



## CHAIR'S QUESTIONS PER THEME FOR AGENDA ITEM 6 – THEMATIC REVIEW OF ALLOCATION REGIME

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This list of questions and topics under each theme has been prepared to help stimulate the thematic discussions during TCAC07 under Agenda item 6 and assist the chair in addressing any information gaps.

Delegations are encouraged to use it in their preparations for the TCAC07 meeting, and in their interventions under each theme during the TCAC07 meeting.

Delegations are also encouraged to express their views and ideas under each theme during the meeting, in particular any new idea to help advance the development of consensus on an allocation regime.

### Theme 1: GENERAL PRINCIPLES FOR ALLOCATION REGIME

From the beginning of the TCAC process, delegations appear to have supported the idea that the IOTC Allocation Regime would contain general principles to help guide and frame discussions on the sharing of tuna and tuna-like species in the IOTC.

1. What are each delegation's top 3 priority principles that they would like to see reflected in the IOTC Allocation Regime?

### Theme 2: ELIGIBILITY TO ALLOCATIONS

1. Who should be eligible to IOTC allocations?

*Please express views related to not only Contracting Parties, but also to Cooperating non Contracting Parties, future new entrants to the Commission, and Non Contracting Parties.*

2. Should there be conditions associated with eligibility to allocations (e.g. payment of Commission dues; non-compliance record; etc)?

### Theme 3: SCOPE OF ALLOCATION REGIME

1. Should the Allocation Regime apply to all IOTC species/stocks and all gear types?

2. Or should the scope of the Regime be limited to specific species/stocks or gear types, or groups of stocks/species, such as tropical tunas, neritic tunas or temperate tunas?

3. If limited, to which species/stocks or gear types should the Regime apply?

*Please explain the rationale for excluding species/stocks or gear types in your interventions.*

\* Note that it is possible to apply the regime to all IOTC species/stocks and gear types, but to phase the implementation of the Regime, starting with certain species/stocks or gear type, and moving to other species/stocks and gear type with time, or to transition the implementation based on availability of data and information required to fully implement an allocation regime. This approach is foreseen under Theme 8 Transition.

## Theme 4: ALLOCATION STRUCTURE

Discussions to date support an allocation structure divided in 3 groups: Baseline Allocation; Supplementary/Complementary Allocation, and Corrections.

### I- Baseline Allocation

1. Who should be eligible to a Baseline Allocation? Contracting Parties only? Cooperating Non Contracting Parties? Future new entrants in the Commission?
2. What should form the basis of a **Baseline Allocation**? There appears to be consensus that catch history should be a factor.
  - a) How should **catch history** be defined?
  - b) Should historic catches from IUU fishing be excluded from catch history?
  - c) What should be the catch reference period used in determining average catch history?
  - d) Should the catch reference period vary per species/stocks?
3. What other factors, in addition to catch history, should be included in formulating a Baseline Allocation for IOTC?
  - a) Should an agreed upon transfer of catch history from catch history holders, form part of a Baseline Allocation?
  - b) Which States should be eligible to receive this transferred catch history? All Contracting Parties? Should Cooperating Non Contracting Parties be eligible? Or should this transfer be limited to Coastal State Contracting Parties, or only those with no catch history?
  - c) What should be the criteria for sharing this transferred catch history among eligible States?
  - d) How much catch history should be transferred, when and how?
  - e) Consider whether spatial distribution of catch history is necessary in the context of a satisfactory transfer of catch history?

### II- Complementary Allocation

Discussions to date propose a portion of the TAC to be dedicated to Coastal States, in recognition of their status, dependence, needs, interests and aspirations in the form of supplementary or complementary factors or criteria, in addition to the Baseline Allocation.

