

**DEVELOPING REGIONAL MINIMUM TERMS AND CONDITIONS FOR GRANTING TUNA FISHING  
ACCESS IN THE WESTERN INDIAN OCEAN**

**AGREEMENT No. CN63**



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**September 2012**

## EXECUTIVE SUMMARY

1. This document serves as the report for the WWF-Coastal East Africa Global Initiative consultancy on 'Developing Regional Minimum Terms and Conditions (MT & Cs) for granting tuna fishing access in the Western Indian Ocean', (Agreement No CN63), designed to (i) contribute to a sound and coordinated tuna management in the Western Indian Ocean (WIO) and to (ii) empower the WIO coastal and Island States to engage with Distant Water Fishing Nations (DWFNs) in order to develop and secure far greater economic returns from the tuna resources within their jurisdiction, while ensuring their sustainability. The focal States for the implementation of this contract are; Kenya, Tanzania, Mozambique, Mauritius, Seychelles, Comoros, Madagascar and South Africa. The consultancy was initiated on 1st August 2012, and completed on 28th September 2012.
2. As stipulated in the TOR, the overall goal of this report is to provide draft MT&Cs for the beneficiary States. Additionally, the following issues are to be addressed;
  - (i) the status of existing fisheries agreements between WIO coastal States, their history and recent development;
  - (ii) the economic and political factors and their dynamics with respect to fisheries access arrangements within the context of individual WIO States;
  - (iii) the general public's perception towards the European Union's Fisheries Partnership Agreements (FPAs)<sup>1</sup> and the effects these perceptions have on local people and the coastal and Island States of the WIO;
  - (iv) justification for the need to have Minimum terms and Conditions for fisheries access arrangements within the WIO range States, while taking into consideration the wider Indian Ocean region perspectives;
  - (v) Minimum Terms and Conditions for fisheries access agreements, including protocol;
  - (vi) technical advice on the implementation of the MT&C and its protocol, including the institutional and political framework, with consideration of its application within the Indian Ocean region.
3. This report is based on a comprehensive desk review of various documents. A summary of the Bibliography is annexed. Input was drawn from relevant reports written by fisheries management and development experts, international instruments, existing tuna fisheries agreements, national and regional policies, legal frameworks, development plans, strategy papers, fisheries statistical data, and fisheries stock assessment and economic reports. The consultant also discussed and collaborated with a range of specialists, including WIO governments, WWF teams, national and regional bodies, and also research institutions.

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<sup>1</sup> FPAs are bilateral agreements between the EU and third countries, usually developing States where the EU pays for fishing rights. A percentage of the funds paid towards fisheries access is intended to finance the development of sustainable fishing in such States.

4. The consultant faced difficulties in accessing up to date information on fisheries agreements from the WIO States as most of this information is not publicly available. This was compounded by time limitation and slow/limited response on the part of WIO government contacts, making it difficult to carry out a more comprehensive study of the content, history and development of such agreements. Despite these limitations that fisheries agreements were not sighted or licensing protocol for most States, the consultant made reference to available reports to analyse the status of tuna agreements in the WIO and specific aspects for individual States in order to design regional terms. The study is however limited in its conclusions which are based on the data/reports referenced.
5. Analyses carried out in the report have been guided by the following;
  - (i) The underpinning motivation for the establishment of Minimum Terms and Conditions for fisheries access in the WIO region lies in the need to utilise the tuna fisheries in the WIO region sustainably and to derive maximum benefits from such resources for the WIO States. It also arises from the fact that the WIO States are conscious of the exploitation of common tuna stocks within their EEZs and the adjacent waters by DWFNs. Such a framework would promote regional cooperation and coordination of fisheries policies which would enable these States to implement their objectives through regional and sub-regional arrangements, including collective negotiations with DWFNs or other representatives.
  - (ii) Expressions of the motivation to develop Regional Minimum Terms and Conditions for Access arrangements and for WIO regional States to negotiate Fisheries Partnership Agreements as a block has been cited in various fora and documents, including; (a) Report of the WIO Fisheries Directors' workshop 2005<sup>2</sup>, (b) WWF/AU-IBAR WIO regional forum for the Directors of Fisheries and workshop on Rights Based Management, November 2011 (c) 1st Conference of African Ministers of Fisheries and Aquaculture held in Gambia in September 2010<sup>3</sup> and (d) in the Alotau Declaration of May 2012.<sup>4</sup> Furthermore, WWF-Coastal Eastern Africa Initiative Tuna Strategy aims for the effective natural resource governance in coastal East Africa and envisages achieving Regional Tuna Fisheries Management Reform by 'facilitating a process for WIO states to agree on a collective approach to managing tuna fisheries'.

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<sup>2</sup> Jane Mbendo and Amani Ngusaru, 2005 Eastern African Marine Ecoregion Programme, 2005, Towards Sustainable and Equitable Fisheries Access Agreements in the Western Indian Ocean Region. WWF: Dar es Salaam, Tanzania.

<sup>3</sup> African Union, Report of the Conference of Ministers of Fisheries and Aquaculture, Banjul, The Gambia, 22-25 September 2010

<sup>4</sup> This Statement was made by representatives of the WIO Fisheries Directors' Forum at the 7<sup>th</sup> annual Ministerial meeting of the Parties to the Nauru Agreement on 1<sup>st</sup> May 2012 in Papua New Guinea. The Directors' Forum recognised the transboundary nature of tuna and emphasised the need for collaboration in managing the tuna stocks of the WIO for the long term benefit to the WIO States. The Forum also recognised the need for coastal States to secure sustainability and profitability of tuna fisheries in their own waters.

- (iii) The legal basis for fishing access agreements is found in the Law of the Sea Convention (LOSC). The development of the above terms and the implementation strategy is in accordance with the relevant principles of international law for coastal States to exercise sovereign rights for the purposes of exploring, exploiting, conserving and managing all marine resources. As tuna stocks in the region are shared, the terms reflect the underlying principles in regional cooperation among States as stipulated in the LOSC, the UN Fish Stocks Agreement and the FAO Code of Conduct for Responsible Fisheries. The UN Fish Stocks Agreement is legal, more meticulous on the duty to cooperate and provides the mechanisms that give effect to this duty, while The Code of Conduct is voluntary and pays special attention to the responsible and effective management and utilisation of fisheries.
- (iv) The protocol defines the measures to be implemented by the WIO States in the management of the activities of vessels in their own EEZs, either through Regulations or licencing conditions. These measures are directed towards ensuring both human and ecosystem well-being. Thus, the preservation of tuna resources, and their supporting ecosystems, equitable distribution of benefits from tuna, economic benefits and an effective governance system are ensured. These include the measures such as; (a) Sharing of data (b) Catch limits (c) Monitoring, Control and Surveillance (d) Flag State responsibility (e) Reporting procedures (f) Stock assessments (g) Law enforcement (h) Licensing procedures (i) Administrative arrangements (j) Vessels register (k) Transshipment (l) Harmonisation of legislation
- (v) Examples of current regional arrangements have been drawn from the experience of West African coastal States (Sub-Regional Fisheries Commission-SFRC) and Pacific Island Countries (NAURU Agreement) in order to inform the framework for the WIO.
- (vi) It is envisaged that cooperation under standardised conditions can provide a vehicle for sharing data among the participating coastal States and also as a focus for the harmonization and coordination of their respective fisheries regimes with attendant benefits to both those States and the distant water fishing States operating in the WIO region, e.g., better information and bargaining position for the coastal States, reduction in compliance control costs, more effective tuna fishery resource management, facilitating access to distant-water fishing States and providing for similar conditions of access over a wide range of zones within which tunas in the WIO migrate and are therefore shared among these States.

#### **Key observations on fisheries agreements in the WIO**

- The EU fishing fleet is the most prevalent in the WIO, with significant financial investments in, mainly purse seiners from Spain and France. These are significant for the regionally based

processing sector (tuna canning) which is dependent upon the supply of raw material from EU vessels to supply finished (canned products) to the EU market<sup>5</sup>. Information on EU agreements is publicly available.

- The prominent non-EU vessels operating in the WIO (agreements/license) are of East Asian origin namely, Japan, China/Taiwan, Thailand and Korea, dominating the longline tuna industry. Information on such agreements is guarded as commercially sensitive and not publicly available.
- The Southwestern Indian Ocean subregion is made up of some of the world's poorest countries, some of which are categorized by the World Bank as having the lowest gross income per capita.<sup>6</sup> The challenges of managing their EEZ resources are further escalated by the activities of foreign fleets.

The EU is thought to be a beneficial access partner, in part because government involvement in the process increases fleet accountability, agreement transparency, and lays down guiding principles for fishing practices. The Common Fisheries Policy (CFP) policies and the new approach to Fisheries Partnership Agreements (FPAs), both purport to increase transparency, encourage sustainable fishing practices and increase accountability of the fleets. However, the EU fleet does not have an entirely clean slate in fishing agreements with African, Caribbean and Pacific (ACP) countries. The 1999 report by IFREMER on the evaluation of EU fisheries agreements shows that the bulk of the benefits (at least three times that of ACP States) from value-added go to the EU. These are among the issues being addressed by FPAs. The environmental, social and economic aspects (positive and negative) of the FPAs form annexes I, II and III to the report. The EU has also been known for the following non-compliance issues in the region;<sup>7</sup>

- Not providing entry and exit notices eg. In Mozambique, Madagascar and Mauritius
- Providing incomplete/late catch declarations: In some cases the catch declarations are not properly filled out, such as not disaggregating by species eg Mozambique 2004-2006 agreement
- Not fulfilling landing or transshipment duties
- Not employing national or ACP seamen- eg Mauritius; 2003-2007 fisheries agreement
- IUU fishing- EU vessel fishing without a license apprehended in Mozambique

Coastal States feel they do not have comparable status and power with the EU in negotiations and that they have weak bargaining power. The EU is known to withhold information vital for such

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<sup>5</sup> Ellen Laipson and Amit Pandya (eds), *Indian Ocean: Resource and Governance Challenges* (The Henry L. Stimson Center, 2009) 11; Elizabeth Havice, 'The Structure of Tuna Access Agreements in the Western and Central Pacific Ocean: Lessons for Vessel Day Scheme Planning' (2010) 34 *Marine Policy* 979, 983.

<sup>6</sup> FAO, *Review of the state of world marine capture fisheries management: Indian Ocean*, Fisheries Technical Paper 488, Rome 2006.

<sup>7</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, *Comparative Study of the Impact of Fisheries Partnership Agreements* (2007). Technical Report (MRAG, CRE & NRI, 2007).

negotiations. FPAs have also been linked to aid given to ACP countries, such as the case of the last Senegal FPA.<sup>8</sup> See section 6.0.

Most of the Asian agreements are concluded between the governments of coastal States and Asian fishing industry associations.<sup>9</sup> Access agreements signed between ACP countries and several Asian countries and fishing associations are kept entirely confidential, meaning citizens of these countries have no idea how many boats are allowed access to their waters, what terms and restrictions are put in place, how much revenue is being generated and where the revenue goes. There is no participation from local citizens in the negotiation of these agreements either.

- Japanese agreements are usually between the Japanese Tuna Association and coastal State, or license fee arrangements between a specific Japanese company and fisheries authorities of a coastal State. The agreements are often linked to a grant aid component. These agreements are usually closed and the financial compensation is not publicly available
- South Korea, China, Taiwan also have agreements through industry associations, or through companies for direct licensing
- Issues associated with East Asian fleets include lack of transparency in the agreements and licensing processes as well as bribery in the inspection process<sup>10</sup> and accountability, far worse than the EU. For example EU vessels, in particular tuna seiners are generally compliant compared to East Asian vessels regarding issues such as catch declaration and entry/exit notices.<sup>11</sup> In comparison with agreements between ACP States and Asian countries such as China/Taiwan, Japan and Korea, the EU FPAs and Fisheries Agreements are known to be more detailed in their provisions and payments.<sup>12</sup> Additionally, EU agreements contribute more to local trade (eg. through processing industries) than Asian agreements.<sup>13</sup>

Key issues for individual WIO coastal States regarding fisheries access agreements were observed as follows:- (Table 1 provides a summary of access agreements all WIO States)

- Kenya has no FPA and all foreign access is through private license. Most of the licenses were issued to Asian longliners from 2005-2008. Between 2009- 2011 no Asian longliners were licensed. French, Spanish and Seychelles purse seiners were licensed between 2007-2011.<sup>14</sup>

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<sup>8</sup> C. Clover, *The End of the Line*, 2006; Andre Standing, *The Benefits and Limits of Transparency: Some Considerations for the Reform of the European Union's Common Fisheries Policy*, 2010. .

<sup>9</sup> Elizabeth Havice, *The State of Play of Access Agreements with Distant Water Fishing Partners: implications and Options for Pacific Island Countries*, FFA Briefing Paper (2007); Stephen Mbithi Mwikya, *Fisheries Access Agreements: Trade and Development Issues*, ICTSD 2006.

<sup>10</sup> Tabitha G. Mallory, *An "Edge Ball" for Sustainable Tuna: China's Role in the Western and Central Pacific Fisheries Commission*, 2012.

<sup>11</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, *Comparative Study of the Impact of Fisheries Partnership Agreements* (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Kwame Mfodwo and Colin Barnes, *Kenya report* 2012.

However, the licenses are issued in data-poor conditions, posing a risk to the tuna stocks. There is concern that Kenya does not derive commensurate return from the licenses issued to foreign fishing vessels in exchange for its tuna. For example, Mfodwo and Barnes estimated the rate of return (RoR) for the actual fees paid to the Kenyan government to be 2.6% for 2007; 4.1% for 2008; and 6.8% for 2009.<sup>15</sup> According to their report, an RoR of 2-4% is considered low. In which case there is a need to increase license fees. Accordingly, an adequate RoR ought to be in the range of 7%, whilst at least 10% of the returns if captured, would represent the lowest level for an equitable outcome.<sup>16</sup> Kenya benefits from transshipment activities in port and export of tuna loins to the EU. It is expected that Kenya and Tanzania proceed to bilateral FPA negotiations with the EU after the conclusion of European Partnership Agreement (EPA) between East Africa Community (EAC) and the EU. See section 8.5.

- Tanzania has no FPA and is in stalemate given the division of revenue accruing from such an agreement between mainland Tanzania and Zanzibar. An agreement has been entered into with the Japan Tuna Co-operative Association. Foreign access is mainly through private license. The concern for these licenses is similar to Kenya and so is the data situation. An assessment by Mfodwo and Barnes established RoR fo 3.7% in 2007, and 2.43% in 2009. A level less than 5% is not considered equitable and would require an increase in license fees. According to the same study, it was recommended that efforts be made to secure an RoR of 5% at least. See section 8.6.
- Seychelles grants access rights through access agreements or issues private licences. The dominant EU purse seine fleet make a significant contribution to the Seychelles economy. Seychelles has a current EU FPA for the period 2011 – 2014. Seychelles has maintained a strong negotiating position with DWFNs. The Asian longline fleet maintains agreements with Seychelles to catch tuna in their EEZ, but land their catches in other ports including, Phuket, Bangkok, Japan, Taiwan, China, Hong Kong, Singapore, Korea, Indonesia and the Philippines.<sup>17</sup> As value addition is seen as a major contributing factor to the economies of coastal States in association with access agreements, the canning industry which has contributed to making Port Victoria the biggest tuna transshipment (by volume) and landing port in the world is very significant. See section 8.3.
- Mauritius FPA has recently been initialled in February 2012 covering a period of six years from the date of signature and renewable for successive periods of three years.<sup>18</sup> The new FPA and the new Protocol are to be signed and enter into force after the completion of the procedures for their formal conclusion. The Agreement will enter into force once the two parties agree and complete the formalities as per the protocol. A study by Mfodwo and Barnes established that Mauritius has a strong negotiating position since it has had a diverse range of trading partners, thereby having more options when dealing with either the EU or

<sup>15</sup> The rate of return RoR is monetary value received by the Coastal State as a proportion of the total monetary value of the catch once sold in the final port of destination of the foreign fleet.

<sup>16</sup> Kwame Mfodwo and Colin Barnes, *Economic Valuation of Tuna Resources in the Western Indian Ocean*, 2012.

<sup>17</sup> Kwame Mfodwo and Colin Barnes, *Economic Valuation of Tuna Resources in the Western Indian Ocean*, 2012.

<sup>18</sup> European Commision, *Proposal for Council Conclusion*, COM (2012), 441 Final.

the East Asian countries. Tuna canning is thriving in Mauritius, but half of its workforce is made up of foreign employees. See section 8.4.

- Madagascar has agreements with the EU and Japan. The Japanese export the catches directly to Japan, while the EU catches contribute to the domestic canning industry. Malagasy benefits from canning are limited to employment alone. A study by Le Manach et al., concludes that the current FPA with a 2007-2012 timeframe is in direct conflict with, and complete contradiction to the goals set forth by the EU CFP. This is because the current FPA is considered less favourable in terms of the financial contribution by the EU. In terms of real value, the financial contribution has dropped by 90% between 1986 and 2010.<sup>19</sup> The EU is receiving more tuna at a fee that has declined by 20%. The EU vessels owners are the beneficiaries of the current agreement with increased ex vessel prices and quotas, while Madagascar's treasury income has decreased. This situation is against the goals set by the CFP for benefits of agreements to be directed mainly towards developing countries, and not towards private EU entities.<sup>20</sup> See section 8.1.
- Mozambique has an FPA with the EU as well as issuing private licenses to other DWFNs. The timeframe for the EU Fisheries Partnership Agreement is 2012 – 2015. Tuna fishing vessels rarely use land-based facilities and Mozambican authorities have had almost no control whatsoever in this fishery. The labour is also foreign, meaning there is no professional development or transfer of skills beneficial to the domestic fishery sector, or flowing into the domestic economy through wages, taxes etc. Tuna catches are transhipped at sea or landed in other WIO ports. The EU Fisheries Agreement has had the exploitation of these EEZ resources within the frame of the IOTC management recommendations, and ensuring improvements in catch reporting before Mozambique became a member of the IOTC. See section 8.7.
- South Africa has joint ventures with Asian fleets, mainly Taiwan and Japan. From 2004 the permits have been issued to South African rights holders. The benefits from tuna are mainly from exports. South Africa maintains a high level of effort control in its tuna fisheries. See section 8.8.
- Comoros receives only access fees from fisheries agreements and licence fees. There are neither exports from the island or local landings of tuna by industrial fishers. EU purse seiners land their catches in other ports. The benefits from access agreements are very minimal. See section 8.2.

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<sup>19</sup> Le Manach F, et al. Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements. Mar. Policy (2012).

<sup>20</sup> European Commission, The Common Fisheries Policy—A User's Guide, European Commission, Brussels, Belgium 2008.



The general challenges for WIO States in managing and optimising economic benefits from access agreements can be summarised as follows;

- Weak Monitoring Control and Surveillance (MCS)
- Little knowledge of the stocks
- Insufficient technical expertise in various areas, including negotiation skills
- Illegal, Unreported and Unregulated fishing activities
- Insufficient port infrastructure and processing plants
- Bulk of the catch by Asian fleets transhipped at sea and exported to Asian markets including Japan and Thailand
- Minimal return of value to domestic economies, relative to value of tuna catches.

STATE	Fisheries access agreements/licenses	LOSC	UN Fish Stocks Agreement	IOTC Membership
Comoros	FPA with EU	Signed-1984 Ratified-1984	No	✓
Kenya	Private Licenses No EU agreement	Signed-1982 Ratified-1989	Acceded 2004	✓
Madagascar	FPA with EU Private licenses	Signed-1983 Ratified-2001	No	✓
Mauritius	Japan Agreement Private Licenses Pending FPA with EU	Signed-1982 Ratified-1994	Acceded 1997	✓
Mozambique	FPA with EU Private Licenses	Signed-1982 Ratified-1997	Acceded 2008	✓
Seychelles	FPA with EU Private Licenses	Signed-1982 Ratified-1991	Signed-1996 Ratified-1998	✓
South Africa	Joint ventures No EU Agreement	Signed-1984 Ratified-1997	Acceded 2003	✓
Tanzania	Private Licenses No EU Agreement	Signed-1982 Ratified-1985	No	✓

Table 1 Summary status of SWIO States<sup>21</sup>

The SWIO States are benefitting mainly from access fees and licensing as majority of value –adding processing is carried out in Asia.<sup>22</sup> Sustainability of tuna stocks cannot be assured in the absence of proper monitoring, control and surveillance mechanisms and capacity. Licenses and access agreements are also being entered into and issued in data-poor situations. It is unclear whether “such payments represent an adequate proportion of the monetary value associated with the resource as well as the opportunity costs associated with allocating the specific fisheries resources to foreign and domestic fleets”.<sup>23</sup> Aside from inadequate data, there is also a lack of transparency

<sup>21</sup> It is essential that all the SWIO States accede to the UNFSA which provided for the regional cooperation of coastal States in order to commit to its legal requirements.

<sup>22</sup> Mfodwo and Barnes, Economic Valuation

<sup>23</sup> Mfodwo and Barnes, Economic Valuation

with respect to fishing fleets, processing companies, associations and governments.<sup>24</sup> This is detrimental to the sustainability of tuna stocks and species that are dependent upon tuna as well as ecosystems. License fees ought to be based on the cost of managing the fishery as well as the value of the resource.<sup>25</sup>

The lack of transparency on the part of the DWFNs weakens the bargaining power of the WIO States. Access agreement negotiations with Asian DWFNs are also 'closed' making them harder to manage since important details such as monitoring procedures may not be sufficiently disclosed to fisheries authorities, making it difficult for them to take appropriate action.<sup>26</sup> These issues put the sustainability of WIO tuna stocks at risk. However, the WIO States have varied strengths which can be pooled in order to respond quickly and efficiently to the conservation and management needs of the tuna stocks in the region. Through a regional access regime, resources can be sought, experiences shared, and skills developed to enhance the bargaining power of the WIO States. Hence, the need to develop Minimum Terms and Conditions for foreign access, to simultaneously bring much greater socio-economic benefits to WIO states and thus strengthen their ability to ensure the sustainability of tuna stocks which migrate throughout the region, and their associated ecosystems.

Although the WIO States may not have identical objectives with regard to foreign fishing activities, their common interests to sustainably develop their tuna resources and to derive optimum benefits to their national economies justifies the development of a joint, or common foreign fishing access regime. Such a regime would need to provide an effective means by which the WIO States may, through their joint efforts, control and manage foreign fishing and increase the benefits from foreign fishing in the region. The increased benefits may come from a range of other economic activities and not necessarily access fees.

The proposed MT&Cs have been drawn from international instruments and address issues of Flag State responsibility, authorisation and licensing, transshipment, reporting mechanisms and observers. To most effectively benefit from, and implement these MT&C's, WIO governments need to be committed at the highest levels. A draft protocol annexed to this report provides guidelines to securing this commitment from the WIO governments. The MT&Cs need to be incorporated into national legislation of the respective countries in the region in order to make them enforceable. Among the challenges that the WIO States may be faced with in implementing these terms will be strong opposition of the conditions by the DWFNs. WIO States also have varied economies and other key disparities between them. The commitment of the WIO States needs to stand the test of acting effectively in order to ensure the implementation of the MT&Cs.

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<sup>24</sup> Mfodwo and Barnes, Economic Valuation

<sup>25</sup> License fees need to be representative of the cost of services provided by WIO governments such as administration, research and compliance, in order to aid in cost recovery. Additionally the value of the fisheries resources contributes to the determination of the level of licensing.

<sup>26</sup> Stephen Mbithi Mwikya, Fisheries Access Agreements: Trade and Development Issues, ICTSD 2006.

A coordinating institution will be required. It is proposed that the Southwest Indian Ocean Fisheries Commission (SWIOFC) be considered for this role, considering that all the WIO States addressed in this report are members of the organisation. Such an entity would require significant human and financial resources. Although the example of the Parties to the Nauru Agreement and Te Vaka Moana Pacific Island country fisheries cooperation initiatives and the West African Sub-Regional Fisheries Commission (SRFC) provide lessons for the WIO, the regions have key differences and therefore the solutions will not necessarily be mirrored. However, the commitment of the Pacific Island States including at the highest political level to cooperate over what is often their only major natural resource, has enabled these States to significantly increase their economic gains from then and to design frameworks for the governance of their tuna resources which they often depend on entirely for government budgets and for the general well-being of their populations. Similarly the West African States have also pooled their efforts for a sustainable and harmonious exploitation of the sub-region's marine resources. The latest MT&Cs in these regions are also finally becoming accepted by DWFNs who initially resisted them and even broke off access agreements in the first days of their implementation, particularly in the Pacific.

## **CONCLUSIONS**

The terms of reference that are specific to this report and which have been met include;

- Undertake a comprehensive review of available data/information on the status of existing fisheries agreements between WIO states and the European Union, China, Japan, USA and any other country as appropriate, their history and recent developments.
- Provide background material on the dynamics and politics of fisheries access arrangements within the context of individual WIO countries and the EU, Japan, China, USA and any other appropriate country as well as public perception on FPAs and how this affects local people and the coastal and island states in the WIO region. This will also include an assessment of the key issues for each coastal state and risk analysis.
- Provide a justification for the need to have Minimum Terms and Conditions for fisheries access arrangements within the WIO range states while taking into considerations wider Indian Ocean region perspectives,
- Prepare Minimum Terms and Conditions for fisheries access agreement, including the protocol.
- Offer suggestions to the countries on how to go about implementing the MT & C and its protocol, including proposals on the host institution and political framework, while looking into option for its application in the entire Indian Ocean region



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## Acronyms

ACP	African, Caribbean and Pacific
AUC	African Union Commission
CFP	Common Fisheries Policy
CCRF	Code of Conduct for Responsible Fisheries (FAO)
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
COMESA	Common Market for Eastern and Southern Africa
DWFN	Distant Water Fishing Nation
EAC	East African Community
EEZ	Exclusive Economic Zone
EPA	European Partnership Agreement
EU	European Union
FPA	Fisheries Partnership Agreement
IUU	Illegal, Unreported and Unregulated
IOTC	Indian Ocean Tuna Commission
ICCAT	Commission for the Conservation of Atlantic Tunas
LOSC	Law of the Sea Convention
MCS	Monitoring, Control and Surveillance
MOU	Memorandum of Understanding
MT&Cs	Minimum Terms and Conditions
MSY	Maximum Sustainable Yield
RFMO	Regional Fisheries Management Organisation
SADC	South African Development Community
SFRC	Sub-Regional Fisheries Commission
SIOFA	South Indian Ocean Fisheries Agreement
SWIOFC	Southwest Indian Ocean Tuna Fisheries Commission
TAC	Total Allowable Catch
UNCLOS	United Nations Convention on the Law of the Sea
UNFAO	United Nations Food and Agricultural Organisation
UNFSA	United Nations Fish Stocks Agreement
VMS	Vessel Monitoring System
WIO	Western Indian Ocean
WTO	World Trade Organisation
WWF	World Wide Fund for Nature

## 1.0 INTRODUCTION

This Report provides draft Regional Minimum Terms and Conditions (MT&C) for granting tuna fishing access in the Western Indian Ocean as requested by WWF-Coastal East Africa Global Initiative (Agreement No CN63). The WIO States addressed in the report are; Kenya, Tanzania, Mozambique, Mauritius, Seychelles, Comoros, Madagascar and South Africa. See Figure 1.

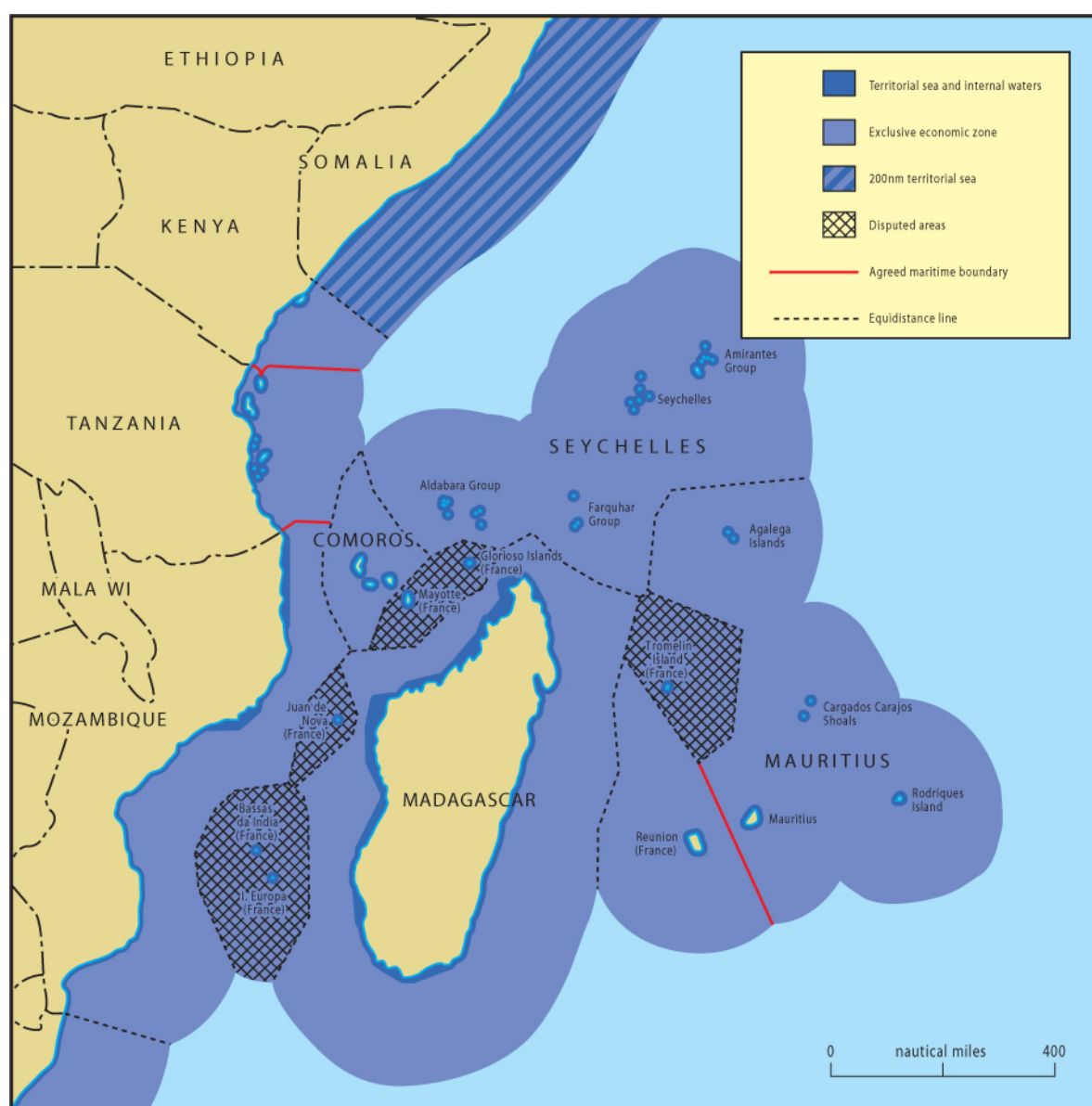


Figure 1. Map of Study Area and Respective Maritime Claims (except South Africa)<sup>27</sup>

### 1.1 Objectives of this Report

The overall goal of the consultancy is to develop Minimum Terms and Conditions Protocol for the WIO range states anchored in a regional political framework with a view to empowering WIO

<sup>27</sup> Source: IBRU/Jane's Exclusive Economic Zones.

Coastal and Island States to engage with Distant Water Fishing Nations (DWFN) in order to secure far greater return from their tuna resources and other migratory species in their respective waters while ensuring the sustainability of the stocks.

