

Report for the 2nd Technical Committee on Performance Review

Eden Island, Mahé, Seychelles, 14-15 March 2019

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ACRONYMS

CPCs	Contracting Party and Cooperating Non-Contracting Party
FAO	Food and Agriculture Organization of the United Nations
IOTC	Indian Ocean Tuna Commission
IGO	Inter-governmental Organisation
ISSF	International Seafood Sustainability Foundation
IUU	Illegal, Unreported and Unregulated
NGO	Non-governmental organization
TCPR	Technical Committee on Performance Review

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EXECUTIVE SUMMARY

The 2nd Session of the Technical Committee on Performance Review (TCPR02) was held Victoria, Mahé, Seychelles from 14 to 15 March 2019 and Chaired by Ms Riley Jung-re Kim. A total of 36 delegates attended the Session, comprising delegates from 17 IOTC Parties, 2 observer organisations, and 3 invited experts

The TCPR reviewed progress on the implementation of the recommendations arising from the report of the 2nd Performance Review Panel, noting that a priority has not yet been set for four of the 63 actions. This includes two actions that have not yet started and two actions that are ongoing. 3 of these actions have been allocated to the Commission and one has been allocated to the TCAC. No changes were made to the status of the actions allocated to the TCPR which remain unchanged.

Draft texts for modernizing and amending the IOTC Agreement and for the establishment of an IOTC Convention in which IOTC is outside the FAO framework, respectively, were presented to the TCPR. The TCPR discussed the text for amending the IOTC Agreement (remaining within the FAO framework) in detail and the general issues raised for each article of the text are recorded in the report.

The TCPR agreed that both draft texts will be circulated to the TCPR for final comments; after which the texts and comments will be presented to the Commission in June 2019 by the TCPR Chairperson.

There was no consensus among TCPR participants as to whether IOTC should remain within the FAO. The TCPR requested that this matter be escalated to the Commission, and for the Commission to make a decision on the institutional link with FAO as soon as possible, as this is required if the TCPR is to be able to undertake further work on the text of the new IOTC agreement.

1. OPENING OF THE SESSION

1. The 2nd Session of the Technical Committee on Performance Review (TCPR02) was held on Eden Island, Mahé, Seychelles from 14 to 15 March 2019. A total of 36 delegates attended the Session, comprising delegates from 17 IOTC Parties, 2 observer organisations, and 3 invited experts. The list of participants is provided at [Appendix 1](#).
2. The Chairperson, Ms Riley Jung-re Kim, welcomed participants to the TCPR02.

2. LETTER OF CREDENTIALS

3. Letters of Credentials were received from 18 CPCs present at the meeting.

3. ADMISSION OF OBSERVERS

4. In accordance with Rule XIV of the IOTC Rules of Procedure (2014), the following observers attended the meeting:
 - a. *Non-governmental Organisations (NGO)*
 - International Pole and Line Foundation (IPNLF)
 - World Wide Fund for Nature (also known as World Wildlife Fund, WWF)
 - b. *Invited Experts*
 - Taiwan, Province of China.

4. ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION

5. The TCPR **ADOPTED** the Agenda provided at [Appendix 2](#). The documents presented to the TCPR are listed in [Appendix 3](#).

5. ACTIONS ARISING FROM TCPR01

6. The Executive Secretary provided feedback on actions arising from the TCPR01.
7. The Executive Secretary reiterated that the TCPR had 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 indicated that this matter would be discussed by the Commission in June 2019 and that the Commission will expect CPCs to have the mandate to discuss this matter.
8. The TCPR had also agreed that a consultant would be recruited to support the work of the drafting group and requested the Secretariat to include this item in its 2018 budget to the Commission and to identify possible funding sources for 2018.
9. The Executive Secretary confirmed that both these actions had been completed.

