

CHAIR'S DRAFT PROPOSAL FOR AN ALLOCATION REGIME (V4) — ANNOTATED

Prepared by the TCAC Chairperson

ABOUT THIS REVISION

IOTC-2022-TCAC10-REF05 contained several erroneous cross references to articles in the text. The errors have been corrected in this Rev1 document and are and shown in yellow.

Background on the draft

Draft #4 has been prepared to reflect written comments received from delegations during the intersessional period from the production of Draft #3 leading to the TCAC10 meeting. This Draft #4 continues to reflect changes made in Draft #3, as the changes made to Draft #3 have not yet been discussed by the TCAC.

Minor adjustments such as correcting typographical errors, renumbering of articles and paragraphs, capitalizing first letters of certain words (e.g. Article), replacing the word “species” by “stock”, and replacing “management cycle” with “allocation period” have been accepted by the Chair on the assumption that there are no oppositions to these minor changes made to drafts #1, #2 and #3. Hence these minor changes are not identified as outstanding edits in this Draft #4. The Chair has also accepted changes made to Draft #1 of the text which have not been opposed or commented on since these were made. The Chair's assumption is that there is consensus for the change made. While these are no longer reflected as proposed edits in the text, the Chair has maintained the comments in the margin explaining the nature of the change and its source, for transparency purposes.

With the exception of the above referenced accepted changes, all other changes and deletions have been tracked in the text. The Chair has also, in some cases, explained certain changes made, and raised certain issues requiring further discussion, in the side bar comments.

The delegation source for remaining substantive changes has been identified in side bar comments, including in respect of which version (Draft #1, Draft #2, Draft #3) the change was proposed and whether the change was proposed during a TCAC meeting or in written comments provided after these meetings. For more details on delegations' written comments, Members are referred to IOTC-2022-TCAC10-REF04 for the compilation of comments received on Draft #3; IOTC-2022-TCAC10-REF01 for the compilation of all written comments received on Draft #2; and, IOTC-2021-TCAC09-REF01 for the compilation of all written comments received on Draft #1.

When the Chair has made adjustments to text proposed by delegations, this has been flagged in side bar comments. Where changes or deletions proposed have been opposed by one or more delegations, the text has been put in brackets. Where a deletion or a change requested by one or more delegations contradicts a proposed text or stated position of another delegation, the text has been inserted in brackets. Where more than one text proposal has been made with respect to the same part of the text, the Chair has proposed text which tries to capture the intent of all proposals. Where this has not been possible, alternatives have been included for decision by the Members. In such instances, the text with the alternative(s) has been put in brackets. And, where a delegation has indicated reservations on the text of a provision, brackets have been added to the text to enable time for that delegation to consider its views and enable a dialogue.

Brackets will be removed when there is consensus on the wording of the relevant text

IOTC RESOLUTION 2023/XX

ESTABLISHING AN ALLOCATION REGIME FOR THE IOTC**PREAMBLE****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 (UNCLOS);

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 (UNFSA);

[The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 1993 \(The 1993 Compliance Agreement\);](#)

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, [including those contained in the above international instruments](#), for the purposes of exploring and exploiting, conserving and managing the living resources, including highly migratory species, within the 200 nautical mile Exclusive Economic Zone under their jurisdiction, and the need for the Allocation Regime not to prejudice such rights;

RECOGNIZING/NOTING [the established interests, historical fishing patterns and fishing practices of Members of the IOTC historically fishing in the IOTC area of competence](#);

Commented [BN1]: The Chair takes note of Maldives' wish to review the Preamble of the text at the end of the discussions on the text of the Resolution. Brackets have been inserted on the preamble to reflect this.

Commented [BN2]: As the EU opposed the deletion of the original wording in their comments on Draft #2 and proposed deletion of the alternative wording that had been proposed by Maldives on Draft #1, I have inserted both options in brackets.

Commented [BN3]: Change proposed by Indonesia

Commented [BN4]: Indonesia requested the addition of the reference to UNCLOS in its comments on Draft #3. The Chair has proposed broader language to reference all instruments referenced earlier in the preamble, which also contain provisions related to rights and obligations.

Commented [BN5]: Word change proposed by Australia in respect of Draft #3

Commented [BN6]: Clause originally proposed by the EU on Draft #1 and adjusted as proposed by the EU in Draft#2.

RECOGNIZING the interests, aspirations, needs, and special requirements of developing [States/Countries], 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

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 6.136, 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; State that is a CPC which is situated wholly or partly in the IOTC Area of Competence, and is listed as a Coastal State CPC in Appendix 1. These term and definition shall apply mutatis mutandis to a regional economic integration organisation that is a CPC and of which any Coastal State is a member and has transferred competence over matters within the purview of the Agreement, including those under this resolution;
- (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;

Commented [BN7]: Indonesia proposed to replace the term “States” for “Countries” in Draft #2. I have inserted both terms in brackets for further consideration.

The term “developing States” is the term used in the fisheries provisions of the UNCLOS and the UN Fish Stocks Agreement. The IOTC Agreement uses both “countries” and “States”. The term State is typically used in the context of exercising sovereignty and sovereign rights, whereas the term country is usually used in a geographic context. In this particular context, the Chair would recommend the use of the term States.

Commented [BN8]: Indonesia proposed to delete this text referencing least-developed States and SIDS in Draft #2. As Maldives opposed this deletion, the text has now been put into brackets. Similar changes have been requested by Indonesia throughout the draft proposal.

While the definition of “Developing States” proposed in this draft Resolution explicitly includes least developed States and SIDS, the Chair notes that the added reference to LDS and SIDS in specific provisions throughout the text of the draft Resolution have been proposed to add particular emphasis to these states. For consideration by the Members, the Chair notes that Art 25(b) of the UN Fish Stocks Agreement uses the term “...developing States, in particular the least-developed among them and small island developing States...”. While the IOTC Agreement does not use this terminology (perhaps as it pre-dates the UN Fish Stocks Agreement), IOTC Resolutions do use the terms “developing states”, “SIDS” and “Least Developed States”.

Commented [BN9]: Definition proposed by Chair based on comments on Draft #1, including that of UK in its written comments regarding Draft #1.

Commented [BN10]: As requested by the EU in respect of Draft #2, the Chair proposes wording for a new definition of Allocation Regime

Commented [BN11]: Definition proposed by Chair based on comment from Maldives on Draft #1

Commented [BN12]: The Chair has proposed new wording for the term and definition to address comments from the Maldives, the EU and Australia in respect of Draft #3, and those of the Maldives on Draft #2 as well as comments from the EU and the UK on Draft #1. And the Chair has made the necessary changes to use this term “Coastal State CPC” throughout the draft document.

Reference to Appendix 1 has been added as suggested by the UK in its comments on Draft #2 but inserted in brackets to reflect Maldives’ proposed deletion.

Appendix 1 has also been adjusted to reflect Australia’s and the EU’s comments on Draft #3 recognizing the EU as a Coastal State CPC in the Indian Ocean given the EU’s role in respect of Mayotte and La Reunion.

As there is yet consensus on the term or the definition, the Chair has put both in brackets for further discussion.

