



## Report for the 5<sup>th</sup> Special Session of the Indian Ocean Tuna Commission

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Held by videoconference, 29 November 2021

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**DISTRIBUTION:**

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

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## ACRONYMS

AFAD	Anchored fish aggregating device
BMSY	Biomass which produces MSY
CMM	Conservation and Management Measure (of the IOTC; Resolutions and Recommendations)
CNCP	Cooperating Non-Contracting Party, of the IOTC
CoC	Compliance Committee of the IOTC
CPs	Contracting Parties
CPCs	Contracting Parties and Cooperating non-Contracting Parties
DFAD	Drifting fish aggregating device
EEZ	Exclusive Economic Zone
FAD	Fish aggregating device
FAO	Food and Agriculture Organization of the United Nations
FMSY	Fishing mortality at MSY
GEF	Global Environment Facility
HCR	Harvest control rule
ICRU	Improved Cost Recovery Uplift
IOC	Indian Ocean Commission
IOTC	Indian Ocean Tuna Commission
IPNLF	International Pole and Line Foundation
ISSF	International Seafood Sustainability Foundation
IUU	Illegal, unreported and unregulated
LRP	Limit reference point
LSTLV	Large-scale tuna longline vessel
MPF	Meeting participation fund, of the IOTC
MSC	Marine Stewardship Council
MSE	Management Strategy Evaluation
NGO	Non-Governmental Organisation
OFCF	Overseas Fishery Cooperation Foundation of Japan
OIG	Office of the Inspector General
OPRT	Organisation for the Promotion of Responsible Tuna Fisheries
OT	Overseas Territories
PEW	PEW Charitable Trust
RFMO	Regional Fisheries Management Organisation
SC	Scientific Committee of the IOTC
SCAF	Standing Committee on Administration and Finance of the IOTC
SIOFA	Southern Indian Ocean Fisheries Agreement
SBMSY	Spawning or 'adult' equilibrium biomass at MSY
SWIOFC	Southwest Indian Ocean Fisheries Commission
TCAC	Technical Committee on Allocation Criteria of the IOTC
TCMP	Technical Committee on Management Procedures of the IOTC
TRP	Target referent point
UNCLOS	United Nations Convention on the Law of the Sea
VMS	Vessel Monitoring System
WPEB	Working Party on Ecosystems and Bycatch of the IOTC
WPICMM	Working party on the Implementation of Conservation and Management Measures
WPM	Working Party on Methods of the IOTC
WPTmT	Working Party on Temperate tunas of the IOTC
WPTT	Working Party on Tropical Tunas of the IOTC
WWF	World Wide Fund for Nature (a.k.a World Wildlife Fund)

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## HOW TO INTERPRET TERMINOLOGY CONTAINED IN THIS REPORT

This report uses the following terms and associated definitions.

Level 1: From a subsidiary body of the Commission to the next level in the structure of the Commission:

**RECOMMENDED, RECOMMENDATION:** Any conclusion or request for an action to be undertaken, from a subsidiary body of the Commission (Committee or Working Party), which is to be formally provided to the next level in the structure of the Commission for its consideration/endorsement (e.g. from a Working Party to the Scientific Committee; from a Committee to the Commission). The intention is that the higher body will consider the recommended action for endorsement under its own mandate, if the subsidiary body does not already have the required mandate. Ideally this should be task specific and contain a timeframe for completion.

Level 2: From a subsidiary body of the Commission to a CPC, the IOTC Secretariat, or other body (not the Commission) to carry out a specified task:

**REQUESTED:** This term should only be used by a subsidiary body of the Commission if it does not wish to have the request formally adopted/endorsed by the next level in the structure of the Commission. For example, if a Committee wishes to seek additional input from a CPC on a particular topic, but does not wish to formalise the request beyond the mandate of the Committee, it may request that a set action be undertaken. Ideally this should be task specific and contain a timeframe for the completion.

Level 3: General terms to be used for consistency:

**AGREED:** Any point of discussion from a meeting which the IOTC body considers to be an agreed course of action covered by its mandate, which has not already been dealt with under Level 1 or level 2 above; a general point of agreement among delegations/participants of a meeting which does not need to be considered/adopted by the next level in the Commission's structure.

**NOTED/NOTING:** Any point of discussion from a meeting which the IOTC body considers to be important enough to record in a meeting report for future reference.

**Any other term:** Any other term may be used in addition to the Level 3 terms to highlight to the reader of an IOTC report, the importance of the relevant paragraph. However, other terms used are considered for explanatory/informational purposes only and shall have no higher rating within the reporting terminology hierarchy than Level 3, described above (e.g. **CONSIDERED; URGED; ACKNOWLEDGED**).

