



**Chair's Explanatory Note for the 11th meeting of the Technical Committee on
Allocation Criteria of the IOTC (TCAC11)**

Mombasa, Kenya,

30 January to 2 February 2023

Dear Heads of delegation and Delegates,

First and foremost, let me wish you all a prosperous and healthy New Year!

We will be meeting in Mombasa, Kenya from January 30 to February 2, 2023 to continue the work of the Committee to develop allocation criteria for the IOTC.

Draft #5 Chair's Proposal for an Allocation Regime for the IOTC

Following our TCAC10 meeting in June 2022 in the Seychelles, written comments were submitted by a number of delegations. These were compiled by the Secretariat and contained in IOTC-2023-TCAC11-REF1. I have done my best to reflect delegations' input provided during TCAC10 and in the written comments provided by delegations to the latest Draft #5 of the Allocation Regime text (IOTC-2023-TCAC11-02). Our discussions in TCAC11 will mainly focus on the latest Draft #5 of the Allocation Regime.

As in the past, you have been provided with 3 versions of the Draft #5 text. One version contains all changes made and tracked in the text, as well as sidebar comments referring to the source of most changes made, and any adjustments I may have made to any proposals provided. A version containing the highlighted changes with no sidebar comments has been provided, as well as a clean Word version for your use. Our Working Document will be the version containing the highlighted changes without sidebar comments (IOTC-2023-TCAC11-02 Rev 1). Revisions were introduced to this document after it was initially posted, to reflect proposed changes submitted after our deadline. While the delegation sources of most changes have been identified in the sidebar, I would refer delegations to the actual submissions compiled by the Secretariat.

From the Draft #5 text provided, you will note that we have made some progress on a number of issues and attempts have been made to simplify the text of the Allocation Regime. However, we still have a lot of work to do, to achieve our common objective of developing an allocation regime for the IOTC. For the sake of clarity and completeness, I offer the following thoughts about some of the comments received and the proposed revisions to the text and the way I handled them in producing Draft #5.

I recognize that polarized views remain on some key parts of the Allocation Regime: the structure and the criteria for allocations. While these polarized views are not new, new ideas on how to structure the allocation regime have been proposed. I have inserted these concepts as an alternative to Article 6, and another as an alternative at the end of Draft #5.

As a first step during TCAC11, we should hear from the two delegations who have submitted these ideas for a new structure. It will be critical to agree to a single structure for the Allocation Regime. The discussions on this issue have been intertwined with the scope of the allocation regime, with concerns expressed by some delegations over the inclusion of coastal areas (EEZ, Territorial Sea, archipelagic waters) and coastal or artisanal fisheries and stocks. Trying to address these concerns through the structure of the allocation regime raises a number of issues that delegations should consider carefully. I have raised a few of these issues in my sidebar comments in the text of Draft #5.

Clearly, the intent of the Parties, as expressed in the IOTC Agreement, is for the Commission to have the authority and competency to adopt conservation and management measures for all stocks listed in Annex B to the Agreement throughout the Area of Competence as described in Article II of the Agreement.

I have tried to address some of the concerns over the small scale/artisanal fisheries by enabling the phasing in of the implementation of allocations for coastal or artisanal stocks, over time. This approach respects the general scope of the Agreement, while recognizing that the Parties may not be ready to implement allocations for stocks in coastal fisheries. There may be other ways to achieve this, but the departure point should be to respect the scope agreed to in the IOTC Agreement – that is the entire IOTC Area of competence, recognizing that anything less is an exception to this departure point.

Discussions regarding the criteria for allocations remain contentious and unresolved. While no consensus has been reached on allocation criteria, delegations generally support criteria that favour the interests and aspirations of coastal developing State CPCs; many delegations support criteria based on historical catch, while some do not; and, the majority of delegations are of the view that catches taken inside a Coastal State waters should be attributed to that Coastal State while some delegations have explicitly opposed this. I have tried to reflect these varying and opposing views by inserting them all in brackets, thus reflecting the lack of consensus on these criteria. A few delegations proposed the addition of a baseline allocation for all CPCs to be shared on an equal basis, however, it is not clear to me how much support there is for this added concept, and so I will want to hear delegations' views on it.

