

IWC68

Finance and Administration Committee

Paper submitted by the IWC Secretariat

Proposed Cooperation Agreement (CA)

between IWC and

the UN Food and Agriculture Organization's Indian Ocean Tuna Commission (IOTC)

Decision required by F&A and Commission:

Review and consider the proposed Cooperation Agreement between IWC and FAO/IOTC for adoption and implementation

This draft Cooperation Agreement (CA) was prepared by the Secretariat of the Indian Ocean Tuna Commission (IOTC - in consultation with FAO) and the Secretariat of the IWC, reflecting collaboration already underway between the two organisations. The IOTC is one of several potential partners with IWC in the FAO ABNJ Common Oceans II programme that will be funded over a 4.5-year period to address cetacean bycatch in tuna fisheries. The draft CA was approved by consensus by the 30 parties to IOTC¹ on 01/09/2022. As noted in the first paragraph in Annex 1 to of Attachment A, whilst a Letter of Intent (LoI) was the initial proposal for formalizing the collaborative work of the two organisations, a CA was subsequently agreed by IOTC parties as a more flexible and expeditious approach.

As noted in the chapeau of the draft CA, the overall objective of the agreement is:

To strengthen the monitoring and assessment of cetacean bycatch and the implementation of proper and effective conservation and management measures to reduce it, as noted in the FAO Code of Conduct For Responsible Fisheries, the International Guidelines on Bycatch Management and Reduction of Discards and the Technical Guidelines to Prevent and Reduce Bycatch of Marine Mammals in Capture Fisheries.

The planned activities under the CA cover three themes:

- 1) *Assessing cetacean bycatch, and data gaps across an ocean basin to understand the scale and scope of issues in relevant fisheries and provide a baseline;*

¹ IOTC Contracting Parties: Australia, Bangladesh, China, Comoros, Eritrea, European Union, France (Territories), India, Indonesia, Iran (Islamic Rep of), Japan, Kenya, Rep. of Korea, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Oman, Pakistan, Philippines, Seychelles, Somalia, South Africa, Sri Lanka, Sudan, United Rep. of Tanzania, Thailand, United Kingdom, Yemen. Cooperating Non-Contracting Parties: Liberia. There are 22 members of IOTC that are also members of the IWC (counting EU members).

- 2) *Building regional capacity and awareness on cetacean bycatch and available solutions; working with key countries to train fishers, fisheries managers and observers in cetacean bycatch mitigation, monitoring, safe handling and release and the review and dissemination of relevant information on best practices to address bycatch.*
- 3) *Collaboratively developing recommendations to address cetacean bycatch for consideration by multi-lateral environmental and fisheries agreements.*

The draft CA is attached as Attachment A.

Attachment A

Draft Cooperative Agreement between IOTC/FAO and IWC

NB: the text in *red* signifies the IOTC-IWC specific text to the basic FAO template

The CA remains a 'Draft' document pending IWC review and adoption



DRAFT
Cooperation Agreement

between the

Food and Agriculture Organization of the United Nations (FAO)

and the

International Whaling Commission (IWC)

on cooperation and coordination of activities without transfer of funds

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

Article 1 – Scope and areas of cooperation

- 1.1 The Parties agree to cooperate and coordinate the implementation of their respective activities ('the implementation activities') as described in the attached Annex I, which forms an integral part of this Agreement. The implementation of the activities undertaken by a Party is subject to that Party's rules, procedures, policies and administrative practice, including any requirements for internal clearances.
- 1.2 These Parties will cooperate as follows:

The Parties will cooperate to strengthen the monitoring and assessment of cetacean bycatch and the implementation of proper and effective conservation and management measures to reduce it.

Article 2 – Coordinating mechanisms

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

Article 3 – Resources

- 3.1 The present Agreement implies no financial or other resource commitment by either Party. The implementation of **activities** is subject to the availability of staff and

financial resources. Each Party shall be fully and solely responsible for the funding of its activities under this Agreement, as well as the administration and management of those funds.

- 3.2 Although it is understood that this Agreement is concluded on the basis that there shall be no transfer of funds between the Parties if, in the course of implementation, it is considered that implementation could be enhanced or facilitated by the transfer of funds from one Party to other for activities under this Agreement, this transfer of funds shall be made under an appropriate separate agreement, to be negotiated in good faith between the Parties.

Article 4 – Relationship and responsibility of the Parties

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

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

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

Article 6 - Intellectual Property Rights

- 6.1. Intellectual property rights, in particular copyright, in material such as information, software and designs, made available by IWC and FAO to be used to carry out activities under this Agreement shall remain with the originating Party. Appropriate authorizations for use of such materials by the other Party will be addressed in the agreements concluded in accordance with Article 3.2 above.

- 6.2. All intellectual Property Rights in materials that should be developed under this Agreement such as, but not limited to, information, software and designs, will be addressed in the agreements concluded in accordance with Article 3.2 above.
- 6.3. Both Parties shall be duly acknowledged in any work resulting from the implementation activities under this Agreement and the wording of such acknowledgement shall be agreed between the Parties.

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

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

Article 8 – Notices

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

For FAO:	Executive Secretary Indian Ocean Tuna Commission / NFITD Tel +248 4225494 IOTC-Secretariat@fao.org
For IWC	Executive Secretary International Whaling Commission Tel: +44 1223 233 971 Secretariat@iwc.int

- 8.2 Each Party shall promptly notify the other in writing of any anticipated or actual material changes that may affect the implementation of this Agreement.
- 8.3 Notice shall be considered as effected on the date of delivery to the addressee.