6. PROGRESS ON THE IMPLEMENTATION OF RECOMMENDATION ARISING FROM THE 2ND PERFORMANCE REVIEW PANEL REPORT

10. Document IOTC-2019-TCPR-02 was presented by the Executive Secretary. This document provided the TCPR with an opportunity to consider the current status of implementation for each of the recommendations arising from the Report of the 2nd IOTC Performance Review Panel (PRIOTC02).
11. The TCPR **RECALLED** that the 63 actions related to the recommendations were allocated to one or more of the following bodies: the Commission, the Secretariat, the Compliance Committee, the Scientific Committee, the Standing Committee on Administration and Finance, the Technical Committee on Allocation Criteria and the TCPR.
12. The TCPR **NOTED** that a priority has not yet been set for four of the 63 actions. This includes two actions that have not yet started and two actions that are ongoing. 3 of these actions have been allocated to the Commission and one has been allocated to the TCAC.
13. No changes were made to the status of the actions allocated to the TCPR which remain unchanged.

7. MAKING A RECOMMENDATION TO THE COMMISSION ON THE INSTITUTIONAL LINK WITH FAO

14. The Executive Secretary provided a verbal update on the progress of the TCPR regarding this matter. He recalled that the TCPR Terms of Reference call on the TCPR to make a recommendation on whether IOTC should remain in the FAO framework or become a separate entity. He noted that the TCPR was not in position to make this recommendation at its last meeting and that to date, the Commission had also provided no clear guidance on this issue. Furthermore the Commission had encouraged CPCs to continue their deliberations on this matter internally and at the TCPR02 in preparation for the 2019 Commission meeting.
15. The TCPR **NOTED** that at this stage there was no consensus among participants as to whether IOTC should remain within the FAO, however there were (i) members that were able to confirm their positions already (ii) members that had expressed views, but were awaiting the outcomes of internal consultation before making official position statements at the Commission Meeting and (iii) members still reviewing the matter.
16. The TCPR **REQUESTED** that this matter be escalated to the Commission, and for the Commission to make a decision on the institutional link with FAO as soon as possible, as this is required if the TCPR is to be able to undertake further work on the text of the new IOTC agreement.

8. REVIEWING THE DRAFT TEXT OF THE IOTC AGREEMENT

8.1. Draft text in support of developing language to modernize the text of the IOTC Agreement

17. The Consultant presented paper IOTC-2019-TCPR02-03 via Skype. This document provided draft text for modernizing and amending the IOTC Agreement (Appendix A) and a draft text for the establishment of an IOTC Convention in which IOTC is outside the FAO framework (Appendix B).
18. The TCPR **NOTED** that the Consultant was not present due to issues with his travel arrangements , and asked the secretariat to work with the FAO to ensure that such an issue will not arise in future with consultants contracted to work with the IOTC.
19. The TCPR discussed the text of the Appendix A in detail and the general issues raised are recorded below for each article of the text.
20. The Chair reiterated that the document was being presented for review and that the discussions would not prejudice a final decision regarding the IOTCs institutional relationship with FAO. Furthermore the exchange of views would not prejudice the official position of any member. TCPR **NOTED** that in response to the TCPR chairperson's email date 1 January 2019, Australia provided comments outlining its preliminary views on both Appendix A and Appendix B. Australia's comments were made available to members during the meeting. These comments were also discussed.

Preamble and Use of terms

21. The TCPR **AGREED** that the preamble would not be discussed as this section is usually agreed once the body of the document is finalised and thus would be addressed at a future stage. Similarly, the definitions were not discussed as this step would overlap with the review of the IOTC Glossary being undertaken by the WPICMM and this work should not be conflicting or duplicated.

Article II. ESTABLISHMENT

22. No comments.

Article III. OBJECTIVE

23. The TCPR **NOTED** that the text in this article could be simplified.
24. The TCPR also **NOTED** a suggestion that the article could include text that provides greater emphasis on the needs of developing coastal states.

Article IV. AREA OF APPLICATION

25. The TCPR **AGREED** that the title of the article should revert to being 'Area of Competence'.
26. The TCPR **NOTED** that there was uncertainty as to what area was being referred to as "adjacent seas". The consultant indicated that this text had been used in the previous agreement, but he was also unclear as to what it means precisely. One member suggested that the Area be defined by reference to the boundaries of ICCAT, CCAMLR and WCPFC thereby avoiding both gaps and areas of overlap.

