
**PROPOSED MOU BETWEEN THE INDIAN OCEAN TUNA COMMISSION (IOTC) AND
THE OVERSEAS FISHERY COOPERATION FOUNDATION OF JAPAN (OFCF JAPAN)**

PREPARED BY: IOTC Secretariat

PURPOSE

To provide the Commission with an opportunity to consider a draft Memorandum of Understanding (MOU) between the Indian Ocean Tuna Commission (IOTC) and the Overseas Fishery Cooperation Foundation of Japan (OFCF Japan).

BACKGROUND***Rationale for an agreement***

The Overseas Fishery Cooperation Foundation of Japan (“OFCF Japan”) is a public interest incorporated foundation, which was established in 1973 with the aims to maintaining and enhancing the amicable relationship in the fisheries field between Japan and the coastal countries by way of extending technical and economic cooperation for the development and promotion of coastal fisheries and for the effective management of international marine resources conducted by the regional fisheries management organizations.

IOTC has had a collaborative relationship with OFCF Japan for 20 years working together to improve systems of collecting and processing data on resources related to tuna fisheries in the Indian Ocean.

Following a recommendation from the Working Party on Data Collection and Statistics, the Scientific Committee, acknowledging the long-term relationship between the OFCF Japan and the IOTC to improve the collection, management and reporting of fisheries statistics, has recommended to the Commission to consider the continuation of this collaboration through an appropriate arrangement.

It is proposed to develop a MOU to continue work:

- a. improving the accuracy of tuna and tuna-like fishery statistics and information provided by IOTC coastal States; and
- b. developing capacity in the collection, management and reporting of tuna fishery statistics by IOTC coastal States.

FAO's is required to have a role in the development of agreements

IOTC and OFCF Japan have entered into a range of agreements over the past 20 years. However, FAO has procedures for the preparation, clearance, and signature of agreements entered into by FAO at Headquarters, Regional, Sub-regional and Country Offices. Agreements include memoranda of understanding, exchanges of letters and other formal arrangements, irrespective of their actual denomination, entered into by FAO and establishing relations with partners such as governments, other organizations of the United Nations System, inter-governmental organizations, private sector entities, civil society organizations, cooperatives, foundations, research institutions and academia.

As a body under Article XIV of the FAO Constitution, does not entrust IOTC with legal personality therefore, it is required to act through FAO on any agreements it intends to enter. This includes the use of FAO templates for agreements; however, authority to sign the agreement can be expected to be delegated (by FAO) to the Executive Secretary¹.

¹ The Report of the 127th FAO Council, held in November 2004, stated at paragraph 91: “The secretaries of the bodies could be authorized to sign the contracts and agreements, which should make appropriate reference to the status of the bodies under Article XIV of the FAO Constitution. The Council noted that, in reviewing any proposed contracts and agreements, FAO would take account of the functional requirements of the bodies concerned and would not interfere with their substance, except in the event that they should have policy, programme or financial implications for FAO.”

THE PROPOSAL

The aim is to have a 5 year Memorandum of Understanding (MOU) between the Indian Ocean Tuna Commission and the Overseas Fishery Cooperation Foundation of Japan (Appendix 1) to which an annual work plan that has been endorsed by the IOTC technical bodies would be attached.

RECOMMENDATION/S

That the Commission:

- 1) **NOTE** paper IOTC–2022–S26-10 which provides the Commission with an opportunity to consider a draft Memorandum of Understanding (MOU) between the Indian Ocean Tuna Commission (IOTC) and the Overseas Fishery Cooperation Foundation of Japan (OFCF Japan).
- 2) **AGREE** on the content of the MOU as detailed in Appendix 1, and request that the MOU be communicated to OFCF Japan for its consideration.
- 3) **AGREE** that, if required, the Executive Secretary and the Chairperson can liaise between the FAO and OFCF Japan on any further un-substantive amendments to the MOU, and if they are not substantive, the Executive Secretary may sign the MOU on behalf of the Commission once it is approved by the OFCF Japan and FAO.