## **1.2 Report Outputs**

The report presents the outputs specified in the TOR as follows;

- A. Inception report outlining the methodology, including work plan for successful implementation of this project
- B. Background document with results of the assessment of the existing agreements in the WIO that would inform the coastal States on conditions for future fishing negotiations under the new MT & C framework
- C. Draft MT & C and Protocol for the WIO region

## **2.0 APPROACH AND METHODOLOGY**

This report is based on a comprehensive desk analysis. The fisheries agreements in the region are generally classified into EU and non-EU. The non-EU agreements are mostly East Asian. The characteristics of these agreements are reviewed in relation to their contribution to the economic and sustainability functions of the WIO tuna fishery. The study is guided by the following elements of international law including;

- The 1982 Law of the Sea Convention
- The UN Fish Stocks Agreement
- FAO Code of Conduct for Responsible Fisheries
- Precautionary approach

The Nauru Agreement and the proceedings from the meetings preceding the establishment of the Parties to the Nauru Agreement provided guidance in the development of MT&Cs. Such meetings included preparatory Conference for the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific. Reference was also made to various proceedings of the Sub-Regional Fisheries Commission as well as workshop reports on Regional Minimum Conditions for Access to Fisheries Zones of West African coastal States. A number of WWF documents on access agreements and the European Union policies were also referenced. The texts of the EU Agreements also provided guidance. Other than the official agreement text information relating to fisheries agreements, the underlying negotiations between contracting parties are not available in public domain. Regarding the EU FPAs, a summary of the benefits and disadvantages to WIO States form an annex to this report.

### 3.0 BACKGROUND

#### 3.1 WIO Tuna Fisheries

Tunas are one of the most economically important marine species globally and their demand has been on the increase, with tuna fishing around the world intensifying especially since the 1990s. According to WWF's Global tuna initiative,<sup>28</sup> the global demand for tuna fisheries continues to escalate with production having reached an estimated six million tons today. Consequently, growth in demand has resulted in increased fishing capacity and the large-scale decline of the world's tuna stocks.<sup>29</sup> This demand is constantly increasing pressure upon developing coastal States to provide distant water fishing nations (DWFNs) with access to their tuna resources. The depletion of these top predators affects and alters the entire ecosystem in various ways. For example overfishing has an effect on the tuna resources, species that depend on them, trophic relationships in the ecosystem, and habitats in which the fishing is done.<sup>30</sup> It can reduce the spawning biomass of tuna, alter species composition and biodiversity, reducing large, long-lived, and high value predator species while increasing small, short-lived, and lower value pelagic and demersal prey species ("fishing down the food chain").<sup>31</sup>

The Indian Ocean has been impacted by the increase in global demand for tuna since the 1980s, and a significant amount of fishing effort shifted from the Atlantic Ocean to the Indian Ocean.<sup>32</sup> By 2004, 26% of the global landings of tuna were being taken from the Indian Ocean.<sup>33</sup> Tuna fishing operations in the Indian Ocean increased rapidly as the purse seine fishery became more efficient.<sup>34</sup> Fishing vessels from Spain and France targeting skipjack and yellowfin tuna expanded their operations to the WIO region.<sup>35</sup> A purse seine fishery was started in the Seychelles in the 1980s by French seiners who had moved from the eastern Atlantic.<sup>36</sup> The longline fishery in the region was dominated by Japan from the 1950s, followed by Taiwan, the Republic of Korea and Indonesia.<sup>37</sup> These vessels were based in Mauritius, Kenya, Seychelles and South Africa.<sup>38</sup> Transshipments are known to take place in Mombasa-Kenya, Port Louis-Mauritius, and Victoria-Seychelles.

#### 3.2 Tuna Resources

The SWIO has several tuna fisheries which are of social and economic importance to the coastal States. The tuna fishery is particularly significant for the economies of the WIO island States, which

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<sup>28</sup> WWF Global tuna initiative, <http://assets.panda.org/downloads/fortuna.pdf>.

<sup>29</sup> World Wide Fund for Nature (WWF), Tuna in trouble: The challenges facing the world's tuna fishery (WWF, 2007)

<sup>30</sup> <http://www.fao.org/fishery/topic/12273>.

<sup>31</sup> <http://www.fao.org/fishery/topic/12273>.

<sup>32</sup> Jacek Majkowski, Global Fishery Resources of Tuna and Tuna-like Species, FAO Fisheries Technical Paper 483 (2007)

<sup>33</sup> Ibid.

<sup>34</sup> Makoto Miyake, Naozumi Miyabe, and Hideki Nakano, Historical Trends of Tuna Catches in the World. FAO Fisheries Technical Paper 467 (2004)

<sup>35</sup> FAO, Historical trends of tuna catches of the world, Fisheries Technical paper No. 467, Rome 2004.

<sup>36</sup> Jacek Majkowski, Global Fishery Resources of Tuna and Tuna-like Species, FAO Fisheries Technical Paper 483 (2007)

<sup>37</sup> Ibid.

<sup>38</sup> J.D. Ardill, Tuna fisheries in the south West Indian Ocean, 1984, <http://www.fao.org/docrep/field/255095.htm>,

have vast EEZs, compared to their land areas. The EEZs of these States 'cover an ocean area of approximately 3.8 million km<sup>2</sup> compared to a total land-cover of only 586,250 km<sup>2</sup>.<sup>39</sup> See Table 2.

State	Area of EEZ (Km <sup>2</sup> )
Comoros	161,993
Kenya	104,056
Madagascar	1,079,672
Mauritius	1,274,638
Mozambique	493,672
Seychelles	1,288,643
South Africa (continental-minus Islands)	1,068,659
Tanzania	204,294

Table 1. Exclusive Economic Zones of SWIO States<sup>40</sup>

The WIO region is one of the most important fishing grounds globally for skipjack, and a principal fishing ground for yellowfin and bigeye tunas after the Western and Central Pacific and the Eastern Pacific oceans respectively.<sup>41</sup> These are the main market species targeted DWFNs and local industrial fishers. Tuna species have contributed more than 75% of the oceanic catches in the region since 1983.<sup>42</sup>

The vast majority of the tuna caught in the region are harvested by foreign fleets. The increasing demand for access to tuna stocks means the WIO States are engaging in selling the rights to fish in their waters to foreign vessels, through foreign access agreements and licensing. Foreign access is therefore a central aspect of the tuna trade of the WIO. As this is an important source of revenue for the WIO States, sustainability and profitability in the tuna fisheries of the WIO are important in both political and economic terms.

### 3.3 The Oceanic Environment

The physical and biological aspects of the WIO coast such as the dispersal and recruitment of tuna are influenced by ocean currents and the climatic conditions (see Figure 1). These aspects similarly impact the productivity of tuna fisheries and the revenue levels expected by WIO States individually. Coastal currents greatly influence the distribution and migration patterns of tuna along the WIO coast, creating high and low seasons of availability. This in turn determines the activity of

<sup>39</sup> Western Indian Ocean Islands and coastal and marine environments, [http://www.eoearth.org/article/Western\\_Indian\\_Ocean\\_Islands\\_and\\_coastal\\_and\\_marine\\_environments#Introduction](http://www.eoearth.org/article/Western_Indian_Ocean_Islands_and_coastal_and_marine_environments#Introduction)

<sup>40</sup> World Resources Institute, 2006, Earthtrends: Environmental Information, <http://earthtrends.wri.org>.

<sup>41</sup> William H Bayliff, Juan Ignacio de Levia Moreno and Jacek Majkowski (eds), Management of Tuna Fishing Capacity: Conservation and Socio-economics (FAO, 2005). Second Meeting of the Technical Advisory Committee of the FAO project, 15-18 March 2004, Madrid, Spain.

<sup>42</sup> FAO, Trends in Oceanic Captures and Clustering of Large Marine Ecosystems, Fisheries Technical Paper No. 435, Rome 2002.

fishing vessels in the region as they pursue the tuna stocks during the different seasons.<sup>43</sup> The implications for management are also clear in terms of the overarching need for arrangements that manage the impacts of fishing throughout the range of the stock, including in EEZs and on the high seas.

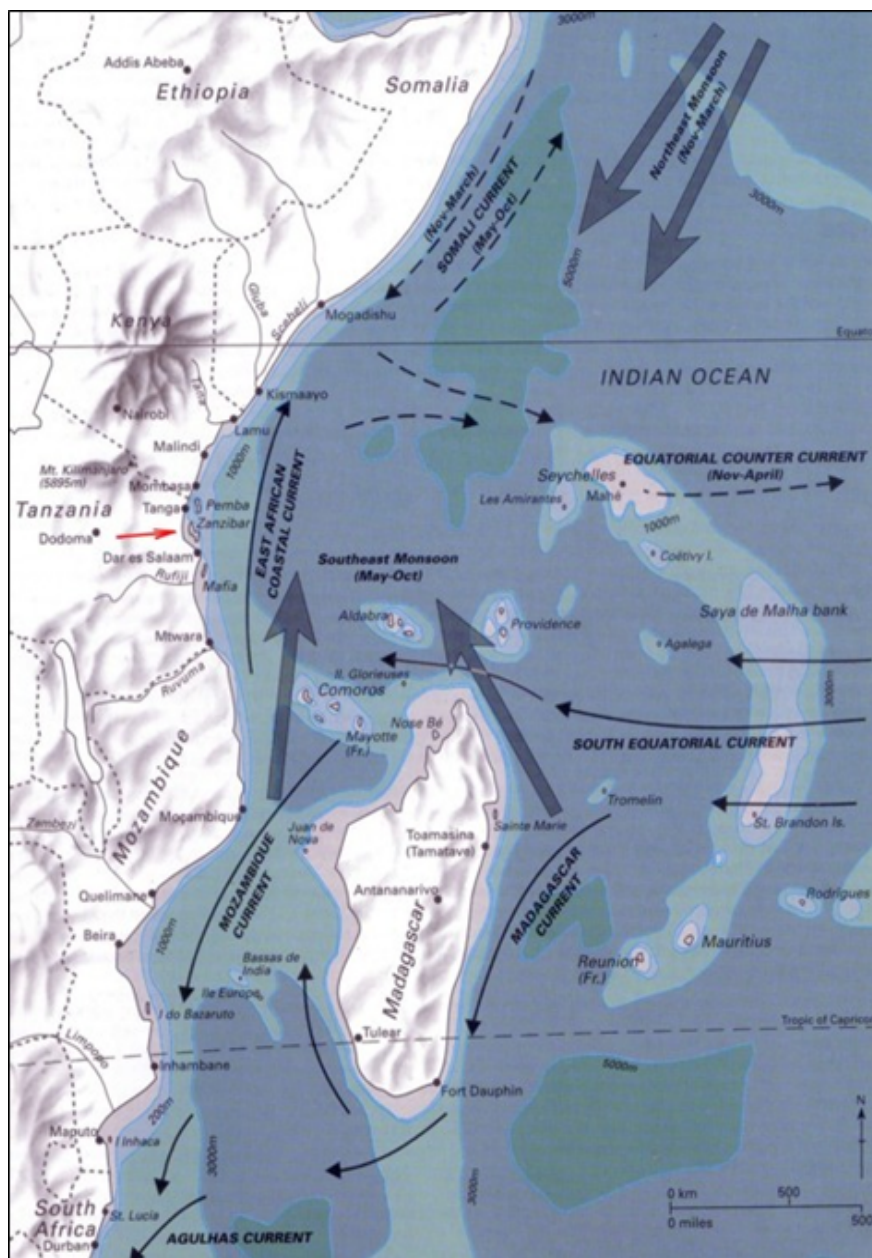


Figure 2. WIO Coastal Currents<sup>44</sup>

Observations from tuna tagging programs of the Indian Ocean have established that all three major species of tuna targeted commercially migrate across the entire Western Indian Ocean region, and

<sup>43</sup> For example purse seiners target free swimming schools of yellowfin in the central area with the Equatorial Counter Current (a seasonal zonal current occurring November -March).

<sup>44</sup> Source: <http://www.theissresearch.org/scientists/theiss/zanzibar/overview.jpg>.



that they are each represented by a single stock in the entire Indian Ocean.<sup>45</sup> Figure 3 gives an indication of the seasonal movements of tuna in the WIO.<sup>46</sup>

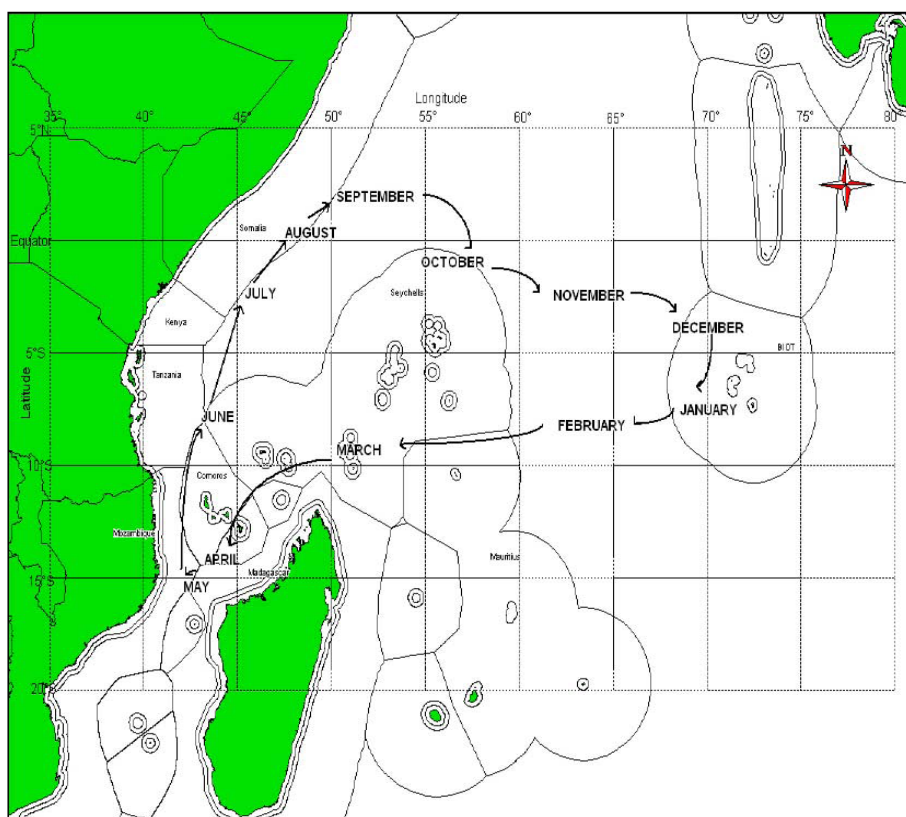


Figure 3. Seasonal Movements of Tuna in the WIO<sup>47</sup>

Although all tunas and tuna-like species occupy a high trophic level as adult predators, their feeding behaviour and developmental changes in their feeding habits mean that over their life history, they occupy more trophic levels than any other group of fishes.<sup>48</sup> This is because tuna feed on a diverse range of prey across different zones of the ocean during their different developmental stages as larvae, juveniles and adults.<sup>49</sup> The migratory nature of tuna correlates with physical ocean properties such as temperature, oxygen and appropriate food supplies. Due to their high metabolic requirements tunas require ready access to food.<sup>50</sup> For this reason tunas swim constantly for

<sup>45</sup> William H Bayliff, Juan Ignacio de Levia Moreno and Jacek Majkowski (eds), *Management of Tuna Fishing Capacity: Conservation and Socio-economics* (FAO, 2005). Second Meeting of the Technical Advisory Committee of the FAO project, 15-18 March 2004, Madrid, Spain.

<sup>46</sup> The Somali basin is exploited from mid-July to mid-November and the Mozambique channel March-June mainly on FADs.

<sup>47</sup> Source: G. Parkes, *IUU Fishing*, May 2007.

<sup>48</sup> FAO, *Research Implications of Adopting the Precautionary Approach to Management of Tuna Fisheries*, Fisheries Circular No. 963 (2001).

<sup>49</sup> Tunas feed on prey found in the pelagic (open ocean), epipelagic (close to water surface) and mesopelagic zones (180-900 meters deep). See *Biological Characteristics of Tuna*, <http://www.fao.org/> (accessed 31 January 2011).

<sup>50</sup> Kathleen A Miller, 'Climate Variability and Tropical tuna: Management Challenges for Highly Migratory Fish Stocks' (2007) 31 *Marine Policy* 56, 60.

feeding purposes, migrating long distances in search of seasonal food and to return to warm waters for spawning.<sup>51</sup> Because of their biological characteristics and the corresponding natural needs, tunas are categorised as “highly migratory species” under international law. Consequently, during their lifetime, tunas may enter and exit the waters of a number of jurisdictions.

#### 4.0 THE INTERNATIONAL LEGAL REGIME

The key global agreements relevant to governing the conservation, management and sustainable utilization of tuna resources are; (a) The 1982 United Nations Convention on the Law of the Sea (LOSC) and The 1995 United Nations Fish Stocks Agreement (UNFSA).<sup>52</sup> This legal framework responds to the biological characteristics of tuna as a migratory species. The FAO Code of Conduct for Responsible fisheries (CCRF) is also applicable to tuna as it establishes principles and standards applicable to the conservation, management and development of all fisheries. Although it is not binding the CCRF has been adopted by International Conferences by consensus, hence its political significance.

##### 4.1 The Law of the Sea Convention

The LOSC provides the international framework for managing and conserving all living marine resources. The LOSC also defines and recognises coastal States’ sovereign rights and duties for the purpose of managing and conserving living resources like tuna in their EEZs. The sovereign rights entitle WIO States to explore and *exploit, conserve and manage* the tuna resources of the EEZ. WIO States are not only able to utilise the tuna resources in their EEZ for their own benefit but they can also limit access to these resources and determine how they are to be utilised.

##### 4.1.1 EEZ Stocks

Tunas are subject to the general fisheries conservation obligations in the EEZ. The WIO States are thus obligated to;

- determine the allowable catch (TAC);
- establish conservation and management measures that ensure the maintenance of the tuna resources in the EEZ so that they are not endangered by over-exploitation
- take into consideration the effects on species associated with or dependent on tuna
- contribute and exchange data relevant to the conservation of tuna stocks

WIO coastal States are also obliged to *promote the objective of optimum utilisation* of their tuna resources by *determining their capacity to harvest the tuna resources of the EEZ*. They have an obligation to *give other States access to the surplus of the allowable catch*, through agreements or

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<sup>51</sup> Jeffrey B Graham and Kathryn A Dickson, ‘Anatomical and Physiological Specializations for Endothermy’ in Barbara A Block and E Donald Stevens (eds), *Tuna: Physiology, Ecology and Evolution* (Academic Press, 2001).

<sup>52</sup> The 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.



other arrangements, *in so far as they do not have the capacity to harvest the entire allowable catch*. The WIO States are empowered to *regulate the activities of nationals of other States fishing in their EEZ*, to ensure that they are consistent with national laws. Accordingly, they are under an obligation to *institute effective compliance and enforcement mechanisms* to ensure implementation of the conservation and management measures that they have adopted.

#### **4.1.2 Specific Tuna Obligations**

The broad migratory range of tunas across jurisdictional boundaries exposes them to exploitation by several States. As a shared fish stock tuna cannot therefore be managed unilaterally. The challenge of managing tuna is that, the conservation and management efforts of one State can be undermined by the uncontrolled fishing activities of a neighbouring State or by States fishing on the high seas. For these reasons, the LOSC underpins the principle of *cooperative management* of tuna and provides for their management in the EEZ and beyond.

#### **4.1.3 Highly Migratory Stocks**

The LOSC encourages State Parties to co-operate, at an *international or regional* basis, for the protection and preservation of the marine environment, taking into account characteristic regional features. The treaty requires State Parties to establish, either directly or through appropriate regional organizations, measures necessary for the conservation and utilization of straddling and highly migratory fish stocks both within and beyond the EEZ. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region are to cooperate to establish such an organization and participate in its work.

A State can only exercise its right to fish on the high seas if it has attended to the rights, duties and interests of coastal States in straddling and highly migratory fish stocks like tuna and also cooperate in the conservation and management of the high seas segments of such fish stocks. States are obligated to take measures to ensure that their nationals fishing on the high seas conserve the relevant tuna stocks. These requirements are aimed at safeguarding the management measures of coastal States in the EEZ such that they are not at risk of being undermined by the activities of vessels fishing on the high seas. These provisions, which are particularly relevant for the transboundary management of tuna stocks, have been elaborated upon in the 1995 United Nations Fish Stocks Agreement.

*It is imperative that for WIO States to discharge the obligation of cooperation to manage tuna, they ought to negotiate, with a view to agreeing to establish appropriate conservation and management measures for the relevant fish stocks. The incentive for the WIO States to cooperate would not only be to maximise the economic returns from the tuna stocks occurring in their EEZs but also to conserve and manage them in order to ensure the long-term sustainability of such fish stocks.*

### **Box 1. Summary on cooperation**

The decisions made by the WIO States will be of interest to fishing States in the region and other coastal States since they bear on shares of the catch; cost of operation; time of activities; choice of gear; and location of fishing. Cooperation in this context should aim at a unified management regime applicable to stocks within and beyond the EEZ. The States involved therefore need to be united in their actions and regulatory measures if they are to achieve their objectives. Thus, it is necessary for the actions of such States to be preceded by communications designed to lead to agreed measures to be implemented by the coastal States within the EEZ and by fishing States beyond, in order for them to be consistent with the requirements of the LOSC.

### **4.2 The 1995 United Nations Fish Stocks Agreement<sup>53</sup>**

The objective of the UN Fish Stocks Agreement (UNFSA) is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the LOSC. It also provides a framework for cooperation among States by establishing the relevant measures in this regard, and recognises the role of Regional Fisheries Management Organisations (RFMOs) in providing the mechanism for achieving cooperation between and among States participating in tuna fisheries. RFMOs have a responsibility to adopt appropriate conservation and management measures to ensure the long-term sustainability of tuna stocks under their purview as required under international law. In the case of the WIO States, cooperation is achieved through the Indian Ocean Tuna Commission (IOTC).

The UNFSA pursues a holistic, ecosystem approach, as it sets out general principles, requiring Parties to, *inter alia*; adopt measures to ensure the long-term sustainability of straddling and highly migratory fish stocks; ensure that such measures are based on the best available scientific evidence, taking into account the interdependence of stocks; apply the precautionary principle; protect marine biodiversity; take measures to prevent or eliminate overfishing; take into account the interests of artisanal and subsistence fishers; and implement and enforce conservation and management measures through effective monitoring, control, and surveillance.

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<sup>53</sup> The 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

*All the WIO States are Parties to the LOSC and the UN Fish Stocks Agreement and are therefore bound by their provisions. They are also members of the IOTC and are thus obligated to participate in its activities and to implement the management measures established by the Commission.*

*Note: The UNFSA provides a basis for the establishment of regional and subregional organisations for the management of tuna. Such an organisation would facilitate the implementation of Minimum Terms and Conditions for managing tuna in the WIO.*

## **Box 2. Summary regional and sub-regional organisations**

### **5.0 FISHERIES ACCESS AGREEMENTS**

The legal basis for fisheries access agreements lies in the LOSC. The adoption of the LOSC in 1982 which enabled coastal States to exercise their jurisdiction over the [tuna] resources in the EEZ created the need for DWFNs to negotiate access to such resources which they had previously fished. The main DWFNs were the USSR, Japan, Spain, Republic of Korea, Poland, Taiwan and Portugal. Fisheries access agreements were adopted in the late-seventies as a means of regulating the activities of foreign fishing vessels when most coastal States extended their jurisdiction over waters adjacent to their coasts.<sup>54</sup> Most coastal States preferred to manage foreign fishing through access agreements rather than direct licensing because access agreements provided the means for coastal States to secure recognition of their jurisdiction and rights, and also for purposes of compliance and economic gain.<sup>55</sup> These agreements provided an opportunity for the establishment of a framework which could incorporate requirements for foreign fishing States to adopt measures which ensured that they would comply with coastal States laws.<sup>56</sup>

The recognition of the sovereign rights of coastal States through access agreements is most significant for tuna, as it facilitates the application of the relevant provisions of the LOSC.<sup>57</sup> Such clarity is significant for developing coastal States as they can exercise their rights and authority over the resources of the EEZ in accordance with the provisions of the LOSC. Today, access agreements have become an increasingly important part of trade and development relations between developed and developing States, and they form the main supply for fishery species like tuna to DWFNs.<sup>58</sup>

The WIO States are ultimately sovereign in deciding to whom they grant access. The practice of many developing States to assign access rights to DWFNs has been driven by the need to generate revenue, their inability to fish surplus stocks and the need to satisfy the obligation in the LOSC to assign such surplus to other States for exploitation.<sup>59</sup> Thus under the terms of Article 62 of the LOSC

<sup>54</sup> Les Clark, Perspectives on Fisheries Access Agreements: Developing Country Views, in Fishing for Coherence: Proceedings of the Workshop on Policy Coherence for Development (OECD, 2006).

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Articles 63 and 64 of the LOSC require States to cooperate in the management of shared tuna stocks.

<sup>58</sup> Marcos Orellana, Towards Sustainable Fisheries Access Agreements: Issues and Options at the World Trade Organisation (UNEP, 2008).

<sup>59</sup> Kevern L Cochrane and Serge M Garcia (eds), A Fishery Manager's Guidebook (FAO, 2009) 122.

which requires coastal States to avail the surplus [tuna] resources in their EEZ to 'other States',<sup>60</sup> developing coastal State such as those of the WIO are able to derive economic benefits from the tuna resources in their EEZ in spite of their inability to harvest them.

The concept of a surplus stock is the basis of fisheries agreements with DWFNs, including the European Union's Fisheries Partnership Agreements (FPAs). The idea of a surplus denotes fish stocks that the host State does not have the capacity or interest to harvest to their full potential.<sup>61</sup> The Scientific, Technical and Economic Committee for Fisheries (STECF) interprets as "surplus" as "the total fishing effort (defined by the fleet capacity and its potential activity) the coastal State is able to apply for the exploitation of its EEZ resources".<sup>62</sup> In other words, "surplus" is the remaining fraction of the allowable catch after subtracting the coastal State catches, taking into account the coastal States fishing capacity.<sup>63</sup> The surplus is therefore based on total allowable catches or effort and coastal State capacity to harvest the stock, which are not simple to estimate and combine.<sup>64</sup> If a coastal State exploits its stocks at Maximum Sustainable Yield (MSY) level,<sup>65</sup> then the surplus catch in a given year is equal to the catch corresponding to the agreed harvesting minus the potential catch of the coastal State.<sup>66</sup>

If the MSY is exceeded, the biomass of the tuna stock cannot regenerate to previous levels and a lower yield is therefore obtained, or stocks could collapse if the MSY is exceeded significantly.<sup>67</sup> As several fleets are operating in the WIO region, the surplus catch refers to the combined catch of these fleets. "A reliable allocation of surplus catches between different foreign fleets assumes that the coastal state has a management plan in operation, effectively enforced and a system that provides reliable fisheries statistics".<sup>68</sup> There is no guarantee that the fisheries are sustainable in the absence of such a management system. In developing States like those of the WIO, lack of adequate data makes it difficult to establish the existence of a surplus.

Besides enabling developing WIO States to derive revenue from their tuna resources, fisheries access agreements can also foster the development of the fishery. In principle, such agreements can be a positive way of managing the surplus fish stocks of developing WIO States and can be a source of much needed foreign exchange which can be channelled towards domestic management of fisheries and development of local fishing businesses.

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<sup>60</sup> LOSC, Art. 62(2).

<sup>61</sup> MRAG, Fisheries and Access Agreements, Policy Brief No. 6.

<sup>62</sup> STECF, 37th plenary meeting, July 2011

<sup>63</sup> Ernesto Jardim, ed., European Commission Joint Research Centre, Scientific and Policy Reports, STECF International Dimension (STECF-12-11), 2012.

<sup>64</sup> Ibid.

<sup>65</sup> MSY is defined as 'the highest theoretical equilibrium yield that can be continuously taken (on average) from a stock under existing environmental conditions without affecting significantly the reproduction process'. See FAO, Fisheries Glossary, <http://www.fao.org/fi/glossary/>.

<sup>66</sup> Ibid.

<sup>67</sup> Stuart M Kaye, *International Fisheries Management* (Kluwer Law International, 2001)

<sup>68</sup> Ibid.

*The implication is that Fisheries Access Agreements and Fisheries Partnership Agreements in the WIO ought to address all the management and conservation issues provided under the legal framework by outlining fishing provisions for DWFNs and defining vessel operators' responsibilities. These agreements are to be governed by terms and conditions jointly negotiated between foreign interests and WIO States. These may include access fees, catch and/ or vessel limits; areas of operation; gears to be used; and mechanisms for reporting, the terms and conditions of fishing and management efforts, and licensing procedures. Creating and implementing access agreements requires sufficient budget that can cover the negotiation, implementation and enforcement of the agreements.*

### **Box 3. Summary; Access Agreements**

#### **5.1 Issues Associated with Fisheries Access Agreements**

Over time, access agreements have become more orientated to facilitating profitable fishing opportunities for DWFNs, securing fish supplies for their processing industries, and serving goals associated with the deployment of their vessels in foreign waters.<sup>69</sup> Consequently, inconsistencies with international fisheries instruments have resulted from the access agreements put in place by fishing States, threatening the sustainability of fisheries resources in the EEZ of coastal States. These include;

- Overexploitation of fisheries resources- due to lack of data on most fish stocks in developing coastal States, access agreements have often been negotiated without sufficient knowledge of the state of the fish stocks involved. Access agreements are often concluded without the surplus of such fish stocks being determined.<sup>70</sup> Such agreements may not take into account the overall fishing effort on the fish stocks concerned, hence, by introducing increased effort, the fish stocks are exposed to overexploitation.<sup>71</sup> Many of the agreements do not clearly define the limits on effort or catch.
- Issues of non-compliance- the pressures exerted on fisheries resources of developing coastal States as a result of competing interests have intensified IUU fishing activities. Fishing vessels operating under access agreements have been known to engage in various activities which disregard the conservation measures adopted internationally, regionally and nationally by coastal States. Contrary to the terms of the access agreement, such vessels may fail to report or under-report catches,<sup>72</sup> use proscribed fishing gear, fishing in closed/protected areas, and unauthorised targeting.<sup>73</sup> This is exacerbated by inadequate

<sup>69</sup> Les Clark, Perspectives on Fisheries Access Agreements: Developing Country Views, in Fishing for Coherence: Proceedings of the Workshop on Policy Coherence for Development (OECD, 2006)

<sup>70</sup> ADE-PWC-EPU, Evaluation of the Relationship between Country Programmes and Fisheries Agreements (2002). Final Report Prepared for European Commission

<sup>71</sup> Andre Standing, Corruption and Commercial Fisheries in Africa, U4 Brief December 2008.

<sup>72</sup> (MRAG), Review of Impacts of Illegal, Unreported, and Unregulated Fishing on Developing Countries (2005) 13. A Report for the UK's Department for International Development (DFID); Charlotte de Fontaubert and Indrani Lutchman with David Downes and Carolyn Deere, Achieving Sustainable Fisheries: Implementing the New International Legal Regime (IUCN, 2003)

<sup>73</sup> Les Clark, 'Perspectives on Fisheries Access Agreements: Developing Country Views', in Fishing for Coherence: Proceedings of the Workshop on Policy Coherence for Development (OECD, 2006).

MCS capacity in many developing coastal States such as those of the WIO. IUU fishing activities result in economic losses of benefits by developing coastal States, have negative impacts on the sustainability of target species and the wider ecosystem, and also have negative consequences for food supply.

