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Programme for the implementation of a Regional Fisheries Strategy for the Eastern and Southern Africa and Indian Ocean Region

Programme pour la mise en œuvre d’une stratégie de pêche pour la région Afrique orientale-australe et Océan Indien

REVIEW OF THE LEGAL FRAMEWORKS IN THE ESA-IO REGION

December 2011
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SF/2011/13
Phil Snijman

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ABBREVIATIONS AND ACRONYMS

AFRC Albion Fisheries Research Centre
ASCLME Agulhas and Somali Current Large Marine Ecosystem
CCAMLR Convention for the Conservation of the Antarctic Marine Living Resources
CFA franc Currency used in Central Africa guaranteed by French treasury
CLS Collecte Localisation Satellites, French company
COI Indian Ocean Commission
COMESA Common market for Eastern and Southern Africa
CPCs IOTC Contracting Parties and Cooperation Non-Contracting parties
CSP Centre de Surveillance des Peches
CPS Contracting Party States
DPP Director of Public Prosecutors
DSFA Deep Sea Fishing Authority
EAIFFPA East Africa Industrial Fishing and Fish Processing Association
EEZ Exclusive Economic Zone
EPA Economic Partnership Agreement
ESA Eastern and Southern Africa
ESA-IO Eastern and Southern Africa-Indian Ocean (Region)
EU European Union
EU-NAVFOR European Union’s Operation Atalanta Naval Force Somalia
FAO United Nations Food and Agricultural Organisation
FAO PSM FAO Port State Measures Agreement
FJTFCA Federation of Japan Tuna Fisheries Co-operative associations
FMC Fisheries Monitoring Centre
FMg Malagasy franc
ICCAT International Commission for the Conservation of Atlantic Tuna
ICCM Implementation of International Fishery Conservation and Management Measures
IOC Indian Ocean Commission
IOR-ARC Indian Ocean Rim Association for Regional Cooperation
IOTC Indian Ocean Tuna Commission
IRFS Implementation of the Regional Fisheries Strategy
IUCN International Union for Conservation of Nature
IUU Illegal Unreported and Unregulated (fishing)
IWC International Whaling Commission
EXECUTIVE SUMMARY

This review consists of a detailed study of the legal frameworks in the Comoros, Kenya, Madagascar, Mauritius, Seychelles, Somalia and the United Republic of Tanzania as far as they pertain to fisheries laws, and are related to MCS and actions agreed upon in RFMO Agreements, and as far as they enable effective prosecution. The aim of the study is to provide recommendations for the improvement of these legal frameworks. The general legal review of the above countries is based on a desktop study, which was followed up by in-country specific investigations for Tanzania, Madagascar and Seychelles. Since there are already numerous other reports that consider this same topic, an attempt was made to avoid duplication thereof, and to focus on additional issues where possible. A distinct emphasis was placed on the use of criminal sanctions as a tool to ensure compliance with fisheries legislation.

The majority of the report comprises of an assessment of the specific areas that require updating and harmonisation and identification of legal challenges and barriers to enforcement for each country. This assessment is divided into three parts for each country, namely an assessment of the legal framework, an evaluation thereof, and finally, recommendations on how the legislation may be improved. Within the evaluation, legal challenges and barriers to the implementation or adoption of regional agreements and standards and barriers to regional cooperation and information sharing were specifically considered.

The principle fisheries legislation in the Comoros is a 2007 decree, which, while quite extensive, lacks the necessary implementing text. In Kenya the principle fisheries legislation that regulates marine and inland fisheries, as well as aquaculture is comparatively outdated and lacking in many areas, however it was found that the 2011 Bill is extensive, and is in many respects a clear improvement. In Madagascar it was found that the current legislation is currently inadequate and contains numerous outdated provisions, such as outdated and inadequate penalties, and inadequate powers of fisheries inspectors. However, as is the case of Kenya, the new 2007 Bill addresses most of these issues. It has however not as yet been finalised, nor is it clear when it will be promulgated. Suggested interventions include a review of all supporting legislation, such as decrees and orders in order to adapt to the Bill. In Mauritius the principal legislation governing fisheries was found to have numerous key shortcomings. The recommendation is for a review of the legislation in order that a comprehensive approach can be taken to ensure that the recent international fisheries instruments to which Mauritius is party are fully implemented. In the Seychelles, there are a number of main pieces of fisheries legislation governing fisheries, and a new Fisheries Bill has been prepared. The new Fisheries Bill, which is expected to become law before the end of 2011 is in the final stages of development, and is a fine effort to modernize fisheries management. While the Fisheries Act of 1987 does not provide an adequate legal framework for MCS, the 2011 draft Bill is a huge improvement in this regard. In Somalia, it was found that the fisheries legislation is currently outdated and insufficient with regard to the creation of offences and the powers of inspectors, and is no longer an effective tool for fisheries management. There is also an inadequate legal framework for effective MCS, both for the enforcement of domestic legislation as well as the enforcement of regional requirements. The legislative framework requires urgent attention if effective MCS on local and regional level is to be achieved. In Tanzania, there are currently five main pieces of Fisheries’ legislation, because the fishery sector is not a union matter and as a result, Mainland Tanzania and Tanzania Zanzibar each have their own specific pieces of legislation that regulate this sector. The Deep Sea Fishing Authority Act of 1998, as amended in 2007, and the Deep Sea Fishing Authority Regulations of 2009 are comprehensive, and recommendations have been made for their improvement and strengthening.
The following findings and conclusions were reached on the evaluation of the legislative framework above, as well as an evaluation of 19 additional factors as specified in the TOR:

- Almost all the countries need some form of assistance to enhance the legal framework, but the degree of assistance will depend on the status of the legislation in each country.
- Training and other assistance for the fisheries inspectorate to ensure better enforcement and investigations is required in all countries.
- There is a need to train and support prosecutors and legal officers on the prosecution of fisheries offences.
- There is a need to establish closer co-operation between enforcement officials, including investigators, and the prosecution authority in each country.
- There is a need to increase awareness amongst presiding officers.
- Regional forums for prosecutors and presiding officers can be helpful.
- Case specific support with investigations and prosecutions is required.
- Assistance with the revision of the IOTC resolutions is required.
- Assistance with the finalisation of the NPOA-IUU is required in some countries.

The following recommendations and proposals are made:

- Country specific assistance to strengthen the legal framework through a combination of an international expert and a consultant from the specific country.
- Training, and the compilation of a manual and a comprehensive set of SOPs for the fisheries inspectorate in each country.
- Training, and the compilation of a guide to the prosecution of fisheries offences for the prosecuting authority and legal officers in each of the countries.
- Awareness training for presiding officers must take place in each country.
- The creation of a national fisheries crime enforcement forum combining fisheries inspectors, investigators and prosecutors should be examined.
- The creation of regional forums for presiding officers and prosecutors must be examined.
- Case specific support with investigations and prosecutions must be provided.
- Assistance with the revision of the IOTC resolutions must be provided.
- Assistance with the finalisation of the NPOA-IUU can be provided to the countries that have not yet finalised these plans.
RÉSUMÉ EXECUTIF

Cet examen comprend une étude détaillée des cadres légaux dans les Comores, le Kenya, Madagascar, Maurice, les Seychelles, la Somalie et la République-Unie de Tanzanie dans la mesure où ils se rapportent à la législation sur les pêches, et sont liées aux SCS et les actions convenues dans les accords ORGP, et dans la mesure où elles permettent l’efficacité des poursuites. L’objectif de cette étude est de fournir des recommandations pour l’amélioration de ces cadres légaux. L’examen juridique général des pays ci-dessus est basé sur une étude de bureau, qui a été suivie par des enquêtes spécifiques pour la Tanzanie, Madagascar et les Seychelles. Comme il existe déjà de nombreux autres rapports qui tiennent compte des mêmes sujets, une tentative a été faite d’éviter la duplication de celle-ci, et de se concentrer sur les questions supplémentaires possible. Un accent particulier a été mis sur l’utilisation des sanctions pénales comme un outil pour assurer la conformité avec la législation des pêches.

La majorité du rapport comprend une évaluation des zones spécifiques qui nécessitent la mise à jour, l’harmonisation et l’identification des défis et des obstacles à la mise en application pour chaque pays. Cette évaluation est divisée en trois parties pour chaque pays notamment une évaluation du cadre juridique, une évaluation de celui-ci, et enfin, des recommandations sur la façon dont la législation peut être améliorée. Dans cette évaluation, les défis juridiques et les obstacles à la mise en œuvre de l’adoption des accords régionaux et les normes sont identifiés.

La principale législation sur la pêche aux Comores est un Décret 2007, qui, tout en étant très vaste, ne dispose pas des textes d’application prévus. Au Kenya, la législation principale qui réglemente la pêche maritime est relativement obsolète et déficiente dans de nombreux domaines, cependant elle est actuellement en constante évolution. À Madagascar, il a été constaté que la législation en vigueur est actuellement insuffisante et contient de nombreuses dispositions obsolètes, telles que des sanctions pénales inadéquates, et les pouvoirs insuffisants des inspecteurs de pêche. Cependant, comme c’est le cas au Kenya, le nouveau projet de loi 2011 répond à la plupart de ces questions et sera promulgué. Des interventions suggérées incluent une revue de toutes les lois à l’appui, tels que les décrets et les ordonnances en vues d’adapter le projet de loi. À Maurice, la législation principale qui réglemente la pêche est actuellement insuffisante dans les domaines essentiels. La recommandation est une révision de la législation, afin qu’un approche complètement puissante pour s’assurer que les consignes soient appliquées.

La Loi sur les pêches en 1987 ne fournit pas un cadre juridique adéquat pour le SCS, le projet de loi 2011 est une amélioration. À Madagascar, il a été constaté que la législation sur la pêche est actuellement insuffisante et insuffisante en ce qui concerne la constitution d’infractions et les pouvoirs des inspecteurs, et n’est plus un outil efficace pour la gestion des pêches. Il ya aussi un cadre juridique inadéquat pour un SCS efficace, tant pour l’application de la législation nationale qu’au niveau local et régional. En Somalie, il a été constaté que la législation sur la pêche est actuellement insuffisante et insuffisante en ce qui concerne la constitution d’infractions et les pouvoirs des inspecteurs, et n’est plus un outil efficace pour la gestion des pêches. Il ya aussi un cadre juridique inadéquat pour un SCS efficace, tant pour l’application de la législation nationale qu’au niveau local et régional. En Tanzanie, il y a actuellement des inhibitions spécifiques de la législation qui réglementent le secteur.

- Les résultats et les conclusions suivantesontété prises sur l'évaluation du cadre législatif ci-dessus, ainsiqu'UNEévaluation de 19 autres facteurs tel que spécifié dans les termes de référence (TOR):
- Presque tous les pays ontbesoin d'une certaine form d'assistance pour améliorer le cadre juridique, mais le degré d'assistance dépendra de l'état de la législation dans chaque pays.
- La formation et d'autres assistances pour l'inspection de la pêche afin d'assurer une meilleure application et d'enquêtes sont nécessaires dans tous les pays.
- Il est nécessaire de former et de soutenir des procureurs et des officiers juridiques sur la poursuite des infractions sur la pêche.
- Il est nécessaire d'établir une coopération plus étroite entre les responsables de l'application, y compris les enquêteurs, et l'autorité de poursuite dans chaque pays.
- Il est nécessaire de former et de soutenir des procureurs et officiers juridiques sur la poursuite des infractions sur la pêche.
- Il est nécessaire d'établir une coopération plus étroite entre les responsables de l'application, y compris les enquêteurs, et l'autorité de poursuite dans chaque pays.
- Une assistance à la révision des résolutions de la CTOI est nécessaire.
- Une assistance à la finalisation du PAN-INN est nécessaire dans certains pays.

Les recommandationset les propositions suivantes sont faites:

- Une aide spécifique au pays pour renforcer le cadre juridique par une combinaison d'un expert international et d'un consultant en provenance du pays.
- La formation, et la compilation d'un manuel et un ensemble complet de modes opératoires standard (SOP) pour l'inspection de la pêche.
- La formation, et la compilation d'un guide pour la poursuite des infractions de pêche pour l'autorité de poursuite et les officiers juridiques de chaque pays.
- La sensibilisation et la formation des officiers présidents doivent avoir lieu dans chaque pays.
- La création d'un forum national pour la lutte contre le crime de la pêche combinant les inspecteurs des pêches, les enquêteurs et les procureurs devraient être examinés.
- Une assistance à la révision des résolutions de la CTOI doit être fournie.
- Une assistance à la finalisation du PAN-INN peut être fourni aux pays qui n'ont pas encore finalisés plans.

Regulations de 2009 sontcomplètes, et des recommandationsontété faites pour leuramélioration et le renforcement.

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- Presque tous les pays ontbesoin d'une certaine form d'assistance pour améliorer le cadre juridique, mais le degré d'assistance dépendra de l'état de la législation dans chaque pays.
- La formation et d'autres assistances pour l'inspection de la pêche afin d'assurer une meilleure application et d'enquêtessont nécessaires dans tous les pays.
• Il est nécessaire de former et de soutenir des procureurs et des officiers juridiques sur la poursuite des infractions sur la pêche.
• Il est nécessaire d’établir une coopération plus étroite entre les responsables de l’application, y compris les enquêteurs, et l’autorité de poursuite dans chaque pays.
• Il y a un besoin d’accroître la sensibilisation des officiers présidents.
• Des forums régionaux pour les procureurs et les officiers présidents peuvent être utiles.
• Le soutien sur des cas spécifiques d’enquêtes et de poursuites est nécessaire.
• Une assistance à la révision des résolutions de la CTOI est nécessaire.
• Une assistance à la finalisation du PAN-INN est nécessaire dans certains pays.

Les recommandations et les propositions suivantes sont faites :
• Une aide spécifique au pays pour renforcer le cadre juridique par une combinaison d’un expert international et d’un consultant en provenance du pays.
• La formation, et la compilation d’un manuel et un ensemble complet de modes opératoires standard (SOP) pour l’inspection des pêches dans chaque pays.
• La formation, et la compilation d’un guide pour la poursuite des infractions de pêche pour l’autorité de poursuite et les officiers juridiques dans chaque pays.
• La sensibilisation et la formation des officiers présidents doivent avoir lieu dans chaque pays.
• La création d’un forum national pour la lutte contre le crime de la pêche combinant les inspecteurs des pêches, les enquêteurs et les procureurs devraient être examinés.
• La création de forums régionaux pour les officiers présidents et les procureurs doivent être examinés.
• Le soutien de casses spécifiques avec des enquêtes et des poursuites doit être fourni.
• Une assistance à la révision des résolutions de la CTOI doit être fournie.
• Une assistance à la finalisation du PAN-INN peut être fournie aux pays qui n’ont pas encore finalisé ces plans.
1. INTRODUCTION

1.1. Objective of the review

The primary objective of this review is to provide a comprehensive study of the legal frameworks pertaining to fisheries laws, as far as they are related to MCS and actions agreed upon in RFMO Agreements. Recommendations have also been made for improvement of the legal frameworks based on this study. The Terms of Reference (“TOR”) dictates that this review should patently emphasise the legislative framework in so far as it enables effective prosecution of offences. The general legal review is based on a desktop study of the following countries in the ESA-IO region:

- Comoros
- Kenya
- Madagascar
- Mauritius
- Seychelles
- Somalia
- The United Republic of Tanzania

In addition in-country specific investigations for the United Republic of Tanzania, Madagascar and Seychelles were undertaken.

The TOR determined that the first part of the review is comprised of an assessment of the current level of compliance in the fishing sectors of the abovementioned countries. This assessment includes compliance with both national laws as well as with regional RFMO requirements, including freshwater sectors where applicable. It should be noted a factual assessment of compliance levels was performed in a concurrent study, and the legal assessment therefore focuses mainly on the adequacy of the legal framework of each of the countries.

The second part of the review is focused on specific areas or issues that require updating or harmonisation, and an attempt was made to identify barriers to the implementation of effective MCS, as well as barriers that inhibit effective prosecution of offences.

The above will serve as the basis for recommendations on how to address each of the areas of investigation. The TOR requires that the recommendations must include immediate actions that can be undertaken in each country.

A further outcome of the evaluation and recommendations will be the preparation of TOR for proposed specific legal assistance to countries in the regions that require further assistance in order to obtain the desired end state, as set out below.

The terms of reference is attached as Annex 1.
1.2. Context

As is set out in the TOR, MCS is a collection of activities, which function together to support fisheries management. MCS takes place primarily within a legal and policy framework. In short, MCS strives to detect, deter and prevent IUU fishing from taking place, through monitoring the activity of the resource users and controlling and verifying the actions of resource users.

The development and implementation of MCS has advanced considerably in recent years in a number of countries in the ESA-IO region. Support from the EU, SADC and other countries have served to strengthen the capacity of MCS in several countries, both at national and at the regional level. Unfortunately, these programmes have fallen short in terms of implementing a strictly regional MCS programme. The desired “end state” of the Implementation of the Regional Fisheries Strategy (IRFS) requires a fully integrated and harmonised regional MCS system.

There are currently several projects on parallel paths to the IRFS. These include the Regional Component 6 of the SWIOFP project, which is also geared towards regionalisation of MCS activities, along with the South West Indian Ocean Fisheries Commission (SWIOFC). Similarly, the ACPFISH II project shares many of the same objectives as the IRFS, and will assist countries in the region with implementation of their national plans of action (NPOAs) and updating their framework legislation.

In light of the above an attempt was made to avoid duplication of previous studies, and to focus on additional issues where possible. A distinct emphasis was placed on the use of criminal sanctions as a tool to ensure compliance with fisheries legislation.

In summary, the aim of this paper is to identify, within the legal context of each country, which issues need to be updated and harmonised in order to make them compatible with the aims of effective MCS between the countries. The aim of this paper is furthermore to determine the barriers to the effective implementation of MCS, with specific focus on the ability to prosecute offences effectively, and lastly to determine whether the regional agreements to which such countries are a party, are being effectively implemented through the enforcement of the relevant national legislation of each country.

1.3. Background

The TOR determines that legal challenges and barriers to effective MCS and the ability to prosecute offences should be identified.

From a legal perspective effective enforcement, both on a national and regional level, requires firstly that enforcement officials must have sufficient powers in terms of the legislation. For our purposes, enforcement officials are mainly fisheries inspectors, whose powers include, but are not limited to, powers of inspection, search, seizure and arrest. It is of utmost importance that the powers of inspection should not be linked to a requirement of suspected non-compliance, but that inspectors should have the power to conduct simple routine inspections. The powers of the fisheries inspectorate should be sufficiently comprehensive, in order to provide a solid basis for effective enforcement action.

As far as the requirements for membership of RFMO are concerned, the first requirement is that the country’s law makes provision for the acceptance of RFMO agreements, which will usually be contained in the Constitution. Incorporation of such agreements into domestic legislation can be achieved in more than
one way, but the most common is their incorporation into domestic legislation via additional legislation or amendments to existing legislation. It must be added that in many instances the implementation of RFMO requirements dealing with enforcement will not necessarily require legislative amendments.

The adoption of regional agreements and standards, and the incorporation of relevant provisions into domestic legislation, is governed by the legal process. The failure to do so is however often more a question of poor management, as opposed to an inadequate legal framework. It was not possible within the ambit of this review to investigate all the individual resolutions or provisions, however a few general remarks follow below with reference to the IOTC resolutions dealing with MCS issues to illustrate this point:

- Several resolutions, for example par. 5(e) and (f) in Resolution 07/02, obliges states to take certain measures “consistent with their relevant laws”, and does not oblige members to adapt their legislation to accommodate, or better accommodate, the implementation of the resolution.
- Several resolutions e.g. Resolution 09/05 which prohibits the use of large-scale drift nets on the high seas in the IOTC area, may require a specific amendment to domestic legislation if the legislation does not already prohibit this (a prohibition on the use of such nets can be made a condition of registration or licensing, however in that case there will nevertheless be no additional recourse against a non-licensed vessel using such a net). Another example would be the prohibition on transhipment of tuna and tuna like species at sea as specified in section 1(1) of Resolution 11/05.
- It is often not necessary to amend legislation in order to accommodate these resolutions, for example:
  - Par. 3 in Resolution 01/02 provides for standards in the marking of vessels and logbooks to be kept by certain vessels, or Resolution 10/03 obliging IOTC Contracting Parties and Cooperation Non-Contracting parties (“CPCs”) to ensure that all purse seine vessels flying its flag and authorised to fish species managed by the IOTC are subject to a data recording system. Such resolutions may simply be implemented by making such conditions a standard part of the registration or licensing conditions.
  - In many other instances, the domestic law already accommodates the obligations created by the resolution, and can be implemented without any amendments, provided that fisheries inspectors have sufficiently wide powers.
  - In some instances the obligation has no legal component, for instance in par. 6 in Resolution 06/03, which provides that Flag states must ensure that VMS on board of its vessels are tamper resistant or Resolution 10/07 requiring CPCs which issue licenses to foreign vessels to fish tuna and swordfish in their EEZ to submit annually to the Secretariat a list of foreign vessels to which such licenses have been issued or the requirement that CPS must, at least 70 days before the Annual Meeting, submit a list of vessels presumed to have been carrying out IUU fishing activities in the IOTC area during the current and previous year, as is determined by par. 2 of Resolution 11/03.
  - Some resolutions e.g. par 11 in Resolution 10/11 on the “conduct of inspections” require proper training and/or SOPs as opposed to any legislative amendment.

Notwithstanding the aforementioned, effective prosecution necessitates comprehensive and clearly formulated transgressions\(^1\) and penalties in the applicable legislation. Also, clear definitions of words contained in the legislation are vital in order for offences to be created. Definitions are usually contained in the first section of a particular piece of legislation, and these definitions play an important role in the clear formulation of both powers and offences.

\(^1\) This is part of the requirement of legality.
Prosecution is the last step in a lengthy process of criminal enforcement, and in order for criminals to be brought to book, and sentenced to penalties that have a deterrent effect on other offenders, there are a number of other requirements that must be met. Firstly, there must be a reasonable possibility that the transgression will be detected. Though this aspect depends heavily on adequate resources, well-trained and experienced inspectors and effective management, the incorporation in the legislation of aspects, such as compulsory VMS on board fishing vessels, can add to the effectiveness of detection. Sufficient powers of fisheries inspectors to inspect or search, also plays an important role. On a regional level, the sharing of information is also an important aspect.

Secondly, there must be a reasonable possibility that the transgressor will be apprehended and brought before court or that administrative action will be taken against the transgressor. This aspect is also heavily dependant on adequate resources, well-trained and experienced inspectors and effective management. Sufficient powers in the legislation, which enable fisheries inspectors to inspect or search; and to seize and arrest also plays an important role. In certain instances, regional cooperation is required in order to apprehend transgressors.

Thirdly, there must be a reasonable possibility that the transgressor will be convicted, or that appropriate administrative action will be taken against the transgressor. This aspect depends on the availability of sufficient, admissible evidence, and a knowledgeable and experienced prosecutor to present the case. The gathering of sufficient admissible evidence again depends on a number of factors, which include adequately trained, and capable inspectors, but also adequate powers in the legislation to enable the inspectors to do a proper investigation. In addition, the use of, and consequently the evidence obtained by technologically advanced techniques such as VMS or other electronic data, is notoriously difficult to present to court, and requires legislative provisions, which accommodates the presentation and admissibility of such evidence. As far as administrative enforcement action is concerned, a defensible and effective system is required, which takes into account the principles of administrative justice.

