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## **A COMPIATION OF COMMENTS RECEIVED ON THE 2ND DRAFT ALLOCATION REGIME**

TCAC comments v7Jan2022

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### **ABOUT THIS DOCUMENT.**

The TCAC09 reviewed a draft allocation regime. The TCAC Chairperson noted the comments made in plenary and also invited Members to submit written comments.

This document contains the comments received on the text of the allocation regime as drafted in IOTC-2021-TCAC09-02b.

## **ESTABLISHING AN ALLOCATION REGIME FOR THE IOTC**

### Republic of Korea, general comments

Korea would like to take this opportunity to express warm support and strong admiration to your passion and hard work, and my personal resentment, as the head of the Korean Delegation, to what all of us had to go through at the end of the 9th meeting.

Korea strongly believes that each CPC holds different degree of responsibility when it comes to the aggravation of fish stock in the IOTC Area of Competence, because some were very diligent in complying with the past IOTC agreements while some others felt very little, if any, reluctant to breach them. Korea does acknowledge the importance of giving due consideration to different circumstances under which each CPC is, among which are the aspiration for development and the economic predicament induced by the pandemic; likewise, it is only fair to give due consideration to such other significant features as the efforts a CPC took for diligent compliance, especially when the CPC's fishing amount is only trivial compared to all the catches in the IOTC. Should these features be neglected, it would constitute what deserves to be called a reverse discrimination to such CPCs.

Against this backdrop, Korea wishes to emphasize again that it has been a well-complying, de minimis fishing nation – a CPC that has been complying faithfully with the past IOTC agreements, with its total fishing amount takes less than two percent of the IOTC catch. Korea is among the Distant Water Fishing nations that are allowed even less fishing opportunity compared to the coastal states, which renders catch attribution from us to them unacceptable. The dichotomous standard, categorizing all CPCs as either a Distant Water Fishing nation or a Coastal State, is not only unreasonable but also misleading; hence a delicate approach is crucial.

In Korea's view, the core question to ponder is how exactly to give the aforementioned due consideration to well-compliance and de minimis fishing. Korea, however, found it extremely difficult to devise a straightforward due consideration clause, largely because the Committee has yet set forth the basic text of the allocation criteria, which means Korea does not have a starting point to elaborate from. Korea will continue to seek to, with the progress in the TCAC discussions, come up with a thought-through and hopefully agreeable proposal for the future TCAC meetings once we manage to secure the organized basis to build on.

Thank you and Korea will be looking forward to seeing you in the following TCAC meeting in March.

### Maldives

Maldives welcomes the opportunity to provide written comments and proposals on the draft allocation proposal v2 prepared by the TCAC Chair. As noted in the meeting, Maldives is disappointed and concerned that several comments made by the Maldives and other coastal States in particular to the main elements of the proposal is not reflected in v2.

Maldives maintains the detailed comments made to V1 and reflected in the summary of comments made by CPCs in IOTC-2021-TCAC09-REF01. Thus, at this point Maldives will offer our comments to the additional texts in v2 of the allocation proposal.

At the outset, the Maldives wishes to emphasize the importance of resolving the quota allocation process in a speedy manner and which protects the rights of coastal States, particularly Small Island Developing States, whose livelihood and economic futures depend on the sustainability of the Indian Ocean stocks.

Maldives offers these comments and proposals in good faith and in the hope of a constructive dialogue and cooperation from the intendent Chair and other States in the Indian Ocean.

### South Africa, Maldives, Australia, Kenya, Mozambique, general comments

On behalf of the above mentioned five (5) IOTC CPCs, we are providing you with the following formal submission for your consideration. Please note that we expect other G16 members to voice support over the coming weeks for the following.

As articulated at the recent TCAC09 meeting (28 June – 1 July 2021), the G16 members listed above, note with continued concern that version two (V2) of the Chair’s draft proposal and the subsequent Chair’s meeting summary, did not take on board both the comments made during the TCAC09 meeting, and written comments provided soon after the TCAC08 meeting.

The G16 has been clear from the outset of this process in 2010 that the allocation process must be consistent with international law, which respects coastal States sovereign rights, and must recognise the differential treatment of developing coastal States of the Indian Ocean.

As indicated at your first TCAC meeting, we believe our current focus should be on the key issues and differences among CPCs, which has been the cause now for this 11+ years process. Focusing on minor issues will not get us to the finish line, but rather cause further strained relationships among the IOTC membership, and unnecessarily stretching out the process further. Thus, this submission reflects our comments on the key provisions that we think require immediate/priority resolution, noting (as other delegations have noted) there are other minor elements which can be resolved at a later time. We emphasize that this submission is without prejudice to any individual or collective positions of G16 members, or to further comments offered by any G16 Member individually.

We welcome the opportunity to provide further comments alongside our previous written and verbal comments which should be considered. We further hope that our collective comments shall be accurately reflected in the next version of the proposal. We expect to see divergent views reflected in the text, and by weight, rather than for the Chair to select which comments and textual suggestions should be included in the text and which should be ‘commented’ on in the margins. This is what we understand normal international negotiation to entail. G16 members offer our submission in good faith, with the aim of cooperation and collaboration in this process.

Chair, we look forward to receiving version 3 of your draft proposal that fully takes into account our requested improvements. Upon receiving that draft, the G16 will review and consider if a TCAC10 meeting would be appropriate.

The G16 wishes to highlight that, although we understand some developed CPCs consider that certain domestic sectors are dependent on IOTC resources and that this is a case for special consideration, we urge those CPCs to remember that the situation for many G16 Members is that their economies are wholly or significantly reliant on tuna and tuna-like species, with little opportunity for economic diversification. We consider this is a very distinct situation from the situation those developed CPCs describe.

#### United Kingdom, general comments

The UK would like to thank the Chair for addressing our previous general comments for inclusion the second draft of the proposal. Furthermore, the UK would like to reiterate our general comments on three elements of the proposal made during the TCAC09 meeting.

#### **PREAMBLE**

##### Maldives

As noted in TCAC08, TCAC09, and in our previous written comments made to V1 and reflected in IOTC-2021-TCAC09-REF01, Maldives would refrain from making comments to the preambular texts as they are negotiated and resolved last in international treaty negotiations.

#### **The Indian Ocean Tuna Commission (IOTC),**

**CONSIDERING** the objective of the Commission to promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by the Agreement and encouraging sustainable development of fisheries based on such stocks, as referenced in Article V.1 1 of the IOTC Agreement;

**MINDFUL** that allocation regimes can contribute to the sustainable management of fish stocks, in particular for fish stocks [“that are depleted, or at or below production levels”], by providing a transparent and equitable means of distributing fishing opportunities;

**NOTING** in this regard IOTC 2010 *Resolution 10/01 for the conservation and management of tropical tuna stocks in the IOTC area of competence* endorsed by the IOTC at its 2010 meeting in Busan, Korea, pursuant to which the Commission mandated the Technical Committee on Allocation Criteria to “discuss allocation criteria for the management of tuna resources in the Indian Ocean and recommend an allocation quota system or any other relevant measures”;

**RECALLING** the principles, rights and obligations of all States, and provisions of treaties and other international instruments relating to marine fisheries, and in particular, relating to highly migratory species, including those contained in:

*The United Nations Convention on the Law of the Sea of 10 December 1982;*

*The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, of 4 August 1995;*

*The 1993 FAO Compliance Agreement;*

*The 1995 FAO Code of Conduct for Responsible Fisheries;*

Other relevant instruments adopted by the Food and Agriculture Organisation of the United Nations; and,

The relevant resolutions of the United Nations General Assembly;

**RECALLING** global commitments to open and transparent decision-making;

**NOTING** the sovereign rights of coastal States in accordance with the international law of the sea for the purposes of exploring and exploiting, conserving and managing the living resources, including highly migratory species, within the 200 nautical mile Exclusive Economic Zone under their jurisdiction, and the need for the Allocation Regime not to prejudice such rights;

**RECOGNIZING** the established interests, fishing patterns and fishing practices of Members historically fishing in the IOTC area of competence;

**RECOGNIZING** the interests, aspirations, needs, and special requirements of developing States, as stated in various international instruments, in particular least-developed States and Small Island Developing States (SIDS) that are coastal States in the IOTC area of competence, including their requirement to equitably participate in the fishery for highly migratory fish stocks in this area;

#### Indonesia

The terminology of least developed states and SIDS are not recognized by the IOTC Agreement.

*RECOGNIZING the interests, aspirations, needs, and special requirements of developing countries States, as stated in various international instruments, ~~in particular least-developed States and Small Island Developing States (SIDS) that are coastal States in the IOTC area of competence, including their requirement to equitably participate in the fishery for highly migratory fish stocks in this area~~*

**UNDERLINING** the results and recommendations from the KOBE process;

**DESIRING** to cooperate to address developing coastal States interests, aspirations, needs, and special requirements and the rights of coastal States regarding fisheries resources in their exclusive economic zone, while recognizing the historic economic interests and rights of all IOTC Contracting Parties and Cooperating Non-Contracting Parties involved in fisheries for IOTC fish stocks;

**ADOPTS**, in accordance with the provisions of Article IX.1 of the Agreement, the following:

### **Article 1. USE OF TERMS**

#### Maldives

Maldives note that Article 1 will need to be revisited when we are closer to the Agreement. However, Maldives do not support the addition/change of definitions in V2 for the coastal and non-coastal CPCs to the definition. This is not reflected in international law and creates confusion to the allocation regime and the IOTC processes. It is also not in the spirit of the framework proposed in the IOTC Agreement. Thus, Maldives proposes the definition to be re-instated to its previous scope, i.e., Coastal States.

