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THE SOUTH WEST INDIAN OCEAN CIVIL SOCIETY TUNA ALLIANCE (SWIOTUNA) POLICY BRIEF ON REGIONAL MINIMUM TERMS AND CONDITIONS FOR GRANTING FISHING ACCESS IN THE SOUTH WEST INDIAN OCEAN (SWIO)

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Introduction

The Regional Minimum Terms and Conditions Guidelines for granting fisheries access in the SWIO region were developed and adopted by the South West Indian Ocean Fisheries Commission (SWIOFC) member states. This policy brief prepared by SWIOTUNA serves to raise awareness among her constituents and the general public about these regional MTC guidelines and urges SWIO member states to accelerate its implementation at national and regional level.

About the South West Indian Ocean Civil Society Tuna Alliance (SWIOTUNA)

The South West Indian Ocean Civil Society Tuna Alliance (SWIOTUNA) is a regional umbrella CSO organization that has been in existence as a network since 2010. In 2016, SWIOTUNA members in their annual general meeting (AGM) held in Mombasa, Kenya resolved to register the network as a regional entity. SWIOTUNA was registered

in May 2019 as a regional Not for Profit Organization under the laws of the Republic of Kenya with its Headquarters currently based in Nairobi. The forum provides a capacity building opportunity to the CSOs and other Non-State Actors (NSA) working on marine and fisheries related issues to advocate for sustainable use, development and management of marine fisheries in the SWIO range states with a view to ensuring that the respective countries and local communities derive more socio-economic benefits from their fisheries resources. SWIOTUNA played an active role in the formulation of the Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa led by the African Union. SWIOTUNA members have played a key role in influencing fisheries policies and tuna strategies at national level via respective national CSO alliances including the Tuna Fisheries Alliance of Kenya (TUFAC), Tanzania Tuna Alliance (TUNA) and FOSCAMC.

SWIOTUNA as an umbrella organization for the Civil Society Organizations in the SWIO region is keen to see the South West Indian Ocean Fisheries Commission (SWIOFC) member states derive more benefits from their shared tuna resources. The SWIO countries offer fishing opportunities to Distant Water Fishing Nations through some form of access arrangements. Experience over the years has shown that SWIO range states have limited capacity to negotiate with the Distant Water Fishing Nations for fair and equitable sustainable fisheries access arrangements. The agreements are more often than not secured in favour of the Distant Water Fishing Nations.

Historical perspective and legal context of the Regional Minimum Terms and Conditions for granting fisheries access

Tuna is the most valuable commercial fish product accounting for about 50% of the global fish trade. The ex-vessel (landed) value of tuna is estimated at US\$ 12.2 Billion with retail end valued at US\$ 42 Billion, against the global production of 4.6 Million Metric Tons (MT). (Pew, 2016). The Indian Ocean share is estimated at 21% of the global value hence US\$ 2.5 Billion and US\$ 9 Billion ex-vessel and retail values respectively.

The South West Indian Ocean (SWIO) region is an important fishing area. The average catch of tunas from the Indian Ocean for the period 2007 - 2016 was estimated at 1.74 MT with 62% of the landings coming from the SWIO region.

Tunas are categorized as highly migratory species hence enter and exit the waters of a number of jurisdictions.

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides the international legal framework for fisheries access arrangements. The UNCLOS defines and recognizes the Sovereignty of coastal states which entitles them to explore, exploit, conserve and manage tuna resources in their respective Exclusive Economic Zones (EEZ). The SWIO states not only can they utilize their tuna resources but can also limit access and sell the surplus under some form of legally acceptable arrangement. Fisheries access arrangements were adopted in the late 70s as a means of controlling and regulating the activities of the foreign fishing operations.

The SWIO countries offer fishing opportunities to Distant Water Fishing Nations (DWFN) through some form of access arrangements, including Sustainable Fisheries Partnership Agreements (SFPAs), private licensing, chartering and joint ventures. This is because the SWIO countries have limited capacity to exploit their deep sea fisheries resources. SFPAs have been used as vehicles to facilitate the profitability for DWFN, securing fish supplies for their processing industries and deployment of their vessels in the foreign waters.