4. Who should be **eligible** to these supplementary or complementary allocations?
  - a) Should it be all Coastal States, or should this be limited specifically to Coastal Developing States and SIDS?
  - b) What source should be used to determine the Developing State and SIDS status?
  - c) Should States with historic catch be eligible, or not, to this supplementary or complementary allocation? Or should there be a catch history threshold above which these States would not be eligible?
  - d) What about Cooperating Non-Contracting Parties and future new entrants? Should they be eligible to receive a complementary allocation?
5. What should be the basis for **sharing** this supplementary or complementary allocation among those eligible States? In other words, what criteria should be used to determine the shares of the complementary allocation among those eligible?

In your interventions, please factor in the following criteria discussed in previous TCAC meetings:

- size of the EEZ in the IOTC Area;
- relative abundance of IOTC species in EEZ;
- developing and social status - using UN standards;
- dependence and needs - based on employment in fishery, level of catch, imports and exports, and food security needs;
- interests and aspirations – based on Fleet Development Plans

### III- Corrections

6. Once Baseline and Complementary Allocations have been determined, should there be a correction mechanism and related factors to ensure a fair and equitable outcome?

- a) Is there a way to ensure this outcome within the Supplementary Allocation?
- b) If not, who should be eligible for this correction mechanism?
- c) What factors and conditions should be considered in making such corrections?

### IV- Other Additional Factors

7. Should the IOTC consider adding other factors or criteria for receiving fish allocations as incentives for positive contributions towards the sustainable management of the IOTC resources?

8. If so, should such factors include contributions to the Commission for the conservation and management of the resource; contributions towards scientific work and research?

## Theme 5: ALLOCATION ADJUSTMENTS

### Over-catches & Non-Compliance

Please refer to previous TCAC discussions in TCAC05, reflected in IOTC-2019-TCAC05-R paragraphs 30-31, and Appendix 5 to this report

1. Should past over-catches proportionally affect the level of future allocations through penalties or adjustments?
2. Should non reporting of catch impact future allocations? If so, under what conditions?
3. Should repeated over-catch affect eligibility to allocations?
4. Should broader non-compliant behaviour affect eligibility to allocations?
5. Would Delegations support a recommendation from the TCAC to the Commission to share **Appendix 5 to the IOTC-2019-TCAC05-R** (attached) with the Compliance Committee and seek for the Commission to ask the Compliance Committee to respond to the noted questions in the Appendix, so as to help the TCAC advance its work on the issue of allocation adjustments for non-compliance and over-catches?

### Stock Decline Adjustments

6. Should the Allocation Regime provide for a gradual decline of allocations in the case of stock declines, or would such a mechanism be better suited for Harvest Control Rules?

7. In the context of stock declines, should there be a minimum threshold for allocation adjustments for overwhelmingly dependent Coastal Developing States?

## Theme 6: WEIGHTING OF ALLOCATION CRITERIA

1. Should discussions regarding weighting of allocation criteria be held concurrently with the development of the allocation criteria, or should it be pushed to a second phase?
2. Do delegations support weighting of the various criteria formulated on the basis of a percentage of the overall TAC for a given stock?
3. Do delegations have views on what proportion of the TAC should be given to Baseline Allocation and to Supplementary Allocation?
4. Are there other means of weighting allocation criteria, in a systematic way, that Delegations would like for the TCAC to consider?

## Theme 7: IMPLEMENTATION OF ALLOCATION REGIME

Some of the topics discussed under themes 7 and 8 may not necessarily be reflected in an Allocation Regime, but instead in an implementation plan for the IOTC Allocation Regime. Under its current mandate, the TCAC could make recommendations to the Commission in respect of the implementation and transition to a new allocation regime. This could include a proposed implementation approach for the Commission and its relevant bodies to consider.

### Application

1. Should the Allocation Regime require an Application to be made by the Contracting Party? By the Cooperating Non-Contracting Party? By the New Entrant?

### Total Allowable Catch (TAC)

2. Allocation regimes discussed in the TCAC to date imply the setting of TAC for the stocks. However, not all IOTC stocks have been subjected to TAC decisions or a TAC establishment process.