- Lack of Transparency- the negotiation process of access agreements is a confidential affair.<sup>74</sup> In the case of the EU, such negotiations do not involve the civil society or other domestic fishing stakeholders,<sup>75</sup> while the agreements entered into with Asian governments or fishing associations remain private with no information to the public.<sup>76</sup> This weakens the bargaining power of developing coastal States, making it difficult for them to obtain adequate reporting on fish stocks and to determine the value of the fish stocks in question. This secrecy facilitates corrupt practices.<sup>77</sup>

WWF has set out the key principles and guidelines for the preparation of such agreements and related management plans, which outline<sup>78</sup> the pertinent issues that should be addressed by all parties which are signatories to fisheries agreements. These include; (i) access authorisation;(ii) payments; (iii) fisheries management practices (catch and effort restrictions; vessel reporting; cooperation on research and stock assessment);(iv) discards and waste;(v) flag state responsibilities;(vi) compliance and enforcement;(vii) dispute settlement; and, (viii) transparency. The guidelines also include model fisheries access agreements.<sup>79</sup>

## 5.2 Types of Fisheries Agreements

Fisheries Agreements can be established between two governments or between a government and private sector companies or associations in order to gain access to fishing rights within the EEZ of a coastal State. The fisheries agreements in the WIO States may fall in the following categories;

- Fisheries agreements with regional economic organisations (EU fisheries agreements and fisheries partnership agreements with African Caribbean and Pacific (ACP) countries);
- Individual government to government fishing agreements, including agreements between governments within a region (eg. *Mauritius and Seychelles*);

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<sup>74</sup> Les Clark, 'Perspectives on Fisheries Access Agreements: Developing Country Views', in *Fishing for Coherence: Proceedings of the Workshop on Policy Coherence for Development* (OECD, 2006); Marcos Orellana, *Towards Sustainable Fisheries Access Agreements: Issues and Options at the World Trade Organisation* (UNEP, 2008); Andre Standing, *Corruption and Commercial Fisheries in Africa*, U4 Brief December 2008

<sup>75</sup> Andre Standing, *Corruption and Commercial Fisheries in Africa*, U4 Brief December 2008.

<sup>76</sup> Ibid.

<sup>77</sup> Andre Standing, *Corruption and Commercial Fisheries in Africa*, U4 Brief December 2008. For further reading concerning corruption in fisheries, See Martin Tsamenyi and Quentin Hanich, *Addressing Corruption in Pacific Island Fisheries* (2008). A Report Prepared for the IUCN PROFISH Law Enforcement, Corruption and Fisheries Project.

<sup>78</sup> Marcos Orellana, *Towards Sustainable Fisheries Access Agreements: Issues and Options at the World Trade Organisation* (UNEP, 2008).

<sup>79</sup> Martin, Will, Michael Lodge, John Caddy and Kwame Mfodwo, *A Handbook for Negotiating Fishing Access Agreements* (WWF, 2000)

- Agreements between governments and private companies (*Madagascar's agreements with Spanish fishing associations; Seychelles agreements with Japanese fishing associations*);
- Agreements between governments and public sector/parastatal/public-private partnerships. Some of the agreements with PR China may also fall into this category.

## 6.0 THE EUROPEAN UNION FISHERIES PARTNERSHIP AGREEMENTS

The EU Fisheries Partnership Agreements (FPAs) provide EU vessels with access to fisheries resources in waters of third countries. The EU fishing fleet is the most prevalent in the WIO, with a significant allocation of financial investments.<sup>80</sup> These agreements play an important role for the processing sector (tuna canning) which is dependent upon the supply from EU vessels for supply to the EU markets.

### 6.1 Background to EU Fishing Agreements

As a major fishing power, the EU has negotiated and concluded bilateral fisheries agreements on behalf of the Community fisheries sector with third countries since 1979.<sup>81</sup> The EU fishing fleet is one of the biggest in all of the earth's Oceans. It is the largest importer of fisheries products with a net import of over 60% and it has a seat in almost every RFMO, making the EU the biggest stakeholder in the global fish market.<sup>82</sup> Hence, the EU adopted the Common Fisheries Policy (CFP) in 1983 which is a comprehensive framework for the management of the fisheries sector with a presiding ethos to achieve a balance between the conservation of fish stocks and the maintenance of viable national fishing industries.<sup>83</sup> The EU policy on fishing in third States is aimed at protecting the interests of the EU in the fishing sector. Therefore, traditionally, the aim of the EU fishing agreements has been; to supply the European fish processing industry with raw materials;<sup>84</sup> to maintain fishing capacity outside EU waters; and to maintain EU employment.<sup>85</sup>

The scope of the CFP extends to conservation, management and exploitation of living aquatic resources and aquaculture, as well as the processing and marketing of fishery and aquaculture products, where such activities are practiced on the territory of Member States or in Community

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<sup>80</sup> Ellen Laipson and Amit Pandya (eds), *Indian Ocean: Resource and Governance Challenges* (The Henry L. Stimson Center, 2009); Elizabeth Havice, 'The Structure of Tuna Access Agreements in the Western and Central Pacific Ocean: Lessons for Vessel Day Scheme Planning' (2010).

<sup>81</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, *Comparative Study of the Impact of Fisheries Partnership Agreements* (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>82</sup> Ibid.

<sup>83</sup> Marc Phillipe, 'The Common Fisheries Policy of the European Union- A Lesson in how not to make Policy' (1999).

<sup>84</sup> Beatrice Gorez, *Policy Study: EU-ACP Fisheries Agreements* (2005). The ACP-EU fisheries access agreements have generated a value-added of €694 million in the Member States through processing and marketing fish caught

<sup>85</sup> Agritrade, *ACP-EU Fisheries Relations and FPAs*. CTA Executive Brief (2009). <http://agritrade.cta.int/>; Anthony Acheampong, *Coherence Between EU Fisheries Agreements and EU Development Cooperation: the Case of West Africa* (1997). ECDPM working Paper No. 52. The ACP-EU fisheries agreements represent 35,000 jobs mainly in processing. See Beatrice Gorez, *Policy Study: EU-ACP Fisheries Agreements* (2005).

waters or by Community fishing vessels or nationals of Member States.<sup>86</sup> Fisheries access agreements have been a major component of the CFP since the adoption of the LOSC.<sup>87</sup> Since its establishment in 1983, the CFP has undergone reforms, with an aim of becoming more effective in achieving its main objective of preserving fish stocks. The main areas of reform are with respect to;<sup>88</sup>

- Conservation of resources
- Protection of the environment from the impacts of fishing
- Fleet management; common organisation of markets
- Relations with third States
- Control and enforcement.

The regulations adopted during the last reform of the CFP in 2002 are particularly significant for the conservation and sustainability of tuna fisheries resources in the WIO States. This is because the EU Fisheries Partnership Agreements were created as a result of the 2002 CFP reform.<sup>89</sup> In theory this enabled FPAs to incorporate economic, environmental and social objectives into access agreements. In contrast to the previous fisheries agreements (FAs) that the EU entered into with third countries, FPAs are designed to be negotiated and developed through a partnership approach,<sup>90</sup> and they aim to contribute more effectively to sustainable fisheries management in the coastal State.

Under the EU Policy, FPAs are required to address the following;<sup>91</sup>

- Contribute towards rational and sustainable exploitation of the surplus of coastal States' marine resources
- Improve scientific and technical knowledge of the fisheries in question;
- Contribute towards combating Illegal, Unregulated and Unreported Fishing (IUU) fishing
- Contribute towards strategies for the sustainable management of fisheries as defined by the coastal State
- Facilitate the integration of developing coastal States into the global economy; and
- Foster better global governance of fisheries

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<sup>86</sup> Council Regulation (EC) No. 2871/2002 of December 2002 on the Conservation and Sustainable Exploitation of Fisheries Resources under the Common Fisheries Policy, Article 2. <http://eur-lex.europa.eu/>.

<sup>87</sup> L Bartels, L A de la Fayette, H Davies and L Campling, Policy Coherence for Development and the Effects of EU Fisheries Policies on Development in West Africa (European Parliament, 2007).

<sup>88</sup> Martin Tsamenyi, Mary Ann Palma, Ben Milligan and Kwame Mfodwo, Fairer Fishing?: The Impact on Developing Countries of the European Community Regulation on Illegal, Unreported and Unregulated Fisheries (Commonwealth Secretariat, 2009) 40. Economic Paper 86.

<sup>89</sup> COM(2002)637 Final, Communication from the Commission on an Integrated Framework for Fisheries Partnership Agreements with Third Countries (Brussels, 2002). <http://www.fairpolitics.nl/>.

<sup>90</sup> L Bartels, L A de la Fayette, H Davies and L Campling, Policy Coherence for Development and the Effects of EU Fisheries Policies on Development in West Africa (European Parliament, 2007).

<sup>91</sup> Council of the European Union, 2599th Meeting of Agriculture and Fisheries, Brussels 19 July 2004.



FPAs are conducted under bilateral agreements which are contingent upon financial compensation and contribute immensely to government budgets in some of the WIO States. The EU is also the main trading partner for ACP fisheries products and it accounts for at least 75% of ACP fishery exports by value.<sup>92</sup>

In practice, various reviews of FPAs have found that the fishing activities of EU fishing vessels in ACP States are not in conformity with its obligations to promote the sustainable utilisation of fish resources as required by the CFP and current international law. This is further discussed in section 6.3.

## **6.2 The Structure of FPAs**

An EU FPA consists of an all-encompassing agreement which establishes principles, rules and procedures governing economic, financial, technical and scientific cooperation with the coastal State; conditions governing access by Community vessels to coastal State waters; and arrangements for surveillance in coastal States waters. A protocol and annexes appended to the agreement detail the fishing opportunities and financial contribution of the EU. Fishing opportunities for tuna stocks are expressed in vessel numbers.

The EU has an important stake in the tuna fisheries of the WIO region, as all the EU agreements with the States in the region (Comoros, Madagascar, Mozambique, Mauritius and Seychelles) are tuna agreements. The purse seine fishery in the Indian Ocean is dominated by the EU which takes about 66 % of purse seine tuna catches (Yellowfin, Big Eye and Skipjack tuna) in the area,<sup>93</sup> Whilst Asian countries including Japan and Taiwan dominate the longline fishery. EU vessels take on average 79 % of the purse seine catch from an average 68 % of the purse seine catch from EEZs where it does not have a fisheries agreement (instead relying on private arrangements for licences).<sup>94</sup> Table 2 shows the WIO States with current FPAs and their provisions.

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<sup>92</sup> Negotiating Economic Partnership Agreements. <http://www.ecdpm.org/>.

<sup>93</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>94</sup> Ibid.

State	Period	Total EU finance (Annually)	Fisheries policy development	Advances (annual)	Tonnage (annual)	No. of vessels
Comoros	2010-2013	€615,250	€300,000	€3,700- per seiner €2,200 per longliner	4,850	45 seiners 25 longliners
Seychelles	2011 - 2014	€5,600,000	€2,220,000	€61,000 per seiner €3,150 per longliner <250GT €4,200 > 250 GRT	52,000	48 seiners 12 longliners
Mozambique	2012 - 2015	€980 000	€460 000	€5,100 per seiner €4,100 per longliner < 250 GT €2,500 > 250 GT	8,000	44 seiners 45 longliners
Madagascar	2007-2012	€1,197,000	€332,500	€3,920-per seiner; €3,500 per longliner >100GT €1,680 <100GT	13,300	43 seiners 76 longliners

Table 2. WIO-EU Fisheries Partnership Agreements<sup>95</sup>

Mauritius has had previous agreements with the EU but currently there is no EU protocol in place since the last one expired in 2007. There is however a proposal for a new FPA and protocol initialled in February 2012 covering a period of six years from the date of signature and renewable for successive periods of three years. The provisions are as follows;

- Access for 86 tuna vessels (41 purse seiners and 45 long-liners),
- €1,980,000 for the whole duration of the Protocol,
- €357,500 annually for access to Mauritius' waters,
- €65 for each additional tonne caught,
- 5,500 tonnes per year, and
- €302,500 per year for the support and implementation of sectoral fisheries policy and maritime policy.

As the concerns and effects of EU FPAs on the WIO States would be similar for the region, a summary is provided with actual examples of issues from individual States. Issues specific to particular States are discussed under section 8.0 on foreign fishing.

<sup>95</sup> Bilateral Agreements with Countries Outside the EU  
[http://ec.europa.eu/fisheries/cfp/international/agreements/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm).

### 6.3 Issues Associated with Fisheries Partnership Agreements

Although the EU has initiated reforms of its fisheries policy and adopted a new approach to fisheries access agreements with coastal States, the EU bilateral agreements continue to attract criticism.<sup>96</sup> It is claimed that the fishing activities of EU fishing vessels in these States do not conform to its obligations to promote the sustainable utilisation of fish resources as required by the CFP and current international law. It is believed that, despite the EU responding to such criticisms through the implementation of FPAs, the basis of the agreements have remained the same, and issues of concern include;<sup>97</sup>

- The sustainable utilisation of fisheries resources (overexploitation),
- Environmental protection,
- Monitoring, control and surveillance,
- Economic and social benefits to coastal States.

These issues are discussed in Sections 6.3.1-6.3.3 including the efforts of the FPAs to address them. Examples are given from the relevant WIO States<sup>98</sup>

#### 6.3.1 Sustainable utilisation of fisheries resources

Most of the States that have agreements with the EU have weak management structures. In addition, it is difficult to estimate the actual impact of EU fishing fleets on tuna stocks in these agreements. The fishing effort has often been underestimated, especially because the access agreement has not stipulated any catch limitation. Basing the fishing possibilities for access to tuna stocks on the number of boats has also made it difficult to obtain an accurate estimation of the fishing effort. Hence, it is difficult to estimate the real amount of catch and impact of the EU fishing fleets on the marine environment as a whole. ACP–EU agreements may therefore be based on such imprecise measurements of capacity.<sup>99</sup> Although the LOSC requires the coastal State to provide access only to surplus fish stocks, it is likely that access agreements are being signed for stocks that are already overexploited.

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<sup>96</sup> Criticisms have been made by social, environmental and development interests such as the Coalition for Fair Fisheries Agreements, WWF, European Parliament, NGOs, the European Court of Auditors and industry.

<sup>97</sup> Nikki Sporrang, Clare Coffey and Kate Bevins, *Fisheries Agreements with Third Countries- Is EU Moving Towards Sustainable Development?* Institute for European Development Policy (2002); Technical Centre for Agricultural and Rural cooperation (CTA), *The Future of ACP-EU Fisheries Relations: Towards More Sustainability and Improved Social and Economic Well-being for ACP Coastal Communities* (2006)

<sup>98</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, *Comparative Study of the Impact of Fisheries Partnership Agreements* (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>99</sup> Beatrice Gorez, *Policy Study: EU-ACP Fisheries Agreements* (2005).

In order to ensure sustained supplies to EU markets, it is in the interest of the EU to contribute towards rational and sustainable utilisation of tuna fisheries by providing the necessary support to coastal States to manage such stocks. The FPA addresses this issue by;<sup>100</sup>

- (i) Imposing limits on EU effort. The agreement provides an exclusivity clause requiring EU vessels to have a licence issued under the FPA, to be able to fish in the coastal State's EEZ.
- (ii) Providing for effort limitation. The fishing opportunities for tuna are determined by the number of vessels and tonnage. In the WIO, EU vessels take the Community quota as established by the IOTC.
- (iii) Conducting evaluation (ex-post evaluation of the previous agreement, and an ex-ante evaluation of the forthcoming agreement) of the impact that the FPA is likely to have on the local economy and community. The results are to be FULLY shared with the coastal States to enable fair negotiations and as a gesture of partnership and transparency. The element of trust in any partnership is essential. *In Seychelles for example, the ex-ante evaluation was shared after the negotiations for the 2006-2012 agreement. In Mozambique, although the evaluation was shared for the 2007-2011 agreement, the authorities doubted that they received the full version.* This does not represent transparency at all. The critics of FPAs are still sceptical of the post-evaluations which are funded by the EU and do not present meaningful trends overtime as they focus primarily on EU interests.
- (iv) Basing the revision of fishing opportunities upon the best available scientific advice, provided through a joint committee which is required to meet annually. *The EU-Seychelles FPA for example, provides the functions of the joint committee which include; monitoring the performance, interpretation and application of the Agreement and evaluating its implementation; providing liaison for matters of mutual interest relating to fisheries; forum for dispute settlement; and re-assessing the level of fishing opportunities. According to the Agreement, the fishing opportunities are to be adjusted based on the recommendations and resolutions of the IOTC and the Joint Committee shall meet once a year. The Joint Committee in Comoros is not to monitor the agreement, but 'to consult over questions arising in connection with the implementation and proper working of this Agreement'.* Scientific advice has also been applied in the case of Seychelles. Based on the IOTC recommendations for *Skip-Jack*: Possibly under exploited, *Yellow-fin*: Exploited near MSY and effort should not be increased, *Bigeye tuna*: Effort levels should be reduced and protection of juveniles, *Sword fish*: Effort levels should be reduced, *the Seychelles tuna licences were decreased in the previous FPA, but the reference tonnage has increased from 46,000 tonnes to 55,000 tonnes. In an EU-Seychelles Joint Committee meeting in 2009 the two parties amicably resolved a dispute*

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<sup>100</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

*regarding an increase in license fees sought by Seychelles. During this meeting the EU compensated for the excess tuna catches taken in 2006-2007.*<sup>101</sup>

Overall, it is difficult to assess whether the fishing possibilities agreed by EU and the coastal State have been based on accurate stock assessments or available scientific information since the ex-ante evaluations are not usually made public. The IOTC data is very vital in these assessments. However, it is also necessary for coastal States and the EU to be transparent with relevant data to aid stock assessments.<sup>102</sup> Coastal States have difficulty accessing data on catches from the EU that may aid stock assessments. Similarly coastal States need to provide information on the fishing opportunities available, best available knowledge on the state of the stocks and the current overall effort on the stocks under negotiation, including effort from both national and other foreign fleets.<sup>103</sup>

### 6.3.2 Monitoring, Control and Surveillance

Monitoring, Control and Surveillance (MCS) is an integral component of tuna fisheries management.<sup>104</sup> Robust national MCS systems and strong regional cooperation on MCS are essential elements for improving compliance.<sup>105</sup> Such systems are used to collect information on the fishery and fishers concerning, *inter alia*, fishing vessels and gear, type and amount of catch, where fish are caught, and what happens to them after they are caught.<sup>106</sup> This information can aid in the setting and monitoring of the rules of the fishery, as it is utilised in combination with surveillance of fishing vessels, to deter fishers who violate the rules of the fishery or to apprehend and punish them if they still do so.<sup>107</sup>

Among the international requirements related to compliance and enforcement with respect to tuna resources in the EEZ, is the development of national legal systems that govern fisheries control.<sup>108</sup> In this regard WIO States are obliged to establish enforceable national regulatory frameworks that provide directions for MCS, to ensure the effective control of the fishing activities in their EEZ, including compliance with their laws and regulations. Such MCS measures include a vessel monitoring system (VMS),<sup>109</sup> an observer scheme,<sup>110</sup> and a boarding and inspection scheme.<sup>111</sup>

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<sup>101</sup> EC/Seychelles Fisheries Partnership Agreement, Joint Committee Victoria, Seychelles 5-6 February 2009. In a second meeting on 15-16 December 2009, the parties agreed on other issues including the calculation of fees, catch reporting system and implementation of the protocol.

<sup>102</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>103</sup> Ibid.

<sup>104</sup> FAO, Essential Role of Monitoring, Control and Surveillance, Twenty Second Session of the Committee on Fisheries, Rome, Italy 17-20 March 1997.

<sup>105</sup> Monitoring, Control and Surveillance from Policy to Implementation, <http://www.stopillegalfishing.com>.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> LOSC, Art. 73.

<sup>109</sup> LOSC, Art. 62(4)(e); UN Fish Stocks Agreement, Arts. 5(j) and 18(3)(g)(iii); FAO Code of Conduct, Art. 7.7.3.

<sup>110</sup> LOSC, Art. 62(4)(g); UN Fish Stocks Agreement, Arts. 18(3)(g)(ii); FAO Code of Conduct, Art. 8.4.3.

<sup>111</sup> LOSC, Art. 73(1); UN Fish Stocks Agreement, Art. 21.

Most ACP States have limited national capacity to monitor and control the activities of DWFN fishing vessels, including those of the EU, and cannot therefore verify catches taken from their vast EEZs by such vessels. There is a tendency for the EU vessel operators to under-report tuna catches as discussed above. Under such circumstances, EU vessel operators often under-report tuna catches or make no reports at all including for by-catch.<sup>112</sup> The extent of under-reporting and lack of sufficient data makes it difficult for coastal States to evaluate their tuna stocks, and hinders them from designing the appropriate management plans for the sustainable management of tuna resources.<sup>113</sup>

The FPA responds to this problem by incorporating the following provisions;

- (i) Observer programmes- the WIO States have varied requirements for observers on board tuna fishing vessels under FPAs; *Comoros*, requires observers at the request of the Comorian Ministry, *Madagascar* – requires regional observers upon request of coastal state, *Mozambique*- requires IOTC-designated observers to be taken on board EU vessels operating in its waters, and *Seychelles*- requires observers appointed by Seychelles authorities<sup>114</sup>
- (ii) Transhipments restrictions- It is a requirement of the FPA that all transhipments must only be carried out ‘in port’ or ‘in designated areas’ to facilitate monitoring by authorities. *All WIO FPAs Prohibit transshipment at sea and penalties apply for non-compliance.*<sup>115</sup>
- (iii) VMS requirements- *the VMS protocols of the WIO States require the Flag state to send VMS information to the coastal state at given intervals. For example in Comoros and Mozambique-2hrs; Seychelles-1hr and Madagascar 3hrs.*<sup>116</sup> *Mozambique has however had challenges regarding the security of data transfer.*<sup>117</sup>

The WIO coastal States still require immense financial and technical support to implement MCS schemes to ensure compliance by the EU and other DWFNs with these provisions. It is well known that EU vessels underreport their EEZ tuna catches throughout the Western Indian Ocean.<sup>118</sup> There

<sup>112</sup> Beatrice Gorez, Policy Study: EU-ACP Fisheries Agreements (2005); European Parliament, Report from the Commission on the Monitoring of Member States’ Implementation of the Common Fisheries Policy 2000-2002, Brussels, 4.1.5005, COM (2004) 849 Final. The report states that; “monitoring of activities of fishing vessels operating beyond Community waters remains an issue which must be particularly targeted....much data is entirely absent for certain activities in waters where EU agreements with third parties have been concluded”.

<sup>113</sup> Beatrice Gorez, ACP-EU Fisheries Relations: Towards Greater Sustainability, A Report of the Meeting held at the ACP Secretariat, Brussels, 7-9 April 2003.

<sup>114</sup> Bilateral Agreements with Countries Outside the EU

[http://ec.europa.eu/fisheries/cfp/international/agreements/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm)

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>118</sup> Moonien V.Duthon de‘barque’ a Maurice sous de‘clare’ au Mozambique par des navires franc- ais. L’Express de Maurice, edition of August4, 2011; Humane Society International. Illegal, unreported and unregulated fishing for sharks and shark finning. Humane Society International, Washington, DC; 2010.

is a need for regular inspections by local inspectors to establish the tuna catches, and also local capacity to interpret and process log book information. *Regarding non-compliance by the EU, there have been cases of non-submission or late submission of catch data in previous Mozambique FPAs and also failure to provide entry and exit notices in Mauritius, Madagascar and Mozambique.*<sup>119</sup>

### 6.3.2.1 Lessons from the Experience of the Pacific Island States

The Pacific Island States are making progress in addressing the above issues through a cooperative management regime under various collaborative initiatives, which could provide guidance for the improvement of the current MCS schemes in the WIO States. The Pacific Islands Forum Fisheries Agency (FFA) has been very instrumental in developing regional MCS measures in assistance to these Member States.<sup>120</sup> The FFA has implemented the use of a VMS that is interlinked with the states and the fishing vessels.<sup>121</sup> This enables FFA Members to monitor and track fishing activities across the region, through a satellite-based system which monitors the position, speed and direction of registered fishing vessels.<sup>122</sup> The FFA is also instrumental in enhancing the capacity of its Members, in order to develop and prepare FFA VMS officers in their roles and responsibilities as VMS implementation officers.<sup>123</sup> The FFA works in partnership with the Secretariat of the Pacific Community (SPC) to build capacity within the Pacific islands region and to support Members with technical assistance.<sup>124</sup> The SPC provides fisheries science services to its members, particularly relating to tuna. There are also observer-coverage programs in the region as part of the monitoring and data collection programme.<sup>125</sup>

The FFA has facilitated the development of various regional cooperative arrangements, including the 1982 Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest (Nauru Agreement, 1982).<sup>126</sup> The Pacific island Parties to the Nauru Agreement (PNA) negotiated the Nauru Agreement in order to coordinate and harmonise their fisheries management and access conditions, thereby placing themselves in a stronger strategic position when negotiating with DWFNs. See Appendix....for the Nauru Agreement.

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<sup>119</sup> Walmsley, S F, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>120</sup> The FFA is an advisory body providing expertise, technical assistance and other support to its members who make sovereign decisions about their tuna resources and participate in regional decision making on tuna management through agencies such as the Western and Central Pacific Fisheries Commission (WCPFC). <http://www.ffa.int/about>.

<sup>121</sup> Margo Deiye, Making the Vessel Day Scheme work, 2007.

<sup>122</sup> FFA- Strengthening national Capacity and Regional Solidarity for Sustainable Tuna Fisheries [http://www.ffa.int/vessel\\_registration](http://www.ffa.int/vessel_registration).

<sup>123</sup> FFA- Strengthening national Capacity and Regional Solidarity for Sustainable Tuna Fisheries <http://www.ffa.int/taxonomy/term/445>.

<sup>124</sup> Secretariat of the Pacific Community, <http://www.spc.int/oceanfish/>

<sup>125</sup> Margo Deiye, Making the Vessel Day Scheme work, 2007.

<sup>126</sup> Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest, opened for signature 11 February 1982 (entered into force 4 December 1982) ('Nauru Agreement') available at [http://www.ffa.int/nauru\\_agreement](http://www.ffa.int/nauru_agreement). The Membership is made up of; Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu.

The PNA have negotiated a series of implementing arrangements to operationalize the Nauru Agreement, including the establishment of MCS schemes. Additionally, FFA Members as a whole have embraced the terms of these arrangements at a National level and further adopted additional measures to enhance their MCS schemes. These arrangements include;<sup>127</sup>

- Establishment of Harmonised Minimum Terms and Conditions for foreign fishing vessels.<sup>128</sup> These terms include harmonised licensing procedures and catch reporting, and a regional register of fishing vessels. Each Pacific island State is responsible for the implementation of these conditions at the national level.<sup>129</sup>
- The Second Implementing Arrangement incorporates observer requirements, prohibits transshipments at sea, expands monitoring and surveillance, and introduces an annual registration for the regional vessel register.<sup>130</sup>
- Adoption of the Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement in the South Pacific Region,<sup>131</sup> by all FFA Members. See Appendix IX for Niue Treaty. The adoption of the Niue Treaty was in response to the lack of capacity by the Pacific Island States to patrol and monitor their large EEZs. This treaty framework adopted in 1993 enabled FFA member States to cooperate in surveillance and enforcement and share surveillance assets.<sup>132</sup> The Treaty supports the development of subsidiary agreements to implement surveillance and enforcement cooperation at the bi-lateral or subregional level and enabled FFA members to cooperate more actively in joint surveillance operations through Memorandums of Understanding (MOU).<sup>133</sup> Non-FFA States, such as France and the

<sup>127</sup> Details of negotiations of 1<sup>st</sup> and 2<sup>nd</sup> Implementing Agreements available in David Doulman, 'Fisheries Cooperation: The Case of the Nauru Group' in David Doulman (ed), *Tuna Issues and Perspectives in the Pacific Islands Region* (1987); Michael Lodge, 'Minimum Terms and Conditions of Access: Responsible Fisheries Management Measures in the South Pacific Region' (1992) 16 *Marine Policy* 277.

<sup>128</sup> First Implementing Arrangement (1983). Full title: An Arrangement Implementing the Nauru Agreement Setting Forth Minimum Terms and Conditions of Access to the Fisheries Zones of the Parties. See Michael Lodge, 'Minimum Terms and Conditions of Access: Responsible Fisheries Management Measures in the South Pacific Region' (1992) 16 *Marine Policy* 277.

<sup>129</sup> Transform Aqorau, 'Cooperative Management of Shared Fish Stocks in the South Pacific' (Paper presented to Norway- FAO expert consultation on the management of shared fish stocks, Bergen, Norway, 7-10 October 2002).

<sup>130</sup> Second Implementing Arrangement (1991). A Second Arrangement Implementing the Nauru Agreement Setting Forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties. See Michael Lodge, 'Minimum Terms and Conditions of Access: Responsible Fisheries Management Measures in the South Pacific Region' (1992) 16 *Marine Policy* 277.

<sup>131</sup> Forum Communique of the Twenty-First South Pacific Forum. Port Villa, Vanuatu 31 July-1 August 1990. <[www.forumsec.org/\\_resources/article/files/1990%20Communique.pdf](http://www.forumsec.org/_resources/article/files/1990%20Communique.pdf)> at 19 March 2009; The Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement in the South Pacific Region. Reprinted in *Commonwealth Law Bulletin* 702; (1993) 32 *ILM* (entered into force 20 May 1993) ('Niue Treaty').

<sup>132</sup> Margo Deiye, *Making the Vessel Day Scheme work*, 2007. The Niue Treaty is an agreement on cooperation between FFA members about monitoring, control and surveillance of fishing - it includes provisions on exchange of information (about where the position and speed of vessels at sea, which vessels are without licences) plus procedures for cooperation in monitoring, prosecuting and penalising illegal fishing vessels. See <http://www.ffa.int/taxonomy/term/451>.

<sup>133</sup> Quentin. A. Hanich, Hannah Parris and Martin Tsamenyi (2010). *Sovereignty and Cooperation in Regional Pacific Tuna Fisheries Management: Politics, Economics, Conservation and the Vessel Day Scheme*. *Australian Journal of Maritime and Ocean Affairs*, 2 (1), 2-15.



US are also cooperating actively with FFA Members in surveillance and enforcement activities, and an increasing number of regular multilateral fisheries surveillance operations that include Niue Treaty Members and non-Members providing support, including aerial surveillance.<sup>134</sup>

Overall, the regional cooperative MCS regime has provided support to Pacific Island States which could not have afforded their own comprehensive MCS regime. The MCS Treaties have provided members with vital facilities such as observers, vessel monitoring services, agreement and enforcement on the ban of at-sea trans-shipment, register of vessels and critical data to support enforcement.<sup>135</sup> Such data is also vital for the purposes of stock management. The treaties have also provided the information sources needed as a basis for negotiations for access agreements and consequently for determining licence fees payable to the FFA member governments.

Learning from the management regimes of the Pacific Island States, it is evident that the current efforts of the WIO States in managing tuna fisheries can be strengthened through regional cooperative initiatives in order to make regional tuna fisheries economically and ecologically sustainable.

### 6.3.3 Developing the National Tuna Industry

It has been shown that the bulk of the economic benefits accruing from the previous “cash-for-access” FAs go to the EU through value-added activities. An evaluation of EU fisheries agreements, estimated the benefits to the EU from value-added to be at least three times that of ACP States.<sup>136</sup> In this regard, the EU is making attempts to enhance the benefits to coastal States through FPAs by providing the following;<sup>137</sup>

- (i) Employment of local or ACP crew- *Comoros FPA requires at least one local seaman employed; Madagascar and Mozambique, 20% ACP crew (for Moz. 40% should be Mozambican) and Seychelles, two seamen per tuna seiner.* In many cases local crew have not been employed due to inadequate professional training.
- (ii) Joint ventures
- (iii) Support towards development and implementation of a sectoral fisheries policy- as indicated in table 2.<sup>138</sup> In consultation with the EU, the coastal States identifies the objectives and priorities for the fisheries sector policy. It is argued that these finances

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<sup>134</sup> Ibid. Examples include; Operations Bigeye and Island Chief in Micronesia, Operations Kurukuru and Tui Moana in Polynesia, and Operation Rai Balang between Palau and the Federated States of Micronesia.