Appendix 1

DRAFT

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

AND

Overseas Fishery Cooperation Foundation of Japan

WHEREAS the Food and Agriculture Organization of the United Nations (hereinafter “FAO”) is a Specialized Agency of the United Nations system established in 1945 to raise levels of nutrition and standards of living for all people in FAO Member Nations, to secure improvements in the efficiency of production and distribution of food and agricultural products, and to contribute toward expanding world economy and ensuring humanity’s freedom from hunger;

WHEREAS FAO’s actions are geared towards supporting Members in implementing the 2030 Agenda for Sustainable Development, especially with regards to ending hunger and malnutrition in all its forms;

WHEREAS FAO’s Strategic Framework is guided by FAO’s vision and the three Global Goals of Members and is firmly anchored in the Sustainable Development Goals (SDGs), and the organising principle of the *four betters - better production, better nutrition, a better environment and a better life, leaving no one behind* demonstrates how FAO intends to support the achievement of the SDGs and reflect the interconnected economic, social and environmental dimensions of agri-food systems while encouraging a strategic and systems-oriented approach;

WHEREAS FAO has the mandate to **make available technical information, guidelines and standards and provides technical advice and assistance to FAO Members in enhancing fisheries and aquaculture development at the national, regional and global levels;**

WHEREAS [The Overseas Fishery Cooperation Foundation of Japan (“OFCF Japan”) is a **public interest incorporated foundation, which was established in 1973 with the aims to maintaining and enhancing the amicable relationship in the fisheries field between Japan and the coastal countries by way of extending technical and economic cooperation for the development and promotion of coastal fisheries and for the effective management of international marine resources conducted by the regional fisheries management organizations;**

WHEREAS FAO and **OFCF** (collectively referred to as “Parties” and individually “Party”) share common objectives with regard to **the sustainable conservation and optimum utilization of tuna and tuna like species and encouraging sustainable development of fisheries, through appropriate management, in the Indian Ocean;**

WHEREAS the Parties intend to conclude this Memorandum of Understanding (“MoU”) with the aim of consolidating, developing and detailing their cooperation and effectiveness to achieve their common objectives in the field of **improvement of system of collecting and processing data on resources related to tuna fisheries in the Indian Ocean;**

WHEREAS the Parties intend their cooperation to cover a broad range of activities, which may include but not be limited to, capacity building, knowledge exchange, provision of resources and development of financing initiatives for the advancement of their common goals and objectives²;

FAO AND OFCF Japan HAVE AGREED TO COOPERATE AS FOLLOWS:

Article 1: Interpretation and Purpose

1. The purpose of this MoU is to provide a framework for collaboration between the Parties to further their shared goals and objectives with regard to the **improvement of system of collecting and processing data on resources related to tuna fisheries in the Indian Ocean**], as further elaborated under Article 2 below.

2. Any Annex to this MoU shall be considered an integral part of this MoU. References to this MoU shall be construed as including any Annexes, as varied or amended in accordance with the terms of this MoU.

3. The present MoU implies no financial commitment by either Party except as specified in this MoU. Activities to be implemented under this MoU are subject to the availability of personnel and financial resources. Implementation of any projects and programmes pursuant to this MoU, including those involving the transfer of funds between the Parties, shall require the execution of appropriate separate legal agreements between the Parties in accordance with their respective rules and regulations. The terms of such agreements shall be subject to the provisions of this MoU.

² LEG instruction: Where appropriate, reference could be added here to the Hand in Hand Initiative.

4. Separate legal agreements between the Parties as expressed in Article 1(3) above shall set out detailed and specific technical, financial and other appropriate conditions for collaboration, as well as conditions relating to each Party's role, responsibilities and liability. Such arrangements will be jointly formulated and concluded on a case-by-case basis between the Parties.

Article 2: Areas of Cooperation and activities

1. The Parties have agreed to the following areas of cooperation for this MoU, which are areas of common interest to FAO and **[OFCF Japan]**. The Parties consider that progress in these areas could be strengthened through cooperation:

- a. **Improving the accuracy of tuna and tuna-like fishery statistics and information provided by IOTC coastal States; and**
- b. **Developing capacity in the collection, management and reporting of tuna fishery statistics by IOTC coastal States.**

2. The Parties will develop a work plan outlining specific activities of collaboration. The work plan is attached to this MoU as **Annex 1** and will constitute an integral part thereof. The work plan will be jointly reviewed on a regular basis between the Parties. Amendments to the work plan will be made, upon mutual agreement, through exchange of letters between the Parties.

