

27 February 2018

## IOTC CIRCULAR

2018–10

Dear Madam / Sir

### PREPARATION FOR THE COMMISSION TO MAKE A DECISION ON WHETHER THE IOTC SHOULD REMAIN WITHIN THE FAO FRAMEWORK OR BECOME A SEPARATE LEGAL ENTITY

I am writing to you in response to a request from the IOTC Technical Committee on Performance Review (TCPR) to remind CPCs about the Commission's intention to make a decision on whether the IOTC should remain within the FAO framework or become a separate legal entity. In 2016, the Commission requested the TCPR to make a recommendation on whether the IOTC should remain within the FAO framework or become a separate legal entity.

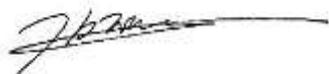
At the first TCPR meeting in February this year, some CPCs indicated that they had come to the meeting with the mandate to make the requested recommendation. Other CPCs indicated that they were not in a position to make such a recommendation; furthermore, these CPCs indicated that any decision to leave the current arrangement would require comprehensive internal/national consultations and procedures to be completed.

The TCPR has requested that I should contact CPCs and indicate that maintaining/changing the institutional link with FAO will be discussed by the Commission in May 2018, and that the Commission will likely expect CPCs to have the mandate to discuss this matter. Furthermore, if CPCs are unable to obtain this authorization in advance of the meeting, they ought to be aware of how long it will take to do so.

To this end, and to assist national deliberations, if required, I have included the following information in the annexes below:

1. A brief chronological summary of events and decisions on the matter of maintaining/changing the institutional link with FAO – including FAO's position on the subject.
2. A list of advantages and disadvantages on the matter as presented by Professor Glenn Hurry to the TCPR.

Yours sincerely



Riley Jung-re Kim (Ms)

IOTC Vice-Chairperson and Chair of the Technical Committee on Performance Review

**Attachments:**

- Two annexes.

Distribution

**IOTC Contracting Parties:** Australia, China, Comoros, Eritrea, European Union, France (Territories), Guinea, India, Indonesia, Iran (Islamic Rep of), Japan, Kenya, Rep. of Korea, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Oman, Pakistan, Philippines, Seychelles, Sierra Leone, Somalia, South Africa, Sri Lanka, Sudan, United Rep. of Tanzania, Thailand, United Kingdom (OT), Yemen. **Cooperating Non-Contracting Parties:** Bangladesh, Liberia, Senegal. **Intergovernmental Organisations, Non-Governmental Organisations.** Chairperson IOTC. **Copy to:** FAO Headquarters, FAO Representatives to CPCs.

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**Annex 1. A brief chronological summary of events and decisions on the matter of maintaining/changing the institutional link with FAO. Links to important documents are highlighted (ctrl + click to follow)**

**2014 (June) Commission meeting:** the Commission endorsed the Terms of Reference for the 2<sup>nd</sup> IOTC performance review (para 105 [click here for the report](#)).

**2016 (February) by circular:** – The second performance review report is made available to the Commission ([click here for the report](#))

The report recommended inter alia, that the IOTC would be more appropriate as an independent entity. As such, as a matter of the highest priority, the Commission should decide whether the IOTC should remain within the FAO framework or become a separate legal entity.

**2016 (May) Commission meeting:** – The Commission endorsed the recommendations of the PR2 report [click here for the report](#) and formed the Technical Committee on Performance Review (with terms of reference) under [Resolution 16/03 On the second performance review follow up](#).

The Terms of reference of the TCPR included, inter alia:

- To develop a new text of the IOTC Agreement
- To make a recommendation to the Commission to decide whether the IOTC should remain within the FAO framework or become a separate legal entity.... If necessary and appropriate, propose to terminate the IOTC Agreement in accordance to the Article XXII of the current Agreement.

The Commission noted the following general comments by the FAO Legal Counsel on the 2<sup>nd</sup> Performance Review:

FAO fully acknowledged that the IOTC Agreement, should be modernized (para 111).

