technical meetings and does not provide vessel information and/or does not provide any fisheries statistics and vessels information.

193. The PRIOTC01 recommended that although IOTC has strengthened its actions towards non-CPCs with the objective of including all important fishing players included under its remit and that diplomatic approaches should be made by the Contracting Parties to non-CPCs with active vessels in the IOTC area of competence. It further recommended that when non-cooperation is identified and all reasonable efforts to improve the situation are exhausted, any non-CPCs continuing not to cooperate should be adequately sanctioned by, for example, market related measures.
194. Since the PRIOTC01, four key coastal States in the region have become members of the Commission; i.e. Maldives, Mozambique, Somalia and Yemen. As at the end of the 2015 Commission meeting there were further three coastal States are also Cooperating Non-Contracting Parties: Bangladesh, Djibouti and South Africa, in addition to two non-coastal States Liberia and Senegal. It was noted that the IOTC Secretariat has been active to encourage participation by additional States, and has responded to queries and briefed representatives from Democratic People’s Republic of Korea, Myanmar, and Singapore about membership. As mentioned above, Resolution 10/10 *Concerning market related measures*, provides the framework in which to apply market related measures. However, the creation of a scheme of incentives and sanctions and a mechanism for their application to encourage compliance is still pending.
195. Estimates show that vessels flying the flags of non-cooperating non-CPCs catch about 3.3% of the totals of tuna and billfish over the period 2011–13 (2.4% in 2013). In addition, vessels flagged to Taiwan Province of China fish around 4% of the total catches of tuna and billfish over the same period (3.8% in 2013). The catches by vessels flying the flags of non-cooperating non-CPCs have been reduced markedly over the years, in particular since 2001 when those catches amounted to around 50% of the totals. Several IOTC measures focus on deterring these activities by restricting fishing, transshipping and other activities at individual vessel level, and possible trade sanctions at flag State level. The IOTC Authorised Vessel List is important in this regard as only vessels included may operate in the Indian Ocean, and the IOTC bigeye tuna statistical document programme explicitly restricts the exportation and importation of frozen bigeye tuna caught by large-scale tuna longline vessels to vessels on the list of authorized vessels. The PRIOTC02 noted that these measures have largely been in place prior to the first performance review with only amendments made to the authorised vessel list (15/04) since that time.
196. The PRIOTC02 noted that the Commission adopted amendments to the existing IUU listing measure (Resolution 09/03). The new measure (Resolution 11/03 *Establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC area of competence*) now includes a mechanism for listing any vessel identified as having carried out IUU fishing in the IOTC area of competence. There seems to be some confusion or shortcomings on how to address IUU fishing, including listings between Commission meetings. The measure defines the activities that are regarded as IUU fishing consistent with the IPOA-IUU and outlines the procedures for the establishment of the IUU Vessel List. The IOTC IUU listing measure also includes procedures for the collection of information (including forms to be completed) and assessment of evidence. Currently 54 vessels are included in the IOTC IUU Vessels List. It contains the names of all the vessels, but few are identified by other means such as current flag, IMO number, photo, call sign owner/beneficial owner or operator. Contracting Parties are obliged to take a number of follow-up actions against those listed vessels including prohibition of port entry, prohibition against import of fish coming from such vessels, refusal of granting flag etc.
197. The PRIOTC02 also noted that the Commission has adopted Resolution 10/10, which provides a mechanism for the identification of market States, both Members and non-members of IOTC, who fail to discharge their obligations or who failed to exercise effective control to ensure that their vessels do not engage in any activity that undermines IOTC measures. States identified would be subject to the adoption of actions consistent with non-discriminatory World Trade Organization marked related measures.

7.3.1 Panel Recommendations

198. The PRIOTC02 **RECOMMENDED** that the IOTC continue to strengthen its actions towards coastal State non-CPCs to have all such coastal States included under its remit, and that Contracting Parties take diplomatic missions to coastal State non-CPCs with active vessels in the IOTC area of competence.

7.4 Cooperation with other RFMOs

199. The need for enhanced cooperation between RFMOs arises from the fact that for example tuna and tuna-like species are a highly migratory species that occur in the regulatory areas of more than one State and/or RFMO, and that fishing fleets may target similar stocks in different parts of the world. It is particularly important to

cooperate in relation to the provision of scientific advice and regarding fisheries management where there are overlapping RFMO jurisdictions, as is the case in the IOTC with the WCPFC Convention Area. Active cooperation between RFMOs has become very important when addressing over-capacity, IUU fishing and other issues, for example through the Kobe process. Most RFMO institutional instruments contain provisions on cooperation, including the Article XV of the IOTC Agreement that focuses in particular on intergovernmental organisations and institutions dealing with tuna in the IOTC area of competence.

200. The PRIOTC02 noted the recommendation from the PRIOTC01 that IOTC should establish mechanisms for mutual recognition of IUU lists of other RFMOs and that this has partially been addressed as the measures dealing with capacity transfers insofar as to IUU vessels on the lists of other tuna-RFMOs should not be flagged by IOTC Contracting Parties, while other aspects are ongoing. The PRIOTC02 also noted the development of cooperative mechanisms, such as MOUs, to facilitate coordinated and cooperative working relationships with other organisations, including intergovernmental organisations and RFMOs, on issues of common interest. The PRIOTC02 noted that the IOTC has MOUs with the CCSBT and the ICCAT, and although not an RFMO, also with the Agreement for the Conservation of Albatrosses and Petrels (ACAP). The PRIOTC02 recognised that many of these MOUs are important of the management of non-target species and for broader ecosystem approaches to marine management. Although IOTC has signed MOUs with the CCSBT and the ICCAT on an observer program, work is ongoing taking into account the outcomes of the Kobe process. Furthermore, it was recommended to nominate a member attending other relevant RFMO meetings as an observer on its behalf, reporting back to the Commission on matters of interest, which is still under consideration, but the PRIOTC02 noted that this is constrained by the ongoing budgetary constraints facing the IOTC. IOTC has entered into arrangements with other institutions, almost invariably of technical nature, either to conduct activities in cooperation or to facilitate exchange of information that would benefit both organisations. The IOTC has agreed to a joint FAD working group with ICCAT.
201. The PRIOTC02 noted that the ongoing cooperation between the IOTC and the CCSBT recognises that the CCSBT has the prime responsibility for conservation and management of southern bluefin tuna, while also recognising the legal competence of the IOTC to do so. The MOU includes arrangements for the exchange of data relating to transshipment and scientific observer programmes/schemes as means to eliminate duplication of work and reducing data collection costs, but needs to be further enhanced in relation to ecosystem, bycatch and MCS related issues. The PRIOTC02 also noted the MOU between the IOTC and the WCPFC that implements arrangements and procedures to promote cooperation and enhance the conservation and sustainable use of species, which are within the competence of both organisations. The IOTC cooperates also with other tuna-RFMOs as a member of the informal network of tuna RFMO's secretariats comprising the CCSBT, the IATTC, the ICCAT, the IOTC and the WCPFC. However, it is noted that there is no formal cooperative mechanisms current in place between IOTC and the South Indian Ocean Fisheries Agreement (SIOFA). It was noted that SIOFA, who manages non-highly migratory fish stocks in largely the same geographical area as that of the IOTC, entered into force in 2012. The IOTC Secretariat is a member of the Regional Fishery Body Secretariats Network.
202. The PRIOTC02 noted that despite recommendations from the PRIOTC01, the IOTC Secretariat does not attend many other RFMO's meeting due to limitation of staffing resources, but reports of such meetings are received by the IOTC Secretariat. However, the IOTC Secretariat attends regularly sessions of the South West Indian Ocean Fisheries Commission and those of its Scientific Committee and other working parties as relevant for example those dealing with information sharing, data and research. The IOTC technical groups are usually informed on the outcomes of the technical meetings held by other relevant RFMOs by participants that attend both meetings. The PRIOTC02 highlighted that some RFMOs have established an alternative practice where by a member of both relevant RFMOs is formally nominated to represent the RFMO when participating in meetings of another RFMO, and subsequently provide a report to its Commission. The PRIOTC02 noted that as many of the IOTC Commissioners also participate in meetings of other tuna-RFMOs, that this may be a legitimate way forward.
203. The PRIOTC02 also noted that although not RFMOs, that additional cooperating mechanisms have been established between the IOTC and the ACAP through an MOU that puts in place arrangements and procedures to promote cooperation between the two organisations to enhance the conservation of albatrosses and petrels in the IOTC area of competence. The Commission is currently considering a draft MOU between the IOTC and the Convention on the Conservation of Highly Migratory Species of Wild Animals.

7.4.1 Panel Recommendations

204. The PRIOTC02 **RECOMMENDED** that:
- a) the IOTC should further develop mutual recognition and possible exploration of cross-listings of IUU lists with other RFMOs to combat IUU activities globally.

- b) The IOTC should develop cooperative mechanisms, such as MoUs, to work in a coordinated manner on issues of common interest, in particular non-target species and an ecosystem approach with other RFMOs especially with SIOFA.

7.5 *Special requirements of developing States*

205. Pursuant to Article V (2) (b) of the IOTC Agreement, the Commission shall have due regard to the special interests and need of Members in the region that are developing States when it comes to transfer of technology, training and enhancement as well as participation in fishing. The reference to “in the region” is probably meant to include developing States that are situated wholly or partly within the IOTC area of competence as referred to in Article V.
206. Like the PRIOTC01, the PRIOTC02 noted that the special requirements of developing States are not adequately addressed in the IOTC Agreement when compared to the international instruments and other RFMO agreements. However, the PRIOTC02 noted that the IOTC has established a specific fund to assist capacity building and developing CPC participation in the work of the Commission. Moreover, that Contracting Parties who are parties to the UNFSA should make use of the part VII fund established under that agreement. To that end the PRIOTC02 noted that the Meeting Participation Fund was established in 2010 and is now integrated into the IOTC Rules of Procedure (2014), while CPCs are regularly reminded of the UNFSA Fund. The Meeting Participation Fund is primarily used to support the participation of national scientists to science meetings, including the Scientific Committee and the Working Parties. However, 25% of the funds available through the Meeting Participation Fund can be used for participation at the Compliance and Commission meetings (75% Science meetings). In addition, some Members provide extraordinary contributions for the purpose to assist developing States, including their participation in the work of the IOTC.
207. The PRIOTC02 noted that there are examples of the needs of developing States being acknowledged and taken into account by the IOTC in the development of its Conservation and Management Measures since the PRIOTC01. For example, the Commission shall give due consideration to the interests of developing coastal States when implementing of a limitation of fishing capacity (Resolution 15/11), and delayed entry into force of other measures such as 15/03 on the VMS. The Panel noted that there were also a range of historical measures in place. For example the IOTC scheme for calculation of financial contributions to the administrative budget indirectly recognises developing States as the contribution formula takes into account the different economic status per capita income of each member; Resolution 05/01 allows those with catches of bigeye tuna below 1000 tons who intend to substantially increase catches to submit fleet development plans within a three year interim period, and Resolution 03/01 took note of the interests of developing States when the Commission established measures for the limitation of fishing capacity.
208. The PRIOTC02 also noted the range of support provided by developed CPCs to the work of the Commission generally. Various forms of assistance have been and continue to be provided to developing States by the IOTC and its Contracting Parties. For many years IOTC has collaborated with the Overseas Fishery Cooperation Foundation of Japan in a project contributing to the realisation of sustainable utilisation of tuna resources in the Indian Ocean by improving the accuracy of data collection and statistical analysis of catches and resources. Activities in a series of developing countries under the project include fact-finding activities, implementation of sampling programmes, training and technical advice on database design and/or database management and field support to sampling programs. On a case-by-case basis, IOTC has assisted scientists from developing States to attend and contribute to technical meetings.
209. A large-scale tuna-tagging project in the Indian Ocean funded by the European Union has operated since 2005, which has involved scientists from a wide range of south west Indian Ocean countries. The project was complemented by several small-scale projects funded by the European Union and Japan that have been implemented in four developing countries. Moreover, there is a number of other projects, targeting or relevant to developing States focusing on issues like tagging, port sampling, MCS as well as various training courses.
210. The PRIOTC02 also noted that some Contracting Parties of the IOTC that also are parties to the Indian Ocean Commission (IOC), who collaborate on particular MCS issues within a project on a regional fishery strategy for the eastern and southern African and Indian Ocean region managed by the IOC.

7.5.1 *Panel Recommendations*

211. The PRIOTC02 **RECOMMENDED** that:
- a) the continuation and optimisation of the IOTC Meeting Participation Fund indefinitely as part of the IOTC Regular Budget, and that the MPF is used to support participation of all eligible Contracting Parties in order to create a more balanced attendance to both science and non-science meetings of the Commission.

- b) the IOTC Secretariat in partnership with development agencies and organisations, should develop a five year regional fisheries capacity development program to ensure coordinated capacity building activities across the region.

7.6 Participation

212. Given its auspice by the FAO, the membership rules of the IOTC are not consistent with UNFSA. Article IV of the IOTC Agreement contains details about who are entitled to become Contracting Parties of the organisation.
213. The PRIOTC02 noted the ongoing issues regarding the participation of Taiwan Province of China and the broad membership language in the IOTC and its implications for the work of the IOTC. In relation to participation of the current IOTC Contracting Parties, the PRIOTC02 noted that the IOTC established the Meeting Participation Fund that provides a funding mechanism to facilitate scientists and other representative from developing CPCs to attend IOTC meetings. Initially the fund is financed by accumulated funds. The PRIOTC01 also recommended that the legal framework of IOTC should be amended or replaced in order to enable fishing entities active in the IOTC area of competence to discharge their rights and obligations in line with UNFSA. Any amendment or replacement of the IOTC Agreement is pending.
214. Currently (2015) there are 32 Members of IOTC, of which 24 are coastal States as they are wholly or partly situated within the IOTC area of competence. There are 39 coastal States altogether within the IOTC area of competence. The total number is about to be reduced to 30 as the Commission agreed in 2015 that Sierra Leone and Guinea should be deemed to have withdrawn their membership. In that regard, it was noted that their membership had created some compliance shortcomings and financial problems, and that there are concerns about the FAO's discretionary power to allow new members to the Commission without any consultation with current Members. The process for implementation of this decision is currently ongoing (Vanuatu and Belize, have withdrawn their membership, effective from 31 December 2015 and 31 December 2016 respectively). The membership has increased over time, and since the PRIOTC01 met in 2008-09, four additional coastal States have joined the organisation. The PRIOTC02 also noted that Commission meetings have never been attended by all Contracting Parties. Over the last ten years, in average six Contracting Parties were absent from Commission meetings each year.
215. On this topic the PRIOTC02 further refers to the analysis in Section 3 and the recommendation therein.

