



**SOUTH WEST INDIAN OCEAN FISHERIES PROJECT  
(SWIOFP)**

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**HARMONIZATION OF FISHERIES LEGISLATION AND  
ASSESSMENT OF THE IMPLEMENTATION OF  
FISHERIES MANAGEMENT PLANS AND RIGHTS  
BASED MANAGEMENT IN THE SOUTH WEST INDIAN  
OCEAN**

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**Judith Swan**

**CONSULTANCY FOR THE HARMONIZATION OF FISHERIES LEGISLATION AND ASSESSMENT OF THE  
IMPLEMENTATION OF FISHERIES MANAGEMENT PLANS AND RIGHTS BASED MANAGEMENT IN THE  
SOUTH WEST INDIAN OCEAN**

**SWIOFP-WWF**

**REPORT**

**FINAL**

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**Judith Swan, Consultant**

## **EXECUTIVE SUMMARY**

This report is comprised of eight components, and applies to the South West Indian Ocean (SWIO) countries Comoros, Kenya, Madagascar, Mauritius, Mozambique, Seychelles, South Africa and the United Republic of Tanzania.

A review of fisheries legislation of SWIO countries in the context of harmonising and promoting shared and/or straddling stock management shows that existing legislation is generally weak and outdated, but five countries are currently developing new laws. Indicative legal text is provided for a wide range of legal provisions, including monitoring, control and surveillance (MCS).

A draft fisheries management legal agreement for shared or straddling fisheries resources in the SWIO range States, with bilateral and multilateral options is provided.

A review and assessment of the extent Rights Based Management (RBM) systems have been applied in the SWIO countries, including its practice and level of understanding, was undertaken. Although efforts are being made in some countries and fisheries to implement RBM systems, many concerns were expressed, including the need for better understanding of what constitutes RBM, data collection, training, awareness raising and substantial government commitment. Options for adoption, including piloting, were considered and supporting legislation reviewed. Development of RBM guidelines was also addressed and case studies were presented, including considerations for adopting RBM for tuna fisheries.

The extent of development and implementation of national and regional fisheries management plans was reviewed, including existing plans and those under development. The extent to which the EAF approach has been incorporated in fisheries management plans was described, noting that it depended mainly on support by EAF-Nansen which is currently assisting in the development of seven such plans in the region. In many countries, it was thought that EAF-Nansen work represents a positive step forward but that a clear basis for implementation was needed. National legislation was considered inadequate for ensuring full and effective implementation of the EAF.

An assessment and recommendations were given relating to the linkages and implications for improved regional fisheries management among the SADC Fisheries Protocol, COI-IOC Fisheries Strategy, the SWIOFC and IOTC, with a focus on MCS.

## **ACKNOWLEDGEMENTS**

The consultant would like to extend her gratitude to all those who gave generously of their time to discuss, inform and provide guidance on the wide range of issues addressed in this document.

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## **ACRONYMS**

AIDCP	Agreement on the International Dolphin Conservation Program
ASCLME	Agulhas and Somali Current Large Marine Ecosystem
AU-IBAR	African Union Interafrican Bureau for Animal Resources
BC	Basin Commission
BMUs	Beach Management Units
COI-IOC	Indian Ocean Commission
CFMA	Collaborative Fisheries Management Area
CPC	IOTC Cooperating Non-contracting Party
CROP	Council of Regional Organisations of the Pacific
EAC	East African Community
EAA	Ecosystem approach to aquaculture
EAF	Ecosystem approach to fisheries management
FIT	Fishermens' Investment Trust (Mauritius)
IATTC	Inter American Tropical Tuna Commission
IOTC	Indian Ocean Tuna Commission
IRFS	Implementation of a Regional Fisheries Strategy for the ESA-IO region (Smartfish)
LVFO	Lake Victoria Fisheries Organization
ITQ	Individual transferable quota
MACEMP	Management of Marine and Coastal Environment Project
MCS	Monitoring, control and surveillance
MPA	Marine Protected Area
NFFP	NEPAD-FAO Fish Programme
PSRP	Plan Régional de Surveillance des Pêches Dans Le Sud-Ouest de L'Océan Indien (COI-IOC Regional fisheries monitoring plan)
REC	Regional Economic Commission
RBM	Rights-based management
RFB	Regional Fishery Body
SADC	Southern Africa Development Community
SIOFA	South Indian Ocean Fisheries Agreement
SPIF	Sustainable fisheries partnership fund for sub-Saharan Africa
SWIOFC	South West Indian Ocean Fisheries Commission
SWIOFP	South West Indian Ocean Fisheries Project

ToRs

Terms of Reference

WWF

World Wildlife Fund

## **1. INTRODUCTION**

### **1.1 Background of the Project**

The objectives of the South West Indian Ocean Fisheries Project (SWIOFP), Component 6 - Strengthening Regional and National Fisheries Management, are to support an emerging regional fisheries management framework in the SWIO countries and to build capacity in regional and national fisheries management bodies. Under this Component, each country is to have a national or subregional management plan for at least one fishery or joint plan between two or more countries where applicable.

The African Union Interafrican Bureau for Animal Resources (AU-IBAR) and World Wildlife Fund (WWF) have been advocating rights-based management (RBM) approaches to improve the conservation and economic performance of marine fisheries resources in the Western Indian Ocean region with a focus on shrimp, artisanal fisheries and tuna fisheries with a view to support the Western Ocean Coastal States to develop a common understanding of and exploring the practicability for implementing RBM in the subsector.

The need for effective and ongoing regional cooperation and harmonization among SWIO member countries for the management of the region's living marine resources is essential given the close geographic proximity of countries, stock structures and distribution and the possibility of one country undermining regional management efforts if it acts unilaterally and not in concert with other SWIO member countries.

It is recognized that such cooperation and harmonization in fisheries management should be underpinned by clear and consistent laws and agreements, which *inter alia* allow for key management approaches such as RBM and ecosystem approach to fisheries management (EAF) and consistency in implementation and enforcement. Other tools that support such cooperation include stocktaking and assessment of management plans or systems developed to date and of linkages among relevant regional organizations.

To this end, four overall outputs were foreseen:

1. To review and make proposals for the harmonisation of fisheries legislation with respect for the management of shared and/or straddling stocks taking in account the previous work carried by the Indian Ocean Commission (COI-IOC), African Union, the Southern Africa Development Community (SADC) and the regional management organisations;
2. Review the extent RBM systems have been applied in the South West Indian Ocean together with supporting regulations and practice and how it could be improved, including its incorporation into the legal framework;
3. Review the extent of the development and implementation of fisheries management plans in the SWIO countries;
4. Assess how these links to the implementation of SADC Fisheries Protocol, COI-IOC Fisheries Strategy, the South West Indian Ocean Fisheries Commission (SWIOFC), Indian Ocean Tuna Commission (IOTC) and FAO Code of Conduct for responsible Fisheries in terms of improving management of fisheries resources.

### **1.2 Scope of the Project**

The scope of the project is comprehensive; its Terms of Reference (ToRs) and methodology are elaborated in Annex 1. A summary of the scope of the project, based on the ToRs, is shown below.



1. A review of fisheries legislation of SWIO countries in the context of harmonising and promoting shared and/or straddling stock management.
2. A proposal of areas for harmonization including any related text for consideration by each country and taking into consideration monitoring, control and surveillance (MCS), including a proposal for harmonising the MCS processes existing in the WIO region (e.g., the COI-IOC, SADC, IOTC, conflict resolution and joint management structures.
3. A draft fisheries management legal agreement for shared or straddling fisheries resources in the SWIO range States (bilateral and multilateral options);
4. A review and assessment of the extent RBM systems have been applied in the SWIO countries, including its practice and level of understanding, and proposing options for adoption, including piloting.
5. A review of any supporting regulations for RBM in each of the countries and proposing areas for harmonisation and improvement, including development of RBM guidelines.
6. A review of the extent of development and implementation of national and regional fisheries management plans (including details of those not implemented, an assessment and recommendations) and relevant global instruments (including FAO Plans of Action, Ecosystem Approach to Fisheries Management) in the SWIO countries, including the extent to which the EAF approach has been incorporated in fisheries regulations and the management plans.
7. An assessment of the linkages and implications for improved regional fisheries management among the SADC Fisheries Protocol, COI-IOC Fisheries Strategy, the SWIOFC, IOTC and FAO Code of Conduct for Responsible Fisheries, and make recommendations.
8. Compile a list of fisheries-related projects to be implemented at national and regional level

### **1.3 Methodology**

In undertaking the tasks, the consultant carried out research and undertook consultations with persons described in Annex 2. Consultations were held, and the research was supplemented during a mission undertaken by the Consultant to six of the SWIO countries: Kenya, Tanzania, Mozambique, Madagascar, Mauritius and Seychelles. It took place from 23 July to 10 August. The itinerary and proposed meeting agenda/discussion points is shown in Annex 3. Consultations also took place at FAO and in the margins of the meeting of the FAO Committee on Fisheries.

In all countries, officials and stakeholders were supportive of the mission and provided comprehensive information and advice, for which the consultant is deeply grateful.

## **2. HARMONIZATION OF FISHERIES LEGISLATION<sup>1</sup>**

### **2.1 Introduction**

Fisheries legislation, similar to laws governing any other subject, is based on international instruments and responsibilities to implement decisions of organizations to which a country is party.

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<sup>1</sup> The term "legislation" is used to refer to laws, regulations and other instruments at national level having the force of law.

However, there may be great variance in the extent to which implementation is addressed, and in the process to update the legislation as new international and regional obligations are formed. Another variable is related to national planning and priority objectives.

Given the mobile nature of the fishery resources and the intensified need for regional and international cooperation in fisheries and ecosystem management, the need for a clear and consistent legal foundation is pressing.

The process of harmonization of fisheries legislation cannot take place in a day, or maybe even in a year. It may take some years between the time it is recognized that new and harmonized legal standards are needed and the time they enter into force, given different political agendas and the need for consultative processes and broad understanding. However, during this period, the draft should be considered as a “living” instrument and revisions may take place along the way to reflect updated international and regional standards and norms.

Harmonized legislation does not mean identical legislation; it is simply a platform to enable countries to take measures and actions to manage and develop their fisheries sectors. The platforms should be compatible to the greatest extent possible to allow for shared or joint management and enforcement arrangements, including through regional fishery bodies.

An important objective of this document is to provide recommendations on provisions that should be included in fisheries legislation that will support harmonization of fisheries management measures and actions, including RBM, EAF, joint management and fisheries enforcement.

## **2.2 Foundation: international, regional, sub-regional instruments and organizations**

National legislation should implement provisions of international, regional and sub-regional instruments or organizations to which the country has formally agreed or in which it is a member or cooperating non-member, or voluntary instruments which have become incorporated in best practices by other countries and the international community.

These instruments and organizations provide a catalyst for harmonization. A table setting out the obligations of countries in key instrument and organizations is shown in Figure 1.

All countries are party to the **1982 UN Convention on the Law of the Sea**, which forms the foundation for the other instruments. It sets the standards for management of fisheries, including straddling fish stocks and highly migratory species.

Key areas of the **1995 UN Fish Stocks Agreement** relevant to this study include the principles, requirements for compatibility of measures inside and beyond areas under national jurisdiction, an ecosystem approach to management stocks and associated and dependent species throughout their range, functions of regional fisheries bodies or arrangements, information provision and exchange, flag State duties, port State measures and MCS provisions including procedures for boarding and inspection on the high seas.

The **2009 FAO Agreement on Port State Measures**, even though it has not yet entered into force, is being implemented by the international community and RFMOs. The members of IOTC have adopted binding Resolution 10/11, which is almost identical to the FAO Agreement. Among other things, it also contains general principles<sup>2</sup> and provides for information exchange and the training of port inspectors.

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<sup>2</sup> Including reference to the ecosystem.

It requires notification of the intention by a foreign fishing vessel to enter into port and requires it to provide information and receive authorization to enter port. If there is reasonable suspicion that the vessel has been engaged in EUU fishing, the vessel may be denied entry.

Upon entry into port, the vessel must be denied use of port prior to inspection for a range of reasons, both before and after inspection, for purposes of landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including refuelling and resupplying, maintenance and drydocking. Inspection must take place according to certain procedures, and the reports of inspection must contain specified information.

**The Indian Ocean Tuna Commission (IOTC)** focuses on the tuna and tuna-like species listed in its constitutive Agreement in areas under national jurisdiction and high seas in its area of competence. It seeks “to promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilisation of stocks” and by “encouraging sustainable development of fisheries based on such stocks”<sup>3</sup>. It has a management mandate and takes legally binding decisions.

**The South Indian Ocean Fisheries Agreement (SIOFA)** entered into force in 2012, and its area of competence falls within the high seas of the South Indian Ocean. It contains principles for the application of the Agreement.<sup>4</sup> It has competence over high seas fisheries resources, other than sedentary species on the continental shelf of countries beyond the exclusive economic zone and, in order not to overlap with IOTC, highly migratory species.<sup>5</sup> It has a management mandate and takes legally binding decisions.

The strategy in establishing SIOFA and SWIOFC was to promote cooperation between the management of fisheries in the high seas (SIOFA) and those in areas under national jurisdiction (SWIOFC). To this end, SWIOFC is referenced in the SIOFA Agreement four times:

- Article 2. **Meetings**. The ordinary Meeting of the SIOFA Parties is to take place, where practicable, back-to-back with meetings of the South West Indian Ocean Fisheries Commission.
- Article 7(1)(b). **Scientific Committee**. In developing advice and recommendations the Scientific Committee must take into consideration the work of the South West Indian Ocean Fisheries Commission as well as that of other relevant research organizations and regional fisheries management organizations.<sup>6</sup>

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<sup>3</sup> <http://www.iotc.org/English/index.php>

<sup>4</sup> Including reference to the ecosystem approach to fisheries management.

<sup>5</sup> The resources over which SIOFA has competence are described as “resources of fish, molluscs, crustaceans and other sedentary species within the Area, but excluding sedentary species subject to the fishery jurisdiction of coastal States pursuant to article 77(4) of the 1982 Convention, and highly migratory species listed in Annex I of the 1982 Convention.”

<sup>6</sup> Here “other” seems to indicate that SWIOFC is a research organization or a regional fisheries management organization and it is neither.

**Figure 1.**

### International, regional, sub-regional instruments and organizations

Shaded areas indicate States that are members or parties to the instrument/organization. Light shading indicates signature only of the instrument.

[illegible]

- Art 12. 2. **Observers.** Intergovernmental organizations concerned with matters relevant to the implementation of the Agreement, in particular the FAO, the South West Indian Ocean Fisheries Commission, and RFMOs with competence over high seas waters adjacent to the Area, are entitled to participate as observers in SIOFA meetings.<sup>8</sup>
- Article 16. **Cooperation with other Organizations.** Cooperation is promoted, “in particular with the South West Indian Ocean Fisheries Commission and any other regional fisheries management organization with competence over high seas waters adjacent to the Area”.

A meeting of the parties is scheduled in November 2012 in Mauritius, which has offered to host the Secretariat.

**The South West Indian Ocean Fisheries Commission (SWIOFC)** has an advisory mandate over all living marine resources within the national jurisdiction of its members, without prejudice to the management responsibilities and authority of other competent fisheries and other living marine resources management. This effectively recognizes the mandate of IOTC within national waters over the tuna and tuna-like species set out in the IOTC Agreement. Its main objectives are to promote the sustainable utilization of the living marine resources of the region through management and development and to address common problems of fisheries management and development faced by the Members of the Commission.

**The Indian Ocean Commission (COI-IOC)** has a strong focus on fisheries and the awareness of IUU fishing is apparent in the Seychelles Declaration of January 2007 of the IOC Fisheries Ministers to combat IUU Fishing. It has adopted a 2009-2014 Strategy for Fisheries and Aquaculture for the Indian Ocean with an overall goal of sustainable development and the fight against poverty.<sup>9</sup> Its objective is comprehensive regional cooperation between IOC States on the conservation, management, and responsible and sustainable exploitation of fisheries resources and for the development of aquaculture. Its five strategic directions include operationalizing a system of MCS,<sup>10</sup> under which a regional fisheries monitoring plan (PSRP - Plan Régional de Surveillance des Pêches Dans Le Sud-Ouest de L'Océan Indien) was developed, with the following activities:

- Fighting IUU fishing activities;
- Strengthening the area's countries capacity and coordination to implement efficient sustainable, MCS policies;
- Contribution to the conservation and sustainable management of tuna resources;
- Improving fisheries monitoring in the South-western Indian Ocean; and
- Sharing information, specifically VMS data.

The IOC-PRSP programme dedicated to fisheries surveillance has been active since 2007 and activities for the next phase are soon to be finalized.<sup>11</sup> IOC has also initiated the implementation of

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<sup>8</sup> It is interesting that other organizations within the region – IOTC and COI-IOC – are not mentioned. It will likely occur in practice, and will be useful for EAF considerations.

<sup>9</sup> IOC, 2009. Stratégie Régionale des Pêches et de L'aquaculture de la Commission de l'Océan Indien 2009 – 2014

<sup>10</sup> The other areas are: sustainable and responsibly conducted conservation and management of fisheries resources; sustainable development of aquaculture; development of capacities in maritime training and safety at sea; and strengthening processing, valuation, and marketing of seafood products.

<sup>11</sup> They include: organization of regional maritime patrols in the EEZs of members; creation of a regional MCS coordination centre through establishing a coordinator for to liaise directors of MCS operations; establishment of a pilot project for fisheries observers, exchange of information (under a project to create a regional VMS

the first phase of a Smartfish programme in March, 2011, which will run until September 2013<sup>12</sup> and aims to promote regional integration through practical implementation of sound fisheries initiatives, based on the principles of the IOC and EU fisheries and development policies, with the desired “end state” of the implementation of the programme being an integrated regional fisheries strategy (IRFS).

The Indian Ocean Commission is expected to set up a Counter Piracy Unit in the Seychelles with a view to having better co-ordination on the activities of countries in the region on piracy issues as well as exchanging information.

The ***Agulhas and Somali Current Large Marine Ecosystem (ASCLME)*** aims to implement an ecosystem approach to management of the LME resources through information-driven governance and policy reforms at the regional level, in partnership with member countries and other stakeholders. One of its objectives is to strengthen scientific and management expertise, with a view to introducing an ecosystem approach to managing the living marine resources of the western Indian Ocean region. It has completed a policy and governance assessment of coastal and marine resource sectors in Kenya in the framework of large marine ecosystems,<sup>13</sup> which evaluates the mandates and actual/potential contribution to the EAF by several regional bodies, including IOC, IOTC, SOFIA and SWIOFC.<sup>14</sup>

The ***East African Community (EAC)*** outlines the role of fisheries in the 4<sup>th</sup> EAC Development Strategy 2011-2016 with respect to the Lake Victoria Fisheries Organisation (LVFO). Fish and fisheries are also mentioned in the EAC Food Security Action Plan 2011-2015. It adopted a Protocol on Environment and Natural Resources in 2005, which provides *inter alia* in Articles 15-17 respectively for the management of coastal and marine resources, fisheries resources and genetic resources.

The EAC seeks to promote the co-management of natural resources, harmonize policies, laws and strategies for both the sustainable use of coastal and marine resources and fisheries, fisheries laws, policies and strategies and address a range of issues including reduction and prevention of pollution, introduction of alien species and monitoring, evaluation and control.

The ***Southern African Development Community (SADC)*** has a long experience of cooperation in fisheries. Following the recent (2008) SADC Statement of Commitment to stop IUU fishing, that provided further elaboration of the principles set out in the 2001 SADC Protocol on Fisheries, the SADC countries have agreed to promote the creation of a Regional Monitoring Control and Surveillance (MCS) Centre as a priority action.

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system), combat piracy, use of new technologies such as satellite radar to detect fishing vessels; creating an MCS centre for Comoros.

<sup>12</sup> SmartFish has financing of 21 million euro provided by the European Union (EU) and includes the beneficiary countries of: Burundi, Comoros, Djibouti, DRC, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Swaziland, United Republic of Tanzania, Uganda, Zambia and Zimbabwe. Mozambique, South Africa and France through the island of La Réunion are also participating although they are not beneficiary countries. The programme is implemented by the IOC in collaboration with the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC). See NFDS - comprehensive review of MCS capacity in the ESA-IO region, 2011.

<sup>13</sup> Renison K. Ruwa, Kenya Marine and Fisheries Research Institute. Report to the ASCLME policy and governance coordinator, ASCLME project; Grahamstown, South Africa. June 2011

<sup>14</sup> For a picture of how the project evolved in practice compared with the strategy put into place in the beginning, see Cunningham, S., Review of Strategic and Programme Developments in the ESA-IO Region in relation to fisheries governance, development and management. July 2012. Draft.

The objective of the SADC Protocol on Fisheries is to promote responsible and sustainable use of the living aquatic resources and aquatic ecosystems of interest to State Parties, and it contains Articles in relation to, *inter alia*, the management of shared resources, harmonization of legislation, law enforcement, access agreements and protection of the aquatic environment. It allows for States establish instruments for co-ordination, co-operation, or integration of management of shared resources.

### 2.3 A review of fisheries legislation in SWIO countries<sup>15</sup>

The review of fisheries legislation was carried out in the context of harmonising and promoting the management of shared and/or straddling stocks. In this broader context, the following elements were considered: possible joint management, rights based management, the ecosystem approach to fisheries management and MCS.

The activities are further addressed in this document in the following sections.

Section 3	Joint management
Section 4	Rights based management
Section 5	Ecosystem approach to management
Section 7	MCS

An outline of some key legal elements for each activity appears in Figure 2.

In order to provide a baseline for a comparative approach, select provisions for a model fisheries law that would address the issues noted above were developed for the following categories:

- I. General
- II. Fisheries conservation, management and development
- III. Information
- IV. Fisheries access arrangements
- V. Licenses required
- VI. Monitoring, control and surveillance
- VII. Evidence
- VIII. Jurisdiction of the court
- IX. Compliance

A title and summary of the contents of each provision is given in a matrix, and where a country includes such a provision in its legislation, this is indicated next to each provision. The matrix is in Annex 5, ("Consolidated table of select model fisheries provisions and their implementation in national legislation") and a summary table is in Annex 5, Addendum A.

Because of the complexity of the task and some constraints of information and time, it is likely there may be some errors or omissions; countries were therefore invited to review the matrix and advise any errors or omissions. However, no responses were received.

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<sup>15</sup> The countries are: Comoros, Kenya, Tanzania, Mozambique, Madagascar, Mauritius, Seychelles and South Africa.

**Figure 2**  
**Key legal elements for joint management, rights based management, the ecosystem approach to fisheries management and MCS**

**Joint management** provisions should give authority to cooperate in fisheries management, and the legislation should provide certain minimum standards that can be used for purposes of joint management. These would include robust definition of terms, requirements for fisheries management plans, authority in areas beyond national jurisdiction, authority to take a range of conservation measures, conflict management, requirements for access of non-national vessels and appropriate MCS provisions described below.

**Rights Based Management** takes many forms, and if RBM is to be operationalized a policy decision should be made on the type and needs of the type of RBM to be implemented. The law would then support this and provide for, as appropriate, the authority to grant rights, the length of time, the type of right (community, individual, territorial) the sub-sector (e.g. artisanal, industrial vessels), duration (the longer it lasts, the more security), transferability (as part of a licensing regime), exclusivity (restrictions on others to use the resource) and control (input/effort, output/catch, area based).

**Ecosystem Approach to Fisheries Management** should be supported as an underlying principle of the legislation. The 2003 FAO Technical Guidelines on the ecosystem approach to fisheries, elaborated under the 1995 FAO Code of Conduct for Responsible Fisheries, is a useful guide in implementing the EAF and the following legal requirements would support implementation consistent with the Guidelines.<sup>16</sup>

- Management objectives and principles
- Application of the legislation to areas beyond national jurisdiction
- Stakeholder consultations/body
- Fisheries management plans
- Pollution of the fishery waters
- Fisheries impact assessments on the ecosystem
- A range of data and information requirements, including monitoring and exchange
- Research priorities
- Fisheries conservation and management measures:
  - Precautionary approach
  - Effort and catch
  - Spatial and temporal controls



- Genetic resources
- Introduction of alien species/import or export of live fish
- Abandoning objects in the fishery waters
- Maintain ecological relationship between harvested, dependent and associated species
- compatible measures across the entire distribution of the resource (across jurisdictions and management plans)
- Declaration of protected areas or reserves
- Relevant licensing requirements
- Mechanisms or coordination, cooperation and integration with other sectors and countries, and within the region and international community
- Conflict resolution and prevention
- MCS, including in areas beyond national jurisdiction
- Implementation of international conservation and management measures
- Governance should ensure human and ecosystem well-being and equity

**MCS**, particularly cooperative or joint MCS, benefits from clear institutional arrangements at national level including establishment of an MCS Unit and clear procedures for appointing authorized officers (or others responsible for compliance who normally have powers of seizure and arrest), inspectors (such as port inspectors who normally do not have powers of arrest) and observers (with scientific, compliance and monitoring functions). A wide range of full powers must be given to them, and persons must allow and assist them in their duties and not obstruct or threaten them in any way. They must be given authority to perform their duties in areas beyond national jurisdiction. For international cooperation, there should be provision for establishing joint or reciprocal MCS and cross-authorization of non-national authorized officers and observers in the fishery waters. International and regional standards for VMS and port State measures should be implemented, and MCS and enforcement of RFMO international conservation and management measures should be provided.

**GENERAL** attention should be given to definitions that form the basis for the legal elements described above, as noted in section 2.3.1 below. In this regard, the definitions of key words used for fisheries management and MCS should be included and harmonized, including inter alia automatic location communicator, buy, fish, fishery or fisheries, fishing, fishing gear, fishing related activity, fishing vessel, flag State, foreign fishing vessel, genetic resource, high seas, international agreement, international conservation and management measures, landing, master, operator, person, pollution, sell, surveillance, transshipment, vessel monitoring system. Definitions for these and other key words are shown in Annex 6 ("Consolidated table of select model fisheries provisions and indicative text").

The consultant apologizes if any errors or omissions remain in the final version, but best efforts were made to be as accurate as possible. At the very least the legal matrix in Annex 5 will provide a good indication of where countries have, or have not addressed an issue in their legislation, and therefore areas where focus needs to be given for improved harmonization.

The overall objective of the legal matrix is to indicate provisions that are important for harmonising and promoting the management of shared and/or straddling stocks, and assess where gaps or weaknesses exist on a regional basis, and how they can be addressed.

The model provisions are based on international fisheries instruments and on best practices in national fisheries legislation, as well as obligations in regional bodies. They are indicative of existing needs in general for harmonization and may be elaborated further at national level. They were prepared for the purposes of this study only and do not represent the entire suite of provisions that may be considered under each category addressed.

The provisions for each country may not be identical to the provision or to that of another State, and may only partially implement the provision. Therefore, in interpreting results, the fact that the issue has been addressed by a country does not mean that the provision is full, complete and up to date. It is indicative that the issue has been recognized as an important component of fisheries legislation.

Areas that normally appear in fisheries legislation but were not addressed in this study include responsibility for administration, institutional arrangements, licensing procedures and conditions, requirements for arrested/seized persons and items, activities such as trade, fish processing and aquaculture and the level of fine or penalty.

The national fisheries laws in Annex 4 were consulted in preparing the matrix. It is significant that five countries have prepared, or are in the course of developing, revised fisheries legislation:

Kenya	Fisheries and Aquaculture Bill has been tabled in Parliament.
Madagascar	Draft Fisheries and Aquaculture Law, developed in 2008, has been tabled in Parliament but there may be time to propose amendments and updates.
Mauritius	The Fisheries and Marine Resources Act 2007 is being reviewed, and draft MCS Regulations have been prepared.
Mozambique	A Fisheries Bill has been tabled in Parliament.
Seychelles	Draft Fisheries Act is expected to reach Parliament by November 2012.

These countries may find the matrix useful in ensuring that their drafts sufficiently address key areas.

An analysis of each category appears below, including the reasons that the provisions are needed for harmonization and the assessment of their implementation. The analysis refers in some places to the fact that one, two, three or half the countries surveyed have implemented a provision similar to the model provisions (recall that the provisions in national laws are often uneven among themselves and may not cover the entire scope of the model provision). This was intended to give the reader a **general sense** of the level of implementation, and the need for (1) strengthening national legislation; and (2) harmonizing legislation at regional level.

This approach is based on the indicative nature of the study: not all national legislation was made available to the consultant in carrying out the study, as noted in Annex 4, and as noted above, no country responded to the consultant's request to review the matrix in Annex 5 for errors or omissions in reporting on their national laws.

Another consideration is the inconsistency of many of the enacted provisions with each other, and with the model provisions in Annex 5. Just because a certain provision is included in fisheries legislation does not mean that it is robust or reflects best practices.

Annex 5 therefore reflects national laws to the extent possible in this study, but not perfectly. The reader is encouraged to refer to Annex 5 for more specific information on an indication of the countries which have enacted provisions similar to those in the Model Law. As described above, it is essential to note that even where a country has a similar provision, it may not be consistent with those in other countries or could meet or fall below the standards of best practices. Such individual assessments were beyond the scope of this study.

### 2.3.1 General

It is standard for legislation and international instruments to contain provisions on definitions, objective, jurisdiction, application, principles for sustainable fisheries management and international cooperation, as described below. They provide a good foundation upon which measures and actions taken under the Act may be based.

**Definitions** should cover the words shown in Figure 2, for example, fish, the act of fishing, fishing related activities and many other terms necessary for purposes of clear implementation, management, surveillance and enforcement. Without a clear understanding of the elements of the activity, harmonization of the implementation of the laws cannot be achieved.

For example, the 2003 Tanzanian legislation defines “fishing” simply as “collecting, capturing, gathering, killing, snaring or trapping of fish or aquatic flora.

The 2007 Mauritius legislation is somewhat broader, and covers more activities than the Tanzanian legislation. It defines “fishing” as (a) catching; collecting; killing or destroying any fish by any method; and (b) including searching for fish for the purpose of catching, collecting, killing or destroying the fish; and placing, searching for or retrieving, a fish aggregating device.

However, neither definition has the scope of the following “best practices” definition, shown in Annex 6:

- attempting to search for or take fish;
- engaging in any other activity which can reasonably be expected to result in the locating or taking of fish;
- placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons;
- any operation on water in support of or in preparation for the above activities;
- use of an aircraft which is related to any activity described in the above paragraphs.

**Objectives** should be included to ensure consistency with national policies and international instruments, and it is standard to base objectives on the long-term sustainable use of the resource. It is standard for international instruments to contain objectives, and best practices for national laws to do so. Implementation of the law should then be consistent with its objectives and, as shown below, its principles.

The ***jurisdiction*** provisions should describe the area of jurisdiction for purposes of implementing the legislation, and as appropriate should refer to law claiming boundaries/marine zones.

The **Application** of the legislation should extend to national persons and vessels undertaking activities in areas beyond national jurisdiction.

**Principles** for sustainable fisheries management should be included that promote cooperation to fulfil general international, regional, bilateral obligations. These would include, for example, the ecosystem and precautionary approaches to fisheries management; a comprehensive list of principles is shown in section 5, Annex 6.

**International cooperation** should be encouraged under the legislation, *inter alia* to fulfil general international, regional, bilateral obligations.

**Conclusion:** All countries have included a provision on definitions; however they have a wide variance with one law defining one term only, and others having several pages of definitions. Key definitions need aligning across the board. No countries have legislation that states an objective, and only one refers to principles for fisheries management and another encourages international/regional cooperation. Three countries have legislation that sets out the jurisdiction, and three apply the legislation to areas beyond national jurisdiction.<sup>17</sup> All these areas are important for both rights based management and the EAF, as well as MCS and possible joint management regimes.

#### Recommendation

1. It is recommended that countries as a matter of priority review the definitions included in their fisheries legislation for completeness and consistency with minimum standards of best practice. Other general areas that should be included and harmonized are objectives, jurisdiction, application, principles for sustainable fisheries management and international cooperation.

### 2.3.2 Fisheries conservation, management and development

In this category, there are three Divisions; fisheries management, fisheries conservation and fisheries development.

#### 2.3.2.1 Fisheries management

Fisheries management provisions generally relate to authority, processes and bodies that are empowered to take or advise management measures.

Although almost all of the laws designate an authority (e.g., the Minister, Director) and process for taking management measures, and specify the type of measures that may be taken (e.g. quotas, effort control, area, gear, seasons, species size), less than half of the countries made provision for fisheries management plans. A framework and process for the plans should be included to guide formulation and ensure consistency of approach for both EAF and RBM, as well as to serve as a basis for shared or joint management.

Provisions particularly important for RBM which appear in the laws of two countries or less relate to the declaration of a fisheries management area, restricting fishing in such an area, granting fishing rights and shared responsibility for fisheries management.

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<sup>17</sup> However, Tanzania is the only country with both the jurisdiction and application provisions in its legislation.

Provisions important for the EAF which appear in the laws of two countries or less relate to genetic resource management and cooperation with other sectors in fisheries management.

Provisions which relate to EAF and RBM and appear in the laws of two countries or less are fisheries research (setting priorities, facilitating collaboration), the functions of a stakeholders' advisory body and conflict prevention/resolution.

Half the countries provide for fisheries management consultations or an advisory body/committee (important for EAF and RBM), and for a shared fisheries management body such as Beach Management Units (BMUs), essential for RBM.

Strangely, all countries' laws provide for the stowage of fishing gear – important for joint management, EAF and RBM – but in different contexts. None provides that a fishing vessel (not just a foreign fishing vessel) should stow gear so that it is not readily available for fishing in any area of the fishery waters where it is not permitted to fish.

**Conclusion:** Given the many gaps in this Division, the countries need to significantly strengthen and harmonize their laws in relation to fisheries management, in particular to form an adequate basis for EAF laws and setting up arrangements for shared management, such as BMUs. The countries that are not implementing RBM do not generally have legislation in place to support it, especially at the community level.

#### Recommendation

2. It is recommended that provisions underpinning fisheries management be introduced or strengthened in order to adequately provide for EAF and RBM forms of fisheries management. In particular, provisions relating to fisheries management plans, declaration of a fisheries management area, genetic resource management, cooperation with other sectors in fisheries management, fisheries research, stakeholders' advisory body, conflict prevention/resolution, fisheries management consultations or an advisory body/committee, a shared fisheries management body and the stowage of fishing gear. Legislation for RBM should, where applicable, be adopted at national and other decentralized government levels.

#### 2.3.2.2 Fisheries conservation

Fisheries conservation measures are targeted at zones, species, environment, gear and specific controls and prohibitions. In general, countries' laws show a greater degree of harmonization in terms of addressing the issues, although there is some unevenness among countries.

Provisions of importance to joint management, conflict resolution, EAF and RBF, implemented by over half the countries, relate to the declaration of different zones for fishing, declaration of protected areas/management areas or reserves for fishing, prohibited fishing gear and methods and prohibitions for certain species/sizes.

Less than three countries provided for provisions essential for implementation of the EAF: the declaration of endangered or protected species of fish, pollution of the fishery waters, the placement of fish aggregating devices, prohibition of damage/destruction/interference with a fishing vessel, gear or a person, prohibition on leaving or abandoning objects in the fishery waters and import and export of live fish.

Also, for joint or shared management, less than two countries prohibited the sale, import, possession etc., of fish or fish products taken illegally in another country, or the implementation of international conservation and management measures.

Only one country authorized the Director to require a fisheries impact assessment, important for the EAF as well as shared or joint management.

**Conclusion:** Although countries have been more active in legislating conservation measures, they will be hampered in applying the EAF because key authorities and requirements do not appear in legislation.

#### **Recommendation**

3. It is recommended that countries ensure there is an adequate legal basis for conservation measures, particularly those essential for adopting an EAF management, including those authorizing the declaration of endangered or protected species of fish, and requiring a fisheries impact assessment. Other provisions in legislation should be included or strengthened to address the pollution of the fishery waters, the placement of fish aggregating devices, prohibition of damage/destruction/interference with a fishing vessel, gear or a person, prohibition on leaving or abandoning objects in the fishery waters and import and export of live fish. In addition, the harmonization of enforcement would be well served where countries include legislation prohibiting the sale, import, possession etc., of fish or fish products taken illegally in another country, and require the implementation of international conservation and management measures.

#### **2.3.2.3 Fisheries development**

Three countries had provisions relating to the development of the fisheries sector; this could apply to RBM and shared or joint management. As there is only one provision in this Division, there are no conclusions.

#### **Recommendation**

4. It is recommended that countries provide for priorities or plans for the development of the fisheries sector in their legislation, in order to more adequately address RBM and shared or joint management.

#### **2.3.3 Information, data and records**

Information requirements in the countries' fisheries laws are scattered throughout the Act, and this tends to dilute their importance and interrelationship. It would promote better understanding of the law and requirements to consolidate them into one part. This would also help promote understanding where there is shared or joint management, and obligations to gather or exchange information and data.

Of the ten suggested provisions, four were not implemented by any country: maintaining a publicly available register of information on legal or administrative actions taken under the Act (this was expressed as a need during the mission), ownership of information to be vested in the Government and information on the labels of containers of fish harvested in the fishery waters and the exchange of information.

Four provisions were implemented by one country only: requiring information given under the Act to be true, complete and correct, falsifying or forging documents, allowing for public access to

information, and requirements for designating confidential information. It is especially vital to require all persons furnishing information to do so truthfully and correctly.

Two countries require persons to furnish data, and three require the establishment of registers. Ideally the register should include a suite of information – e.g. licence information that contains specifics of vessels, operator, master, owner, beneficial owner, VMS equipment etc. In one country, only a vessel register was required; this does not cater for regional requirements for information about licensing vessels and is not as useful for enforcement as information about licensing.

**Conclusion:** The widespread failure to include clear and comprehensive information requirements, including those that would contribute to a regional MCS system or shared/joint management, would jeopardize efforts to manage the fishery at all levels: EAF, RBM, joint or shared management, as well as standard management and enforcement. This area needs urgent attention.

#### Recommendation

5. It is recommended that countries consider consolidating all requirements relating to fisheries information in one part for improved transparency and understanding and ease of implementation. Clear and comprehensive information requirements are urgently needed that would contribute to a regional MCS system, shared/joint management arrangements and the EAF and RBM approaches to fisheries management.

#### 2.3.4 Fisheries access arrangements

All countries had some provisions governing fisheries access agreements or arrangements, prohibiting foreign fishing vessels from fishing unless some arrangement is in place, and many countries set minimum conditions for a fisheries access arrangement. The provision may be flexible to allow for a range of access arrangements, including government-to-government or government-to-industry arrangements, individual vessel arrangements, charter arrangements, joint venture arrangements or rights-based fisheries.

**Conclusion:** Legislation in general did not cater for such a wide range of arrangements for fisheries access, minimum conditions were not as robust as possible and RBM for foreign vessels were generally not in the law. It would serve countries well to strengthen and harmonize these provisions if a joint/shared fishing arrangement is to be developed.

#### Recommendation

6. It is recommended that provisions relating to fisheries access be reviewed and updated to ensure flexibility for a wide range of access arrangements, including for RBM, and to form a strong legal basis for shared or joint fishing arrangements. Minimum terms and conditions of fisheries access could be introduced in such a context.

#### 2.3.5 Licences required

Most countries require licenses for foreign and national fishing vessels in the legislation reviewed, as well as some fishing related activities (e.g. transshipment, but many did not require licences for other fishing related activities such as supply). Only half the countries had requirements for fishing in areas

beyond national jurisdiction; and some of them weren't clear that this applied also to EEZs of other countries. Most countries did not require vessels to obtain licenses from other coastal States or to comply with international conservation and management measures.

**Conclusion:** Any form of joint or shared management will need clear license requirements. For the EAF, it is foreseen that conditions for fishing in vulnerable marine ecosystems will need to be provided.

#### **Recommendation**

7. It is recommended that countries ensure the adoption of requirements for licensing of national vessels and persons beyond areas of national jurisdiction to comply with flag State duties and international instruments, as well as to form a basis for cooperation under shared or joint management and control nationals where fishing in vulnerable marine ecosystems is concerned.

### **2.3.6 Monitoring, control and surveillance**

#### **2.3.6.1 Establishment of Unit**

The legislation of only three countries establishes an MCS Unit, and provides for its functions. This type of institutional structure is highly useful for regional enforcement cooperation as well as for ensuring coordination within the Ministry and the national government.

#### **Recommendation**

8. It is recommended that an MCS Unit be established under legislation, and functions be described for useful to facilitate regional enforcement cooperation as well as to ensure coordination within the fisheries agency and the national government.

#### **2.3.6.2 Appointment and powers of authorized officers**

Most, but not all, legislation provides for the appointment and powers of authorized officers. Some legislation simply refers to authorized officers in the section on definitions, but does not give a designated official the power to appoint such officers. The status of anyone carrying out the functions of an authorized officer can therefore be challenged in court.

Most legislation gives authorized officers the power of arrest and seizure, and defines their authorities. But most laws do not expressly apply to authorized officers carrying out duties in areas beyond national jurisdiction (also addressed in section 2.3.6.4 below). A mechanism may be designated to give authorized officers from another country the same authorities as national authorized officers, e.g. under an MOU signed by the Minister. This will strengthen capacity for cooperative enforcement missions.

Only half the laws refer to the power of hot pursuit – needed in the case of joint or shared management.

Three countries require authorized officers to identify themselves upon request, and specify powers of entry and search.



Provisions authorizing officers to remove parts from seized vessels to immobilise them, and giving them authority over abandoned fishing vessels, gear etc., are implemented by one country each.

No countries provide the general power to take, detain, remove and secure information and evidence for purposes and activities falling within the scope of the Act, or to take a vessel to the nearest available port and remain in control where he/she believes that it has been used for IUU fishing; some allow the officer to direct the Master to do this, but there is no fallback where the Master refuses.

**Conclusion:** Authorities of authorized officers are contained in laws, but very unevenly and many authorities needed for robust enforcement are not provided. This may adversely affect the potential effectiveness of strengthened regional MCS cooperation involving joint or reciprocal patrols and lead to uneven enforcement of shared or joint fisheries management arrangements.

#### Recommendation

9. It is recommended that countries designate in their legislation the authority or process for appointment of authorized officers and empower them to carry out duties in areas beyond national jurisdiction, including hot pursuit. Conversely, mechanisms should be included to allow cross-authorization of non-national authorized officers. In all countries, the powers of entry and search should be strengthened or introduced, and specific powers included such as immobilization of seized vessels, authority over abandoned fishing vessels and gear, taking, etc. evidence and taking a vessel to port where it is believed to have engaged in IUU fishing. Authorized officers should be required to identify themselves on request.

#### 2.3.6.3 Appointment and functions of inspectors and observers

There are significant lacunae in the fisheries legislation of almost all the countries in relation to observers.

Observer programmes generally tend to be regional in nature, but it would be useful to have a national programme for observers, which would be legally mandated to carry out specific functions, including – according to long established best practices – scientific, management and compliance functions. In this context, compliance functions refer to identifying and reporting on IUU fishing and other activities that do not comply with the legislation. Observers otherwise have no authority to take action against non-compliance. It is extremely important that these functions be identified in legislation so they are non-negotiable in cases of fisheries access by foreign vessels; the latter, or their countries, have a longstanding practice of arguing that observers should not be allowed to report on IUU fishing.

National observer programmes, which provide for an overall, identifiable cadre of observers, could also integrate with regional training and observer programmes. No country has provided this.

Some countries have provisions for appointing observers and inspectors and set out conditions for observers that vessels upon which they are placed must fulfil. But the conditions are not up to date and are very basic in all countries' national legislation – i.e. food and accommodation. There should also be provision for work space, notification before sets/hauls (especially for purse seiners carrying out activities at night), assistance from the crew in designated activities and other duties to be owed by the master and crew.

Some countries require vessels to pay for observer costs, but only basically – salary, transport and insurance. There is a whole range of other costs met by boatowners as best practices in other regions, for example training and equipment.

No country has a designated provision for embarkation and disembarkation of observers, nor for requirements for monitoring and offloading where the vessel must do so at a port where an observer is available.

**Conclusion:** There is a serious lacuna of provisions relating to observers in the fisheries laws. These are especially important for shared or joint management, as well as the EAF and to be used as a non-negotiable requirement for fisheries access.

#### **Recommendation**

10. It is recommended that the mandate of observers be designated as including monitoring, scientific and compliance functions, and that authority to establish a national observer programme be included in legislation. Countries should update and broaden their provisions in relation to the conditions and costs to be required of fishing vessels carrying observers, and to provide for the embarkation and disembarkation of observers.

#### **2.3.6.4 Application of Act to authorized officers, observers in areas beyond national jurisdiction, and to non-national authorized officers and observers in areas under national jurisdiction**

As indicated in section 2.3.6.2 above, no country has provided for the application of the law to authorized officers and observers in areas beyond national jurisdiction, and one country has a provision applying the law to non-national observers/authorized officers in national waters. Normally this is done pursuant to an MOU or other agreement, but the basic authority to empower non-nationals should be in legislation. This is important to facilitate regional cooperation in MCS.

#### **Recommendation**

11. It is recommended that both authorized officers and observers be empowered to carry out duties in areas beyond national jurisdiction and that a mechanism be identified to empower non-national authorized officers and observers to carry out duties in areas under national jurisdiction.

#### **2.3.6.5 Protection and obstruction of authorized persons**

Half the countries laws require, to varying extents, operators to allow and assist the authorized officer or observer to carry out his/her duties, and not to obstruct the officer/observer. Only two laws protect the officer/observer from liability for actions done in the course of duty. The law could also protect informants and offer a reward, but the former may be covered under other national laws and the reward should be a policy decision of the country concerned.

**Conclusion:** Authorized officers and observers may not have the broad range of legal protection needed to carry out their duties, requiring all persons to allow and assist them to carry out their functions and prohibiting obstruction, assault, etc. Authorized officers and observers are generally unprotected from liability for actions done in the course of duty.

#### Recommendation

12. It is recommended that countries review and/or introduce requirements protecting the authorized officers and observers and ensure that the highest standard is in effect. They should be protected from liability for actions done in the course of duty. Protection of informants should be considered, and a reward may be offered but should have strict legal requirements for eligibility and administration.

#### 2.3.6.6 Requirements for vessel monitoring systems

Only half the countries have made provision for vessel monitoring systems. Some basic provisions should be entrenched in the law, while more technical specifications should be in regulations. This is important, considering the system required by IOTC, and the proposed regional VMS initiatives proposed by both COI-IOC and SADC. Confidentiality requirements should be included, but should permit operation of a regional system.

**Conclusion:** Most countries do not currently have an adequate legal basis to support VMS requirements of IOTC, nor proposed regional initiatives of COI-IOC and SADC.

#### Recommendation

13. It is recommended that up to date VMS requirements at the highest possible standards should form part of the legislation, and that confidentiality requirements permit the operation of a regional system.

#### 2.3.6.7 Requirements for the use of ports

At least four provisions are required to implement the FAO Agreement and IOTC Resolution on Port State Measures. Only two countries prohibit the use of port (although none prohibits entry), three countries allow denial of the use of port (but only for landing and transshipping, not for all the other uses specified in the Agreement and Resolution – packaging, processing of fish and other port services including refuelling and resupplying, maintenance and drydocking). One country provides for inspection of foreign fishing vessels in port.

No country's legislation prohibits a vessel from entering port where there is sufficient proof of IUU fishing, nor do they implement the Agreement/Resolution by requiring certain information prior to entry into port

**Conclusion:** There is extremely weak or non-existent implementation of the FAO Agreement and IOTC Resolution on Port State Measures in legislation throughout the region.

#### Recommendation

14. It is recommended that countries implement on an urgent basis the full range of requirements in the FAO Agreement and the IOTC Resolution on Port State Measures.

### 2.3.7 Evidence

Regional cooperation in detecting IUU fishing should extend to evidence. It is important for authorized officers and observers to know the rules of evidence in carrying out inspections, especially in circumstances of shared or joint management, and for national legal processes to be supported by clear rules of evidence that are tailored to fisheries related offences. Such provisions have been developed in other regions and form part of best practices of national laws.

The legislation of three countries provides rules for photographic evidence and caters for the tampering with or destruction of evidence. Two countries provide for certificate evidence, which sets out fair rules for certificates to be produced in certain circumstances so that officers are not required to make a court appearance.

One country each provides in their legislation for the validity and procedures of certificate evidence, a certificate as to the location of a vessel and rebuttable presumptions (e.g. all fish on board a vessel used to commit an offence are presumed to have been caught during the commission of the offence unless the contrary can be proved).

No country provides for the readings on an electronic location device (e.g. mobile transceiver unit) integral to a VMS to be used as *prima facie* evidence of the location of a vessel, a reversal of the onus of proof in certain circumstances (e.g. the vessel operator must prove that he/held a license) nor for prohibiting any person to tamper with or destroy any item that can be used in non-compliance with the Act.

**Conclusion:** In the SWIO region, legislation pays almost no attention to rules of evidence in respect of fisheries offences. This is a serious impediment in supporting robust enforcement.

#### Recommendation

15. It is recommended that countries give urgent attention to providing evidentiary rules for fisheries-related offences in their laws, including photographic evidence, certificate evidence, *prima facie* evidence of the location of a vessel, a reversal of the onus of proof in certain circumstances, and prohibiting tampering with or destruction of any item that can be used in non-compliance with the legislation.

### 2.3.8 Jurisdiction

It is important in fisheries legislation to ensure that a court has jurisdiction, for example for violations of the Act committed on the high seas. A designated court should specifically be given such jurisdiction if it doesn't already have such under national law, and normally this is not otherwise given to the court. Only one country's legislation has such a provision.

Compounding offences, on the other hand, is in the legislation of almost all countries. However, none of the legislation establishes a clear and transparent process for compounding; it normally allows a designated person (usually the Minister) to accept payment for an offence in lieu of proceeding by prosecution. In one country, a compounding Commission is established. However, there should be a process that clearly defines the rights and duties of both the country and the violator, and none of the legislation contains provisions such as the following:

- process for allowing the offence to be compounded (e.g. agreement with Attorney General or other);

- the charged person must cease illegal activity at once;
- the charged person is deemed to have consented to any seizure;
- the level of monetary determination that must be imposed;
- whether other penalties may be given;
- the process for taking the decision to compound (e.g. hearings, Commission etc);
- the process for notifying the person charged of the decision;
- what to do if the person charged has failed to respond in 24 hours;
- what to do if the person charged has failed to pay the fine or determination;
- requirement to register determination in court;
- whether there is the right of appeal.

**Conclusion:** Lax laws and processes for hearing and determining violations could jeopardize the effectiveness of enforcement activities and fail to combat IUU fishing. In this regard, countries do not generally have satisfactory provisions relating to the jurisdiction of the court and compounding offences.

#### **Recommendation**

16. It is recommended that countries include a legally transparent, accountable and comprehensive requirements and administrative process for compounding offences in their legislation. This should include, for example, rules governing the accused/charged person's activities and consent, seizures, process for taking the decision, level of determination or penalty, requirements for payment, actions where payment is not made, registration of decision in court and appeals.

### **2.3.9 Compliance**

All countries provide for offences and fines in their legislation, but they vary in terms of comprehensiveness, level of fine and reference to other penalties, remedies, damages or actions including imprisonment.

Around half the countries do not provide for imprisonment, and none implements Article 73 of the 1982 Law of the Sea Convention which, *inter alia*, does not allow imprisonment for fisheries offences committed in the EEZ using foreign vessels.

One country each provides for a license cancellation or suspension and responsibility of the operator or charterer to pay costs incurred by the State.

No country provides for the following:

- Continuing offences and repeat offenders
- Banning order
- Liability of operator
- Compensation for loss or damage
- Deprivation of monetary benefits
- Default for non-payment of fines
- Non-payment of pecuniary penalties

**Conclusion:** The consequences of non-compliance with the law should be a priority for harmonization so that vessels don't migrate to countries with weak or no authority to punish and deter illegal action. The laws in this regard are generally weak or non-existent, and the level of fine is often far too low.

#### **Recommendation**

17. It is recommended that countries harmonize the levels of fines, and include a wide range of other “best practices” penalties in their laws, including those relating to continuing offences and repeat offenders, banning orders, liability of the operator, compensation for loss or damage, deprivation of monetary benefits, default for non-payment of fines and non-payment of pecuniary penalties.

#### **2.4 A basis for harmonization of legislation: Indicative text**

The initial review of the legislation and development of the matrix described in section 2.3 above revealed the wide discrepancies and lacuna in the fisheries legislation across the SWIO members, and the need to provide baseline indicative text for all model provisions.

The text appears in Annex 6. Countries may use it, together with the legal matrix in Annex 4, to analyse and strengthen their fisheries legislation. In so doing, they should be mindful that the text is “indicative” only and may be adjusted, omitted or added to in order that national legislation can be better tailored to the needs of the country while, at the same time, be better harmonized with the legislation of other countries in the region.

The table sets out indicative text for the model fisheries provisions that may be used as a basis for further harmonization of fisheries legislation in the East African and South West Indian Ocean range States. It incorporates the same provisions in the table in Annex 4 and is based on international and regional instruments, obligations under regional organizations and best practices at national level.

For convenience, reference is made to “Minister” and “Director”, although fisheries administrations may have different officials and may take different forms – e.g. a Ministry, Department or Statutory Authority. The legislation is also referenced as an “Act”, and its provisions “sections” although these may be identified differently among countries.

This is not a model of a complete Fisheries Act, but instead focuses on important areas for harmonization. Some areas that may appear in fisheries legislation but were not addressed include licensing procedures, responsibility for administration, institutional arrangements, requirements for arrested/seized persons and items and activities such as trade, fish processing and aquaculture and level of fine or penalty.

The text given is intended to serve as a basis for consideration by each country; it can and should be adapted to the circumstances of each country, but without detracting from the aim of regional harmonization to the extent possible. There is always room for improvement in the text, to address existing and future circumstances in the region, and it should be regarded as a “living” document, subject to improvement according to need.

#### **Recommendation**

18. It is recommended that countries review the provisions in their national legislation to assess consistency and harmonization with the indicative text provided in Annex 6.

### 3. DRAFT FISHERIES MANAGEMENT AGREEMENT FOR SHARED OR STRADDLING FISHERIES RESOURCES

A draft fisheries management agreement for use as a template in the case of shared or joint management over fish stocks, particularly offshore shared stocks such as shrimps and demersal species, has been prepared and is attached as Annex 7. It may also serve as a guideline and possible common negotiation platform in a broader regional context.

It was prepared mindful of existing regional organizations and arrangements as well as bilateral arrangements that countries have with non-coastal States. It is based on international fisheries laws and best practices, and incorporates suggestions made during consultations with countries on the consultant's mission throughout the region and by WWF and SWIOFP.

The approach taken was to provide an overall framework setting out essential forms of cooperation for shared and joint management, such as objectives, principles, application and the complementary relationship with other agreements on fisheries management. Also provided are basic provisions for cooperation in stock assessment and data sharing, general duties special requirements of developing countries, conflict avoidance and settlement, and dispute resolution.