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CHINA  
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ERITREA  
EUROPEAN UNION  
FRANCE (OT)  
INDIA  
INDONESIA  
IRAN, ISLAMIC REPUBLIC OF  
JAPAN  
KENYA  
KOREA, REPUBLIC OF  
MADAGASCAR  
MALAYSIA  
MALDIVES  
MAURITIUS  
MOZAMBIQUE  
OMAN  
PAKISTAN  
PHILIPPINES  
SEYCHELLES  
SOMALIA  
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TANZANIA, UNITED REPUBLIC OF  
THAILAND  
UNITED KINGDOM  
YEMEN

**COOPERATING NON-CONTRACTING PARTIES OF THE INDIAN OCEAN TUNA COMMISSION**

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SENEGAL

## EXECUTIVE SUMMARY

In accordance with Article VI.5 of the IOTC Agreement IOTC Members requested the IOTC Chairperson to convene a Special Session of the Commission to reach a decision on whether to adopt IOTC-2021-S25-PropE\_rev2.

The 5th Special Session of the IOTC was held on 29 November 2021 and chaired by Ms Jung-re Riley Kim (Rep. of Korea).

Following discussions on the validity of the vote taken at S25 and possible processes the Commission might use to arrive at a decision on whether to adopt PropE\_Rev2, Kenya informed the Commission that it was withdrawing the proposal.

## 1. Opening of the session

1. The 5th Special Session of the IOTC was opened and chaired by the IOTC Chairperson Ms Jung-re Riley Kim (Rep. of Korea).

## 2. Letters of credentials

2. The Commission **NOTED** that 23 Members, and 13 Observer organisations submitted credentials and registered to participate in the meeting. The Executive Secretary informed the Commission about the specific elements of the credentials of some Members that were not consistent with the standard set out in Appendix I of the IOTC Rules of Procedure.
3. The list of participants is provided in [Appendix 1](#).
4. Mauritius and the United Kingdom made statements ([Appendix 4](#)).

## 3. Admission of observers

5. Pursuant to Article VII of the Agreement establishing the IOTC and Rule XIV of the IOTC Rules of Procedure, the Commission admitted the following observers:

*Members and Associate Members of the FAO that are not Members of the Commission:*

- —

*Intergovernmental organizations having special competence in the field of activity of the Commission:*

- Indian Ocean Commission

*Non-governmental organizations having special competence in the field of activity of the Commission:*

- Agreement on the Conservation of Albatrosses and Petrels
- Australian National Centre for Ocean Resources and Security
- Blue Resources Trust
- Global Tuna Alliance
- International Pole and Line Foundation
- International Seafood Sustainability Foundation
- Marine Stewardship Council
- PEW Charitable Trusts
- Sustainable Fisheries and Communities Trusts
- Sustainable Fisheries Partnership
- Sustainable Indian Ocean Tuna Initiative
- World Wide Fund for Nature (WWF)

*Invited consultants and experts:*

- Taiwan, Province of China

## 4. Adoption of the agenda and arrangements for the session

6. The adopted agenda is provided in [Appendix 2](#). The documents presented to the Commission are listed in [Appendix 3](#).

## 5. Consideration of information received on the vote taken at S25

7. The Executive Secretary presented IOTC-2021-SS5-02. In summary, he informed the Commission:
  - A secret vote was held at S25 (11 June 2021) on whether to adopt IOTC-2021-S25-PropE\_Rev2 as a Conservation and Management Measure (CMM). However, the Commission did not agree on whether the 2/3 majority was met as there was disagreement on whether the votes cast as 'abstain' should be included in the total count of votes, and advice from the FAO Legal Office was requested on this matter.



- Heads of Delegations met on 8 September 2021 to receive the advice from FAO Legal Office. The advice 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 and some votes being found to have been cast by non-authorised persons. Advice on the irregularities from the FAO Legal Office was also provided to the meeting.
- 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.

## 6. Steps to be undertaken to reach a decision on whether to adopt IOTC-2021-S25-PropE\_Rev2

8. Some Members indicated that they believed that, given the advice from the FAO Legal Office on how abstention votes are to be treated, the proposal did receive the required 2/3 majority in favour and therefore it was adopted, as of 11 June 2021.
9. Other Members were of the opinion that the proposal was not adopted at S25; and that the irregularities could not be ignored and were of such a nature to invalidate the outcome of the vote taken during the S25.
10. The Chairperson reminded the Commission that the S25 Report (which was adopted after the Heads of Delegations Meeting) did not report that a CMM on the management of fish aggregating devices in the IOTC area of competence had been adopted.
11. After considerable discussions on the validity of the vote taken at S25 and possible processes the Commission might use to arrive at a decision on whether to adopt PropE\_Rev2, Kenya informed the Commission that it was withdrawing the proposal. A statement by Kenya is available at [Appendix 4](#).
12. The Commission **ACKNOWLEDGED** the considerable work that Kenya and the co-proponents put into developing the proposal and **THANKED** Kenya for its flexibility.
13. Several Members indicated they are prepared to work intersessionally with Kenya on a revised proposal.

