
A COMPIATION OF COMMENTS RECEIVED ON THE 3RD DRAFT ALLOCATION REGIME

Prepared by the Secretariat

ABOUT THIS DOCUMENT.

Following TCAC09, the TCAC Chairperson received written comments on the 2nd version of the draft allocation regime. The TCAC Chairperson circulated a 3rd version of the draft proposal on 11 February 2022 and Heads of Delegations, on 28 February, agreed that TCAC Members should provide written comments on the 3rd draft by 31 March, and these comments would be used by the Chair to produce a 4th draft of the allocation regime, that would then be reviewed at TCAC10

This document contains the comments received on the 3rd version of the proposal as drafted in IOTC-2021-TCAC10-REF03.

ESTABLISHING AN ALLOCATION REGIME FOR THE IOTC (v3)

France (OT)

At this stage, the French delegation (ToM) has no comments to make. However, we reserve the right to make comments at a later stage on future versions of the text.

Maldives

As noted in the Heads of Delegation meeting on 28 February, Maldives did not get adequate time to reach out to other Member States in order to provide collective comments, suggestions and textual proposals to achieve broader consensus. Thus, we reserve our right to comment further in detail during the TCAC10.

Maldives maintains the positions mentioned in detailed comments made to V1, V2 and reflected in the summary of comments made by CPCs in IOTC-2021-TCAC09-REF01 and IOTC-2022-TCAC10-REF01_Rev1 unless otherwise stated in the comments mentioned below.

At the outset, the Maldives wishes to reiterate 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 independent Chair and other States in the Indian Ocean.

PREAMBLE

Maldives

As noted in TCAC08, TCAC09, and in our previous written comments made to V1 and V2, Maldives would refrain from making comments to the preambular texts as they are negotiated and resolved last in international treaty negotiations. However, Maldives would not accept the deletion of

“special circumstances of SIDS” as reflected in various international instruments which the paragraph has referred. Thus, Maldives would propose to retain the paragraph as it was in V1.

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 [at levels below maximum sustainable yield / OR / 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;

Indonesia

Indonesia proposes to change:

The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 1993 (The 1993 FAO Compliance Agreement)

The 1995 FAO Code of Conduct for Responsible Fisheries;

Other relevant instruments adopted by the Food and Agriculture Organization 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;

Indonesia

Indonesia proposes to add “including UNCLOS 1982” after law of the sea.

NOTING the sovereign rights of coastal States in accordance with the international law of the sea including UNCLOS 1982 for the purposes...

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

Australia

NOTING ~~RECOGNISING~~ the established interests, historical fishing patterns and fishing practices of Members of the IOTC historically fishing in the IOTC area of competence;

RECOGNIZING the interests, aspirations, needs, and special requirements of developing [States / Countries], as stated in various international instruments, including their requirement to equitably participate in the fishery for highly migratory fish stocks in this area;

Maldives

Maldives would not accept the deletion of “special circumstances of SIDS” as reflected in various international instruments which the paragraph has referred. Thus, Maldives would propose to retain the paragraph as it was in V1.

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;

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 V3 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, and 7.3.
- (c) **“Allocation Regime”** means the criteria, rules and process contained in this Resolution pursuant to which allocations are determined and approved by the Commission.
- (d) **“Allocation Period”** means the period during which an allocation established pursuant to this Resolution remains valid as determined pursuant to Article 10;
- (e) **[[“Coastal State CPC”]** means a member as referred to in Article IV of the Agreement who is situated wholly or partly in the IOTC Area of Competence and listed as such in Appendix 1;]

Australia

Agree the appropriate term is ‘coastal State’. However, we recognise the EU as a Regional Economic Integration Organisation represents the coastal State interests of France in respect to Reunion and Mayotte and these specific interests should somehow be recognised in the coastal State allocation.

European Union

The EU would like to stress two points:

- First, the word State does not encompass the situation in which the EU falls
- Second, and as referred in our comment in the Annex, the EU is under any respect a Coastal CPC

In this respect the EU would like to remind the wording of Article IV of the IOTC agreement.

Article IV. MEMBERSHIP 1. Membership in the Commission shall be open to Members and Associate Members of FAO (a) that are: (i) coastal States or Associate Members situated wholly or partly within the Area; (ii) States or Associate Members whose vessels engage in fishing in the Area for stocks covered by this Agreement; or (iii) regional economic integration organizations of which any State referred to in subparagraphs (i), or (ii) above is a member and to which that State has transferred competence over matters within the purview of this Agreement; and (b) that accept this Agreement in accordance with the provisions of paragraph 1 of Article XVII

- (e) ~~[[“Coastal State CPC”]~~ means a member as referred to in Article IV of the Agreement who is situated wholly or partly in the IOTC Area of Competence and listed as such in Appendix 1;]

Note comment in Appendix 1. The EU strongly stresses that this definition is ABSOLUTELY unacceptable for the EU. It would deny the rights of more than 1M EU citizens living on shore of the IO and the relevant sovereignty rights of one of its member state.

We demand this incorrect definition to be corrected as a pre-condition for the EU to be able to discuss this annex.

