



Report of the 5th Technical Committee on Allocation Criteria

Victoria, Mahé, Seychelles, 11-13 March 2019

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ACRONYMS

CMM	Conservation and Management Measure (of the IOTC; Resolutions and Recommendations)
CPCs	Contracting Party and Cooperating Non-Contracting Party
DWFN	Distant Water Fishing Nation
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
IOTC	Indian Ocean Tuna Commission
IGO	Inter-governmental Organisation
IUU	Illegal, Unreported and Unregulated
NGO	Non-governmental organization
SC	Scientific Committee of the IOTC
TCAC	Technical Committee on Allocation Criteria

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EXECUTIVE SUMMARY

The 5th Session of the Technical Committee on Allocation Criteria (TCAC05) was held in Victoria, Mahé, Seychelles, from 11 to 13 March 2019. A total of 69 delegates attended the Session, comprised of 62 delegates from 21 Contracting Parties (Members), 4 delegates from 3 observer organisations and 3 invited experts.

The independent allocation consultant described the results of simulations completed as part of an agreed work plan, and provided an opportunity for the TCAC to review the outputs and seek clarifications. The consultant calculated allocation proportions of an overall TAC by species and flag and used the estimates of CPC historical catch data for the IOTC species that were first published in Circular 2018-28. The criteria for catch allocation were based on those in two allocation proposals IOTC-2018-S22-INF01 and IOTC-2019-TCAC05-PropA_Rev2. It was noted that the overlap of box plots for some simulations indicated that there were potential similarities in the results produced by the two proposals for some CPCs, and this could be relevant to future discussions on the commonalities, differences and merits of the respective proposals. Discussions related to the spatial separation of historical catches for each CPC, the use of EEZ as a proxy for fish abundance, the correction factors listed in the EU proposal and the categorisation of developing states were also held and although agreement may have been reached on aspects of each, it was noted that these would not prejudice any future discussions or proposals.

The development of an allocation model ‘simulator’, using a simple platform such as MS-Excel or an interactive “Shiny app”, so that CPCs will be able to easily manipulate the relative weightings and other settings such as catch baseline was considered to be an important tool for member countries to assess the effects of different options on the allocation outputs.

The proponents of IOTC-2018-S22-INF01 presented a revised proposal, explaining the differences from the version previously presented to the TCAC04. The proponents of IOTC-2019-TCAC05-PropA_Rev2 then presented their revised proposal which had been modified from the version presented to the Commission in 2018. Given that there are two proposals, the Chairperson was requested to develop a ‘three column’ document containing the elements of the two current proposals (i.e. two columns), and in the third column, a list of outcomes relating to elements that have been discussed, and in particular, any possible compromises or options on elements of the proposals, as well as matters that the Chairperson considers to be relevant and would benefit from being discussed.

The TCAC concluded that the duration of TCAC meetings is too short and as such, does not result in a significant negotiating momentum being develop and this has resulted in many allocation issues being unresolved. To address this issue, the TCAC made a request to the Commission to consider extending the duration of future TCAC meetings.

1. OPENING OF THE SESSION

1. The 5th Session of the Technical Committee on Allocation Criteria (TCAC05) was held in Victoria, Mahé, Seychelles, from 11 to 13 March 2019. A total of 69 delegates attended the Session, comprised of 62 delegates from 21 Contracting Parties (Members), 4 delegates from 3 observer organisations and 3 invited experts. The list of participants is provided at [Appendix 1](#).
2. Mr. Don MacKay, the independent Chairperson, welcomed the participants and was confirmed as Chair for the TCAC05.

2. LETTER OF CREDENTIALS

3. The TCAC **NOTED** that in accordance with Rule III, para. 1 of the IOTC Rules of Procedure (2014), a Letter of Credentials was received from 17 CPCs and the 4 observers present at the meeting.
4. The TCAC also **NOTED** the statements made by Mauritius and the United Kingdom (OT) on sovereignty, which are provided in [Appendix 2](#).

3. ADMISSION OF OBSERVERS

5. At the 17th Session of the Commission, Members decided that its subsidiary bodies should be open to participation by observers from all those who have attended the current and/or previous sessions of the Commission. Applications by new Observers should continue to follow the procedure as outlined in Rule XIV of the IOTC Rules of Procedure (2014). In accordance these decisions, the TCAC **NOTED** the presence of the following observers:
 - a. *Intergovernmental Organisations (IGO)*
 - South West Indian Ocean Fisheries Governance and Shared Growth Project (SWIOFish).
 - b. *Non-governmental Organisations (NGO)*
 - World Wide Fund for Nature (a.k.a World Wildlife Fund, WWF).
 - International Pole and Line Foundation (IPNLF).
 - c. *Invited experts*
 - Taiwan, Province of China.

4. ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION

6. The TCAC **ADOPTED** the agenda provided in [Appendix 3](#). The documents presented to the TCAC are listed in [Appendix 4](#).