Article V (deleted). SPECIES AND STOCKS

27. The TCPR **NOTED** that there was general acceptance for retaining this article that had been deleted but that some language should be added to provide the Commission with the flexibility to amend the species listed in Annex B in the future if required by the Commission.
28. The Consultant was of the opinion that amending annexes in agreements is not a trivial task, and other management bodies have preferred to remove the definitive annex of species from their agreements.

New Article V. COASTAL STATES RIGHTS

29. The TCPR **NOTED** that there was a divergence of views on this article. Some members reflected that it was better to be placed alongside flag state duties..
30. The TCPR also **NOTED** that some members stated that the rights of CPCs in their own EEZs is beyond question, but CMMs apply to EEZs and high seas unless otherwise agreed.
31. The TCPR **AGREED** that it should be made clear that CMMs adopted by the Commission shall apply to EEZs of coastal states and high seas unless otherwise agreed and this should be reflected in the agreement.

Article VI. COMPATIBILITY

32. The TCPR **NOTED** that there were divergent views on this article. Some members expressed the opinion that this article clarifies the text of the agreement ensuring that there is clear guidance on the compatibility of high seas and national regulations. Others felt that as CMMs apply to both EEZ and high seas unless otherwise agreed, there is no need to raise an issue of compatibility. These differences will need to be discussed and resolved in the future.

Article VII. MEMBERSHIP

33. No comments.

Article VIII. GENERAL PRINCIPLES

34. The TCPR **NOTED** that there were divergent views on this article. The items listed by the consultant were generally accepted by the TCPR although some changes to the items listed were discussed.
35. A member indicated that there could be additional elements to be added to the article, while others did not agree that the addition of those elements would be appropriate.

Article IX. FUNCTIONS OF THE COMMISSION

36. The TCPR **NOTED** that there were some concerns about the inclusion of sanctions in the text and that this would need to be carefully considered before any agreement could be reached on potential wording of this clause.
37. Some members noted that references to decision making should not be included in this article, but should be referred to in the 'Sessions of the Commission' article.

Article X. SESSIONS OF THE COMMISSION

38. The TCPR **NOTED** the view of a member that Article X is the more appropriate place for including issues such as voting and the decision making processes that are currently included under Article IX.

Article XI. SUBSIDIARY BODIES

39. The TCPR discussed several issues under this article and **NOTED** comments suggesting that a new subsidiary body could be created for capacity development.
40. The TCPR also **ACKNOWLEDGED** that if a subsidiary body of the Commission does not have its own rules of procedure, the rules of procedure for the Commission should apply as a default.
41. The TCPR generally accepted that subsidiary bodies should be mandated to not only provide information, but also advice and recommendations to the Commission.

Article XII. SCIENTIFIC COMMITTEE

42. The TCPR **NOTED** that there were divergent views on this article in relation to which IOTC body might deal with socio-economic matters. Some members nominated the Scientific Committee while others nominated the Compliance Committee which as a result of the additional mandate could be expanded to be called the Technical and Compliance Committee.

Article XIII. COMPLIANCE COMMITTEE

43. The TCPR **NOTED** that some members suggested that the Compliance Committee be renamed as the Technical and Compliance Committee, as it would have an increased technical advisory role.

Article XIV. ADMINISTRATION

44. No comments

Article XV. FINANCES

45. Some members queried whether IOTC should be comparable with FAO and employ FAO procedures in the way it adopts its budget.

46. The TCPR **NOTED** that a budget agreed by consensus has a risk of not being agreed in any one year. This risk could be mitigated by having a procedure whereby if no budget is adopted, the budget from the previous year is adopted by default as is the practice in some other RFMOs.

Article XVI. DECISION MAKING

47. The TCPR **NOTED** that the timeline for new resolutions entering into effect could be reduced.

48. The TCPR **NOTED** the position of some CPCs that consensus on certain matters could be preferable but that this required further consideration.

49. The TCPR was divided on the suggestion by a CPC of adopting a “2 chamber” voting system with the majority of coastal CPCs indicating that they did not accept the concept of a 2 chamber proposal.

Article XVII. IMPLEMENTATION

50. The TCPR **NOTED** a divergence of views on whether to retain or delete paragraph 4. Furthermore the species under the IOTC competence should be defined in the Agreement as IOTC fisheries resources.