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 V3 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) ~~[[“Coastal State CPC”]~~ means a member as referred to in Article IV of the Agreement who is situated wholly or partly in the IOTC Area of Competence ~~and listed as such in Appendix 1;]~~

- (f) **“Commission”** or **“IOTC”** means the Indian Ocean Tuna Commission;

- (g) **“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);
- (h) **“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;
- (i) **“Contracting Party”** or **“CP”** means a party to the Agreement;
- (j) **“Contracting Parties and Cooperating Non-Contracting Parties”** are jointly referred to as **“CPCs”**;
- (k) **“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;

Maldives

Simplifying the text and to use similar language in New Entrants in the current text:

*(k) **“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 been ~~admitted to the IOTC as completed the application process to become a~~ Cooperating Non contracting Party to the IOTC as per, as detailed in Appendix III of the IOTC Rules of Procedures*

- (l) **“Developing State”** means a State that is a CPC listed in Appendix 1 whose developing status has been determined on the basis of internationally accepted standards defined by the United Nations, and includes Least Developed States and Small Island Developing States;

European Union

The EU insists on the need that this definition and any consequence directly linked to it are based on explicitly agreed UN standards based on a closed list and to be included in the text.

Maldives

Maldives do not see the value of adding an adjective to the text to describe how the United Nations defines developing States:

- (l) **“Developing State”** means a State that is a CPC listed in Appendix 1 whose developing status has been ~~determined on the basis of internationally accepted standards~~ defined by the United Nations, and includes Least Developed States and Small Island Developing States;

- (m) **“Fish Stocks”** or **“Stocks”** means highly migratory species, including stocks of tuna species, referenced in Article 5 and listed in Annex 1;
- (n) **“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.

Japan

Not sure what “which may be determined on the basis of portions of catch, biomass, or shares based on fishing effort” means

Maldives

The current negotiations on allocation of fishing opportunity is based on the portions of catch and thus Maldives propose to alter the definition:

(n) “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.~~

- (o) **“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*;
- (p) **“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;
- (q) **“Member”** means a Member of the Commission as specified in Article IV of the Agreement;
- (r) **“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;

Australia

Just for clarification that CPs are admitted in accordance with the Agreement and CNCPs are admitted in accordance with the RoP.

“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 in accordance with the IOTC Agreement (for contracting Parties) or as per the Rules of Procedure (for CNCPs) after the adoption of this Resolution;

- (s) **[“Non-Coastal State CPC”]** means a member as referred to in Article IV of the Agreement who is not situated wholly or partly within the IOTC Area of Competence;]

European Union

See above.

[“Non-Coastal State CPC”] means a member as referred to in Article IV of the Agreement who is not situated wholly or partly within the IOTC Area of Competence;]

- (t) **“Serious non-compliance”** means violations identified by the Commission pursuant to Article 7.2(b), which constitute repeated or gross disrespect of the IOTC’s Conservation and Management Measures adopted by IOTC Resolution, or disrespect of IOTC Conservation and Management Measures that the Commission deems a serious threat to the conservation of IOTC fish stocks;
- (u) **“Scientific Committee”** means the permanent committee provided for in Article XII.1 of the Agreement;

- (v) **“Small Island Developing States” or “SIDs”** are States listed in Appendix 1 whose status has been determined on the basis of internationally accepted standards defined by the United Nations;

Indonesia

Indonesia Proposes to delete:

~~**“Small Island Developing States” or “SIDs”** are States whose status has been defined by the United Nations;~~

Maldives

Reflecting our comment above:

*(v) **“Small Island Developing States or SIDS”** are States listed in Appendix 1 whose status has ~~jointly~~ been ~~determined on the basis of internationally accepted standards~~ defined by the United Nations*

- (w) **“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 1 in its stock assessment reports for such stocks. Stock Assessment cycles may vary by stock;
- (x) **“TAC”** means the Total Allowable Catches established by the Commission [following a management evaluation process] for a stock listed in Annex 1 and caught in the IOTC Area of Competence;

European Union

The EU confirms that it cannot agree to this reference “Commission [following a management evaluation process]” as the meaning of the proposed insertion is not clear. Proponents are thus asked to clarify.

- (y) **“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.

Indonesia

Indonesia proposes to change:

“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 based on the recommendation of the scientific committee and usually follows the same schedule as the Stock Assessment Cycle.

Japan

A harvest control may change TAC annually based on the latest abundance index without waiting for the next stock assessment (e.g. Greenland halibut in NAFO). In order not to exclude such possibility, we suggest deletion of this part.

“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.

Australia

We understand some delegations suggested deleting 'New Entrants' here, however, we feel they should still be specified here. Potentially, it could include 'and New Entrants (where appropriate)' here? (the location indicated is after "CPCs")

Article 3. GUIDING PRINCIPLES

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 a quantitative, fair, equitable and transparent manner to allocate fishing opportunities in the IOTC area of competence;

Maldives

Maldives would like to suggest the following to paragraph 3.1:

3.1 provide a quantitative, fair, equitable and transparent ~~manner~~ mechanism to allocate fishing opportunities in the IOTC area of competence;

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

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;

Australia

Australia would suggest replacing 'opportunities' with 'mortality'. It is total fishing mortality that we don't want to exceed the TAC, or the recommended biological catch if a TAC has not yet been formally set.

3.3 contribute to the sustainable management and use of IOTC stocks by ensuring that total fishing ~~opportunities~~ mortality does not exceed the TAC or recommended biological catch if a TAC has not yet been set ~~sustainable limits, or TACs where provided;~~

Japan

There will be no situation where allocations are implemented while TAC is not provided (see 1.1. (b)). Allocation is a distribution of TAC, and introducing a new idea of allocation of 'biologically sustainable limits' would simply complicate the discussion.

