
ON THE CHALLENGE TO THE RESULT OF THE VOTE TAKEN ON IOTC-2021-S25-Prop_rev2

PREPARED BY: SECRETARIAT

BACKGROUND

At its 25th Session, the Commission considered proposal IOTC–2021–S25–PropE *On management of fish aggregating devices in the IOTC Area of Competence*. There was no consensus on the adoption of the proposal (as rev2) and the proponents called for a vote on whether this proposal should be adopted. Following further discussions, a secret vote was called for and seconded.

Because S25 was being held by videoconference, the Commission agreed to an electronic voting procedure. At the time of the vote, representatives from 23 Members were present. The Chairperson and Executive Secretary informed the participants about the voting rules and procedures and left the vote open for 10 minutes.

The Executive Secretary informed the Commission that 19 valid votes were cast: 12 votes were in favour of adopting Proposal e_rev2, 5 votes were against, and 2 votes were abstentions. However, the Commission did not agree on whether the 2/3 majority was met, as there was disagreement on whether the abstention votes should be included in the total count of votes.

The Proponents of PropE_rev2 requested legal advice from FAO on the whether the votes cast as 'abstain' should be included in the total count of votes when determining if the 2/3 majority was met. Other Members disagreed with making such a request. To overcome this impasse, the Chairperson indicated that she would seek advice from the FAO Legal Counsel on the matter and report back at a Heads of Delegation meeting, at a date to be confirmed.

Heads of Delegations met on 8 September 2021 to receive the legal advice from FAO Legal Office. The advice from the FAO Legal Office stated that "...only votes in favour or against a proposal are to be counted for the purpose of determining a majority. Abstentions are not counted." However, in addition to this information, the Heads of Delegations were informed about some irregularities in the voting process that were identified after the session had concluded. The irregularities included some potentially valid votes not being counted (due to unknown deficiencies in the poll report used for the validation of votes) and some votes being found to have been cast by non-authorized persons. The Heads of Delegations subsequently agreed that any decisions on the validity of the vote taken at S25 should be made by the Commission at a Special Session.

This document provides information on:

1. The treatment of abstention votes.
2. Indications that some potentially valid votes were not counted.
3. Indications that some votes were cast by non-authorized persons.

RECOMMENDATION/S

That the Commission:

- 1) **NOTE** paper IOTC–2021–SS5–02 which provided the Commission with information relevant to the outcome of the vote taken on IOTC-2021-S25-PropE_rev2 at S25 .
- 2) **NOTE** that only votes 'in favour' or 'against' a proposal are to be counted for the purpose of determining a majority. Abstentions are not counted.
- 3) **CONSIDER** the standing of the votes cast by: (i) Heads of Delegations that used shared User email addresses; (ii) persons that were not a Head of Delegation or an Alternate; (iii) and Alternates that were not duly authorised to vote according to ROP Appendix I.

1. On abstention votes

The question posed to FAO Legal Office

Are all valid votes to be included in the total count of votes, or are “abstain” votes not counted?

Advice from the FAO Legal Office.

Regarding the question relating to the validity of the voting during the 25th Annual Session of the Commission on a proposal relating to the management of fish aggregating devices in the IOTC area of competence, which was taken by secret ballot at the request of some delegations, LEG notes at the outset the following rules:

Paragraph 2 of Article VI of the Agreement for the Establishment of the IOTC (the IOTC Agreement), provides that *"Unless otherwise provided in this Agreement, decisions and recommendations of the Commission shall be taken by a majority of the votes cast. A majority of the Members of the Commission shall constitute a quorum"*.

Paragraph 2 of Article IX of the IOTC Agreement further provides that *"[...]the Commission may, by a two-thirds majority of its Members present and voting, adopt conservation and management measures binding on Members of the Commission in accordance with this Article"*(emphasis added).

Paragraph 6 of Rule X of the IOTC Rules of Procedure (IOTC RoPs) further provides that *"Votes cast means votes 'in favor' and 'against'"*(emphasis added).

“It follows from the above rules that only votes in favor or against a proposal are to be counted for the purpose of determining a majority. Abstentions are not counted.”

In summary:

Abstentions are not counted.

2. Re. potentially valid votes not being counted

On vote night, 23 Members appeared to be in the meeting room, but a voting result pertaining to only 19 votes was reported to the Commission. The votes from four Members were invalidated on vote night because they were deemed to have been cast by persons that were not a Head of Delegation (HOD) or an Alternate (ALT).