8. FINANCIAL AND ADMINISTRATIVE ISSUES

8.1 Availability of resources for IOTC activities & Efficiency and cost-effectiveness

216. Contributions by Contracting Parties are deposited in FAO accounts, and FAO Finance maintains the accounting of the Commission. Project support costs are charged by FAO at the rate of 4.5%, assessed over the expenditures. In recent years, the FAO has imposed other cost recovery charges totaling to about 7.5%. The FAO in 2014 added another layer of cost to the IOTC budget through the Improved Cost Recovery Uplift (ICRU) for the support of field security and information technology. The field personnel will be subject to two Field ICRU charges – 1.4% for Information Technology support services and 4.8% (Africa) for Field security. In the discussions with the FAO following the 18th Session of the Commission, the FAO agreed to reduce the rates of Field Security to 1.5%, however for Information Technology support services fee remained at 1.4%.
217. The non-payment of contributions to the Commission has an immediate negative impact on the IOTC. The trend of non-payment of contributions has increased in the last few years and, should this trend continue, IOTC operations and delivery on the Commission's recommendations may be adversely affected. The total outstanding contributions in 2009 were approximately US\$822,000 and in 2013, approximately US\$1.4 million. If this trend were to continue, the projected unpaid contributions in 2018 would be approximately US\$2.5 million. This is significant in terms of deficits the Commission absorbs each year and was possible when the Commission had accumulated funds (or savings), which are now exhausted.
218. The IOTC has experienced reduced operations, compared to those budgeted in 2014 and 2015, due to unrealised contributions from Contracting Parties and savings. The financial position of the Commission is a shared responsibility of all CPCs and the amount of contributions in arrears merits immediate and ongoing attention from the Commission.
219. In 2015, three Professional Grade staff positions became vacant for extended periods: Fishery Officer (P4: Data Coordinator from 15 April), Fishery Officer (P4: Stock Assessment from 14 September) and the Executive Secretary (D1 from 31 October) that has resulted in considerable savings being achieved. The IOTC Regular budget is now back in surplus.

220. Historic outstanding contributions are approximately US\$2.1 million and the 2015 budget-specific contributions are in arrears approximately US\$244,615. It is clear that without full contributions, Commission approved budgets can only be operationalised against contributions received.
221. In 2014, the IOTC moved from a budgeting process that approved the calendar year budget within the same year, to a process that now has the Commission adopting a budget in advance. This resulted in two call for funds letters being issued in 2014, and a subsequent doubling of the contributions outstanding for much of 2015. This problem has now largely been rectified as Contracting Parties have caught up with payments outstanding. This action, combined with the three (3) professional grade staffing vacancies in 2015 has now lead to a budget in surplus.
222. The IOTC is an organisation constituted under article XIV of the FAO Constitution. This means that the organisation is able to adopt binding Resolutions and function on the basis of an autonomous budget while, at the same time, it retains administrative links to the FAO and FAO has some responsibilities associated with the operation of the Commission. For example, the Executive Secretary and all of the IOTC staff are FAO employees. The financial regulations, staff rules, and procurement procedures of FAO apply to IOTC.
223. There are difficulties arising from the operations being divided between the IOTC Headquarters in Seychelles and in Rome, although the relationship with FAO is based on preserving the functional autonomy of the IOTC Secretariat.
224. The preparation of the budget and the financial reports are done by the IOTC Secretariat on the basis of the financial reports supplied through FAO's Integrated Management Information System (iMIS). The IOTC Secretariat's expenditures have been within the anticipated budget over the past seven years.
225. The cost-effectiveness of the IOTC Secretariat is guided by value for money and transparency in financial and administrative actions. Under the financial and administrative rules and regulations of FAO, the IOTC Secretariat procures services/equipment, initiates travel and employs consultants within the FAO manual section guidelines of the specific actions carried out.
226. The remote headquarter location of the IOTC Secretariat (Seychelles) implies that costs are greater than they would be on the mainland of Africa or Asia. Travel to and from Seychelles, internet/communications and goods imported are generally high in cost. Therefore, the efficiency of travel and purchased goods and services is not optimal for the IOTC Secretariat. Even with these limitations in efficiency, the IOTC Secretariat aims to achieve the best possible cost conditions available.
227. The PRIOTC02 noted that the Commission, in 2015, requested that a cost and benefit of the IOTC within and outside of the FAO be undertaken by an independent consultant.

8.1.1 Panel Recommendations

228. The PRIOTC02 **RECOMMENDED** that:
- a) the IOTC continue to strengthen its actions towards non-paying Contracting Parties including consideration of diplomatic missions to non-paying Contracting Parties to encourage payment and to explore other mechanisms to recover the outstanding contributions (debt), and collaborate with FAO to identify the difficulties faced in recovering outstanding contributions.
 - b) consistent with best practice governance procedures, that the Commission:
 - i. Amend or replace the IOTC Financial Regulations (1999) as a matter of urgency in order to increase Contracting Parties' as well as the Secretariat's control of all the budget elements, including staff costs of the budget, consistent with best practice governance procedures.
 - ii. A system of cost-recovery should be considered as a possible funding mechanism for new activities and/or ongoing activities.
 - iii. An annual external financial audit of the organisation be implemented as soon as possible, and include a focus on whether IOTC is efficiently and effectively managing its human and financial resources, including those of the IOTC Secretariat.
 - iv. Develop guidelines for the acceptance of extra-budgetary funds to undertake elements of the Commission's Program of Work, or those of its subsidiary bodies.
 - v. Explore opportunities to improve efficiency concerning financial contributions, including extra-budgetary funds in support of the Commission's Program of Work, including the possibility of minimising project support costs.
 - vi. Develop and implement staff development, performance and accountability evaluations and procedures, for inclusion within the IOTC Rules of Procedure (2014).
 - c) the Commission, as a matter of urgency, decide whether remaining inside the FAO structure (as an Article XIV body) provides the most suitable means to effectively deliver upon the IOTC Objectives.

9. FAO

229. Under the current IOTC framework, the FAO Legal office is mandated with ensuring that IOTC activities are carried out in accordance with its agreement and that of the FAO (FAO Basic Texts), and in a manner consistent with its status as an intergovernmental organisation. However, FAO legal office, at times, have provided legal advice to the IOTC upon request. The PRIOTC02 noted however that on occasion, substantive issues are not addressed in a timely manner and in accordance with legal support obligations.
230. The PRIOTC02 noted that since PRIOTC01, the Commission has requested the participation of an FAO legal officer at the IOTC Commission meetings, but have been advised that the IOTC should pay for their cost of participation (travel and daily subsistence). FAO has attended some IOTC Commission meetings, in some cases only partially, in particular where there is an implication to the FAO legal and institutional framework, e.g. adopting rules of procedures or discussing matters on the IOTC institutional and legal framework.
231. The PRIOTC02 noted the Finance Committee of the FAO has the power to disallow the IOTC financial regulations and any amendments thereto if it finds them inconsistent with the FAO Financial Regulations. Moreover, FAO considers IOTC as a Project from an administrative, managerial and financial point of view and this hampers the current functioning of the organisation. The Assistant Director General of the Technical Cooperation Department signs all IOTC projects, unless delegated to the Executive Secretary of the IOTC, and that is not automatic. This affects the independence and efficiency of the IOTC and as such, the PRIOTC02 observed that IOTC should have a legal entity. The PRIOTC02 noted that it would be more appropriate to be an independent entity consistent with the best practices of managing highly migratory fishery resources.
232. On this topic the PRIOTC02 further refers to the analysis in Section 3 and the recommendation therein.

9.1.1 Panel Recommendations

233. The PRIOTC02 **RECOMMENDED** that the IOTC would be more appropriate as an independent entity. As such, as a matter of the highest priority, the Commission should decide whether the IOTC should remain within the FAO framework or become a separate legal entity, and as necessary, begin consultations with the FAO on this matter.

10. CONCLUSIONS

234. The PRIOTC02 commended the Commission for all the initiatives taken and the good progress made in many areas in response to recommendations provided by PRIOTC01. Substantive work has been undertaken to improve the performance of the IOTC. However, this is an ongoing process and much remains to be done.
235. Of note is that the IOTC Agreement is yet to be revised or replaced as recommended by the PRIOTC01 and agreed by the Commission. The PRIOTC02 again highlights this recommendation to the Commission and has provided suggestions on a way forward to update and modernize the agreement including allowing full participation of all relevant fishing players, to take into account modern principles of fisheries management as well assess the financial and administrative relationship with the FAO.
236. The PRIOTC02 noted that lack of data continues to hamper the work of the IOTC, in particular the Scientific Committee. Although progress has been made concerning data collection and sharing requirements as well as capacity building, there is still a problem with many non-compliant CPCs.
237. Other issues that need further work are those related to capacity management, catch limitations including their allocations, MCS and follow-up on infringements. Recommendations have been made in these areas.
238. Overall the IOTC should be commended for its progress to date, but must continue to tackle critical issues to further progress the implementation of sustainable tuna fisheries management in the region.
239. The PRIOTC02 **ENCOURAGED** that the next Performance Review of the IOTC be carried out in five (5) years, and be presented to the Commission no later than at its Session in 2021.
240. The consolidated set of recommendations arising from the PRIOTC02 is provided at [Appendix V](#).
241. The PRIOTC02 **ADOPTED** the report of the 2nd IOTC Performance Review (IOTC–2016–PRIOTC02–R) via correspondence on 22 January 2016.

APPENDIX I

TERMS OF REFERENCE AND CRITERIA TO CONDUCT THE SECOND PERFORMANCE REVIEW OF THE IOTC

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 (To be determined by the Panel).
- c) Six representatives of IOTC Members as follows: EU, Japan, Maldives, Mauritius Oman and Seychelles.
- d) Two Non-Governmental Organisations: ISSF and PEW Charitable Trust.
- e) Two members (not already Members of the IOTC) from other Tuna Regional Fisheries Management Organisations: WCPFC and ICCAT.

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 20th 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 (08/09/2014)

- 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 (08/09/2014)

- 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 (08/09/2014)

- 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 (2015)

- Extent to which the IOTC has adopted Conservation and Management Measures for both target stocks and non-target species that ensures 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 (08/09/2014)

- 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 (08/09/2014)

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

Fishing allocations and opportunities (08/09/2014)

- 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.

COMPLIANCE AND ENFORCEMENT

Flag State duties (08/09/2014)

- 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 (08/09/2014)

- 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) (08/09/2014)

- 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 (08/09/2014)

- 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 (08/09/2014)

- 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 (08/09/2014)

- 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.

Fishing Capacity (08/09/2014)

- Extent to which the IOTC has implemented and complied with the Conservation and Management Measures relating to fishing capacity, in particular, the developments plans as required by the Resolutions 03/01 and 12/11.

DECISION-MAKING AND DISPUTE SETTLEMENT

Decision-making (08/09/2014)

- 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.

Dispute settlement (08/09/2014)

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

INTERNATIONAL COOPERATION**Transparency (08/09/2014)**

- 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 (08/09/2014)

- 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) (08/09/2014)

- 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 (08/09/2014)

- 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 (08/09/2014)

- 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 (08/09/2014)

- 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.

FINANCIAL AND ADMINISTRATIVE ISSUES**Availability of resources for IOTC activities (2015)**

- 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 (2015)

- 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.

- Extent to which the IOTC is managing its budget as well as its capacity to monitor and audit annual and multiannual expenditures.
- The extent of IOTC’s viability within and outside of the FAO structure in term of the cost and the benefits of breaking from the UN administrative structure and mandate.

FAO

Support to IOTC (2015)

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

FIRST PERFORMANCE REVIEW ((08/09/2014))

Recommendations

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

APPENDIX II

2015: UPDATE ON PROGRESS REGARDING RESOLUTION 09/01 – ON THE PERFORMANCE REVIEW FOLLOW-UP

(NOTE: NUMBERING AND RECOMMENDATIONS AS PER APPENDIX I OF RESOLUTION 09/01)

| ON THE IOTC AGREEMENT – REFORM | RESPONSIBILITY | UPDATE/STATUS | WORKPLAN/ TIMELINE | PRIORITY |
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| 0. The IOTC Agreement needs to be revised or replaced to: 1) allow the full participation of all fishing players, 2) take into account modern principles for fisheries management. | <i>Commission</i> | Pending: No new developments have taken place in this area. | | High |
| ON THE IOTC AGREEMENT – A LEGAL ANALYSIS | RESPONSIBILITY | UPDATE/STATUS | WORKPLAN/ TIMELINE | PRIORITY |
| 1. The final conclusion of the Panel is that the Agreement is outdated and there are many areas for improvement. The weaknesses and gaps identified are, or have a potential to be, major impediments to the effective and efficient functioning of the Commission and its ability to adopt and implement measures aimed at long-term conservation and sustainable exploitation of stocks, according to modern fisheries management instruments. More fundamentally, these deficiencies are likely to prevent the Commission from achieving its basic objectives. | <i>Commission and Members</i> | Pending: No new developments have taken place in this area. | | High |
| 2. Consequently, the Panel recommends that the IOTC Agreement either be amended or replaced by a new instrument. The decision on whether to amend the Agreement or replace it should be made taking into account the full suite of the deficiencies identified. | <i>Commission and Members</i> | Pending: No new developments have taken place in this area. | | High |
| ON CONSERVATION AND MANAGEMENT | RESPONSIBILITY | UPDATE/STATUS | WORKPLAN/TIMELINE | PRIORITY |
| Data collection and sharing | | | | |
| <i>The Panel identified a poor level of compliance by many IOTC Members. with their obligations, notably those related to the statistical requirements on artisanal fisheries and sharks, and recommends that:</i> | | | | |
| 3. The timing of data reporting be modified to ensure that the most recent data are available to the working parties and the Scientific Committee. | <i>Scientific Committee</i> | Completed: Currently CPCs are required to submit information on their flag vessels by 30 th June every year. The timeline for coastal CPCs who license foreign vessels has been brought | Review annually at IOTC WP and SC meetings. | Medium |