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. consistent with Article XVI of the Agreement, respect and not prejudice the exercise of the sovereign rights and obligations of coastal States in accordance with 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 their jurisdiction;

Australia

3.4 The guidelines could also reflect the international agreements such as UNFSA and UNCLOS here.

Maldives

Maldives would like to suggest the following to paragraph 3.4:

~~3.4 consistent with Article XVI of the Agreement, respect and~~ shall not prejudice the exercise of the sovereign rights and obligations of coastal States consistent with Article XVI of the Agreement in accordance with 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 their jurisdiction;

- 3.5. 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.

European Union

As repeated on various occasions during the meeting, the EU cannot agree to this exclusion that would imply a violation of the area of competence defined by the IOTC agreement.

~~3.5 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.~~

Japan

UNFSA Article 7 does not say Archipelagic waters and territorial sea are excluded

~~3.5 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.~~

- 3.6. respect the rights and obligations of all States fishing in the IOTC area of competence;
- 3.7. take into consideration the significant efforts made by each CPC to fulfil their obligations to comply with the IOTC Agreement and Resolutions.
- 3.8 Take into consideration the unequal challenges and disproportionate burden faced by Developing States in particular, Least Developing States and Small Island Developing States in fulfilling their obligations to comply with the IOTC Agreement and Resolutions.

European Union

The EU accepts the principle but would invite the proponents to stick to solid legal language and refrain from expression and comparisons which are per se empty and risks to raise interpretation doubts.

~~3.8 Take into consideration the unequal challenges and disproportionate burden faced by Developing States in particular, Least Developing States and Small Island Developing States in fulfilling their obligations to comply with the IOTC Agreement and Resolutions.~~

Indonesia

Indonesia proposes to change:

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

3.9 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;

Indonesia

Indonesia proposes to delete “in particular the vulnerability of Small Island Developing States”.

3.9 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;

3.10. 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];

European Union

The EU is open to discuss and improve wording as long as the principle that the aspirations of DCS have to be balanced with the historical rights of other CPCs fishing in the area of competence of the IOTC.

3.10 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 [, while respecting ~~without undermining~~ the rights of other CPCs fishing for the same fish stocks];

Indonesia

Indonesia proposes to delete ~~without undermining the rights of other CPCs fishing for the same fish stocks~~;

3.10 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

With regards to paragraph 3.10, Maldives cannot accept the addition of the phrase, “without undermining the rights of other CPCs fishing for the same fish stocks”, as this is not the focus of this sentence. This particular paragraph is structured to highlight the rights of the coastal states, as

outlined in the UNCLOS, in particular Article 116, and the UNFSA. Therefore, we propose to delete this particular addition.

3.10 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~~];

3.11. take into account [and accommodate the established interests,] fishing patterns and fishing practices of CPCs historically fishing in the IOTC area of competence;

Australia

'Take into account' is consistent with Article 11 on UNFSA

3.12 be implemented in a step-wise manner while providing some stability in the fisheries, resulting in a [partial] shifting of current fishing to CPCs that are developing coastal States, [including] in particular, Least Developed States and Small Island Developing States, as promptly as possible, taking into account the socio-economic impacts [of the resulting change in past fishing patterns and] the socio-economic impacts of any delay in the transition] on CPCs that are developing coastal States [whose people, present and future, rely on the [fish stocks] resources for their economic and food security]; and,

European Union

Re. "as promptly as possible"

The EU would prefer once again a more precise and legally sound text, based on a defined and agreed timeline. In any case we consider that this reference should remain in brackets and its acceptance for the EU is clearly and explicitly linked to 'limiting of social impact from the switching of fishing patterns'

3.10 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 [, while respecting ~~without undermining~~ the rights of other CPCs fishing for the same fish stocks];

[Alternate 3.12:

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; and,]

Australia

Australia prefers Alternate 3.12 which we feel captures the guideline. Then it is for the text in the allocation formula on how this guideline is being met.

European Union

The EU opposes this approach as we have always supported a limited and gradual transfer of fishing opportunities

[Alternate 3.12:

~~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; and,]~~

Indonesia

Indonesia agrees with alternative 3.12, much less wordy.

- 3.13 the Allocation Regime is intended to deter Illegal, Unreported and Unregulated fishing and serious non-compliance with relevant IOTC CMMs.

Article 4. ELIGIBILITY

- 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 Regime¹. 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 is not eligible to receive an allocation as described in Article 4.1 if the CNCP did not express a real interest in fishing in the IOTC area of competence when it submitted its application for CNCP status. A CNCP that has expressed such an interest at that time is eligible to receive [50%] of the allocation for each fish stock for which it is eligible, until such time as it becomes a CP. 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.

European Union

The situation of 'CNCP which are new entrants' should be explicitly addressed in the Resolution.

Maldives

Furthermore, Maldives would like to add a clarifying text to 4.2.

...[50%] of the allocation for each fish stock for which it is eligible depending on the status of the stock, until such time as it becomes...

- 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 6.12, 6.13 and 6.14. [A New Entrant that is not a Coastal State is not eligible to receive an allocation under this resolution.]

Australia

~~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 6.12, 6.13 and 6.14. [A New Entrant that is not a Coastal State is not eligible to receive an allocation under this resolution.]~~

European Union

The EU would like to re-state its firm opposition to this inclusion that would represent a violation of internal law.

¹ 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.

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 6.12, 6.13 and 6.14. ~~[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

Maldives

As stated in the TCAC08 and TCAC09 Maldives would like the allocation regime to include all stocks managed by the IOTC. Thus, we would like to revert to the original text in 5.1 in V2. Our comments to V1 were more of a future proofing of the allocation regime.

