
DRAFT LETTER OF INTENT BETWEEN THE IOTC AND THE INTERNATIONAL WHALING COMMISSION (IWC)

PREPARED BY: IOTC SECRETARIAT

PURPOSE

To provide the Commission with an opportunity to consider a Letter of Intent (LoI) between the Indian Ocean Tuna Commission (hereafter IOTC) and the Secretariat of the International Whaling Commission (hereafter IWC Secretariat).

BACKGROUND

The Scientific Committee through its Working Party on Ecosystems and Bycatch (WPEB) has been involved in several informal collaborative workshops with the IWC to identify collaborative work areas between the two organisations relating to bycatch of cetaceans in Indian Ocean tuna fisheries.

These collaborations were initiated due to the lack of expertise within the Scientific Committee on cetacean bycatch issues as well as the lack of data available on cetaceans at the IOTC Secretariat. The reports of the collaborative workshops are provided in [IOTC-2021-WPEB17\(AS\)-29](#) and [IOTC-2020-WPEB16-INF06](#).

As noted previously, these collaborations were informal and identified potential areas of collaboration that would be beneficial to both organisations.

In 2021, IOTC-2021-S25-PropB *On the Conservation of cetaceans* was presented to the Commission. The Proposal was deferred because:

([IOTC-2021-S25-R](#) Para 42) The Commission NOTED that the proposal was not based on advice provided by the Scientific Committee. As such, it was suggested that available information on cetaceans, including bycatch of cetaceans by gillnet within the EEZs of coastal States, should be reviewed by the Scientific Committee so that the future iteration of this proposal can be based on the best available science for the species concerned.

In order to improve the information available to the Scientific Committee as well increase the participation of experts on cetacean issues in IOTC scientific meetings, a formalisation of the collaboration between the IOTC and IWC Secretariats in the form of a draft Letter of Intent was presented to the WPEB17 in 2021.

([IOTC-2021-WPEB17-R](#) Para 157) One of the key discussions during this meeting was for the WPEB to endorse the draft Letter of Intent intended to formalise the collaboration between IOTC and IWC (paper IOTC-2021-WPEB17(AS)-INF03). The WPEB NOTED that this letter is based on the language used in the Letter of Intent between IOTC and ACAP which has been accepted by the Commission. The WPEB NOTED that there was dissent during discussions of this proposal but finally the WPEB ACKNOWLEDGED the Letter of Intent and RECOMMENDED that the letter is discussed at the SC.

Consequently, the draft LoI was presented to the Scientific Committee in 2021.

([IOTC-2021-SC24-R](#) Para 74) The SC ACKNOWLEDGED the proposed Letter of Intent between the IWC and IOTC and NOTED that this letter is based on the language used in the Letter of Intent between IOTC and ACAP which has been accepted by the Commission. The SC RECOMMENDED that the letter is presented at the Commission for further consideration.

Rationale for an agreement

There is a lack of expertise within the Scientific Committee on cetacean bycatch issues as well as a lack of data available on cetaceans at the IOTC Secretariat. In order to improve the information available to the SC as well increase the participation of experts on cetacean issues in IOTC scientific meetings, a draft Letter of Intent for a future collaborative arrangement between IOTC and IWC Secretariats on areas of common understanding and interest is being proposed.

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

FAO has procedures for the preparation, clearance, and signature of agreements entered into by FAO at Headquarters, Regional, Sub-regional and Country Offices. Agreements include memoranda of understanding,

exchanges of letters and other formal arrangements, irrespective of their actual denomination, entered into by FAO and establishing relations with partners such as governments, other organizations of the United Nations System, inter-governmental organizations, private sector entities, civil society organizations, cooperatives, foundations, research institutions and academia.

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

FAO has templates for a LOI's and MOU's. In the case of the IOTC-IWC Agreement, a LOI is deemed most appropriate as a LOI is simply a record an intention to collaborate in the future and does not identify concrete activities nor create any legal, financial or other commitments for the Parties.