The matter of removal of IOTC from the framework of FAO and the UN was clearly a matter for the IOTC Members to decide upon and FAO would not interfere with their decision. The FAO Secretariat, and presumably the Governing Bodies of FAO, as was the case in the past, would only press for a solution, which would ensure full clarity and certainty in the future legal relationship between FAO and the Commission and avoid any potential liabilities for the Organization (para 113).

**2018 (February) Technical Committee on Performance Review meeting:** This was the first meeting of the TCPR ([click here for the report](#)).

Prof Glenn Hurry presented the results of his report on the costs and benefits of IOTCs relationship with FAO ([IOTC-2016-S20-05](#)). The information in this report has since been updated, and was provided in his presentation to the TCPR ([IOTC-2018-TCPR01-INF01](#)). This presentation included information on the following:

- What has changed over the last 3 years in IOTC and FAO
- IOTC/FAO relationship
- The legal views
- A short history of the IOTC
- Lessons from a study of recommended agencies
- Comparison of IOTC with other tuna RFMOs
- FAO Costs Explained
- Options for IOTC:
  - a. Stay with FAO
  - b. Stay with FAO but with increased autonomy
  - c. Leaving the FAO

The TCPR noted that the Commission, in 2016, had requested the TCPR to make a recommendation on whether the IOTC should remain within the FAO framework or become a separate legal entity. However, a number of CPCs indicated that they were not in a position to make a recommendation at this meeting. Furthermore, these members highlighted that any decision to leave the current

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arrangement would require comprehensive internal/national consultations and procedures to be completed (para 15).

Other CPCs indicated that they had come to this meeting with the mandate to make the requested recommendation. These members expressed their regret that the meeting could not move forward on this important matter and urged CPCs to initiate the national processes required to obtain the mandate to enable them to make a decision on whether to maintain the institutional link with FAO (para 16).

The TCPR requested the Secretariat to write to CPCs reminding them about the Commission's intention to make a decision on whether the IOTC should remain within the FAO framework or become a separate legal entity. The letter should indicate that this matter will be discussed by the Commission in May 2018 and that the Commission will expect CPCs to have the mandate to discuss this matter. If CPCs are unable to obtain this authorization in advance of the meeting, they are requested to indicate how long it will take to do so (para 17).

The TCPR did concur that it would move forward with the task of developing a new text of the IOTC Agreement (as per the TCPR Terms of Reference). To this end, the TCPR agreed to convene a drafting group that would approach this task in a phased approach (para 19).

**Annex 2. A list of advantages and disadvantages on the matter of maintaining/changing the institutional link with FAO as adapted from the presentation by Prof. Glenn Hurry to the TCPR (from ([IOTC-2018-TCPR01-INF01](#)))**

**Option 1: staying with the FAO**

Potential Benefits of staying in FAO	Possible disadvantages of staying	Noting these consequences
<ul style="list-style-type: none"> <li>• Institutional: FAO provides a safety net regional structure, specialist services, support and protection for developing countries (this was the view of the G77 in 2007).</li> <li>• Administrative: financial and support systems, HR systems, security support.</li> <li>• Staff benefits and allowances well prescribed.</li> <li>• Pensions and health care systems for staff.</li> <li>• Attractive to new staff wanting to join IOTC/FAO.</li> <li>• Currently IOTC gets a reduction on FAO cost recovery charges.</li> </ul>	<ul style="list-style-type: none"> <li>• The FAO DG determines staff appointments including the Executive Secretary.</li> <li>• Support costs seem high to members.</li> <li>• Lack of transparency in costs and recovery.</li> <li>• Inability to enter into 3rd party agreements for extra budgetary funding.</li> <li>• Staff salaries and conditions of service are under the UN Common System.</li> <li>• Inability to deal with Taiwan Province of China.</li> <li>• No real ownership of the IOTC as FAO controls.</li> </ul>	<ul style="list-style-type: none"> <li>• The DG FAO has overall responsibility for IOTC performance.</li> <li>• IOTC will have to accept the rules of the FAO in relation to Art 14 bodies.</li> <li>• IOTC have to be content with the arrangements it has on cost recovery.</li> <li>• Both FAO and IOTC have to rebuild a strong working relationship.</li> <li>• IOTC has to stay (in FAO) with good grace; and this problem has to be put behind you.</li> </ul>

