
**PROPOSED COOPERATION AGREEMENT BETWEEN THE INDIAN OCEAN TUNA COMMISSION (IOTC) AND
THE INDIAN OCEAN COMMISSION (IOC)**

PREPARED BY: IOTC Secretariat

Date: 05 April 2023

PURPOSE

To provide the Compliance Committee with an opportunity to consider a draft Cooperation Agreement (CA) between the Indian Ocean Tuna Commission (IOTC) and the Indian Ocean Commission (IOC).

BACKGROUND

Rationale for an agreement

Given the territories of the five Member States of the IOC covers a vast expanse of the Western Indian Ocean and that the IOC actively promotes cooperation for the sustainable development of the Indian Ocean region through a range of projects aimed at promoting sustainable fisheries practices, integrated management of marine and coastal ecosystems and maritime safety, *inter alia*. Also given the long history of cooperation and collaboration between the IOTC and the IOC, the Compliance Committee is invited to consider the draft Cooperation Agreement, which aims to provide a more formal structure for future collaborative arrangement between IOTC and IOC on areas of common interest.

FAO's role in agreements between IOTC and other organisations

As a body under Article XIV of the FAO Constitution, the IOTC is not entrusted with a legal status, 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.

THE PROPOSAL

A draft Cooperation Agreement, based on the texts agreed between the Secretariats of the IOTC and the IOC, is provided in Appendix 1.

RECOMMENDATION/S

That the Compliance Committee:

- 1) **NOTE** paper IOTC–2023–CoC20-07, which provides the Compliance Committee with an opportunity to consider a draft Cooperation Agreement (CA) between the Indian Ocean Tuna Commission (IOTC) and the Indian Ocean Commission (IOC).
- 2) **AGREE** on the content of the CA, as detailed in Appendix 1.
- 3) **RECOMMEND** the agreed CA for the consideration of the Commission.

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****Cooperation Agreement**

between the

Food and Agriculture Organization of the United Nations (FAO)

and the

Indian Ocean Commission (IOC)**on cooperation and coordination of activities without transfer of funds**

This Cooperation Agreement ('the Agreement') establishes a framework for cooperation and coordination between the Food and Agriculture Organization of the United Nations ('FAO') and Indian Ocean Commission (IOC) (collectively referred to as 'the Parties' and individually also as a 'Party') in the implementation of their activities related to the Indian Ocean Tuna Commission MTF/INT/661/MUL ('the project') with no transfer of resources.

Article 1 – Scope and areas of cooperation

- 1.1 The Parties agree to cooperate and coordinate the implementation of their respective activities ('the implementation activities') as described in the attached Annex I, which forms an integral part of this Agreement. The implementation of the activities undertaken by a Party is subject to that Party's rules, procedures, policies and administrative practice, including any requirements for internal clearances.
- 1.2 This Parties will cooperate as follows:
- a. to develop capacity in support of the implementation of IOTC conservation and management measures in the IOTC coastal States that are beneficiaries of programmes and projects managed by the IOC; and

Article 2 – Coordinating mechanisms

- 2.1 Modalities for coordination between the Parties shall be those described in Annex I.
- 2.2 In addition, the Parties may hold bilateral meetings as needed for the purpose of developing and monitoring collaborative activities. Such meetings shall take place on an ad-hoc basis if required to discuss technical and operational issues related to furthering the objectives of the Agreement, and jointly review progress of work.

Article 3 – Resources

- 3.1 The present Agreement implies no financial or other resource commitment by either Party. The implementation of activities is subject to the availability of staff and financial resources. Each Party shall be fully and solely responsible for the funding of its activities under this Agreement, as well as the administration and management of those funds.
- 3.2 Although it is understood that this Agreement is concluded on the basis that there shall be no transfer of funds between the Parties if, in the course of implementation, it is considered that implementation could be enhanced or facilitated by the transfer of funds from one Party to other for activities under this Agreement, this transfer of funds shall be made under an appropriate separate agreement, to be negotiated in good faith between the Parties.