3. The list of activities outlined in this MoU and in the work plan should not be taken to exclude or replace other forms of cooperation between the Parties, as may be agreed by the Parties pursuant to Article 3 to allow the Parties to respond to newly emerging issues of common interest.

Article 3: Mechanisms for coordination and review

1. The Parties shall hold regular bilateral meetings on matters of common interest, in accordance with an agenda agreed to in advance by the Parties, for the purpose of developing and monitoring collaborative activities, projects and programmes. Such meetings shall take place at least once every **[year]** to³:

- a. discuss technical and operational issues related to furthering the objectives of this MoU;
- b. provide overall strategic guidance for the implementation of this MoU;
- c. monitor the progress in the implementation of the MoU and exchange views on the lessons learned;
- d. review progress of work undertaken by **OFCF Japan** pursuant to a separate legal instrument in the areas of cooperation mentioned in Article 2 above.

2. In identifying joint activities, projects and programmes to be executed under this MoU, due regard shall be given to **OFCF Japan's** geographic coverage, capacity for implementation and experience in the related field.

3. Within the context defined above, further bilateral meetings at desk-to-desk and at expert level shall be encouraged and set up on an ad hoc basis as deemed necessary by the relevant FAO divisions and **OFCF Japan** for the implementation of joint activities, projects and programmes in specific areas, countries and regions.

4. ~~[Optional] The objectives of this MoU shall also be achieved through the following activities [Or: through the activities detailed in Annex I to this MoU].~~

- a. ~~— [describe other activities that could be carried out by the Parties];~~
- b. ~~— ...~~

4. [5]. To implement activities, projects and programmes in the agreed areas, the Parties shall execute separate legal instruments appropriate for the implementation of each initiative in accordance with Article 1(3) above.

Article 4: Status of the Parties and their Personnel

1. The Parties acknowledge and agree that **OFCF Japan** is an entity separate and distinct from FAO. The employees, personnel, representatives, agents, contractors or affiliates of **OFCF Japan**, including the personnel engaged by **OFCF Japan** to carry out any of the activities, projects or programmes conducted pursuant to this MoU, shall not be considered in any respect or for any purposes whatsoever as being employees, personnel,

³ LEG instruction: This standard text is simply one LEG means of ensuring regular monitoring and implementation of the MoU. The responsibility of determining the specifics of the coordination mechanism rests with the relevant unit leading the development of the MoU.

representatives, agents, contractors or affiliates of FAO, nor shall any employees, personnel, representatives, agents, contractors or affiliates of FAO be considered, in any respect or for any purposes whatsoever, as being employees, personnel, representatives, agents, contractors or affiliates of **OFCF Japan**.

2. The Parties shall undertake the activities under this MoU in accordance with the rules and regulations to which they are subject. Where compliance with rules may lead to a difficulty in performing under the MoU, or adhering to its provisions, the Party concerned undertakes to draw this to the attention of the other Party with a view to resolving the matter appropriately and amicably.

3. Neither Party shall be entitled to act or make legally binding declarations on behalf of the other Party. Nothing in this MoU shall be deemed to constitute a joint venture, agency, interest grouping or any other kind of formal grouping or entity between the Parties.

Article 5: Acknowledgment and publicity

1. **OFCF Japan** may refer to its collaboration with FAO in its internal documents and will seek and receive FAO's written clearance in advance of any other documents, in particular, materials intended to be made public relating to the collaboration with FAO.

2. At or near a time to be mutually agreed upon by the Parties, **OFCF Japan** and FAO may each issue a press release and make public statements regarding their collaboration, the content of which will be subject to the written agreement of the other Party, which will not unreasonably be withheld or delayed. Neither Party will issue any press release or promotional material, hold any press conference or make any public announcement concerning this MoU and/or the relationship of the Parties hereunder, without obtaining the approval of the other Party.

3. In all cases of acknowledgment and publicity on the collaboration under this MoU, the Parties will use neutral language that accurately reflects the actual contribution of each Party.

4. This MoU or information about this MoU may be published on FAO's website after it has entered into force consistent with its policies of transparency, as updated from time to time. **OFCF Japan** may also publish the MoU or information on its website after it has entered into force.

Article 6: Use of Name and Logo

The Parties agree not to use the other Party's name or logo in any press release, memo, report, or other published disclosure related to this MoU without the prior written consent of the Party concerned.