5. PRESENTATION OF THE WORK OF THE ALLOCATION CONSULTANT

7. The allocation consultant presented through Skype the results of his analysis (IOTC-2019-TCAC05-02-Rev3). The presentation described the results of simulations completed as part of the consultants work plan and provided an opportunity for the TCAC to review the outputs and seek any necessary clarifications.
8. The consultant calculated proportions of an overall TAC by species and flag and used the estimates of CPCs historical catch data for the IOTC species that were first published in Circular 2018-28. The criteria for catch allocation were based on IOTC-2018-S22-INF01 and IOTC-2019-TCAC05-PropA_Rev2. Allocated proportions were translated to a flag and species specific allocation using the 2018 stock status advice for MSY as a proxy for the TAC to provide values of actual allocated catch should the 2018 MSY values be adopted. These estimates were illustrative only as MSY is subject to change and may not be a viable value for TAC for some species.
9. Information on the proportion of the TAC was also presented. IOTC-2019-TCAC05-PropA_Rev2 calculated one historical catch and summarized it in three ways while the Proposal IOTC-2018-S22-INF01 uses three different historical catch allocations summarized in the same manner. For purposes of comparison and reference, the reported catches from 2017 were compared to calculated TAC values, by species and flag, for both proposals.
10. An extensive range of simulations of TACs as well as catch proportions are provided in the tables of the report along with the relative increase or decrease of each CPCs TAC relative to the 2017 catch. The values show

substantial differences between the proposals when comparing the medians of the model scenarios, but the differences may be less apparent if the variance across all simulations are compared.

11. Some CPCs expressed their concern that the allocation consultant was not present in person to deliver his presentation. The Executive Secretary informed the meeting that once the consultant had informed the Secretariat that he could not be present at the meeting, but could undertake the work as specified by the Commission, the matter was deferred to the IOTC Chairperson for a decision. The Chairperson’s decision was that the presentation could be made by skype.
12. The TCAC **RECOMMENDED** that the IOTC Secretariat facilitate the development of an allocation model ‘simulator’, using a simple platform such as MS-Excel or an interactive “Shiny app”, so that CPCs will be able to easily manipulate the relative weightings and other settings such as catch baseline. The ‘simulator’ should provide both numerical outputs and graphic outputs to aid in the interpretation of the allocation proposal being simulated. For the current proposals (IOTC-2019-TCAC05-PropA_Rev2 and IOTC-2018-S22-INF01), this should be completed as soon as possible by the IOTC Secretariat, preferably no later than 30 days from the close of the TCAC05. Further work and new simulations will be subject to the availability of the allocation consultant.
13. The TCAC **AGREED** that simulation outputs should include a range of reference periods / years including the average of 2012-2016, 2017, 2018 (noting that 2018 data will only be available after the end of June 2019), and others to be confirmed. Although not objecting to the consultant preparing simulations for 2017 and 2018, some CPCs expressed concern with using catch after 2016 for comparative purposes given that the allocation negotiations commenced in 2016 and that following this some CPCs reduced or froze their catch, whereas others increased it. Some CPCs stated that comparison of the simulation results with recent years such as 2017 and 2018 is important since this will indicate better reality on what is likely to happen after adopting allocation criteria.
14. The TCAC **CONCURRED** that any simulations and proposals should carefully consider and reflect how the catches of Taiwan, Province of China are treated in the proposals. China stated that catches of fishing vessels from Taiwan, Province of China in the IOTC area targeting IOTC stocks should be treated the same as catches from other distant-water vessels when addressing allocation.
15. The TCAC **NOTED** the statements made by Comoros, Mauritius, the United Kingdom (OT) and France (OT) on sovereignty which are provided in [Appendix 2](#).
16. Indonesia expressed its general concern that reallocation of fishing opportunity should not create negative implications especially for small-scale fisheries in developing coastal states.
17. In response to the TCAC’s request, results from some additional analyses were presented by the consultant on day two of the meeting. The work included adding box plots to catch allocation results, undertaking simulations that included a 2012-2016 reference period, and the EU being designated as a coastal state (IOTC-2019-TCAC05-02_Rev3 day 2).
18. The TCAC **NOTED** that the overlap of box plots for some simulations indicated that there were potential similarities in the results produced by the two proposals for some CPCs, and this could be relevant to future discussions on the commonalities, differences and merits of the respective proposals.

6. PROPOSALS FOR A QUOTA ALLOCATION SYSTEM IN IOTC

6.1 Discussion on the basis of Appendix 6 to the Report of the 22 Session of the Commission (IOTC-2018-S22R) Consolidated Program of Work for Allocation Of Fishing Opportunities (2018-19)

19. In response to a request made by the Commission in 2018, the Secretariat presented IOTC-2019-TCAC05-INF06 which outlines a possible administrative process for the allocation of catch to a CPC, who does not have a ‘baseline historical catch; a catch reconciliation mechanism; and an over-catch penalty administration.
20. The TCAC **NOTED** the following aspects related to the above respective processes will need direction from the Commission:

Regarding the administrative process for the allocation of catch to a CPC, who does not have a ‘baseline historical catch

- which species allocations are to be made for;
- an agreed methodology for estimating baseline allocations (for CPCs with no historical baseline catches)

- a decision on a schedule for catch reporting of species for which allocations are agreed (e.g. monthly, quarterly or other).