While the requirement to establish TACs for allocated stocks should be embedded in the Allocation Regime, would Delegations support that the TCAC recommend to the Commission that it establish a plan and process, with the support of the Scientific Committee, to determine and set TACs for IOTC stocks?

### Data Gaps

3. Allocation Regimes require data to implement. Some IOTC stocks are data deficient. In addition to factoring in the level of data in determining to which stock to apply the Allocation Regime, does the TCAC wish to recommend to the Commission that certain measures or strategies be taken to address data gaps or data poor stocks?

### Allocation Transfers

4. Do delegations support the transfer of IOTC allocations? If so, should this be allowed on a temporary basis or on a permanent basis?
5. If allowed, what should be the terms and conditions for such transfers?

### Allocation Process

6. An allocation regime implies a regular process for determining allocations based on established criteria. An important part of this work is to estimate and reconcile catches used for establishing catch history, and to adjust allocations based on past catches (including adjustments under theme 5) and any allowed transfers.

- a) What are Delegations' views on what this allocation determination process should entail (catch determination, reconciliation, reviews, adjustments, appeals)?

- b) Should the IOTC Allocation Regime include a mechanism – such as a **catch reconciliation mechanism** - to review and adjust allocations based on previous year(s) and current year reported catches?
- c) Which IOTC body is best placed to do this work?

### Term of Allocations

- 7. Once allocations have been determined, for how long should these allocations be in place?
- 8. Views expressed to date include fixed term – such as 1 year, or 5 years - or individual terms for each stock, based on stock assessment cycles.

Should the TCAC support allocation terms based on stock assessment cycles, would delegations support a recommendation to the Commission and the Scientific Committee to rotate these assessments to spread out the timeframe for setting TACs and allocations?

## Theme 8: TRANSITION TO A NEW ALLOCATION REGIME

- 1. Do delegations wish for the TCAC to propose a **list of priority stocks** to which to apply the Allocation Regime in its initial phase?
  - a) If so, what would be the basis for determining this priority list (e.g. stocks for which IOTC has sufficient data; status of stock; etc)?
  - b) Does the TCAC require information or advice from the Secretariat, or the Scientific Committee to determine this priority list?
  - c) Note that if a priority list of stocks for implementation of the allocation regime is determined, this should help guide the priority stocks for establishing TACs.

- 2. Should there be a planned **process for establishing the initial allocations** under the new Allocation Regime? Recognizing that a large portion of the work will be conducted in this initial phase, do delegations wish to recommend a plan and timeframe for accomplishing this?

Note the linkages with the allocation process discussed under Theme 7. Are there specific process requirements unique for the initial phase of establishing the allocations? Should this be provided in the Allocation Regime?

## Theme 9: FINAL CLAUSES

- 1. Recognizing that there are standard final clauses for allocation regimes, are there specific clauses that TCAC delegations wish to see in the Allocation Regime, such as:
  - a) Duration of the Allocation Regime
  - b) Ability to review and amend the Allocation Regime, after a period of time
  - c) Legal clause(s) protecting or safeguarding legal positions
  - d) Others?

## Appendix 5 to the IOTC-2019-TCAC05-R

### COMPLIANCE FACTORS TO BE CONSIDERED IN THE ALLOCATION SYSTEM

The IOTC allocation system should recognise the contribution by CPCs to the effective conservation and management of fisheries resources in the IOTC Convention Area. It is recognised that this could be achieved through a range of means but that, importantly, the IOTC allocation system should include two core compliance elements which, together, aim to incentivise and promote compliance with the allocation system and with IOTC measures more broadly:

- 1) Penalties for overcatch
- 2) Consideration of past compliance as a factor of a CPC's allocation

This paper considers compliance issues that need to be taken into account in any allocation system adopted by the IOTC. This paper captures progress made at TCAC05 with the aim of continuing discussion at the 16th session of the Compliance Committee in June 2019. This paper has been prepared without prejudice to any existing or future allocation proposal to be presented to the Commission, and in full recognition of the fact that parallel processes are occurring to consider improvements to the IOTC compliance process.