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 stocks of highly migratory species, including tuna stocks, 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.

European Union

The EU opposes this as explained above

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 stocks of highly migratory species, including tuna stocks, 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.

Indonesia

Indonesia request retention for excluding the Territorial Sea and Archipelagic waters of CPCs

(2) Subject to Article 11.3, the Commission may amend Annex 1, including to exclude fish stocks where a CPC can scientifically demonstrate to the Commission that a particular stock is discreet to that CPC's Exclusive Economic Zone and does not migrate to, or straddle the High Seas.

European Union

The EU requests this para to remain in brackets in view of a thorough discussion on the issue in the TCAC. It is not clear what stocks could be covered by this para and what would be the necessary evidence to provide to implement it. Also consideration should be given to the necessity to involve the SC on this issue.

The risk is to lead to an unlimited quota for certain stocks under the un-proven allegation that the stock is 'discreet to a CPC EEZ'

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.

Australia

We wonder if this Article can be a bit simpler, noting Article 9 on Implementation already exists.

Potentially we could just have:

5.1 This resolution shall apply to those species covered in Annex 1 [excluding the Territorial Sea and Archipelagic waters of CPCs] and managed by the IOTC.

Article 6. ALLOCATION STRUCTURE

Total Allowable Catch

6.1. [(a)] 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(a)

6.1 [(a)] 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].~~

[(b) In the absence of a TAC, the Commission may use a proxy for a TAC for a given fish stock, such as the maximum sustainable yield or other level of exploitation determined by the Commission, for establishing allocations pursuant to this Resolution.]

European Union

The EU is fully committed to the definition of a global IOTC TAC but we also considers that in the absence of a fully-fledged allocation regime, other solutions can be explored, such as for instance stock-specific TAC or catch limits distributed among CPCs (as it is currently the case for YFT).

We understand that once this resolution adopted and provided it covers the various IOTC stocks this provision becomes obsolete.

We believe this point deserves a discussion in the TCAC to get to a common understanding of the issue.

Indonesia

IDN proposes to delete 6.1.(b), because it beat the purpose of trying to establish TAC system.

6.2. Allocations to CPCs of a given fish stock shall be established based on allocation criteria contained in articles 6.5 to 6.11, and pursuant to the process set out in articles 9.5. to 9.17. [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 6.11, 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 Article 7.3, 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.

Australia

6.3 Subject to Article 7.3, the sum of allocations for a given fish stock established for a given allocation period pursuant to this Resolution shall not exceed the TAC or proxy set by the Commission in the absence of a TAC, ~~biologically sustainable limits, or TACs, where provided,~~ for that stock for that allocation period.

European Union

Re. "biologically sustainable limits "

The EU has serious doubts on this notion. It is not clear what this would mean and how this would interplay with the recommendations of the SC

Maldives

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

6.3 Subject to Article 7.3, the sum of allocations for a given fish stock established for a given allocation period pursuant to this Resolution shall not exceed limits determined by the Commission in articles 6.1(a) and 6.1(b) ~~biologically sustainable limits, or TACs, where provided, for that stock for that allocation period.~~

- 6.4 [The total Catch-based Allocation shall comprise [%] of the TAC, and the total Coastal State Allocation shall comprise [%] of the TAC.]

Australia

We feel we can delete this here as it is described in 6.5 and the percentages are detailed in 6.6 and 6.9.

European Union

The EU finds option 2 much less clear and would be willing to discuss and develop option 3

Criteria for Allocations

Maldives

Maldives reserves to further comment on Article 6.4. [Secretariat: the reference to Article 6.4 may be incorrect as this comment was made under the heading for 'Criteria for Allocations.

- 6.5 [The allocated share of the TAC for a given stock for each eligible CPC shall consist of two elements:

- (a) a percentage share of the Catch-based Allocation as defined by criteria provided in articles 6.6 to 6.8, and
- (b) a percentage share of the Coastal State Allocation as defined in criteria provided by articles 6.9 and 6.10 and indicators provided in Annex 3,

Australia

We believe there should be a criteria to include an equal portion for each CPC's right to access the high seas. This could be in addition to the catch based and coastal State allocation and captured here as a third criteria, or contained within the catch-based allocation as catch history specifically represents the rights of all CPCs to fish in the Indian Ocean

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

Catch-Based Allocations

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

6.7. (a) Eligible CPCs shall receive a Catch-based Allocation established based on the Historical Catches of CPCs determined based on the criteria provided in Article 6.8.

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

Historical Catch

6.8 (1) (a) Subject to paragraphs (2) and (3), Annex 2 and Article 6.11, the historical catch used to determine a CPC's 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.*]

Australia

Option 3 captures each CPCs preferred catch period. Simpler to have just this as the option.

(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, catches taken by identified IUU vessels shall be excluded.

European Union

Re. "catches taken by identified IUU vessels "

According to the EU this definition needs improvement. We would suggest to make reference to the IUU resolution where the definition of IUU activities is very clear.

Indonesia

IDN suggests that this is difficult to determine, hence better to drop/delete it

- (2) [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 and reported such catches.]

European Union

The EU reiterates its absolute opposition to this approach — delete 2

- (3) 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:

Indonesia

Indonesia proposes to delete ... excluding those taken by identified IUU vessels.

