
ON A QUOTA ALLOCATION SYSTEM IN THE IOTC AREA OF COMPETENCESUBMITTED BY: European Union

Ex. IOTC-2019-S23-PropM[E]

Explanatory memorandum

At the 5th Session of the Technical Committee on Allocation Criteria (TCAC05), which was held in Victoria, Mahé, Seychelles, from 11 to 13 of March 2019, participants discussed the results of simulations carried out by the independent allocation consultant on the two allocation proposals IOTC-2018-S22-INF01 and IOTC-2019-TCAC05-PropA_Rev2. During the discussion, it was noted 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.

The TCAC also 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. The Chair circulated said document to all CPCs on 8 April 2019.

Based on the discussions that took place at the TCAC, the EU has consolidated its own proposal in order to take into account some of the comments expressed during the meeting. In particular, while the EU agrees on the fundamental basis for a transfer of fishing opportunities to developing coastal states, it considers that a more gradual change should be applied to maintain stability in the fishery as well as a definition of the scale and pace of the reattributions and to whom these will benefit. The EU intends to further clarify some of its notions based on the discussions that will take place at the CoC and the Annual meeting, notably on the issue of compliance.

This proposal is submitted to the IOTC Secretariat and to members for information to serve as a basis to continuing a discussion for developing a commonly agreed quota allocation system for the IOTC. It should be incorporated in the 'three column' document in view of further discussions at the TCAC.

Keywords: Allocation criteria; TCAC; Quota; Total Allowable Catch; fishing opportunities

RESOLUTION 19/XX**ESTABLISHING A QUOTA ALLOCATION SYSTEM FOR THE MAIN TARGETED SPECIES IN THE IOTC AREA OF COMPETENCE****The Indian Ocean Tuna Commission (IOTC),**

CONSIDERING the objectives of the Commission to ensure, through appropriate management, the conservation and optimum utilisation of stocks covered by the organisation's establishing Agreement and encouraging sustainable development of fisheries based on such stocks, as qualified by relevant environmental and economic factors, including the special requirements of developing States in the IOTC area of competence;

BEING MINDFUL of Article XVI of the IOTC Agreement regarding the rights of Coastal States to the exercise of sovereign rights in accordance with Part V of the UN Convention of the Law of the Sea (UNCLOS) within a zone up to 200 nautical miles under their jurisdiction and the duties of Coastal States under UNCLOS to inter alia ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation and the conditions regarding access to the surplus of the allowable catch;

CONSIDERING Article 63 (2) of UNCLOS on the duty of cooperation of the coastal States and other States for the purpose of conservation and development of straddling stocks occurring within the Exclusive Economic Zones (EEZs) of two or more coastal States and in an area beyond or adjacent to it and Article 64 (1) of UNCLOS on the duty to cooperate between coastal States and other States whose nationals fish in the region to ensuring conservation of highly migratory species both within and beyond the EEZs;

BEING MINDFUL of Articles 87 and 116 of UNCLOS concerning, respectively, the freedom of fishing in the high seas and the right for all States for their nationals to fish on the high seas;

RECOGNISING the special requirements of the developing states in Article 24 of the Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA);

RECALLING that Article 5, of UNFSA requires Coastal States and States fishing on the high seas to adopt measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks and to ensure that the conservation and management of highly migratory fish stocks is based on the best scientific evidence available;

FURTHER RECALLING that Article 6, of UNFSA, requires the states to be cautious during the application of precautionary approach when information is uncertain, unreliable or inadequate and this should not be a reason for postponing or failing to take conservation and management measures;

FURTHER RECALLING that Article 7 and 8 of the UNFSA point out the equal rights and obligations of all States fishing straddling fish stocks or highly migratory fish stocks in high seas;

BEING MINDFUL that Article 119 UNCLOS requires States to ensure that conservation measures and their implementation do not in form or in fact discriminate against the fishermen of any state;

RECOGNISING that Article 8 of UNFSA requires that terms of participation of a State in a RFMO shall not be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned;

NOTING that Resolution 15/10 sets as a guideline that for a stock where the assessed status places it within the red quadrant, the aim shall be to end overfishing with a high probability and to rebuild the biomass of the stock in as short time as possible;

FURTHER CONSIDERING the recommendations of the 18th IOTC Scientific Committee held in Bali, Indonesia, 23-27 November 2015 that the catches of yellowfin tuna have to be reduced by 20% of the 2014 levels to recover the stocks to levels above the interim target reference points with 50% probability by 2024, and subsequent recommendations by the IOTC Scientific Committee;

FURTHER NOTING the results of the Kobe process recommending the harmonisation of a series of targeted recommendations in key areas of by-catch, coordinated scientific efforts, reduced capacity, decision-making guidelines, and compliance and enforcement;

FURTHER CONSIDERING the active and stable important investments made in harvesting, processing and trade industries are essential to keep IOTC fisheries economic and socially viable and maintain jobs created in the region as well as to supply international markets with tuna and tuna like products.