- (j) “Contracting Parties and Cooperating Non-Contracting Parties” are jointly referred to as “CPCs”;
- (k) “Cooperating Non-Contracting Party” or “CNCPP” 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 as a completed the application process to become a Cooperating Non-contracting Party to the IOTC, pursuant to as detailed in Appendix III of the IOTC Rules of Procedures and which the Commission has endorsed;
- (l) “Developing State” means a State that is a CPC listed in Appendix 1 and whose developing status has been [determined on the basis of internationally accepted standards] defined under by the United Nations, standards and which includes Least Developed States and Small Island Developing States, as provided by the Human Development Index (include ref here); and the Gross National Income status provided by the World Bank (include ref here);
- (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;
- (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, the management and conservation of species under the mandate of the IOTC;
- (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 CNCPP at the time this Resolution was adopted, and which has been admitted to the IOTC after the adoption of this Resolution, in respect of a Contracting Party, has pursuant to the Agreement, and in respect of a CNCPP, pursuant to the Rules of Procedures, submitted its instrument of accession to the IOTC after the adoption of this Resolution;
- (s) [[“Non-Coastal State CPC”] means a member as to in Article IV of the Agreement who is State whose exclusive economic zone is not situated wholly or partly within adjacent to or included in the IOTC Area of Competence;] State that is a CPC which is not situated wholly or partly in the IOTC Area of Competence, and is listed as a Non-Coastal State CPC in Appendix 1. These term and definition shall apply mutatis mutandis to a regional economic integration organisation that is a CPC and of which any Non-coastal State is a member and has transferred competence over matters within the purview of the Agreement, including those under this resolution];
- (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;

Commented [BN13]: Changes proposed by Maldives in respect of Draft #1, Draft #2 and Draft #3.

Commented [BN14]: Link to Appendix 1 as requested by UK in Draft #2

Commented [BN15]: Wording added in response to the comment from the EU on Draft #2, and inserted in brackets as per Maldives comments on Draft #3.

Commented [BN16]: Change proposed by Chair to address EU comment regarding a closed list in its comments on Draft #3.

Commented [BN17]: Least Developed States proposed by Sri Lanka in respect of Draft #1

Commented [BN18]: Deletion proposed by the Maldives during TCAC08 and in its written comments on Draft #1

Commented [BN19]: Definition proposed by Chair in Draft #2 based on comments received on Draft #1 related to the use of the term “species”, “stocks” and the scope of the Allocation Regime, and comments from Maldives on Draft #2.

Commented [BN20]: Definition originally proposed by the Chair in Draft #2 based on requests made by UK and the EU during TCAC08 and in writing on Draft #1. Deletion proposed by Maldives in its comments on Draft #3, which may address Japan’s questions in respect of Draft #3.

Commented [BN21]: Definition taken from the IOTC Scientific Glossary and proposed to be used by the EU in its comments related to Draft #1.

Commented [BN22]: Changes have been made to this definition to clarify the meaning of New Entrant within the context of this Resolution, as per comments from several delegations: Philippines, Malaysia, Maldives and Australia.

To be clear a New Entrant, whether previously a CNCPP or not, may be admitted as a new Entrant to the IOTC. The process and criteria for this are provided in the IOTC Rules of Procedures for CNCPPs, and under the Agreement for other States. It is proposed that New Entrants admitted prior to the adoption of the Allocation Resolution would simply be treated as CPCs under the Allocation Resolution. If admitted after the adoption of the Allocation Resolution, such New Entrants would have limited access to “special” allocations, determined by the Commission only in situations where the TACs for stocks go up. This is the combined effect of the definition and articles 4.3 and 6.12-6.14.

Outstanding questions regarding New Entrants include:

- 1- whether to limit the eligibility of New Entrants to allocations to those that are coastal States to the IOTC area;
- 2- Whether New Entrants should be eligible to access the regular allocation key for all fish stocks, and if so, at what stage (when the TAC goes up; at the beginning of a new allocation cycle);
- 3- Whether a special allocation should be made available for New Entrants, either as a substitute for accessing the regular allocation key; or as an interim allocation until a new cycle begins for a stock at which point the New Entrants could access the regular allocation key; and,
- 4- How to share the special allocation among New Entrants, if there are more than one. Some changes have been proposed to Articles 6.12-6.14 that may help to address some of these questions, but more discussion is required to finalise the provisions regarding New Entrants.

Commented [BN23]: A new version is proposed to address the comments by the EU in Draft #1 and Draft #3 and by Maldives in Draft #2 and Draft #3. As this is the corollary of the definition of Coastal State CPC, the Chair has changed the term back to its original version, so that it now reads “Non-coastal State CPC” for...

Commented [BN24]: The addition of a definition of this term was originally proposed by Seychelles in respect of Draft #1 during TCAC08. Text is proposed by the Chair based on wording currently contained in Article 7.2.

~~(+)~~(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 jointly been determined on the basis of internationally accepted standards] defined by the United Nations, UN and the OECD (include ref here);

~~(+)~~(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 under its mandate listed in Annex 1 and caught in the IOTC Area of Competence;

~~(+)~~(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 based on the recommendation of the Scientific Committee 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, and New Entrants where relevant, in a fair, equitable and transparent manner.

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 an objective, a quantitative, fair, equitable and transparent [manner / mechanism] system 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 / mortality] does not exceed the TAC [or recommended biological catch limit if a TAC has not yet been set];
- 3.4. consistent with Article XVI of the Agreement and in accordance with international law of the sea, including as provided in UNCLOS and UNFSA, 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; within their Exclusive Economic Zone or equivalent maritime boundary, and national waters;

Commented [BN25]: As proposed by UK

Commented [BN26]: Wording added in response to comment from the EU on Draft #2 and inserted in brackets given Maldives opposition in its comments on Draft #3.

Brackets have been inserted around the definition to reflect Indonesia’s request to delete this definition and term in its comments on Draft #3. In this respect, please see Chair’s comments regarding this terminology in comments related to the same terms in the Preamble.

Commented [BN27]: To address comment from Maldives on Draft #1

Commented [BN28]: Definition originally proposed by Chair based on comments from a number of delegations on Draft #1.

Commented [BN29]: Change proposed by Maldives during TCAC08. As EU has stated a reservation in respect of this edit in its comments on Draft #2 and Draft #3, the text has been put in brackets for further discussion.

Commented [BN30]: Added words proposed by Indonesia in its comments on Draft #3.

Commented [BN31]: Definition proposed by Chair based on comments from a number of delegations on Draft #1.

Deleted words at the end proposed by Japan in its comments on Draft #3.

Commented [BN32]: The term fish stocks or stocks has been retained and used throughout the draft text.

Commented [BN33]: Addition proposed by Maldives in TCAC08 on Draft #1 and deletions proposed by Japan in its comments on Draft #1 accepted as no opposition to either in meetings and written comments since Draft #1.

Commented [BN34]: While some delegations opposed the inclusion of “new Entrants” in the purpose clause, Australia suggested maintaining it with the qualifier of relevance in its comments on Draft #3. Wording has been added to this effect, while brackets remain around the reference, enabling further consideration.

Commented [BN35]: The term “objective” was added to Draft #1 to address a comment from the UK. The alternative “quantitative” was proposed by the EU in Draft #2. As the UK clarified its intent for this principle to touch on the need for the allocation to “be based on a clear set of guidelines and based on data”, the Chair proposes the term “quantitative” to be retained as reflecting this intent.

Commented [BN36]: Change proposed by Indonesia in Draft #2. Alternative proposed by Maldives in its comments on Draft #3.

Commented [BN37]: Comments from UK in Draft #1 and changes proposed by Maldives in Draft #2 have been accepted.

Adjustments proposed by Australia to replace the term opportunities with mortality in its comments on Draft #3 has been added as an option to the use of the term opportunities originally proposed by Maldives.

Brackets have been inserted around wording suggesting biological catch limit where TACs are not yet set, opposed by Japan in its comments on Draft #3. The Chair would note that this alternative limit has been called a proxy in article 6.3 and elsewhere in the resolution. If the concept is agreed upon, for consistency and clarity, the same term should be used throughout, and perhaps if ...