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| | | forward to 15 th February every year. The timing of the Working Parties will be reviewed annually to ensure that assessments can be completed and results reported to the Scientific Committee each year. | | |
| 4. The deadline to provide data on active vessels be modified to a reasonable time in advance of the meeting of the Compliance Committee. This deadline is to be defined by the Compliance Committee. | <i>Compliance Committee</i> | Completed: Resolutions 10/07 and 10/08 have modified the reporting date for active vessels, which is now in the month preceding the meeting of the Compliance Committee. Resolution 10/08 establishes February 15 th as the new deadline for submission of the list of active vessels for the previous year. | Periodic review of Resolutions. | Low |
| 5. The scheduling of meetings of the working parties and Scientific Committee be investigated based on the experience of other RFMOs. This should bear in mind the optimal delivery of scientific advice to the Commission. | <i>Scientific Committee</i> | Completed: Given the large number of meetings of other RFMOs, it is becoming increasingly difficult to find a schedule of meetings that would be better than the one currently in practice. However, the Working Parties and the Scientific Committee will annually review the timing of the Working Parties. | Review annually at IOTC WP and SC meetings. | Low |
| 6. The Commission task the Scientific Committee with exploring alternative means of communicating data to improve timeliness of data provision. | <i>Scientific Committee</i> | Partially Completed & Ongoing: The Secretariat encourages members to utilise electronic means to expedite reporting. A study was commissioned for 2011 to determine the feasibility of reporting near real-time for various fleets. Outcome: Real time reporting not currently possible for most CPCs. | Review annually at IOTC WP and SC meetings. | Medium |
| 7. Non-compliance be adequately monitored and identified at individual Member level, including data reporting. | <i>Compliance Committee</i> | Ongoing: Resolution 10/09 has partially been developed for this purpose. Reports on compliance with data reporting requirements have been regularly reviewed by the Compliance Committee, as well as discussed at the species Working Parties, the Working Party on Data Collection and Statistics and the Scientific Committee. For the Compliance Committee meetings, country-based reports have been prepared for this purpose since the 2011 meeting. A first implementation of this approach took place in the Compliance Committee meeting 2011 (Colombo, Sri Lanka) There remains a need to setup a scheme of penalties and incentives. | Annual review at Compliance Committee meeting | High |
| 8. The causes of non-compliance be identified in cooperation with the Member concerned. | <i>Compliance Committee</i> | Ongoing: The Terms of Reference of the Compliance Committee was revised in 2010 (Resolution 10/09) and provides for the assessment of compliance by CPCs. The Secretariat, via the Compliance Section, maintains contact with national officers to determine the reasons for non-compliance, in particular, concerning data reporting. The identification of non-compliance causes started with the | Review annually at the Compliance Committee meeting | High |

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| | | <p>country based approach (Compliance Committee meeting 2011 – Colombo, Sri Lanka).</p> <p>Starting in 2013 the Compliance Section has begun conducting Compliance Support Missions (CSM). To date 15 CPCs have benefitted from CSMs and six CPCs have benefitted from follow-up CSMs.</p> <p>During the intersessional period, staff of the Secretariat have conducted CSMs in Comoros, India, Malaysia, Seychelles/Somalia, South Africa and Thailand, where a Compliance Action Plan have been developed with these CPCs.</p> <p>The Capacity Building activities planned for 2015/16 are detailed in the annual Programme of work and budget for the Secretariat. Refer: IOTC-2015-SCAF12-05.</p> | | |
| 9. When the causes of non-compliance are identified and all reasonable efforts to improve the situation are exhausted, any Member or non-Member continuing to not-comply be adequately sanctioned (such as market related measures). | <i>Compliance Committee</i> | Pending: Resolution 10/10 provides the necessary framework in which to apply market related measures, following an appropriate process. Reductions in future quota allocation have been proposed as deterrents for non-compliance. Process still to be implemented. | Review annually at the Compliance Committee meeting | High |
| 10. There is a need to improve the quality and quantity of the data collected and reported by the Members, including the information necessary for implementing the ecosystem approach. The most immediate emphasis should be placed on catch, effort and size frequency. The Panel also recommends that: | <i>Scientific Committee</i> | Ongoing: See below recommendation 11. Other sources and cooperative arrangements will continue (e.g. IOTC-OFCF Project) or might be available in the future (e.g. SWIOFC, COI, etc.). The Secretariat continues to collaborate with these initiatives. | Review annually at IOTC WP and SC meetings. | High |
| 11. Support for capacity building be provided to developing States – the Commission should enhance funding mechanisms to build developing country CPCs' capacity for data collection, processing and reporting infrastructures, in accordance with the Commission requirements. | <i>Standing Committee on Administration and Finance</i> | Ongoing: In 2010 the Commission allocated USD\$400,000 for a range of projects related to capacity building in data collection and reporting. The Commission allocated USD\$60,000 for Capacity Building in the 2011 budget, USD\$78,000 in 2012 and US\$80,000 in 2013. Further increases have been proposed for the 2014 and 2015 budgets. One workshop was organised in 2011, in Chennai, India involving representatives of several CPCs. Numerous capacity building activities have been delivered by the Secretariat, or in collaboration with other institutions in recent years (e.g., IOTC-OFCF Project, EU-COI-Smartfish, BOBLME, and CPCs). A summary of current activities can be found on the IOTC website: http://iotc.org/about-iotc/capacity-building | Review annually at IOTC meetings. | High |
| 12. A regional scientific observer programme to enhance data collection (also for non-target species) and ensure a | <i>Scientific Committee</i> | Partially completed: Resolution 11/04 (superseding Res.09/04 and Res. 10/04) provides CPCs with the necessary framework for | Review annually at IOTC WP and SC | High |

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| unified approach be established, building on the experience of other RFMOs, Regional standards on data collection, data exchanged and training should be developed. | | putting in place national scientific observer programmes. The Regional Observers Scheme commenced July 1 st 2010, and is based on national implementation. The Secretariat coordinated the preparation of standards for data requirements, training and forms. Implementation by CPCs has been limited to date. The IOTC Secretariat will commence training workshops in 2015 in several key CPCs requesting assistance (i.e. I.R. Iran and Sri Lanka). | meetings. | |
| 13. Actions be taken so that fishing fleets, especially Maldives, Taiwan, Province of China and Yemen participate in data collection and reporting. | <i>Commission</i> | Partially Completed & Ongoing: Maldives became a Member in July 2011 and is complying with its mandatory data requirements. Taiwan, Province of China, submits data from its fishing fleet on a regular basis and complies with most of the IOTC mandatory data requirements. The Yemen became a Member in July 2012. | | High |
| 14. A relationship with Taiwan, Province of China be developed in order to have data access when needed, to all its fleet data as well as historical series, and address the problems deriving from the current legal framework. | <i>Commission and Members</i> | Partially Completed & Ongoing: Taiwan, Province of China, provides data from its fishing fleet on a regular basis and routinely allows access to historical data. It also continues to participate in the Regional Observer Programme to monitor transshipment at sea. | | High |
| 15. The Secretariat's capacity for data dissemination and quality assurance be enhanced, including through the employment of a fisheries statistician. | <i>Standing Committee on Administration and Finance via Scientific Committee Commission</i> | Partially Completed & Ongoing: The existing post of Data Analyst was converted to a Fisheries Statistician to join the Data Section of the Secretariat. The position was filled in September 2012. Further efforts continue to be made to improve data dissemination, including through an online data atlas, planned for 2014/15 which will be launched in early-2015, in addition to general improvements in the dissemination and access to IOTC datasets via the new IOTC website. | Staffing needs to be assessed annually at IOTC meetings. | Medium |
| 16. A statistical working party be established to provide a more efficient way to identify and solve the technical statistical questions. | <i>Scientific Committee</i> | Completed: The Working Party on Data Collection and Statistics (WPDCS) has been formed and will hold its 11 th Session in October 2015. | Annual meeting. | High |
| 17. The obligation incumbent to a flag State to report data for its vessels be included in a separate Resolution from the obligation incumbent on Members to report data on the vessels of third countries they licence to fish in their exclusive economic zones (EEZs). | <i>Compliance Committee</i> | Completed: Resolutions 14/05 (formerly 12/07) and 10/08 address the reporting requirements of flag and coastal States responsibilities, with regards to vessels that are active in the IOTC Area. | Review annually at the Compliance Committee meetings | Medium |
| <i>In relation to non–target species, the panel recommends that:</i> 18. The list of shark species for which data collection is | <i>Commission</i> | Partially Completed & Ongoing: The Commission meetings in 2012, 2013 and 2014 considered several proposals in this regard, and Resolution 12/03 was subsequently adopted and then revised | The Commission to revisit in 2015, taking into account the SC17 | Medium |

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| required in Recommendation 08/04 be expanded to include the five species identified by the Scientific Committee (blue shark, shortfin mako, silky shark, scalloped hammerhead, oceanic whitetip), and apply to all gear types. | | in 2013 as Resolution 13/03. The Scientific Committee has identified several remaining gaps which will be considered at the S19 meeting. | recommendations. | |
| 19. The Secretariat's capacity to provide support to developing States' Members should be enhanced. | <i>Commission and Standing Committee on Administration and Finance</i> | Ongoing: Resolution 10/05 provides a mechanism for financial support to facilitate scientists and representatives from developing IOTC CPCs to attend and/or contribute to the work of the Commission, the Scientific Committee and its Working Parties. In 2012, 2013 and 2014, capacity building funds were provided and utilized in workshops to enhance understanding of the IOTC process among officials of member countries. The Secretariat has also collaborated directly and indirectly with other regional initiatives, including, inter alia, to the EU-COI/SmartFish, BOBLME, OFCF, SWIOFC and EU-COI/SmartFish Project. In 2014 a Regional workshop was organised in collaboration with EU-COI/Smartfish Project, aimed at improving levels of compliance amongst coastal states in particular, in terms of the collection and reporting of fisheries data to the IOTC. | Review annually at IOTC meetings. | High |
| 20. Cooperative capacity building efforts amongst Members and, as appropriate external organisations, should be encouraged. | <i>Members and Secretariat</i> | Ongoing: In November 2011, the first of a series of Capacity Building workshops was held in Chennai, India (17–18 November). The theme was 'Bridging the gap between IOTC science and management'. See also Recommendations 13 and 21. Support was received from the ACP Fish II Project for other workshops in 2012. Further workshops were undertaken in 2014 and 2015 in Thailand and South Africa. | Seek opportunities through other regional projects, and funding directly from CPCs. | High |
| 21. Innovative or alternative means of data collection (e.g. port sampling) should be explored and, as appropriate, implemented. | <i>Scientific Committee</i> | Ongoing: The Secretariat has been implementing sampling programmes since 1999. The IOTC, in collaboration with others (i.e. OFCF, COI, BOBLME) has supported sampling programmes and other means of data collection since 2002. The Secretariat continues to work with CPCs to improve their data collection programs. | Review annually at IOTC WP and SC meetings. | Medium |
| 22. Avenues to collect data from non-Members should be explored. | <i>Secretariat</i> | Ongoing: The activities of the IOTC–OFCF Project have not been limited to IOTC Members, and, in the past, have extended to important non-member fishing countries such as Yemen (now a Member). Participation at IOTC Working Party meetings by scientists from non-IOTC CPCs has been and will continue to be encouraged. | Review annually at IOTC WP and SC meetings. | Medium |

| Quality and provision of scientific advice | | | | |
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| 23. For species with little data available, the Scientific Committee should be tasked with making use of more qualitative scientific methods that are less data intensive. | <i>Scientific Committee</i> | <p>Partially Completed & Ongoing: The species Working Parties have been using informal analyses of stock status indicators when data are considered insufficient to conduct full assessments for some time. However, a formal system that reviews those qualitative indicators and provides a recommendation on the current status, based on the weight-of-evidence is currently being implemented.</p> <p>In 2013 and 2014, data poor approaches to determining stock status was applied to a range of billfish and neritic tuna species. The SC will consider in 2014, options to rank stock status determination using a ‘tier’ approach, which will assist in the interpretation of the level of uncertainty present in assessment methods applied.</p> | To be considered at the WPM and others. Review annually at IOTC WP and SC meetings. | High |
| 24. More emphasis should be given to adherence to data collection requirements. | <i>Compliance Committee</i> | <p>Ongoing: The Working Party on Data Collection and Statistics and the species Working Parties evaluate the availability and quality of data, and make recommendations to the Scientific Committee on how to improve data quality. The country-based compliance report submitted to the Compliance Committee provides information on the timeliness and completeness of the reporting of data required by the various Resolutions of the Commission.</p> <p>A Regional Workshop was conducted in February 2014 to address the issue data reporting, for compliance with IOTC requirements. A conclusion from the Regional Workshop is that the Secretariat will need to conduct in country missions in several of the Member States.</p> | Review annually at the Compliance Committee meeting. | High |
| 25. Confidentiality provisions and issues of accessibility to data by the scientists concerned needs to be clearly delineated, and/or amended, so that analysis can be replicated. | <i>Scientific Committee</i> | <p>Ongoing: Input, output and executable files for the assessment of major stocks are archived with the Secretariat to allow replication of analyses. Access to operational data under cooperative arrangements, and those subject to confidentiality rules is still limited. In some cases the Secretariat is bound by the domestic data confidentiality rules of Members and Cooperating Non-Contracting Parties. The SC recommended to include observer data under the confidentiality policy of IOTC, which was Adopted by the Commission in 2012 as Resolution 12/02.</p> | Review annually at IOTC WP and SC meetings. | Medium |
| 26. The resources of the IOTC Secretariat should be increased. Even though some progress will be made with recruitment of the stock analysis expert, some additional professional staffing is required. | <i>Standing Committee on Administration and Finance on advice</i> | <p>Ongoing: The Secretariat recruited a Fisheries Officer (Science) in 2014, as requested by the Scientific Committee and Commission.</p> | Review annually at IOTC meetings. | High |