Article XVIII. FLAG STATE DUTIES

51. There was general acceptance of the inclusion of an article on ‘Flag State Duties’ in the Agreement text but further discussions are needed on the content.

Article XIX. PORT STATE DUTIES

52. There was general acceptance of the inclusion of an article on ‘Port State Duties’ in the Agreement text but further discussions are needed on the content.

Article XX. MONITORING, COMPLIANCE AND ENFORCEMENT

53. The TCPR **NOTED** a divergence of views, particularly with regards to the introduction of a high seas boarding and inspection programme and/or the use of a centralized VMS system.

54. A member recalled the ongoing work of the CMS undertaken by a consultant and the WPICMM and suggested that the outcome of that work be taken under consideration in the revision of the agreement.

Deleted Article XIII. INFORMATION

55. No comments

Article XXI. OBSERVERS

56. The TCPR **NOTED** that many CPCs supported the need for transparency and full participation of observers in the processes of the Commission, noting that confidentiality issues need to be addressed.

Article XXII. SPECIAL REQUIREMENTS OF DEVELOPING STATES CONTRACTING PARTIES

57. The TCPR **NOTED** a strong general support for the requirements of developing states to be included in the Article. However there was no agreement on the inclusion of disproportionate burden contained in 2c. Many coastal CPCs expressed their strong preference for the requirements of developing states to be prominently included, in particular the principle of disproportionate burden, noting it is derived from UNFSA (Article 24:2c) and operational in one RFMO. However, some members indicated that the definition of disproportionate burden (2c) would need to be clearly defined before it can be considered to avoid facing the challenges in making this concept operational. The idea of creating a working group to elaborate the definition of disproportionate burden and criteria for its application was raised.

58. In relation to paragraph 3, while generally supporting the principle, a member expressed the view this article should not be mandatory. The TCPR **NOTED** that many members contributed and assisted the region in various forms including financial assistance. One member highlighted their substantive contribution but indicated that an RFMO is not an aid agency. Another member indicated that any form of assistance to the region is only done so at will and not in a charitable obligation.

Article XXIII. NON-CONTRACTING PARTIES

59. Some members indicated that the title of the article could better reflect the content of the Article, and because the actions appear to relate to IUU fishing, this article might be more appropriately included in a CMM.

Article XXIV. COOPERATION WITH OTHER ORGANIZATIONS AND INSTITUTIONS

60. No comments

Article XXV. SETTLEMENT OF DISPUTES

61. No comments

Article XXVI. HEADQUARTERS

62. No comments

Article XXVII. ACCEPTANCE

63. No comments

Article XXVIII. ENTRY INTO FORCE

64. No comments

Article XXIX. RESERVATIONS

65. No comments

Article XXX. AMENDMENT

66. No comments

Article XXXI. WITHDRAWAL

67. No comments

Article XXXII. TERMINATION

68. No comments

Article XXXIII. DEPOSITARY

69. No comments

General comments on Appendix B

70. Appendix B was not discussed in detail at the meeting; however, the TCPR **NOTED** that members will have the opportunity to provide comments on Appendix B prior to the Commission meeting.

8.2. Discussion on the processes likely to be required to put a new IOTC Agreement in place (Doc-04).

71. The Executive Secretary presented document IOTC-2019-TCPR02-04. This document provided background on the processes required to develop a new IOTC convention and included elements related to modernising the (current) IOTC Agreement, remaining inside the FAO framework and establishing IOTC as an independent body outside FAO. The implications and associated requirements for each of these elements was presented.

9. REVIEW OF THE TCPR PROGRAMME OF WORK

72. The TCPR **AGREED** on the following workplan to be facilitated by the secretariat.

- a. The text of Appendix A of document IOTC-2019-TCPR02-03 will be retained. (V1appA)
- b. The general comments from TCPR02 (as above) will be inserted into document V1appA beneath the corresponding articles resulting in V2appA.