Annexes contain frameworks for mechanisms for shared management (approached in common by the States, for example by each adopting a fisheries management plan) and joint management (where a bilateral or multilateral structure is agreed with decisionmaking power, such as a joint committee of Ministers). Parties may base their agreements on elements in the framework; this is a flexible approach which would allow them to apply those elements of relevance, and to add others as needed.

The coastal East African countries suggested and supported the inclusion of an Article on Aquaculture cooperation. It extends beyond the terms of reference of this study, but nonetheless Article 8 has been included for initial consideration and to keep the need for such agreement in mind. It was suggested informally to one donor agency that support might be considered for a separate instrument on aquaculture, but the response was not encouraging at the time. The Article may be retained or, if other support is found become part of a separate initiative, or be deleted.

Explanatory notes for the text are given below. Some areas of the draft text should first be developed and agreed by countries as a matter of policy; this is indicated throughout by notes in *italics*.

1. **Definitions** should normally be finalized as the instrument is agreed, but some indicative definitions are given for consideration.
2. **Objectives** of the Agreement are stated, based on the need for a framework agreement.
3. **Principles** for fisheries management of shared and straddling fish stocks are set out, consistent with principles in international instruments, upon which the Agreement is based.
4. The **Application** of the Agreement needs to be agreed, in terms of geographical area and States.
5. The **Relationship with relevant international laws and regional, instruments, bodies and arrangements** provides that existing international laws, etc must be honoured

and the Agreement does not affect them, that Parties shall comply with them and that measures taken under the Agreement must be compatible with such laws and measures.

6. **Shared fisheries management arrangements** may be established for shared fisheries resources or straddling fish stocks, based on the framework in Annex 1. The Annexes will be subject to a separate and more flexible amendment process than the body of the Agreement.
7. **Joint fisheries management arrangements** may be established for shared fisheries resources or straddling fish stocks, based on the framework in Annex 2.
8. **Cooperative aquaculture management arrangement** may be established for shared fisheries resources or straddling fish stocks, based on the framework in Annex 3.
9. **Cooperation with existing organizations in stock assessment, data sharing** In establishing and implementing an arrangement Parties must endeavour to obtain relevant information and advice from, and disseminate information through, relevant regional and international fisheries organizations where it may be available. This is intended to foster cooperation with such organizations as SWIOFC.
10. **General duties of cooperation under arrangements for shared or joint management** Notwithstanding the requirements relating to the establishment of management arrangements, general duties of cooperation based on international instruments are set out.
11. **Allocation criteria for fisheries management arrangements** In establishing allocation criteria, arrangements for shared or joint fisheries management must take into account specified allocation criteria.
12. **Special requirements of developing countries** To address the special requirements of developing States, there is a provision for technical, financial, project or other forms of assistance to be given by international, regional or other intergovernmental bodies, States, donor organizations or others to support any arrangement concluded under the Agreement. To facilitate such assistance, the Parties are to agree on certain activities in relation to each arrangement established under this Agreement:
13. **Conflict and dispute prevention and resolution** sets out different mechanisms and actions through which parties may cooperate and consult to prevent and resolve conflicts and disputes, including disputes of a technical nature or on the interpretation of the agreement.
14. **Binding dispute settlement** Where parties were unable to resolve a dispute, a binding dispute settlement mechanism normally used in international and regional instruments is provided.
15. **Final provisions** will need to be agreed. They include: Signature, Entry into force, Reservations and exceptions, Amendment, Withdrawal, Annexes, Depositary, Authentic texts

**Annexes 1, 2 and 3** provide the frameworks for arrangements under Articles 6, 7 and 8 respectively. They are extensive and based on international instruments and best



practices. Among other things, they provide for identification of resources and area, reciprocal access, criteria for access, collaborative research, joint stock assessment, equitable sharing of fishing opportunities and social and economic benefits, allocation mechanisms, fisheries management plan, licensing, monitoring, control and surveillance, human capacity building and harmonization of legislation.

In general, the draft Agreement aims to enhance bilateral and regional cooperation among Parties, and fill the spaces where existing regional organizations do not have a mandate. It lays the foundation for a smooth and relatively speedy negotiation process and for harmonized arrangements throughout the region. At the same time, it maintains flexibility in the elements of the actual arrangements; Parties are required only to “base” the arrangements on the frameworks in the Annexes.

#### **Recommendation**

19. It is recommended that countries review the draft Agreement for the management of shared fisheries resources or straddling stocks, with a view to using it as a basis for entering into agreements for shared or joint fisheries management.

#### **4. APPLICATION OF RIGHTS BASED MANAGEMENT SYSTEMS IN THE SOUTH WEST INDIAN OCEAN COUNTRIES**

In order to describe the application of RBM systems in the SWIO countries, it is important first to understand the meaning of RBM, and this presents a challenge. As shown in Figure 2 above, rights based management systems may take many forms, including those developed for inshore and offshore fisheries. This leads to various choices and outcomes, as shown in Figure 3, and to some confusion.

**Figure 3**  
**Some choices and outcomes for RBM<sup>18</sup>**

No one form of use right is superior in all circumstances. The choice will depend upon society’s objectives, fishery structure, history and traditions, social and cultural factors, economic situation, pre-existing rights, political realities, and fish stock realities. It may not be appropriate for all fisheries. A combination of management measures is generally needed to achieve effective management of the fishery.

Rights must be supplemented by biological and technological measures such as protecting juveniles, selectivity of fishing gear and other measures.

Rights-based management systems will depend on how the management is designed, the institutional approach (market versus community-based), how the exclusiveness of the right is specified, the conditions under which it could be transferred, the duration of use rights, and the basis for the assignment of the rights.

Individual fishing rights or group ownership doesn’t automatically lead to better stewardship but will depend upon the mentality of the people who participate. Questions of equity arise as use rights define who can and cannot take part in the fishery. Decisions about use rights may be irreversible. Once allocated, it can be difficult to make changes.

<sup>18</sup> Pomeroy, Rights-based Fisheries Management. Sea Grant Publication Number CTSG-04-02

In Tanzania the view was expressed that for purposes of advocacy the definition of RBM will be challenging; it needs to be thoroughly defined so everyone will understand what it is. It would be important to find the best definition for the country and to train managers on its use.

To address the need for clarification, WWF has published a very helpful document on the use of rights-based management in fisheries management.<sup>19</sup> It provides a good understanding of the scope of RBM through a description of features, characteristics and types of rights, and calls for rights to be well defined. In addition, the World Bank is in final stages of developing a project to develop a clear, empirically based understanding of how RBM approaches might most effectively benefit small scale fisheries and their constituent communities in Africa.

A study carried out for the European Commission offered a consolidated definition of RBM for purposes of rights-based management in the EC: “any system of allocating fishing rights to fishermen, fishing vessels, enterprises, cooperatives or fishing communities’. As such, the main types of RBM systems covered are: limited non-transferable licensing ; limited transferable licensing; community catch quotas; individual non-transferable effort quotas; individual transferable effort quotas; individual non-transferable catch quotas; vessel catch limits; individual transferable quotas (ITQs) and territorial use rights in fisheries.”<sup>20</sup>

Notwithstanding the absence of a clear definition of RBM, there are initiatives to apply this form of fisheries management at different levels and in relation to different fisheries throughout the region. In this sense, it could be seen as an adaptable tool, as long as there is clarity for any given circumstances on the benefits to countries and the resource.

At the community level, structured RBM initiatives have been undertaken for some years in Kenya and Tanzania, described below. At the regional level, the issue of criteria for allocations of tuna is under review in IOTC, and WWF has supported a process that encourages development of a common position by SWIO countries for artisanal fisheries, tuna and shrimp.

Recommendations on the implementation of RBM, attached as Annex 8, were developed at the November, 2011 AU-IBAR WWF Workshop on the Rights Based Management of Fisheries in the Western Indian Ocean Region. Most of the Workshop recommendations were very general in nature, relating *inter alia* to improving knowledge, raising awareness, promotion, processes, strengthening legal and institutional support, improving monitoring, collaboration, equity, etc.

It is clear from consultations in countries that initiatives to improve knowledge, raise awareness, etc. are essential precursors for implementing RBM, particularly those under an open access regime. However, what should the message be – what is the produce? There is a concern that the recommendations are based not on specific outcomes but on a complex and somewhat amorphous concept that could take any shape; and this was underscored by a presentation in the Workshop defining RBM as a suite of choices – various forms and assignment of rights:

#### **Forms of rights**

- Exclusive Rights to Catch ; target catch, non-target catch, effort and capacity
- Area delimited
- Exclusive rights to benefits generated in the fishery

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<sup>19</sup> The Use of Rights-Based Measures in Fisheries Management. WWF Position Paper, September 2007. Compiled by Grieve, Chris.

<sup>20</sup> An analysis of existing Rights Based Management (RBM) instruments in Member States and on setting up best practices in the EU. Study published 01/02/2009.  
[http://ec.europa.eu/fisheries/documentation/studies/rbm/index\\_en.htm](http://ec.europa.eu/fisheries/documentation/studies/rbm/index_en.htm)

- Responsibilities
- Many design features account for social and cultural issues.

**Assignment** of rights may be to any of the following

- Individuals (business, person and vessel)
- Groups of fishers (cooperatives)
- Communities (Board manages quotas and proceeds)
- Villages
- Commercial fisheries
- Recreational fisheries

This provided a good framework but indicated that RBM for a specific type of fishery could take any form – there was still no better understanding of benefits of specific forms/assignments/options for particular circumstances, and therefore of the product that would be promoted in awareness raising.

Examples are given below of consideration at international level of RBM for tuna fisheries. The outcomes were consideration of concrete options and principles – a necessary first step.

Although RBM can be an effective tool for fisheries management in the right circumstances, in many cases application of RBM has not been successful, and where it is successful it has evolved - usually with very long trial and error periods where mistakes have been made to the detriment of the resource and/or the industry.<sup>21</sup> It is difficult to replicate successes from circumstance to circumstance and from fishery to fishery. The options, principles and risks must be carefully considered for each type of fishery.

The Workshop recommended that RBM can be promoted as a tool for management of shrimp fisheries, but the essential groundwork was not addressed. As part of the promotion there should be a more precise explanation of the nature of the tool and its risks and implications for the fishery or its participants.

Recommendations were made to Identify pilot sites and develop guidelines for the implementation of RBM in the shrimp fishery, but before that is done there is still a question to be answered – why RBM, and in what form? Does it necessarily involve co-management or ITQs? If so, what does co-management involve? Will ITQs lead to monopolies by wealthy companies? What makes an RBM the preferred tool for managing a specific fishery, as opposed to other forms of management?

Without answers to these questions, there is a danger that RBMs could be regarded as a temporary “fad” or new concept which attracts considerable funding but perhaps minimal support by fisheries managers, who may be operating on the basis of tried-and-true management tools. Even the WWF has warned in a position paper that one size doesn’t fit all.<sup>22</sup>

In this context, it is recommended that, before identifying pilot sites and establishing guidelines for the use of RBM in any fishery, including the shrimp fishery, the following concrete actions are taken:

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<sup>21</sup> See Shotton, R. (ed.) Use of property rights in fisheries management. Proceedings of the FishRights99 Conference. Fremantle, Western Australia, 11-19 November 1999. Mini-course lectures and core conference presentations. FAO Fisheries Technical Paper. No. 404/1. Rome, FAO. 2000. 342p. Ministers from New Zealand, Namibia and Canada describe their experience, including the difficulties and decisions that had to be discarded.

<sup>22</sup> The Use of Rights-Based Measures in Fisheries Management. WWF Position Paper, September 2007. Compiled by Grieve, Chris.

- undertake a performance review of RBM management in similar fisheries at national, regional and international level and assess their applicability;
- consult, propose and seek agreement on the form/assignment of RBM that should be considered for a fishery, or at least map out clear options;
- explain how this differs from existing management measures, or those non-RBM measures used successfully in other similar fisheries in the region or internationally;
- identify the implications and process/risks/costs/benefits of the proposed RBM for the resource, fishers and environment; and
- provide evidence why the use of RBM would be a long-term improvement to the sustainable management of the fishery over any current or alternative management measures.

Only after this has been done, can there be a focus on knowledge, awareness, promotion etc. Just as war is too important to be left to the Generals, who may believe in its usefulness no matter the cost, fisheries management is too important to be left to “propaganda”, however well intentioned, with no clear understanding of the product. Clear understanding is essential for RBM is to gain any traction at national level, as described in the next section.

In addition, lessons may be learned from the process established under the EAF-Nansen project for in-country project activities to support the development of the EAF described in Section 6. EAF-Nansen is distinguishable from the more general approach to *piloting* RBM programme because it is carried out in a structured *project* context. However, the type of in-country activities carried out under the projects provide a sound basis for developing a management system, including identifying and prioritizing issues related to the fishery and examining management options. Risk assessments and cost-benefit analyses also form part of the activities.

The Workshop made a few substantive recommendations, for example concerning artisanal fisheries to design RBM tools, and for tuna to define criteria for quota allocation and develop country specific tuna management plans. These seem to be appropriate steps; when there are clear tools, risks are better understood, as well as the process and costs and benefits. Efforts to increase awareness could then begin.

The misgivings described above were reflected in the concern and confusion expressed by countries during consultations, noted below. On the whole, they clearly signalled that the region is not ready, or in some cases unwilling, to consider RBM, particularly at levels above community-based fisheries.

#### **Recommendation**

20. It is recommended that before identifying pilot sites and establishing guidelines for the use of RBM in any fishery, including the shrimp fishery, and as a precondition for knowledge and awareness promotion, the lessons learned from establishing the EAF-Nansen project be considered and the following concrete actions taken:

- undertake a performance review of RBM management in similar fisheries at national, regional and international level and assess their applicability;
- consult, propose and seek agreement on the form/assignment of RBM that should be considered for a fishery, or at least map out clear options;
- explain how this differs from existing management measures, or those non-RBM measures used successfully in other similar fisheries in the region or internationally;
- identify the implications and process/risks/costs/benefits of the proposed RBM for the resource, fishers and environment; and
- provide evidence why the use of RBM would be a long-term improvement to the sustainable management of the fishery over any current or alternative management measures.

#### 4.1 Concerns of countries

There was confusion and concern about RBM systems throughout the region. Due to the lack of a clear understanding at regional level of the scope, or definition, of RBM, the question was sometimes asked whether a certain management practice amounted to rights-based management.

For example, in Mauritius it was not clearly understood whether the following three cases could be referred to as RBM; each seemed to have some element of a RBM system but may have elements of other management approaches as well.

- A company has been given a lease and a yearly allocation quota for a specified area in the St. Brandon area. It employs people on the island who have carrier vessels or who preserve the fish in salt. The license is not transferable, and the owner of the company has reinforced his rights through court.
- The Fishermen's Investment Trust (FIT) was established in 2006, and the shareholders are all fishermen. The Government gave FIT a quota so it could, in turn, make allocations to the fishers who then have an exclusive right to fish in a specific area (around St. Bravin Island). The quota is non-transferable.
- In another fishery, areas are demarcated for allocations to companies for using basket traps, but areas are rotated and new entrants are allowed.

In some countries there was confusion about whether co-management could be considered as RBM. Madagascar referred to the Conseil consultative nationale de gestion de pecherie which serves to advise on co-management.

The Ministry of Livestock Development and Fisheries - WWF Guidelines for the Establishment of Collaborative Fisheries Management Areas (CFMAs) in coastal and marine waters of Tanzania, 2009<sup>23</sup> describe co-management as "a management tool which relies on the active participation of the local communities on the management of the fishery resources. Fisheries collaborative management is an alternative to centralized command and control of fisheries management. It is one of possible solution to the problems of resources use conflicts and overexploitation." In this sense, co-management can be considered a tool that may comprise a part of an RBM system, along with other management tools.

A number of countries had fundamental concerns about RBM systems.

- Kenya noted that the small-scale BMUs in Lake Victoria, begun in the last five years, are still developing. There are still low levels of implementation, and there is a need for them to understand their rights and role.
- Madagascar explained that RBM would be difficult to implement considering the traditional free access fishers have enjoyed. They also cited the need for training and collecting the necessary data and statistics as a first step.
- Mauritius is aiming to democratize the economy and provide the opportunity of access to everyone. There is concern that if individual transferable quotas (ITQs) were introduced it would lead to monopolization by the larger companies.
- In Seychelles, a UNDP project to develop a management plan for Praislin was supposed to incorporate RBM, but it was decided that such an approach would be premature. It would not be effective because of the need to educate fishers and the public in general. The plan

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<sup>23</sup> Prepared by Fisheries Development Division and World Wide Fund for Nature. March, 2009. Reviewed March, 2010.

was restricted to co-management, and the lessons learned can be built upon in future. It was noted that a way forward would be to train fishermen as trainers to raise awareness; outreach and field work would be needed in this regard, particularly where there is open access.

- Tanzania noted that RBM would need substantial government commitment. It would not be right to try out RBM because funds are available. It may need significant awareness raising and sensitization including for decisionmakers/policymakers. Examples of successful RBM systems (which normally took years to develop under certain circumstances) shouldn't simply be transplanted from one country to another.
- Concerning BMUs, there is concern in Tanzania that the user is managing him/herself. BMUs should be subject to some form of control. For example, it might be better for the BMU to serve as monitor while fisheries associations are given a role to oversee the BMU for example by querying the BMU why illegal gear is being used. The BMU would then have to take action. More generally, the need for a performance review of BMUs was expressed. (It is noted that governance of BMUs is different among countries – e.g. Tanzania emphasizes county governance of BMUs where it is at district level in Kenya)

## 4.2 Legislation

Concerning the legislation underpinning RBM systems, Kenya reported that its Constitution emphasizes rights based management; communities must ensure that the natural resources are sustainable and benefit the country as a whole. Section 69(d) of the 2010 Constitution encourages public participation in the management, protection and conservation of the environment. Kenya has adopted the Fisheries (Beach Management Unit) Regulations, 2007, which forms the most extensive legislation in the region.

In Kenya, membership in a BMU is required for fishing in the area. BMUs contribute to the development of management plans and policies, and are trained to collect data and perform monitoring functions. They have been instrumental in moving from open access to limited access. They have the right to give access<sup>24</sup> and they vet illegal fishers.<sup>25</sup> The ecosystem is catered for in the system.

Tanzania provides for the establishment of Beach Management Units in its Fisheries Act<sup>26</sup> and for co-management in its fisheries Regulations.<sup>27</sup> Legislation governing CFMAs exists in the form of by-laws. It is understood that the draft fisheries policy refers to CFMAs. A number of challenges are facing the BMU system in Tanzania, including the lack of authority of the Ministry over municipal management of the BMU. Other challenges are described in section 4.3.1 below.

South Africa establishes a Fisheries Transformation Council<sup>28</sup> with the object of facilitating fair and equitable access to a right for commercial fishing or subsistence fishing, mariculture or operating a fish processing establishment. Only South African persons may acquire or hold such rights and the rights may not exceed 15 years. The Minister is empowered to determine conservation and

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<sup>24</sup> Section 7 of the Kenya Fisheries (Beach Management Unit) Regulations, 2007, authorizes the designation of a co-management area in which there may be restrictions on the number of fishing vessel licenses or fishing licenses that may be issued.

<sup>25</sup> The authority is given in Part III of the 2007 BMU Regulations, which provide *inter alia* the criteria and categories for membership, a joining procedure and resignation and expulsion of members.

<sup>26</sup> Section 18, Fisheries Act No. 22 of 2003.

<sup>27</sup> Regulations 104, 133-137, Fisheries Regulations of 2005.

<sup>28</sup> Marine Living Resources Act 18 of 1998, Part Five sections 29-37.

management measures to which a right may be subject, and may allocate rights to the Council. In turn, the Council may lease commercial fishing rights.

Other countries provide for forms of co-management in their legislation without specifically referring to structures such as BMUs.

In Madagascar, where there is open access some communities in the South West are *de facto* using RBM; they won't allow migrants to fish unless the community accepts. This effectively constitutes a claim by the community of rights over the fishing grounds. There is legislation allowing the transfer of management to local communities over certain areas of marine resources, such as the management of crabs in mangroves, but this forms part of a broader environmental law. Marine protected areas are co-managed with local communities, including rights of access to marine resources. In this context, there are some areas where fishing is allowed, and this is a matter for the rural community and entity responsible for marine protected area (MPA) management (e.g. an NGO or the National Parks administration).

Legislation in Mauritius was recently reviewed with a view to making recommendations to support co-management in marine protected areas, but the report did not refer to RBM.<sup>29</sup>

In Mozambique, the legislation does not deal directly with RBM, but provides for a system of participatory management<sup>30</sup> and establishes a Fisheries Co-Management Committee<sup>31</sup> and Community Fishery Council.<sup>32</sup> However, there are provisions in a Bill that is currently in Parliament which addresses the allocation of rights in terms of nationals and foreigners.

Mozambique was the only country that expressed an interest in providing for RBM for foreigners as well as nationals. A workshop on RBM had been held the week prior to the consultant's visit, where Namibia had explained their experience with RBM for foreigners.

In Seychelles, there is currently no applicable legislation but it is proposed to include a provision on co-management in the draft Fisheries Act.

Kenya referred to BMU Guidelines for Lake Victoria that were developed for the harmonization of structuring BMUs under the Lake Victoria Environmental Management Project. The laws of the three riparian countries were reviews and areas of collation were identified. The second phase of the Lake Victoria Environmental Project has a mandate for establishing marine BMUs as well. However, the level of capacity development is still low.

#### **Recommendation**

21. Mindful of the continuing challenges facing the ongoing establishment of BMUs in the region, together with their administration and the need to improve fisheries management at community level, it is recommended that a performance review of BMUs and as appropriate other forms of shared management in the region be undertaken.

<sup>29</sup> PMU (2011). Policy and Legal Review of Co-management of Protected Areas in Mauritius and Rodrigues. Final. Output 1.1: Partnerships for Marine Protected Areas in Mauritius and Rodrigues MAR/03/G35/A/1G/99. Pp. 129. 22nd December 2011. Government of Mauritius, GEF, UNDP, Dawson Shepherd, A.R.

<sup>30</sup> Fisheries Regulations, Decree No. 43-2003, Regulation 15.

<sup>31</sup> *Ibid.*, Regulation 18.

<sup>32</sup> *Ibid.* Regulation 19.

### 4.3 Case studies

There are many case studies on RBM, which may also be considered in the context of tenure. The FAO definition of tenure refers to the rules that “define how rights to land and other natural resources are assigned within societies” as well as “rights to use, control and transfer these resources”. At a 2011 FAO Workshop on Governance of Tenure for Responsible Capture Fisheries,<sup>33</sup> a wide range of case studies were presented by international experts, and the outcomes synthesized.

The Workshop contributed to the development of the 2012 FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. The first principle of the Guidelines is that States should “Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.”

Many of the case studies below, and the synthesis, were drawn from the outcomes of the Workshop. The case studies below summarize developments and issues relating to the following:

Tanzania	Collaborative Fisheries Management Areas
South Africa	Small-scale fisheries
Grenada	Beach seine fishery
Cambodia, Philippines, Thailand, Viet Nam	Improving governance of tenure in capture fisheries
Lake Victoria	Co-management regime
MPAs	Practices by communities with respect to MPAs to secure their access to resources and their rights to manage them
Namibia	Prerequisites for and equity aspects to be factored into RBM systems

#### 4.3.1 Tanzania<sup>34</sup>

The WWF is supporting the establishment of CFMAs in Tanzania. One of the challenges is building human capacity, including for enforcement by community and district authorities. This has been an ongoing activity for the past four or five years, and received some profile in 2011 on the occasion of the presentation of certificates to community leaders by the Prince of Wales.

Initially, the focus was to improve livelihoods of people dependent on species, fisheries habitats and species. Outputs included initiation of collaborative engagement of different stakeholders including district authorities where the fisheries dependent communities were located, communities themselves, the national government, private sector stakeholders dependent on the fishery, exporters, processors and other NGOs that may be interested.

Threats included use of destructive fishing methods (effected mainly by communities but others, such as middlemen, may also be involved), overharvesting, trawling and conflicts between trawlers. There was a need for support from District governments.

The development of collaborative fisheries management was carried out with the Ministry of Livestock and Fisheries Development under the Management of Marine and Coastal Environment

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<sup>33</sup> FAO. Report of the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011. *FAO Fisheries and Aquaculture Report*. No. 983. Rome, FAO. 2011. 34 pp.

<sup>34</sup> Based on information provided by WWF during consultations.



Project (MACEMP), begun in 2006, with the objective of positive fisheries management. The WWF Coastal East Africa Initiative also underpins the efforts, and WWF has made a long term commitment to natural resources/fisheries management.

It was recognized in 2006 that fisheries co-management was not taking off, so national guidelines for BMUs and CFMAs were piloted on the coast, and MACEMP has started to replicate that in other coastal districts. MACEMP ends in August and future support will be needed.

Having experimented for five years, it is believed that there is greater understanding about the details that will need to appear in legislation. For example, the BMUs around Lake Victoria manage a landing site rather than a territorial-based fishing ground. This type of arrangement is better for marine waters. Although now CFMAs are in by laws this doesn't exist in national legislation.

CFMAs may introduce quotas or other management measures. There are still some challenges that remain, including:

- **conflict management:** Villages depending on fishing grounds are acknowledged as managers of the fishing grounds. Anyone passing by has to ask for a fishing permit from the BMU. However, there are still some problems in implementation, for example fishers could have relatives who are not residents of the village that try to avoid the permit requirement.
- **ongoing capacity development needs,** including for surveillance and monitoring committees, regulation of fishing gear and the collection of fees by financial committee – revenue collection needs legal authority and control.

Three key areas of conflict in BMUs were described:

- **Outside fishermen** (mobile fishing/migration). Accommodation of outside fishermen is left to the local planning, the BMUs can decide if they want to give free access to migrant fishers or to neighbouring districts. Fees may be set out in a plan.
- **Internal conflict between BMUs and village leaderships.** Party political conflicts within a community or neighbouring communities are driven by illegal fishers and party political issues.
- **Commercial industrial fishing,** especially prawn trawling. There has been a moratorium on prawn trawling for four years, and when lifted there is potential for massive conflict. The Ministry will need to balance the issues of the BMUs and the prawn trawlers, and this could be a test of strength for the BMUs.

There is no harmonization with Kenya BMUs, but there is currently a project in Kenya led by the Wildlife Conservation Society working with communities/fisheries officials. It is believed that the BMU concept is much stronger on Lake Victoria.

#### 4.3.2 South Africa<sup>35</sup>

Proposals for the governance of tenure in small-scale fisheries in South Africa have been emerging as a result of the current small-scale fisheries policy process in South Africa, highlighting the need to

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<sup>35</sup> FAO. Report of the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011. *FAO Fisheries and Aquaculture Report*. No. 983. Rome, FAO. 2011. 34 pp. Report of the presentation of Jackie Sunde of the Environmental Evaluation Unit of the University of Cape Town, South Africa, presented the *Emerging proposals for governance of tenure in small-scale fisheries in South Africa*.

recognize customary tenure systems and the emancipatory potential of customary law in establishing more equitable and sustainable forms of tenure governance.

South Africa has a very diverse set of tenure systems, arising from the interface between customary law and the colonial and apartheid legacy of fisheries management. A de facto plural legal system exists; however, customary law and associated tenure systems have largely been ignored by the State.

Prior to 1994, South Africa's fisheries system was dominated by the interests of the industrial and recreational sectors. Legislation introduced over the past century was geared towards these sectors and largely excluded black, small-scale fishers, introducing a centrally managed, individually-based system of access rights, de-coupled from community. Post-apartheid legal reform failed to recognize and accommodate the customary rights of traditional fishing communities, and these communities are now articulating a demand for a complex net of tenure rights, one that weaves customary rights with a normative human rights framework. The new South African Constitution recognizes customary law as a legitimate body of law insofar as it is consistent with the Bill of Rights. Precedent setting court judgement in the Richtersveld case (2004) in this country has recognized that customary law is not limited by tradition; it is 'living' customary law and this living law is the basis of a customary community's culture and the origins of their tenure rights and regimes. Emerging African jurisprudence has also confirmed the rights of customary local communities to their culture and points to the centrality of customary law and tenure systems in the protection of culture.

The potential of 'living' customary law was emphasized to give substance to the call for a 'bottom-up', community-based, participatory approach to small-scale fisheries governance. Within customary tenure systems, rights are a function of the membership of groups and the local social, cultural and economic relations within which they are embedded. Rights are defined through systems of access and use in the context of these relations and are not absolute.

Such rights may simultaneously be communal and recognize individual entitlements within a collective context. Use and management of resources is interrelated, and administration of rights is nested within layered communal tenure systems, depending on where the right is vested. Similarly, dispute resolution processes are embedded in local layers of accountability. Because customary rights are a function of, and operate in, changing social relations, they allow for their administration to be flexible and adaptive.

It was argued that good governance of tenure in fisheries must confirm the recognition of living customary law as a legitimate body of law alongside statutory law in fisheries governance systems. Towards this end, decision-making should be devolved to the local level and governance should emerge from this local context. Thus, it is the State's role to respect, protect and promote these local processes, facilitate their interaction across different scales, and provide guidance towards ensuring that these processes are in line with a normative human rights framework.

#### **4.3.3 Grenada beach seine fishery<sup>36</sup>**

Fisheries governance, tenure and governance of tenure are poorly documented in the eastern

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<sup>36</sup> FAO. Report of the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011. *FAO Fisheries and Aquaculture Report*. No. 983. Rome, FAO. 2011. 34 pp. Report of the presentation of Patrick McConney of the Centre for Resource Management and Environmental Studies, University of the West Indies, Barbados, presented *Tenure in transition: changing traditions in a Caribbean beachseine fishery* co-authored with the consultant and former Grenada Chief Fisheries Officer, James Finlay.

Caribbean. This is in large part because such institutions have not developed. An exception is found in Grenada where interdisciplinary research and fishing industry consultations on the beach seine fishery have led to fishery tenure rules being recommended for legalization. The setting is Gouyave, a west coast town known as the fishing capital of Grenada where beach seining for coastal pelagics and small-scale pelagic longlining for tunas are integrated fisheries.

A variety of conflicts have arisen out of the recent erosion of traditional beach seine rules. The case describes the rules of tenure and the process of developing recommendations to reduce conflict over contested resources and space.

The fishing industry, through consultations, devised a plan through which legislation could be used to strengthen, but not entirely replace, a system of informal tenure rights and rules. A critical factor was the extent to which legislation would allow local-level interpretation and development of the beach seine rules to continue through existing informal institutions rather than be completely replaced by the formal judicial system for adaptive governance of tenure.

In this case, fishers did not want to become empowered for community-based management, but instead wanted to have access to a civil tribunal system set up specifically for the fishery. They saw the need to have informal, semi-formal and formal dispute resolution mechanisms. Principles such as fairness and equity were important as well as the adaptive capacity to modify the tenure system as circumstances changed.

The case study demonstrated that fishers can be innovative in creating governance structures but are powerless to have them implemented. The case also provided some criteria for assessing the success of governance of tenure for responsible small-scale marine capture fisheries. State and industry stakeholders will require a considerable amount of capacity building for governance of tenure through co-management to have a reasonable chance of success.

Such capacity building must encompass much more than training. It must include changes in the vision for fisheries management and the structures or institutional arrangements that are intended to make and keep it functional.

#### **4.3.4 Capture fisheries in Cambodia, the Philippines, Thailand and Viet Nam<sup>37</sup>**

Weak governance has been identified as one of the main causes of the present poor condition of fisheries in Southeast Asia. Secure tenure for fishers to fisheries resources has been proposed as an important component in improving fisheries governance in the region. The presenter pointed out that having good governance in place is essential for achieving most fisheries management goals and helps to protect and enable tenure arrangements. The presentation reviewed national laws, policies and administrative structures in each country with respect to the governance of tenure in the fisheries sector.<sup>38</sup>

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<sup>37</sup> FAO. Report of the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011. *FAO Fisheries and Aquaculture Report*. No. 983. Rome, FAO. 2011. 34 pp. Report of the presentation of Robert S. Pomeroy of the University of Connecticut-Avery Point, United States of America.

<sup>38</sup> Specific case studies of governance of tenure arrangements for selected fisheries in each country were presented, including: community fisheries in the Tonle Sap Lake fishery in Cambodia; coastal resources co-management in Chumphon Province in Thailand; community-based fisheries co-management system in Hinatuan, Surigao del Sur and Indigenous People's Rights in the Philippines; and co-management and fishing rights in the provinces of Thua Thien Hue, Quang Nam, Binh Dinh and Ben Tre in Viet Nam.

A number of recommendations were identified for improving governance of tenure in capture fisheries, including:

- decentralization: this refers to the systematic and rational dispersal of power, authority and responsibility from the central government to lower or local-level government or institutions;
- co-management and community-based management;
- national and local policies that support co-management mechanisms and granting of exclusive fishing rights to community-based institutions;
- supporting legal frameworks at national and local government levels;
- the legal framework should clarify/define the designated tenure area and the co-management mechanism for governance.
- the sea has multiple functions and meanings to people – in addition to its economic function as a source of food and livelihood, the sea has social and political value, as well as important religious and cultural meanings;
- a variety of laws, formal and informal/customary can impact upon access and governance.
- Rights, authority and responsibility must be clear;
- governance of tenure arrangements may require access rights to be limited to some resource users and to exclude others, often resulting in conflicts - conflict management mechanisms must be established; and
- management organizations should be financially sustainable.

#### **4.3.5 Lake Victoria<sup>39</sup>**

Secure tenure for fisheries is an essential ingredient for not only improving but also ensuring good fisheries governance. Poverty in fishing communities can equally benefit considerably from good governance of tenure for capture fisheries. A historical analysis of the governance of tenure system for capture fisheries in Lake Victoria can be divided in two periods: namely, the traditional (pre-colonial period) and the after independence (postcolonial period).

The co-management regime introduced in the lake in the late 1990s was grounded on an ownership regime based upon the customary tenure system. During the pre-colonial period, entitlement to land and other resources was based on traditions and customs of the respective tribes riparian to the lake. Ownership of these resources was communal, i.e. family, clan or tribe-based. Under this system, chiefs, headmen and elders had the power of land administration entrusted by the community. Access to fish and fishing grounds was open to all community members.

In the post-colonial period, territorial user rights were introduced. The lake was divided broadly among the three riparian countries, namely Kenya, the United Republic of Tanzania and Uganda. Kenya and the United Republic of Tanzania subdivided the lake further into provincial/regional areas, which were then subdivided into districts. In Uganda, the subdivision was at the county level.

While access within the national areas remained open, crossing borders to the other country was now restricted. The three riparian countries introduced a co-management regime where local communities and the government shared ownership of the fish resources and fishing grounds.

It was proposed that a good governance of tenure arrangement should be able to make among others every effort to uphold:

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<sup>39</sup> FAO. Report of the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011. *FAO Fisheries and Aquaculture Report*. No. 983. Rome, FAO. 2011. 34 pp. Report of the presentation of Paul O. Onyango of the Norwegian College of Fisheries Science, University of Tromsø, Norway, and University of Dar es Salaam, the United Republic of Tanzania, on the *Governance of tenure in the Lake Victoria fisheries*.

- equity and the perceptions of fairness in distribution of resources among various actors in the Lake region;
- legitimacy, i.e. the capacity of governance of tenure to bring about and maintain the belief that fisheries institutions are the most appropriate and proper ones for the community; and
- respect and cooperation among fishers.

#### 4.3.6 MPAs<sup>40</sup>

The focus on tenure issues in relation to MPAs is relevant in a context where MPAs are set for expansion in the coming years. Parties to the Convention on Biological Diversity (CBD) have agreed on a target of bringing at least 10 percent of oceans under protection by 2020. The Conferences of Parties (COP) of the CBD have consistently reiterated the need to respect the rights of indigenous and local communities (ILCs) in the context of protected areas.

A review of literature of MPA implementation from the perspective of tenure reveals a mixed picture. There are many cases where MPA implementation has led to weakening/denial of tenure rights of fishing communities. In these cases, MPA implementation has been associated with conflict, denial of livelihoods, impoverishment/criminalization of local populations, and has even compromised the safety of fishers, even when there is no clear evidence of biological success. Significantly, such cases are often associated with strengthening of the tenure rights of the tourist sector.

There are also several cases where tenure rights have been strengthened (or there is hope that they will be strengthened) during MPA practice. In all such cases, it can be seen that communities are using MPAs as a tool to secure their access to resources and their rights to manage them, and that strengthening/establishing tenure rights is a strong motivation for communities opting for MPAs.

Based on the literature review, some elements of good practice with respect to MPAs were identified, including: biological and social success in MPA practice is closely interlinked; coastal and marine spaces are often characterized by complex systems of 'sea tenure', which are important to map and use in decision-making around MPA practice; providing for adequate time to understand local tenure systems and for developing genuinely consultative and participative processes (including for conflict resolution) around MPA practice; ensuring that international commitments to recognizing rights of ILC, including to participate in decision-making, is reflected in legislation, policy and practice at the national level; recognizing and supporting different governance types, including community-led management and co-management; capacity building support designed to enable communities to establish, claim and strengthen their rights and fulfil their responsibilities, including with respect to other sectors, and recognizing that there are power differentials within communities that need to be addressed.

In conclusion, it was emphasized that MPA practice has to move towards greater equity and participation, both as an end in itself, and as a means to more sustainable conservation and management.

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<sup>40</sup> FAO. Report of the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011. *FAO Fisheries and Aquaculture Report*. No. 983. Rome, FAO. 2011. 34 pp. Report of the presentation of Chandrika Sharma of the International Collective in Support of Fishworkers on *MPAs: securing tenure rights of fishing communities?*, which was co-authored by Ramya Rajagopalan.

#### 4.3.7 Namibia<sup>41</sup>

The government has put in place sector specific management systems/measures among others which include area restrictions, limit on cod-end mesh size, and setting of TAC's for separate fisheries. Transshipment at sea is not allowed in Namibian waters. Fishing rights are not transferable, except with the approval of the Minister responsible for fisheries as provided for by the law. Main reason is that the transfer of rights might seriously threaten the progress made in achieving the goals of Namibianization and empowerment.

The TAC is set for all the major species based on the recommendations of scientists and advice from the Marine Resources Advisory Council. The purpose of setting the TAC is to ensure sustainable fishing operations and that the level of fishing effort does not undermine the status of each fish stock in question.

The TAC is then sub-divided and distributed to right holders in the form of quota allocations. The main purpose is to promote economic efficiency to allow proper planning of fishing activities. Quotas just like Rights are not transferrable.

Fishing licenses are required, mainly to raise revenue. There are various categories of licenses for Namibian and non-Namibians. There are also other fees, namely, the Quota fee and By-catch fee. There is a Marine Resources Fund Levy (a small fee is charged on all landings), License fee; fishing companies are required to pay a license fee to enable fishing vessels fish.

Development of the fishing sector is mainly for job creation, earning foreign exchange, increase domestic supply to maintain existing plants and processing factories. There are over 25 plants in Namibia. There is also a small domestic market. The development of the fishing industry also aimed at maintaining competitiveness on the export market, finding new markets and promoting private-public sector partnership. They have joint ventures between Namibia and foreign interest. This is encouraged to transfer expertise and technology. Foreigners are encouraged to apply for 20 year right duration.

The meeting was informed that the fisheries sector in Namibia is not subsidized because doing so would cause over-capitalization which would in turn lead to over fishing.

Key conclusion were:

- equity aspects must be factored in any RBM so that the local people can benefit from their inherent fisheries resources;
- effective fisheries management measures and structures, including compliance, MCS, management plan are a pre-requisite to a successful RBM system; and
- TACs should be set based on scientific advice and should ensure sustainable fishing operations and that the level of fishing effort does not undermine the status of fish stocks in question.

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<sup>41</sup> Draft Report of proceedings for the Workshop on the Rights Based Management of Fisheries in the Western Indian Ocean (WIO) region held on the 7<sup>th</sup> -8<sup>th</sup> of November 2011 at the Double Tree Hotel, Dar Es Salaam, United Republic of Tanzania.

#### 4.3.8 Synthesis of case studies<sup>42</sup>

The synthesis of the case studies presented at the 2011 FAO Workshop highlighted a need for the following areas to be considered in developing guidelines for systems of tenure.

##### 4.3.8.1 Governance of tenure in fisheries

###### *Context matters*

The overall size of the resource system matters and, therefore, boundaries of resource system and resource sectors are useful. Distinctive location and context specificities put resources in a unique position. In addition to spatial considerations, tenure must be understood in its particular historical context. User units in whose favour tenure will be allocated need to be defined.

###### *Systems*

Governance of tenure needs to be interpreted within the total social-ecological system of the fishery and can be framed within concepts such as adaptive capacity, self-organization and networks. Building stronger institutions can be seen as a precursor to successful governance of tenure.

###### *Diversity*

Governance of tenure in fisheries needs to acknowledge the diversity of values held by various stakeholders as well as the potential coexistence of multiple property rights. Different resource sectors need different tenure arrangements. Tenure in fisheries applies to a wide variety of gear types and fisheries systems and needs to recognize and support different governance types (community-led management, co-management) across scales and multiple levels.

##### 4.3.8.2 Governance of tenure as a process

Processes related to the governance of tenure in fisheries require fair and transparent administration as well as a doctrine of strict compliance with laws and rules.

There is a sequence of steps conducive to good governance of tenure for responsible capture fisheries:

- identification of relevant stakeholders and meaningful values;
- negotiations among stakeholders;
- definition of objectives;
- design of policies to reach objectives;
- implementation;
- monitoring; and
- feedback.

Governance of tenure emerges from local context and processes; local law is hence a determinant of the tenure system. If no tenure arrangement exists (or it is ineffective or unacceptable), then a new system must be appropriate to the cultural and historical situation and capacities of the fishery.

###### *Relationships, including power relations*

It needs to be recognized that there are power differentials within communities that need to be addressed. Changes in governance involve the redistribution of power and the reconfiguration of

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<sup>42</sup> FAO. Report of the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011. *FAO Fisheries and Aquaculture Report*. No. 983. Rome, FAO. 2011. 34 pp. Report of the presentation of Prof. Anthony Charles, synthesizing the case studies.

fisheries networks. There is an important role for leaders in finding, modelling and aligning the path to good governance of tenure in fisheries and in empowering.

#### *Capacity*

Capacity-building support designed to enable communities to establish, claim and strengthen their rights and fulfil their responsibilities, including towards other sectors, needs to be provided.

#### 4.3.8.3 Key factors to consider in tenure systems in fisheries

Key factors to be considered in fisheries tenure governance identified in the case studies include the following:

- flexibility;
- integration;
- participation;
- practicability;
- specificity;
- fairness;
- legitimacy;
- subsidiarity;
- responsiveness; and
- coherence.

#### *Responsibilities*

Tenure must include both rights and responsibilities. The former is about the legal framework, whereas the latter is partly about decision-making authority and partly about organizational capacity. The thinking about tenure arrangements must be connected with that on the sustainability of the fisheries in line with the 1995 FAO Code of Conduct for Responsible Fisheries. This requires the provision of incentives for responsible behaviour of all parties – not just fishers but also for state agents with respect to responsibility, competence and corruption.

#### *Respect, conflict and cooperation*

The existence of traditional mechanisms of conflict resolution in fishing communities is a key factor in conflict management. Any type of organization and concerted resolution of conflicts should seek the opinion of and validation by local authorities (e.g. elders of the village) to increase the chances of success.

In addition, rules need to be defined for establishing legitimacy. Efficient enforcement by the state to exclude illegitimate users (intruders) has to be promoted and mechanisms for the resolution of legitimacy-related conflicts need to be created. It is important to establish a governance of tenure that enables mutual respectful behaviour of fishers and enhances cooperation among fishers.

Governance of tenure may require access rights to be limited to some resource users and to exclude others, often resulting in conflicts. Conflict management mechanisms must be established. Local communities have various abilities, based often on respect and cooperation, to address conflicts that arise among them.

#### *Equity, fairness and development*

A specific focus of attention is on equity issues: who holds fishing rights (crucial to community well-being, food security, poverty alleviation) and how does tenure impact on social, economic and



human rights? The definition and allocation of rights to fish must include “poverty-reduction criteria as a key component of decisions over equitable allocation of rights”.

#### *Pre-existing rights*

It needs to be recognized that coastal and marine spaces are often characterized by complex systems of ‘sea tenure’ that are important to map and to use in decision-making. Governance of tenure planning needs to provide for adequate time to understand local tenure systems and to develop genuinely consultative and participative processes, including for conflict resolution.

#### *Management rights*

Management regimes designed by the communities themselves ensure local ownership of management measures and makes it easier, or even guarantees their implementation. Experience shows that there is better compliance where boundaries are set and management rules formulated by communities themselves.

Communities can use MPAs as a tool to secure their access to resources and their rights to manage them. Establishing or strengthening tenure rights provides a strong motivation for opting for MPAs. Enabling conditions include the existence of community organizations and/or appropriate legal frameworks. There is also evidence of strong linkage between social and biological success, with social considerations determining long-term biological success of MPAs.

#### *Forms of tenure*

For a ‘place-based’ approach to tenure, it should be considered having community or communal rights to draw on local institutions and local moral pressure to create incentives for better resource stewardship, to increase efficiency of management and to improve compliance.

- Co-management and community-based management are governance arrangements that are now widely utilized in some regions.
- TURFs may be especially suitable for tenure arrangements in sedentary fisheries.
- Customary tenure rights emerge through systems of access and use and are a function of membership of groups and local relations. Rights are shared, relational, nested and not absolute.
- Common property and individual rights under community-based norms can be understood as a system of complementary interests held simultaneously.

#### **4.3.9 RBM/Allocations for RFMOs with a mandate over tuna fisheries**

A valuable resource for better understanding the issues relating to RBM in tuna fisheries is the recently published book, “Conservation and Management of Transnational Tuna Fisheries”.<sup>43</sup>

Chapter 4, “Rights-Based Management in Transnational Tuna Fisheries,”<sup>44</sup> considers property and use rights as a management approach in transnational fisheries for tunas and other highly migratory species. It discusses the types of rights that can be awarded—the right to participate in a fishery, the right to catch a specified quantity of a species of fish, the right to utilize a specified amount of fishing power, and the right to exert a specified amount of fishing effort. It then discusses the allocation of rights—to states or to individuals or groups, and the criteria for allocation of rights.

History shows that adoption of rights-based institutions tends to come late in resource use when the costs of both open-access and central regulation are high and that the most complete rights

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<sup>43</sup> ed. Robin Allen, James Joseph, Dale Squires. 2010 Blackwell Publishing, ISBN 978-0-8138-0567-2.

<sup>44</sup> Robin Allen, William Bayliff, James Joseph, and Dale Squires.

will be assigned to resources that are more valuable, less mobile, and more observable (Libecap 2006). The authors conclude that whether the transformation to rights-based management backed by strong international treaties will be completed prior to this point remains an open question.

Nonetheless, a stronger start has been reached than initially meets the eye through ICCAT's allocation of TACs by state, the Forum Fisheries Agency's transferable effort program, and the Inter-American Tropical Tuna Commission's (IATTC) bycatch share program for dolphins, the Agreement on the International Dolphin Conservation Program (AIDCP) and IATTC's limited entry and capacity management program. These are valuable lessons, but not necessarily directly applicable to the SWIO region.

Issues of politics, enforcement, and compliance are also addressed.<sup>45</sup> In an assessment of the legal and political challenges of establishing ITQ schemes in RFMOs that manage highly migratory tuna stocks, four specific challenges are considered: (1) exclusion; (2) initial allocation of quota rights; (3) distributive issues associated with rights transfer; and (4) monitoring and enforcement.

The author argues that the political challenges for RFMOs and high seas fisheries are much different from those within the EEZs of coastal states. The most significant difference is the lack of an authoritative agent that can impose, coerce, or in some other way forge the distributive bargains that are necessary for such programs to take root.

As a consequence, recognition of exclusive access rights, allocation disputes, and monitoring and enforcement issues are more problematic in international waters than in domestic EEZs. Although prospects for ITQ programs are considered to remain poor for the near term, the author discusses the conditions under which such a program would be possible. The author concludes that the most plausible future scenario may be a sequence of modest institutional reforms in multiple RFMOs that gradually move toward ITQs, as opposed to a more dramatic user rights experiment in a single tuna RFMO.

The issue of allocation criteria is currently being addressed in IOTC, and WWF supported a Consultative meeting for the coastal States on the quota allocation criteria for the Bigeye and Yellowfin Tuna Resources in the IOTC Area of Competence, at the request of the Fisheries Directors Forum<sup>46</sup>. The object of the meeting was to help coastal States have a full understanding of the quota allocation issues. Proposals had been made by a number of Members, including Seychelles and the EC, reflecting the interests of the coastal States and distant water fleets respectively. IOTC will consider the issue further at a meeting in Oman in February 2013.

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<sup>45</sup> See Chapter 15, "Prospects for Use Rights in Tuna Regional Fisheries Management Organizations," by Frank Alcock.

<sup>46</sup> Minutes of the Fisheries Directors Forum Meeting, 9 and 10<sup>th</sup> November 2011, Dar es Salaam (Whitesands Hotel), Tanzania. The Minutes noted that there was a recognition that, although tuna resources were very important for the WIO states, few internal (within countries) discussions and no sub-regional harmonization (at WIO region) of the issues to be discussed in, or proposed to IOTC existed in order to better defend the interest of WIO states and influence the decisions taken. This included the present discussions on Quota Allocation System. The following recommendations were made:

- Establish WIO Technical Working Group on Tuna Conservation and Management Measures, including Quota Allocation System (QAS), proposed by Seychelles, under the umbrella of SWIOFC;
- Request WWF to support this Technical Working Group (including technical support on Quota Allocation as per WIO criteria);
- Establish TOR for the Technical Working Group, including the profiles of the experts (annex 4);
- Raise WIO states knowledge on tuna stock assessment (countries are encouraged to assign scientists for this activity).

Some further background on this issue is provided by the consideration of applying RBM to the tuna fisheries in other regions. It was discussed at length at a 2008 IATTC Workshop<sup>47</sup> and at a 2011 Conference in Cordoba, Spain.<sup>48</sup>

At the IATTC Workshop, the following options for RBM systems for international tuna fisheries were considered:

**Country allocations.** In this case, the participating countries agree explicit shares in the use rights to the tuna stocks. These rights can be defined either as (i) a fraction of the total allowable catch, or (ii) a fraction of total permitted fleet capacity. It is then up to each country to decide how these rights are used by its own fishers or those whom it authorizes to use these rights.

**Universal ITQs.** Universal ITQs involve the setting of a total allowable catch, with rights to catch allocated to individual fishing enterprises. This implies that countries would agree to give up their right to control individual harvesting rights. The rights in the fishery would be shares (fractions) of the TAC, which would be owned as property in perpetuity or for a long period and would be freely tradeable. Each year a right would generate an annual catch entitlement (ACE) equal to the fraction of the TAC represented by the right. The rights in the fishery and the ACEs could be traded independently. The ACEs could be specified by gear type or method, to account for the different effects of fishing associated with each gear type; for example a share in the TAC may generate 3 tonnes of longline-caught tuna, but only 2 tonnes of tuna caught with purse seines. Spatial issues may be handled either by dividing the TAC or by qualifying ACEs. The system may include limits on quota aggregation and/or constraints on places where fish may be landed.

**TunaCorp** With this system, a corporation (TunaCorp) would be established, which would be owned by the members of the IATTC, with shareholdings in proportion to their ownership interest in the fisheries rights. Each year the countries would vest the catching rights (ACE) generated in TunaCorp, to be managed to maximum economic benefit. Country ACE allocations could be allocated in a variety of ways, and may be encumbered in accordance with the policies of the member whose rights they are associated with. Examples of encumbrances would be a requirement to land tuna in ports of a member, or limiting allocations to vessels flying the flag of a member. The system can use similar mechanisms to those of the universal ITQ system to address spatial issues.

Although various pros and cons of each model were considered, the Workshop participants were not in a position to compare the models, which were only developed in a preliminary way during the Workshop. However, they suggested that further work be put into developing the models and exposing them to discussion with a wide range of tuna fishery stakeholders.

The conclusions of the Cordoba Conference were more of a general nature. An agreed framework was developed of principles, measures and actions that should be taken in the allocation of rights.

1. The first step in an allocation of rights is to close the pool of participants to which rights are allocated. Catch rights that can be exercised anywhere within a RFMO area do not eliminate the

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<sup>47</sup> Report of Workshop on rights-based management and buybacks in international tuna fisheries, La Jolla, California, USA, 5-9 May 2008.

<sup>48</sup> Cordoba Conference on the Allocation of Property Rights in Global Tuna Fisheries (Cordoba Conference), Cordoba, Spain, 5-9 September 2011.

requirement of having access rights to EEZs. Despite holding an allocated Use Right, vessels wishing to fish within an EEZ must also obtain an access.

2. Two different levels of rights exist. The Property Right is allocated to participating states. Use Rights are subsequently made available by those participating states to individuals or groups that operate in the fishery.

3. The duration or term of initially allocated rights can vary from indefinite to shorter time periods with corresponding pros and cons. The former provides certainty for investment and strengthens incentives for conservation and stewardship, while the latter provides flexibility simplifying reallocations of rights, including developing coastal states and new members.

4. The right allocated must be expressed in units that are linked as closely as possible to the impact on the resource, and in general, this favours using catch rather than fishing effort.

5. Total allocations should be science-based with the objective to maximize the benefits from the fishery as well as ensuring the health of the stocks and their ecosystem and, further, account for all removals from the fish stock.

6. Denominating rights as a percentage share of the total allowable catch or effort will avoid the need for reallocations as fish stocks and optimum catch levels fluctuate.

7. Transferability of rights is essential to realize the full benefits of rights-based management and create flexibility in adapting to changing circumstances.

8. When accommodating new or increased participation by coastal states, the total of the allocations must remain equal to the target of the rights-based system.

9. Effective allocations systems require a high level of confidence among the participants that their rights are secure and that the rules are applied equally to all. Therefore, any allocation system must be transparent in its establishment, implementation, compliance, and enforcement.

10. Compliance and enforcement are necessary components of any allocation agreement and must be considered as part of the agreement. Along with the rights that an allocation specifies, an obligation to abide by the agreement and enforce its provisions is a responsibility of every participating nation.

The more recent Bellagio framework for sustainable tuna fisheries, developed at a 2010 Conference,<sup>49</sup> included consideration of a RBM framework. It concluded that some of the benefits of a full rights-based management system can be captured by making smaller steps.

A non-exhaustive list of brief individual examples of rights-based management and capacity reduction methods was given, as shown below. The examples included ones that could be carried out without a full RFMO rights-based management system, while others demonstrate how an RFMO rights-based management system could be used to achieve particular goals.

- Two or more countries that implement an individual catch quota program for their country allocations can cooperate and arrange for international trade between companies owning the quotas. The trades would only be for one year, and would not imply that the countries are decreasing or increasing their allocation.

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<sup>49</sup> <http://econ.ucsd.edu/CEE/newsitems/BellagioFramework.pdf>.