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| | <i>from Committees and the Commission</i> | | | |
| 27. To enhance the quality of scientific advice and the technical soundness of the papers being considered by the Scientific Committee and its working parties, and to encourage publication of IOTC scientific papers in relevant journals, future consideration should be given to the establishment of a scientific editorial board within the Scientific Committee | <i>Scientific Committee</i> | Partially Completed & Ongoing: Guidelines for the presentation of stock assessment papers were revised and agreed to by the Scientific Committee in 2010 and 2012. The SC will again revise the guidelines in 2014, as a result of the Commission adoption Recommendation 14/07 <i>To standardise the presentation of scientific information in the annual Scientific Committee report and in Working Party reports.</i> The SC actively encourages national scientists to publish in peer reviewed journals, as is the case following the Tuna tagging Symposium held in 2012. | Review annually at IOTC WP and SC meetings. | Medium |
| 28. An online IOTC Data Summary should be established | <i>Secretariat</i> | Ongoing: Online data summary, Phase I was launched in March 2015. Phase II, which will include a mapping component will be completed by the end of 2015. | Review at SCAF meeting. | Medium |
| 29. Ongoing peer review by external experts should be incorporated as standard business practice of working parties and the Scientific Committee. | <i>Scientific Committee</i> | Pending: External experts (Invited Experts) are regularly invited to provide additional expertise at Working Party meetings, although this does not constitute a formal process of peer review. The Scientific Committee in 2010 and 2011, agreed that once stock assessment models were considered robust, that peer review would be advantageous and funds will be requested to undertake peer reviews of stock assessments. The Scientific Committee reviewed the processes for Invited Experts, Consultants and Peer review at its 14 th Session in 2011. | Review annually at IOTC WP and SC meetings. | Medium |
| 30. New guidelines for the presentation of more user friendly scientific reports in terms of stock assessments should be developed. In this respect, Kobe plots are considered to be the most desirable method of graphical presentation, especially to non–technical audience. | <i>Scientific Committee</i> | Pending: External experts (Invited Experts) are regularly invited to provide additional expertise at Working Party meetings, although this does not constitute a formal process of peer review. The Scientific Committee, in 2010 and 2011, agreed that once stock assessment models were considered robust, that peer review would be advantageous and funds will be requested to undertake peer reviews of stock assessments. The Scientific Committee reviewed the processes for Invited Experts, Consultants and Peer review at its 14 th Session in 2011. | Review annually at IOTC WP and SC meetings. | Medium |
| 31. A special fund to support the participation of scientists from developing States should be established. | <i>Standing Committee on Administration and Finance</i> | Completed: A Meeting Participation Fund was established via Resolution 10/05 and now integrated into the IOTC Rules of Procedure (2014, ROP). The Resolution ROP provides a funding mechanism to facilitate scientists and other representatives from developing IOTC CPCs to attend and/or contribute to the work of | Review annually at IOTC SCAF and Commission meetings. A procedure for supplying funds to the | High |

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| | | <p>the Commission, the Scientific Committee and its Working Parties.</p> <p>The approved MPF budget for 2014 and 2015 is US\$60,000. In addition to this amount, Membership agreed in S18 to place future reductions of the budget under Improved Cost Recover Uplift (ICRU) within the MPF budget. FAO announced a reduction of the ICRU charges in 2014 and US\$66,989 was added to the 2014 and 2015 MPF budget (giving a total budget of US\$126,989). Members agreed that contribution shall be funded through the regular budget contributions of membership. 2016 Budget include a full amount that is required to support participation of scientist to IOTC meetings.</p> | MPF should be developed and presented at S19. | |
| 32. The Commission should renew efforts to convene meetings of the Working Party on Neritic Tunas | <i>Commission</i> | Completed: The first Session of the WPNT took place in India, 14–16 November 2011. The 5 th Session will be held in Tanzania, May 2015. | Annual meeting. | High |
| Adoption of conservation and management measures | | | | |
| 33. As the IOTC has faced the management of the main targeted stock under its purview only through a regulation of the fishing effort; other approaches should be explored, such as those envisioned in Resolution 05/01, including catch limits, total allowable catch (TAC) or total allowable effort (TAE). | <i>Commission</i> | Partially Completed & Ongoing Resolution 10/01, superseded by Resolution 12/13 and again by Resolution 14/02 provides the starting point in the process of moving towards a total allowable catch limit. The first meeting of the Technical Meeting on Allocation Criteria was held in Nairobi, Kenya from 16–18 February 2011 and the Second meeting was held in Muscat, Oman from 18–20 February, 2013. | Annual meeting. | Very High |
| 34. Within the system of the freezing of fishing effort in terms of number of vessels and correspondent capacity in gross tonnage, a deadline should be agreed for the implementation of fleet development plans. | <i>Commission</i> | Completed: Some CPCs have cited the global financial crisis as the reason for their inability to implement their fleet development plan and have therefore signalled to the Commission that their plan will be revised. A deadline of 31 st December, 2009, was set for submission of all revised or new fleet development plans. Resolution 15/11 supersedes 12/11. | Review annually at the CoC and Commission meeting. | Low/Medium |
| 35. IOTC should consider developing a framework to take action in the face of uncertainty in scientific advice. | <i>Scientific Committee and Commission</i> | Partially Completed & Ongoing The Scientific Committee has agreed that the development of a Management Strategy Evaluation process be initiated to provide better advice that would incorporate explicit consideration of uncertainty. | Progress at WPM annual meeting. | High |
| 36. IOTC should use the full range of decision making processes available to it under the Agreement. | <i>Commission</i> | Ongoing: For the first time in its history of adopting Conservation and Management Measures, the Commission took a vote on a proposed resolution during its 14 th Annual Session. | Annual meeting. | High |
| 37. The IOTC Agreement needs to be amended or replaced in order to incorporate modern fisheries management principles, such as the precautionary | <i>Commission and Members</i> | Partially Completed & Ongoing. The Commission addressed this matter through the adoption of Resolution 12/01 <i>on the implementation of the precautionary approach</i> . Some elements | – | High |

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| approach. | | of Precautionary Approach were also adopted in Resolution 13/10 on <i>interim target and limit reference point and a decision framework</i> . | | |
| 38. Pending the amendment or replacement of the Agreement, the Commission should implement the precautionary approach as set forth in the UNFSA. | <i>Commission</i> | Pending: see also Recommendations 35 and 37. | For consideration at S17. | High |
| 39. Measures to regulate shark fisheries should be considered by the Commission. | <i>Commission</i> | Partially Completed & Ongoing: Resolution 05/05 provides the framework for combating the practice of shark finning and Resolution 12/09 is aimed at the conservation of sharks of the family Alopiidae. Resolution 13/06 <i>on a scientific and management framework on the conservation of sharks species caught in association with IOTC managed species</i> . | For consideration at S18. | High |
| 40. There is a need to develop and take into account modern principles for fisheries management, including ecosystem based approach, protection of marine biodiversity and reducing the harmful impacts of fishing on marine environment. | <i>Commission and Members</i> | Ongoing: Resolutions 10/06, 12/06, 12/04, 12/12, 13/04 and 13/05, are all aimed at encouraging fishing practices that protect marine biodiversity and reducing the harmful impacts of fishing on the marine environment or on species that are incidentally caught in association with IOTC species. | For further consideration at S19. | Medium |
| 41. These concepts should be integrated in the IOTC Agreement. | <i>Commission and Members</i> | Pending. See Recommendations 1 and 2 above. | | High |
| Capacity management | | | | |
| 42. IOTC should establish a stronger policy on fishing capacity to prevent or eliminate excess fishing capacity. | <i>Working Party on Fishing Capacity Scientific Committee Commission</i> | Ongoing: The Commission has since 2003 adopted a series of Resolutions (03/01, 06/05, 07/05, 09/02, 12/11) with the objective of addressing the issue of fishing capacity. However, to date these resolutions have not resulted in a strong control on fishing capacity, and the concern remains that overcapacity might result from this lack of control. The Secretariat is actively involved in developing the global vessels record for vessels fishing for tuna and tuna-like species that would contribute to the assessment of existing fishing capacity. A second fishing capacity study was conducted in 2013. | See Recommendation 33, which has been agreed as the priority path in this regard. | Medium |
| 43. Loopholes in the current systems of fishing capacity limitation, such as the establishment of fleet development plans and exemptions for vessels less than 24 meters, should be closed. | <i>Working Party on Fishing Capacity Commission</i> | Partially Completed & Ongoing: Resolution 09/02, superseded by Resolution 12/11, and the decisions made at IOTC 14, establishing a new deadline to file fleet developments plans, aim at establishing firm capacity targets. The IOTC Scientific Committee has indicated that IOTC fisheries should not be managed via fishing capacity limitations, as they are inherently difficult to manage and highly uncertain due to variations in fishing power over time and among vessels. | See Recommendation 33, which has been agreed as the priority path in this regard. | Medium |

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| 44. IOTC should endorse the recommendation of the Scientific Committee to create a Working Group on Fishing Capacity. | <i>Commission</i> | Partially completed & Ongoing: The first Working Party on Fishing Capacity was convened in 2009. In 2010 and all years since, as no new documents were presented, it was amalgamated into the Working Party on Tropical Tunas as a theme session. A review of compliance to Resolution 12/11 on fishing the capacity resolution to be included in the second performance review of the IOTC. | See Recommendation 33, which has been agreed as the priority path in this regard. | Medium |
| Compatibility of management measures | | | | |
| 45. IOTC Members should be invited to promptly implement IOTC conservation and management measures through their national legislation. | <i>Secretariat and Commission</i> | Ongoing: CPCs are reminded annually about the responsibility of integrating IOTC Conservation and Management Measures in their national legislation. The Secretariat is cooperating with CPCs by assisting in the assessment of the legal needs to effectively implement IOTC measures. | Annually review at CoC and Commission meetings. | Very high |
| Fishing allocations and opportunities. | | | | |
| 46. IOTC should explore the advantages and disadvantages of implementing an allocation system of fishing quota, expressed as TAC or TAE system. Such an investigation should include consideration of how significant catches by current non–Members would be accounted for. | <i>Commission</i> | Partially Completed & Ongoing: Resolution 10/01, superseded by Resolution 12/13 and again by Resolution 14/02 has begun the process of moving towards the implementation of a total allowable catch limit for IOTC species. The Technical Committee on Allocation Criteria met twice to discuss on proposed guidelines and methods to allocate future quota. No allocation criteria have been decided so far. | See Recommendation 33, which has been agreed as the priority path in this regard. | Medium |
| ON COMPLIANCE AND ENFORCEMENT | RESPONSIBILITY | UPDATE/STATUS | WORKPLAN/TIMELINE | PRIORITY |
| Flag State duties | | | | |
| 47. Any amendment to or replacement of the IOTC Agreement should include specific provisions on Member's duties as flag States, drawing on the relevant provisions of the UNFSA. | <i>Commission and Members</i> | Pending. | | High |
| Port State measures | | | | |
| 48. Any amendment to or replacement of the IOTC Agreement should include specific provisions on Member's duties as port States. | <i>Commission and Members</i> | Pending. | | High |
| 49. IOTC should explore the possible implementation of the FAO Model Scheme on Port State Measures. | <i>Commission</i> | Completed: Resolution 10/11 is inspired by the FAO Port State Measures Agreement. By adopting this resolution, IOTC CPCs have agreed to implement the conditions of this agreement even before it becomes globally binding, and it became the first RFMO to do so. Implementation begun as of 1 st March 2011. The | Review annually at the CoC meeting. | High |

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| | | Resolution applies only to the IOTC Area. An evaluation of legal needs and training for officials of coastal CPCs was organised by the Secretariat with the support of the ACP Fish II Programme. | | |
| 50. The IOTC should duly note the outcome of the current process for establishment of a globally binding agreement on port State measures. | <i>Commission</i> | Completed: see Recommendation 49. | | |

| Monitoring, Control and Surveillance | | | | |
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| <p>51. IOTC should develop a comprehensive monitoring, control and surveillance (MCS) system through the implementation of the measures already in force, and through the adoption of new measures and tools such as a possible on-board regional observers' scheme, a possible catch documentation scheme as well as a possible system on boarding and inspection.</p> | <p><i>Compliance Committee</i></p> | <p>Ongoing: IOTC already has an extensive number of MCS related measures. However, the implementation of these measures are the duty and responsibility of the CPCs. Proposals to introduce a catch documentation scheme, especially for the major IOTC species, have until now not received the agreements CPCs. As a way forward, the Commission agreed to set up an IOTC Intersessional Working Party to make progress on a catch documentation scheme for tropical tuna species.</p> <p>During the intersessional period the EU circulated two documents to the WG for comments and Mozambique produced a document designed to capture comments. Beyond this not much progress has been made, as it was not possible to hold a meeting.</p> <p>It should be noted that there is a Project under the ABNJ Programme, on Tuna Traceability & CDS Best Practices. It would be advisable that the Working Party waits for the conclusion of this project so that it can be better guided in its work.</p> <p>Resolution 11/04 – observers and field samplers are required to monitor the landing and unloading of catches respectively.</p> <p>The IOTC Regional Observer Programme (ROP) has over the years expanded in scope to include the verification of documents on board fishing vessels (flag State Authorisation To Fish and fishing logbook), marking of vessels (consistent with information in the IOTC Record of Authorised Vessels) as well as their VMS.</p> <p>The results of a study on options for a regional high-seas boarding and inspection scheme, for the IOTC Area, was presented the last Compliance Committee meeting (CoC11). However, CPCs were of the opinion that the further work is required to adapt the option for the IOTC Area. For this purpose, the Commission requested that an informal Working Group be constituted. Not much progress has been made by the Working Group in the intersessional period.</p> | <p>Review annually at IOTC meetings.</p> | <p>High</p> |
| <p>Follow-up on infringements</p> | | | | |
| <p>52. The current IUU resolution should be amended to allow the inclusion of vessels flagged to Members.</p> | <p><i>Commission</i></p> | <p>Ongoing: The Compliance Committee, under its revised terms of reference, is in a better position to assess such cases through the country-based Compliance Reports, and will continue to do so in 2015.</p> | <p>Review annually at IOTC meetings</p> | <p>Medium</p> |