Article 7: Confidentiality

1. It is acknowledged that each Party may possess confidential information, which is proprietary to it or to third parties collaborating with it. Any information provided by one Party (as the "Disclosing Party") to the other Party (as the "Receiving Party") in the context of this MoU shall be treated by the Receiving Party as confidential.

2. The Receiving Party shall take all reasonable measures to keep information pursuant to paragraph 1 above confidential and shall only use the information for the purpose for which it was provided. The Receiving Party shall ensure that any persons having access to the said information shall be made aware of and be bound by the obligations of the Receiving Party hereunder.

3. Notwithstanding the foregoing, there shall be no obligation of confidentiality or restriction on use where (i) the information is publicly available, or becomes publicly available otherwise than by action of the Receiving Party; or (ii) the information was already known to the Receiving Party (as evidenced by its written records) prior to its receipt; or (iii) the information was received from a third party not in breach of an obligation of confidentiality owed to the Disclosing Party; or (iv) the Disclosing Party has given its written consent to disclosure to the Receiving Party.

Article 8: Intellectual Property Rights

1. Intellectual property rights, in particular copyright, in material such as information, software and designs, made available by **OFCF Japan** and FAO to be used to carry out activities under this MoU shall remain with the originating Party. Appropriate authorizations for use of such materials by the other Party will be addressed in the agreements concluded in accordance with Article 1(3) above.

~~2. **Option 1:** Intellectual Property Rights in materials developed under this MoU, such as information, software and designs, shall be vested in FAO. The [Other Party] will enjoy a royalty free, non-exclusive and non-transferable~~

~~license to use, publish, translate and distribute, privately or publicly, any item or part thereof for non-commercial purposes, provided that FAO is acknowledged as the source and copyright owner.~~

~~**Option 2:** Intellectual Property Rights in materials developed under this MoU and appropriate authorizations for use of such materials by either of the Parties will be addressed in the agreements concluded in accordance with Article 1(3) above.~~

Option 3: Intellectual Property Rights in materials developed under this MoU, such as information, software and designs, shall be jointly owned by FAO and **OFCF Japan**, including, without any limitations, the right to use, publish, translate, sell or distribute, privately or publicly, any item or part thereof for non-commercial purposes.

Article 9: Responsibility

Each Party will be responsible for dealing with any claims or demands arising out of its actions or omissions, and those of its personnel, in relation to this MoU.

Article 10: Commitment to respect FAO's principles and values

1. **OFCF Japan** agrees to respect FAO's constitutional principles and values, and warrants that nothing in its governance or operational activities, or those of its affiliates, is incompatible with FAO's constitutional mandate, principles and policies, or with internationally recognized principles concerning human rights, the environment and anti-corruption as reflected in the United Nations Global Compact Principles⁴.
2. **OFCF Japan** warrants that it has zero tolerance for all forms of sexual wrong-doing, and acknowledges that sexual exploitation and abuse and sexual harassment violate human rights and are incompatible with the core values of the United Nations System. **OFCF Japan** confirms that it has in place appropriate and effective mechanisms to prevent and address conduct incompatible with those core values. It undertakes to promptly inform FAO of allegations against its employees and any other persons involved in the implementation of activities in relation to this MoU and which have been found to be credible under **OFCF Japan**'s mechanisms.
3. **OFCF Japan** supports the internationally recognized principles endorsed by the Committee on World Food Security (CFS), such as the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), the Principles for Responsible Investment in Agriculture and Food Systems, and the Voluntary Guidelines on Food Systems and Nutrition, while recognising the voluntary nature of these principles.

Article 11: Privileges and Immunities and Applicable Law

1. Nothing in or relating to this MoU or in any document or arrangement relating thereto shall be construed i) as a waiver, express or implied, of any of the privileges and immunities of FAO, nor as extending any privileges or immunities of FAO to the other Party, or to its personnel, ii) as the acceptance by FAO of the applicability of the laws of any country to FAO, or iii) as the acceptance by FAO of the jurisdiction of the courts of any country.
2. The present MoU and any document or arrangement relating thereto shall be governed by general principles of law, to the exclusion of any single national system of law. Such general principles of law shall include UNIDROIT General Principles of International Commercial Contracts 2016.