- Subsets of RFMO members could take action in support of conservation and management objectives with measures that go beyond those of the RFMO.
- Transferrable bigeye bycatch limits could be used as a bigeye bycatch mitigation tool in purse seine fisheries. Within a nation, allocated limits could be transferred among individual purse seine vessels. In circumstances when there are multiple gear types catching bigeye, with allocations, transfers might be permissible between gear types.
- Buybacks can address situations of over capacity as long as there is limited entry. A RFMO, a group of countries, or an individual country may purchase vessels to scrap. Governments, non-governmental organizations, or a public loan repaid over time by the industry can finance the buyback. Any industry portion of repayment can be financed through some combination of fees and landing taxes.
- Transferrable allocations can be used for either continued use of the right, or its retirement.
- Transfers of vessels and/or quotas, provide a way of accommodating coastal states' rights to develop their tuna fisheries, including on the high seas in this respect.
- Developing States, in particular small island developing states and states with small and vulnerable economies should be assisted in the development of their fisheries. Potential methods of transfer include:
  - Issuing time-limited rights to current users that upon expiration revert to developing
  - Landings taxes or annual fees on current fishers used to fund the developing states' ability to develop their fisheries; and
  - Property rights on the high seas allocated to developing coastal states where the corresponding use rights can be rented, leased or fished.
- The member countries of a RFMO could establish a "Tuna Corporation" (similar to the "Enterprise" established in UNCLOS for deep-sea mining) in which individual countries hold shares. The corporation would contract with fishing fleets to capture the tuna quotas and distribute the rents among its "shareholders."

#### **Recommendation**

22. It is clear there are no "best" approaches to the type of RBM that would best be used for tuna. It is recommended that, before a decision is made on implementing RBM for any tuna fishery in the region, the issue be thoroughly addressed in the context of the considerations outlined in the stocktaking of possible approaches in the text.

#### **4.4 Recommendations for piloting RBM in the region**

The recommendations of the WWF AU-IBAR Workshop included identifying pilot sites for RBM of the shrimp fishery, and to establish pilot projects in each country for the artisanal fishery. These recommendations were not accompanied by a clear rationale. It is worrying that, in the Workshop report, there did not appear to be any agreed criteria for identifying pilot sites or establishing projects for the artisanal fisheries. This would be fundamental to the success of any initiative.

There may have been criteria agreed based on scientific studies and other research on management measures of which the consultant is unaware,<sup>50</sup> but from available literature the recommendations do not seem to be based on an ongoing analysis, implemented at national level, of such criteria or the risks, costs and benefits and many other aspects of such management. It is well known that introduction and implementation of RBM is a long and complex process; if approached simply through site selection – without criteria or a carefully laid plan – it is likely to take longer and its effectiveness may be compromised.

In addition, as shown above, the understanding, human capacity and policies needed to underpin the implementation of RBM are generally not in place, and it would seem to be a necessary early step.

Case studies, even in developed countries, indicate that criteria, human capacity or policies were not necessarily in place as RBM was implemented, leading to a long period of confusion. Not only was there no “best practice” in piloting, but RBM was often introduced in an environment of some confusion. This was underlined in the FishRights99 Conference,<sup>51</sup> and some examples are shown below.

In Canada’s experience with ITQs, the early programmes were “experimental in nature and cautious in the freedom given to holders of fishing licences who participated in the programmes”. Despite the use of ITQs over 25 years, there were no government plans at the time of the Conference to expand their use into the remaining fisheries. It was foreseen that the development of IQ fisheries would be at the instigation of the licence holders.

“The policy on IQs has been to permit them to develop as extensions of the fishing licence, where a significant proportion of licence holders in a fishing fleet requests to have IQs and where they can reach agreement on a sharing arrangement and a fishing plan”.

The Speaker of the New Zealand House of Representatives and former Fisheries Minister, Hon. D. Kidd, reported that, “after several years of skirmishing, the government of the day introduced the Quota Management System in 1986. The core feature of the system was the TAC, fixed each year by a scientifically-based assessment process, and the subdivision of the TAC into ITQs held by individual fishers and companies.

“The great failing of the system was in the definition of the property right – it was not clearly defined. Perhaps more importantly it was not proportional. This led to TACs being blown out by the granting of absolute ITQs under the catch-history appeal system. A considerable element of the conservation and sustainability-gains hoped for by the system were not initially achieved”.

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<sup>50</sup> Robust criteria for the application/piloting of RBM may exist. Some criteria for selecting villages to form a CFMA exists, but is based on geographical and psychological considerations rather than on a deeper assessment. The criteria for selecting villages encompass: i. Existence of established BMUs in respective villages; ii. Presence of villages which share common fishing ground(s); and iii. Communities (through BMU assemblies) showing willingness and readiness to collaborate in establishing a CFMA. See Guidelines for Establishment of Collaborative Fisheries Management Areas (CFMAs) in coastal and marine waters of Tanzania, 2009. Ministry of Livestock Development and Fisheries. Prepared by Fisheries Development Division and World Wide Fund for Nature. March, 2009. Reviewed March, 2010.

<sup>51</sup> Shotton, R. (ed.) Use of property rights in fisheries management. Proceedings of the FishRights99 Conference. Fremantle, Western Australia, 11-19 November 1999. Mini-course lectures and core conference presentations. FAO Fisheries Technical Paper. No. 404/1. Rome, FAO. 2000. 342p.

In contrast, for Namibia, Hon. A. Iyambo, the Minister of Fisheries and Marine Resources, explained that the first Namibian fisheries policy in 1990 had as goals Namibianization of the fishery and empowerment to ensure an equitable balance of participation among Namibians, particularly those previously excluded. He reported that “from the start, it was planned that the new fisheries management regime should be based on a system of fishing rights. This drew both on previous experience in the management of Namibia’s inshore fisheries and emerging international trends and experience”. The focus on rights based fishing in the 2001 White Paper was continued in the 2004 Fisheries Policy. This would indicate that “best practice” would involve some clear thinking and continuing policy support at a high level.

Without criteria on which to base a decision on piloting, and in the absence of applicable policy and human capacity, any piloting scheme should take some preliminary steps before selecting sites or fisheries in which to introduce RBM. National management, scientific, economic, legal and other experts working together with stakeholders in the fishery should be involved.

### **Recommendations**

23. It is recommended that, in the first phase, the actions in the framework below should be undertaken to the extent possible. This may take the form of a dedicated initiative or project.

- Establishment of a steering committee to oversee and guide the process for implementation of RBM;
- Designation by government or regional consensus of priority fishery/fisheries for consideration, and the rationale for such designation;
- Preparation of a scoping report on the use of RBM to manage the designated fishery/fisheries which would:
  - prepare a baseline report on the status of the stocks;
  - report on the history of and current activities in the fishery, including the activities and expectations of the fishers and related industry, and in view of this assess potential challenges and solutions to the introduction of RBM;
  - assess the current management of the fishery;
  - assess the strengths, challenges and possible solutions to current management of the fishery;
  - take into account relevant bilateral, sub-regional and regional considerations;
  - provide a performance review of the implementation of RBM in similar fisheries at national, regional and international levels and assess the applicability;
  - describe relevant risks, including issues relating to human capacity, the law, policy, institutions, and enforcement, as well as to equity, social, cultural and economic aspects and propose consultation and awareness raising processes as appropriate;
  - define the RBMs to be considered - in consultation with relevant stakeholders, develop a model or options for RBM of the fishery, including proposed forms/assignments;
  - describe the risks, costs and benefits to the resource, fishers and the environment of implementing the RBM management options;
  - explain how RBM differs from existing management measures, and how RBM measures differ from non-RBM measures used successfully in other similar fisheries in the region or internationally;
  - provide evidence why the use of RBM would be a long-term improvement to the sustainable management of the fishery over any current or alternative management measures; and
- Description of next steps, including consultations, awareness raising, social/economic/ legal/policy aspects and implementation of RBM, including activities, a timeframe and budget.

The outcomes, to be reviewed and agreed by government, should be used to identify piloting sites, fisheries and/or methods.

24. For the second phase, the process should begin in earnest. The development of a model or options, based on risks, costs and benefits in the context recommended above would at least give

stakeholders, including government, a clearer picture of the goal. It should be recognized that, during the second phase, the proposals are there to provide clarity; they may be agreed, modified or dismissed, or another management approach may be adopted.

In the recommended way forward, all stakeholders will be able to assess potential products and take ownership with a clear vision. It will also determine, at a preliminary stage, where stakeholders may not be ready for, or will reject, efforts to implement RBM. In such cases, it will be important to assess the reasons why and to focus on a Plan B – other management forms for the fishery or other fisheries/areas for the implementation of RBM.

The experience in Seychelles where fishers were not ready to accept the outputs of a project to develop RBM for the sea cucumber fishery could be averted by a preliminary scoping study along the lines of that suggested above, or by developing criteria for the piloting of RBM that would flag such an eventuality.

#### Recommendations

25. Notwithstanding the previous recommendation, it is recommended that NGOs involved in piloting RBM in Kenya and Tanzania cooperate to ensure compatibility and effectiveness. At country level, it is recommended that efforts be strengthened to ensure compatibility of RBM management especially for inland waters. Piloting choices should be made, to the extent possible, in a jurisdiction where there is legal authority to ensure successful implementation.

In addition to the recommendations made above for a process to pilot RBM, the following guidelines for consideration in formulating RBM options may be useful.<sup>52</sup>

- **Local conditions:** RBM systems need to be tailored to local circumstances and objectives.
- **Scientific requirements:** A sound scientific basis for establishing exploitation limits is important for any management system. For quantitative RBM systems this requirement may be even greater. For example, management through ITQs requires accurate real-time specification of TACs, adjusted annually in response to stock fluctuations.
- **Cost-benefit assessment:** Sophisticated RBM systems can be costly to implement and maintain. Such systems may be economically warranted only for large, valuable resource stocks.
- **Economic performance:** Previous research has shown resource rent generation is highest in those systems that have the highest quality rights. Systems with weak rights showed negative or low resource rents and could not cover the management cost. These findings showed a clear link between the management regime and the opportunity for profitable fisheries.
- **Avoidance of overcapacity:** The OECD recommends that fisheries management systems are designed to prevent overcapacity and overfishing from occurring, and that there should be appropriate incentives for fishers to automatically adjust fishing capacity and effort, so as to avoid the use of expensive decommissioning schemes where possible. RBM systems that do not lead to a natural reduction in excess fishing capacity should be augmented by active decommissioning schemes to promote an improved balance between fishing capacity and

<sup>52</sup> An analysis of existing Rights Based Management (RBM) instruments in Member States and on setting up best practices in the EU. Study published 01/02/2009.

[http://ec.europa.eu/fisheries/documentation/studies/rbm/index\\_en.htm](http://ec.europa.eu/fisheries/documentation/studies/rbm/index_en.htm)



fishing opportunities. Schemes should not allow capacity, once removed, to return to the fishery and preferably should not require the use of public funds.

- **Precautionary management:** Fishery resources typically suffer from high unpredictability, which can lead to overfishing or collapse unless specifically allowed for. The fishing industry is also impacted by numerous factors which are outside of the control of any management agency or authority, for example, oil price or world currency markets. Even well-managed fisheries may suffer shocks from external factors, which can affect their economic performance.

- **Enforcement:** Rights require enforcement, because of the potential impacts of illegal activities. Without effective enforcement, exclusivity and security have little meaning.

- **Transferability:** Enhanced transferability of rights and improved flexibility in rights management may produce a reduction of redundant capacity and enhancement of efficiency. Nevertheless, even when a right is not officially transferable, if the right is valuable, stakeholders will find some element of the system through which this value can be expressed. In IQ systems, where there is a specific concern to restrict transferability, similar outcomes to those of ITQ systems (reduction in capacity, reduction in the race to fish, and obtaining an appropriate mix of quota) can be achieved by other nationally-implemented measures, such as decommissioning schemes and national quota swaps. This requires more input (time and resources) from the central authorities, rather than allowing the market to act. A number of Member States have purposely restricted transferability of rights with the aim of protecting national fishing interests, small scale fishers and fishing-dependent communities. Even in systems where transferability is significant (e.g. VTQ and ITQ systems) there are often systems in place to ensure the protection of small-scale fishers and to ensure the possibility of new entrants to the fishery, such as allocating a proportion of national quota to the small-scale sector, and reserving a part of the quota for new entrants in order to build up a track record.

- **Co-management and fisher responsibility:** Effective implementation will not be realised without the cooperation of fishermen in terms of design, implementation, and compliance. The industry needs to be empowered to take on responsibility for stewardship of the resource to ensure a sustainable future for fisheries. The use of POs not only as platforms for quota management but also as platforms to develop technical measures may enhance resource sustainability. PO management of markets for rights, when based on sufficient/necessary provision of information to Member states (e.g. quota uptake), can increase the ability of fishermen to adapt fishing strategies resulting in economic and social benefits

- **Government intervention:** Even in market-based ITQ systems, national authorities should establish the parameters and limits within which the system should work, and may wish to maintain the possibility for intervention should it be seen to not be functioning as expected. While longer-term rights are generally regarded to be higher quality, it may be prudent to include a 'sunset clause' to enable such intervention if necessary. An RBM system may be seen as a 'resource give-away', unless accompanied by a system of fair user fees. Mechanisms for cost recovery should be given due consideration at an early stage, as it is much harder to implement later in the process.

- **Markets for rights:** The existence and functioning of markets in the EU is bringing about considerable benefits in terms of resulting efficiencies and fleet reductions, in line with CFP objectives. However, Member States should be free to continue to impose limitations on the functioning of markets to protect vulnerable/dependent fishing communities. Stakeholders must be fully involved in decisions taken by Member States as to the establishment and development of markets for rights. With increasing value of fishing rights resulting from the development and functioning of markets, special provisions may be required to assist new entrants to the fishery because of increasingly high entry costs. It need not be necessary for State administrations to retain complete control over the monitoring of transfer markets.

• **National objectives:** These may impose constraints on the development of RBM. RBM systems need to be tailored to local circumstances and objectives. In this regard, moving towards IQ and ITQ management systems is necessarily an iterative process that takes a substantial period of time, and should allow opportunities for stakeholder input and revision or modification of the system as it evolves.

• **Small scale fisheries:** Schemes for small-scale fisheries, such as a separate quota allocation, and/or prevention of consolidation can be implemented alongside ITQ systems and result in their protection and continued participation in the fishery. It is a process that takes a substantial period of time, and should allow opportunities for stakeholder input and revision or modification of the system as it evolves.

## 5. HARMONIZATION OF LEGISLATION AND GUIDELINES FOR THE IMPLEMENTATION OF RBM

As noted above, there are many variables in the use and composition of RBM, and these should be taken into account when approaching the task of harmonizing legislation and guidelines. They include the many different forms/areas/fisheries of RBM, different political, policy, cultural, economic, institutional and other needs and systems of countries and different legal system including at community, county and district level.

Mindful that one size won't fit all, some basic considerations for harmonizing legislation and guidelines relating to RBM appear below.

### 5.1 Legislation

Legislation relating to RBM systems covers a broad range of topics and can also apply to management that is not rights based. Some of the key topics that should be included are listed below and appear in Annex 4, which show whether a country has included a similar provision in its legislation, and Annex 6, which gives text that can be used as a basis for harmonization:

5. Principles for sustainable fisheries management<sup>53</sup>
7. Fisheries management plans
8. Fisheries management measures
9. Declaration of fisheries management area
10. Restriction on fishing in fisheries management area
11. Granting of fishing rights
12. Shared responsibility for fisheries management
13. Functions, etc of fisheries management advisory body or committee
14. Shared Fisheries Management Bodies
21. Declaration of zones for fishing
22. Declaration of protected areas, management areas or reserves for fishing
23. Declaration of endangered or protected species of fish
24. Pollution of the fishery waters
25. Fisheries impact consultations and assessments
47. Fishing using non-national (foreign, joint venture etc) fishing vessels<sup>54</sup>

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<sup>53</sup> The principles should include a provision similar to paragraph (g), encouraging participation of users of the fisheries resources, and of the community more generally, in the management of fisheries.

<sup>54</sup> The requirements include an access right granted by the Minister, taking into account the provisions of subsections (1) and (2) and in consultation with the Director, in accordance with such conditions as he may require and as may be prescribed, including the:

- (a) maximum number of such rights to be granted for a given period of time;
- (b) maximum period of time during which such right can be held;

Some conservation measures included in Annex 4 and 6 may also be considered for rights based management. They are:

26. Prohibited fishing gear and methods
27. Prohibitions for certain species, sizes
28. Possession of prohibited fishing gear, substance
29. Fish Aggregating Devices (FADs)
30. Damage, destruction to, interference with fishing gear, vessel, person prohibited
31. Leaving, abandoning objects in the fishery waters prohibited

In particular, for community-based RBM section 12 empowers the relevant authority to make arrangements with a local authority (Counties/Villages etc.), competent fishers' organizations and such other stakeholders' organisations that may be recognized for their fisheries management skills and knowledge, for the development of shared responsibility for the management of artisanal fisheries, fisheries management areas, Marine Protected Areas and areas within the jurisdiction of each (County).

The arrangements may be established in fisheries management plans or by a shared management agreement which should include to the greatest extent possible:

- a) a statement of objectives of the agreement;
- b) a description of the area covered by the agreement;
- c) a description of the governance arrangements and authorities for implementing the agreement;
- d) a description of the management activities to be undertaken;
- e) rules governing the access to and use of the area by other fishers;
- f) rules governing the requirements for information and data;
- g) rules governing the enforcement of the agreed activities;
- h) rules governing the financial aspects of the agreement, including collection and accountability for fees, fines and penalties;
- i) the duration of the agreement;
- j) provision for monitoring the agreement;
- k) provision for revision and termination of the agreement; and
- l) provision for conflict avoidance and the settlement of disputes.

The above framework is not necessarily complete or appropriate for each situation, but at least provides a basic template. Tanzania has enacted most of the elements shown above in section 18 of the 2003 Fisheries Act.

Comprehensive legislation has been established by Kenya in adoption of the 2007 BMU Regulations which address the following areas, and can be used as a baseline example for regulations:

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- (c) fishery or fisheries to which rights-based access applies;
  - (d) qualifications of applicants for such rights;
  - (e) procedures for application for such rights;
  - (f) criteria for the grant of such rights;
  - (g) conditions for the use of such rights;
  - (h) transferability of such rights; and
  - (i) conditions for the cancellation or revocation of such rights.

- Objectives, structure, area of jurisdiction and mandate in co-management
- Membership and elections
- Administration
- Responsibilities of the BMU organs and officers
- BMU finances and financial management
- Establishment, registration, supervision and dissolution
- General provisions (obstruction, malicious damage, penalty)

Although there is a general power to take management measures and develop management plans, which could include RBM for any fishery, the indicative provisions do not expressly include authority for the government to issue leases for RBM management, nor is transferability addressed. This would need to be included in the relevant management plan, or provisions similar to those found in Section 18 and 29-37 of the Marine Living Resources Act of South Africa. These provisions are dedicated to the granting of rights, and establishment of a Fisheries Transformational Council.

The Minister is empowered to grant rights and require an environmental impact assessment report to be submitted by the applicant. New entrants are permitted, and the rights are not to exceed 15 years, after which it automatically terminates and reverts back to the State for reallocation. The Minister may determine conservation and management measures.

The Council is dedicated to facilitating the achievement of equitable and fair access to the rights described in section 17. It may, *inter alia*, lease fishing rights, determine a price and conditions for the lease and assist in capacity building.

The 2001 Namibia Regulations relating to the Exploitation of Marine Resources contains some useful forms and procedures for granting rights or exploratory rights, allocating quotas and issuing licences, and can serve as a basis for harmonization in this regard.

#### Recommendation

26. It is recommended that, where RBM is being introduced, legislation be reviewed to ensure that provisions elaborated in the text provide a clear foundation for their implementation.

## 5.2 Guidelines

The harmonization of guidelines for the implementation of RBM is better established by a process, based on certain principles, rather than a baseline framework to be used in all cases. This would allow the flexibility needed for the wide range of variables contained in RBM – level, sectoral, species, area and others.

Concerning **community-based RBM**, guidelines for the implementation of RBM systems in coastal and marine waters of Tanzania – CFMAs - were prepared 2009 by the Tanzanian Ministry of Livestock and Fisheries Development and WWF and reviewed in 2010;<sup>55</sup> they complement guidelines applying only to marine waters published in 2009.<sup>56</sup>

<sup>55</sup> Guidelines for Establishment of Collaborative Fisheries Management Areas (CFMAs) in coastal and marine waters of Tanzania, 2009. Ministry of Livestock Development and Fisheries. Prepared by Fisheries Development Division and World Wide Fund for Nature. March, 2009. Reviewed March, 2010.

<sup>56</sup> Guidelines for establishing community based collaborative fisheries management in marine waters of Tanzania prepared by fisheries development division and World Wide Fund for Nature. 2009. ISBN: 978-9987-508-02-0.

The 2009 Guidelines were prepared by MACEMP and WWF- RUMAKI to facilitate the coastal communities to establish Beach Management Units (BMUs) that will be responsible for implementing collaborative fisheries management activities. The Manual has been prepared to act as a guide and comprises of six chapters namely Fisheries Policy and Legislation, Fisheries Management, Comanagement, Good Leadership and Governance, Conflict Management and Indicators for marine natural resources collaborative management system.

The 2010 Guidelines provide for the establishment of CFMAs among BMUs, and have the following framework:

- The concept of CFMA
- Phases and criterion for establishing CFMAs
  - Phase 1. Consultation
  - Phase 2. Information gathering and issue identification
  - Phase 3. CFMA Establishment
  - Phase 4. Implementation
- Institutional context of CFMA Roles, Responsibilities and Operational Procedures
- Development of CFMA Management Plan
- Guidelines for monitoring and Evaluation

The Guidelines cover key matters and offer credible guidance for taking into account laws and policies, governance, institutional aspects, conflict management and other issues. However they tend not to address issues raised by countries that may form impediments to the implementation of RBM. For example, is there human capacity in the country to ensure effectiveness? Is there an adequate data system? What are the risks and threats that must be addressed? Why is RBM the best solution for any given situation?

#### **Recommendation**

27. The following principles are recommended that may assist in addressing some of the issues relating to the preparation of guidelines described in the text and in providing a basis for harmonization of guidelines.

- A fundamental principle is that guidelines should focus on what could be very useful preliminary considerations and criteria. For example, assessments of existing human capacity, databases, resources, management, institutions, laws (at all levels), policies, social/cultural patterns, economic situations, governance and processes (including conflict avoidance) should be made at an early stage. There should be a process to identify risks/costs/benefits for particular circumstances, and then to develop a strategy for establishing RBM.

This may seem onerous, but addressing some or all of these aspects of RBM in guidelines, as a preliminary matter, would be responsible, methodical, respond to current concerns and contribute to more productive results.

- A second, and related, principle on which to base guidelines is that the RBM should be well defined for each situation. A suite of potential benefits just doesn't give the user full information and can be taken more as propaganda, particularly where the RBM system doesn't gain traction. The "what" and "why" need to be clear.
- A third principle is that guidelines should take into account best practices in legal requirements, such as those noted in section 5.1. For example, the framework of a management plan or shared management agreement could be integrated into the RBM system.

- A fourth principle is to include a communications strategy in the Guidelines, to ensure widespread understanding.
  - A fifth principle is that harmonization of guidelines with countries that share bodies of inland water, or species in the marine environment, should be encouraged. It should take into account commonalities and variables discussed above.
28. As a first step, it is **recommended** that the NGOs active in promoting RBM at community level in different countries in the region, together with relevant authorities, collaborate and share their experiences and views with a view to elaborating harmonized guidelines. In doing so, existing guidelines should be assessed for their effectiveness, completeness, strengths and weaknesses.
29. Concerning **other fisheries and areas**, there do not appear to be any commonly used guidelines for applying RBM. For such other fisheries, which are diverse in terms of areas, species management needs and industry, considerations have been developed, such as those indicated in section 4, that may be tailored to each situation. If guidelines are needed on a regional basis, for example for shrimp or tuna fisheries, it is recommended that the two-phase process described in section 4 for piloting RBM could be used as a starting point.

## 6. FISHERIES MANAGEMENT PLANS INCLUDING THE EAF APPROACH

The overall objective of this component of the study is to improve on fisheries management planning and how to make the plans work bearing in mind information from EAF-Nansen, FAO and any other relevant regional fisheries approaches to fisheries management. To carry this out, the consultant was tasked with reviewing the extent of development and implementation of national and regional fisheries management plans as well as relevant global instruments. A list of all management plans was required to be provided with details, and an assessment of the reasons for the success or otherwise of the plan was to be made.

It was also to cover the extent of how EAF approach to fisheries management has been translated into the fisheries legislation and in the management plans. (The EAF aspects of fisheries legislation were addressed in Section 2, above.)

To this end, a preliminary list of management plans was drawn up and information was requested from countries, FAO and EAF-Nansen. Countries generally provided overviews of their management plans and concepts during consultations and some advised more formally their management plans. To supplement this information, the consultant distributed the matrix in Annex 9 to countries and sought their kind cooperation in responding with the information requested, but received no completed forms. The information in this section is therefore incomplete and unable to be properly assessed.

FAO reported that it does not keep a database of fisheries management plans, either generally or regarding those for which it has provided technical assistance. Some information was taken from a comprehensive 2006 publication on fisheries management in the Indian Ocean region,<sup>57</sup> but this has not been updated. Updated information is given for Comoros, Kenya, Madagascar, Mauritius and Tanzania in a 2011 Smartfish report.<sup>58</sup>

<sup>57</sup> FAO. deYoung, C. (ed) Review of the state of world marine capture fisheries management: Indian Ocean. *FAO Fisheries Technical Paper*. No. 488. Rome, FAO. 2006.459p.

<sup>58</sup> Analyse du cadre de gouvernance des pêches maritimes dans la zone ESA-COI-IOC (Madagascar, Somalie, Seychelles, Tanzanie, Kenya, Maurice, Comores) en appui à l'élaboration du Plan d'Actions du programme

The EAF-Nansen project supports development of EAF-based fisheries management plans in the region. It has five components, including policy and management, ecosystem assessment and monitoring, capacity building, support to regional research vessels and planning and disseminating technical guidelines, training materials and information, as well as lessons learned. It works in partnership with SWIOFP on projects described below in Comoros, Kenya, Madagascar and Mauritius.

An indication of management plans implemented by countries, under development or at the initial concept stage is in Figure 4. This preliminary information shows that there are only five fisheries management plans in place in the region, while around 25 species-related plans are in stages of concept or development. Madagascar and Mauritius have adopted NPOAs-IUU, but Madagascar does not have the capacity to implement the Plan developed by a consultant under FAO technical assistance. Seychelles is developing an NPOA-IUU that will be reviewed after the draft Fisheries Act, which will provide legal underpinning, is passed. Seychelles has an NPOA-Sharks.

Mauritius explained that management plans may take the form of establishment of MPAs, of which there are three categories: marine parks, fishing reserves and marine reserves (Rodrigues). Attention was drawn to the establishment of a marine reserve in Chagos which is not recognized by Mauritius due to the ongoing case in the international court of justice regarding the claim by the UK to Chagos.

Mauritius also referred to a master plan for marine aquaculture, and the importance of such management plans for site selection among other things. In Mauritius, the Act does not permit the fisheries administration to implement several of the sites, which must be operationalized pursuant to the Finance Act.

During consultations, countries generally expressed satisfaction with the in-country project activities taking place under the EAF-Nansen project. They include:

- preparing a baseline report on the selected fishery which is validated by the national task group;
- identifying and prioritizing issues relating to the fishery;
- examining management options;
- formulating appropriate management actions;
- undertaking cost-benefit analyses of management options; and
- making suggestions for the review of fisheries-related laws and regulations to ensure they include EAF considerations.

A central part of the process is risk assessment, which is considered in national workshops.

EAF-Nansen has published a project report on “Legislating for an ecosystem approach to fisheries; a review of trends and options in Africa”.<sup>59</sup> It gives a comprehensive overview of EAF legislation and includes a table showing the extent to which EAF-related principles are reflected in binding

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Smartfish pour l'amélioration de la gouvernance des pêches maritimes dans les pays participant au projet. C. Breuil, AGROTEC CONSORTIUM, Septembre 2011. Annexe 6. Revue des principaux composantes du cadre de gouvernance des pêches maritimes dans les pays visités par la mission.

<sup>59</sup> FAO EAF-Nansen Project. Legislating for an ecosystem approach to fisheries. A review of trends and options in Africa. *FAO EAF-Nansen Project Report No.10*. FAO 2011. 158 p.

international instruments. The table could be further enhanced by including reference to, *inter alia*, impact assessments, management throughout the range of the species (including dependent and associated species, bycatch and discards) and general information and data requirements for which there should be authority in national laws.



**Figure 4.**  
**Indicative table of fisheries management plans**

EXISTING PLAN	COMMENT		PLAN UNDER DEVELOPMENT	COMMENT
<b>COMOROS</b>				
			Demersal fish species	In collaboration with Madagascar, supported by EAF Nansen.
<b>KENYA</b>				
Prawn Fishery Management (2011)	Did not allow for an EAF approach but this is currently being explored.		Lobster fishery	Plan was very small but is now being enhanced.
Lake Victoria Fisheries Management Plan for Nile Perch, Tilapia and freshwater sardine	Harmonized for the three riparian countries.		Ringnet fishery (Small and Medium Pelagic (EAF)	Management plan drafted, financed by EAF Nansen and SWIOFP
			Lake Victoria Fisheries Management Plan 2	To succeed the first plan. A donor is being sought.
			National tuna management strategy	WWF funded.
<b>MADAGASCAR</b>				
NPOA-IUU	Prepared with FAO technical assistance. Not implemented.		Demersal fish species	Supported by EAF Nansen and SWIOFP
<ul style="list-style-type: none"> <li>• <i>Shrimp</i></li> <li>• <i>Traditional shrimp fishing bycatch</i></li> <li>• <i>Traditional shrimp fishing</i></li> <li>• <i>Traditional crab</i></li> </ul>	<i>Information from FAO, 2006.<sup>60</sup></i>		Shrimp	Fisheries Dept has a complicated process. Research results to be considered by interministerial committee, industrial fishers, traditional fishers, government. Administration calculates fees.

EXISTING PLAN	COMMENT		PLAN UNDER DEVELOPMENT	COMMENT
			Lobster, crab, sea cucumbers and octopus.	These are apparently in concept stage.
<b>MAURITIUS</b>				
2010 NPOA-IUU			Shallow water demersal fish species of the Saya de Mala and Nazareth Banks	Supported by EAF Nansen, the Risk Assessment has been completed and the Plan is being drafted. Many stakeholder meetings have been held. Drafting has begun. It is the first fisheries management plan for Mauritius.
<b>MOZAMBIQUE</b>				
Shrimp management plan			Sofala Bank shallow water shrimp fisheries	Supported by EAF-Nansen
<ul style="list-style-type: none"> <li>• <i>Industrial shrimp</i></li> <li>• <i>Sport fishing</i></li> <li>• <i>Sea Cucumber</i></li> </ul>	<i>Information from FAO, 2006.<sup>61</sup></i>		Industrial linefish fisheries (based on TACs)	Supported by EAF-Nansen
			National tuna management and development plan,	Supported by WWF
			Draft management plan for Niassa Lake fisheries	
<b>SEYCHELLES</b>				
Sea cucumber	Plan approved by Cabinet but only a part has been operationalized. The TAC proposal of the plan was not implemented.		Artisanal fisheries – demersal line	Supported by EAF-Nansen, EU
2008 NPOA Sharks			Sea cucumber	Supported by EU; working on stock assessment
			Net fishery	

<sup>61</sup> FAO. deYoung, C. (ed) Review of the state of world marine capture fisheries management: Indian Ocean. *FAO Fisheries Technical Paper*. No. 488. Rome, FAO. 2006.459p.

EXISTING PLAN	COMMENT		PLAN UNDER DEVELOPMENT	COMMENT
			NPOA-IUU	To be finalized after the Fisheries Bill is passed.
			NPOA-Seabirds	
			2007 NPOA-Capacity	Process stalled, consultant's report not in English.
Mother ship line fishery Management Plan	Plan finalised for mother fish fishing on the outlying banks. Plan implemented <i>de facto</i> .			
<b>SOUTH AFRICA</b> <sup>62</sup>				
<ul style="list-style-type: none"> <li>• Hake trawl</li> <li>• Small Pelagic</li> <li>• Horse Mackerel</li> <li>• Recreational: linefish, whale watching, shark cage diving</li> </ul>	Information from FAO, 2006. <sup>63</sup>		Tuna management plan	Focus is in the Western areas of the maritime zones.
<b>TANZANIA</b>				
Lake Victoria Fisheries Management Plan	No apparent monitoring of implementation. Should consider independent management organizations close to or within the water bodies for monitoring purposes. e.g. LVFO could implement the management plan.		Small and medium pelagic (exploited mainly in artisanal fisheries)	Supported by EAF-Nansen.
			National tuna management strategy	Supported by WWF.
			Octopus management plan	Final draft stage.
			Marine parks	Marine parks have their own management plans, currently developing TangaCoelocanth

<sup>62</sup> No information received.

<sup>63</sup> FAO. deYoung, C. (ed) Review of the state of world marine capture fisheries management: Indian Ocean. *FAO Fisheries Technical Paper*. No. 488. Rome, FAO. 2006.459p.

EXISTING PLAN	COMMENT		PLAN UNDER DEVELOPMENT	COMMENT
				marine park.
			Shrimp management plan	In discussion
			Prawn Fishery Management Plan	Developed with FAO Technical Assistance, status unclear.

The extent to which the EAF has been included in legislation is described in Section 2, based on information in Annex 4 and indicative legal provisions in Annex 6. In addition to the specific legal provisions needed to underpin EAF that are shown in Figure 2, the following provisions relating to fisheries management, conservation, development and access are relevant for more general aspects of EAF implementation; as noted in Section 5.1, many are also relevant for the implementation of RBM.

1. Definitions/ Interpretation
2. Objective of Act
3. Jurisdiction
4. Application of Act
5. Principles for sustainable fisheries management
6. International, regional, bilateral cooperation
7. Fisheries management plans
8. Fisheries management measures
9. Declaration of fisheries management area
10. Restriction on fishing in fisheries management area
11. Granting of fishing rights
12. Shared responsibility for fisheries management (national level)
13. Fisheries management consultations, advisory body or committee
14. Functions, etc of fisheries management advisory body or committee
15. Shared Fisheries Management Bodies
16. Genetic resource management
17. Fisheries research
18. Stowage of gear
19. Cooperation in fisheries management
20. Conflict prevention and resolution
21. Declaration of zones for fishing
22. Declaration of protected areas, management areas or reserves for fishing
23. Declaration of endangered or protected species of fish
24. Pollution of the fishery waters
25. Fisheries impact consultations and assessments
26. Prohibited fishing gear and methods
27. Prohibitions for certain species, sizes
28. Possession of prohibited fishing gear, substance
29. Fish Aggregating Devices (FADs)
30. Damage, destruction to, interference with fishing gear, vessel, person prohibited
31. Leaving, abandoning objects in the fishery waters prohibited
32. Import and release of live fish
33. Export of live fish
34. Prohibited activities relating to fish or fish products taken from another State
35. Implementation of international conservation and management measures
36. Development of the fisheries sector
37. Information, data and records
38. Information to be true, complete and correct
39. False or forged documents
40. Registers of licences and vessels
41. Information on legal, administrative action taken under the Act
42. Public access to information
43. Ownership of information
44. Information on the labels of containers, etc. containing fish harvested in the fishery waters

- 45. Confidential information
- 46. Exchange of information
- 47. Fishing using non-national (foreign, joint venture etc) fishing vessels

Only 9 of the above provisions are implemented, to varying extents, in the legislation of four or more of the countries in this study. Of the others:

- 8 provisions are implemented by three countries,
- 8 by two countries
- 13 by one country
- 9 are not implemented by any country.

Despite some good progress in developing management plans, some concerns about the use of EAF were expressed during consultations. A major concern is that, although current EAF-Nansen projects represent a positive step forward, a clear basis for implementation is needed. In this regard,

- National legislation is inadequate for ensuring full and effective implementation.
- Unless the fisheries management plans are developed under the EAF-Nansen project, many do not appear to focus on EAF. However, this observation is based on consultations and not a review of the management plans.
- SWIOFC cannot effectively support implementation of EAF because it has no authority to take binding decisions on transboundary issues within national zones of Members.
- Many countries have not implemented ecosystem-related decisions of IOTC, for example on sharks. In this regard, Madagascar noted that the legislation does not provide for sharks or highly migratory species in general.
- Mauritius and Seychelles have signed an agreement on joint management of a designated area of the continental shelf between the countries. While not related to the EAF approach to fisheries, it shows cooperation in the management of a related sector. (As noted above, Mauritius has also entered into joint fishing agreements with Seychelles and Mozambique).
- In Tanzania, the value of EAF in its potential for cross-sectoral regulations was raised in the context of the pollution and other adverse impacts from agriculture and mining, particularly around the dams. The effectiveness of continuing species-specific management was also expressed.
- In Kenya, capacity building remains a clear need, but progress was being made through EAF Nansen and SWIOFP. EAF is considered to be in infant stages, but the three pillar approach is being followed based on ecological well being, human well being and governance. The prawn management plan does not adopt the EAF but they are exploring ways to include it. There is general movement from EAF to RBM systems, mindful that RBM has ecosystem implications.

An issue relevant to EAF management is the work on vulnerable marine ecosystems (VMEs) in the Indian Ocean region. FAO is engaged in activities to protect the deep-sea Vulnerable Marine Ecosystems from adverse impact, and to this end has identified a need for close monitoring to build up a database to align with the FAO International Guidelines for the Management of Deep-sea Fisheries on the High Seas. The Guidelines provide a detailed framework that countries can use, individually and in the context of RFMOs, to manage deep sea fisheries in the high seas.

A FAO Indian Ocean Regional Workshop on Vulnerable Marine Ecosystems was held in Mauritius. 25-27 July 2012. Its objectives were to:

- Discuss the VME concept in the framework of the FAO Deep-sea Guidelines, including examples of different management methodologies and options for VMEs and how these processes can be facilitated;

- Identify and assess relevant existing information, including confidentiality issues and identify future requirements;
- Build capacity on VMEs and related management issues in the region;
- Identify future requirements and support mechanisms including network of experts to support the VME process and collaborative arrangements for data sharing.

South Africa reported the work it had initiated on identifying and mapping potential VMEs as a component of a project aimed at developing a network of offshore spatial management measures (from the 30 m depth contour to the EEZ boundary of mainland South Africa). Protection of potential VMEs was one of several key objectives for the network of spatial management measures, developed at the project outset through a collaborative workshop held in 2007. The draft FAO guidelines were used to support the development of a national map of potential VMEs in 2009.

#### **Recommendations**

30. Given the difficulty in obtaining full information from countries about existing or proposed fisheries management plans, including the status of implementation and challenges/strengths/weaknesses, as well as partial duplication of efforts in obtaining information on management plans between this project and a Smartfish initiative, it is recommended that a regional knowledge base be established as a repository for such information. It should allow for periodic updates in the monitoring of implementation as well, so lessons learned can be shared among countries. It would be useful to include in such a knowledge base management measures of a regional nature, including those adopted by IOTC and SIOFA, and those recommended by SWIOFC.
31. Concerning the implementation of the EAF in fisheries management, although the EAF-Nansen project has produced or is in the process of formulating specific fisheries management plans based on a well - designed and successful process, support needs to be considered for ensuring a solid national legal foundation and increasing the general level of understanding of the EAF in the region.

## **7. LINKAGES AMONG COI-IOC, IOTC, SADC and SWIOFC: MCS FOCUS**

The consultant was tasked with reviewing and assessing all initiatives of COI-IOC, IOTC, SADC and SWIOFC in the region in relation to fisheries management, including MCS. The institutions and linkages are to be addressed and, as appropriate, recommendations made to improve their functioning, effectiveness and coordination.

Information on COI-IOC, IOTC, SADC and SWIOFC was summarized in Section 2.2 above. Generally, they have different membership, mandates/objectives and activities, but there are also some areas where activities risk duplication and communications are weak. Linkages exist, but could and should be improved as described below.

This report focuses on MCS linkages, as the management aspects are extremely extensive and relevant management strategies/policies are being considered in a broader project under Smartfish. As part of that project, a description of the respective objectives, strategies and policies of the four organizations has been prepared and excerpts are attached as Annex 10.<sup>64</sup> A summary of the information appears below.

<sup>64</sup> Review of Strategic and Programme Developments in the ESA-IO Region in relation to fisheries governance, development and management. July 2012. Draft. Stephen Cunningham.

## 7.1 Mandates, strategies and goals of the organizations

**COI-IOC** has adopted a regional strategy for fisheries and aquaculture (“Stratégie régionale des pêches et de l’aquaculture de la Commission de l’Océan Indien 2009 – 2014”). The regional strategy seeks to address a number of issues, including:

- A lack of harmonised and joint research efforts, together with the absence of diagnoses of the state of exploited fish stocks necessary to ensure conservation and sustainable and responsible management
- Heavy pressure due to illegal fishing (with only 50% of high-seas catch being declared to management organisations)
- Limited development opportunities: such opportunities exist for both coastal and offshore fishing but are limited by a range of factors such as lack of trained crew, lack of fisher organisations, lack of national representations and regional harmonisation
- Potential but very varied aquaculture development – no regional development guidelines

In order to manage, conserve and exploit fish resources sustainably and to develop responsible aquaculture, the following strategic guidelines are adopted:

1. Conservation and management of fish resources are undertaken sustainably and responsibly
2. Aquaculture is developed sustainably
3. MCS is strengthened
4. Capacity in maritime training and safety is increased
5. Productivity, processing, value-addition and marketing of seafood produce and market development are enhanced

The implementation of the plan will respect and be based on a certain number of concepts, principles and practices, including:

For each of the strategic guidelines outlined above, a set of results to be achieved is specified as follows. The results for the Strategic Guideline 1 and 3 are shown below.

1. Conservation and management of fish resources are undertaken sustainably and responsibly
  - Strengthen skills in research and training and their exchange
  - Mechanisms implemented to enable development of common positions in international arenas
  - Harmonisation of legislation and licensing for good regional governance
  - Regional fishery information system (artisanal, semi-offshore, offshore, recreational) developed and used by MS
  - Regional mechanisms implemented to regulate by-catch
  - Demersal species are rationally exploited
3. MCS is strengthened
  - Regional agreement on IUU fishing developed; information exchange on vessel position and movement
  - Port state measures strengthened
  - At-sea control intensified
  - Harmonised definitions of infringements and penalties
  - Regional communication strategy (policy) defined



The results or effectiveness of the results under Strategic Guideline 1 are not assessed in detail in this paper, but it is observed that the categories of activities are also adopted by other organizations and could be better coordinated, even mindful that the membership of COI-IOC is limited to five countries.

For example, some management plans being developed with the support of EAF-Nansen focus on demersal fisheries, regional mechanisms on by-catch are addressed by IOTC, a regional fishery information system should be compatible with those established under IOTC, SIOFA and SWIOFC, harmonisation of legislation is a focus of SWIOFP, WWF and Smartfish, development of common positions is being addressed in a number of other fora (e.g. WWF is supporting improved understanding of quota allocations among coastal States in IOTC) and research is similarly being addressed in a number of other fora.

**Summary:** *Notwithstanding the plans for fisheries management, the focus of COI-IOC appears to be on the PSRP and implementation of the MCS strategic goal. Many elements of the management and MCS strategic goals have also been adopted by other organizations, so care should be taken to ensure complementarity and not duplication.*

**SADC** has formulated and adopted a Regional Indicative Strategic Development Plan, which includes fisheries, a Fisheries Protocol and an Implementation Programme. The Fisheries Protocol was signed in 2001.

The Sector strategy includes establishing a regional stock assessment and fisheries management system; promoting regional trade; and building capacity for better fisheries management. Details on the implementation

In the case of shared resources, State Parties shall co-operate in exchange of information on the state of the resources and the levels of fishing effort. Two or more State Parties may establish instruments for co-ordination, co-operation, or integration of management of shared resources and may agree on management plans. They will take measures to prevent and eliminate overfishing and excess fishing capacity in the Region and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fish resources.

SADC has a plan of action for the “operationalization” of the SADC Statement of commitment to combat IUU Fishing and has endorsed the proposal to establish a Regional Monitoring Control & Surveillance (MSC) Centre to be located in Mozambique. This is discussed in greater detail below.

Despite the Protocol and progress in its implementation, the SADC website identifies the following challenges to current policies and strategies:

- Lack of a programme for the effective management of fish stocks, which would cover all the Member States;
- Absence of policies to promote aquaculture (fish grown in inland ponds) and mariculture (fish in offshore ponds);
- Improving the quality of fish through appropriate handling, processing and conservation of fish landings; and
- Lack of concrete interventions to address the constraints faced by women in the sector.

**Summary:** *SADC does not appear to generate much activity in relation to fisheries management. Its focus is on the MCS aspects, and establishment of a regional centre in Maputo.*

**SWIOFC's** main objective is to promote the sustainable utilization of the living marine resources of the South West Indian Ocean region, by the proper management and development of the living marine resources, without prejudice to the sovereign rights of coastal States and to address common problems of fisheries management and development faced by the Members of the Commission.

The Commission has due regard for and promote the application of the provisions of the FAO Code of Conduct on Responsible Fisheries, including the precautionary approach and the ecosystem approach to fisheries management. Other than this, the Commission does not seem to have produced a strategy as such. Its activities are defined more through its functions and through the requests for support from its members.

The functions and responsibilities of the Commission include providing assistance and advice in a range of matters, such as the development of fishery management systems, research and training, and advising on management measures to member governments and competent fisheries organizations and on MCS (including joint activities) especially as regards issues of a regional or sub-regional nature.

Current priority activities include:

- (i) supporting Members States in the development of fisheries management plans;
- (ii) improving the capacity for data collection and monitoring in support to small scale fisheries management and policy development;
- (iii) supporting the implementation of SPADA (the Special Programme for Assistance to Aquaculture Development in Africa); and
- (iv) supporting a Working Group on Climate change and fisheries in the sub region.

Due to limited human and financial resources, SWIOFC plays more of a coordinating role in terms of management. Its outputs are mainly in the form of meetings and its management advice is not binding. Following a performance review, efforts are being undertaken to explore ways to strengthen SWIOFC.

**Summary:** *There are concerns about management-related activities because advice given by SWIOFC does not have binding authority, and there are no mechanisms to monitor management advice given to members from one year to the next. There is some concern that countries are not taking it into account.*

**IOTC's** objective is to promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilisation of stocks covered by the Agreement and encouraging sustainable development of fisheries based on such stocks. It is one of the five "tuna" RFMOs in the world, with a mandate over tuna and tuna-like species listed in the Agreement that swim both within and beyond areas of national jurisdiction.

The functions of the Commission, shown below, include MCS and adopting binding conservation and management measures.

- To monitor the conditions of stocks covered by the Agreement and collect and disseminate relevant data
- To encourage and coordinate research, development, training and so on with respect to the relevant stocks and fisheries
- To adopt, on the basis of scientific evidence, conservation and management measures to ensure the conservation of the stocks covered by the Agreement and to promote the objective of their optimum utilisation throughout the Area;

- To keep under review the economic and social aspects of the fisheries based on the stocks covered by this Agreement bearing in mind, in particular, the interests of developing coastal states.

The Commission has adopted a number of binding conservation and management measures, including for port State measures and data and information (including on certain non-target, associated and dependent species affected by tuna fishing operations). Its members are considering the issue of allocation criteria, with the coastal States currently favouring the right to take fish in their own waters and some distant water countries favouring the right to own the fish that they take in the coastal State waters. IOTC has a regional observer programme and VMS requirements, and operates registers for authorized and IUU fishing vessels. It carries out training programmes, particularly in relation to data collection and MCS activities.

It is the responsibility of each Member to ensure that action is taken under their national legislation to implement binding conservation and management measures. Members are also expected to exchange information about fishing for relevant stocks by nationals of non-Member States or entities.

**Summary:** *Concerning management, the conservation and management measures agreed by members are binding, and the status of implementation is reported to the IOTC Compliance Committee annually. Where there has been no report or implementation, the Secretariat reminds them of this and encourages compliance. The national reports in this regard, which formerly were at a low level, have been increasing due to IOTC capacity development projects.*

## **7.2 MCS goals, strategies and activities**

**COI-IOC** has focused its MCS efforts on a partnership entered into in 2007 with the European Commission to combat IUU fishing.<sup>65</sup> The ministerial declaration adopted at the signing of the partnership endorsed several measures that the IOC contracting parties had committed themselves to applying, including a ban against transshipment at sea (transfer of cargo, crews and supplies between vessels at sea) and denial of access to ports for vessels that have been blacklisted by an RFMO or that are not included on the authorized vessel list of vessels fishing legally. Measures also included harmonisation of national legislation against IUU fishing, and setting fines at a level that deter illegal activities.

An important element of the partnership was the launch of the 2007-2011 EUR 10 million “Regional Plan for Fisheries Surveillance in the South-West Indian Ocean (RPFS/PSRP)” implemented through the IOC and funded by the DG Maritime Affairs and Fisheries of the European Commission with co-financing by IOC member states.

The objectives of the programme are: a) to reduce IUU fishing in the region, b) to contribute to fisheries resources conservation and sustainable management, c) to improve surveillance in the Indian Ocean, and d) to strengthen MCS capacity of the countries in the region. The project coordinates the fisheries surveillance activities within the five COI-IOC countries, managing training for inspectors, regional fisheries surveillance patrols (boats and planes) and intelligence (radarsat pictures, links with ATALANTA, exchange of data etc.).

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<sup>65</sup> Information drawn, *inter alia* from consultations, COI-IOC materials and the EU ex-post evaluation of the current protocol to the fisheries partnership agreement between the European Union and Mozambique, and analysis of the impact of the future protocol on sustainability, including ex-ante evaluation. Final Report June 2011.

Within the different activities of monitoring and surveillance of the PRSP, a scientific observer component takes place in the COI-IOC countries and trains three observers per country. It was intended that observers have a regional accreditation in order to be able to observe on any vessel – national or licensed – in all COI-IOC waters. In addition to the training provided, the project also assists the countries in the management of their observers. The main goal of this component is to help the COI-IOC countries, all members of the IOTC, to comply with the IOTC Resolution and to increase their capacity to develop a coordinated strategy for a sustainable development of the fisheries.

Mozambique is not presently a formal part of this project. However due to strong interest among the countries involved for a better surveillance of the Mozambique Channel, Mozambique started cooperation with the project in 2007, with participation of Mozambican inspectors on board IOC patrol vessel when patrolling the Mozambican EEZ. This cooperation has been on an *ad hoc* basis and is not yet formalized.

A regional coordination unit has been created to control the regional monitoring network, composed of the MCS department heads of five member countries, led by a regional coordinator.

New technologies are utilised, such as the use of satellite radar detection of fishing vessels.

There are plans in the 2012-2014 phase to create a regional system of communication to contribute to deterring IUU fishing, continue coordination or regional surveillance activities including at-sea surveillance, and establish a regional information system to include a VMS system among the five States. For 2012- 2014 it is planned to extend activities to Mozambique, Tanzania and Kenya.

Outputs for the 2007-2011 phase included the following.

Maritime joint Patrols:	900 days
Inspections at sea:	328 controls and boardings
Actions:	27 infringement reports
	7 vessels arrested
	Several reports of dubious activities to port authorities
Fishing vessels identified	458 vessels
Satellite remote sensing	Radarsat 229 Envisat, 56 radarsat for the most part provided in less than 3 hours, in operational situation
Inspectors & technicians training:	297 boardings of inspectors of various nationalities
Observers trained:	15
Comoros:	Support to the Fisheries Centre
	Inventory & registration of the Comorian artisanal fishing fleet
	Staff training, restarting the VMS

The above represented a regional strategy for effective monitoring; it is said to be less expensive thanks to the pooling of resources, sharing information, data and expertise. The project is considered by COI-IOC to be a very important factor for regional integration of states of the COI-IOC. In essence, it is said to have had the effect of decompartmentalizing the surveillance efforts of the States.

The Indian Ocean Commission is expected to set up a Counter Piracy Unit in the Seychelles with a view to having better co-ordination on the activities of countries in the region on piracy issues as well as exchanging information.

In **SADC**, arrangements to establish an MCS Coordination Centre in Mozambique are well advanced, as part of ongoing regional initiatives. The SADC region developed a fisheries protocol in 2001, which encouraged regional approaches to MCS and a 2008 Statement of Commitment to combat IUU fishing by SADC Ministers. Actions and measures to give form to the regional initiative forward were developed through workshops hosted in Mozambique.

The Centre will also fall within the context of the wider continental framework of the African Union (AU) and NEPAD Agency. The need to identify areas of cooperation among the organizations at an early stage is compelling. Most of the COI-IOC members are part of SADC and IOTC, and are bound by their respective legal frameworks.

ACP Fish II has supported studies on behalf of SADC regarding the financial and sustainability aspects and a project for establishing the a Regional Fisheries MCS coordination centre in Mozambique. The mission to examine financial and sustainability<sup>66</sup> aimed to “provide SADC and member states with guidelines for the establishment of the Regional MCS Centre in order to prevent and combat IUU fishing in the region, facilitating cost-effective cooperation and coordination of MCS activities.”.

A Project Proposal for the establishment of the SADC Regional Fisheries MCS Coordination Centre - Start-up Project was completed in 2011,<sup>67</sup> and it is reported that the Government of Mozambique is currently developing an agreement to host the centre and that mechanisms for sustainable financial support are being explored.

The Project Proposal proposes details of the following services of the Centre:

- Regional fishing vessel register
- Regional fishing vessel monitoring system
- Fisheries MCS data and information sharing
- Regional fisheries MCS information portal
- Regional fishery observer coordination
- Regional fisheries surveillance coordination
- Fisheries law enforcement and legal support
- Port state measures support
- Build and support national MCS capacity to facilitate regional integration

It was agreed that the Centre will be about coordinating and not controlling and that it is useful to keep in mind the priority areas that the SADC Ministers identified as requiring 'our urgent attention' in the SADC Statement of Commitment (2008):

- Improving regional and inter-regional cooperation with a view to eradicating IUU fishing;
- Strengthening fisheries governance and legal frameworks to eliminate illegal fishing;
- Developing a regional MCS strategy and a regional plan of action in relation to IUU fishing;
- Strengthening fisheries MCS capacity.

The following long-term arrangements for the Centre have been proposed.

- The Centre will be a sub-regional organisations (SROs) of the SADC created by Council under the principle of subsidiarity
- The Centre will be called the 'SADC Regional Fisheries Monitoring, Control and Surveillance Coordination Centre' or the 'SADC MCS Centre' for short, it will have its own logo and may also use the SADC logo and branding.

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<sup>66</sup> Carried out by NFDS.

<sup>67</sup> By NFDS, with ACP Fish II support. Ref: CU/PE1/10/010.