Commented [BN38]: Given comments and opposition to proposed text lodged by the UK (Draft #1) and Mauritius (Draft #2) respectively, the Chair redrafted this provision to align with Article XVI of the IOTC Agreement, as proposed by India in TCAC09 in ...

ALTERNATE 3.4

Shall not prejudice the exercise of the sovereign rights and obligations of coastal States consistent with Article XVI of the 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];
- 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].
- 3.9 recognize and accommodate the special requirements of developing coastal States, [in particular the vulnerability of including 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 while respecting 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;
- 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 of CPCs 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 for their economic and food security]; and,

[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.]

- 3.13 The Allocation Regime shall be 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

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.

Commented [BN39]: Addition proposed by EU and Japan during TCAC08 in respect of Draft #1. Wording proposed by Japan supported by Thailand during TCAC09.

Additional text proposed at the end of this Article by Indonesia in its comments on Draft #2 opposed by some delegations during TCAC09 and by Japan and the EU in their written comments on Draft #3.

Commented [BN40]: Wording proposed by Korea in Draft #1 accepted by the Chair as no opposition or comments provided against it.

Commented [BN41]: New Principle originally proposed by the EU in its comments on Draft #3 with deletions proposed by the EU in its comments on Draft #3 inserted in brackets.

Reference to SIDS and LDS has been inserted in brackets given the opposing views of Indonesia and Maldives in their respective comments on Draft #3. The Chair would refer delegations to her comments made with respect to the same terms used in the Preamble, also put in brackets.

Commented [BN42]: Change proposed by Maldives in its comments on Draft #1. This text has been put into brackets as opposed and proposed to be deleted by Indonesia in its comments on Draft #3. Again, the Chair refers delegations to earlier comments regarding the use of LSD and SIDS in the preamble.

Commented [BN43]: Proposed text addition from the EU in Draft #1 adjusted in its comments on Draft #3, and proposed deletion from Indonesia and Maldives in Draft #2 and Draft #3, hence the brackets inserted in the last part of this provision.

Commented [BN44]: New principle proposed by the EU during TCAC08 and in its comments on Draft #1. Text in brackets proposed to be deleted by Indonesia in its written comments on Draft #2.

Commented [BN45]: Several changes have been made to this provision, based on comments from the EU, UK, China and the Maldives made on Draft #1, during TCAC09 and in respect of Draft #2. The Chair proposes wording that avoids characterizing the CPCs given the number of opposing and contradicting comments, and focussing the provision instead on the principle of a step wise approach proposed to address the impacts of an allocation regime on all CPCs. The details of implementation of the step wise approach are proposed later in this Resolution (see new paragraph 9.4(c)) and, eventually, if Members agree, could be detailed in Annex 2. This somewhat reflects the approach suggested by the UK in respect of Draft #1. Brackets have been inserted around text that has been opposed and requires further discussion.

Commented [BN46]: Alternative text proposed by Australia in respect of Draft #1 and supported by Indonesia in its comments on Draft #3. Brackets have been added to this alternative to reflect the EU's proposed deletion in Draft #2 and Draft #3.

Commented [BN47]: Text that had been originally proposed to include as a principle the need to create an incentive for CNCPs to become members of the IOTC has been deleted at the request of China, Maldives, and South Africa in respect of Draft #1, as no one opposed this deletion since then.

Commented [BN48]: Edits proposed by Indonesia in Draft #2, with slight change suggested by the Chair. Opposition to the added word "relevant" by the EU in its comments on Draft #3 is reflected by the insertion of brackets.

Commented [BN49]: China had sought that the timing of this be prior to the adoption of the Resolution in its comments during TCAC08. Words such as prior to or before are not limited in time and could refer to a significant time prior to the adoption of the Resolution. The Chair suggests that the term "at the time of the adoption" conveys the intent sought: to refer to CPs that hold that status when the resolution is adopted. Should Members not be satisfied with this proposal, they could consider the following alternative wording: "immediately prior to the adoption", however, the Chair notes that this makes the sentence a bit awkward.

allocation shall be determined based on the criteria and process outlined in this Resolution, [its appendices](#) and its annexes.

- 4.2. [A CNCP at the time of the adoption of this Resolution may also be is not eligible to receive an allocation as described in Article 4.1 if the CNCP did not expressed a real interest in fishing in the IOTC area of competence when it submitted its application for CNCP status. In such a case, the A CNCP that has expressed such an interest at that time that is eligible to one or more allocations pursuant to this Resolution shall receive \[50%\] 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 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. A CNCP that is a New Entrant may only be eligible to a Special allocation pursuant to article 4.3 and described in articles 6.12 and, 6.13 and 6.14.](#)
- 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 and, 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

- 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 the fish highly migratory species, including tuna stocks,](#) listed in Annex 1 to this Resolution [caught](#) in the IOTC Area of Competence [\[, excluding the Territorial Sea and Archipelagic waters of CPCs\] and managed by the IOTC.](#)
- (2) [Subject to Article 11.3, the Commission may amend Annex 1, including to exclude fish stocks \[where a CPC can scientifically demonstrate to the Commission on the basis of advice from the Scientific Committee, that a particular stock is discreet to that CPC's Exclusive Economic Zone and does not migrate to, or straddle the High Seas.\]](#)

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.

ALTERNATE 5

Article 5. SCOPE

[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 [\[and reflected in relevant IOTC Management Procedures or other relevant decision of the Commission following the results of a stock assessment\].](#)

Commented [BN50]: Changes made to address Maldives comments regarding eligibility of CNCPs on Draft #2 and further adjusted to address Maldives comments on Draft #3.

Commented [BN51]: To address the EU's comment in respect of Draft #3.

Commented [BN52]: To address UK's comments on Draft #1.

Commented [BN53]: To address Maldives' comments on Draft #1.

Commented [BN54]: Brackets inserted on this provision to reflect opposition by EU, Indonesia and Australia to excluding New Entrants that are not coastal States during TCAC09 and in written comments from the EU on Draft #2 and from both the EU and Australia in their comments on Draft #3.

Commented [BN55]: Brackets have been added to this Article as China sought deletion of this Article in Draft #1, however, other delegations have supported maintaining it and Article 7.2.

Commented [BN56]: The Chair proposed to delete Option 1 of Art. 5(1) in Draft #2 and retain option 2 as the most favoured by delegations in their comments on Draft #1 and during TCAC08. This deletion has now been accepted by the Chair as no further comments have been provided on this since then.

Commented [BN57]: Exclusion inserted in Draft #2 at the request of Indonesia and supported by Omar in TCAC08 and in Indonesia's written comments on Draft #1. The text has been inserted in brackets as objected by the UK, China and others in TCAC08, and by EU in its written comments on Draft #2 and Draft #3, Maldives in its comments on Draft #3, and reflecting Australia's reservation stated in TCAC08.

Commented [BN58]: Text added to Draft #2 to address India's request to exclude certain species during TCAC08 and TCAC09 in respect of Draft #1 and #2. Criteria proposed here for exclusion of stocks supported by China and the UK in their comments on Draft #2. Brackets have been inserted around the text added to paragraph (2) to enable further discussion as requested of the Maldives and the EU in their respective comments on Draft #2 and Draft #3. Reference to the Scientific Committee was also added to address EU's suggestion in its comments on Draft #3.

Commented [BN59]: Alternative Art 5 proposed by Australia in its comments on Draft #3. The Chair understands this proposal to replace 5.1 and 5.2.

Commented [BN60]: Changes proposed by the EU and Japan with adjustments by Chair to Draft #1. Maldives proposed deletion of last part of the provision in its comments on Draft #2 and Draft #3, which has been reflected by adding brackets.