I expect that a great part of the time in Mombasa will be spent discussing these criteria with a view to better understanding the various positions and to see how compromises can be achieved. In preparing for these discussions, delegations should consider how positions on these criteria are tied to other concepts in the draft text, such as the transfer provisions, and the step-wise transition approach to the implementation. It may not be possible to remove brackets from these provisions at this stage, but it may be possible to make textual progress on the combined concepts, which may enable delegations to consider number simulations in the near future.

TCAC11

We will be meeting for 4 full days. A preliminary Agenda has been provided for your consideration, which I have adjusted after further reflection (IOTC-2023-TCAC11-01-Rev1). I propose that we forgo the usual introductions and jump directly into the substantive part of the meeting with my brief presentation of Draft #5.

I then propose that we review the text of Draft #5 following the key themes used in the past. As you will note, this would not follow the normal order of the articles of the draft text. Rather, all provisions related to a given theme would be considered together. The intent with this approach is for the Committee to consider the more substantively critical parts of the text early in the TCAC11 meeting, thereby ensuring sufficient time to cover each issue in a comprehensive way before moving to the next theme.

You will understand from my earlier comments why I have dedicated most of the first day to discussing the allocation structure and criteria. These are critical parts of the allocation regime and I wanted to ensure that we have enough time to cover the issues. At the end of the first day, I propose that we discuss how to frame our discussions on day 2.

In this respect, I propose that working groups (to the extent possible) be formed on Day 2 to discuss narrower or specific topics requiring more focused but informal discussions among delegations. Such an approach could enable participants to exchange on the practical considerations of an issue, and jointly develop text proposals that could resolve specific issues currently outstanding in Draft #5. It will be up to each delegation to determine whether they wish to participate in the working groups. Chairs for each working group would be chosen by the participants of the group. Working groups will be held consecutively to ensure that everyone may participate, but the actual format will depend on the facilities available.

With regard to the topics for working group discussions, these should be discussed at the end of Day 1. We could consider a working group for each of the following topics:

Definitions of CPC Coastal States and REIO – Art. 1.1 (e) and (s) bis;

New Entrants – Art. 1.1(r), 4 & 6.9

Allocation Adjustments to address compliance – Art. 7

Of course, I remain open to additional topics that delegations may wish to address in a working group format. Working Groups would then report back to plenary on Day 3 and specific proposals from the working groups may be considered by the plenary at that stage.

The remainder of the third day will review themes not addressed in Days 1 and 2, including the definitions, principles, allocation transfers and exigent circumstances.

We will resume the meeting on Day 4 and discuss the implementation process and the timelines and other considerations for the transition of the allocations. We will then cover any other provision of the text on Day 4 that may not have been discussed throughout the week. As in the past, I will remain flexible to cover the key parts that delegations wish to address, but my hope is to cover the entire text during our 4 days together, before we discuss a way forward and next steps for 2023.

Negotiation Process

As in our previous meetings, we will follow the standard practice of UN organisations for negotiating text shared in previous sessions of the TCAC.

Moving Forward

I would encourage you to share with me your written submissions or interventions after the TCAC11 meeting, including any wording proposals made during the meeting. In this respect, it will be important for chairs of working groups to submit any proposals from these working groups in writing so that I may have a record of them. My plan is to make changes and adjustments to Draft #5 after our meeting, based on your interventions and written submissions, within the timeframe agreed upon during our meeting on Day 4.

At the end of the TCAC11 meeting, I will want to hear delegations' views on our way forward in 2023, including views on the 2 scheduled TCAC meetings in June and October, and any preparatory work that may be required from the Secretariat for these meetings.

I remain available should any delegation wish to speak with me prior to our TCAC11 meeting virtually, and on the ground in Mombasa.

I look forward to meeting you in person in Mombasa and wish you all safe travels.

With kind regards,

Nadia Bouffard
Chair,
TCAC, IOTC