<sup>135</sup> Ibid.

<sup>136</sup> IFREMER, Evaluation of the Fisheries Agreements Concluded by the European Community (1999).

<sup>137</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>138</sup> Detailed variation of the sums for FAs and FPAs available in Walmsley, S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

may not necessarily aid the improvement of fisheries management and that it should be accompanied with technical support. Additionally coastal States may not have the institutional capacity for effective management of fisheries even with the EU financial contributions.

- (iv) Supporting local landings and using of local services- *The FPA for Madagascar provides for financial incentives for local landings; Licence fee reduced by €5/tonne if catch landed and an additional €5/tonne if sold to local processing industry. The Seychelles FPA also encourages vessels to land by-catch at local price and supply canneries.*

It is arguable that FPAs will resolve the issues of unsustainable fisheries especially since the lack of reliable data on stocks continues to exacerbate the problem of overfishing, and the EU deems its investments in FPAs as commercial.<sup>139</sup> Nevertheless, when compared to private agreements (section 7.0), which are not as transparent, FPAs are still preferred by developing coastal States for developing their tuna industries for the following reasons;<sup>140</sup>

- Overall, FPAs offer coastal States a fair price for tuna fishing opportunities with purse seine agreements offering between 11- 13% of the catch value (normally 10%). This is a higher rate per tonne for purse seine catches than that of Asian DWFNs, but less per tonne for longline catches. The EU pays a fixed rate per tonne, rather than basing this rate on the market value, thus protecting coastal States from the fluctuations in tuna prices on the world market. FPAs also contribute more to local processing industries and trade compared to Asian Agreements. See Table 4.
- EU tuna seiners are known to be more compliant with regard to catch declarations and entry/exit notices compared to their Asian counterparts
- FPAs emphasise the partnership and offer opportunities for investment and transfer of knowledge
- FPAs provide a reliable, constant source of income making it easier to plan budgets
- FPAs are potential for immediate revenue source with minimal investment cost.
- Compared to other fishing agreements, FPAs are much more transparent as the text to the agreements, including fishing possibilities and financial contribution are available in public domain
- Under EU Law, there is recourse to challenge the implementation of FPAs.

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<sup>139</sup> EU Policy Coherence for Development, Fisheries Partnership Agreements: An Empty Shell for Development?, <http://www.eucoherence.org>.

<sup>140</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

	Indicative tuna market value per tonne (€)	Price paid per tonne (€)	% of market value paid by EU
EU Purse seine (under an FPA)	770	100	13%
EU Longline (under an FPA)	4,750	100	2%
Japanese longliners	4,750	----	6%
US vessels under Pacific treaty	770	----	22%

Table 3. Percentage of tuna market value paid by EU, Japan and US under fishing<sup>141</sup>

FPAs are considered a better deal for development than the agreements that are offered by other States such as China,<sup>142</sup> and they remain a vital part of improved governance of tuna fisheries in ACP States.<sup>143</sup> (See Box 4).

However, coastal States feel they do not have comparable status and power with the EU in negotiations, and that the EU agreements put too many conditions on the agreement and the manner in which the financial contribution is to be spent. The relative transparency of EU agreements presents an opportunity for dialogue and it is necessary for the ongoing analysis of such agreements by interested parties such as NGOs, Governments and civil society as a whole to be maintained in order to review the agreements to make them fairer and more equitable. WWF keenly assesses and pursues the effective reform of the CFP including its external dimension which governs distant water fishing by EU fleets. WWF has regularly proposed changes to the CFP proposals including the most current one, as in Annex VII. It is necessary for the WIO States to examine the relevant aspects of the CFP reform and their implications for tuna fisheries in the region with the cooperation of NGOs, like WWF, and with a view to address relevant issues.<sup>144</sup>

<sup>141</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007). Japan and Korea pay approximately 6% of the market value of their tuna catch under agreements in the Pacific Ocean. Most of their catch is from longliners-for high valued fish, so they would be paying a higher price per tonne of tuna.

<sup>142</sup> ADE, Evaluation of the Relationship between Country Programmes and Fisheries Agreements, Final Report (2002).

<sup>143</sup> Andre Standing, Reforms to European Common Fisheries Policy Good News for African Fisheries? Institute for Security Studies (2010).

<sup>144</sup> An elaborate outline is given by Mfodwo and Barnes Draft Seychelles case study (2012). These issues would be applicable to the WIO States with EU –FPAs as well as those that are aspiring to enter into such agreements.

*In general, the EU is thought to be a beneficial access partner, in part because government involvement in the process increases fleet accountability, agreement transparency, and lays down guiding principles for fishing practices. However, the EU fleet does not have an entirely clean slate in fishing agreements with ACP countries.*

*Despite the CFP policies and the new approach to FPAs, both of which purport to increase transparency, encourage sustainable fishing practices and increase accountability of the fleets, several ACP countries have run into examples of the EU attempting to skip its contractual obligations. For example, in July 2004, the EC admitted that undeclared landings, misreporting and underreporting of catches from EU fishing fleets were widespread and that overall, there was a very low level of compliance with regard to reports of catch volume in third party waters.<sup>145</sup>*

*In summary, despite efforts to increase economic returns and sustainable fishing practices, WIO States should endeavour to design agreements that reduce opportunities for corruption and to augment monitoring, control and surveillance efforts whenever possible.*

#### **Box 4. EU Inconsistencies: Policy Incoherence in FPAs<sup>146</sup>**

A recent Madagascar case study<sup>147</sup> makes valuable recommendations calculated to enhance contributions to the socio-economic development of host countries as follows;

- EU agreements shift the onus of costs for access away from EU taxpayers and on to vessel owners, reducing and eventually eliminating EU subsidies in fishing agreements
- The reform should index the annual access fees to the annual average landed value of tuna in Europe and Japan, thereby increasing access fees paid by vessel owners from the current estimated 2.7% of landed value to a level more in line with the 50% suggested by Bertignac et al. (2000).
- Development assistance for management and enforcement should be separated from fishing agreements and associated negotiations.
- Effort limits and quotas should be based on scientific studies and follow the precautionary principle.

## **7.0 Non-EU AGREEMENTS IN THE WIO**

The prominent non-EU vessels operating in the WIO (agreements/license) are of East Asian origin namely, Japan China/Taiwan, Thailand and Korea. Asian fleets dominate the longline tuna industry. Information on such agreements is not publicly since it is regarded as commercially sensitive and it is therefore difficult to obtain. Although none of these agreements with WIO States have been obtained for this report, information on some related previous agreements and other regions has been used to gain understanding into their structure.

<sup>145</sup> CTA

<sup>146</sup> Elizabeth Havice, The State of Play of Access Agreements with Distant Water Fishing Partners: implications and Options for Pacific Island Countries, FFA Briefing Paper (2007).

<sup>147</sup> F. Le Manach, et al. Who gets what? Developing a more equitable framework for EU fishing agreements. Mar. Policy (2012).

Most of the Asian agreements are concluded between governments of coastal States and industry associations. They are usually rolled over at the end of the agreed period which varies from 1-3 years, following consultations and checks on the status of tuna stocks. These associations may provide services to their members such as negotiating for fisheries access, supplies of fuel, bait gear and crew to vessel operators, license registration and administrative assistance. The associations take one negotiating position as a strategy to strengthen their bargaining power

### 7.1 Japanese Fisheries Agreements

Historically, Japan fishing has been associated with Seychelles, Madagascar, South Africa, Mauritius, Mozambique, and Tanzania. Japanese agreements fall into two categories;

- Agreements between the Japanese Tuna Association and the coastal State- for example; *the Seychelles –Federation of Japan Tuna Fisheries Cooperative Associations and The National Federation of Fisheries Cooperative Associations of Japan agreements. These were one year agreements for tuna longliners, first signed in 1988. Licences were issued for a 90 day period with the possibility of extension for additional 30 day licence periods. The licence fees were reviewed based on the previous year's tuna prices and catches. Linked to the agreement was a grant aid component paid by the Overseas Fishery Cooperation Foundation (OFCF) based on the number of vessels that have been granted licences.*<sup>148</sup>
- License fee arrangements between a specific Japanese company and the fisheries authorities of a coastal country.

Negotiations for these fisheries agreements are held between the coastal State and the Japanese Tuna Association. The Japanese government is also represented and active in the negotiations. These agreements are usually closed and the financial compensation is not publicly available. In the Pacific, this lack of transparency is said to empower the Japanese fleet and may deny coastal States the opportunity to optimise the benefits they receive from the agreements.<sup>149</sup> The negotiations are conducted by government officials, but the fee levels for the individual owners are negotiated on a case-by-case basis for each vessel.<sup>150</sup>

Examples of Agreements between WIO States include the Mauritius-Japan Agreement of 2000-2006. Mauritius has had a long standing association with Japan as tuna canning was first set up in the country in 1972 through a joint Mauritian-Japanese venture. Port Louis is also an important port of transshipment for the Far East Asian tuna longliners, which are landing or transshipping an

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<sup>148</sup> Philippe Michaud, Experience from the bilateral fisheries access agreement, impact on the economy and implications for Seychelles of the outcome of the WTO mediation on the case of tuna between the EU and Thailand and the Philippines.

<sup>149</sup> Elizabeth Havice, The State of Play of Access Agreements with Distant Water Fishing Partners: implications and Options for Pacific Island Countries, FFA Briefing Paper (2007).

<sup>150</sup> Stephen Mbithi Mwikya, Fisheries Access Agreements: Trade and Development Issues, ICTSD 2006.

average of 17,500 tonnes per year.<sup>151</sup> The Seychelles and Mauritius agreements are discussed in sections 8.3 and 8.4.

The ownership structure of the Japanese fleet industry differs significantly from that of the Taiwanese and Korean fleets. Vessels owners in Japan are generally individuals who own 1-2 vessels unlike Taiwan where many vessels are owned by one large and diversified company. The Japanese fleet therefore claims to have more limited financial flexibility than their competitors. In Japan's negotiations with Pacific Island States, the Japanese fleet argues that it cannot be flexible on access fees, and also does not have the money or the 'know-how' to make onshore investments in places where distant water vessels are active.<sup>152</sup> As noted earlier value-addition and related activities supplement the income from access agreements significantly aside from licenses.

In the West and Central Pacific Ocean, Japanese industry associations representing different tuna gear types have traditionally been represented in one negotiation position, such that, in the event that a Pacific Island Country does not grant an agreement to any one of the fleets, then the rest pull out of negotiations.<sup>153</sup> Although this tradition is being eroded, it served to strengthen Japanese bargaining power in the negotiation process.

Regarding financial compensation, aside from the license fees, each vessel pays 5-6% of the value of fish harvested on each trip.<sup>154</sup> The price is determined as the landing price in Japan. This approach offers the Japanese fleet incentive to under report catches, and most likely underpay the coastal State as well as being detrimental to the health of tuna stocks in the long run as it would alter the scientific models upon which catch limits are set. In as much as the Japanese compensation system reflects the market price of the catch, it is reliant upon accurate reporting of the geographical origin of the catches which may not always be accurate. As the compensation is not based on a predetermined figure, the coastal State has difficulties budgeting on such revenue.<sup>155</sup>

Access negotiations with the Japanese industry are also often linked to Official Development Assistance, such that it appears that aid is contingent upon the provision of access to fishing licenses. OFCF projects and grants for example, are explicitly tied aid. OFCF has served as a tool to 'promote amicable relations between [foreign] nations and the Japanese fishing industry with funds provided by the Japanese government',<sup>156</sup> and provides financial and technical support only to

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<sup>151</sup> Mauritius, [http://www.stopillegalfishing.com/doc/publication/eng/mauritius\\_country\\_profile.pdf](http://www.stopillegalfishing.com/doc/publication/eng/mauritius_country_profile.pdf).

<sup>152</sup> Elizabeth Havice, *The State of Play of Access Agreements with Distant Water Fishing Partners: implications and Options for Pacific Island Countries*, FFA Briefing Paper (2007).

<sup>153</sup> Ibid.

<sup>154</sup> Stephen Mbithi Mwikya, *Fisheries Access Agreements: Trade and Development Issues*, ICTSD 2006; S F Walmsley, C T Barnes, I A Payne and C A Howard, *Comparative Study of the Impact of Fisheries Partnership Agreements* (2007). Technical Report (MRAG, CRE & NRI, 2007)

<sup>155</sup> Stephen Mbithi Mwikya, *Fisheries Access Agreements: Trade and Development Issues*, ICTSD 2006

<sup>156</sup> OFCF 1989, quoted in Bergin, Anthony and Marcus Haward, *Japan's Tuna Fishing Industry: A Setting Sun or New Dawn?*, 1996.

countries with which the Japanese industry has access agreements. Such aid may be used for infrastructure projects in the fisheries sector, such as port development.

## 7.2 South Korea, China, Taiwan

These countries also have agreements through industry associations, for example; *the Seychelles – Taiwan Deep Sea Tuna Boat-owners & Exporters Association agreement*. They also have agreements through companies for direct licensing, for example; *the Seychelles – Korean private agreements*. These types of access agreements can either be between individual fishing companies and governments of coastal States or between fishing interests and coastal State governments requiring companies to make investments onshore.

In the former case where individual fishing companies engage with coastal State governments, the companies can comprise owners or operators of a fleet of vessels or a single vessel, while in the latter case part of the licensing agreement may require the foreign fishing interest to create a business operation or base the company in a coastal State. The aim of the coastal State would be to derive economic gain from the business activities of such an operation, such as employment for its nationals. Such agreements are usually short term, usually one year and are renegotiated at the end of every term.

### 7.2.1 Taiwanese Fishing Activities

Taiwanese vessels are known to have been fishing in Kenya, Madagascar, Mozambique, Seychelles and Tanzania. Taiwan is one of the world's leading DWFNs, and its tuna fishery is the most important distant water fishery.<sup>157</sup> Taiwan's global purse seine fleet of 34 vessels is the second largest in the world after Japan.<sup>158</sup> Taiwan is a major fishing entity in the Indian Ocean, having started tuna longline fishing in 1963,<sup>159</sup> with a longline fleet that is currently catching about 30% of the total bigeye catch.<sup>160</sup> Taiwan had a total of 640 longliners and a catch of 27,000tonnes in 2008.<sup>161</sup> Between 2004 and 2008, Taiwan's annual catch for longliners was 95,000tonnes.<sup>162</sup> Taiwan has the highest tuna catches in the Indian Ocean with over 300 fishing vessels in operation.<sup>163</sup>

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<sup>157</sup> Peter S C Ho, 'The Impact of the UN Fish Stocks Agreement on Taiwan's Participation in International Fora' (2006) 37(2) *Ocean Development & International Law* 133, 140; Marcus Haward and Anthony Bergin, 'Taiwan's Distant Water Tuna Fisheries' (2000) 24(1) *Marine Policy* 33, 42.

<sup>158</sup> C C Hsu and H C Liu, 'Taiwanese longline and gillnet fisheries in the Indian Ocean', in FAO, *Proceedings of the second FAO Expert Consultation on the interactions of Pacific tuna fisheries*, Shimizu, Japan 23-31 January 1995.

<sup>159</sup> *Ibid.*

<sup>160</sup> IOTC, *Report of the Twelfth Session of the Scientific Committee*, Victoria Seychelles, 30 November -4 December 2009.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

<sup>163</sup> Peter S C Ho, 'The Impact of the U.N. Fish Stocks Agreement on Taiwan's Participation in International Fora' (2006) 37(2) *Ocean Development & International Law* 133, 142.

Although Taiwan's tuna catches in the Indian Ocean are quite substantial, the status of Taiwan limits its participation in the international management of high seas fish stocks.<sup>164</sup> As a Republic of China, Taiwan has limited international recognition and has been excluded from most global and regional fishery instruments dealing with high seas fisheries.<sup>165</sup> Taiwan's participation in global and regional agreements for international management of high seas fish stocks is equally limited. Since the IOTC has not established an effective mechanism for the participation of fishing entities, its membership restriction has prevented Taiwan, as a fishing entity from becoming a member of the Commission. Consequently, Taiwan can neither discharge its obligation to cooperate, nor can IOTC address issues related to non-cooperation or non-compliance of fishing entities such as Taiwan. Considering Taiwan's substantial fishing activity in the Indian Ocean, its participation in the work of the IOTC is fundamental to the effective conservation and management of tuna stocks in the region.

### 7.2.2 Chinese Fishing Activities

Similar to Japan, China may also provide development aid as part of the access to fishery resources.<sup>166</sup> China's fishing activities in Africa as a whole began in 1985 once China's resources became overfished.<sup>167</sup> Commercial tuna fishing operations began in the Indian Ocean in 1995.<sup>168</sup> It has been observed that Chinese observers, who are often students, are inadequately trained and that their observer data is poor. The log book data is also considered poor compared to other fishing States.<sup>169</sup> Such inaccurate reports make it difficult for accurate stock assessments to be made. This in turn would affect the management advice provided by RFMOs such as the IOTC.

China is very strategic and views its expansion of DWF as a way to guard its ocean interests and seek international space for development.<sup>170</sup> Regarding compliance and corruption, China has been implicated in the illegal procurement of fishing licenses and exceeding its catch quota.<sup>171</sup> Overall, China has demonstrated a record of compliance and, to a considerable extent, cooperation with international institutions.<sup>172</sup>

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<sup>164</sup> Hasjim Djalal, 'The Emergence of the Concept of Fishing Entities: A Note' (2006) 37(2) *Ocean Development and International Law* 117, 118.

<sup>165</sup> Michael W Lodge, 'The Practice of Fishing Entities in the Regional Fisheries Management Organisations: The Case of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean' (2006) 37(2) *Ocean Development & International Law* 185, 187.

<sup>166</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, *Comparative Study of the Impact of Fisheries Partnership Agreements* (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>167</sup> Tabitha Grace Mallory, *An "Edge Ball" for Sustainable Tuna: China's Role in the Western and Central Pacific Fisheries Commission*, 2012.

<sup>168</sup> IOTC, *Report of Chinese Tuna Fisheries in the Indian Ocean between 1995 and 1999*.

<sup>169</sup> *Ibid.*

<sup>170</sup> Tabitha Grace Mallory, *China's Global Quest for Resources and Implications for the United States*, 2012.

<sup>171</sup> WCPFC, *Technical and Compliance Committee Summary Report, Sixth regular session, 30 September–5 October 2010, Pohnpei, Federated States of Micronesia, 2010*; Report WCPFC-SC7-2011/ST IP-03.

<sup>172</sup> Tabitha Grace Mallory, *An "Edge Ball" for Sustainable Tuna: China's Role in the Western and Central Pacific Fisheries Commission*, 2012.



### 7.3 Issues associated with East Asian Agreements

The shortcomings of such arrangements include;<sup>173</sup>

- These agreements are less transparent than government agreements mainly because fishing companies claim that the disclosure of information is commercially sensitive
- Industry association access payments are unsubsidised: in the case of Japan, this has resulted in justification for comparatively lower access payments in order to allow the fleet to remain competitive. However, the aid flows are additional to Japanese fleet payments.
- Japanese payments are often made on a per-trip basis, creating an incentive to under-report.

## 8.0 FOREIGN FISHING IN THE WIO

The WIO tuna fishery benefits immensely from its proximity to the Arabian and Somali coastlines which have high levels of productivity resulting from nutrient rich upwellings. Up to 970,000 tonnes of oceanic tunas with a processed value of €2-3 billion are harvested annually from the region by purse seine and long line fleets.<sup>174</sup> The Southwestern Indian Ocean subregion is made up of some of the world's poorest countries,<sup>175</sup> and the challenges of managing their EEZ resources are further escalated by the activities of foreign fleets.

The piracy acts off Somalia have also greatly reduced fishing vessels operating in the region and consequently reduced the catches.<sup>176</sup> Since the crisis off the Somali coast escalated in 2008, more than 3,000 seafarers have so far been kidnapped and held for ransom.<sup>177</sup> The piracy situation has not only caused anarchy and maritime insecurity, but also denies the coastal States the economic benefits from fisheries and related activities. This situation further perpetuates illegal fishing activities.<sup>178</sup>

### 8.1 Foreign Fishing in Madagascar

Foreign fleets have operated in Madagascar's waters extensively since the 1980s. Economically, Madagascar has been classified by the World Bank as one of the poorest States in the world.<sup>179</sup>

Foreign fishing in Madagascar consists of the following;<sup>180</sup>

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<sup>173</sup> Elizabeth Havice, The State of Play of Access Agreements with Distant Water Fishing Partners: implications and Options for Pacific Island Countries, FFA Briefing Paper (2007).

<sup>174</sup> Neil Ansell, FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat IUU Fishing, 28 August – 1 September 2006, Mocambo Hotel, Nadi, Fiji.

<sup>175</sup> FAO Fisheries Technical Paper No.488. *Review of the State of the World Marine Capture Fisheries Management: Indian Ocean*. Rome 2006.

<sup>176</sup> IOTC, Report of the Ninth Session of the Scientific Committee, Victoria, Seychelles, 6-10 November 2006; IOTC, Report of the Fourteenth Session of the Indian Ocean Tuna Commission, Busan, Korea 2010.

<sup>177</sup> IMO, Piracy in the Indian Ocean, World Maritime Day, 2011.

<sup>178</sup> Jasmine Hughes, The Piracy-Illegal Fishing Nexus in the Western Indian Ocean (2011).

<sup>179</sup> World Bank, Madagascar Country Profile. Available at: <http://data.worldbank.org/country/Madagascar>

- The EU Fishing Agreement and Protocols
- The Japan-Madagascar Agreement which is renewed annually
- Private Fishing Licenses

Private fishing licences are issued to individual vessels or fleets run by a company or association. A model Protocol with appropriate provisions imposes duties on the private licence holders with fees for purse seiners @ USD3,000 – USD 5,000; longliners @ USD 2,000 – USD 4,500 and support vessels @ \$3000. An additional \$1,000 is paid for entry into the EEZ.<sup>181</sup>

Madagascar is one of the most important tuna fishing grounds in the world in both volume and value of catches.<sup>182</sup> Madagascar plays a significant role in the Indian Ocean tuna trade, through the exploitation of stocks by DWFNs in its EEZ waters and also as a fish processing hub at the Antsiranana port and cannery and also transshipping from Asian longliners at Tulear.<sup>183</sup> The cannery is supplied with tuna landed by EU vessels or shipped from the Seychelles via container. Tuna catches from longliners comprising mainly of Sashimi-grade yellowfin are frozen on-board and exported directly to Japan. Antsiranana's tuna cannery provides 2000 jobs and generates up to €7 million annually of net revenue.<sup>184</sup> As the cannery (PFOI) is foreign owned by the French based Thunnus Overseas Group,<sup>185</sup> it is likely that Malagasy benefits are limited to employment alone as the revenues are do not remain in Madagascar.<sup>186</sup> Most of the output from the cannery is exported to the EU. In the last decade alone, at least 40,000t of tuna have been processed.<sup>187</sup>

The first EU Agreement with Madagascar was signed in 1986, making it the first Indian Ocean State to sign such an agreement.<sup>188</sup> Madagascar also maintains close economic ties with France (previously colonised by France) which has a large presence in its EEZ. Side agreements, made outside the EU's agreement framework, have been negotiated between Madagascar and two French companies. The EU contribution through agreements with Madagascar has been reducing

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<sup>180</sup> Kwame Mfodwo and Colin Barnes, *Economic Valuation of Tuna Resources in the Western Indian Ocean*, Madagascar Case Study, 2011.

<sup>181</sup> Ibid.

<sup>182</sup> FAO, *The State of World Fisheries and Aquaculture*, Rome 2010.

<sup>183</sup> Kwame Mfodwo and Colin Barnes, *economic valuation of tuna resources in the western indian ocean*, Madagascar Case Study, 2011.

<sup>184</sup> Le Manach F, et al. *Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements*, Mar. Policy (2012).

<sup>185</sup> Emerging Capital Partners, Thunnus Overseas Group, Available at: [/http://www.ecpinvestments.com/inv\\_details.xml?id=1114&p=1012&d=1047S](http://www.ecpinvestments.com/inv_details.xml?id=1114&p=1012&d=1047S).

<sup>186</sup> J Catanzano, M H Dabat, E Despres, P Failler, A Maucorps, B Mesnil, et al. *Evaluation of Fishing Agreements Concluded by the European Community*, European Contract No.97/S 240-152919.10.12.1197 IFREMER/CEMARE/CEP ref. APC02, IFREMER, Paris, 1999; R Grynberg, *WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management*, Mar Policy 2003;27: 499–511.

<sup>187</sup> Le Manach F, et al. *Who Gets What? Developing a More Equitable Framework for EU Fishing Agreements*. Mar. Policy (2012).

<sup>188</sup> European Union, *Agreement between the European Economic Community and the Government of the Democratic Republic of Madagascar on fishing off Madagascar*, Off J L 1986; 73:26–30.

over time. The total annual financial contribution from the EU dropped by almost 90% between 1986 and 2010.<sup>189</sup> This decline is attributed to a much lower inflation rate in Europe over the last 2 decades and also by the currency devaluation in Madagascar. For an Island State that is grappling with severe poverty, it is vital to ensure fair and transparent revenues from foreign fishing agreements as a matter of national importance, as it has implications for its economy and food security.

Across the WIO and especially in Madagascar, fisheries have been affected by Somali pirate activities. EU vessel owners arm themselves for protection against pirates and are therefore cannot legally dock in Malagasy ports, where weapons are prohibited.<sup>190</sup> These vessels which have also been servicing in Antsiranana are now accessing ports further south and eastern parts of the Indian Ocean.<sup>191</sup> The disputes over maritime claims and fisheries zones of Madagascar are also seen as a hindrance to regional cooperation. Madagascar's weak MCS is a hindrance to fair negotiations with the EU, in a data deficient situation. This makes it difficult to justify the surplus available to foreign fleets. IUU fishing is prevalent as in other WIO EEZs. EU vessels (Réunion/France and Mayotte/France), Taiwan and Comoros have been associated with such IUU fishing activities.

These challenges place Madagascar's tuna fisheries at risk. Fisheries agreements signed under data poor conditions pose a risk to the sustainability of tuna as well as species dependent on tuna and the wider ecosystem as a whole. This goes against the international best practices and legal requirements for agreements to be signed only after determining the availability of a surplus. The boundary delimitation disputes also hinder regional cooperation which is a risk to the migratory tun fisheries within the region.

A recent analysis of the Madagascar FPA indicates that the EU's current agreement with Madagascar is in direct conflict with, and complete contradiction to the goals set forth by the EU CFP. The agreement is more or less a direct economic benefit to EU vessel owners. The EU subsidizes the European DWF, thus contributing directly to fleet overcapacity and threatening the long-term ecological and economic sustainability of Madagascar's tuna resources which are vital for national food security.<sup>192</sup> The current FPA is considered less favourable in terms of the financial contribution by the EU. In terms of real value, the financial contribution has dropped by 90% between 1986 and 2010. The EU is receiving more tuna at a fee that has declined by 20%. The EU vessels owners are the beneficiaries of the current agreement with increased ex vessel prices and quotas, while Madagascar's treasury income has decreased. This situation is against the goals set by

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<sup>189</sup> Le Manach F, et al. Who gets what? Developing a More Equitable Framework for EU Fishing Agreements, Mar. Policy (2012).

<sup>190</sup> Ibid. The author observes that this prohibition does not appear to be enforced at Atsiranana.

<sup>191</sup> Report on "The Impacts of Piracy on Fisheries in the Indian Ocean", 28-29 February 2012, Mahe, Seychelles; IOTC, Report of the Fourth Session of the IOTC Working Party on Temperate Tunas, 20-22 August 2012, Shanghai, China.

<sup>192</sup> Le Manach F, et al. Who gets what? Developing a More Equitable Framework for EU Fishing Agreements, Mar. Policy (2012).

the CFP for benefits of agreements to be directed mainly towards developing countries, and not towards private EU entities.<sup>193</sup>

## 8.2 Foreign Fishing in Comoros

The revenue from tuna fisheries of Comoros is derived from access and licence revenues from the EU -FPA. Comoros concluded its first fisheries agreement with the EU in 1988. The first FPA to be initialled and provisionally applied was Comoros (2005). Local production is dominated by artisanal fishers who use outrigger canoes and sell tuna locally. Over the past 50 years, inshore fisheries have declined.<sup>194</sup>

Comoros is made up of three islands with inadequate transportation links and no port facilities for fishing vessels. Airfreight is also costly. Hence there are neither exports from the island or local landings of tuna by industrial fishers. EU purse seiners land their catches in other ports such as Antsiranana, Mombasa, Port Louis, Port Victoria and Thailand. Comoros is among the poorest nations in the world and fisheries are susceptible to illegal takes and unsustainable fishing methods.<sup>195</sup>

Comoros faces challenges arising from data poor situations and illegal takes in regard to the risks to its tuna fisheries. These issues threaten the sustainability of Comoro's tuna fisheries.

The protocol for the current FPA with the EU covers the period 2010 to 2013 and the provisions are indicated in table 2. The provisions of the current protocol of the EU FPA are as follows:<sup>196</sup>

- Access for 70 tuna vessels (45 purse seiners and 25 long-liners).
- €615,250 annually for access to Comoros waters
- €35 per tonne caught- fee for shipowners
- 4,850 tonnes per year
- €300,000 annually to support and implement sectoral fisheries and maritime policy.
- €3,700- per seiner €2,200 per longliner advance fees

## 8.3 Foreign Fishing in Seychelles

The nature of foreign fishing in Seychelles includes agreements and private licenses providing access to countries including; EU, Korea, Taiwan , Japan, India, Indonesia, China, Thailand, Iran, Russia, Netherlands Antilles, Panama, Guinea, Belize, Mauritius, Mayotte.<sup>197</sup>

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<sup>193</sup> Le Manach F, et al. Who gets what? Developing a More Equitable Framework for EU Fishing Agreements, Mar. Policy (2012).

<sup>194</sup> E F Granek and M A Brown, 2005. Co-management approach to marine conservation in Mohéli, Comoros Islands, Conservation Biology 19(6):1724.

<sup>195</sup> Project Global, Comoros Country Profile.

<sup>196</sup> [http://ec.europa.eu/fisheries/cfp/international/agreements/comoros/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/agreements/comoros/index_en.htm).

<sup>197</sup> Kwame Mfodwo and Colin Barnes, Seychelles case study 2011.

Seychelles is the main base for EU tuna purse seiners in the WIO, mainly French and Spanish, with a well-developed supply chain for tuna resources. The EU purse seiner fleet makes a contribution through EU access agreement payments, private licenses and other related payments and vessel expenditure in Victoria. Other tuna vessels licensed to fish in Seychelles EEZ are flagged to Taiwan, Japan and South Korea, Philippines and China. Asian longliner fleets land their catches in other ports or tranship at sea. The current EU/Seychelles FPA covers the period 2011 to 2014 with provisions as in table 2.