(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.

6.2. Allocations to CPCs of a given fish stock shall be established based on allocation criteria contained in articles 6.5 to 6.10, 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, at the beginning of each species cycle designated by the Scientific Committee.

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

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

Criteria for Allocations

6.5. The allocated share of the TAC for a given stock for each eligible CPC may 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,

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) Each eligible CPCs shall receive a Catch-based Allocation consisting of two components: may receive

(i) an equal Baseline Allocation consisting of [%] of the total Catch-based Allocation for a given fish stock; and,

(ii) a Catch-based Allocation consisting of a share of the total Catch-base Allocation, established based on the Historical Catches of the CPCs determined based on the criteria provided in Article 6.8, adjusted to reflect catches attributed to relevant

Commented [BN61]: This paragraph had been deleted at the request of Maldives and Japan in Draft #1, the latter being opposed to the use of proxies for use as a basis for establishing allocations. The paragraph has now been reinserted, with brackets to reflect opposition by UK to the deletion of the concept of proxies, and ongoing opposition to retaining the concept by Japan and Indonesia in respect of Draft #3. Other similar changes have been made where the concept of proxies was found in the text.

In respect of the EU's comments in respect of Draft #3, the Chair takes note of the need for further discussion on the transition of the allocation regime in the context of existing catch limits and associated measures (e.g. YFT). The Chair would note that members could agree to use the YFT overall catch limit for YFT as a proxy, in transition to establishing a 'formal' TAC for the stock.

Commented [BN62]: Last sentence inserted in brackets to reflect Maldives' request for deletion in Draft #2 and Draft #3. The second sentence of this article is repetitive of the content of the bracketed text in 6.1(a). If the latter is retained, this second sentence could be deleted here.

Commented [BN63]: Addition originally proposed by Maldives in Draft #2. Brackets inserted to reflect EU Comments on Draft #3, and 2 alternative wording as proposed by Australia and by Maldives in their comments on Draft #3.

The Chair would note that different terms are being proposed to address the same matter: alternatives to TACs when a TAC has not yet been established by the Commission. In 3.3, some have proposed to use 'biological catch limit'; and here some have proposed 'biologically sustainable limits', while others have proposed 'proxy' used in a few articles in the draft resolution. It would be recommended to use the same term throughout. A definition could be added if supported by delegations.

The 3 options proposed all appear to address the same issue: to ensure that the total of all allocations for a given stock does not exceed limits set for that stock by the Commission, whether this be through a TAC or other forms of limits. An example of this is the current limit imposed on YFT. Agreeing to the appropriate terminology should be easy to reflect this option in the text. The more contentious issue is whether delegations support the idea that limits may be set by the Commission in the form other than TACs, once this resolution is in place. More discussion is needed to ensure full understanding of the intent, and agreement on the concepts.

Commented [BN64]: I have reinserted this provision here with brackets. The re-insertion is based on EU comments on Draft #2, but the text has been put in brackets given the comments from the Maldives, China and the EU on Draft #1, as well as the comments from Maldives during TCAC09 and their reservation raised in their comments on Draft #3.

For the same reason, I have maintained the brackets on the alternative provisions dividing this section into two and moved t...

Commented [BN65]: The UK has sought clarification in its comments on Draft #2 as to whether it is intended to provide a double allocation to SIDS and Least Developing States. The Chair was inspired by the Coastal State proposal when drafting the proposal, in particular the Coastal State Allocation referenced in 6.11 and 6.12 and Annex 3.

Commented [BN66]: See comments and reasons for brackets stated for Article 6.4.

Commented [BN67]: Changes to reflect Australia's proposal in its comments on Draft #3 for a new Allocation criteria for an equal baseline allocation for all CPCs. Adjustments have also been made as a consequence to paragraph (a)(ii).

Commented [BN68]: Added text from the Chair resulting from changes made to paragraph (i) in response to Australia's comments on Draft #3.

~~CPCs that are developing Coastal States pursuant to articles 6.8 and 6.9, and revised pursuant to Article 6.10.~~

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

Commented [BN69]: Deleted based on changes made to 6.8-6.10.

Historical Catch

- 6.8 (1) (a) ~~Subject to paragraphs (2) and (3), Annex 2-articles 6.9, 6.10 and Article 6.11, the historical catch used to determine a CPC's initial Catch-based Allocation for a given stock shall be based on the best scientific estimates of nominal catch data provided by each CPC and, where relevant, re-estimated through a process approved by the Commission determined by the Scientific Committee for each stock caught in the IOTC area of competence, and averaged over the following periods:~~

(i) ~~For Tropical Tuna stocks:~~

~~Option 1: 2000-2016,~~

~~Option 2: 2012-16,~~

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

(ii) ~~For other stocks:~~

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

~~6.7. (a) The historical catch used to determine a CPC's initial Catch-base Allocation for a given species shall be based on the best scientific estimates of nominal catch data determined by the Scientific Committee for each species caught in the IOTC area of competence averaged over the reference periods listed in Annex 1.~~

~~[(b) In determining the best scientific estimates of nominal catch data pursuant to paragraph (a), IUU catches taken by vessels on the IOTC IUU Vessels List created pursuant to Resolution 17/03 for the relevant period identified IUU vessels shall be excluded.]~~

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

- (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.]~~
- (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 vessels on the IOTC IUU Vessels List created pursuant to Resolution 17/03]:~~

~~(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:~~

Commented [BN70]: These changes are to reflect the views expressed by many that the concern with ensuring that the catch history period not include years more recent than 2016 were in reference to tropical tunas only, and that therefore the catch history period could be different for tropical tunas than for other stocks.

All options have been put in brackets to reflect the various opposing views and suggested deletions.

Commented [BN71]: Terminology was corrected and a cross reference to the Resolution that enables the identification of IUU vessels was added at the request of the EU in its comments on Draft #3. Further, brackets have been inserted around this provision to reflect Indonesia's request to delete this provision in its comments on Draft #3.

In respect of estimates of IUU catch, it has been the Chair's experience that such estimates can be determined based on joint processes that combine compliance experts and scientific experts, which catches are then factored in stock assessments, and which may be factored here in the context of allocations. The wording proposed in 6.8(1)(a) proposes that any process for re-estimating nominal catch data shall be approved by the Commission. The combined effect of 6.8(1)(a) and (b) is that the Commission would be empowered to elaborate a catch estimate process that estimates catches where needed, including any IUU catches that need to be excluded as per paragraph (b). This would include determining the "relevant period" for the IUU catch to be excluded. This relevant period could cover the period during which the vessel was on the IUU vessel list, and could also cover the period prior to this during which catches were taken contrary to the IOTC Rules which led to the vessel being added to the IUU vessel list.

Commented [BN72]: Moved to Art. 11.4 and adjusted based on discussions during TCAC09 and written comments provided by Members on Draft #2. See more detailed comments in margins of Art. 11.4

Commented [BN73]: New paragraph included at the request of South Africa, Maldives, Australia, Kenya and Mozambique, and supported by other delegations during TCAC08 and TCAC09. Brackets inserted to reflect opposition to the concept as stated by EU, Japan and China in TCAC09 and reiterated by the EU in its comments on Draft #3. The Chair has made a minor adjustment by referring to the reported catches.

Commented [BN74]: New paragraph (3) proposed by South Africa, Maldives, Australia, Kenya and Mozambique in their comments on Draft #2. This wording would be based on an approach noted by the TCAC in its report of the TCAC05 meeting which, "...contains elements that were generally accepted by the participants", while recognizing that it was included "... without prejudice to the ultimate outcomes with respect to allocation and attribution".