Article 4 – Relationship and responsibility of the Parties

- 4.1 Nothing in this Agreement shall be construed as creating a partnership, employment or agency relationship between the Parties.
- 4.2 Each Party shall be fully and solely responsible for the manner in which it carries out the implementation activities for which it is responsible, as described in Annex I of this Agreement. Thus, a Party shall not be responsible for any loss, accident, damage or injury suffered or caused by the other party, or that other party's personnel, contractors, or sub-contractors, in connection with, or as a result of, the collaboration and coordination under this Agreement.
- 4.3 Each Party shall remain fully and solely liable to any third party, including any donors, for obligations entered into by that Party in connection with the implementation activities. It is understood that the obligations accepted by one Party with respect to any third party, including its donors, shall not extend to the other Party.

Article 5 – Confidentiality and use of logo, emblem or name

- 5.1 Neither Party nor its personnel shall communicate to any other person or entity any confidential information made known to it by the other Party pursuant to this Agreement nor shall it use this information to private or company advantage.
- 5.2 The Parties agree not to use in any press release, memo, report or other published disclosure related to this Agreement any of the other party's name, emblem and logo without prior written agreement by the Party concerned.

Article 6 - Intellectual Property Rights

- 6.1. Intellectual property rights, in particular copyright, in material such as information, software and designs, made available by IOC and FAO to be used to carry out activities under this Agreement shall remain with the originating Party. Appropriate authorizations for use of such materials by the other Party will be addressed in the agreements concluded in accordance with Article 3.2 above.
- 6.2. All intellectual Property Rights in materials that should be developed under this Agreement such as, but not limited to, information, software and designs, will be addressed in the agreements concluded in accordance with Article 3.2 above.
- 6.3. Both Parties shall be duly acknowledged in any work resulting from the implementation activities under this Agreement and the wording of such acknowledgement shall be agreed between the Parties.

Article 7 – Commitment to respect FAO's principles and values

- 7.1 IOC agrees to respect FAO's constitutional principles, values and policies, and warrants that nothing in its governance or operational activities, or those of its affiliates, is incompatible with them or with internationally recognized principles concerning human rights, the environment and anti-corruption as reflected in the United Nations Global Compact Principles.
- 7.2 IOC warrants that it has zero tolerance for all forms of sexual wrongdoing and acknowledges that sexual exploitation and abuse and sexual harassment are incompatible with core values of the United Nations System. IOC confirms that it has in place appropriate and effective mechanisms to prevent and address such conduct and that it will promptly inform FAO of allegations against its employees and any other persons involved in the implementation of activities in relation to this Agreement and which have been found to be credible under IOC's mechanisms.

Article 8 – Notices

8.1 All notices regarding, request and reports, or any other communication to the other Party, required under this Agreement, shall be given in writing and delivered in person or by registered mail to the addresses provided below:

For FAO:	Executive Secretary Indian Ocean Tuna Commission / NFITD Tel +248 4225494 IOTC-Secretariat@fao.org
For IOC	Secrétariat Général Commission de l’Océan Indien +230 402 6100 secretariat@coi-ioc.org

8.2 Each Party shall promptly notify the other in writing of any anticipated or actual material changes that may affect the implementation of this Agreement.

8.3 Notice shall be considered as effected on the date of delivery to the addressee.

Article 9 – Settlement of disputes²

9.1 Any dispute between the Parties concerning the interpretation and the execution of this Agreement will be settled by negotiation or, if not settled by negotiation between the Parties or by another agreed mode of settlement shall, at the request of either Party, be submitted to one conciliator. Should the Parties fail to reach agreement on the name of a sole conciliator, each Party shall appoint one conciliator. The conciliation shall be carried out in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law (“UNCITRAL”) as at present in force. Article 16 of the UNCITRAL Conciliation Rules shall not apply.

9.2 Any dispute between the Parties which is not settled amicably in accordance with the foregoing paragraph shall, at the request of either Party, be settled by arbitration in accordance with the UNCITRAL Arbitration Rules, as at present in force. Decisions of the arbitral tribunal shall be final and binding to the Parties and the arbitral tribunal shall have no authority to award punitive damages.