Regarding catch reconciliation mechanisms

- whether catch reports are to be compared with official annual catch statistics (used for scientific purposes).
- whether a catch documentation scheme might be required to complement catch monitoring.

Regarding over-catch penalty administration

- agreed procedures for penalties if allocations are exceeded.
- a decision on whether the transfer of allocations is permissible and what options might be used.

21. The TCAC also **NOTED** the Secretariat's view that the implementation and management of an allocation process will require additional resources in the Secretariat

6.2 Presentation and discussion of revised proposals from Members

6.2.1 Proposal IOTC-2018-S22-INF01

22. The proponents introduced proposal IOTC-2018-S22-INF01 which had been tabled at the Commission meeting in 2018. The proponents informed the TCAC of the following modifications:

- The main principles have been elaborated to provide more clarity.
- Compliance elements have been clarified, including the weightings applied to compliance elements, and adjustments related to a CPCs capacity to implement CMMs.
- Matters related to SIDs are addressed in a separate category.
- Correction factors are presented in a more logical way, drawing on the elements from Article 11 UNFSA.

6.2.2 Proposal IOTC-2019-TCAC05-PropA_Rev2

23. The Maldives introduced proposal IOTC-2019-TCAC05-PropA_Rev2 which had been revised since it was first tabled at the Commission meeting in 2018. Maldives informed the TCAC of the following modifications:

- The original proposal had two baseline and two supplementary elements. One of the supplementary elements, the 'developing coastal state allocation', has been further elaborated and now is a stand alone element.
- Bounds for some of the weightings have been added, even though these bounds still have to be finalized.

24. The Maldives informed the TCAC that the allocation principles and criteria are the same for all species covered under the proposal, but noted that the application of different weightings for each species, depending on a country's priority for each species, could be examined.

25. On day 2 South Africa introduced for information a further revision of proposal IOTC-2019-TCAC05-PropA_Rev2. The TCAC **NOTED** that the proposal had been revised to provide more clarity and transparency regarding the thinking of the coastal states on allocation matters, and to better define some elements that will be modelled in future simulation exercises. The TCAC also **NOTED** that the revision contained minor revisions (including revisions to the ranges) based on discussions during plenary, and indicated the direction with respect to allocation that the proponents would like to head towards.

26. Some CPCs expressed their concerns that the proposed 100% attribution of historical catches in the EEZs to coastal countries in proposal IOTC-2019-TCAC05-PropA_Rev2 was a much too drastic change in the current level of fishing opportunities, and while agreeing on the fundamental basis for a transfer of fishing opportunities to developing coastal states, a more gradual change should be applied to maintain stability in the fishery and accommodate the aspirations of developing coastal states. Some CPCs also stressed that the key issue was the scale and pace of the reattributions and to whom these will benefit.

27. Other CPCs also expressed their strong view that the allocation system needed to respect and take full account of the rights and interest of coastal States and the rights and interest of Developing coastal States in the IOTC area. These CPCs noted with concern that these aspects were not sufficiently included in proposal IOTC-2018-S22-INF01.

6.2.3 Comments in general on the proposals

28. The TCAC **ACKNOWLEDGED** the complexities associated with having one allocation procedure being applied to multiple species and CPCs. However, there was no clear decision to establish allocation species by species.
29. The Republic of Korea made a presentation on its information paper IOTC-2019-TCAC05-INF07 which provides views on five important elements including compliance scores.
30. A small working group convened by Australia was tasked with addressing how and to what extent compliance matters should be taken into account in allocation. The deliberations of this group are included in [Appendix 5](#)
31. The TCAC **AGREED** that compliance matters are an important element of the allocation and that the advice of the Compliance Committee should be sought on specific aspects of the compliance factors.
32. The TCAC **NOTED** the concerns of Bangladesh regarding how new IOTC members will be accommodated under the allocation proposals when they do not have a catch history.
33. In an effort to accelerate and assist the work of the TCAC, the TCAC **REQUESTED** the Chairperson to develop a 'three column' document containing the elements of the two current proposals (i.e. two columns), and in the third column, a list of outcomes relating to elements that have been discussed, and in particular, any possible compromises or options on elements of the proposals, as well as matters that the Chairperson considers to be relevant and would benefit from being discussed. This document should be made available to all CPCs as soon as possible, preferably no later than 30 days after the end of the session.
34. The TCAC **CLARIFIED** that the three column document was not an attempt to merge the two current allocation proposals.
35. The TCAC **NOTED** the statements made by Mauritius, the United Kingdom (OT) and France (OT) on sovereignty which are provided in [Appendix 2](#).

6.2.4 Outcomes of discussions on issues highlighted by the Chairperson

36. The TCAC Chairperson identified the following issues from the current proposals as some of those that warranted further elaboration and discussion in plenary in order to foster a better understanding of the issues facing TCAC members.

Regarding the spatial separation of historical catches for each CPC.