Fourthly, the conviction must lead to appropriate, and where necessary, severe, punishment or strict administrative measures. The first requirement is that the maximum penalties must be adequately high, and where appropriate, should include imprisonment without the option of a fine\(^2\). This further depends on a few factors, namely that sufficient evidence in aggravation be gathered by the investigating officer and presented to court, as well as a presiding officer being willing to hand down an appropriately harsh sentence.

Fifthly, supplementary orders such as forfeiture of the catch, gear and vessel used in the commission of the offence, and the forfeiture of the proceeds of the crime are required, in order to act as an additional deterrent. The legislation must firstly make provision for such forfeiture, and secondly the presiding officers must be willing to make such an order in light of the seriousness of the offence. Another advantage of forfeiture is the possibility that a forfeited vehicle or vessel might in appropriate cases be utilised as a patrol vessel.

Finally, successes should be published, in order to deter other would be perpetrators. This can be done via the various forms of media, including websites. Publication carries the additional advantage of “name and shame”, which can also play a role in deterrence.

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\(^2\) It is appreciated that the provisions of UNCLOS place some limitation on the possibility of imprisonment.
The above also applies, with the necessary adaptations, to following an administrative enforcement process. Few countries have administrative measures such as compliance notices and directives in their fisheries legislation, but the suspension or cancellation of licences in cases of non-compliance can be an effective deterrent as well. In this context, as compounding is often an option in the legislation, it must be stressed that this is seen as part of, albeit an alternative method, the criminal enforcement process.
2. METHODOLOGY

The general legal review of the seven countries is based on a desktop study and this was followed up by an in-country specific investigation for Tanzania, Madagascar and Seychelles. The desktop study is based on available reports and reviews on the subject matter, as well as legislation. The in-country specific investigation was based on personal consultations with various officials from Tanzania, Madagascar and Seychelles, as well as officials from the IOTC. The schedule of visits and persons that were consulted with are attached as Annex2.

Some of these officials also supplied additional information in the form of statistics, reports, copies of draft legislation and even a very helpful academic dissertation. In some cases gaps or uncertainties, or the need for additional information led to further contact with these and other officials, mostly by mail. We are indebted to all of the officials who assisted us in this matter.

As was pointed out above, the first part of the review comprises of an assessment of the current level of compliance with both national law as well as with regional RFMO requirements in the fishing sectors of these countries. The factual assessment of compliance levels was done in a parallel study, whereas this report is focused on whether there is an adequate legal framework in place and therefore also serves as the legal background to the factual assessment.

The second part of the report, which considers areas that should be updated or harmonised and the identification of legal challenges and barriers to effective MCS, as well as the ability to prosecute offences, is based on the nineteen specific issues as set out in the TOR. This was done in table format, and compiled mainly during the in-country investigations and additional interviews during the subsequent workshop. These country specific evaluation tables are contained in Annex 4.

In light of the fact that some of the listed issues overlap to a certain degree, and in an effort to follow a more logical approach, the issues were grouped under three main headings. The tables created for each country, as contained in Annex 4, reflect these three main headings as follows:

- Legal Framework (deals with points 3, 1, 19, 6, 2, 4, 9 and 7 from the TOR)
- Legal Challenges and Barriers to the Adoption and Implementation of Regional Agreements and Standards (deals with points 5, 10, 8, 11, 15, 18 and 2 from the TOR)
- Legal Challenges and Barriers to Regional Co-operation & Information Sharing (deals with points 12, 13, 14, 16 and 17 from the TOR)

Note that point 2 from the TOR was included under both the first two headings above, under the first heading it deals with internal harmonisation, and under the second heading it deals with regional harmonisation. Where necessary, and this sometimes differs from country to country, due to the difference in legal systems, subheadings referring to specific issues were used. In addition to the requirements noted in the TOR, or sometimes as a subheading or related issue, the specific issues as discussed in 1.3 above, were investigated. Each of the three general headings also contains general remarks on the subject matter at the outset, in order to prevent unnecessary duplication of material under the individual headings.

In an effort to follow a logical approach, and make the report easier to use, the first and the second part of the review are combined in a single chapter for each country. While the tables in Annex 4 refer to all the relevant points, the discussion in each of these chapters are solely focussed on the legal framework and the issues requiring attention, and are grouped under the three main headings, which include recommendations. The final chapter contains final conclusions and recommendations.
3. PERFORMANCE IN RELATION TO THE TERMS OF REFERENCE

As pointed out above, all the specifications in the TOR were examined for each of the countries, as is reflected in the country tables contained in Annex 4. The in-country visits proved to be very valuable, despite the constraints such as very limited time, diverse legal systems and language barriers in the case of Madagascar. The following factors played a role in the amount of valuable information, and the ability to draw conclusions from such information:

- Very little information could be found on Somalia. The political instability is an apparent cause of the lack of comprehensive national fisheries legislation, as well as the lack of available information about such legislation.
- Very limited information was available on Comoros.
- Many of the studies previously done were outdated, and therefore were not helpful.
- Some studies provided incorrect or inaccurate information, which will be pointed out where appropriate.
- Where reports and legislation were only available in French, we used translation programs and assistance from colleagues to interpret these. Whilst this was a limitation, we are satisfied that we were able to effectively use and interpret this information. Where there is a misinterpretation, we appreciate feedback on it.

Other aspects with regard to the performance in relation to the TOR:

- A desktop study of all the countries was completed prior to the in-country visits, and submitted;
- Preparation and briefing by Skype was replaced with two personal meetings, one in Cape Town on 7 July 2011 and one in Mauritius on 11 July 2011, both prior to the in-country visits;
- Seychelles, Tanzania and Madagascar were visited in the period from 12-27 July 2011. The visit to the United Republic of Tanzania included Mainland Tanzania as well as the fishery authority and the Deep Sea Fishing Authority in Zanzibar.
- All the visits included a meeting with the relevant Fisheries Authority
- We were very fortunate in having had the opportunity to meet the Acting Attorney-General of Seychelles, and the national Director of Public Prosecutions in Mainland Tanzania. In Madagascar we met with the legal council who is appointed to act on behalf of the fisheries authority in enforcement matters.
- A debriefing was held in Mauritius on 28 July 2011.
- A first draft was submitted after this initial stage.
- A regional workshop was held in Mauritius during 27-30 September 2011 and this included reporting back on initial findings, as well as discussions around the various issues.
- The workshop also provided the opportunity for individual consultations with each of the countries, which proved to be extremely valuable to obtain information on outstanding issues and to discuss the findings, needs and recommendations.
- Assistance was provided with the drafting of TORs to address the legal challenges and barriers identified during the study (also see Annex 5 in this regard).

The list of people met and institutions visited is attached as Annex B, and additional persons consulted with via e-mail or other methods of communication are also listed, as well as the list of persons who attended the regional workshop where individual consultations with each of the countries’ representatives took place.
the review are combined in a single chapter for each country. While the tables in Annex 4 refer to all the relevant points, the discussion in each of these chapters are solely focussed on the legal framework and the
4. ASSESSMENT, IDENTIFICATION OF LEGAL CHALLENGES AND BARRIERS AND RECOMMENDATIONS

4.1. Comoros

4.1.1. Legal Framework and Assessment

The principle fisheries legislation in the Comoros is Decret N°07-159/PRPortant promulgation de la loi N°07-01/AU du aout 2007, portant Code de Pêches et de l’Aquaculture de l’Union des Comoros, referred to as the 2007 Act and discussed further below. Also of relevance is the Arrête No 0731, Portantcréation d’un Centre National de Contrôle et du Surveillance des Pêches, which creates the Centre National de Contrôle et du Surveillance des Pêches (CNCSP). It inter alia sets out the mission of the CNCSP in article 5, responsibilities of the CNCSP in article 7, the creation, composition and functions of the steering committee in article 8 to 10 and the sources of financing for the CNCSP in article 14.

Comoros is a member of the Indian Ocean Commission, (IOC), the Indian Ocean Tuna Commission (IOTC)3, the Southwest Indian Ocean Fisheries Commission (SWIOFC)4, and it has also signed the South Indian Ocean Fishing Agreement (SIOFA)5. Comoros is also a member of the IOTC6.

The Union of the Comoros consists of four islands, namely Grande Comore (Ngazidja), Anjouan (Nzwani), Moheli (Mwali) and Mayotte. Anjouan has economic and legislative independence within the Union of the Comoros and is a self-governing island within the new Union of the Comoros. Anjouan does not seem to have any fisheries laws, and the State of Anjouan Port Authority Act is silent on fisheries. The islands have a large amount of autonomy within the Union. The Comorian legal system is based on Islamic law, an inherited French (Napoleonic) legal code, and customary law. Village elders, kadis or civilian courts settle most disputes. The judiciary is independent of the legislative and the executive. The Supreme Court also acts as a Constitutional Council and High Court of Justice.

It was reported that fisheries governance in the Comoros is informally shared among state fisheries departments, national and island fishing syndicates, and village fishing associations. Although the overall development and management of fisheries is shared among the three levels of authority, the actual implementation of management strategies is largely undertaken at the local level. The national government maintains no formal regulations on fishing and due to limited staff, resources, expertise, and funding, they have little capacity for effective management. As a result, local fishing associations have taken on a pivotal role in managing fisheries in their own communities. They function much like cooperatives and collectively design, monitor, and enforce local regulations7.

5 http://www.fao.org/Legal/treaties/035s-e.htm
Decisions are based on local knowledge and experience, and management strategies are adaptive and based on low-cost practical solutions. Nevertheless, the multi-level fisheries governance structure provides a strong foundation upon which to build effective management strategies.

Talla\(^8\) and others in a 2004 report provided a summary of legislation applicable to the fisheries sector, which includes legislation from the colonial period as far back as 1852. More recent texts identified by the same authors include Law No. 82-005 (Loi N°82-015/ Relative à l’activité des Navires de pêcheétrangers) containing fairly comprehensive provisions\(^9\). This legislation has however been replaced by a 2007 Act which is discussed below.

Customary law still plays a huge role in the artisanal fishing sector, but these rules vary between islands, regions or villages. Village committees have also developed rules on fishing. It is reported that customary rules are respected above the written rules in the Comoros, and that the fishermen themselves are responsible for enforcing these rules by preventing and punishing transgressors\(^10\).

Comoros does not as yet have an NPOA-IUU, but have indicated that they would take steps in the near future to finalise their national plans of action in order to implement the International and National Plans of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing\(^11\).

The National Centre for Control and Surveillance of Fisheries of the Union of Comoros has a VMS system that has been operational since December 17, 2009. The VMS allows the authorities to monitor the activity of a sample of 15 small-scale fishing vessels of the Comoros, and to follow the activities of industrial fishing vessels licensed, while fishing in the waters of the Comoros\(^12\). It was also reported already in 2005, that each foreign fishing vessel will be required to have a Comorian observer on board\(^13\).

Decret N°07-159/PR Portant promulgation de la loi N°07-011/AU du aout 2007, portant Code de Pêches et de l’Aquaculture de l’Union des Comoros, governs fisheries and aquaculture, and is divided into seven parts, which are referred to as “Titles”. These parts are then further divided into chapters and sections, which further comprise of articles.

Part 1 covers general provisions and is divided into two chapters. Chapter 1 deals with general principles and chapter 2 contains definitions in two sections: section 1 deals with fishing and section 2 deals with aquaculture.

Part 2 covers sustainable management of fisheries resources, and is divided into 3 chapters. Chapter 1 deals with the development of the fisheries and aquaculture sectors, while chapter 2 deals with the management of fisheries and aquaculture.

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\(^9\) A summary of this was done and is available should it be required. The remark by the authors that “[i]n the EEZ, under Law No. 82-005, only the scientific or technical research shall be subject to licensing by the state of the Comoros”, is however, it is submitted, incorrect. This is discussed in the summary.


\(^11\) http://bycatch.nicholas.duke.edu/Countries/Comoros/ComorosCP

\(^12\) MCS Regional Plan for the South West Indian Ocean website: http://www.prsp-coi.org/

\(^13\) http://bycatch.nicholas.duke.edu/Countries/Comoros/ComorosCP
Chapter 2 is further divided into 3 sections; Article 15 in chapter 3 provides that the Minister can, through or by way of an order regulate certain measures, which are set out in Article 15(a) – (v). Chapter 3 is divided into 9 sections, and governs the exploitation of fisheries resources, namely various types of fishing, including commercial fishing, fishing by foreign vessels, fishing for sport, and traditional fishing.

Part 3 governs the protection of aquatic species and ecosystems, and is divided into 4 chapters. Chapter 1 governs the control of activities that may affect fishing and aquaculture. Chapter 2 creates “conservation environments”, while chapter 3 governs marine protected areas. Chapter 4 deals with prohibited activities and sets out prohibited activities such as prohibited methods of fishing involving toxic substances, and explosives in Articles 77. Article 78 prohibits certain activities without permission from the Minister.

Part 4 deals with economic and financial provisions. It is interesting to note that in Article 80 it is provided that monies gained from rights, royalties and taxes shall be repaid to the treasury, and in an account designed to support fishing in terms of regulations (also see article 14 of Arrête No 0731).

Part 5 is entitled policing of fishing and aquaculture. Chapter 1 is entitled monitoring of fisheries and aquaculture, and chapter 2 is entitled research and recording of offences. Section 1 deals with surveillance officers, i.e. monitoring officials. According to Article 85, surveillance officials include the following: officers of the Army (National Development); captains of the autonomous islands; internal security officials in the autonomous islands; sworn in customs officials; and sworn in officers in the “Environmental Administration”. Section 2, sets out the powers of these surveillance officials in Article 88, and these powers are fairly extensive. Article 89 details how foreign vessels engaging in prohibited activities should be handled. Article 90 provides certain measures, which can be taken without a warrant in certain circumstances. Article 91 provides for the methods that should be followed in order to bring a ship to a stop, and the circumstances under which this can be done. Section 3 governs the processes to be followed when an offence has occurred, and section 4 sets out what happens to seized material and gear. Section 5 governs evidence, and provides importantly in Article 98, that any information obtained or transmitted by a device for locating ships or fishing boats is prima facie admissible (or authentic) until proven otherwise, and the article further provides that surveillance officers are competent to read and analyse the information from a tracking device located on ships or fishing boats, and can by way of a certificate, set out certain facts therein, which are set out in Article 98(a)-(d). Chapter 3 provides for compounding in detail. Chapter 4 is entitled offences and penalties, and divides offences into categories. The first category, in Article 112 is entitled very serious contraventions of fishing legislation, and is comprised of 4 contraventions, the first of which is fishing without a licence or authorisation. Each category carries a separate penalty. On a second or subsequent conviction in terms of Article 112, namely very serious offences, the court may forfeit the vessel used in the commission of the offence. Article 115 is a kind of “catch-all” provision, which provides that any violation of this Act not expressly referred to in this Act or regulations is punishable by a fine, however it is not expressly clear that these violations constitute offences.

Part 6 contains final provisions, and covers issues such as repeal provisions.

For additional remarks and more information on these aspects, please refer to the country table in Annex 4.
4.1.2. Evaluation

Legal Framework

While it is clear from the above discussion that the 2007 Act provides a strong framework for effective MCS, the lack of implementing text is a huge concern. This aspect should be addressed as a matter of urgency. It will be expedient to do a more detailed evaluation of the 2007 Act during this process, to ensure that all aspects are fully covered.

Legal Challenges and Barriers to the Adoption or Implementation Regional Agreements and Standards

The fundamental law of the Union of Comoros (Constitution of the Union of the Comoros of 23 December 2001) provides for ratification of treaties in Article 10. Comoros is a member of various regional bodies, as was pointed out above. No additional legal barriers to the adoption and implementation of regional agreements and standards were reported or detected, save for the absence of implementing text. No provisions dealing with this issue were however found in the legislation.

See the general remarks on this issue in Part 5 below.

Legal Challenges and Barriers to Regional Cooperation and Information Sharing

There are no comprehensive provisions on this in the 2007 Act. The establishment of compatible data collection or reporting systems and the sharing of data and information regionally do not necessarily require any legislative prescriptions. In view of the problems experienced in practice, it might however be expedient to incorporate some of the regional obligations in this regard into domestic legislation. This can possibly be further explored in the drafting of implementing text for the 2007 Act, or an amendment of the 2007 Act.

Also see the general remarks on this issue in Part 5 below.

4.1.3. Recommendations

The following recommendations are based on the desktop study, the evaluation of the legislation above, the in-country visits and consultations and the consultations conducted during the workshop, as contained in this text and the country table in Annex 4.

Immediate action:
Though it might be more appropriate marking this as urgent, and not immediate, assistance with the drafting of the implementing text for the 2007 Act should be provided as soon as possible.

Proposed further legal assistance:
• Assistance with the drafting of a NPOA-IUU, and ensuring that the NPOA, the 2007 Act and the implementing text are harmonised;
• Training of fishery inspectors;
• The drafting of a comprehensive set of SOPs and/or a manual for fisheries inspectors;
• Training of legal officers/prosecutors (but excluding the lawyers in private practice who are being appointed to prosecute in certain instances);
• The drafting of a manual on the prosecution of fisheries offences for prosecutors;
• Awareness programs for presiding officers;
• The compilation of a bench book for presiding officers;
• Setting up of a national network for the enforcement of fisheries legislation;
• Joining a regional network of prosecutors;
• Joining a regional network of presiding officers.

Please see Part 5 for more detail on the contents and scope of the above proposals.

4.2. Kenya

4.2.1. Legal Framework and Assessment

The principle fisheries legislation in Kenya is the Fisheries Act, CAP 378, Laws of Kenya of 1989, which regulates marine and inland fisheries, as well as aquaculture. There are various other pieces of subsidiary legislation, including the 2009 Fisheries (Foreign Fishing Craft) Regulations. The Ministry of Fisheries Development was created in April 2008 and comprises of the Department of Fisheries and the Kenya Marine and Fisheries Research Institute, a semi-autonomous government agency. The Ministry of Fisheries Development is charged with the management, development and utilization of fisheries resources. The Department of Fisheries, established under the 1989 Fisheries Act, is mandated to provide for the exploration, exploitation, utilization, management, development and conservation of fisheries resources. The Department has four directorates: Marine and Coastal Fisheries, Inland and Riverine Fisheries, Aquaculture and Fish Quality Assurance and Marketing.

A new draft Fisheries Management and Development Bill 2011 is currently being drafted to replace the 1989 Fisheries Act. It will consolidate elements of the policy and strategy and provide a clear foundation for the powers and responsibilities of the Ministry as well as the underlying institutional arrangements.

Kenya is a member of the Indian Ocean Tuna Commission (IOTC), the Southwest Indian Ocean Fisheries Commission (SWIOFC), the South West Indian Ocean Fisheries Project (SWIOFP) and the Lake Victoria Fisheries Organisation, (LVFO). The objectives of the LVFO are namely to foster cooperation among the contracting parties, harmonize national measures for the sustainable utilization of the living resources of Lake Victoria and to develop and adopt conservation and management measures. Among other things, the LVFO aims to promote the proper management and optimum utilization of the fisheries and other resources of the Lake and enhance capacity building of existing institutions and develop additional institutions dedicated to, or likely to contribute to the purposes of the Convention in cooperation with existing institutions established in or by the Contracting Parties and with such international, regional or non-governmental organizations. Member states of the LVFO are bound by agreements reached by the LVFO Council of Ministers and a series of policy documents have been developed in recent years: Regional Plan of Action on Illegal, Unregulated and Unreported (RPOA-IUU) fishing (2004), the Fisheries Management Plan (2001) and Fisheries Management Plan 2 for Lake Victoria 2009 – 2014 (2008);

14 In the “Legal and Capacity Assessment” referred to in the footnote below, it is wrongly indicated as CAP 250. See paragraph 3.1.3.
15 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CU/P1/IG/10/008
16 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CU/P1/IG/10/008
the Regional Plan of Action on Management of Fishing Capacity (RPOA-Fishing Capacity) covering Lake Victoria and, the Nile Perch Fishery Management Plan for Lake Victoria July 2009 – June 2014 (2009). The Technical Committees of the LVFO have been strengthened in recent years through the participation of representatives of the fishers themselves (through the Regional Beach Management Unit network chair) and industry through the East Africa Industrial Fishing and Fish Processing Association (EAIFFPA)\(^\text{20}\).

Kenya is also a party to the 1982 UN Convention and the 1995 UN Fish Stocks Agreement and has signed the FAO Port State Measures Agreement\(^\text{21}\).

Kenya does not have a National Plan of Action, (NPOA), however a National Oceans and Fisheries Policy and Strategic Plan for the Ministry of Fisheries Development was adopted in 2008. The Policy addresses, inter alia, MCS, regional and international agreements and cooperation, an institutional framework and a legislative framework\(^\text{22}\). One of the aims of this policy is to create a harmonized legal framework to guide management, coordination and regulation of the oceans and fisheries sector. The Strategic Plan complements the Policy and its strategies include institutional, policy and legal reforms.

The principle legislation that governs Kenyan fisheries is the Fisheries Act of 1989, which was revised in 1991. Part I of the Act contains preliminary provisions, whilst part II covers administration, and part III covers registration of fishing vessels. Part IV provides for licensing provisions, which includes provisions for foreign fishing vessels as follows:

- Section 8 covers general licensing provisions;
- Section 9 covers local fishing vessel licenses;
- Section 10 deals with the validity of local fishing vessel licenses;
- Section 11 deals with fishing and entry into Kenyan fishing waters by foreign fishing vessels;
- Section 12 provides for the issuing of foreign fishing licenses;
- Section 13 deals with the validity of foreign fishing licenses;
- Section 14 deals with other licenses.

Part V provides for offences and penalties, which are set out below:

- Section 15 deals with prohibited methods of fishing;
- Section 16 deals with receiving fish in respect of which an offence has been committed;
- Section 17 deals with obstruction of officers;
- Section 18 deals with powers of officers;
- Section 19 deals with forfeiture;
- Section 20 deals with compounding of offences.

Part VI concludes the act with general provisions, which includes a section that deals with the conduct of prosecutions.

Fisheries Management and Development Bill of 2011 is comprised of 9 Parts. Part I deals with preliminary provisions, and Part II deals with Kenya Fisheries Service. Part III covers financial provisions,
and Part II deals with Kenya Fisheries Service. Part III covers financial provisions, and Part IV deals with fisheries development, management and conservation. Part IV contains 13 sections that deal specifically with MCS. The following sections should be noted:

- **Section 34(1)** provides that the Minister may by notice in the Gazette, designate any device or machine, or class of device or machine as an observation device for use in the monitoring and surveillance of fishing vessels. Section 34(2) provides that monitoring and surveillance of vessels shall be carried out in such a manner as the Minister may prescribe in regulations. Note that making regulations relating to VMS is not mandatory, and is left to the discretion of the Minister.

- **Section 35(1)(a)** provides that the operator of each foreign fishing vessel in respect of which a fishing licence is issued under this Act and such other fishing vessels or persons as the Director may require shall comply with monitoring, control and surveillance requirements for the operation of a vessel monitoring system in respect of the vessel and ensure that any information or data which may be required to be transmitted by an automatic location communicator is transmitted continuously, accurately and effectively to the designated receiver.