**Option 2: Staying with FAO but with increased autonomy**

Potential Benefits of staying in FAO	Possible disadvantages of staying	Noting these consequences
<ul style="list-style-type: none"> <li>• IOTC currently has some favourable treatment and autonomy from FAO               <ul style="list-style-type: none"> <li>- cost reductions on ICRU and PSC charges</li> <li>- no charge on the Meeting Participation Fund</li> </ul> </li> <li>• IOTC creates its own budget and financial rules</li> <li>• IOTC can plan and undertake travel (although FAO travel day restrictions apply to IOTC staff)</li> </ul>	<ul style="list-style-type: none"> <li>• Inability to deal with Taiwan Province of China</li> <li>• IOTC is unlikely to be granted further concessions or greater autonomy while responsibility and accountability for performance and management rest with the DG FAO</li> <li>• IOTC must pay its share of cost recovery.</li> <li>• FAO travel day restrictions apply to IOTC staff</li> </ul>	<ul style="list-style-type: none"> <li>• DG FAO has overall responsibility for IOTC performance.</li> <li>• FAO rules and accountabilities will apply.</li> <li>• A MoU like IPCC might be attractive to parties if members wanted to leave and FAO wanted to retain IOTC in the FAO framework. This would require maturity, professionalism and respect between parties.</li> </ul>

### **Option 3: Leaving the FAO**

<b>Potential Benefits of an independent IOTC</b>	<b>Possible disadvantages of an independent IOTC</b>
<ul style="list-style-type: none"> <li>• IOTC will have the independence and the control and flexibility to make its own decisions, control its own finances and to decide its own destiny within the bounds of a new convention.</li> <li>• A stronger sense of ownership of the IOTC by the members as it is their own organization.</li> <li>• Control over the appointment of the Executive Secretary and key staff in the IOTC.</li> <li>• Capacity to deal with all entities fishing in the Indian Ocean.</li> <li>• More direct control over financial management and the payment of accounts and entitlements.</li> <li>• Actual, instead of average, charges for staff conditions of service.</li> <li>• Greater transparency and understanding of the costs associated with running a tRFMO,</li> <li>• Annual auditing and reporting on accounts,</li> <li>• A new modernized Convention that reflects the UN Fish Stocks Agreement including the flexibility to include fishing entities.</li> <li>• Ability to negotiate with governments and donors and sign agreements for funds,</li> <li>• Greater control over contracting and project management,</li> <li>• Improved ability to generate external income for projects.</li> </ul>	<ul style="list-style-type: none"> <li>• A safety net when working in the field and in particular in difficult security circumstances. The FAO has regional and country offices that can assist in communicating with members, delivering assistance with activities in member countries and provide support with duty travel of staff as well as members.</li> <li>• Benefit of a FAO passport (laissez passer) for staff working in member countries,</li> <li>• A safety net for developing countries who feel that being part of the FAO provides them with level of support and protection when dealing with developed countries. This sentiment is expressed in the 2007, G77 letter to the FAO. However, in reality it may be delicate for the FAO to interfere in bilateral issues amongst members.</li> <li>• The FAO can act as an intermediary with member and non-member countries over issues such as non-payment of fees and non-engagement.</li> <li>• The FAO system now provides specialist services in security assessment and security training.</li> <li>• FAO provides proven finance and HR management systems,</li> </ul>

### **Professor Hurry's summary comments on the matter**

- IOTC has been unhappy with the FAO relationship on and off for 29 years
- What IOTC decides is largely a political decision not a legal or cost one
- IOTC needs to be able to deal with fishing entities
- On a cost assessment there is little evidence when compared to WCPFC that IOTC will see any major changes to costs or contributions outside of the FAO system
- The cost slightly favour independence and the cost savings might increase
- The four other tuna RFMOs function very well and still have strong links to FAO
- With some concessions (MoU) IOTC members may opt to stay with FAO
- Both parties must be mature and professional about the future ....it is not a contest
- IOTC must make a decision and move forward on this issue as it has, and continues, to effect the performance and growth of the IOTC.