- It will be established through a Charter, negotiated by all SADC Member States, and entering into force when two-thirds of SADC Member States have signed and become State Parties to the Charter. The Charter will remain open for signature on entry into force.
- The Centre will be a legal entity under the law of Mozambique and legal and diplomatic status will be granted to the Centre and its staff by the host country.
- The principles of the Centre will support the common agenda of the SADC through implementation of services that assist State Parties to implement and fulfil their obligations under the SADC Protocol on Fisheries (2001) and the regional MCS policy as set out in the SADC Statement of Commitment (2008).
- The relation between the Centre and the SADC Secretariat will be agreed by MoU based on the SADC Secretariat, Directorate of FANR, providing the policy guidance and leadership to the Centre, while the Centre, will focus on the purpose of 'coordination', and the objectives of 'strengthening national human and institution capacity', 'facilitating exchange of information' and 'supporting and coordinating MCS activities'.
- The Centre would mobilise State Party contributions as the main funding mechanism but assessment of the options to include fees associated with; regional fishing vessel registration, services provided by the Centre such as VMS or training services, and income from fines derived from regionally coordinated MCS activities will be considered as will contributions and support by cooperating partners, donors or others (such as NGOs).
- The Centre will cooperate and work closely with other regional entities and partners, as demonstrated through its rules and procedures and create MoUs with them.

**IOTC** maintains a broad base of information,<sup>68</sup> including registers of authorized fishing vessels and IUU fishing vessels. Information is exchanged as required, subject to confidentiality. There is transparent sharing of information, including through the Compliance Committee, established in 2002, which receives compliance reports from members annually in relation to all IOTC requirements<sup>69</sup> and makes a report to the Commission.

Information exchange on compliance matters is required by a number of IOTC Resolutions,<sup>70</sup> and a VMS Programme requires satellite-based VMS on vessels of a certain size operating in the IOTC Area.

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<sup>68</sup> Information on the various IOTC databases appeared in the IOTC Performance Review. The information has not been updated but is indicative of the scope. "IOTC has adopted a range of management measures relating to the provision of fisheries data; including fisheries statistics for all species under the IOTC mandate (nominal catch, catch and effort and size data for all the species under the IOTC mandate, and the activities of supply vessels and use of fish aggregating devices (FADs). Additional requirements are in place for provision of information on sharks (Resolution 05/05), seabirds (Resolution 08/03) and sea turtles (Recommendation 05/08). IOTC also obtains a range of information on vessel characteristics of authorised vessels (Resolution 07/04), vessel activities relating to the vessel monitoring programmes (Resolution 06/03) and transshipment operations (Resolution 08/02)."

<sup>69</sup> For example, on the IOTC record of authorised vessels, the IOTC list of active vessels, port inspections, the IOTC bigeye tuna statistical document programme and establishing a list of vessels presumed to have carried out illegal, unregulated and unreported fishing in the IOTC area.

<sup>70</sup> For example: Resolution 01/03 *Establishing a scheme to promote compliance by Non-Contracting Party vessels with resolutions established by IOTC* — obliges Members to notify of any vessel fishing contrary to IOTC conservation and management measures. Resolution 07/02 *Concerning the establishment of an IOTC record of vessels authorised to operate in the IOTC area* — obliges Members to provide factual information when there are reasonable grounds for suspecting that a fishing vessel not on the IOTC Record of Authorised Vessels is engaged in fishing or transshipment of tuna or tuna-like species in the IOTC Area. Resolution 05/04 *Concerning registration and exchange of information on vessels, including flag of convenience vessels, fishing for tropical tunas and swordfish in the IOTC Area of competence* — obliges Members to provide information on any vessels not on the active vessels list but known or presumed to be fishing for tropical tunas and swordfish in the Area. Resolution 06/01 *On establishing a list of vessels presumed to have carried out illegal, unregulated and*

Resolution 10/11 on Port State Measures is almost identical to the FAO Agreement on Port State Measures, and capacity building programmes are operated by IOTC including for observers and data and information collection and reporting. In fact a special fund has been established for the latter activity in order that developing States may fulfil their obligations under IOTC Resolutions. There is provision for the follow up of infringements, so there may be monitoring of actions taken against vessels that have violated the IOTC measures.

It is the responsibility of IOTC Members and Cooperating Non-contracting Parties (CPCs) to implement MCS tools to further the objectives of the Commission and comply with binding Resolutions. The role of the Secretariat is to assist its members to better comply with their obligations. To this end, the IOTC Compliance Committee considers national reports on the progress of implementation of conservation and management measures CPCs. The Sixteenth Session of IOTC agreed to the development and distribution of letters of feedback by the IOTC Chair, highlighting areas of non-compliance to relevant CPCs, together with the difficulties and challenges being faced. IOTC is also undertaking an EC-supported project to assess and improve compliance by its members.

In this context, assistance by other organizations to IOTC CPCs to help them to comply with their obligations would be a positive step forward. It would first be important to identify the objectives of the other organizations, projects and initiatives in the region and to ensure consistency. For example, it would be important for all to have the same understanding of what constitutes IUU fishing – does it include related activities and transshipment at sea for all organizations/projects/initiatives? Is tuna a priority for other organizations/projects/initiatives or are they focused on other species? Issues such as these need clarification.

**SWIOFC** has almost no current activity relating to MCS, although one of its functions is to advise on monitoring, control and surveillance, including joint activities, especially as regards issues of a regional or sub-regional nature.

The SWIOFC Performance review concluded: “Despite SWIOFC has not taken any direct action for the promotion of MCS in the region, it has served as an important forum for sharing information on the issue and has thus helped to promote a better regional coordination of MCS activities that are being done by other organizations (e.g. IOC, SADC, etc.), as well as by SWIOFC member countries. It should be noted, however, that coordination on this matter is hampered by the different MCS capabilities of the various countries in the region.”

### **7.3 Linkages**

The linkages among the organizations seem to consist mainly of cross-attendance at meetings and institutional partnerships in common with other organizations. For example, IOC attends IOTC meetings as observer. Concerning cooperation in institutional partnerships, SWIOFC and IOTC cooperate as institutional partners of SWIOFP, and COI-IOC and SWIOFC cooperate on the steering committee of SWIOFP.

At the Fourth Session of SWIOFC, IOC invited SWIOFC and SWIOFP together with IOTC to form a strategic collaboration of partners within the IOC fisheries programme. It was envisaged that SWIOFC would be a member of the fisheries programme’s steering committee and develop an MOU. This was endorsed by SWIOFC Members at the Fourth Session of SWIOFC. The programme of work for that Session included technical support for SWIOFC members and the IOC and SADC Secretariats in the Action Plan that resulted from the IOC/SADC Statements of Commitment against IUU fishing. However these have not resulted in a current priority for SWIOFC.

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*unreported fishing in the IOTC area* — obliges Member to list vessels presumed to be carrying out IUU fishing activities in the IOTC Area, with supporting evidence – 120 days before the next Commission meeting.

The operational linkages are tenuous between two most active organizations carrying out MCS in the region – COI-IOC and IOTC. It would seem that COI-IOC could play a meaningful role in supporting compliance for IOTC, but no formal channels of communication exist. In this context, IOTC does not receive information or have input to activities.

Even more disappointing is the fact that details about the COI-IOC operations are not publicly available on a website (especially considering that Euros 10 million have been given to support the project to date). For example, although there were seven arrests in the five years of the project, there are no details as to the type of infraction, the vessel, the penalty and the follow up to the infringement. Even more broadly, to what kinds of offences do the 27 infringement reports relate and on what basis are boardings conducted? It may be that priorities are set to focus MCS activities on non-tuna fisheries, but even this is not known.

It is understood that the details of the sorties are agreed among COI-IOC countries and according to their needs and priorities, so there would be no expectations that the focus would be on IOTC-related activities. However, there would seem to be an opportunity for at least some regularized communication, given the high level of activity of tuna fishing in the region.

Other concerns are the opportunities that exist for coordination with respect to VMS and observer training. These are activities that the SADC MCS Coordination Center also intends to carry out and in which IOTC is active. In addition, the view expressed during consultations that at-sea inspection is preferable to port State measures (it is said to be better respected by the masters of vessels) seems to be in need of a more balanced approach.

The COI-IOC PSRP appears to have been beneficial for building an *esprit de corps* among the COI-IOC countries, but an independent audit would assist in identifying its effectiveness in terms of combating IUU fishing.<sup>71</sup> The only current indication of effectiveness are figures that show 27 infringement reports and 7 arrests, as well as, *inter alia*, the number of surveillance sorties, type of equipment and the training of 15 observers, over five years for five countries. These results are tied to the project activities, not the goal of the project, to have an effect on IUU fishing, or the effectiveness of the project in the context of supportive linkages with other MCS initiatives in the region.

Another reason it is not possible to assess effectiveness on IUU fishing and in respect of linkages without an audit is the lack of transparency, particularly compared to IOTC operations.<sup>72</sup>

An area where there is an opportunity for linkages is establishment of regional VMS system. COI-IOC is proposing to establish a system including Mozambique, Tanzania and Kenya, but the possibility of design in coordination with other systems is apparently not taken into account. IOTC has a VMS programme, SADC is also proposing to serve as a regional VMS centre and SIOFA will no doubt have

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<sup>71</sup> Such audits are carried out in the West and Central Pacific region for MCS.

<sup>72</sup> It is tempting to make a preliminary assessment based on consultations, but there may not be complete information. For example, is the use of resources for the training of observers (3 a year) effective when observer placements are not available due to piracy (security forces are said by the vessels to be taking up the extra space – and where there is inspection the armed security forces follow the inspector closely) or danger (conditions on some vessels are dangerous), the effectiveness of observer training under the programme). Or when national legislation should be requiring the foreign vessels to pay for the training of observers, according to best practices? In the longer term the trained observers may be deployed, for example, in shrimp fisheries if they have not found other work. It is noted that IOTC has trained around 50 observers for monitoring transshipments in two years.



VMS requirements. It will be important to have consistent tracking facilities. Notwithstanding issues of confidentiality applicable to all VMS systems, this is again an area where linkages would be useful.

Given that SWIOFC is not currently active in MCS and the SADC initiative is still work in progress, linkages among organizations in key areas of MCS seem to be tenuous at best.

**Summary:** *The organizations and initiative are not linked by any formal means such as an MOU, which would foster regularized coordination, cooperation and communications. Nor is there any applicable regional strategy or coordination mechanism.*

#### 7.4 Assessment

As explained above, it appears that there are no effective working linkages among the bodies, despite the many commonalities in the activities. A table of current or planned MCS activities and authorities in COI-IOC, IOTC, SADC and SWIOFC, based on the documents referenced above, is provided in Figure 5 to facilitate the assessment. It shows twelve categories of MCS activity, of which only two are undertaken by one organization alone.

**Figure 5.**  
**Table of current or planned MCS activities and authorities in COI-IOC, IOTC, SADC, SWIOFC**

	COI-IOC	IOTC	SADC (proposed)	SWIOFC
<b>Database</b>	No information on contents of database	Broad information base, including statistics, follow-up on infringements	MCS data and information sharing	May keep databases
<b>Fishing vessel registers</b>		Authorized and IUU fishing vessels registers	Maintenance of regional fishing vessel register	
<b>Information exchange</b>	Among COI-IOC members.	Information exchange is required by a number of IOTC Resolutions.	Fisheries MCS data and information sharing	May exchange information
<b>Observers</b>	15 observers trained 2007-2011	Transshipment and monitoring programme (100%) coverage Regional observer programme; 50 observers trained from 2009-2011.		
<b>VMS</b>	Included in PSRP 2012-14	Requires satellite-based VMS	Regional VMS	
<b>Port State Measures</b>	To be strengthened	Binding resolution on port State measures; some members currently implementing in legislation	Support port State measures	
<b>At-sea control</b>	To be intensified			
<b>Advising on MCS (including joint)</b>		Management decisions are taken	Regional fisheries surveillance	Mandate, no reported activity

	COI-IOC	IOTC	SADC (proposed)	SWIOFC
activities) especially as regards issues of a regional or sub- regional nature		with MCS objectives. .	coordination	
Capacity building		Compliance, observers, information and data collection	For facilitation of regional integration	
Fisheries law enforcement and legal support	No information on post-arrest activities	Members are responsible for law enforcement, Secretariat may provide information exchange and analysis.	Fisheries law enforcement and legal support	
Violations and penalties	To be Harmonized		Infringement follow-up	
Regional communication strategy	To be defined	Communication through IOTC website		

The starting point and most important consideration in this assessment is the emergence of two major institutions that will be concerned with MCS but have not yet established a formal programme: the SADC MCS Coordinating Centre, and SIOFA. This amounts to **five** regional bodies involved in MCS. Given the current absence of regularized communications, let alone a regional strategy, this could have a multiplier effect on the potential for duplication and disarray.

As the international community is intensifying its efforts to better coordinate MCS through agreement on instruments such as the FAO Port State Measures Agreement and the FAO criteria on flag State performance, there is an increasing threat in the SWIO region that MCS efforts are tripping over themselves instead of achieving greater harmonization.

Recently, there has been an effort under Smartfish to analyse the gaps in MCS legislation throughout the region, with a view to harmonization and implementation of regional arrangements. An assessment of MCS readiness showed that much needed to be done at national level; several recommendations were made for regional cooperation, mostly through IOTC related projects, but one recommendation directed at regional level was to:

Develop and implement a regional cooperation programme where MCS platforms can be shared as well as on-the-job training can be given. The project must facilitate planning as well as finance direct costs related to the initiative (e.g. charter costs of patrol vessels, charter cost of airplanes). This initiative should include pre-patrol planning including use of intelligence information, VMS information (from countries with operational VMS), use of IUU lists, use of research data in terms of fleet movements, AIS data etc. to maximum practical training experience.<sup>73</sup>

<sup>73</sup> Review of the legal frameworks, including fisheries based laws, where they pertain to MCS and RFMO agreed actions, in the ESA-IO region, to determine areas to be updated and harmonized and identify barriers to the implementation of effective MCS IOC IRFS Programme. AGROTEC CONSORTIUM, draft Report, including desktop study, October 2011.

This is a step in the right direction, but doesn't quite take the comprehensive view needed in a region with potentially **five** regional bodies carrying out MCS activities of one kind or another. For this, a regional strategy is needed. And, at least in the interim, the organizations need to regularize relations. Otherwise there is a clear danger of disarray and possibly even "turf" battles, with different training programmes and VMS systems being offered.

Benefits from adopting an MCS strategy, or at least better coordinating regional MCS initiatives could include improved cost-effectiveness and information, greater MCS coverage, more accurate regional stock assessments, more targeted MCS activities, faster response times, greater observer coverage, fuller VMS tracking, better coordinated port State measures and improved deterrence.

This situation also posed a threat in the West and Central Pacific region. There, a regional MCS Strategy was adopted in 2010.<sup>74</sup> It took into account the national needs and the various regional organizations that needed to coordinate and integrate projects for MCS. The purpose of the strategy was to support compliance with fisheries management frameworks and associated measures at national, sub-regional, regional and WCPFC Commission levels to ensure the long term sustainability of oceanic fish stocks and associated economic benefits flowing from them to Pacific Island Countries. Its goals and strategic objectives are shown below; they may differ from those applicable to the SWIO region, but are instructive nonetheless.

Goal 1 Enhanced MCS, integrated with fisheries management planning and implementation

Strategic Objective 1 – National MCS frameworks based on best practice risk assessment

Strategic Objective 2 – Improved management of information useful for MCS purposes

Strategic Objective 3 – Improved fisheries management outcomes through strengthened relationships between fisheries management/planning and MCS processes/activities/work units.

Strategic Objective 4 – Improved understanding of the drivers and level of compliant and non-compliant behaviour

Strategic Objective 5 – Capacity and capability to respond to risk/information/intelligence including human resources/institutional set-up and enforcement assets

Strategic Objective 6 – Increased focus on voluntary compliance and innovative tools for awareness, enforcement, detection and penalty

Goal 2: Contribute to other strategic objectives as described in the RTMADS<sup>75</sup>

Strategic Objective 1 – Enhanced influence on WCPFC measures for high seas/convention area

Strategic Objective 2 – Increased MCS coverage in support of fisheries management outcomes through application of MCS tools via market based measures and mechanisms

Strategic Objective 3 – Cost efficient and effective MCS programmes

The idea behind the strategy is one of regional MCS coordination, and project development to assist countries to fulfil their needs both in terms of MCS at national and regional level.

Another approach would be to create a coordinating mechanism among MCS bodies. In the West and Central Pacific, a general coordinating body for regional agencies is called the Council of Regional Organisations of the Pacific (CROP).<sup>76</sup> It has a charter, and functions as a coordination mechanism

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<sup>74</sup> Regional Monitoring, Control and Surveillance Strategy, 2010-2015. (Adopted by Forum Fisheries Committee 74, May, 2010).

<sup>75</sup> Regional Management Tuna Development Strategy.

<sup>76</sup> <http://www.forumsec.org/resources/uploads/attachments/documents/The%20CROP%20Charter%20-%20Final%20-%2015th%20July%202002.pdf>

between the heads of the regional organisations in the Pacific, and is a high-level advisory body, which provides policy advice and may assist in facilitating policy formulation at national, regional and international levels. It consists of the heads of the respective regional organizations, and may establish Working Groups, but would require a Secretariat and human capacity to carry out assessments, make recommendations and monitor coordination as appropriate.

CROP is served by the Pacific Islands Forum Secretariat, which provides policy advice and guidance, as well as coordination and assistance, in implementing the decisions of the Pacific Islands Forum (Heads of Government of Pacific Island countries). The Secretariat also supports meetings and activities of relevant bodies or arrangements such as CROP. There is no equivalent organization in the SWIO region to support such a meeting. Membership of CROP and the Forum are the same.

In the SWIO region an option would be the development of a regional MCS strategy, including a regional coordination mechanism among regional organizations, projects and initiatives. Initially this could be through one or more regional consultation(s) where countries would state their vision and priorities for what could be included in such a strategy after considering their binding obligations, general MCS needs and mandates/activities/programmes/plans of regional bodies, projects and initiatives relating to fisheries MCS.

In the end, it is the countries that should be served, according to their obligations and needs and in a coherent manner, by organizations or initiatives that have mandates or strategies relating to fisheries MCS. As part of such a consultation process, transparent and accountable information should be available from all relevant organizations/initiatives, in order that costs/benefits may be assessed. Where there is uncertainty, countries may wish to request independent audits or performance reviews to be supported by donors. There should be a clear vision of priorities for binding MCS measures, such as those agreed through IOTC, and of the potential impact and sustainable financing of non-binding initiatives.

As noted above, countries should consider as one element of the strategy an ongoing regional coordination mechanism among the organizations and arrangements. Countries may wish to consider in this context input from the organizations and initiatives and, as appropriate, outcomes of an independent audit or assessment. The “secretariat” duties of such a mechanism would need to be defined, and might be agreed on a rotational basis.

#### **Recommendations**

32. It is recommended that consideration be given to developing a regional MCS strategy, initially through regional consultations in which countries would identify and prioritize their needs, considering national needs as well as regional and international MCS related obligations, and an effective mechanism for sustainable regional coordination of fisheries MCS among existing bodies, projects or initiatives would be identified. Input from, and independent audits or assessments of, existing bodies, projects and initiatives may be considered. All organizations, projects and initiatives should be involved, including COI-IOC, IOTC, SADC, SIOFA and SWIOFC.
33. The regional organizations should, as a matter of priority, consider concluding MOUs clearly setting out areas of cooperation and communication, and ensuring that overlap and duplication are avoided in the best interests of the member countries.

## 8. CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

Fisheries related legislation in the SWIO region is generally outdated and weak, including for RBM and EAF, but this has been recognized and five countries have new legislation under development. The analysis and text provided in Section 2 may be useful resources for countries in moving forward and modernizing their legislation.

In situations not covered by existing regional agreements or organizations, a draft agreement for joint or shared management of shared fishery resources or straddling stocks should provide a robust starting point for countries to initiate discussions and reach early agreement.

Efforts to implement RBM and the EAF approaches to fisheries management have met with some success. It is clear that many artisanal fisheries would benefit from RBM, and the EAF-Nansen Project has worked well with countries to improve understanding and develop management plans. However, much work remains to be done in terms of promoting a broader regional understanding and acceptance of these management tools in such a way that managers understand the elements, risks, costs and benefits, as well as the development processes, in relation to particular types of fisheries. Improved coordination among NGOs (and within some NGOs that have different country offices) and neighbouring countries in the implementation of RBM is needed. Piloting initiatives should first assess risks, costs and benefits. Consideration of quota allocations in tuna fisheries has been taking place in other regions and internationally, and knowledge of options and conclusions could benefit the ongoing process in IOTC.

Organizations and initiatives relating to regional MCS urgently need to be addressed, considering that there will be five such bodies with overlapping membership in the not too distant future: COI-IOC, IOTC, the SADC MCS Coordination Centre, SIOFA and SWIOFC. There are currently no formal linkages or consultations. A regional MCS strategy should be developed and/or a coordination mechanism established.

A knowledge base of projects and management plans in the region should be established, with a view to avoiding duplication and promoting mutual reinforcement. Coordination on projects relating to MCS and capacity building, among others, would be particularly helpful.

The recommendations made in this document are summarized below in Figure 6.

**Figure 6.**  
**Summary of recommendations**

<b>2. HARMONIZATION OF FISHERIES LEGISLATION</b>	
<b>2.3.1 General</b>	
1.	It is recommended that countries as a matter of priority review the definitions included in their fisheries legislation for completeness and consistency with minimum standards of best practice. Other general areas that should be included and harmonized are objectives, jurisdiction, application, principles for sustainable fisheries management and international cooperation.
<b>2.3.2 Fisheries conservation, management and development</b>	
2.	It is recommended that provisions underpinning fisheries management be introduced or strengthened in order to adequately provide for EAF and RBM forms of fisheries management. In particular, provisions relating to fisheries management plans, declaration of a fisheries management area, genetic resource management, cooperation with other sectors in fisheries management, fisheries research, stakeholders' advisory body, conflict prevention/resolution, fisheries management consultations or an advisory body/committee, a shared fisheries management body and the stowage of fishing gear. Legislation for RBM should, where applicable, be adopted at national and other

decentralized government levels.	
3.	It is recommended that countries ensure there is an adequate legal basis for conservation measures, particularly those essential for adopting an EAF management, including those authorizing the declaration of endangered or protected species of fish, and requiring a fisheries impact assessment. Other provisions in legislation should be included or strengthened to address the pollution of the fishery waters, the placement of fish aggregating devices, prohibition of damage/destruction/interference with a fishing vessel, gear or a person, prohibition on leaving or abandoning objects in the fishery waters and import and export of live fish. In addition, the harmonization of enforcement would be well served where countries include legislation prohibiting the sale, import, possession etc., of fish or fish products taken illegally in another country, and require the implementation of international conservation and management measures.
4.	It is recommended that countries provide for priorities or plans for the development of the fisheries sector in their legislation, in order to more adequately address RBM and shared or joint management.
<b>2.3.3 Information, data and records</b>	
5.	It is recommended that countries consider consolidating all requirements relating to fisheries information in one part for improved transparency and understanding and ease of implementation. Clear and comprehensive information requirements are urgently needed that would contribute to a regional MCS system, shared/joint management arrangements and the EAF and RBM approaches to fisheries management.
<b>2.3.4 Fisheries access arrangements</b>	
6.	It is recommended that provisions relating to fisheries access be reviewed and updated to ensure flexibility for a wide range of access arrangements, including for RBM, and to form a strong legal basis for shared or joint fishing arrangements. Minimum terms and conditions of fisheries access could be introduced in such a context.
<b>2.3.5 Licences required</b>	
7.	It is recommended that countries ensure the adoption of requirements for licensing of national vessels and persons beyond areas of national jurisdiction to comply with flag State duties and international instruments, as well as to form a basis for cooperation under shared or joint management and control nationals where fishing in vulnerable marine ecosystems is concerned.
<b>2.3.6 Monitoring, control and surveillance</b>	
8.	It is recommended that an MCS Unit be established under legislation, and functions be described for useful to facilitate regional enforcement cooperation as well as to ensure coordination within the fisheries agency and the national government.
9.	It is recommended that countries designate in their legislation the authority or process for appointment of authorized officers and empower them to carry out duties in areas beyond national jurisdiction, including hot pursuit. Conversely, mechanisms should be included to allow cross-authorization of non-national authorized officers. In all countries, the powers of entry and search should be strengthened or introduced, and specific powers included such as immobilization of seized vessels, authority over abandoned fishing vessels and gear, taking, etc. evidence and taking a vessel to port where it is believed to have engaged in IUU fishing. Authorized officers should be required to identify themselves on request.
10.	It is recommended that the mandate of observers be designated as including monitoring, scientific and compliance functions, and that authority to establish a national observer programme be included in legislation. Countries should update and broaden their provisions in relation to the conditions and costs to be required of fishing vessels carrying observers, and to provide for the embarkation and disembarkation of observers.

11. It is recommended that both authorized officers and observers be empowered to carry out duties in areas beyond national jurisdiction and that a mechanism be identified to empower non-national authorized officers and observers to carry out duties in areas under national jurisdiction.
12. It is recommended that countries review and/or introduce requirements protecting the authorized officers and observers and ensure that the highest standard is in effect. They should be protected from liability for actions done in the course of duty. Protection of informants should be considered, and a reward may be offered but should have strict legal requirements for eligibility and administration.
13. It is recommended that up to date VMS requirements at the highest possible standards should form part of the legislation, and that confidentiality requirements permit the operation of a regional system.
14. It is recommended that countries implement on an urgent basis the full range of requirements in the FAO Agreement and the IOTC Resolution on Port State Measures.
<b>2.3.7 Evidence</b>
15. It is recommended that countries give urgent attention to providing evidentiary rules for fisheries-related offences in their laws, including photographic evidence, certificate evidence, prima facie evidence of the location of a vessel, a reversal of the onus of proof in certain circumstances, and prohibiting tampering with or destruction of any item that can be used in non-compliance with the legislation.
<b>2.3.8 Jurisdiction</b>
16. It is recommended that countries include a legally transparent, accountable and comprehensive requirements and administrative process for compounding offences in their legislation. This should include, for example, rules governing the accused/charged person's activities and consent, seizures, process for taking the decision, level of determination or penalty, requirements for payment, actions where payment is not made, registration of decision in court and appeals.
<b>2.3.9 Compliance</b>
17. It is recommended that countries harmonize the levels of fines, and include a wide range of other "best practices" penalties in their laws, including those relating to continuing offences and repeat offenders, banning orders, liability of the operator, compensation for loss or damage, deprivation of monetary benefits, default for non-payment of fines and non-payment of pecuniary penalties.
<b>2.4 A basis for harmonization of legislation: Indicative text</b>
18. It is recommended that countries review the provisions in their national legislation to assess consistency and harmonization with the indicative text provided in Annex 6.
<b>3. DRAFT FISHERIES MANAGEMENT AGREEMENT FOR SHARED OR STRADDLING FISHERIES RESOURCES</b>
19. It is recommended that countries review the draft Agreement for the management of shared fisheries resources or straddling stocks, with a view to using it as a basis for entering into agreements for shared or joint fisheries management.
<b>4. APPLICATION OF RIGHTS BASED MANAGEMENT SYSTEMS IN THE SOUTH WEST INDIAN OCEAN COUNTRIES</b>
20. It is recommended that before identifying pilot sites and establishing guidelines for the use of RBM in any fishery, including the shrimp fishery, and as a precondition for knowledge and awareness promotion, the lessons learned from establishing the EAF-Nansen project be considered and the following concrete actions taken:

<ul style="list-style-type: none"> <li>• undertake a performance review of RBM management in similar fisheries at national, regional and international level and assess their applicability;</li> <li>• consult, propose and seek agreement on the form/assignment of RBM that should be considered for a fishery, or at least map out clear options;</li> <li>• explain how this differs from existing management measures, or those non-RBM measures used successfully in other similar fisheries in the region or internationally;</li> <li>• identify the implications and process/risks/costs/benefits of the proposed RBM for the resource, fishers and environment; and</li> <li>• provide evidence why the use of RBM would be a long-term improvement to the sustainable management of the fishery over any current or alternative management measures.</li> </ul>
<p>21. Mindful of the continuing challenges facing the ongoing establishment of BMUs in the region, together with their administration and the need to improve fisheries management at community level, it is recommended that a performance review of BMUs and as appropriate other forms of shared management in the region be undertaken.</p>
<p>22. It is clear there are no “best” approaches to the type of RBM that would best be used for tuna. It is recommended that, before a decision is made on implementing RBM for any tuna fishery in the region, the issue be thoroughly addressed in the context of the considerations outlined in the stocktaking of possible approaches in the text.</p>
<p>23. It is recommended that, in the first phase, the actions in the framework below should be undertaken to the extent possible. This may take the form of a dedicated initiative or project.</p> <ul style="list-style-type: none"> <li>• Establishment of a steering committee to oversee and guide the process for implementation of RBM;</li> <li>• Designation by government or regional consensus of priority fishery/fisheries for consideration, and the rationale for such designation;</li> <li>• Preparation of a scoping report on the use of RBM to manage the designated fishery/fisheries which would: <ul style="list-style-type: none"> <li>○ prepare a baseline report on the status of the stocks;</li> <li>○ report on the history of and current activities in the fishery, including the activities and expectations of the fishers and related industry, and in view of this assess potential challenges and solutions to the introduction of RBM;</li> <li>○ assess the current management of the fishery;</li> <li>○ assess the strengths, challenges and possible solutions to current management of the fishery;</li> <li>○ take into account relevant bilateral, sub-regional and regional considerations;</li> <li>○ provide a performance review of the implementation of RBM in similar fisheries at national, regional and international levels and assess the applicability;</li> <li>○ describe relevant risks, including issues relating to human capacity, the law, policy, institutions, and enforcement, as well as to equity, social, cultural and economic aspects and propose consultation and awareness raising processes as appropriate;</li> <li>○ define the RBMs to be considered - in consultation with relevant stakeholders, develop a model or options for RBM of the fishery, including proposed forms/assignments;</li> <li>○ describe the risks, costs and benefits to the resource, fishers and the environment of implementing the RBM management options;</li> <li>○ explain how RBM differs from existing management measures, and how RBM measures differ from non-RBM measures used successfully in other similar fisheries in the region or internationally;</li> <li>○ provide evidence why the use of RBM would be a long-term improvement to the sustainable management of the fishery over any current or alternative management measures; and</li> </ul> </li> <li>• Description of next steps, including consultations, awareness raising, social/economic/ legal/policy aspects and implementation of RBM, including activities, a timeframe and budget.</li> </ul> <p>The outcomes, to be reviewed and agreed by government, should be used to identify piloting sites, fisheries and/or methods.</p>



<p>24. For the second phase, the process should begin in earnest. The development of a model or options, based on risks, costs and benefits in the context recommended above would at least give stakeholders, including government, a clearer picture of the goal. It should be recognized that, during the second phase, the proposals are there to provide clarity; they may be agreed, modified or dismissed, or another management approach may be adopted.</p>
<p>25. Notwithstanding the previous recommendation, it is recommended that NGOs involved in piloting RBM in Kenya and Tanzania cooperate to ensure compatibility and effectiveness. At country level, it is recommended that efforts be strengthened to ensure compatibility of RBM management especially for inland waters. Piloting choices should be made, to the extent possible, in a jurisdiction where there is legal authority to ensure successful implementation.</p>
<p><b>5. HARMONIZATION OF LEGISLATION AND GUIDELINES FOR THE IMPLEMENTATION OF RBM</b></p>
<p>26. It is recommended that, where RBM is being introduced, legislation be reviewed to ensure that provisions elaborated in the text provide a clear foundation for their implementation.</p>
<p>27. The following principles are recommended that may assist in addressing some of the issues relating to the preparation of guidelines described in the text and in providing a basis for harmonization of guidelines.</p> <ul style="list-style-type: none"> <li>• A fundamental principle is that guidelines should focus on what could be very useful preliminary considerations and criteria. For example, assessments of existing human capacity, databases, resources, management, institutions, laws (at all levels), policies, social/cultural patterns, economic situations, governance and processes (including conflict avoidance) should be made at an early stage. There should be a process to identify risks/costs/benefits for particular circumstances, and then to develop a strategy for establishing RBM.</li> </ul> <p>This may seem onerous, but addressing some or all of these aspects of RBM in guidelines, as a preliminary matter, would be responsible, methodical, respond to current concerns and contribute to more productive results.</p> <ul style="list-style-type: none"> <li>• A second, and related, principle on which to base guidelines is that the RBM should be well defined for each situation. A suite of potential benefits just doesn't give the user full information and can be taken more as propaganda, particularly where the RBM system doesn't gain traction. The "what" and "why" need to be clear.</li> <li>• A third principle is that guidelines should take into account best practices in legal requirements, such as those noted in section 5.1. For example, the framework of a management plan or shared management agreement could be integrated into the RBM system.</li> <li>• A fourth principle is to include a communications strategy in the Guidelines, to ensure widespread understanding.</li> <li>• A fifth principle is that harmonization of guidelines with countries that share bodies of inland water, or species in the marine environment, should be encouraged. It should take into account commonalities and variables discussed above.</li> </ul> <p>28. As a first step, it is recommended that the NGOs active in promoting RBM at community level in different countries in the region, together with relevant authorities, collaborate and share their experiences and views with a view to elaborating harmonized guidelines. In doing so, existing guidelines should be assessed for their effectiveness, completeness, strengths and weaknesses.</p>

29.	Concerning other fisheries and areas, there do not appear to be any commonly used guidelines for applying RBM. For such other fisheries, which are diverse in terms of areas, species management needs and industry, considerations have been developed, such as those indicated in section 4, that may be tailored to each situation. If guidelines are needed on a regional basis, for example for shrimp or tuna fisheries, it is recommended that the two-phase process described in section 4 for piloting RBM could be used as a starting point.
<b>6.</b>	<b>FISHERIES MANAGEMENT PLANS INCLUDING THE EAF APPROACH</b>
30.	Given the difficulty in obtaining full information from countries about existing or proposed fisheries management plans, including the status of implementation and challenges/strengths/weaknesses, as well as partial duplication of efforts in obtaining information on management plans between this project and a Smartfish initiative, it is recommended that a regional knowledge base be established as a repository for such information. It should allow for periodic updates in the monitoring of implementation as well, so lessons learned can be shared among countries. It would be useful to include in such a knowledge base management measures of a regional nature, including those adopted by IOTC and SIOFA, and those recommended by SWIOFC.
31.	Concerning the implementation of the EAF in fisheries management, although the EAF-Nansen project has produced or is in the process of formulating specific fisheries management plans based on a well - designed and successful process, support needs to be considered for ensuring a solid national legal foundation and increasing the general level of understanding of the EAF in the region.
<b>7.</b>	<b>LINKAGES AMONG COI-IOC, IOTC, SADC and SWIOFC: MCS FOCUS</b>
32.	It is recommended that consideration be given to developing a regional MCS strategy, initially through regional consultations in which countries would identify and prioritize their needs, considering national needs as well as regional and international MCS related obligations, and an effective mechanism for sustainable regional coordination of fisheries MCS among existing bodies, projects or initiatives would be identified. Input from, and independent audits or assessments of, existing bodies, projects and initiatives may be considered. All organizations, projects and initiatives should be involved, including COI-IOC, IOTC, SADC, SIOFA and SWIOFC.
33.	The regional organizations should, as a matter of priority, consider concluding MOUs clearly setting out areas of cooperation and communication, and ensuring that overlap and duplication are avoided in the best interests of the member countries.
<b>8.</b>	<b>FISHERIES-RELATED PROJECTS</b>
34.	It is recommended that a regional knowledge base be established and maintained that contains information on all proposed and existing fisheries related projects in SWIO countries, including the objectives, proposed outcomes, donor(s), funding level, duration and beneficiaries. As appropriate, the outcomes of project evaluations should also be included. The information should be web based and publicly available, and should serve inter alia as a basis for cooperation among donors to enhance complementarity of projects and avoid duplication and overlapping efforts.

## TERMS OF REFERENCE AND SCOPE OF SERVICES

The Consultant will undertake the tasks set out in the Scope of the study, using the methodology set out below.

### **2.1 Review regulations of the SWIO countries in view of harmonising and promoting shared and/or straddling stock management of fisheries taking into account reviews already carried out by other agencies**

The consultant proposes to review and evaluate the fisheries and related legislation, and regulations currently in force or under development.<sup>77</sup>

The Consultant will research the legislation of the eight countries involved, draw up an inventory of what she already has or can obtain on the web, and request contacts (to be provided by SWIOFC) to provide additional information. She will also compile relevant regional treaties and other agreements, and reviews carried out by other agencies

She will perform an initial review of the legislation and other instruments, considering in this broader context MCS and fisheries management, including possible joint management, rights based management and the ecosystem approach.

### **2.2 Propose areas for harmonization including any related text for consideration by each of the countries. There may be a need to consider MCS (including proposal for harmonising the two MCS processes existing in the WIO region – IOC and SADC), conflict resolution and joint management structures etc.**

The consultant will prepare a matrix containing a Model Fisheries Law to provide a baseline of the “best practices” provisions of a national fisheries law, taking into account legal obligations under regional bodies such as IOTC and potential bilateral or regional cooperation. This takes into account the interrelationship of various Parts in a Fisheries Law. For example, a definitions must be developed to ensure clear and even implementation; evidence laws should be similar if there is to be joint MCS; licensing systems must be transparent and clear if there is to be shared management.

The matrix would then indicate for each country where national laws do or do not have similar provisions, showing where areas need strengthening at national level. The matrix will contain the following parts:

- I. GENERAL PROVISIONS
- II. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT
- III. INFORMATION
- IV. FISHERIES ACCESS ARRANGEMENTS
- V. MONITORING, CONTROL AND SURVEILLANCE
- VI. EVIDENCE
- VII. JURISDICTION OF THE COURT
- VIII. COMPLIANCE

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<sup>77</sup> It is understood that the term "legislation" will be used to refer also to regulations, and that reference to shared and straddling fish stocks will be taken to include highly migratory species unless otherwise directed.

There will be a summary description of the elements of each provision in the Model Law. Some text can be developed as appropriate for key provisions needed for harmonization.

### **2.3 Propose a draft fisheries management legal agreement for shared or straddling fisheries resources in the SWIO range States (bilateral and multilateral options).**

A draft fisheries management agreement would be prepared for use as a template in the case of shared or joint management over fish stocks, particularly offshore shared stocks such as shrimps and demersal species. It will provide for cooperation in fisheries management, including through a joint management plan, and serve as a guideline and possible common negotiation platform in a broader regional context. Joint or cooperative MCS arrangements to support fisheries management measures will also be addressed taking into account existing arrangements between countries in the region.

The draft legal agreement would be prepared mindful of existing regional organizations and arrangements as well as bilateral arrangements that countries may have with non-coastal States.

Preparation of the draft agreement will be based on international fisheries laws and best practices, as well as consultations with countries and organizations in the region to promote practicability and acceptance.

### **2.4 Review and assess the extent Rights Based Management Systems have been applied in the South West Indian Ocean Countries, including its practice, level of understanding, and propose options for adoption and including piloting.**

The consultant will seek information on RBMs in the region from the country contacts, including the existence and extent of RBMs in the region and the process initiated by the AU-IBAR – WWF November 2011 Workshop. Information will need to be identified as set out under section 1.2, above, to establish the extent of current experience and thinking, as well as understanding, on the elements of RBMs and their possible application, mindful that one size doesn't fit all.

Further information will be sought from AU-IBAR, WWF Workshop attendees and resource persons, as well as those who are engaged in developing or overseeing RBM in their respective countries. One-on-one discussions in the region will be an important source of information, and the NMUs will be requested to assist in identifying appropriate persons or programmes in each country.

The information collected will serve as a baseline of what is currently provided in legislation and the *de facto* practice in the region.

Case studies of RBM practices by other countries will also be undertaken to provide insight and guidance. This can be done initially through broad-based research and information from international organizations such as the FAO.

Recommendations for piloting RBM in the region will be made based on successful practice within and outside the region, and the needs of the region.

### **2.5 Review any supporting regulations for RBM in each of the countries and propose areas for harmonisation and improvement, including development of RBM guidelines.**

The Consultant will review the relevant legislation for the use of RBM in each country and any Guidelines for implementation of RBM that have been developed, including the work done by WWF in this context. These guidelines should only be tailored to suite the SWIO fisheries situation.

Recommendations will be made for adapting them within the region, in a harmonised manner and taking into account differences in laws, institutional capacities, policies, fisheries and socio-economic conditions.

**2.6 Review the extent of development and implementation of national and regional fisheries management plans as well as relevant global instruments (including FAO Plans of Action, Ecosystem Approach to Fisheries Management) in the SWIO countries. This relates to numerous management plans prepared e.g. by FAO and have never been implemented. A list of all the management plans (draft or approved plan) incomplete) should be provided with details (funding agency, status, etc). Assess the reasons why and make recommendations. This should also cover the extent of how EAF approach to fisheries principles has been translated into the fisheries regulations and in the management plans.**

The Consultant will research, compile and assess national and regional management plans in the SWIO countries that have been prepared, including those that are not adopted or implemented, and take stock of their status. Information will be sought on the funding agency, the status of the plans and, if not adopted or implemented the reasons for this will be identified. Equally, where plans have been successfully implemented, the reasons for this will be described, including the extent of how the EAF approach has been included in fisheries legislation and management plans. .

The overall objective is to improve on fisheries management planning and how to make them work bearing in mind information from EAF-Nansen, FAO and any other relevant regional fisheries approaches.

Information will be requested from countries, as well as FAO and the EAF-Nansen project.

**2.7 Assess the linkages and implications to the SADC Fisheries Protocol, COI Fisheries Strategy, the SWIOFC, IOTC and FAO Code of Conduct for Responsible Fisheries for improved regional fisheries management and make recommendations.**

The Consultant will review and assess all initiatives in the region in relation to fisheries management, including MCS. The institutions and linkages will be addressed. As appropriate, recommendations will be made to improve their functioning, effectiveness and coordination.

**PROPOSED ADDENDUM TO CONSULTANT'S TERMS OF REFERENCE  
(in approval process)**

**2.8 Carry out an assessment on options to render the SWIOFC more effective in meeting the growing needs of countries**

The SWIOFC have recently completed its performance review and a number of recommendations have been made. These recommendations have to be translated into possible amendments to the SWIOFC institutional framework to improve its effectiveness. The consultant is required to look at the fundamental issues that will render the organisation more effective in delivering on its mandate. This may include changes in its legal mandate, recommending options to ensure proper coordination of fisheries research and management at the sub regional level and linkages with other regional organisations, taking into consideration the outcomes in 2.7.

The consultant shall identify pivotal role(s) that may be played by SWIOFC under its current mandate in response to the needs of its members as expressed in the Performance Review and discussed in meetings during the consultant's mission. This shall include recommendations on:

- improving the effectiveness of the Secretariat;

- institutional development in the region for better coordination of fisheries issues;
- improving funding, including through co-financing, innovative ways for members to contribute and setting criteria for contributions;
- better response to members' needs by putting in place clear strategies to rebuild targeted fisheries and sustainably increase revenues generated for members.

The consultant shall explore options relating to the legal mandate of SWIOFC, taking into account the relevant areas of the SWIOFC Performance Review, and legal/administrative/ financial implications for each. The options shall include:

- Continuation as a FAO Article VI body, with additional arrangements or authorities;
- Transformation into a FAO Article XIV body;
- Transformation into an independent, non-FAO body.

The consultant shall submit a report on this component by 20 September 2012 and make a presentation to the SWIOFC meeting from the 8- 12 October 2012, in Mauritius following which submit the final report.

## **2.9 Compile a list of fisheries-related projects to be implemented at national and regional level**

The consultant shall draw up a list of all fisheries-related ongoing and proposed projects to be implemented at national or regional level and identify the proponent(s) and beneficiaries of those projects and identify overlaps and/or duplications. The result of this exercise shall be provided in a matrix and shall form the basis for coordination between the different stakeholders in order to avoid overlaps and/or duplication of efforts. To achieve this result, the consultant shall liaise with the Secretariats of SWIOFC, IOTC, COI (including Smart Fish and PRSP), ACP FISH II, SWIOFP, WWF and any other relevant organisations and projects active in the region.

The consultant shall submit a report on this component by 31 July 2012.

## **2.10 Prepare a project document for the implementation of the grant provided by the World Bank in support of rights based management.**

The World Bank has provided a grant of US\$ 1.1M in support of rights-based fisheries management in the Southwest Indian Ocean from the Development Grant Fund (DGF) to be used to support key leveraged activities of SWIOFC/IOTC either directly or through the Indian Ocean Commission (IOC). The SWIOFC is expected to act as the Policy Steering Committee of the project with respect to the approval of work plans and budget.

The consultant is required to work on the project document as per the attached annex. The project document should be broad even to allow adjustment to the planned activities during implementation, consequently detailed activities would be provided as an appendix. The budget should be broken down into three equal amounts for three consecutive years (around \$375,000 per year) and guided by the following overall activities (budget categorization is not binding at this stage):

- Technical assistance to qualifying Members to review their fisheries law and regulations to ensure that the legal framework is adequate to allow the Members to implement the Resolutions adopted by the Indian Ocean Tuna Commission; (Technical Assistance, \$100,000)
- Technical assistance to develop and promote the implementation of practices that will allow for good governance of fishery sector, in particular through the development of guidelines

for improved transparency and accountability in domestic fishing access rights allocation and fishing revenues collection; (Technical Assistance \$150,000)

- Technical assistance, consultations and operating costs to create a more effective channel of communication at both national and regional level in order to promote collaboration and implementation of the agreed FAO Port State Measures to enforce fishing rights; (Steering Committee \$50,000, Operating costs \$75,000, Audit & Evaluation \$75,000)
- Training to ensure proper implementation of the FAO Port State Measures Resolution to enforce fishing rights (Technical Assistance \$75,000, Training \$350,000, Workshop \$125,000)
- Contingencies (\$100,000)

While developing the budget, the consultant should keep in mind that no goods can be financed by the DGF grant.

In developing the details activities the consultant should liaise primarily with the SWIOFC, IOTC, COI (including SmartFish and PRSP), ACP FISH II, and WWF secretariats and/or any relevant organisations and projects active in the region.

The consultant shall submit a report on this component by 26 August 2012.

## RESOURCES DOCUMENTS AND CONSULTATIONS

### I. LIST OF DOCUMENTS

#### A. ORGANIZATIONS AND PROJECTS

##### ASCLME

- Background from website, including mid-term evaluation report.
- Policy and governance assessment of coastal and marine resource sectors in Kenya in the framework of large marine ecosystems. Renison K. Ruwa, Kenya Marine and Fisheries Research Institute. Report to the ASCLME policy and governance coordinator, ASCLME project; Grahamstown, South Africa. June 2011

##### AU-IBAR - WWF

- AU-IBAR Strategic Plan, 2010-2014
- Minutes of the Fisheries Director Meeting, 9 and 10th November 2011, Dar es Salaam (Whitesands Hotel), Tanzania
- Draft Report of proceedings for the Workshop on the Rights Based Management of Fisheries in the Western Indian Ocean (WIO) region held on the 7th -8th of November 2011 at the Double Tree Hotel, Dar Es Salaam, United Republic of Tanzania
- Report of Proceedings for the 2nd Session of the Western Indian Ocean (WIO) Civil Society (CSO)/Private Sector Consultative Forum on Sustainable Fisheries Management in the WIO that was held on the 9th -10th of November 2011 at the WhiteSands Hotel, Dar Es Salaam, Tanzania
- Report of proceedings for the meeting of the Western Indian Ocean (WIO)-Directors of Fisheries Forum that was held on the 1<sup>st</sup> of March 2012 at the Seychelles Fishing Authority, Mahe, Victoria, Seychelles.

##### CORDOBA CONFERENCE

Cordoba Conference on the Allocation of Property Rights in Global Tuna Fisheries (Cordoba Conference), Cordoba, Spain, 5-9 September 2011.

##### COUNCIL OF REGIONAL ORGANISATIONS OF THE PACIFIC (CROP)

The CROP Charter

##### EAC

1999 Protocol on Environment and Natural Resources Management

##### EAF-NANSEN

- Key points in revised Project document covering Kenya, Comoros and Madagascar.
- The EAF-Nansen Project. Strengthening the knowledge base for and implementing an ecosystem approach to marine fisheries in developing countries.



## **FAO**

- FAO-EAF-Nansen Project. Legislating or an ecosystem approach to fisheries. A review of trends and options in Africa. *FAO EAF-Nansen Project Report No.10*. FAO 2011. 158 p.
- FAO. Report of the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks. Bergen, Norway. 7-10 October 2002. *FAO Fisheries Report No. 695*. Rome. FAO. 2002. 34p.
- FAO. Munro, G.; Van Houtte, A; Willmann, R. The conservation and management of shared fish stocks; legal and economic aspects. *FAO Fisheries Technical Paper*. No. 465. Rome, FAO. 2002. 69p.
- FAO. deYoung, C. (ed) Review of the state of world marine capture fisheries management: Indian Ocean. *FAO Fisheries Technical Paper*. No. 488. Rome, FAO. 2006. 459p.
- Shotton, R. (ed.) Use of property rights in fisheries management. Proceedings of the FishRights99 Conference. Fremantle, Western Australia, 11-19 November 1999. Mini-course lectures and core conference presentations. *FAO Fisheries Technical Paper*. No. 404/1. Rome, FAO. 2000. 342p.
- FAO Indian Ocean Regional Workshop on Vulnerable Marine Ecosystems. Pearl Beach Hotel, Flic en Flac, Mauritius. 25-27 July 2012. Draft report, August 2012
- FAO. Report of the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011. *FAO Fisheries and Aquaculture Report*. No. 983. Rome, FAO. 2011. 34 pp.
- FAO. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. 2012

## **IATTC**

- Report of Workshop on rights-based management and buybacks in international tuna fisheries, La Jolla, California, USA, 5-9 May 2008.

## **INDIAN OCEAN COMMISSION MCS PROJECT**

- Pilot project for MCS in the Indian Ocean - an emphasis on port states measures. Neil Ansell, Chief Technical Officer, MCS Programme, Indian Ocean Commission (IOC), Mauritius. 2006
- Plan Régional de contrôle et de surveillance des pêches dans le Sud-Ouest de l'Océan Indien. Demande de subvention pour la continuation et l'élargissement des activités, la consolidation des acquis, et la pérennisation de la stratégie régionale de surveillance dans le sud ouest de l'Océan Indien. 2012.
- PSRP Flyer

## **IOTC**

- IOTC Agreement
- Reports of Sessions
- RESOLUTION 10/04 on a regional observer scheme
- RESOLUTION 06/03 on establishing a vessel monitoring system programme

- RESOLUTION 10/11 on Port State Measures
- Reports/WWF Prospectus of meetings to discuss Allocation Criteria.
- A Summary of IOTC Regional Observer Programme, IOTC-2012-COC09-04b

#### **PACIFIC ISLANDS FORUM FISHERIES AGENCY**

Regional Monitoring, Control and Surveillance Strategy, 2010-2015. (Adopted by Forum Fisheries Committee 74, May, 2010).

#### **SADC**

- 2001 Protocol on Fisheries
- 2008 Statement of Commitment by SADC Ministers Responsible for Marine Fisheries on Illegal Unreported and Unregulated Fishing

#### **SIOFA**

- Southern Indian Ocean Fisheries Agreement

#### **SMARTFISH**

- Comprehensive review of the capacity to implement effective MCS at a national and regional level including RFMO agreed actions, in the ESA-IO region, to determine areas to be updated, harmonized and to identify barriers to implementation of effective MCS. January, 2012
- Implementation of a Regional Fisheries Strategy for the ESA-IO. Inception Report. April 2011. D. Greboval, M. Kroese and C. Short
- Partners Meeting on Fisheries Strategy for the ESA-IO Region , Flic en Flac, Mauritius, 30th-31th July 2012
- Fisheries policy/strategy coherence in eastern and southern African and Indian Ocean (ESA-IO) region. July 2012. Draft. Peter Manning.
- Review of Strategic and Programme Developments in the ESA-IO Region in relation to fisheries governance, development and management. July 2012. Draft. Stephen Cunningham.
- Review of the legal frameworks, including fisheries based laws, where they pertain to MCS and RFMO agreed actions, in the ESA-IO region, to determine areas to be updated and harmonized and identify barriers to the implementation of effective MCS IOC IRFS Programme. AGROTEC CONSORTIUM, draft Report, including desktop study, October 2011.
- Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011", Ref: CU/PE1/UG/10/008
- Analyse du cadre de gouvernance des peches maritimes dans la zone ESA-COI-IOC (Madagascar, Somalie, Seychelles, Tanzanie, Kenya, Maurice, Comores) en appui a l'elaboration du Plan d'Actions du programme Smartfish pour l'amelioration de la gouvernance des peches maritimes dans les pays participant au projet. AGROTEC CONSORTIUM, Septembre 2011

- PMU (2011). Policy and Legal Review of Co-management of Protected Areas in Mauritius and Rodrigues. Final. Output 1.1: Partnerships for Marine Protected Areas in Mauritius and Rodrigues MAR/03/G35/A/1G/99. Pp. 129. 22nd December 2011. Government of Mauritius, GEF, UNDP, Dawson Shepherd, A.R.

#### **SWIOFC**

- Statutes, Rules of Procedure
- Advance Report of the Performance Review
- Document SFS/DM/SWIOFC/07/8 E, 2007 Proposed institutional arrangements for reviewing compliance and enforcement.
- Reports of Sessions

#### **UNITED STATES SEA GRANT**

- Pomeroy, Rights-based Fisheries Management. Publication Number CTSG-04-02

#### **WCPFC**

- Discussion paper on allocation issues, Document WCPFC3-2006/15, Third Regular Session, Apia, Samoa, 11-15 December 2006

#### **WWF (see also under AU-IBAR – WWF and TANZANIA)**

- WWF's Coastal East Africa Initiative; Securing Natural Capital for People and Development
- The Use of Rights-Based Measures in Fisheries Management. WWF Position Paper, September 2007. Compiled by Grieve, Chris.

#### **WIOFISH**

- Database report 2010-2011.

### **B. COUNTRIES**

#### **EUROPEAN COMMUNITY**

- An analysis of existing Rights Based Management (RBM) instruments in Member States and on setting up best practices in the EU. Study published 01/02/2009.  
[http://ec.europa.eu/fisheries/documentation/studies/rbm/index\\_en.htm](http://ec.europa.eu/fisheries/documentation/studies/rbm/index_en.htm)

#### **MAURITIUS**

- Agreement, Mauritius-Seychelles, Fishing in Mauritius Waters, 11 March 2001
- Aquaculture Master Plan, December 2007
- Fishing Agreement with Japan Tuna, April 2009
- MoU, Mauritius-Mozambique, Cooperation in Fisheries, March 2002,
- Mauritius and Piracy, D.Mauree - Director of Fisheries Ministry of Fisheries and Rodrigues Workshop - The Impacts of Piracy on Fisheries in the Indian Ocean, 28 - 29 February 2012 Seychelles

#### **MOZAMBIQUE**

- MCS Regional Network for East and Southern Africa, Concept Paper
- NFDS Report. Project Proposal for the SADC Regional Fisheries MCS Coordination Centre - Start-up Project.
- Oceanic Développement, MegaPesca Lda (2007). 'Evaluations, impact analyses and monitoring services in the context of FPAs : Establishment of a Framework Contract Management Unit (FCMU) to manage, monitor and coordinate the activities under the Framework contract and the relevant specific agreements.