Brackets inserted on Paragraph 3 (a) to (e) based on opposition of EU in its comments on Draft #3. Brackets also inserted in the latter part of the chapeau of this new paragraph based on Indonesia's request to delete references to IUU vessels in its comments on Draft #3. The Chair has adjusted the wording reference to IUU vessels to conform to the wording proposed by the EU in paragraph 6.8(1)(b).

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) Notwithstanding paragraph 6.8(3)(d) and unless otherwise demonstrated by the coastal flag State, 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.]

[Attributed Catch]

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

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

6.9. The Coastal States Attributed Catch shall be shared by CPCs that are developing coastal States based on the criteria set out in article 6.11 and indicators provided in Annex 3.

6.10 The Catch-based Allocations of developed non-coastal CPCs shall be revised in accordance with the amounts and schedule provided in Annex 2.]

Coastal State Allocation

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

Commented [BN75]: The Chair suggests that this statement is not clear: it is not clear what disagreement is referred to here and which CPC is referred to in this section.

Commented [BN76]: Wording proposed by Chair to address the EU's comments regarding this paragraph in its comments on Draft #3.

Commented [BN77]: Edits proposed by Chair to clarify meaning.

Commented [BN78]: Additional reference to Resolution 15/02 suggested by Chair for definition of coastal fisheries.

Commented [BN79]: The inclusion of paragraph 6.8 (2) and (3) proposed by South Africa, Maldives, Australia, Kenya and Mozambique in their comments on Draft #2, if agreed to, would eliminate the need to attribute catches to Coastal States taken inside areas under their national jurisdiction, as one of the key objectives of Articles 6.9 and 6.10. South Africa, Maldives, Australia, Kenya and Mozambique have requested that Art 6.9 and 6.10 be deleted.

The Chair notes that these provisions (6.9 to 6.11) were not only meant to provide for catch attribution to Coastal States for catches taken inside areas under the national jurisdiction of those Coastal States, but also to provide for a step-wise transition for the implementation of the allocations, which had been identified as a priority by some delegation (such as the EU and Japan in earlier discussions), and reflected in the principle in Art. 3.8 (now 3.12). This concept has now been proposed by the EU to be added to Art. 9.4 (c), in its written comments on Draft #2, which the Chair has accommodated.

Given the above, the Chair proposes to delete 6.9 and 6.10, put in brackets 6.8(2) and (3) and add 9.4(c) and put in brackets Annex 2, as reflecting the various and opposing views on the concepts of catch attribution of catches taken inside Coastal States EEZs and the step-wise implementation of the allocations. The following articles have been renumbered accordingly.

Commented [BN80]: Option 2 was eliminated as it did not provide solutions to the issues raised by delegations.

Commented [BN81]: The Chair proposes these new provisions. They are meant to implement art. 3.12 of the Allocation Principles. The details of Annex 2 would need to be discussed/negotiated and agreed upon, and reflected in the Implementation Plan, as proposed by the EU under Article 9.4 (c).

Commented [BN82]: See comments on 6.4 and 6.6 for reasons for this provision and the brackets.

6.10 ~~In addition to the Catch base Allocation, (1) To address the particular vulnerability and dependency of developing coastal States on the fish stocks listed in Annex 1, Coastal State [CPCs] that are Coastal States shall be eligible to receive a share of the TAC [for fish stocks that occur in their Exclusive Economic Zones], which may shall comprise one or more 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;
- (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 particular vulnerability, 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 ~~the~~ indicators described in Annex 3; and
- (c) ~~[[17.5% / 0%]~~ of the Coastal State Allocation dedicated to Coastal State [CPCs] ~~that are Coastal States~~ 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.~~

~~(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, with the agreement of the Commission, 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 and capacity to fish for stocks covered by this Resolution during the catch history reference period referred to in Article 6.8 has been has demonstrated to have been directly and severely restrained or impeded by extenuating circumstances, such as:~~

- (a) engagement in war or other military conflicts;
- (b) engagement in civil conflicts;
- (c) wide spread piracy in the fishing area;
- (d) environmental disasters, such as a tsunami;
- (e) impacts of climate ~~change~~ once adequate and stable indicators are developed and agreed,

Commented [BN83]: The Chair takes note of the offer by South Africa, Maldives, Australia, Kenya and Mozambique to provide text to replace what is now article 6.10 and Annex 3. When this text is submitted as a proposal to the TCAC, the Chair will revise the text accordingly. In the meantime, brackets have been inserted around Article 6.10(1)(a) to (c) and Annex 3 to reflect the lack of consensus on these provisions at this stage.

Commented [BN84]: The chair takes note of Maldives request to delete the reference to CPC throughout 6.9 and has reflected this in brackets around the term. The Chair would note, however, that this creates confusion around eligibility as stated in Art. 4. The draft regime has structured the eligibility and access to allocations based on a State's or regional integration organisation's status as a member or non-member of the IOTC, whether the non-member has been admitted as a CNCP, and the timing of such membership for new entrants. Deleting the reference to 'CPC' in 6.9 as proposed by Maldives would cause ambiguity as to who would be eligible to receive a coastal State allocation.

Commented [BN85]: Proposed by China during TCAC08, opposed by India in TCAC09 and proposed to be deleted by Maldives in its comments on Draft #2 and #3. The text has accordingly been put in brackets.

Commented [BN86]: Deletion proposed by Maldives in Draft #2

Commented [BN87]: Changes made in response to comments from Maldives and Sri Lanka in Draft #1 and inserted concept of vulnerability from the chapeau, as per Australia's comments on Draft #3.

Commented [BN88]: Text proposed in response to comment from EU on Draft #2 and India's comment during TCAC09 that such indicators should be those adopted by the UN.

Commented [BN89]: Paragraph added in response to comments from Maldives in Draft #1 and change made in response to comment from the EU on Draft #2.

One question for Maldives: Should the TCAC agree to new indicators provided by coastal States in future meetings of the TCAC, will this Art 6.10(2) still be required?

Commented [BN90]: This article was originally inserted to reflect comments from Maldives in relation to Article 10 in Draft #1. It was then inserted as Art. 7.4. as an adjustment to an allocation.

While the EU suggested that Art. 7.4 be deleted in its comments on Draft #2, they had suggested that the idea contained in 7.4 could be retained in their comments during TCAC09, if the adjustment could only be made when a new allocation period commences. Maldives agreed with this idea in TCAC09. As a result, the Chair has made the changes discussed and moved this provision to this Article 6.10(3).

Commented [BN91]: Words added in response to the EU's comments on Draft #3.

Commented [BN92]: Proposed by EU in Draft #2.

Commented [BN93]: Some delegations wish this provision be open to all CPCs (see EU written comments on Draft #1 and comments from other delegations during TCAC08), while others (Maldives) prefer restricting this to developing coastal States, hence the initial wording reflecting this narrower scope has been inserted in brackets.

The remaining changes to this article were proposed by Maldives in Draft #1 and #2, including the last part of the paragraph which was co-drafted with the EU for changes to Draft #1. Further changes have been proposed by both Members in respect of Draft #2. ...

Commented [BN94]: Consideration of climate change impacts was added to Draft #3 at the request of Maldives. In its comments on this draft, the EU proposed adding the need for indicators before this criteria may be considered, which consideration has been ...

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, the approval of the Commission seek to have its [allocation /catch history] allocation for that stock corrected [based on the average catch taken within the catch history reference period by CPCs developing coastal States 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 ~~the~~ 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, where relevant, and which has been verified by the Commission Scientific Committee;
- (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 TAC is reviewed for the stock and in doing so shall take into account the factors specified in Article 11 of the UNFSA.