Part V deals with registration and licensing, in sections 47-63, as set out below:

- **Section 47** deals with registration of vessels. Section 47(1) provides that no fishing vessel shall be operated in Kenya fishery waters, and no local fishing vessel shall be used in or outside the Kenyan fishery waters for fishing or related activity, unless the Board has registered such vessel or ship and issued with the appropriate license.

- **Section 49(1)** provides that no person other than persons fishing for their own consumption shall catch or assist in catching fish in Kenyan fishery waters otherwise than under and according to the terms and conditions of a valid licence issued to him under the act, and section 49(6) provides that non-compliance with subsection 49(1) is an offence, which is punishable with a fine not exceeding two hundred thousand shillings or imprisonment for a terms not exceeding one year.

- **Section 52** allows the Director General to cancel or revoke licenses, and 52(1)(b) lists as one of the reasons for cancellation or revocation, breach of any applicable access agreement or arrangement entered into under section 51.

- **Section 55** provides for licensing of locally based foreign fishing vessels under a separate and distinct license;

- **Section 56, 57 and 58** together regulate foreign fishing in Kenyan waters. Section 56 provides that the Minister may enter into agreements with other states, intergovernmental organisations or associations representing foreign fishing vessel operators allocating fishing rights to vessels of those states, organisations or associations.

- **Section 57(1)** provides that no foreign fishing vessel shall be used for fishing or related activities in Kenyan waters unless a foreign fishing vessel license has been issued to such vessel, and non-compliance with this subsection is an offence in terms of subsection 57(6). Section 57(4) provides that no foreign fishing vessel license shall be issued to any foreign fishing vessel unless there is in force an arrangement the Government of the flag state of the vessel or with an association of which the owner or charterer is a member.

- **Section 59** provides that no license shall be issued under this Act for a foreign fishing vessel to fish within Kenya’s territorial waters.

- **Section 60-63** provides for other licenses for other activities such as sport fishing.

- Although there are numerous provisions dealing with licenses in this part, there is much repetition, and nothing substantive is actually set out in terms of conditions for licenses, apart from some general conditions.
Part VI deals with enforcement in sections 64 – 77, as set out below:

- Section 64 deals with the powers of authorised officials; and provides that for the purpose of enforcing the act, and any regulations made in terms of the act, an authorised officer may without a warrant, perform the actions specified in subsection 64(1)(a)-(j). The powers of these officers are wide and comprehensive.
- Section 65 deals with seizure of vessels by authorised officers;
- Section 66 deals with seizure of vehicles or aircrafts by authorised officers;
- Section 67 deals with immobilizing of seized vessels, vehicles or aircrafts;
- Section 68 deals with the powers of authorised officers to direct persons under their command;
- Section 69 deals with the duty to comply with instructions;
- Section 70(1) deals with the powers of officers beyond the Kenyan fishery waters; and provides that following the commission of an offence, they may be pursued, and authorised officers are empowered to exercise their full range of powers, to the “extent recognised by international law”. This provision is essentially the power of “hot pursuit”, and therefore incorporates the provision contained in article 111 of UNCLOS.
- Section 71 deals with the identification of authorised officers;
- Section 72 deals with the compounding of offences; and provides that the Minister may by notice in the Gazette issue a schedule of offences under this act or regulations made under the act, which may be settled by the Director-General through compounding according to 72(2). Section 72(2) then empowers the Director General to compound offences in the notice by accepting a sum of money not exceeding one hundred thousand shillings.
- Section 73 deals with offences committed against authorised officers, and comprises of a lengthy list of offences;
- Section 74 deals with impersonating authorised officers;
- Section 75 deals with the destruction of evidence and avoidance of seizure;
- Section 76 deals with receiving fish in respect of which an offence has been committed;
- Section 77 deals with the illegal importing of fish.

Part VII covers prosecution, handling of seized goods and evidence. Part VIII covers the fish levy, and Part IX deals with aquaculture development.


In a June 2011 report it was stated that there are no provisions in the existing 1989 Fisheries Act that would allow the implementation of the IOTC Port State Measures Resolution. As recognized in the Policy, the existing Fisheries Act is extremely weak and outdated. MCS arrangements are weak or non-existent. If a vessel on the IOTC IUU Vessel List were in port, there would be nothing that could be done under current laws and procedures. There is no or minimal legal basis for compliance tools that are complementary to port State measures, such as regulation of VMS, the appointment of authorized officers, the appointment of observers and the duties and rights of each as well as the range of requirements for persons to support them, and to assist them to do their job, and to provide information that is true, complete and correct. Requirements relating to information systems and decision-making are also not provided.

23 Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11. June 2011”, Ref: CL/JPE/I/JG/10/008
The report further remarks that “authorized officers” are currently described in the “Interpretation” part of the law rather than the part dealing with enforcement. There is no substantive empowerment in the Act for the Minister or others to appoint personnel, or for the standards of accountability of such personnel. Officers have very limited powers under section 18 of the Fisheries Act, and there are no requirements for the master, etc. of the vessel to obey and assist MCS personnel in carrying out their duties.

The Fisheries (Foreign Fishing Craft) Regulations 2009 provide for observers in section 44, but the report describes this as a very weak provision. It simply empowers the Director to “assign an observer” and does not provide for the appointment in writing or standards for observers. An observer typically has broad “scientific, compliance and monitoring” functions, but the Regulations describe the functions more loosely, as collecting scientific data and carrying out such other management and enforcement activities as the Director may authorize. It does not provide for duties assigned to observers by the operators, masters and crew of a vessel. Observers should be empowered to provide key information to port inspectors, including information that relates to compliance matters, but the Regulations do not permit this.

The report indicated that government demonstrated its political will to move forward at a solid pace by introducing a new Fisheries Bill in a relatively short space of time after the establishment of the Ministry. The draft was reviewed, and it was found that it did not contain provisions to implement the PSMR, either directly or indirectly through providing robust requirements for complementary compliance tools and enforcement powers. In addition, it was found that although the Bill is a positive start, it is still outdated, and updating, coherence, as well as further development and review by an expert in international fisheries law is required. The Bill should ideally be forward looking, robust, and comprehensive, in order to bring positive long-term benefits to the sector and the nation. Initiatives were taken to seek technical assistance in this regard 24.

For additional remarks and more information on these aspects, please refer to the country table in Annex 4.

4.2.2. Evaluation

Legal Framework

While it is clear from the above that the 1989 Act is outdated and lacking in many respects, it is respectfully submitted that in spite of valid criticism as reported above, the 2011 Bill is a huge improvement, but requires strengthening of the MCS provisions and further refinement.

Legal Challenges and Barriers to the Implementation or Adoption of Regional Agreements and Standards

Chapter 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the law of Kenya, and Chapter 2(6) further provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

The 2011 Bill is however silent on the matter of the implementation of regional agreements, and according to the report discussed above, does not contain adequate provisions to implement the PSMR.

24 Also see the general remarks on this issue in Part 5 below. Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011. Ref: CUIPEJUG10008

Also see the general remarks on this issue in Part 5 below.
Legal Challenges and Barriers to Regional Cooperation and Information Sharing

No legal barriers were detected or reported, but it might be helpful to incorporate more extensive obligations in this regard into the 2011 Bill.

Also see the general remarks on this issue in Part 5 below.

4.2.3. Recommendations

The following recommendations are based on the desktop study, the evaluation of the legislation above, the in-country visits and consultations and the consultations conducted during the workshop, as contained in this text and the country table in Annex 4.

Immediate action:
Assistance with the finalisation and strengthening of the 2011 Bill should be provided as soon as possible.

Proposed further legal assistance:
• Assistance with the finalisation of the draft NPOA-IUU and ensuring that the NPOA and the 2011 Bill is harmonised;
• Training of fishery inspectors;
• The drafting of a comprehensive set of SOPs and/or a manual for fisheries inspectors;
• Training of legal officers/prosecutors;
• The drafting of a manual on the prosecution of fisheries offences for prosecutors;
• Awareness programs for presiding officers;
• The compilation of a bench book for presiding officers;
• Setting up of a national network for the enforcement of fisheries legislation;
• Joining a regional network of prosecutors;
• Joining a regional network of presiding officers.

Please see Part 5 for more detail on the contents and scope of the above proposals.

4.3. Madagascar

4.3.1. Legal Framework and Assessment

The principle fisheries legislation in Madagascar is Ordonnance No 93-022, Portantreglementation de la pecheet de l’aquaculture, which regulates marine and inland fisheries, as well as aquaculture. In addition, the Decret No 94-112, Portant organisation generale des activites de peche maritime and the Decret No 2007-957, Portant definition des conditions d’exercice de la peche des crevettescotieres also forms part of the legal framework. There are various decrees (hereafter referred to as “decrees”) and arrête (hereafter referred to as “orders”) that support the implementing text. We were provided with a list of these decrees and orders, which amounts to a total of exactly 100 of these instruments, which have been promulgated between 1921-2011. The 2010 ArrêteMinisteriel No 34.031/2010 creates and regulates the nomination of members of the national fisheries advisory consultative committee (ConseilConsultatif National pour la Gestion des Pecheries). There is however a 2007 Bill which is intended to replace the 1993 framework legislation.

The marine fisheries sector in Madagascar is divided into traditional, artisanal and industrial fishing. MCS is largely focussed on the industrial sector, and minimal enforcement effort is made in the traditional fishing sector.
The Ministry of Agriculture, Livestock and Fisheries manages the fishing sector through the intermediary of the Directorate of Fisheries and Fishery Resources (Direction Generale de la Peche et des Ressources Halieutiques). On a regional level, the Regional Services for Fisheries and Fishery Resources is responsible for the regulation of the fisheries sector. Most importantly, the Centre de Surveillance des Peches (hereafter referred to as the “CSP”) takes primary responsibility for MCS functions, and reports directly to the Minister.

The legislation relies primarily on a criminal enforcement system, but also provides for an administrative penalty scheme to enforce the regulations governing the shrimp industry\textsuperscript{26}. In practice, very few fishery cases are prosecuted, as most transgressions are currently being dealt with through the compounding process. The Malagasy State is an active member of the Indian Ocean Tuna Commission (IOTC), and a member of the Southwest Indian Ocean Fisheries Commission (SWIOFC), the Western Indian Ocean Tuna Organization (WIOTO) and the Indian Ocean Commission (COI)\textsuperscript{27}.

Whilst the legislation is in dire need of an update, a process that has already culminated in a 2007 Bill, the overall impression we received, based on the desktop study, the interviews undertaken during the in-country visit, and the parallel reports on MCS and governance, was that the main barriers to effective MCS can be found in the area of the implementation of MCS or poor governance, and not in the shortcomings in the legal framework. This conclusion must however not be interpreted to mean that the updating of the fisheries legislation should not be a priority, as any increase in the effectiveness of MCS will soon lead to inadequacies in the legislation being used to escape liability. The increase of the maximum penalties in the legislation also requires urgent attention. These issues are dealt with below in the evaluation.

As stated above, Ordinance No 93-022 is the principle piece of fisheries legislation in Madagascar. The Ordinance is divided into 7 titles, or parts. The study of this Ordinance is based on a direct translation from French to English.

Part I envisages the establishment of the general framework and provides definitions. The definitions section appears to be scant, and missing vital definitions such as “fish”, and “vessel”. “Fishing” is defined as all activities designed to capture, by any means and for all purposes whatsoever, biological resources living in water. This definition is problematic, as “biological resources” are not further defined, and “water” is not defined. Article 4 provides that fishing vessels are classified as national fishing vessels, foreign fishing vessels, foreign fishing vessels based in Madagascar and foreign fishing vessels chartered by Malagasy persons or entities. Furthermore, it is provided that the plan of each class of ship is fixed by decree.

Part II deals with the management of fisheries by establishing an “Interministerial Commission” for fisheries and aquaculture at national level whose functions; composition and operating procedures will be set out in regulations.

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\textsuperscript{26} www.stopillegalfishing.com

Part III governs the conditions of fishing. Article 7 provides that other instruments such as fisheries management plans and regulations should set guidelines to determine:

- The areas in which certain types of fishing will be permitted;
- The times of opening and closing of various fisheries,
- Prohibited gear and fishing methods;
- The sizes of capture and protection of spawning;
- Bait;
- Prohibited or limited capture of certain species;
- Special measures for the establishment of aquaculture establishment; and
- Any other provision or measure

Article 8 envisages that on the proposal of the Ministry of Fisheries and Aquaculture, in cooperation with other relevant ministers, parks and nature reserves can be designated, where fishing activities will be banned or severely restricted.

Article 10 provides that without the express permission from the Ministry of Fisheries and Aquaculture, the following methods of fishing are prohibited:

- The use of toxic substances to stun, weaken or kill fish;
- The use of explosives;
- The use of electrical processes in the fish;
- The use of any device “to an immersion longer than that permitted by the single natural breath”. This presumably refers to oxygen tanks used by divers.

Article 10, as discussed below is extremely vague, to the extent that it may even be unenforceable because the terms used in the article, such as “toxic substances”, “explosives”, “electrical processes” and “device” are not defined in the Ordinance. Without a clear definition of these terms the provision cannot be properly enforced and is therefore rendered useless.

Article 11 provides that in the “Intertidal zone” and mangroves, regulations should set out special measures for protection of marine plants and animals.

Part IV directly translated means “the categorizing of the legal status, or the legal regime of the fishing and aquaculture”, which basically sets out the rules governing fishing. This part is comprised of article 12-15.

- Article 12 provides that fishing in the waters referred to in article I of the Ordinance is subject to prior approval of the Minister for Fisheries and Aquaculture according to conditions prescribed by this Ordinance, and the regulations made in terms of this Ordinance.
- Article 13 (1) provides that in waters under national jurisdiction, fishing is primarily limited to ships flying the Malagasy flag. For artisanal and industrial fishing, a licence is required in terms of article 12.
- Article 13(2) provides that artisanal and industrial fishing may be permitted for vessels from other states which have concluded agreements with the Malagasy government or that received a license issued by the Malagasy State.
- Article 13(3) provides that the licensing regime and the conditions of operations of the vessels involved are fixed by “regulatory”, which presumably means regulations.
- Article 14 provides that in private waters, fishing rights belong to the owner. It is unclear what “private waters” refers to. The practice of fishing in public waters can be subject to the rules of the concession according to conditions set by decree.
- Article 15 governs aquaculture.

Part V contains provisions on the safety control and product quality fishing and aquaculture.
Part VI lists the control agents, and defines their powers. Article 18 provides that violations of this Ordinance and regulations made in terms thereof are investigated and recorded by the following “control agents”:

- The staff of the Administration of fishing and aquaculture;
- Authorised police officials;
- The commanding officers of the buildings and boats of the Malagasy government;
- Agents of the merchant navy and customs;
- The agents recognized as a result of agreements between the Malagasy state and third party states. These agents require specific authorisation, and must be sworn in.

Article 19(1) provides that the authorised persons referred to in Article 18 may do the following when non-compliance is detected:

- Order any fishing vessel found in the waters defined in article I to stop and perform all operations “useful to facilitate the visit”;
- Search the vessel and control its nets and other fishing gear and catches that are on board;
- Check and make copies of all the administrative and technical documents of the vessel;
- Enter and search any premises, buildings and places a professional;
- Take samples of the catch on board vessels or vehicles and premises, buildings and places where they conduct a search.

It is submitted that the powers in article 19(1) are somewhat limited because no provision is made for the power to arrest. Furthermore, officials are only empowered to take the action set out in section 19(1) when non-compliance is detected, as opposed to where there is a reasonable suspicion of non-compliance, which is limited.

As provided in 19(2), and as discussed below, officials may detain the crew of a foreign vessel, but note that this is only when they “find an infringement”, meaning that the Ordinance does not provide a power to detain, or arrest when non-compliance is detected, or where there is a reasonable suspicion that an offence was committed.

Article 19(2) provides that in the event of a finding of infringement, enforcement officers may:

- Conduct the vessel on which the offence was committed to a Malagasy port, in order to use it as evidence of the offense. In all cases, however, a foreign fishing vessel found to be fishing in Malagasy waters without proper authorization, under Article 13 of this Ordinance, will be conducted together with the crew, to the nearest Malagasy port to be detained until the end of the procedures provided for in Article 29 below (namely compounding);
- Enter a vehicle, machine or other instruments and fishing equipment, which the officers suspect was used in the commission of the crime as a precaution.

Article 19(3) provides that the Minister for Fisheries and Aquaculture will proceed to do the following with regards to the seized objects; namely

- Destroy the prohibited machines, instruments and substances; or
- Sell the fishery products likely to deteriorate, or donate them to a charity, the product of the sale will be deposited with the Treasury until the finalisation of the proceedings.

Article 20 provides that the report prepared and signed by the “control agents” listed in article 18 is deemed to be authentic until proven otherwise.

Part VII covers offences and penalties in article 21-29. Article 21 provides that any master of a fishing vessel flying a foreign flag that has begun fishing in Malagasy marine waters, without the proper authorization under
article 13 of the present Ordinance is punishable by a fine, to be paid in “convertible currency”, amounting to 80 000 - 400 000. Special Drawing Rights (SDRs). Added to this the following can be done:

- Confiscation of the vessel in accordance with Articles 19(a) and 29 of this Ordinance;
- Confiscation of the catch on board or the proceeds of their sale;
- Confiscation of fishing gear and substances used to commit the offence.

Article 22(a)-(g) provides that a person who:

Violates the general prohibition in Article 10 of this Ordinance,
Uses a prohibited method or fishing gear;

- Fishes in prohibited areas and during prohibited times, and or fishing a prohibited species or fish whose dimensions are less than those authorized (undersize);
- Fishes without prior authorization under Article 12 of this Order;
- Fishes beyond the limited amount of authorized species (bag limits); and
- Violates the provisions relating to the quality and the safety, processing and marketing of fishery products;
- Deliberately prevents enforcement officers to perform their duties,
- Is liable to a fine of up to 150 000 FMga case of recreational or subsistence fishing, up to 250 000 FMg in the case of traditional fishing, up to 5 million FMg in the case of artisanal fishing, up to 1500 000 000 FMg in the case of a scientific or experimental fishing and up to 500 000 000 FMg in the case of industrial fishing.

In addition the court may confiscate the catch, or the proceeds of their sale; and forfeit the fishing gear or instrumentalities used to commit the offence. It is unfortunate that some of the terms used above, such as “toxic substances”, “explosives”, and “electrical processes” and “devices” are not further defined in the Ordinance.

- Article 23(a) and (b) provides that violations of the provisions of this Ordinance and its implementing regulations that are not included under Articles 21 and 22 above are subject to a fine of 10 000 to 100 000 FMg. In addition, the court may impose the following measures:
  - The confiscation of the catch or the proceeds of their sale;
  - The forfeiture of fishing gear or substances used to commit the offense. Once again, provision is not made for forfeiture of vessels.
- Article 24 provides that anyone who creates an unauthorized aquaculture facility is liable to a fine. In addition, the court may order the forfeiture of that establishment, in favour of the Administration or its immediate destruction at the expense of the offender.
- Article 25 provides that anyone who violently assaults or obstructs “control agents” in the performance of their duties as provided for in Article 19, or make any threat of violence to the said agents, shall be punishable under the provisions of the Penal Code.
- Article 26 provides that in case of repeat offenders, the fines provided in the preceding articles are doubled.
- Article 27 provides that the owners of aquaculture establishments will also be held responsible for fines imposed on their employees., and in the case of a captain of a fishing vessel being criminally liable, the owner will be jointly liable for the payment of fines imposed.

28 Seen the context of this provision, “forfeiture” might be a more appropriate term than “confiscation".
• Article 27 provides that the owners of aquaculture establishments will also be held responsible for fines imposed on their employees, and in the case of a captain of a fishing vessel being criminally liable, the owner will be jointly liable for the payment of fines imposed.

• Article 28 provides that the Minister for Fisheries and Aquaculture may follow the compounding process in the case of violations of Articles 21, 22, 23, and 24. The amount of the fine may not exceed the maximum amount of the fine for the offence. The minimum amount may be less than the minimum amount of the fine corresponding to the offence as determined by the Ordinance. The confiscation of catch and gear, and the withdrawal of the fishing license, concession or authorisation may be ordered.

• The payment of the fine levied via the compounding process requires an admission of guilt from the offender and serves as a first conviction for the determination of repeat offenders. In the absence of compounding, or in the event of default, the Minister for Fisheries and Aquaculture shall immediately forward the case to the prosecutor for prosecution.

• Article 29 provides that foreign fishing vessels not authorised to operate in Malagasy waters, together with their crew, kept in accordance with Article 19(a) above, must deposit an appropriate amount as security to the Treasury to guarantee the payment of fines, confiscation and costs.

• The above amount, which is paid as security, will be returned immediately in the event of an acquittal, or dismissal, or on payment of the fine imposed, as well as any costs which the defendant had to cover.

Part VIII covers miscellaneous provisions.

With the exception of article 28, the Ordinance only seems to provide for criminal enforcement of the provisions contained therein. As discussed above, it would seem that there are limited powers of forfeiture in the Ordinance, especially in relation to vessels. There are no provisions in the ordinance relating to VMS systems. The Ordinance is also silent on information sharing and regional co-operation. The Ordinance is also silent on stowage of gear.

Traditional fishing is not subject to licensing and maintains an open access system, though there are a series of decrees and orders regulating the fishery. It is regulated like individual fishing, with, for example, certain fishing methods being prohibited. It is however a management decision whether this system should change or not, and only then can the need for changes in the legal framework be investigated.

There are various inadequate or outdated provisions in the current legislation. Most importantly, the outdated and inadequate penalties, and a revision of the powers of fisheries inspectors, must be addressed urgently.

The 2007 Bill however addresses most of these issues, but it has not yet been finalised, nor is it clear when it will be promulgated. Penalties have lost their deterrent power due to the devaluation of the currency over the past years. Even the IOC/MRAG report on the economic impact of tuna on the Malagasy economy refers to the current levels of fines that need to be reconsidered by the policy makers as one of their recommendations on the management of the fishery. A perusal of the 2007 Bill indicates a substantial increase in the maximum penalties.

30 Draft NPOA for Madagascar (due to the translation used, it is not possible to provide specific page numbers, but see under Part 3: Responsibilities of States).
The compounding of fines is a simpler and quicker process than prosecution, and this system is retained in the new Bill\textsuperscript{33}. The maximum amounts that can be set in the compounding process are limited to the maximum prescribed penalties, and the current low level of fines therefore also limits the fines that may be determined through the compounding process.

The deterrent value of sufficiently high fines, while an important factor, is limited as it is often amounts to little more than a business expense for syndicates and large corporations. Imprisonment of natural persons involved in the commission an offence is usually much more of a deterrent. While short-term imprisonment is a possibility in certain instances, and taking into account the limitations set by Article 73 of UNCLOS, the absence of long-term imprisonment as a sentencing option is a matter of concern\textsuperscript{34}. This position remains the same in the Bill.

The Bill provides for automatic forfeiture of the catch (or the proceeds of the sale of the catch), as well as the gear used in the commission of the offence, in the case of unlicensed fishing by foreign vessels in Malagasy waters. The forfeiture of the vessel is left to the discretion of the court, though in the case of repeat offenders, such forfeiture is automatic\textsuperscript{35}. These provisions add substantially to the deterrent value of the criminal penalty.