## 1.1. For the purposes of this Resolution:

- (a) **“Agreement”** means the Agreement for the Establishment of the Indian Ocean Tuna Commission, approved by the FAO Council at its Hundred-and-Fifth Session in November 1993, and entered into force on 27 March 1996;
- (b) **“Allocation”** means a fishing opportunity represented as a percentage share of the Total Allowable Catch (TAC) for a given fish stock established by the Commission pursuant to Articles 6.1 to 6.16, and adjusted by the Commission pursuant to Articles 7.1, 7.2, 7.3 and 7.4.
- (c) **“Allocation Period”** means the period during which an allocation established pursuant to this Resolution remains valid as determined pursuant to Article 10;
- (d) **“Coastal CPC”** means a State or associated member or regional economic integration organisation situated wholly or partly within the IOTC Area of Competence;

Maldives

Maldives do not support the addition/change of definitions in V2 for the coastal and non-coastal CPCs to the definition. This is not reflected in international law and creates confusion to the allocation regime and the IOTC processes. It is also not in the spirit of the framework proposed in the IOTC Agreement. Thus, Maldives proposes the definition to be re-instated to its previous scope, i.e., Coastal States.

- (e) **“Commission”** or **“IOTC”** means the Indian Ocean Tuna Commission;
- (f) **“Compliance Committee”** means the permanent committee provided for in Article XII.5 of the Agreement and established pursuant to the IOTC Rules of Procedures (2014);
- (g) **“Conservation and Management Measure”** or **“CMM”** as specified in Article IX of the Agreement, and consist of Resolutions, which are binding on Members, subject to Article IX para 5 of the IOTC Agreement, and Recommendations, which are non-binding, subject to Article IX para 8 of the Agreement;
- (h) **“Contracting Party”** or **“CP”** means a party to the Agreement;
- (i) **“Contracting Parties and Cooperating Non-Contracting Parties”** are jointly referred to as **“CPCs”**;
- (j) **“Cooperating Non-Contracting Party”** or **“CNCP”** means any non-Member of the Commission, which voluntarily ensures that vessels flying its flag fish in a manner which conforms with the Conservation and Management Measures adopted by the IOTC and have completed the application process to become a Cooperating Non-contracting Party to the IOTC, as detailed in Appendix III of the IOTC Rules of Procedures, [and which the Commission has endorsed];

Maldives

Maldives would like to propose changes to the definition of paragraph (j) Cooperating Non-Contracting Party, CNCP:

**“Cooperating Non-Contracting Party” or “CNCP”** means any non-member of the Commission, which voluntarily ensures that vessels flying its flag fish in a manner which conforms with the Conservation and Management measures adopted by the IOTC and have completed the application process to become a Cooperating non-Contracting Party to the IOTC as detailed in Appendix III of the IOTC Rule of Procedures.”

- (k) **“Developing State”** means a State that is a CPC whose developing status has been defined under United Nations standards and includes least developed States and Small Island Developing States.;
- (l) **“Fish Stocks” or “Stocks”** means tuna stocks and highly migratory species referenced in Article 5 and listed in Annex 1;

Maldives

Recognising that tuna are also highly migratory stocks, Maldives proposes the definition of fish stocks is changed to:

**“Fish stocks or “Stocks”** means highly migratory species including tuna stocks species referenced in Article 5 and listed in Annex 1.

- (m) **“Fishing Opportunity”** means, in the context of allocations, access rights of CPCs to catch a share of a given fish stock managed by the IOTC, which may be determined on the basis of portions of catch, biomass, or shares based on fishing effort.

United Kingdom

The UK notes a question from the Chair regarding the inclusion of the definition ‘Fishing Opportunities’ under Article 1. The UK would suggest that at this stage the list of terms needs to be comprehensive and include all the Terms used throughout the document. If towards the end of the process we decide a full list of Terms is not needed, we can look to reduce or remove as appropriate, but they are useful to include for now to ensure CPCs are all on the same page.

- (n) **“IOTC Area of Competence”** means the area under the IOTC mandate as defined in Article II of the Agreement and set out in *Annex A to the Agreement*;
- (o) **“IOTC Management Procedures”** means IOTC Resolutions adopted for the sustainable exploitation of harvested stocks through a set of formal actions, usually consisting of data collection, stock assessment (or other indicators), and harvest control rules, able to iteratively and adaptively provide robust decisions to manage a fishery. ;
- (p) **“Member”** means a Member of the Commission as specified in Article IV of the Agreement;

- (q) **“New Entrant”** for the purpose of this Resolution, means a State which was neither a Contracting Party nor a CNCP at the time this Resolution was adopted, and which has submitted its instrument of accession to the IOTC after the adoption of this Resolution;

Maldives

Maldives also would like to suggest a modification to the definition of New Entrants: **“New Entrant”** means a State who was neither a Contracting Party nor a CNCP at the time this Resolution was adopted, and which has been admitted to the IOTC as per the Rules of Procedure after the adoption of this Resolution;

- (r) **“Non-Coastal CPC”** means a State or associate member not situated wholly or partly within the IOTC Area of Competence;

Maldives

Maldives do not support the addition/change of definitions in V2 for the coastal and non-coastal CPCs to the definition. This is not reflected in international law and creates confusion to the allocation regime and the IOTC processes. It is also not in the spirit of the framework proposed in the IOTC Agreement. Thus, Maldives proposes the definition to be re-instated to its previous scope, i.e., Coastal States.

- (s) **“Serious non-compliance”** means ... Article 7.2
- (t) **“Scientific Committee”** means the permanent committee provided for in Article XII.1 of the Agreement;
- (u) **“Small Island Developing States”** or **“SIDs”** are States whose status has been defined by the United Nations;.
- (v) **“Stock Assessment Cycle”** means a cyclical schedule of stock assessments approved by the Commission for scientific advice provided by the Scientific Committee related to the status of fish stocks listed in Annex A in its stock assessment reports for such stocks. Stock Assessment cycles may vary by stock;
- (w) **“TAC”** means the Total Allowable Catches established by the Commission following a management evaluation process for a stock listed in Annex A and caught in the IOTC Area of Competence;
- (x) **“TAC Period”** means the period for which a TAC for a given fish stock remains valid and unchanged by the Commission. The TAC Period is determined by the Commission and usually follows the same schedule as the Stock Assessment Cycle.

## Article 2. PURPOSE

2.1 . The Allocation Regime contained in this Resolution shall form the basis and manner for the Commission to determine and share allocations of fish stocks listed in Annex 1 and caught in the IOTC Area of Competence among CPCs in a fair, equitable and transparent manner.

### Article 3. GUIDING PRINCIPLES

#### United Kingdom

There was a comment from the Chair under Article 3 regarding the UK’s request to include the phrase ‘evidence-based’ within the guiding principles. The Chair asked for a definition of ‘evidence-based’.

As per the UK comments in the TCAC09 meeting, the UK is not overly wedded to this specific wording. Our previous comment was to convey the general idea that this should not be a subjective process and needs to be based on a clear set of guidelines and based on data (e.g. catches and where these have occurred). We welcome the insertion of the word ‘objective’.

The following principles shall guide the Commission’s decisions in determining allocations for CPCs and New Entrants. Allocations established pursuant to the Allocation Regime contained in this Resolution shall:

3.1. provide an objective, fair, equitable and transparent system to allocate fishing opportunities in the IOTC area of competence;

#### Indonesia

*3.1 provide an objective, fair, equitable and transparent ~~system~~ manner to allocate fishing opportunities in the IOTC area of competence;*

*Consistent with para 2.1*

3.2. factor in the status of the IOTC stocks to be allocated;

3.3 contribute to ensuring the sustainable management and use of IOTC fish stocks ;

#### Maldives

Maldives would like to suggest the following to paragraph 3.3:

*3.3 contribute to the sustainable management and use of IOTC stocks by ensuring that total fishing opportunities do not exceed biologically sustainable limits, or TACs where provided.*

3.4. respect the sovereign rights and obligations of coastal States within their Exclusive Economic Zone or equivalent maritime zone;

#### United Kingdom

The UK also noted the objection from Mauritius on the inclusion of the text “, or equivalent maritime boundary, and national waters” after “Exclusive Economic Zone” in 3.4. The UK believes this is an important insertion to make to allow for maritime zones that are not explicitly declared as an EEZ (which is the case for the UK as a coastal state).

3.4 bis ensure the compatibility of conservation and management measures for fish stocks in their entirety established for both the high seas and the areas under jurisdiction of coastal States.

#### Indonesia

*3.4 bis ensure the compatibility of conservation and management measures for fish stocks in their entirety established for both the high seas and the areas under national jurisdiction of coastal States excluding Archipelagic Waters and Territorial Sea.*

South Africa, Maldives, Australia, Kenya, Mozambique

The G16 queries the EU and Japan insertion into paragraph 3.4 bis and the relevance of the compatibility provisions to an allocation regime, noting that compatibility ordinarily arises in the management context.