~~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

[(a) Over-catch of a fish stock by an allocation holder 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 / by 120%] / OR/ [1.1:1 / by 110%] of the over catch.

(b) An allocation holder 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 ratio will shall be increased [to a ratio of 1.5:1 / by 150%] of the over catch.

(c) Where an allocation holder a CPC or New Entrant over-catches a given stock for [three / two] consecutive calendar years, shall result in an the allocation of that CPC or New Entrant holder for the [fourth / third] year of the allocation period (n+3) shall be deducted ~~from~~ of [at a ratio of 2:1 / by 200%] of the over-catch, 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 [ratio / percentages] referred to in paragraphs 7.1. (a) to (c).]

Commented [BN95]: The chair has inserted brackets around the word "eligible" in response to comments from the EU on Draft #3. The outcome of these brackets is contingent on the discussions around Article 4.3.

A few delegations have also raised questions as to how this Special Allocation would be determined. Under the current draft, the determination of whether and how to set a special allocation is left at the Commission's discretion. The trigger to consider this is when a TAC for a given stock increases. Reference to the allocation criteria for new entrants provided by Article 11 of UNFSA has been added to Art. 6.13 at Australia's request in its comments on Draft #3.

Commented [BN96]: Paragraphs (b), (c) and (d) were originally included in Draft #1 based on comments from delegations during TCAC08 and the wording inspired by Art 11 of the UNFSA. Paragraphs (b) and (c) were further adjusted based on comments from China during TCAC09, and other changes were made to paragraph (b) and brackets to (c) and (d) proposed by Maldives in Draft #2. Brackets were inserted around paragraph (b) in response to comments from the EU on drafts #2 and #3 and from Australia in respect of Draft #3. Finally, the chair has attempted to address the comments from Australia and the EU to paragraphs (b) and (c) by: - adding the words "where relevant" in paragraph (b), recognizing that not all New Entrants will have catch history in the IOTC; and - deleting the words "and demonstrated" in paragraph (c), which is meant to reduce the burden on the New Entrant.

Commented [BN97]: To address EU question on Draft #2

Commented [BN98]: Change proposed by the Maldives in Draft #1 and #2.

Commented [BN99]: Proposed wording from Australia in their comments on draft #3. Accordingly, the chair has deleted 6.14, as proposed by Australia.

Commented [BN100]: Brackets have been inserted to paragraphs (a) to (d) to reflect comments received from Australia and Japan in respect of Draft #3. The Chair notes the various comments to the effect that the current data reporting requirements would not support the first option outlining an annual adjustment scheme for over-catch. Delegations may wish to consider how this impacts the current wording, and perhaps frame the adjustments in a longer timeframe. In this respect, two alternative texts are proposed to replace these paragraphs 7.1(a) to (d): one drafted by Australia with the Chair's minor adjustments; one drafted by the Chair in response to Japan's comments. The former proposes a simpler version of the adjustment, the latter proposes to let the Commission determine the nature of the adjustment on a stock by stock basis.

The Chair has changed the words 'CPC and New Entrants' to allocation holders, to make it clear that this provision is to apply to all who will receive allocations under the regime, in response to the EU's comment in respect of Draft #3.

The Chair has not proposed a definition of over-catch, as the meaning in this provision is in its ordinary sense: catching more than the amount allocated by the Commission. If delegations wish to see a definition, the chair is happy to provide one.

Commented [BN101]: Alternative proposed by Indonesia

Commented [BN102]: Maldives proposed 2 consecutive years in a row in its comments on Draft #1. The EU proposed 3 years in its comments on draft #1. Both options have been inserted in brackets.

Commented [BN103]: EU has proposed deletion of this paragraph in Draft #2. Brackets have been inserted given China's earlier comments.

ALTERNATE 1 to paragraphs 7.1 (a) to (d)

7.1 Over-catch

(a) 100% of the over-catch of a fish stock by an allocation holder in a given calendar year shall be deducted from that holder's allocations for the following two years, unless over-catch for that allocation holder has occurred in two or more consecutive years, in which case 125% of the over-catch shall be deducted over the following two years.

Commented [BN104]: Proposal from Australia in its comments on Draft #3 with minor adjustments by the Chair.

ALTERNATE 2 to paragraphs 7.1 (a) to (d)

7.1 Over-catch

(a) An allocation holder that over catches its allocation of a given fish stock in a given year shall see its allocation for the subsequent year(s) deducted in the amount determined through a penalty mechanism approved by the Commission for each stock and reflected in the Conservation and Management Measures for that stock.

Commented [BN105]: Proposal from Japan in its comments on Draft #3 with wording proposed by the Chair.

(e) Catch Reporting:

(i) To ensure proper monitoring of IOTC allocations, CPCs and New Entrants, allocation holders 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 allocation holder shall close its fishery for that stock and inform the IOTC Secretariat of its decision.

(ii) Where an allocation holder 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 allocation holder shall, in the subsequent calendar year where overages 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.

Commented [BN106]: The Chair suggests the term adjustments, as the term "overages" has not been used in this Resolution.

Commented [BN107]: New Section drafted in response to comments from the UK on Draft #1 and further explained in comments on Draft #2. Brackets inserted to reflect Maldives reservation raised during TCAC09.

Commented [BN108]: A few delegations have raised the need to exclude situations where a CPC has lodged an objection to the allocation and is not bound by the quota allocated to it (notably China and UK). The Chair would appreciate hearing views about this before drafting text to reflect this.

Commented [BN109]: Brackets have been inserted on 7.2 based on comments from Australia in respect of Draft #3.

[7.2. Serious Non-Compliance]

(a) The Commission may 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 serious, systematic 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.

The option of reducing the CPC allocation has been added here and in paragraph 7.2(b) to reflect the request from the UK, the EU and Japan during TCAC09 to implement this option for the serious non-compliance situations described in 7.2(b).

Commented [BN110]: Change proposed by EU in Draft #2. The words systematic was also deleted from paragraph (b).

(b) The Commission shall identify violations that constitute serious non-compliance which shall lead it to determine whether 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. the Commission may consider. In making this determination, the Commission shall factor the following examples of serious and systematic non-compliance:

The Chair proposes the deletion of the word serious and replacement with the latter part of the sentence which better defines the term "serious". The intent is to cover violations that may have occurred only once but the seriousness of the violation – i.e. its impacts on the resource is such that it warrants consideration of a quota deduction or temporary loss of eligibility to allocations. This wording aligns with the new definition of Serious non-compliance proposed by the Chair and requested by some delegations.

Commented [BN111]: Words to address China's comment on the definition of CMM in Draft #1.

Commented [BN112]: Changes proposed by the EU in Draft #1, adjusted by the Chair.

(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) ~~Long term~~ 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 may 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, as outlined in Paragraph 7.2(b).]

7.3 Adjustments for 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 carried over to the next calendar year within during the allocation period for the stock, if it can demonstrate to the Commission that its ability and capacity to fish the allocation during that calendar year within the allocation period for the stock has been directly and severely restrained or impeded by extenuating circumstances described in Article 6.11.3.

~~(1)(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].

7.4. Changing Statistics

~~A developing Coastal CPC may seek to have its allocation under Paragraph 6.10(1)(b) for a given stock adjusted within the allocation period for that stock to reflect changes in statistics related to its dependency on fish stocks listed in Annex or fisheries for such stocks. In such a case, the CPC shall seek to have its dependency statistics adjusted and its allocation adjusted by the Commission.~~

Article 8. ALLOCATION TRANSFERS AND USE

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

~~(b) The receiving CP shall notify its acceptance of the transferred allocation to the Commission within [xx days] prior to the transfer occurring.~~

Commented [BN113]: Changes proposed by the Maldives in Draft #1 in respect of "long term". The words "concrete actions" were replaced by quantifiable improvements proposed by the EU in its comments on draft #3.