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| | | <p>Infringements detected under the ROP are communicated to the concerned fleets for their investigation and provision of explanations and/or actions taken.</p> <p>There remains a need to setup a scheme of penalties and incentives.</p> | | |
| 53. IOTC should explore options concerning the possible lack of follow-up on infringements by CPCs. | <i>Compliance Committee</i> | <p>Ongoing: The Compliance Committee, under its revised terms of reference, is in a better position to assess such cases through the country-based Compliance Reports, and will continue to do so in 2015.</p> <p>Infringements detected under the ROP are communicated to the concerned fleets for their investigation and provision of explanations and/or actions taken.</p> <p>There remains a need to setup a scheme of penalties and incentives.</p> | Review annually at IOTC meetings | Medium |
| 54. IOTC should establish a sanction mechanism for non-compliance, and task the Compliance Committee to develop a structured approach for cases of infringement. | <i>Compliance Committee</i> | <p>Pending: The Compliance Committee, under its revised terms of reference, shall develop a scheme of incentives and sanctions and a mechanism for their application to encourage compliance by all CPCs.</p> <p>There remains a need to setup a scheme of penalties and incentives.</p> | <p>Attempts over the last two years to introduce a scheme of penalties to be applied in case of non-fulfilment of reporting obligations have so far not received the required support for adoption.</p> <p>There is a need to continue with these efforts.</p> | High |
| 55. Provisions for follow-up on infringement should be included in any amended/replaced Agreement. | <i>Commission and Members</i> | Pending: | | High |
| Cooperative mechanisms to detect and deter non-compliance | | | | |
| 56. A structured, integrated approach to evaluate the compliance of each of the Members against the IOTC Resolutions in force should be developed by the Compliance Committee. | <i>Compliance Committee</i> | Ongoing: Since the 2011 Compliance Committee meeting, country-based reports have been prepared for this purpose on the basis of Resolution 10/09. | Review annually at the Compliance Committee meeting | High |
| 57. CPCs should be reminded of their duty to implement in their national legislations the conservation and management measures adopted by IOTC. | <i>Compliance Committee</i> | Ongoing: CPCs are reminded annually about the responsibility of integrating IOTC conservation and management measures in their national legislation. The Reports of Implementation, mandated in the IOTC Agreement, provide a mechanism to | Review annually at IOTC meetings | High |

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| | | <p>monitor progress of implementation at the national level.</p> <p>The first phase of a project sponsored through the WB/IOC grant for <i>Global Partnership for Oceans</i>, has just been completed. The objective of the project is to develop a model legal framework to facilitate CPCs to efficiently transpose conservation and management measures adopted by the Commission into their national legislation.</p> | | |
| 58. The requirement to present national reports on the implementation of IOTC measures should be reinforced. | <i>Compliance Committee</i> | Ongoing: Reminders are sent to CPCs prior to the Commission meeting and a template, which is revised annually, is provided by the Secretariat to facilitate CPCs preparation of national reports on implementation of IOTC measures. Compliance with this requirement is assessed in the country-based compliance reports. With the introduction of the country-based Compliance Reports, this reporting requirement has gone from 52% for 2010 to 82% for 2012, and down to 76% in 2013. | Review annually at IOTC meetings | High |
| 59. The sense of accountability within IOTC seems to be very low; therefore more accountability is required. There is probably a need for an assessment of the performance of CPCs. | <i>Compliance Committee</i> | Ongoing: The revised terms of reference of the Compliance Committee now facilitates this assessment in the form of the country reports prepared for the Compliance Committee meeting. <p>Through the Compliance Support Mission, CPCs are becoming more conscious of their role in ensuring the effectiveness of the Commission.</p> | Review annually at IOTC meetings | High |
| 60. Establishment of formal mechanisms of MCS (e.g. observers programmes) should be considered | <i>Compliance Committee</i> | Ongoing: Resolution 14/06 (superseding Resolutions 12/05, 11/05, 08/02 and 06/02) provides for an observer programme to monitor at sea transshipments, by placing observers on carrier vessels. Resolution 11/04 (superseding Resolution 09/04 and 10/04) establishes a Regional Observer Scheme that includes observers on board fishing vessels and port sampling for artisanal fisheries. <p>Implementation remains pending for a number of CPCs.</p> | Review annually at IOTC meetings | Medium |
| Market related measures | | | | |
| 61. As IOTC action in terms of measures relating to the exercise of rights and duties of its Members as market States are very weak, the non-binding market related measure should be transformed into a binding measure. | <i>Commission</i> | Partially Completed & Ongoing: Resolution 10/10 partially meets this requirement. | Review annually at IOTC meetings | Medium |
| 62. The bigeye statistical document programme should be applied to all bigeye products (fresh and frozen). Catch documentation schemes for target species of high commercial value should be considered. Alternatively, | <i>Commission</i> | Partially Completed & Ongoing: Proposals for a resolution to introduce a catch documentation scheme, especially for the major IOTC species, was not endorsed by CPCs at its 14 th , 15 th or 16 th annual Sessions. An adhoc working group has been set up to | Commission to consider proposals from CPCs at its annual session. | High |

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| expanding the scope of the current statistical document programme to address current loopholes should be considered. | | further the discussion outside the plenary. | | |
| ON DECISION MAKING AND DISPUTE SETTLEMENT | RESPONSIBILITY | UPDATE/STATUS | WORKPLAN/TIMELINE | PRIORITY |
| Decision making | | | | |
| 63. In order to improve the IOTC practices of decision making and adoption of measures, when every effort to achieve consensus has been exhausted, invoking the procedure of voting should be explored | <i>Commission</i> | Ongoing: Resolution 10/12 (superseded by Resolution 12/09) was voted upon by CPCs at the IOTC's 14 th Annual Session. It was the first time that the voting procedure was used in IOTC for the adoption of a resolution. | To be implemented as necessary. | High |
| 64. Amending the objection procedure so that it is more rigorous, and in line with other RFMO Conventions, featuring restricted grounds for the bases to object is recommended. | <i>Commission and Members</i> | Pending. | | High |
| Dispute settlement | | | | |
| 65. A provision on dispute settlement should be amended in line with the requirements of UNFSA. | <i>Commission and Members</i> | Pending. | | High |
| ON INTERNATIONAL COOPERATION | RESPONSIBILITY | UPDATE/STATUS | WORKPLAN/TIMELINE | PRIORITY |
| Transparency | | | | |
| 66. The active vessels list should be made available on the IOTC website. | <i>Commission Secretariat</i> | Completed: Resolutions 07/02, 10/07 and 10/08. The lists of authorised and active vessels are hosted on the IOTC website. | Periodic revision. | High |
| 67. The Commission, in consultation with the Scientific Committee, should review the availability of critical data sets used in development of scientific advice and take steps to assure that these data are held at the Secretariat and available for validation of analyses, subject to the appropriate confidentiality requirements. | <i>Commission</i> | Ongoing: See Recommendations on Data collection and sharing above. | | |
| Relationship to cooperating non Members | | | | |
| 68. The legal framework of the IOTC Agreement should be amended or replaced in order to enable fishing players active in the area to discharge their obligations in line with the UNFSA. | <i>Commission and Members</i> | Pending: In the meantime, alternative ways of participation of active fishing fleets in the activities of the Commission are being pursued. | | High |
| Relationship to non cooperating non Members | | | | |
| 69. Although the IOTC has strengthened its action | <i>Commission</i> | Ongoing: The Secretariat has been active in contacting relevant | | High |

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| towards non–Members in order to have all important fishing players included under its remit, diplomatic approaches should be made by IOTC Members to non–Members with active vessels in the area. | | non–Members to encourage their participation. The Secretariat has also responded to queries, briefed representatives about membership from Bangladesh, DPR of Korea, United Arab Emirates, Singapore and Myanmar. | | |
| 70. When non–cooperation is identified and all reasonable efforts to improve the situation are exhausted, any non–Members continuing not to cooperate should be adequately sanctioned by, for example, market related measures. | <i>Compliance Committee</i> | Ongoing: Resolution 10/10 provides the necessary framework in which to apply market related measures. Actions are to be taken by the Compliance Committee, under its revised terms of reference. However, the creation of a scheme of incentives and sanctions and a mechanism for their application to encourage compliance by all CPCs is still pending . | Review annually at IOTC meetings | High |
| Cooperation with other RFMOs | | | | |
| 71. IOTC should establish mechanisms for a mutual recognition of IUU lists with other RFMOs. | <i>Commission</i> | Partially Completed & Ongoing: This issue is addressed in the Resolutions dealing with capacity transfers insofar as to vessels found on IUU lists of other tuna RFMOs should not be flagged by CPCs. | Review other RFMO IUU Lists upon request to add new vessels to the IOTC Record of Authorised Vessels. | High |
| 72. IOTC should develop cooperative mechanisms, such as MoUs, to work in a coordinated manner on issues of common interest, in particular non–target species and an ecosystem approach with other RFMOs especially with SIOFA. | <i>Commission</i> | Ongoing: The Secretariat is active in identifying opportunities for collaboration, for the consideration of the Commission. The KOBE process also facilitates the interaction of tRFMO’s. In 2011 the first bycatch joint technical working group was held. MoUs have been signed with ICCAT and CCSBT for the implementation of the Regional Observer Programme. IOTC and WCPFC has a MoU to exchange information at the Secretariat level on matters of common interest. Further information is available via the IOTC Website: http://iotc.org/about-iotc/cooperation-other-organisations | Annual review | Medium |
| 73. IOTC should annually agree on a Member attending other tuna RFMO meetings as an observer on its behalf and reporting back to the Commission on matters of interest | <i>Commission</i> | Ongoing: Pending annual financial approval by the Commission. | Annual review. | Low |

| Special requirements of developing States | | | | |
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| 74. A specific fund to assist capacity building should be put in place. | <i>Standing Committee on Administration and Finance</i> | Partially completed & Ongoing: A Meeting Participation Fund was established via Resolution 10/05 and now integrated into the IOTC Rules of Procedure (2014, ROP) (See 19 and 31) and needs ongoing financial contributions. Additional funding for capacity building provided in 2012, and 2013, 2014, 2015 and proposed in the budgets for 2014, 2016 and 2017. See also para. 11 above. | S19 will need to consider proposed budget lines for capacity building funds. | High. |
| 75. Members, that are Parties of UNFSA, should make use of the part VII Fund, established under UNFSA. | <i>Members</i> | Ongoing: Regular reminders are sent to CPCs. | Annually for each IOTC meeting. Currently unknown to what degree CPCs are utilizing this fund. Feedback from delegates sought. | Medium |
| Participation | | | | |
| 76. Financial support, in particular for attendance in the scientific activities to developing States, is needed. | <i>Standing Committee on Administration and Finance</i> | Partially completed & Ongoing: A Meeting Participation Fund was established via Resolution 10/05 and now integrated into the IOTC Rules of Procedure (2014, ROP). The Resolution ROP provides a funding mechanism to facilitate scientists and other representatives from CPCs who are developing States to attend IOTC meetings. The fund is financed in the, initially, by accumulated funds, with no provisions for long-term support yet agreed through membership contributions. | Annually for each IOTC meeting. | High |
| 77. The legal framework of the IOTC should be amended or replaced in order to enable fishing players active in the area to discharge their obligations in line with the UNFSA. | <i>Commission and Members</i> | Pending. | Commenced in 2014. Small working group of CPCs to lead. | High |
| ON FINANCIAL AND ADMINISTRATIVE ISSUES | | UPDATE/STATUS | WORKPLAN/TIMELINE | PRIORITY |
| Availability of resources for RFMO activities – efficiency and cost-effectiveness | | | | |
| 78. The IOTC Agreement as well as financial management rules should be amended or replaced in order to increase Members' as well as Secretariat's control of all the budget elements, including staff costs of the budget. This would also improve transparency. | <i>Standing Committee on Administration and Finance</i> <i>Commission and Members</i> | Pending. See Recommendations 1 and 2. | | High |

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| 79. Prior to the Commission assuming full control of the budget, the Commission meeting at which the budget is considered should be held as close as possible to the commencement of the financial year to which this budget relates and if possible in advance of that year. | <i>Commission</i> | Completed: The Commission has adopted a modified annual budget process to address this issue, with the budget for the next financial year adopted in the previous year (i.e. 2015 Session adopts the budget for 2016). | | Medium |
| 80. A fee system should be considered as a possible funding mechanism for possible new activities. | <i>Commission</i> | Pending: The IOTC Regional Observer Program (monitoring transshipment at sea) is fully funded by the participants through such a fee system. | | Medium |
| 81. The agreed external financial audit should be implemented as soon as possible, and should include a focus on whether IOTC is efficiently and effectively managing its human and financial resources, including those of the Secretariat. | <i>Standing Committee on Administration and Finance Commission</i> | Pending. | | |

APPENDIX III
SUMMARY OF A LEGAL ANALYSIS OF THE IOTC AGREEMENT AGAINST THE UNFSA

| Title of Article from IOTC Agreement | Comment | Agreement Article | UNFSA Article |
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| Establishment | <p>The Article simply establishes the Commission and highlights that it is formed under the auspice of the Food and Agriculture Organization of the United Nations. There is no reference to the elements contained in the UNFSA Article 8 including, <i>inter alia</i>, that States with a real interest becoming members of the RFMO and only members to the organisation or those who agree to apply measures established by such an RFMO shall have access to the fishery resources.</p> | I | 8 |
| Area of competence | <p>The Agreement refers to the Indian Ocean as defined by the FAO Statistical Areas, specifically areas 51 and 57, and the adjacent seas, north of the Antarctic Convergence zone, as its area of competence. The Article further highlights that the area of competence applies for the purpose of the conservation and management of stocks that migrate in and/or out of the Indian Ocean. The treaty doesn't specify the application to exclusive economic zones, territorial seas or archipelagic waters, however the obligation on states to implement compatible measures in waters under national jurisdiction in accordance with Article 7 of UNFSA remains. It must also be recalled that there is an overlap with the WCPFC Convention area in the area between 140 and 150 degrees East (below Australia).</p> <p>The UNFSA applies to the conservation and management of straddling and highly migratory fish stocks in areas beyond national jurisdiction. However, Article 5 (principles) Article 6 (precautionary approach) and Article 7 (compatibility) apply also to the conservation and management of such stocks within areas under national jurisdiction. Importantly UNFSA states that there shall be due consideration to the respective capacities of developing States regarding the application of articles 5, 6 and 7.</p> | II | 3, 9(1)(a), 9(1)(b) |
| Species and Stocks | <p>This Article provides for the species covered by the Agreement. Annex B of the Agreement lists 16 specific species. There are species listed in LOSC that the IOTC Agreement does not have a specific mandate to conserve or manage.</p> <p>As an implementing agreement under LOSC, UNFSA refers to all fish stocks and highly migratory fish stocks where fish includes molluscs, crustaceans except sedentary species and highly migratory fish stocks means all fish stocks listed in Annex 1 of LOSC.</p> <p>Other RFMOs, for example WCPFC simply states that the Convention is consistent with the UNFSA thereby requiring the provisions to be interpreted and applied in the context of and consistent with the LOSC while also referring to the UNFSA.</p> | III | - (relevant reference is LOSC Annex 1) |