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~~

- (a) 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;
- (b) Any CPC may provide fine scale spatial information to the IOTC Secretariat no later than [xx]. Once vetted by the IOTC Secretariat, that information shall be used to spatially attribute the catch history for that CPC;
- (c) Catches reported for 5x5 or 1x1 degree grid squares that:
- i) wholly fall within areas under national jurisdiction are to be considered as being taken in areas under national jurisdiction of a coastal State;
 - ii) wholly fall within the high seas are to be considered as being taken in the high seas;
 - iii) overlap one or more areas under national jurisdictions of Coastal States 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;
 - iv) are taken by a coastal State fishing within its own area under national jurisdiction, shall be considered as being taken within that States' area under national jurisdiction.
- (d) 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;
- (e) Catches by vessels of a coastal State in its coastal fisheries as defined in Resolution 15/02 are assumed to have been taken within the area under the national jurisdiction of that coastal State, irrespective of whether spatial effort data is available.

European Union

The EU reiterates its absolute opposition to this approach — delete all sections of 3.

Re. 3: The sentence refer to paragraph 38 of TCAC05 “the TCAC noted”, which has never been agreed by CPCs.

In addition some of the proposed wording is unclear just as unclear is the procedure to be applied in case of controversy

The TCAC NOTED the following approach, that without prejudice to the ultimate outcomes with respect to allocation and attribution, contains elements that were generally accepted by the participants.

Re. 3c iv

While confirming our opposition to all this section, the EU would like to underline that the meaning and usefulness of this sub-point iv) is highly questionable

Re. 3d “In cases where the flag State is in disagreement with another CPC, supporting evidence shall be provided for consideration by the IOTC Compliance Committee”

The EU considers that bringing a disagreement among CPC to the attention of the CoC is not a very effective solution

Re. 3d and 3e

The combination of these two paras seems to create the possibility of a loophole and an incentive to avoid reporting spatial effort data.

the interplay between sub-para d) and e) is also not very clear.

In addition sub-para e) does not seem to capture the situation where a particular vessel is authorised to fish outside EEZ.

Coastal State Allocation

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

6.10 [(1) To address the particular vulnerability and dependency of developing coastal States on the fish stocks listed in Annex 1, coastal State CPCs shall be eligible to receive a share of the TAC [for fish stocks that occur in their Exclusive Economic Zones], which shall comprise the following components:

Australia

Suggest moving the sentence “ To address the particular vulnerability and dependency of developing coastal States on the fish stocks listed in Annex 1” to start 6.10 1(b) which is specific for developing coastal states.

European Union

Re. “[(1) To address the particular vulnerability and dependency of developing coastal States”
This is in the principle already, irrelevant here.

Re. “[for fish stocks that occur in their Exclusive Economic Zones]”

This part needs a discussion within the TCAC as its aim and implementation modalities are not clear. An essential pre-condition would be the ability to prove that a certain stock occurs in the particular EEZ of a CPC. As a general principle, however, the EU could accept the idea that the coastal state allocation is limited to only those species normally fished as a coastal state in your EEZ waters

Maldives

Maldives would like to suggest an amendment paragraph 6.10:

To address the particular vulnerability and dependency of developing coastal States on the fish stocks listed in Annex 1, coastal States CPCs shall be eligible to receive a share of the TAC for fish stocks that occur in their Exclusive Economic Zones, which shall comprise of the following components;

- (a) [35% / 45%] of the Coastal State Allocation to address their interests and aspirations as Coastal State CPCs, to be shared in equal portion by all Coastal State CPCs as per Annex 3;

Maldives

(a) [35% / ~~45%~~] of the Coastal State Allocation to address their interests and aspirations as Coastal State CPCs, to be shared in equal portion by all Coastal State CPCs as per Annex 3;

- (b) [47.5% / 55%] of the Coastal State Allocation dedicated to coastal State CPCs that are developing coastal States, in particular Small Island Developing States and Least Developed States, to address their needs and dependency on the fish stocks listed in Annex 1 and the fisheries for these stocks, to be shared based on internationally agreed upon indicators described in Annex 3; and

Australia

(b) [47.5% / 55%] To address the particular vulnerability and dependency of developing coastal States on the fish stocks listed in Annex 1 of the Coastal State Allocation dedicated to coastal State CPCs that are developing coastal States, in particular Small Island Developing States and Least Developed States, to address their needs and dependency on the fish stocks listed in Annex 1 and the fisheries for these stocks, to be shared based on internationally agreed upon indicators described in Annex 3; and

European Union

Re. “internationally agreed upon indicators ”

We reiterate the need to specify these indicators before accepting the principle.

Indonesia

Indonesia proposes to delete in particular Small Island Developing States and Least Developed States.

(b) [47.5% / 55%] of the Coastal State Allocation dedicated to coastal State CPCs that are developing coastal States, in particular ~~Small Island Developing States and Least Developed States~~, to address

their needs and dependency on the fish stocks listed in Annex 1 and the fisheries for these stocks, to be shared based on internationally agreed upon indicators described in Annex 3; and

Maldives

(b) [47.5% / ~~55%~~] of the Coastal State Allocation dedicated to coastal State ~~CPCs~~ that are developing coastal States, in particular Small Island Developing States and Least Developed States, to address their needs and dependency on the fish stocks listed in Annex 1 and the fisheries for these stocks, to be shared based on ~~internationally agreed upon~~ indicators described in Annex 3; and

- (c) [[17.5% / 0%] of the Coastal State Allocation dedicated to Coastal State CPCs to address their rights and status as Coastal States, to be shared based on the indicators in Annex 3.]

