

WWF, GTA and TUPA are working in partnership to end the misuse of objections by delegations of the Indian Ocean Tuna Commission.



TUPA
Tuna Protection Alliance



THE INDIAN OCEAN TUNA COMMISSION

The misuse of objections and the impact on sustainable fisheries management.

March 2023

X Summary

The IOTC Agreement currently allows Members to opt out of any measure at their will, with no justification and consequences. This is greatly limiting the ability of the IOTC to implement responsible fisheries management.

The Global Tuna Alliance (GTA), Tuna Protection Alliance (TUPA) and World Wide Fund for Nature (WWF), and their market partners, call on IOTC Members to revise the Agreement to remove this weak, unhelpful and out-dated objection procedure.



Introduction

The Global Tuna Alliance (GTA), Tuna Protection Alliance (TUPA) and World Wide Fund for Nature (WWF), and their market partners, call on IOTC Members to revise the Agreement to remove this weak, unhelpful and out-dated objection procedure.

During this time there have been times when our advocacy has been unsuccessful. In many occasions this is not because we were asking for the impossible, but because the structure and processes of the IOTC allowed minority views to dictate decision-making.

The primary ‘road-block’ that is holding back responsible decision-making in the IOTC is delegates registering objections. Table 1 lists objections, and their consequences, in recent IOTC meetings.

The negative consequences of the ability of IOTC delegations to raise ‘spurious’ objections were noted in a 2010 review of all 5 tRFMOs by Aranda et al.¹ In their assessment of the IOTC they noted:

The [IOTC] Agreement follows a rather modern approach to decision making (that is a recourse to voting procedures), yet it contains a weak and out-dated objection procedure. Objection procedures contained in more modern RFMO conventions include obligations such as clear and limited admissibility of the objection for specific reasons, for example when the content of a decision discriminates in any form against a Member or is inconsistent with the Convention, and/or obligations to take equivalent measures.

Table 1: Recent IOTC Objections

Issue	Detail	Objectors	Consequence
Yellowfin Rebuilding	Interim yellowfin rebuilding plan (21/01)	India, Oman, Somalia, Iran, Indonesia & Madagascar.	<ul style="list-style-type: none">• We estimate that catches could be around 440,000mt whereas MSY is 401,000mt.• As a result, the stock is likely to decrease further, necessitating larger cuts to rebuild.
	Revised yellowfin rebuilding plan	India, Oman & Somalia (maybe others) noted they would not accept any cuts.	<ul style="list-style-type: none">• Another special session was agreed for February.• Anything agreed at that session, or at the 27th session, will begin in Jan 24 – so we face an additional 12 months fishing overfished yellowfin way above MSY (recalculated to 349,000mt)
MSC	Strengthening High-Seas Boarding to Combat IUU Fishing	Withdrawn by EU due to lack of consensus (China noted it would object)	<ul style="list-style-type: none">• Unclear what will happen to the proposal. EU may re-table.

¹Aranda M., de Bruyn P., Murua H. 2010. A report review of the tuna RFMOs: CCSBT, IATTC, IOTC, ICCAT and WCP-FC. EU FP7 project n°212188 TXOTX, Deliverable 2.2, 171 pp.

Issue	Detail	Objectors	Consequence
MSC	Strengthening The CPCs Compliance Assessment	Blocked by India & Somalia.	<ul style="list-style-type: none"> Discussions will continue intersessionally. However, this discussion has been ongoing for four years now. The proposal would have established a framework of possible responses to non-compliance situations, grading of the different infractions according to their seriousness, ensuring an appropriate follow-up to infractions, improving overall compliance. Backward step in combatting Illegal, Unreported and Unregulated (IUU) fishing.
Data Reporting	Strengthening Statistical Reporting	Many coastal states refused to support it. The primary point of contention was a proposal for coastal fisheries to report catches monthly.	<ul style="list-style-type: none"> This was a recommendation from SciCom. We may continue to struggle with poor data reporting.
FADs	FAD Management Improvements	The EU's FAD proposal was withdrawn following several objections to, among other things, a lack of dFAD closure, and the inclusion of aFADs in the proposed CMM.	<ul style="list-style-type: none"> Another special session was agreed. Details TBC. It was a huge missed opportunity to improve the management of FADs in the Indian Ocean.
Skipjack	Skipjack HCR	EU & Maldives were unable to agree on a joint text, but the primary reason for withdrawal was because some CPCs had said they would object to any cuts.	<ul style="list-style-type: none"> The skipjack catch will continue to exceed the agreed harvest control rule TAC. This may have consequences on the MSC certified skipjack fisheries as they have conditions to demonstrate that exploitation levels required under the HCR are being achieved.