37. A small working group convened by South Africa was tasked to derive a common approach to assigning historical catches when 5x5 and 1x1 grids overlap both an EEZ and high seas .
38. The TCAC **NOTED** the following approach, that without prejudice to the ultimate outcomes with respect to allocation and attribution, contains elements that were generally accepted by the participants.
 - The spatial separation of historical catches, by each CPC, as between areas within and beyond national jurisdiction shall be made on the following basis, excluding those taken by identified IUU vessels:
 - Where the IOTC Secretariat holds fine-scale spatial information about the distribution of a CPCs' catches, that information shall be used to spatially attribute the catch history for that CPC.
 - Any CPC may provide fine scale spatial information to the IOTC Secretariat. Once reviewed by the IOTC Secretariat and [TBD], that information shall be used to spatially attribute the catch history for that CPC.
 - Catches reported for 5x5 or 1x1 degree grid squares that:
 - wholly fall within areas under national jurisdiction are to be considered as being taken in areas under national jurisdiction;
 - wholly fall within the high seas are to be considered as being taken in the high seas;
 - overlap one or more EEZs and/or the high seas, shall be distributed proportionately by area. In cases where there is disagreement by one or more participants, the supporting evidence shall be provided to, and considered by the IOTC Compliance Committee.
 - are taken by a CPC fishing within its own EEZ, shall be considered as being taken within that CPCs EEZ.

- Catches reported or estimated without associated spatial effort data (as required by IOTC Resolution 15/02, or any superseding Resolution), shall be considered as being taken on the high seas by that CPC. In cases where the flag State is in disagreement with another CPC, supporting evidence shall be provided for consideration by the IOTC Compliance Committee.
- Catches by coastal fisheries are assumed to have been taken within the area under the national jurisdiction of the Coastal State CPC, irrespective of whether spatial effort data is available.

Regarding the use of EEZ size as a proxy for fish abundance.

39. The TCAC **NOTED** that the proposal IOTC-2019-TCAC05-PropA_Rev2 uses EEZ size as one of the elements in the catch allocation estimation procedure. The proponents of the proposal informed the TCAC that the inclusion of EEZ size is for two reasons (i) it is considered to be the best available proxy for fish abundance as there are no fine-scale indices of abundance available for the species concerned, and (ii) it reflects the sovereign rights of coastal states, which is an essential element of an outcome.
40. Some TCAC members expressed their concern that the EEZ size proxy for fish abundance was not appropriate and its use in the allocation estimation procedure could result in an over-attribution in catches to some coastal states. Some TCAC members stressed that the use of EEZ size should not be used, in order to avoid IOTC becoming involved in disputes on EEZ boundaries. Some CPCs also stated EEZ is a suitable proxy as no alternate proxy was proposed to measure fisheries abundance.
41. The TCAC **RECALLED** that the Commission in 2018 tasked the Scientific Committee to provide advice as to how an index of relative abundance of each allocated species might be constructed, within the area under national jurisdiction of each CPC. The proponents of the proposal IOTC-2019-TCAC05-PropA_Rev2 indicated that an index of abundance, if available, may replace EEZ size as the principle proxy for fish abundance in the allocation estimation procedure.

Regarding the correction factors listed in the proposal IOTC-2018-S22-INF01.

42. The TCAC **NOTED** that the proposal IOTC-2018-S22-INF01 acknowledges amongst other things the special requirements of the developing States by increasing the allocation for a particular CPC using a sequence of correction factors related to contribution to the effective conservation and management of fishery resources, development and social factors, and fishery-related issues and trade factors.
43. The TCAC **AGREED** in general that various factors as listed could have relevance; however, they needed elaboration with respect to how they would be quantified and operationalised.

Regarding the categorisation of developing states.

44. The TCAC **DISCUSSED** the categorisations of ‘developing states’ used in the two current proposals. The TCAC **NOTED** that the SIDs category is common to both proposals, but no agreement was reached on how the other development categories should be defined in the respective proposals. There was also no agreement on the proportion of the gTAC to be applied to developing coastal states.

Regarding other issues highlighted by the Chairperson that were not discussed.

45. The TCAC **NOTED** that not all important issues have been discussed due to a lack of time.

7. PROPOSALS FOR ALTERNATIVE MANAGEMENT MEASURES

46. No proposals were submitted for consideration by the TCAC.

8. OTHER BUSINESS

47. The TCAC **CONCLUDED** that the duration of TCAC meetings is too short and as such, does not result in a significant negotiating momentum being develop and this has resulted in many allocation issues being unresolved. The TCAC **REQUESTED** the Commission to consider extending the duration of future TCAC meetings.
48. The TCAC **NOTED** the generous offer from Thailand to host an additional meeting of the TCAC before the Commission meeting in June if feasible.
49. The TCAC **RECOMMENDED** that the IOTC Secretariat develop and incorporate budget elements for the current and future years, through budget re-appropriations to ensure the adequate resourcing of the TCAC process. This

includes additional work to modify the simulation code based on revisions to the allocation proposals, and the development of the allocation model simulator mentioned above.