Australia

Australia will not accept a zero percent allocation here. This is one of the few ways the rights of all coastal States are recognised in the allocation so this must remain.

European Union

In line with the discussion held so far, the EU questions the need to keep sub-para c). In our understanding there is no CPC having expressed support for it.

Maldives

(c) [[17.5% / ~~0%~~] of the Coastal State Allocation dedicated to Coastal State ~~CPCs~~ to address their rights and status as Coastal States, to be shared based on the indicators in Annex 3.]

- (2) Subject to Article 11.3, Annex 3 may be amended by the Commission to replace the indicators with alternative more precise internationally agreed upon indicators reflective of the dependency of developing Coastal State 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 State CPCs shall be adjusted to reflect the new indicators once approved by the Commission.

Maldives

(2) Subject to Article 11.3, Annex 3 may be amended by the Commission to replace the indicators with alternative more precise internationally agreed upon indicators reflective of the dependency of developing Coastal State ~~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 State ~~CPCs~~ shall be adjusted to reflect the new indicators once approved by the Commission.

- (3) At the beginning of a new allocation period, a Coastal State CPC that is a developing State may seek to have its allocation under Paragraph 6.10(1)(b) for a given stock adjusted for that stock to reflect changes in statistics related to its dependency on fish stocks listed in Annex 1 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 changed and its allocation adjusted by the Commission.

European Union

The EU would require to clarify the modalities and evidence for the implementation of this sub-para and would propose to condition its application to an agreement by either the Commission or the Allocation Committee

Maldives

(3) At the beginning of a new allocation period, a Coastal State CPC that is a developing State may seek to have its allocation under Paragraph 6.10(1)(b) for a given stock adjusted for that stock to reflect changes in statistics related to its dependency on fish stocks listed in Annex 1 or fisheries for such stocks. In such a case, the Coastal State 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 changed and its allocation adjusted by the Commission.

Correction for Extenuating Circumstances

6.11. At the beginning of an allocation period, a [Coastal State CPC that is a developing State and] whose ability to fish for stocks covered by this Resolution during the catch history reference period referred to in Article 6.8 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,

Australia

We understand the inclusion of impacts of climate change, however, we feel this may be difficult to demonstrate and maybe worth more discussion.

European Union

The EU fully supports the consideration of future impact of climate change but we consider that this aspect would be implementable only once clear and stable indicators to measure its impact over time are developed and agreed. Furthermore a discussion is needed on the way this would actually affect the allocation criteria and according to which procedure

(e) impacts of climate change once adequate and stable indicators are developed and agreed

directly affecting the fishing capacity, 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 [allocation /catch history] for that stock corrected [based on the average catch taken within the catch history reference period by CPCs for the same stock.]

New Entrants

6.12. 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 an eligible New Entrant as defined in Article 4.3, where such a New Entrant:

European Union

Re. "eligible"

The EU opposes this inclusion as explained above

6.12 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 an eligible New Entrant as defined in Article 4.3, where such a New Entrant:

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

Australia

New Entrants won't necessarily have catch data for the fish stock it is seeking an allocation for unless it has leased quota from IOTC CPs. Is this necessary?

European Union

The EU (and other delegations) have already expressed doubts on the feasibility of these requirements

~~(b) provides nominal catch data for the fish stock for which it is seeking an allocation and which has been verified by the Scientific Committee~~

- (c) [expressed and demonstrated a real interest in the fishery for that stock at the time it sought accession to the IOTC;]

Australia

This seems overly restrictive, particularly on developing countries who are trying to build up their industries.

European Union

The EU (and other delegations) have already expressed doubts on the feasibility of these requirements

~~(c) [expressed and demonstrated a real interest in the fishery for that stock at the time it sought accession to the IOTC;]~~

- (d)[pays its annual contribution to the Commission;] and,
- (e) complies with the CMMs, as determined by the Compliance Committee.

6.13. The Commission may allocate shares of the Special Allocation referenced in Article 6.12 to each New Entrant in the year that the Allocation Regime is applied to the stock.

Australia

This addition would provide the Commission more flexibility in relation to New Entrants.

6.13 The Commission may allocate shares of the Special Allocation referenced in Article 6.12 to each New Entrant in the year that the Allocation Regime is applied to the stock and in doing so shall take into account the factors specified in Article 11 of the Fish Stocks Agreement.

6.14. [New Entrants shall share in equal proportion, any Special Allocation set aside by the Commission pursuant to articles 6.12. and 6.3.]

Australia

If the suggestion to include reference to Article 11 in UNFSA in 6.13 then 6.14 can be deleted.

~~6.14 [New Entrants shall share in equal proportion, any Special Allocation set aside by the Commission pursuant to articles 6.12. and 6.3.]~~

Article 7. ADJUSTMENTS WITHIN ALLOCATION PERIOD

7.1 Over-catch

Australia

We feel this is overly prescriptive and would prefer to keep this section as simple as possible. This section could use what is in resolution 21/01 once the Commission agrees on the interpretation of the payback mechanism.

Potentially something like:

a. over-catch in xx year, 100% of that over-catch shall be deducted from the following two years unless;

c. over-catch for that CPC has occurred in two or more consecutive years, in which case 125% of the over-catch shall be deducted over the following two years.

Japan

We believe rules on pay back of over-catch fit better in CMM for each stock rather than prescribing universal rules in this resolution. For example, more penalty on over-catch would be necessary for stocks which are severely depleted. Thus, we request section 7.1 is put in brackets.