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| Membership | <p>This Article details who is entitled to become a member of the IOTC. Membership is restricted to members and associate members of FAO, however, States that are not members of FAO, but members of the United Nations,³ might be admitted to become parties of IOTC, provided that their application receives support by two-thirds of the IOTC parties. In addition, both categories of applicants must either be a coastal State wholly or partly situated within the Convention area or vessels flying their flag fishing for stocks covered by the IOTC Agreement. However, in practice the IOTC has never been asked to consider a membership application, rather new members simply deposit an instrument of accession with the depositary – the FAO.</p> <p>Article 8 of UNFSA provides that States with a ‘real interest’ in the fisheries may become members of the relevant RFMO but the term ‘real interest’ is not defined. In practice real interest is generally taken to be that members of RFMOs at least should include coastal States situated within or facing the RFMO’s regulatory area and States fishing for stocks in the area. UNFSA applies to all fishing players,⁴ meaning that all having a real interest in a fishery managed by an RFMO should be entitled to become members of that RFMO. The IOTC should establish clear guidelines to assess real interest particularly in light of memberships from States such as Sierra Leone and Guinea.</p> | IV | 8 |
| Objectives | <p>The IOTC objective is ‘<i>to promote cooperation among its members with the 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</i>’.</p> <p>The objective of UNFSA is ‘to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention’.</p> <p>Other RFMOs have stand-alone provisions to describe the objective(s) of the Commission, which are consistent with UNFSA.</p> | V(1) | 2 |
| Functions and Responsibilities of the Commission | <p>The relevant paragraph of the article makes reference to the relevant articles of LOSC (Article 119), but not UNFSA. The functions of the IOTC Commission are limited and do not take account of functions described in UNFSA such as agreeing participatory fishing rights and a means of accommodating the fishing interests of new members in relation to catch and/or effort allocations or appropriate levels of fishing effort relative to the sustainable use of the resources; establishing minimum standards for responsible conduct of fishing operations; obtaining and evaluating scientific advice and setting minimum standards for the collection and verification of fisheries data related to the target, non-target, associated and dependent species and the ecosystem more broadly; establishing and implementing cost effective monitoring, control and surveillance measures; dispute settlement and cooperation with national fisheries agencies.</p> | V(2(a-h)(3)) | 10 |

³ Members also of any of the United Nations Specialized Agencies or of the International Atomic Energy Agency might become parties to IOTC. It is, however, rather unclear to envisage the possible role that the latter might play within the organisation.

⁴ Cf. article 1 of UNFSA.

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| | Other RFMOs have stand-alone provisions to describe the functions of the Commission, which are consistent with the provisions of UNFSA. | | |
| Session of the Commission | <p>The Article provides all the usual operational aspects expected of an RFMO. Unlike UNFSA, the article also mixes the voting procedures as a component of this article rather than having it as a stand-alone provision outlining the decision making procedures of the Commission.</p> <p>Other RFMOs don't have designated provisions to describe session of the Commission, but rather have a stand-alone provision that establishes the Commission and sets out the general operation of the Commission including selection of a chair, holding annual sessions, providing cost-effectiveness, etc.</p> | VI | 8 |
| Observers | <p>Article VII of the IOTC Agreement deals with the role of observers, giving non-members, intergovernmental organisations the possibility to attend IOTC meetings. Furthermore, Rule XIV of the IOTC Rules of Procedure provides for the participation of non-governmental organisations and the Commission has agreed a list of pre-approved non-governmental organisations.</p> <p>UNFSA Article 12 requires transparency in the decision-making processes and other activities of the Commission.</p> <p>Other RFMOs have a stand-alone provision regarding transparency of the RFMOs work and actions as a more general issue, e.g., WCPFC Article 21.</p> | VII | 12 |
| Administration | <p>The Article outlines the role of the FAO in the administration of the treaty and includes the role of the FAO Director-General in the work of the Commission and that the financial regulations of the FAO apply to the Commission.</p> <p>UNFSA highlights that for effective conservation and management of straddling and highly migratory fishery resources, that all those with a real interest to be party to the treaty. Moreover, Article 13 of UNFSA outlines the need to strengthen existing organisations and arrangements to improve their ability to establish and implement conservation and management measures for highly migratory fishery resources. The current administrative arrangements do not provide for the participation of all those with a real interest in the work of the Commission to be party to the treaty and the Commission has insufficient decision making and administrative autonomy.</p> | VIII | 8, 9(2), 10 |
| Procedures Concerning Conservation and Management Measures | <p>The Agreement literally outlines the procedures for the adoption of Conservation and Management Measures. Of concern is that the Agreement calls for proposals from sub-commissions established under Article XII, which limits the ability of an individual party to bring forward proposals for the Commission consideration. Also concerning is the lack of reference to key provisions of UNFSA, namely articles 5, 6 and 7.</p> <p>UNFSA provides great detail regarding the conservation and management of highly migratory fisheries resources. Article 5 outlines the general principles to be taken into account when developing measures. Article 6 outlines how the precautionary approach is to be applied. Article 7 provides that measures, without prejudicing the rights of coastal States, should be compatible between high seas areas and areas under national jurisdiction.</p> | IX | 5, 6, 7 |
| Implementation | Article X provides some guidance on member's duties for the implementation and includes a variety of topics relevant to implementation, such as adoption of national legislation, the duty of members for imposing adequate penalties for violations of IOTC measures and providing statements on actions taken in that regard. The provision | X | 18, 19 |

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| | <p>also mandates IOTC parties, through the Commission, to establish a system for monitoring, control and surveillance as well as monitoring activities of non-members.</p> <p>UNFSA devotes an entire section (Part V, Article 18) to the duties of flag States, specifying the flag State role, responsibilities and duties with regard to vessels flying its flag and obligations in relation to the implementation of the treaty for vessels on the high seas. In addition, Article 19 considers compliance and enforcement by flag States, including enforcing measures, undertake immediate investigations, and ensure that a vessel does not engage in fishing on the high seas until all sanctions are complied with.</p> <p>Other RFMOs contain similar provisions, but are more extensive and explicit about member duties and the possible consequences of failing implementation.</p> | | |
| Information | <p>Article XI of the IOTC Agreement provides for the collection of relevant fisheries data from parties and enables the Commission to determine the scope, form and timing of data submissions. However there is very limited detail provided in the Agreement text itself.</p> <p>Annex 1 of UNFSA outlines very detailed data collection and reporting requirement for highly migratory fisheries resources. The obligation on States to cooperate and provide a range of fisheries data is reinforced throughout UNFSA see for example Articles 5(j), 10(e)(f), 14, 18(3)(e), 21(11)(b).</p> <p>Other RFMOs, for example WCPFC, provide greater emphasis and are more explicit regarding the requirement of parties to collect and submit relevant fisheries data including outlining the information required for all vessels fishing for highly migratory fisheries resources in the Convention Area.</p> | XI | Annex 1, 5(j), 10(e)(f), 14, 18(3)(e), 21(11)(b) |
| Subsidiary Bodies | <p>This Article establishes a permanent Scientific Committee, but fails to provide any guidance on functions or tasks of this permanent body, nor is there any formal link between the Scientific Committee and the Commission. In contrast, the Commission may establish sub-commissions to deal with one or more stocks covered by the IOTC Agreement, which are mandated to keep under review and gather information, assess and analyse conditions and trends as well as coordinate research and studies on the stocks concerned.</p> <p>Article 5 of UNFSA requires parties to collect, share and complete accurate data concerning fishing activities on, <i>inter alia</i>, vessel position, catch and fishing effort, as set out in its Annex I, as well as information from national and international research programmes. In addition Article 14 of UNFSA outlines the criteria for the collection and provision of such information, also through RFMOs, and cooperation in scientific research. As for the stocks concerned, it is clear that most data collection and sharing are carried out under the auspices of scientific bodies of relevant RFMOs or international institutions providing advice to RFMOs. These bodies are, however, dependent on data provided by national scientists and institutions.</p> <p>Other RFMOs, require the establishment of scientific committees, and contain specific provisions for their functions, including a formal linkage between the committees and their respective commissions. WCPFC also outlines the functions of the Technical and Compliance Committee (Article 14) thereby providing clarity regarding compliance and technical advice.</p> | XII | 5, 10(h), 14 |
| Finances | <p>Article XIII of the IOTC Agreement gives the framework for the financial arrangements. In essence the provision empowers the Commission to adopt a budget and to establish a contribution formula as well as obligations on</p> | XIII | n/a |

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| | <p>members to contribute in accordance with that agreed formula. IOTC has adopted a scheme for calculation of contributions to the administrative budget of the Commission, which is an annex to the financial regulations. Being an organisation set up under Article XIV of FAO, IOTC has special relations to FAO concerning financial issues. This is reflected in article V about the objective, functions and responsibilities of the Commission requiring the accounts and autonomous budget to be transmitted to the Director-General of FAO, and article VI about sessions of the Commission stating that the financial regulations shall be consistent with principles embodied in the Financial Regulations of FAO. The Finance Committee of FAO has the power to disallow the IOTC financial regulations and any amendments thereto if it finds them inconsistent with the FAO Financial Regulations. In all RFMOs, except for IOTC and the General Fisheries Commission of the Mediterranean, adoption of the budgets of the organization require consensus. In IOTC voting may take place also on the budget if the efforts to achieve consensus fail.</p> <p>UNFSA is largely silent on the administration of RFMO budgets, but it does make references to the need to provide financial assistance to developing State members of RFMOs (preamble, article 25(2) and Annex 1).</p> <p>Like IOTC, other RFMOs have established permanent subsidiary bodies to deal with financial issues, which are responsible for reviewing the operation of the budget for the current year and examining the draft budget for the coming year. Financial committees are not, however, established through the conventions itself, but more likely in accordance with powers given to the Commission. The WCPFC Convention, for example, includes three specific articles related to the financial affairs of the Commission: Article 17 regarding funds of the Commission, Article 18 regarding the commission's budget, Article 19 regarding the annual audit of the Commissions finances.</p> | | |
| Headquarters | <p>Common standards of multilateral treaties, generally included in a stand-alone section of the treaty regarding the Secretariat (see for example Article 15 of the WCPFC Convention).</p> <p>In other RFMOs this section generally includes provisions that the Commission established a headquarters agreement, outline the functions of the Secretariat and the appointment procedures for, and role of, the Executive Secretary (or equivalent).</p> | XIV | n/a |
| Cooperation with Other Organizations | <p>Although brief, the Article outlines that the Agreement shall cooperate with other intergovernmental organisations and institutions that might contribute to or benefit from closer collaboration. The Article also provides for the ability to enter into agreements with such organisations to promote complementarity thereby avoiding duplication.</p> <p>UNFSA covers this concept in two separate articles Article 9(1)(C) and 12(2).</p> <p>In other RFMOs some of the key regional or intergovernmental organizations are listed in the treaty itself.</p> | XV | 9(1)(c), 12(2) |
| Coastal States Rights | <p>The Article recognises the legitimate rights of coastal States to their exclusive economic zone consistent with LOSC (Part V). However the Article does not apply the provisions regarding developing States consistent with UNFSA. Moreover the article does not provide clear linkages regarding the need to implement compatible measures in waters under national jurisdiction (Article 7) and thereby providing for the effective management of the resources throughout their range.</p> <p>Part VII of UNFSA includes Articles 24, 25 and 26 and outlines the requirements of developing States. Article 24 includes recognition of the special requirements of developing States including related to the duty to cooperate and when adopting conservation and management measures. Article 25 outlines the forms of cooperation that the</p> | XVI | 24-26 |

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| | Commission provide to developing State. Article 26 outlines the specific assistance required to implement the provisions of UNFSA itself. | | |
| Acceptance | Common standards of multilateral treaties, generally included in the Final Clauses section of the treaty. | XVII | n/a |
| Entry Into Force | Common standards of multilateral treaties, generally included in the Final Clauses section of the treaty. | XVIII | n/a |
| Reservations | Common standards of multilateral treaties, generally included in the Final Clauses section of the treaty. | XIX | n/a |
| Amendment | Common standards of multilateral treaties, generally included in the Final Clauses section of the treaty. | XX | n/a |
| Withdrawal | Common standards of multilateral treaties, generally included in the Final Clauses section of the treaty. | XXI | n/a |
| Termination | Common standards of multilateral treaties, generally included in the Final Clauses section of the treaty. | XXII | n/a |
| Interpretation and Settlement of Disputes | The Agreement provides for the establishment and adoption of a dispute settlement procedure for when the Commission cannot settle the dispute internally, although the Commission is yet to develop these procedures. In developing these procedures the Commission could simply apply the procedures described in Article 30 of UNFSA as other RFMOs have done (see for example Article 31 of the WCPFC Convention). | XXIII | 27-32 |
| Depositary | Common standards of multilateral treaties, generally included in the Final Clauses section of the treaty. Being an Article XIV body of the FAO the Director General is the Depositary of the Agreement. | XIV | n/a |
| UNFSA Articles without an IOTC Equivalent | | | |
| Use of terms | The Agreement does not contain a provision on ‘definitions’ or ‘use of terms’. Although some of the terms are found in other provisions of the Agreement text, there are a number of critical terms that are undefined. For example ‘fishing/fishing activity’, ‘fishing vessel/vessel’, ‘fishing capacity’, ‘fishing effort’, ‘conservation and management measures’ | - | 1 |
| Relationship between this Agreement and the 1982 Convention | The Agreement is, to some extent, consistent with LOSC and is to be interpreted and applied in the context of and consistent with LOSC. The Agreement was agreed prior to the finalisation of UNFSA as a consequence there is no requirements for the provisions of UNFSA to be taken into account. | - | 4 |
| Principles and measures for conservation and management | The Agreement does not cover this component of the UNFSA. It is important to also learn from other RFMOs, including requiring that both the members and the Commission are obliged to apply the principles and measures. | - | 5 |
| Application of the precautionary approach | The Agreement, being agreed prior to the finalisation of UNFSA, does not make reference to the application of the precautionary approach. However the Commission has agreed to apply the precautionary approach through its adoption of Resolution 2012-01 <i>On the Implementation of the Precautionary Approach</i> . The UNFSA requires States to apply the precautionary approach as a principle/ measure in Article 5, and in Article 6 provides that “States shall apply the precautionary approach widely...” and lists several requirements for applying | - | 6 |