The Chair has not included the wording related to deliberate non reporting as this would impose a challenging burden of proof on the Commission – to prove "intent".

It was also suggested to reference the concerns expressed by the Scientific Committee. Data gap concerns may be expressed by a number of IOTC bodies, the Scientific Committee being one. The Chair has opted to be more general and generic here and not restrict the source of the concerns expressed.

Commented [BN114]: Brackets reflecting deletion requested by the UK in Draft #1 and opposed by the EU in Draft #2.

Commented [BN115]: Added the words "or reduced" to reflect the changes proposed in 7.2 in Draft #2, providing a choice for the Commission to either reduce a CPC's allocation or temporarily withdraw its eligibility to the allocation.

Proposed added wording from the EU in Draft #1 is not necessary as the word "and" after (i) is cumulative.

Commented [BN116]: Words no longer needed as the non-compliance that may be the subject of loss of eligibility would be defined by the Commission as per 7.2.(b).

Commented [BN117]: The draft provision proposing an adjustment based on changes to TACs has been removed. It had originally been proposed as a means of adjusting allocations following "in cycle" TAC adjustments where the harvest control rules (PA decision rules) in the PA framework for a stock allows for TAC adjustments within the stock cycle when the TAC exceeds or is below specified thresholds. The Chair recognizes however, that this was introducing a level of complexity that may not be required in the IOTC allocation regime. The proposed article was deleted in Draft #2 at the request of Japan, the EU and Maldives in their written comments on Draft #1. As no further comments were received in this respect, the Chair has removed it from the draft text.

Commented [BN118]: Words deleted as repetitive in the title of this section. The Chair has also restructured the section into 2 subparagraphs to improve the reading of the provision.

Commented [BN119]: In response to Australia's comment on draft #3, the difference between 7.3 and 6.11 is in its application and the timing of the request. 6.11 is meant to be addressed when the catch history is determined, whereas 7.3 is meant to apply o...

Commented [BN120]: The UK had requested in Draft #1 that this underage be transferred to the next calendar year subject to the TAC not having been fully caught.

Commented [BN121]: See my comments on Article 6.11.

Commented [BN122]: As per China's request supported by Philippines in Draft #1 and supported by the EU in Draft #2, a limit suggested to ensure that carry forwards are not putting ...

Commented [BN123]: Added words at the request of the EU during TCAC09.

Commented [BN124]: This article was originally inserted to reflect comments from Maldives in relation to Article 10 in Draft #1. It was then inserted here as Art. 7.4, as a criteria or mechanism to enable an adjustment to the allocation.

Commented [BN125]: Proposed by Indonesia in its comments on draft #3.

Commented [BN126]: Deleted at UK's request.

Commented [BN127]: Paragraph deleted and content merged in paragraph (c) as proposed by Maldives in Draft #2

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

(d) The Secretariat shall share the written notifications with all CPCs within [xx days] of the receipt. 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. (f) The written notification of the CP shall include the amount of fish to be transferred; the species; the period; the gear type to be used; and, the CP to whom the allocation, or part thereof, will be transferred.

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

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

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

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

Article 9. IMPLEMENTATION

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

Commented [BN128]: New Article from Japan, with adjustments from the Chair in Draft #1, put in brackets as proposed to be deleted by Maldives in Draft #2.

Commented [BN129]: Proposed by Maldives in TCAC09.

Commented [BN130]: Gear type deleted at UK's request in Draft #1.

Commented [BN131]: Paragraph moved up to paragraph (b) and amended as proposed by Maldives in Draft #2

Commented [BN132]: Addition at request of China in Draft #1. Brackets inserted to reflect proposed deletion from Maldives in its comments on Draft #2.

Commented [BN133]: Edit proposed by Maldives in Draft #2, whereas the EU has proposed the deletion of the paragraph in its comments on Draft #2. As a result, this provision has been inserted in brackets.

Commented [BN134]: Revisions based on comments from France (OT) on Draft #1 and discussion during TCAC09, in response to proposed edits from Japan.

Shall has been changed to "may" as suggested by the EU in its comments on Draft #3.

Commented [BN135]: Addition at request of Maldives in Draft #1 and put in brackets to reflect the proposed deletion of the concept from the EU in Draft #2.

Commented [BN136]: As discussed in TCAC08, the list of immediate priority fish stocks – i.e. the tropical tunas - has been inserted in the Annex, instead of the text of the Resolution. Changes to reflect this have been accepted in this version of the text as no opposition or further comments have been received in this regard. The timeframe and order of priority for establishing allocations for other fish stocks listed in Annex I will be determined by the Commission based on criteria found in article 9.2.

- (d) the need to manage the workload of the Commission by rotating the timing of various TAC decisions.

9.3. The Commission may amend Annex 1 to reflect these implementation priorities.

Implementation Plan

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

- 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

Commented [BN137]: Brackets inserted to reflect Maldives opposition to the Implementation Plan in Draft #2 while others supported it.

Commented [BN138]: Changes made based on comments from the EU in respect of Draft #3.

Commented [BN139]: The concept of proxies in lieu of TACs was opposed by Japan, however, UK has asked that it be retained in its comments on draft #2, hence the re-insertion of the text, within brackets, in article 6.1(b) and here.

Commented [BN140]: New text proposed by the EU in respect of Draft #2. The Chair understands this provision as replacing the step-wise implementation concept that had been included in Art. 6.9 and 6.10 now proposed to be deleted. As no formula was provided for this step-wise implementation, the Chair has linked this new provision to Annex 2, yet to be drafted, as more discussion is required in this regard.

Commented [BN141]: Article 9.5 to 9.18 contain 2 options throughout.

While some delegations have expressed reservations on the concept of an Allocation Committee (Japan in respect of Draft #1) and some delegations have opposed the idea (South Africa, Maldives, Australia, Kenya and Mozambique in their comments on Draft #2, reiterated by Australia in its comments on Draft #3), other delegations have supported the concept to be included in the text notably the EU, China, the UK and Thailand.

Given the different and opposing views expressed on Draft #1, the text in Draft #2 which contained the concept of an allocation committee was put in brackets, and alternative text was added by the Chair throughout Article 9 in Draft #2 to reflect 2 options for a decision-making process: one involving an Allocation Committee; and, one which sees all decisions related to allocations referred directly to the Commission at its annual meeting.

For clarity, such decisions include the following:

- approval of allocation tables, including any data validation and reconciliation, and
- decisions in response to requests made pursuant to articles: 6.11, 6.12-6.14, 7.2(c)(ii), and 7.3. Note that decisions referenced in these provisions involve some form of discretionary authority on the part of the Commission.

In each of these articles, a reference is made to a decision to be made by the Commission following some form of request or application by a CPC or New Entrant. From what I heard in the discussions to date, there was a desire for these issues to be matters for the discretion of the Commission, to be determined on a case by case basis, as opposed to automatic rights built into the allocation regime. Members may choose to have these matters discussed, debated in a subcommittee of the IOTC (e.g. Allocation Committee) and recommendations made to, and allocation tables reflecting these to be approved by, the Commission, or, they can be discussed, debated and decided at the Commission table.

In addition to these decisions, catch reconciliation when establishing allocation tables can be a tedious job. Members may wish to consider whether they wish to task the Commission with this work and take up valuable time of the Commission during its annual meeting, or whether another body would be best suited for this. In the absence of an Allocation Committee as proposed by some Members, this may be a job for the Secretariat. More direction is needed for the Chair to conclude the drafting of this issue. Ideally, this work should be done before the Commission considers the allocation tables for approval during its annual meeting.