Part VII of the Bill also deals extensively with the authority and powers of fisheries inspectors. It is not possible to evaluate the adequacy of these powers within the scope of this report, but a quick perusal indicates that there is a comprehensive set of powers. The provisions on the admissibility of VMS and photographic evidence in Chapter 3 of Part VII is an essential tool to assist with presenting such evidence to a court, and is therefore to be welcomed. Lack of knowledge of fisheries legislation amongst prosecutors, legal practitioners and the judiciary was a factor that was highlighted both in interviews and the draft NPOA\textsuperscript{36}. While the draft NPOA recommends the training of judges and prosecutors in fisheries legislation\textsuperscript{37}, the information received during the in-country visit was that due to the very low amount of cases that are prosecuted, and the fact that there is a high turnover in officials, it may prove to be a waste of resources to invest in such training (see the proposal on regional training in Part 5 of this review).

4.3.2. Evaluation

Legal Framework

The 2007 Bill is clearly a huge improvement of the current legislation, and serves as a good basis for a revised legislative framework. The sentiment often expressed during the interviews however, is that this Bill needs to be revised, updated and strengthened.

Legal Challenges and Barriers to the Implementation or Adoption of Regional Agreements and Standards

Article 82 VIII of the Constitution of the Republic of Madagascar: adopted on 19 August 1992, provides for the process of ratification or approval of treaties (“alliances or commercial treaties, treaties or agreements regarding international organization which commit State finances”).

\textsuperscript{33} See Part VIII: Chapter 3 of the Bill.
\textsuperscript{34} The same sentiment was expressed in the draft NPOA (due to the translation used, it is not possible to provide specific page numbers, but see under Part 3: Responsibilities of States, and the proposal in Measure 3.5).
\textsuperscript{35} See Article 67 of the Bill.
\textsuperscript{36} Also see remarks regarding this issue the draft NPOA (due to the translation used, it is not possible to provide specific page numbers, but see under Part 3: Responsibilities of States.
\textsuperscript{37} Measure 3.6.
It was already reported in 2004 that the Malagasy State has integrated some of the provisions of the regional conventions into its legislation, such as the setting up of a satellite surveillance system for boats in order to deter illegal fishing\textsuperscript{38}. The 2007 Bill makes provision for the establishment of conservation measures applicable to, and the management of shared, straddling or highly migratory stocks, and furthermore places an obligation on the Minister of Fisheries to consult with the other states in the region or sub-region, in order to harmonise and to ensure compatibility of such measures with those adopted by each state and in accordance with the provisions of the international conventions and agreements to which the Malagasy state is a party\textsuperscript{39}. This provision is valuable, but some resolutions or provisions may require a further amendment to domestic legislation in order to be properly implemented. As a general statement, and not specific to Madagascar, the failure to implement regional agreements is however often more a question of poor management, as opposed to an inadequate legal framework.

Measured against the background provided in part 2 on methodology, it is clear that while some legislative amendments may be required, most resolutions and decisions of RFMO can be implemented without such a requirement. Regular legal review to ensure that domestic legislation can accommodate these regional measures will however be beneficial. Rafomanana, Secretary General of the Ministry, also emphasised the need for regular (and therefore ongoing) legal review in light of the fact that, new IOTC resolutions are a regular occurrence. Gerard Domingue, Compliance Coordinator of the IOTC, expressed the same sentiment.

In a 2011 interview\textsuperscript{40} with the Honourable Minister Ratolojanahary, the Minister emphasised the need for harmonisation of the legal frameworks between the countries in the region with specific reference to the levels of fines. He remarked that “fines should be on the same level in different countries” as it is “problematic when one country applies a fine that is less than the others, and which has no effect on offences committed by ship owners.” The draft NPOA highlighted the same issue, and proposes this as a specific measure\textsuperscript{41}.

This issue of regional harmonisation is discussed below under Part 5 of this review.

**Legal Challenges and Barriers to Regional Cooperation and Information Sharing**

In the same 2011 interview\textsuperscript{42} with the Honourable Minister Ratolojanahary referred to above, the Minister also highlighted the need to share information on illegal fishing. No legal barriers were detected or reported in this regard, but as is the case with the other countries in the region, it might be helpful to incorporate more extensive obligations in this regard into the 2007 Bill.

The provisions on the admissibility of VMS and photographic evidence in Chapter 3 of Part VII of the Bill is to be welcomed.


\textsuperscript{39} See article 3-5 of the Bill.

\textsuperscript{40} Interview conducted by Gilles Hosch, Stop Illegal Fishing Programme, www.stopillegalfishing.com

\textsuperscript{41} Measure 3.10 in the draft NPOA.

\textsuperscript{42} Interview conducted by Gilles Hosch, Stop Illegal Fishing Programme, www.stopillegalfishing.com
4.3.3. Recommendations

The following recommendations are based on the desktop study, the evaluation of the legislation above, the in-country visits and consultations and the consultations conducted during the workshop, as contained in this text and the country table in Annex 4.

Immediate action:
Legal assistance is required for the finalisation, strengthening, adoption and implementation of the 2007 Bill. Other interventions that are required include a review of all supporting legislation (decrees and orders) in order to adapt to the Bill and investigation of their possible consolidation (both of these interventions were also recommended in the draft NPOA).

Proposed further legal assistance:
• Assistance with the finalisation of the draft NPOA-IUU and ensuring that the NPOA and the 2007 Bill is harmonised;
• Training of fishery inspectors, including other supporting personnel, being the Gendarmerie, Police and Navy (based on the information, the fisheries inspectors have undergone a fair amount of training, but as soon as the new Bill is finalised, and preferably before it comes into operation, it is of utmost importance that these officials are trained on the contents thereof, as well as further training on investigative skills);
• The drafting of a comprehensive set of SOPs and/or a manual for fisheries inspectors;
• Training of legal officers and possibly prosecutors (the review indicates that the current amount of cases culminating in prosecution is minimal, and the training should therefore rather focus on the legal officers);
• The drafting of a manual on the prosecution of fisheries offences for legal officers and prosecutors;
• Awareness programs for presiding officers and the compilation of a bench book for presiding officers (this should however be re-evaluated against the number of cases landing up in court);
• Setting up of a national network for the enforcement of fisheries legislation;
• Joining a regional network of prosecutors;
• Joining a regional network of presiding officers.

Please see Part 5 for more detail on the contents and scope of the above proposals.

4.4. Mauritius

4.4.1. Legal Framework and Assessment

The principle fisheries legislation is the Fisheries and Marine Resources Act 2007 (No. 20 of 2007); the Merchant Shipping Act 2007 (No. 26 of 2007), the Consumer Protection (Control of Imports) Regulations 1999 (G.N. No. 135 of 1999); and the Fisheries and Marine Resources (Vessel Monitoring System) Regulations 2005 (G.N. No. 87 of 2005). There are also various other relevant regulations such as:

• Prohibition of the Use of Hooks of Small Size Regulations of 2011
• Export of Fish and Fish Products (Amendment) Regulations of 2010
• Extension of Net Fishing Season Regulations of 2010
• Export of Fish and Fish Products Regulations of 2009
• Extension of Net Fishing Season Regulations of 2009
• Fishing of Sea Cucumbers Regulations of 2009

http://www.gov.mu
• Prohibition of Removal of Coral and Sea-shell Regulations of 2006
• The Fishing of Sea Cucumbers Regulations of 2008
• The Toxic Fishes Regulations of 2004
• The Undersized Fish Regulations of 2006
• Vessel Monitoring System Regulations of 2005

The Ministry of Fisheries and Rodrigues includes, inter alia, a Fisheries Planning Division and a Fisheries Management Division, as well as a Fisheries Protection Service. Fisheries Research and Fisheries Training Services have also been established, but their focus is not on the offshore fisheries.

The Fisheries Planning Division is responsible for the analysis and implementation of fisheries policies and legislation, planning, economics and fisheries information management functions. Amongst other things, this division is responsible for following up on matters relating to international and regional organizations, bilateral matters and fishing agreements.

The Fisheries Management Division includes the tuna fishery, monitoring of foreign fishing vessels, licensing of fishing vessels and MCS – these are all highly important aspects of the management of the offshore fishery and they fall specifically within the duties of the Divisional Scientific Officer for Fisheries under this Service. Its goals are to develop and manage fisheries and marine resources, facilitate the import and export of fish and fish products and to provide a rapid and efficient service to fishing vessels docked at Port Louis for various activities, and to monitor fishing vessels operating in the EEZ.

The Licensing Unit of the Ministry is responsible for issuing fishing licences that authorise local and foreign fishing vessels to fish in the Exclusive Economic Zone of Mauritius. Fishing licences are issued under a set of conditions and against payment of the appropriate licence fees. Foreign vessels are provided with licences to practice mainly longline fishing. Mauritius has also concluded Fishing Agreements with the European Union, the Government of Seychelles and the Federation of Japan Tuna Fisheries Co-operative Associations (FJTFC). A number of licences are issued under these agreements.

The priorities of the Fisheries Management Division are to provide a quick service regarding the transhipment by fishing vessels, import and export of seafood through the one-stop shop (Seafood Hub) and ensure a constant monitoring of the activities of both local and foreign licensed fishing vessels in the EEZ through VMS. The Division provides clearance for unloading or transhipment for fishing vessels calling at Port Louis.

The Fisheries Protection Service is responsible for the enforcement of all fisheries law and regulations. The priorities and objectives of the FPS include monitoring fishing activities and combating illegal fishing.

Mauritius is a member of the Indian Ocean Commission, (IOC), the Indian Ocean Tuna Commission (IOTC), the Southwest Indian Ocean Fisheries Commission (SWIOFC), and a party to the Convention on Conservation of Antarctic Marine Living Resources (CCAMLR).

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46 http://www.gov.mu/
47 "Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011", Ref: CU/PE1/JUG/10/008
48 "Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011", Ref: CU/PE1/JUG/10/008
51 Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011", Ref: CU/PE1/JUG/10/008
Mauritius is also a party to the 1982 UN Convention, the 1995 UN Fish Stocks Agreement, the 1993 FAO Compliance Agreement and the SADC Fisheries Protocol\(^{52}\). It has also signed the South Indian Ocean Fishing Agreement (SIOFA) and the FAO Port State Measures Agreement.

In so far as SADC is concerned, the Ministry of Economic Development, Productivity and Regional Development is the National Contact Point for SADC and the sectoral contact points relevant to appropriate Ministries have been officially designated. They are expected to ensure proper follow-up on decisions taken by SADC and to help in the formulation of project proposals. The current project portfolio of the Marine Fisheries Sector Coordinating Unit includes marine fisheries training in the areas of inter alia fisheries law as well as SADC Monitoring, Control and Surveillance and SADC Regional Fisheries Information System\(^{53}\).

Mauritius adopted an NPOA-IUU in 2010. It describes the existing laws and initiatives that combat IUU fishing, and for the most part, undertakes to maintain the existing situation\(^{54}\).

Jehangeer\(^{55}\) also notes the impact of various non-fisheries legislation on fisheries management, including inter alia the National Coast Guard Act (1988). The National Coast Guard which is a specialised agency within the Police Force, provides additional assistance for enforcement of national fisheries laws and regulations, and is responsible for:

- The enforcement of any laws related to security of the state of Mauritius;
- The enforcement of any laws relating to protection of the maritime zones;
- The detection, prevention and suppression of any illegal activity within the maritime zones (including illegal fishing).

The NCG therefore supplements and reinforces the enforcement capacity of the fisheries law and regulations beyond the limits of the territorial sea (in the EEZ) and especially in the distant outer islands.

The EC-Regulations on Illegal, Unreported and Unregulated (IUU) Fishing (the IUU Regulation), are being implemented as of January 2010\(^{56}\). The IUU Regulation seeks to establish a system of conditional access through which access to its markets will be partly conditioned to the extent to which the country, area or region of origin of the exported fish product is free from IUU fishing\(^{57}\).

All local vessels require a fishing licence to fish in Mauritian waters, the continental shelf, and the high seas as well as in the fishing zone of a foreign state. All foreign vessels need to have a licence to fish in Mauritian waters. A VMS is in place on all licensed vessels and in May 2008 it was reported that the Ministry of Agro-Industries and Fisheries has recently negotiated a protocol for the satellite monitoring of EU vessels fishing in the EEZ\(^{58}\).

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\(^{52}\) Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011. Ref: CU/PE1/JUG/10/008

\(^{53}\) http://www.gov.mu

\(^{54}\) See above at page 16.


\(^{56}\) http://fisheries.gov.mu/


\(^{58}\) Stop Illegal Fishing in Southern Africa, publication by Stop Illegal Fishing Programme, Gaborone, Botswana, May 2008:29. Web….
The Fisheries Protection Service, with a staff compliment of approximately 264 officers (in May 2008) is responsible for the enforcement of all fisheries law and regulations. In addition, the National Coast Guard also enforce the provisions of the Fisheries and Marine Resources Act.

The Fisheries and Marine Resources Act, Act 27 of 2007 is the principal legislation in Mauritius.

Part I is entitled “Preliminary”, and the definitions section contained therein are extensive and seems to define all relevant terms in the Act. Part II is entitled management of fisheries and administration, and envisages the designation of Marine Protected Areas. Part III covers fish farming, and Part IV covers control of fishing activities, as discussed further below.

Part IV covers the following issues in the following sections:

- Section 11 deals with registration of fishermen
- Section 12 deals with 12 prohibited fishing methods and gear:
  - Section 12(1)(a) provides that no person shall fish with a gunny bag, canvas or cloth, creeper, leaf or herb. However none of these words are defined in section 1.
  - Section 12(1)(b) provides that fishing with a "poisonous substance" is prohibited. The term “poisonous substance” is defined in the definitions section as “any substance likely to kill, stun or injure any fish or damage or pollute aquatic ecosystems”. The term “likely”, which is used in the section, unfortunately makes this somewhat difficult to enforce, and should rather have read, “has the potential to”.
  - Section 12(1)(c) provides that no person may fish with any explosive, and “explosive” is defined as having the meaning assigned to it by the Explosives Act.
  - Section 12(1)(d) deals with fishing with any drift net; which is defined.
  - Section 12(1)(e) deals with using or keeping on board a boat or vessel or any device that may be used to transform gear;
  - Section 12(1)(h) provides that no person may fish with, or have in his possession, a spear gun, except with the written approval of the Permanent Secretary. “Spear gun” is defined as a device fitted with a trigger and a spear.
- Section 13 deals with the prohibition of underwater fishing;
- Section 14 deals with closed periods;
- Section 15 deals with fish aggregating devices;
- Section 16 deals with protection of fish, which includes the prohibition of fishing of “undersized fish”, which is defined as a fish the size of which is less than the size prescribed for that species of fish.
- Section 17 deals with the landing, possession and sale of fish. According to this section, no person may land or cause another person to land, sell or have in their possession any “toxic fish”;
- Section 18 deals with fishing with the aid of artificial light;
- Section 19 deals with fishing in pass;
- Section 20 deals with fish landing stations, and provides that no fisherman shall land fish at a place other than a fish landing station, which is prescribed by the Minister. Section 20(3)(a) provides that any person who lands fish at a fish landing station shall, where requested by a fishery control officer, cause the fish to be weighed.

and shall keep and store the fish in the manner and place as directed by the fishery control officer, and shall not expose the fish to rain, sun, flies or other unhygienic conditions.

- Section 21 deals with the sale and origin of fish. This section does not apply to fishermen who sell fish at a fish landing station. Section 21(1) provides that no person shall sell or have in his possession for sale any fish unless he holds a fishmonger’s licence, which is issued by the Permanent Secretary.
- Section 21(3) provides that no person shall purchase fish from a fisherman at any place for the purpose of sale other than at a fish landing station, which is another control mechanism;
- Section 21(4) provides that no fishmonger who purchases fish from a fisherman shall refuse to sell fish at a fish landing station; and
- Section 21(5) provides that a person found in possession of fish shall, on being required to do so by a fishery control officer, furnish the fishery control officer with the particulars of the origin or source of the fish, which is another control mechanism.

Part V covers import, export and manufacturing. Part VI consists of sub part A and B. Subpart A covers gear, and provides that no person may use or have in their possession gear, without a gear license. Subpart B covers fishing boats and fishing vessels. Subpart B consists of sections 34 – 38, and provides for foreign fishing boat or foreign fishing vessel licences, and international agreements, as well as licences issued to a Mauritian fishing boat or fishing vessel, and the conditions such licences as follows:

- Section 34 deals with foreign fishing boat or foreign fishing vessel licences, and provides that no person shall use a foreign fishing boat or foreign fishing vessel for fishing or any related activity within the maritime zones, unless he is the holder of a foreign fishing boat or foreign fishing vessel licence. The Minister may, on such terms and conditions as he thinks fit and subject to the approval of the Prime Minister, issue a licence in a prescribed form, for the use of a foreign fishing boat or foreign fishing vessel for the purpose of fishing or any related activity within the maritime zones. Section 34(4) provides, importantly, that the Minister shall refuse to issue a licence under this section where:
  - The foreign fishing boat or foreign fishing vessel in respect of which the licence is sought has a history of non-compliance with international fishery conservation and management measures, except where the ownership of the fishing boat or fishing vessel has subsequently changed and the new owner provides sufficient evidence that the previous owner or master has no legal, beneficial or financial interest in, or control of, the fishing boat or fishing vessel;
  - The foreign fishing boat or the foreign fishing vessel does not comply with the requirements of a regional fisheries management organisation to which Mauritius is a party, or has not complied with the measures adopted by that organisation. This is evidence of incorporation of RFMOs into licensing conditions for foreign vessels, and is a very important control measure.
- Section 35 covers licences and international agreements, and is a further control measure, which provides that a foreign fishing boat licence or foreign fishing vessel licence shall not be issued under section 34, unless there is an agreement –
  - Between the Government of Mauritius and the State in which the fishing boat or fishing vessel is registered;
  - Between the Government of Mauritius and an economic integrated organization to which a member State of the organisation in which the fishing boat or fishing vessel is registered has delegated the power to negotiate fishing agreements; or
  - Between the Government of Mauritius and a fishing association of which the owner or charterer of the fishing boat or fishing vessel is a member. However in the absence of any such agreement, the Minister may also issue a licence under this section if the applicant provides such financial or other guarantees as he may determine.
• Section 36 covers licences issued to Mauritian fishing boats or fishing vessels. Note that section 36(3) provides that the Minister may exempt any fishing boat less than 12 metres in length from the requirements of subsection (1)(a), subject to such terms and conditions as he may determine.
• Section 37 covers conditions of licences, this section provides that the terms and conditions imposed by the Minister for licensing of both foreign and Mauritian vessels may include the listed conditions found in 37(a)-(f), which includes (e) reporting obligations; and (f) the carrying on board of communications, position fixing or other equipment.

Part VII covers obligations relating to fishing boats and fishing vessels. This part consists of 3 subparts, namely subpart A, B and C. Subpart A consists of general provisions, whilst subpart B covers Mauritian fishing boats and Mauritian fishing vessels, and subpart C covers foreign fishing boats or foreign fishing vessels. Subpart C provides in section 52(a) and (b), that the master of a foreign fishing boat or a foreign fishing vessel shall keep the gear stowed:
• While the boat or vessel is within the maritime zones and is not licensed under section 34; and
• While being in a place where the boat or vessel is not authorised to fish.
These are important control measures to prevent illegal fishing.

Part VIII covers enforcement, in sections 55-68. These sections cover the following issues:
• Section 55 covers warrants to enter and search;
• Section 57 covers the implementation of international fishery conservation and management measures;
• Section 58 covers powers of search and seizure, note that fishery control officers cannot search a premises without a warrant as provision is not made for such search in this section;
• Section 59 covers powers to arrest and detain. Section 59(a) and 59(b)(i) and (ii), provide that where a fishery control officer finds a person fishing or conducting any related activity, or in possession of any fish or gear, or selling fish caught in breach of this act, he may without a warrant stop that person; and require that person to give his name and address; and the name and address of the owner of any boat or vessel used in the commission of the suspected breach of the act. It would seem that this provision does not actually empower fishery control officers to arrest and detain, but merely to stop and question.
• Section 60 covers the seizure of fish;
• Section 61 covers the duties of fishery control officers;
• Section 62 covers the pursuit beyond the maritime zones;
• Section 63 covers the custody of seized items;
• Section 64 covers the custody and disposal of found items;
• Section 65 covers security for release of seized items;
• Section 66 covers disposal of fish;
• Section 67 covers application of the Public Officers Protection; and lastly
• Section 68 covers suspension and cancellation.

Part IX covers offences and penalties and only consists of 4 sections as follows
• Section 69 covers protection of the aquatic ecosystem. Section 69(1) provides that no person shall place, throw, discharge any poisonous substance or cause such substance to be placed, thrown or discharged into the maritime zones or into a river, lake, pond, canal, stream, tributary or wetland. “Poisonous substance” is defined in Part I as meaning any substance likely to kill, stun or injure any fish or damage or pollute aquatic ecosystems. Section 69(2) provides that no person shall, except with the written approval of the Permanent Secretary, cut, take; remove; or damage, a mangrove plant.
Section 69(3) provides that no person shall place, construct or cause to be placed or constructed, any structure within the territorial sea or internal waters as defined in the Maritime Zones Act 2005, except with the written authorisation of the Permanent Secretary.

- Section 70 covers offences and penalties. There is no general provision that provides that non-compliance with any provision of the act is an offence, thus non-compliance with provisions that are not specifically mentioned in section 70 will not amount to an offence in terms of this act. It would seem that interfering with fishery control officers in the execution of their duties is not an offence in terms of this section.
- Section 71 covers forfeiture and is a fairly comprehensive provision.
- Section 72 covers giving false information and tampering with evidence. This section is silent on tampering or falsifying documents connected with applications for licences and falsification of fishing licences.

The final Part X contains miscellaneous provisions; the relevant provisions are listed below:

- Section 74 provides that the Minister may make regulations that cover a very broad spectrum of issues and areas. Section 74(1)(d) provides that the Minister may make regulations that prescribe the conditions for licensing of fishing boats and fishing vessels, format and content licences and the procedure for their issuance, cancellation and revocation. Section 74 (1) (e) provides that the Minister may make regulations requiring a fishing boat or a fishing vessel to be equipped with specified communications, position fixing instrument, and other equipment. Section 74 thus provides for a comprehensive list of issues that the Minister is empowered to make regulations concerning, and these areas include administrative enforcement measures, such as revocation of licenses, as well as conditions for licences as well as vessel monitoring devices.
- Section 75 provides for compounding of offences. According to this section, the permanent secretary may compound certain offences. A Compounding Commission, according to section 75(2) shall be set up to assist the permanent secretary in determining the amount to be paid by the offender under subsection (1), having due regard, inter alia, to the circumstances of the case and the past behaviour of the offender.
- Section 77(1) provides that where a photograph is taken of any fishing or related activity and simultaneously the date and time and position from which the photograph is taken are superimposed upon the photograph, it shall be prima facie evidence that the photograph was taken on the date, at the time and in the position so appearing.

A 2011 report remarked that the Fisheries and Marine Resources Act 2007 contains many components that constitute a positive approach to Port State measures, however there remain a number of key areas that still require strengthening, such as an update of definitions, requirements for mandatory denial of use of ports and associated laws, as well as requirements and forms used for prior notice of entry into ports and reporting of the results of inspection. Importantly, power to take Port State measures in respect of related activities must still be included.