The Zoom voting platform provides an output called a poll report (see an example below). On vote night, the voters' names were checked and their votes were tallied using the poll report. Voter names were checked by comparing the Username and/or User-Email information in the poll report with the name of the HOD or Alternate (ALT) listed in the Credentials.

In the example below, Nancy King is a HOD and listed as such on a credential therefore her vote would have been determined to be valid. John Smith is not an eligible voter according to the credentials and his vote would have been determined to be invalid.

Poll Report					
user-name	user-email	time of vote	Question	Answer	Vote valid?
Nancy King	n.king@gmail.com	Jun 11, 2021 08:27:00	Are you in favour of Proposal E Rev2?	no	Valid
John Smith	john.smith@fisheries.gov	Jun 11, 2021 08:26:38	Are you in favour of Proposal E Rev2?	yes	Not valid – name not on credentials

Following the meeting, the Executive Secretary recalled the HODs associated with the four invalidated votes made multiple interventions throughout the session and were regularly visible in the meeting room, so he reviewed the voting records to better understand why some non-eligible persons appeared to cast a vote instead of their HOD. The Executive Secretary also recalled that some delegations were located in one room; therefore, it was possible that the HODs, working in a shared room, may have been involved in the vote by, for example, directing someone else to make the vote on their behalf, or casting the vote themselves — but because they were sharing the Zoom link of a colleague i.e., sharing 'user' details, their names did not appear on the poll report, and therefore their votes were not counted. Concerned that the process used to validate the four votes concerned may have been subject to error, the Executive Secretary, examined the matter further.

The Username and User-Email information from the poll report for the four Members which were determined to have cast invalid votes was re-checked; and for each of the votes concerned it was confirmed that the Username and User-Email of the respective voters did not appear to be related to the HOD or ALT.

However, after generating and reviewing the Zoom participant list (a separate report, generated after the meeting – see below) and checking the time the HODs were in the meeting, it was found that the four HODs, whose votes were invalidated, were in the meeting at the time of voting and all were correctly labelled as HODs and they were using the same shared User-Email addresses of the persons listed in the poll report. It is therefore highly probable that these HODs cast valid votes on vote night.

In the example below, the participants report confirms Nancy King was correctly labelled as a HOD. The report also confirms that HOD David Jones was present (and labelled correctly) but reveals that he was using the (user-email) platform of his colleague John Smith (whose name appeared in the poll report) — this was the case for the four HODs on vote night.

Participant Report			
Name (Original name)	user email	time join	time leave
MEMBER-HOD-Nancy Kings	n.king@gmail.com	06-11-21 12:05	06-11-21 20:57
MEMBER-HOD-David Jones	john.smith@fisheries.gov	06-11-21 12:16	06-11-21 20:47

In summary:

The use of the Username and User-Email from the poll report alone should not be used to determine whether a HOD or ALT was present and cast a vote. The 'original name' and time provided in the participant report confirmed the four HODs, whose votes were invalidated, were in the room when votes were cast, but they were using the platform (user-email) belonging to a colleague. It is highly probable that these HODs cast valid votes on vote night.

The deficiencies in the poll report were not known on vote night. Any future voting process implemented under similar meeting circumstances (e.g., in a Zoom plenary) will need to use both the poll report and the participants report to confirm the identity of the voters.

The Commission might consider the standing of the votes made by the four HODs that used shared User email addresses.

3. Re. votes made by some persons not eligible to vote

(a) votes made by persons that were not a HOD or Alternate but were labelled as such

IOTC Agreement Article VI. SESSIONS OF THE COMMISSION

1. Each Member of the Commission shall be represented at sessions of the Commission by a single delegate who may be accompanied by an alternate and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Commission but may not vote, except in the case of an alternate who is duly authorized to substitute for the delegate.

According to the IOTC Agreement only HODs and ALTs may vote. During the meeting, the Chairperson reiterated this condition to Members.

During a review of the vote records, it was found that, in accordance with Art VI.1 of the IOTC Agreement, some voters were not eligible to vote because they were not, in accordance with the Credentials submitted, either a HOD or an ALT.

The ineligible voters involved were well known to Secretariat as HOD or ALTs from other IOTC meetings, and their respective votes were incorrectly accepted on vote night. However, during the review of vote records, it was found that the voters concerned were not listed as either a HOD or an ALT on the credentials; furthermore, they had clearly (as revealed in the participants report), incorrectly, labelled themselves as the HOD or the ALT for the vote.