Experience over the years has shown that SWIO range states have limited capacity to negotiate with the Distant Water Fishing Nations for fair and equitable fisheries access arrangements. The agreements have not been fair and their sustainability aspect is questionable. The SFPAs are in favor of the Distant Water Fishing Nations

In the recent past, the SWIO states have embarked on a journey of building their national fleets as provided for under the Indian Ocean Tuna Commission (IOTC) resolutions.

The process of developing regional MTC was initiated in 2012 with the support of WWF in collaboration with the African Union and the SWIOFC. The MTC taskforce that was established in 2014 spearhead the technical preparation of the MTC with the SWIOFC Working Party Collaboration and Cooperation on Tuna Matters (SWIOFC-WCCT) providing guidance and the SWIOFC Commission making major decisions. WWF and SWIOFISH1 Project provided both technical and financial support to this piece of work.

The MTC were adopted by the SWIOFC member states during the 9th Session of the SWIOFC Commission held in October 2018 in Cape Town. The SWIOFC working intercessionally communicated the decision of the adoption of the MTC in February 2019. These Guidelines are voluntary in nature and are aligned with the international and regional legal and policy instruments, including the UNCLOS, 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 (UNFSA), and the FAO Code of Conduct for Responsible Fisheries, the Indian Ocean Tuna Commission (“the IOTC Agreement”), the Agreement on Port State Measures to Prevent and Deter Illegal, Unreported and Unregulated (IUU) fishing Ports States Measures (PSMA) and the ILO fishing convention among others.

The objective and rationale for the SWIO regional MTC

The process of developing the SWIO regional fisheries MTC was inspired by the desire for the Coastal states to derive more sustainable benefits from their shared EEZ tuna resources. They further acknowledged the need for a collective approach to granting fishing access to the DWFN.

The objective of these Guidelines is to establish a common access regime for the foreign fishing of tuna and tuna-like species in the SWIOFC Region with a view to; improving and generating sustainable economic benefits for the SWIOFC States; improving conservation and management of tuna and tuna-like species, including by-catch; and monitoring and controlling fishing activities more efficiently and effectively within the SWIO region.

Key elements and highlights of the MTC Guidelines.

The regional MTC Guidelines have 26 Articles and 40? Provisions. The main elements of the MTC that have to be addressed mutually by the SWIOFC member states and the Distant Water Fishing Nations are as follows;

Pre-Inspection of fishing vessels; Prior to granting a fishing license to fish for tunas, the vessel has to undergo pre-inspection. In the event of change of its ownership, name and characteristics, the vessel has to undergo pre-inspection fresh. The pre-inspection certification is valid for 12 months.

Condition to operate; all foreign fishing vessels (including supply and transport)

should be on the Indian Ocean Tuna Commission (IOTC) record of authorized vessels with valid Authorization to Fish (ATF) as issued by the flag state and possess valid license.

Condition for licensing; a petitioning vessel should be pre-inspected, registered by IOTC, has valid ATF and has no history of illegal fishing activities.

Financial compensation; SWIO states to standardize/ harmonize financial compensation with 12% minimum based on the prevailing market value of their fisheries resources. Financial compensation may be based on the potential catch, potential market value and cost of management of the tuna fishery.

Regional record of licensed foreign fishing vessels; SWIOFC states to establish a register of authorized and active Distant Water Fishing Nations in their respective waters. The vessels to include those involved in actual fishing, transport and supply.

Flag state/Fishing Association responsibility; Flag state of DWFN and Associations licensed to fish in the SWIO waters should ensure compliance of their flagged vessels in line with national and international laws.

Fishing zones; DWFN not permitted to fish in the territorial and archipelagic waters or any other restricted areas such as Marine Protected Areas (MPAs) whatsoever.

Vessel reporting requirement; All licensed vessels to provide position, quantity and type of fish catch by species on board prior to the entry and exit from the respective

jurisdiction water and ports at least 6-24 hours and 24 hours respectively. SWIOFC states have also to consider harmonizing their reporting in line with the IOTC requirements.

Regional observers; a Regional Observer Programme (ROP) to be established by SWIOFC member states. The ROP to collect both fisheries management and scientific data. The ROP to cover vessels in both EEZ and the Areas Beyond National Jurisdiction (ABNJ)

Vessel Monitoring Systems (VMS) and Automatic Identification System (AIS); SWIOFC states should require all licensed foreign fishing vessels, including supply and transport vessels to install, maintain and operate appropriate and functioning VMS and AIS. This is part of regional collaborative efforts to curb IUU fishing and improve transparency in the SWIO waters.