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- c. The V2appA document will be circulated to the TCPR for comments which will be due on or before the 3rd of May 2019.
 - d. A V3appA document including the TCPR02 comments and the comments from member countries will be presented to the Commission by the TCPR Chairperson.
 - e. The text of Appendix B of document IOTC-2019-TCPR02-03 will be retained (V1appB).
 - f. The V1appB document will be circulated to the TCPR for comments which will be due on or by the 3rd of May 2019.
 - g. A V2appB document including the comments from member countries will be presented to the Commission by the TCPR Chairperson.
73. The TCPR **REQUESTED** that the Commission provide guidance and direction on the future work of the TCPR regarding the development of the new text of the IOTC agreement.

10. OTHER BUSINESS

74. There was no other business

11. ADOPTION OF THE REPORT OF THE 2ND TECHNICAL COMMITTEE ON PERFORMANCE REVIEW (TCPR02)

75. The TCPR **ADOPTED** the report of the 2nd Session of the Technical Committee on Performance Review (IOTC-2019-TCPR02-R) on 15 March 2019.

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APPENDIX 2.
AGENDA OF THE 2ND TECHNICAL COMMITTEE ON PERFORMANCE REVIEW

Date: 14-15 March 2019

Venue: Eden Bleu Hotel, Eden Island, Seychelles

Time: 9:00–17:00 daily

Chairperson: Ms Riley Jung-re Kim (IOTC Vice-Chairperson)

1. **OPENING OF THE SESSION**
2. **LETTER OF CREDENTIALS**
3. **ADMISSION OF OBSERVERS**
4. **ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION (IOTC-2019-TCPR02-01)**
5. **ACTONS ARISING FROM TCPR01 (No paper)**
6. **PROGRESS ON THE IMPLEMENTATION OF RECOMMENDATIONS FROM THE 2ND PERFORMANCE REVIEW PANEL REPORT (IOTC-2019-TCPR02-02)**

The Commission has requested that the TCPR monitor and report on the progress of the implementation of the recommendations arising from the report of the 2nd Performance Review Panel (IOTC-2016-PR1OTC02-R).

7. **MAKING A RECOMMENDATION TO THE COMMISSION ON THE INSTITUTIONAL LINK WITH FAO (No paper)**

The TCPR's terms of reference calls on the TCPR to make a recommendation to the Commission to decide whether the IOTC should remain within the FAO framework or become a separate legal entity. At the last TCPR meeting (March 2018), a number of CPCs indicated that they were not in a position to make a recommendation at this meeting.

At the Commission meeting in (June) 2018, most Members provided an update on their views relating to the matter of maintaining/changing the institutional link with FAO, and again there was no clear direction. Members were encouraged to continue their national discussions and were reminded that the TCPRs work to develop the text of a new IOTC agreement (phase I and II of the TCPR workplan) would continue in the meantime.

The Commission noted that the TCPR will be seeking a conclusion on the maintaining/changing the institutional link with FAO at the next meeting of the Commission (S23 in 2019) in order to be able to adapt the text of the IOTC Agreement accordingly and present it to the Commission by 2020.

This agenda item provides an opportunity to improve understanding of the issues surrounding this matter, exchange views, and prepare for further discussions on the matter at the 2019 commission meeting.

8. **REVIEWING THE DRAFT TEXT OF THE IOTC AGREEMENT (IOTC-2019-TCPR02-03 & 04)**

8.1. Draft text in support of developing language to modernize the text of the IOTC Agreement (Doc-03) was sent to the TCPR for review on 1 January 2019. Depending on the nature of any comments received by the end of February, an updated document may be produced for the meeting. Notwithstanding this, the text will be discussed by the TCPR before an agreed draft is provided to the Commission in June 2019.

8.2. Discussion on the processes likely to be required to put a new IOTC Agreement in place (Doc-04).

9. **REVIEW OF THE TCPR PROGRAMME OF WORK**

10. **OTHER BUSINESS**

11. **ADOPTION OF THE REPORT**

APPENDIX 3.
LIST OF DOCUMENTS

Document reference (website link – click here)	Title
IOTC-2019-TCPR02-01	Draft: Agenda for the 2nd Technical Committee on Performance Review
IOTC-2019-TCPR02-02	Implementation of PR2 actions by bodies of the Commission
IOTC-2019-TCPR02-03	Draft IOTC Agreement text
IOTC-2019-TCPR02-04	Matters relating to putting a new Agreement in place – a discussion document