X Discussion

Registering objections to conservation and management measures (CMMs) in the IOTC

IOTC delegations are not bound by CMMs to which they have registered an objection. This means that the effectiveness of an agreed CMM can be greatly diminished, or result in failure, by the actions of one or more delegation.

The ability to object is enshrined in Article IX of the IOTC Agreement²:

Article IX(5): Any Member of the Commission may, within 120 days from the date specified or within such other period as may be specified by the Commission under paragraph 4, object to a conservation and management measure adopted under paragraph 1. A Member of the Commission which has objected to a measure

shall not be bound thereby. Any other Member of the Commission may similarly object within a further period of 60 days from the expiry of the 120-day period. A Member of the Commission may also withdraw its objection at any time and become bound by the measure immediately if the measure is already in effect or at such time as it may come into effect under this article.

Article IX(6): If objections to a measure adopted under paragraph 1 are made by more than one-third of the Members of the Commission, the other Members shall not be bound by that measure; but this shall not preclude any or all of them from giving effect thereto.



² <https://www.iotc.org/sites/default/files/documents/2012/5/25/IOTC%20Agreement.pdf>

Issues with objections

In 2010, Aranda et al carried out a review of all 5 tRFMOs. In their assessment of the IOTC they included the following anonymous statement:

...the objection procedure in the IOTC Agreement allows Members to opt out of any measure at their will, with no justification and consequences. This is considered to be a fundamental flaw of this Agreement, with the potential to severely weaken the implementation and compliance mechanisms (Anon 2009).

Among the outcomes of the United Nations Fish Stocks Agreement (UNFSA) Review Conference (New York, 23-27 May 2016) was the importance of ensuring “that post opt out behaviour is constrained by rules for preventing opting-out parties from undermining conservation, by establishing clear processes for dispute resolution and for the adoption of alternative measures with equivalent effect that would be implemented in the interim” and encouraging RFMOs to “review their decision-making procedures, noting the need for procedures that facilitate the adoption of conservation and management measures in a timely and effective manner and, in particular, to consider provisions for voting and objection procedures.”³

The IOTC Commission, at its 19th session in 2015, noted that there was a “need for the Commission to review existing objections to Conservation and Management Measures and develop a formal annual review and potential withdrawal process for Members to follow”, and requested the 2nd Performance Review to “consider how a justification requirement could be included as part of the objection

lodgement process when the IOTC Agreement is revised”.⁴

The 2nd Performance Review report of the IOTC determined that the IOTC objection procedure was “weak” and “inconsistent with international best practice”⁵ and reiterated the recommendation of the first Performance Review that the objection procedure in the IOTC Agreement be amended. The 2nd Performance Review Report further noted that the lack of consequences for objecting can weaken implementation and compliance with IOTC measures: “in particular as the Agreement does not provide a due process by which an objection is validated nor a process for reviewing objections.”⁶

Table 1 captures CMMs in the last two years that were blocked and/or withdrawn by objections or the threat of objections. It is clear that objections are having a negative impact on the success of the IOTC in meeting its mandate.

Lodge et al (2007)⁷ consider that an RFMO following best practice should not permit an objecting member to substitute its unilateral decision for that of the majority - a situation we have seen in the IOTC recently. They go further and argue that such a claim might also be inconsistent with the spirit of article 8 (3-4) of UNFSA, in the sense that if a member refuses to accept and apply the conservation and management measures established by the RFMO, it should not ‘have access to the resources to which those measures apply’, just like a non-member. It would not be so much an exercise of the objecting State’s sovereignty as its failure to cooperate with the other States.

³ Report of the 2016 Resumed Fish Stocks Agreement Review Conference (doc. A/CONF.210/2016/5 of 1 August 2016), Annex Para B.5.

⁴ Report of the 19th Session of the Indian Ocean Tuna Commission (2015) IOTC-2015-S19-R[E] 22.

⁵ Report of the 2nd IOTC Performance Review (2015) IOTC-2016-PRIOTC02-R[E] 38 [172].