- Ex-post evaluation of the current protocol to the fisheries partnership agreement between the European Union and Mozambique and analysis of the impact of the future protocol on sustainability, including ex-ante evaluation. Final report. June 2011

## **TANZANIA**

- Guidelines for Establishment of CFMAs in coastal and marine waters of Tanzania, 2009. Ministry of Livestock Development and Fisheries. Prepared by Fisheries Development Division and World Wide Fund for Nature. March, 2009. Reviewed March, 2010.
- Guidelines for establishing community based collaborative fisheries management in marine waters of Tanzania prepared by Fisheries Development Division and World Wide Fund for Nature. Prepared by Fisheries Development Division and World Wide Fund for Nature 2009. ISBN: 978-9987-508-02-0.
- Fisheries Project Concept Notes:
  - Empowering of Artisanal Fishers in Tanzania
  - Establishment of a Fishing Harbour along the Indian Ocean Tanzania Coast
  - Construction of Cold Storage facilities at Kasanga Fish Market
  - Rehabilitation and restoration of the “Tanzania Fisheries Corporation” (TAFICO) buildings and facilities

## **REGIONAL**

Final Act of the Conference of Plenipotentiaries for the adoption of the amended Convention on the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean. 31 March 2010.

## **II. CONSULTATIONS**

### **ORGANIZATIONS**

#### **COI-IOC**

Xavier Nicholas  
Project Manager, PSRP

#### **FAO**

Kwame Koranteng  
Coordinator, EAF-Nansen Project  
Marine & Inland Fisheries Service (FIRF)

Rolf Willmann  
Senior Fishery Planning Officer  
Development Planning Service (FIEP)  
Fisheries and Aquaculture Economics and Policy Division (FIE)  
Fisheries and Aquaculture Department

Clotilde Bodiguel  
Project Manager  
Smartfish

Dominique Greboval  
Project Manager  
Smartfish

Cassandra deYoung  
Fishery Policy Analyst  
Fisheries and Aquaculture Economics and Policy Division (FIE)

Annick Van Houtte  
Legal Officer (responsible for FAO Statutory Bodies)  
Legal Office

**IOTC**

Alejandro Angenuzzi  
Executive Secretary

Gerard Domingue  
Compliance Officer

Florian Giroux  
Fishery Officer

**SWIOFC**

Mr Aubrey Harris  
Secretary

**SWIOFP**

Rondolph Payet  
Regional Executive Secretary  
South West Indian Ocean Fisheries Project Regional Management Unit

**WORLD BANK**

Tim Bostock  
Senior Fisheries Expert

Michael Arbuckle  
Senior Fisheries Specialist

**WWF**

Domingos Gove,  
Head of Marine Programme

Edward Kimakwe  
Fisheries Programme Officer

Tanzania: Jason Rubens, Josephine Meela  
Madagascar: Ralison Harifidy, Didier Fourgon

## **COUNTRIES**

### **KENYA**

Ministry of Fisheries Development

Patrick Osare MBS  
Director of Administration

Godfrey V. Monor  
Director of Fisheries

Susan Imende  
Acting Deputy Director

Renison K. Ruwa  
Deputy Director (Marine and Coastal)

Lucy A. Obungu  
Acting Director, Marine and Coastal Fisheries

Maxine Yalo M.  
Principal Fisheries Officer

Mwaka Barabara  
Principal Fisheries Officer

### **MADAGASCAR**

Razafindratery Tantely Harimonana  
Directeur de la pêche

Risolonjatovo Harimandimby  
Chef, Centre de Surveillance des pêches

Razaiharidera Noro Olga  
Chef, Service législation/contétiux

Ratsimanarisoa Njaka  
Chef, Service gestion pêche thonière

Ranaivoson Samueline  
Directeur de la Gestion des Ressources Halieutiques,  
Point focale EAF Nansen

Andriamenalotiana Nirima Herison  
Chef, Service Alerisation et commeercialisation

Randrianrola Tiama  
Chef de Service, Operations et communication

Randrianantenaina Joely

Secrétaire Technique, SWIOFP

Ramanfolala Sedara  
Justice CSP

Raboanarijaona Hari Palao Zoelys  
Directeur de l'aquaculture

Rasolonjatovo Norosoa Alice  
Focal Point SWIOFP

Ravomanana Dorothée  
Agent Regional  
Smartfish

Razafihdrainibe Hajanirine  
National Focal Point ASCLME

## **MAURITIUS**

D Mauree  
Director  
Ministry of Fisheries and Rodrigues

V.S. Soondron  
Principal Fisheries Officer

Ms. Syama Rathacaren  
Principal Fisheries Officer

Yu Fat Noel Wan Sai Cheong  
Senior Technical Officer

Veehassen Caullee  
Scientific Officer

Jay Prakash Luchmun  
Scientific Officer

Albion Research Centre

Dev Norungee  
Principal Fisheries Officer

Satis Khadun  
Scientific Officer

C. H. Paupioh  
Scientific Officer

G. Dhunnoo  
Ag Divisional Scientific Officer

Ms Mira Hurbungs  
Divisional Scientific Officer

Ravin Hassea  
Ag Scientific Officer

MS Koonjw  
Scientific Officer

Ms. N. Jeenally  
Ag Scientific Officer

Degambur Dharmendra  
Scientific Officer

## **MOZAMBIQUE**

### **National Fisheries Administration-ADNAP**

Simeao Lopes  
Director General

Maria Ascensao R. Pinto  
Deputy Director General

Lucinda Mangué  
Head Fisheries Management Department

Leonid Santana Chimarizene  
Lawyer

Carmen Goncalves  
Lawyer

Nilza Dias  
Focal Point, SWIOFP

Ministry of Fisheries

Mr Manuel Castiano  
Ministério das Pescas  
Direcção Nacional de Fiscalização da Pesca  
Director Nacional

Mr Peter Flewwelling  
MCS Adviser

Mr Runar Hartvigsen  
Senior Advisor



## **SEYCHELLES**

Roy Clarisse  
Deputy Chief Executive Officer

Roddy Allison  
FMC Administrator

Sonny Naien  
Senior Enforcement Officer

Wendy Perreau  
Act. Senior Processing

Elisa Cocrate  
Fisheries Administrator

## **TANZANIA**

Ministry Of Livestock and Fisheries Development

Hosea Gonza Mbilinyi  
Director  
Fisheries Development Division

Baraka S.M. Mngukwi  
Assistant Director  
Fisheries Resource Protection

Mr Rashid Bakari Hoza  
Principal Fisheries Officer  
Fisheries Development Division

Herman Clement Lyimo  
Principal State Attorney

Sophia Hamisi Kissuda  
Fisheries officer – Legislation

Hamisi L. Nikuli  
Principal Veterianary Officer (Aquaculture)

Julius Kumila  
Principal Assistant Fisheries Officer

Daniel Kawiche  
Fisheries Inspector

### ITINERARY AND AGENDA

The Consultant's final itinerary and meeting times available is shown below. Meetings are kindly requested in each place with the following persons and organizations.<sup>78</sup> An agenda for discussion, based on the Consultant's Terms of Reference, is attached for distribution to meeting participants.

1. Government officials responsible for the following fisheries matters:
  - Legal
  - Management
  - MCS
2. Participants in the Western Indian Ocean (WIO)-Directors of Fisheries Forum
3. The following organizations and programmes:
  - AU-IBAR (Nairobi)
  - EAF-NANSEN
  - COI-IOC MCS Programme (Mauritius)
  - WWF

#### I. FINAL ITINERARY

	Meeting time available	Arrive	Depart
Dar Es Salaam	<ul style="list-style-type: none"> <li>Tuesday 24 July afternoon</li> <li>Wednesday 25 July</li> <li>Thursday 26 July morning</li> </ul>	24 July 0155 ET 827	26 July 1600 KQ 6716
Nairobi	<ul style="list-style-type: none"> <li>Friday 27 July</li> <li>Saturday 28 July</li> </ul>	26 July 1715 KQ 6716	29 July 0750 KQ 740
Maputo	<ul style="list-style-type: none"> <li>Monday 30 July</li> <li>Tuesday 31 July</li> </ul>	29 July 1045 KQ 740	1 August 0700
Antananarivo	<ul style="list-style-type: none"> <li>Thursday 2 August</li> <li>Friday 3 August</li> </ul>	1 August 1410 SA 8252	4 August 0840 MD186
Mauritius	<ul style="list-style-type: none"> <li>Monday 6 August</li> <li>Tuesday 7 August</li> <li>Wednesday 8 August morning</li> </ul>	4 August 1125 MD186	8 August 1710 SEZ 54
Seychelles	<ul style="list-style-type: none"> <li>Thursday 9 August</li> <li>Friday 10 August</li> </ul>	8 August 1945 SEZ 54	

<sup>78</sup> Separate arrangements are being made to consult with the IOTC and SWIOFC.

## **II. AGENDA FOR DISCUSSION**

### **1. COUNTRIES**

#### **Legal Experts**

1. Country to review and comment on the matrix of laws to be prepared by consultant, showing a model fisheries law and indicating where countries have, or do not have, relevant provisions.
2. Discuss legal provisions and mechanisms for harmonization, including:
  - Rights based management
  - MCS
  - Conflict resolution
  - Joint management structures
3. Review the extent of implementation of the Ecosystem Approach to Fisheries in legislation.
4. Address legal elements of fisheries access agreements with a view to harmonizing minimum terms and conditions of fisheries access and including them in national laws.
5. Review a draft legal agreement to be prepared by consultant on fisheries management for shared or straddling fisheries resources in the SWIO range States.

#### **Management Experts**

1. Rights based management
  - (Discussions to take place with AU-IBAR, WWF Workshop attendees and resource persons, as well as those who are engaged in developing or overseeing RBMs)
  - The existence of Rights Based Management Systems and extent of their application, including practice and level of understanding.
  - Options for adoption, including piloting, of Rights Based Management Systems. Piloting should be based on successful practice within and outside the region, and the needs of the region.
  - Adaptation of RBM Guidelines within the region, in a harmonised manner and taking into account differences in laws, institutional capacities, policies, fisheries and socio-economic conditions.
3. Fisheries management plans.
  - Development and implementation of draft or approved national and regional fisheries management plans (including status and any support by funding agency)
  - Recommendations on development and implementation of fisheries management plans, Assess the reasons why and make recommendations.

- Review the extent of implementation of the Ecosystem Approach to Fisheries in fisheries management plans.

4. Joint fisheries management mechanisms.

5. Recommendations for improved regional fisheries management, considering linkages and implications of the SADC Fisheries Protocol, COI Fisheries Strategy, the SWIOFC, IOTC and FAO Code of Conduct for Responsible Fisheries.

### **MCS Experts**

1. Harmonization of MCS processes in the WIO region, including IOC and SADC and taking into account binding MCS requirements of IOTC and the potential role of SWIOFC.

## **2. ORGANIZATIONS/PROGRAMMES**

### **ASCLME**

Work on IUU fishing and databases relevant to fishing.

### **AU-IBAR**

Information and assessment of the process for rights based management, initiated at the November 2011 Workshop and followed up at subsequent meetings.

### **COI-IOC**

Harmonization of MCS processes in the WIO region.

### **EAF-NANSEN**

Information that will assist in improving fisheries management planning and implementation.

### **IOTC**

Comments on possible SWIOFC role in the development and implementation of a draft fisheries management legal agreement for shared or straddling fisheries resources in the SWIO range States (bilateral and multilateral options). *Note, the consultant has already met with IOTC and will make further arrangements for a follow-up meeting.*

### **SWIOFC**

Possible SWIOFC role in the development and implementation of a draft fisheries management legal agreement for shared or straddling fisheries resources in the SWIO range States (bilateral and multilateral options).

Future of SWIOFC.

### **WWF**

Work done by WWF relating to the development of Guidelines for the implementation of RBM, including the November 2011 AU-IBAR/WWF meeting and subsequent follow-up.

Explain how Guidelines are tailored to suite the SWIO fisheries situation.

Adaptation of Guidelines within the region, in a harmonised manner and taking into account differences in laws, institutional capacities, policies, fisheries and socio-economic conditions.

## NATIONAL FISHERIES LEGISLATION

COUNTRY	LEGISLATION AVAILABLE	LEGISLATION UNAVAILABLE, REQUESTED	DRAFT LEGISLATION UNDER DEVELOPMENT
COMOROS	Loi N°82-015/ Relative à l'activité des Navires de pêche étrangers	<ul style="list-style-type: none"> <li>Decret N°07-159/PR Portant promulgation de la loi N°07-011/AU du aout 2007, portant Code de Pêches et de l'Aquaculture de l'Union des Comores (replaces Law No. 82-005)</li> <li>Arrête No 0731, Portant création d'un Centre National de Contrôle et du Surveillance des Pêches</li> </ul>	
KENYA	<ul style="list-style-type: none"> <li>The Fisheries Act, CAP 378, Revised Edition 1991</li> <li>The Fisheries (General) Regulations, 1991</li> <li>The Fisheries (Beach Management Unit) Regulations, 2007</li> <li>The Fisheries (Foreign Fishing Craft) Regulations 2009</li> </ul>		Fisheries and Aquaculture Management and Development Bill, 2011
MADAGASCAR	<ul style="list-style-type: none"> <li>Decret No 94-112, Portant organisation generale des activites de peche maritime</li> <li>Ordonnance 93-022</li> <li>Decree 94-112 Titre12, Establishing the general organisation of Maritime Fishing</li> <li>Arrete 2005 060. Crevettes (conditions for fishing shrimp)</li> <li>Decret N°2007-957. Portant définition des conditions d'exercice de la pêche des crevettes côtières</li> <li>Arrete 13277, 2000. Reorganizing the CSP (Centre de surveillance des peches)</li> </ul>		Projet de Loi N°2012- Portant Code de la peche et de l'aquaculture (drafted in 2007), to replace Ordonnance 93-022

COUNTRY	LEGISLATION AVAILABLE	LEGISLATION UNAVAILABLE, REQUESTED	DRAFT LEGISLATION UNDER DEVELOPMENT
	Arrete 2002 1612. Eau profondes (Minimum mesh size)		
<b>MAURITIUS</b>	<ul style="list-style-type: none"> <li>Fisheries and Marine Resources Act 2007 (No. 20 of 2007)</li> <li>The Marine Protected Areas Regulations, 2001</li> <li>Government Notice No. 1960[2007]</li> <li>Regulations made by the Minister under sections 7(3) and 73 of the Fisheries and Marine Resources Act</li> <li>Finance (Miscellaneous Provisions) Act 2008</li> <li>Regulation GN Notice No. 105 of 2007 (Marine Protected Areas – Amendment)</li> </ul>		<ul style="list-style-type: none"> <li>A process to review and revise the 2007 Act has been initiated.</li> <li>Draft Fisheries (Monitoring, Control and Surveillance) Regulations 2008</li> </ul>
<b>MOZAMBIQUE</b>	<ul style="list-style-type: none"> <li>Lei no. 3/90 das Pescas</li> <li>Lei Mozambique politica pesqueira, 1996</li> <li>Decree No. 43-2003 on Marine Fisheries Regulation</li> <li>Lei do Ambiente, 1997</li> <li>Decree no. 57 2008, Regulamento da Pesca em Aguas Interiores</li> </ul>	<ul style="list-style-type: none"> <li>Despacho que estabelece os valores das multas a aplicar por infraccao a legislacao pesqueira, ao obrigo do artigo 58 da Lei n. 3/90, de 26 de Setembro</li> <li>Decree 51/99 on Sport Fishing</li> <li>Ministerial decree – Aprova o quadro juridico do processo de infraccao de pesca</li> <li>Regulation – Fixacao e atribuicao do incentivo (fine)</li> <li>Resolucao n. 26/2008: Aprova a Politica de MCS e sua estrategia de implementacao</li> </ul>	Draft Fisheries Act, relating to Conservation Areas.
<b>SEYCHELLES</b>	<ul style="list-style-type: none"> <li>1987 Fisheries Act Chapter 82, Revised Edition 2010</li> <li>1987 Fisheries Act Chapter 82, Revised</li> </ul>		Draft Fisheries Bill

COUNTRY	LEGISLATION AVAILABLE	LEGISLATION UNAVAILABLE, REQUESTED	DRAFT LEGISLATION UNDER DEVELOPMENT
	Edition 2010 (Subsidiary Legislation)		
<b>SOUTH AFRICA</b>	Marine Living Resources Act 18 of 1998	Marine Living Resources Regulations, as amended	
<b>TANZANIA, UNITED REP. OF</b>	<ul style="list-style-type: none"> <li>• The Fisheries Act, 2003</li> <li>• Fisheries (Amendment) Regulations, 2000</li> <li>• Deep Sea Fishing Authority Act (Cap No. 388) of 1998 and the Deep Sea Fishing Authority (Amendment) Act of 2007</li> <li>• Deep Sea Fishing Authority Act (Cap No. 388) Regulations, 2009</li> <li>• The Fisheries Regulations , 2009</li> </ul>		



## CONSOLIDATED TABLE OF SELECT MODEL FISHERIES PROVISIONS AND THEIR IMPLEMENTATION IN NATIONAL LEGISLATION

*For purposes of assessing the status and needs for the harmonization of select areas of fisheries laws, the title and summary content of select model provisions for some key areas of fisheries legislation are given in the table below, in the columns on the left.*

*The model provisions are based on international fisheries instruments and on best practices in national fisheries legislation. They are indicative of existing needs in general for harmonization and may be elaborated further at national level. They do not represent the entire suite of provisions that may be considered under each area addressed.*

*Where part or all of the model provisions appear in the laws of each SWIOFP country, this is indicated with reference to specific Articles, Sections or Regulation numbers for the relevant laws of each country. The provisions for each country may not be identical to the indicative provision or to that of another State, and may only partially implement the indicative provision.*

*A full list of the legislation obtained and requested from SWIO countries is shown in Annex 4. Where countries are in the process of developing new fisheries legislation, this is also shown in Annex 1 but is not included in the table below.*

*The select provisions are arranged in the following framework, which represents the most important areas for harmonization. Areas that may appear in fisheries legislation but were not addressed include licensing procedures, responsibility for administration, institutional arrangements, requirements for arrested/seized persons and items, activities such as trade, fish processing and aquaculture and level of fine or penalty.*

### **I. GENERAL**

### **II. FISHERIES MANAGEMENT, CONSERVATION AND DEVELOPMENT**

Division 1 – Fisheries Management

Division 2 – Fisheries Conservation

Division 3 – Fisheries Development

### **III. INFORMATION, DATA AND RECORDS**

### **IV. FISHERIES ACCESS ARRANGEMENTS**

### **V. LICENSES REQUIRED**

### **VI. MONITORING, CONTROL AND SURVEILLANCE**

Division 1 - Establishment of Unit

Division 2 - Appointment and powers of authorised officers

Division 3 - Appointment and functions of inspectors and observers

Division 4 - Application of Act to authorized officers, observers in areas beyond national jurisdiction, and to non-national authorized officers and observers in areas under national jurisdiction

Division 5 - Protection and obstruction of authorised persons, protection of informants, reward

Division 6 - Requirements for vessel monitoring systems

Division 7 - Requirements for use of ports

## VII. EVIDENCE

## VII. JURISDICTION

## VIII. COMPLIANCE A summary table of this matrix appears as Addendum A to this Annex.

Title	Summary	COMO ROS <sup>79</sup>	KENYA <sup>80</sup>	MADAGAS CAR <sup>81</sup>	MAURITIU S <sup>82</sup>	MOZAMBI QUE <sup>83</sup>	SEYCHELLE S <sup>84</sup>	SOUTH AFRICA <sup>85</sup>	TANZANIA <sup>86</sup>
I. GENERAL									
1. Definitions/ Interpretation	Ensure consistency with international instruments, best practices; should define all key terms in Act.	A. 1 (only for foreign fishing vessels)	S.2 R.2 FFR	94/A.4-9 93/A.2	S.2	L.1	S.2	S.1	S.2
2. Objective of Act	Ensure consistency with international instruments; long-term sustainable use.								

<sup>79</sup> **A:** Article in Loi N°82-015/ Relative à l'activité des Navires de pêche étrangers.

<sup>80</sup> **S:** Section of the Fisheries Act, CAP 378, Revised Edition 1991; **R:** The Fisheries (General) Regulations, 1991; **FFR:** The Fisheries (Foreign Fishing Craft) Regulations, 2009.

<sup>81</sup> **93/:** Ordonnance 93-022 Article ; **94/** Decree 94-112 Titre12 Article, Establishing the general organisation of Maritime Fishing.

<sup>82</sup> **S:** Section of the Fisheries and Marine Resources Act 2007 (No. 20 of 2007); **MPAR:** Marine Protected Areas Regulations, 2001; **F:** Finance (miscellaneous provisions) Act 2008, Act No. 18 of 2008.

<sup>83</sup> **R:** 1993 Fisheries Regulations Decree 43-2003; **L:** 1990 Law no. 3/90 das Pescas; **LPP:** Lei Mozambique politica pesqueira, 1996. (Translation from Portuguese not perfect)

<sup>84</sup> **S:** 1987 Fisheries Act Chapter 82, Revised Edition 2010 . **R:** 1987 Fisheries Act Chapter 82, Subsidiary Legislation Revised Edition 2010.

<sup>85</sup> **S:** Section of the Marine Living Resources Act, 1998.

<sup>86</sup> **S:** Section in the Fisheries Act, 2003 (CAP No 378); **R:** Fisheries Regulations, 2009; **DSR:** Deep Sea Fishing Authority Act (CAP No. 388) Regulations.

Title	Summary	COMO ROS <sup>79</sup>	KENYA <sup>80</sup>	MADAGAS CAR <sup>81</sup>	MAURITI US <sup>82</sup>	MOZAMBI QUE <sup>83</sup>	SEYCHELLE S <sup>84</sup>	SOUTH AFRICA <sup>85</sup>	TANZANIA <sup>86</sup>
3. Jurisdiction	Describe area of jurisdiction for purposes of implementing the Act; as appropriate refer to law claiming boundaries/marine zones.			94/A.2 93/A.1	S.73				S.51.
4. Application of Act	Extend application to nationals and national vessels undertaking activities in areas beyond national jurisdiction.					L.2		S.2	S.1(2)
5. Principles for sustainable fisheries management	Management principles should be identified and form the basis for decisions relating to fisheries management under the Act.								DSR.19
6. International, regional, bilateral cooperation	Promotes cooperation to fulfil general international, regional, bilateral obligations.					L.7			
<b>II. FISHERIES MANAGEMENT, CONSERVATION AND DEVELOPMENT</b>									
<b>Division 1 – Fisheries Management</b>									
7. Fisheries management plans	A framework for fisheries management plans, including the process and criteria for developing the plans (including stakeholder consultations), management measures and monitoring/evaluation. May be linked to fisheries management areas (provided below).			93/A.6		R.6	S.3		
8. Fisheries management measures	<ul style="list-style-type: none"> <li>Responsibility, criteria and procedures for taking management measures, e.g. Minister/ Director may declare closed areas or seasons, effort control, catch or quota limits,</li> </ul>		S.5	93/A.7 93/A.11	S.14	L.35(a)  R.8-14, 20-24, 132	S.4	S.14	S.17

Title	Summary	COMO ROS <sup>79</sup>	KENYA <sup>80</sup>	MADAGAS CAR <sup>81</sup>	MAURITIU S <sup>82</sup>	MOZAMBI QUE <sup>83</sup>	SEYCHELLE S <sup>84</sup>	SOUTH AFRICA <sup>85</sup>	TANZANIA <sup>86</sup>
	<p>prohibited gear and other measures/ prohibitions.</p> <ul style="list-style-type: none"> <li>Implementation of EAF and RBM may be provided.</li> <li>Procedures to be followed should be elaborated, e.g public notice in the Gazette, Regulations, etc.</li> </ul>								
9. Declaration of fisheries management area	Empowers the Minister after consultation with other relevant Ministers and the stakeholders to declare any area of water to be a fisheries management area.							S.15	
10. Restriction on fishing in fisheries management area	Prohibits fishing in fisheries management area without a licence or other permission.								
11. Granting of fishing rights	The Minister may grant rights, require an environmental impact assessment, implement the general principles and determine management measures. Rights are not transferable and may be granted for a stated period (e.g. 15 years) and may be leased by the State.							S.18, 22, 31	
12. Shared responsibility for fisheries management (national level)	<ul style="list-style-type: none"> <li>Provides for and describes framework of agreements for shared management or co-management, e.g. of artisanal fisheries, management areas, between (Director) and (Local Councils).</li> <li>Implementation of RBM may be provided.</li> </ul>					R.15			
13. Fisheries	Encourages consultations with			93/A.5	S.3	R. 7, 16		S.5,6,8,71	

Title	Summary	COMO ROS <sup>79</sup>	KENYA <sup>80</sup>	MADAGAS CAR <sup>81</sup>	MAURITI US <sup>82</sup>	MOZAMBI QUE <sup>83</sup>	SEYCHELLE S <sup>84</sup>	SOUTH AFRICA <sup>85</sup>	TANZANIA <sup>86</sup>
management consultations, advisory body or committee	stakeholders on management measures and empowers Minister, by legal instrument, to appoint an advisory body for fisheries management advice generally or a Committee for a fisheries management area. Membership, etc. described.								
14. Functions, etc of fisheries management advisory body or committee	Describes the functions, financial responsibilities, reporting duties of a fisheries management advisory body and/or a committee, including processes for co-management arrangements, relations with NGOs etc.					R.17			
15. Shared Fisheries Management Bodies	Provides for shared fisheries management bodies, including for Beach Management Units or rights based fishing. Includes establishment, management mechanisms/procedures, decisionmaking, coordination, enforcement. (Includes Beach Management Units)		Fisheries (Beach Management Unit) Regulations, 2007			R.18, 19		S.29-37	S.18 R.133-137
16. Genetic resource management	Requires the management of fish genetic resources, <i>inter alia</i> by requiring a permit for the introduction of genetically modified fish into the fishery waters.								S.13, 44
17. Fisheries research	Minister/Director to set research priorities, facilitate collaboration at national and, as appropriate, regional and other levels.						S.17		S.53

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18. Stowage of gear <sup>87</sup>	All vessels in the fishery waters should have their gear stowed so it is not readily available for use when they are in an area where they do not hold a license to fish.	A.4	S.11(2) FFR.19	94/A.21	S.52	R.25	S.8 R.9	S.49	DSR.39
19. Cooperation in fisheries management	Responsibility to cooperate and coordinate measures relating to fisheries management with other sectors/ agencies at national level.								
20. Conflict prevention and resolution	Mechanisms to prevent and resolve conflicts at national level, including through declaration of separate fisheries zones and establishment of conciliators, stakeholders committees or an appeals panel.					L.11			S.8 <sup>88</sup>
<b>Division 2 – Fisheries Conservation</b>									
21. Declaration of zones for fishing	Prohibited or permitted areas may be established and demarcated. for, e.g. inshore fishing, commercial fishing, foreign fishing, aquaculture	A5.1	MPAR Part V	93/8	F.11	R.75, 78, 81 LPP.75, 78, 81	R.5(a)		S.19
22. Declaration of protected areas, management areas or reserves for fishing	Protected areas, management areas or reserves may be declared. A framework should be provided, e.g. objective, components, mandate, management measures, conflict resolution.			93/9	S.4	R.112-115	R.11(1) R.15	S.15, 43	S.23
23. Declaration of endangered or protected species of fish	General power to declare and protect endangered or protected species of fish.					L.35(b) R.109			S.23 R.67
24. Pollution of the	Prohibits the introduction into the		R.59, 60						DSR.25, 70

<sup>87</sup> Legislation generally applied this to foreign fishing vessels only, but it should be applied to fishing vessels in areas where they are not licensed to fish.

<sup>88</sup> The relationships are between the Ministry, local authorities and fisheries management authorities.

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fishery waters	fishery waters deleterious substances which adversely affect the habitat or health of the fish.		FFR.35 MPAR. 5(2)						
25. Fisheries impact consultations and assessments	The Director must be consulted where there are plans to conduct activity other than fishing likely to have an adverse impact on fish and their habitat, and he/she may require recommendations, reports and environmental or fisheries impact assessments or other measures.								S.52
26. Prohibited fishing gear and methods	Sets out prohibited fishing gear and methods, such as beach seining and fishing with explosives, poisons etc.	A.5	R.43	93/10  Arrete 2002 1612. Eau profondes (Minimum mesh size)	S.12, 13	L.36	R.14, 18- 21	S.44, 47	S.17(f), 43, 44 R.48 R.66
27. Prohibitions for certain species, sizes	The fishing for certain species (targeted or otherwise) may be prohibited, e.g. sharks, green turtles, etc. Release or excluder devices may be included.		R.45-48, 51	Decret N°2007- 957. Portant définition des conditions d'exercice de la pêche des crevettes côtières.	S.16		R. 10-13, 19, 21		DSR.66
28. Possession of	Prohibits possession of prohibited								

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prohibited fishing gear, substance	fishing gear or substance, may allow for possession with permission in writing from the Director.								
29. Fish Aggregating Devices (FADs)	Requirements for deployment and maintenance of a FAD (requirements to report, not to place in areas of marine traffic etc), markings and equipment on a FAD, designated FAD (for specific fishers) disposal of a FAD.				S.15	R.27,28		S.48	
30. Damage, destruction to, interference with fishing gear, vessel, person prohibited	Prohibits damage or destruction to fishing gear, vessels belonging to others and to persons, using a vessel, and requires certain actions to be taken by the master.						R.23	S.46	
31. Leaving, abandoning objects in the fishery waters prohibited	Prohibits the dumping of gear, moorings and other objects into the fishery waters or abandon them if they may adversely affect fish. Provides notification requirements.		R.60		S.49	R.26			
32. Import and release of live fish	Controls the import and release of live fish, including the introduction of non-native species.		R.26, 51 MPAR.9	93/17	S.23				
33. Export of live fish	Procedures/prohibitions for export of live fish.		R.26		S.25				
34. Prohibited activities relating to fish or fish products taken from another State	Prohibits sale, purchase, import, export, landing, etc of any fish or fish product taken, possessed, etc. in violation of any law of another State.								DSR.43
35. Implementation of international	Provides a mechanism for implementation of international				S.17(2), 37			S.42	



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conservation and management measures	conservation and management measures of RFMOs to which the country is party, and a duty to facilitate information.								
<b>Division 3 – Fisheries Development</b>									
36. Development of the fisheries sector	Guidelines for promoting, encouraging, supporting initiatives leading to the development and sustainable use of the fisheries resources through stated measures.		S.4			R.6			S.9 R.24
<b>III. INFORMATION, DATA AND RECORDS</b>									
37. Information, data and records	Requires persons carrying out activities under the scope of the Act to furnish such information, data and records that may be required.						S.5		S.55
38. Information to be true, complete and correct	Any information given, furnished or maintained etc. must be true, complete and correct and no such information shall be false, misleading or inaccurate.				S.72				
39. False or forged documents	No person shall unlawfully alter, destroy, erase, obliterate, forge or falsify any document made or required under the Act.								R.130
40. Registers of licences and vessels	Director to establish and maintain registers, including of licences vessels, gear, fishers, etc.				S 6, 11			S.12	DSR.15
41. Information on legal, administrative action taken under the Act	Information to maintained and made publicly available on actions resulting in a judgment or administrative determination.								

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42. Public access to information	Subject to the next section, information to be made available to public.								S.7
43. Ownership of information	Ownership of information required under the Act is vested in the Government.								
44. Information on the labels of containers, etc. containing fish harvested in the fishery waters	The information on labels containing fish harvested in the fishery waters must designate that they were harvested in the fishery waters, and other information requirements.								
45. Confidential information	General requirements for identifying confidential information, duty not to breach, etc.				S.7				
46. Exchange of information	Requires Director to exchange information with other States in general to promote effective fisheries management, and in accordance with international obligations.								
<b>IV. FISHERIES ACCESS ARRANGEMENTS</b>									
47. Fishing using non-national (foreign, joint venture etc) fishing vessels	Empowers Minister to conclude Agreements; Prohibits fishing or related activities using foreign fishing vessels unless certain conditions are met (e.g. access agreement).		FFR.6	94/A.20	S.34,35	L.32,33	S.6	S.39	DSR. 51
48. Access by non-national vessels	Sets out minimum conditions for a fisheries access agreement, and/or fishing by non-nationals (e.g. fee payable in advance, reporting requirements,	A.8	FFR.6	94/A.24-29		L.6	R.5, 6	S.38	S.20

Title	Summary	COMO ROS <sup>79</sup>	KENYA <sup>80</sup>	MADAGAS CAR <sup>81</sup>	MAURITIU S <sup>82</sup>	MOZAMBI QUE <sup>83</sup>	SEYCHELLE S <sup>84</sup>	SOUTH AFRICA <sup>85</sup>	TANZANIA <sup>86</sup>
<b>V. LICENSES REQUIRED</b>									
49. Foreign fishing vessel	Requires licence	A.3	S.11(1) FFR.3		S.34	L.34	S.7	S.39	S.20
50. National fishing vessel (defined categories)	Requires licence	A.3	S.8		S.36	R.118	S.9	S.23	S.22
51. Areas beyond national jurisdiction	Requires licence or authorization			94/A.36	S.36	R.129		S.40	
52. Fishing Related Activities <sup>89</sup>	Requires licence or authorization	A.3	S.14		S.39, S.47, <sup>90</sup> S.57(b) <sup>91</sup>	R.131	S.11	S.39	(DSR.24) <sup>92</sup>
<b>VI. MONITORING, CONTROL AND SURVEILLANCE</b>									
<b>Division 1</b>									
<b>Establishment of Unit</b>									
53. Establishment of MCS Unit	Establishment of an MCS Unit and a description of its functions may be appropriate, depending on institutional arrangements in each			Arrête 13277, 2000 <sup>93</sup>		R.152			S. 31, 32 DSR. 31,32

<sup>89</sup> In international instruments and best practices, “fishing related activities” means any activity in support of, or in preparation for, fishing including:

- (a) transshipping of fish to or from any vessel;
- (b) landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at port ;
- (c) provisioning of personnel, fuel, gear and other supplies at sea or performing other activities in support of fishing operations;
- (d) exporting fish or fish products from the country; and
- (e) attempting or preparing to do any of the above.

<sup>90</sup> Implies licence needed for landing for Mauritian vessels, but does not expressly require.

<sup>91</sup> Applies only to landings or transshipments by foreign fishing vessels.

<sup>92</sup> Transshipment to be carried out at designated ports under supervision; no license is expressly required.

<sup>93</sup> Reorganization of the CSP (Centre de surveillance des peches)

Title	Summary	COMO ROS <sup>79</sup>	KENYA <sup>80</sup>	MADAGAS CAR <sup>81</sup>	MAURITIU S <sup>82</sup>	MOZAMBI QUE <sup>83</sup>	SEYCHELLE S <sup>84</sup>	SOUTH AFRICA <sup>85</sup>	TANZANIA <sup>86</sup>
	country.  It would indicate the fisheries agency as that the lead authority for MCS, but cooperation with other agencies could be encouraged as appropriate.								
<b>Division 2</b> <b>Appointment and powers of authorised officers</b>									
54. Appointment of authorised officers	Procedures for the appointment of authorised officers are set out.	A.13		93/18			R.2	S.9	S. 2 <sup>94</sup> and S. 5(b) -(c) <sup>95</sup> DSR.35
55. Authority and general powers of authorised officers, inspectors, etc.	Authorised officers, inspectors may do all such acts and things and give such directions as are reasonably necessary for the purposes of exercising any of his/her powers under the Act. Powers without a warrant are described. <ul style="list-style-type: none"> <li>Also should address use of force, assistance, application of act where duties are carried out in areas beyond national jurisdiction and potential cooperation in MCS.</li> </ul>	A.9	S.18(1) FFR.43	93/19			S.19	S.51	S.33 R.72 R.147
56. Identification of authorised	Authorised officers must identify themselves upon request and				S. 61	R.162			R.146

<sup>94</sup> There is an anomaly: the Director is not given authority in the Act to appoint authorised officers, but the interpretation section defines “authorised officers” as being appointed by the Director. The interpretation section cannot give authority to the Director to appoint authorised officers; it must be done clearly by law. Responsibilities and requirements for the appointment must be set out in the body of the Act and not as a definition.

<sup>95</sup> There is another anomaly; the Director appoints an “enforcement officer” but the term “authorised officer” is used throughout the rest of Act. It is not clear whether they are different or the same.

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officers	produce evidence that he/she is an authorised officer.								
57. Powers of hot pursuit	Authorised officer may, following hot pursuit outside the fishery waters in accordance with international law.	A.12			S.62		S.20	S.52	
58. Powers of entry and search	For vessels, premises, etc. ,detaining any person, vessel, vehicle, aircraft, document, gear, fish, etc.;				S.58			S.51(3)	S.33, 36
59. Power to take, detain, remove and secure information and evidence	Authorised officers have the power to take, detain, remove and secure information or evidence for purposes and activities falling within the scope of the Act.								
60. Power of arrest	Specifies conditions under which an authorised officer may make an arrest.	A.11	S. 18(2)		S.59			S.51(3)(d)	S. 36(d)
61. Power to give direction	An authorised officer may, upon belief that the vessel is being or has been used in contravention of the Act, take the vessel to the nearest available port in the country, and remain in control of the vessel for a reasonable period of time.								
62. Power of seizure	Gives power of seizure of authorized officer and identifies items that may be seized (e.g. vessel, conveyance, gear, fish, article, record etc) and retained (e.g. passports and seaman's books).	A.10	S.4		S.60		S.19(3)	S.53, 54	S.37 R.145(3)
63. Removal of parts from seized vessels, etc.	An authorised officer may remove any part from a seized vessel for the purpose of immobilizing it.							S.55	
64. Authority of authorised officer	Where an authorised officer has reason to believe that any fishing								S.48

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or inspector in relation to abandoned fishing vessels, fishing gear, fish or fish products	vessel, gear or fish product has been abandoned to avoid prosecution, he/she shall apply to the Court for an order to dispose of it. He/she may also investigate the area/premises where fishing vessel, gear, products are abandoned and he/she believes that a person has done so to avoid investigation.								
<b>Division 3</b>									
<b>Appointment and functions of inspectors and observers</b>									
65. Observer programmes	May be established for collecting, recording and reporting reliable and accurate information for scientific, management and compliance purposes.								
66. Appointment of, and identification by inspectors and observers	Director may appoint inspectors for monitoring, compliance and management, and observers for purposes of the observer programme. Inspectors and observers must identify themselves on request and produce evidence of their appointment.		FFR.44					S.50	DSR.33, 34
67. Conditions for observers	The operator and licence holder of any vessel upon which an observer is placed must provide the observer with a certain standard of accommodation, work space, assistance, etc.						R.6(i) <sup>96</sup>		
68. Observer costs	All observer costs are itemized and to be paid by or on behalf of the								

<sup>96</sup> Food, accommodation and communications only.

Title	Summary	COMO ROS <sup>79</sup>	KENYA <sup>80</sup>	MADAGAS CAR <sup>81</sup>	MAURITI US <sup>82</sup>	MOZAMBI QUE <sup>83</sup>	SEYCHELLE S <sup>84</sup>	SOUTH AFRICA <sup>85</sup>	TANZANIA <sup>86</sup>
	vessel upon which the observer is placed including salary, travel, insurance and training.								
69. Embarkation and disembarkation of observer	The Director must give reasonable notice of intention to place an observer on a vessel, and the vessel must comply with the instruction. The vessel must disembark the observer at the time and place required by the Director.								
70. Requirements for monitoring of offloading	Where a fishing vessel is required as a condition of licence to be subject to the monitoring of offloading, the offloading shall take place at a port where an inspector or observer is available for such monitoring.								
<b>Division 4</b>									
<b>Application of Act to authorized officers, observers in areas beyond national jurisdiction, and to non-national authorized officers and observers in areas under national jurisdiction</b>									
71. Application of Act to authorized officers and observers in areas beyond national jurisdiction	National authorized officers and observers carrying out duties under the Act beyond national jurisdiction in accordance with any international agreement, international conservation and management measures or international law shall be subject to the provisions of the Act.								
72. Application of Act to non-national authorized officers and observers under agreement in	Provides for recognition of non-national authorized officers and observers where they are carrying out MCS duties under an agreement to which Seychelles is party, and gives them full authorities under the						S.22		

Title	Summary	COMO ROS <sup>79</sup>	KENYA <sup>80</sup>	MADAGAS CAR <sup>81</sup>	MAURITIU S <sup>82</sup>	MOZAMBI QUE <sup>83</sup>	SEYCHELLE S <sup>84</sup>	SOUTH AFRICA <sup>85</sup>	TANZANIA <sup>86</sup>
national waters	Act.								
<b>Division 5</b>									
<b>Protection and obstruction of authorised persons, protection of informants, reward</b>									
73. Protection of authorised persons from liability	Persons carrying out their duties under the Act are not subject to action, liability or claim. In respect of vessels brought to port, where the master is in control he/she is responsible for the safety of the vessel and persons on board. (Authorised persons includes officers, inspectors and observers.)							S.59	S. 42
74. Duties of operators, etc, to authorized persons	The operator and crew aboard a vessel or others carrying out activities under the Act to which an inspector or observer has been assigned have specified duties to allow and assist the inspector or observer to effectively carry out his/her duties under the Act.	A.16	FFR.30			R.159-160		S.56(5)	
75. Obstruction, etc of authorised persons	A wide range of prohibited actions are described which would result in the obstruction, etc. of an authorised person.		S.17 R.68				S.24(9)	S.56	S.41 DSR.69
<b>Division 6</b>									
<b>Requirements for vessel monitoring systems</b>									
76. Vessel Monitoring Systems	Director may establish and operate vessel monitoring systems for monitoring, control and surveillance, and managing the operation of fishing vessels. Requirements are set out				S. 37, 78	R.146-155		S.76	R.69 DSR.28-30



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<b>Division 7</b> <b>Requirements for use of ports<sup>97</sup></b>									
77. Use of port without authorization prohibited	Requires notification of entry into port and certain information to be given and an authorization prior to entering port. Otherwise the use of port is prohibited for the landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including refuelling and resupplying, maintenance and drydocking.				S.54 <sup>98</sup>	R.134 <sup>99</sup>			
78. Vessels may be prohibited from entering port	Vessels may be prohibited from entering port where there is sufficient proof of IUU fishing								
79. Denial of the use of port to a foreign fishing vessel	Sets out reasons why the use of port either must be denied, or may be denied for activities listed in previous section. It may be denied either before or after inspection for applicable reasons.					(R.98-100) <sup>100</sup>	(R.24A) <sup>101</sup>		(DSF.24) <sup>102</sup>
80. Inspection of	Inspection must take place according								DSF.37 <sup>103</sup>

<sup>97</sup> This Division is based on the requirements in the 2009 FAO Agreement on Port State Measures to combat illegal, unreported and unregulated fishing, as well as IOTC Resolution 10/11 which is almost identical.

<sup>98</sup> Notification only.

<sup>99</sup> Notification only.

<sup>100</sup> Landings and notification only.

<sup>101</sup> This provision aims to prohibit landings or transshipments of fish caught contrary to international conservation and management measures that are binding on Seychelles, but this is too restrictive because it should apply to all IUU-caught fish, including in other countries' zones, for reasons given in the relevant international instruments, and the language used is not technically appropriate.

<sup>102</sup> Landings and notification only.

<sup>103</sup> Inspection only relates to landing and offloading, not to use of port generally.

Title	Summary	COMO ROS <sup>79</sup>	KENYA <sup>80</sup>	MADAGAS CAR <sup>81</sup>	MAURITIU S <sup>82</sup>	MOZAMBI QUE <sup>83</sup>	SEYCHELLE S <sup>84</sup>	SOUTH AFRICA <sup>85</sup>	TANZANIA <sup>86</sup>
foreign fishing vessels in port	to certain procedures, and the reports of inspection must contain specified information.								
<b>VII. EVIDENCE</b>									
81. Certificate evidence	The Director or any person designated in writing by him may give a certificate stating specified things, e.g. whether a person held a licence, that a document is a true copy of the licence, a particular location is within the fishery waters, an item is fishing gear, the cause and manner of death and injury to any fish, etc.							S.71	S. 35
82. Validity and procedure for certificate	A document issued under previous section shall be deemed such a certificate. a process of service on the defendant is set out, and where there is no objection the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.							S.72	
83. Certificate as to the location of a vessel	A certificate as to the location of a vessel shall be evidence, unless the contrary is proved, of the place or area in which a vessel was at the relevant date and time.							S.73	
84. Electronic location device	The readings of any mobile transceiver unit or other electronic location device integral to a vessel monitoring system may be used as <i>prima facie</i> evidence unless the								

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	contrary is proved.								
85. Photographic evidence	If a photograph is taken of any activity under the Act, and the date and time are superimposed, it is prima facie evidence that the photograph was taken on that date, under certain conditions.		R.69		S.77			S.75	
86. Presumptions	A range of rebuttable evidentiary presumptions are given, e.g. all fish on board a vessel used to commit an offence are presumed to have been caught during the commission of the offence, unless the contrary is proved.		FFR.47						
87. Onus of proof	Circumstances in which the onus of proof is reversed are given, e.g. the charged person must prove that he/she held a requisite licence.								
88. Interfering with evidence	Interfering with evidence is prohibited and various circumstances are given, e.g. destroy gear, fish etc with intent to avoid seizure, remove from legal custody vessel, fish etc.,			93/22(g)	S.72			S.60	
89. Tampering with item, etc that may be used in evidence of non-compliance with the Act	Prohibited to tamper with, destroy etc. any item, document or other thing that may be used in evidence of non-compliance with the act.								
<b>VII. JURISDICTION</b>									
90. Jurisdiction of Courts	Specifies the jurisdiction of the court for offences committed in areas							S.70	

Title	Summary	COMO ROS <sup>79</sup>	KENYA <sup>80</sup>	MADAGAS CAR <sup>81</sup>	MAURITIU S <sup>82</sup>	MOZAMBI QUE <sup>83</sup>	SEYCHELLE S <sup>84</sup>	SOUTH AFRICA <sup>85</sup>	TANZANIA <sup>86</sup>
	within and beyond national jurisdiction, and deems the offence to have been committed within the jurisdiction of the court.								
91. Compounding	Allows compounding of an offence and establishes a transparent and accountable process.		S.20	93/28	S.75	L.61	S.26		S.40
<b>VIII. COMPLIANCE</b>									
92. Offences and fines	The offences and level of fines may be set in one section or in each section of the Act that describes an offence, or in a Schedule, which can be amended as a Regulation.	A.14,15	FFR.46	93/21 93/22	S.70	L.51-53	S.24	S.58	S.41-48 DSR.Part VIII
93. Court may order imprisonment	Provision for imprisonment (Should also refer to Article 73 of the 1982 UN Law of the Sea Convention, relating to imprisonment of foreigners for fisheries offences in the EEZ, but no legislation does this).	No	Not under FFR	No	Yes	No <sup>104</sup>	No	Yes	Yes
94. Court may order forfeiture	Provision for forfeiture.	A.14	S.19	93/22-24	S.71	Yes <sup>105</sup>	S.25	S.68	S.38
95. Continuing offences and repeat offenders	Each day of a continuing offence shall be considered a separate offence, and repeat offenders shall be given at least twice the amount of the fine as in the previous conviction or determination.								
96. Banning order	A Court may order that a convicted person shall be banned from going								

<sup>104</sup> Based on an imperfect translation of Portuguese.

<sup>105</sup> *Ibid.*

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	on or remaining on board a fishing vessel, or carrying out specified activities for a period (e.g. of up to five years)								
97. Cancellation or suspension of licence	A Court may order that a convicted person's licence be cancelled or suspended.				S.68 <sup>106</sup>				
98. Liability of operator	Act or omission of crew member is deemed to be that of the operator								
99. Costs incurred by State	The operator and charterer of a vessel shall bear the costs to the Government in connection with seizures, prosecutions, costs of maintaining seized items and imprisonment.	A.18							
100. Compensation for loss or damage	A person who commits an offence may be liable for loss or damage caused by the offence and the amount may be awarded by the Court as compensation or restitution in addition to a fine.								
101. Deprivation of monetary benefits	Where a Court has convicted a person, it may impose an additional fine equal to the court's estimation of a monetary benefit gained.								
102. Default for non-payment of fines	In addition to any other fine or penalty, the Court may order a default penalty for non-payment of fines or determinations, not to exceed (e.g. 1%) per day of the total amount.								
103. Non-payment of	All fines, etc. not paid may be sued								

<sup>106</sup> This power is given to the Minister or Secretary, not the Court.

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pecuniary penalties	for.								

ADDENDUM A

#### SUMMARY OF ANNEX 5

Title	COMO ROS	KENYA	MADAGAS CAR	MAURI TIUS	MOZAM BIQUE	SEYCHEL LES	SOUTH AFRICA	TANZANIA
1. Definitions/ Interpretation								
2. Objective of Act								
3. Jurisdiction								
4. Application of Act								
5. Principles for sustainable fisheries management								
6. International, regional, bilateral cooperation								
7. Fisheries management plans								
8. Fisheries management measures								
9. Declaration of fisheries management area								
10. Restriction on fishing in fisheries management area								
11. Granting of fishing rights								
12. Shared responsibility for fisheries management (national level)								
13. Fisheries management consultation, advisory body or committee								
14. Functions, etc of fisheries management advisory body or committee								
15. Shared Fisheries Management Bodies								
16. Genetic resource management								
17. Fisheries research								
18. Stowage of gear <sup>107</sup>								

<sup>107</sup> Legislation generally applied this to foreign fishing vessels only, but it should be applied to fishing vessels in areas where they are not licensed to fish.

Title	COMO ROS	KENYA	MADAGAS CAR	MAURI TIUS	MOZAM BIQUE	SEYCHEL LES	SOUTH AFRICA	TANZANIA
19. Cooperation in fisheries management								
20. Conflict prevention and resolution								
21. Declaration of zones for fishing								
22. Declaration of protected areas, management areas or reserves for fishing								
23. Declaration of endangered or protected species of fish								
24. Pollution of the fishery waters								
25. Fisheries impact consultations and assessments								
26. Prohibited fishing gear and methods								
27. Prohibitions for certain species, sizes								
28. Possession of prohibited fishing gear, substance								
29. Fish Aggregating Devices (FADs)								
30. Damage, destruction to, interference with fishing gear, vessel, person prohibited								
31. Leaving, abandoning objects in the fishery waters prohibited								
32. Import and release of live fish								
33. Export of live fish								
34. Prohibited activities relating to fish or fish products taken from another State								
35. Implementation of international conservation and management measures								
36. Development of the fisheries sector								
37. Information, data and records								
38. Information to be true, complete and correct								
39. False or forged documents								
40. Registers of licences and vessels								
41. Information on legal, administrative action taken under the Act								
42. Public access to information								
43. Ownership of information								
44. Information on the labels of containers, etc. containing fish								

Title	COMO ROS	KENYA	MADAGAS CAR	MAURI TIUS	MOZAM BIQUE	SEYCHEL LES	SOUTH AFRICA	TANZANIA
harvested in the fishery waters								
45. Confidential information								
46. Exchange of information								
47. Fishing using non-national (foreign, joint venture etc) fishing vessels								
48. Access by non-national vessels								
49. Foreign fishing vessel								
50. National fishing vessel (defined categories)								
51. Areas beyond national jurisdiction								
52. Fishing Related Activities								
53. Establishment of MCS Unit								
54. Appointment of authorised officers								
55. Authority and general powers of authorised officers, inspectors, etc.								
56. Identification of authorised officers								
57. Powers of hot pursuit								
58. Powers of entry and search								
59. Power to take, detain, remove and secure information and evidence								
60. Power of arrest								
61. Power to give direction								
62. Power of seizure								
63. Removal of parts from seized vessels, etc.								
64. Authority of authorised officer or inspector in relation to abandoned fishing vessels, fishing gear, fish or fish products								
65. Observer programmes								
66. Appointment of, and identification by inspectors and observers								
67. Conditions for observers								
68. Observer costs								
69. Embarkation and disembarkation of observer								



Title	COMO ROS	KENYA	MADAGAS CAR	MAURI TIUS	MOZAM BIQUE	SEYCHEL LES	SOUTH AFRICA	TANZANIA
70. Requirements for monitoring of offloading								
71. Application of Act to authorized officers and observers in areas beyond national jurisdiction								
72. Application of Act to non-national authorized officers and observers under agreement in national waters								
73. Protection of authorised persons from liability								
74. Duties of operators, etc, to authorized persons								
75. Obstruction, etc of authorised persons								
76. Vessel Monitoring Systems								
77. Use of port without authorization prohibited								
78. Vessels may be prohibited from entering port								
79. Denial of the use of port to a foreign fishing vessel								
80. Inspection of foreign fishing vessels in port								
81. Certificate evidence								
82. Validity and procedure for certificate								
83. Certificate as to the location of a vessel								
84. Electronic location device								
85. Photographic evidence								
86. Presumptions								
87. Onus of proof								
88. Interfering with evidence								
89. Tampering with item, etc that may be used in evidence of non-compliance with the Act								
90. Jurisdiction of Courts								
91. Compounding								
92. Offences and fines								
93. Court may order imprisonment								
94. Court may order forfeiture								
95. Continuing offences and repeat offenders								
96. Banning order								
97. Cancellation or suspension of licence								

<b>Title</b>	<b>COMO ROS</b>	<b>KENYA</b>	<b>MADAGAS CAR</b>	<b>MAURI TIUS</b>	<b>MOZAM BIQUE</b>	<b>SEYCHEL LES</b>	<b>SOUTH AFRICA</b>	<b>TANZANIA</b>
98. Liability of operator								
99. Costs incurred by State								
100. Compensation for loss or damage								
101. Deprivation of monetary benefits								
102. Default for non-payment of fines								
103. Non-payment of pecuniary penalties								

## CONSOLIDATED TABLE OF SELECT MODEL FISHERIES PROVISIONS AND INDICATIVE TEXT

This table sets out indicative text for the model fisheries provisions that may be used as a basis for further harmonization of fisheries legislation in the East African and South West Indian Ocean range States. It uses the same provisions in the table showing implementation at national level, and is based on international instruments and best practices at national level.

For convenience, reference is made to “Minister” and “Director”, although fisheries administrations may have different officials and may take different forms – e.g. a Ministry, Department or Statutory Authority. The legislation is also referenced as an “Act”, although it may be called differently among countries.

