

Review of the Terms of References for a comparative assessment of existing sanctioning systems in other organizations

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PURPOSE

To provide participants at the Working Party on the Implementation of Conservation and Management Measures (WPICMM) with the opportunity to review and revise the Terms of Reference (ToR) developed by the IOTC Secretariat for conducting a comparative assessment of existing sanctioning systems in other regional fisheries management organisations (RFMOs).

BACKGROUND

The effective implementation of IOTC Conservation and Management Measures (CMMs) is key to enable IOTC to achieve its objective of conservation and optimum utilisation of tuna and tuna-like fisheries in the Indian Ocean. Non-compliance by both Contracting Parties and Cooperating non-Contracting Parties (CPCs) to IOTC CMMs severely undermines regional management efforts and threatens stocks sustainability. The individual assessment of CPCs compliance with IOTC CMMs, enables the Compliance Committee to ensure their effective implementations, identify problems and recommend suitable actions to the Commission. Nonetheless, when all reasonable efforts to improve compliance are exhausted, to address the actions of States that repeatedly fail to comply with their obligations, further measures, such as sanctions, are required. To enable more effective enforcement and address such cases of serious repeated non-compliance, under its revised terms of reference, the Compliance Committee was tasked to develop a scheme of incentives and sanctions and a mechanism for their application ([IOTC-RoP-2014](#)).

The IOTC Performance Review Panel noted within its two performance reviews of 2009 and 2016, that the development of the referred scheme of incentives and sanctions and a mechanism for their application to encourage compliance by all CPCs, is still pending. In response, the WPICMM proposed a work plan with proposed timelines and priorities, adopted by the Compliance Committee. Component 15, sub-component 15.1 of the work plan of the WPICMM comprise of the following activities:

15	Develop recommendations and guidelines for a schedule of sanctions for non-compliance with IOTC CMMs for consideration by the CPCs and the Commission
15.1	<i>Schedule of sanctions for non-compliance with IOTC CMMs</i>
15.1.1	Develop ToRs for a Comparative assessment of existing sanctioning systems in other organizations
15.1.2	Conduct assessment of existing sanctioning systems in other organizations
15.1.3	Assessment of the report and provision of recommendations by the WPICMM
15.1.4	Submission of the report to the Compliance Committee

DISCUSSION

The work plan of the WPICMM, component 15 “Develop recommendations and guidelines for a schedule of sanctions for non-compliance with IOTC CMMs for consideration by the CPCs and the Commission”, sub-component 15.1 makes provision for the develop a schedule of sanctions for non-compliance with IOTC CMMs and recommend actions for the CoC on the development of a ToR for a comparative assessment of existing sanctioning systems in other RFMOs.

In line with the above recommendation, Annex 1 of this document provides the draft ToR for the comparative assessment of existing sanctioning systems in other organisations.

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RECOMMENDATION

That the WPICMM05:

- 1) **NOTE** paper IOTC-2022-WPICMM05-03_Add1.
- 2) **REVIEW** and revise the ToR, as WPICMM05 finds appropriate.
- 3) **RECOMMEND** an agreed ToR to the Compliance Committee, for its consideration.
- 4) **RECOMMEND** an implementation process to the Compliance Committee, which would involve requesting the IOTC Secretariat to seek funds for the recruitment of an expert, either through external funding or through the Standing Committee on Administration and Finance (SCAF19).
- 5) **RECOMMEND** that the report on “Comparative assessment of existing sanctioning systems in other organizations” is reviewed by the WPICMM06 to provide recommendations to the Compliance Committee (CoC20).

Annex I

Terms of Reference

For

Comparative assessment of existing sanctioning systems in other organizations to develop a schedule of sanctions for non-compliance with IOTC CMMs

Background and context:

The Indian Ocean Tuna Commission is an intergovernmental organization established under article XIV of the FAO constitution. The IOTC agreement was concluded in 1993 and entered in force in 1998. The IOTC is mandated to manage tuna and tuna-like species in the Indian Ocean and adjacent seas, being its primary objective to ensure, through appropriate management, their conservation and optimum utilisation. To achieve this objective, the Contracting Parties and Cooperating non-Contracting Parties (CPCs) adopt legally binding resolutions which contain conservation and management measures (CMMs) that parties are obligated to implement. To monitor their compliance in respect to the effective implementation of these IOTC CMMs, a Compliance Committee is established in 2002.

Over the years, however, the repeated lack of compliance of CPCs, particularly concerning information reporting requirements has resulted in the adoption of further measures by the Commission, such as Resolution 18/07 *On Measures Applicable in Case of Non-Fulfilment of Reporting Obligations in the IOTC*. With more emphasis being placed on compliance, the Terms of Reference of the Compliance Committee was revised in 2009, with a view on strengthening its role and capacity to improve the level of compliance of CPCs with IOTC CMMs ([IOTC-RoP-2014](#)). In particular, under the revised terms of reference, the Compliance Committee is mandated to identify and discuss the root causes of non-compliance and recommend suitable actions for the consideration of the Commission. To address cases of serious and/or repeated non-compliance, where all reasonable efforts are exhausted and proven unsuccessful, the Compliance Committee is also tasked to develop a scheme of incentives and sanctions and a mechanism for their application.