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60 "Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011", Ref: CUFPE1/UG/10/008
Other comments from this report includes the following:

- Regarding definitions, those definitions that relate to “fish”, “fishing”, “related activity” and “vessel” require strengthening in order to bring them in line with the IOTC Port State Measures Resolution (PSMR). The definitions are currently much more restrictive than the definitions used in the PSMR, and the definitions of “fishing boat” and “fishing vessel” are highly confusing.

- Some of the more troublesome provisions address enforcement and “related activities”. These provisions set out the legal basis for appointment and powers of fishery control officers.

- The Act does not empower an authority to appoint fishery control officers, nor does it provide them with a clear legal status. They are merely defined in the “use of terms” and there is therefore no transparency.

- The 2007 Act specifically confines port inspection and enforcement powers under section 57, “Implementation of International Fishery Conservation and Management Measures” to “fishing” activities. However, because these international measures are not defined, it would be impossible to technically prove that the IOTC PSMR falls within this term.

- In addition, “related activities” which are not defined as broadly as in the PSMR, are currently not covered under section 57(3), which allows the Permanent Secretary to prohibit landings or transhipments. This would limit enforcement of the PSMR to fishing only, and not related activities. In addition, this section does not authorize denial of the full range of uses of port described in the PSMR such as packaging, processing, refuelling, resupplying, dry-docking, and does not provide for mandatory denial of use of port as required in the PSMR.

- Fishery control officers have basic powers of search and seizure under section 58 of the Fisheries and Marine Resources Act. However, the Act is weak in the sense that it does not cover the range of inspection activities normally found in legislation including entering and searching for general purposes of compliance (not confined to where the officer “suspects an offence” as currently required) or entering and searching of premises.

- Search and seizure involving gear and equipment is included, but the Act provides a restrictive definition of “gear”, and there is no definition of “equipment” (e.g. helicopters on purse seiners). This could hamper inspection and enforcement operations.

- Fisheries control officers are given the power in section 58 to inspect any Mauritian fishing boat or fishing vessel or any such boat or vessel flying the flag of a state party to an international agreement to which Mauritius is also a party. This is however framed in the context of “stop board and search”, and should ideally apply more broadly to port inspections.

- There is furthermore no clear definition of an “international agreement”. Under section 58, vessels and their gear, and other items may be seized where there is reason to believe that a violation of a “fisheries management measure under an international agreement to which Mauritius is party” has occurred, however such a measure is not defined. Added to this confusion is the inconsistent and undefined term “international fishery conservation and management measure” used in section 57. These measures appear to be two different things; neither of which are defined, which would in turn give rise to serious technical difficulties when trying to establish whether any IOTC Resolution had been undermined.
• As was also pointed out above, section 59 is entitled “power to arrest and detain” but no such power is given in the Act. Instead, section 59 only gives the fishery control officer the power to stop a person in violation of the Act and require him to give his name and address as well as the name and address of the owner of any relevant boat or vessel.

• The Fisheries and Marine Resources Act prohibits the use of a “foreign fishing boat or foreign fishing vessel” for “fishing or any related activity within the maritime zones” without a “foreign fishing boat or foreign fishing vessel licence”, however it is understood that the Fisheries Ministry does not licence vessels for related activities. The Shipping Division of the Ministry of Public Infrastructure, Land Transport and Shipping under the Merchant Shipping Act license vessels greater than 24 metres.

• The Act does not require, as a condition of licence, that foreign vessels that undertake fishing must comply with relevant international conservation and management measures. It is presumed that the licences issued for vessels carrying out related activities also have no such requirement.

• In terms of the provisions relating to vessels not licensed by Mauritius that call at port, it would be difficult to take Port State measures against vessels that engage in fishing, and impossible to take measures against those that engage in related activities to support IUU fishing for reasons described above, this includes undermining IOTC conservation and management measures.

The report, which focuses on the incorporation and implementation of port state measures, comes to the conclusion that while the above points out some key shortcomings of the act, the entire act should be reviewed, and a comprehensive approach taken to ensure that the recent international fisheries instruments to which Mauritius is party are fully implemented, including port state measures.

4.4.2. Evaluation

Legal Framework

As remarked and reported above the Fisheries and Marine Resources Act 2007 contains fairly extensive provisions providing a good basic framework, but requires strengthening and refinement. It was reported that Mauritius has already started the process to update the 2007 Act. A revision of the definitions, powers of inspectors and implementation of regional agreements revealed aspects (that were specifically mentioned) that require attention.

Legal Challenges and Barriers to the Implementation or Adoption of Regional Agreements and Standards

The Constitution of 1968 makes no reference to the adoption and incorporation of international and regional agreements, but no barriers or challenges were reported in this regard.

Mauritius has a 5-year Fishery Development Plan that states the following regarding regional co-operation:

“Regional Cooperation in fisheries management and development and marine conservation is of utmost importance to small island states like Mauritius.

61 http://www.gov.mu
In this context, the ministry will actively participate in the activities of the relevant Regional Fisheries Organisations such as the Indian Ocean Tuna Commission (IOTC), the Convention for the Conservation of Antarctic Marine Living Resources, (CCAMLR), the South West Indian Ocean Fisheries Commission (SWIOFC). It will also participate in the regional pilot project for Monitoring Control and Surveillance of large pelagic fishes in the Western Indian Ocean and the regional tuna-tagging project. These measures will result in improved collaboration amongst countries of the region for the control of IUU fishing and improved knowledge of the regional fish stocks, which will ultimately lead to a more sustainable utilisation of resources. Besides cooperation under the SADC, COMESA and Indian Ocean Rim Association for Regional Cooperation (IOR-ARC) will be continued”.

It was however reported that the Fisheries and Marine Resources Act 2007 contains many components that constitute a positive approach to Port State measures specifically, but requires strengthening in some regards. Also see the remarks on the legal framework directly above.

Legal Challenges and Barriers to Regional Cooperation and Information Sharing

As far as the sharing of information is concerned, the legislation contains a provision dealing with this aspect. Due to the existence of a confidentiality clause, and while there seems to be no reluctance or unwillingness to share information; the impression gained from the consultations was that a high degree of caution is exercised before information is shared. It is respectfully submitted that the provision in the legislation is well formulated, but possibly interpreted too narrowly.

4.4.3. Recommendations

The following recommendations are based on the desktop study, the evaluation of the legislation above, the in-country visits and consultations and the consultations conducted during the workshop, as contained in this text and the country table in Annex 4.

Immediate action:
Legal assistance with the review and amendment process of the 2007 Act to refine and strengthen the MCS provisions is required.

Proposed further legal assistance:
• Training of fishery inspectors in various aspects, including investigation and prosecution, are required (the fishery officers conduct the prosecutions of less serious cases).
• The drafting of a comprehensive set of SOPs and/or a manual for fisheries inspectors;
• Training of officials from the State Law Office dealing with fisheries prosecutions and/or the inspectors involved in prosecutions. Most of the more serious cases are settled via the compounding process, but it will be beneficial to prepare at least a few prosecutors from the prosecuting authority to be able to conduct such matters.
• The drafting of a manual on the prosecution of fisheries offences for legal officers, prosecutors and fisheries inspectors involved in prosecutions;
• Awareness programs for presiding officers and the compilation of a bench book for presiding officers;
• Setting up of a national network for the enforcement of fisheries legislation;
• Joining a regional network of prosecutors;
• Joining a regional network of presiding officers.

Please see Part 5 for more detail on the contents and scope of the above proposals.
4.5. Seychelles

4.5.1. Legal Framework and Assessment

The main pieces of fisheries legislation are namely the Fisheries Act of 1987, which was revised in 1991 and has been amended numerous times, namely by Act 8 of 1993, and Act 2 of 2006, the Regulations published under section 4 of that Act, and in addition to that the Maritime Zone Act of 1977, the Seychelles Fishing Authority (Establishment) Act 10 of 1984 and the Licenses (Fisheries) Regulations of 1987. Most importantly, a new Fisheries Bill has been prepared and we have been provided with a 2011 draft of this legislation. The new Fisheries Bill is in final stages of development, and is a fine effort to modernize fisheries management. The new draft Bill is expected to become law before the end of 2011, and has been commented on in a recent report, which has been taken into consideration.

Other pieces of legislation that are of relevance because the Act invokes their application to certain fisheries management activities, are the Seychelles Licensing Authority Act, as licences under the Act are issued by the Seychelles Licensing Authority, the Town and Planning Authority Act, as the Town and Planning Authority gives approval for granting exclusive rights to propagate, raise and take fish and other aquatic organisms and the Public Officers (Protection) Act of 1976, as this Act provides protection for fisheries officers.

Fisheries fall under the mandate of the Seychelles Ministry of Environment, Natural Resources and Transport. The executive body responsible for implementing guidelines set by the Ministry is the Seychelles Fishing Authority (SFA), created in 1984 by the Seychelles Fishing Authority (Establishment) Act. The aim of the SFA is to develop the fishing industry to its fullest potential and to safeguard the resource base for sustainable development, endorsing the long-term policy of the Government.

Seychelles is a party to the 1982 UN Convention, the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement. It is a Member of IOTC, IOC, SWIOFC and cooperates with ICCAT, CCAMLR and SADC. The SFA has is an active participant in the Regional Fishery Surveillance project managed by the Indian Ocean Commission.

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63 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CUIPE/1/JUG/10/008
64 Report of the Workshop on the Harmonization of Marine Fisheries Policy within Coastal Countries of the Southern African Development Community, Zanzibar, United Republic of Tanzania, 24-27 July 2001
65 FAO Fisheries Report No. 662, APPENDIX D - Comparative analysis of the fisheries legal frameworks of SADC coastal countries: status and options, by BlaiseKuemlangan
66 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CUIPE/1/JUG/10/008
69 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CUIPE/1/JUG/10/008
70 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CUIPE/1/JUG/10/008
71 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CUIPE/1/JUG/10/008
Seychelles ratified the 1982 UN Convention on 16 September 1991, and became a party to the Compliance Agreement on 7 April 2000 and the UN Fish Stocks Agreement on 20 March 1998\textsuperscript{72}.

Seychelles has an NPOA for the conservation and management of sharks. It is made up of 11 work programmes and is currently in the fourth year of application with a review to be done at the end of 2011. Seychelles also reported that they have a general NPOA-IUU that has been partly implemented. They are however awaiting the enactment of the Fisheries Amendment Bill to enable the SFA to proceed with certain aspects of the NPOA.

The Fisheries Act, Chapter 32, Law of the Seychelles, is comprised of four Parts. Part I covers preliminary provisions, and Part II deals with Management of Fisheries. Part III is entitled Enforcement, and is comprised of sections 19 – 26.

- Section 19 deals with powers of authorised officers
- Section 20 deals with hot pursuit
- Section 21 deals with public officers
- Section 22 deals with regional arrangements
- Section 23 deals with custody of seized articles
- Section 24 deals with offences
- Section 25 deals with forfeiture
- Section 26 deals with compounding of offences

Part IV concludes the Act by dealing with regulations.

Kuamlangan\textsuperscript{73} makes extensive comments on the current fisheries legislation in his report. This is however not examined any further here, since there is already a new draft Bill that will repeal the old Fisheries Act. This Bill is discussed immediately below.


For these purposes Part III and IV are the most relevant. Part III comprises of sections 21-29, and provides as follows:

- Section 21 deals with the appointment of authorised officers;
- Section 22 deals with areas where an authorised officer may exercise his powers with respect to fishing vessels;
- Section 23 deals with the powers of authorised officers regarding fishing vessels and premises;
- Section 24 deals with procedures for detained vessels and persons;
- Section 25 deals with procedures for detained fish;
- Section 26 deals with Port State measures;
- Section 27 deals with the establishment of observer programmes;
- Section 28 deals with public officers;
- Section 29 deals with regional cooperation in surveillance and enforcement.

\textsuperscript{72} Report of the Workshop on the Harmonization of Marine Fisheries Policy within Coastal Countries of the Southern African Development Community, Zanzibar, United Republic of Tanzania, 24-27 July 2001
\textsuperscript{73} FAO Fisheries Report No. 662, APPENDIX D - Comparative analysis of the fisheries legal frameworks of SADC coastal countries: status and options, by BlaiseKuemlangan
Part IV covers offences and penalties in sections 30-45 as follows:

- Section 30 covers Category 1 offences;
- Section 31 covers Category 2 offences;
- Section 32 covers Category 3 offences;
- Section 33 covers Category 4 offences;
- Section 34 covers Category 5 offences;
- Section 35 covers Category 6 offences;
- Section 36 covers Category 7 offences;
- Section 37 covers Category 8 offences;
- Section 38 covers offences in relation to the length of vessels;
- Section 39 covers second and subsequent offences;
- Section 40 covers the procedure regarding articles in custody of court;
- Section 41 covers presumptions;
- Section 42 covers compounding;
- Section 43 covers the rules of evidence regarding VMS information;
- Section 44 covers the rules of evidence regarding vessel monitoring device information;
- Section 45 covers photographic evidence.

While the impression gained was that the new Fisheries Bill will add substantially to more effective legislation from a compliance and enforcement point of view, the 2011 report views the draft Bill as inadequate to implement the IOTC PSMR and reports that it also has weaknesses and inconsistencies on a more general level. The main areas of concern noted included the following remarks: Section 45 of the 2011 Fisheries Bill deals specifically with port state measures, but it falls short of implementing the IOTC PSMR. It is a seriously weak and restrictive provision, which is based on terms that are not defined in the draft Bill. There are also some fundamental problems with the requirement in section 45 that “SFA” must have “reasonable grounds to believe that a foreign fishing vessel has engaged in, or supported, IUU fishing...” before it could deny the use of a port. Firstly, it is not “SFA” that should be required to have reasonable grounds for a range of reasons. This precludes any other authorized officer – e.g. the police – from taking action as necessary. Secondly, an institution cannot have “reasonable grounds to believe”, as only a person can. It is standard drafting to simply use a broad reference and provide “where there are reasonable grounds...” Thirdly, the standard of proof is not the same as required in the PSMR (“reasonable grounds” rather than “sufficient proof” and “clear grounds”).

In addition, the provision does not expressly cover fishing related activities. Although reference is made to “supporting” IUU fishing, the draft Bill does not define “supporting”. It is best to incorporate the definitions of “fishing related activities” from the PSMR and track the language of the PSMR, which refers to the vessel “being engaged in fishing related activities in support of (IUU) fishing”.

Finally, there is no definition of IUU fishing. This omission means there is no clear basis for the authority to deny use of port and, compounded with all the other inconsistent and confusing provisions, would destroy any chance of a successful case and possibly invite some form of retribution from the ship-owner.

74 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CU/PE1/JUG/10/008
75 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CU/PE1/JUG/10/008
There needs to be clarity in several respects, for example:

- Fishing and fishing related activities need to be clearly and separately defined, and consistent with the PSMR;
- Port State measures should clearly be applicable to both fishing and fishing related activities;
- Port State measures should be applicable for IUU fishing, but this needs to be defined consistently with international instruments and the area of application should be clear (i.e. areas beyond national jurisdiction);
- There must be a clear description of the uses of port that may be denied, which should be consistent with the PSMR (PSMR requires all uses to be denied: "landing, transshipping, packaging and processing of fish..." The draft Bill is far more restrictive and refers to denial of "landing, transshipping, packaging or processing of fish..."), otherwise the port State measures will not be harmonized or effective;
- Denial of the use of port should be based on the same standard of proof as required in the IOTC PSMR (this varies from “sufficient proof” to “clear grounds”, depending on whether there has been an inspection);
- The draft Bill must require denial of entry and use of port without an inspection under certain circumstances, consistent with paragraphs 7 and 9 of the IOTC PSMR;
- The draft Bill must require denial of use of port in the circumstances stated in the PSMR, it is not discretionary in some specified circumstances;
- The draft Bill should enable Seychelles to take action or measures under certain circumstances consistent with its national laws, IOTC measures and international law, rather than simply empower SFA to request the flag State to investigate the matter.

It however seems that the above assessment was based on an earlier draft of the Bill76, and that some of these issues have in the mean time been addressed. In addition, this review does not allow for such a detailed analysis on specific aspects. Should further assistance to finalise the Bill be given to the Seychelles, the above very valuable comments should therefore be taken into account.

4.5.2. Evaluation

Also see the country specific table for the Seychelles in Annex 4.

Legal framework

The Fisheries Act of 1987 does not provide an adequate legal framework for MCS, but the 2011 Bill is a huge improvement in this regard. In certain places the Fisheries Bill however falls short of ensuring that all MCS aspects are addressed and that sufficient powers are granted to inspectors to enable them to detect non-compliance and take appropriate enforcement action,

The maximum penalties provided for in the 1987 Fisheries Act are between SR 5000 up to an amount of SR 50 000, depending on the offence (see section 24). These fines are clearly inadequate to serve as a deterrent. There is also no provision for imprisonment as a penalty option, bearing in mind that UNCLOS places certain limitations on such a possibility. The new set of offences and penalties in section Part XII of the 2011 Fisheries Bill are quite extensive and provide for penalties of up to USD 2 500 000, and a further provision for the increase of fines in certain circumstances in terms of section 57 and 58, which seems to rectify the situation.

76 E.g. looking at comments on the definition of fishing and related activities, and that the report refers to section 27, which is now section 45.
Legal framework

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Legal Challenges and Barriers to the Implementation or Adoption of Regional Agreements and Standards

The Constitution of the Republic of Seychelles of 1993 provides in section 64 for the authorization and ratification of treaties, agreements or conventions by the President and that these instruments shall bind the Republic if ratified in the manner stipulated in the section.

As a general remark, and not specific to the Seychelles, the failure to adopt and implement regional agreements and standards, and the incorporation of relevant provisions into domestic legislation, where necessary, is governed by the legal process. The failure to do so is often rather a question of poor management, rather than an inadequate legal framework.

Section 48 and 67(1) of the Bill deals specifically with this issue, but the above discussion also shows that the Bill falls short of ensuring the implementation of regional agreements and standards in certain respects, and this should also be addressed during a review.

Legal Challenges and Barriers to Regional Cooperation and Information Sharing

As a general remark, and not specific to the Seychelles, the lack of provisions on the sharing of information in legislation was highlighted as a problem area by the IOTC. Section 6 of the 2011 Fisheries Bill deals with the duty of the SFA regarding the collection of information, and section 6(5) provides for the Minister to enter into agreements on the exchange and format of information, including evidentiary information relating to breach of national fisheries legislation and international fisheries conservation and management measures. In practice some countries are reluctant to share information, and while the sharing of data and information does not necessarily require any legislative prescriptions, it might be expedient to incorporate obligations on this into domestic legislation in view of this situation. No intervention in terms of legal provisions is required in this case, and this provision can serve as a good example for other countries in the region.

The 2011 Fisheries Bill contains fairly detailed provisions on the admissibility of VMS and vessel monitoring device evidence, as well as photographic evidence (see sections 64-66 of the Bill).
4.5.3. Recommendations

The following recommendations are based on the desktop study, the evaluation of the legislation above, the in-country visits and consultations and the consultations conducted during the workshop, as contained in this text and the country table in Annex 4.

Immediate action:

Legal assistance with the review and refinement of the 2011 Bill is required in order to ensure that all problematic aspects mentioned above are addressed. As the Bill is still pending finalisation, it might be useful to ensure that all regulations published under the Act are compatible with the Bill (see section 67 of the Bill). Section 69(2) of the Bill contains a transitional provision providing that subsidiary legislation made under the Fisheries Act will stay in force.

Proposed further legal assistance:

- Training of fishery inspectors in various aspects, including the subject of investigations was highlighted as the most important issue to be addressed;
- The drafting of a comprehensive set of SOPs and/or a manual for fisheries inspectors;
- Training of the SFA legal advisors and prosecutors from the office of the Attorney general is required;
- The drafting of a manual on the prosecution of fisheries offences for legal advisors and prosecutors;
- Awareness programs for presiding officers and the compilation of a bench book for presiding officers;
- Setting up of a national network for the enforcement of fisheries legislation;
- Joining a regional network of prosecutors;
- Joining a regional network of presiding officers;
- Though not strictly speaking a legal issue, assistance with the full implementation of the general NPOA IUU is a possible intervention.

Please see Part 5 for more detail on the contents and scope of the above proposals.

4.6. Somalia

4.6.1. Legal Framework and Assessment

Fisheries legislation in Somalia is outdated and is no longer an effective tool for fisheries management. The ability to implement and enforce any fisheries legislation is another serious concern at present. The current Somali fisheries law dates from 1985 (Somali Fishery Law No. 23 of 30 November 1985). A Maritime Security Bill, which was intended to establish an EEZ, and which incorporates some IUU aspects, is currently being drafted. There is no national fisheries policy in Somalia, but the Government of Puntland, through the Ministry of Fisheries, Ports, Marine Transport and Marine Resources, in 2006 prepared a Marine Fisheries Policy and Strategy for their own coastline. Somalia is part of the ESA negotiating group for the Economic Partnership Agreements (EPA) with the European Union.

In Somalia, fisheries is the responsibility of the Ministry of Fisheries and Marine Resources (MoFMR) of the Transitional Federal Government (TFG). The semi-autonomous region of Puntland to the north has its own Ministry of Fisheries which co-ordinates fisheries management with the MoF of the Transitional Federal Government (TFG)77.

77 http://acpfish2-eu.org/index.php?page=somalia&hl=en
In another source this is indicated as the Ministry of Fisheries, Ports and Sea Transport of Puntland, inter alia responsible for the control, conservation and protection of marine resources\(^78\).

Somalia is a member of the Southwest Indian Ocean Fisheries Commission, (SWIOFC)\(^79\). It was reported as not being a member of the IOTC, but this position has changed as they have joined the IOTC in 2011\(^80\).

The waters around Somalia are reported to be rife with illegal fishing due to the absence of a functioning government and lack of any coastal protection or enforcement on the part of the state. Due to the absence of a functioning government with maritime surveillance and enforcement agencies and capabilities, the country’s waters are essentially not policed. The Food and Agriculture Organisation of the United Nations (FAO) estimates that around 700 foreign fishing vessels are engaged in unlicensed fishing in Somali waters. IUU fishing vessels come from both within the region and outside it\(^81\). Some European vessels captured by Somali pirates, such as the Alakrana in October 2009, were reportedly involved in illegal fishing. Watchdog groups such as fishsubsidy.org confirmed this allegation. In *Violence at Sea: Piracy in the Age of Global Terrorism*, Peter Lehr of St Andrews University describes the situation as a “resources swap”, with Europeans and Asians poaching US$300 million in fish annually and Somalis, in return, taking US$100 million in ransoms\(^82\).

There is very little current information available on Somalia. Some of the principles and objectives of the Somalia Ministry Of Fisheries, Ports, and Marine Transport’s Fisheries/Marine Policy and Strategy of 2004 are as follows\(^83\):

- To develop a proper legislative system that regulates the use of the marine and coastal resources of Puntland, to promulgate such laws and regulations and to ensure enforcement of such laws and regulations at local, national and regional levels, and to specify fines and penalties;
- To promote the ratification and adoption of relevant and appropriate international conventions by the president of Puntland State via parliament;
- To foster co-operation with neighbouring countries concerning straddling and migratory stocks;
- To implement a programme of surveillance compliance, to apprehend transgressors, and to lay charges and submit these to the court.