3.5. respect the rights and obligations of all States fishing in the IOTC area of competence;

3.5 bis take into consideration the significant efforts made by each CPC to fulfil their obligations to comply with the IOTC Agreement and Resolutions

Maldives

Maldives would also like to add an additional paragraph for 3.5 ter:

*3.5 ter. Take into consideration the unequal challenges and disproportionate burden faced by developing States in particular, Least Developing Countries and Small Island Developing States in fulfilling their obligations to comply with the IOTC Agreement and Resolutions.*

3.6. recognize and accommodate the special requirements of developing coastal States, in particular the vulnerability of Small Island Developing States, who are socio-economically dependent on IOTC fisheries resources, including for food security, and factor their needs and dependency on these resources;

3.7. take into account and accommodate the interests and aspirations of coastal States, particularly those of developing coastal States, in further developing their fishing opportunities in the IOTC area of competence , without undermining the rights of other CPCs fishing for the same fish stocks;

Indonesia

*3.7 take into account and accommodate the interests and aspirations of coastal States, particularly those of developing coastal States, in further developing their fishing opportunities in the IOTC area of competence ~~without undermining the rights of other CPCs fishing for the same fish stocks;~~*

Maldives

Maldives do not understand the textual addition in the last sentence as how the rights of other CPCs will be undermined in paragraph 3.7. The rights are clear in international law and the previous text reflected that. However, the additional texts in v2 to paragraph 3.7, loses the balance negotiated and agreed in international law, in particular through LOSC, UNFSA, etc and the judgements of international courts. Thus, Maldives suggests to delete the additional text in v2 as propose as follows:

*3.7 take into account and accommodate the interests and aspirations of coastal States, particularly those of developing coastal States, in further developing their fishing opportunities in the IOTC area of competence.*

3.7(bis) take into account and accommodate the established interests, fishing patterns and fishing practices of CPCs historically fishing in the IOTC area of competence;

Indonesia

*3.7 (bis) take into ~~account and accommodate the established interests,~~ fishing patterns and fishing practices of CPCs historically fishing in the IOTC area of competence*

- 3.8. be implemented in a step-wise manner while providing some stability in the fisheries, by partially shifting current fishing patterns from Developed CPCs and Non-coastal CPCs to Coastal CPCs that are developing Coastal States, including in particular, least developed states and small island developing states, taking into account the socio-economic impacts of the resulting change in past fishing patterns of Developed CPCs and Non-coastal CPCs, and the socio-economic impacts of any delay in the transition on developing coastal CPCs whose people, present and future, rely on the fish stocks for their economic and food security;

Alternative 3.8:

take into account the desire to limit socio economic shocks from the implementation of the allocation regime by providing the ability to temporarily transfer allocations between CPCs

#### Maldives

Maldives would like to suggest some clarity in paragraph 3.8 and suggest as follows:

*3.8 be implemented in a stepwise manner while providing some stability in the fisheries, by shifting current fishing patterns from developed CPCs to CPCs that are developing coastal States (in particular least developed countries and small island developing states) as promptly as possible, taking into account the socio- economic impacts on developing CPCs whose people, present and future, rely on these resources for their economic and food security;*

- 3.9. The Allocation Regime shall deter Illegal, Unreported and Unregulated fishing and serious non-compliance with relevant IOTC CMMs.

#### Indonesia

*3.9 The Allocation Regime shall intend to deter Illegal, Unreported and Unregulated fishing and serious non-compliance with relevant IOTC CMMs*

### **Article 4. ELIGIBILITY**

#### Maldives

Recalling our comments made to v1, Article on Allocation and Transfer of Use states that if a CNCP New Entrant does not intend to fish or preserve their allocation for conservation purposes, the unused allocation shall be re-allocated, Maldives believes that such CNCPs shall not be included in the allocation process to begin with. Specifying this earlier in the process and in the eligibility, criteria will eliminate complexity and can ensure that the process is efficient.

- 4.1. Each CP at the time of the adoption of this Resolution is eligible to receive an allocation for one or more fish stocks under this Allocation Regime<sup>1</sup>. The nature and extent of the allocation shall be determined based on the criteria and process outlined in this Resolution, its appendices and its annexes.
- 4.2. A CNCP at the time of the adoption of this Resolution may also be eligible to receive an allocation as described in Article 4.1 if the CNCP expressed a real interest in fishing in the IOTC area of competence when it submitted its application for CNCP status. In such a case, the CNCP shall receive [50%] of the allocation for each fish stock for which it is eligible, until

<sup>1</sup> As agreed in the TCAC5 meeting (indicated in paragraph 14 of the meeting report of TCAC05), the allocations for the fishing fleet represented by the Invited Experts in the IOTC area of competence shall be treated in the same way as those for other distant water fishing fleets represented by Contracting Parties.

such time as it becomes a Contracting Party to the IOTC. Once a CNCP becomes a CP, it may receive 100% of the allocations to which it is eligible, upon payment of its contribution to the Commission pursuant to Article XIII of the Agreement.

- 4.3. A New Entrant that is situated wholly or partly within the IOTC Area of Competence may only be eligible to receive a Special allocation described in articles 6.14, 6.15 and 6.16. A New Entrant that is not a Coastal State is not eligible to receive an allocation under this resolution.
- 4.4. [CPCs and New Entrants may lose eligibility to an allocation pursuant to Article 7.2.]

## Article 5. SCOPE

### United Kingdom

The UK would like to thank the Chair for adding a new table in Appendix 1 referring to a list of CPCs that are developing States and would suggest that the table needs expanding to capture the status of all CPCs. We also feel that this table needs to contain or be linked to an appropriate definition of 'Developing State', for example via a reference to Article 1(k).

However, the UK notes the deletions suggested by others in Article 1(k) to remove references to the Human Development Index and World Bank Gross National Income as definitions of developing status. As such, we are not entirely sure the particular issue of a definition for 'developing State' has been resolved. The UK feels that expanding the current table in Appendix 1 to capture the status of all CPCs would address any concerns around adopting a definition agreeable to all.

In terms of excluding certain species, RFMOs have a responsibility to manage shared stocks within their areas of competence, which as we have noted includes CS EEZs. As a starting point the UK thinks the regime should cover the species listed in Annex 1 as being under IOTC management. If individual CPCs can evidence, and it can be proved, that discreet stocks or sub-stocks reside solely in their own EEZs then that might be one thing, and it would be good for the Commission to see that evidence. But as soon as a stock straddles any boundary, collaboration on its management would be required, and it needs to be part of this regime. See also our comments on Article 5.

The UK feels it is essential that the new allocation regime covers the entirety of the IOTC Area of Competence. The IOTC Agreement defines this as FAO areas 51 and 57 which go right to the coastline and cover all waters. We therefore do not see why, and could not accept, any suggestion that we could have an IOTC quota management regime which excludes areas of IOTC waters such as Territorial Waters or EEZs.

5.1. (1) Subject to priorities set out in Annex 1 and further established pursuant to articles 5.2 and 9.2, this Resolution shall apply to the tuna stocks and highly migratory species listed in Annex 1 to this Resolution found in the IOTC Area of Competence [, excluding the Territorial Sea and Archipelagic waters of CPCs] and managed by the IOTC.

(2) Subject to Article 11.4, the Commission may amend Annex 1 to include or exclude fish stocks.

5.2. The Commission may implement the Allocation Regime in this Resolution in a gradual manner, based on priorities set out in Annex 1 and further established in accordance with Article 9.2.

## Article 6. ALLOCATION STRUCTURE

### Total Allowable Catch

#### United Kingdom

The UK would like to request clarification from the Chair as to how high seas catches and EEZ catches are attributed as this appears unclear in the proposal as currently drafted (it is the UK's understanding that high seas catches are attributed to Flag States and that the main point of debate is how EEZ catches are allocated to the Flag State and Coastal State). We feel this is an important point of common understanding on how the allocation regime will apply to each individual CPC.

In order to facilitate this understanding of the proposal by CPCs, the UK continues to feel it would be beneficial to have some projection models covering the reference period options as outlined in Article 6.7. This would enable CPCs to understand what each option means for them individually and make an informed decision. The UK notes the discussion in TCAC09 on this matter and that the relevant data file was still available on the TCAC04 webpage (and had been used for previous simulations). Our understanding is that this previous work could be refreshed and used to produce some updated projections.

- 6.1. Allocations to CPCs under this Allocation Regime shall consist of fishing opportunities represented as percentage shares of the Total Allowable Catches (TACs) for fish stocks determined by the Commission and reflected in relevant IOTC Management Procedures or other relevant decision of the Commission following the results of a stock assessment.

#### Maldives

As stated in V1 comments, Maldives suggests to delete latter part of paragraph 6.1:

*6.1. Allocations to CPCs under this Allocation Regime shall consist of fishing opportunities represented as percentage shares of the Total Allowable Catches (TACs) for fish stocks determined by the Commission ~~and reflected in relevant IOTC Management Procedures or other relevant decision of the Commission following the results of a stock assessment.~~*

#### United Kingdom

The UK notes that Maldives and Japan have requested the deletion of a TAC proxy as outlined in Article 6.1(b). The UK does not understand the issue with using a proxy in the absence of a TAC and suggest it will be important to have a starting point for all species at the time this allocation regime comes into force – even those where there may not be an updated stock assessment available.