As noted in relation to the “implementation” table, this is not a model of a complete Fisheries Act, but instead focuses on important areas for harmonization. Some areas that may appear in fisheries legislation but were not addressed include licensing procedures, responsibility for administration, institutional arrangements, requirements for arrested/seized persons and items and activities such as trade, fish processing and aquaculture and level of fine or penalty.

The text given is intended to serve as a basis for consideration by each country; it can and should be adapted to the circumstances of each country, but without detracting from the aim of regional harmonization to the extent possible. There is always room for improvement in the text, to address existing and future circumstances in the region.

The arrangement of sections appears below, for ease of reference.

### **I. GENERAL**

1. Definitions
2. Interpretation
3. Objective of Act
4. Jurisdiction
5. Application of Act
6. Principles for sustainable fisheries management
7. International, regional, bilateral cooperation

## **II. FISHERIES MANAGEMENT, CONSERVATION AND DEVELOPMENT**

### **Division 1 – Fisheries Management**

8. Fisheries management plans
9. Fisheries management measures
10. Declaration of fisheries management area
11. Restriction on fishing in fisheries management area
12. Granting of fishing rights
13. Shared responsibility for fisheries management
14. Functions, etc of fisheries management advisory body or committee
15. Shared Fisheries Management Bodies
16. Genetic resource management
17. Fisheries research
18. Stowage of gear
19. Cooperation in fisheries management
20. Conflict prevention and resolution

### **Division 2 – Fisheries Conservation**

21. Declaration of zones for fishing
22. Declaration of protected areas, management areas or reserves for fishing
23. Declaration of endangered or protected species of fish
24. Pollution of the fishery waters
25. Fisheries impact consultations and assessments
26. Prohibited fishing gear and methods
27. Prohibitions for certain species, sizes
28. Possession of prohibited fishing gear, substance
29. Fish Aggregating Devices (FADs)
30. Damage, destruction to, interference with fishing gear, vessel, person prohibited
31. Leaving, abandoning objects in the fishery waters prohibited
32. Import and release of live fish
33. Export of live fish
34. Prohibited activities relating to fish or fish products taken from another State
35. Implementation of international conservation and management measures

### **Division 3 – Fisheries Development**

36. Development of the fisheries sector

### **III. INFORMATION, DATA AND RECORDS**

37. Information, data and records

38. Information to be true, complete and correct

39. False or forged documents

40. Registers of licences and vessels

41. Information on legal, administrative action taken under the Act

42. Public access to information

43. Ownership of information

44. Information on the labels of containers, etc. containing fish harvested in the fishery waters

45. Confidential information

46. Exchange of information

### **IV. FISHERIES ACCESS ARRANGEMENTS**

47. Fishing using non-national (foreign, joint venture etc) fishing vessels

48. Access by non-national vessels

### **V. LICENSES REQUIRED**

49. Foreign fishing vessel

50. National fishing vessel (defined categories)

51. Areas beyond national jurisdiction

52. Fishing Related Activities

### **VI. MONITORING, CONTROL AND SURVEILLANCE**

#### **Division 1 - Establishment of Unit**

53. Establishment of MCS Unit

#### **Division 2 - Appointment and powers of authorised officers**

54. Appointment of authorised officers

55. Authority and general powers of authorised officers, inspectors, etc.

- 56. Identification of authorised officers
- 57. Powers of hot pursuit
- 58. Powers of entry and search
- 59. Power to take, detain, remove and secure information and evidence
- 60. Power of arrest
- 61. Power to give direction
- 62. Power of seizure
- 63. Removal of parts from seized vessels, etc.
- 64. Authority of authorised officer or inspector in relation to abandoned fishing vessels, fishing gear, fish or fish products

**Division 3 - Appointment and functions of inspectors and observers**

- 65. Observer programmes
- 66. Appointment of, and identification by inspectors and observers
- 67. Conditions for observers
- 68. Observer costs
- 69. Embarkation and disembarkation of observer
- 70. Requirements for monitoring of offloading

**Division 4 - Application of Act to authorized officers, observers in areas beyond national jurisdiction, and to non-national authorized officers and observers in areas under national jurisdiction**

- 71. Application of Act to authorized officers and observers in areas beyond national jurisdiction
- 72. Application of Act to non-national authorized officers and observers under agreement in national waters

**Division 5 - Protection and obstruction of authorised persons**

- 73. Protection of authorised persons from liability Duties of operators, etc, to authorized persons
- 74. Obstruction, etc of authorised persons

**Division 6 - Requirements for vessel monitoring systems**

- 75. Vessel Monitoring Systems

**Division 7 - Requirements for use of ports**

- 76. Use of port without authorization prohibited
- 77. Vessels may be prohibited from entering port

- 78. Denial of the use of port to a foreign fishing vessel
- 79. Inspection of foreign fishing vessels in port

#### **VII. EVIDENCE**

- 80. Certificate evidence
- 81. Validity and procedure for certificate
- 82. Certificate as to the location of a vessel
- 83. Electronic location device
- 84. Photographic evidence
- 85. Presumptions
- 86. Onus of proof
- 87. Interfering with evidence
- 88. Tampering with item, etc that may be used in evidence of non-compliance with the Act

#### **VII. JURISDICTION**

- 89. Jurisdiction of Courts
- 90. Compounding

#### **VIII. COMPLIANCE**

- 91. Offences and fines
- 92. Court may order imprisonment
- 93. Court may order forfeiture
- 94. Continuing offences and repeat offenders
- 95. Banning order
- 96. Cancellation or suspension of licence
- 97. Liability of operator
- 98. Costs incurred by State
- 99. Compensation for loss or damage
- 100. Deprivation of monetary benefits
- 101. Default for non-payment of fines
- 102. Non-payment of pecuniary penalties

Title	Summary	Indicative draft text
<b>I. GENERAL</b>		
1. Definitions/ Interpretation	Ensure consistency with international instruments, best practices; should define all key terms in Act.	<p>“automatic location communicator” means a device approved by the Director which is placed on a fishing vessel and is designed to transmit, whether independently or in conjunction with another device or devices, information or data concerning position, fishing and such other activities of the vessel as may be required and includes a mobile transceiver unit;</p> <p>“buy “includes:-</p> <ul style="list-style-type: none"> <li>(a) barter or attempt to barter;</li> <li>(b) purchase or attempt to purchase;</li> <li>(c) receive on account or consignment;</li> <li>(d) receive in order to send, forward or deliver for sale;</li> <li>(e) broker a sale;</li> <li>(f) purchase or barter for future goods or for any consideration of value; and</li> <li>(g) purchase or barter as an agent for another person,</li> </ul> <p>and “buyer” has a corresponding meaning</p> <p>“export” in relation to fish or fish products means to:</p> <ul style="list-style-type: none"> <li>(a) send or take out of (country);</li> <li>(b) attempt to send or take out of (country);</li> <li>(c) receive on account or consignment for the purposes of (a) or (b); or</li> <li>(d) carry or transport anything for the purposes of (a) or (b), when associated with any buying or selling, or intended buying or selling of the fish or fish products;</li> </ul> <p>“fish” means any marine or aquatic animal or plant, living or not and processed or not, and any of their parts and includes any shell, coral, reptile and marine mammal;</p> <p>"fish processing" means any process that adds value to or preserves fish and includes the cutting up, dismembering, cleaning, sorting, icing, freezing, canning or any other action taken to alter the shape, appearance or form of fish from that in which the fish is when first taken from its natural habitat;</p> <p>"fish product" means any product or part thereof (including oil) obtained by fish processing, and intended for use</p>



Title	Summary	Indicative draft text
		<p>as human food, animal feed or raw material ingredient in the manufacture of other commodities of commercial or ornamental value;</p> <p>“fishery” or “fisheries” means:</p> <ul style="list-style-type: none"> <li>(a) one or more stocks of fish, or parts thereof, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics; or</li> <li>(b) any fishing for such stocks;</li> </ul> <p>“fishing” means-</p> <ul style="list-style-type: none"> <li>(a) searching for or taking of fish;</li> <li>(b) the attempted searching for or taking of fish;</li> <li>(c) engaging in any other activity which can reasonably be expected to result in the locating or taking of fish;</li> <li>(d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons;</li> <li>(e) any operation on water in support of or in preparation for any activity described in paragraphs (a), (b), (c) or (d);</li> <li>(f) use of an aircraft which is related to any activity described in Paragraphs (a), (b), (c) or (d), except for flights in emergencies involving the health or safety of a crew member or the safety of a vessel, but does not include aquaculture or the transportation of fish;</li> </ul> <p>“fishing gear” means any equipment, implement, structure, construction, installation or other article that can be used in the act of fishing, whether or not it is used in connection with a vessel, including any fishing net, line, float, cork, buoy, basket, light, winch, boat or aircraft;</p> <p>“fishing related activity” means any activity in support of, or in preparation for, fishing including the:</p> <ul style="list-style-type: none"> <li>(a) transshipping of fish to or from any vessel;</li> </ul>

Title	Summary	Indicative draft text
		<p>(b) landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at port ;</p> <p>(c) provisioning of personnel, fuel, gear and other supplies at sea or performing other activities in support of fishing operations;</p> <p>(d) exporting fish or fish products from the country; and</p> <p>(e) attempting or preparing to do any of the above;</p> <p>“fishing vessel” means any vessel used for, equipped to be used for, or of a type that is normally used for, fishing or fishing related activities;</p> <p>“flag State” in relation to a vessel that is not a (country) fishing vessel means the State in which the vessel is registered, providing it is registered in only one State;</p> <p>"foreign fishing vessel" means any fishing vessel other than a (country) fishing vessel and includes any support vessel, notwithstanding that the vessel may be registered and/or licensed or required to be registered or licensed in (country) pursuant to this Act and/or under the (relevant Merchant Shipping Act, Maritime Act);</p> <p>“genetic resource” includes germplasm of plants, animals or other organisms containing useful characters of actual or potential value;</p> <p>“high seas” means the waters beyond areas under the jurisdiction of any State including the territorial sea, exclusive economic zone or other zone of national jurisdiction;</p> <p>“import” means the bringing into the country of any fish or fish product and aquatic flora from any place outside (country);</p> <p>“international agreement” includes any treaty or other legally binding instrument, including bilateral, multilateral regional agreements or arrangements;</p> <p>“international conservation and management measures” means measures to conserve or manage one or more species of living marine resources which are adopted and applied by a regional fisheries management organization or arrangement in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention of the Law of the Sea, and which are recognised as binding by the (country) as notified in the Gazette in accordance with section XX;</p>

Title	Summary	Indicative draft text
		<p>“landing” means bringing any fish or fish product to the harbour, port or beach from within or outside the fishery waters and offloading it to such place for the first time after it was caught;</p> <p>“master” in relation to a vessel, aircraft or vehicle the person in command or in charge or apparently in command of the vessel, aircraft or a vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;</p> <p>“operator” means any person who is in charge of, responsible for the operations of, directs or controls a vessel, including the owner, charterer and master and includes the beneficiary of the economic or financial benefit of the vessel’s operations;</p> <p>“person” means any natural person or business enterprise and includes a corporation, partnership, cooperative, association and any foreign government, its subdivisions or agents;</p> <p>“pollution” means the introduction, directly or indirectly, of substances or energy into the marine or aquatic environment which results or is likely to result in deleterious or otherwise harmful effects or impacts on fisheries resources and their habitat, marine environmental quality and fishing related activities;</p> <p>“sell” includes-</p> <ul style="list-style-type: none"> <li>(a) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash, and barter; and</li> <li>(b) disposition to an agent for sale on consignment; and</li> <li>(c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or displayed for sale; and</li> <li>(d) disposition by way of raffle, lottery, or other game of chance,</li> <li>(e) and “sell” and “sold” have a corresponding meaning;</li> </ul> <p>“surveillance” means monitoring and ensuring compliance with control measures imposed under this Act in fishing and fishing related activities;</p> <p>"transhipment" means transferring fish or fish products to or from any vessel, whether or not the fish or fish products have first been taken on board the vessel from which the fish is passed;</p> <p>“vessel monitoring system” includes a satellite based reporting system capable of monitoring the position and activities of fishing vessels.</p>

Title	Summary	Indicative draft text
2. Objective of Act	Ensure consistency with international instruments; long-term sustainable use.	The objective of this Act is to manage, use and develop the marine and aquatic resources in a manner that is consistent with ecologically sustainable development of the resources and management of marine ecosystems.
3. Jurisdiction	Describe area of jurisdiction for purposes of implementing the Act; as appropriate refer to law claiming boundaries/marine zones.	<p>(1) (Country) exercises full jurisdiction and sovereign rights over fisheries resources in accordance with the XX Act, and such other maritime zones or areas that may be claimed from time to time, and full sovereignty and jurisdiction over fisheries resources in all public waters within its territory, including to the outer limit of the territorial sea, notwithstanding any right, including ownership or occupation, that any person may possess in relation to the water, seabed, riverbed or subsoil.</p> <p>(2) In accordance with subsection (1), the exclusive rights of management and control over such fisheries resources are vested in (country).</p>
4. Application of Act	Extend application to nationals and national vessels undertaking activities in areas beyond national jurisdiction.	<p>This Act, unless the contrary intention appears, shall apply to:</p> <ul style="list-style-type: none"> <li>(a) Areas over which (country) exercises jurisdiction or sovereign rights, including the (country) fishery waters;</li> <li>(b) fishing and fishing related activities, utilization of fish and genetic material derived from fish and any other activity falling within the scope of this Act;</li> <li>(c) persons, vessels, vehicles, aircraft, export facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act;</li> <li>(d) persons (including non-citizens) and vessels (including foreign vessels) in and in relation to: <ul style="list-style-type: none"> <li>(i) the fishery waters; and</li> <li>(ii) areas beyond national jurisdiction: <ul style="list-style-type: none"> <li>a. following hot pursuit initiated in the (country) fishery waters and conducted in accordance with international law; or</li> <li>b. as required pursuant to this Act or international conservation and management measures;</li> <li>c. as permitted by international law or any international agreement; and</li> </ul> </li> </ul> </li> </ul>

Title	Summary	Indicative draft text
		(e) all (country) fishing vessels and all persons on them or dealing with them or having any relevant relationship to them or to persons on them, in and in relation to any area within or beyond national jurisdiction in so far as it does not conflict with the jurisdiction of another State.
5. Principles for sustainable fisheries management	Management principles should be identified and form the basis for decisions relating to fisheries management under the Act.	<p>In the application of this Act, all persons shall apply the following principles to the greatest extent possible:</p> <ul style="list-style-type: none"> <li>(a) long-term sustainable use, conservation and management of fisheries resources and habitat, and adoption and implementation of management measures in such a manner as to ensure that the fisheries resources and habitat are not overexploited, threatened or endangered;</li> <li>(b) allocation of access to the fisheries resources be in a manner that achieves optimum utilization, equitable distribution and long-term sustainable development of fisheries resources to achieve social well-being, economic growth, human resource development, employment creation, a sound ecological balance and generational equity;</li> <li>(c) conservation and protection of fisheries habitats;</li> <li>(d) the effective application of the ecosystem approach to fisheries management;</li> <li>(e) maintaining and enhancing biodiversity and genetic diversity in the marine environment;</li> <li>(f) fostering recreational and ornamental fishing, aquaculture and commercial fishing activities for the benefit of the entire community;</li> <li>(g) encouraging participation of users of the fisheries resources, and of the community more generally, in the management of fisheries;</li> <li>(h) ensuring that management measures are based on the best scientific evidence available and are designed to maintain or restore stocks capable of producing sustainable yield, as qualified by relevant social, environmental and economic factors including fishing patterns, the interdependence of stocks and generally recommended international standards;</li> <li>(i) application of the precautionary approach to the management and development of the fisheries at no less standard than is set out in any international agreement;</li> </ul>

Title	Summary	Indicative draft text
		<p>(j) managing fisheries resources in an efficient and cost effective manner, including setting targets for the recovery of management costs;</p> <p>(k) collection and, as appropriate sharing, in a timely manner complete and accurate data and information concerning fishing activities and fisheries;</p> <p>(l) implementation and enforcement of conservation and management measures through effective monitoring, control and surveillance;</p> <p>(m) promotion of sustainable aquaculture in appropriate zones as a viable option to contribute to food security and wealth generation;</p> <p>(n) minimization of wastes, bycatch, discards, catch by lost or abandoned gear, pollution originating from fishing vessels and promotion of development and use of selective, environmentally safe and cost-effective fishing gear and techniques;</p> <p>(o) prevention or elimination of over-fishing and excess capacity and managing levels of fishing efforts so they do not exceed levels commensurate with sustainable use of fishery resources;</p> <p>(p) effective implementation of international agreements and relevant international law; and</p> <p>(q) ensuring effective cooperation with coastal States, fishing States and entities and competent organisations and arrangements.</p> <p>(2) All persons and bodies involved in the administration, implementation or enforcement of this Act and any other person or body required to comply with or consider any activity pursuant to, or application of, this Act, including in relation to other legislation, shall act in accordance with, and seek to further the objective and principles of this Act.</p>
6. International, regional, bilateral cooperation	Promotes cooperation to fulfil general international, regional, bilateral obligations.	The Minister shall ensure cooperation with other States necessary to discharge regional or international obligations or to promote regional and international cooperation or coordination in fisheries management, including monitoring, control and surveillance of relevant activities.
<b>II. FISHERIES MANAGEMENT, CONSERVATION AND DEVELOPMENT</b>		
<b>Division 1 – Fisheries Management</b>		

Title	Summary	Indicative draft text
7. Fisheries management plans	A framework for fisheries management plans, including the process and criteria for developing the plans (including stakeholder consultations), management measures and monitoring/evaluation. May be linked to fisheries management areas (provided below).	<p>(1) The Director shall ensure that stakeholders are consulted in the development of each fisheries management plan, that such plan is consistent with this Act and that the following are included in each plan:</p> <ul style="list-style-type: none"> <li>(a) identification of the fisheries resource and its characteristics, including its economic and social value and interrelationship with other species in the ecosystem;</li> <li>(b) identification of a consultation process to develop the management plan;</li> <li>(c) an assessment of the historical and present state of exploitation of the fisheries resource and potential average annual yields;</li> <li>(d) the objectives to be achieved in the management and development of the fishery;</li> <li>(e) the best information on all relevant biological, social, economic and other applicable factors, to determine the maximum sustainable yield;</li> <li>(f) the measures, if any, to be taken to promote the development of fisheries;</li> <li>(g) any relevant traditional fishing rights, methods or principles;</li> <li>(h) the impact of the plan upon the fishery or fisheries involved, associated and dependent species, habitat, the ecosystem in general and any other area determined relevant;</li> <li>(i) fisheries management measures;</li> <li>(j) any research necessary to enhance management of the fisheries;</li> <li>(k) the information and other data required to be given or reported for effective management and development;</li> <li>(l) an implementation strategy which explains how the objectives are to be achieved including through stakeholder consultations, the budget and timelines;</li> <li>(m) a plan for monitoring and assessment of the implementation of the fisheries management plan;</li> <li>(n) a process for approving, reviewing, amending or repealing the plan, including consultations.</li> </ul>

Title	Summary	Indicative draft text
8. Fisheries management measures	Responsibility, criteria and procedures for taking management measures, e.g. Minister/ Director may declare closed areas or seasons, effort control, catch or quota limits, prohibited gear and other measures/ prohibitions.	<p>( 1)The Director may, with the approval of the Minister, by notice in the Gazette, impose, <i>inter alia</i>, any of the following measures for the conservation and management of any fishery—</p> <ul style="list-style-type: none"> <li>(a) closed seasons and/or areas for designated areas, species of fish or methods of fishing;</li> <li>(b) prohibited fishing areas for all or designated species of fish or methods of fishing;</li> <li>(c) limitations on the types of gear, including mesh sizes of nets, that may be used for fishing;</li> <li>(d) limitations on the types and/or number of fishing vessels permitted to engage in fishing;</li> <li>(e) limitations on catch or quotas;</li> <li>(f) limitations on the amount, size, age and other characteristics and species or composition of species, of fish that may be caught, landed, transhipped or traded;</li> <li>(g) regulate the landing of fish and provide for the management of fishing ports, including fish landing stations;</li> <li>(h) control of the introduction into, or harvesting or removal from, the fishery waters of any species of fish, including aquatic plants;</li> <li>(i) define and identify fragile aquatic ecosystems and provide structures to enable collaborative protection;</li> <li>(j) provide for the regulation of identification of trade in endangered species of fish and fish products; and</li> <li>(k) any other measures consistent with the objective and principles of this Act.</li> </ul> <p>(2) Where the use of any gear is prohibited in any area or in all areas, the Director may also, by notice in the Gazette, prohibit the possession, trade or manufacture of the gear in such area or areas.</p> <p>(3) Notwithstanding the provisions of subsection (1), the Director may take fisheries management measures</p>



Title	Summary	Indicative draft text
		<p>to limit fishing and fishing related activities in accordance with the objective and principles of this Act and shall communicate such measures by notice in writing to the persons affected.</p> <p>(4) The measures may apply <i>inter alia</i>, to such activity, place and/or time as the Director deems fit, including the number of persons or vessels, the use of specified gear or activities in specified areas or specified seasons, and may include, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>(a) refusal to issue or renew licences;</li> <li>(b) imposition of special licence or catch fees; and</li> <li>(c) preferential licensing.</li> </ul> <p>(6) A person aggrieved by the action taken by the Director pursuant to subsection (1) may appeal in writing to the (Minister/Appeals Board).</p>
9. Declaration of fisheries management area	Empowers the Minister after consultation with other relevant Ministers and the stakeholders to declare any area of water to be a fisheries management area.	<p>(1) The Minister may, after consultation with stakeholders and other relevant Ministers, declare any area of the fishery waters to be a fisheries management area for stated purposes consistent with the objective and principles of this Act, including shared fisheries management.</p> <p>(2) The Minister may specify management responsibilities, processes and measures in relation to a fisheries management area.</p>
10. Restriction on fishing in fisheries management area	Prohibits fishing in fisheries management area without a licence or other permission.	No person shall fish in a fisheries management area declared under section 9 except in accordance with applicable management measures, licenses and permissions.
11. Granting of fishing rights	The Minister may grant rights, require an environmental impact assessment, implement the general principles and determine management measures. Rights are not transferable and may be granted for a stated period (e.g. 15 years) and may be	<p>(1) The Minister may grant a right for undertaking fishing activities or engaging in mariculture.</p> <p>(2) The Minister may require an environmental impact assessment report to be submitted by the applicant.</p> <p>(3) Only (nationals/citizens/others) may acquire or hold rights unless otherwise determined by the Minister.</p> <p>(4) In the granting of any right under this section, the Minister shall have regard to the objective and principles of this Act.</p> <p>(5) All rights granted under this section shall be valid for a period determined by the Minister, not to exceed 15</p>

Title	Summary	Indicative draft text
	leased by the State.	<p>years, at which time it shall automatically terminate and revert back to the State for reallocation as may be appropriate.</p> <p>(6) The right shall be subject to conservation, management and development measures under this Act which the Minister may from time to time require.</p>
12. Shared responsibility for fisheries management (national level)	Provides for and describes framework of agreements for shared management or co-management, e.g. of artisanal fisheries, management areas, between (Director) and (Local Councils).	<p>(1) The Director may make arrangements with (Counties/Villages etc.), competent fishers' organizations and such other stakeholders' organisations that may be recognized for their fisheries management skills and knowledge, for the development of shared responsibility for the management of artisanal fisheries, fisheries management areas, Marine Protected Areas and areas within the jurisdiction of each (County).</p> <p>(2) Such arrangements may be established in fisheries management plans established in accordance with this Act, or by a shared management agreement which includes the following to the greatest extent possible:</p> <ul style="list-style-type: none"> <li>m) a statement of objectives of the agreement;</li> <li>n) a description of the area covered by the agreement;</li> <li>o) a description of the governance arrangements and authorities for implementing the agreement;</li> <li>p) a description of the management activities to be undertaken;</li> <li>q) rules governing the access to and use of the area by other fishers;</li> <li>r) rules governing the requirements for information and data;</li> <li>s) rules governing the enforcement of the agreed activities;</li> <li>t) rules governing the financial aspects of the agreement, including collection and accountability for fees, fines and penalties;</li> <li>u) the duration of the agreement;</li> <li>v) provision for monitoring the agreement;</li> <li>w) provision for revision and termination of the agreement; and</li> </ul>

Title	Summary	Indicative draft text
		x) provision for conflict avoidance and the settlement of disputes.
13. Fisheries management consultations, advisory body or committee	Encourages consultations with stakeholders on management measures and empowers Minister, by legal instrument, to appoint an advisory body for fisheries management advice generally or a Committee for a fisheries management area. Membership, etc. described.	<p>(1) There is hereby established an advisory body to be known as the Fisheries Advisory Council ("the Council"), which shall consist of (e.g. not more than twenty persons with full knowledge and experience of, or responsibilities relating to the fisheries sector) representing (e.g. government, stakeholders).</p> <p>(2) Appointment of members (e.g. by Prime Minister on advice of Minister).</p> <p>(3) Term of membership (e.g. two years, renewable no more than twice).</p> <p>(4) Each person represented on the Council in accordance with subsection (1) may designate an alternate who is knowledgeable and experienced in issues relevant fisheries.</p> <p>(5) The Council may establish such working groups and committees as it deems necessary and as are agreed by the Minister.</p> <p>(6) The Ministry responsible for fisheries shall provide secretariat services for the Council.</p>
14. Functions, etc of fisheries management advisory body or committee	Describes the functions, financial responsibilities, reporting duties of a fisheries management advisory body and/or a committee, including processes for co-management arrangements, relations with NGOs etc.	<p>(1) The function of the Council (e.g. shall be to review and advise the Minister Secretary on:</p> <ul style="list-style-type: none"> <li>(a) policies in relation to fisheries management;</li> <li>(b) the allocation of access to fisheries resources;</li> <li>(c) intergovernmental agreements and arrangements related to fisheries;</li> <li>(d) research, education, capacity development in fisheries and the management of fisheries resources;</li> <li>(e) management plans and resources for the development of the fisheries sector, and</li> <li>(f) any other matters that are connected with this or any other related Act.</li> </ul>
15. Shared Fisheries Management Bodies	Provides for shared fisheries management bodies, including for Beach Management Units or rights based fishing. Includes establishment, management mechanisms/procedures, decisionmaking,	<p>(1) The Minister may for purposes of ensuring structured community participation in fisheries management, make regulations governing the administration of bodies established for shared fisheries management.</p> <p>(2) Regulations made under subsection (1) may provide, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>(a) objectives, structure, areas of jurisdiction and mandate in co-management;</li> <li>(b) membership and general administration;</li> </ul>

Title	Summary	Indicative draft text
	coordination, enforcement. (Includes Beach Management Units)	<ul style="list-style-type: none"> <li>(c) decisionmaking authority;</li> <li>(d) structure and procedures for taking management decisions;</li> <li>(e) coordination mechanisms with the Ministry responsible for fisheries;</li> <li>(f) enforcement authorities;</li> <li>(g) establishment, registration, supervision and dissolution procedures;</li> <li>(h) fees and charges which a beach management unit may levy and the management of such levies, and</li> <li>(i) any other consideration the Minister may deem necessary.</li> </ul>
16. Genetic resource management	Requires the management of fish genetic resources, <i>inter alia</i> by requiring a permit for the introduction of genetically modified fish into the fishery waters.	<ul style="list-style-type: none"> <li>(1) The Director shall ensure the management of fish genetic resources.</li> <li>(2) No person shall, without written permission granted by the Director with the endorsement of the Minister: <ul style="list-style-type: none"> <li>a) introduce or cause to be introduced into (country) or the fishery waters any species of fish or any genetically modified fish; or</li> <li>b) transfer any eggs, fingerlings or seed of exotic or genetically modified species or such adult species of fish from one aquaculture facility in (country) to another or from any location in (country) to another;</li> </ul> </li> </ul>
17. Fisheries research	Minister/Director to set research priorities, facilitate collaboration at national and, as appropriate, regional and other levels.	The Minister shall, on the recommendation of the Director, set priorities for research relating to the fisheries sector and shall ensure collaboration with other relevant government Ministries, other States, regional and international organizations and institutions as appropriate.
18. Stowage of gear	All vessels in the fishery waters should have their gear stowed so it is not	<ul style="list-style-type: none"> <li>(1) The operator and master of a: <ul style="list-style-type: none"> <li>a) semi-industrial or industrial fishing vessel in any place in the fishery waters; or</li> </ul> </li> </ul>

Title	Summary	Indicative draft text
	readily available for use when they are in an area where they do not hold a license to fish.	<p>b) (national) fishing vessel:</p> <p>(i) navigating through an area under the jurisdiction of another State where it does not have a licence to fish; or</p> <p>(ii) at all times when navigating in an area of the high seas to which international conservation and management measures apply where it has not been authorized to fish in that area pursuant to this Act,</p> <p>shall ensure that all fishing gear on board is at all times stowed or secured in such a manner that it is not readily available for fishing unless the vessel is licensed or authorized to engage in fishing in that area of the fishery waters, or of the high seas in accordance with an international agreement, international conservation and management measures or authorization of another State recognized by (country) as applicable to the relevant area.</p>
19. Cooperation in fisheries management	Responsibility to cooperate and coordinate measures relating to fisheries management with other sectors/ agencies at national level.	The Director shall promote the implementation of the objectives and principles of this Act by facilitating cooperation and coordination of fisheries management with other sectors, government agencies and organizations in (country).
20. Conflict prevention and resolution	Mechanisms to prevent and resolve conflicts at national level, including through declaration of separate fisheries zones and establishment of conciliators, stakeholders committees or an appeals panel.	<p>The Minister shall establish guidelines prevent and resolve disputes in the fisheries sector, consistent with the objectives and principles of this Act. They may, <i>inter alia</i> specify:</p> <p>(a) processes for the prevention of disputes as appropriate, including the responsibility in relation to various types of conflict, including gear, zone, sub-sector, aquaculture/fisheries and inter-community, as well as information, communication and the taking of evidence;</p> <p>(b) the appointment of a category of persons or panel of mediators, one or more of whom may be selected at any time to hear and peacefully settle a conflict;</p> <p>(c) rules and processes for conflict resolution.</p>
<b>Division 2 – Fisheries Conservation</b>		
21. Declaration of zones for fishing	Prohibited or permitted areas may be established	(Countries may establish zones according to their needs and practices, for example inshore zones reserved for national artisanal fishing, and other zones reserved for semi-industrial or industrial fishing, mariculture, etc.

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	and demarcated. for, e.g. inshore fishing, commercial fishing, foreign fishing, mariculture	
22. Declaration of protected areas, management areas or reserves for fishing	Protected areas, management areas or reserves may be declared. A framework should be provided, e.g. objective, components, mandate, management measures, conflict resolution.	<p>The Minister may, (in consultation with the Advisory Council and the Director), by Notice in the <i>Gazette</i>, declare any area of the fishery waters to be a Marine Protected Area or Marine Reserve, and shall, as part of such declaration, identify its components including the following:</p> <ul style="list-style-type: none"> <li>(a) area;</li> <li>(b) boundaries;</li> <li>(c) purpose;</li> <li>(d) objective;</li> <li>(e) a mandate for total or partial regulation;</li> <li>(f) management measures;</li> <li>(g) decision-making responsibilities;</li> <li>(h) procedures for the coordination of stakeholders;</li> <li>(i) procedures for conflict resolution;</li> <li>(j) procedures for monitoring and review; and</li> <li>(k) fines and penalties.</li> </ul> <p>(2) The management measures in each declaration made under subsection (1)(f) shall, upon publication in the <i>Gazette</i>, have the status of Regulations.</p>
23. Declaration of endangered or protected species of fish	General power to declare and protect endangered or protected species of fish.	<p>(1)The Minister may, by Notice in the <i>Gazette</i>, declare any species of fish to be protected, endangered or threatened with extinction, and shall, to the extent possible, include those species relevant to (country) that have been declared endangered or threatened under any international agreement or instrument to which (country) is party.</p> <p>(2) Unless otherwise provided by the Minister, no person shall engage in fishing for, catch, possess, transport, process, buy or sell any species of fish declared protected, endangered or threatened with extinction pursuant to subsection (1).</p>
24. Pollution of the fishery waters	Prohibits the introduction into the fishery waters deleterious substances	(1) No person shall prepare for the introduction of, attempt to introduce or introduce into the fishery waters, directly, indirectly, deliberately or accidentally, any deleterious article or substance, including articles or substances which may have toxic, hazardous or other harmful properties or effects in relation to fish or the marine

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	which adversely affect the habitat or health of the fish.	<p>environment, and which may adversely affect the habitat or health of the fish.</p> <p>(2) A person who contravenes subsection (1) is guilty of an offence and shall be liable on conviction to fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding five years or to both, and in addition shall be liable for full compensation in respect of any resulting loss or damage as well as the full cost of restoring the affected habitat and fishery resources to their previous state.</p> <p>(3) The Director may suspend or cancel the licence of a vessel to which this section applies until such time as all fines, penalties and damages have been satisfied.</p> <p>(4) Notwithstanding subsection (2), in the event of an accidental introduction into the fishery waters of any deleterious article or substance prohibited in subsection (1), or in the event of encountering such articles, the owner, operator or master of the vessel shall immediately report the incident to the Director giving the following information to the extent possible—</p> <ul style="list-style-type: none"> <li>(a) the name of the reporting person and, as appropriate, the name and call sign, if any, of the vessel from which the introduction or encounter occurred;</li> <li>(b) the nature of the article disposed or encountered;</li> <li>(c) the location of the article or substance; and</li> <li>(d) the time and date of the incident.</li> </ul> <p>(5) Unless it is provided otherwise, the provisions of (relevant environmental legislation) shall apply to offences involving discharge of pollutants under this Act.</p>
25. Fisheries impact consultations and assessments	The Director must be consulted where there are plans to conduct activity other than fishing likely to have an adverse impact on fish and their habitat, and	<p>(1) Any person or Government Ministry or other agency that plans to conduct any activity other than fishing which is likely to have an adverse impact on fish and their habitat, shall inform the Director of such plans and consult with him/her prior to the commencement of the planned activity with a view to ensuring the conservation and protection of such resources.</p> <p>(2) The Director may make or require reports and recommendations by the agency responsible for environmental</p>

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	he/she may require recommendations, reports and environmental or fisheries impact assessments or other measures.	<p>protection in (country) and those conducting the planned activity regarding the likely impact of such activity on the fishery resources, including their habitat, and possible means of preventing or minimising adverse impact.</p> <p>(3) Any report or recommendation prepared in accordance with subsection (2) shall be taken into account by the relevant person, Government Department and/or other agency in the planning of the activity and in the development of means of preventing or minimising any adverse impacts.</p>
26. Prohibited fishing gear and methods	Sets out prohibited fishing gear and methods, such as beach seining and fishing with explosives, poisons etc.	<p><i>(It is for each country to prohibit specific gear and methods, an example is shown below.)</i></p> <p><b>46.</b> (1) No person shall use, permit to be used or attempt to use or carry on board a vessel:</p> <ul style="list-style-type: none"> <li>(a) fishing gear that has not been authorized by a valid and applicable licence issued pursuant to this Act for the purpose of fishing unless otherwise provided in this Act;</li> <li>(b) any fish aggregating device unless an authorization has been issued in accordance with this Act;</li> <li>(c) a trawl net or other net the mesh of which is less in stretched diagonal length than the prescribed mesh size;</li> <li>(d) the method of pair trawling for the purpose of fishing;</li> <li>(e) monofilament net for the purpose of fishing;</li> <li>(f) more than one net at a time for the purpose of fishing with trawl net;</li> <li>(g) attachments to any trawl net except as may be prescribed;</li> <li>(h) a gill net, whether drifting or set, in any river or body of water forming part of the riverine system if the mesh of the net is less than forty- five millimeters in stretched diagonal length;</li> <li>(i) a seine net the mesh of which is less than forty-five millimetres in stretched diagonal length;</li> <li>(j) a beach seine net for the purpose of fishing;</li> <li>(k) a seine net in any body forming part of the riverine system;</li> </ul>



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		<p>(l) firearms, lights or other electrical devices for the purpose of fishing, including stunning, disabling, catching or killing fish, or in any way rendering fish to be caught more easily; or</p> <p>(m) such other gear as may be prescribed or prohibited in a fisheries management plan.</p> <p>(2) Unless otherwise prescribed, no person shall use for fishing, from an industrial fishing vessel, any net or combination of nets the mesh of which is less than:</p> <p>(a) sixty millimetres in stretched diagonal length for the meshes forming the cod-end of the net for demersal trawl nets;</p> <p>(b) forty-five millimetres in stretched diagonal length for the meshes in the cod-end for catching shrimp and other shellfish;</p> <p>(c) forty-five millimetres in stretched diagonal length for seine nets; and</p> <p>(d) in the case of a trawl net, where the sides of the net are less than the mesh of the cod-end.</p> <p>(3) No person shall use on an industrial fishing vessel a bottom trawl in coastal waters of less than fifteen meters depth.</p> <p>(4) No person shall, for the purpose of fishing, set any net across any river from bank to bank so as to form a barrier.</p> <p>(5) No person shall:</p> <p>(a) permit to be used, use or attempt to use any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or in any way rendering fish more easily caught; or</p> <p>(b) carry or have in his/her possession or control any explosive, electric shock device, poison or other noxious substance in circumstances indicating an intention of using such substance for any of the purposes referred to in subparagraph (a).</p> <p>(6) Any explosive, electric shock device, poison or other noxious</p>

Title	Summary	Indicative draft text
		<p>substance found on board any fishing vessel shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in paragraph (a) of subsection (5).</p>
<p>27. Prohibitions for certain species, sizes</p>	<p>The fishing for certain species (targeted or otherwise) may be prohibited, e.g. sharks, green turtles, etc. Release or excluder devices may be included.</p>	<p><i>(It is for each country to prohibit or regulate fishing for certain species; this can be done in management measures but the Act should entrench measures for species needing special attention according to regional or international agreement and best practices , examples of species are shown below.)</i></p> <p>Prohibitions and requirements for gravid lobsters or other gravid crustacean, marine mammals, sea turtles, rays and sharks.</p>
<p>28. Possession of prohibited fishing gear, substance</p>	<p>Prohibits possession of prohibited fishing gear or substance, may allow for possession with permission in writing from the Director.</p>	<p>Except as otherwise may be provided in this Act, a person shall not, without permission in writing from the Director, possess or control fishing gear which is prohibited for use in the fishery waters.</p>
<p>29. Fish Aggregating Devices (FADs)</p>	<p>Requirements for deployment and maintenance of a FAD (requirements to report, not to place in areas of marine traffic etc), markings and equipment on a FAD, designated FAD (for specific fishers) disposal of a FAD.</p>	<p><b>A. Deployment and maintenance of a fish aggregating device</b></p> <p>(1) No person shall deploy or maintain a fish aggregating device in the fishery waters except with the authorization by the Director and in accordance with such conditions as he/she may specify or as are otherwise specified in this Act.</p> <p>(2) In granting permission under subsection (1), the conditions which the Director may specify include the following:</p> <ul style="list-style-type: none"> <li>a) the method of use of the fish aggregating device;</li> <li>b) its location;</li> <li>c) the times during which it may be used; and</li> <li>d) the markings or colourings to be adopted.</li> </ul> <p>(3) No fish aggregating device shall be placed in such a way as to hinder or block marine traffic or be a hazard to navigation at sea.</p>

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		<p>(4) The permission of the Director under this Act shall be in writing and may be in electronic form whether as a condition or licence or otherwise.</p> <p>(5) Unless otherwise provided under this Act or specified by the Director, permission to place a fish aggregating device shall not confer any exclusive right to fish in the vicinity of the device.</p> <p>(6) The master of any vessel placing a fish aggregating device shall notify the Director within 24 hours of such placement and of the nature and location of the device.</p> <p><b>B. Designated fish aggregating device</b></p> <p>(1) The Director may, by notice published in the <i>Gazette</i>, declare any aggregating device to be a designated fish aggregating device for the purposes of this Act.</p> <p>(2) Subject to subsection (3), no person shall fish within a radius of one nautical mile from a designated fish aggregating device except with the permission of the Director and in accordance with such conditions as he/she may specify.</p> <p>(3) The Minister may, by Public Notice, declare that any class of persons who are (country) nationals may fish within a specified radius of a designated fish aggregating device or a class of designated fish aggregating devices.</p> <p><b>C. Markings, equipment for fish aggregating devices</b></p> <p>(1) No person, being the operator of a fishing vessel or any other person in apparent control of a fish aggregating device deploys a fish aggregating device unless it:</p> <p style="padding-left: 40px;">a) is clearly marked with the name of the owner and of the vessel from which such a device was placed; and</p> <p style="padding-left: 40px;">b) is equipped with a radar reflector and such lights as shall be clearly visible at night from a distance of one nautical mile,</p>

Title	Summary	Indicative draft text
		<p>and has such other equipment or markings as the Director may from time to time require.</p> <p><b>D. Use or disposal of unauthorized fish aggregating devices</b></p> <p>(1) No person shall use or dispose of a fish aggregating device in a manner other than in accordance with this Act or as may be required by the Director.</p>
30. Damage, destruction to, interference with fishing gear, vessel, person prohibited	Prohibits damage or destruction to fishing gear, vessels belonging to others and to persons, using a vessel, and requires certain actions to be taken by the master.	<p>(1) No person shall, using a vessel, wilfully, negligently, unintentionally or otherwise damage, destroy, interfere with, endanger, injure or cause loss of life in respect of:</p> <ul style="list-style-type: none"> <li>(a) any fishing gear that he/she does not own or use or that is not associated with such vessel;</li> <li>(b) any other vessel and/or persons thereon; or</li> <li>(c) any persons on any other vessel or otherwise in the fishery waters.</li> </ul> <p>(2) Where a vessel becomes entangled with fixed fishing gear or other object referred to in subsection (1), the master shall:</p> <ul style="list-style-type: none"> <li>(a) undertake to minimize any damage caused by the gear;</li> <li>(b) where practicable return the gear to the sea and log the position; and</li> <li>(c) make a full report of the incident and steps taken by him/her to the Director at the earliest opportunity.</li> </ul> <p>(3) Where events referred to in subsection (1) or (2) occur, the master shall immediately:</p> <ul style="list-style-type: none"> <li>(a) undertake to minimize any damage caused;</li> <li>(b) where any person has been injured or harmed in any way: <ul style="list-style-type: none"> <li>(i) rescue such person from the sea;</li> <li>(ii) administer all possible first aid or medical treatment; and</li> <li>(iii) steam directly to shore and seek further medical treatment;</li> </ul> </li> </ul>

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		<p>(c) where there has been a death of a person, recover the body and bring it directly to port; and</p> <p>(d) promptly make a full report of the incident and steps taken by him/her to the Director.</p> <p>(4) A person who contravenes subsection (1), (2) or (3) commits an offence shall fully compensate the owner or apparent owner of the fishing gear for any damage caused and for lost fishing time, any injured person compensation for medical expenses, injury and as appropriate loss of expectation of life, and the estate of any person who died as a consequence of the action full compensation for loss of life unless there is sufficient proof that:</p> <p>(a) in the case of fishing gear, that the person who owned or used the fishing gear at the relevant time did not hold a valid and applicable licence required pursuant to this Act; or</p> <p>(b) the damage, destruction, interference or endangerment took place in an area where the person(s) or vessel(s) that caused such consequences were legally entitled to be at that time and it was not reasonably possible to detect the fishing gear or vessel and any relevant fishing gear was not marked in accordance with the requirements pursuant to this Act.</p> <p>(5) Each person making a claim for compensation pursuant to subsection (4) shall do so as soon as possible and in any case within a reasonable time after the damage, destruction, interference or endangerment took place, and shall produce all available evidence.</p>
31. Leaving, abandoning objects in the fishery waters prohibited	Prohibits the dumping of gear, moorings and other objects into the fishery waters or abandon them if they may adversely affect fish. Provides notification requirements.	<p>(1) No person shall dump gear, moorings and other objects in the sea or leave unnecessarily or abandon such objects in the sea or on the seabed if they may adversely affect fish or other marine organisms including by continuing to enmesh, trap or otherwise catch fish, impede harvesting operations, damage harvesting gear or endanger vessels.</p> <p>(2) Where objects have been left in the sea or on the seabed the person who is responsible for such action, or any person who subsequently discovers the object, shall promptly notify the Director of the nature of the object and the position.</p> <p>(3) Any person who contravenes subsection (1) or (2) commits an offence and shall be responsible for the full cost of clearing and/or removing the relevant objects.</p>

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32. Import and release of live fish	Controls the import and release of live fish, including the introduction of non-native species.	<p>(1) No person shall import into (country) any live fish without the written approval of the Director and in accordance with such procedures as may be prescribed.</p> <p>(2) No person shall release into the fishery waters any live fish imported into (country) except with the written approval of the Director.</p> <p>(3) The Director shall not approve any release of live fish unless the fish has been kept under observation and control for such period and on such terms and conditions as he/she thinks fit.</p> <p>(4) Where the Director is satisfied that any fish which has been imported into (country) is unsuitable for the purpose of release he may order the fish to be forfeited and destroyed.</p> <p>(5) The importer and exporter of any fish destroyed under subsection (4) shall not be entitled to compensation.</p>
33. Export of live fish	Procedures/prohibitions for export of live fish.	No person shall export from (country) any live fish except in accordance with such procedures as the Director may require in writing and publicly notify or as may be prescribed.
34. Prohibited activities relating to fish or fish products taken from another State	Prohibits sale, purchase, import, export, landing, etc of any fish or fish product taken, possessed, etc. in violation of any law of another State.	<p>(1) No person shall, within (country) or in the fishery waters, on their own account or any other capacity:</p> <p>(a) cause or permit a person acting on his or her behalf; or</p> <p>(b) use or permit a vessel to engage in fishing or related activity,</p> <p>to take, import, export, tranship, land, transport, sell, receive, acquire or buy any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of international conservation and management measures.</p> <p>(2) This section does not apply to fish taken on the high seas contrary to the law of another State where (country) does not recognise the jurisdiction of that State over those fish.</p>
35. Implementation of international conservation and management	Provides a mechanism for implementation of international conservation and management measures of RFMOs to which the	<p>(1) The Director shall by notice in the Gazette give notice of any international conservation and management measures recognized by (country) for the purposes of this Act.</p> <p>(2) A notice under subsection (1) shall append the relevant agreement or arrangement, or international conservation and management measure.</p>

Title	Summary	Indicative draft text
measures	country is party, and a duty to facilitate information.	<p>(3) Where the Director has reason to suspect that a foreign fishing vessel is, or has been, involved in the contravention of an international conservation or management measure in areas beyond the national jurisdiction of (country), the Director may, and in cases where such measure has been notified pursuant to subsection (1), shall—</p> <ul style="list-style-type: none"> <li>(a) provide to the appropriate authorities of the flag State, relevant coastal State(s), relevant regional fisheries management organization and others as appropriate, relevant information, including any available evidence, relating to such contravention;</li> <li>(b) request immediate investigations by the flag State;</li> <li>(c) when such foreign fishing vessel is in a port in (country), promptly notify the appropriate authorities of the flag State of the vessel accordingly; and</li> <li>(d) take additional measures in conformity with international law, including such measures as the flag State of the vessel has expressly requested or to which it has consented and any measures agreed through the relevant regional fisheries management organization.</li> </ul>
<b>Division 3 – Fisheries Development</b>		
36. Development of the fisheries sector	Guidelines for promoting, encouraging, supporting initiatives leading to the development and sustainable use of the fisheries resources through stated measures.	<p>The XX may, in consultation as appropriate with other agencies of Government, promote the development of the fisheries sector through, <i>inter alia</i>—</p> <ul style="list-style-type: none"> <li>(a) developing and implementing a fisheries development strategy and plan;</li> <li>(b) promotion of public education, training, human resource development, awareness, research, data collection and information systems in relation to activities and programmes falling within the scope of this Act;</li> <li>(c) the development of shared fisheries management at community level, including the facilitation of environmental impact assessments;</li> <li>(d) the development of rights-based fisheries management;</li> <li>(e) promoting the development of (specified fisheries sub-sectors);</li> </ul>

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		<p>(f) providing a national framework of extension and training services;</p> <p>(g) conducting research and surveys;</p> <p>(h) promoting co-operation among fishers;</p> <p>(i) identifying and developing markets for fish products; and</p> <p>(j) such other measures and actions as may be appropriate.</p>
<b>III. INFORMATION, DATA AND RECORDS</b>		
37. Information, data and records	Requires persons carrying out activities under the scope of the Act to furnish such information, data and records that may be required.	<p>(1) The Director may, for purposes of this Act, require any person to keep and furnish in such manner and form and at such time as he/she may specify, or as may be prescribed:</p> <p>(a) any information and data, including information relating to fishing, fisheries, aquaculture, landing, research, storage, food safety, processing, buying, selling, exports and other related transactions;</p> <p>(b) accounts, records, returns, documents; and</p> <p>(c) other information in relation to activities falling within the scope of this Act additional to that specified under this Act.</p> <p>(2) The following categories of persons shall keep such accounts, records, documents, and furnish such returns, data and other information, in accordance with the requirements under this Act:</p> <p>(a) holders of licences or authorizations issued under this Act;</p> <p>(b) owners, operators, legal representatives, and masters of vessels licensed or authorized under this Act;</p> <p>(c) owners and persons in charge of any premises where fish or fish products are received, bought, stored, transported, processed, sold, or otherwise disposed of;</p>



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		<p>(d) persons who engage in the receiving, buying, selling, transporting, processing, storage, export, import or disposal of fish or fish products;</p> <p>(e) persons who engage in commercial aquaculture activities;</p> <p>(f) persons engaged in recreational fishing;</p> <p>(g) persons engaged in fishing otherwise than for the purpose of sale of the fish caught, including research; and</p> <p>(h) such other persons who may be required to do so by the Director pursuant to this Act.</p> <p>(3) The Director may, for purposes of verification of accounts, records, documents, returns, or information required to be kept, furnished or communicated in any manner or form under subsection (1) or (2):</p> <p>(a) audit or inspect any accounts, records, returns or other information or place where such information may be kept;</p> <p>(b) audit or inspect any vessel, processing plant or other facility operating under the scope of this Act; and</p> <p>(c) require from any person further information, clarification or explanation regarding any accounts, returns or information kept, furnished or communicated under this section in accordance with such time limits as may be specified or prescribed.</p>
38. Information to be true, complete and correct	Any information given, furnished or maintained etc. must be true, complete and accurate and no such information shall be false, misleading or inaccurate.	Any information given, furnished or maintained or required to be given, furnished or maintained under this Act shall be true, complete and accurate and no such information shall be false, misleading or inaccurate.
39. False or forged documents	No person shall unlawfully alter, destroy, erase, obliterate, forge or falsify	No person shall unlawfully alter, destroy, erase, obliterate, forge or falsify any document made or required under this Act.