There is no decision as yet on how frequently the allocation formula would be applied (and therefore duration of the allocation), but this is relevant to the use of the compliance factors considered below, as compliance changes through time.

#### ***Penalties for overcatch***

There is general support to include a provision for a quota overcatch penalty.

In the current G16 proposal, it is proposed a default deduction ratio of 1.2:1 for overcatch of an annual allocation to be applied to the following allocation period, or a deduction ratio of 1.5:1 if that deduction is deferred to the subsequent allocation period. It also proposed that a second or greater consecutive overcatch result in a deduction ratio of 2:1, and no deferral would be permitted (see para 20(b) of the G16 proposal). **The CoC should advise on whether this is considered an adequate mechanism to address overcatch.**

In addition, there is a need to account for persistent or significant overcatch; and persistent or significant non-reporting. There is general support for the need to take a graduated approach. Noting the need to consider capacity and preserve equity in the system, **CoC should advise on the following issues to be decided:**

- 1) After what period of time should there be an additional consequence beyond the normal over catch penalties. A period of 3 years was discussed.
- 2) Whether, in addition to a temporal factor, a percentage or tonnage threshold should be applied.
- 3) What penalty in this circumstance should be applied, noting that the overcatch could also be a reflection of a capacity issue.

It is also recognised that there is a need to develop a mechanism to reconcile reported catch against CPC allocations. It is proposed that this be discussed by the Commission meeting in 2019.

If it is not possible to adopt such a mechanism prior to the allocation system being adopted, it was considered that there is a need for each CPC to be transparent about how reported data is being verified. The annual compliance questionnaire is one way to achieve this. It was also identified that there needs to be a mechanism to account for when overcatch is not discovered until a later point in time. **CoC should advise on the best way to achieve this.**

### ***Past compliance history***

It is recognised that compliance with IOTC Resolutions is important, and that penalties could be applied to CPCs in the allocation system for various infringements as a way to incentivise compliance. It was also recognised that, at this stage, the ability to comprehensively consider past compliance history in this system is constrained in the absence of a robust compliance monitoring scheme (CMS), which is under development by the IOTC. It was also considered that, for fairness, only compliance which can be objectively assessed by the Secretariat should be part of the penalty regime – at least until a CMS is adopted. Therefore it was considered that a two stage approach could be taken.

**The Compliance Committee, with assistance from the Secretariat, should advise the TCAC on the following elements:**

- Identification of Resolutions which are relevant for this exercise and where compliance could be objectively assessed by the Secretariat, including the relevant paragraphs. For example, Resolution 15/02 was identified: data provision is crucial, and integral to a successful allocation system; but it is also simple for the Secretariat to determine whether requisite data has been received or not. Applying a penalty to a CPC with a vessel on the IUU Vessel List was also discussed, but only to vessels linked to the IOTC IUU Vessel list (not as a result of cross-listing), and further consideration would need to be given to situations where the flag State is in the process of taking effective action but the vessel has not yet been de-listed.
- The extent of the penalty to be applied to the allocation system (deduction) as a percentage of the total allowable catch as well as the criteria for applying the penalty. It would need to be clear how far back compliance is considered (eg compliance with Resolutions for [x] years), and is relevant to the duration of the allocation period more generally. It would also need to be clear about the basis for the penalty – for example, it should be applied for no data submission, rather than simply late data submission in the relevant period.
- The use of the non-attributed quota. It was suggested that if a penalty is applied, that quota should not be redistributed (as this leads to too much variability in allocations and fleets are not equipped to respond); but could be set aside as a conservation benefit.

The allocation system could also reflect that once the Commission has adopted a fit-for-purpose compliance monitoring scheme to assess compliance by each CPC, that the Commission may develop a different mechanism to appropriate adjust allocations in a way that incentivises compliance in IOTC.

### **Other issues**

TCAC should advise on whether the penalties and other compliance factors should be embedded in the allocation system Resolution or a separate Resolution