- 6.2. Allocations to CPCs of a given fish stock shall be established based on allocation criteria contained in articles 6.5 to 6.12, and pursuant to the process set out in articles 9.5. to 9.18. Such allocations shall be set based on the TAC decision of the Commission for the given stock following each stock assessment for the stock. The allocation shall remain valid until adjustments are made pursuant to Articles 7.1, 7.2 or 7.3.

#### Maldives

As stated in V1 comments, Maldives suggests to delete latter part of paragraph 6.2:

*6.2. Allocations to CPCs of a given fish stock shall be established based on allocation criteria contained in articles 6.5 to 6.12, and pursuant to the process set out in articles 9.5. to 9.18. ~~Such allocations shall~~*

~~be set based on the TAC decision of the Commission for the given stock following each stock assessment for the stock. The allocation shall remain valid until adjustments are made pursuant to Articles 7.1, 7.2 or 7.3.~~

6.3. Subject to Articles 7.3 and 7.4, the sum of allocations for a given fish stock established for a given allocation period pursuant to this Resolution shall not exceed the TAC for that stock for that allocation period.

#### Maldives

Maldives also would like to propose a modification to paragraph 6.3:

6.3. *Subject to Articles 7.3 and 7.4, the sum of allocations for a given fish stock established for a given allocation period pursuant to this Resolution shall not exceed biologically sustainable limits, or TACs, where provided, for that stock for that allocation period.*

#### **Criteria for Allocations**

6.4. The allocated share of the TAC for a given stock for each eligible CPC may consist of two elements:

- (a) a percentage share of the Catch-based Allocation as defined by criteria provided in articles 6.6 to 6.10, and
- (b) a percentage share of the Coastal State Allocation as defined in criteria provided by articles 6.11 and 6.12 and indicators provided in Annex 3,

the sum total of which may be adjusted by factors defined in articles 7.1 to 7.3.

#### Maldives

Maldives reserves to further comment on Article 6.4.

#### United Kingdom

The UK felt that text regarding the allocation allowance of Small Island Developing States (SIDS) or Least Developed Countries (LDCs) might be introducing some duplication or double counting where some states would potentially be eligible for benefits of qualifying twice which may be additive or multiplicative. We would welcome clarification on whether SIDS and LDCs qualify just once or for each element. *Secr: this comment also included at Annex 3.*

#### **Catch-Based Allocations**

6.5. [The total initial Catch-based Allocation for a given fish stock shall comprise [ %] of the TAC for that stock.]

6.6. (a) Eligible CPCs shall receive a Catch-base Allocation established based on the Historical Catches of CPCs determined based on the criteria provided in Article 6.7, adjusted to reflect catches attributed to relevant CPCs that are developing Coastal States pursuant to articles 6.8 and 6.9, and revised pursuant to Article 6.10.

(b) The Catch-base Allocation shall be normalised for each eligible CPC as a percentage of the stock specific TAC.

South Africa, Maldives, Australia, Kenya, Mozambique

Article 6.6

a. Eligible CPCs shall receive Catch-base Allocation established based on the Historical Catches of CPCs determined based on the criteria provided in Article 6.7, adjusted to reflect catches attributed to relevant CPCs that are developing Coastal States pursuant to articles 6.8 and 6.9, and revised pursuant to Article 6.10.

b. The Catch-base Allocation shall be normalized for each eligible CPC as a percentage of the stock specific TAC.

1. The 19 IOTC members forming the G16 maintain our view that this paragraph is contrary to international law:

a. Coastal States have sovereign rights for the purpose of exploiting, conserving, and managing living and non-living resources in their EEZs (UNCLOS, Article 56 (1a))<sup>1</sup>, subsequently reflected in the IOTC Agreement (Article XVI)<sup>2</sup>. Coastal States in the Indian Ocean need to meaningfully access their EEZs in line with the rights enshrined in UNCLOS and UNFSA.

b. International law also provides for how coastal States exercise these rights alongside promoting optimum utilization of these living resources (UNCLOS Article 62(1))<sup>3</sup>. After the coastal State determines their TAC (Article 61(1)) and whether it has the capacity to harvest the entire TAC (Article 62(2)), the coastal State shall give access to the surplus (including for compensation) and pursuant to its terms, conditions and laws and regulations. Coastal States are not giving away their rights enshrined in international law, but subject to their significant discretion, terms, conditions and domestic laws, are merely providing access for surplus fish within their EEZs (UNCLOS Article 62(4))<sup>4</sup>. It follows that if an agreement cannot be reached on the terms and conditions of access to the EEZ, the coastal State has the ability to deny access to another State; it is therefore effectively at the discretion of the coastal State whether or not to grant access to the other State. Furthermore, coastal States are also cooperating in good faith in line with international law by participating in the IOTC to cooperate in conserving and managing the resource (UNCLOS Article 63), UNFSA Article 7(1b)<sup>5</sup> without prejudice to the sovereign rights enshrined in international law as mentioned above.

c. G16 coastal States also agree with distant water fishing nations (DWFNs) that all States including coastal States have a right to fish in the high seas subject to the rights and duties of coastal States (UNCLOS Article 116(b))<sup>6</sup>.

d. Flag-based attribution also penalises coastal States who have complied with their obligations to promote the optimum utilization of living resources in their EEZ and to give other States access to the surplus of the allowable catch they do not have the capacity to harvest themselves as mentioned above. Such a penalty will be particularly pronounced, and particularly inappropriate, in the case of developing coastal States, whose special interests the Commission is required to take into account (IOTC Agreement, Article V(2)(b) and (d)).

2. Furthermore, flag-based attribution may also lead to coastal States denying other States access to the living resources in its EEZ and block decision-making in regional fisheries management organisations (RFMOs). It also means coastal States are likely to refrain from joining RFMOs until such time as they have developed national fishing capacity consistent with their aspirations. These perverse incentives run contrary to the IOTC’s objective of promoting optimum utilization of stocks (IOTC Agreement Article V(2c)).

3. The expert consultation for the management of shared fish stocks held by Food and Agriculture Organization of the United Nations (FAO) in collaboration with Norway, concluded that all catches within the EEZ are to be counted, when establishing the historical catch record of the coastal States (FAO, 2002)<sup>7</sup>.

4. DWFNs have already agreed to similar provisions in other tuna RFMOs such as the Inter-American Tropical Tuna Commission for establishing national purse seine carrying capacity limits which have included ‘the amount of catch historically taken within the zones where each state exercises sovereignty or national jurisdiction’ (IATTC, 1998)<sup>8</sup>.

5. G16 reminds the Chair and other Members that the G16 has consistently expressed this view, supported by legal reasoning, both verbally and in writing. G16 Members have no flexibility regarding the attribution of catches caught in our EEZs. G16 Members further acknowledge, with appreciation, the growing number of other CPCs who have expressed their support to move in this direction. We are aware of only two CPCs who directly or indirectly oppose this approach. Therefore, we consider that there is sufficient support to continue negotiations on this basis.

Thus, G16 proposes to reword the Article 6.6 as follows:

*a) Eligible CPCs shall receive a catch-based allocation established based on historical catches of CPCs determined based on the criteria provided in Article 6.7.*

*1 In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving, and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone such as the production of energy from the water, currents and winds.*

*2 This Agreement shall not prejudice the exercise of sovereign rights of a coastal State in accordance with the international law of the sea for the purposes of exploring and exploiting, conserving, and managing the living resources, including the highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction.*

*3 The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.*

*4 Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State.*

*5 Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention: (b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate*

*mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.*

*6 All States have the right for their nationals to engage in fishing on the high seas subject to: the rights and duties as well as the interests of coastal States provided for, inter alia, in article 63, paragraph 2, and articles 64 to 67; catches within the EEZ are to be counted, when establishing the historical catch record of the coastal States (FAO, 2002)7.*

*7 FAO Fisheries Report no. 695 Report of the Norway -FAO expert consultation on the management of shared fish stocks Paragraph 66 <https://www.fao.org/3/y8173e/y8173e.pdf>*

*8 IATTAC Resolution C-98-11. Resolution on fleet capacity. [https://www.iattc.org/PDFFiles/Resolutions/IATTC/\\_English/C-98-11\\_Fleet%20capacity.pdf](https://www.iattc.org/PDFFiles/Resolutions/IATTC/_English/C-98-11_Fleet%20capacity.pdf)*

#### Maldives

Maldives supports the comments by the G16 like-minded coastal States to 6.6.

#### **Historical Catch**

6.7. (a) Subject to articles 6.8, 6.9, 6.10 and 6.13, the historical catch used to determine a CPC’s initial Catch-based Allocation for a given stock shall be based on the best nominal catch data provided by each CPC and, where relevant, re-estimated through a process approved by the Commission for each stock caught in the IOTC area of competence, and averaged over the following periods:

(i) For Tropical Tuna stocks:

Option 1: 2000-2016,

Option 2: (2012-16),

Option 3: best 5 years averaged from within the period 1950-2016.