## 7. Adoption of the report of the 5th Special Session of the Commission

14. The report of the 5th Special Session of the Indian Ocean Tuna Commission (IOTC-2021-SS5-R) was **ADOPTED** by correspondence on 16 December 2021.

## APPENDIX 1

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**APPENDIX 2**

**AGENDA OF THE 5TH SPECIAL SESSION OF THE INDIAN OCEAN TUNA COMMISSION**

**FOCUS OF THE SESSION: REACHING A DECISION ON WHETHER TO ADOPT IOTC-2021-S25-PROPE\_REV2**

- 1. OPENING OF THE SESSION**
- 2. LETTERS OF CREDENTIALS**
- 3. ADMISSION OF OBSERVERS**
- 4. ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION**
- 5. CONSIDERATION OF INFORMATION RECEIVED ON THE VOTE TAKEN AT S25 (IOTC-2021-SS5-02)**
- 6. STEPS TO BE TAKEN TO REACH A DECISION ON WHETHER TO ADOPT IOTC-2021-S25-PROPE\_REV2**
- 7. ADOPTION OF THE REPORT OF THE 5TH SPECIAL SESSION OF THE COMMISSION**

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**APPENDIX 3**  
**LIST OF DOCUMENTS**

<b>Document</b>	<b>Title</b>
IOTC-2021-SS5-01	Draft agenda for SS5 (v 29Oct).
IOTC-2021-SS5-02	On the challenge to the result of the vote held on PropE_rev2
<b><i>Reference documents</i></b>	
IOTC-2021-SS5-Statement01	Mauritius
IOTC-2021-SS5-Statement02	United Kingdom
IOTC-2021-SS5-Statement03	Kenya



## APPENDIX 4 STATEMENTS

### Statement 1. Mauritius

5<sup>th</sup> Special Session of the Indian Ocean Tuna Commission  
29 November 2021

Agenda Item 2: Letters of Credentials

Statement by the Republic of Mauritius

The Republic of Mauritius reiterates its long-standing position that the United Kingdom is not entitled to be a member of the Indian Ocean Tuna Commission (IOTC) as a “coastal State situated wholly or partly within the Area [of competence of the Commission]” and wishes to place on record its objection to the participation of the United Kingdom in the 5<sup>th</sup> Special Session of the IOTC as a coastal State purporting to represent the Chagos Archipelago.

In addition to the reasons provided in the past to support its stand, the Republic of Mauritius wishes to draw the attention of the Commission to the Judgment delivered on 28 January 2021 in the case of *Mauritius v. Maldives* by a Special Chamber of the International Tribunal for the Law of the Sea (ITLOS). This Judgment ruled that the Republic of Mauritius has undisputed sovereignty over the Chagos Archipelago, thereby further confirming that the United Kingdom cannot be recognized as a member of the IOTC as a coastal State.

In its Judgment, the Special Chamber also held that:

- (a) the determinations made by the International Court of Justice (ICJ) in its Advisory Opinion of 25 February 2019 on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* have legal effect and clear implications for the legal status of the Chagos Archipelago;
- (b) the United Kingdom’s continued claim to sovereignty over the Chagos Archipelago is contrary to the determinations made by the ICJ that the detachment of the Chagos Archipelago by the United Kingdom from Mauritius was unlawful and that the United Kingdom’s continued administration of the Chagos Archipelago constitutes an unlawful act of a continuing character;

- (c) the fact that the time-limit of 22 November 2019 set by the UN General Assembly for the withdrawal of the United Kingdom's administration from the Chagos Archipelago has passed without the United Kingdom complying with that demand further strengthens the Special Chamber's finding that its claim to sovereignty over the Chagos Archipelago is contrary to the authoritative determinations made in the Advisory Opinion of the ICJ;
- (d) while the process of decolonization of the Republic of Mauritius has yet to be completed, the Republic of Mauritius' sovereignty over the Chagos Archipelago can be inferred from the ICJ's determinations;
- (e) the continued claim of the United Kingdom to sovereignty over the Chagos Archipelago cannot be considered anything more than "a mere assertion" and such assertion does not prove the existence of a dispute;
- (f) the Republic of Mauritius is to be regarded as the coastal State in respect of the Chagos Archipelago.