Seychelles has an extensive EEZ and is located in a rich tuna belt. It has developed to become the regional hub for industrial tuna fisheries and is also host to the IOTC. The contribution of fisheries-related activities in Seychelles to GDP and foreign exchange exceed that of tourism, while exports of fishery products account for over 97% of all exports.<sup>198</sup> The development of industrial tuna fisheries has encouraged the development of infrastructure for reception and handling facilities for fisheries in general. Port Victoria is the principle tuna transshipment port in the region. Vessel expenditure is the most important item of revenue to the government of Seychelles, with a total of USD 29,882,990 earned in 2005, USD 40,988,791 in 2006 and USD 23,463,269 in 2007 respectively.<sup>199</sup>

The Seychelles fisheries industry is significant as a foreign exchange earner and the Indian Ocean Tuna (IOT) cannery the largest employer, with 7.6% of the working population gainfully employed.<sup>200</sup> Mfodwo and Barnes estimate value added from fisheries and related sectors to be USD 65.6 million.<sup>201</sup> Earnings from transshipments in port amounted to USD 1,078,621 in 2005, but dropped to USD 375,686 in 2007, due to piracy activities and climate change.<sup>202</sup> The free-tariff and free-quota market access to the EU has been instrumental in attracting investment in the cannery.

Seychelles is the largest single source of canned tuna compared to other ACP producers and is largest volume supplier of canned tuna to the UK, arguably the most important market for 'green and fair' tuna today. Seychelles is therefore highly dependent on the European market for its canned tuna exports. A significant portion of the tuna landed in Seychelles by EU vessels is used in canneries, while some of it is bought by the cannery in Mauritius, Madagascar, Kenya and the

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<sup>198</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>199</sup> Kwame Mfodwo and Colin Barnes, Seychelles case study 2011.

<sup>200</sup> Philippe Michaud, Experience from the Bilateral Fisheries Access Agreement, Impact on the Economy and Implication for Seychelles of the Outcome of the WTO Mediation on the Case of Tuna between the EU and Thailand and Philippines, Seminar on ACP-EU Fisheries Relations: Towards a Greater Sustainability ACP Secretariat, Brussels, Belgium 7-9 April 2003.

<sup>201</sup> Kwame Mfodwo and Colin Barnes, Seychelles case study 2011.

<sup>202</sup> Ibid.

balance is transhipped to Europe (UK, France, Italy, and Germany).<sup>203</sup> The canning industry has contributed to making Port Victoria the biggest tuna transshipment and landing port in the world.<sup>204</sup>

### **8.3.1 The East Asian fleet in Seychelles<sup>205</sup>**

Seychelles has agreements with the Japanese, Taiwanese and previously Chinese fleets, while the Korean fleet operates under license. The East Asian fleets operate tuna longliners and land their catches in Asian ports. The main focus for the Japanese, Taiwanese and Korean vessels is to supply the Japanese sashimi market from yellowfin, bigeye and bluefin tuna catches. Japan also obtains close to 99% of Taiwanese tuna for this purpose. The sashimi grade catch is the most valuable. As the East Asian long line fleet tranships at sea, the most valuable catch in the entire WIO supply chain is hardly transhipped or landed in ports in the WIO region. The WIO States do not therefore participate in, or benefit from the fact that their fish supplies the high value sashimi trade.

#### **8.3.1.1 Seychelles- Japan Access Agreements**

The two types of agreements that the Seychelles has with Japan allow for (i) fishing access for Japan in the Seychelles EEZ; and (ii) provision of goods and services by Japan to Seychelles. The second agreement is linked to Official Development Assistance as described in 7.1 above. The current access agreement entered into force in 2007 and elaborates the terms and conditions for access. Previous to the current access agreement, Japan and Seychelles had negotiated agreements every 1-2 years. License fees stood at \$0.67 million/year in total. Seychelles does not have a comparable negotiating position to Japan, and the economic returns from this agreement to Seychelles are also minimal. However, Seychelles benefits from Japan's ability to easily substitute lost catch opportunities in any specific EEZ, with imports or alternative access agreements. The Japanese grant-aid has been used to build ice plants, fishing quays and fishing port infrastructure, fund research, provide fishing vessels, fishing equipment and engines for the development of the fishing industry.

#### **8.3.1.2 The Seychelles-Taiwan Access Agreement**

Seychelles has had agreements with Taiwan since 1997, on a 2 year basis. The latest agreement between Seychelles and Taiwan came into force in 2008. These agreements are not linked to any aid. As in the Seychelles-Japanese agreements the economic returns are minimal. Taiwanese vessels also have a history of IUU fishing activities, implying that the costs to Seychelles from the

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<sup>203</sup> Ibid.

<sup>204</sup> It would be worthwhile to further investigate the actual contribution of the IOT cannery to the Seychelles government treasury, as a confidential study stated that the Seychelles' IOT cannery contributed essentially nothing to the Seychelles' economy and treasury, due to various tax breaks and transfer pricing activities. Le Manach F, et al. Who gets what? Developing a more equitable framework for EU fishing agreements. Mar. Policy (2012).

<sup>205</sup> Kwame Mfodwo and Colin Barnes, Seychelles case study 2012.

Taiwan agreement are likely to be much higher than the costs from the agreement with Japan. The license fees were at €1.41 million/year in total.

### **8.3.1.3 The Seychelles-China Access Agreement**

Although Seychelles has had agreements with China, there is no current agreement. The last agreement with China came into force in 2006.

Seychelles has maintained a strong negotiating position as they have good information on the actual catches of the EU fleets and are also well informed on Japanese vessel movements and strategies available through the VMS requirements set out in the latest access agreements. This has been made possible by the available data from the IOTC and also because EU fleets land most of their catch in its ports. They have also had years of experience in the negotiations and their contribution amount is relatively high. It has however been observed that Seychelles has not been taking full advantage of all the agreement's options, particularly in terms of supplying local crews and their own observers.

Piracy off the coast of Somalia has threatened all maritime activities in the WIO since the start of the civil war in the 1990s, making it difficult to monitor fisheries activities. As a result, the EU purse seiner fleet has declined in number (by 30%). The implication for Seychelles is that the number of vessels handled, volume of fish trans-shipped, catches destined for the cannery and services provided to vessels have all declined, and jobs have also been lost.

However, overall, the relatively strong success of the Seychelles tuna industry can be attributed to;

- A policy environment that provides incentives to support export-oriented fishing investment,
- Political stability and key champions,
- Experienced fisheries-related work force,
- Well-established position on EU markets.

Seychelles is constrained by;

- High labour costs with a significant expatriate proportion (Philippines, Kenya and Madagascar).
- EU rules of origin- a hindrance to accessing cheaper tuna and freedom to source raw material, thus making production competitive.
- Inadequate capacity for surveillance of a large EEZ
- Minimal control of Asian longline fleets and hence loss of revenue/opportunities

A risk to the sustainability Seychelle's tuna fisheries arises from its inadequate surveillance capacity which exacerbates IUU fishing activities.

## 8.4 Foreign Fishing in Mauritius

Mauritius' EEZ is situated in relatively poor waters. Tunas migrate from the Maldives across the exclusive zone of Seychelles to the South of Mozambique, with a brief entry into the Mauritian EEZ. Until early 1990s tuna catches by domestic vessels thrived in Mauritius. The domestic fleet failed due to inadequate local supplies of tuna, among other things, bringing in the onset of tuna imports from the Seychelles. Such imports satisfy the EU rules of origin.<sup>206</sup>

Mauritius offers a platform for the transshipment, warehousing, handling, processing and re-export of fish and fish products.<sup>207</sup> Tuna canning commenced in 1972. To date, Mauritius has been very successful in developing a thriving tuna cannery sector. In 2009, a total of 604 fishing vessels called in port and the volume of fish transhipped amounted to 35, 087 tonnes.<sup>208</sup> The export of canned tuna yielded 209million Euros in 2009.<sup>209</sup> Today, the main companies carrying out tuna canning in Mauritius include Princes Tuna (Mauritius) Ltd, Mer des Mascareignes and Thon des Mascareignes. Mauritius exports the most diverse of all processed and unprocessed seafood products in the WIO.

Tuna fisheries are accessed through private licences held by companies, individuals and vessels from the East Asian longline sector. Many of the Mauritian private licences are taken by the Taiwanese longline albacore fleet which takes part of its catch in Mauritian waters. Between 2000-2006, the license fees for agreements with 20 Japanese vessels stood at \$6,000/longline for 90 days; \$2,000 for additional 30 days.<sup>210</sup>

Mauritius access agreements are with the Government of Seychelles (vessels owned by EU and Taiwanese interests) and the Federation of Japan Tuna Fisheries Co-operative Associations.<sup>211</sup> Tuna fishing vessels calling at Port Louis include longliners flagged to Taiwan, Indonesia, Japan, Spain, Belize, Malaysia, Seychelles, Korea, and purse seines from France, Spain and Italy. Having dealt with such a diverse set of trading partners, Mauritius is in a much stronger negotiating position than the other WIO States and has more options when dealing with either the EU or the East Asian countries.

The first EU agreement with Mauritius was concluded in 1989. Currently there is no EU protocol in place since the last one expired in 2007, and EU vessels operate under private licenses. There is

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<sup>206</sup> Under the Cotonou Agreement, tuna exports to the EU must be wholly obtained in order to qualify for duty-free access to EU markets. The main criteria for originating products are registration and flag, ownership and crewing arrangements on the fishing vessels and factory ships.

<sup>207</sup> ESA, Meeting on Trade and Sustainable Approaches to Fisheries Negotiations under WTO/EPA, Labourdonnais Waterfront Hotel, Port Louis- Mauritius, 2-4 May 2007.

<sup>208</sup> Mauritius, Report on Tuna Fisheries in Mauritius , IOTC Thirteenth Session of the Scientific Committee, Mahé, Seychelles, 6-10 December 2010.

<sup>209</sup> Ibid.

<sup>210</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>211</sup> Mfodwo and Barnes Draft Report, 2012.



however a proposal for a new FPA and protocol initialled in February 2012 covering a period of six years from the date of signature and renewable for successive periods of three years. The provisions are as follows;<sup>212</sup>

- Access for 86 tuna vessels (41 purse seiners and 45 long-liners).
- €1,980,000 for the whole duration of the Protocol.
- €357,500 annually for access to Mauritius' waters
- €65 for each additional tonne caught
- 5,500 tonnes per year, and
- €302,500 per year for the support and implementation of sectoral fisheries policy and maritime policy.

There has been a slight reduction in the number of longliners in the above agreement as compared to the previous one. The financial compensation for each tonne of tuna has also increased from €25 to €65, while the annual amount has also reduced by 1000 tonnes.

Port Louis is an important transshipment base with good port and storage facilities for tuna. Asian tuna longliners are landing or transshipping an average of 17,500 tonnes of tuna annually.<sup>213</sup> Some EU purse seiners also use the port for repairs and dry docking. The tuna fishery supports other associated trades such as stevedoring and shipping agents. In Mauritius, a total of €140 million a year is generated in port revenue and a similar amount from tuna processing export earnings.<sup>214</sup> The bulk of Mauritian canned tuna is exported to the EU markets, with the UK being the main consumer. The contribution from the tuna sector to the Mauritian economy is derived from value-added, port activities and employment associated to the canning industry.<sup>215</sup> The proximity of Mauritius to the major shipping routes from Cape Town to Asia has attracted the Asian longline fleet.

The establishment of the Mauritius based Indian Ocean Tuna Operators Association (IOTOA) in 2011 is a step in the right direction in ensuring the sustainability/eco-certification of tuna fisheries, particularly in the Island States of Mauritius, Madagascar, Seychelles, France (Reunion) and Comoros (SWIO-Indian Ocean Commission Members). The main objective of IOTOA (made up of 25 companies), is to demonstrate sustainability and potentially develop a regional eco-certification for tuna purse-seine fishing and canning (including environmental, social, sanitary and phytosanitary, quality and traceability aspects).<sup>216</sup> The Island States are striving towards eco-certification as a strategic mechanism for improving competitive positioning of their products, primarily in the

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<sup>212</sup> Mauritius, [http://ec.europa.eu/fisheries/cfp/international/agreements/mauritius/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/agreements/mauritius/index_en.htm).

<sup>213</sup> Mauritius, Report on Tuna Fisheries in Mauritius, IOTC Thirteenth Session of the Scientific Committee, Mahé, Seychelles, 6-10 December 2010.

<sup>214</sup> Greenpeace, *Taking Tuna Out of the Can: Rescue Plan for the World's Favourite Fish* (2007)18.

<sup>215</sup> Mfodwo and Barnes Draft Report, 2012

<sup>216</sup> Patrice Robert, Indian Ocean Tuna Industry, Challenges and Opportunities, Mauritius, 15 March 2012.

European market under the FPAs.<sup>217</sup> These efforts have been stimulated based on increased market pressure from environmental groups to improve environmental performance of the fishery and pressure on consumers to demand products that conform to sustainable practices.<sup>218</sup>

Challenges for the tuna trade in Mauritius include;

- Lack of adequately trained personnel eg. skippers and master fishermen for purse-seine or longline fisheries and a shortage of trained seamen and fishermen.
- Lengthy immigration procedures for foreign crews working on Mauritian-flagged vessels deter incoming investment.
- High costs of production.
- Existing ageing fleet operating on banks are unable to operate on the high seas that cover the migratory track of tuna.
- Tuna only pass through the EEZ briefly, and catches are concentrated outside the zone.

Risks to the sustainability of Mauritius' tuna fisheries derive from the general data poor situation as in the other WIO States.

## **8.5 Foreign Fishing in Kenya**

Foreign access to Kenya's tuna resources has been regulated through direct licensing since 1996 to date. Kenya has licensed EU and Asian purse seiners and longliners (Spain, France, China, Indonesia, and Japan). Kenya has never held an FPA with the EU although there have been several discussions with the EU regarding this issue, including an ex-ante study carried out in 2004. Domestic landings of tuna in Kenya are entirely by foreign fishing vessels, some of which are licensed to fish in Kenya's EEZ. EU purse seiners and reefers also land some catches in Kenya. There is a very minimal landing of tuna by artisanal fishers. The port of Mombasa has minimal transshipment activities by European and Asian fishing vessels.

Between 2009- 2011 no Asian longliners were licensed. French, Spanish and Seychelles purse seiners were licensed from 2007-2011.<sup>219</sup> The annual fishing license fee for purse seiners to secure access to the Kenyan EEZ is US\$50,000 per vessel. This fee has recently been adjusted from US\$ 20,000 in 2009.<sup>220</sup> The longline fishing license fee has equally been revised from the previous US\$5,000 per month to US\$10,000; from US\$7,000 for three months to US\$20,000; and from

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<sup>217</sup> Robert Gillet, Eco-certification for the Tuna Industry, Technical Assistance for Implementation of a Regional Fisheries Strategy for ESA-IO (IRFS), REPORT/RAPPORT: SF/2011/04, 2011.

<sup>218</sup> Ibid.

<sup>219</sup> Kwame Mfodwo and Colin Barnes, Economic Valuation of Tuna Resources in the Western Indian Ocean, Case Study- Kenya report, 2012.

<sup>220</sup> Republic of Kenya, Law Reports, The Fisheries (Foreign Fishing Craft)(Amendment) Regulations, 2009, Section 2(a)(ii). [http://www.kenyalaw.org/kenyalaw/klr\\_app/frames.php](http://www.kenyalaw.org/kenyalaw/klr_app/frames.php) (accessed 16 January 2010).

US\$12,000 for twelve months to USD\$30,000.<sup>221</sup> Foreign fishing fleets are also required to pay royalties set as a percentage of the landed catch. However, very little if any royalties are recovered. These license fees, which had not been previously adjusted since 1991, are considered very low,<sup>222</sup> and when the PNA are now charging USD\$8,000 per day for purse seine fishing in their waters. Further, the licenses are issued in data-poor conditions, posing a risk to the tuna stocks.

There is concern that Kenya does not derive commensurate return from the licenses issued to foreign fishing vessels in exchange for its tuna. For example, Mfodwo and Barnes estimated the rate of return (RoR) for the actual fees paid to the Kenyan government to be 2.6% for 2007; 4.1% for 2008; and 6.8% for 2009.<sup>223</sup> According to their report, an RoR of 2-4% is considered low. In which case there is a need to increase license fees. Accordingly, an adequate RoR ought to be in the range of 7%, whilst at least 10% of the returns if captured, would represent the lowest level for an equitable outcome. It is expected that Kenya and Tanzania proceed to bilateral FPA negotiations with the EU after the conclusion of European Partnership Agreement (EPA) between East Africa Community (EAC) and the EU.

The tuna landed by foreign fishing vessels in Kenya's EEZ is wholly utilised in the shore-based investment of the tuna processing industry. The tuna landed in Kenya is processed into loins (fillets) by the Wananchi Marine Products Company based in Mombasa.<sup>224</sup> The company also produces tuna flakes for the domestic market. The quantity of tuna loins produced for export is about 10,000mt, while at least an additional 15,000mt of tuna are landed by foreign fleets and transhipped from the same company annually.<sup>225</sup>

The tuna processing in Kenya was initiated in 1996 with modest exports of 500-1000 tonnes of tuna loins to Italy which increased to 9,000 tonnes in exports to the EU generally by 2005.<sup>226</sup> The Kenyan exports represent 12% of the EU import market of pre-cooked tuna loins, most of which were made up of yellowfin tuna and exported to Italy, which accounts for nearly 90% of the total.<sup>227</sup> Tuna loins

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<sup>221</sup> Republic of Kenya, Law Reports, The Fisheries (Foreign Fishing Craft)(Amendment) Regulations, 2009, Section 2(a)(i); Mathias Wafula and Beth Wagude, Overview of Kenya's Marine Fisheries, Report for ESA Meeting on Trade and Sustainable Approaches to Fisheries Negotiations under WTO/EPA, Port Louis, Mauritius, 2-4 May 2007; S. M. Mwikya, Kenya-EU Fishery Agreement: Critical Aspects and Negotiating Positions, 2004, Technical Report for the Ministry of Trade.

<sup>222</sup> In the words of the Chairman of the Kenya Association of Sea Anglers, Simon Hemphill; "commercial firms have been licensed for a pittance to fish in Kenya's EEZ". See the Standard Newspaper 09/02/2007.

<sup>223</sup> The rate of return RoR is monetary value received by the Coastal State as a proportion of the total monetary value of the catch once sold in the final port of destination of the foreign fleet.

<sup>224</sup> Wananchi Marine Products is a subsidiary of the United States based Tri Marine, which is one of the largest global tuna supply companies in the world. The company owns fishing fleets and processing companies worldwide, supplying tuna from the Pacific, Atlantic and the Indian Ocean.

<sup>225</sup> S M Mwikya, Kenya's Marine Fishery: Development Potential under an Economic Partnership Agreement with the EU, Technical Report for the Ministry of Trade, Government of Kenya (2005).

<sup>226</sup> Oceanic Development, 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.

<sup>227</sup> Some of the tuna loins are exported to France. See 'Kenya Considers Foreign Investment to Exploit its Tuna Fishing Potential' <http://www.atuned.biz/public/ViewArticle.asp?>

are relatively minor compared to the other products of the tuna industry such as canned or fresh tuna. Compared to the other WIO States tuna catches in the Kenyan EEZ are relatively low.

The sustainability of Kenya's tuna stocks is threatened by the inadequate surveillance and data poor situation. Even with legislation and policies that address these issues, it is necessary that they be enforced in order to ensure the sustainability of Kenya's tuna stocks and a sound ecosystem.

## 8.6 Foreign Fishing in Tanzania<sup>228</sup>

Since 1998 to date the Government of United Republic of Tanzania has been licensing foreign purse seines and longline vessels, including EU and Japan under private licences to fish in its EEZ.

Tanzania does not have an FPA with the EU though there have been discussions in the past to establish such an agreement. In 1990 the European Economic Community and the United Republic of Tanzania had initialled a tuna Agreement which was never implemented because of internal Tanzanian constitutional/political problems. During talks in 2004, the EU approached the Tanzania Mainland Government and Zanzibar for formal arrangements to ratify an FPA. The Parties initialled a new Agreement after an exploratory mission and 3 negotiation rounds. See Table 4 for EU proposal

Annual Contribution	€600,000 i) €210,000 financial compensation ii) €390,000 for targeted activities eg MCS, institutional support
Annual catch of tuna	8,000 tons
Additional catch of tuna	Above 8,000-24,000 tons, additional €75 per ton
No. of vessels	39 purse seiners; 31 longliners
Contribution from vessel owners	€130,000 annually in addition
Employment	At least 30 Tanzanian seamen

Table 4. EU Proposal for FPA<sup>229</sup>

Although this arrangement was initialled, there were concerns on the level of compensation as well as modalities of distribution of benefits between Tanzania Mainland and Zanzibar. Negotiations with the EU are still underway. A consultant engaged by the Tanzanian government reviewed this situation in 2005 as it was seen to be a raw deal and also in the light of MACEMP planning and focus

<sup>228</sup> EU, Proposal for a Council Regulation Concerning the Conclusion of the Agreement between the European Community and the United Republic of Tanzania on Fishing in Tanzania's Fishing Zone, Brussels, 23.12.2005 COM(2005) 693 final; WWF-EAME, Recommendations To The Director Of Fisheries- United Republic Of Tanzania On The Ratification Of Fisheries Partnership Agreement Between The European Union And The Tanzania Government, 2006.

<sup>229</sup> EU, Proposal for a Council Regulation Concerning the Conclusion of the Agreement between the European Community and the United Republic of Tanzania on Fishing in Tanzania's Fishing Zone, Brussels, 23.12.2005 COM(2005) 693 final.

on EEZ. The report revealed the potential of catches from the Tanzanian EEZ to be 36,000 tons for the year 2003/4. Thus the compensation would ideally be EURO 2,700,000 pa for that level of catches. Considering that there are also other private fishers, it was suggested that the minimum base level for negotiations with EU be raised to 18,000 tons pa, which would give financial compensation of EURO 1,350,000 pa. These changes to the agreement could not be made, as the EU only agreed to review them after a year of ratification.

The Deep Sea Fishing Authority which was established in 2008 issued 50 foreign fishing license, (34 purse seiners and 16 long liners) in 2010, earning the country USD 1,297,400.00 as revenue from licensing.<sup>230</sup>

There are no tuna processing activities or fishing port in Tanzania. However, Tanzania supplies sashimi grade tuna to Japan and other sashimi markets through the global longline fleets.<sup>231</sup> The EU purse seine catch from Tanzania EEZ is processed in Madagascar, Seychelles and Mauritius. Further, the tuna fishery is seasonal and the levels of stocks fluctuate. The state of stocks in the EEZ and the immediately adjacent regions is not well known. But the fishing fleets that are operational in Tanzania's EEZ have knowledge of these stocks.<sup>232</sup> This situation poses a risk to Tanzania's tuna resources as the agreements are entered into with inadequate knowledge of the stocks. Further, Tanzania's surveillance capacity is inadequate, thus exposing the tuna stocks to illegal takes that contribute to overfishing.

## **8.7 Foreign Fishing in Mozambique<sup>233</sup>**

The Mozambique foreign tuna fishery is made up of purse seiners and longliner fleets. The fishery is almost completely dominated by foreign vessels that acquire a fishing license to operate with few practical limitations. The main revenue derived from tuna resources is from licence fees, with an average of 125 licenses issued annually.<sup>234</sup> Licenses for purse seiners are \$18,000, while longliners are \$20,000 (2005 prices).<sup>235</sup> The southern Mozambique Channel is an important fishing ground for longliners, targeting bigeye, yellowfin and albacore tuna. Purse seiners flagged from EU (France, Italy & Spain) and Seychelles operate in the north of the Mozambique Channel between March to June, while longliners mainly from Japan, Korea, China/Taiwan and Spain operate in the south of the channel all year round peaking from December to February. Vessels operating on Mozambique's open registry include flags from Honduras, Belize, Cambodia and Panama.

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<sup>230</sup> Kwame Mfodwo and Colin Barnes, Economic Valuation of Tuna Resources in the Western Indian Ocean, Case Study-Tanzania report 2012.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Oceanic Development, Megapesca, Mozambique Ex-ante Report, 2006.

<sup>234</sup> Kwame Mfodwo and Colin Barnes, Economic Valuation of Tuna Resources in the Western Indian Ocean, Case Study-Mozambique report 2012.

<sup>235</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

Mozambique has also concluded an FPA with the EU. The first agreement concluded with the EU was in 1988 and provided the EU with fishing opportunities for shallow-water shrimp, deep-water shrimp and tuna. This agreement was to be terminated by Mozambique in 1993 when it became restricted to tuna alone.<sup>236</sup> However, exploratory talks were held with Mozambique from 1999 and a new Agreement was initialled on 21 October 2002. The current fishing agreement between Mozambique and the EU (France, Spain, Portugal, Italy and UK) is for the period 2012 to 2015 with provisions as indicated in table 1.

Prior to the 2004-2006 EU Mozambique Fisheries Agreement, EU tuna purse seiners operated under licences. Since 2004 an average of 35 European purse seiners annually have drawn licences under the Agreement to fish in the Mozambican EEZ. A total of 11,213.7 tons of tuna were caught in 2004, while approximately 2,000 tonnes were caught in 2005.<sup>237</sup>

As tuna fishing vessels rarely use land-based facilities except in case of emergencies, the Mozambican authorities have had almost no control whatsoever in this fishery. The fleets use Quelimane, Beira and Maputo ports for basic services of handling, supply of fuel and water and cold storage. The labour is also foreign, meaning there is no professional development or transfer of skills beneficial to the fishery sector. Tuna catches are transhipped at sea or landed in other WIO ports including in Seychelles, Madagascar, Mauritius and South Africa. Mozambique also has limited MCS capacity.

The EU Fisheries Agreement has brought about considerable change to this situation, by bringing the exploitation of these EEZ resources within the frame of the IOTC management recommendations, and ensuring improvements in catch reporting before Mozambique became a member of the IOTC. The Scientific, Technical, and Economic Committee for Fisheries (STECF) of the European Commission has emphasised the need to improve the quality of data available, particularly concerning the fisheries of coastal states, and the need for assessments or assessment updates for species such as albacore tuna. Another benefit of this agreement is the substantial contribution towards strengthening MCS activities (annually €1M) under the SADC Monitoring, Control and Surveillance of Fishing Activities Programme (SADC-MCS), from 2000 to 2006.<sup>238</sup>

There are however, still substantial weaknesses in fisheries control in Mozambique, and the number of unlicensed vessels has been estimated to be about 21% in number, while the overall under-reporting of catches is about 20%.<sup>239</sup> Hence the reports of IUU fishing by EU purse seiners in Mozambican waters. Overall, the institutional capacity for policy formulation remains weak. These aspects expose the tuna fisheries of Mozambique putting them at risk of overexploitation and threatening ecosystem health. Issues arising from Mozambique FPAS are summarised in Table 5.

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<sup>236</sup> Oceanic Development, Megapesca, Mozambique Ex-ante Report, 2006.

<sup>237</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

<sup>238</sup> Reports available from SADC-MCS ([www.mcs-sadc.org](http://www.mcs-sadc.org)).

<sup>239</sup> MRAG Report 2005.

Issues	Aspirations and Concerns
1. Government budget contribution	The FPAs is a supplementary source of finances towards the development of fishing activities and the fisheries sector
2. Access to EU markets	Small and medium scale fisheries aspire to access EU markets but concerned about impacts of IUU fishing on coastal resources and do not see direct benefits from FPAs; Industrial fishers (joint ventures) lose shrimp market and therefore don't benefit from tuna FPA
3. Access to EEZ for foreign longliners (mainly Japanese)	Excessive exploitation of bigeye tunas and impact of IUU fishing
4. Employment	FPAs are clear on employment of at least 20 % of seamen of ACP origin, of which, if possible, at least 40 % are Mozambican

Table 5. Issues arising from Mozambique FPAS

In summary;

- The FPA approach would be in the interest of Mozambique as it links budgetary support to the submission of a fisheries sector strategy with a structured budget in the form of a mid-term expenditure framework. This is expected to accelerate the development of an improved institutional capacity for sectoral strategic management.
- It is important for Mozambique to be compliant with the provisions of the Protocol eg. timely licensing procedures; planning and reporting of measures financed by the Agreement compensation; Procedures for transfer and use of FPA Funds<sup>240</sup>
- EU vessels also ought to comply with agreement provisions.

## 8.8 Foreign Fishing in South Africa

Tuna and tuna-like species are caught on the high seas and seasonally within the South African EEZ. South Africa has a domestic industrial tuna fleet, and the longliners and pole and line vessels catch mainly yellowfin, bigeye and albacore tuna. Historically, foreign fishing mostly from Japan and Taiwan dominated, with about 130 permits issued annually.<sup>241</sup> After an experimental fishing period, long-term fishing rights for directed effort on tuna (30 rights) and swordfish (20 rights) were issued in November 2004 to exclusively South African rights holders. Many of these rights are now fished by foreign flag operators in joint ventures with the South African rights holders, with the main objective being to increase South Africa's catch history for tuna and to develop local capacity.<sup>242</sup>

<sup>240</sup> Oceanic Development, Megapesca, Mozambique Ex-ante Report, 2006.

<sup>241</sup> FAO, National Fishery Sector Overview, South Africa, 2010.

<sup>242</sup> Ibid.

Currently 12 longline vessels from Japan and Korea operate under joint ventures.<sup>243</sup> The vessels are under the management of South Africa and not the flag state, their main objective being to increase South Africa's catch history for tuna and to develop local capacity. Joint venture agreements in fisheries have provided the opportunity for coastal States to develop fishing capacity in partnership with foreign investors, often using vessels that are already operational with an experienced crew.

The tuna poling fishery targets albacore and to a lesser extent yellowfin tuna. It is seasonal (October to June) and operates on the West Coast. Currently 200 vessels are registered within the poling fishery, with annual landings amounting to approximately 6 200 tonnes.<sup>244</sup> The longline has 31 vessels registered to operate within the fishery. Stock status of these resources is not well understood, although for albacore tuna the stock is thought to be underexploited and is allocated by ICCAT under a "sharing" agreement with Namibia, Brazil, Angola and Taiwan. Small quantities of Southern Bluefin Tuna are also caught in South African waters, with a quota allocation of about 40 tonnes from the Commission for the Conservation of Southern Bluefin Tuna (CCSBT).<sup>245</sup> South African tuna fisheries fall under three management jurisdictions including IOTC, CCSBT and ICCAT. South Africa is a member of ICCAT and a Co-operating Non-Contracting Party of IOTC and CCSBT.

At least (80%) of the tuna, particularly albacore is exported to the EU for canning, with about 100 tonnes of yellow fin tuna sold on the local market annually.<sup>246</sup> Fresh yellowfin is also exported to USA and Japan, while bigeye tuna mainly goes to Japan. Tuna processing occurs in Durban and Port Elizabeth. Cape Town is a major provisioning and service port for high seas tuna vessels.

The South African government favourably considers joint ventures under the following terms;<sup>247</sup>

- between historically disadvantaged persons and non-South Africans, alternatively previously advantaged persons;
- that can demonstrate how the local members of the joint venture would benefit in terms of skills transfers
- where locals own a reasonable level of equity interest and are responsible for the management of the applicant;
- that demonstrate a right of access to or ownership of a suitable vessel;

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<sup>243</sup> Edward Kimakwa, Proceedings of the WWF-AU Expert Consultations on Sustainable Management of Tuna and other Highly Migratory Resources in the South West Indian Ocean Coastal States, Silver Springs Hotel, Nairobi, Kenya 17th – 18th December 2009.

<sup>244</sup> FAO, National Fishery Sector Overview, South Africa, 2010.

<sup>245</sup> Ibid.

<sup>246</sup> Edward Kimakwa, Proceedings of the WWF-AU Expert Consultations on Sustainable Management of Tuna and other Highly Migratory Resources in the South West Indian Ocean Coastal States, Silver Springs Hotel, Nairobi, Kenya 17th – 18th December 2009.

<sup>247</sup> South Africa, Policy for the Allocation Of Commercial Fishing Rights In The Large Pelagics (Tuna Longline and Swordfish) Fishery: 2003.