Title	Summary	Indicative draft text
	any document made or required under the Act.	
40. Registers of licences and vessels	Director to establish and maintain registers, including of licences vessels, gear, fishers, etc.	<p>(1) The Director shall establish and maintain a national register of licences and authorizations issued under this Act in accordance with such requirements as may be prescribed or required by the Minister.</p> <p>(2) The register established under subsection (1) shall include:</p> <ul style="list-style-type: none"> <li>(a) information on applications for licences and authorizations under this Act;</li> <li>(b) information on each licence and authorization issued, renewed, suspended and/or cancelled under this Act, including the activity, date and duration;</li> <li>(c) information on each licensed or authorized person;</li> <li>(d) information on the relevant vessel, facility, and/or licensed or authorized activity;</li> <li>(e) any record of non-compliance with the licence or authorization;</li> <li>(f) any record of action taken as a result of non-compliance;</li> <li>(g) the requirements of any relevant international conservation and management measures of an organization of which (country) is a member or cooperating non-member; and</li> <li>(h) such other information that may be prescribed or required by the Director.</li> </ul> <p>(3) The register established under subsection (1) shall contain information relating to fishing vessels licensed or authorized for fishing or fishing related activities:</p> <ul style="list-style-type: none"> <li>(a) within areas under national jurisdiction; and</li> <li>(b) in areas beyond national jurisdiction.</li> </ul> <p>(4) The Director shall, in respect of information contained in the register in accordance with subsection (2), provide access to such information on request by directly interested Government bodies of (country), regional fishery bodies including regional fisheries management organizations,</p>

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		<p>international organizations and foreign States or entities, taking into account any applicable laws regarding the confidentiality or release of such information.</p> <p>(5) The Director shall ensure that the information on each license and authorization in the database is sufficient for purposes of fisheries management and monitoring, control and surveillance, and to implement the international and regional agreements to which (country) is party or cooperating non-party.</p> <p>(6) The Director shall ensure that, as appropriate, information is released from the database and communicated to other States and regional and international organizations in a timely manner to ensure the discharge of the regional and international obligations of (country) including as a flag State and as a member of regional fisheries management organizations.</p> <p>(7) Registration of a licence or authorization in the national register shall not be considered a licence or authorization for the purposes of this Act.</p> <p>(8) A person may, upon payment of such fee as may be prescribed, access any non-confidential information from the register.</p>
41. Information on legal, administrative action taken under the Act	Information to maintained and made publicly available on actions resulting in a judgment or administrative determination.	The Director shall maintain and make publicly available a record of the outcome of any legal or administrative action taken in respect of any violation against this Act that results in a judgment or administrative determination.
42. Public access to information	Subject to the next section, information to be made available to public.	The Director shall make information available to the public and as necessary disseminate relevant information to stakeholders for purposes of fisheries conservation, management and development, including regional and international organizations, except for such information that may be provided under section 43 or is designated confidential in accordance with section 45.
43. Ownership of information	Ownership of information required under the Act is vested in the Government.	Ownership of all information required to be reported, notified or otherwise given to the Government and all information generated by automatic location communicators or similar device that is part of a vessel monitoring system under this Act is vested in the Government.
44. Information on the labels of	The information on labels containing fish harvested in	The labels of any container or packaging materials containing fish harvested in the fishery waters shall clearly designate:

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containers, etc. containing fish harvested in the fishery waters	the fishery waters must designate that they were harvested in the fishery waters, and other information requirements.	<ul style="list-style-type: none"> <li>a) that the fish were harvested in the fishery waters, irrespective of the flag State of the vessel or nationality of any person involved in the production of such fish, and shall not indicate in any way that such fish is the product of any State other than (country);</li> <li>b) the name of the fishing vessel that harvested the fish;</li> <li>c) the name of the company that is the owner or operator of the fishing vessel; and</li> <li>d) such other information that may be prescribed.</li> </ul>
45. Confidential information	General requirements for identifying confidential information, duty not to breach, etc.	<p>(1) No person carrying out duties or responsibilities under this Act, including the Minister, Permanent Secretary and Director shall, unless authorized or otherwise provided or directed in accordance with this Act, reveal information or other data of a confidential nature or designated as confidential in accordance with this Act, acquired by virtue of their said authority, duties and responsibilities to any person not having such authority or carrying out such duties and responsibilities.</p> <p>(2) The Minister in consultation with the Director may designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidentiality requirements.</p> <p>(3) The Director may authorise in writing any person to:</p> <ul style="list-style-type: none"> <li>a) receive or access confidential information;</li> <li>b) access or restrict access to such premises holding confidential information as he/she may designate.</li> </ul> <p>(4) Notwithstanding subsection (2), the following information shall be confidential unless the Minister in consultation with the Director otherwise directs:</p> <ul style="list-style-type: none"> <li>(a) any information or data of a commercial nature provided in records, returns, or other documents required under this Act;</li> <li>(b) any information or data supplied by a vessel monitoring system or part thereof in accordance with this Act;</li> </ul>

Title	Summary	Indicative draft text
		<p>(c) such raw data from scientific research as may be designated by the Minister in consultation with the Director; and</p> <p>(d) such other information or data as may be required by the Minister in consultation with the Director.</p> <p>(5) Information may be disclosed to the extent:</p> <p>(a) that disclosure is authorized or required under this Act or any other law;</p> <p>(b) that the person providing the information authorized its disclosure;</p> <p>(c) necessary to enable the Director to publish statistical information relating to the fisheries sector;</p> <p>(d) necessary for enforcement of (country) laws by other Ministries and agencies of the Government of (country);</p> <p>(e) necessary to discharge regional or international obligations or to promote regional and international cooperation or coordination in monitoring, control and surveillance of relevant activities; and</p> <p>(f) necessary to enable advice to be given to the Minister.</p> <p>(6) The Minister in consultation with the Director may authorise the release of any information:</p> <p>(a) relating to the real-time or other position of any vessel, upon request, to the responsible authority for purposes including surveillance, search and rescue and other emergency;</p> <p>(b) for purposes he/she deems would be supportive of the objectives and enforcement of this Act, including reasonable transparency in decision-making; or</p> <p>(c) designated as confidential for such purposes as the Minister may approve or as may be prescribed.</p> <p>(7) Any information designated as confidential shall maintain such classification for a period of five years from the time of such designation, and at the expiry of five years, the Minister in consultation with the Director may extend such classification for a further period of up to five years or more as they may deem necessary for purposes relating to the objectives and enforcement of this Act.</p>

Title	Summary	Indicative draft text
46. Exchange of information	Requires Director to exchange information with other States in general to promote effective fisheries management, and in accordance with international obligations.	The Director shall provide and exchange such information with other States and organizations as may be required under international, regional or bilateral agreements, paying due regard to the requirements of confidentiality, and shall do so in general to promote effective fisheries management throughout the range of the stocks and taking into account the ecosystem approach to fisheries management.
<b>IV. FISHERIES ACCESS ARRANGEMENTS</b>		
47. Fishing using non-national (foreign, joint venture etc) fishing vessels	Empowers Minister to conclude Agreements; Prohibits fishing or related activities using foreign fishing vessels unless certain conditions are met (e.g. access agreement).	<p>(1) The Minister may, on behalf of the Government of (country) and in accordance with the provisions of this Act, any applicable international agreement and national policies and strategies, and taking into account the advice of the Director, permit access by foreign fishing vessels to the fishery waters for fishing or fishing related activities.</p> <p>(2) Fisheries access may be granted, and licences or authorizations may be issued in accordance with subsection (1) pursuant to:</p> <p>(a) such international agreement, fisheries partnership agreement, joint venture or other written agreement or arrangement setting out the terms and conditions of fisheries access as are required pursuant to this Act and additional terms and conditions as may be recommended by the Director, with</p> <ul style="list-style-type: none"> <li>(i) States or regional economic integration organisations;</li> <li>(ii) any fishing association or similar body;</li> <li>(iii) a publicly incorporated company; or</li> <li>(iv) such other persons or bodies as the Minister considers appropriate; and/or</li> </ul> <p>(b) an access right granted by the Minister, taking into account the provisions of subsections (1) and (2) and in consultation with the Director, in accordance with such conditions as he may require and as may be prescribed, including the:</p> <ul style="list-style-type: none"> <li>(i) maximum number of such rights to be granted for a given period of time;</li> <li>(ii) maximum period of time during which such right can be held;</li> <li>(iii) fishery or fisheries to which rights-based access applies;</li> </ul>

Title	Summary	Indicative draft text
		<ul style="list-style-type: none"> <li>(iv) qualifications of applicants for such rights;</li> <li>(v) procedures for application for such rights;</li> <li>(vi) criteria for the grant of such rights;</li> <li>(vii) conditions for the use of such rights;</li> <li>(viii) transferability of such rights; and</li> <li>(ix) conditions for the cancellation or revocation of such rights; or</li> </ul> <p>(c) a determination by the Minister, on the recommendation of the Director, that each vessel meets the requirements under this Act for licence issuance, including the standards for licence approval in section XX (fees) and such other requirements that may be prescribed or required by national policy or by notice in the Gazette and:</p> <ul style="list-style-type: none"> <li>(i) the vessel, its operator, master and beneficial owner have not engaged in or were not reasonably suspected to have engaged in illegal, unreported or unregulated fishing in any place during the five-year period prior to application for the license; and</li> <li>(ii) the Minister determines there are clear benefits to (country) for issuing such a licence.</li> </ul> <p>(3) Fisheries access granted pursuant to subsection (2) shall be subject to the terms and conditions in this Act and such other conditions as may be required by the Minister on the advice of the Director.</p> <p>(4) The Director shall, in respect of each proposed arrangement, right and licence for fisheries access determine:</p> <ul style="list-style-type: none"> <li>a) the estimated value of the fisheries to the other party; and</li> <li>b) the designated area, an access fee and other required benefits to (country), except that such fee or benefits shall not include development assistance or benefits that are unrelated to the value of the fisheries access.</li> </ul> <p>(5) Fisheries access shall be permitted solely for purposes of fishing or fishing related activities in the exclusive economic zone or at a designated port.</p> <p>(6) No licence or other authorization for fishing or fishing related activities shall be issued to a foreign fishing vessel unless fisheries access has been granted in accordance with this Act.</p>

Title	Summary	Indicative draft text
48. Access by non-national vessels	Sets out minimum conditions for a fisheries access agreement, and/or fishing by non-nationals (e.g. fee payable in advance, reporting requirements,	<p>In addition to any other terms or conditions for fisheries access that may be prescribed or required, each agreement, arrangement, right, licence and authorization for fisheries access shall require:</p> <ul style="list-style-type: none"> <li>(a) the operator to comply with all laws of (country);</li> <li>(b) the operator to hold, in respect of the vessel, a valid and applicable licence or authorization from the State in which it is registered to carry out fishing or fishing related activities in the fisheries waters;</li> <li>(c) the operator to hold, in respect of the vessel, a valid and applicable license for fishing or fishing related activities issued in (country);</li> <li>(d) that the vessel is included on a list of authorized vessels maintained by any competent regional fishery body to which (country) is a party or a cooperating non-party in accordance with the rules of such organization(s);</li> <li>(e) that the vessel is not included on a list of illegal, unreported or unregulated vessels maintained by any competent regional fishery body to which (country) is a party or a cooperating non-party in accordance with the rules of such organization(s), and that that access shall automatically terminate should the vessel be included on such a list;</li> <li>(f) the other party to take all measures required to ensure compliance with the requirements for fisheries access and otherwise pursuant to this Act, including by posting a performance bond in accordance with this Act 51 if required;</li> <li>(g) where fisheries access is agreed with a corporation, association or other body acting on behalf of its members or other persons, it shall be liable for the undischarged liabilities of its members or other persons arising out of any operations under the agreement and the agreement itself, including fees;</li> <li>(h) that any trade-related undertakings are consistent with the rules of the World Trade Organization;</li> <li>(i) the flag States of the vessels to fully comply with their duties and responsibilities as flag States under international law and standards as reflected in international fisheries instruments;</li> <li>(j) fees, levies and other charges to be fully paid at the required time, and all other undertakings are discharged within a stated time, or access will automatically terminate should this not be done; and</li> </ul>



Title	Summary	Indicative draft text
		(k) such other requirements that may be made in accordance with the principles and objectives of this Act and as appropriate to implement any international obligation or undertaking of (country).
V. LICENSES REQUIRED		
49. Foreign fishing vessel	Licenses for all categories should be required.  Authorizations given for national vessels fishing beyond areas under national jurisdiction, conditions should require compliance with international conservation and management measures and with the laws of coastal States.  Authorizations for transshipments may be prohibited for at-sea transshipment.	
50. National fishing vessel (defined categories)		
51. Areas beyond national jurisdiction		
52. Fishing Related Activities <sup>108</sup>		
VI. MONITORING, CONTROL AND SURVEILLANCE		
Division 1 Establishment of Unit		
53. Establishment of MCS Unit	Establishment of an MCS Unit and a description of its functions may be appropriate, depending on institutional arrangements in each country.	(1) There is hereby established within the Ministry a Monitoring, Control and Surveillance Unit (“the MCS Unit”)  (2) The Unit shall have the functions of:  (a) monitoring, controlling and surveillance, including compliance and enforcement, of:

<sup>108</sup> In international instruments and best practices, “fishing related activities” means any activity in support of, or in preparation for, fishing including:

- (f) transshipping of fish to or from any vessel;
- (g) landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at port ;
- (h) provisioning of personnel, fuel, gear and other supplies at sea or performing other activities in support of fishing operations;
- (i) exporting fish or fish products from the country; and
- (j) attempting or preparing to do any of the above.

Title	Summary	Indicative draft text
	It would indicate the fisheries agency as that the lead authority for MCS, but cooperation with other agencies could be encouraged as appropriate.	<p>i. all activities falling within the scope of this Act; and</p> <p>ii. any other legislation relating to activities falling within the scope of this Act; and</p> <p>(b) as appropriate, cooperating and coordinating with, and performing relevant functions within the broader system of monitoring, control and surveillance at bilateral, sub-regional, regional and international levels to implement agreements or measures which are binding upon (country) or which the Minister, as appropriate in consultation with the Ministers responsible for internal security and defence, directs.</p> <p>(3) The MCS Unit shall include the officers specified in (a Schedule to the Act) and such other persons or categories of officers as may be appointed by the Minister by Notice in the Gazette from time to time.</p> <p>(4) In addition to the provisions in this Act relating to the powers of authorized officers, the Minister may by notice in the Gazette provide for-</p> <p>(a) the organization and deployment of the Unit,</p> <p>(b) the duties to be performed by members of the Unit, and their guidance in the discharge of those duties;</p> <p>(c) the regulation of matters relating to discipline in the Unit;</p> <p>(d) the description and issue of arms, ammunition accoutrements, uniforms and other necessary supplies to members of the Unit , and</p> <p>(e) matters relating generally to the good order and administration of the Unit.</p>
<p style="text-align: center;"><b>Division 2</b></p> <p style="text-align: center;"><b>Appointment and powers of authorised officers</b></p>		
54. Appointment of authorised officers	Procedures for the appointment of authorised officers are set out.	<p>(1) The Director may, with the approval of the Minister, appoint in writing as authorized officers:</p> <p>a) fisheries officers;</p> <p>b) any person or class of persons who are public officers appointed in accordance with the Constitution; and</p>

Title	Summary	Indicative draft text
		<p>c) for a specified period of time, any person or class of persons who are not (country) citizens but are appointed as authorized officers by their national State where such State is party to an applicable international agreement or arrangement with the objective of carrying out fisheries monitoring, control and surveillance operations jointly or cooperatively with the Government of (country),</p> <p>for the purpose of administering, monitoring and enforcing this Act and such other relevant laws and measures within and in areas beyond national jurisdiction that fall within the scope of this Act, any applicable international agreement and/or international conservation and management measure, and shall publicly notify such appointments in the <i>Gazette</i>.</p> <p>(2) The Minister may limit the exercise of any powers and functions of any authorized officer to a specific area and/or period of time.</p>
55. Authority and general powers of authorised officers, inspectors, etc.	<p>Authorised officers, inspectors may do all such acts and things and give such directions as are reasonably necessary for the purposes of exercising any of his/her powers under the Act.</p> <p>Powers without a warrant are described.</p> <ul style="list-style-type: none"> <li>Also should address use of force, assistance, application of act where duties are carried out in areas beyond national jurisdiction and potential cooperation in MCS.</li> </ul>	<p>(1) An authorized officer may do all such acts and things and give such directions as are reasonably necessary for the purposes of exercising any of his/her powers under this Act.</p> <p>(2) An authorized officer may use such force as may be reasonably necessary to enable the exercise of his/her powers under this Act.</p> <p>(3) An authorized officer bringing a vessel to a place in (country) in accordance with this Act, or in other circumstances where the need for assistance in enforcing this Act is immediate and overwhelming, may require any person to assist him or her, and that person shall be deemed to be an authorized officer for the purposes for and time during which he/she is required to act.</p> <p>(4) Where an authorized officer is required to undertake duties in areas beyond national jurisdiction, unless provided otherwise in an international agreement or arrangement, the provisions of this Act are applicable as if the duties were performed within areas under national jurisdiction.</p> <p>(5) Where an authorized officer has been appointed in accordance with section 18 or is otherwise serving under the authority of another State where such State is party to an applicable international agreement or arrangement with the objective of carrying out fisheries monitoring, control and surveillance operations jointly or cooperatively with the Government of (country), he/she shall make such reports to the Director as may be required</p>

Title	Summary	Indicative draft text
		pursuant to the terms of such international agreement or arrangement.
56. Identification of authorised officers	Authorised officers must identify themselves upon request and produce evidence that he/she is an authorised officer.	<p>(1) An authorized officer in exercising any power conferred by this Act shall, upon request, identify himself /herself and produce evidence that he/she is an authorized officer.</p> <p>(2) The production by any authorized officer of any identification document issued to him or her shall, until the contrary is proved, be sufficient authority for any such authorized officer to do anything which he/she is authorized by this Act to do.</p>
57. Powers of hot pursuit	Authorised officer may, following hot pursuit outside the fishery waters in accordance with international law.	An authorized officer may, following hot pursuit outside the fishery waters in accordance with international law and commenced within the fisheries waters, stop board and search outside the fisheries waters any vessel which he/she has reasonable grounds to believe has been used in the commission of an offence under this Act, exercise any powers conferred by this Act and bring such vessel and all persons and things aboard back into the fishery waters.
58. Powers of entry and search	For vessels, premises, etc. ,detaining any person, vessel, vehicle, aircraft, document, gear, fish, etc.;	<p>(1) An authorized officer may, for purposes falling within the scope of this Act, without a warrant at any reasonable time:</p> <ul style="list-style-type: none"> <li>(a) stop, enter, board, stay on board, examine and search any vessel, vehicle or aircraft, including: <ul style="list-style-type: none"> <li>(i) any (national) vessel outside the fisheries waters; and</li> <li>(ii) any other vessel to which this Act or any international agreement applies;</li> </ul> </li> <li>(b) enter, examine and search any premises or place, other than premises used exclusively as a dwelling house, including premises that are part of or attached to a dwelling house which he/she reasonably suspects are used for activities falling within the scope of this Act: <ul style="list-style-type: none"> <li>(i) in or on which he/she has reason to suspect that evidence of an offence against this Act may be found; or</li> <li>(ii) that it is necessary or expedient to enter or search to ascertain whether this Act is being or has been complied with;</li> </ul> </li> <li>(c) stop any person and examine any record, article, container, gear, apparatus, device, or fish in the possession of that person; and</li> <li>(d) pass across any land,</li> </ul>

Title	Summary	Indicative draft text
		<p>and may examine and search any document, record, article, container, gear, equipment, apparatus, device, container, fish and contents of any kind found therein or thereon.</p> <p>(2) An authorized officer may detain any person, vessel, vehicle, or aircraft, parcel, package, record, document, article, gear, equipment, apparatus, device, container, fish or thing for such period as is reasonably necessary to enable the authorized officer to carry out an examination or search under this section.</p> <p>(3) An authorized officer may, in respect of premises used exclusively as a dwelling house, only conduct searches and seizures in accordance with this section with a warrant issued by any court of competent jurisdiction and, the provisions of this section shall apply <i>mutatis mutandis</i>.</p>
59. Power to take, detain, remove and secure information and evidence	<p>Authorised officers have the power to take, detain, remove and secure information or evidence for purposes and activities falling within the scope of the Act.</p>	<p>An authorized officer may, for purposes and activities falling within the scope of this Act:</p> <ul style="list-style-type: none"> <li>(a) inspect, take, detain and secure samples, documents, logbooks or other information, or copies thereof, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house but including premises that are part of or attached to a dwelling house used for activities falling within the scope of this Act;</li> <li>(b) make or take copies of any record, and for this purpose may take possession of and remove from the place where they are kept any such records, for such period of time as is reasonable in the circumstances;</li> <li>(c) if necessary, require a person to reproduce, or assist the authorized officer to produce in a useable form, information recorded or stored in a document;</li> <li>(d) require any person associated or apparently associated with a vessel, premises, facilities or other place or activity falling within the scope of this Act, to provide such information as may be reasonably required for the monitoring or enforcement of this Act; and</li> <li>(e) otherwise remove and secure any item that may reasonably be considered to be evidence of an offence against this Act.</li> </ul> <p>(2) Where an authorized officer is questioning a person pursuant to subsection (1), he/she may, <i>inter alia</i> require:</p> <ul style="list-style-type: none"> <li>(a) the person being questioned to provide answers including any explanation or information</li> </ul>

Title	Summary	Indicative draft text
		<p>concerning any vessel or any place or thing or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, buying, trade, import, export or possession of any fish; and</p> <p>(b) require that person or any other person to produce any permit, authority, approval, permission, licence, certificate or other document issued in relation to any vessel or person.</p> <p>(c)</p>
60. Power of arrest	Specifies conditions under which an authorised officer may make an arrest.	<p>(1) An authorized officer may, if he/she believes on reasonable grounds that a person is committing or has committed an offence against this Act, or if a person assaults him/her or any other authorized officer, inspector or observer while exercising his/her powers or duties under this Act, or offers a bribe to an authorized officer, inspector, or observer:</p> <p>(a) order that person to forthwith cease and desist;</p> <p>(b) request that person to supply to the authorized officer that person's name, date of birth, residential address and occupation and may request that person to supply such verification of those details as it is reasonable in the circumstances to require that person to provide; and</p> <p>(c) arrest, without warrant, that person.</p> <p>(2) If an authorized officer arrests a person under subsection (1) the authorized officer shall cause the person to be delivered into the custody of a member of Police Force as soon as practicable and that person shall thereafter be dealt with in accordance with the relevant law or laws,</p>
61. Power to give direction	An authorised officer may, upon belief that the vessel is being or has been used in contravention of the Act, take the vessel to the nearest available port in the country, and remain in control of the vessel for a reasonable period of time.	<p>(1) An authorized officer may, if he/she believes that a vessel is being or has been used in contravention of the provisions of this Act or of the conditions of any license, authorization, authority, approval, permission, registration or certificate issued or otherwise effected under this Act:</p> <p>(a) take the vessel as soon as reasonably practicable to the nearest available port in (country) or such port as may be agreed between the master and the authorized officer; and</p> <p>(b) remain in control of the vessel at such port for such period as is reasonably necessary for the purpose of the authorized officer exercising any other powers under this Act, until the authorized officer permits the master to depart from that place, provided that the period does not exceed seventy two (72) hours in total where there are no reasonable grounds to suspect contravention of this Act.</p>

Title	Summary	Indicative draft text
		<p>(2) After an authorized officer has given a direction under subsection (1), he/she may also give to the master or any other person on board the vessel any reasonable direction in respect of any activity, method, procedure, item, gear, document, fish, property or thing while the vessel is proceeding to or remains in port.</p>
62. Power of seizure	<p>Gives power of seizure of authorized officer and identifies items that may be seized (e.g. vessel, conveyance, gear, fish, article, record etc) and retained (e.g. passports and seaman's books).</p>	<p>(1) For the purposes of this section:</p> <ul style="list-style-type: none"> <li>(a) a vessel's equipment, gear, furniture, appurtenances, stores, cargo and aircraft shall be deemed to form part of the vessel;</li> <li>(b) aircraft operating independently of a vessel shall be subject to this section; and</li> <li>(c) "Court" means the (High Court).</li> </ul> <p>(2) An authorized officer may seize:</p> <ul style="list-style-type: none"> <li>(a) any vessel or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment or thing which the authorized officer believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this Act;</li> <li>(b) any fish which the authorized officer believes on reasonable grounds are being, or have been taken, killed, transported, bought, sold or found in the possession of any person in contravention of this Act and any other fish with which such fish are intermixed;</li> <li>(c) any article, record or thing which the authorized officer believes on reasonable grounds may be or contain evidence of an offence against this Act;</li> <li>(d) retain any passport and seaman's book: <ul style="list-style-type: none"> <li>(i) of the master and crew of a vessel directed to return to and remain in port pursuant to this Act until the vessel is permitted to depart;</li> <li>(ii) of any person arrested, until that person is brought before a Court; or</li> <li>(iii) pursuant to any order of the Court; and</li> </ul> </li> <li>(e) any other item which the authorized officer has reasonable grounds to believe :</li> </ul>

Title	Summary	Indicative draft text
		<p>(i) has been or is being used in the commission of an offence against this Act;</p> <p>(ii) has been seized or forfeited under this Act; or</p> <p>(iii) has been unlawfully removed from custody under this Act.</p> <p>(3) Anything seized pursuant to subsection (1) shall be delivered into the custody of the Director.</p> <p>(4) A written notice shall be given to the person from whom any article or thing was seized or to any other person whom the authorized officer believes is the owner or person otherwise entitled to possession of the article or thing seized and the grounds for such seizure shall be stated in the receipt.</p>
63. Removal of parts from seized vessels, etc.	An authorised officer may remove any part from a seized vessel for the purpose of immobilizing it.	<p><b>146.</b> (1) An authorized officer may remove any part from the vessel seized pursuant to this Act for the purpose of immobilizing that vessel.</p> <p>(2) Any part or parts removed under subsection (1) shall be kept safely and returned to the vessel upon release.</p> <p>(3) No person shall, otherwise than acting under the authority of the Director:</p> <p>(a) possess or arrange to obtain any part or parts removed under subsection (1);</p> <p>(b) possess or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or</p> <p>(c) fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel immobilised pursuant to this Act.</p>
64. Authority of authorised officer or inspector in relation to abandoned fishing vessels, fishing gear, fish or fish products	Where an authorised officer has reason to believe that any fishing vessel, gear or fish product has been abandoned to avoid prosecution, he/she shall apply to the Court for an order to dispose of it. He/she may also investigate	<p>(1) Where an authorized officer has reason to believe that any fishing vessel, fishing gear, fish or fish product has been abandoned for the purpose of avoiding prosecution, he/she shall apply to the Court of applicable jurisdiction for an Order to dispose of the fishing vessel, fishing gear, fish or fish product.</p> <p>(2) Where a fishing vessel or fishing gear or fish product is abandoned, and an authorized officer or inspector believes that any person is liable to be investigated, searched or arrested in connection with a commission of an offence under this Act, or that person has absconded to any place within or outside (country), or has concealed himself or herself so that he/she cannot be searched, arrested or otherwise investigated, the authorized officer or inspector may cause investigation measures to be taken in relation to the area or premises and property previously</p>



Title	Summary	Indicative draft text
	the area/premises where fishing vessel, gear, products are abandoned and he/she believes that a person has done so to avoid investigation.	in possession, occupation or under control of the suspect.
<p style="text-align: center;"><b>Division 3</b>  <b>Appointment and functions of inspectors and observers</b></p>		
65. Observer programmes	May be established for collecting, recording and reporting reliable and accurate information for scientific, management and compliance purposes.	<p>(1) An observer programme shall be established by the Minister for the purpose of collecting, recording and reporting reliable and accurate information for scientific, management, and compliance purposes including, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>(a) the species, quantity, size, age, and condition of fish taken;</li> <li>(b) the methods by which, the areas in which, and the depths at which, fish are taken;</li> <li>(c) the effects of fishing methods on fish, and the environment;</li> <li>(d) all aspects of the operation of any vessel;</li> <li>(e) processing, transportation, transshipment, storage, or disposal of any fish;</li> <li>(f) monitoring the implementation of management measures and applicable international conservation and management measures; and</li> <li>(g) any other matter that may assist the Director to obtain, analyse, or verify information for fisheries scientific, management, and compliance purposes.</li> </ul> <p>(2) Observers may be deployed as may be directed by the Director in accordance with this Act, any applicable international agreement or arrangements, including an agreement or arrangement with the objective of carrying out fisheries monitoring, control and surveillance operations jointly or cooperatively with the Government of (national country), or any international conservation and management measures on any vessel used for fishing, transshipment, transportation and/or landing of fish within and beyond the fishery waters and such other uses as may fall within the scope of this Act.</p>

Title	Summary	Indicative draft text
66. Appointment of, and identification by inspectors and observers	Director may appoint inspectors for monitoring, compliance and management, and observers for purposes of the observer programme. Inspectors and observers must identify themselves on request and produce evidence of their appointment.	<p>(1) The Director may, in writing, appoint:</p> <ul style="list-style-type: none"> <li>(a) inspectors for purposes of monitoring, compliance and management and auditing, including inspections of vessels, premises and facilities and aquaculture establishments to gather information, monitor and report on the fulfillment of pre-licensing requirements and any obligations pursuant to this Act; and</li> <li>(b) observers for purposes of the observer programme established under section 66, in accordance with such standards and procedures as may be prescribed or approved by the Minister.</li> </ul> <p>(2) An inspector or observer shall on request identify himself or herself and produce evidence that he/she is an inspector or observer.</p>
67. Conditions for observers	The operator and licence holder of any vessel upon which an observer is placed must provide the observer with a certain standard of accommodation, work space, assistance, etc.	<p>The operator and license holder in respect of any vessel on which an observer is placed shall:</p> <ul style="list-style-type: none"> <li>(a) provide full board, accommodation and access to any cooking and toilet facilities and amenities at officer level or similar standard approved in writing by the Director and free of charge at all times;</li> <li>(b) provide a safe work area adjacent to the sample collection site, for sampling and storage of fish to be sampled, of 4.5 square meters, including the observer's sampling table and which permits the observer to stand upright and have a work area at least 0.9 m deep in the area front of the table and scale;</li> <li>(c) notify the observer at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer;</li> <li>(d) collect bycatch when requested by an observer;</li> <li>(e) collect and carry baskets of fish when requested by an observer;</li> <li>(f) allow an observer to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch;</li> <li>(g) take measurements, including of decks, codends, and holding bins;</li> <li>(h) ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of any observer involved; and</li> </ul>

Title	Summary	Indicative draft text
		(i) comply with such other requirement as may be prescribed or the Minister may require in writing.
68. Observer costs	All observer costs are itemized and to be paid by or on behalf of the vessel upon which the observer is placed including salary, travel, insurance and training.	<p>(1) The costs of operating the observer programme shall consist of funds paid by:</p> <ul style="list-style-type: none"> <li>(a) licence holders in respect of all or any vessels licensed or authorized pursuant to this Act as a specified component of the licence fee, at such level and in such manner as the Director may require, in accordance with any relevant policy which may be adopted by the Minister or such level as may be prescribed;</li> <li>(b) such other source as may be qualified to contribute (established under the law as appropriate, e.g. for an MCS Fund).</li> </ul> <p>(2) The costs referred to in subsection (1) shall include, <i>inter alia</i>-</p> <ul style="list-style-type: none"> <li>(a) full insurance coverage;</li> <li>(b) salary;</li> <li>(c) allowances;</li> <li>(d) equipment;</li> <li>(e) training;</li> <li>(f) all travel and associated expenses to and from the vessel to which the observer is assigned; and</li> <li>(g) other costs associated with the management and administration of the observer programme at a level to be prescribed or approved in writing by the Minister.</li> </ul> <p>(3) Where payment of such costs is not made at the required time, or within thirty days of such reasonable time as may be required by the Director, the relevant licence shall be cancelled.</p>
69. Embarkation and disembarkation of observer	The Director must give reasonable notice of intention to place an observer on a vessel, and the vessel must comply with the instruction. The vessel must disembark the observer at the time and	<p>(1) The operator of a licensed vessel shall notify the Director-</p> <ul style="list-style-type: none"> <li>(a) at the beginning of each licensing period of any port or ports in Solomon Islands where it intends to base operations for purposes of observer placement, and if placement is not possible at such port or ports the operator of the vessel shall be responsible to the Director or all and any extra costs incurred in observer placement;</li> <li>(b) of the intended time of entry into and subsequent departure from port at such reasonable</li> </ul>

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	place required by the Director.	<p>time prior to such entry as the Director may direct for the purpose of arranging observer deployment.</p> <p>(2) The Director shall give reasonable notice of intention to place an observer on a vessel, and the operator shall comply with the conditions of the Director's notification.</p> <p>(3) The operator of the vessel shall safely disembark the observer at the time and place required by the Director and shall pay all travel and associated repatriation costs.</p>
70. Requirements for monitoring of offloading	Where a fishing vessel is required as a condition of licence to be subject to the monitoring of offloading, the offloading shall take place at a port where an inspector or observer is available for such monitoring.	The operator of any fishing vessel required as a condition of licence to land all or part of its catch in country) shall cause such landings to take place only where an observer or inspector is present to monitor such offloading and otherwise perform his/her functions pursuant to this Act.
<p style="text-align: center;"><b>Division 4</b></p> <p><b>Application of Act to authorized officers, observers in areas beyond national jurisdiction, and to non-national authorized officers and observers in areas under national jurisdiction</b></p>		
71. Application of Act to authorized officers and observers in areas beyond national jurisdiction	National authorized officers and observers carrying out duties under the Act beyond national jurisdiction in accordance with any international agreement, international conservation and management measures or international law shall be subject to the provisions of the Act.	Where any authorized officer or observer is carrying out duties under the scope of this Act in areas beyond national jurisdiction, and in accordance with any agreement with an applicable coastal State, a regional or international agreement, international conservation and management measures or international law, he/she shall be subject to the provisions of this Act.
72. Application of Act to non-	Provides for recognition of non-national authorized	Where any non-national authorized officer or observer is carrying out duties under the scope of this Act in areas within national jurisdiction and under an agreement between the Government of (national country) and the

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national authorized officers and observers under agreement in national waters	officers and observers where they are carrying out MCS duties under an agreement to which Seychelles is party, and gives them full authorities under the Act.	government of which the authorized officer or observer is a national, which so provides, such authorized offer or observer has full powers and duties under this Act as if he/she were a national of (national country).
<p style="text-align: center;"><b>Division 5</b> <b>Protection and obstruction of authorised persons</b></p>		
73. Protection of authorised persons from liability	Persons carrying out their duties under the Act are not subject to action, liability or claim. In respect of vessels brought to port, where the master is in control he/she is responsible for the safety of the vessel and persons on board. (Authorised persons include officers, inspectors and observers.)	<p>(1) The Ministry and officers, employees and other persons acting under the authority of the Ministry, including persons with delegated authority and any person assisting an authorized officer who acts or omits to act while performing duties under this Act shall not be subject to any action, liability, claim or demand for any matter or thing done or omitted to be done in good faith (whether negligently or not) in the performance or purported performance of any function or duty, or exercise or purported exercise of any power under this Act, or any other applicable fisheries law.</p> <p>(2) Where a vessel is being brought to a place in (country) in accordance with this Act:</p> <p style="padding-left: 40px;">(a) where the master is required to remain in control the master shall be responsible for the safety of the vessel and each person on board the vessel until the vessel arrives at the designated place; and</p> <p style="padding-left: 40px;">(b) no claim may be made against any authorized person in respect of any death, injury, loss or damage that occurs while the vessel is being brought to such place.</p> <p style="padding-left: 40px;">(2) The State shall not be held directly or indirectly liable for an act or omission of any authorized person or person assisting an authorized officer, unless such person would incur liability for the act or omission.</p>
74. Duties of operators, etc, to authorized persons	The operator and crew aboard a vessel or others carrying out activities under the Act to which an inspector or observer has been assigned have	<p>(1) The operator and each crew member of any vessel, or licence holder in respect of any vessel on which an observer is placed or to which an inspector has been assigned, shall allow and assist the inspector or observer, in the performance of his/her official duties, to carry out his/her duties, including to:</p> <p style="padding-left: 40px;">(a) board such vessel at such time and place as the Director may require;</p>

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	specified duties to allow and assist the inspector or observer to effectively carry out his/her duties under the Act.	<p>(b) receive and transmit messages and communicate with the shore and other vessels by means of the vessel's communications equipment;</p> <p>(c) take photographs of the fishing operations, including fish, gear, equipment, documents, charts and records, and remove from the vessel such photographs or film as he/she may have taken or used on board the vessel;</p> <p>(d) gather such other information relating to fisheries as may be required for purposes of carrying out the objectives of this Act; and</p> <p>(e) allow observers to disembark at such time and place as the Director may require or in accordance with an applicable access agreement, provided it is in accordance with the safe operation of the vessel.</p> <p>(2) The provisions of subsection (1) shall apply:</p> <p>(a) when the vessel is at any place in the fisheries waters or such other place where fish taken from the fisheries waters is unloaded or transhipped as may be required in the applicable licence, access agreement or international conservation and management measures, or as may be otherwise authorized under any applicable access or other agreement, or in the applicable licence; and</p> <p>(b) in the case of a (national) fishing vessel operating under an authorization to fish in the high seas in areas subject to international conservation and management measures, when the vessel is on the high seas in an area subject to such international conservation and management measures or otherwise in accordance with such measures or the applicable license or authorization.</p>
75. Obstruction, etc of authorised persons	A wide range of prohibited actions are described which would result in the obstruction, etc. of an authorised person.	<p>(1) For the purposes of this section "fail" includes any effort which does not result in meeting the specified requirement.</p> <p>(2) No person shall:</p> <p>a) being the operator or crew member of a vessel, fail or refuse to allow and assist any person identified as an authorized person:</p> <p>(i) safe boarding of a vessel;</p> <p>(ii) to have full access to and use of all facilities, gear and equipment on board which</p>

Title	Summary	Indicative draft text
		<p>such authorized person may determine is necessary to carry out his/her duties, including full access to the bridge, fish and fish products on board, fishing gear and areas which may be used to hold, process, weigh or store fish; that are not of a specified size or dimension;</p> <p>(iii) to have full access to the vessel's records including its logs, charts and documentation and other information relating to fishing, whether required to be carried and maintained under this Act or otherwise, for purposes of carrying out functions and exercising powers under this Act, including records inspection and copying;</p> <p>(iv) to have access to all navigational and communications equipment;</p> <p>(v) to take, measure, store on or remove from the vessel and retain such reasonable samples or whole specimens of any fish as may be required for scientific purposes;</p> <p>(vi) where any authorized person is forced by circumstances to stay on board the vessel for a prolonged period of time, provide him/her while on board the vessel with food, accommodation and medical facilities equivalent to that accorded to officers of the vessel, at the expense of the operator; and</p> <p>(vii) safe disembarkation from a vessel;</p> <p>b) fail or refuse to allow an audit, inspection, examination or search that is authorized by or under this Act to be made or impedes the same;</p> <p>c) in respect of any premises, facility, including those used for aquaculture, cold storage, export and processing, landing site or other place where person(s) engage in activities within the scope of this Act fail or refuse to facilitate by all reasonable means the entry into and inspection by an authorized person in accordance with this Act of:</p> <p>(i) the entire premises, facility, landing site or other place including storage areas; and</p> <p>(ii) any fish or fish product, fishing gear, equipment or records;</p> <p>d) fail, refuse or neglect to immediately and fully comply with every lawful instructions or directions given by an authorized person;</p> <p>e) deny a request by an authorized person made in the course of exercising his or her duties and powers under this Act, including requesting access to records, documents, areas, gear and equipment including navigation and communication equipment and that equipment be turned on for his or her use;</p>

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		<p>f) when lawfully required to state his/her name, date of birth and place of abode to an authorized person fail or refuse to do so or state a false name, date of birth or place of abode to the authorized person;</p> <p>g) when lawfully required by an authorized person to give information, give information which is false, incorrect or misleading in any material respect;</p> <p>h) resist lawful arrest for any act prohibited by this Act;</p> <p>i) aid, incite or encourage another person to assault, resist, intimidate or obstruct an authorized person who is carrying out his/her duties or exercising his/her powers under this Act, or any person lawfully acting under a authorized officer's instructions or in his/her aid;</p> <p>j) interfere with, delay or prevent by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act in contravention of this Act;</p> <p>k) fail or refuse to allow an authorized person to carry out all duties safely, or to take all reasonable measures to ensure the safety of an authorized person as appropriate in the performance of his/her duties;</p> <p>l) impersonate or falsely represent himself or herself to be an authorized officer, or to be a person lawfully acting under the Director's instructions or in his/her aid;</p> <p>m) impersonate or falsely represent himself or herself to be the master or an officer, or not to be the master or an officer, of a fishing vessel;</p> <p>n) fail to sail a seized vessel to a place in (country) designated by an authorized officer and fail to ensure the safety of all those on board;</p> <p>o) bribe or attempt to bribe an authorized person;</p> <p>p) interfere with an authorized person in the performance of his/her duties; or in any other way obstruct or hinder an authorized person in the exercise of his or her powers, duties or functions under this Act;</p>



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		<p>q) use abusive or threatening language or insulting gestures or behave in a threatening or insulting manner towards an authorized person who is carrying out his/her duties or exercising his/her powers under this Act, or towards any person lawfully acting under the authorized officer's instructions or in his/her aid; or</p> <p>r) obstruct, resist, delay, refuse boarding to, intimidate, or kidnap an authorized person who is performing his/her duties or exercising his/her powers under this Act, or any person lawfully acting under a authorized officer's instructions or in his/her aid; or</p> <p>s) breach any other duty to an authorized person as required under this Act.</p>
<p style="text-align: center;"><b>Division 6</b> <b>Requirements for vessel monitoring systems</b></p>		
76. Vessel Monitoring Systems	Director may establish and operate vessel monitoring systems for monitoring, control and surveillance, and managing the operation of fishing vessels. Requirements are set out	<p>(1) The Director may establish and operate vessel monitoring systems for purposes of monitoring, control and surveillance, and managing the operations of fishing vessels under this Act.</p> <p>(2) The Director may require the operator of any fishing vessel, as a condition of licence or otherwise, to install, maintain and operate in accordance with such conditions as may be prescribed and such other conditions that may be required by the Director, a mobile transceiver unit or other device or equipment that is an integral component of a vessel monitoring system at all times while the fishing vessel is in the fishery waters or, in respect of a (country) fishing vessel, in areas beyond national jurisdiction or such other area as may be prescribed or agreed in an international agreement or international conservation and management measures.</p> <p>(3) The operator of each fishing vessel shall comply with all licence conditions and requirements imposed pursuant to subsection (2) and shall, where the mobile transceiver unit or other device or equipment ceases to operate immediately:</p> <p style="padding-left: 40px;">(a) notify the Director when the mobile transceiver unit or other device ceases to operate in accordance with such requirements; and</p> <p style="padding-left: 40px;">(b) cause the vessel to cease fishing except as otherwise authorized by the Director.</p> <p>(4) Where the mobile transceiver unit or other device ceases to operate as required, the operator shall immediately notify the Director and submit to him/her a report of the vessel's name, call sign, position (expressed</p>

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		<p>in latitude and longitudes to the minutes of arc) and the date and time of the report at intervals of four hours or such other period as the Director may notify the operator and:</p> <ul style="list-style-type: none"> <li>(a) cause the vessel to cease fishing except as otherwise authorized by the Director; or</li> <li>(b) cause the vessel to immediately return to the port of Mombasa.</li> </ul> <p>(5) The operator shall comply with such other conditions that may be prescribed and such additional conditions that may be required by the Director, including:</p> <ul style="list-style-type: none"> <li>(a) the type of vessel monitoring system equipment to be used;</li> <li>(b) installation procedures;</li> <li>(c) operational requirements;</li> <li>(d) information requirements;</li> <li>(e) confidentiality; and</li> <li>(f) reports.</li> </ul> <p>(6) No person shall:</p> <ul style="list-style-type: none"> <li>(a) without lawful excuse render inoperative or otherwise interfere with a mobile transceiver unit or other device installed pursuant to this Act so that it does not operate accurately or in accordance with any prescribed conditions;</li> <li>(b) whether within, or in areas beyond, national jurisdiction, intentionally, recklessly or negligently destroy, damage, render inoperative or otherwise interfere with any part of an mobile transceiver unit or vessel monitoring system aboard a vessel licensed pursuant to this Act, or intentionally feed or input into that system information or data which is not officially required or is meaningless; or</li> <li>(c) intentionally, recklessly or negligently divulge information or data obtained from a vessel monitoring system or a system of reporting or recording required or permitted under this Act, other than in the course of duty and to a person or persons entitled to receive that information or data.</li> </ul>
<b>Division 7</b>		

Title	Summary	Indicative draft text
<b>Requirements for use of ports<sup>109</sup></b>		
77. Use of port without authorization prohibited	Requires notification of entry into port and certain information to be given and an authorization prior to entering port. Otherwise the use of port is prohibited for the landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including refuelling and resupplying, maintenance and drydocking. Director may deny entry into port if IUU fishing is suspected.	<p>No foreign fishing vessel shall use a port in (country) for landing, transshipping, packaging, or processing of fish or for other port services including, <i>inter alia</i>, refuelling and resupplying, maintenance and drydocking, unless:</p> <ul style="list-style-type: none"> <li>(a) the port has been designated for use by foreign fishing vessels;</li> <li>(b) the operator has given at least 48 hours advance notice or such other notice as may be prescribed or required by the Director;</li> <li>(c) the operator has provided to the Director such information as may be prescribed or he/she may require;</li> <li>(d) in the case of a foreign fishing vessel, a written authorization for the use of such port has been issued by the Director; and</li> <li>(e) where the Director has authorized entry of such vessel into port, the master of the vessel or, in the case of a foreign fishing vessel, the vessel's representative presents the authorization for entry into the port to an authorized officer or other competent officer upon the vessel's arrival at port.</li> </ul>
78. Vessels may be prohibited from entering port	Vessels may be prohibited from entering port where there is sufficient proof of IUU fishing	<p>(1) Authorization to enter a port shall be denied where there is sufficient proof that a vessel seeking entry into port has engaged in illegal, unreported and unregulated fishing or fishing related activities in support of illegal, unreported and unregulated fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a regional fisheries management organization, in which (country) is a member or cooperating non-member, in accordance with the rules and procedures of such organization and in conformity with international law.</p> <p>(2) Notwithstanding subsection (1), authorization for such a vessel to enter a port may be given exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating illegal, unreported and unregulated fishing and fishing related activities in support of illegal, unreported and unregulated fishing.</p>

<sup>109</sup> This Division is based on the requirements in the 2009 FAO Agreement on Port State Measures to combat illegal, unreported and unregulated fishing, as well as IOTC Resolution 10/11 which is almost identical.

Title	Summary	Indicative draft text
79. Denial of the use of port to a foreign fishing vessel	Sets out reasons why the use of port either must be denied, or may be denied for activities listed in previous section. It may be denied either before or after inspection for applicable reasons.	<p>Where a foreign fishing vessel has entered one of its ports, the Director shall deny that vessel the use of the port for landing, transshipping, packaging or processing of fish that have not been previously landed or for other port services, including, <i>inter alia</i>, refuelling and resupplying, maintenance and drydocking, where:</p> <ul style="list-style-type: none"> <li>(a) the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by its flag State;</li> <li>(b) the vessel has not been granted a valid and applicable license to engage in fishing or fishing related activities required under this Act;</li> <li>(c) there is clear evidence that the fish on board was taken in contravention of applicable requirements of any coastal State in respect of areas under the national jurisdiction of that coastal State;</li> <li>(d) the flag State of any foreign fishing vessel does not confirm within a reasonable period of time on the request of the Director that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization; or</li> <li>(e) there are reasonable grounds to believe that the vessel was otherwise engaged in illegal, unreported or unregulated fishing or fishing related activities in support of illegal, unreported or unregulated fishing, unless the operator of the vessel can establish: <ul style="list-style-type: none"> <li>(i) that it was acting in a manner consistent with relevant conservation and management measures; or</li> <li>(ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not at the time of provisioning a vessel referred to in subparagraph (e);</li> </ul> </li> </ul> <p>(2) Notwithstanding subsection (1), a vessel shall not be denied the use of port services essential to the safety and health of the crew and the safety of the vessel, provided these needs are duly proven, or, where appropriate, for the scrapping of the vessel.</p>
80. Inspection of foreign fishing	Inspection must take place according to certain	(1) In carrying out inspections of fishing vessels in port, authorized officers shall follow such procedures as may be prescribed or the Director may require to the extent possible, and:

Title	Summary	Indicative draft text
vessels in port	procedures, and the reports of inspection must contain specified information.	<p>(a) present to the master of the vessel an identification document prior to an inspection;</p> <p>(b) in case of appropriate arrangements with the flag State of a foreign fishing vessel, invite that State to participate in the inspection;</p> <p>(c) not interfere with the ability of the master of a foreign fishing vessel, in conformity with international law, to communicate with the authorities of the flag State;</p> <p>(d) make all possible efforts to:</p> <p style="padding-left: 40px;">(i) avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of authorized officers on board, and to avoid action that would adversely affect the quality of the fish on board;</p> <p style="padding-left: 40px;">(ii) facilitate communication with the master or senior crew members of the vessel; and</p> <p>(e) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel.</p> <p>(2) A report of the inspection shall promptly be provided to the Director in such form as may be prescribed or the Director may require.</p>
<b>VII. EVIDENCE</b>		
81. Certificate evidence	The Director or any person designated in writing by him may give a certificate stating specified things, e.g. whether a person held a licence, that a document is a true copy of the licence, a particular location is within the fishery waters, an item is fishing gear, the cause and	<p>(1) The Director or any person designated in writing by him or her may give a certificate stating that:</p> <p>(a) a specified vessel was or was not on a specified date or dates a (country) fishing vessel or a foreign fishing vessel;</p> <p>(b) a person was or was not on a specified date or dates the holder of any specified license, authorization or registration;</p> <p>(c) a specified fishing vessel was not on a specified date or dates the subject to a specified license, authorization or registration;</p>

Title	Summary	Indicative draft text
	manner of death and injury to any fish, etc.	<p>(d) an appended document is a true copy of the license or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;</p> <p>(e) a particular location or area of water was on a specified date or dates within the (country) fishery waters or a closed, limited, restricted or in any other way controlled area of the (country) fishery waters, or an area of the (country) fishery waters subject to specified conditions;</p> <p>(f) an appended chart shows the boundaries on a specified date or dates of the (country) fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;</p> <p>(g) a particular item or piece of equipment is fishing gear;</p> <p>(h) the cause and manner of death of or injury to any fish;</p> <p>(i) an appended document is a true copy of an approved charter agreement or an access agreement;</p> <p>(j) a call sign, name, or number is that of or allotted to a particular vessel under any system of naming or numbering of vessels;</p> <p>(k) an appended position or catch report was given for a specified vessel;</p> <p>(l) a specified fishing vessel is included on a list of illegal, unreported and unregulated fishing vessels or authorized fishing vessels established by a regional fisheries management organization or pursuant to an international agreement; or</p> <p>(m) a certificate as to the condition of fish given under this Act was made in accordance with this Act and was made by the person who is signatory to the certificate.</p>
82. Validity and procedure for certificate	A document issued under previous section shall be deemed such a certificate. a process of service on the defendant is set out, and	<p><b>176.</b> (1) Unless the contrary is proved, a document purporting to be a certificate issued under section 83 shall be deemed to be such a certificate and to have been duly issued.</p> <p>(2) Where a certificate issued under section 83 is served on a defendant seven or more days before its production in court in any proceedings under this Act, the certificate shall, unless the contrary is proved, be sufficient evidence</p>

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	<p>where there is no objection the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.</p>	<p>of all the facts averred in it.</p> <p>(3) Where a certificate issued under section 83 is served upon a defendant fourteen or more days before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing on the prosecutor, then the certificate shall, unless the Court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.</p> <p>(4) Where any objection is notified under subsection (3) the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.</p> <p>(5) Any certificate issued under section 83 shall be titled “Certificate made under section 83, Fisheries Management and Development Act” and no such certificate may be used as conclusive proof of the facts averred therein unless it is served with a copy of sections 83 and 84 of this Act.</p> <p>(6) Any omission from or mistake made in any certificate issued under section 83 shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced by it.</p> <p>(7) Where in any proceedings a certificate made under section 83 is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the Court shall, where material, rely on the facts therein unless the contrary is proved.</p>
<p>83. Certificate as to the location of a vessel</p>	<p>A certificate as to the location of a vessel shall be evidence, unless the contrary is proved, of the place or area in which a vessel was at the relevant date and time.</p>	<p><b>177.</b> (1) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, then a place or area stated in a certificate by an authorized officer shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.</p> <p>(2) An authorized officer shall in any certificate made under subsection (1) state:</p> <p>(a) his name, address, official position, country of appointment and provision under which he is appointed;</p> <p>(b) the name, if known, call sign of the fishing vessel concerned;</p> <p>(c) the date and time or period of time the vessel was in the place or area;</p>

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		<p>(d) the place or area in which it is alleged the vessel was located;</p> <p>(e) the position fixing instruments used to fix the place or area stated in paragraph (d) and their accuracy within specified limits;</p> <p>(f) a declaration that he checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and</p> <p>(g) if a position fixing instrument which is not judicially noticed as notoriously accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such instrument.</p> <p>(3) Section 83 shall apply to a certificate given under this section as if it had been a certificate issued under section 149 and any reference therein to section 180 shall be read as a reference to this section.</p> <p>(4) For the purposes of this section “authorized officer” shall include surveillance officers and those charged with similar responsibilities in other countries.</p>
84. Electronic location device	The readings of any mobile transceiver unit or other electronic location device integral to a vessel monitoring system may be used as <i>prima facie</i> evidence unless the contrary is proved.	<p>(1) The readings of any mobile transceiver unit or other electronic location device integral to a vessel monitoring system shall be admissible as evidence and may be used as <i>prima facie</i> evidence unless the contrary is proved of the facts that they aver.</p> <p>(2) The readings of such devices may be made from a printout or as observed from a visual display unit.</p> <p>(3) Any electronic location device must be capable either wholly or partially in itself of producing the readings concerned and not merely be a receiver of information or data.</p>
85. Photographic evidence	If a photograph is taken of any activity under the Act, and the date and time are superimposed, it is <i>prima facie</i> evidence that the photograph was taken on that date, under certain conditions.	<p>(1) If a photograph is taken of any fishing or fishing related activity and the date and time on and position from which the photograph is taken are simultaneously superimposed upon the photograph, it shall be <i>prima facie</i> evidence that the photograph was taken on the date, at the time and in the position so appearing.</p> <p>(2) The provisions of this section shall apply only when:</p> <p>(a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and</p>



Title	Summary	Indicative draft text
		<p>(b) the instruments which provide the date, time and position are notoriously recognised as being accurate or are designated machines or were checked as soon as possible after the taking of the photograph against such instruments.</p> <p>(3) The provisions of this section do not affect the admissibility of photographic evidence in any way.</p>
86. Presumptions	A range of rebuttable evidentiary presumptions are given, e.g. all fish on board a vessel used to commit an offence are presumed to have been caught during the commission of the offence, unless the contrary is proved.	<p>(1) All fish found on board any fishing vessel which has been used in the commission of an offence under this Act shall be presumed to have been caught during the commission of that offence, unless the contrary is proved.</p> <p>(2) All fish found on board any fishing vessel in respect of which false or misleading information or no information has been provided prior to the vessel's entry into port, as required pursuant to this Act, shall be presumed to have been caught during the commission of an offence or during illegal, unreported or unregulated fishing activities, unless the contrary is proved.</p> <p>(3) Where, in any legal proceedings under this Act, the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place.</p> <p>(4) The production of a written copy or extract of the entry certified by a fisheries inspector as a true copy of the accurate extract shall be <i>prima facie</i> evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft.</p> <p>(5) Where in any legal proceedings relating to an offence under this Act:</p> <p style="padding-left: 40px;">(a) an authorized officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fishery waters; and</p> <p style="padding-left: 40px;">(b) the Court considers that, having regard to that evidence the grounds are reasonable,</p> <p>all the fish shall be presumed to have been so taken, unless the contrary is proved.</p> <p>(6) Where in any legal proceedings for an offence under this Act:</p> <p style="padding-left: 40px;">(a) an authorized officer gives evidence of reasonable grounds to believe that any fish to which the</p>

Title	Summary	Indicative draft text
		<p>charge relates were taken by the use of illegal gear; and</p> <p>(b) the Court considers that, having regard to the evidence, the grounds are reasonable, all the fish shall be presumed to have been so taken, unless the contrary is proved.</p> <p>(7) Where any information is given for a fishing vessel under this Act or an access agreement in relation to any fishing activity of a fishing vessel, it shall be presumed to have been given by the master, owner or charterer of the vessel concerned, unless it is proved it was not given or authorized to be given by any of them.</p> <p>(8) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be deemed to be that of the master, owner and charterer of the vessel, unless proven otherwise.</p> <p>(9) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act shall be presumed to be accurate.</p> <p>(10) For the purposes of subsection (6), a position fixing instrument shall be deemed to be any device which indicates the location of a vessel, including but not limited to any global positioning system.</p> <p>(11) The readings from any vessel monitoring, communications or navigation equipment required under this Act, either made from a printout or observed from a visual display unit, and which are capable either wholly or partly of producing the readings concerned and are not merely receivers of information or data, when checked for correct working and read by a competent operator, shall, unless the contrary is proved, be presumed to give accurate readings within the manufacturers specified limits.</p> <p>(12) Unless the contrary is proved, any person who is found in possession of any illegal fishing gear, including explosives, poison or any device capable of producing an electric shock on or near the fishery waters shall be presumed to be undertaking an unlawful activity contrary to this Act.</p>
87. Onus of proof	Circumstances in which the onus of proof is reversed are given, e.g. the charged person must prove that he/she held a requisite licence.	<p>(1) Where, in proceedings under this Act, a person is charged with having committed an offence involving an act for which a license, authorization or other permission is required, the onus shall be on that person to prove that at the relevant time, the requisite license or authorization or other permission was held by that person.</p> <p>(2) Where a person is charged with the contravention of entering into the fishery waters for a purpose inconsistent with international law or in violation of this Act, the onus shall be on that person to prove that his</p>