⁶ *ibid* [172].

⁷ Lodge, M.W. et al (2007) Recommended Best Practices for Regional Fisheries Management Organizations: Report of an independent panel to develop a model for improved governance by Regional Fisheries Management Organizations. London, UK, Chatham House, 160pp. DOI: <http://dx.doi.org/10.25607/OBP-958>

■ Situation in other tRFMOs

ICCAT adopts CMMs by consensus or qualified majority decision-making (Article III(3) ICCAT Convention). It has an objection procedure (Table 2), but unlike under the IOTC Agreement, objections do not automatically result in the objecting CPC being not bound by the CMM. Instead, if one or less than one fourth of the CPCs also object, then the objection must be reaffirmed to become effective. If more than one-fourth, but less than the majority of the CPCs object, then the CMM will only apply to CPCs that have not presented an objection. If an objection is presented by a majority of the CPCs, then the CMM itself is rejected.

Beyond these purely procedural requirements, there are no additional constraints such as an obligation to give specific reasons for the objections and/or a Review Panel procedure to ascertain their merits.

In **WCPFC** (Table 2), whose constitutive treaty was adopted in 2000, if an objection to a CMM proposal is made known before a decision has been taken and if all efforts to reach a decision by consensus have been exhausted, decisions by voting on questions of procedure are taken by a three-fourths majority of those members present and voting (article 20(2) WCPFC Convention). Thus, the 'objection' has no legal effects besides preventing consensus and can, therefore, be viewed as no more than a stage in the decision-making process.

Once a CMM is adopted, a member which has voted against a CMM proposal or which was absent during the meeting at which the decision was made cannot lodge an objection to the CMM in the same manner as under the IOTC Agreement. Rather, the member may seek a review of the decision by a Review Panel constituted in accordance with the procedures

set out in Annex II to the WCPFC Convention. Such review can only be sought on the grounds that (a) the decision is inconsistent with the provisions of the WCPFC Convention, the UNFSA or UNCLOS, or (b) the decision unjustifiably discriminates in form or in fact against the member concerned.

Annex II of the WCPFC Convention requires not only that the objector shall supply a statement of the grounds it seeks to invoke for the review but also that the statement shall be circulated to all members of the Commission and furthermore that any member may submit a memorandum to the Review Panel and shall be given an opportunity to be heard. Pending the findings and recommendations of the Review Panel and any action required by the Commission, no member of the Commission shall be required to give effect to the decision in question. If the Review Panel finds that the decision of the Commission need not be modified, amended or revoked, the decision becomes binding on all members (including the 'objector'). Otherwise, the Commission shall, at its next annual meeting, modify or amend its decision in order to conform with the findings and recommendations of the Review Panel or it may decide to revoke the decision at a special session.

IATTC has no objection process as all decisions have to be made by consensus (Table 2).