- that have access to or that own the appropriate gear and equipment to harvest tuna and swordfish using the longline method;
- that can demonstrate access to knowledge and the necessary expertise to efficiently and in an environmentally sustainable manner harvest both tuna and swordfish;
- that are able to demonstrate access to or ownership of suitable processing facilities in South Africa, as well as access to suitable markets for the sale of tuna and swordfish; and
- whose directors, shareholders or members, as the case may be, can demonstrate a history of adhering to international law and all applicable domestic laws

Since 1977, up to 200 Japanese and Taiwanese tuna longliners operated in the South African EEZ under bilateral agreements.<sup>248</sup> They fished the large stocks of yellowfin tuna which migrate to the region south of Cape Agulhas in the summer and in the winter. The annual permit fees levied to Japanese and Taiwanese vessels was approximately R9 million (USD1,093,325). These agreements were terminated in 2002 by the Minister of Environmental Affairs and Tourism who emphasised that "South Africa's fishing resources are for exploitation by South Africans", maintaining a policy preventing foreign access to resources in South African waters. The Minister claimed to be upholding the objectives of NEPAD, to develop domestic fisheries since allowing foreign fishing fleets access to fish in South African waters would undermine its ability to develop domestic fisheries. South Africa also previously had bilateral fisheries agreements with Portugal and Spain before these countries joined the EU.<sup>249</sup>

The 2004 fees for joint ventures payable quarterly were as follows; (current figures were not available to consultant),<sup>250</sup>

- Swordfish, Yellowfin and Bigeye tuna: R1,200 (USD143) per ton landed;
- Southern Bluefin tuna: R4,000 (USD477) per ton landed;
- All other catches, including Albacore tuna and sharks: R 107 (USD12.8) per ton landed
- An application fee of R6,700 (USD800) also applies.

South Africa does not have an FPA. South Africa has a well-established MCS and only allows transshipment at a SA port with a permit. Fisheries access is controlled by effort and vessel restrictions in most commercial fisheries including the longline tuna fishery. Rights holders have to justify new vessels within each sector through a Fishing Effort Allocation Committee.<sup>251</sup> New effort can only replace existing effort in any sector, with replaced vessels not permitted back into the specific sector from which they came. However, the fishing industry in South Africa is given relatively low priority as it only contributes a very small amount to national GDP.

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<sup>248</sup> Phasing out of Foreign Access Agreements – the South African Approach, <http://www.sanparks.org/about/media/2002/japanesefishing.pdf>

<sup>249</sup> <http://www.sanparks.org/about/media/2002/japanesefishing.pdf>

<sup>250</sup> Ibid.

<sup>251</sup> FAO, National Fishery Sector Overview, South Africa, 2010.

## 9.0 RISK ANALYSIS OF ACCESS AGREEMENTS

Fishing access should always be preceded by a proper analysis of the associated risks, be it for overfishing or for effects on ecosystem and social effects. Access agreements need to adopt a standpoint from the point of view of overfishing, conservation issues and socio-economic benefits. The issues ought to be dealt with in theory and practice. Hence, provisions to be included in access agreements need to ensure that fisheries resources are not at risk of overfishing, thereby achieving the goal of sustainability. Coastal States should aim to minimise the risks to tuna fisheries resources by ensuring that access agreements address such issues.

Thus, it is necessary to take ‘all relevant factors’ into account when negotiating tuna fishing access. These ‘relevant factors’ include submission of accurate data as stipulated under international law and compliance with conservation measures established by coastal States. There have been access arrangements that have led to the depletion of host country stocks, in cases where relevant sustainability issues were not taken into consideration. As tuna are highly migratory, sustainability can only be achieved through cooperative management and concerted/ harmonised efforts from all the SWIO States. The same stocks of tuna migrate throughout the region and the conservation efforts of one State can be undermined if the other States in the region fail to cooperate in the conservation of the stocks as a whole. The risk of any State in the region not adhering to the conservation measures established by Members through the IOTC, would put the whole Indian Ocean tuna stock at risk of overexploitation and threaten its sustainability.

### 9.1 The Surplus Principle

Fishing access should be based on the surplus principle. The LOSC obliges coastal States that are not able to exploit resources occurring in waters under their jurisdiction to maximum sustainable yield (MSY) levels, to allow other states to do so.<sup>252</sup> The LOSC also provides for legal recourse for States that fail to allow access to these “surplus” resources.<sup>253</sup> In which case, where stocks are already exploited at levels at or above MSY, it is only possible to reduce fishing capacity where necessary and equitably reallocate available resources.<sup>254</sup> However, many developing States such as those of the WIO grant access with very little or no knowledge of the status of the stocks, putting such stocks at a high risk of overexploitation. Access agreements are only very rarely accompanied by thorough stock assessments. Hence, frequently neither the surplus of a fishery is determined before concluding arrangements,<sup>255</sup> nor are precise provisions consistently included related to effort or catch limits.<sup>256</sup>

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<sup>252</sup> LOSC, Art. 62.

<sup>253</sup> LOSC, Art. 297.

<sup>254</sup> Greenpeace, *Overcapacity in Tuna Fisheries: the Challenge Ahead*, Joint Tuna RFMOs International Workshop on RFMO Management of Tuna Fisheries Brisbane, Australia, 29th June – 1st July, 2010.

<sup>255</sup> ADE-PWC-EPU, *Evaluation of the Relationship between Country Programmes and Fisheries Agreements*. Final Report, prepared for European Commission, 2002. This report shows that even where scientific analysis comes to necessary conclusions, this advice is often ignored (e.g. octopus in EU-Mauritania 2001-2006).

<sup>256</sup> Les Clark, *Perspectives on Fisheries Access Agreements: Developing Country View*, prepared for OECD Workshop

This problem is further exacerbated by under-reporting/non-reporting of catches by DWFNs and weak enforcement regimes in developing States, such as what has been observed in the SWIO. Developing States lack cost-effective means of deterring the incursions of foreign vessels into their EEZs. Also attempts to maximize revenue from foreign exchange earnings or from the sale of access privileges to foreign fishing fleets can conflict with efforts to manage fisheries sustainably by setting lower catch limits. Other DWFNs like the EU carry out evaluations but as indicated in the discussions above concerning foreign fishing in the WIO, this information is not shared with the coastal State on time.<sup>257</sup>

A surplus can only be determined with adequate data and analysis and ensuring that the fishery is being harvested below the Maximum Sustainable Yield. Under circumstances when knowledge is limited, coastal States need to take precautionary measures as required under international law.<sup>258</sup> This is a challenge for the SWIO States as the tuna stocks migrate across the Indian Ocean. However, a cooperative approach such as that being sought by these States and the establishment of minimum terms may be a beginning to an Indian Ocean wide initiative. States are required to take conservation and management measures even in the absence of adequate scientific information by applying the guidelines set out in Annex II of the UNFSA.

## **9.2 The Precautionary Approach**

States are required to determine stock-specific reference points and the action to be taken if they are exceeded.<sup>259</sup> Reference points enable States to define a catch rate that should not be exceeded. By applying the precautionary approach, States are able to address fisheries management problems proactively, thereby ensuring the sustainability of fisheries resources and those of the associated ecosystem. In the case of the SWIO the determination of reference points is to be done by the scientific committee of the IOTC whose role is to provide management advice based on stock assessment results. As tuna is a migratory species fishing access conservation measures in the EEZ ought to be compatible with those from adjacent EEZs and those of the high seas.

## **9.3 Policy and Legislation**

Coastal States need to adopt conscious and practical strategies to minimise risk to the fishery resource, curtailing destructive and illegal fishing practices by lobbying for appropriate law and policy, educating stakeholders and the wider public, and developing certification programs such as those available under the auspices of the Marine Stewardship Council. In the SWIO, IOTOA is striving towards such a scheme for the tuna fisheries of the Island States as discussed earlier. Essentially, access rights ought to be determined in terms of capacity. However, many coastal

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on Policy Coherence for Development in Fisheries, 2006, COM/AGR/DCD/PCDF(2006)2. For an analysis of EU-ACP Fisheries Partnership Agreements, see: Niki Sporrang et al., Fisheries Agreements with Third Countries – Is the EU Moving towards Sustainable Development? IEEP for WWF, 2002.

<sup>257</sup> Although the ex-post evaluations are availed publicly, this information is not shared with coastal States before the negotiations in order to facilitate such talks.

<sup>258</sup> UN Fish Stocks Agreement, Art. 6; FAO Code of Conduct for Responsible Fisheries, Art. 7.5.

<sup>259</sup> UN Fish Stocks Agreement, Arts. 6(2) and (3)(b).

States do not have the capacity to calculate Total Allowable Catch (TAC). This can still be done by vessel numbers and characteristics, and effort determined by fishing days. In the SWIO the determination of TAC is ongoing at the IOTC under the Technical Committee for Quota Allocation. It has been proposed that a baseline be determined upon which to base the quota allocation.<sup>260</sup> The SWIO States may also establish national harvest strategies (formal decision making process) for tuna in order to set out the management actions that would aid them in achieving defined biological and economic objectives for tuna. Such strategies may specify 'control rules' that regulate the level of fishing activity, and monitoring and assessment processes to inform both setting and progress of the harvest strategy objectives. The rules and criteria of the harvest strategy need to be agreed by industry, fisheries managers and scientists and approved by the relevant government ministry.

#### **9.4 Social and Economic Aspects**

Declining fish stocks, and related impacts on the marine eco-system, entail severe social and economic consequences for the local fishing population and the development of the island or coastal State. For example the tuna fisheries in Seychelles contribute significantly to the economy through port services, canning etc. Any decline in tuna stocks would significantly affect the whole industry and a large portion of foreign exchange and government revenues. On a global level, this would pose a food security and nutritional risk. Economically, there is a direct link between overfishing and poverty. The economic security/welfare of a large number of coastal communities depends on the services accruing from tuna fisheries such as in the WIO, particularly the Island States. Approximately half of the total export value of the world trade in fish and fisheries products is known to come from developing countries. Poverty among coastal communities in developing countries is often high (especially in Asia and Africa), and this is alleviated partly by fishing industries which employ 150 million people.<sup>261</sup> It is therefore in the interests of coastal States to deter any fishing practices that would eventuate in overexploitation of the resource.

Regarding the social impacts, fishing access ought to consider the impacts of DWFNs on national fleets. Some agreements have attracted particular attention because they comprise high-volume fish catches, and also involve species that are endangered or used locally, i.e., that are strategic from the point of view of food security. Frequent conflicts between DWFNs and local small-scale fleets relate to competing for the same stocks, gear conflicts when vessels occupy the same fishing grounds and destruction of locally-important habitats such as reefs and seagrass beds.<sup>262</sup> In addition, access arrangements have often been criticized as unfair given that they are very rarely based on resource rent principles – access agreements in the South West Indian Ocean and also the

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<sup>260</sup> IOTC, Report on the Technical Committee Meeting on Allocation Criteria, Nairobi 16-18 February 2011.

<sup>261</sup> World Bank/FAO, *The Sunken Billions: The Economic Justification for Fisheries Reform*, October 2008.

<sup>262</sup> Stephen Mbithi Mwikya, *Fisheries Access Agreements: Trade and Development Issues*, ICTSD 2006.

Western and Pacific Ocean, for example, are estimated to account for not more than 5-10 per cent of the value of the catch.<sup>263</sup>

## 9.5 Subsidies and Catch Limitations

DWFNs are often highly subsidized thus exacerbating the impacts depicted above. Such subsidies may encourage foreign vessels to fish beyond the economic optimum compatible with sustainable resource management, encourage fishing vessels to operate in troubled fishing industries, and encourage overfishing.<sup>264</sup> In many developing coastal States, the terms of access agreements do not provide a limit on the quantity of fish licensed boats can catch, and where there are limits put in place, critics feel they are too high. It is not clear for example if the WIO States issuing foreign fishing licenses have a limit on the catch. The EU FPAs have no catch limit, but just an advance on payment for a given tonnage. If the tonnage is exceeded, the EU pays a pre-determined amount per tonne. Consequently, such agreements could lead to the depletion of tuna stocks and rapid decrease in marine biodiversity. It is also essential that access agreements provide for reduction of by-catch, which is another major risk to the sustainability of marine biodiversity and the ecosystem as a whole. Collectively, these issues pose serious consequences for the stability of marine and coastal ecosystems as the depletion of fish stocks often involve other ecological changes.

## 9.6 Transparency

An explanation for why African states allow poor regulations in access agreements is sometimes depicted as the outcome of a weak bargaining position. For example, in Senegal during the negotiation of a new access agreement in 2002, “the EU actively resisted numerous conservation measures and drove a hard bargain on price”.<sup>265</sup> Other reports suggest that the failure to implement responsible fisheries regulations in access agreements may be an outcome of brown envelope diplomacy i.e. bribes and kickbacks. For example, there are claims that the negotiation of access agreements in Pacific Island States, particularly involving Asian countries, has been influenced by a range of crass incentives and strategies.<sup>266</sup> Access agreements can also be influenced by the lure of donor funds or the threat of their removal. This could be the case of the majority of WIO states which are highly dependent on donor aid. Such allegations have been made against the EU and Asian countries.<sup>267</sup> These forms of corruption are greatly facilitated where public access to information is restricted. As discussed earlier, the EU negotiation process is confidential, with no involvement from civil society or other domestic fishing stakeholders. Key documents, including the results of audits and evaluations, are also not availed on time. The agreements between coastal States and Asian fishing associations or governments are also completely private.

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<sup>263</sup> Marcos A. Orellana, *Towards Sustainable Fisheries Access Agreements Issues and Options* at the World Trade Organization, 2008.

<sup>264</sup> Gareth Porter, *The Euro-African Fishing Agreements: Subsidizing Overfishing in African Waters*, Background Paper for UNEP/WWF Workshop, 1997.

<sup>265</sup> Clover, 2005.

<sup>266</sup> Tsamenyi, M and Hanich, Q (2008), “Addressing corruption in Pacific Island Fisheries”, Report prepared for the IUCN Profish Law Enforcement, Corruption and Fisheries Project, available from [www.iucn.org](http://www.iucn.org).

<sup>267</sup> Clover 2005; Mwikya 2006.

Overall, poorly managed fisheries will undermine marine and coastal ecosystems, reducing the rich biological diversity of these areas and the many benefits that derive from healthy ecosystems. However, access agreements make an important contribution of access payments to SIDS and developing coastal States' economies. Access agreements have the potential to help integrate developing-country fishing or fish-processing industries into the global economy.<sup>268</sup> Likewise, if properly designed and implemented, they can help promote conservation and sustainable fisheries management.<sup>269</sup>

## **10.0 PROPOSAL FOR A JOINT FOREIGN FISHING ACCESS REGIME FOR SWIO STATES**

From the discussion above, access agreements are likely to remain a potentially important instrument of fisheries control, management, and revenue generation for the SWIO States. The reality is that DWFNs do not appear to have a long-term vision for their fishing agreements, aiming instead, to optimise fishing possibilities, secure fish supplies, and benefit from economic opportunities afforded by the SWIO States through fisheries agreements. As noted above, DWFNs have a comparative advantage over SWIO States through sophisticated technology, greater knowledge, subsidies, and the ability to shift fishing operations between countries and fisheries in accordance with the changing nature of the fisheries economies, the regulatory framework and resource availability.

Although the SWIO States may not have identical objectives with regard to foreign fishing activities, their common interests to sustainably develop their tuna resources and to derive optimum benefits to their national economies justifies the development of a joint, or common foreign fishing access regime. Such a regime would need to provide an effective means by which the WIO States may, through their joint efforts, control and manage foreign fishing and increase the benefits from foreign fishing in the region. The increased benefits may come from a range of other economic activities and not necessarily access fees.

To achieve a common access regime for foreign fishing the SWIO States need to develop a process leading to a common negotiating position without undermining national sovereignty. Such a regime is likely to take some time to design and institute, and would require coordination, protocols between the SWIO States, administrative arrangements at the regional level, clarification of the tangible benefits of such an arrangement and substantial political commitment by SWIO States.

The arrangements for such a regime would include;

- (i) Common and agreed principles governing the access of foreign fishing vessels.

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<sup>268</sup> Michaud (2003) illustrates, for example, how industrial tuna fishing and the tuna canning factory have become indispensable pillars of the Seychelles economy, in great part due to the access agreements which allow distant water fleets from the EU, Japan and Taiwan to fish for tuna in Seychelles waters.

<sup>269</sup> David Schorr, *Healthy Fisheries, Sustainable Trade. Crafting New Rules on Fishing Subsidies in the World Trade Organization*, WWF 2004, pgs. 53 et seq.

- (ii) Agreed technical minimum terms and conditions (MT&Cs) of access to be applied to all foreign fishing vessels.
- (iii) Mechanisms for the exchange of information on the operation, negotiation and impact of fishing access arrangements.
- (iv) Mechanisms for the establishment of common positions in international fora such as the IOTC, WTO and the ACP/ EU dialogue.
- (v) Persistent and cohesive application of these elements until the new regime was accepted by DWFNs.
- (vi) Key allies in both the NGO and market arena to support WIO governments.

The Minimum Terms and Conditions for Fisheries Access Arrangements in the WIO need to be anchored in a framework providing a common access regime.

The consultant proposes harmonised parallel arrangements whereby each Member State has a separate access arrangement/licensing protocol, but where each arrangement contains identical non-negotiable minimum terms and conditions of a purely technical nature. Separate compensation arrangements would be specific to each Member State. This is because of the different approaches to foreign access in the WIO States (licenses/agreements) and economies, and also the different residence time the tuna has in each of the WIO countries as demonstrated in figure 2 showing the seasonal movements of tuna in the WIO.

## **11.0 JUSTIFICATION FOR MT&Cs IN THE WIO**

### **11.1 International Legal Basis for MT&Cs**

The international legal basis for regional cooperation regarding access agreements includes;

- The LOSC- Arts. 55-75, 117-118 as in section 4.0 concerning the rights and obligations for managing, conserving and utilising EEZ resources, and Annex 1 which defines highly migratory species. Art. 62(4) of the LOSC empowers coastal States to impose terms and conditions of access and to regulate the activities of foreign fishers, to ensure that they are consistent with national laws. These regulations may include *inter alia*, catch limits/quotas, licensing requirements, regulating seasons and areas of fishing, placing observers on board foreign fishing vessels, type and size of gear. LOSC Art. 63 & 64 of the LOSC obligates States to cooperate in the management of transboundary fish stocks such as tuna.
- The United Nations Fish Stocks Agreement- provides the mechanism for cooperation including subscribing to RFMOs or other regional/subregional arrangements to establish conservation and management measures for migratory and straddling fish stocks [tuna] (UNFSA Art.10). Harmonised management ought to cover the entire range of tuna stocks for effective management because of their biological unity (UNFSA Art. 7(2)(d));

- The principles set out in the IOTC Convention<sup>270</sup> - The UN Fish Stocks Agreement establishes the role of Regional Fisheries Management Organisations as the mechanism through which international management of tuna fisheries can be achieved both in the EEZs and on the high seas. Cooperation among the WIO States is achieved through the IOTC.
- FAO Code of Conduct- Art. 7.1.3-States are to cooperate to manage and conserve transboundary, straddling, highly migratory fish stocks; 7.5.3- precautionary principle, reference points to be determined based on best scientific evidence available.
- National legal basis- WIO states have claimed EEZs and enacted relevant legislation enabling vessels to be licensed to fish in the EEZ. It will be necessary for the fisheries legislation of the WIO States to be harmonised. This will only be in the way of administrative procedures and not the principles on which states fisheries legislation is based. The derogation or loss of sovereign rights of WIO states is to be avoided at all costs.

## **11.2 Economic and Social Basis**

- Direct payments by DWFNs in access/license fees
- Purchase of goods and services by DWFNs in WIO Ports
- Landings of fish
- Research and training
- Employment and on-board training
- Improved scientific information base
- Taxes, trade, banking and foreign exchange, investment
- Increased bargaining power, and equitable economic sharing of benefits.

## **11.3 Conservation of Fisheries Resources**

A coherent international regime as required for tuna will enable effective management through;

- Improved conservation and management of fisheries resources
- More effective control of foreign fleets
- Constraining overcapacity by preventing fishing vessels from re-locating to neighbouring EEZs with more favourable terms of access.

## **11.4 Harmonising the interests of WIO States**

WIO States have different views of the role of access agreements/foreign fishing. For some, like Seychelles, the revenue from tuna fisheries is a vital component of the national revenue and foreign exchange, while in others, like Madagascar, employment, fish supply and sale of services is important. However, all WIO States in the long term wish to improve the economic returns from tuna fisheries. These States have common interests like market access, technology transfer, and income from DWFNs. A common long-term vision and some compromise with the DWFNs may result in successful equitable arrangements between the WIO States. The WIO States can also take

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<sup>270</sup> See the Agreement for the establishment of the Indian Ocean Tuna Commission.



common positions in various fora such as the IOTC, EU/ACP dialogue, thus articulating issues that may be unique to their tuna fisheries. The WIO States can safeguard their tuna resources by successfully asserting their position in regional meetings of the IOTC.

### **11.5 Financial Base**

The WIO States are not able to finance their tuna fisheries management objectives unilaterally eg MCS. Lack of control over the fishing activities of DWFNs, results in financial loss and overexploitation of the tuna stocks in the region. Through a regional initiative to implement MT&Cs, the finances from fishing agreements, donor funds etc, can be pooled to finance agreed regional activities and initiatives fundamental to the sustainable utilisation of tuna fisheries.

MT&Cs may provide an increase in the direct revenues accruing from compensation payments and licence fees to the WIO States by securing a minimum level of access fees by joint efforts. Landings of fish in the WIO states as well as employment may be increased. They can also improve the investment climate required for creation of joint ventures and direct foreign investment, add stability to the fisheries, and create a basis for long-term planning of the optimum usage of tuna resources by the WIO States and responsible foreign fishing partners. This would facilitate the sustainable management of tuna resources, and could enhance the ability of the coastal States to monitor and control the fishing activities of foreign fishing fleets.

Adopting a regional approach will deter WIO States from competing for foreign fishing vessels. DWFNs will not exploit the differences and inconsistencies between the individual national access regimes eg. access fees, regulatory regimes, to their advantage and also play the WIO States against each other. The exercise of developing a joint regional foreign fishing access regime would foster practical regional cooperation. It is evident that most of the WIO States cannot afford to police their EEZs. Implementation of MT&Cs through a regional approach could enhance their capabilities. Such an approach can also help define the role of development assistance in relation to the access agreements.

DWFNs would also benefit from a common access regime as follows;<sup>271</sup>

- creation of a more stable and enduring relationship between coastal states and DWFN,
- fostering a common fisheries management ethic and responsible practice,
- providing greater administrative and operational flexibility in fishing operations
- by opening the possibility to stabilise fish supplies and prices in the longer term, through more cost-effective fleet deployment, improved conservation, and increased net economic benefits for all parties

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<sup>271</sup> Kieran Kelleher, The Design Of A Sub-Regional Foreign Fishing Access Regime For West Africa, Dakar, July 2000.

## **12.0 LESSONS FROM THE EXPERIENCE OF THE SOUTH PACIFIC**

The Pacific island States have demonstrated substantial power in both bargaining and compliance control with respect to DWFNs through strong political commitment to regional cooperation. For example, the establishment of a regional register of vessels operating in the region (maintained by the Forum Fisheries Agency) is a regional data bank of information on foreign fishing activities which is a deterrent to illegal fishing.<sup>272</sup> The register has ensured that fleets operating in the South Pacific act responsibly with respect to national fisheries laws and fisheries access agreements. It has also facilitated a high degree of voluntary compliance by foreign fishing fleets. At the national level this has lessened the financial burden of enforcement. There has been increase in fee levels from 5% of landed value under previous bilateral arrangements, to over 10% of landed value under the multilateral treaty with the United States as a result of regional negotiation of access agreements and joint licensing schemes.

### **12.1 Incentives for Regional Cooperation**

The most important tropical tuna resources are found in the South Pacific which was one of the first regions to adopt harmonised MT&Cs. Their incentives to cooperate in adopting such measures include;

- The tuna resources in the region are economically significant to these States
- Most of the States' intra-EEZ harvests of tuna are taken by DWFNs
- The States are small and scattered over an ocean space of 35 million square kilometres
- Low levels of development with no capacity to monitor such a large ocean area
- To ensure that Japan which was in the position of a monopolist DWFN within the Pacific Islands region did not play one island State off against the other

### **12.2 Mechanisms for Cooperation-How did they achieve it?<sup>273</sup>**

- Established the South Pacific Forum Fisheries Agency (FFA) in 1979 to play a facilitative and coordinating role amongst its members as well as strengthening regional solidarity
- Federated States of Micronesia Arrangement for Regional Fisheries Access, which gives multilateral fisheries access across the combined EEZs to purse seines that meet the criteria for 'locally based' at discounted fishing licenses
- The Palau Arrangement for the management of the purse seine fishery

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<sup>272</sup> The register is a computer listing of information about vessels fishing or intending to fish in the area served by the FFA. The information includes; vessel marking, ownership and vessel and fishing masters, operational base, gear and equipment, freezing and storage capacity, bait storage capacity and fuel capacity, and all activities carried out by the vessel.

<sup>273</sup> Vina Ram- Bidesi and Martin Tsamenyi, 'Implications of the Tuna Management Regime for Domestic Industry Development in the Pacific Island States' (2004) 28 Marine Policy 383,383; Elizabeth Havice, 'The Structure of Tuna Access Agreements in the Western and Central Pacific Ocean: Lessons for Vessel Day Scheme Planning' (2010) 34 Marine Policy 979, 980..

- The Secretariat for the Pacific Community (SPC) for statistical data collection and providing technical advice for fisheries management purposes
- Sub-regional group of FFA members –in 1982, Nauru Group (Federated States of Micronesia (FSM), Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, Tuvalu) adopted the *Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest* (Appendix VIII) recognising that DWFNs could weaken their negotiating positions by playing off one state against another. The Nauru Agreement dictates minimum and uniform terms of access for foreign vessels (prioritizes domestic over foreign vessels).

### **12.3 Concerns of the Parties to the Nauru Agreement**

The Parties to the Nauru Agreement (PNA) became an independent body/organisation in 2010. Their key objective is to maximise/optimize economic benefits derived from their tuna fishery resource. Because they shared their interests and concerns, PNA recognised the value of regional cooperation and cooperative measures. Their concerns were;

- More than 50% of purse seine catch in WCPO is taken from PNA EEZs
- A multi-billion \$\$ industry YET economic benefits to PNA countries were relatively low
- A situation of “IMBALANCE”
- PNA have been working to address this IMBALANCE through strengthened regional cooperation and cooperative measures for 3 decades

### **12.4 Initiatives and achievements of PNA<sup>274</sup>**

PNA established MTCs which are continually undergoing review. Other regional initiatives and achievements through strengthened regional cooperation and cooperative measures include;

- Palau Arrangement for the Management of Purse Seine Fishery
- Federated States of Micronesia (FSM) Arrangement
- Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Region
- Vessel Day Scheme for the purse seine fishery
- Third Implementing Arrangement – High Seas Pocket Closure, Fishing Aggregate Closure, Ban on Whale Shark setting, etc
- Establishment of an independent PNA Office in Majuro, Marshall Islands in 2010.
- Marine Stewardship Council Certification-2011

## **13.0 DEVELOPING MINIMUM TERMS AND CONDITIONS OF FOREIGN ACCESS IN THE WIO**

The experience of the South Pacific lends lessons that can inform the WIO regional cooperation process. Although the situation in the SWIO may not be necessarily identical to that of the Pacific, the regions share a similarity in that tuna in WIO is also fished primarily by foreign fleets. Using the

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<sup>274</sup> <http://www.ffa.int/>

examples from the Pacific, the SWIO States could adopt strategies that are feasible in the region. However, the South Pacific is unique in that it is dominated by tuna as a single species which is of very high value and it is also an area of closely-knit coastal Island States with relatively homogeneous political systems, traditions and state of development and a strong political commitment to regional cooperation. The WIO States differ, with both littoral and Island States, and with varying importance of tuna fisheries to their economies. But like the Pacific Island States, the WIO States are developing and have disparities between their economies.

The main benefits for WIO States will accrue from more effective control of fishing activities, and growth in commercial opportunities for fishing enterprises and services in WIO States. This is likely to lead to more landings, employment, processing, and food supply.

The issues that are critical and which have been selected based on the provisions of international law requiring DWFNs to comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State include;

- Authorisation and License Conditions- LOSC Art. 62(4)(e); CoC Art. 7.6.2  
All DWFN fishing vessels are to be authorised in order to fish in WIO States EEZ. WIO States are to be remunerated. WIO States can either standardise the license form or attach conditions agreed upon on the current forms used by individual States. These conditions must be consistent with the MTCs.
- Vessel Reporting Requirements- LOSC Art. 62(4)(e)  
WIO States are at liberty to specify information required of fishing vessels, including catch and effort statistics and vessel position reports. Vessels exit from and entry to coastal States EEZ is to be reported. Such information is necessary for facilitating MCS and for verifying catch and effort data. A standardised format for vessels position reporting in the region should be considered.
- Transshipment at sea- LOSC Art. 61 & 62; UN Fish Stocks Agreement, Art. 18 (3); 23(3).  
At-sea transshipment is known to encourage laundering of illegally caught fish by avoiding inspection. As the practice distorts catch data, the coastal State is therefore not able to fulfil its conservation, management and optimum utilisation obligation as required under international law. In cases where the States have adopted a per vessel/per trip licensing system, transshipment will distort the calculation of a "fishing trip".
- Observers - LOSC Art. 62(4)(g)  
The LOSC empowers coastal States to place observers on board foreign vessels fishing in their EEZ. Observers provide independent data on parameters important to the management of fisheries such as composition and location of catches, type of gear used and

interactions with protected species. They generate scientific and compliance fisheries data essential for effective fisheries management.

- Appointment of an Agent- LOSC Art. 62(4)(k)  
Enforcement procedure
- Flag State or Fishing Association Responsibility- LOSC Art. 62(4)(k); Art. 94  
Such a requirement aids in reducing costs and ensuring responsibility for compliance is borne by the flag State or fishermen's association.
- Foreign Fishing Vessels in Transit- LOSC Art. 62(4)(a)(c) and (k)  
A coastal State can regulate seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;

It would be valuable for WIO states to operate a Regional register of foreign fishing vessels. Such a register like the one established by the FFA is a “compliance-without-force” requirement. Which establishes “good standing” for the registered fishing vessel. The threat of loss of “good standing” or “blacklisting” for non-compliance with national laws or MTCs jeopardises the opportunity for the blacklisted vessel to fish. Pooling information on foreign fishing operations in the region and maintaining a regional register would be a valuable tool for collecting and collating information as well as for compliance control.

See Annexes IV and V for draft MT&Cs and Protocol.

The MT&Cs will take effect through a step by step process thus;

- The WIO States will need to agree on the MT&Cs including the protocol which must be binding. Hence, WIO States will only license foreign vessels subject to the minimum terms and conditions.
- Secondly, the conditions should be formerly agreed upon with the DWFNs
- The MT&Cs are to be applied to all foreign fishing vessels.
- The MT&Cs will be reviewed from time to time as deemed appropriate by WIO States

#### **14.0 IMPLEMENTING THE MINIMUM TERMS AND CONDITIONS FOR FOREIGN FISHERIES ACCESS**

The implementation of MT&Cs is a process which will take some time. The terms will also need to be reviewed progressively and refined according to the issues that may emerge from their implementation by the WIO States. The South Pacific countries, for example, held their first meetings from March 1982 and the first MTCs were adopted in September 1983.<sup>275</sup> During this period there were many meetings/workshops. These terms were revised in 1990. The WIO States

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<sup>275</sup> Workshop on Harmonization and Co-ordination of Fisheries Regimes and Access Agreements (Suva, Fiji, 22 February - 5 March 1982).

will need to agree on the terms and also deal with any conflicts that arise between themselves, in order to speak with one voice at negotiations.