Appointment of agent; SWIOFC should require the flag state to appoint a certified agent from the Coastal and Island states. The agent will be held responsible and accountable for any vessel activities under their jurisdiction.

Foreign fishing on transit; All DWFN vessels on transit should keep all fishing gears securely stowed and communicate accordingly to the relevant authority in the SWIO states upon entry and exit of the respective waters.

Authorized gears, gear markings and Fishing Aggregating Devices (FADs); Fishing gears should be marked clearly according to the FAO standards. All licensed vessels should carry only authorized fishing gears. Use of

FADS should be strictly monitored, register kept and once deployed should also be retrieved.

Fishing Ports; DWFN should use the fishing ports in Coastal and Island States or offshore terminals in compliance with Ports States Measures Agreement (PSMA)

Transshipment; SWIOFC member states should allow transshipment only designated ports under close supervision of the national competent authority.

Landing of catch by-catch and discards; All licensed foreign fishing vessels should land catch and by-catch in any of their designated ports in the SWIO region. Endangered, Threatened and Protected (ETP) species accidentally captured should be released safely back into the waters.

Crew and working conditions on board; SWIOFC should have at least 10% of the regional crew employed on foreign fishing fleets. The employment, working and living conditions on board should be in compliance with the International Labour Organization (ILO) standards including the ILO Fishing Convention.

Other important provisions; The MTC guidelines for implementation and conflict resolution mechanism. The MTC guidelines to be implemented by all the entities involved in fishing operations in the SWIO region including national, regional and global organizations, NGOs, fishing associations and companies. In case of conflict and or dispute, the guidelines advocate for mutual and amicable resolution by the concerned parties without any prejudice to either party.

Implementing the MTC Guidelines

The implementation arrangements for the regional MTC guidelines have to be undertaken within the context of the legal, policy and institutional frameworks at national, regional and global level.

The SWIOFC States have sovereignty and sovereign rights to explore, exploit, conserve and manage all marine resources and the corresponding responsibility to sustainably utilise these resources in waters under their jurisdiction as provided for the UNCLOS. The states can do so under some form of regional cooperation as stipulated in the United Nations Fish Stock Agreement (UNFSA). The Indian Ocean Tuna Commission (IOTC) is responsible for the management of tuna and tuna-like species in their area of jurisdiction in which SWIOFC members are party to. The SWIOFC WCCPT provides a mechanism for strengthening tuna management among the SWIO range states. The SWIO range states have relevant legal and policy frameworks that govern the development and management of shared stocks.

In August 2014, Kenya, Mozambique and Tanzania signed up Maputo Declaration in which the three countries committed themselves to implement the SWIO regional MTC though not concluded at that time. The countries reviewed progress of implementation of the Maputo Declaration in December 2017. It was noted that the countries had made good progress with implementation including raising minimum license fee for Tuna purse seiners to US\$

50,000 and Longliners US\$35,000, charging support vessels US\$ 5,000, charging a minimum of 300 Euros per vessel for observer programme. Support from Sustainable Fisheries Access Agreement (SFPA) to include MCS Policy, Industry and Infra-structure Support, mandatory landing of catch/ by-catch in coastal states and introduction of performance bond among others. In October 2019 during the 10th Session of the SWIOFC Commission held in Maldives, member states gave an update on the progress with the implementation of the SWIO regional MTC Guidelines. It was reported that some countries have made significant progress with the implementation of the MTC. It was observed that out of the 40 provisions of the MTC, 10 of them require regional mechanism and approach while 30 may be implemented at national jurisdiction. It was recommended that the MTC taskforce should review on the practical aspects of the 10 provisions requiring regional approach and report back to the 11th Session of the SWIOFC for further elaboration and consideration.

In view of the above, in order to implement effectively and efficiently the regional MTC, highest political commitment, legal and policy reforms and regional mechanism are necessary.

Political commitment; whereas the 9th Session of the SWIOFC adopted the regional MTC as guidelines, it is necessary to bring this to the highest level of political decision making such as Ministerial and Presidential. The Pacific Islands States, Party to NAURU Agreement provides a good example where the MTC have received backing and support by the Heads of State and Government to the

parties of the NAURU Agreement. Currently the SWIOFC MTC enjoy the support of the Directors and Permanent Secretaries responsible for fisheries. This should be pushed a notch higher to the political class.