50. Some TCAC members sought clarification on the administration of the IOTC meeting participation fund (MPF). The TCAC **REQUESTED** the Executive Secretary to provide a summary of the Secretariat’s application of the MPF by the end of March 2019, to be distributed to all members via an IOTC Circular. The circular will include the relevant text of the IOTC Rules of Procedure, IOTC financial regulations (Regulation 5, para. 3), the Secretariat’s interpretation of Regulation 5, para. 3, the Secretariat’s application of the MPF, and the state of member contributions.
51. In response to the concerns of some TCAC members that the Secretariat had denied some members access to the MPF due to them being in arrears of their contributions, the Executive Secretary informed the meeting that this was not the case for the TCAC05 where 8 members applied for and were supported from the MPF to participate in the TCAC meeting. Four members applied just prior to the meeting and were deemed not eligible due to not complying with the MPF’s 45 days application deadline, and moreover, FAO’s 15 day travel requirement. The Executive Secretary, also described how the Secretariat interprets the MPF rules of procedure to determine when a member is ineligible for the MPF due to being 2 years in arrears and this will be in the circular the TCAC requested.

9. ADOPTION OF THE REPORT OF THE 5TH TECHNICAL COMMITTEE ON ALLOCATION CRITERIA

52. The TCAC **ADOPTED** the report of the 5th Session of the Technical Committee on Allocation Criteria (IOTC–2019–TCAC05–R) on 13 March 2019.

APPENDIX 1. LIST OF PARTICIPANTS

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APPENDIX 2.

STATEMENTS OF MAURITIUS, THE UNITED KINGDOM (OT) RELATED TO LETTERS OF CREDENTIAL, REGARDING ISSUES OF SOVEREIGNTY

Statement by the Republic of Mauritius on Agenda Item 2: Letter of Credentials

The Committee will no doubt be aware that on 25 February 2019, the International Court of Justice (ICJ) delivered its Advisory Opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965, following the request made by the UN General Assembly in its resolution 71/292.

In its Advisory Opinion, the ICJ has concluded, inter alia, that:

- (a) as a result of the unlawful detachment of the Chagos Archipelago from Mauritius in 1965 and its incorporation into the so-called “British Indian Ocean Territory” (“BIOT”), the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968;
- (b) the United Kingdom’s continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State, and is an unlawful act of a continuing character;
- (c) the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination;
- (d) all Member States of the United Nations are under an obligation to co-operate with the United Nations to complete the decolonization of Mauritius.

The Court’s conclusions confirm that the Chagos Archipelago is an integral part of the territory of the Republic of Mauritius. We are now, therefore, in a legal situation that can neither be questioned nor doubted under the rules and principles of international law, that is, the Republic of Mauritius is the sole State lawfully entitled to exercise sovereignty and sovereign rights in relation to the Chagos Archipelago and its maritime zones.

In consequence, the Delegation of Mauritius has the strongest possible reservations to the continued presence and membership of the United Kingdom of Great Britain and Northern Ireland in the IOTC as a “coastal State” within the meaning of Article IV(1)(a)(i) of the Agreement for the Establishment of the Indian Ocean Tuna Commission, and requests a formal ruling on the matter.

The delegation also reserves its right to return to this matter at the next annual meeting of the Commission.

UK Position on Sovereignty of the British Indian Ocean Territory

The Government of the United Kingdom is clear about its sovereignty of the Chagos Archipelago, which has been British since 1814, and which it administers as the British Indian Ocean Territory. No international court, or tribunal, including the March 2015 United National Convention on the Law of the Sea (UNCLOS) ad hoc arbitral tribunal, has ever found the United Kingdom’s sovereignty to be in doubt. We strongly refute Mauritius’ claim that the Chagos Archipelago, which the UK administers as the British Indian Ocean Territory, is part of Mauritius.

While we do not recognise the Republic of Mauritius’ claim to sovereignty of the Archipelago, the UK has repeatedly undertaken to cede it to Mauritius, when no longer required for defence purposes; we maintain that commitment though it is for the UK alone to determine when this condition is met. In the meantime, BIOT is still needed for defence purposes. It is used to combat some of the most difficult problems of the 21st Century including terrorism, international criminality, instability and piracy.

Marine Protected Area

The BIOT Marine Protected Area (MPA), which the UK declared in 2010, is highly valued by scientists from many countries. They consider it a global reference site for marine conservation in an ocean which is heavily overfished. The UNCLOS arbitral tribunal found no evidence of ulterior motive or improper purpose in the creation of the MPA. The issue of improper purpose has also been scrutinised by UK Courts in great detail. On 8 February 2018 the UK

Supreme Court found there had been no improper purpose behind and also dismissed the claimant’s appeal that the MPA had been declared on the basis of a flawed consultation.

The Arbitral Tribunal was also clear that it took no view on the substantive quality or nature of the MPA; its concern was confined to the manner in which it was established. The Tribunal found that the UK needed to have further consultation with Mauritius about the establishment of the MPA in order to have due regard to its rights and interests under the 1965 Agreement between the UK and Mauritius. Implementation of the Tribunal’s Award has started with a series of bilateral talks, the latest of which took place in August 2016.

The UK is committed to implementing the Arbitral Tribunal Award. In line with the Award, the UK will continue to work with Mauritius to agree the best way to meet our obligation to ensure fishing rights in the territorial sea remain available to Mauritius, so far as practicable. The Arbitral Award did not require the termination of the MPA.