The IOTC Performance Review Panel noted within its two performance reviews, concluded in 2009 and 2016, that the Compliance Committee, needed still to develop a scheme of incentives and sanctions and a mechanism for their application to encourage compliance by all CPCs. To make headway in the debate on this subject, the IOTC Working Party on the Implementation of Conservation and Management Measures (WPICMM) adopted a work plan with proposed timelines and priorities, which included Recommendation 15 entitled “Develop recommendations and guidelines for a schedule of sanctions for non-compliance with IOTC CMMs for consideration by the CPCs and the Commission” ([IOTC-2022-WPICMM05-05](#)). At its 15th Session, the work plan was adopted by the Compliance Committee ([IOTC-2018-CoC15-R](#)).

Purpose of the assignment:

As per recommendation 15, section 15.1 of the WPICMM work plan, the purpose of the assignment is to conduct a comparative assessment of existing sanctioning systems in other organizations to improve compliance of both Contracting Parties and Cooperating non-Contracting Parties (CPCs).

The findings of this comparative assessment will serve to assist the Commission in the development of a scheme of sanctions and incentives to improve compliance with respect to the effective implementation of IOTC CMMs.

Activities of the consultant:

Under the supervision of IOTC Secretariat, the consultant will:

1. Review existing schemes of penalties and incentives currently implemented by other RFMOs and/or relevant international organizations.
2. Make a comparative analysis of the existing schemes of penalties and incentives identified. The expert may contact secretariats of RFMOs that have a schedule of sanctions in place for the purpose of collecting information on the status of implementation, constraints these RFMOs and/or relevant international organizations face in implementing the scheme and potential improvement to facilitate the implementation of such scheme.
3. Review existing mechanisms or structured approaches in use by other RFMOs and/or international organizations for cases of non-compliance by their members and non-members.
4. Conduct comparative analyses of the selected implementation approaches identified.
5. Prepare a preliminary draft report for review and guidance by the IOTC Secretariat that identifies, which RFMOs (and relevant international organisations) have implemented a scheme of sanctions and incentives. The draft report shall also include, (i) a preliminary review and comparative assessment of the schemes of sanctions and incentives implemented, (ii) the structured approach taken for its application, and (iii) any issues encountered in their implementation.
6. Taking into account comments from the IOTC Secretariat, prepare a final report that includes:
 - An introduction and background.
 - A summary of the findings.
 - A summary assessment of the current regional schemes of sanctions and incentives implemented by RFMOs.
 - A summary assessment of the current global and/or regional schemes of sanctions and incentives implemented by other relevant international organisations.
 - A summary assessment of the current global and/or regional structured approaches used for the application of these schemes.
 - A comparative analysis of the existing schemes of sanctions and incentives
 - A comparative analysis of the existing mechanisms for the implementation of the schemes of sanctions and incentives
 - Any substantive issues specific to IOTC CPCs, area or regulation.
 - Conclusions derived from the comparative analysis.

As a general practice, the final report and its findings should be based on a number of principles, and considerations, namely:

- i. Consistency with the IOTC Agreement, IOTC Financial Regulations (2019), IOTC Rules of Procedure (2014) and existing international instruments and law. Due regards must be given to 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 (UNFSA), the United Nations Convention on the Law of the Sea (UNCLOS 1982), the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas (FAO CA 1993) and other relevant Conventions. No proposal in this guideline shall undermine the basic principles and terms of these international instruments.
- ii. Due consideration of IOTC Conservation and Management Measures in force.
- iii. Recognition of the special requirements of Developing States and Small Island Developing States. The development of a fair, transparent and non-discriminatory scheme would increase the acceptance of effectiveness of these actions as means of deterrence.
- iv. Due consideration to both positive (financial or technical assistance and capacity building) and also negative responses, *inter alia*, automatic quota reductions, loss of fishing opportunities, enhanced monitoring and non-discriminatory trade measures.

Expected outputs/delivery:

- A preliminary draft report for review and guidance by the IOTC Secretariat that identifies (i) which RFMOs (and relevant international organizations) have implemented a scheme of sanctions and incentives, and that includes (ii) a preliminary review and comparative assessment of the schemes of sanctions and incentives implemented, (iii) the structured approach taken for its application, and (iv) any issues encountered on their implementation.
- A final report that includes:
 - An introduction and background.
 - A summary of the findings.
 - A summary assessment of the current regional schemes of sanctions and incentives implemented by RFMOs.
 - A summary assessment of the current global and/or regional schemes of sanctions and incentives implemented by other relevant international organisations.
 - A summary assessment of the current global and/or regional structured approaches used for the application of these schemes.
 - A comparative analysis of the existing schemes of sanctions and incentives
 - A comparative analysis of the existing mechanisms for the implementation of the schemes of sanctions and incentives
 - Limitations/weaknesses and challenges
 - Conclusions derived from the comparative analysis.
- Presentation of the report and the findings of the study to the WPICMM and/or the Compliance Committee

Qualifications and Experience

The consultant should be able to demonstrate a successful history of consultancy engagements related to these Terms of Reference or similar work.

Qualifications and skills

- A post graduate degree (LL.M. or equivalent in international law with expertise in law of the sea or equivalent)
- Excellent communication and legal drafting skills
- A high level of proficiency in written and spoken English

Experience

- Experience in the region/countries of the IOTC and knowledge of IOTC functioning
- Minimum 10 years of professional experience in international law and areas of law closely related to RFMOs and fisheries management
- Demonstrated knowledge of international and regional fisheries instruments related to IOTC Resolutions
- Experience in legal drafting of international fisheries instruments
- Ability to work under pressure and meet tight deadlines