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| | <p>this approach. It also requires the improvement of decision-making by, <i>inter alia</i>, implementing improved techniques for dealing with risk and uncertainty.</p> <p>Again it is important to also learn from other RFMOs, in applying the precautionary approach any amendments to the Agreement would be wise to ensure that both members individually and the Commission are required to apply and implement the precautionary approach and that risk and uncertainty also be taken into account.</p> | | |
| Compatibility of conservation and management measures | <p>The Agreement, being finalised prior to the adoption of UNFSA, does not make reference to the need for compatibility of conservation and management measures between the high seas and waters under national jurisdiction.</p> <p>The UNFSA requires compatibility of CMMs established for the high seas and in areas under national jurisdiction. States have a duty to cooperate and must make every effort to agree on compatible CMMs within a reasonable period of time. Certain criteria must be taken into account in establishing these CMMs. UNFSA applies to members, who have a duty to cooperate to achieve compatible measures and not to undermine measures on the high seas, and the RFMO, which, <i>inter alia</i>, must take into account measures adopted by coastal States within areas of national jurisdiction.</p> <p>Other RFMOs, for example WCPFC, also adds an important requirement, not appearing in the UNFSA, that the WCPFC Commission must pay special attention to ensure compatibility between measures adopted for the high seas and those established by coastal States in accordance with Article 61 of the 1982 Convention in areas where the high seas are entirely surrounded by the exclusive economic zones of WCPFC Commission members. Furthermore, the WCPFC Convention seeks to balance the requirements of compatibility with sovereign rights in the exclusive economic zones of coastal States (see article 7 of the WCPFC Convention). The term ‘sovereign rights’ and subsequent language is consistent with the 1982 Convention reference to the exclusive economic zones.</p> | - | 7 |
| Duties of Flag States | <p>The Agreement is largely silent on the duties of flag States.</p> <p>In contrast, UNFSA devotes an entire section to the duties of Flag States. Key components of Article 18 include taking measures to ensure flag State control, authorisations of all vessels flying its flag, establishment of a national register of vessels operating on the high seas, adoption of standardised vessel marking and identification, monitoring the vessels position and verifying the catch and effort using observer schemes, port monitoring and other inspection schemes, taking measures to monitor vessels flying their flag, regulation of transshipment, and implementing compatible measures with relevant RFMOs active in the area.</p> <p>Other RFMOs, for example the amended GFCM Agreement requires parties to report on how they have implemented and/or transposed adopted recommendations into legislative documents, to submit information on monitoring and control of their fisheries, and each party shall take measures to ensure that their duties as flag States and port States are fulfilled. Moreover, the GFCM Commission will address parties that fail to comply with the recommendation, and shall define appropriate measures to be taken when parties are identified as being in prolonged and unjustified non-compliance.</p> | - | 18 |

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| Compliance and Enforcement | <p>The Agreement is largely silent on compliance and enforcement, including in relation to the function and role of the Compliance Committee. IOTC has adopted new terms of reference for its Compliance Committee, but there is only limited integration of MCS tools.</p> <p>UNFSA outlines explicitly the compliance and enforcement activities expected to be undertaken by flag States and how the international community shall cooperate in relation the compliance and enforcement.</p> <p>Other RFMOs have very explicit provisions for monitoring, control and surveillance. For example the WCPFC Convention includes articles related to general principles of compliance, annual reporting by flag States regarding compliance, high sea boarding and inspection, transshipment, vessel monitoring systems, port State measures and observer programs.</p> | - | 19, 20 |
| Boarding and Inspection | <p>The Agreement is silent on high seas boarding and inspection and has not established a policy or procedures for undertaking high seas boarding and inspection.</p> <p>UNFSA provides for the boarding of vessels on the high seas by duly authorised personnel of parties to the RFMO treaty for the purpose of ensuring compliance with the conservation and management of highly migratory fishery resources under the mandate of the relevant RFMO. Article 22 of UNFSA provides the basic procedures for high seas boarding and inspection.</p> | - | 21, 22 |
| Measures taken by Port States | <p>The Agreement is silent on port State measures but the Commission has adopted a measure regarding port State Measures (Resolution 10-11) that is consistent with the FAO Port State Measures Agreement.</p> <p>UNFSA outlines the measures to be taken by port States including, <i>inter alia</i>, inspection of documents, fishing gear and catch.</p> | - | 23 |
| Regional Observer Program | <p>The Agreement is silent on Regional Observer Programs, however the Commission adopted and implemented an observer scheme (Resolution 11/04).</p> <p>UNFSA makes provision of the implementation of regional observer programs to support the collection and verification of fishing activities and for monitoring, control and surveillance of fishing activities (see IOTC Resolution 14/06).</p> <p>The WCPFC Convention provides some of the most robust Convention language regarding regional observer programs.</p> | - | 18(3)(f)(g(ii)) |
| Transshipment | <p>The Agreement is silent on transshipment, however the Commission adopted Resolution 12-05 for large scale fishing vessels.</p> <p>UNFSA makes provision of the management of transshipment to support the collection and verification of fishing activities and for monitoring, control and surveillance of fishing activities.</p> | | 18(3)(f) |
| Non-Parties to the Treaty | <p>The Agreement is silent on the treatment of non-parties.</p> <p>UNFSA provides a clear role for RFMOs to agree on the mechanism for providing for the fishing interests of new members or new participants in the treaty. UNFSA highlights that any participatory fishing rights need to take into</p> | | 10(i), 11, 17 |

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| | account the status of the resources and the level of interest of the party, their contributions to the conservation and management of the stock and the needs of coastal fishing communities and developing States. Finally, Article 17 of UNFSA highlights that non-parties and/or non-participants are not discharged from their duty to cooperate regarding the conservation and management of highly migratory species. Thus that non-parties must act in a manner that does not undermine the RFMOs or its rules. | | |
| Decision Making | As highlighted above, rather than having a single stand-alone article for the Agreement's decision making procedures, the IOTC Agreement refers to decision making in four separate articles: Articles VI, IX, XIII, XX. Other RFMOs have a single provision that outlines the decision making procedures relevant to all aspects of the implementation of the treaty. | - | 10(j) |

APPENDIX IV CONVENTION AMENDMENTS – THE ICCAT EXPERIENCE⁵

The International Commission for the Conservation of Atlantic Tuna (ICCAT) has been, since 2013, involved in a process to amend its Convention, which was adopted in 1969. ICCAT has been focusing on many of the issues IOTC's I Performance Review report also identified as also needing update in IOTC's Convention. This account of ICCAT's process is presented to briefly point out some issues that might arise, when and if, IOTC decides to start a similar exercise.

The ICCAT Convention Amendment process is being conducted by the Working Group on Convention Amendments (WG), created in 2012 (Recommendation 12-10) as the result of an extensive process, initiated with ICCAT's first Performance Review, held in 2008, and developed by the Working Group on the Future of ICCAT. The WG held three intersessional meetings (Sapporo – 2013; Barcelona - 2014 and Miami - 2015) and one extraordinary meeting in advance of 2015's regular commission meeting, held in Malta. In Malta, Contracting Parties felt a fourth intersessional meeting was needed to not only finalize the amendments but also to give time to fully integrate all Contracting Parties in the process. This meeting is scheduled to take place in March 2016.

Recommendation 12-10 established, in its annexes, the issues that should be reviewed by Contracting Parties. This helped limiting the scope of reform to those topics Contracting Parties felt were fundamental for the good governance and modernization of ICCAT's Convention. It should also be noted that the Rec 12-10 established two categories of topics. Annex I listed those topics which Contracting Parties felt should necessarily be dealt with amendments to the Convention (Convention scope, in particular shark conservation and management; decision-making processes and procedures, such as objection procedures and dispute resolution; and non-party participation). Annex II listed those issues that Contracting Parties felt could either be dealt by draft recommendations or amendments to the Convention (Precautionary Approach, Ecosystem considerations, Capacity building and assistance, Allocation of fishing possibilities and Transparency).

It is interesting to note that the WG was attended by an increasing number of participants (the Miami meeting was attended by 27 Contracting Parties), considering the average participation during regular ICCAT intersessional meetings. This was a direct consequence not only of the importance of the discussed topics but also of the fact that Rec 12-10 guaranteed the provision of funds to finance the traveling costs of developing states delegates.

As mentioned before, the process has yet to be concluded and an extra meeting of the WG is scheduled to take place in 2016. However, based on the available reports of the meetings, an initial assessment can already be made on the process.

On the issue of objection, the WG agreed, broadly, that the current objection process set out in Article VIII of the Convention was overly burdensome and complex and needed to be streamlined. However, Contracting Parties expressed different views on the extent of these changes. Some Contracting Parties, for example, underlined the importance of limiting the objection procedure in order to ensure a level playing field among Contracting Parties. Other Contracting Parties were of the view that it was fundamental for ICCAT to maintain enough flexibility on the objection process and preferred, therefore, to maintain just an illustrative list of objection grounds.

On dispute settlement, even if Contracting Parties showed broad support for the inclusion of such rules in the Convention, to this stage no consensus has been reached. This is mainly due to the strong divergence of views among Parties. Some believe a compulsory and binding procedure has to be adopted whereas others have a strong preference for a non-compulsory process. In addition to that, some Contracting Parties expressed a general reservation on making any reference to other international instruments to which they are not parties.

⁵ This summary has been prepared based on the Working Group on Convention Amendment reports that were available as of December, 2015. Such documents can be downloaded at:

<http://www.iccat.int/Documents/Meetings/Docs/2013_WGCA_REPORT_ENG.pdf>, <http://www.iccat.int/Documents/Meetings/Docs/2014-ConvAmendWG_ENG.pdf> and <http://www.iccat.int/intermeetings/Convention/2015/ENG/2015_CONV_final_report_ENG.pdf>.

In what regards the participation of Fishing Entities, since the beginning of the process, Contracting Parties have noticed the importance of allowing them wider participation in the work of the Commission. However, it was noted at a very early stage of the WG that any effort to include provisions in the Convention to allow their greater participation would require a Contracting Party to take on the role of Depositary from the FAO.

Finally, there was extended debate on how to deal with Annex II issues. The difference between the two Annexes resulted from different views Contracting Parties had on the nature of each group of issues. Although recognizing the importance of Annex II issues, some Contracting Parties stressed that ICCAT had already made considerable progress on implementing them. Therefore, further action did not necessarily require a change in the Convention. These Contracting Parties also highlighted the long time expected to finalize amendments to the Convention and have them enter into force, and stated that addressing these issues through the Convention would not be a time-effective solution. Other Contracting Parties noted that amending the Convention was necessary to inscribe Annex II issues in the Convention to solidify the legal basis for the Commission's work. Furthermore, these Contracting Parties noted that inclusion of these sorts of guiding principles in the Convention sent a strong signal of the importance to these issues to ICCAT and its Contracting Parties. At this stage of the process, Contracting Parties are considering to integrate Annex II topics in a future new General Principle Article.

APPENDIX V
CONSOLIDATED RECOMMENDATIONS OF THE 2ND PERFORMANCE REVIEW OF THE INDIAN OCEAN TUNA COMMISSION

Analysis of the IOTC Agreement against other international instruments

PRIOTC02.01 ([para. 81](#)) **NOTING** [para 80](#), the PRIOTC02 **RECOMMENDED** that the Commission establish an ad-hoc Working Party on the Modernisation of the IOTC Agreement, based on the following scope:

- a) Develop proposed language for the IOTC Agreement that takes into account modern principles of fisheries management;
- b) Develop a multi-year Program of Work that outlines the specific priority issues to be discussed using the legal analysis contained in [Appendix III](#) of this report to inform the working party deliberations;
- c) Proposals to enable the participation of all fishing players with direct fishing interests in IOTC;
- d) That all CPCs should participate in the Working Party and that funds be provided to support the participation of developing coastal States in the meetings;
- e) That the working group meet at least annually and to the extent possible progress its work inter-sessionally using electronic means.

Status of living marine resources

PRIOTC02.02 ([para. 86](#)) The PRIOTC02 **RECOMMENDED** that:

- a) while continuing to work on improving data collection and reporting, the Scientific Committee should continue to utilise qualitative stock assessment methodologies for species where there is limited data available, including ecological risk based approaches, and support the development and refinement of data poor fisheries stock assessment techniques to support the determination of stock status.
- b) confidentiality provisions and issues of accessibility to data by the scientists involved needs to be clearly delineated, and/or amended if necessary, so that stock assessment analysis can be replicated.
- c) chairpersons and Vice-Chairpersons of the Scientific Committee and respective Working Parties, in conjunction with the IOTC Secretariat, develop guiding principles for the provision of papers to ensure that they are directly related to the Program of Work of the respective Working Party and/or Scientific Committee, as endorsed by the Commission, while still encouraging for new and emerging issues to be presented.
- d) ongoing peer review and input by external scientific experts should be incorporated as standard best practice for Working Parties and included in the Commission's regular budget.

Data collection and reporting

PRIOTC02.03 ([para. 96](#)) The PRIOTC02 **RECOMMENDED** that:

- a) the Commission make further investments in data collection and targeted capacity building, which is necessary for further improvement in the provision and quality of data in support of the Commission's objectives, as well as to identify the sources of the uncertainty in data and work towards reducing that uncertainty.
- b) while there are budgetary implications, the IOTC Secretariat staffing dedicated to data collection and data capacity building activities should be increased from 3 to 5 full-time data staff.
- c) the IOTC Secretariat should facilitate discussions with coastal State non-CPCs and other non-CPCs fishing within the IOTC area of competence to formalise long-term strategies for data submission to the IOTC Secretariat, including all relevant historical data sets.
- d) steps to gain access to fine-scale data to be used in joint analysis, with sufficient protection of confidentiality, should be taken.