It should also be noted, perhaps for most of IOTC fisheries, catch amount of in year (n) will be finalized in the middle of year (n+1), thereby pay-back of an over-catch in year (n) in year (n+1) being practically challenging. The degree of practical challenge would differ between stocks and/or fisheries, thus more tailored approach need to be established in stock-specific resolutions

(a) Over-catch of a fish stock by a CPC or New Entrant in a given calendar year (n) within an allocation period shall be deducted from that CPC's or New Entrant's allocation for that stock in the following [calendar year within the same allocation period / OR allocation period] [at a ratio of 1.2:1/OR by 120%] of the over catch.

European Union

Re. "Over-catch"

Maybe adding a definition of over-catch could be useful, to avoid any loophole or misinterpretation.

Re. "CPC or New Entrant"

A new entrant is a CPC. In particular following the definitions in 1.1 which do state otherwise. All the reference here and elsewhere to a CPC and a new entrant are therefore wrong.

Re. "[120%]"

The EU considers that this approach is slightly different from what discussed/understood in previous discussions, but we can agree with it, provided other CPCs are fine with it.

The issue would probably need clarification in the TCAC, especially on the feasibility to apply a payback already on year N+1 due to the lack of data until mid-year and as proven by recent example on YFT.

Indonesia

Indonesia proposes [at a ratio of 1.1:1/OR by 110%]

(b) A CPC or New Entrant may seek to defer this deduction to the next calendar year(n+2) within the allocation period, in which case, the deduction shall be increased [to a ratio of 1.5:1 /OR by 150%] of the over catch.

(c) Where a CPC or New Entrant over-catches a given stock for [three / two] consecutive calendar years, the allocation of that CPC or New Entrant for the [fourth / third] year of the allocation period (n+3) shall be deducted [at a ratio of 2:1 / OR by 200%] of the overcatch, 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:

(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 adjustments 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

Australia

Australia still prefers not to have 'Serious Non-Compliance' in the allocation scheme.

(a) The Commission shall temporarily withdraw eligibility to an allocation of any CPC or New Entrant or reduce its allocation, where the Commission determines that the CPC or New Entrant has demonstrated repeated or gross disrespect of the IOTC's Conservation and Management Measures adopted by IOTC Resolution, or disrespect of such measures which pose a serious threat to the conservation of IOTC fish stocks.

(b) The Commission shall identify violations that constitute serious non-compliance which shall lead it to either temporarily withdraw eligibility of a CPC or New Entrant to an allocation or reduce the allocation by an amount to be determined by the Commission, based on advice and recommendations from the Compliance Committee. In making this determination, the Commission shall factor the following examples of serious 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;

European Union

Re. “data”

The EU –in line with its policy on categorisation of non-compliances – would suggest to specify “catch data” as a serious non-compliance.

Re. “concrete”

The EU would favour a less subjective wording. Submission of data is actually quantifiable

(ii) Non-provision of catch data for 3 years or more with no quantifiable improvement in addressing concrete actions taken to address the data gaps;

[(iii) Persistent non-payment of contributions to the Commission in accordance with Article XIII of the Agreement.]

(c) The Commission shall reinstate a CPC’s or New Entrant’s allocation that has been temporarily withdrawn or reduced, 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.

7.3 Extenuating Circumstances

- (1) A CPC may, when the TAC from the previous calendar year has not be fully caught, 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.

Australia

I think this is now 6.11

European Union

Re. “adjusted”

The EU supports “carried over” as adjusted could mean for more than one year.

(1) A CPC may, when the TAC from the previous calendar year has not be fully caught, seek to have its allocation for a given fish stock ~~adjusted~~ carried over during the allocation period for the stock, if it can demonstrate to the Commission that its ability and capacity...

- (2) 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 carried forward and added to the following calendar year’s allocation of the stock for that CPC [in an amount not exceeding xx% of the TAC factoring in the status of the stock].

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.

Indonesia

Indonesia proposes to change:

(a) CPs who wish to transfer, on a temporary basis, a maximum of 20% ~~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 of fish to be transferred; the stock; the period; and, the CP to whom the allocation, or part thereof, will be transferred.

(c) The transfer shall take effect upon receipt by the Secretariat of the written acceptance from the receiving CP.

(d) The written notification and the written confirmation shall be circulated to the Commission.

[(e) When a transfer is notified after the allocation table has been approved by the Commission pursuant to Article 9.17, the Secretariat shall attach a revised allocation table when it shares the written notifications of the transfer with the Commission.]

(f) Transfers of allocations are not permitted within the last 45 days of the allocation cycle.

(g) Permanent transfers of allocations are not permitted.

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

[(i) This Resolution shall not be considered a precedent for future allocation decisions.]

European Union

Re. “[i) This Resolution shall not be considered a precedent for future allocation decisions.]”

The EU strives to understand at all the meaning of this paragraph in a resolution which is actually intended to establish an allocation regime. We hope proponents will be in a position to clarify their objective.

- 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, is encouraged to 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.

European Union

The EU is not opposed to this para, but we would like to better understand how this process would function in practice and in what specific cases could concretely apply.

Re. “shall”

Maybe “may” instead of “shall”

[8.4 Allocation transfers shall not prejudice the determination of future allocations of CPCs.]

European Union

The EU is of the view that systematic transfers of quota should represent a precedent and a factor for future allocations.

Article 9. IMPLEMENTATION

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.