The voters in question could clearly be identified by their email addresses; and they could be identified from their other members of their delegations present in the meeting at the time of the vote.

In summary:

There are indications that some votes were cast by persons that were not a HOD or an ALT.

The Commission might consider the standing of the votes cast by persons that were not a HOD or an ALT.

3. Re. votes made by some persons not eligible to vote

(b) there were votes made by Alternates that, according the Credentials, were not duly authorized to do so (IOTC Agreement Article VI. / IOTC ROP III)

IOTC Agreement. Article VI. SESSIONS OF THE COMMISSION

1. Each Member of the Commission shall be represented at sessions of the Commission by a single delegate who may be accompanied by an alternate and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Commission but may not vote, except in the case of an alternate who is duly authorized to substitute for the delegate.

IOTC Rules of Procedure. RULE III: CREDENTIALS

At each Session the Executive Secretary shall receive the Letter of Credentials of each delegation issued by, or on behalf of, the Head of state, the head of government, the minister for foreign affairs or the minister concerned, indicating clearly the head of delegation and the alternate, as well as the list of advisors and experts who will be part of the delegation. Such Letter of Credentials shall conform to the standard set out in [Appendix I](#). The Executive Secretary shall report to the Commission the Letter of Credentials received and recommendations for any action if required

IOTC Rules of Procedure. Appendix I: Letter of credentials, Paragraph 2

[Title and Name], Head of Delegation or, in his/her absence, the alternate or any other member of the Delegation designated by him/her, is authorised to fully take part in the proceedings of the Session and take, on behalf of the Government (or Authority concerned for Regional Economic Integration Organisation e.g. EU) of [name of IOTC Member], any action or any decision required in relation with this Session.

According to the IOTC Agreement only HODs and ALTs may vote. And according to the IOTC Rules of Procedure, an ALT needs to be duly authorised to vote.

The questions posed to FAO Legal Office

The FAO Legal Office was asked two questions:

Question 1: When it comes to ascertaining whether an alternate is duly authorised to substitute for the delegate (HOD), if the clause marked above (paragraph 2 in Appendix 1 of the IOTC Rules of Procedure) is provided in the Credentials, and the alternate is clearly listed, does this permit the alternate to vote?

The FAO Legal Office advice on question 1:

Concerning your question as to whether Credentials clearly listing an alternate for the Head of Delegation, would be sufficient for the Alternate to vote, LEG notes that Rule III.1 of the IOTC RoPs provides that "*At each Session the Executive Secretary shall receive the Letter of Credentials of each delegation issued by, or on behalf of, the Head of State, the head of government, the minister for foreign affairs or the minister concerned, indicating clearly the head of delegation and **the** alternate, as well as the list of advisors and experts who will be part of the delegation*" (emphasis added). It stems from this Rule that there should be one alternate only.

Article VI(1) refers to "alternates" in the plural, implying that a Member State can include in its delegation more than one alternate. However, that provision also specifies that "an alternate" needs to be duly authorized to substitute for the delegate. A duly authorized alternate can vote: Not an "expert" or an "advisor".

Appendix I to the RoPs, containing a template letter of credentials, refers to "**the**" alternate, i.e. only one, in conformity with Rule III.1. It also indicates that both the alternate, as well as "*any other designated member of the Delegation*" can take "*any action or any decision required in relations with this Session*", which is to be understood as to include voting.

The above provisions, read together, can be interpreted in the sense that the credentials need to clearly identify one alternate only, who is duly authorized to substitute the Head of Delegation in all circumstances, including voting. This is also in accordance with relevant practice.

Question 2: if a Credential does not include the paragraph 2 from Appendix 1 then does this mean that the alternate (although clearly listed) is not duly authorised to vote.

The FAO Legal Office advice on question 2:

“...in the interest of transparency in a voting process, and particularly on the occasion of an online vote, the paragraph you have pointed to should be included. In the case of a meeting in person, whereas that paragraph would be equally needed, the issue can be considered as less critical.”

In summary:

Paragraph 2 of the Credential template provided in Appendix I of the IOTC Rules of Procedure is the basis for an ALT to be recognised as being duly authorised (as per IOTC Agreement Article VI.1) to participate in a vote.

During a review of the vote records, it was found that the Credentials of some Members whose ALTs cast a vote on behalf of their delegation, did not contain the above-mentioned Paragraph 2; therefore, the ALTs concerned were not duly authorised to cast the vote.

The Commission might consider the standing of votes made by ALTs that were not duly authorised according to ROP Appendix I.