The option involving an Allocation Committee would see the committee work through the technical issues associated to these matters and make recommendations to the Commission for it to make decisions at its annual meeting. Alternatively, if Members ...

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 referenced in articles 9.4 and 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, and 6.12 and 6.13 respectively, shall send a letter of application to the Commission at least xx days prior to the annual meeting of the [Allocation Committee / OR Commission].

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

(a) any transfers notified xx days prior to the Commission's annual meeting pursuant to 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.

Commented [BN142]: Changes reflecting comments from Japan on Draft #1 and adjusted to reflect changes made to article 8.1 in Draft #2.

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

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.

Commented [BN143]: See comments on Allocation Committee immediately before Article 9.5

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 ~~decision~~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~~ 6.134, 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 7.2, and any in-period adjustments made pursuant to article 7.1, each allocation for a given fish stock made and approved pursuant to this Resolution 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. and reflected in the management procedure for the species.

Commented [BN144]: Changes made to Draft #2 based on comments from Maldives on draft #1.

Commented [BN145]: The word "proxy" which had been proposed to be deleted by Japan in respect of Draft #1 is reinserted with brackets to reflect the opposition to deleting the concept in 6.1(b) by the UK.

Commented [BN146]: Changes made in Draft #2 to reflect Maldives' comments on Draft #1.

Commented [BN147]: The Chair has noted that there appears to be some confusion about the nature of the term discussed in this Article. As a result, the Chair proposes the addition of the words of Resolution to the title.

The term in this Article is proposed to refer to the duration of the Allocation Regime (i.e. this Resolution), as opposed to, or distinct from, the duration of allocations issued pursuant to this Regime (Resolution). The duration of allocations would be covered by Article 10. The duration of the Regime would be covered by Article 11. Presumably, the duration of the Regime would be lengthier than allocations, which would provide for some stability to the IOTC and its members.

Commented [BN148]: In its comments on draft #2, Maldives has proposed deletion of articles 11.3 and 11.4 and proposed alternative text to replace Articles 11.2 and 11.3. These changes have been embedded throughout Articles 11.2 to 11.4.

Specifically, text has been added in 11.2(1) and brackets have been added to 11.2(2) to reflect opposing views on this provision.

Details on 11.3 and 11.4 are provided below in each article.

Commented [BN149]: This text had originally been proposed by the Chair in Draft #2 in response to comments from Maldives on Draft #1. As Maldives does not support the Chair's text, the Chair has deleted it and replaced with the old section 11.4 below.

Article 11. FINAL CLAUSES

Coming into Effect

- 11.1. This Resolution shall come into effectforce on [date].within the timeline provided by Article IX of the Agreement

Term and Amendment of Resolution

- 11.2 Subject to Article 11.3, (1) The Allocation Regime contained in this Resolution shall be reviewed after [10 / OR 5 years] of its entry into effect, 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, and may be amended by decision of the Commission.]
- 11.3 In reviewing the Allocation Regime pursuant to Article 11.2, the Commission shall consider whether the implementation of the Regime and the resulting allocations have achieved the purpose provided in Article 2, and whether they have met the guiding principles set out in Article 3. The term of the Allocation Regime contained in this Resolution may be extended by periods of 5 years.

11.3 The Allocation Regime may be amended by decision of the Commission [after the initial term set out in Article 11.2(1)], including 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.]

Commented [BN150]: The word “including” has been added to reflect the EU’s comment on Draft #3 that the revisions to the regime shall consider a number of factors.

Commented [BN151]: Brackets inserted to reflect Indonesia’s request to delete these words in its comments on Draft #3.

[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.]

Commented [BN152]: The first change proposed in this article is to make it clear that no amendments to the Resolution (Allocation Regime) would be entertained during the first term. The Chair understands this to be the intent of comments raised by a number of delegations.

Added text to define the scope for review proposed by the Maldives in its comments on draft #2 has been inserted in 11.3.

Brackets were inserted in draft #2 to reflect Maldives opposition to this text in Draft #1.

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.

Commented [BN153]: This provision originally included as Article 6.7 (1)(c) to address Japan’s comments on Draft #1 in respect of the need to review the catch history average periods, was moved to this part of the text and adjusted to reflect comments from Japan and the EU during TCAC09. Brackets were inserted to reflect opposition to the article by Seychelles in TCAC09 and by South Africa, Maldives, Australia, Kenya and Mozambique during TCAC09 and their written comments on Draft #2.

Past Resolutions

11.6 This Resolutions replaces and supersedes the following Resolutions:

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

Commented [BN154]: As per comment from Mauritius and accurate reflection of Article IV.6 of the Agreement.

[Appendix 1](#)

Commented [BN155]: New Appendix added at the request of the UK in Draft #1, adjusted as per UK comments on Draft #2 and Australia's and EU's comments on Draft #3.

Developing Status will need to be filled in once criteria have been agreed to for the purpose of this Resolution.

[IOTC membership by category](#)

CPC	CP	CNCP	COASTAL STATE CPC	NON-COASTAL STATE CPC	DEV STATES	DEV COASTAL STATE	SIDS	LDS
AUSTRALIA	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
BANGLADESH, People's Republic of	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
CHINA	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>				
COMOROS	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
ERITREA	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
EUROPEAN UNION	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				
FRANCE (OT)	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
INDIA	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
INDONESIA	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
IRAN, Islamic Republic of	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
JAPAN	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>				
KENYA	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
KOREA, Republic of	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>				
MADAGASCAR	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
MALAYSIA	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
MALDIVES	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
MAURITIUS	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					
MOZAMBIQUE	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>					

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 mackerel¹
- ~~Indo-Pacific Blue Marlin~~
- ~~Black Marlin~~
- ~~striped marlin~~
- Indo-Pacific sailfish

Commented [BN156]: This Annex proposed in Draft #1 was amended to reflect the comments seeking to move the priority species originally inserted in Article 9.1 moved to the Annex, and make it clear which stocks are to be allocated as an initial priority pursuant to the Allocation Regime, and which shall be allocated at a later stage. Southern Bluefin Tuna has been excluded as it is managed by the CCSBT. These changes have been accepted by the Chair, however the order of the second list remains in edit format as it has not been discussed since it was changed.

Commented [BN157]: Order shifted to reflect comments from China in TCAC09

Commented [BN158]: Neritic species proposed to be excluded from the Allocation Regime by India during TCAC09, and opposed by China, have been put in brackets.

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

[Annex 2]

~~[Schedule for Attribution of Catch from Developed CPCs and Non-coastal CPCs to Developing Coastal CPCs]~~

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)]

]

Commented [BN159]: This Annex is linked to Article 3.12 and 9.4 (c). Further discussion is required to draft this Annex in more detail.

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)] 1

Commented [BN160]: Brackets inserted to reflect that South Africa, Maldives, Australia, Kenya and Mozambique have opposed these provisions as written and plan to submit new indicators for the TCAC consideration.

The Chair has noted India's request for indicators to be reflected in values as opposed to ratios. The Chair encourages South Africa, Maldives, Australia, Kenya and Mozambique to consider this request in their re-draft of the indicators before submitting it to TCAC for its consideration.

Commented [BN161]: Brackets inserted to reflect Australia's and the EU's respective reservation and opposition.

Annex 4

Commented [BN162]: Brackets inserted to reflect opposition by some members to the Allocation Committee proposed in Article 9.

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 **and to 6.134**;
 - (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.[\]](#)