UK Position on the right to participate at IOTC

The Agreement for the Establishment of the Indian Ocean Tuna Commission provides that IOTC membership shall be open, inter alia, to FAO members that are situated wholly or partly within the IOTC’s Area of Competence. As the British Indian Ocean Territory is situated wholly within the IOTC’s Area of Competence, there can therefore be no doubt that the United Kingdom, as the State with sovereignty over BIOT as aforementioned, is entitled to be a member of IOTC. As such, we are full members of the IOTC and have every right to be here.

IOTC incorrect forum to raise bilateral issues

The United Kingdom regrets the continued use of this important multilateral forum by the Republic of Mauritius to address a bilateral matter. This only serves to distract from the important work of IOTC members to combat the regional IUU threat and other matters considered by this Committee.

The UK notes the statement from the FAO at the IOTC meeting in May 2016 recognising that this is a bilateral matter between Mauritius and the United Kingdom and that the FAO Secretariat would not express any views on the question. The FAO Secretariat went on to state that “The United Kingdom and Mauritius are both Parties to the IOTC Agreement and Members of the IOTC and that the instruments of acceptance of the IOTC Agreement of 1994 and 1995 and none of the instruments contains any declaration, restriction or reservation on the matter. The IOTC is not a forum to discuss issues of sovereignty.” The FAO Secretariat requested both Members not to raise the matter in this forum. As such, the UK thanks the FAO for recognising this matter as a bilateral issue and rather than respond to Mauritius each time it inappropriately raises it, has submitted this written statement for the record, to avoid any further disruption to the work of this meeting.”

Reply by the Republic of Mauritius to UK’s Statement

The Delegation of Mauritius has taken note of the Secretariat’s position and the UK’s position, and reserves the right to return to the matter.

Statement by the Union of the Comoros on Agenda Item 5: Presentation of the work of the Allocation Consultant

Comoros are an island nation composed of Ngazidja island, Anjouan island, Mayotte island and Moheli island.

Comoros hence consider that Mayotte EEZ is a Comorian EEZ.

Consequently, Comoros call for Mayotte historical catches not to be considered as French nor European catches.

Statement by the Republic of Mauritius

The Government of the Republic of Mauritius reaffirms that the Chagos Archipelago, including Diego Garcia, and the Island of Tromelin form an integral part of the territory of the Republic of Mauritius.

The Government of the Republic of Mauritius strongly objects to the use of the term “France (OT)” in the document entitled “Report on the Simulations of Catch Allocation Based on Criteria from the EU Proposal and the Coastal States Proposal” (IOTC-2019-TCAC05-02_Rev2) in so far as this term purports to refer to the Island of Tromelin as a French territory. The Government of the Republic of Mauritius rejects the sovereignty claim of France over the Island of Tromelin and reiterates that the Republic of Mauritius has full and complete sovereignty over the Island of Tromelin, including its maritime zones.

The Government of the Republic of Mauritius also strongly objects to the use of the term “United Kingdom (OT)” in the same document in so far as this term purports to refer to the Chagos Archipelago as a British territory or to the United Kingdom’s entitlement to be a member of the IOTC.

The Government of the Republic of Mauritius reiterates, as found by the International Court of Justice that, inter alia, the United Kingdom’s continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State and that it is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius.

The Republic of Mauritius reaffirms that it is the only State that is lawfully entitled to exercise sovereignty and sovereign rights in relation to the Chagos Archipelago and its maritime zones and that neither the United Kingdom, nor the so-called “British Indian Ocean Territory” is entitled to be a member of the IOTC.

Reply by the UK to the Republic of Mauritius Statement

The UK referred the TCAC to their previous statement.

Reply by France OT to the Union of the Comoros Statement

Mr Chair, I am sorry to have to take the floor on a matter that falls outside the RFMOs but regarding the statement by Comoros, France considers that the Comorian statement has no legal value as it disregards the fact that Mayotte is a French territory over which France exercises consistently full sovereignty. France enjoys hence sovereign rights and jurisdiction under international law in the Exclusive Economic Zone adjacent to Mayotte. The meetings of the Indian Ocean RFMOs are not the place to discuss matters of territorial sovereignty, but France stresses that it will continue to have a constructive dialogue with Comoros on this matter.

I take this opportunity to stress that France on behalf of its territories at the IOTC does not encompass Mayotte but as this statement has been made we have had to respond.

Regarding the statement by Mauritius, France considers that the Mauritian statement has no legal value as it disregards the fact that the Tromelin Island is a French territory over which France exercises consistently full sovereignty. France enjoys hence sovereign rights and jurisdiction under international law in the Exclusive Economic Zone adjacent to the Tromelin Island. Once again, the meetings of the Indian Ocean RFMOs are not the place to discuss matters of territorial sovereignty, but France stresses that it will continue to have a constructive dialogue with the Republic of Mauritius on this matter.

Statement by the Republic of Mauritius on Agenda Item 6: Proposals for a Quota Allocation System in IOTC

The Government of the Republic of Mauritius has serious reservations about the revised proposal which has been submitted by certain coastal States as well as that submitted by the EU for a quota allocation system.