(ii) For other stocks:

Best 5 years averaged from within the period of 1950 to [xx].

(b) In determining the best estimates of nominal catch data, IUU catches shall be excluded.

#### Indonesia

Seek a clarification on the definition of IUU Catches, and how to estimate it

(c) The catch history average periods provided in Paragraph 6.7(a) may be revised [from time to time / every xx years] by the Commission, to take into account most recent catch periods.

#### Maldives

Maldives supports the comments by the G16 like-minded coastal States to 6.7. As stated in TCAC09, Maldives do not support the insertion of paragraph 6.7(c).

South Africa, Maldives, Australia, Kenya, Mozambique

Further, Article 6.7 to be revised as the methodology of catch attribution agreed in TCAC05 (reflected in Paragraph 38 of the TCAC05 Report)<sup>9</sup>. This paragraph could be used as a starting point for further negotiations.

*All historical catches taken within an area under national jurisdiction of a CPC shall be attributed solely to the CPC with jurisdiction over that area, regardless of the flag of the vessels that took such catches (baseline historical catch). 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:*

*i. 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.*

*ii. Any CPC may provide fine scale spatial information to the IOTC Secretariat no later than [TBD]. Once vetted by the IOTC Secretariat that information shall be used to spatially attribute the catch history for that CPC.*

*iii. Catches reported for 5x5 or 1x1 degree grid squares that:*

*a. wholly fall within areas under national jurisdiction are to be considered as being taken in areas under national jurisdiction of a coastal State.*

*b. wholly fall within the high seas are to be considered as being taken in the high seas;*

*c. 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.*

*d. are taken by a coastal State fishing within its own EEZ, shall be considered as being taken within that States' EEZ.*

*iv. 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.*

*v. Catches by coastal fisheries are assumed to have been taken within the area under the national jurisdiction of the coastal State, irrespective of whether spatial effort data is available.*

Chair, the inclusion of the above modifications is the single most fundamental issue facing the TCAC, and must be addressed before the TCAC can continue its work on other areas of the proposal.

Noting that the above is the opinion of the clear majority of IOTC CPCs, it must be used as the basis for moving forward. We welcome further improvements by the TCAC at the next session.

<sup>9</sup> IOTC 2019 Report of the 5th technical committee on allocation criteria [https://iotc.org/documents/TCAC/05/Report\\_E](https://iotc.org/documents/TCAC/05/Report_E)

The G16 disagrees that ‘historic fishing rights’ has any meaning in this context. We do not agree that historical catch records confer to any rights in international law, but are a reflection of social, economic and cultural linkage to tuna resources.

The G16 does not agree on the insertion of paragraph 6.7(c) as it is already reflected in paragraph 11.2 to 11.4 in the amendment and the review process. If the Commission decides that it is important to update the catch history in the review process, then it could be agreed upon at that time. Further, if the Commission is forced to review the catch history every time the allocation regime is reviewed, negotiations around TCAC will be unstable, biased to any allocation system initially adopted. Please remove.

### **Attributed Catch**

6.8. [[X%] of the historical catch of Developed CPCs and Non-coastal CPCs that are listed in Annex 2 for specified fish stocks [taken within the Exclusive Economic Zones of Coastal CPCs that are Developing States and reported to the Commission as catch of those Developed CPCs and Non-coastal CPCs listed in Annex 2] shall be attributed to the relevant Coastal CPCs that are Developing States listed in Annex 2.]

#### Maldives

Maldives suggests deleting 6.8

#### United Kingdom

The UK notes that there is currently no minimum threshold for transfers under Article 6.8. The UK had requested that a minimum threshold was considered as some developed CPCs would fall into this requirement but, due to very small catch levels, would be required to transfer several kilos of fish. The UK does not believe this is the intention of this paragraph.

6.9. [The implementation of the attributed catch shall be transitioned for each relevant fish stock over a specified period in the amounts and based on the schedule set out in Annex 2 to the relevant Coastal CPCs that are Developing States listed in Annex 2, to form the basis of their respective Coastal States Attributed Catch.]

#### Maldives

Maldives suggests deleting 6.9

#### South Africa, Maldives, Australia, Kenya, Mozambique

“Transition” is not exclusively relevant to developed CPCs with large fleets. ‘Transition’ is highly relevant to ensuring that benefits are distributed to those most in need (i.e., developing coastal States). Delaying the implementation of a fair and equitable allocation outcome is a significant issue for G16 Members.

6.10 The Catch-based Allocations of CPCs listed in Annex 2 for the relevant fish stocks shall be revised in accordance with the amounts and schedule provided in Annex 2.

### Coastal States Allocation

6.11. [The total initial Coastal State Allocation for a given fish stock shall comprise [ %] of the TAC for that stock.]

6.12 (1) Coastal CPCs shall be eligible to receive a share of the TAC for fish stocks that occur in their Exclusive Economic Zones, which shall comprise one or more of the following components:

#### Maldives

Maldives would like to suggest an alternative to the paragraph 6.12:

*CPCs that are Coastal States shall be eligible to receive a share of the TAC, which shall comprise the following components.*

Furthermore, Maldives together with G16 like-minded coastal States are working on presenting to the TCAC process indicators we consider are appropriate to reflect the special requirements and differential treatment for developing States as reflected in UNFSA.

#### South Africa, Maldives, Australia, Kenya, Mozambique

The G16 will provide a separate submission to the Chair on the indicators that we consider are appropriate to reflect special requirements and differential treatment for developing States as reflected in UNFSA, at a later date. We do not consider that we are bound by the indicators in our previous proposal, noting that they were proposed within the context of a different structural approach, and based on information available at that time.

- (a) [35% / 45%] of Coastal State Allocation to address their interests and aspirations as Coastal CPCs, to be shared in equal portion by all Coastal CPCs as per Annex 3;
- (b) [47.5% / 55%] of the Coastal State Allocation dedicated to developing coastal CPCs, in particular SIDs and least developed States, to address their needs and dependency on the fish stocks listed in Annex A and the fisheries for these stocks, to be shared based on the indicators described in Annex 3; and
- (c) [[17.5% / 0%] of Coastal State Allocation dedicated to Coastal CPCs to address their rights and status as Coastal CPCs, to be shared based on the indicators in Annex 3.]

(2) Subject to Article 11.4, Annex 3 may be amended by the Commission to replace the indicators with alternative more precise indicators reflective of the dependency of developing Coastal CPCs on the fish stocks and the fisheries for these stocks, as data necessary to implement such alternative indicators become available. Allocations of developing coastal CPCs shall be adjusted to reflect the new indicators once approved by the Commission.

### Correction for Extenuating Circumstances

6.13. A CPC whose ability and capacity to fish for fish stocks during the catch history reference period referred to in Article 6.7 has demonstrated to have been directly and severely restrained or impeded by extenuating circumstances, such as:

- (a) engagement in war or other military conflicts;
- (b) engagement in civil conflicts;
- (c) wide spread piracy in the fishing area;

(d) environmental disasters, such as a tsunami,

may, subject to a formal documented request provided to the Secretariat at least 60 days before the Commission meeting and subject to the explicit approval of the Commission, seek to have its catch history for that stock corrected based on the average catch taken within the catch history reference period by CPCs for the same stock.

#### Maldives

Maldives cannot support the current formulation of paragraph 6.13. Thus, Maldives proposes as follows:

*6.13. A CPC that is a developing coastal State and whose ability to fish for stocks covered by this Resolution during the catch history reference period referred to in Article 6.7 has been severely restrained or impeded by extenuating circumstances, such as:*

- (a) engagement in war or other military conflicts;*
- (b) engagement in civil conflicts;*
- (c) wide spread piracy in the fishing area;*
- (d) environmental disasters, such as a tsunami,*
- (e) impacts of climate change;*

*directly affecting the fishing capacity may, subject to a formal documented request provided to the Secretariat and subject to the approval of the Commission, seek to have its allocation for that stock corrected.*

#### **New Entrants**

6.14. The Commission may set aside a portion of a TAC that has increased from the previous TAC period, to be allocated, as a Special Allocation, to eligible New Entrants as defined in Article 4.3, where such New Entrant:

- (a) submits a written request to the Commission for an allocation of a given stock;
- (b) had provided nominal catch data for the fish stock for which it is seeking an allocation and which has been verified by the Commission;
- (c) expressed and demonstrated a real interest in the fishery for that stock at the time it sought accession to the IOTC;
- (e) (d) pays its annual contribution to the Commission; and complies with the CMMs.

#### Maldives

While this Article proposes that Commission may set aside a portion of a TAC to New Entrants, it is currently unclear how the set aside for new entrants will be formulated. This needs to be clarified here. Maldives also strongly believes that any set asides should be solely reserved for Coastal State New Entrants and DWFN New Entrants should not be allocated catch from the Set Aside Quota. Further, Maldives believes it would be difficult to include annual contributions (as they may not have

been liable to pay previously) and compliance with CMMs (as they will not have been able to develop a compliance record). Similar to the above point, it would be preferable not to conflate this process with the established process for determining cooperation and welcoming new States to IOTC.