BEING MINDFUL of Article V of the IOTC Agreement to adopt on the basis of scientific evidence, conservation and management measures, to ensure the conservation of the stocks and to promote the objective of their optimum utilization throughout the Area;

ADOPTS, in accordance with the provisions of Article IX, paragraph 1 of the IOTC Agreement, the following:

Main principles

1. In order to ensure their long-term sustainability, the IOTC Commission shall establish allocation criteria for a Total Allowable Catch (TAC) for stocks covered by the IOTC Agreement on a stock by stock basis in line with Scientific Committee advice. The setting of TACs and participatory rights in accordance with these allocation criteria shall be applied in a gradual manner focusing in the first place on stocks where their assessed status places them within the upper left quadrant (red) of the Kobe plot.
2. The allocation criteria shall apply to Members, Cooperating Non-Members and long-term participating non-Contracting Parties (LPNCP) (in the context of this resolution defined as CPCs) in a fair and equitable manner according to this Resolution and shall apply to all fishing gears.
3. The allocation shall be limited to IOTC CPCs and consist of an initial baseline allocation for all CPCs plus complementary and new entrants allocations to be adjusted by certain correction factors as set out below. The initial baseline allocation shall comprise [8580]% of the TAC. The remaining [1520]% of the TAC shall be set aside for redistribution through a complementary allocation [812]%, new entrants allocation [1%] and adjusted by correction factors [76]%.
4. A CPC that has failed to report nominal catch data (exclusively), including zero catches, in accordance with Resolution 15/02, paragraph 2, for one or more species for a given year, is not eligible to receive a TAC allocation for that year. If a CPC has provided incomplete reporting on nominal catch data it remains in principle eligible to receive a TAC allocation, but the Commission may pursuant to Resolution 16/06 consider prohibiting that CPC from retaining such species as of the year following the incomplete reporting and its allocation redistributed until such data has been received by the IOTC Secretariat. In such cases, a proportional temporary adjustment amongst CPCs on the basis of their final allocation shall take place.
5. [A CPC having a compliance score of less than [60%] each year, for two consecutive years, without any indication of real progress in compliance is also not eligible to receive a TAC allocation. In such cases, a temporary proportional adjustment amongst CPCs on the basis of their final allocation shall take place. "Real progress" in this context means an improved compliance score of [10%] compared to the previous year .]
Paragraphs 5 need to be revised on the basis of the results of the discussions in CoC on how to take into account the compliance record in the allocation criteria.
6. Any upwards or downwards revision of the TAC due to the application of paragraphs 4 and 5 shall lead to a proportional adjustment amongst CPCs on the basis of their final allocation.

7. In order to assure CPCs and their nationals, who fish or have made other fishing related investments in the **IOTC Convention area**, relative stability of their fishing and related activities and to avoid any sudden economic dislocation/disruption in the countries concerned, any final allocation that results in a reduction in excess of [10]% of the of the average catches in the last 10 years or the precedent quota, if a quota was already established, shall be implemented gradually over a period of [5-10] years (hereinafter referred to as the "stability principle").

Initial baseline allocation

8. The initial baseline allocation of the TAC amongst CPCs shall be based on historical catches covering the period [2000-2016]. For the purposes of this Resolution and in order to calculate the initial baseline allocation historical catches taken within an EEZ shall be reallocated between the respective coastal State and the flag state of the fishing vessel(s) that took the catches in a proportion of respectively **[10/90]** of those catches. This reallocation of historical catches shall be dependent on reliable catch data being available and validated for catches within the EEZ concerned. In accordance with the principle of stability the change in attribution that result from this new approach shall be implemented gradually over a transitional period of [10] years.

Complementary allocation

9. In addition to the baseline allocation provided for in paragraphs 9 and 10 and to accommodate the special requirements of the developing States in Article 24 UNFSA and special interests of developing countries in the Indian Ocean Region to benefit equitably from the fishery resources as recognised in the IOTC Agreement the following complementary allocations shall be added to the baseline allocation to be distributed amongst the following CPCs:
- a) **Least developed countries** (LDCs) on the list of LDCs established by the United Nations' Committee for Development (CDP) shall receive a supplementary baseline allocation of [1/2] in this paragraph to be distributed amongst all LDCs in proportion of the size of their EEZs.
 - b) **Small Island Developing States** (SIDS) shall receive a supplementary baseline allocation of [1/4] of the complementary allocation provided for in this paragraph to be distributed amongst all SIDS in proportion of the size of their EEZs
 - c) **Coastal developing States**, excluding States described in a) and b), shall receive a supplementary baseline allocation of [1/4] of the complementary allocation provided for in this paragraph to be shared amongst all coastal developing States in proportion to the size of their EEZs.
10. Any CPC having after the application of the allocation principles set out in this resolution an allocation for a particular species corresponding to more than [5-10%] of the TAC shall no longer be eligible for a complementary allocation for that species.
11. In order to benefit from the complementary allocation the CPCs concerned must confirm that such additional allocations and the associated future fishing efforts are consistent with the their Fleet Development Plan (FDP) submitted under Resolution [15/11] and its actual implementation ~~(->50%)~~.