The Government of the Republic of Mauritius reaffirms that the Chagos Archipelago, including Diego Garcia, forms an integral part of the territory of the Republic of Mauritius.

The Advisory Opinion of the International Court of Justice has made it clear that the United Kingdom’s continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State, and is an unlawful act of a continuing character which arose as a result of the separation of the Chagos

Archipelago from Mauritius. The Court has ruled that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination.

The Government of the Republic of Mauritius reiterates that it is the only State that is lawfully entitled to exercise sovereignty and sovereign rights in relation to the Chagos Archipelago and its maritime zones.

The baseline allocation for the Republic of Mauritius should take into account the maritime zones of the Republic of Mauritius around the Chagos Archipelago.

The Government of the Republic of Mauritius wishes to point out that the United Kingdom cannot and should not be granted any baseline allocation in respect of the Chagos Archipelago. Neither the United Kingdom, nor the so-called “British Indian Ocean Territory” is entitled to be a member of the IOTC.

The Government of the Republic of Mauritius also reaffirms that the Island of Tromelin forms an integral part of the territory of the Republic of Mauritius.

The Government of the Republic of Mauritius rejects the sovereignty claim of France over the Island of Tromelin.

The Government of the Republic of Mauritius wishes to point out that France cannot and should not be granted any baseline allocation in respect of the Island of Tromelin.

The baseline allocation for the Republic of Mauritius should take into account the maritime zones of the Republic of Mauritius around the island of Tromelin as well.

Mauritius reserves all its rights to reply to any statement made by the UK and France during the meeting of the Technical Committee, subsequent to that meeting.

APPENDIX 3.
AGENDA OF THE 5TH TECHNICAL COMMITTEE ON ALLOCATION CRITERIA

Date: 11-13 March 2019

Location: Seychelles

Venue: Eden Bleu Hotel, Eden Island

Time: 09:00–17:00 daily

Chairperson: Mr Don MacKay

1. **OPENING OF THE SESSION** (Chairperson & IOTC Secretariat)
2. **LETTER OF CREDENTIALS** (IOTC Secretariat)
3. **ADMISSION OF OBSERVERS** (Chairperson)
4. **ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION** (Chairperson)
 - IOTC-2019-TCAC05-01: Agenda for the 5th Technical Committee on Allocation Criteria (TCAC05)
5. **PRESENTATION OF THE WORK OF THE ALLOCATION CONSULTANT** (Consultant)
 - IOTC-2019-TCAC05-02: Preliminary Report on the Simulations of Catch Allocation
 - Review of the Methodology
 - Explanation of the results
 - Questions or comments on the presentation
6. **PROPOSALS FOR A QUOTA ALLOCATION SYSTEM IN IOTC**
 - 6.1 Discussion on the basis of Appendix 6 to the Report of the 22nd Session of the Commission (IOTC-2018-S22R) Consolidated Program of Work for Allocation Of Fishing Opportunities (2018-19)
 - 6.2 Presentation and discussion of revised proposals from Members
 - 6.2.1 The EU proposal
 - IOTC-2018-S22-INF01
 - 6.2.2 The Coastal States proposal
 - IOTC-2019-TCAC05-PropA_Rev2
 - 6.2.3 Comments in general on the proposals
 - IOTC-2019-TCAC05-INF07: Republic of Korea's views on Allocation Criteria for the Main Targeted Species in the IOTC Area of Competence
 - 6.2.4 Outcomes of discussions on issues highlighted by the Chairperson
7. **PROPOSALS FOR ALTERNATIVE MANAGEMENT MEASURES** (Chairperson)
8. **OTHER BUSINESS**
9. **REVIEW OF THE DRAFT, AND ADOPTION OF THE REPORT OF THE 5TH TECHNICAL COMMITTEE ON ALLOCATION CRITERIA (TCAC05)** (Chairperson)

APPENDIX 4.
LIST OF DOCUMENTS

All documents are available on the IOTC website [[click here](#)]

Document number	Title
IOTC–2019–TCAC05–01	Draft agenda for the 5 th Technical Committee on Allocation Criteria
IOTC–2019–TCAC05–02_Rev3	Preliminary Report on the Simulations of Catch Allocation
IOTC-2019-TCAC05-02_Rev3 day 2	Preliminary Report on the Simulations of Catch Allocation - day 2
IOTC-2019-TCAC05-PropA_Rev2	On the allocation of fishing opportunities for IOTC species (from 11 coastal States)
<i>Information papers</i>	
IOTC-2018-S22-INF01_Clean	On Allocation - TCAC04-PropA Rev2 - European Union
IOTC-2019-TCAC05-INF01	Letter from the Chair
IOTC-2019-TCAC05-INF02	Allocation Matters/Decisions Emanating from other RFMOS
IOTC-2019-TCAC05-INF03	Letter from the EU on Preparation of the Technical Committee on Allocation Criteria
IOTC-2019-TCAC05-INF04	2nd Letter from the Chair
IOTC-2019-TCAC05-INF05	Chair's informal comparison between the revised proposals from a Group of Coastal States (GCS) and the European Union (EU)
IOTC-2019-TCAC05-INF06	Administrative Processes
IOTC-2019-TCAC05-INF07	Republic of Korea's views on Allocation Criteria for the Main Targeted Species in the IOTC Area of Competence

APPENDIX 5.