Article 9 – Settlement of disputes

- 9.1 Any dispute between the Parties concerning the interpretation and execution of this Agreement, or any document or arrangement relating thereto, shall be settled by negotiation between the Parties. Any differences that may not be so settled shall be brought to the attention of the Executive Heads of the two organizations for final resolution.
- 9.2 Any dispute between the Parties which is not settled amicably in accordance with the foregoing paragraph shall, at the request of either Party, be settled by arbitration in accordance with the UNCITRAL Arbitration Rules, as at present in force. Decisions of the arbitral tribunal shall be final and binding to the Parties and the arbitral tribunal shall have no authority to award punitive damages.
- 9.3 The conciliation and the arbitration proceedings shall be conducted in English and the place of arbitration shall be Rome, Italy. The Parties may request conciliation while the Agreement is in force or within a period not to exceed twelve (12) months after the expiry or the termination of the Agreement. The Parties may request arbitration not later than ninety (90) days after the termination of the conciliation proceedings.

Article 10 – Privileges and Immunities and Applicable Law

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

Article 11 – Entry into force, Termination, Amendment

- 11.1 This Agreement shall enter into force on the date of its signature by both Parties. If signature occurs on separate dates, it shall enter into force on the date of the last signature. The Agreement shall remain in force for a duration of 5 years. The duration of the Agreement may be extended by mutual written consent of the Parties if deemed necessary.

11.2 This Agreement may be terminated by either Party upon **three (3) months**² written notice given to the other Party. In that event, the Parties will agree on measures required for the orderly conclusion of any ongoing collaborative activities and the settlement of any outstanding obligations.

11.3 This Agreement may be amended by mutual written agreement of the Parties. Such amendments shall enter into force **one (1) month** following notifications of consent by both Parties to the requested amendments or on a date otherwise agreed in writing for the amendment to enter into force.

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

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

² Proposed notice period to be adapted to the duration of the Agreement.

Annex I

1. Collaboration activities and implementation modalities

Background

The IOTC Scientific Committee through its Working Party on Ecosystems and Bycatch (WPEB) has been involved in several informal collaborative workshops with the IWC to identify collaborative work areas between the two organisations relating to bycatch of cetaceans in Indian Ocean tuna fisheries.

These collaborations were initiated due to the lack of expertise within the Scientific Committee on cetacean bycatch issues as well as the lack of data available on cetaceans at the IOTC Secretariat. As noted previously, these collaborations were informal and identified potential areas of collaboration that would be beneficial to both organisations.

In 2021, an amended conservation measure IOTC–2021–S25–PropB *On the Conservation of cetaceans* was presented to the Commission. The Proposal was deferred because:

The Commission NOTED that the proposal was not based on advice provided by the Scientific Committee. As such, it was suggested that available information on cetaceans, including bycatch of cetaceans by gillnet within the EEZs of coastal States, should be reviewed by the Scientific Committee so that the future iteration of this proposal can be based on the best available science for the species concerned.

There is a lack of expertise within the IOTC Scientific Committee on cetacean bycatch issues as well as a lack of data available on cetaceans at the IOTC Secretariat. In order to improve the information available to the Scientific Committee as well increase the participation of experts on cetacean issues in IOTC scientific meetings, a formalisation of the collaboration between the IOTC and IWC Secretariats in the form of a draft Letter of Intent (LOI) was presented to the WPEB17 in 2021. Consequently, the draft LOI was presented to the Scientific Committee in 2021 who recommended that the letter be presented at the Commission for further consideration.

IOTC Commission approval for a Cooperation Agreement with IWC

At its 26th Session (2022) the Commission agreed on a draft text of a LOI between FAO and IWC. A FAO LOI is simply to record an intention to collaborate in the future and does not identify concrete activities. This instrument is essentially used to determine whether a prospective collaboration partner is acceptable to FAO, and is usually a precursor to a future arrangement when the nature of the collaborative activities are better understood. In the case of the proposed collaboration between IOTC and IWC, the Scientific Committee has already identified areas of information sharing which are of mutual benefit to both organisations.

Given that most IOTC collaboration arrangements are flexible with respect to commitment, do not have strict legal arrangements, and do not involve the transfer of funds between parties, the FAO Legal Office Counsel, subsequently advised the Commission that a FAO Cooperation Agreement could be a more suitable instrument for such cases. Subsequently the LOI was replaced with this Cooperation Agreement with no substantial changes to the operational text of the previously agreed arrangement.

2. FAO's role and responsibilities

IOTC shall be responsible for the following:

- (1) Appoint one counterpart from among the staff of the IOTC Secretariat to be responsible for the overall supervision of the Collaboration and oversee the practical collaboration activities.
- (2) The IOTC Secretariat will ensure that all data sharing will be consistent with the provisions stipulated in Resolution 12/02 on Data Confidentiality Policy and Procedures. Accordingly, the IOTC Secretariat will ensure that permission is obtained from relevant CPCs to share any data that are not publicly available.

3. IWC's role and responsibilities

IWC shall be responsible for the following:

- (1) Appoint counterparts from among the staff of the IWC Secretariat to be responsible for the overall supervision of the Collaboration and oversee the practical collaboration activities.
- (2) As appropriate, report to the IOTC's Working Party on Ecosystems and Bycatch on relevant activities.

4. Coordinating mechanisms

Interaction and information exchange through the scientific committees of both parties, as well as communication between the Secretariats.