Table 2: Use of Objections in other tRFMOs

RFMO	Treaty Provision
<p>ICCAT ⁸</p>	<p>Article VIII 3.</p> <p>(a) If any Contracting Party in the case of a recommendation made under paragraph 1(b)(i) above, or any Contracting Party member of a Panel concerned in the case of a recommendation made under paragraph 1(b)(ii) or (iii) above, presents to the Commission an objection to such recommendation within the six months period provided for in paragraph 2 above, the recommendation shall not become effective for an additional sixty days.</p> <p>(b) Thereupon any other Contracting Party may present an objection prior to the expiration of the additional sixty days period, or within forty-five days of the date of the notification of an objection made by another Contracting Party within such additional sixty days, whichever date shall be the later.</p> <p>(c) The recommendation shall become effective at the end of the extended period or periods for objection, except for those Contracting Parties that have presented an objection.</p> <p>(d) However, if a recommendation has met with an objection presented by only one or less than one fourth of the Contracting Parties, in accordance with sub-paragraphs (a) and (b) above, the Commission shall immediately notify the Contracting Party or Parties having presented such objection that it is to be considered as having no effect.</p> <p>(e) In the case referred to in sub-paragraph (d) above the Contracting Party or Parties concerned shall have an additional period of sixty days from the date of said notification in which to reaffirm their objection. On the expiry of this period the recommendation shall become effective, except with respect to any Contracting Party having presented an objection and reaffirmed it within the delay provided for.</p> <p>(f) If a recommendation has met with objection from more than one-fourth but less than the majority of the Contracting Parties, in accordance with sub-paragraphs (a) and (b) above, the recommendation shall become effective for the Contracting Parties that have not presented an objection thereto.</p> <p>(g) If objections have been presented by a majority of the Contracting Parties the recommendation shall not become effective.</p>
<p>WCPFC ⁹</p>	<p>Article 20</p> <p>6. A member which has voted against a decision or which was absent during the meeting at which the decision was made may, within 30 days of the adoption of the decision by the Commission, seek a review of the decision by a review panel constituted in accordance with the procedures set out in Annex II to this Convention on the grounds that:</p> <p>(a) the decision is inconsistent with the provisions of this Convention, the Agreement or the 1982 Convention; or</p> <p>(b) the decision unjustifiably discriminates in form or in fact against the member concerned.</p> <p>7. Pending the findings and recommendations of the review panel and any action required by the Commission, no member of the Commission shall be required to give effect to the decision in question.</p> <p>8. If the review panel finds that the decision of the Commission need not be modified, amended or revoked, the decision shall become binding 30 days from the date of communication by the Executive Director of the findings and recommendations of the review panel.</p> <p>9. If the review panel recommends to the Commission that the decision be modified, amended or revoked, the Commission shall, at its next annual meeting, modify or amend its decision in order to conform with the findings and recommendations of the review panel or it may decide to revoke the decision, provided that, if so requested in writing by a majority of the members, a special meeting of the Commission shall be convened within 60 days of the date of communication of the findings and recommendations of the review panel.</p>

⁸ <https://www.iccat.int/Documents/Commission/BasicTexts.pdf>

⁹ <https://www.wcpfc.int/doc/convention-conservation-and-management-highly-migratory-fish-stocks-west-ern-and-central-pacific>

Treaty Provision

ARTICLE IX. DECISION MAKING

1. Unless provided otherwise, all decisions made by the Commission at meetings convened pursuant to Article VIII of this Convention shall be by consensus of members of the Commission present at the meeting in question.

IATTC¹⁰

4. With respect to decisions referred to in paragraphs 2 and 3 of this Article, if a Party or member of the Commission, as the case may be, is absent from the meeting in question and has not sent a notification in accordance with paragraph 6 of this Article, the Director shall notify such Party or member of the decision taken at the meeting. If, within thirty (30) days of the receipt by the Party or member of such notification, the Director has not received a response from such Party or member, that Party or member shall be deemed to have joined the consensus on the decision in question. If, within such 30-day period, such Party or member replies in writing that it cannot join the consensus on the decision in question, the decision shall have no effect, and the Commission shall seek to reach consensus at the earliest opportunity.



¹⁰ <https://www.iattc.org/getattachment/593fe044-9e3c-440b-8acf-e676d16b6618/Antigua%20Convention%20-%20text>

Selected non-tuna RFMOs with modern or modernised decision-making procedures

Northwest Atlantic Fisheries Organization (NAFO)

A reform of the NAFO Convention was adopted in 2007 allows for two thirds majority voting when attempts at consensus have failed. The reform also revised the objection procedure and added a dispute settlement mechanism. Following the reform, an explanation must be given for objections specifying either that the measure is deemed to be inconsistent with the NAFO treaty or unjustifiably discriminatory against the objecting party, and describing alternative measures the party intends to take. The objecting party may submit the issue to ad hoc panel proceedings. If it does not, the Commission then decides by simple majority mail vote whether to submit the matter to proceedings. Reports of the Working Group on Reform show that Canada had initially tabled a WCPFC-like provision (i.e. no objections but possibility to review the decision itself). However, this proposal was dropped as an objection procedure was deemed essential.

South Pacific Regional Fisheries Management Organisation (SPRFMO)

The SPRFMO Convention was adopted in 2009. It provides that decisions of substance may be taken by a three quarters majority where efforts at consensus have been exhausted. Objections are possible but an objecting party must specify their grounds for objection and the only permissible grounds are that the RFMO decision is contrary to UNCLOS, UNFSA, or the SPRFMO treaty, or that the decision unjustifiably discriminates against the party. The grounds for objection are automatically reviewed by a Review Panel of three independent experts. The objecting party must also put in place equivalent alternative measures, and the Review Panel also considers

whether these are deemed to be equivalent. Notably, the chair of the negotiations for the SPRFMO treaty originally copied the WCPFC procedure in his draft text. However, by the penultimate round of negotiations this had been replaced with the current mechanism, suggesting, as with the NAFO reform, that the parties involved preferred to maintain some form of objection procedure rather than copy the WCPFC.