THE PROPOSAL

The proposed draft text of the Lol is contained in Appendix 1.

RECOMMENDATION/S

That the Commission:

- 1) **NOTE** paper IOTC-2022-S26-09 which provides the Commission with an opportunity to consider the draft Letter of Intent (LoI) between the Indian Ocean Tuna Commission (IOTC) and the Secretariat for the International Whaling Commission (IWC).
- 2) **AGREE** on the content of the LOI as detailed in Appendix 1, and request that the LOI be communicated to the IWC for its consideration.
- 3) **AGREE** that, if required, the Executive Secretary and the Chairperson can liaise between the FAO and IWC Secretariat on any further un-substantive amendments to the LOI, and if they are not substantive, the Executive Secretary may sign the LOI on behalf of the Commission once it is approved by the IWC and FAO.

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

APPENDIX 1

DRAFT



LETTER OF INTENT

BETWEEN

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

AND

THE INTERNATIONAL WHALING COMMISSION

The Food and Agriculture Organization of the United Nations ("FAO") and The International Whaling Commission ("IWC") (hereinafter collectively referred to as "Parties" and individually as "Party");

CONSIDERING that FAO has the mandate to ensure, through effective management, the long-term conservation and sustainable use of the stocks of tuna and tuna-like species in the Indian Ocean;

CONSIDERING that IWC is an Inter-Governmental Organisation which has the mandate to provide for the proper conservation of whale stocks and the orderly development of the whaling the management of whaling ^[Fisheries1];

RECOGNIZING the common will of FAO and IWC to strengthen the monitoring and assessment of cetacean bycatch and the implementation of proper and effective ^[Fisheries2] conservation and management measures to reduce it, as noted in the FAO Code of Conduct For Responsible Fisheries, the International Guidelines on Bycatch Management and Reduction of Discards and the Technical Guidelines to Prevent and Reduce Bycatch of Marine Mammals in Capture Fisheries;

Now, therefore, FAO and IWC

1. Declare their intention to work together to finalize cooperation agreements ^[Fisheries3], ~~which will be signed at a later stage, in accordance with their internal rules and procedures,~~ to promote cooperation in order to enhance proper and effective ^[森田 博之4] the conservation of whale stocks-cetaceans caught in association with IOTC fisheries ^[森田 博之5].
2. Acknowledge that:
 - a) This Letter of Intent is a statement of intent and does not create any legal, financial or other commitments for any of the Parties, nor does it create any formal relationship between the Parties, or authorize any Party to make representations on behalf of the other, or to bind the other in any manner whatsoever.
 - b) Any confidential or otherwise sensitive information exchanged under this Letter of Intent will be subject to any restrictions concerning the dissemination and confidentiality that FAO, ~~or~~ IWC or flag states ^[森田 博之6] may apply as the owner of the information, and FAO and IWC agree to keep such information confidential.

- c) No representation or warranty, express or implied, will be made by the Parties regarding the collaboration envisaged, including but not limited to any outcome thereof, any agreement or further relationship.
- d) This Letter of Intent or information about this Letter of Intent may be published on FAO's website after it has entered into force consistent with its policies on transparency, as updated from time to time. This Letter of Intent or information about this Letter of Intent may also be published on IWC's website.
- e) The name and/or logo of FAO and IWC will not be used in any form of publicity or public disclosure unless with their prior written consent.
- a) Nothing in this Letter of Intent will affect the ownership of any intellectual property made available under this Letter of Intent, nor confers any right to use such intellectual property except as agreed by FAO or IWC as the owner of the intellectual property concerned.
- f) Nothing in this Letter of Intent or in any document or arrangement relating thereto constitutes a waiver, express or implied, of the privileges and immunities of FAO or IWC nor confers any of the privileges and immunities enjoyed by FAO or IWC to the other party or its personnel.

Signed in _____, on _____, in two original copies in English.

[To be used for signature of the LoI:

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

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

For the Food and Agriculture Organization
of the United Nations (FAO)

For IWC