The information immediately below was taken from a January 2005 FAO report:

The Ministry of Fisheries and Marine Resources (“MoFMR”) issues fishing licences for foreign fishing vessels, and established management measures as a condition for granting fishing licences. Conditions include reporting requirements, namely:

- On or prior to departure from the zone;
- On commencement or cessation of fishing operations;
- On or prior to entry into national ports;
- Timely position reporting;
- Regular catch and effort reporting; and
- Submission of logbooks and catch reports at the end of each voyage and upon permit expiry.

\(^78\) http://www.puntlandchamber.com/view.php?id=87
\(^79\) http://www.fao.org/fishery/rfb/swiofc/en
\(^84\) http://www.fao.org/oldsite/FCP/en/SOM/body.htm
The information immediately below was taken from a January 2005 FAO report:

The Ministry of Fisheries and Marine Resources (“MoFMR”) issues fishing licences for foreign fishing vessels, and established management measures as a condition for granting fishing licences. Conditions include reporting requirements, namely:

- On or prior to departure from the zone;
- On commencement or cessation of fishing operations;
- On or prior to entry into national ports;
- Timely position reporting;
- Regular catch and effort reporting; and
- Submission of logbooks and catch reports at the end of each voyage and upon permit expiry.

Enforcement procedures for fishery laws and regulations and MCS requirements and procedures reflect the provisions of LOSC and the International Flag States Convention.

Furthermore, arrested vessels and their crews are to be released promptly on posting of reasonable bond or other security. Penalties include possible imprisonment for second offences (captains face a possible sentence of 3 to 10 years imprisonment). When foreign vessels are arrested or detained, the MoFMR promptly notifies the relevant Flag State. Fines imposed for illegal fishing by foreign vessels range from about US$ 100 to more than US$ 2 million. In addition to fines, the Somali courts are empowered to order forfeiture of the catch and fishing gear, and the vessel itself in the case of a second offence.

Somali MCS measures have however not recovered since the civil war of 1991, and regionally the mechanisms have not materialized due to lack of interest and disagreements among the Indian Ocean coastal states, distant-water fishing nations, and others with an interest in the matter.

As far as the rather basic provisions, consisting of 17 articles on 3 pages, the Somali Fishery Law of 30 November 1985 is the principle legislation. It covers both marine and inland waters. The following references are of particular reference to MCS:

- Article 1 contains only 9 definitions, with many terms such as “fish”, used in article 5(3)), as well as “ship”, and “marine transport” not being defined. “[A]quatic animals are defined as all animals in sea and inland water, and include oysters, crustaceans, plankton and algae.
- Article 5 contains three basic prohibitions:
  - No activities may be undertaken, or equipment used, which may cause damage to aquatic animals;
  - No person may possess equipment which can cause damage to aquatic animals;
  - No person may sell or exchange fish or other aquatic animals.
- Article 6 provides that the Minister may declare closed seasons. The granting of licenses is regulated by article 7, but these provisions are not applicable to persons “not using marine transport”, a sector apparently unregulated. A register of such licenses must be maintained, containing certain details, including that of the “ship”, the number of the licence, the name of the ship and that the registered port must be “clearly written and shown on the ship”.
- Article 8 obliges persons who have a fishing licence to obey the legislation and submit catch reports. The provisions on “Control and Inspection” are very basic and contain only 3 subsections. These determine that “specialised agencies, the regional and district authorities or any other “authorised person may, with the prior approval of the Minister inspect or search any person conducting fishing activities”.

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85 The information up to this paragraph from the FAO report.
Article 13 determines that the Somali Navy Force have the powers and responsibility to enforce of this law. A person, who violates the legislation, can be taken to the nearest port. As far as a ship crossing into the waters of another country is concerned, the article simply states that such a matter must then be discussed with the concerned authority “according to International Law”. It does not refer to the position with regard to “hot pursuit”. While not dealing with MCS per se, article 11, read with the definitions in article 1, provides that the Ministry must promote the development of traditional and “modern” fishing. Traditional fishing is defined as fishing with small boats in the coastal areas, whilst modern fishing means “fishing in the high seas using ships and modern technology such as trawlers”. The term “high seas” is not defined, and raises the question of how fishing in the EEZ is controlled.

- Article 12(1) provides for fines for the contravention of articles 8 and 10. These range between 1000 So.Sh. to 50 000 So.Sh. depending on the size of the boat and engine. For ships of more than 101 HP, the fine is between 1 700 000 – 4 000 000 So.Sh. In the case of repeat offenders, the Criminal Procedure Act apparently makes provision for an increased fine. What is of serious concern is that article 8 only applies to persons who have been granted licences, and article 10 describes the powers of inspection and search, but does not contain any prohibitions. No imprisonment is provided for as an alternative to the fine.

- Article 12(2) provides for imprisonment of between 3-10 years or a fine of So.Sh. 5 000 000 – 50 000 000 (or both) for the following offences:
  - Use of explosives;
  - Fishing or possessing materials or equipment in prohibited areas (although it is not clear what materials or equipment and prohibited areas are referred to (possibly these may be contained in separate notices or regulations) – apparently the materials and equipment are those referred to in article 5)
  - Fishing during closed periods;
  - Fishing “prohibited types of fish or other aquatic animals”;  
  - Fishing with prohibited materials or equipment.

- A person who fails to submit the required reports can be punished with a fine of between So.Sh. 20 000 and 50 000 So.Sh. Article 12(3), also seems to provide for a “catch all” penalty, making it applicable to any person “who fails… to fulfil the provisions of this law”.

- Article 12(4) stipulates that any person who fails to perform their duties and to fulfil the terms and conditions of a contract with the Ministry shall lose their license. One can assume that this will be done via an administrative process, but the Act does not specify this. If a person commits an offence under this law, the equipment, engine and other materials used in the offence may be forfeited in terms of article 14(1). Strangely this article only refers to forfeiture and not to seizure, whereas article 14(2), with relation to fish and other aquatic animals, only provides that these may “also” be seized, but is silent about forfeiture. Neither of these two provisions makes any reference to the seizure or forfeiture of a boat, ship or vessel.

- Whilst article 14(3) provides that offences under this law shall come under the competence of the National Security Court, article 15 seems to create an administrative penalty as an alternative measure, but is extremely vague. It only stipulates that unless “the offence constitutes a crime punishable with a more serious penalty, the Ministry shall discuss the matter with the authorities concerned”.


Article 16 provides for the making of regulations, but it is unclear whether this is the set of regulations attached to the Goboleedka report as Annex 8 and dated April 2004, is proposed regulations, or regulations already promulgated. In contrast to the Act itself, the regulations made under the Fisheries Law No. 23, which are sited as the “Fisheries Regulations of Puntland State of Somalia” are much more detailed and extensive than the Act. Provisions of particular relevance to MCS activities are the following:

- **It contains fairly extensive definitions**;
- **Regulation 8 provides for fisheries data and information dissemination, and even provides for harmonisation and exchange of information with other states**;
- **Regulation 11 provides for the registration of fishing vessels and article 13 provides that all persons, except those fishing for their own consumption, may only fish in “Puntland fishery waters” (a term unfortunately not clearly defined – see regulation 1) in terms of a license, and in accordance with terms and conditions of such a license**;
- **Regulation 14 prohibits foreign fishing vessels to fish without a license, and prescribes that the stowage of gear by non-licensed vessels and that fishing without a license is an offence for both the master and the owner of the vessel**;
- **Regulation 15(2) deals with national fishing which, except for certain exemptions, is also prohibited without a license, thereby rectifying the possible gap in Act 23**;
- **Regulation 18 provides that Licenses must be kept on board and made available to an authorised officer on request**;
- **Regulation 26 on the obligations of licensed fishermen is almost identical to Article 8 of Act 23**;
- **Regulation 27 makes provision for the Minister to appoint an authorised officer “for the purpose of this Regulation” (note the difference in the provisions in Act 23 on this, and the note below on Article 30)**;
- **Regulation 28 establishes a Fisheries Advisory Council and prescribes its composition, but the regulations are silent on the purpose and powers of the Council**;
- **Regulation 29(1) prohibits the fishing of “endangered species” (a term not defined – the term that is defined in Article/ Regulation 1 is “protected marine species”, which is the title of Article/ Regulation 29)**;
- **Regulation 29(2) provides that accidentally caught endangered species must be released**;
- **Regulation 29(3) prohibits the taking and destruction of coral reefs, mangrove trees and shells**;
- **Regulation 30 on “Control and Inspection” is almost identical to Article 10 in the Act, but refers to “authorised persons” whereas Article 27 refers to “authorised officers”**;
- **Regulation 31 rectifies, the lack of sufficient powers for inspectors in Act 23 to a certain degree, but refers to “authorised inspectors”. From the context it would seem that “authorised officers”, “authorised persons” and “authorised inspectors” are used as synonyms. Article 31 does however contain wider powers of inspection, search and seizure, which are absent in the Act**;
- **Regulation 32 creates various offences (some of which overlap with offences in the Act) and Regulation 33 prescribes penalties. Imprisonment is not a sentencing option, but the penalties are defined in USD, and range between USD 200-5000 (penalties for small boats and dhows) to fines up to USD 100 000 for a contravention of Article 31(1)(a)(i) and USD 50 000 for some other offences in Article 31. These are clearly incorrect references, as Article 31 does not prescribe any prohibitions and does not create any offences (it deals with the powers of authorised inspectors).**
- **Regulation 34 on the “Confiscation of Property” is almost identical to Article 14 of Act 23, except that it now includes a vessel as one of the objects that may be forfeited**;
- **It is not clear to what extent Article 33(4)(f) and 35 allow for compounding, payment of admission of guilt fine or an administrative penalty process.**

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86 See fn 99.
87 Even after consultations, this position has not been clarified.
4.6.2. Evaluation

The following recommendations are based on the desktop study, the evaluation of the legislation above, the in-country visits and consultations and the consultations conducted during the workshop, as contained in this text and the country table in Annex 4.

Legal Framework

It is clear from the above that the provisions in Act 23 of 1985 are insufficient with regard to the creation of offences and the powers of inspectors. This results in an inadequate legal framework for effective MCS, both for the enforcement of domestic legislation as well as the enforcement of regional requirements. Two aspects from the Act that are to be welcomed, are namely that imprisonment is a penalty option in certain cases and that article 12 of the Act creates a type of catch-all offence. Both these provisions are very valuable. Forfeiture of catch and gear, and in the case of a subsequent conviction, the vessel, was reported to be a possibility in terms of the legislation, but article 12 is silent on this.

It is not clear whether the Regulations are in force, but judging from the large number of mistakes found therein, it would seem that it is probably a proposed draft. The Regulations create more offences and provide for wider powers of inspectors, however due to the poor drafting, it will currently not contribute to a more effective legal framework. It might however serve as a good basis for a revision.

Another matter of concern is whether the vague and broadly worded article 16 in Act 23 of 1985 is sufficient to authorise the extent of the Regulations, as the Regulations often deal with similar subject matter, but contain much wider and more extensive provisions. Examples of this are the powers of inspection, search and seizure.

Legal Challenges and Barriers to the Implementation or Adoption of Regional Agreements and Standards

As far as the adoption of international and regional agreements are concerned, the following came to light on perusal of the relevant legislation:

• Article 10 of the Somaliland Constitution of 1960 entitled “Foreign Relations”, provides that the Republic of Somaliland shall observe all treaties and agreements entered into by the former state of Somalia with foreign countries or corporations, provided that these do not conflict with the interests and concerns of the Republic of Somaliland (it is not clear whether this is still in place).

• Article 69 of the Transitional Federal Charter of the Somali Republic provides that international laws shall be accepted and adopted subject to the legislative acts of Parliament.

• Article 11(1) of the transitional Constitution of Puntland Regional Government of 2001 provides for the maintenance of the international conventions that the Somali Republic convened with foreign governments, if such conventions are not contradictory to the interests of Puntland. The Constitution does not specify anything further on the adoption or ratification of the agreements.

It is unclear what the current status is regarding the above, but all of these constitutions do make some form of provision for the adoption of international and regional agreements. There is currently however no reference to the implementation of regional agreements neither in the Act, nor in the Regulations. It has however been mentioned as a priority in terms of Somalia Ministry Of Fisheries, Ports, and Marine Transport’s Fisheries/Marine Policy and Strategy of 2004.
Legal Challenges and Barriers to Regional Cooperation and Information Sharing

Act 23 of 1985 is silent on regional cooperation and information sharing. The same applies to the Regulations, with the exception of Article 8, which provides for fisheries data and information dissemination, and explicitly provides for harmonisation and exchange of information with other states. Article 10(3) in Act 23 and the parallel regulation 30(3) in the Regulations both refer to the application of international law where an offence is committed in Somali waters and the vessel then crosses the border into another state, however they are silent on other issues, such as article 111 of UNCLOS on hot pursuit which is not referred to.

4.6.3. Recommendations

The following recommendations are based on the desktop study, the evaluation of the legislation above, the in-country visits and consultations and the consultations conducted during the workshop, as contained in this text and the country table in Annex 4.

Immediate action:

There is unfortunately insufficient information available to draw clear conclusions on detailed issues, and the state of the legislation is also unclear. The one general conclusion that can be drawn with confidence is that the legislative framework requires urgent attention if effective MCS on local and regional level is to be achieved.

Proposed further legal assistance:

- Training of fishery inspectors in various aspects, including the subject of investigations was requested during consultations.
- The drafting of a comprehensive set of SOPs and/or a manual for fisheries inspectors;
- Due to a lack of information it is difficult to evaluate the need for training and other assistance such as a prosecution manual for legal advisors and prosecutors, or awareness programmes and a bench book for presiding officers.
- Setting up of a national network for the enforcement of fisheries legislation (it is however not clear if the political situation currently allows for this);
- Joining a regional network of prosecutors;
- Joining a regional network of presiding officers.
- Though not strictly speaking a legal issue, assistance with the drafting of a NPOA IUU is a possible intervention.
- In addition, as Somalia only became a member of the IOTC this year, they will require assistance with the incorporation and implementation of the resolutions.

Please see Part 5 for more detail on the contents and scope of the above proposals.
4.7. The United Republic of Tanzania

4.7.1. Legal Framework and Assessment

There are five main pieces of Fisheries’ legislation in Tanzania. The reason for this is that the fishery sector is not a union matter and as a result, Mainland Tanzania and Tanzania Zanzibar each have their own specific pieces of legislation that regulate this sector. The Fisheries Act of 2003, which came into operation in 1st August 2005 is the main piece of fisheries legislation in Mainland Tanzania, and the Fisheries Act of 2010 is the main piece of legislation that governs fisheries in Zanzibar. There are two pieces of legislation that cover the entire United Republic of Tanzania and are therefore applicable in both sides of the union, these are namely the Territorial Sea and Exclusive Economic Zone Act of 1989 and the Deep Sea Fishing Authority Act of 1998 (note that this Act has undergone amendments by the Deep Sea Fishing Authority (Amendment) Act of 2007). The former Act declares the EEZ of the United Republic of Tanzania while the later establishes the Deep Sea Fishing Authority. These Acts are intended to assist Tanzania in regulating fishing activities in the territorial sea and the EEZ.

The Deep Sea Fishing Authority Act (CAP No. 388) Regulations of 2009 are the most relevant for port inspections and licensing of foreign fishing vessels. They were reported to be not yet in force in Zanzibar, but during consultations it was confirmed that that are in force. Fisheries matters were moved to the Ministry of Livestock and Fisheries Development in 2008. The Ministry’s work is concerned with fisheries within inland waters and the territorial sea, and the newly established Deep Sea Fishing Authority (DSFA) addresses foreign fishing in the EEZ. The DSFA brings together both the mainland Tanzanian and the Zanzibar fisheries authorities, which both provide personnel, and also get assistance from other enforcement entities.

Tanzania is party to the 1982 UN Convention and the 1995 UN Fish Stocks Agreement. A task force has been established to develop a Cabinet paper for accession to the FAO Port State Measures Agreement. Tanzania participates in several regional programmes and organizations including IOTC, SWIOFC, SWIOFP, SADC, IWC, ASCLME and the LVFO. Tanzania has a draft NPOA, which applies within the Exclusive Economic Zone (EEZ) of the United Republic of Tanzania and to fishers of all

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88 Some of this information are from the “Enforcement Procedures Offences and Sanctions in Tanzania, Legal Assessment and Review” Working Paper No 42, February 2006 and additional information were sourced during the in country visits. Some information is from the “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CU/PE1/UG/10/008, but that report refers to the Fisheries Act of 1970 and the Fisheries Act of 1988 (Zanzibar). This is apparently incorrect as the Fisheries Act of 2003 is in force in Mainland Tanzania, and the Fisheries Act of 2010 in Zanzibar.
89 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CU/PE1/UG/10/008
92 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CU/PE1/UG/10/008
93 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CU/PE1/UG/10/008
94 “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11, June 2011”, Ref: CU/PE1/UG/10/008
types and nationalities within the EEZ. The draft NPOA-IUU contains a focused framework for the prevention and elimination of IUU fishing activity in the EEZ and details the range of measures and responsibilities necessary to facilitate this.\(^{97}\)

In 2006 it was reported that given the myriad of fisheries legislation in Tanzania and the fact that fisheries management falls under two distinct and independent departments, the Tanzanian fisheries legal regime is fragmented and provides contradictory sanctions especially with regard to the management of the EEZ. This will be corrected under the Deep Sea Fishing Authority, which will have jurisdiction and mandate over the EEZ and not the fisheries department on the two sides of the Union.\(^{98}\) This situation has however changed and the DSFA is now functional.

The following conclusions were reached in a recent academic study:\(^{99}\)

The main gaps in the fisheries legislation are as follows, in the Fisheries Act of 2003, the wide range of regulations, such as the Minister’s power to make exemptions and reservations can be abused and consequently undermine the proper management of fisheries. Added to this, the jurisdiction scope of the fishery activities, resources conservation and management purposes of the Act are not well explained. The Zanzibar Fisheries Act provides weak penalties for the offence of using explosives in URT EEZ, which may result in many people using explosives because a fine is not a deterrent. The DSFA (2007) lacks a strong and explicit provision on the need to initiate plans for implementing international agreements on sustainable fishing. The Act does not include a collaborative system on how the authority collaborates with other institutions to implement the MCS, and furthermore, the officers of the institutions mentioned under the Act are not recognized under the Act as “Authorized Officers”. This can have a directly or indirect influence on management of fisheries resources. The DSFA lacks provisions on enforcement, and it is important that these provisions are included in order to ensure that an offender does not escape because of the lack of a legal basis for pursuing the individual beyond national jurisdiction. There is no specific and clear provision on MCS, which is very important in management of marine resources in the EEZ.

The following comments from the June 2011 report:\(^{100}\)

The 2009 Deep Sea Fishing Authority Regulations are the most relevant for port inspections and licensing of foreign fishing vessels. They are not yet in force in Zanzibar. The Regulations do not allow implementation of the PSMR. The DSFA Regulations identify categories of persons who have the designation of authorised officer (section 35) but they have no apparent authority under the Regulations. The only persons who are given compliance authority under the Regulations are inspectors and members of the Surveillance Unit, and their powers and authority could be strengthened to reflect best practices. Procedures for inspection of vessels are set out, but only in relation to pre-licensing and offloading. The criminal fisheries sanctions are largely inadequate to deter non-compliance. This is due to the fact that the fisheries legislation has not been amended to take into account factors such as inflation and depreciation of the Tanzanian currency on the one hand and the failure to take into account the severity of each different type of offence on the other. Even where they have been amended.

\(^{97}\) Abstract from the NPOA-IUU for Tanzania http://www.mcs-sadc.org/Publications/NPOA%20IUU%20-%20Tanzania.pdf


\(^{100}\) “Legal and Capacity Assessment of Mauritius, Mozambique, Seychelles, Tanzania and Kenya of readiness to implement the IOTC Port State Measures Resolution 10/11. June 2011”. Ref: CU/PE/1/JUG/10/008

\(^{101}\) It was already mentioned that they have been reported to be in force.
or newly enacted the inflation rate has reduced the severity of the fine in a very short time. As a result, it is currently seen by offenders as cheaper to violate the law than to comply with it. Again, the uncoordinated mandates of the fisheries departments in Mainland Tanzania and Tanzania Zanzibar have led to inaction and institutional rivalry. The need for cooperation and harmonization of the legislation cannot be overemphasised as the two sides share the same water bodies. Furthermore, the Ministers and directors of fisheries are given wide discretionary powers to exempt any person from compliance with the provisions of the existing legislation, powers that are largely not accompanied by a system of transparency and accountability and thus provide an avenue for corruption.

While the above comments should be taken into account, it was reported, and a perusal of the legislation seems to confirm this, that the DSFA Regulations are indeed in force, and these regulations also make provision for much stronger penalties (even up to 20 years imprisonment, see the discussion further below).

The principle legislation that governs mainland Tanzania is the Tanzania Mainland Fisheries Act of 2003. Part I of the Act contains preliminary provisions, including definitions, and part II deals with administration. Part III deals with development of the fishing industry, whilst part IV deals with aquacultural development.

Part V is entitled management and control of the fishing industry, and contains sections 17-23.

- Section 17 deals with management and control measures;
- Section 18 deals with beach management units;
- Section 19 deals with the prohibition of foreign fishing in territorial waters;
- Section 20 deals with licensing of foreign vessels;
- Section 21 deals with certificate of registry;
- Section 22 deals with the prohibition of certain activities without a license;
- Section 23 deals with conservation of fisheries resources.

Part VI is entitled fish quality management and standards, and part VII s entitled financial provision, and sets out the Fisheries Development Fund, and the power to charge fees.

Part VII deals with enforcement, is divided into 10 sections, as set out below:

- Section 31 deals with the Surveillance Unit;
- Section 32 deals with the functions of the Unit;
- Section 33 deals with the powers of the Unit;
- Section 34 deals with the power to prosecute;
- Section 35 deals with certificates of evidence;
- Section 36 deals with the powers of search and seizure;
- Section 37 deals with seizure of things used for commission of the offence;
- Section 38 deals with forfeiture of things used for commission of the offence;
- Section 39 deals with forfeiture upon conviction, and
- Section 40 deals with the power to compound offences.

Part IX deals with offences and penalties, and this part is also divided into 10 sections, as set out below:

- Section 41 deals with obstruction of officials;
- Section 42 deals with indemnity;
- Section 43 deals with the penalty for possessing and using explosives;
- Section 44 deals with the penalty for using poison;
- Section 45 deals with the penalty for using a foreign fishing vessel without a license;
- Section 46 deals with the penalty for violating fish quality standards;
- Section 47 deals with the penalty for other offences;
• Section 48 deals with abandoned vessels, gear, fish or fishery products;
• Section 49 deals with rewards;
• Section 50 deals with protection of informers.

Part X is entitled general provisions and concludes the act by dealing with regulations, exemptions and administrative provisions, as well as research information.

The principle legislation governing Zanzibar fisheries is the Fisheries Act of 2010. This recent act is divided into 6 parts, and is fairly short in comparison to the other legislation governing fisheries in Tanzania.

Part I of this act covers preliminary provisions, while part II deals with administration, and envisages the establishment of a Department. Part I defines a “fishing vessel” and “fishing”, but does not define “vessel”.

Part III is entitled development and control of the fishing industry, while part IV deals with licensing of fishing operations. Section 15 of part IV deals with the general conditions for licensing, and is divided into 8 sub sections which detail the process for licensing, which is governed principally by regulations. Section 15 allows the Minister to revoke or suspend a license issued under this act for failure to comply with the provisions of this act, or regulations made there under, or any condition of the license, or furthermore where such action is necessary for the proper management of fisheries. This section does not expressly make VMS a mandatory condition for a license.