North Pacific Fisheries Commission (NPFC)

Negotiations towards the NPFC Convention began in 2006 and were completed in 2012. Similarly to SPRFMO, three quarter majority voting may be used and, again, the only permissible grounds for objection are inconsistency with UNCLOS, UNFSA, or the NPFC treaty and unjustifiable discrimination. Written reasons for the objecting party's position must be given and equivalent alternative measures must be adopted. However, where NPFC differs from SPRFMO is that it is the Commission, a meeting of which may be convened by any member, which reviews the justification of the objection and the equivalency of the alternative measures. If convened, the Commission must invite two or more non-partisan experts to provide advice to the Commission on the issue.

Table 3: Use of Objections in selected non-tuna RFMOs

RFMO	Treaty Provision
NAFO ¹¹	<p>Article XIV 3.</p> <p>2. Where any Contracting Party presents an objection to a measure by delivering it to the Executive Secretary within sixty days of the date of transmittal specified pursuant to subparagraph 1(a), any other Contracting Party may similarly present an objection prior to the expiration of an additional twenty day period, or within fifteen days after the date of transmittal specified in the notification to the Contracting Parties of any objection presented within that additional twenty day period, whichever shall be later. The measure shall then become binding on each Contracting Party, except any that has presented an objection. If, however, at the end of such extended period or periods, objections have been presented and maintained by a majority of Contracting Parties, the measure shall not become binding, unless any or all of the Contracting Parties nevertheless agree as among themselves to be bound by it on an agreed date.</p> <p>3. Any Contracting Party that has presented an objection may withdraw it at any time and the measure shall then become binding on it.</p> <p>4. (a) Any time after the expiration of one year from the date on which a measure enters into force, any Contracting Party may notify the Executive Secretary of its intention not to be bound by the measure and, if that notification is not withdrawn, the measure shall cease to be binding on it at the end of one year from the date of receipt of such notification by the Executive Secretary. b) Any time after a measure has ceased to be binding on a Contracting Party pursuant to subparagraph (a), the measure shall cease to be binding on any other Contracting Party on the date the Executive Secretary receives notification of its intention not to be bound.</p> <p>5. Any Contracting Party that has presented an objection to a measure pursuant to paragraph 2 or given notification of its intention not to be bound by a measure pursuant to paragraph 4 shall at the same time provide an explanation for its reasons for taking this action. This explanation shall specify whether it considers that the measure is inconsistent with the provisions of this Convention, or that the measure unjustifiably discriminates in form or fact against it. The explanation shall also include a declaration of the actions it intends to take following the objection or notification, including a description of the alternative measures it intends to take or has taken for conservation and management of the relevant fishery resources consistent with the objective of this Convention.</p> <p>6. The Executive Secretary shall immediately notify each Contracting Party of:</p> <p>(a) the receipt or withdrawal of any objection pursuant to paragraph 2 or 3;</p> <p>(b) the date on which any measure becomes binding pursuant to paragraph 1;</p> <p>(c) the receipt of any notification pursuant to paragraph 4; and</p> <p>(d) each explanation and description of alternative measures received pursuant to paragraph 5.</p> <p>7. Any Contracting Party that invokes the procedure set out in paragraphs 2, 4 or 5, may at the same time submit the matter to ad hoc panel proceedings. Annex II shall apply mutatis mutandis.</p> <p>8. Where a Contracting Party does not submit the matter to ad hoc panel proceedings pursuant to paragraph 7, the Commission shall decide by simple majority mail vote, whether to submit that Contracting Party's explanation made pursuant to paragraph 5 to such proceedings. Where the Commission decides to submit the matter to such proceedings, Annex II shall apply mutatis mutandis.</p> <p>9. Where, pursuant to paragraph 8, the Commission decides not to submit the matter to ad hoc panel proceedings, any Contracting Party may request a meeting of the Commission to review the measure adopted by the Commission and the explanation made pursuant to paragraph 5.</p> <p>10. An ad hoc panel constituted pursuant to paragraph 7 or 8 shall review the explanation made pursuant to paragraph 5 and the measure to which it relates and make recommendations to the Commission on:</p> <p>(a) whether the explanation provided by the Contracting Party pursuant to paragraph 5 is well founded, and if so, whether the measure should accordingly be modified or rescinded, or where it finds that the explanation is not well founded, whether the measure should be maintained; and</p>

¹¹ <https://www.nafo.int/Portals/0/PDFs/key-publications/NAFOConvention-2017.pdf>.