European Union

Re. "Prior to the coming into force of this Resolution "

In the EU's views the impact on the timeline is questionable. It would actually mean that as this has to be prior to the entry into force and approved by the Commission, the resolution would not come into force for more than a year. It is an element to be clarified in the discussions.

Re. "from time to time "

The EU requests this reference to be more precise

- (b) The Implementation Plan shall include:
 - (i) a schedule for setting TACs [or appropriate proxies], as per the 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.]

(c) In accordance Article 3.12, the Implementation Plan shall foresee a step-wise approach for the full implementation of the allocation regime by establishing a progressive transition period of no less than 5 years on the basis of the schedule and formula described in Annex 2.

Allocation Process and Catch Validation

[Allocation Committee

Australia

Australia does not believe an Allocation Committee is needed.

- 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 6.11.
- (c) 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 6.10, 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 article 8. The Secretariat shall adjust the allocation tables with any transfers notified after this deadline and circulate to Commission in accordance with Paragraph 8.1 (d); 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

Australia

Australia does not believe an Allocation Committee is needed.

- 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 6.11, 6.12 to 6.14 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 6.11, 6.12 to 6.14, 7.2(c)(ii), and 7.3] 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 [or proxy] established for the fish stock. .

Article 11. FINAL CLAUSES

Coming into Effect

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

Term and Amendment of Resolution

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

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

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

European Union

The EU is of the view that when revising the allocation regime all factors initially considered in its definition should be taken into account. The EU invites also the proponents to acknowledge that among these factors aspirations of DC, LDC and SIDs are already fully recognised.

Indonesia

Indonesia proposes to change:

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

[11.4 The catch history average periods provided in Paragraph 6.8(1)(a) may be revised after the initial term set out in Article 11.2(1), on intervals determined by the Commission, to take into account most recent catch periods.]

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

IOTC membership by category

European Union

The EU strongly stresses that this definition is ABSOLUTELY unacceptable for the EU. It would deny the rights of more than 1M EU citizens living on shore of the IO and the relevant sovereignty rights of one of its member state.

We demand this incorrect definition to be corrected as a pre-condition for the EU to be able to discuss this annex

CPC	CP	CNCP	COASTAL STATE CPC	NON-COASTAL STATE CPC	DEV STATES	DEV COASTAL STATE	SIDS	LDS
AUSTRALIA	X		X					
BANGLADESH, People's Republic of	X		X					
CHINA	X			X				
COMOROS	X		X					
ERITREA	X		X					
EUROPEAN UNION	X			X				
FRANCE (OT)	X		X					
INDIA	X		X					
INDONESIA	X		X					
IRAN, Islamic Republic of	X		X					
JAPAN	X			X				
KENYA	X		X					
KOREA, Republic of	X			X				
MADAGASCAR	X		X					
MALAYSIA	X		X					
MALDIVES	X		X					

MAURITIUS	X		X					
MOZAMBIQUE	X		X					
OMAN, Sultanate of	X		X					
PAKISTAN	X		X					
PHILIPPINES	X			X				
SEYCHELLES	X		X					
SOMALIA	X		X					
SRI LANKA			X					
SOUTH AFRICA	X		X					
SUDAN	X		X					
TANZANIA	X		X					
THAILAND	X		X					
UNITED KINGDOM of Great Britain and Northern Ireland	X		X					
YEMEN	X		X					
SENEGAL		X		X				

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 IOTC² shall be allocated pursuant to the Allocation Regime of the IOTC provided in Resolution 2023/XX, in the following priority order:

1st 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:

- Indo-Pacific Blue Marlin
- Black Marlin
- Striped marlin
- [Long tail tuna
- Kawakawa
- Frigate tuna
- Bullet tuna
- Narrow barred Spanish mackerel
- Indo-Pacific king mackerel]
- Indo-Pacific sailfish

² Southern Bluefin Tuna has been excluded as it is managed by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

[Annex 2

Step-wise Implementation of the Allocation Regime

1. The implementation of the Allocation Regime shall be transitioned for each relevant fish stock over the following periods in the amounts and based on the schedule set out below for each CPC.
2. At the beginning of each allocation period, the allocations of CPCs for the relevant fish stocks shall be revised in the allocation table in accordance with the amounts and schedule provided herein.

(Details to be negotiated)

]

Annex 3

Coastal State Allocation Indicators

[1. The following indicators shall be used to calculate the Coastal State Allocation pursuant to Article 6.10 of the Allocation Regime in Resolution 2023/XX:

a) Pursuant to Paragraph 6.10(a), Coastal State CPCs: Status weighting = 1 (an equal portion for each). Proportion = [35% / OR 45%] of the Coastal State Allocation;

b) Pursuant to Paragraph 6.10(b), Coastal State CPCs that are Developing States: Proportion = [47.5% / OR 55%] of the Coastal State 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 State 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 State Allocation;

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

[c) Pursuant to Paragraph 6.10(c), Coastal State CPCs: 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 State 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)]]

[Annex 4**Terms of Reference for Allocations Committee****Membership**

1. (a) The Allocations Committee of the IOTC established pursuant to Article 9.5 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 9.4;
 - (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 6.12 to 6.14;
 - (e) Corrections to allocations of a CPC that is a developing coastal State for extenuating circumstances provided in Article 6.11;
 - (f) Allocation adjustments pursuant to articles 7.1, 7.2., and 7.3.;
 - (g) Temporary withdrawal of or reinstatement 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.]