- e) where budgets and other resources permit, to encourage data preparatory meetings preceding stock assessment review meetings (Working Parties).
- f) innovative and/or alternative means of data collection and reporting should be explored and, as appropriate, implemented, including a move towards electronic data collection and reporting for all fleets.

Compliance with data collection and reporting requirements

PRIOTC02.04 ([para. 102](#)) The Commission, through its Compliance Committee, needs to strengthen its compliance monitoring in relation to the timeliness and accuracy of data submissions. To that end, the PRIOTC02 **RECOMMENDED** that:

- a) the Commission review its compliance monitoring program conducted by the Compliance Committee, including identification of priority obligations (e.g. timely and accurate data reporting, catch and effort limits, accuracy of the supplied registered fishing vessel information, etc.).
- b) the compliance monitoring program review all priority obligations and undertake the compliance review by obligation and by CPCs and that the Commission publish a report of each CPCs compliance by obligation and CPC. The reports of all Compliance Missions should be appended to the compliance report of that relevant CPC and where the CPC has identified an action plan, that they not be assessed for that obligation.
- c) the Commission develop a scheme of responses (in accordance with the IOTC Rules of Procedure (2014) Appendix V, para. 3b (iv)) to priority non-compliance areas, including the preparation of CPC Implementation Action Plans that outline how the CPC will, over time, implement its obligations and alternative responses to serious violations of IOTC CMMs taking into account the FAOs Voluntary Guidelines for Flag State Performance. Reforms to the compliance monitoring program should include the ability of developing CPCs to identify (though the preparation of an Implementation Action Plan) and seek assistance for obligations that they are currently non-compliant with, including for example requesting capacity assistance, capacity building, resources, etc., to enable, overtime, implement its obligations.
- d) to facilitate thorough reviews of compliance, the Commission should invest in the development and implementation of an integrated electronic reporting program. This should include automatic integration of data from CPCs into the IOTC Secretariat’s databases and automatic cross-referencing obligations and reports for the various obligations, in particular related to the provision of scientific data.

Capacity building (Data Collection)

PRIOTC02.05 ([para. 104](#)) The PRIOTC02 **RECOMMENDED** that:

- a) the Commission expand its current data support and data compliance missions and that the IOTC Secretariat should be granted increased autonomy to seek and attract external donor funds to support the work approved by the Commission, including supporting actions and/or capacity building initiatives from Compliance Missions that are applicable to more than two CPCs.
- b) the IOTC should continue the workshop series aimed at Connecting the IOTC Science and Management processes. The aims of the workshop series should be to: 1) improve the level of comprehension among IOTC CPCs on how the scientific process informs the management process for managing of IOTC species and ecosystem-based management; 2) increase the awareness of IOTC Contracting Parties to their obligations, as stipulated in the Commissions’ Conservation and Management Measures which are based on rigorous scientific advice; 3) improve the decision making process within the IOTC; and 4) to provide direct assistance in the drafting of proposals for Conservation and Management Measures.

Non-target species

PRIOTC02.06 ([para. 106](#)) The PRIOTC02 **RECOMMENDED** that the Commission should continue to improve upon the requirements of data collection and reporting mechanisms of non-IOTC species that interact with IOTC fisheries.

Quality and provision of scientific advice

PRIOTC02.07 ([para. 112](#)) The PRIOTC02 **RECOMMENDED** that:

- a) the Scientific Committee should continue the good work undertaken since the PRIOTC01 and strive to make further improvements in the way it communicates information about stock status and future prospects for the stocks to the Commission.
- b) an independent peer review process (and budgeting mechanism) for stock assessments should be implemented if IOTC science is to be considered to be in line with best practice and to maintain a high standard of quality assurance.
- c) the Scientific Committee, through its Working Party on Ecosystems and Bycatch should pursue the application of ecosystem modelling frameworks.
- d) continue to develop and adopt robust target and limit reference points, and species or fishery specific harvest control rules through management strategy evaluations, noting that this process has commenced for several species and is specified in IOTC Resolution 15/10 *on target and limit reference points and a decision framework*. The mandated Resolution 14/03 *on enhancing the dialogue between fisheries scientists and managers*, will benefit from having communication between the Scientific Committee and the Commission more formally structured, facilitated dialogue to enhance understanding and inform decision making.
- e) the Commission and its subsidiary bodies continue to ensure that meeting schedules and activities are rationalised so that the already heavy workload of those involved, and budgeting constraints, are taken into account.
- f) the Commission fully implements Resolution 12/01 *On the implementation of the precautionary approach*, so as to apply the precautionary approach, in accordance with relevant internationally agreed standards, in particular with the guidelines set forth in the UNFSA, and to ensure the sustainable utilisation of fisheries resources as set forth in Article V of the IOTC Agreement, including ensuring that a lack of information or increased uncertainty in datasets/stock assessment, is not used as a justification to delay taking management actions to ensure the sustainability of IOTC species and those impacted by IOTC fisheries.
- g) while there are budgetary implications, the IOTC Secretariat staffing dedicated to scientific analysis should be increased from 2 to 4 full-time science staff.

Adoption of Conservation and Management Measures

PRIOTC02.08 ([para. 123](#)) The PRIOTC02 **RECOMMENDED** that:

- a) the Commission acknowledge the inherent difficulty in managing small scale and data poor fisheries and continue efforts to adopt adequate fisheries management arrangements and to assist developing coastal States to overcome constraints to implement the CMMs.
- b) as the IOTC has faced the management of the main targeted stock under its purview only through a regulation of the fishing effort; other approaches should be explored, such as those envisioned in Resolutions 05/01 and 14/02, including catch limits, total allowable catch (TAC) or total allowable effort (TAE).
- c) the Science-Management Dialogue is strengthened to improve understanding of modern approaches to fisheries management, including the implementation of Harvest Strategies through the use of Management Strategy Evaluation. The Commission adopt a formal process of developing and implementing Harvest Strategies within a prescribed timeframe.

Fishing capacity management

PRIOTC02.09 ([para. 129](#)) The PRIOTC02 **RECOMMENDED** that:

- a) the IOTC should establish a stronger policy on fishing capacity to prevent or eliminate all excess fishing capacity, including options to freeze capacity levels as an interim measure, while alternative management measures are considered. As current capacity limits are generic and apply across all fleets and their ability to control catch of particular species is limited, therefore alternative management measures should be considered which may include spatial-temporal area closures, quota allocation, etc.

- b) the Commission undertake a formal process to develop transfer mechanisms to developing coastal States, and in particular the least developed among them, with a view to realising their fleet development aspirations within sustainable levels.

Compatibility of management measures

PRIOTC02.10 (para. 133) The PRIOTC02 **RECOMMENDED** that if needed, CPCs request assistance from other CPCs or PRIOTC02.01 (para. 81) the IOTC Secretariat to assist in the assessment of the legal needs to effectively implement IOTC CMMs, noting that this process has already commenced with a number of IOTC Contracting Parties.

Fishing allocations and opportunities

PRIOTC02.11 (para. 136) The PRIOTC02 **RECOMMENDED** that the IOTC develop allocation criteria or any other relevant measures as a matter of urgency through the established Technical Committee on Allocation Criteria (TCAC) process, and that it include consideration of how catches by current non-CPCs would be accounted for. This process should not delay the development and adoption of other management measures, based on the advice of the Scientific Committee.

Flag State duties

PRIOTC02.12 (para. 139) The PRIOTC02 **RECOMMENDED** that any amendment to or replacement of the IOTC Agreement should include specific provisions on Member's duties as flag States, drawing on the relevant provisions of the UNFSA and take due note of the FAO Guidelines on flag State performance.

Port State measures

PRIOTC02.13 (para. 144) The PRIOTC02 **RECOMMENDED** that:

- a) since port State measures are critical for the control of fishing in the IOTC area and beyond, CPCs should take action to ratify the FAO Agreement on Port State Measures, and the Commission explore possible ways of including ports situated outside the IOTC area known to be receiving IOTC catches in applying port State measures established by the IOTC.
- b) the Commission, through its port State measures training, support the implementation, including support from FAO and other donors, of the requirements of the FAO PSMA and the IOTC Resolution 10/11 *On port state measures to prevent, deter and eliminate illegal, unreported and unregulated fishing*.

Monitoring, control and surveillance (MCS)

PRIOTC02.14 (para. 149) The PRIOTC02 **RECOMMENDED** that:

- a) the IOTC should continue to develop a comprehensive monitoring, control and surveillance (MCS) system through the implementation of the measures already in force, and through the adoption of new measures and tools such as a possible catch documentation scheme, noting the process currently being undertaken within the FAO.
- b) as a matter of priority review the IOTC monitoring, control and surveillance (MCS) measures, systems and processes, with the objective of providing advice and guidance on improving the integration of the different tools, identification of gaps and recommendations on how to move forward, taking into consideration the experiences of other RFMOs, and that the review should be used as a basis for strengthening MCS for the purpose of improving the ability of the Commission to deter non-compliance and IUU fishing.

Follow-up on infringements

PRIOTC02.15 (para. 153) The PRIOTC02 **RECOMMENDED** that:

- a) the IOTC should establish a scheme of responses to non-compliance in relation to CPCs obligations, and task the Compliance Committee to further develop a structured approach for cases of infringement.
- b) further develop an online reporting tool to facilitate reporting by CPCs and to support the IOTC Secretariat through the automation of identification of non-compliance.
- c) reasons for the non-compliance should be identified, including whether it is related to the measure itself, a need for capacity assistance or whether it is wilful or repeated non-compliance, and that the Compliance Committee provide technical advice on obligations where there are high level of CPCs non-compliance.

Cooperative mechanisms to detect and deter non-compliance

PRIOTC02.16 ([para. 159](#)) The PRIOTC02 **RECOMMENDED** that the Commission considers strengthening the intersessional decision making processes in situations where CPCs have not transmitted a response such that a decision can be taken for effective operational cooperative mechanisms and that the Commission encourages the CPCs to be more involved in decision making and for the Commission to collaborate to the greatest extent possible with other RFMOs.

Market-related measures

PRIOTC02.17 ([para. 163](#)) The PRIOTC02 **RECOMMENDED** that:

- a) the Commission considers strengthening the market related measure (Resolution 10/10 *Concerning market related measures*) to make it more effective.
- b) the Commission considers to invite key non-CPCs market States that are the main recipient of IOTC catches as observers to its meetings with the aim of entering into cooperative arrangements.

Fishing capacity

PRIOTC02.18 ([para. 169](#)) The PRIOTC02 **RECOMMENDED** that the Commission consider non-compliance with fishing capacity related measures as a priority in the scheme of responses to non-compliance, in order to ensure the sustainable exploitation of the relevant IOTC species.

Decision-making

PRIOTC02.19 ([para. 175](#)) The PRIOTC02 **RECOMMENDED** that intersessional processes be utilised (e.g. via formal or informal subsidiary bodies, or through facilitated electronic working groups) such that proposals brought to the Commission have been subject to debate and consideration by all CPCs.

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

PRIOTC02.20 ([para. 198](#)) The PRIOTC02 **RECOMMENDED** that the IOTC continue to strengthen its actions towards coastal State non-CPCs to have all such coastal States included under its remit, and that Contracting Parties take diplomatic missions to coastal State non-CPCs with active vessels in the IOTC area of competence.

Cooperation with other RFMOs

PRIOTC02.21 ([para. 204](#)) The PRIOTC02 **RECOMMENDED** that:

- a) the IOTC should further develop mutual recognition and possible exploration of cross-listings of IUU lists with other RFMOs to combat IUU activities globally.
- b) The IOTC should develop cooperative mechanisms, such as MoUs, to work in a coordinated manner on issues of common interest, in particular non-target species and an ecosystem approach with other RFMOs especially with SIOFA.

Special requirements of developing States

PRIOTC02.22 ([para. 211](#)) The PRIOTC02 **RECOMMENDED** that:

- a) the continuation and optimisation of the IOTC Meeting Participation Fund indefinitely as part of the IOTC Regular Budget, and that the MPF is used to support participation of all eligible Contracting Parties in order to create a more balanced attendance to both science and non-science meetings of the Commission.
- b) the IOTC Secretariat in partnership with development agencies and organisations, should develop a five year regional fisheries capacity development program to ensure coordinated capacity building activities across the region.

Availability of resources for IOTC activities & Efficiency and cost-effectiveness

PRIOTC02.23 ([para. 228](#)) The PRIOTC02 **RECOMMENDED** that:

- a) the IOTC continue to strengthen its actions towards non-paying Contracting Parties including consideration of diplomatic missions to non-paying Contracting Parties to encourage payment and to explore other mechanisms to recover the outstanding contributions (debt), and collaborate with FAO to identify the difficulties faced in recovering outstanding contributions.
- b) consistent with best practice governance procedures, that the Commission:

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- i. Amend or replace the IOTC Financial Regulations (1999) as a matter of urgency in order to increase Contracting Parties' as well as the Secretariat's control of all the budget elements, including staff costs of the budget, consistent with best practice governance procedures.
 - ii. A system of cost-recovery should be considered as a possible funding mechanism for new activities and/or ongoing activities.
 - iii. An annual external financial audit of the organisation be implemented as soon as possible, and include a focus on whether IOTC is efficiently and effectively managing its human and financial resources, including those of the IOTC Secretariat.
 - iv. Develop guidelines for the acceptance of extra-budgetary funds to undertake elements of the Commission's Program of Work, or those of its subsidiary bodies.
 - v. Explore opportunities to improve efficiency concerning financial contributions, including extra-budgetary funds in support of the Commission's Program of Work, including the possibility of minimising project support costs.
 - vi. Develop and implement staff development, performance and accountability evaluations and procedures, for inclusion within the IOTC Rules of Procedure (2014).
- c) the Commission, as a matter of urgency, decide whether remaining inside the FAO structure (as an Article XIV body) provides the most suitable means to effectively deliver upon the IOTC Objectives.

FAO

PRIOTC02.24 ([para. 233](#)) The PRIOTC02 **RECOMMENDED** that the IOTC would be more appropriate as an independent entity. As such, as a matter of the highest priority, the Commission should decide whether the IOTC should remain within the FAO framework or become a separate legal entity, and as necessary, begin consultations with the FAO on this matter.