RFMO	Treaty Provision
NAFO	<p>(b) whether the alternative measures set out in the explanation made by the Contracting Party pursuant to paragraph 5 are consistent with the objective of this Convention and preserve the respective rights of all Contracting Parties.</p> <p>11. No later than thirty days following the termination of the ad hoc panel proceedings pursuant to this Article, the Commission shall meet to consider the recommendations of the ad hoc panel.</p> <p>12. Where the procedures set out in paragraphs 7 to 11 have been concluded, any Contracting Party may invoke the dispute settlement procedures set out in Article XV.</p>
SPRFMO ¹²	<p>Article 17</p> <p>2. (a) Any member of the Commission may present to the Executive Secretary an objection to a decision within 60 days of the date of notification “the objection period”. In that event the decision shall not become binding on that member of the Commission to the extent of the objection, except in accordance with paragraph 3 and Annex II.</p> <p>(b) A member of the Commission that presents an objection shall at the same time: (i) specify in detail the grounds for its objection; (ii) adopt alternative measures that are equivalent in effect to the decision to which it has objected and have the same date of application; and (iii) advise the Executive Secretary of the terms of such alternative measures.</p> <p>(c) The only admissible grounds for an objection are that the decision unjustifiably discriminates in form or in fact against the member of the Commission, or is inconsistent with the provisions of this Convention or other relevant international law as reflected in the 1982 Convention or the 1995 Agreement.</p> <p>3. Any member of the Commission that has objected to a decision may at any time withdraw that objection. The decision shall then become binding on that member in accordance with paragraph 1(b) or on the date of the withdrawal of the objection whichever is the later.</p> <p>4. The Executive Secretary shall promptly notify all members of the Commission of: (a) the receipt and withdrawal of each objection; and (b) the grounds for that objection and the alternative measures adopted, or proposed to be adopted, pursuant to paragraph 2.</p> <p>5. (a) When an objection is presented by a member of the Commission pursuant to paragraph 2, a Review Panel shall be established within 30 days after the end of the objection period. The Review Panel shall be established in accordance with the procedures in Annex II.</p> <p>(b) The Executive Secretary shall promptly notify all members of the Commission of the establishment of the Review Panel.</p> <p>(c) If two or more members of the Commission present objections based on the same grounds, those objections shall be dealt with by the same Review Panel, which shall have the membership specified in Annex II paragraph 2.</p> <p>(d) If two or more members of the Commission present objections on different grounds, those objections may, with the consent of the members of the Commission concerned, be dealt with by the same Review Panel, which shall have the membership specified in Annex II paragraph 2. In the absence of such consent, objections on different grounds shall be dealt with by separate Review Panels.</p> <p>(e) Within 45 days after its establishment, the Review Panel shall transmit to the Executive Secretary its findings and recommendations on whether the grounds specified for the objection presented by the member or members of the Commission are justified and whether the alternative measures adopted are equivalent in effect to the decision to which objection has been presented.</p> <p>(f) The Executive Secretary shall promptly notify all members of the Commission of the findings and recommendations of the Review Panel. The findings and recommendations of the Review Panel shall be dealt with and have effect as set out in Annex II.</p> <p>6. Nothing in this Article limits the right of a member of the Commission at any time to refer a dispute concerning the interpretation or application of this Convention for binding settlement in accordance with the provisions of this Convention relating to the settlement of disputes.</p>

¹² <http://www.sprfmo.int/assets/Basic-Documents/Convention-web-12-Feb-2018.pdf>.