*6.14 The Commission may set aside a portion of a TAC that has increased from the previous TAC cycle, to be allocated, as a Special Allocation, to New Entrants as defined in paragraph 4.3, where the New Entrant:*

- (a) submits a written request to the Commission for an allocation of a given stock;*
- (b) provides nominal catch data for the species for which it is seeking an allocation and verified by the Scientific Committee.*

6.15. The Commission may allocate shares of the Special Allocation referenced in Article 6.13 to each New Entrant in the year that the TAC is reviewed for the stock.

#### Maldives

Maldives would also like to suggest the following to paragraph 6.15:

*6.15. The Commission may allocate shares of the Special Allocation referenced in Article 6.13 to each New Entrant in the year that the Allocation Regime is applied for the stock.*

6.16. [New Entrants shall share in equal proportion, any Special Allocation set aside by the Commission pursuant to articles 6.13. and 6.14.]

## **Article 7. ADJUSTMENTS WITHIN ALLOCATION PERIOD**

#### Maldives

Maldives in principle supports the provisions in Article 7. However, the draft Resolution presumes that the allocation regime will only be run when the TAC changes. We think that is too limiting. The allocation model may need to be run at other times; for instance, it could be run more frequently on the same TAC, to adjust for changes in dependency statistics. Over-catch is not the only adjustment. We have also made comments above on other elements we consider should be moved into adjustments.

### **7.1 Over-catch**

#### United Kingdom

The UK notes that there was agreement in the TCAC09 meeting that the percentages as outlined in 7.1 should read 120% and 150% (not 20% and 50%). We would also like to reiterate our suggestion that worked examples are provided for these over-catch deductions, again to facilitate understanding of the allocation regime's application.

(a) Over-catch of a fish stock by a CPC or New Entrant in a given calendar year within an allocation period shall be deducted from that CPC's allocation for that stock in the following [calendar year within the same allocation period / OR allocation period] by 20%.

#### Maldives

*(a) Over-catch of a fish stock by a CPC or New Entrant in a given calendar year within an allocation period shall be deducted from that CPC's allocation for that stock in the following [calendar year within the same allocation period / OR allocation period] by ratio of 1.2:1.*

(b) A CPC or New Entrant may seek to defer this deduction to the next calendar year within the allocation period, in which case, the deduction ratio shall be increased by [50%].

#### Maldives

*(b) A CPC or New Entrant may seek to defer this deduction to the next calendar year within the allocation period, in which case, the deduction ratio shall be increased to 1.5:1.*

(c) Where a CPC or New Entrant over-catches a given stock for three consecutive calendar years, the allocation of that CPC or New Entrant shall be deducted by 200%, and deferral shall not be permitted.

(d) Any outstanding over-catch of a stock from an allocation period shall be deducted from the first calendar year of the following allocation period, based on the relevant percentages referred to in paragraphs 7.1. (a) to (c).

(e) Catch Reporting:

#### United Kingdom

Linked to compliance, the UK would like to reiterate what we believe is a need for increased reporting frequency.

The UK would like to thank the Chair for drafting a new section, Article 7.1(e), regarding increased reporting frequency for over-catches in line with comments already made. We wanted to offer a word or two of explanation given comments from the Chair in the margin at this section.

In our view, in order to successfully implement an allocation regime, increased data reporting for catches will be required as the current reporting frequency results in a time lag. Essentially, the UK's aim in our suggestions is to ensure that simpler data is reported more quickly (than currently required) to facilitate our future collective quota management.

We note a question from the Chair on whether these provisions would be best placed in the relevant resolution on data reporting and cross-referenced. The UK does not seek to unduly duplicate references or reporting requirements already covered elsewhere. But including these requirements within the allocation regime at this stage would be appropriate as they go beyond those already outlined under current requirements [15-02].

The UK also notes the Chair's comment in 7.1(e) regarding the requirement on CPCs to close their fishery once 100% allocation is reached, as something which is not normally required under quota management. The UK feels it is important for fisheries to be closed once an allocation is reached to ensure the fishery is managed sustainably and that over-catch does not occur. This could be done either on a national or regional basis. However, the UK would welcome further clarification from the Chair regarding their comment, as we feel closing a fishery in these circumstances is usual practice.

In relation to the amendment under Article 7.1(a), which would see penalties applied in the next allocation period as opposed to within the same allocation period, the UK does not agree with this. We believe it is important for over-catch reductions to be made in a timely manner and in a period sufficiently close to when the over-catch occurred. It needs to be in the CPC's interest to avoid over-catch and by including a 'trigger point' to more frequent reporting we can prevent over-catch from occurring. It would also get increasingly difficult to follow if it were deferred to the next allocation period and may have implications for sustainable stock management.

More generally, the UK would like to reiterate the importance of data submitted by CPCs going through a set process for consistency and sense-check.

(i) To ensure proper monitoring of IOTC allocations, CPCs and New Entrants shall report catches of allocated stocks on a quarterly basis based on a schedule and requirements determined by the Commission for each stock. When reaching 100% of its allocation, the CPC shall close its fishery for that stock and inform the IOTC Secretariat of its decision.

(ii) Where a CPC or New Entrant has exceeded its allocation and over-catch penalties have been imposed pursuant to paragraphs 7.1 (a), (b) or (c), that CPC or New Entrant shall, in the subsequent calendar year where overages have been applied, monitor and report its catches for that stock to the Secretariat on a monthly basis after 50% of its allocation has been caught, to ensure catches over the adjusted allocation do not occur.

## 7.2. Serious Non-Compliance

### United Kingdom

Secondly, we want to reiterate the importance of compliance. Any new allocation regime will require more robust compliance. The current mechanism for managing stocks is, unfortunately, failing and any new system requires the compliance of all Parties. The UK supports the principle that non-compliance needs to have consequences and we think this needs to continue to be a focus of the new allocation regime.

(a) The Commission shall temporarily withdraw eligibility to an allocation of any CPC or New Entrant, where the Commission determines that the CPC or New Entrant has demonstrated serious, systematic or gross disrespect of the IOTC's Conservation and Management Measures that are adopted by IOTC Resolution.

(b) The Commission shall define situations of serious non-compliance that shall lead it to temporarily withdraw eligibility of a CPC or New Entrant to an allocation, based on advice and recommendations from the Compliance Committee and the following examples of serious and systematic non-compliance:

- (i) Repeated and persistent over-catch or underreporting, with refusal to adjust their allocation in accordance with Article 7.1, or where no concrete actions are taken to remediate;
- (ii) Non-provision of data for 3 years or more with no concrete actions taken to address the data gaps;

(c) The Commission shall reinstate a CPC's or New Entrant's allocation that has been temporarily withdrawn where:

- (i) the CPC or New Entrant has fully addressed the non-compliance issue; and,
- (ii) the CPC or New Entrant has made a request in writing to the Commission for reinstating their allocation, providing information related to steps taken to address the non-compliance, as outlined in Paragraph 7.2(b).

### 7.3 Adjustments for Extenuating Circumstances

#### United Kingdom

The UK welcomes the inclusion and recognition of our intent under Article 7.3 whereby under-catch caused by exceptional circumstances could only be carried into the subsequent year if the overall TAC has not been reached. However, we are not sure whether the amendment proposed by the Chair on transfer of under-catch to be subject to advice from the Scientific Committee does address the issues. Given the time lags and IOTC processes this could be addressed more simply under the UK's original suggestion of using the previous year's TAC as the indicator.

The Chair's amendment would also create additional burdens on the Scientific Committee. However, the UK notes that given the SC meet in December, it could be doable from one calendar year to the next. The UK would welcome clarification from the Chair as to why they felt using the previous TAC would not be appropriate, and whether this is something the SC can actually undertake (i.e. as an increased burden).

A CPC may, subject to the advice of the Scientific Committee on stock status, seek to have its allocation for a given fish stock adjusted during the allocation period for the stock, if it can demonstrate to the Commission that its ability and capacity to fish the allocation during a calendar year within the allocation period for the stock has been directly and severely restrained or impeded by extenuating circumstances described in Article 6.13. In such a case, the CPC shall submit a formal documented request to the Secretariat at least 60 days before the Commission meeting to seek to have the under-harvested part of its allocation for that calendar year [in an amount not exceeding xx% of the TAC], carried forward and added to the following calendar year's allocation of the stock for that CPC.

### 7.4. Adjustments for Changing Statistics

A developing Coastal CPC may seek to have its allocation under Paragraph 6.12(1)(b) for a given stock adjusted within the allocation period for that stock to reflect changes in statistics related to its dependency on fish stocks listed in Annex A or fisheries for such stocks. In such a case, the CPC shall submit a formal documented request to the Secretariat at least 60 days before the Commission meeting to seek to have its dependency statistics adjusted and its allocation adjusted by the Commission.

## Article 8. ALLOCATION TRANSFERS AND USE

- 8.1. (a) CPs who wish to transfer, on a temporary basis, a portion or all of their allocations within an allocation period, shall notify the Commission in writing [XX days] prior to the transfer occurring.
- (b) The receiving CP shall notify its acceptance of the transferred allocation to the Commission within [xx days] prior to the transfer occurring.
- (c) The transfer shall take effect upon receipt by the Secretariat of the written acceptance.