Part V and VI are of direct relevance and importance for the purpose of this paper, as these parts deal with conservation measures and offences and penalties respectively.

Part V deals with conservation measures in 8 sections, and provides as follows:
• Section 19 deals with the Marine Conservation Unit;
• Section 20 deals with prohibited methods of fishing;
• Section 21 deals with use of prohibited gear;
• Section 22 deals with catching immature fish;
• Section 23 deals with powers of authorised officers. These powers are wide and may be exercised without a warrant. The lack of definitions of terms such as “premises” may be problematic;
• Section 24 deals with seized fish that may be sold;
• Section 25 provides that a person arrested is to be sent before court;
• Section 26 deals with the release of a vessel;
• Section 27 deals with forfeiture and destruction of prohibited gear.

Part VI deals with offences and penalties in 9 sections, which concludes the act, they provide as follows:
• Section 28 creates an offence for fishing using explosive and noxious substances; however the penalty provided is weak, being a fine or term of imprisonment not less than three months and not more than five years, or both such fine and imprisonment;
• Section 29 creates an offence and penalty relating to licenses, and again the penalty of a fine or term of imprisonment not less than three months and not more than two years is weak;
• Section 30(3) creates a general offence for non-compliance with any provision of the act, however once again the penalty provided is weak, and the above comments apply;
• Section 31 deals with penalties for wilful obstruction of an authorised officer. This is somewhat limited and does not include other related offences such as intimidation, and assault of such officer;
• Section 32 deals with payment of a fine by foreigners;
• Section 33 deals with exemptions, and provides that the Minister may exempt any person or organisation from any provision of this act or regulations made under the act, if it is in the public interest;
• Section 34 deals with regulations, and provides a long list in subsection 34(1)(a)-(y) of the issues upon which the minister may make regulations;
• Section 35 deals with compounding of offences, whereby the Minister, again, is authorised to compound the offence by accepting a reasonable sum of money to compensate the damage caused;
• Section 36 deals with repeal and saving.

The Deep Sea Fishing Authority Act of 1998 is divided into 6 parts, of which only part V is of direct relevance in this context. Part I to IV deal with preliminary provisions, and the establishment of a Deep Sea Fishing Authority, the management of such authority, and financial provisions respectively. Part VI concludes the act with miscellaneous provisions that deal with appeals, regulations and other miscellaneous issues. In terms of preliminary provisions it should be noted that “vessel”, “fish” and “fishing” are not defined.

Part V is entitled offences and penalties, and comprises of three sections. Section 17 deals with the power to call for information and the penalty for refusal, while both section 18 and 19 deal with fishing contrary to this act, as well as general offences as follows:

• Section 18 provides that every person who carries out fishing activities in the EEZ contrary to this act or regulations made under this act commits an offence and upon conviction is liable to a fine of not less than one billion shillings or to imprisonment for a term of not less than 20 years. As discussed below compounding is now also included under section 18. The court may also order forfeiture of the vessel, structure, equipment or thing in connection to the offence committed.
• Section 19(a) to (e) creates an offence and penalty for various actions committed against authorised officers in 19(a) to (d), and subsection 19(e) provides a penalty for a general offence of contravention of any provision of the act for which no penalty is provided in the regulation102.

The Deep Sea Fishing Authority Act of 1998 is not very detailed, and in fact is focussed primarily on the establishment and management of the Deep Sea Fishing Authority. Section 23 concludes the act by providing that the Minister may make regulations on specific topics. However, many of the regulations published in terms of this section were not included in the section authorising the Minister to do so. One example being that the authorisation to make regulations on the powers of inspectors and officers does not appear in this section, however the regulations contain these powers as discussed below.

The Deep Sea Fishing Authority Amendment Act of 2007 does not alter the principle act in any major way with the exception of section 4, 6 and 14, which are of relevance. Section 4 of the Amendment Act amends section 4(4) of the principal act by inserting new paragraphs (g) and (h), which provide that the functions of the Deep Sea Fishing Authority shall be to safeguard the EEZ environment, and to implement any agreement reached at regional and other international levels to which the United Republic is a party. Section 6 amends section 7 of the principal act such that the Director General shall be responsible, for monitoring and surveillance in the EEZ beyond 12 nautical miles and the territorial sea. Section 7 also amends section 6 in order to provide the Director General the power to revoke licenses in cases where the principal act has been breached. Section 14(2) of the Amendment act amends section 18 of the principle act by substituting section 18 to make a new 18(1), and adding subsections (2) and (3), such that section 18(2) provides for compounding of the offence, by accepting a sum of money, and the new subsection 18(3) provides that the sum collected shall be remitted to the treasury.

102 See however the provision in regulation 71 discussed further below.
The Deep Sea Fishing Authority Regulations of 2009, Government Notice No. 48 published in 2009, and made in terms of section 23 of the principle act is divided into eleven parts. Part I sets out preliminary provisions while part II deals with licensing of fishing operations. In terms of preliminary provisions again it should be noted that a “vessel” is not defined. A “foreign fishing vessel” is also not defined, and although this is defined in the act, as discussed above, there is no provision in the regulations that links the definitions in the act to the regulations. Lastly, “fishing” is not defined in the regulations, nor in the Act.

Of relevance in part II are the following:

- Regulation 6, which provides for the following licenses, namely licenses for foreign fishing vessels, local fishing vessels, and special licenses;
- Regulation 10 provides for licensing conditions, one of which is that the vessel is linked to a VMS installed in the office of the Authority;
- Regulation 13 provides for surrender of license;
- Regulation 14 deals with inspection of fishing vessels;
- Regulation 15 deals with registering of licenses, and provides that a register shall be kept and maintained by the Director General in respect of each type of license. No provision is made for sharing this information however;
- Regulation 16 deals with suspension and revocation of licenses. This administrative tool is provided to the Director General, where the holder of a license contravenes the conditions of the license, or has furnished false or incomplete information in the application for the license, or has contravened the act, or importantly, contravenes the fisheries management measures set out by a regional organisation, bilateral arrangement or international convention to which the United Republic is a party. In these circumstances the Director General may require the holder to show good cause as to why the license should not be revoked or suspended within 7 days, and after such time he may suspend, revoke, or allow the licensee to proceed under the terms and conditions of the license.

Part III deals with management of fishery resources and protection of the marine environment. Of relevance in this part is regulation 26, which provides for information sharing, however this is not a mandatory provision, and merely provides that the Director may prepare fisheries statistics and vessels information and submit it to the FAO of the UN, and other bilateral agreements, regional or international organisations which the United Republic is a part.

Part V deals with quality management programme in one section, and part V, which is of more direct relevance, provides for MCS. All of the sections in this part are set out below, as they are of particular reference to MCS:

- Regulation 28 provides for a Vessel Monitoring System. Regulation 28(1) provides that a fishing vessel licensed under these regulations shall be equipped with an Automatic Location Communicator linked to the vessel monitoring system, capable of transmitting messages automatically to a land based vessel monitoring operations centre, to allow continuous monitoring of the vessel, and as it is a condition for licensing, non-compliance is an offence as discussed below;
- Regulation 29 provides for Vessel Monitoring Operation centre, equipped with receivers and other equipment that will receive and record information transmitted from all fishing vessels by the Automatic Location Communicator’s approved under the regulations;
- Regulation 30 provides for confidentiality of VMS information. Sub regulations 30(1)(a)-(e) provide for exceptions to confidentiality, and one such exception contained in 30(1)(c) is that such information may be granted to a person who is empowered to ensure compliance of the United Republic with the obligations under international law. This is seemingly the only provision that relates to information sharing;
- Regulation 31 provides for a Surveillance Unit, which shall consist of enforcement officers. This Unit
is established within the authority;

- Regulation 32(1) provides that the functions of the Unit shall be the protection of the fishery resources and marine environment against illegal, unreported and unregulated fishing in the EEZ, and general enforcement of the act. Regulation 32(3)(a)-(g) sets out the powers and functions of the Unit. These powers are granted to enforcement officers, and they are generally authorised to cause a vessel to stop and to board the vessel and require a captain or crewmember to produce information and thereafter order the captain to sail to port. Regulation 32(d) provides that the members of the Surveillance Unit shall be able to exercise all the powers of authorised officers once on board the vessel (the term “authorised officers” is not defined in the regulations, but is defined in the Act). “Authorised officials” are defined in the Act as officers of the authority, fisheries officers, members of the police force, and defence force, customs and any other person approved by the minister. However, the Act does not specifically set out the powers of these officers, their powers will be set out in other legislation. “Authorised officers” are also designated in terms of regulation 35(a)-(g), which includes all the mentioned persons that are referred to in the definition of the act, and others that were not included.

- Regulation 33 provides for fisheries inspectors. Regulation 33(2)(a)-(f) provides wide powers for these inspectors, including the power to interrogate in sub regulation 33(2)(d). However, it is unclear whether a warrant is required in certain circumstances and there is no reference to the power to arrest.

- Regulation 34 provides for fishery observers, and their powers are set out in 34(2)(a)-(e). These powers are limited to observation and do not include powers such as search and seizure, although added powers may be granted to them by the minister in terms of sub regulation 34(2)(e);

- Regulation 35 provides for designation of authorised officers as discussed above;

- Regulation 36 provides for pre-licensing inspection procedures;

- Regulation 37 provides for off-loading inspection procedures, which basically provides for verification of authorisations for fishing and related activities;

- Regulation 38 provides for sea inspection procedures;

- Regulation 39 provides for stowage of fishing gear. A captain shall in terms of this regulation ensure that all fishing gear cannot be used in fishing by securing and covering it, whilst in an unauthorised fishing area or time in the Republic;

- Regulation 40 provides for logbooks, the requirements as set out are fairly detailed and stringent in terms of the information that should be recorded on a daily basis;

- Regulation 41 provides for radio call signs;

- Regulation 42 provides for hot pursuit or long arm jurisdiction. According to this regulation, both fisheries inspectors and authorised officers have the power to pursue a vessel beyond the waters of the United Republic based on evidence from numerous specified sources, including VMS. Regulation 42(2) provides that a fishery inspector or authorised officer shall take into consideration relevant bilateral, regional or international instruments to which the Republic is party to in the exercise of this right. This regulation incorporates UNCLOS article 111.

- According to 42(4), a fishing vessel that violates the law of another state and flees to the Republic shall be arrested and charged according to the provisions of the act or these regulations or any other written law, or handed over to the where the offence was committed.

- Regulation 43 provides that where a person is in the Republic, and undertakes certain specified illegal acts related to fishing that are contrary to the laws of another state, they shall be arrested and handed over the he state where the offence was committed. Regulation 43(2) provides that any fish found onboard a fishing vessel within the EEZ shall be presumed to have been taken within the EEZ of the Republic by such vessel.
Part VI provides for administration of the authority, and is divided into 8 regulations that detail with the administration of the authority, and Part VII deals with financial provisions. Part VIII deals with appeals, in regulation 60. Part IX deals with capacity building, awareness and research, in regulations 61 to 64.

Part X deals with offences and penalties in regulations 65 to 71, which are set out below:

- Regulation 65 deals with falsification of documents;
- Regulation 66 deals with possession of shark fins without the carcass;
- Regulation 67 deals with offences relating to fishing without a license, and forfeiture is included. The penalty provided for such an offence is twenty years, and it is unclear whether this is a maximum term or whether a terms of less than twenty years may be imposed;
- Regulation 68 deals with offences relating to contravention of licensing conditions, however no provision is made for forfeiture for this offence. The penalty provided is a fine or imprisonment for a period of “not less than” 20 years, which seems to be an error, and was intended perhaps to rather refer to a maximum term of twenty years, given the fact that there is an option of a fine;
- Regulation 69 deals with obstruction of inspectors and observers;
- Regulation 70 deals with offences relating to pollution;
- Regulation 71 deals with general penalties, and provides a general penalty where no specific penalty has been provided for a specific offence under these regulations. While this regulation does not create a general offence for non-compliance with any other regulation not specifically mentioned in Part X, section 18 of the Deep Sea Fishing Authority Act provides than non-compliance with the act and regulations is an offence.
- The general penalty provided in regulation 71 allows for a fine of not less than one million shillings or for imprisonment of not exceeding 2 years.

Part XI deals with general provisions, which are divided into 5 regulations from regulation 72 to regulation 76. Regulation 75 deals with access to information, which is relevant for these purposes. Regulation 75 provides that any member of the public may, on showing reasonable cause, and on payment of a fee set out in the Second Schedule of the regulations access entries from the registers.

4.7.2. Evaluation

Also see the country specific table for Tanzania in Annex 4.

Legal Framework

Based on the above discussion as well as consultations with various officials from Tanzania, the Fisheries Act of 2003, which applies to Mainland Tanzania, provides a basic legal framework, but is in need of a revision and update. The Fisheries Act of 2010, which regulates artisanal and small-scale fishing in Zanzibar has just recently come into operation and no intervention is required. The Deep Sea Fishing Authority Act of 1998, as amended in 2007, and the Deep Sea Fishing Authority Regulations of 2009, should be revised and strengthened.

Legal Challenges and Barriers to the Implementation or Adoption of Regional Agreements and Standards

Neither the Constitution of Tanzania of 1977, nor the Constitution of Zanzibar seems to make reference to the subject of recognition of international treaties. There does however not seem to be a problem in practice.
The Deep Sea Fishing Authority Act of 1998, as amended in 2007, and the Deep Sea Fishing Authority Regulations of 2009, should be revised and strengthened with regard to additional provisions required to be able to effectively implement the IOTC resolutions and other regional agreements and obligations.

Legal Challenges and Barriers to Regional Cooperation and Information Sharing

While, as a general remark, some countries are reluctant to share information, and while the sharing of data and information does not necessarily require any legislative prescriptions, it might be expedient to incorporate obligations on this into domestic legislation in view of this situation. A good example of such a provision is to be found in section 6 of the 2011 Seychelles Fisheries Bill.

4.7.3. Recommendations

The following recommendations are based on the desktop study, the evaluation of the legislation above, the in-country visits and consultations and the consultations conducted during the workshop, as contained in this text and the country table in Annex 4.

Immediate action:

No immediate action is required.

Proposed further legal assistance:

- The Fisheries Act of 2003, applying to Mainland Tanzania, is in need of a revision and update;
- The Deep Sea Fishing Authority Act of 1998, and the Deep Sea Fishing Authority Regulations of 2009, should be revised and strengthened;
- Training of fishery inspectors in various aspects, including the subject of investigations (this should include other agencies which play a supportive role, such as the police, Navy and Coastguard);
- The drafting of a comprehensive set of SOPs and/or a manual for fisheries inspectors;
- Training of the legal advisors and prosecutors from the office of the Director of Public Prosecutions is required. As they are in the process of replacing police prosecutors with graduated prosecutors from the DPP, it might be unnecessary to include the police in the training effort, although it is not clear when this process will be finalised.
- The drafting of a manual on the prosecution of fisheries offences for legal officers and prosecutors (including police prosecutors);
- Awareness programs for presiding officers and the compilation of a bench book for presiding officers (see the comments below);
- Setting up of a national network for the enforcement of fisheries legislation;
- Joining a regional network of prosecutors;
- Joining a regional network of presiding officers.
- Though not strictly speaking a legal issue, assistance with the finalisation of the draft NPOA IUU is a possible intervention that was requested.

Please see Part 5 for more detail on the contents and scope of the above proposals.

Mainland Tanzania indicated that they are implementing an awareness program with magistrates, in cooperation with various government partners (including the Ministry of Justice, DPP and Police), as well as
NGOs. These workshops are aimed at creating awareness on the importance of the fisheries sector, which will take place in the three coastal regions. The need for these workshops, as well as follow-up workshops was identified based on the low conviction rate. In addition, due to the prosecutor system at local level, and problems with poor preparation of cases, police officials will also receive training. This is an excellent example of the type of the awareness training that is recommended for all countries, and support for this program can be considered.

Previously regional training courses were presented via Mbegani under the SADC-EU project (one of the institutions reported that a total of 49 inspectors from both Mainland and Zanzibar were trained during this period). Mbegani FDC currently presents various relevant courses such as a national enforcement course, a junior and senior inspectors course, a sea fishery inspectors course etc. The one aspect that is not included in the Mbegani program is a course on investigation of fisheries offences. Mbegani also has all the necessary facilities to act as a possible training venue.
5. CONCLUSIONS AND RECOMMENDATIONS

5.1. Legal barriers to achieving the desired end state of mcs in the region

This review should be read with the two simultaneous reviews that took place at the time of drafting this review, the one on the state of MCS and the other on governance. The overall impression when these three aspects are considered holistically is that while there are clearly legal barriers and challenges present, and in some cases these should be addressed urgently, it is rather the state of MCS and lack of proper governance that is a hindrance to effective MCS and control of IUU fishing. Currently, either due to a lack of resources or other hindrances, the MCS effort does not result in many transgressors being brought to book, which this is especially true in the industrial fishing sector. Also for various reasons, one of which is that many of the countries reviewed use the compounding system, not many of the serious matters result in prosecution. The reason for this is that, generally, the transgressors also choose to follow the compounding route as a faster and more effective way of dealing with such matters. Because so few of the more serious cases land up in court, the legislation as well as the admissibility of evidence gathered, are not often challenged.

As MCS efforts become more effective and good governance increases, more and more of these cases will result in prosecution, especially in light of the heavier penalties that are in the process of being incorporated via amendments, or introduced via new acts. Is it at this stage that one can expect transgressors to increasingly attack the validity of legislation, and challenge the admissibility of evidence.

Similarly, where the legislative framework does not make provision for sufficiently wide and extensive powers to fisheries inspectors, or fails to incorporate the provisions of regional agreements, the fisheries inspectors might have to look on powerlessly while IUU fishing and related activities continue.

Some of the most serious legal barriers and challenges that were identified:

- Lack of incorporation of the provisions of regional agreements into domestic legislation, where required;
- Insufficient powers granted to fisheries inspectors;
- Inadequate penalty provisions;
- Insufficient powers to courts to forfeit vessels;
- Lack of evidentiary provisions on the admissibility of VMS and other electronically generated evidence;

Some other provisions that are sometimes lacking, and could improve the effectiveness of MCS provisions are:

- Provisions on regional cooperation and information sharing;
- Harmonisation of legislation on regional level, taking into account that this has certain limitations;
- The incorporation of a catch-all offence;
- The introduction of a Lacey offence in the legislation (which is quite a simple and effective way of improving regional harmonisation).

Related issues that require attention:

- Some fisheries inspectors only have a basic qualification, while other countries employ only graduated officials. Irrespective of the background of these officials, only a few have the capacity to undertake a thorough investigation;
• Legal officers and prosecutors require training and support in the prosecution of fisheries related offences;
• Presiding officers often lack awareness of the importance of the fisheries sector;
• Only two of the seven countries that were the subject of this study had an NPOA IUU (while this is not strictly speaking a legal aspect, a NPOA also contains a review of the legal framework, and can be used as a helpful tool to identify areas that should be improved)

As far as the adoption, incorporation and implementation of the IOTC resolutions are concerned, the following comments were received:
• The IOTC process is still not engrained in the members. Many members are under the impression that the secretariat/IOTC must implement the agreement, and states consequently fail to implement it. It seems there is a lack of understanding regarding the implications of adopting resolutions;
• Members will easily agree to resolutions, but then not implement them. Members may enter a reservation (and have 90 days to do it), but do not use the mechanism;
• Members do not take action against other members that do not adhere;
• One of the main gaps in legislation is inadequate provision for inspections at port and the lack of provisions on the sharing of information;
• National legislation should be revised in tandem with resolutions that come into force, and an annual or regular revision of national legislation is necessary to ensure that national legislation can accommodate the resolutions;
• Members agree to the IOTC PSMR, but then incorrectly assume it will only become binding when FAO-PSMA comes into effect;
• The IOTC resolutions are not “user friendly” and should be consolidated and arranged according to the subject matter. With the introduction of new resolutions, older ones become obsolete, but are not always repealed. There are also numerous inconsistencies in the resolutions.

This review has the purpose of identifying legal barriers and challenges, and therefore, to a large degree, focuses on what is lacking. It has however also uncovered many positive aspects:
• Many of the countries either have introduced more comprehensive legislation recently, are in the process of updating or reviewing legislation, and quite a few have recently introduced new Bills;
• Most of the above makes provision for more comprehensive powers of inspectors, higher penalties and the admissibility of VMS and other evidence, to name but a few aspects;
• Training courses and other initiatives such as those presented by Mbegani Fisheries College is ongoing;
• In two of the countries that were visited, there was a close and good working relationship between the inspectorate and the prosecution authority;
• Some countries have started initiatives to increase awareness amongst presiding officers.
• The above is in no way meant to be an exhaustive list, but is simply intended to illustrate some of the positive developments.
5.2. Evaluation of areas requiring attention and specific recommendations on actions and assistance required

The country specific chapters above, read with the country tables in Annex 4, provides country specific evaluations as well as recommendations of both immediate, or at least urgent, as well as medium or long term, interventions. Below follows a consolidation of these proposals, as well as regional interventions required.

Legal Framework:

Almost all the countries examined require some form of assistance, but the degree of assistance will depend on the status of the legislation in each country. It is proposed that two international short-term experts should be appointed to assist the countries. The experts should have the required background to deal with the different approaches in the legal systems of the countries. In addition, a legal expert from each of these countries with an in-depth knowledge of the domestic fisheries legislation and industry should be appointed to work closely with the international expert. It is proposed that the international experts should firstly focus on the individual countries with the assistance of the country expert, and then collaborate closely in an attempt to harmonise the legislation as far as is possible. The issue of the harmonisation of maximum penalties should receive priority.

The specific assistance required per country is as follows:

- Comoros: The drafting of the necessary implementing should receive priority.
- Somalia: Urgently requires a revision of all fisheries legislation
- Seychelles: The 2011 Bill is extensive and but assistance to finalise, refine and strengthen it, will be valuable, and will also help to ensure harmonisation with the other countries in the region
- Tanzania & Zanzibar: Mainland Tanzania Fisheries Legislation requires revision. The Zanzibar Fisheries Legislation of 2010 does not require any intervention.
- Deep Sea Fishing Authority: Although fairly new, revision and strengthening of the provisions is required.
- Kenya: The 2011 Bill is extensive, but requires strengthening of the MCS provisions and further refinement.
- Mauritius: Assistance will be required with the review of the Act
- Madagascar: A Bill dating from 2007 have been drafted, but has still not been enacted. Madagascar should be provided with support to finalise and update the draft Bill.

Where Bills are finalised and promulgated as Acts, such countries might also require assistance with the drafting of regulations.

As far as immediate action is required, both Somalia and the Comoros require urgent assistance. As some of the other countries already have draft Bills, which could be finalised in the near future, such assistance must also be seen as urgent. These countries are namely Seychelles, Kenya and Madagascar.