Article 12: Settlement of disputes

Any dispute between the Parties concerning the interpretation and execution of this MoU, or any document or arrangement relating thereto, shall be settled by negotiation between the Parties. Any differences that may not be so settled shall be brought to the attention of the Executive Heads of the two institutions for final resolution.

⁴ <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

Article 13: Contacts for correspondence⁵

All correspondence regarding the implementation of this MoU, including notifications made pursuant to this MoU, shall be addressed to:

For FAO:	Executive Secretary, Indian Ocean tuna Commission (iotc-secretariat@fao.org)
For OFCF Japan	[Mr. ANKYU Seiji, Managing Director, Technical Cooperation Department (ankyu@ofcf.or.jp) TORANOMON 30 MORI BLDG., 2-2, TORANOMON 3, MINATO-KU, TOKYO 105-0001 JAPAN

Article 14: Notification and Amendments

- Each Party shall promptly notify the other in writing of any anticipated or actual material changes that shall affect the execution of this MoU.
- This MoU may be amended by mutual consent in writing at any time at the request of either Party. Such amendments shall enter into force one (1) month following notifications of consent by both Parties to the requested amendments or on a date otherwise agreed in writing for the amendment to enter into force. If the written mutual consent occurs on two different dates, amendments will take effect on the date of the second notification. Each Party shall give sympathetic consideration to any amendment proposed by the other.

Article 15: Entry Into Force, Duration and Termination

- This MoU shall be signed by the duly authorized representatives of the Parties and shall enter into force upon the date of last signature. It shall remain in force for a period of ~~three (3)~~ five (5) years, unless terminated in accordance with the terms of this Article.
- Subject to satisfactory past implementation, this MoU may be renewed for similar periods thereafter by written agreement between the Parties through Exchange of Letters.
- This MoU may be terminated by either Party upon the provision of three (3) months' written notice to the other Party.
- Upon termination of this MoU, the rights and obligations of the Parties defined under any other legal instrument executed pursuant to this MoU shall cease to be effective.
- Notwithstanding the foregoing, any termination of this MoU shall be without prejudice to (i) the orderly completion of any ongoing collaborative activity and (ii) any other rights and obligations of the Parties accrued prior to the date of termination under this MoU or any legal instrument executed pursuant to this MoU.
- The provisions of Articles 7, 8, 11 and 12⁶ shall survive the expiry or termination of this MoU.

[To be used for multi-language MoUs:

Option 1 – if an official language is being used: ~~[This MoU is done in the English and *[other language]* languages, both texts being equally authentic].~~

⁵ LEG instruction: In line with the Personal Data Protection Principles (AC2021/01), instead of naming a particular individual, LEG recommends limiting the focal contact point details to the identification of a functional title and generic official email address e.g. Legal Counsel, LEG-Director@fao.org. This avoids issues pertaining to who has authority to sign extensions, give notice of amendments etc., which may arise in the future where a named individual has subsequently changed roles or left the Organization.

⁶ LEG instruction: These Articles should refer to: Confidentiality, Intellectual Property Rights, Privileges and Immunities and Applicable Law and Dispute Settlement.

~~Option 2 – if a non-official language is being used: [This MoU is done in the English and [other language] languages. In case of discrepancy, the English version shall prevail]⁷.~~

IN WITNESS WHEREOF, the duly authorized representatives of the Parties affix their signatures below.

[To be used for signature of the MoU:

Option 1 – if the Parties decide to sign the MoU electronically: [The Parties agree that electronic signature of this MoU using the Adobe-Acrobat tool shall be treated as valid and legally binding. This MoU shall be treated as an original for all purposes.]

Option 2 – if the Parties decide to conclude the MoU through an exchange of emails attaching the scanned versions of the MoU signed in hard copy: [The Parties agree that this MoU will be concluded electronically via email exchange of scanned signed copies and that the signed copies exchanged in this manner shall be treated as originals.]

For FAO

For [For the Overseas Fishery Cooperation Foundation of Japan

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[Christopher O'Brien]
[Executive Secretary IOTC]

TAKENAKA Yoshiharu
President

Date:.....

Date:

⁷ LEG instruction: LEG notes that non-official languages in MoUs should be used in exceptional circumstances, e.g. where requested and the MoU is to be signed by a Head of State or other very high-level government official, as i) it is not standard FAO practice to sign agreements in non-official languages; ii) FAO does not have the capacity to verify the authenticity of texts.