### Maldives

Maldives would like to offer some clarity to paragraph 8.1 as follows:

#### 8.1

*(a) CPs who wish to transfer, on a temporary basis, a portion or all of their allocations within an allocation period, shall notify the Commission in writing [XX days] prior to the transfer occurring.*

*(b) The written notification of the CP shall include the tonnage to be transferred; the stock; the year to which the quota and, the CP to whom the allocation, or part thereof, will be transferred. The transfer shall take effect upon written confirmation from the receiving Contracting Party. Both the written notification and the written confirmation shall be circulated to the Commission.*

*(c) Permanent transfers of allocations are not permitted.*

*(d) This Resolution is not to be considered a precedent for future allocation decisions.*

### United Kingdom

The UK notes that there now appears to be two options for Article 8.1(b)-(c). The UK would welcome clarification as to the intent behind the recent insertions and whether they are indeed options for consideration or merely a formatting error.

(b) The Secretariat shall share the written notifications with all CPCs within [xx days] of the receipt.

(c) When a transfer is notified after the allocation table has been approved by the Commission pursuant to Article 9.18, the Secretariat shall attach a revised allocation table when it shares the written notifications of the transfer with CPCs.

(d) The written notification of the CP shall include the amount of fish to be transferred; the stocks; the period; and, the CP to whom the allocation, or part thereof, will be transferred.

(e) Permanent transfers of allocations are not permitted.

(f) A CP who has received a transferred allocation may not transfer this allocation or a portion thereof to a CPC or New Entrant.

(g) A transferred allocation or portion thereof shall not be considered a precedent for future allocation decisions.

8.2. CNCPs and New Entrants are not eligible to transfer any whole or part of their allocations, nor to receive any whole or part of an allocation from CPCs or New Entrants.

- 8.3. A CPC or New Entrant that does not intend to fish, transfer, or preserve its allocation for conservation purposes, in a calendar year period, may notify, on a voluntary basis, the Commission in writing, within xx days of the Annual meeting of the Commission. The unused allocation shall be re-allocated in accordance with Article 9.12.
- 8.4. Allocation transfers shall not prejudice the determination of future allocations of CPCs.

### **[Article 9. IMPLEMENTATION**

#### **Maldives**

Maldives is still not convinced of the need to develop the implementation plan referred in this article. Maldives believes this article should be deleted as suggested in our previous comments.

#### **Priority Fish Stocks**

- 9.1. Allocations shall be established as a matter of priority for the fish stocks listed as first priority in Annex 1.
- 9.2. The Commission may determine an order of priority for the remaining fish stocks pursuant to Article 5.1 and Annex 1, for which it will gradually implement allocations. In determining the order of priority, the Commission shall consider the advice from the Scientific Committee, and factor in:
- (a) the availability and reliability of data for the remaining fish stocks;
  - (b) the status of the stocks;
  - (c) the stock assessment cycles; and
  - (d) the need to manage the workload of the Commission by rotating the timing of various TAC decisions.
- 9.3. The Commission may amend Annex 1 to reflect these implementation priorities.

#### **Implementation Plan**

- 9.4. (a) Prior to the coming into force of this Resolution, the Secretariat shall prepare for the Commission's approval, an Implementation Plan for establishing allocations factoring in the priority list of fish stocks contained in Annex 1 and additional priorities approved by the Commission pursuant to Article 9.1. The Implementation Plan may be amended from time to time, to add fish stocks to the priority list based on decisions of the Commission.
- (b) The Implementation Plan shall include:
- (i) a schedule for setting TACs as per schedule of stock assessments for each stock and the advice of the Scientific Committee;
  - (ii) a draft template for allocation tables;

(iii) information and data requirements for establishing TACs and allocations beyond current data requirements of the IOTC; and,

(iv) proposed strategies for addressing data gaps required to be addressed to enable the Commission to establish TACs and allocations for fish stocks, as needed.

### **Allocation Process and Catch Validation**

#### **[Allocation Committee**

##### South Africa, Maldives, Australia, Kenya, Mozambique

The G16 sees little benefit of an Allocation Committee. Please remove. Should any serious issues arise associated with the allocation scheme adopted, the Commission is well equipped to deal with them. Adding an additional subsidiary body (a Committee) would simply serve as another opportunity for a disproportionate burden to be placed on developing coastal States. The final allocation scheme adopted, must have relevant annual processes contained within, so that the Secretariat may implement the scheme accordingly. An allocation Key, similar to Appendix II of the G16 proposal would be a useful addition in that context.

9.5. Pursuant to Article XII.5 of the Agreement, the Commission hereby establishes the Allocation Committee to support the Commission’s process for allocating IOTC fish stocks to CPCs and New Entrants.

9.6. The mandate of the Allocation Committee shall include:

- (a) to adjust and make corrections to the allocations consistent with this Resolution; and,
- (b) to provide advice and recommendations to the Commission for decisions it is mandated to make pursuant to this Resolution.

9.7. Membership and Terms of Reference for the Allocation Committee are provided in Annex 4. A process map for the allocation process and catch validation is included as Appendix 2.]

#### **Implementation Plan**

9.8. During its first meeting following the adoption of this Resolution, the [Allocation Committee / OR Commission] shall review [and provide advice and recommendations to the Commission in respect of the adoption of/ OR and adopt ] the Implementation Plan drafted by the Secretariat in accordance with Article 9.4. [Thereafter, the Allocation Committee shall provide advice and recommendations to the Commission on any amendments that may be proposed to / OR Thereafter, the Commission may review and make any amendments to] the Implementation Plan.

#### **Allocation Tables**

9.9. (a) XX days prior to the commencement of the allocation period for each fish stock, and in accordance with the Implementation Plan adopted pursuant to Article 9.8, the Secretariat shall develop draft Allocation Tables for each stock to be allocated pursuant to this Resolution for that period, based on the TAC decisions of the Commission for such stocks.

(b) The draft Allocation Tables shall include allocations for each eligible CPC established pursuant to the criteria in this Resolution, including any adjustments pursuant to Article 7, and any corrections requested pursuant to Article 6.13.

(y) The draft Allocation Tables do not confer allocation rights to CPCs until they are approved by the Commission.

9.10. Eligible CNCPs and New Entrants that wish to be considered for allocations under articles 6.6 to 6.12 and 6.13 to 6.15 respectively, shall send a letter of application to the Commission at least xx days prior to the annual meeting of the [Allocation Committee / OR Commission].

9.11. The Secretariat shall also include in the Allocation Tables:

(a) any transfers notified xx days prior to the Commission’s annual meeting pursuant to articles 8.1 and 8.2. The Secretariat shall adjust the allocation tables with any transfers notified after this deadline and circulate to CPCs in accordance with Paragraph 8.1 (b); and,

(b) any requests for allocations submitted by CNCPs and New Entrants pursuant to Article 9.10.

9.12. Upon receipt of the notification in Article 8.3., the Secretariat shall revise the relevant Allocation Tables by reallocating the proposed unused allocation to other CPCs based on the relevant allocation criteria.

#### **[Annual Meeting of the Allocation Committee**

##### South Africa, Maldives, Australia, Kenya, Mozambique

The G16 sees little benefit of an Allocation Committee. Please remove. Should any serious issues arise associated with the allocation scheme adopted, the Commission is well equipped to deal with them. Adding an additional subsidiary body (a Committee) would simply serve as another opportunity for a disproportionate burden to be placed on developing coastal States. The final allocation scheme adopted, must have relevant annual processes contained within, so that the Secretariat may implement the scheme accordingly. An allocation Key, similar to Appendix II of the G16 proposal would be a useful addition in that context.

9.13. The Allocation Committee shall meet annually, prior to the Commission’s Annual Meeting.]

9.14. XX days prior to the annual meeting of the [Allocation Committee / OR Commission], the Secretariat shall share with [the Members of the Allocation Committee / CPCs] information and recommendations emanated from the Compliance Committee regarding non-compliance of CPCs and New Entrants for consideration by the [Allocation Committee / OR the Commission] in accordance with Article 7.2, and any requests made pursuant to articles 6.13, 6.14, 6.15 and 7.3.

9.15. The Secretariat shall update the Allocation Tables with any information submitted to the Commission in accordance with Article 9. It shall post the updated Allocation Tables on the IOTC Website at least xx days prior to the [Allocation Committee / OR Commission] annual meeting.

- 9.16. CPCs may seek revisions or corrections to the Allocation Tables from the [Allocation Committee / OR Commission / OR Secretariat] to reconcile and validate catch data compiled and reported to the Commission.

#### **Commission Approval**

- 9.17. The Secretariat shall prepare final draft Allocation Tables for each stock reflecting the outcomes of the [Allocation Committee / OR Commission] meeting and submit them for approval by the Commission at its annual meeting.
- 9.18. (a) At its annual meeting, the Commission shall [consider the recommendations of the Allocation Committee / OR consider any requests made pursuant to articles 6.13, 6.14, 6.15, 7.2(c)(ii), 7.3 and 7.4] in approving the Allocation Tables submitted by the Secretariat.
- (b) The final Allocation Tables, including any decision by the Commission, shall be made public as soon as possible after the Commission's decision.
- (c) The allocations contained in the Allocation Tables approved by the Commission constitute the final allocations of CPCs and New Entrants for the Allocation Period for the stock.