#### **14.1 Agreement and Political Commitment**

The WIO Member States will need to agree on the MT&Cs to be applied in the region. Additionally, to achieve the regional objectives of MT&Cs, the SWIO States need to be genuinely committed to cooperate towards this goal. The WIO States need to have the political commitment to establish a common access regime which will enable the establishment of MT&Cs. These States have demonstrated cooperation as members of SWIOFC and of the Nairobi Convention, both organisations which promote the sustainable utilization of living marine resources in the region.

The concepts of a regional regime will need to be communicated to the region's decision makers for approval in order to develop an action plan. It is seen in section 7.0 that the importance of tuna fisheries to the economies of the WIO States differs. For example, Mfodwo and Barnes, 2012 established that tuna fisheries are very significant for Seychelles; Mauritius benefits from port visits and expenditure as well as the value added from the tuna processing industry; Madagascar is a supplementary part of the regional system focused on Seychelles and Mauritius; tuna has had little impact on the other States.

These aspects also differ between the Island States and mainland States. This is a process that will require negotiation and compromise, in order to make decisions that will be acceptable to all parties. The issues involved impinge on a broad spectrum of national concerns like finance, law, territorial boundaries, and international relations, and a political commitment at the highest level of government is required.

*It will be necessary for WIO States to develop a joint statement/MOU of common position concerning the implementation of the Minimum Terms and Conditions as a sign of political commitment of each WIO State to this process. This Statement should be endorsed by all States.*

#### **Box 5. Agreement and Commitment to MT&Cs**

An example of such a draft Statement of political commitment on the creation of a common access regime for foreign fishing could be:

*The WIO Member States affirm their total commitment to a process to establish a common regime for access by foreign fishing vessels to the waters and fishery resources of the region and to apply the Minimum Terms and Conditions as a non-negotiable standard of access for foreign fishing vessels to the EEZs of WIO States. This position of solidarity shall be communicated to foreign fishing industries and governments.*

It will also be necessary to agree on the area where the MT&Cs apply, particularly in the case of the Island States disputed areas as far as boundary delimitations are concerned (see fig 1.).

## 14.2 Framework for Implementation

A regional institution which can play a facilitative and coordinating role will be required (LOSC Art. 64- States are to cooperate for the conservation and optimum utilisation of tuna, directly or through international organisations). Such an institution would exist purely as a management tool to provide information and advice. The WIO States will need to nominate/form such an organisation. For example, FFA in South Pacific Island States enables these States to cooperate in the areas of fisheries management, establishment of Minimum Terms and Conditions of access for DWFNs and in monitoring, control and surveillance. In West Africa, the Sub-Regional Fisheries Commission plays this role.

The Consultant suggests that the Southwest Indian Ocean Fisheries Commission (SWIOFC) be considered for this role, as it is already an established organisation in the region and can provide the framework for the implementation of the MT&Cs. The WIO States are all members of SWIOFC. The MT&Cs can be formulated as a protocol to SWIOFC. The establishment of a new organisation would be time consuming and the financial implications prohibitive. Besides, there are various regional organisations already in operation including the IOTC, SWIOFC, SIOFA, IOC, EAC, SADC, and COMESA). SWIOFC aims to promote the sustainable utilization of the living marine resources of the area of the Commission, by the proper management and development of the living marine resources, and address common problems of fisheries management and development faced by the Members of the Commission.<sup>276</sup> As the MT&Cs will be formulated as a protocol to SWIOFC, tuna fisheries issues will be prioritised including access regulation to tuna fisheries in the region.

SWIOFC is an FAO body committed to implementing the provisions of the FAO Code of Conduct on Responsible Fisheries, including the precautionary approach and the ecosystem approach to fisheries management.<sup>277</sup> A Scientific Committee has been established to consider the state of fisheries in the area of competence and to advise on the scientific basis for possible regulatory measures to be considered for adoption by the members of the Commission. It also within the Commission's Statutes to establish, on an *ad hoc* basis, such other committees or working parties as it may consider necessary on problems of major importance or of a specialized nature. It is therefore envisaged that the conditions within SWIOFC provide a basis upon which tuna fisheries access can be addressed. These decisions are all subject to consultation with, and the approval of FAO.

There will be implications for the human and financial resources needed if SWIOFC is to play this role. SWIOFC will be instrumental in adopting the necessary decisions for the fulfilment of the MOU/agreement and also the coordination of *inter alia*;

- Harmonisation of fisheries policies and legislation

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<sup>276</sup> SWIOFC, Resolution and Statutes of the South Western Indian Ocean Fisheries Commission, First Session, Mombasa, Kenya, 18-20 April 2005.

<sup>277</sup> SWIOFC, Resolution and Statutes of the South Western Indian Ocean Fisheries Commission, First Session, Mombasa, Kenya, 18-20 April 2005.

- Relating with DWFNs
- Cooperation in monitoring, control and surveillance of tuna stocks and fishing activities
- Human resource development
- Participation in international fora

The defunct Western Indian Ocean Tuna Commission (WIOTO) played this role for some of the Indian Ocean states in the 90s (harmonization of fisheries policies; relations with DWFNs; fisheries surveillance and enforcement; fisheries development; and access to EEZs of members). It may be worthwhile to explore its functions to inform SWIOFC if it (SWIOFC) is the preferred institution.<sup>278</sup>

### **14.3 National Legislation**

The WIO States need to ensure that the MT&Cs have legal status and therefore are non-negotiable. Each State will need to incorporate the terms into their national legislation, thereby harmonising their fisheries legislation. As the basic framework for all fisheries activities in the region is provided under national legislation, to ensure the effectiveness of the MT&Cs, they will need to be incorporated into domestic law. As part of national law, the MT&Cs can be enforced, leaving little room for negotiation by DWFNs about their applicability and also providing a significant bargaining advantage to WIO States. DWFNs are also assured that the MT&Cs would apply uniformly to other DWFN seeking access in that zone.

This is one of the crucial recommendations the WIO States will need to make and be committed to. Some of the issues in the MT&Cs may already have been addressed in the legislation of the States. The process of harmonisation of legislation may take time. In the interim the MT&Cs can be included in the conditions for a foreign fishing license/ contractual access agreements once they are agreed upon by the WIO States. Where national legislation empowers the Minister to make regulations requiring a license for any fishery activities, the MT&Cs can be among these conditions.

MT&Cs can also be implemented through contract agreements. However, there are difficulties in doing this as DWFNs can negotiate away the conditions they do not favour.

An Action plan for the implementation of the MT&Cs forms Annex VI of this report.

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<sup>278</sup> Members of WIOTO were; Kenya, Seychelles, Comoros, Tanzania, Mozambique, India, Maldives, Madagascar, Mauritius and Sri Lanka.



## 15.0 CHALLENGES OF IMPLEMENTING MT&CS

Some of the MT&Cs will be more difficult to implement than others. See Table 6 below.

Condition	Reason why challenging to implement
Transshipment at sea	With limited MCS in the WIO, this condition may be difficult to implement and enforce. Also the Asian longline fleets tranship at sea as large-scale tuna longline fishing vessels are exempted from the transshipment in ports. <sup>279</sup> Unless there is a fish landing port with the necessary infrastructure, it will not be feasible for WIO States like Kenya, Mozambique, Comoros and Tanzania with insufficient fishing ports to require fishing vessels to land in port. Fishing fleets will have to move out the EEZ of such States for transshipment. WIO States may develop commercial relationships between themselves with an understanding of vessels landing in those States with port facilities, and a method devised to share the benefits with the licensing State.
Flag State or Fishing Association Responsibility	May be difficult to implement especially in respect to agreements with fishermen's associations, such as those with Japanese associations because the association itself is limited in the degree of control it can legally exercise over the members of the association. The WIO States also need to devise mechanisms of dealing with Taiwan and Korea as they are known to have a very poor level of compliance by their fleets. Re-flagging and chartered vessels can also render flag state responsibility difficult to implement. Again inadequate MCS capabilities in the region will impede the progress of implementation.
Observers	This condition assumes that there are a sufficiently trained number of observers in the WIO States. SWIOFP has trained 5 observers per each country and some of them are already deployed in the tuna vessels. It will be necessary to keep investing in a good number of observers considering the on-going IUU fishing activities that are prevalent in the region

Table 6. Challenges of Implementing MT&Cs

A major challenge for the WIO States in implementing the MT&Cs will be the acceptance of these terms by DWFNs. The existing agreements (most of them expire by 31<sup>st</sup> December 2014, except Mozambique FPA ending in 2015) will need to be evaluated and renegotiated when their term ends to incorporate the MT&Cs. Negotiations can be lengthy especially with the introduction of new rules, and there are financial implications for this exercise. In the Pacific for example, some of the DWFNs terminated agreements and refused to renegotiate when MT&Cs were introduced. In the case of Palau, it took 12 months to renegotiate and include the MT&Cs in some of the agreements.

<sup>279</sup> IOTC Resolution 12/05 on establishing a programme for transshipment by large-scale fishing vessels

However, with time this relationship has improved as the DWFNs also acknowledge the benefits of these terms to their industries. It is evident that there is a demand for tuna and the persistence and cooperation among the WIO States will be instrumental in moving this process forward.

Generally, there are other challenges in implementing the MT&Cs. These include;

- Maintaining cooperation and solidarity; regional cohesion
- Managing the different interests of the WIO States
- Developing compensation mechanisms re; fisheries agreements and license fees;
- Political support from individual WIO states
- Acceptance by SWIOFC/FAO to take up the coordinating role
- Integrating the objectives of WIO States with the existing cooperative arrangements existing between SWIOFC Member States (other members include France, Somalia, Maldives and Yemen).
- Establishing consultative mechanisms
- Funding the activities of SWIOFC/coordinating institution
- Varying levels of tuna fisheries development and its economic significance between WIO states
- Insufficient technical expertise in the region
- Disparity between the economies of WIO States

## **16.0 IMPLEMENTATION OF MT&CS IN THE WIDER INDIAN OCEAN**

The challenges of implementing MT&Cs in the WIO sub-region discussed above, would apply to the rest of the Indian Ocean as well, but on a larger scale. It would be advisable to effect the MT&Cs in the WIO sub-region initially in order for the rest of the Indian Ocean coastal States to learn from the experience of these States. Consideration should be given to the fact that the rest of the Indian Ocean is even more diverse and will involve a larger number of States. However, MT&Cs may also be implemented in smaller sub-regions of the Indian Ocean States. But these States must be convinced of the benefits of implementing MT&Cs. The UNFSA provides for cooperation of coastal States and DWFNs to manage tuna through sub-regional organisations. It would be essential for all participating States to accede and implement relevant international fisheries conventions as the MT&Cs are derived from these instruments. This will include the LOSC, UNFSA and a commitment to the CCFR.

At the sub-regional level there may be existing institutions which could play a coordinating role. If there are any protocols between States at this level, regarding management of fisheries resources these could provide the leverage for cooperation with a view to implementing the MT&Cs in the tuna fishery.

The diverse political systems come into play and so do the economies of these States. There is a need for sustained awareness in the coastal States of the Indian Ocean, particularly at the policy level, using positive examples from the South Pacific Islands and West Africa. The MT&Cs can also

be implemented in piece meal considering that they will take a couple of years to establish. The Indian Ocean states for example can set out to implement a few of the terms that are most critical to the tuna fisheries in the sub-region.

It will be necessary for Indian Ocean States to understand and accept that they may lose some of the Agreements with DWFNs in the short term. Some of the Pacific Island States negotiated with DWFNs at different stages in fear of losing the income from tuna fisheries. In this case if one DWFN declined to sign the agreement, they still sustained other fisheries agreements with the DWFNs that were not yet affected by such the MT&Cs. But considering that there is still a global demand for tuna, the DWFNs will eventually oblige to implement the MT&Cs if the regional States are committed to this regional outlook.

## **17.0 KEY OBSERVATIONS**

1. Although the EU FPAs provide a reasonable level of compensation and make efforts to address sustainability issues, the EU still takes advantage of the weaknesses of the WIO States regarding information and poor surveillance in respect of negotiations and compliance. This also applies to Asian DWFNs with access rights in the WIO. Overall, the challenges of the WIO States in managing the access agreements in the region impede the promotion of conservation and sustainable tuna fisheries management. These incapacities also erode their ability to optimally utilise their tuna stocks and benefit economically.
2. The absence of regional collaboration regarding the tuna stocks in the WIO is an incentive for fishing fleets to move from one EEZ to the other, after committing an offense, and also play one States against the other in respect to access/license fees.
3. The commitment of WIO governments to the regional cooperation process is crucial. It is equally important that action is taken towards the implementation of the MT&Cs, especially because, the concept of harmonization of fishery access regimes has been acknowledged previously by South West Indian coastal States at a workshop organized by the FAO Fisheries Law Advisory Programme in 1984. The recommendations of the workshop were to harmonise minimum terms and conditions for access in the region; sharing information on foreign fishing, including vessel reports on catch and position among coastal States; adoption of standardise marking requirements for foreign fishing vessels, and that countries cooperate in establishing a regional register of foreign fishing vessels for the southwest Indian Ocean.<sup>280</sup> These recommendations have not been implemented to date.
4. Although FPAs are considered favourably by the WIO States, it is not yet clear if they will achieve sustainable fisheries and promote optimum utilisation of tuna stocks and enhance economic returns in these States.

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<sup>280</sup> See Report of the Workshop on Licensing and Control of Foreign Fishing, Mahe, Seychelles, 21-26 May 1984, FAO document IOFC:DM/SW/84/4, September 1984.

## 18.0 RECOMMENDATIONS

1. The SWIO States need to develop commercial relationships between the Member State enterprises as a means to achieving equitable distribution of benefits among themselves. The success of implementing a sustainable fishery economy through access agreements depends very much on the investment, infrastructure and human resources in each WIO States.
2. The Minimum Terms and Conditions need to be applied uniformly and by all WIO States if they are to be effective. These conditions will need to have legislative force through national legislation. The MT&Cs are a tool for implementing and monitoring access agreements in the SWIO. They will provide a uniform code under which foreign fishing vessels in the SWIO can operate irrespective of whose EEZ they fish. Thus, the failure of one coastal State to impose the Minimum Terms and Conditions renders the collaborative effort of other States meaningless. Effective cooperation is a necessary prerequisite to tuna management. The progress of MT&Cs will need to be assessed continually to ensure they are aligned with national and regional policies.
3. The SWIO governments need to endorse the MT&Cs. This is fundamental to their successful implementation. It is crucial that these terms be presented appropriately to policy makers and political leaders alike, supported with the decisions and recommendations from previous meetings and workshops facilitated by WWF and other relevant parties.
4. WIO States need to establish or nominate an institution whose mandate will be to help Members harmonise their procedures for fisheries agreements. They will need to be committed to its stability and ensure that such an institution is financially solvent.
5. There is a need for WIO States to build capacity of their nationals to benefit from the access agreements they enter into. For example, in EU FPAs, the conditions of access provide for employment of nationals, the State should be able to provide the relevant human resource for these positions. Research and training levy for local crews can be included in agreements. Similarly, if the conditions of access encourage domestic development through prohibition of transshipment at sea, there is a need for corresponding port infrastructure and facilities in order to fulfil such a requirement.
6. SWIO States need to share experience and expertise concerning issues such as negotiation.
7. SWIO States need to enhance their MCS and enforcement capabilities (to ensure compliance) if they are to implement the MT&Cs successfully. This is critical to enforcement of all of the proposed terms.
8. With the support of the IOTC, more financial and technical support should be given to Member States that are still developing such as the SWIO States. The UNFPA recognizes the need for specific assistance, including financial, scientific and technological assistance, in order that developing States and Small Island Developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly

migratory fish stocks.<sup>281</sup> Such support can also be obtained from DWFN in terms of financial /technical input which can also be a requirement under the MT&Cs. The SWIO Coastal States could also agree on how to use a given percentage of the access fees to enhance their capabilities in managing tuna stocks in the region. The implementation of the MT&Cs will require immense technical and financial inputs and yet majority of the WIO States are among the poorest in the world. For example, training for enforcement officers to undertake effective port State enforcement is essential. They require expertise in detecting violations through port State control and enforcement as a way to regulate IUU fishing. Such officers require highly specialized skills to detect logbooks which may be concealed, and logbook data which may be deliberately falsified. The IOTC is addressing these issues and with a collective voice the SWIO States can prioritise their requirements under such a programme.

9. The SWIO States need to make deliberate efforts to build partnerships with DWFNs so that they appreciate the benefits they can also derive from implementation of MT&Cs. Such collaboration will foster better relations and dialogue
10. The SWIO States should aim at development strategies that will enhance their capabilities for value-addition at national level. Access/license fees are a very small contribution to what SWIO States can gain economically from the tuna fisheries in the region. However, the determining factor is good fisheries management to optimise the economic and ecological sustainability of tuna fisheries in the region. This can be achieved by designing access agreements/license protocols appropriately and through the implementation of the MT&Cs. The SWIO governments can make regional tuna fisheries economically and ecologically sustainable, by implementing sound fisheries policies in their own jurisdictions and strengthening these through regional cooperative initiatives.
11. Strategies regarding DWFNs should be tailored to the geographic and economic circumstances of particular WIO States. The African Union Commission (AUC) has been instrumental in providing a platform for the protection of fishery resources in our exclusive economic zones. The Sirte Declaration mandated the AUC to “promote the development of fisheries resources, develop fishing methods and equipment, improve facilities for their preservation, storage, distribution and processing and encourage regional cooperation in the field of fishing, including the protection of fishery resources in our exclusive economic zones” in 2004.<sup>282</sup> In this context, the AUC is working with African regional fisheries organizations, regional economic communities and member States to harmonize policies especially as pertains to negotiating fisheries access agreements. Such opportunities could be further utilised by SWIO States to enhance their capabilities to manage tuna resources in the region.

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<sup>281</sup> UNFPA, Articles 3(3); Art 24; Art 25; Art 26

<sup>282</sup> African Union Commission and FAO, Regional Workshop on Fisheries Access Agreements, A concept Note



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**Annex I**  
**ECONOMIC IMPACTS OF FPAS ON COASTAL STATES<sup>283</sup>**

	Negative	Positive
Public Revenue	<ul style="list-style-type: none"> <li>-If negotiated without full knowledge of the resource's potential, may lead to a loss of resource rents</li> <li>-Loss of tax due to concessions given to DWF vessels (no taxes paid where DWF vessels do not land, bunker or tranship in ACP ports)</li> <li>-Cost of negotiating agreement</li> <li>-Cost of implementing agreement (MCS, VMS, observer programmes)</li> <li>-Cost of investment in ports and infrastructure for DWF vessels</li> </ul>	<ul style="list-style-type: none"> <li>+Means of extracting economic 'rents' from the fishery resources</li> <li>+Contribution to national budget and fisheries sector</li> <li>+Reliable, constant source of income, easier to plan budgets</li> <li>+Potential for immediate revenue source with minimal investment cost</li> <li>+Revenue from licence payments (although income may fluctuate depending on demand)</li> <li>+Revenue from port taxes, rates and other fiscal payments, if vessels land in-country</li> </ul>
Private Income	<ul style="list-style-type: none"> <li>-Private income depends on EU activity in port, and landings</li> <li>-Impact on catches and income of local fleet, if EU vessels exploit the same resources</li> </ul>	<ul style="list-style-type: none"> <li>+Expenditure of EU vessels in ports</li> <li>+ 'Originating' supply of fish for processing sector, if EU vessels land in-country</li> </ul>
Competition	<ul style="list-style-type: none"> <li>-Competition may occur between national fleet and EU fleet, EU fleets more technologically advanced</li> </ul>	<ul style="list-style-type: none"> <li>+Potential support for national fleet</li> </ul>
Consumers	<ul style="list-style-type: none"> <li>-Potential reduction in fish availability or increase in prices if FPA has impact on status of stocks consumed locally</li> </ul>	<ul style="list-style-type: none"> <li>+Potential increase in fish availability, or decrease in fish price if catches or by catches are landed locally</li> </ul>
Trade	<ul style="list-style-type: none"> <li>-Reduced exports if EU vessels do not land locally and minimal capture of value added. Exports likely to be lower under FPAs</li> </ul>	<ul style="list-style-type: none"> <li>+Increase in exports if able to purchase 'originating' fish for processing from EU vessels (if they land locally)</li> <li>+EU agreements usually contribute more to local processing industries (and therefore</li> </ul>

<sup>283</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

	than under joint ventures	trade) than Asian agreements
Local Economies in Specific Regions	<ul style="list-style-type: none"> <li>-Incentives for local landings do not always exist</li> <li>-Transshipment levels high</li> </ul>	<ul style="list-style-type: none"> <li>+Potentially supports economic activities in coastal areas including ports and processing sectors where local landings occur</li> <li>+Potential increase in purchasing power if employment increases</li> </ul>

**Annex II**  
**SOCIAL IMPACTS OF FPAS ON COASTAL STATES<sup>284</sup>**

	Negative	Positive
Employment	<ul style="list-style-type: none"> <li>-Fewer employment opportunities than with joint ventures</li> <li>– New FPAs specify national crew, most specify ACP crew</li> <li>– In some cases processing sector loses out to EU processing sector</li> <li>– FPA can reduce investment into national fishing fleet reducing livelihood options</li> <li>– Potential impact on local fishing livelihoods if FPA affects fish stocks or local landings reduce fish prices</li> <li>– Potential impact on traditional processing (often traditionally by women) if FPA affects stocks or diversion of fish to exports</li> <li>– In some cases EU vessels can pay instead of hiring crew</li> </ul>	<ul style="list-style-type: none"> <li>+Employment on EU vessels (most agreements specify crew numbers)</li> <li>+Employment within ports</li> <li>+Employment in own processing sector</li> </ul>
Standards and rights related to job quality		<ul style="list-style-type: none"> <li>+ Employment standards on EU vessels (ILO standards) better than on other fleets</li> <li>+ Observer employment standards</li> </ul>
Poverty	<ul style="list-style-type: none"> <li>– Potential impacts on fishing and processing livelihoods if FPA affects locally used fish stocks</li> <li>– Potential decrease in food security if FPA leads to reduced stocks, increased</li> </ul>	<ul style="list-style-type: none"> <li>+ Balances trade deficits</li> <li>+ Provides foreign exchange</li> <li>+ Assists debt re-payment</li> <li>+ Potentially supports food security if EU fleets land by-catch or local landings, or increases purchasing power of employment</li> <li>+ Can support coastal livelihoods</li> </ul>

<sup>284</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

	<p>fish prices and increased exports</p> <ul style="list-style-type: none"> <li>– Potentially no support to coastal livelihoods if most fish transhipped outside the country</li> </ul>	
Equity	<ul style="list-style-type: none"> <li>– If little port and processing activity women can lose processing options as fish is transhipped directly out of the country</li> <li>– Role for women in industrial processing may be less than artisanal processing</li> <li>– National fleets can have little support and out of date equipment while EU fleets are supported through public funds</li> <li>– Joint ventures slow to develop in some countries</li> </ul>	<ul style="list-style-type: none"> <li>+ Increased employment opportunities can support both men (port based jobs; crew) and women (processing sector)</li> <li>+ Joint ventures can promote equity in asset ownership (between EU &amp; developing country)</li> </ul>

**Annex III**  
**ENVIRONMENTAL IMPACTS OF FPAS ON COASTAL STATES<sup>285</sup>**

	Negative	Positive
Natural resource stocks	<ul style="list-style-type: none"> <li>– Impacts of fishing on target stocks</li> <li>– May lead to over-exploitation where stock status is unknown</li> <li>– Fishing possibilities not restricted by fishing power; highly efficient fishing methods can increase fishing power for a given tonnage</li> <li>– Biological recovery periods not always detailed</li> <li>– Exclusivity criteria does not exclude non-EU vessels</li> <li>– Promotion of joint ventures may increase overall fishing effort</li> </ul>	<ul style="list-style-type: none"> <li>+ Allow coastal state to reap benefits from otherwise under-exploited resources</li> <li>+ Agreements limit effort, exclusivity clause restricts total EU effort, limiting impacts on stocks</li> <li>+ Agreements not always 100% utilised, minimising impacts</li> <li>+ Some agreements allow flexibility to reduce fishing pressure in line with scientific advice</li> <li>+ Some agreements allow for biological recovery periods</li> <li>+ Joint scientific committee in place to annually review stock status</li> </ul>
Environmental quality & Biodiversity	<ul style="list-style-type: none"> <li>– Fishing activities have negative impacts on wider ecosystem and biodiversity</li> <li>– Potentially destructive fishing methods still allowed e.g. trawling</li> </ul>	<ul style="list-style-type: none"> <li>+ Agreements allow for gear and by-catch restrictions zoning and recovery periods, which help minimise ecosystem impacts</li> <li>+ EU vessels may be more selective than non-EU vessels</li> </ul>

<sup>285</sup> S F Walmsley, C T Barnes, I A Payne and C A Howard, Comparative Study of the Impact of Fisheries Partnership Agreements (2007). Technical Report (MRAG, CRE & NRI, 2007).

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## **Annex IV**

### **DRAFT MINIMUM TERMS AND CONDITIONS FOR FOREIGN FISHING VESSEL ACCESS IN THE SWIO**

#### **1. Definitions**

These definitions shall, apply to these Minimum Terms and Conditions as agreed by the SWIO States, and are recommended to each State for implementation in national legislation.

(a) “Foreign Fishing Vessel” means any tuna fishing vessel or tuna support vessel operating in the exclusive economic or fisheries zone of a SWIO Member State other than a domestic vessel of the coastal State in whose zone the operation occurs.

(b) “fishing” means;

(i) searching for, catching, taking or harvesting fish;

(ii) attempting to search for, catch, take or harvest fish;

(iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;

(iv) any operations at sea directly in support of or in preparation for any activity described in subparagraphs (i) to (iv);

(v) use of any other vehicle, air or sea borne, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health and safety of the crew or the safety of a vessel.

(c) “by-catch” means all living and non-living organisms incidentally caught while fishing for target species, including any by-products and discards forming part of the catch not retained on board the vessel during such fishing operation;

(d) “Vessel Monitoring System” or “VMS” means the systems employed by WIO States to monitor the position and activities of foreign fishing vessels for the purpose of effective management of fisheries.

(e) “fish aggregating device” means any man-made or partly man-made device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location.

(f) “transshipment” means the removal of any or all of the fish on board a licensed foreign fishing vessel either ashore or onto another vessel,

(g) “member country” means a SWIO State

(h) “zone” means the exclusive economic zone or fisheries zone of a SWIO State

(i) “operator” means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master;

## 2. Authorisation and License Conditions

(a) Foreign fishing vessels and fishery support vessels shall operate subject to a valid fishing license issued by one (or more) of the SWIO States

(b) The license shall be carried on board the vessel at all times.

(c) The licence shall be issued only if vessels are registered or entered on fishing vessel records

## 3. Flag State or Fishing Association Responsibility

Flag States or Fishing Associations shall ensure compliance by their fishing vessels with coastal State laws.

## 4. Fishing Zones

No foreign fishing shall be permitted within the territorial or archipelagic waters.

## 5. Vessel Reporting Requirements

(a) The operator of a foreign fishing vessel shall provide to the licensing State or its representative information relating to the position of, and catch on board, the vessel, as required by a licensing State as follows:

(i) On a designated day;

(ii) within a specified time of entry into and departure from the zone of any licensing State;

(ii) within a specified time of entry into any port of a licensing State;

(b) The operator of a foreign fishing vessel shall also provide, after each fishing trip, quantity/type of fish on board, to the licensing State or its representative.

(c) The vessel operator shall provide catch and effort information in the format stipulated by the State, using the approved [IOTC] logbook. The logbook shall be kept current at all times and produced on demand to authorised officers.

## 6. Observers

(a) The operator and each member of the crew of a vessel shall allow and assist any person identified by a State as an observer to:

(i) board the vessel for recording, compliance, monitoring and other functions related to fishing;

(ii) have full access to and use of all facilities and equipment on board which the observer may determine is necessary to carry out his or her duties,

(iii) carry out all duties safely.



(b) The operator or any crew member of the vessel shall enable the observer to perform his or her duty competently without interference, obstruction, assault or delay.

(d) The operator shall meet all costs associated with observers performing their duties including the following;

- (i) food and accommodation at officer level
- (iii) salary
- (iv) insurance
- (v) travel costs to and from the point of boarding/discharge

## 7. Vessel Monitoring System

Satellite tracking devices (VMS) shall be mandatory for all foreign fishing vessels

## 8. Transshipment and Supply Operations

(a) All transshipment and ancillary vessels must be registered

(b) The operator of a foreign fishing vessel shall;

- (i) only tranship at the time and port designated for transshipment by the licensing State
- (ii) not tranship at sea unless otherwise authorised
- (iii) provide notice as prescribed to a licensing State of a request to tranship fish on board, with details of the catch, the time and port where transshipment is to take place and undertake to pay any related fees
- (iv) submit reports on transshipping as prescribed
- (v) facilitate the activities of authorised officers without interference with, intimidating or impeding his or her work in any way.
- (vi) enable authorised officers to access all relevant areas of the vessel including records related to fishing for purposes of monitoring

## 9. Appointment of an Agent

The flag State or fishermen's association shall nominate an agent in the licensing State who shall have authority to receive and respond to legal process.

## 10. Foreign Fishing Vessel in Transit

Foreign fishing vessels not licensed to fish in the EEZ/fishing zone of a SWIO State shall have their fishing gear securely stowed when transiting through the EEZ

## 11. Vessel and Gear Markings

All licensed foreign fishing vessels shall be marked and identified in accordance with the FAO approved Specifications for the Marking and Identification of Fishing Vessels

## 12. Foreign Fishing Vessels in Port

All licensed foreign fishing vessels shall comply with the coastal State laws when in the ports or offshore terminals of any SWIO State. The operator and each member of the crew of a vessel shall allow and assist any person authorised by a State to inspect documents, fishing gear and tuna catches on board fishing vessels for compliance purposes.

**Annex V**  
**PROTOCOL FOR MINIMUM TERMS AND CONDITIONS FOR FOREIGN FISHERIES ACCESS IN THE**  
**SWIO**

**PREAMBLE**

WE, the Heads of State or Government of:

The Republic of Comoros

The Republic of Kenya

The Republic of Madagascar

The Republic of Mauritius

The Republic of Mozambique

The Republic of Seychelles

The Republic of South Africa

The United Republic of Tanzania

AFFIRMING that SWIO States have the sovereign right to exploring, exploiting, conserving and managing all marine resources and the corresponding responsibility to sustainably utilise these resources;

CONSIDERING our shared commitment to the implementation of the relevant provisions of the 1982 Law of the Sea Convention, the UN Fish Stocks Agreement and the FAO Code of Conduct

RECOGNISING the need for rational and responsible exploitation of tuna fisheries resources for the benefit of the peoples of the SWIO Member States,

RECOGNISING our shared concern for and commitment to the conservation of the living resources of the high seas;

RECOGNISING the need for more effective control of foreign fishing,

ACKNOWLEDGING the need for co-operation among SWIO States in enforcing laws governing tuna fisheries

RECOGNISING the need to establish a durable and equitable framework for cooperation with DWFN and/or representative fisheries organisations/associations;

FULLY AWARE that Member States have different specific objectives for their tuna fisheries sectors, and without prejudice to national sovereignty the parties:

HAVE REACHED AN UNDERSTANDING on the following:

**ARTICLE 1**  
**DEFINITIONS**

For the purposes of this arrangement, these definitions shall, apply to these Minimum Terms and Conditions as agreed by the SWIO States, and are recommended to each State for implementation in national legislation.