Title	Summary	Indicative draft text
		<p>entry into the fishery waters was for a purpose recognized by international law.</p> <p>(3) Where a person is charged with furnishing information that is not true, complete and accurate, the onus shall be on that person to prove that the information given was true, complete and accurate.</p>
88. Interfering with evidence	Interfering with evidence is prohibited and various circumstances are given, e.g. destroy gear, fish etc with intent to avoid seizure, remove from legal custody vessel, fish etc.,	<p>(1) No person shall, being on board any vessel being pursued, about to be boarded or notified that it will be boarded by an authorized officer, whether in the (country) fishery waters or beyond areas under national jurisdiction, who throws overboard or destroys any fish, equipment, document, explosive, noxious substance or other item with intent to avoid its seizure or the detection of any offence against this Act.</p> <p>(2) No person shall destroy or abandon any fish, fishing gear, net or any other fishing appliance, electric shock device, explosive, poison or any other noxious substance, or any other thing with intent to avoid their seizure or the detection of an offence against this Act.</p> <p>(3) No person shall remove from legal custody any vessel, fish, equipment or other item, or do any act or omission by which a vessel, fish, equipment or other item held in legal custody may be so removed, whether or not she/he knew that the vessel, fish, equipment and other item was being held in custody.</p> <p>(4) No person shall intentionally, recklessly or negligently destroy, damage, render inoperative or otherwise interfere with any premises or licensed aquaculture establishment.</p>
89. Tampering with item, etc that may be used in evidence of non-compliance with the Act	Prohibited to tamper with, destroy etc. any item, document or other thing that may be used in evidence of non-compliance with the act.	No person shall tamper with any item, document or thing that may be used in evidence of non-compliance with this Act, including evidence relating to the catching, loading, landing, handling, transshipping, transporting, processing, possession, aquaculture and disposal of fish.
<b>VII. JURISDICTION</b>		
90. Jurisdiction of Courts	Specifies the jurisdiction of the court for offences committed in areas within and beyond national jurisdiction, and deems the offence to have been	<p><b>187.</b> 1) Any act or omission in contravention of any provision of this Act committed:</p> <p>(a) by a person or vessel within the (country) fishery waters;</p> <p>(b) outside the fishery waters by any citizen or vessel or person ordinarily resident in (country);</p>

Title	Summary	Indicative draft text
	committed within the jurisdiction of the court.	<p>(c) outside the fishery waters by any person or vessel in contravention of conditions required under this Act for fishing for industrial fishing vessels or international conservation and management measures; or</p> <p>(d) by any person on board any national fishing vessel,</p> <p>shall be dealt with in a court determined by the (Chief Justice), but where a foreign fishing vessel is involved, the matter shall be dealt with by the (High Court) and the judicial proceedings shall be taken as if the act or omission had taken place within the jurisdiction of (country).</p> <p>(2) Where an authorized officer is exercising any powers conferred on him/her outside the (country) fishery waters in accordance with this Act, any act or omission of any person in contravention of a provision of this Act shall be deemed to have been committed within the fishery waters.</p> <p>Notwithstanding any provision of any other act, an information or charge in respect of any offence against this Act may be laid at any time within one year of the commission of the offence.</p>
91. Compounding	Allows compounding of an offence and establishes a transparent and accountable process.	<p><b>A. Decision to proceed administratively</b></p> <p>(1) The Director may, after consultation with the Minister and the written consent of the Attorney General, proceed administratively against any person who has been charged with a contravention of this Act.</p> <p>(2) The Director shall promptly notify the person charged that he or she may, within 24 hours of receiving such notification, choose to proceed administratively.</p> <p>(3) Where the person charged chooses to proceed administratively, he or she or she shall notify the Director in writing that he or she:</p> <p>(a) admits to having committed such violation; and</p> <p>(b) consents to summary administrative proceedings after being fully informed about these proceedings.</p> <p>(4) Upon notifying the Director of his or her choice under subsection (3), the person charged shall:</p> <p>(a) not engage in any activity within the scope of this Act until the penalty has been paid in full; and</p>

Title	Summary	Indicative draft text
		<p>(b) be deemed to have consented to any seizure which took place in accordance with this Act in relation to the violation subject to the Summary Administrative Proceedings, and to have waived any right to a hearing in the judicial process.</p> <p>(5) Upon receiving the notification given under subsection (3), the Director or his/her designee may handle this matter in accordance with this Part, in consultation with the Director of Public Prosecutions.</p> <p>(6) Where the person fails to respond to the Director's written notice within 24 hours, the Director shall refer the matter to prosecution.</p> <p><b>B. Summary Administrative Proceedings</b></p> <p>(1) The Director may, where the person charged has fulfilled the conditions of section 187 (3)), dispose of such violation by causing a Compounding Agreement to be drawn up by the Attorney General to formalise the terms and conditions for the Director to accept on behalf of the (country) Government from such person an Administrative Penalty, the amount of which shall:</p> <p>(a) not exceed the maximum fine or penalty prescribed under the Act, plus the fair market value of any fish caught illegally;</p> <p>(b) not be less than the minimum level of fine calculated in conformity with the guidelines required pursuant to section 189 and</p> <p>(c) where the person charged has committed the same or a similar offence in the past, an amount not less than the fine or determination previously set plus an additional ten per cent.</p> <p>(2) The compounding of an offence under this section shall be valid on the payment of the fine or penalty and the notification in writing upon payment, under the signature of both parties, to the appropriate Court.</p> <p>(3) Summary Administrative Proceedings shall be null and void if the full amount of the penalty as determined under subsection (1) is not paid within 3 working days of the notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately be referred to the Court.</p> <p>(4) On payment of the penalty in full under this section, the Director may order the release of any article, items, fish or fish products seized under this Act or proceeds of sale of such items, fish or fish products on such conditions</p>

Title	Summary	Indicative draft text
		<p>as he or she may determine.</p> <p>(5) Where the person is unable to pay the determination in full, that person may enter into an agreement with the Director and Attorney General providing that the determination shall be paid in such instalments as may be agreed.</p> <p>(6) In any proceedings brought against any person for an offence against this Act, it shall be a defence if such person proves that the offence for which he is charged has been compounded under this section.</p> <p>(7) The Director may order that any fishing gear or other appliance used for illegal fishing connected with the vessel be confiscated, but shall not impose a term of imprisonment in compounding an offence.</p> <p>(8) Any person aggrieved by a decision of the Director under this section may appeal to the High Court within thirty days of the Director's decision.</p>
<b>VIII. COMPLIANCE</b>		
92. Offences and fines	The offences and level of fines may be set in one section or in each section of the Act that describes an offence, or in a Schedule, which can be amended as a Regulation.	Each country should adopt its own approach to providing for offences. However, the penalty levels should be harmonized to the extent possible, particularly for foreign fishing vessels.
93. Court may order imprisonment	Provision for imprisonment (also refer to Article 73 of the 1982 UN Law of the Sea Convention, relating to imprisonment of foreigners for fisheries offences in the EEZ).	<p>Imprisonment may be ordered, except that the following provision should be included to implement Article 73 of the 1982 Law of the Sea Convention.</p> <p>(1) In cases of arrest or detention of foreign fishing vessels for a contravention of this Act, the Director shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.</p> <p>(2) Any foreign fishing vessel and its crew arrested for the contravention of any provision of this Act that governs any act of fishing or fishing related activity shall be promptly released upon the posting of a reasonable bond or other security.</p>

Title	Summary	Indicative draft text
		<p>(3) In the absence of any agreement to the contrary with the State of which the vessel or its crew are nationals, penalties for violations of this Act in the Exclusive Economic Zone shall not include imprisonment or any other form of corporal punishment.</p>
94. Court may order forfeiture	Provision for forfeiture.	<p>(1) Where a court convicts a person of an offence against this Act, or such other offences as may be prescribed for the purposes of this subsection, the Court may order the forfeiture of any of the following:</p> <ul style="list-style-type: none"> <li>(a) any fish, fish product, fishing vessel (including its gear, furniture, appurtenances, stores, cargo and aircraft) vehicle, aircraft, gear, equipment, explosive or noxious substance taken, used or otherwise involved in the commission of the offence;</li> <li>(b) where a fishing vessel, vehicle or aircraft was used in the commission of an offence, any fish on board such vessel, vehicle or aircraft at the time of the offence;</li> <li>(c) where a storage facility was used in the commission of the offence, any fish or fish products in the facility at the time of the offence; or</li> <li>(d) where any fish has been sold under section XX, the proceeds of the sale of the fish.</li> </ul> <p>(2) Where a court convicts a person of an offence against this Act, or such other offences as may be prescribed for the purposes of this subsection, in the commission of which a foreign fishing vessel was used or was otherwise involved, the Court shall order the forfeiture of:</p> <ul style="list-style-type: none"> <li>(a) the fishing vessel;</li> <li>(b) any gear and other equipment that was on the vessel concerned at the time of the offence; and</li> <li>(c) all fish or fish products on board the vessel at the time of the offence, or where the fish products have been sold, the proceeds of sale.</li> </ul>
95. Continuing offences and repeat offenders	Each day of a continuing offence shall be considered a separate offence.	<p>(1) Each day of a continuing offence shall be considered a separate offence.</p> <p>(2) Where a person has committed the same offence under this Act more than once, the level of fine shall, as a minimum, be doubled for each successive violation.</p>

Title	Summary	Indicative draft text
96. Banning order	A Court may order that a convicted person shall be banned from going on or remaining on board a fishing vessel, or carrying out specified activities for a period (e.g. of up to five years)	Where a person has been convicted of an offence against this Act, the Court may in addition to any other penalty or forfeiture, order that for a period not exceeding five years that person be banned from going on or remaining aboard any fishing vessel in the fishery waters.
97. Cancellation or suspension of licence	A Court may order that a convicted person's licence be cancelled or suspended.	In addition to any other penalty, the Court may order the suspension or cancellation of any license, permit or authorization given under this Act where there has been a serious violation of this Act.
98. Liability of operator	Act or omission of crew member is deemed to be that of the operator	In any proceedings under this Act, the act or omission of a crew member of a fishing vessel or in association with a fishing vessel shall be deemed to be that of the operator of the vessel, unless otherwise expressly provided.
99. Costs incurred by State	The operator and charterer of a vessel shall bear the costs to the Government in connection with seizures, prosecutions, costs of maintaining seized items and imprisonment.	<p>(1) The operator and charterer shall jointly and severally bear the cost or expenditure incurred by the Government, upon application by the Government and as determined by the Court upon conviction, in connection with:</p> <ul style="list-style-type: none"> <li>(a) the seizure of a fishing vessel, vehicle or aircraft or other item for an offence against this Act, including any relevant costs of pursuit of a vessel, vehicle or aircraft;</li> <li>(b) the prosecution for an offence in accordance with this Act;</li> <li>(c) the costs of imprisonment; and</li> <li>(d) the repatriation of the master or crew of any vessel seized under this Act.</li> </ul> <p>(2) The amount of any costs or expenditure by the Court under subsection (1) may be recovered in the same manner as a fine and shall be imposed in addition to any fine or penalty that may be ordered by the Court.</p> <p>(3) Nothing in subsection (1) shall be deemed to allow for the recovery of any cost or expenditure that has already been recovered pursuant to any other order made under this Act.</p> <p>(4) If it intends to apply for pursuit costs in accordance with subsection (1), the Government shall, fourteen (14) days prior to a trial related to the offence, serve the defendant with written details of those costs.</p>



Title	Summary	Indicative draft text
100. Compensation for loss or damage	A person who commits an offence may be liable for loss or damage caused by the offence and the amount may be awarded by the Court as compensation or restitution in addition to a fine.	<p>(1) Any person who commits an offence under this Act may be liable for loss or damage to any person or the environment caused by the offence notwithstanding any fine, penalty or other determination that may be required.</p> <p>(2) Concerning damages caused to any person or his or her fishing vessel and/or gear, they may include full compensate the owner or apparent owner of the fishing vessel and/or gear for any damage caused and for lost fishing time, any injured person compensation for medical expenses, injury and as appropriate loss of expectation of life, and the estate of any person who died as a consequence of the action full compensation for loss of life.</p>
101. Deprivation of monetary benefits	Where a Court has convicted a person, it may impose an additional fine equal to the court's estimation of a monetary benefit gained.	<p>(1) A Court that has convicted a person of an offence under this Act may summarily and without pleadings inquire into the pecuniary benefit acquired or saved by the person as a result of the commission of the offence and may, upon reliable expert evidence otherwise admissible in a court of law and in addition to other penalty imposed, impose a fine equal to the court's estimation of that pecuniary benefit, despite any maximum penalty elsewhere provided.</p> <p>(2) The Court shall, in imposing a fine pursuant to subsection (1), report fully in writing on details of the expert evidence upon which its judgment was based.</p>
102. Default for non-payment of fines	In addition to any other fine or penalty, the Court may order a default penalty for non-payment of fines or determinations.	In addition to any fine or penalty determined under this Act, the Court may order a default penalty for non-payment of fines or determinations, not to exceed one percent (1%) per day of the total amount of the fine or determination.
103. Non-payment of pecuniary penalties	Fines, forfeitures etc. unpaid may be sued for.	All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Act may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a court of competent jurisdiction in the name of the State as the nominal plaintiff; and all such proceedings shall be deemed to be civil proceedings.

**DRAFT AGREEMENT ON SHARED OR JOINT MANAGEMENT OF SHARED OR STRADDLING FISH  
STOCKS IN THE SOUTH WEST INDIAN OCEAN<sup>110</sup>**

**ARRANGEMENT OF ARTICLES**

PREAMBLE

ARTICLE 1	Definitions
ARTICLE 2	Objectives
ARTICLE 3	Principles
ARTICLE 4	Application
ARTICLE 5	Relationship with relevant international and regional laws, instruments, bodies and arrangements
ARTICLE 6	Shared fisheries management arrangement
ARTICLE 7	Joint fisheries management arrangement
ARTICLE 8	Cooperative aquaculture management arrangement
ARTICLE 9	Cooperation with existing organizations in stock assessment, data sharing
ARTICLE 10	General duties of cooperation under arrangements for shared or joint management
ARTICLE 11	Allocation criteria for fisheries management arrangements
ARTICLE 12	Special requirements of developing countries
ARTICLE 13	Conflict and dispute prevention and resolution
ARTICLE 14	Binding dispute settlement

FINAL PROVISIONS

*Signature, Entry into force, Reservations and exceptions, Amendment, Withdrawal, Annexes,  
Depositary, Authentic texts*

ANNEX 1	Framework for shared fisheries management arrangement
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<sup>110</sup> This draft does not include text which should first be developed and agreed by countries as a matter of policy; this is indicated throughout by notes in *italics*.

ANNEX 2	Framework for joint fisheries management arrangement
ANNEX 3	Framework for cooperative aquaculture management arrangement

## THE PARTIES:

AFFIRMING their commitment to implementing the relevant provisions of the 1982 United Nations Convention on the Law of the Sea ("the 1982 Convention"), the 1995 United Nations Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks ("the 1995 Agreement"), the 2009 FAO Agreement on Port State Measures to prevent, deter and eliminate illegal, unreported and unregulated fishing, and to taking into account the standards of the 1995 FAO Code of Conduct for Responsible Fisheries;

RESOLVED to honour and fulfill their commitments to relevant regional fisheries instruments and organizations;

DETERMINED to ensure the long-term conservation and sustainable use of shared fish stocks and straddling fish stocks;

ACKNOWLEDGING that international and regional arrangements together do not provide a framework for cooperation in the conservation and management of all shared or straddling fish stocks in the South West Indian Ocean;

RESOLVED to improve cooperation between States to that end;

CONSCIOUS of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations;

CONVINCED that an agreement providing a basis for States to agree on shared or joint management of shared or straddling fish stocks in the South West Indian Ocean would best serve these purposes;

Have agreed as follows:

### **ARTICLE 1** **Definitions**

*(To be completed when the Agreement is finalized, some indicative definitions are given below)*

- "fish" means any marine or aquatic animal or plant, living or not, and any of their parts and includes any shell, coral, reptile and marine mammals;
- "fishery" or "fisheries" means:
  - one or more stocks of fish, or parts thereof, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics; or
  - any fishing for such stocks;
- "Instrument" includes any legally binding agreement between States, such as conventions, treaties and protocols;
- "Joint management" refers to management undertaken jointly by two or more countries under an agreed bilateral or multilateral legal regime;

- “Region” includes the waters over which SWIO countries have jurisdiction or sovereign rights and adjacent high seas areas;
- “Regional fishery body” (RFB) includes bodies with advisory or management mandates;
- “Shared fishery resources” means where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States;
- “Straddling fish stocks” means where the same stock or stocks of associated species occur both within the exclusive economic zone of a Party and in an area beyond and adjacent to the zone;
- “Shared management” refers to management undertaken individually but cooperatively and in common by two or more countries, based on agreed measures and activities;
- SWIO countries means...(to be agreed, e.g. coastal States whose territories lie within the same area of competence designated by the SWIOFC statutes.)

## **ARTICLE 2**

### **Objectives**

The objective of this Agreement is to provide a framework and basic requirements for cooperation in the shared or joint management of shared fisheries resources and straddling fish stocks that occur in the area of application of this Agreement and thereby to ensure the long-term conservation and sustainable use of such fisheries resources and fish stocks and of marine ecosystems.

## **ARTICLE 3**

### **Principles**

In the application of this Agreement, the following principles shall be given effect:

- a) sustainable use, economic viability and ecological balance of fisheries resources and habitat;
- b) recognition that governments, resource users and others with an interest in the fisheries share responsibility for the sustainable use and economic viability of the fisheries;
- c) promotion, to the extent practicable, of an understanding of and broad and accountable participation in the conservation, management and development of marine and coastal fisheries resources;
- d) ensuring that management measures are based on the best scientific evidence available to maintain or restore stocks at levels capable of producing sustainable yield, as qualified by relevant environmental and economic factors including fishing patterns, the interdependence of stocks and generally recommended international standards;
- e) application of the precautionary approach to the management and development of the fisheries at no less standard than set out in any international agreement;

- f) ensuring the effective application of the ecosystem approach to fisheries;
- g) protection of biodiversity in the marine and aquatic environment;
- h) implementation and enforcement of conservation and management measures through effective monitoring, control and surveillance;
- i) collection and, as appropriate sharing, in a timely manner complete and accurate data and information concerning fishing activities and fisheries;
- j) minimization of wastes, bycatch, discards, catch by lost or abandoned gear, pollution originating from fishing vessels and promotion of development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- k) prevention or elimination of over-fishing and excess capacity and managing levels of fishing efforts so they do not exceed levels commensurate with sustainable use of fishery resources;
- l) effective implementation of international agreements and relevant international law; and
- m) ensuring effective cooperation among coastal States, fishing States and entities and competent organisations and arrangements.

#### **ARTICLE 4** **Application**

*Application of the Agreement in terms of area, etc. should be determined. Some indicative items are shown below.*

This Agreement applies to (*specified activities in a defined area*)

- [e.g. fishing, fishing-related activities (and aquaculture) in waters over which Parties have sovereignty, jurisdiction or sovereign rights and adjacent high seas areas where straddling fish stocks occur].

#### **ARTICLE 5** **Relationship with relevant international and regional laws, instruments, bodies and arrangements**

1. This Agreement, or other agreements or arrangements made pursuant to it, does not prejudice:

- a) the sovereignty, jurisdiction or sovereign rights of any Party over its maritime zones;
- b) any obligations of a Party in relation to a regional fishery body;
- c) the rights and obligations of any Party under any other existing applicable international or regional instrument governing fisheries in the region;
- d) the rights and obligations of any Party under a bilateral agreement for fisheries access by non-national vessels or persons to its waters.

2. Parties shall recognize and ensure compliance with relevant bilateral, regional and international laws and agreements, and agreed decisions, measures and other requirements of competent bilateral, regional and international organizations and arrangements.
3. Parties shall ensure that management measures agreed under a shared or joint fisheries management arrangement are compatible with the management measures or advice of any regional fishery body with a mandate in the region.

#### **ARTICLE 6**

##### **Shared fisheries management arrangement**

Two or more Parties may establish a shared fisheries management arrangement for shared fisheries resources or straddling fish stocks. In so doing, they shall base the arrangement on the framework in Annex 1.

#### **ARTICLE 7**

##### **Joint fisheries management arrangement**

Two or more Parties may establish a joint fisheries management arrangement for shared fisheries resources or straddling fish stocks. In so doing, they shall base the arrangement on the framework in Annex 2.

#### **ARTICLE 8**

##### **Cooperative aquaculture management arrangement**

Two or more Parties may establish a cooperative aquaculture management arrangement where the aquaculture operations in the respective Parties are linked as a result of geographical proximity, water bodies, waterways, watersheds and/or environmental impact. In so doing, they shall base the arrangement on the framework in Annex 3.

#### **ARTICLE 9**

##### **Cooperation with existing organizations in stock assessment, data sharing**

In establishing and implementing an arrangement pursuant to Articles 6, 7 or 8, Parties shall endeavour to obtain relevant information and advice from, and disseminate information through, relevant regional and international fisheries organizations where it may be available.

#### **ARTICLE 10**

##### **General duties of cooperation under arrangements for shared or joint management**

Notwithstanding the requirements in Articles 6 and 7, Parties shall, in establishing arrangements for shared or joint fisheries management, to the extent possible:

- a) agree on and comply with conservation and management measures to ensure the long-term sustainability shared fishery resources and of straddling fish stocks;
- b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;
- c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;

- d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;
- e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
- f) collect, compile and disseminate accurate and complete statistical data to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- h) establish a joint scientific working group;
- i) establish appropriate joint or cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- j) establish mechanisms for coordination of disaster prevention, planning and response;
- k) agree on means by which the fishing interests of new Parties to the shared or joint management arrangement or new participants in the arrangement will be accommodated;
- l) agree on transparent and effective decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- m) agree on mechanisms for conflict avoidance and binding dispute resolution;
- n) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the arrangement; and
- o) give due publicity to the conservation and management measures established by the arrangement.

## **ARTICLE 11**

### **Allocation criteria for fisheries management arrangements**

In establishing allocation criteria, arrangements for shared or joint fisheries management shall take the following into account, *inter alia*:

- a) the status of the stocks and the existing level of fishing effort in the fishery;
- b) the respective interests, past and present fishing patterns and fishing practices of participants in the fishery;
- c) the rights and applicable management plans and measures of the coastal State;
- d) the extent of the catch being utilized for domestic consumption;



- e) equitable benefits, taking into consideration social and economic factors;
- f) the respective contributions of participants to the conservation and management of the fisheries resources and straddling fish stocks, including their timely provision of full and accurate data;
- g) the record of compliance with fisheries-related laws and regulations; and
- h) the needs of coastal communities which are dependent mainly on fishing for the shared fishery resources or straddling fish stocks.

## **ARTICLE 12**

### **Special requirements of developing countries**

1. In giving effect to the duty to cooperate in the establishment of shared or joint management arrangements, the special requirements of developing States shall be taken into account, in particular:

- a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;
- b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States; and
- c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

2. To address the special requirements of developing States, technical, financial, project or other forms of assistance may be given by international, regional or other intergovernmental bodies, States, donor organizations or others to support any arrangement concluded under this Agreement.

3. To facilitate such assistance, the Parties may agree on the following in relation to each arrangement established under this Agreement:

- a) the form(s) of assistance to be sought;
- b) the terms of reference for such assistance;
- c) the allocation among parties for such assistance;
- d) responsibilities for requesting assistance;
- e) responsibilities for receiving assistance;
- f) responsibilities for monitoring, evaluating and accounting for such assistance;
- g) as appropriate, establishment of a joint account for financial assistance;
- h) the responsibility of each Party in relation implementing the assistance;
- i) responsibilities for reporting on the assistance.

## **ARTICLE 13**

### **Conflict and dispute prevention and resolution**

1. The Parties shall cooperate and consult in order to prevent conflicts and disputes.

2. To prevent conflicts and disputes, the Parties may:

- a) take measures to ensure a process for stakeholder consultations and a general level of understanding and awareness by all relevant stakeholders, including the political level; and
  - b) agree on mechanisms with the responsibility to receive and share information and take appropriate action on potential conflicts and disputes, such as regular meetings of the parties and/or cooperation by designated officials or bodies in each party.
3. Where a conflict or dispute is of a technical nature, and the Parties are unable to resolve the dispute among themselves, they may designate an expert or an *ad hoc* expert panel chosen by, or established pursuant to the advice of a regional fishery body in the region with relevant technical experience. The panel shall confer with the Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.
4. If any dispute arises between two or more Parties concerning the interpretation or implementation of this Agreement or any arrangement made hereunder, those Parties shall consult among themselves with a view to resolving the dispute, or to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

### **ARTICLE 13**

#### **Binding dispute settlement**

1. Parties shall cooperate to establish a process for binding dispute settlement in each arrangement for shared or joint management.
2. Where agreement is not reached pursuant to subsection (1), and where a dispute is not referred for settlement within a reasonable time of any consultations, procedures or other means undertaken pursuant to Article 12, , such dispute shall, at the request of any party to the dispute, be submitted for binding decision in accordance with procedures for the settlement of disputes provided in Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, by provisions set out in Part VIII of the 1995 UN Fish Stocks Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also Parties to these instruments.
3. A court, tribunal or panel to which any dispute has been submitted under this article shall apply the relevant provisions of this Agreement, of the 1982 Convention, of the 1995 Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law, compatible with the 1982 Convention and the 1995 Agreement, with a view to ensuring the conservation of the fish stocks concerned.

## FINAL PROVISIONS

*Final provisions should be addressed directly by the countries. It is recommended that the Agreement be binding upon signature only and that ratification would not be necessary. Indicative final provisions and considerations are shown below.*

### SIGNATURE

*(by Member States of SWIOFP? Others? Time period for remaining open for signature)*

### ENTRY INTO FORCE

*(e.g. upon, or 30 days after the signature of a certain number of States)*

### RESERVATIONS AND EXCEPTIONS

*(No reservations or exceptions may be made)*

### AMENDMENT

*(Procedure for amendment, including proposal, circulation of proposal and agreement by a specified proportion of parties, e.g. 2/3, and the binding nature of amendments)*

### WITHDRAWAL

*(Withdrawal normally allowed upon specified notice)*

### ANNEXES

*(The Annexes form an integral part of the Agreement and may be amended by procedures less rigorous than the Agreement.)*

### DEPOSITARY

*(To be identified)*

### AUTHENTIC TEXTS

*(English, French, Portuguese?)*

**FRAMEWORK FOR SHARED FISHERIES MANAGEMENT ARRANGEMENT****(Article 6)**

Parties shall base an arrangement for shared fisheries management on the following framework:

- a) the shared fisheries resources or straddling fish stocks that are subject to shared fisheries management;
- b) the area within which the shared fisheries management shall be applicable;
- c) terms of reciprocal access;
- d) the criteria for access by a non-coastal State Party or a non-Party in relation to the area where the shared fishery resources or straddling fish stocks occur;
- e) mechanisms for collaborative research;
- f) mechanisms for joint stock assessment and the sharing of resource data;
- g) equitable sharing of fishing opportunities;
- h) equitable sharing of social and economic benefits;
- i) allocation mechanisms and the negotiation of shares, and a scheme for updating allocations as appropriate;
- j) a fisheries management plan, which shall:
  - i. identify the fishery resources and their characteristics, including the biological, ecological and socio-economic objectives for each fishery, the economic and social value to each Party and interrelationship with other species in the ecosystem;
  - ii. identify a consultative process in formulating the fisheries management plan;
  - iii. identify existing scientific or technical organizations or committees that have competence to provide advice;
  - iv. ensure consistency with the principles set out in Article 3;
  - v. assess the present state of exploitation of the fishery resource and potential average annual yields;
  - vi. specify the objectives to be achieved in the management and development of the fishery resources;
  - vii. take into account the best information and advice available on all relevant biological, social, economic and other applicable factors for fisheries management;
  - viii. determine the maximum sustainable yield;

- ix. where there is insufficient information and advice for fisheries management purposes, identify a plan for determining such information;
  - x. identify measures for the management of fisheries in accordance with the principles and objectives of this Agreement;
  - xi. identify a budget and timelines;
  - xii. specify the research necessary to enhance the management of the fisheries;
  - xiii. specify the information and other data required to be given or reported for effective management and development;
  - xiv. take into account any relevant traditional rights and practices;
  - xv. specify arrangements for monitoring, revising and enforcing the implementation of the management plan;
  - xvi. specify arrangements for the exchange of information and data; and
  - xvii. specify the entry into force and duration of the management plan.
- k) arrangements for licensing or other form of permission;
  - l) arrangements for monitoring, control and surveillance, including standardized requirements for vessels, reporting and operational enforcement procedures;
  - m) joint human capacity building;
  - n) harmonization of legislation as appropriate; and
  - o) such other matters that may be required to ensure effective shared fisheries management under this Agreement.

## FRAMEWORK FOR JOINT FISHERIES MANAGEMENT ARRANGEMENT

### (Article 7)

Parties shall base an arrangement for shared fisheries management on the following framework:

- a) the shared fisheries resources or straddling fish stocks that are subject to joint fisheries management;
- b) the area within which the joint fisheries management shall be applicable;
- c) a joint mechanism, including but not limited to a Commission, that will have management authority;
- d) the membership, authority and budgetary arrangements of the joint mechanism;
- e) guidelines or requirements for decisions on conservation and management measures by the Commission, which shall include:
  - i. the principles and objectives of this Agreement;
  - ii. cooperation with existing scientific or technical bodies;
  - iii. consideration of social and economic benefits;
  - iv. allocation criteria;
  - v. fisheries resource access.
- f) the guidelines or requirements set out in paragraph (e) may be supplemented by a fisheries management plan, which shall:
  - i. identify the fishery resources and their characteristics, including the biological, ecological and socio-economic objectives for each fishery, the economic and social value to each Party and interrelationship with other species in the ecosystem;
  - ii. identify a consultative process in formulating the fisheries management plan;
  - iii. identify existing scientific or technical organizations or committees that have competence to provide advice;
  - iv. ensure consistency with the principles set out in Article 3;
  - v. assess the present state of exploitation of the fishery resource and potential average annual yields;
  - vi. specify the objectives to be achieved in the management and development of the fishery resources;
  - vii. take into account the best information and advice available on all relevant biological, social, economic and other applicable factors for fisheries management;

- viii. determine the maximum sustainable yield;
  - ix. where there is insufficient information and advice for fisheries management purposes, identify a plan for determining such information;
  - x. identify measures for the management of fisheries in accordance with the principles and objectives of this Agreement;
  - xi. identify a budget and timelines;
  - xii. specify the research necessary to enhance the management of the fisheries;
  - xiii. specify the information and other data required to be given or reported for effective management and development;
  - xiv. take into account any relevant traditional rights and practices;
  - xv. specify arrangements for monitoring, revising and enforcing the implementation of the management plan;
  - xvi. specify arrangements for the exchange of information and data; and
  - xvii. specify the entry into force and duration of the management plan.
- g) mechanisms for joint stock assessment, data collection and exchange and research;
- h) harmonization of arrangements for monitoring, control and surveillance, including standardized requirements for vessels and reporting and operational enforcement procedures;
- i) joint training of personnel in standard management and operational procedures;
- j) harmonization of legislation as appropriate; and
- k) such other matters that may be required to ensure effective joint fisheries management under this Agreement.

## FRAMEWORK FOR COOPERATIVE AQUACULTURE MANAGEMENT ARRANGEMENT

### (Article 8)

Parties shall base an arrangement for shared fisheries management on the following framework:

- a) an aquaculture management plan, which shall:
  - i. identify the basis for the arrangement in terms of, as appropriate, the linkages of aquaculture operations, including the economic and social value to each Party and interrelationship with other species in the ecosystem;
  - ii. identify a consultative process in formulating the aquaculture management plan;
  - iii. identify existing scientific or technical organizations or committees that have competence to provide advice;
  - iv. ensure consistency with the principles set out in Article 3;
  - v. specify the objectives to be achieved in the management and development of the aquaculture resources;
  - vi. take into account the best information and advice available on all relevant biological, social, economic and other applicable factors for the management of aquaculture operations;
  - vii. where there is insufficient information and advice for management purposes, identify a plan for determining such information;
  - viii. identify minimum standards and/or measures for the management of aquaculture operations in their respective jurisdictions in accordance with the principles and objectives of this Agreement;
  - ix. specify the research necessary to enhance the management of the aquaculture;
  - x. specify the information and other data required to be given or reported for effective aquaculture management and development;
  - xi. take into account any relevant traditional land use;
  - xii. specify arrangements for monitoring the implementation of this management plan;
  - xiii. specify arrangements for the exchange of information and data; and
  - xiv. specify the entry into force and duration of the management plan.
- b) arrangements for minimum standards in the regulation of aquaculture operations in their respective jurisdictions, including licensing;
- c) arrangements for environmental impact assessments;



- d) arrangements for coordination of disaster prevention, planning and response in relation to aquaculture operations and their impact on humans and the environment;
- e) arrangements for monitoring, control and surveillance, including actions that should be taken in shared waters;
- f) joint human capacity building;
- g) harmonization of legislation as appropriate; and
- h) such other matters that may be required to ensure effective aquaculture management under this Agreement.

**RECOMMENDATIONS OF THE WORKSHOP ON RIGHTS BASED MANAGEMENT OF FISHERIES IN THE  
WESTERN INDIAN OCEAN REGION,  
7-8 NOVEMBER 2011<sup>111</sup>**

The Workshop made the following recommendations on how to move forward with the implementation of RBM as a tool for sustainable fisheries management in the WIO region.

### **Shrimp**

- i. Improve knowledge on the status of stock for improved management
  - undertake stock assessment and baseline surveys
  - Carry out Socio-economic evaluation of the fishery
  - Conduct Ecosystem assessment (impact assessment)
- ii. Raise awareness on RBM as a tool for sustainable fisheries management
  - Develop communication strategy (communication products)
  - Develop information package and disseminate to key stakeholders
  - Knowledge management and information sharing
  - stakeholder consultation
- iii. Promote RBM as a tool for sustainable fisheries management
  - Identify pilot sites for RBM
  - Review existing national policy and legal framework to incorporate RBM elements.
  - Develop and agree on RBM guidelines
- iv. Convene regional shrimp fishery meeting (use regional meetings to encourage national level for management of prawns)

### **Artisanal fisheries**

- i. Design RBM tools along geographical zoning, gears, catch units etc considering the fact that the fisheries are multi-species.
  - Establish pilot projects in each country
- ii. Ensure the RBM processes minimize the negative impact of implementation.
  - Undertake vulnerability assessment studies
  - Alternative livelihood
- iii. Strengthen institutional and legal framework and support for RBM
  - Assimilate RBM in fisheries management frameworks in the region- Prepare communication materials to target different audience
  - Strengthen multi-stakeholder governance bodies

### **Tuna**

- i. Improve catch monitoring
  - Standardize data collection methods/protocols for tuna
  - Build capacity in data collection, analysis and dissemination
  - Establish national and or regional observer system

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<sup>111</sup> Report of Proceedings for the 2<sup>nd</sup> Session of the Western Indian Ocean (WIO) Civil Society (CSO)/Private Sector Consultative Forum on Sustainable Fisheries Management in the WIO that was held on the 9<sup>th</sup> -10<sup>th</sup> of November 2011 at the White Sands Hotel, Dar Es Salaam, Tanzania. Appendix V.

- ii. Strengthen collaboration among the RECS, RFBs/RFMOs and NGO
- iii. Quota allocation
  - Define criteria and agree on the quota allocation for WIO countries
  - Provide technical backstopping for the WIO countries in the TA/QA discussions
- iv. Country specific fishery development and management plans for tuna
  - Develop national tuna fishery management and development plans
  - Conduct economic valuation of the tuna fishery and cost analysis for the various development options
  - Establish sustainable financing mechanism
  - Improve fishery infrastructure
- v. Equity and benefit sharing
  - Countries in the WIO should review their licensing regime and adjust them accordingly
  - WIO countries should develop minimum terms and conditions for fisheries access
  - Improve downstream benefits from tuna
- vi. Cross cutting issues
  - Raise awareness among the policy makers and the private sector, CSOs on the importance of tuna in national development.
  - Pilot RBM as a tool for sustainable tuna fishery management
  - Undertake some studies around FADS to reduce by-catch
- vii. Regional approach to tuna fisheries management
  - Undertake some review on existing fisheries policy framework in the WIO countries and facilitate their harmonization for coherence in the region.
  - Strengthen IOTC and improve compliance with conservation and management measures.
  - IOTC and its member states should establish Harvest strategy and control rules. WWF working in close collaboration with the WIO member states and IOTC was requested to assist on this.

NAME:

COUNTRY:

EMAIL:

**HARMONIZATION OF FISHERIES LEGISLATION AND ASSESSMENT OF THE IMPLEMENTATION OF FISHERIES MANAGEMENT PLANS AND RIGHTS BASED  
MANAGEMENT IN THE SOUTH WEST INDIAN OCEAN  
SWIOFP - WWF**

**FISHERIES MANAGEMENT PLANS IN THE SOUTH WEST INDIAN OCEAN COUNTRIES  
EXISTING AND PROPOSED - NATIONAL AND REGIONAL**

*Comoros, Kenya, Tanzania, Mozambique, Madagascar, Mauritius, Seychelles, South Africa*

Information is kindly requested about national and regional fisheries management plans and relevant global instruments in the South-West Indian Ocean, which are either existing or proposed (i.e. as a concept, or as a project proposal).

Responses are requested **ON OR BEFORE 10 AUGUST 2012**.

Thank you for your understanding and cooperation.

## A. FISHERIES MANAGEMENT PLANS - EXISTING

Please provide information on the implementation of the following in your country, if applicable:

- National fisheries management plans
- Regional fisheries management plans
- National Plans of Action (NPOA) that implement FAO International Plans of Action<sup>112</sup>

Please indicate in the last column whether the management plan implements, partially or fully, the following international instruments:

- FAO Technical Guidelines on the ecosystem approach to fisheries,
- FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas
- FAO International Guidelines on Bycatch Management and Reduction of Discards
- Other (please identify)

Name of fisheries management plan, NPOA	Date adopted	Main Objectives	Funding agency(ies)	Implementation status • Not implemented • Partly implemented • Fully implemented	Reasons for implementation status	Implementation of international instruments described above (please indicate which instrument(s))

<sup>112</sup> The four IPOAs relate to sharks, seabirds, the management of fishing capacity and IUU fishing.

**B. FISHERIES MANAGEMENT PLANS – PROPOSED**

<b>Name of fisheries management plan, NPOA</b>	<b>Expected date of completion</b>	<b>Main Objectives</b>	<b>Funding agency(ies)</b>	<b>Reason for developing fisheries management plan</b>	<b>Challenges in developing management plan</b>	<b>Expected implementation of international instruments described above (please indicate which instrument(s))</b>

## DETAILED INFORMATION ON IOC, SADC, IOTC AND SWIOFC<sup>113</sup>

Following is information explaining regional strategies and programmes of IOC, SADC, IOTC and SWIOFC.

### Indian Ocean Commission (IOC)

The IOC is an intergovernmental organization, the members of which are Comoros, Madagascar, Mauritius, France (for Réunion), and the Seychelles. Maldives has observer status.

It has developed a regional strategy for fisheries and aquaculture (“Stratégie régionale des pêches et de l’aquaculture de la Commission de l’Océan Indien 2009 – 2014”)

The strategic guidelines for the IOC were adopted by the Council of Ministers of Member States on 16 January 2005.

The MS recognize the need for a regional fisheries and aquaculture policy for IOC countries to ensure responsible and sustainable fisheries and the conservation and optimal utilisation of fish resources (although the term “optimal” seems to have been left undefined).

The regional strategy seeks to address a number of issues, including:

- A lack of harmonised and joint research efforts, together with the absence of diagnoses of the state of exploited fish stocks necessary to ensure conservation and sustainable and responsible management
- Heavy pressure due to illegal fishing (with only 50% of high-seas catch being declared to management organisations)
- Limited development opportunities: such opportunities exist for both coastal and offshore fishing but are limited by a range of factors such as lack of trained crew, lack of fisher organisations, lack of national representations and regional harmonisation
- Potential but very varied aquaculture development – no regional development guidelines

In order to manage, conserve and exploit fish resources sustainably and to develop responsible aquaculture, the following strategic guidelines are adopted:

- Conservation and management of fish resources are undertaken sustainably and responsibly
- Aquaculture is developed sustainably
- MCS is strengthened
- Capacity in maritime training and safety is increased
- Productivity, processing, value-addition and marketing of seafood produce and market development are enhanced

The implementation of the plan will respect and be based on a certain number of concepts, principles and practices, including:

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<sup>113</sup> Taken from draft Smartfish project report: Review of Strategic and Programme Developments in the ESA-IO Region in relation to fisheries governance, development and management. July 2012. Draft. Stephen Cunningham.

*For the fisheries sector*

- Use of the precautionary principle
- Definition of various reference points (biological, economic, environmental, social) that will guide fisheries management and conservation through fishery management plans
- Adoption of the ecosystem approach to fisheries
- Ensure participation
- Use an inter-sectoral approach
- Take into account environmental constraints and climate change in the fisheries management and planning process
- Apply the CCRF

*For aquaculture:*

- Evaluate potential impact of aquaculture development on genetic diversity and ecosystem integrity through the concept of ecological footprint. Evaluate resource use and limits to aquaculture development
- Establish EIA guidelines for aquaculture
- Respect environmental assimilation constraints and limit pollution
- Apply technical guidelines on best practice for feed production
- Define a framework for responsible utilisation of introduced species
- Guarantee food security as well as animal health and wellbeing
- Construct common definitions and standards for biological and ecological aquaculture
- Strengthen actor participation in sector planning

To develop the strategy based on these principles and guidelines, in July 2007, the IOC Secretary General established a Fisheries and Aquaculture Working Group that includes a national focal point and a resource person from each MS.

The fisheries sector is seen to have great economic and social development potential in IOC countries. It currently produces some 5% of GDP based on offshore, semi-offshore and artisanal activities. The former segment is export-based and has its main impact through fiscal receipts. The other two are of more importance for food security, poverty alleviation and employment.

Fish resources are in two broad categories: tuna and tuna-like, and others (small pelagics, demersal fish, crustaceans, molluscs). The exploitation of tuna is managed by IOTC. Other shared resources are managed regionally by SWIOFC or the Southern Indian Ocean Fisheries Agreement (SIOFA).

The absence of reliable catch and landings data makes it difficult to know true state of the stocks other than for a few species. Nonetheless, the biological production limits of wild fish stocks are recognised and it is expected therefore that aquaculture will play an increasing role in seafood supply, with the need for a strategy to develop sustainable aquaculture.

Capture fishery management recognized as important. However, the main focus seems to be on dealing with overcapacity, which is seen as the main cause of overfishing. Further work seems to be needed in this area to clarify the relationship between these two issues which rather than being causally related are both symptoms of the same underlying problem of fish resource overexploitation. Overcapacity is the economic manifestation and it can exist with or without overfishing.

For each of the strategic guidelines outlined above, a set of results to be achieved is specified as follows. Each of these results is discussed further in the strategy document.



SG1. Conservation and management of fish resources are undertaken sustainably and responsibly

- Strengthen skills in research and training and their exchange
- Mechanisms implemented to enable development of common positions in international arenas
- Harmonisation of legislation and licensing for good regional governance
- Regional fishery information system (artisanal, semi-offshore, offshore, recreational) developed and used by MS
- Regional mechanisms implemented to regulate by-catch
- Demersal species are rationally exploited

Understandably, most of the points address management issues from a regional perspective. This may be a requirement for successful management of shared stocks but not for stocks exploited solely within the EEZ of a single MS. One important question that this raises is how regional bodies can best assist in the case of such fisheries.

Another important question is whether it is a good idea to harmonise legislation and develop regional information systems before firmly establishing strategy and policy towards the fishery sector. The type of legislation needed presumably follows the policy orientation as do the information needs, even if it may possible to identify some minimum information needs that will have to be met regardless of management system and approach.

SG2. Aquaculture is developed sustainably

- Strengthen skills in research and training and their exchange
- Implement a code of conduct for the respect of environmental constraints and an impact monitoring system
- Obtain a regional label by meeting SPS standards for monitoring and analysis of waste, feed and seed
- Regional harmonisation of aquaculture legislation

Given current understanding of the needs for aquaculture development (as expressed for instance in the FAO Spada approach), it is surprising that there are no expected results at the business level.

SG3. MCS is strengthened

- Regional agreement on IUU fishing developed; information exchange on vessel position and movement
- Port state measures strengthened
- At-sea control intensified
- Harmonised definitions of infringements and penalties
- Regional communication strategy (policy) defined

As with SG1, one question is whether appropriate MCS design does not require first the clear definition of fisheries policy and strategy, and perhaps even precise management design in terms of fishery management plans.

It is also noteworthy that dealing with IUU fishing is seen as purely an MCS issue rather than being set in a compliance framework. However, this impression may arise simply from how the document is constructed.

SG4. Capacity in maritime training and safety is increased

- Existing training mechanisms (for fishers as well as crew and other jobs in the chain) are identified and networked
- Development of regional exchange (visits) between fisher and aquaculture associations to enhance the better kinds of collective professional structure
- Regional cooperation in artisanal fisher training in safety at sea

SG5. Productivity, processing, value-addition and marketing of seafood produce and market development are enhanced

- Technologies are implemented
- Market access is improved
- Support for post-harvest activities (cold chain) implemented
- Cooperative and enterprise development promoted
- Regional trade in aquaculture products developed

The main impact of these measures, if successful, will be increased fishing revenues (through a combination of increased sales in the most lucrative markets and increased prices due to improved product quality) and reduced fishing costs, and hence increased profits (and rents) from the exploitation of fish resources. Whilst this policy is perfectly logical, it is important to consider the impact that it may have depending in particular on the conditions for access to fish resources (if access remains more or less open, such a policy may have unintended negative consequences through its impact on fishing effort levels). The policy may also require clarification of other dimensions of fisheries policy (for instance, in the case of significant exports, it may reduce the direct contribution of fish resources to domestic food security whilst increasing the potential indirect contribution).

### **Southern African Development Community (SADC)**

Although not an ESA-IO organisation, SADC's strategy is briefly reviewed here since a number of ESA-IO countries are also members of SADC.

The SADC Treaty and Declaration was signed on August 17, 1992, at a Heads of State and Government Summit held in Windhoek, Namibia. SADC currently has 15 Member States: Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe.

SADC has formulated and adopted a Regional Indicative Strategic Development Plan, which includes fisheries, a Fisheries Protocol and an Implementation Programme

According to the SADC website, the Fisheries Protocol was signed in 2001, but the required number of Member States has not yet ratified it. The Sector strategy includes establishing a regional stock assessment and fisheries management system; promoting regional trade; and building capacity for better fisheries management.

The objective of the Protocol on Fisheries is to promote responsible and sustainable use of the living aquatic resources and aquatic ecosystems of interest to State Parties in order to:

- a) promote and enhance food security and human health;
- b) safeguard the livelihood of fishing communities;
- c) generate economic opportunities for nationals in the Region;

- d) ensure that future generations benefit from these renewable resources; and
- e) alleviate poverty with the ultimate objective of its eradication.

Responsibility for the implementation of the Protocol is primarily national, but in the case of shared resources, State Parties shall co-operate with one another to ensure that the objective of the Protocol is achieved.

Important strategic goals addressed in the Protocol are that:

- State Parties shall take appropriate measures to regulate the use of living aquatic resources and protect the resources against over-exploitation, whilst creating an enabling environment and building capacity for the sustainable utilisation of the resources;
- State Parties with capacity in matters of fisheries shall endeavour to transfer skills and technologies to other State Parties to enhance effective regional co-operation;
- State Parties, taking into account the best scientific evidence available shall, through proper conservation and management measures ensure that aquatic living resources in the areas under their national jurisdiction are not endangered by over exploitation;
- State Parties shall endeavour to establish common positions and undertake co-ordinated and complementary actions with regard to international fora, conventions, agreements and bodies relevant to the Protocol;
- State Parties shall take measures required to harmonise legislation with particular reference to the management of shared resources;
- State Parties shall co-operate in the establishment of harmonised minimum terms and conditions for access by non-SADC-flag fishing vessels to the fisheries resources of State Parties and may consider the joint negotiation of foreign fishing access agreements with a regional or sub-regional dimension, in particular with regard to highly migratory species;
- State Parties shall seek a rational and equitable balance between social and economic objectives in the exploitation of living aquatic resources accessible to artisanal and subsistence fishers by instituting legal, administrative and enforcement measures necessary for the protection of artisanal and subsistence fishing rights, tenure and fishing grounds, taking particular account of the needs of socially and economically disadvantaged fishers;
- State Parties shall take the necessary steps to optimise the economic contribution of aquaculture to the Region;
- State Parties shall conserve aquatic ecosystems, including their biodiversity and unique habitats, which contribute to the livelihood and aesthetic values of the people and the Region;
- State Parties shall promote sustainable trade and investment in fisheries and related goods and services by reducing barriers to trade and investment, facilitating business contacts and exchange of information and establishing basic infrastructure for the fisheries sector.

In the case of shared resources, State Parties shall co-operate in exchange of information on the state of the resources and the levels of fishing effort. Two or more State Parties may establish instruments for co-ordination, co-operation, or integration of management of shared resources and may agree on management plans. They will take measures to prevent and eliminate overfishing and excess fishing capacity in the Region and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fish resources.

As part of the implementation of the Protocol, in 2010, SADC Ministers responsible for Environment and Natural Resources approved a regional Aquaculture and Development Programme that aims to contribute through the enhancement of the development of sustainable aquaculture to ensure food security and livelihoods of the population of the SADC region.

In the context of the SADC regional programme for food security in member countries, Ministers also approved the Managing for Resilience Programme which aims to strengthen co-management of shared fisheries resources in the Zambezi basin (which includes 7 SADC Members States).

SADC has a plan of action for the “operationalization” of the SADC Statement of commitment to combat IUU Fishing and has endorsed the proposal to establish a Regional Monitoring Control & Surveillance (MSC) Centre to be located in Mozambique

Despite the Protocol and progress in its implementation, the SADC website identifies the following challenges to current policies and strategies:

- Lack of a programme for the effective management of fish stocks, which would cover all the Member States;
- Absence of policies to promote aquaculture (fish grown in inland ponds) and mariculture (fish in offshore ponds);
- Improving the quality of fish through appropriate handling, processing and conservation of fish landings; and
- Lack of concrete interventions to address the constraints faced by women in the sector.

### **Southwest Indian Ocean Fisheries Commission (SWIOFC)**

SWIOFC was established in 2004 by Resolution 1/127 of the FAO Council under Article VI 1 of the FAO Constitution. Current members are: Comoros, France, Kenya, Madagascar, Maldives, Mauritius, Mozambique, Seychelles, Somalia, South Africa, United Rep. of Tanzania, and Yemen.

The main objective of the Commission is to promote the sustainable utilization of the living marine resources of the South West Indian Ocean region, by the proper management and development of the living marine resources, without prejudice to the sovereign rights of coastal States and to address common problems of fisheries management and development faced by the Members of the Commission.

The Commission has due regard for and promote the application of the provisions of the FAO Code of Conduct on Responsible Fisheries, including the precautionary approach and the ecosystem approach to fisheries management. Other than this, the Commission does not seem to have produced a strategy as such. Its activities are defined more through its functions and through the requests for support from its members.

The functions and responsibilities of the Commission include:

- contributing to improved governance through institutional arrangements that encourage cooperation amongst members;
- assisting fishery managers in the development and implementation of fishery management systems that take due account of environmental, social and economic concerns;
- monitoring the state of the fishery resources in the area and the industries based on them;
- assisting with the design and organisation of research related to the living marine resources in the area;
- promoting the collection, exchange, dissemination and analysis or study of statistical, biological, environmental and socio-economic data and other marine fishery information;
- providing a sound scientific basis to assist Members in taking fisheries management decisions;

- advising on management measures to member governments and competent fisheries organizations;
- advising on monitoring, control and surveillance, including joint activities, especially as regards issues of a regional or sub-regional nature;
- encouraging and coordinating training in the areas of interest of the Commission;
- promoting the utilization of the most appropriate fishing craft, gear, fishing techniques and post harvesting technologies.

The Commission has a scientific committee to help address these issues. It also establishes working parties as necessary, for instance on fisheries data and statistics. Workshops are organised to address particular issues, such as the ecosystem approaches to fisheries management, or the improvement of vessel registration.

Current priority activities include:

- (v) supporting Members States in the development of fisheries management plans
- (vi) improving the capacity for data collection and monitoring in support to small scale fisheries management and policy development,
- (vii) supporting the implementation of SPADA
- (viii) supporting a working Group on Climate change and fisheries in the sub region.

### **The Indian Ocean Tuna Commission (IOTC)**

IOTC is an intergovernmental organization established under Article XIV of the FAO constitution and mandated to manage tuna and tuna-like species in the Indian Ocean and adjacent seas.

The Agreement for the Establishment of the IOTC was adopted by the FAO Council at its Hundred and Fifth Session in Rome on 25 November 1993. The Agreement entered into force on the accession of the tenth Member on 27 March 1996. It defines the precise area of competence of the Commission and the species included in its mandate.

Membership of IOTC is open to Indian Ocean coastal countries and to countries or regional economic integration organisations which are members of the United Nations or one of its specialised agencies and are fishing for tuna in the Indian Ocean. Current members are Australia, Belize, China, Comoros, Eritrea, European Community, France, Guinea, India, Indonesia, Iran, Japan, Kenya, Korea, Madagascar, Malaysia, Mauritius, Oman, Pakistan, Philippines, Seychelles, Sri Lanka, Sudan, Tanzania, Thailand, United Kingdom and Vanuatu.

There are currently four Cooperating non-Contracting Parties to the IOTC - the Maldives, Senegal, South Africa and Uruguay who are not yet members of the IOTC - nor is Taiwan, a major distant water fishing entity.

The objective of the Commission is to promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilisation of stocks covered by the Agreement and encouraging sustainable development of fisheries based on such stocks.

In order to achieve these objectives, the Commission has the following broad functions and responsibilities:

- To monitor the conditions of stocks covered by the Agreement and collect and disseminate relevant data

- To encourage and coordinate research, development, training and so on with respect to the relevant stocks and fisheries
- To adopt, on the basis of scientific evidence, conservation and management measures to ensure the conservation of the stocks covered by the Agreement and to promote the objective of their optimum utilisation throughout the Area;
- To keep under review the economic and social aspects of the fisheries based on the stocks covered by this Agreement bearing in mind, in particular, the interests of developing coastal states.

Conservation and management measures adopted by a two-thirds majority of Members present and voting are binding on Members of the Commission, except that Members who object to a decision are not bound by it.

Recommendations concerning conservation and management of the stocks are adopted by a simple majority of its Members present and voting.

It is the responsibility of each Member to ensure that action is taken under their national legislation to implement conservation and management measures which become binding on it.

Members are also expected to exchange information about fishing for relevant stocks by nationals of non-Member States or entities.

The IOTC does not appear to have a formal strategy. Certainly a search for “strategy” and “strategic” on its website returns no documents.

The strategy is defined through its objectives and actions which seek to ensure the sustainable management and conservation of the tuna resources of the Indian Ocean. Much then depends on the strategies adopted by the Member States to manage the operations of their industries based on these resources.

The IOTC operates on the basis of a Scientific Committee and a Compliance Committee, together with working parties that analyse in detail technical issues related to the management goals of the Commission.

Annual Sessions of the Commission - are normally held annually in March. The IOTC Scientific Committee meets annually several months prior to the Commission meeting in order for Commission members to act on the most recent scientific advice. Several working party meetings are held throughout the year as required. Most working parties are organised by fish species (eg tropical tunas) or for scientific purpose (eg tagging). However, there is also a working party on fishing capacity.