9.3 The conciliation and the arbitration proceedings shall be conducted in English and the place of arbitration shall be Rome, Italy. The Parties may request conciliation while the Agreement is in force or within a period not to exceed twelve (12) months after the expiry or the termination of the Agreement. The Parties may request arbitration not later than ninety (90) days after the termination of the conciliation proceedings.

²For agreements with other IGOs or Governments: “Any dispute between the Parties concerning the interpretation and execution of this Agreement, or any document or arrangement relating thereto, shall be settled by negotiation between the Parties. Any differences that may not be so settled shall be brought to the attention of the Executive Heads of the two organizations for final resolution”.

Article 10 – Privileges and Immunities and Applicable Law

- 10.1 Nothing in this Agreement or in any document or arrangement relating thereto shall be construed as constituting a waiver of the privileges or immunities of FAO or IOC, nor as extending any privileges or immunities of either Party to the other Party or its personnel
- 10.2 This Agreement is governed solely by general principles of law to the exclusion of any single national system of law. General principles of law shall include the UNIDROIT General Principles of International Commercial Contracts 2016.

Article 11 – Entry into force, Termination, Amendment

- 11.1 This Agreement shall enter into force on the date of its signature by both Parties. If signature occurs on separate dates, it shall enter into force on the date of the last signature. The Agreement shall remain in force for a duration of five (5) years. The duration of the Agreement may be extended by mutual written consent of the Parties if deemed necessary.
- 11.2 This Agreement may be terminated by either Party upon three (3) months written notice given to the other Party. In that event, the Parties will agree on measures required for the orderly conclusion of any ongoing collaborative activities and the settlement of any outstanding obligations.
- 11.3 This Agreement may be amended by mutual written agreement of the Parties. Such amendments shall enter into force one (1) month following notifications of consent by both Parties to the requested amendments or on a date otherwise agreed in writing for the amendment to enter into force.

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

On behalf of FAO:	On behalf of IOC:
Name:	Name:
Title:	Title:
Date:	Date:

Annex I

1. Collaboration activities and implementation modalities

The Indian Ocean Commission (IOC) is the principal organization supporting development in the Western Indian Ocean Region, which works for the well-being of Indian Ocean people through the effective and innovative application of science and knowledge, guided by a deep understanding of Indian Ocean Islands contexts, cultures and challenges and which strives to ensure that the Indian Ocean is a region of peace, harmony, security, social inclusion and prosperity so that all Indian Ocean people can lead free, healthy and productive lives;

The FAO and the IOC are currently parties to a MOU which provides a framework for strategic collaboration between the parties in the areas of common interest; and will underpin the below arrangement.

The purpose of this Cooperation Agreement is to provide a framework for collaboration between the IOTC and IOC to further their shared goals and objectives with regard to establishing and maintaining consultation, co-operation and collaboration in respect of matters of common interest to both parties.

The IOTC and IOC consider that progress in the below areas could be strengthened through:

- a. exchange of data and information consistent with their respective information-sharing policies;
- b. collaboration on efforts to better understand fisheries and fish stocks of mutual interest, including stock assessments, and
- c. collaboration on efforts relating to improve the implementation of IOTC conservation and management measures by IOC Members.

2. FAO's role and responsibilities

IOTC shall be responsible for the following:

- Appoint a counterpart from among the staff of the IOTC Secretariat, as required, to oversee any collaboration activities.

3. IOC's role and responsibilities

IOC shall be responsible for the following:

- Appoint a counterpart from among the staff of the IOC Secretariat, as required, to oversee any collaboration activities.

4. Coordinating mechanisms

The objectives of this Cooperation Agreement could also be achieved through the following activities:

- a. reciprocal participation as observers in relevant meetings of each organization, including those of relevant subsidiary bodies;
- b. sharing information and data on fisheries and fish stocks of mutual interest;
- c. sharing information on monitoring, control and surveillance of fisheries of mutual interest;
- d. development of processes to promote harmonization and compatibility, while avoiding duplication and conflict; and
- e. exchange of relevant meeting reports, information, technologies, research data and results, project plans, documents, and publications regarding matters of mutual interest.