RFMO	Treaty Provision
NPFC ¹³	<p>Article 9</p> <p>1. Binding decisions by the Commission shall take effect in the following manner:</p> <p>[...]</p> <p>(c) a member of the Commission may object to a decision solely on the grounds that the decision is inconsistent with the provisions of this Convention, the 1982 Convention or the 1995 Agreement, or that the decision unjustifiably discriminates in form or in fact against the objecting member;</p> <p>(d) if a member of the Commission presents an objection, it shall so notify the Chairperson of the Commission in writing at least two weeks in advance of the date that the decision becomes binding in accordance with subparagraph (b) above; in this case, the decision shall not, to the extent stated, be binding upon that member; however, the decision shall remain binding on all other members unless the Commission decides otherwise;</p> <p>(e) any member of the Commission that makes a notification under subparagraph (d) above shall specify whether the decision is inconsistent with the provisions of this Convention, the 1982 Convention or the 1995 Agreement, or unjustifiably discriminates in form or in fact against that member and, at the same time, provide a written explanation of the grounds for its position. The member must also adopt and implement alternative measures that are equivalent in effect to the decision to which it has objected and that have the same date of application;</p> <p>(f) the Chairperson shall promptly circulate to all members of the Commission details of any notification and explanation received in accordance with subparagraphs (d) and (e) above;</p> <p>(g) in the event that any member of the Commission invokes the procedure set out in subparagraphs (d) and (e) above, a Commission meeting shall take place at the request of any other member to review the decision to which the objection has been presented. The Commission shall, at its expense, invite to that meeting two or more experts who are nationals of non-members of the Commission and who have sufficient knowledge of international law related to fisheries and of the operation of regional fisheries management organizations to provide advice to the Commission on the matter in question. The selection and activities of these experts shall be in accordance with procedures to be adopted by the Commission;</p> <p>(h) the Commission meeting shall consider whether the grounds specified for the objection presented by the member of the Commission are justified and whether the alternative measures adopted are equivalent in effect to the decision to which the objection has been presented;</p> <p>(i) if the Commission finds that the decision to which objection has been presented does not discriminate in form or fact against the objecting member of the Commission and is not inconsistent with this Convention, the 1982 Convention or the 1995 Agreement, but that the alternative measures are equivalent in effect to the decision by the Commission and should be accepted as such by the Commission, the alternative measures shall be binding on the objecting member in substitution for the decision to which the objection has been presented; and</p> <p>(j) if the Commission finds that the decision to which objection has been presented does not discriminate in form or in fact against the objecting member and is not inconsistent with this Convention, the 1982 Convention or the 1995 Agreement, but that the alternative measures are not equivalent in effect to the decision to which it has objected, the objecting member may:</p> <p>(i) present different alternative measures to be considered by the Commission;</p> <p>(ii) within forty-five (45) days implement the original decision to which it had presented an objection; or</p> <p>(iii) institute dispute settlement proceedings pursuant to Article 19 or paragraph 4 of the Annex.</p> <p>2. Any member of the Commission that invokes the right of objection set out in paragraph 1 may at any time withdraw its notification of objection and become bound by the decision immediately if it is already in effect or at such time as it may come into effect under this Article.</p>

¹³ <https://www.npfc.int/document/convention-conservation-and-management-high-seas-fisheries-resources-north-pacific-ocean>.

Potential support within IOTC for reform of decision-making procedures

More recently negotiated, or recently reformed, RFMOs tend to have improved decision-making procedures effectively restrict objections. Table 4 indicates the overlap in membership between IOTC and a set of other RFMOs selected as having modern decision-making procedures. These modern RFMOs include WCPFC (adopted in 2000), NAFO (reform adopted in 2007), SPRFMO (adopted in 2009) and NPFC (adopted in 2012).

As can be seen in the timeline of adoptions, the decision-making procedures of WCPFC were the starting point of (successful) RFMO reform regarding objections. The WCPFC treaty text was adopted in September 2000 by vote. Decision-making was a controversial topic during the WCPFC negotiations with heated discussion on this continuing until the very last of the day of the final conference. Several DWFN expressed disagreement with majority decision-making and particularly with the lack of objection procedure. The Pacific Islands Forum Fisheries Agency States had the support

of Ambassador Satya Nandan, chair of the negotiations, in their opposition to including an objection procedure, but were eventually persuaded to accept the US formulation of the chambered voting procedure which provided a safeguard to DWFN. Japan and Korea voted against the final adoption of the treaty.

Table 4 below indicates which IOTC members are parties of and were involved in the negotiation or reform of these modern RFMOs, suggesting that they may consider supporting or, at the least, not opposing a reform of IOTC decision-making. It demonstrates that many of the DWFN which are IOTC CPs have already accepted limitations on the use of objections in the other RFMOs to which they are party. However, the negotiation history of these other RFMOs also suggests that certain States (e.g. Japan, Korea) may try to avoid the IOTC adopting an automatic independent panel review of objection justifications, preferring for this review to be conducted ad hoc or by the Commission.