Policy and legislative reforms; the SWIO Coastal and Island states have the relevant legal framework that governs the management and development of shared stocks. Nevertheless they have to make MTC explicitly anchored in their respective fisheries policy and legislations so that are not negotiable nor create room for non-compliance. Currently MTC are voluntary FAO Guidelines.

Regional mechanism; Effective and efficient implementation of the SWIO MTC requires a regional coordination and institutional framework. There are various regional fisheries frameworks and institutions in the SWIO region including the SWIOFC, SIOFA and SADC which could serve such a purpose. However SWIOFC member states can benefit from the lessons from the Pacific Islands. The Pacific Island States have the Forum Fisheries Agency (FFA) which enables the countries under the NAURU Agreement (PNA) to cooperate on matters related to regional MTCs, sustainable fisheries management and MCS with desirable results and impacts. Discussions are underway within the SWIOFC framework to establish the SWIO Fisheries Framework Agency (SWIO-FFA) modelled on the FFA of the Pacific. Some studies including the Cost Benefit Analysis (CBA), policy and institutional aspects and sustainable financing mechanism have been contacted by the SWIOFC Secretariat with the support of WWF and SWIOFISH1 Project

to inform this process. A policy brief on SWIO-FFA to seek high political buy-in has also been developed by the SWIOFC. It is envisaged that high level meeting involving Ministers responsible for fisheries in SWIOFC will be convened mid-2020 to chart the way forward. Establishing the SWIO-FFA has both political and financial implication.

Why the SWIOFC member states should implement the regional MTC.

The SWIOFC member states motivation of developing, adopting and implementing the regional MTC is informed by the desire for the countries to collectively derive more socio-economic benefits from their tuna resources while at the same time improving fisheries governance and stock sustainability.

Some of the benefits of the SWIO MTC as briefly highlighted below.

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Harmonized policy and legal framework; Harmonization of policy and legal frameworks within the context of the MTC, especially on administrative and management procedures while maintaining the sovereignty of each of the SWIOFC member states.

Enhanced Socio-Economic benefits; the socio- economic benefits including direct payments for license, fisheries access and sustainable partnership agreements, purchase of goods and services, fishing landings, employment opportunities, trade, banking and scientific expertise will be enhanced. The countries will have improved negotiating power for better, sustainable and equitable fisheries access arrangements.

Improved fisheries conservation and management measures; the SWIOFC member states will improve coherence of fisheries conservation and management

measures in line with existing regional fisheries management frameworks and instruments. The countries will have improved MCS and effective monitoring of fishing operations.

Strengthen common voice and championing the interest of the SWIO range states; The SWIO range states have different interests and stakes with regards to fisheries access arrangements. 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 MTC presents an excellent opportunity for the SWIO states to take a common position/ stand on matters of interest to the region.

Pooling resources together for a common plan; The SWIO range states are at different levels of development in terms of accessing, utilizing and managing their tuna resources in their respective waters. Most of the countries have limited capacity, including expertise, financial and technical resources to effectively monitor, utilize and manage their EEZ resources. The MTC will of the countries an opportunity to leverage efforts

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and resources towards effective and efficient management of their tuna resources.

A call to Action

SWIOTUNA commends the SWIOFC member states for developing and adopting regional MTC Guidelines. This is the first step towards helping the countries derive more sustainable benefits to the respective countries and local communities.

1. SWIOTUNA urges SWIOFC member states to implement binding regional MTC which should not be voluntary as currently approved.
2. SWIOTUNA calls upon the SWIOFC member to establish a SWIO FFA based on the model from the Pacific Islands Forum Fisheries Agency.
3. Measuring of results and impacts of implementing regional MTC is critical. SWIOFC should put in place a mechanism to monitor the progress of implementation of MTC and associated impacts, including Socio-Economic benefits and stock sustainability.
4. The Non-State Actors (NSA) play an important role on matters fisheries and community development. The SWIOFC should put in place a structured framework for engaging NSA actors on fisheries access arrangement discourse.

Disclaimer

The views expressed in this document do not necessarily represent an endorsement by WWF.

Further Information

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