#### **Article 10. ALLOCATION PERIOD**

- 10.1. Subject to in-period adjustments made pursuant to Article 7, each allocation for a given fish stock shall remain valid for the period determined by the Commission for that stock. In the absence of a specified period, the allocation shall remain valid for the same period as the TAC period established for the fish stock. .

#### **Article 11. FINAL CLAUSES MDV**

##### **Coming into Effect**

- 11.1. This Resolution shall come into force on [date].

##### **Term and Amendment**

###### Maldives

Maldives queries the benefit of Article 11.3. We consider it is clearly within the Commission's power to make a decision to modify any element of the Allocation Regime in accordance with its decision-making processes. We further consider that it is clear that, except where it is expressly specified, a Resolution remains in force until or unless it is otherwise decided by the Commission. Maldives proposes to delete paragraphs 11.3 and 11.4 as they are not necessary.

In lieu of 11.2 and 11.3 Maldives suggest:

*The Allocation Regime contained in this Resolution shall be reviewed after [xx years] of its entry into force, and every [x] years thereafter; and may be amended by decision of the Commission, to ensure that the allocation is recognizing the interests, aspirations, needs and special requirements of*

*developing States, in particular least-developed States and Small Island Developing States that are coastal States.*

11.2 (1) The Allocation Regime contained in this Resolution shall be reviewed after [10 / OR 5 years] of its entry into force.

(2) This term may be extended by decision of the Commission every [x] years thereafter, subject to Articles 11.3. and 11.4..

11.3 In reviewing the Allocation Regime pursuant to Article 11.2, the Commission shall consider whether the implementation of the Regime and the resulting allocations have achieved the purpose provided in Article 2, and whether they have met the guiding principles set out in Article 3. .

11.4 The Allocation Regime may be amended by the Commission after the initial term set out in Article 11.2(1). [In this respect, the Allocation Regime shall remain in effect until amended or replaced by the Commission.]

#### **Safeguard**

11.5 Consistent with Article IV.6 of the Agreement, nothing in this Resolution, nor any act or activity carried out pursuant to this Resolution, shall be considered or interpreted as changing or in any way affecting the position of any party to the Agreement with respect to the legal status of any area covered by the Agreement.

#### **Past Resolutions**

11.6 This Resolutions replaces and supersedes the following Resolutions:

- (a) 14/02 (title)
- (b) 03/01 (title)
- (c) others..

**Appendix 1****LIST OF DEVELOPING STATES THAT ARE CPCs<sup>2</sup>**

Bangladesh	Madagascar	Somalia
China	Malaysia	Sri Lanka
Comoros	Maldives	South Africa
Eritrea	Mauritius	Sudan
India	Mozambique	Tanzania (United Republic of)
Indonesia	Oman	Thailand
Iran (Islamic Republic of)	Pakistan	Yemen
Kenya	Philippines	
Korea (Republic of)	Seychelles	


<sup>2</sup> Source: UN World Economic Situation and Prospects 2021:  
[https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/ESP2021\\_Annex.pdf](https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/ESP2021_Annex.pdf)

**Appendix 2**

**A process map for the allocation process and catch validation**

*to be added*

## Annex 1

### Fish Stocks to be Allocated pursuant to the Allocation Regime

A. The following stocks of tunas and highly migratory species found in the IOTC area of competence and managed by the IOTC<sup>3</sup> shall be allocated pursuant to the Allocation Regime of the IOTC provided in Resolution 2023/XX, in the following priority order:

1<sup>st</sup> Priority List:

1. yellowfin tuna
2. big eye tuna
3. skipjack tuna
4. albacore tuna
5. swordfish

B. The following stocks of tunas and highly migratory species found in the IOTC area of competence and managed by the IOTC shall be allocated pursuant to the Allocation Regime of the IOTC provided in Resolution 2023/XX based on the priority order to be determined by the Commission pursuant to Article 9.2:

- longtail tuna
- kawakawa
- frigate tuna
- bullet tuna
- narrow barred Spanish mackerel
- Indo-Pacific king mackerel
- Indo-Pacific Blue Marlin
- Black Marlin
- striped marlin
- Indo-Pacific sailfish

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<sup>3</sup> Southern Bluefin Tuna has been excluded as it is managed by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

**[Annex 2**

**Schedule for Attribution of Catch from Developed CPCs and Non-coastal CPCs to  
Developing Coastal CPCs**

]

### Annex 3

#### Coastal States Allocation Indicators

1. The following indicators shall be used to calculate the Coastal States Allocation pursuant to Article 6.12 of the Allocation Regime in Resolution 2023/XX:

a) Pursuant to Paragraph 6.12(a), CPCs that are coastal States: Status weighting = 1 (an equal portion for each). Proportion = [35% / OR 45%] of the Coastal States Allocation;

b) Pursuant to Paragraph 6.12(b), CPCs that are developing coastal States: Proportion = [47.5% / OR 55%] of the Coastal States Allocation;

- *Human Development Index (HDI) status*: Status weighting = low (1), medium (0.75), high (0.50), Very high (not applicable). Proportion = 30% of the developing coastal States element of the Coastal States Allocation;

- *Gross National Income (GNI) status*: Status weighting = low (1), low-middle (0.75), upper-middle (0.5), high (0.25). Proportion = 30% of the developing coastal States element of the Coastal States Allocation;

- *Small Islands Development Status (SIDS)*: Status weighting = yes (1), no (0). Proportion = 40% of the developing coastal States element of the Coastal States Allocation;

[c] Pursuant to Paragraph 6.12(c), CPCs that are coastal States: EEZ proportion: In the absence of data supporting an indicator based on stock abundance, the size of the area under national jurisdiction within the IOTC Area of Competence, as a proportion of the overall IOTC Area of Competence. Proportion = 17.5% of the Coastal States Allocation; EEZ size weighting:

- >0.0–≤1.0% of the IOTC Area of Competence (weighting = 1)
- >1.0–≤2.0% of the IOTC Area of Competence (weighting = 2)
- >2.0–≤3.0% of the IOTC Area of Competence (weighting = 3)
- >3.0–≤4.0% of the IOTC Area of Competence (weighting = 4)
- >4.0–≤5.0% of the IOTC Area of Competence (weighting = 5)
- >5.0–≤6.0% of the IOTC Area of Competence (weighting = 6)
- >6.0–≤7.0% of the IOTC Area of Competence (weighting = 7)
- >7.0–≤8.0% of the IOTC Area of Competence (weighting = 8)]

#### United Kingdom

The UK felt that text regarding the allocation allowance of Small Island Developing States (SIDS) or Least Developed Countries (LDCs) might be introducing some duplication or double counting where some states would potentially be eligible for benefits of qualifying twice which may be additive or

multiplicative. We would welcome clarification on whether SIDS and LDCs qualify just once or for each element.

## **Annex 4**

### **Terms of Reference for Allocations Committee**

#### **Membership**

1. (a) The Allocations Committee of the IOTC established pursuant to Article 9.4 of the IOTC Allocation Regime contained in Resolution 2023/XX shall consist of representatives of CPCs.  
  
(b) Representatives from New Entrants, Observers and Experts may participate in meetings of the Allocations Committee in accordance with the IOTC Rules of Procedure.

#### **Chair**

2. The Allocations Committee shall be presided by a Chairperson elected by its members in accordance with the IOTC Rules of Procedure.

#### **Mandate**

3. The mandate of the Allocations Committee shall include to adjust and make corrections to the allocations tables prepared by the Secretariat consistent with the Resolution, and to provide advice and recommendations to the Commission for decisions it is mandated to make pursuant to the Resolution.
4. Specifically and consistent with the process established in the Resolution and reflected in the process map in Appendix 2, the Allocation Committee shall review draft Allocation Tables prepared by the Secretariat for each stocks allocated pursuant to the Resolution, and provide advice and make recommendations to the Commission for decisions on the following matters:
  - (a) Implementation Plan drafted by the Secretariat pursuant to Article 9.3;
  - (b) Allocation Tables prepared by the Secretariat pursuant to Article 9.8;
  - (c) Requests from Eligible CPCs to reconcile catch data pursuant to Article 9.12;
  - (d) Requests for allocations by New Entrants pursuant to articles 6.14 to 6.16;
  - (e) Corrections to allocations of a CPC that is a developing coastal State for exigent circumstances provided in Article 6.13;
  - (f) Allocation adjustments pursuant to articles 7.1, 7.3 and 7.4;
  - (g) Temporary withdrawal of an allocation from a CPC or New Entrant for serious non-compliance pursuant to Article 7.2; and
  - (h) any other matter required by the Commission.
5. The Allocations Committee shall report directly to the Commission on its deliberations and recommendations.
6. The Allocations Committee shall cooperate closely with the IOTC Secretariat and IOTC subsidiary bodies in accomplishing its functions, in particular, the Compliance Committee and the Scientific Committee.

**Meetings**

7. The Allocations Committee shall meet once a year, prior to the annual meeting of the Commission.

**Rules of Procedure**

8. The procedures of the Allocations Committee shall be governed mutatis mutandis by the Indian Ocean Tuna Commission: Rules of Procedure (2014), as amended from time to time.]