COMPLIANCE FACTORS TO BE CONSIDERED IN THE ALLOCATION SYSTEM

The IOTC allocation system should recognise the contribution by CPCs to the effective conservation and management of fisheries resources in the IOTC Convention Area. It is recognised that this could be achieved through a range of means but that, importantly, the IOTC allocation system should include two core compliance elements which, together, aim to incentivise and promote compliance with the allocation system and with IOTC measures more broadly:

- 1) Penalties for overcatch
- 2) Consideration of past compliance as a factor of a CPC's allocation

This paper considers compliance issues that need to be taken into account in any allocation system adopted by the IOTC. This paper captures progress made at TCAC05 with the aim of continuing discussion at the 16th session of the Compliance Committee in June 2019. This paper has been prepared without prejudice to any existing or future allocation proposal to be presented to the Commission, and in full recognition of the fact that parallel processes are occurring to consider improvements to the IOTC compliance process.

There is no decision as yet on how frequently the allocation formula would be applied (and therefore duration of the allocation), but this is relevant to the use of the compliance factors considered below, as compliance changes through time.

Penalties for overcatch

There is general support to include a provision for a quota overcatch penalty.

In the current G16 proposal, it is proposed a default deduction ratio of 1.2:1 for overcatch of an annual allocation to be applied to the following allocation period, or a deduction ratio of 1.5:1 if that deduction is deferred to the subsequent allocation period. It also proposed that a second or greater consecutive overcatch result in a deduction ratio of 2:1, and no deferral would be permitted (see para 20(b) of the G16 proposal). **The CoC should advise on whether this is considered an adequate mechanism to address overcatch.**

In addition, there is a need to account for persistent or significant overcatch; and persistent or significant non-reporting. There is general support for the need to take a graduated approach. Noting the need to consider capacity and preserve equity in the system, **CoC should advise on the following issues to be decided:**

- 1) After what period of time should there be an additional consequence beyond the normal over catch penalties. A period of 3 years was discussed.
- 2) Whether, in addition to a temporal factor, a percentage or tonnage threshold should be applied.
- 3) What penalty in this circumstance should be applied, noting that the overcatch could also be a reflection of a capacity issue.

It is also recognised that there is a need to develop a mechanism to reconcile reported catch against CPC allocations. It is proposed that this be discussed by the Commission meeting in 2019.

If it is not possible to adopt such a mechanism prior to the allocation system being adopted, it was considered that there is a need for each CPC to be transparent about how reported data is being verified. The annual compliance questionnaire is one way to achieve this. It was also identified that there needs to be a mechanism to account for when overcatch is not discovered until a later point in time. **CoC should advise on the best way to achieve this.**

Past compliance history

It is recognised that compliance with IOTC Resolutions is important, and that penalties could be applied to CPCs in the allocation system for various infringements as a way to incentivise compliance. It was also recognised that, at this stage, the ability to comprehensively consider past compliance history in this system is constrained in the

absence of a robust compliance monitoring scheme (CMS), which is under development by the IOTC. It was also considered that, for fairness, only compliance which can be objectively assessed by the Secretariat should be part of the penalty regime – at least until a CMS is adopted. Therefore it was considered that a two stage approach could be taken.

The Compliance Committee, with assistance from the Secretariat, should advise the TCAC on the following elements:

- Identification of Resolutions which are relevant for this exercise and where compliance could be objectively assessed by the Secretariat, including the relevant paragraphs. For example, Resolution 15/02 was identified: data provision is crucial, and integral to a successful allocation system; but it is also simple for the Secretariat to determine whether requisite data has been received or not. Applying a penalty to a CPC with a vessel on the IUU Vessel List was also discussed, but only to vessels linked to the IOTC IUU Vessel list (not as a result of cross-listing), and further consideration would need to be given to situations where the flag State is in the process of taking effective action but the vessel has not yet been de-listed.
- The extent of the penalty to be applied to the allocation system (deduction) as a percentage of the total allowable catch as well as the criteria for applying the penalty. It would need to be clear how far back compliance is considered (eg compliance with Resolutions for [x] years), and is relevant to the duration of the allocation period more generally. It would also need to be clear about the basis for the penalty – for example, it should be applied for no data submission, rather than simply late data submission in the relevant period.
- The use of the non-attributed quota. It was suggested that if a penalty is applied, that quota should not be redistributed (as this leads to too much variability in allocations and fleets are not equipped to respond); but could be set aside as a conservation benefit.

The allocation system could also reflect that once the Commission has adopted a fit-for-purpose compliance monitoring scheme to assess compliance by each CPC, that the Commission may develop a different mechanism to appropriately adjust allocations in a way that incentivises compliance in IOTC.

Other issues

TCAC should advise on whether the penalties and other compliance factors should be embedded in the allocation system Resolution or a separate Resolution.