Table 4: Overlaps in membership of IOTC and RFMOs with modern decision-making procesures

IOTC Contracting Parties	WCPFC	SPRFMO	NPFC	Re-formed NAFO	Reformed (2006) NEAFC
Australia	XN	XN			
China	XN	XN	XN		
EU	X	XN	X (as of March 2022)	XN	XN

IOTC Contracting Parties	WCPFC	SPRFMO	NPFC	Re-formed NAFO	Reformed (2006) NEAFC
France OT	XN			X*N	
Indonesia	XN				
Japan	XA		XN	XN	
Korea	XA	XN	XN	XN	
Philippines	XN				
Thailand	cooperating non-party				
UK	N**			X	X

Key

X - current party

N - was not involved in negotiation of the RFMO treaty or its reform

A - was involved in negotiations of RFMO treaty but voted against adoption of treaty

* in respect of St Pierre and Miquelon

** involved in negotiations on behalf of Pitcairn, Henderson, Ducie and Oeno Islands

Furthermore, in a recent interview¹⁴ with SeafoodSource, Maldives Fisheries Minister Hussain Rasheed Hassan noted:

"But I think the way we are implementing the IOTC resolutions by unanimous consent does not work, because it just takes a few countries to say no for any advance to fail. So reforming IOTC is hugely important. Without reforming the IOTC, I don't think we can actually bring about the meaningful change in the Indian Ocean and save the fate of the tuna stocks."

¹⁴ <https://www.seafoodsource.com/news/supply-trade/maldives-fisheries-minister-hussain-rasheed-hassan-hoping-for-tuna-turnaround>

Conclusion

At present, an IOTC Member can opt out of a decision that it does not like. This ability to object can result in the undermining of conservation. Furthermore, it appears to contradict by the Members' duty to cooperate with the other members under the IOTC Agreement (Article V, Para 1), as well as by its general obligations under the Law of the Sea Convention and UNFSA.

There is an urgent need to revise the IOTC Agreement to address this. Lodge et al (2007) provide best practice text which could be adopted:

- If consensus still cannot be reached after extended consultations, the rules should provide for the assistance of a facilitator or a conciliator. This assistance should be available at the request of the presiding officer or any participant in the consultations.
- When all efforts to reach consensus have been exhausted, decisions in an RFMO that has:

(a) fewer than five members may be taken by consensus, coupled with a right for a dissatisfied member which does not block consensus to request a review of the decision by a panel;

(b) more than five members should require a high majority for adoption such as two-thirds of the members voting for or against, rising to three-quarters in an RFMO with more than 12 members.

A member objecting to or intending to vote against the adoption of a proposal can request a review or enter an objection to the (proposed) decision within a short time limit. Objections should be reasoned and should be based on one of the following grounds:

(a) The decision is contrary to UNCLOS, UNFSA or the RFMO's constitutive instruments;

(b) The decision discriminates against that member in form or fact and there is no objective justification for the discrimination.

- In such circumstances, decisions do not enter into force immediately, even if they are supported by the requisite majority. The default position, pending resolution of the objection or dispute, on decisions about conservation and management measures should not permit action to be taken that may compromise the sustainability of the stock(s) or undermine the objection procedures of the RFMO.

Conversely, objection procedures should not be able to be used so as to allow inaction. The exception is that decisions on conservation and management measures that would apply within a coastal State's EEZ should be taken by consensus.

- Whenever an objection is submitted, a panel of independent experts shall review the objection without delay and report its conclusions to the appropriate organ of the RFMO. If the panel is not unanimous, all views shall be included in the report. If the panel endorses the decision, it shall enter into force for all members on a specified date. If the panel upholds the objection, the decision shall be reconsidered urgently by the RFMO in the light of the panel's report and a new decision shall be taken. If there are objections to this new decision, any legal differences should be submitted to the RFMO's procedures for the settlement of disputes without delay. Panels should be able to set provisional or interim measures.
- Once taken, decisions are accepted and implemented by all members, including those voting against, subject to any pending legal disputes referred to the dispute settlement mechanism.



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Nature, Global Tuna
Alliance** and the
**Tuna Protection
Alliance**



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