It is crystal clear that as a matter of international law, the Republic of Mauritius is the only State lawfully entitled to exercise sovereignty and sovereign rights over the Chagos Archipelago and its maritime zones, as the coastal State and that the United Kingdom is not in a position to claim any rights over the Chagos Archipelago. The so-called "British Indian Ocean Territory" which the United Kingdom purported to create by illegally excising the Chagos Archipelago from the territory of Mauritius prior to its accession to independence is an illegal entity. The United Kingdom cannot accordingly be a member of the IOTC as a coastal State.

The Republic of Mauritius requests that this statement be annexed to the report of this meeting.

**Statement 2. United Kingdom**

Note Number: OTD/008/2021

The Overseas Territories Directorate of the Foreign, Commonwealth and Development Office presents its compliments to the Secretariat of the Indian Ocean Tuna Commission (IOTC) and the 5<sup>th</sup> Special Session held virtually on 29 November 2021. For the benefit of the delegates the United Kingdom wishes to restate its position on the British Indian Ocean Territory (BIOT) and membership of the IOTC. This is with reference to Mauritius's statement of 26 November 2021 (No 12/2021 – 18570/46/142).

The United Kingdom has no doubt about its sovereignty over the Chagos Archipelago, which has been under continuous British sovereignty since 1814. Mauritius has never held sovereignty over the Archipelago and we do not recognise its claim. However, we have a long-standing commitment, first made in 1965, to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes. We stand by that commitment.

The United Kingdom was disappointed that this matter was referred to the International Court of Justice (ICJ), contrary to the principle that the Court should not consider bilateral disputes without the consent of both States concerned. Nevertheless, the United Kingdom respects the ICJ and participated fully in the ICJ process at every stage and in good faith. An Advisory Opinion is advice provided to the United Nations General Assembly at its request; it is not a legally binding judgment. The UK Government has considered the content of the Opinion carefully, however we do not share the Court's approach.

UN Resolution 73/295, adopted following the ICJ's Advisory Opinion, does not and cannot create any legal obligations for UN Member States. Neither the non-binding Advisory Opinion nor the non-binding General Assembly resolution alter the legal situation, namely that of a sovereignty dispute between the United Kingdom and Mauritius. The General Assembly is not the appropriate forum to resolve such a bilateral dispute.

The United Kingdom is aware of the judgment delivered on 28 January by the Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) formed to deal with the Dispute concerning delimitation of a maritime boundary claimed by Mauritius to exist between Mauritius and Maldives in the Indian Ocean. The UK is not a party to these proceedings, which can have no effect for the UK or for maritime delimitation between the UK (in respect of BIOT) and the Republic of the Maldives.

The United Kingdom is a full member of the IOTC. The United Kingdom deposited instruments of acceptance to the IOTC Agreement on 31st March 1995 and 22nd December 2020 and has been a party to the Agreement since it entered into force. 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 BIOT 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.

The United Kingdom requests that this statement be annexed to the report of the 5<sup>th</sup> Special Session and posted on the IOTC's website.

The Overseas Territories Directorate of the Foreign, Commonwealth and Development Office avails itself of the opportunity to renew to the Secretariat of the Indian Ocean Tuna Commission the assurances of its highest consideration.

FOREIGN, COMMONWEALTH AND DEVELOPMENT OFFICE  
LONDON

03 December 2021



### Statement 3. Kenya

#### Kenya rebutting statement – Special Session IOTC-2021-SS5

Kenya wishes to express its disappointment in the course our discussions together have taken today. As Kenya emphasised at the outset of this Special Session, under the IOTC Agreement our proposal was successfully adopted with a two-thirds majority of the Members present and voting. This was confirmed by the FAO Legal Counsel, who confirmed that abstentions do not count as “votes cast”.

As per IOTC Agreement Article IX(3), the adoption of the proposal should have been communicated to the CPCs. Regrettably, this has not been done until today.

Kenya regrets that technical problems encountered at the time of the vote have led the Commission to not recognise the validity of the adopted measure. Kenya has therefore decided to withdraw the proposal and repropose it in the next Commission meeting.

Kenya recognises and appreciates the work of the IOTC – both the work of the Secretariat and of all the parties who come together to act cooperatively. Nonetheless, Kenya must express frustration and disappointment with how this vote and the communication surrounding it has been handled. Kenya sent several letters to the Secretariat to be circulated to all CPCs, which unfortunately was not done in a timely manner. Meeting the great challenge of cooperatively managing tuna stocks in the Indian Ocean requires us to trust each other and the processes through which we make decisions. This trust flourishes in conditions of transparency and open channels of communication.