(a) “Foreign Fishing Vessel” means any tuna fishing vessel or tuna support vessel operating in the exclusive economic or fisheries zone of a SWIO Member State other than a domestic vessel of the coastal State in whose zone the operation occurs.

(b) “fishing” means;

(i) searching for, catching, taking or harvesting fish;

(ii) attempting to search for, catch, take or harvest fish;

(iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;

(iv) any operations at sea directly in support of or in preparation for any activity described in sub-paragraphs (i) to (iv);

(v) use of any other vehicle, air or sea borne, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health and safety of the crew or the safety of a vessel.

(c) “by-catch” means all living and non-living organisms incidentally caught while fishing for target species, including any by-products and discards forming part of the catch not retained on board the vessel during such fishing operation;

(d) “Vessel Monitoring System” or “VMS” means the systems employed by SWIO States to monitor the position and activities of foreign fishing vessels for the purpose of effective management of fisheries.

(e) “fish aggregating device” means any man-made or partly man-made device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location.

(f) “transshipment” means the removal of any or all of the fish on board a licensed foreign fishing vessel either ashore or onto another vessel,

(g) “member country” means a WIO State

(h) “zone” means the exclusive economic zone or fisheries zone of a SWIO State

(i) “operator” means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master;

## ARTICLE 2

### SCOPE

This Protocol applies to the conservation and sustainable utilisation of tuna fishery resources of the SWIO Region

## ARTICLE 3

### OBJECTIVE

The objective of this protocol is to establish a common access regime for foreign fishing of the tuna fisheries resources of the SWIO Region in order to;

- (a) improve and generate sustainable economic benefits for the SWIO Member States
- (b) improve conservation and management of the tuna fisheries resources
- (c) control tuna fishing activities more effectively

#### ARTICLE 4

##### Authorisation and License Conditions

- (a) Foreign fishing vessels and fishery support vessels shall operate subject to a valid fishing license issued by one (or more) of the SWIO States.
- (b) The license shall be carried on board the vessel at all times.
- (c) The licence shall be issued only if vessels are registered or entered on fishing vessel records

#### ARTICLE 5

##### Flag State or Fishing Association Responsibility

Flag States or Fishing Associations shall ensure compliance by their fishing vessels with coastal State laws.

#### ARTICLE 6

##### Fishing Zones

No foreign fishing shall be permitted within the territorial or archipelagic waters.

#### ARTICLE 7

##### Vessel Reporting Requirements

- (a) The operator of a foreign fishing vessel shall provide to the licensing State or its representative information relating to the position of, and catch on board, the vessel, as required by a licensing State as follows:
  - (i) On a designated day;
  - (ii) within a specified time of entry into and departure from the zone of any licensing State;
  - (ii) within a specified time of entry into any port of a licensing State;
- (b) The operator of a foreign fishing vessel shall also provide, after each fishing trip, quantity/type of fish on board, to the licensing State or its representative.
- (c) The vessel operator shall provide catch and effort information in the format stipulated by the State, using the approved [IOTC] logbook. The logbook shall be kept current at all times and produced on demand to authorised officers.

#### ARTICLE 8

##### Observers

- (a) The operator and each member of the crew of a vessel shall allow and assist any person identified by a State as an observer to:
  - (i) board the vessel for recording, compliance, monitoring and other functions related to fishing;

- (ii) have full access to and use of all facilities and equipment on board which the observer may determine is necessary to carry out his or her duties,
- (iii) carry out all duties safely.

(b) The operator or any crew member of the vessel shall enable the observer to perform his or her duty competently without interference, obstruction, assault or delay.

(d) The operator shall meet all costs associated with observers performing their duties including the following;

- (i) food and accommodation at officer level
- (iii) salary
- (iv) insurance
- (v) travel costs to and from the point of boarding/discharge

#### ARTICLE 9

##### Vessel Monitoring System

Satellite tracking devices (VMS) shall be mandatory for all foreign fishing vessels

#### ARTICLE 10

##### Transshipment and Supply Operations

- (a) All transshipment and ancillary vessels must be registered
- (b) The operator of a foreign fishing vessel shall;
  - (i) only tranship at the time and port designated for transshipment by the licensing State
  - (ii) not tranship at sea unless otherwise authorised
  - (iii) provide notice as prescribed to a licensing State of a request to tranship fish on board, with details of the catch, the time and port where transshipment is to take place and undertake to pay any related fees
  - (iv) submit reports on transshipping as prescribed
  - (v) facilitate the activities of authorised officers without interference with, intimidating or impeding his or her work in any way.
  - (vi) enable authorised officers to access all relevant areas of the vessel including records related to fishing for purposes of monitoring

#### ARTICLE 11

##### Appointment of an Agent

The flag State or fishermen's association shall nominate an agent in the licensing State who shall have authority to receive and respond to legal process.

#### ARTICLE 12.

##### Foreign Fishing Vessel in Transit

Foreign fishing vessels not licensed to fish in the EEZ/fishing zone of a SWIO State shall have their fishing gear securely stowed when transiting through the EEZ

ARTICLE 13.

Vessel and Gear Markings

All licensed foreign fishing vessels shall be marked and identified in accordance with the FAO approved Specifications for the Marking and Identification of Fishing Vessels

ARTICLE 14.

Foreign Fishing Vessels in Port

All licensed foreign fishing vessels shall comply with the coastal State laws when in the ports or offshore terminals of any SWIO State. The operator and each member of the crew of a vessel shall allow and assist any person authorised by a State to inspect documents, fishing gear and tuna catches on board fishing vessels for compliance purposes.

**ANNEX VI**  
**ACTION PLAN FOR IMPLEMENTING MINIMUM TERMS AND CONDITIONS**  
**FOR FOREIGN ACCESS IN THE SOUTH-WESTERN INDIAN OCEAN**

Step	Process	Outcome
1. Awareness and consensus at technical level/definition of MT&Cs	<ul style="list-style-type: none"> <li>Meetings/workshops, briefings with directors of fisheries from WIO States</li> <li>Technical discussions, negotiations and approval of the draft MT&amp;Cs</li> </ul>	<ul style="list-style-type: none"> <li>Consensus on implementation of MT&amp;Cs</li> <li>Revised draft MT&amp;Cs</li> <li>Draft action plan for implementation of MT&amp;Cs</li> <li>proposed Institutional framework</li> </ul>
2. Approval of MT&Cs at policy level	<ul style="list-style-type: none"> <li>Meetings with directors of fisheries and fisheries Ministers from WIO States</li> <li>Explain concepts, advantages and disadvantages of common access regime and MT&amp;Cs</li> </ul>	<ul style="list-style-type: none"> <li>Revised draft MT&amp;Cs</li> <li>Revised action plan for implementation of MT&amp;Cs</li> <li>Institutional framework</li> </ul>
3. Approval and endorsement by political leaders	<ul style="list-style-type: none"> <li>WWF, directors of fisheries, ministerial secretaries and ministers of WIO States, AU</li> <li>Technical discussions, negotiations and approval of the draft MT&amp;Cs</li> </ul>	<ul style="list-style-type: none"> <li>Formal statement of intent by WIO Member States</li> <li>Binding set of MT&amp;Cs for foreign access and protocol adopted</li> <li>Motion of support at Pan-African level</li> </ul>
4. Forming a regional secretariat as per the provisions under SWIOFC	<ul style="list-style-type: none"> <li>Personnel, membership, financial issues</li> </ul>	<ul style="list-style-type: none"> <li>Action plan</li> <li>timescale</li> </ul>
5. Comparative analysis of national legislation with a view to implementing the MT&Cs  6. Provide legal framework and back up at national and or regional level to facilitate the adoption and implementation of the MT&Cs by the WIO states	<ul style="list-style-type: none"> <li>Negotiations to render national legislation/license conditions more harmonious</li> <li>Drafting of model clauses</li> </ul>	<ul style="list-style-type: none"> <li>National legislative instruments effective in WIO sub-regional context</li> <li>Substantial harmonisation of national laws on foreign fishing</li> </ul>
7. Development of a strategic plan of negotiating future agreements	<ul style="list-style-type: none"> <li>WIO Member States discussion with major DWFNs</li> </ul>	<ul style="list-style-type: none"> <li>Timescale/strategy for introduction of the MT&amp;Cs negotiated</li> <li>Formal negotiation of proposals with DWFNs</li> </ul>
8. Awareness	<ul style="list-style-type: none"> <li>Stakeholders information sessions on the regional collaboration and implementation of MT&amp;Cs</li> </ul>	<ul style="list-style-type: none"> <li>Opinions and inputs from stakeholders</li> </ul>
9. Make linkages with other processes	<ul style="list-style-type: none"> <li>Build links with EU/ACP; WTO processes</li> </ul>	<ul style="list-style-type: none"> <li>Sub-regional position /action re; IOTC</li> </ul>



## ANNEX VII

### WWF COMMENTS ON EXTERNAL DIMENSION OF COMMON FISHERIES POLICY (CFP) PROPOSAL



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## REFORM OF THE COMMON FISHERIES POLICY

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### WWF COMMENTS ON THE EXTERNAL DIMENSION OF THE COMMON FISHERIES POLICY (CFP) PROPOSAL

Fishing outside EU waters by EU vessels should be firmly anchored in the 2012 revision of the Common Fisheries Policy. This is to ensure consistency and clarity on the standards of behaviour for EU vessels wherever they fish in the world.

WWF congratulates the Commission on the inclusion of the External Policy section in the proposal.

We strongly welcome the explicit commitment that the Union shall participate in international organisations dealing with fisheries, including Regional Fisheries Management Organisations (RFMOs), in line with international obligations and policy objectives and consistent with the objectives set out in Articles 2 and 3.

We do however feel there is scope to strengthen this role to one which commits the Union to demonstrate leadership and promote good practices not only in scientific knowledge and advice development but also in other areas of fisheries management such as governance, administration and enforcement.

WWF also welcomes the principles and objectives set out for Sustainable Fisheries Agreements (SFAs) including the key commitment to ensure that fishery resources

remain above levels capable of producing MSY and that only surplus catch determined by the third country shall be fished by Union vessels.

The inclusion of the clause conditioning financial aid based on the achievement of specific results is also welcome but needs strengthening.

#### What needs to change?

i) First and foremost in this section WWF believes it is vital that Article 39 remains unaltered in the Regulation.

ii) WWF believes the language in Article 39(1) should be strengthened and, in line with the language in the Explanatory memorandum of the Regulation (page 8), require that the Union 'actively participate' in international organizations to 'promote' content that is in line with CFP policy objectives and international obligations. In this way the Union will be mandated to actively promote the principles of the CFP and take leadership in external activities.

iii) We recommend strengthening Article 42 where aid is explicitly coupled to SFAs by stating that any aid should be specifically aimed at improving third countries governance and management of their natural resources, i.e. fish stocks and environmental impacts of harvesting.

iv) We would welcome an explicit commitment to move towards securing full contribution of fleet owners to the cost of access rights.

v) The EU is already one of the biggest players in global fisheries and seafood consumption. The Commission set out its external dimension objectives in the 2001 Green Paper, followed by the Commission Communication (2002) and Council Conclusions on Fisheries Partnership Agreements (2004). Since then the situation in global fisheries has continued to deteriorate and significant changes are necessary if this trend is to be turned around. As such WWF looks forward to seeing detailed and legally binding mechanisms which will operationalise the strong commitments made in the Regulation and that these are monitored and enforced effectively.



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## ANNEX VIII

### NAURU AGREEMENT

#### NAURU AGREEMENT CONCERNING COOPERATION IN THE MANAGEMENT OF FISHERIES OF COMMON INTEREST

The Federated States of Micronesia, the Republic of Kiribati, the Marshall Islands, the Republic of Nauru, the Republic of Palau, Papua New Guinea and Solomon Islands:

**TAKING** into account the work of the Third United Nations Conference on the Law of the Sea;

**NOTING** that in accordance with the relevant principles of international law each of the Parties has established an exclusive economic zone or fisheries zone (hereinafter respectively called "the Fisheries Zones") which may extend 200 nautical miles from the baselines from which their respective territorial seas are measured and within which they respectively and separately exercise sovereign rights for the purposes of exploring exploiting conserving and managing all living marine resources;

**HAVING REGARD** to the objectives of the South Pacific Forum Fisheries Agency Convention and in particular the promotion of regional co-operation and co-ordination of fisheries policies and the need for the urgent implementation of these objectives through regional or sub-regional arrangements;

**CONSCIOUS** of the exploitation of the common stocks of fish, both within the Fisheries Zones and in the water adjacent thereto, by the distant water fishing nations;

**MINDFUL** of their dependence, as developing island states, upon the rational development and optimum utilisation of the living resources occurring within the Fisheries Zones and in particular, the common stocks of the fish therein;

**RECOGNISING** that only by co-operation in the management of the Fisheries Zones may their peoples be assured of receiving the maximum benefits from such resources; and

**DESIROUS** of establishing, without prejudice to the sovereign rights of each Party, arrangements by which this may be achieved;

**HAVE AGREED AS FOLLOWS:**

#### **ARTICLE I**

The Parties shall seek, without any derogation of their respective sovereign rights, to co-ordinate and harmonise the management of fisheries with regard to common stocks within the Fisheries Zones, for the benefit of their peoples.

#### **ARTICLE II**

The Parties shall seek to establish a co-ordinated approach to the fishing of the common stocks in the Fisheries Zones by foreign fishing vessels and in particular:

- (a) shall establish principles for the granting of priority to applications by fishing vessels of the Parties to fish within the Fisheries Zones over other foreign fishing vessels;
- (b) shall establish, as a minimum, uniform terms and conditions under which the Parties may licence foreign fishing vessels to fish within the Fisheries Zones regarding:

(i) the requirement that each foreign fishing vessel apply for and possess a licence or permit;

*NAURU AGREEMENT CONCERNING COOPERATION IN THE MANAGEMENT OF FISHERIES  
OF COMMON INTEREST*

- (ii) the placement of observer on foreign fishing vessels;
  - (iii) the requirement that a standardized form of log book be maintained on a day-to-day basis which shall be produced at the direction of the competent authorities;
  - (iv) the timely reporting to the competent authorities of required information concerning the entry, exit and other movement and activities of foreign fishing vessels within the Fisheries Zones; and
  - (v) standardized identification of foreign fishing vessels;
- (c) seek to establish other uniform terms and conditions under which the Parties may licence foreign fishing vessels to fish within the Fisheries Zones, including:
- (i) the payment of an access fee, which shall be calculated in accordance with principles established by the Parties;
  - (ii) the requirement to supply to the competent authorities complete catch and effort data for each voyage;
  - (iii) the requirement to supply to the competent authorities such additional information as the Parties may determine to be necessary;
  - (iv) the requirement that the flag States or organisations having authority over a foreign fishing vessel take such measures as are necessary to ensure compliance by such vessel with the relevant fisheries laws of the Parties; and
  - (v) such other terms and conditions as the Parties may from time to time consider necessary.

**ARTICLE III**

The Parties shall seek to standardise their respective licensing procedures and in particular:

- (a) seek to establish and adopt uniform measures and procedures relating to the licensing of foreign fishing vessels, including application formats, licensing formats and other relevant documents; and
- (b) explore the possibility of establishing, without prejudice to the respective sovereign rights of the Parties, a centralised licensing system of foreign fishing vessels.

**ARTICLE IV**

The Parties shall seek the assistance of the South Pacific Forum Fisheries Agency in establishing procedures and administrative arrangements for the exchange and analysis of:

- (a) statistical data concerning catch and effort by fishing vessels in the Fisheries Zones relating to the common stocks of fish; and

*NAURU AGREEMENT CONCERNING COOPERATION IN THE MANAGEMENT OF FISHERIES  
OF COMMON INTEREST*

- (b) information relating to vessel specifications and fleet composition.

**ARTICLE V**

1. The Parties shall seek the assistance of the South Pacific Forum Fisheries Agency in providing secretariat services for implementing and coordinating the provisions of this Agreement.

2. An annual meeting of the Parties shall be convened immediately preceding or following the regular session of the Forum Fisheries Committee in order to promote the implementation of this Agreement. Additional meetings may be convened at the request of three or more Parties. Such requests shall be communicated to the Director of the Forum Fisheries Agency who will inform the Parties.

3. With the concurrence of the Parties, members of the South Pacific Forum Fisheries Agency, not Parties to this Agreement, may attend, as observers, the meetings referred to in this Article.

**ARTICLE VI**

The Parties shall, where appropriate, cooperate and coordinate the monitoring and surveillance of foreign fishing activities by:

- (a) arranging for the rapid exchange of information collected through national surveillance activities;
- (b) exploring the feasibility of joint surveillance; and
- (c) developing other appropriate measures.

**ARTICLE VII**

The Parties shall seek to develop cooperative and coordinated procedures to facilitate the enforcement of their fisheries laws and shall in particular examine the various means by which a regime of reciprocal enforcement may be established.

**ARTICLE VIII**

Nothing contained in this Agreement shall be construed as a derogation of the rights and obligations undertaken by any of the Parties under the South Pacific Forum Fisheries Agency Convention or any other international agreement in effect on the date on which this Agreement enters into force.

**ARTICLE IX**

The Parties shall conclude arrangements where necessary to facilitate the implementation of the terms and to attain the objectives of this Agreement. The Parties concluding such arrangements shall lodge copies with the depositary of this Agreement.

**ARTICLE X**

1. This Agreement shall be open for signature by the States named in the preamble hereto and shall be subject to ratification.

*NAURU AGREEMENT CONCERNING COOPERATION IN THE MANAGEMENT OF FISHERIES  
OF COMMON INTEREST*

2. This Agreement shall enter into force thirty days following receipt by the depositary of the fifth instrument of ratification. Thereafter it shall enter into force for any signing or acceding State thirty days after receipt by the depositary of an instrument of ratification or accession.

3. This Agreement shall be deposited with the Government of the Solomon Islands which shall be responsible for its registration with the United Nations.

4. Following entry into force, this Agreement shall be open for accession by other States with the concurrence of all of the Parties to this Agreement.

5. Reservations to this Agreement shall not be permitted.

**ARTICLE XI**

1. This Agreement is a binding international agreement concluded among States and is governed by international law.

2. Any Party may withdraw from this Agreement by giving written notice to the depositary. Withdrawal shall take effect one year after receipt of such notice.

3. Any amendments to this Agreement proposed by a Party shall only be adopted by unanimous decision of the Parties.

**IN WITNESS WHEREOF** the undersigned, duly authorised by their respective Governments, have signed the Agreement.

**DONE** at Nauru this 11th day of February 1982

Federated States of Micronesia

Republic of Kiribati

Republic of the Marshall Islands

Republic of Nauru

Republic of Palau

Papua New Guinea

Solomon Islands



**ANNEX IX**  
**NIUE TREATY ON COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT IN THE SOUTH PACIFIC REGION**

**NIUE TREATY ON COOPERATION IN FISHERIES SURVEILLANCE AND  
LAW ENFORCEMENT IN THE SOUTH PACIFIC REGION**

**THE PARTIES TO THIS TREATY:**

**GIVEN** that in accordance with international law as expressed in the United Nations Convention on the Law of the Sea, coastal States have sovereign rights for the purposes of exploring and exploiting, conserving and managing the fisheries resources of their exclusive economic zones and fisheries zones;

**TAKING INTO ACCOUNT** Article 73 of the United Nations Convention on the Law of the Sea;

**NOTING** that the Parties to the South Pacific Forum Fisheries Agency Convention, 1979 have agreed under Article 5 of that Convention that the Forum Fisheries Committee shall promote intra-regional coordination and cooperation in fisheries surveillance and law enforcement;

**CONSIDERING** the vast areas of ocean covered by the exclusive economic zones and fisheries zones of coastal States in the South Pacific region and the vital economic significance of such zones to the economic development of South Pacific coastal States;

**WISHING THEREFORE** to enhance their ability to enforce effectively their fisheries laws, and deter breaches of such laws;

**HAVE AGREED AS FOLLOWS:**

**ARTICLE I - DEFINITIONS**

In this Treaty:

- (a) 'fishing' means:
  - (i) searching for, catching, taking or harvesting fish;
  - (ii) attempting to search for, catch, take or harvest fish;
  - (iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
  - (iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
  - (v) any operations at sea directly in support of, or in preparation for any activity described in this paragraph;
  - (vi) use of any craft, air or sea borne, for any activity described in this paragraph except for emergencies involving the health and safety of the crew or the safety of a vessel;
  - (vii) the processing, carrying or transshipping of fish that have been taken.
- (b) 'fishing vessel' means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for fishing;
- (c) 'foreign fishing agreement' means an agreement or arrangement authorizing or permitting foreign fishing vessels to fish in the exclusive economic zone or fisheries zone of any Party;
- (d) 'foreign fishing vessel' in relation to a Party means a fishing vessel which is not part of the domestic fleet of that Party;

*NIUE TREATY ON COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT IN THE  
SOUTH PACIFIC REGION*

- (e) 'South Pacific Forum Fisheries Agency' means the Agency of that name established by the South Pacific Forum Fisheries Agency Convention, 1979; and
- (f) 'Subsidiary Agreement' means an agreement or an arrangement entered into by any two or more Parties in accordance with this Treaty.

**ARTICLE II - RELATIONSHIP WITH OTHER TREATIES**

1. Rights and obligations under this Treaty shall apply as between the Parties in addition to any right or obligation concerning a similar matter applicable to a Party under any other Treaty.
2. A Subsidiary Agreement may expand upon rights and obligations under this Treaty in their application between the Parties to the Subsidiary Agreement.

**ARTICLE III - GENERAL COOPERATION**

1. The Parties shall cooperate in the enforcement of their fisheries laws and regulations in accordance with this Treaty and may agree on forms of assistance for that purpose.
2. The Parties shall cooperate to develop regionally agreed procedures for the conduct of fisheries surveillance and law enforcement. Where appropriate, fisheries surveillance and law enforcement will be conducted in accordance with such regionally agreed procedures.

**ARTICLE IV - COOPERATION IN THE IMPLEMENTATION OF HARMONIZED  
MINIMUM TERMS AND CONDITIONS OF FISHERIES ACCESS**

1. The Parties shall cooperate in the implementation of harmonized minimum terms and conditions of fisheries access as may be agreed upon from time to time.
2. The Parties shall ensure that no foreign fishing vessel shall be licensed for fishing unless the vessel has good standing on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency.
3. The Parties shall ensure that foreign fishing vessels licensed to fish under foreign fishing agreements are, as a minimum, required to provide reports in accordance with the standard forms of reporting as set out in the harmonised minimum terms and conditions of fisheries access from time to time.
4. The Parties shall ensure that fishing vessels licensed to fish under foreign fishing agreements are required to be readily identifiable from the sea and the air by way of distinctive markings.
5. The Parties shall, as far as possible, ensure that foreign fishing agreements with flag States require the flag State to take responsibility for the compliance by its flag vessels with the terms of any such agreement and applicable laws.
6. The Parties shall, as far as possible, ensure that foreign fishing arrangements with foreign parties, including Fishing Associations, require the foreign party to take responsibility for the compliance by its vessels with the terms of any such arrangement and applicable laws.



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**ARTICLE V - EXCHANGE OF INFORMATION**

1. Each Party shall, to the extent permitted by its national laws and regulations, provide to the South Pacific Forum Fisheries Agency, or to any other Party directly, information relevant to the purposes of this Treaty, including but not limited to information about:
  - (a) the location and movement of foreign fishing vessels;
  - (b) foreign fishing vessel licensing; and
  - (c) fisheries surveillance and law enforcement activities.
2. The Parties shall develop standard forms and procedures for reporting information provided under paragraph 1 of this Article and effective methods for communicating such information.

**ARTICLE VI - COOPERATION IN FISHERIES SURVEILLANCE AND LAW  
ENFORCEMENT**

1. A Party may, by way of provisions in a Subsidiary Agreement or otherwise, permit another Party to extend its fisheries surveillance and law enforcement activities to the territorial sea and archipelagic waters of that Party. In such circumstances, the conditions and method of stopping, inspecting, detaining, directing to port and seizing vessels shall be governed by the national laws and regulations applicable in the State in whose territorial sea or archipelagic waters the fisheries surveillance or law enforcement activity was carried out.
2. Vessels seized by another Party pursuant to an agreement under paragraph 1 of this Article in the territorial sea or archipelagic waters of a Party shall, together with the persons on board, be handed over as soon as possible to the authorities of that Party.
3. Any two or more Parties may enter into a Subsidiary Agreement under which they would cooperate in the provision of personnel and the use of vessels, aircraft or other items of equipment for fisheries surveillance and law enforcement purposes. Vessels and aircraft shall be identified as set out in Annex 1.
4. Any Party wishing to authorize its officers to perform fisheries surveillance and law enforcement functions on its behalf while on board a vessel or aircraft of another Party shall by instrument in writing designate the officers accordingly and such officers shall be identified as set out in Annex 2.
5. Any Party wishing to authorise the officers of another Party to perform fisheries surveillance and law enforcement functions on its behalf while on board a vessel of that other Party shall by instrument in writing designate such officers accordingly. Officers carrying out enforcement functions shall be identified by a card in the form set out in Annex 2 with such variations as may be agreed to in a Subsidiary Agreement or otherwise.

**ARTICLE VII - COOPERATION IN PROSECUTIONS**

1. The Parties may, by way of provisions in a Subsidiary Agreement or otherwise, agree on procedures for the extradition to a Party of persons charged with offences against the fisheries laws of that Party.
2. A Party may request another Party which is holding a person or any equipment (including a vessel) in custody for an offence against the laws of the holding Party to assist the requesting Party to enforce its fisheries laws in respect of that person or equipment. The holding Party shall provide such

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assistance upon completion of its legal processes and to the extent permitted by its national laws and regulations. Such assistance shall be provided on such conditions as to cost recovery or other matters as the Parties agree in each case.

3. The Parties may agree on procedures whereby persons permitted to appear as advocates or expert witnesses in the courts of one Party are, for the purposes of judicial proceedings involving offences against fisheries laws, entitled to perform the same or substantially similar functions in the courts of another Party.

4. Where there are waters over which more than one Party claims to have jurisdiction for the purposes of the application of fisheries laws, the Parties concerned shall for the purposes of the application of this Agreement seek to adopt the provisional lines used for the distribution of revenue received under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America done at Port Moresby on 2 April 1987.

**ARTICLE VIII - COOPERATION IN ENFORCEMENT OF PENALTIES**

Should two or more Parties wish to provide that a penalty imposed by one Party under its fisheries laws be enforced by another Party, they may, by way of provisions in a Subsidiary Agreement or otherwise, agree on procedures for that purpose consistent with their national laws.

**ARTICLE IX - CONSULTATIONS**

The Director of the South Pacific Forum Fisheries Agency, at the request of any three or more Parties, shall convene a meeting to discuss any matter arising out of the application of this Treaty. The meeting shall be held at such time and place as the Parties may agree, but shall be held not more than 90 days after the request is notified to the Director.

**ARTICLE X - NOTIFICATION**

1. Each Party shall notify the Director of the South Pacific Forum Fisheries Agency of the current postal, cable, telex and facsimile addresses which it wishes to be used for the receipt of notices given pursuant to this Treaty, and of any changes to a notified address. The Director of the South Pacific Forum Fisheries Agency shall inform all Parties of the notified addresses.

2. Any notice given under this Treaty shall be in writing and may be served by hand, post, cable, telex or facsimile to the notified address.

**ARTICLE XI - DEPOSITARY**

The depositary for this Treaty shall be the Government of Niue.

**ARTICLE XII - AMENDMENTS**

1. Any Party may propose to the depositary an amendment to this Treaty, which shall be considered by the Parties at a meeting arranged in accordance with Article IX.

2. The text of any amendments shall be adopted by unanimous decision of the Parties to the Treaty.

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3. Any amendment to this Treaty which is adopted by the Parties shall enter into force upon the receipt by the depositary of the instruments of ratification, acceptance or approval by all of the Parties, or on such later date as may be specified in the amendment.

4. The depositary shall notify all of the Parties of the entry into force of an amendment.

#### **ARTICLE XIII - FINAL CLAUSES**

1. This Treaty shall be open for signature by:

- (a) any member of the South Pacific Forum Fisheries Agency;
- (b) any Territory of a Member of the South Pacific Forum Fisheries Agency which has been authorized to sign the Treaty and to assume rights and obligations under it by the Government of the State which is internationally responsible for it.

2. This Treaty is subject to ratification by members of the South Pacific Forum Fisheries Agency and the Territories referred to in paragraph 1 of this Article. The instruments of ratification shall be deposited with the depositary.

3. This Treaty shall enter into force on the date of deposit of the fourth instrument of ratification.

4. This Treaty shall remain open for accession by the members of the South Pacific Forum Fisheries Agency and the Territories referred to in paragraph 1 of this Article. The instruments of accession shall be deposited with the depositary.

5. If all of the Parties agree, a State which is not a Party to the South Pacific Forum Fisheries Agency Convention may accede to this Treaty.

6. For any member of the South Pacific Forum Fisheries Agency or a State or Territory which ratifies or accedes to the Treaty after the date of deposit of the fourth instrument of ratification, the Treaty shall enter into force on the date of deposit of its instrument of ratification or accession.

#### **ARTICLE XIV - CERTIFICATION AND REGISTRATION**

1. The original of the Treaty shall be deposited with the depositary, which shall transmit certified copies to all States and Territories eligible to become party to this Treaty.

2. The depositary shall register this Treaty in accordance with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Treaty.

OPENED FOR SIGNATURE at Honiara, Solomon Islands on the ninth day of July, One thousand nine hundred and ninety two.

#### **REPRESENTATIVES OF:**

Australia	Palau
Cook Islands	Papua New Guinea
Federated States of Micronesia	Solomon Islands
Fiji	Tokelau

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Kiribati  
Marshall Islands  
Nauru  
New Zealand  
Niue

Tonga  
Tuvalu  
Vanuatu  
Western Samoa

## Annex 1

### Fisheries Surveillance and Law Enforcement Flag



The Regional Fisheries Surveillance and Law Enforcement Flag is authorised for use by vessels during surveillance patrols. It should be flown at the same times as the national or ensign flag with the national or ensign flag superior.

#### *Aircraft Markings:*

Aircraft shall be clearly marked and identifiable in a manner agreed between the Parties to subsidiary agreements.

**Annex 2**  
**Identification Card**

	<p><b>TREATY ON COOPERATION IN FISHERIES SURVEILLANCE AND LAW ENFORCEMENT IN THE SOUTH PACIFIC REGION</b></p>		
<p>THE HOLDER OF THIS CARD IS AUTHORISED TO ENFORCE THE FISHERIES LAWS OF THE COUNTRIES LISTED BELOW WHILE ON BOARD THIS CRAFT:</p>			
<table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top;"><p>NAME OF HOLDER: _____</p><p>SIGNATURE: _____</p><p>ISSUED BY: _____ <small>(Name of issuing officer)</small></p><p>SIGNATURE: _____</p><p>DATE: _____</p><p>THIS AUTHORIZATION IS VALID UNTIL: _____</p></td><td style="width: 50%; text-align: center; vertical-align: middle;"><div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto; display: flex; align-items: center; justify-content: center;">photograph</div></td></tr></table>		<p>NAME OF HOLDER: _____</p> <p>SIGNATURE: _____</p> <p>ISSUED BY: _____ <small>(Name of issuing officer)</small></p> <p>SIGNATURE: _____</p> <p>DATE: _____</p> <p>THIS AUTHORIZATION IS VALID UNTIL: _____</p>	<div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto; display: flex; align-items: center; justify-content: center;">photograph</div>
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