DEVELOPING REGIONAL MINIMUM TERMS AND CONDITIONS (MTC) FOR GRANTING TUNA FISHING ACCESS IN THE SOUTH WEST INDIAN OCEAN (SWIO)

1. Rationale

The approach taken by SWIO states with regard to foreign fishing activities in their waters differs considerably, often dependent on natural conditions (species abundance), but also historical and political ties as well as economic strength and opportunities. Nevertheless, tuna being a shared migratory stock, States also have common interests in terms of:

a) Securing long-term social and economic benefit through a coherent, coordinated and sustainable tuna fisheries management framework;

b) Reducing costs and increasing benefits by joining efforts to better control and manage access to fisheries by foreign fleets.

The proposed Minimum Terms and Conditions for Fisheries Access provide a common access regime based on a harmonised negotiating position (without undermining national sovereignty). The system encompasses a set of common and agreed principles governing the access of foreign fleets, including agreed technical conditions for access, mechanisms for exchange of information, and mechanisms for agreeing on common or harmonised positions.

2. Justification for Minimum Terms and Conditions (MTC) in SWIO

2.1 From the Economic and Social perspective

- Secure direct and fair payments by DWFN for fishing access/license fees, by increasing bargaining power. This could include increased direct revenues by securing a minimum level of access fees by joint efforts;
- Provide goods and services for DWF fleets in SWIO ports, to further expand the socio-economic benefits from this fisheries;
2.2. From the Conservation of Fisheries Resources perspective

- Promote and ensure improved regional cooperation for conservation and sustainable management of highly migratory and shared tuna fisheries stocks;
- Through joint research and training on fisheries management, increase capacity for decision making, as it is challenging for SWIO unilaterally to have the financial capacity to do this;
- Guarantee more effective and cost-effective control of foreign fishing fleets, including better control on overfishing by preventing vessels from re-locating to neighbouring EEZ with more “favourable” terms of access;
- Minimise exploitation by DWFN of the differences and inconsistencies among different SWIO states (access fees, regulatory regimes, etc.);
- Enhance capacity to police individual/combined EEZs, through joining efforts;
- Increase reciprocal benefits to DWFN from a common access regime, through more stable/enduring relationship with coastal states, as one group; fostering common fisheries management ethics; ensuring greater administrative and operational flexibility in fishing operations; etc.

3. Legal basis for MTC

The legal basis for regional Minimum Terms and Conditions include, among others, the following:

- UNCLOS (United Nations Convention on Law of the Sea), in particular Art.55-75 addressing rights and obligations for managing, conserving and utilising EEZ resources; Art. 62(4): empowering coastal states to impose TAC (Total Allowable Catches) and to regulate foreign fleets; catch limits/quotas; licenses; observers; type and size of gears; seasons and areas of fishing; and Art.63-64, which obliges states to cooperate in management of trans-boundary stocks.
- UNFSA (United Nations Fish Stocks Agreement), namely the mechanisms for fisheries regional cooperation (through RFMO (Regional Fisheries Management Organisations) or other regional/sub-regional arrangement) to conserve, manage migratory/straddling fish stocks, in particular Art. 7(2)(d) on the management to cover the entire range of migratory/straddling fish stocks.
- IOTC (Indian Ocean Tuna Commission), responsible for management of tuna and tuna-like species within the Indian Ocean, and which adopts during its annual sessions conservation and management measures (CMM) for tuna management, to be obligatory implemented by all the members states.
- FAO Code of Conduct, including Art.7.1.3. on the management of trans-boundary, straddling, highly migratory fish stocks; and Art.7.5.3. on the precautionary approach.
- National fisheries legislation, which regulates fisheries management within EEZ of the individual SWIO coastal states, and that should be fully in harmony with all IOTC CMM), UNFSA and UNCLOS (where coastal countries have ratified these instruments).
4. Aspects to be addressed by the Regional MTC for Foreign Access in SWIO

Some of the critical issues requiring compliance by DWFN include:

- Authorization and License Conditions (UNCLOS Art.62 (4)(e)): SWIO could standardize the license form or attach the conditions agreed on the current forms used by individual states;
- Vessels Reporting Requirements – UNCLOS Art 62(4)(e): Catch and effort, vessel position, exit and entry in Exclusive Economic Zone (EEZ), standardized format for vessels position reporting should be considered;
- Transhipment at Sea – UNCLOS Art.61 & 62, UNFSA Art 18(3), 23(3): Transhipment at sea encourage laundering of illegally caught fish;
- Observers – UNCLOS Art 62 (4) (g);
- Appointment of an Agent – UNCLOS Art. 62(4)(k);
- Enforcement procedure;
- Flag State or Fishing Association responsibility – UNCLOS Art.62(4); Art.94;
- Reduction of Monitoring, Control and Surveillance (MCS) costs and ensuring responsibility for compliance to flag state or fishermen associations;

5. How to Implement a Regional MTC

There should be agreement and political commitment;
There should be an agreement on the Framework for Implementation (SWIOFC seems to be the best entity to host this process), in particular in regard to:
- Harmonisation of fisheries policies and legislation between SWIO states;
- Relating with DWFN on regional aspects, clearly stated under the MTC;
- Promoting regional cooperation in MCS and liaising with similar initiatives under the Regional Economic Communities;
- Promoting human resource development for adequate implementation of MTC; and
- Harmonising, coordinating SWIO states participation in International fora;
- To incorporate MTC in national legislation (and therefore non-negotiable terms and conditions);
- In the interim, MTC could be included in the fishing license/access arrangements.

6. Challenges for implementing Regional MTC

- Ensuring no transhipment at Sea;
- Ensuring flag state or fishing association fully exercise their responsibilities;
- Ensuring a fully functional and effective regional observers programme;
- Securing acceptance of MTC by DWFN;
- Managing different interests of SWIO states;
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- Securing political support from individual SWIO states;
- Securing acceptance by SWIOFC/FAO to be the coordinating entity;
- Integrating the objectives of SWIO states with other SWIOFC members, outside the SWIO region (Red sea, Arabian gulf, Northern Indian Ocean);
- Securing funding for activities of SWIOFC related to the implementation of MTC;
- Different levels of tuna fisheries development and its economic significance among SWIO states;
- Insufficient technical expertise in the region;
- Disparity between the economies of SWIO states.
7. Actions Implemented

A draft protocol for regional MTC for granting fisheries access to foreign fleets in SWIO region has been produced and agreed among the SWIO countries and a task force established to coordinate further technical discussion. This was achieved during a SWIO regional MTC workshop held in Dar es Salaam, in 23-24 March 2015, organized by SWIOFC with support from Smartfish project and WWF, based on a draft discussion document, produced by a WWF funded international consultancy and enriched by the 1st regional SWIO MTC meeting, organized by the Smartfish project, in Mauritius, in February 2014. Several national level discussions were also held in several SWIO coastal states to secure country inputs and commitment.

8. Recommendations on the way forward

- The need for SWIOFC to approve the MTC process and agree to act as its umbrella, including helping harmonise procedures for fisheries agreements;
- The need for individual SWIO states to support/endorse the MTC process;
- The need for the agreed MTC to be applied uniformly by all SWIO states;
- The need for SWIO states to enhance their MCS and enforcement capabilities;
- The need for SWIO states to share experiences and expertise concerning negotiations;
- The need for SWIO states to build capacity of their nationals to benefit from the Fishes access arrangements (FAA).