Correction factors

12. The following correction factors shall be applied to the sum of the initial and the complementary allocation as per paragraphs 8 to 11 in order to increase, where appropriate, the allocation for a particular CPC:
- a) ~~Contribution to the effective conservation and management of fishery resources, through:~~
 - i. ~~Effective monitoring, control, surveillance and enforcement as evidenced by a IOTC compliance score exceeding 80%;~~

- ~~ii. Provision of accurate and timely data;~~
- ~~iii. Contributions both in kind and through the provision of financial support to the conduct of scientific research with respect to fishery resources and the public dissemination of the results of such research~~
- ~~iv. contribution to capacity building in developing coastal States;~~

~~b) a)~~ **Development and social factors, including:** [this shall be revisited on the basis of the result of the scoping study]

- i. the needs of subsistence, small-scale and artisanal fishers, who are mainly dependent on fishing for the IOTC stocks;
- ii. the needs of coastal states whose economies are overwhelmingly dependent on the exploitation of marine living resources. Such dependency shall be in terms of for example when [%] of jobs are linked to the exploitation of marine living resources employment and [%] of the GDP income resultsing from exports;
- iii. the vulnerability of developing coastal states, and notably LDC, ~~in whose area of national jurisdiction the ITOC stock also occur and~~ who are dependent on the exploitation of marine living resources, including for meeting nutritional requirements ~~contribution~~ of their population or parts thereof.

~~c) b)~~ **Fishery-related issues and trade factors, including:**

- i. real fishing interest as evidenced by fishing patterns and fishing practices by the existence an active domestic fleet or a FDP under implementation;
- ~~ii. the public and/or private sector investments made in the tuna sector;~~
- ~~iii.~~ the weight of imports of raw tuna products for transformation on a CPCs economy.
- ~~iii.iv.~~ [%] of GDP depends on exports of products linked to the exploitation of marine living resources

13. Each individual correction factor in paragraph 12 shall be weighted at 1/~~23~~. The application of the correction factors can't result in an increase of the total TAC.

New entrants allocation

14. In order to accommodate requests from new entrants with a real interest in the fishery, [1]% of the overall TAC shall be reserved for allocations to new entrants established in accordance with the provisions of this Resolution. This [1]% set aside shall be equally shared by all new entrants, regardless of the moment they join IOTC. If there are no requests by new-entrants or the actual allocation to new entrants is less than the set-aside of [1]%, the remaining amount shall be distributed proportionally amongst Members on the basis of their final allocation.

Final allocation

15. The sum of the initial allocation, the complementary allocation, the allocation for new entrants, plus the correction factors shall constitute the final allocation for the five-year period. Any additional allocation as a result of the applications of paragraphs 3 and 4 above shall be considered temporary and the CPCs concerned by the loss of allocation shall reacquire its full allocation as the soon as the conditions that led to the loss have ceased to exist.

16. In order to ensure the stability of producers, canneries, markets, investments, food supply and to promote the social and economic development and the livelihood of the fishermen, including the need to minimize economic disruption and dislocation, any initial allocation or revision of that allocation in accordance with paragraphs 8 to 13 above that results in a decrease of more than 10% of the allocation from the preceding period for any CPC shall be implemented progressively over the following 10 year period.
17. The final allocation is not to be considered a precedent for future allocation decisions or revisions.
18. Cooperating non-contracting Parties shall be eligible for a maximum of 80% of **its** TAC as per paragraphs 8 to 12. Downwards revision of the TAC to Cooperating non-Contracting Parties shall lead to a proportional adjustment amongst CPCs on the basis of their final allocation.

Weighting of the allocation criteria

19. Each Member of the Commission commits to making a good faith effort to reach agreement on a weighting scheme for the correction factors set out in this Resolution within 2 years after the adoption of this Resolution.

Transferability

20. No CPC shall trade or sell its quota allocation or a part thereof unless authorised to do so by the Commission.¹

¹ This paragraph shall not apply to international agreements between a CPC coastal State and another sovereign State or Regional Economic Integration Organization which provides for access to the coastal state EEZ