Please see Annex 5 for a more detailed explanation of aspects requiring attention.
**NPOA-IUU:**

Although not strictly speaking part of the legal framework, the following countries require assistance with the drafting of a national NPOA-IUU:

- Comoros
- Somalia
- Tanzania & Zanzibar (still in draft form)
- Kenya (commenced with a draft)
- Madagascar (still in draft form)

**Inspectors:**

Training on all aspects, but as far as the legal component is concerned, the training must also focus on the legislation (this will be especially valuable where new acts or implementing texts come in place). The training should focus on:

- the powers of fishery inspectors (inspection, search, seize and arrest);
- the offences created by the legislation;
- evidentiary provisions in the legislation;
- basic investigation techniques (crime scene management; gathering of evidence; pocket books and statements; presentation of evidence)

A manual, covering the same aspects, was also identified as a need, as was the need for a comprehensive set of SOPs. This was identified as a need in all countries.

Please see Annex 5 for a more detailed explanation of aspects that should be covered during training and included in a manual, as well as a list of SOPs required (please note that this focuses on legal aspects, and that additional SOPs on other operational MCS matters are also required).

**Prosecutors:**

Training on the prosecution of fisheries offences is required for prosecutors as well as legal officers of fisheries departments or the relevant organs of state assisting with prosecution and other enforcement action.

The training of prosecutors is a need in all the countries with the exception of Madagascar and Comoros, as these two countries utilise private lawyers to conduct prosecutions. The legal officers attached to the fisheries department or other organs of state, who often assist with investigations and prosecutions, should of course be included.

The setting up of a national enforcement forum, which combines the prosecuting authority, fisheries department and other relevant role players in the investigation and prosecution of fisheries offences is a model that has worked well in other countries, and this option should be discussed by the authorities in the various countries. It is noted under this heading because the initiative should come from the prosecuting authority in the country. The setting up a regional network of prosecutors to share experiences, expertise and enhance co-operation may also prove to be very helpful. This does not necessarily imply meeting regularly, but rather the regular sharing of information and ideas through e.g. the electronic media.

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103 In South Africa both divisional (roughly following provincial borders) and a national forum has been created. Some of the divisional forums have existed for the last few years and have proved to be invaluable in enhancing co-operation between enforcement officials, investigators and prosecutors.
This idea can be further explored and discussed at the proposed training sessions with prosecutors.

Please see Annex 5 for a more detailed explanation of aspects that should be covered during such training, and should also be included in a guide to the prosecution of fisheries offences.

**Inspectors and Prosecutors:**

It is strongly suggested that the prosecution and inspectorate training courses run parallel and that the two groups are combined for a day or two. There are various reasons for this suggestion:

- The case studies will be relevant to, and valuable for, both groups;
- The two groups need to discuss the idea of a national fisheries crime forum and make a joint decision;
- An inspector's/investigator’s course should contain a practical exercise during which their skills are tested and evaluated. This will normally be done via the acting out of a scenario where such officials must take the necessary action, gather evidence, compile a case docket/file and present their case in a mock court. It is ideal in such circumstances to have the prosecutors present. They can assist in the evaluation and debriefing of the inspectors, and can play the necessary roles during the mock court session;
- This will also serve to create a better understanding of each other’s role and a closer relationship between the inspectorate and the prosecution team.

**Presiding Officers:**

Awareness training for presiding officers (magistrates and judges) is of utmost importance. This is a need in all the countries, and the introduction of a benchbook, simply containing all the relevant fisheries legislation, will also be valuable.

The setting up a regional network of presiding officers to share experiences and expertise may prove to be very helpful. It will also contribute to the harmonisation of penalties and sentences in the region. This does not necessarily imply meeting regularly, but rather the regular sharing of information and ideas through e.g. the electronic media. This idea can be further explored and discussed at the proposed awareness training sessions.

**IOTC Resolutions:**

Assistance with the revision of the IOTC resolutions and the creation of a compendium of resolutions and recommendations is required. Additional assistance to member countries on the integration and implementation of the resolutions would be extremely valuable. The consultants assisting with the finalisation or redrafting of legislation could possibly fulfil this role.

**Case-specific Investigation and Prosecution Support**

Case-specific support in serious cases, especially those committed by foreign vessels, would be extremely valuable. This would include assistance with the investigation as well as the prosecution of such cases. Such assistance would have a twofold purpose: it would increase the chance of success, but as the support team would work closely with the investigator and prosecutor in the case, it would also empower the investigator and prosecutor, and would make a large contribution to establish expertise in the country itself.
5.3. In conclusion

The taking of effective enforcement action, especially criminal prosecution is dependent upon an efficient, experienced and trained inspectorate, that have the necessary powers in terms of the legislation to take enforcement action. A successful case relies on the gathering of sufficient, admissible evidence. Even where the compounding process is followed, the persuasive value of such evidence to enter into an agreement should not be underestimated.

It is for this reason that the legal review not only investigated whether the legislative framework is adequate, but also looked at the ability of fishery inspectors to prepare a case for court. Without this basis, a successful prosecution is unlikely. The recommendations have therefore included the following elements:

- Revision of the legislation to ensure effective powers for fishery inspectors;
- Training of fishery inspectors, including training on investigative techniques;
- A manual for inspectors (it can be based on, or serve as, the training material).

In addition, the drafting of a comprehensive set of SOPs was proposed. Not only do SOPs assist inspectors in effectively performing their tasks, but they also provide binding prescriptions\textsuperscript{104}.

Effective prosecution of fisheries offences of course also requires a solid legislative framework, and evidentiary provisions on the admissibility of VMS and other similar evidence is necessary to assist the prosecutor in proving the case. The need for the training of prosecutors, and a manual on such prosecutions, is clear from the review. It was also suggested that via joint training, the creation of a national forum for the enforcement of fisheries offences and case-specific support in investigations and prosecutions would contribute to more effective MCS.

To a large extent, harmonisation with regard to sanctions can be achieved, even within the diverse legal frameworks, in countries that have similar offences with similar prescribed penalties. This solution in itself is however still inadequate, as in most cases the discretion of the amount of the fine is left up to the court, or is fixed by way of the compounding process. Joint programmes or workshops for the judiciary can however ensure a more uniform approach to quantifying fines in the region. Because fines act as a deterrent to would-be transgressors, large discrepancies between the countries would lead to higher levels of IUU in countries with a more lenient approach. The same would apply to the compounding of offences.

It is lastly submitted that the proposals made in this report will serve to empower the individual countries as well as the region, and if they are efficiently executed, will have a sustainable positive impact thereon.

\textsuperscript{104} This has an additional advantage that failure to follow these can also lead to disciplinary action if required.
Annexe 1 : Terms of référence

<table>
<thead>
<tr>
<th>Assignment Name</th>
<th>Comprehensive review the legal frameworks, including fisheries base laws, where they pertain to MCS and RFMO agreed actions, in the ESA-IO region, to determine areas to be updated and harmonized and identify barriers implementation of effective MCS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mission Schedule Number</td>
<td>Output 3.M.1.1</td>
</tr>
<tr>
<td>Number</td>
<td></td>
</tr>
<tr>
<td>Coordinator</td>
<td>Marcel Kroese, Coordinator of Module 3.M.3</td>
</tr>
<tr>
<td>Technical Verifier</td>
<td>PMU</td>
</tr>
<tr>
<td>Background to assignment</td>
<td>MCS is a collection of activities with the intent to support fisheries management. MCS takes place primarily within a legal and policy framework. In brief, MCS strives to detect, deter and prevent IUU fishing from taking place, monitors the activity of the resource users and controls/verifies the actions for resource users. To enable MCS actions, a range of tools is deployed which range from technologically advanced solutions such as vessel monitoring systems (VMS), to deployment of observers, to simple robust hardware such as a net gauge to measure the mesh size of nets. Increasingly more attention is paid the unregulated and unreported components of the fisheries as international measures are implemented. Thus aspects such as catch reporting and accuracy of data, as well as converting unregulated fisheries, in many cases artisanal fisheries, to a regulated framework, are gaining increasing importance. The development and implementation of MCS has considerably advanced in the last few years in a number of countries in the ESA-IO region. Despite most countries having implemented MCS for domestic fisheries, these vary hugely in terms of scale, capacity and regional impact. Support from the EU, SADC and others have strengthened the MCS capacity in several counties, including at the regional level. Unfortunately, these programmes have fallen short in fully sharing regional resources and implementing a truly regional MCS programme. The desired “end state” of the Implementation of the Regional Fisheries Strategy (IRFS) is a bold expectation that will require nothing less than the fully integrated and harmonised regional MCS system. This envisioned MCS system will address IUU fishing in a comprehensive manner by firstly:</td>
</tr>
</tbody>
</table>
implementing harmonized system of fisheries data collection and dissemination on a national and regional level for transboundary stocks and especially where it concerns the collection of fisheries data to be submitted to RFMOs. Secondly, it will require a system of data sharing on a regional level of relevant MCS data that can be used by a Regional MCS Data and Operational centre (RMDOC). Thirdly, the enhancement of human resources in the ESA-IO region to a dedicated fully trained, professional fisheries inspectorate. Fourthly, the development of a national and regional response to IUU fishing through, inter alia joint patrols operations at sea.

There are currently several projects on parallel paths to the IRFS. Some of these include the Regional Component 6 of the SWIOFP project, which is also geared towards regionalisation of MCS activities, as indeed is the South West Indian Ocean Fisheries Commission (SWIOFC). Similarly, the ACPFISH II project share many objectives of the IRFS, and will assist countries in the region with implementation of their national plans of action (NPOAs) and updating their framework legislation.

**Implementation of the MCS component**

In order to understand the position of this project in the MCS component, a brief outline of the MCS component is provided.

**Part 1 - Assessment and analyses**

The implementation of the MCS component of the IRFS will take place in several parts designed to give maximum use of the available time. Part 1 is the analyses and assessment. The first set of activities to be undertaken will be “gaps analysis”, since duplication of components undertaken by other programs is to be avoided. In stead our focus will be on harmonizing with these programs and seeking to implement the recommendations the other programs, thereby avoiding duplications and maximising complementarities.

**Part 2 - Implementation and strengthening national and regional capacity**

*Regional coordination and joint patrols*

With the envisioned expansion of the joint patrol concept in the greater ESA-IO region, the existing multilateral requirement for harmonised action has already forged contact on an operational and political level between countries.

It is planned that through cooperation and expansion of the IOC MCS Regional Joint Patrol Project to include the ESA-IO region, as well as other eligible countries, additional multilateral joint patrols in the region will be harmonized and undertaken.
**Information technology and data**

It is also noted that traditionally MCS operation to combat Illegal, Unreported and Unregulated fisheries in the ESA-IO region has focussed mainly on industrial fisheries. However, the region has not progressed to more comprehensive regional measures such as a harmonisation of licensing requirements. This has been a significant step in other RFMO and regions with common dependence on transboundary resources, to initiate a common regional standards for licensing vessels and sharing information.

In addition, the focus on industrial fisheries may be a risk to the sustainability of regional resources as artisanal fisheries may well reach similar, or larger total landings as larger fleets. These small scale fisheries will also be included on the overall MCS approach, in particular to address the Unregulated and Unreported component of IUU fishing. Close collaboration with SWIOFP, SWIOFC and SADC will be forged to address the issue. Risk management procedures will also be investigated to determine if counties are indeed responding to the correct risks to their fisheries.

Fisheries data lies at the heart of any successful development and management strategy. In particular it relates to the methodology used by individual countries in their collation and reporting to FAO and the IOTC. It will be a task of the IRFS strategy to ensure that the FAO data are fully compatible and harmonised. Ultimately the “Unreported” component of fisheries data are a fundamental part of the actions to combat IUU fishing and it is the intention to enable countries to compile such date to ultimately enable forensic accounting investigations.

Similarly, the use of VMS systems relates to both MCS and IUU fishing. While a number of countries have established their own VMS facilities, only SADC countries have signed a protocol on data exchange, however it has not been implemented due to technical difficulties and the low number of countries with fully functioning VMS systems. Such a system of data sharing on a regional level of relevant MCS data that can be used by a Regional MCS Data and Operational centre (RMDOC), which has greatly added value to the data in other regions and assisted in decreasing IUU fishing.

**Training and capacity building**

The enhancement of human resources in the ESA-IO region to a dedicated fully trained, professional fisheries inspectorate is a very large part of the vision of MCS in the region. Therefore considerable time will be spent in providing the training mechanisms and methodology and operational training to the regions fisheries inspectorate to enable them to implement existing international, RFMO and national legal obligations. Specific regional priorities such as the implementation of the Port State Agreement will receive dedicated attention.
Note: The countries of the ESA-IO region comprise Burundi, Comoros, Djibouti, DR Congo, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

### Issues to be addressed

This intervention is required to addressed a comprehensive legal review to enable the “end state” MCs to function within a legal framework. So that:

1. implementing harmonized system of fisheries data collection and dissemination on a national and regional level for transboundary stocks and especially where it concerns the collection of fisheries data to be submitted to RFMOs.
2. a system of data sharing (including, inter alia VMS) on a regional level of relevant MCS data that can be used by a Regional MCS Data and Operational centre (RMDOC).
3. the enhancement of human resources in the ESA-IO region to a dedicated fully trained, professional fisheries inspectorate.
4. the development of a national and regional response to IUU fishing through, inter alia joint patrols operations at sea.

is achieved

### Activities of the Consultant

The expert shall perform the following tasks:

**Comprehensive review and provision of recommendations on the legal frameworks, including fisheries base laws, where they pertain to MCS and RFMO agreed actions, with a strong emphasis on the ability to prosecute offences. The general legal review will be of the following countries: Comoros, Kenya, Madagascar, Mauritius, Seychelles, Somalia and The United Republic of Tanzania in ESA-IO region, and will be based on a desktop study and an in-country specific investigation for Tanzania, Madagascar and Seychelles.**

Specifically the review will consist of the following parts:

**Part 1.** An indicative assessment of the current level of compliance in the fishing sectors (artisanal, semi-industrial, industrial, DWFN, FPA, local licensed foreign vessels) with national law and with regional RFMO requirements of the ESA-IO countries. The indicative assessment is to encompass freshwater and marine sectors where applicable.

**Part 2.** The specific areas to be updated and harmonized/compatible and identify barriers implementation of effective MCS and the ability to prosecute offences, including legal challenges and barriers to:
1. improving compliance levels in ESA-IO region, with national law and the provisions of RFBs. [are the challenges to improving compliance with national laws and the conservation measures of RBO as a result of operational issues or loopholes in the law? If the latter – please elaborate]

2. identifying which areas of legislation should be harmonised to improve effectiveness in terms of domestic legislation (for example the criminal procedures act or similar and the fisheries operational limitations such as confiscation of large volumes of fish, foreign nationals etc)

3. the legal capacity/ability to undertake MCS in countries, including prosecution processes (including administrative penalties) for offenders

4. implementation of effective national and regional MCS actions (where effective MCS actions are defined as inter alia, a list of authorised fishing vessels, VMS, observers on board vessels, powers of inspection and/or apprehension, ability to investigate crime, exchange of information domestically and with other (neighbouring) enforcement agencies

5. implementation by countries of the provisions of their IUU fishing (NPOA-IUU) plan/s (ie, specifically in terms of the NPOAs, determine what, if any, legal barriers there are to implementation of NPOAs.

6. existing fisheries laws of the country that are barriers to implementing an effective fisheries inspectorate, for example the appointment, powers and duties of officers and inspectors.

7. the provision for a Fisheries Inspector career path in national laws (It may be necessary to consult human resources and labour laws).

8. implementing the existing provisions of the IOTC Port State Measure resolutions and FAO PSM Agreement provisions

9. the adoption of a Risk analysis methodology in order to support for a diversified and centrally planned set of MCS tasks including more effective targeting of fishing vessels at sea and in port. [The consultant has to determine if there are any provisions in the current (fisheries) legislation that will hinder a central planned, and risked based approach to MCS – for example, that the local governor is in charge of the fisheries management and surveillance falls under him/her. Or, that the law requires the Fisheries officers can only monitor/control industrial fisheries - such type of situations.]
10. participating in the “IOC” MCS Regional Plan for the South West Indian Ocean”.
11. developing and implementing existing provisions of IOTC regulations related to MCS and combating IUU fishing in addition to those mentioned in Number 8.  
12. establishing a compatible data collection system and processing and sharing such information with other national organisations, neighbouring countries and RFMOs. This includes data for scientific purposes and for MCS, such as a list/register licenses, a register of fishing vessels, permits and licenses, the information collected in terms of the PSMA.  
13. establishing a compatible reporting systems for tuna fishery statistics to the IOTC on tuna fisheries in the ESA-IO regions  
14. Specifically, the implementing a national VMS and sharing the data VMS Data regionally  
15. strengthening other central MCS functions prescribed by the IOTC (for example the List of authorised vessels).  
16. pooling and sharing operational MCS information on a bilateral basis of all potentially relevant data types including VMS specifically related to confidentiality.  
17. sharing data to enable the development and operationalization of a Regional MCS Data and Operations Centre (RMDOC) (emphasis here is on the regional nature of the sharing, where it may be shared with a wider audience than the specific regional economic grouping, such as SADC and with the members of an RFB, such as IOTC)  
18. adoption of common ESA-IO regional standards for licensing of fishing vessels, including establishing a regional register of authorised fishing vessels,  
19. the legal procedures for arrest, confiscation seizures and disposal of evidences, including for example large volumes of product seized from local of foreign vessels. Do counties, MCS authorities, have the ability (and legislative back-up to undertake such large scale apprehensions – Use the Experience of Tanzania as a reference case).

Part 3. Contribute data/information/analyses for Chapter 2 and 3 of the “Comprehensive review of progress made to improve Governance of the Marine Fisheries sector in the ESA-IO region and the identification of Priority areas for actions of regional significance that could be undertaken by the IRFS program in relation to key principles of good governance.”
A. The experts shall produce one report detailing their activities, the specific legal barriers to the achieving the desired end state of MCS in the regions, along with specific recommendation on how to address each of the specific areas of evaluation identified above
B. Recommend what immediate actions could be undertaken per country to address the issues in the interim period should the legal frameworks need to be amended
C. Prepare TORs for proposed specific legal assistance to the countries in the regions that require further assistance county to obtain the desired end state.

<table>
<thead>
<tr>
<th>Expected outputs</th>
<th>Expected outputs</th>
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<tbody>
<tr>
<td>The Expert shall produce a report demonstrating the work done, namely:</td>
<td>D. The experts shall produce one report detailing their activities, the specific legal barriers to the achieving the desired end state of MCS in the regions, along with specific recommendation on how to address each of the specific areas of evaluation identified above</td>
</tr>
<tr>
<td>E. Recommend what immediate actions could be undertaken per country to address the issues in the interim period should the legal frameworks need to be amended</td>
<td>F. Prepare TORs for proposed specific legal assistance to the countries in the regions that require further assistance county to obtain the desired end state.</td>
</tr>
<tr>
<td>The report (in English) to be produced using MS Word (and other MS Office software if necessary) and be available in hard copy and electronic form, both in Word (and other MS Office Programmes as appropriate) and all the elements together in single file pdf format. All training materials and questionnaires should form part of the report.</td>
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<tr>
<th>Format of each report</th>
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<tbody>
<tr>
<td>MS Word Styles for IRFS Programme Reports and Technical Papers</td>
<td>Structure</td>
</tr>
<tr>
<td>Title pages in model format as per other Programme Reports</td>
<td>Table of contents, to three levels (ex. 1.1.1)</td>
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<tr>
<td>List of annexes</td>
<td>Tables of tables, figures and pictures</td>
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<tr>
<td>Abbreviations and acronyms</td>
<td>Executive Summary (1 page)</td>
</tr>
<tr>
<td>Introduction</td>
<td>Main body of report divided into different sections as appropriate, normally Context, Methodology, Performance in relation to TOR, and Discussion (up to 20 pages)</td>
</tr>
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Conclusions and recommendations
Annex 1 Terms of reference (if appropriate)
Annex 2 Schedule and people met (with contacts)
Annex 3 Aide Memoire (max. one page on execution of mission, findings, conclusions, and recommendations in bullet points)
Any other annex(es) as appropriate

<table>
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<th>PMU / PMC</th>
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<tr>
<td>Program methodology development</td>
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<td>Travel to countries in the region</td>
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<td>Briefing with PS/ Prosecutor /EC Delegation in country</td>
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<td>Visits to MCS and legal institutions</td>
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<tr>
<td>Preparing the general action plan</td>
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<td>Debriefing to Authorities (TAT)</td>
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<td>Travel to Home port</td>
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<td>Report writing</td>
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<td>Report editing and debriefing</td>
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Start date | Mid June 2011 or soon after |

Completion dates for Reports and fee payment schedule
Draft report | 8 working days after the return to Home base |
Comments from PCM | Within 2 weeks after reception |
Final report | 5 working days after reception of comments by TAT including comments of authorities |

Final report basis for relevant payments

Experience and qualification
Legal and Prosecution
Qualifications and skills: University degree in Law, fluency in English and working knowledge of the other language; knowledge of French would be an attribute.

General professional experience: significant experience in the drafting of fisheries legislation and specialist prosecution of marine/fisheries offences (ten years), experience in working with RFMOs and international organisations, experience in working in ACP countries.
<table>
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<tr>
<th>Locations and travel</th>
<th>Specific professional experience: Prosecution of Fisheries offences, Fisheries Legislation, regulation, MCS, Operational procedures, Legal and administrative action of enforcement.</th>
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|                      | **STE based in xx:**  
|                      | 2 x travel Home Base - MRU – Home Base  
|                      | 1 x MRU - Seychelles - Tanzania - Madagascar – MRU  
<p>|                      | up to 26 nights per diem (15 nights in Mission and 11 in Mauritius) |</p>
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<tr>
<th>PERSON</th>
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<tr>
<td>Marcel Kroese, MCS Officer, Smartfish</td>
<td></td>
</tr>
<tr>
<td>Dominique Greboval, Project Manager, Smartfish</td>
<td></td>
</tr>
<tr>
<td>Nicolas Xavier, technical Coordinator IOC</td>
<td></td>
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<tr>
<td>Amaud Le Mentec, MCS Director, Reunion</td>
<td></td>
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<tr>
<td>Jay Prakash Luchmun, Scientific Officer, Ministry of Fisheries and Agro Industries, Mauritius</td>
<td></td>
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<tr>
<td>Denis Reiss, Attaché, EU Delegation</td>
<td></td>
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<tr>
<td>Mahmud Rafik Hossen Bacu, Senior Technical Officer, Fisheries Protection Officer</td>
<td></td>
</tr>
<tr>
<td>Tiana Ramdrandriambo, Chief of MCS</td>
<td></td>
</tr>
<tr>
<td>Jude Talma, MCS Manager, Seychelles</td>
<td></td>
</tr>
<tr>
<td><a href="mailto:Jtalma@sfa.sc">Jtalma@sfa.sc</a></td>
<td>Tel: +248 467 0315</td>
</tr>
<tr>
<td>Finley Racombo, CEO</td>
<td></td>
</tr>
<tr>
<td>Fisheries Authority, Victoria, Mahe Island</td>
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**DATE AND PLACE**

| 7 July 2011, Cape Town, South Africa | 7 July 2011, QuatreBornes, Mauritius |
| 11 July 2011, QuatreBornes, Mauritius | 11 July 2011, QuatreBornes, Mauritius |
| 12 July 2011, QuatreBornes, Mauritius |
| 13 July 2011, Seychelles | 13 July 2011, Seychelles |

**SCHEDULE AND PEOPLE MET**

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<td>Cape Town, South Africa</td>
<td>Marcel Kroese, MCS Officer, Smartfish</td>
<td>Discussion of Desk Report and Terms of Reference</td>
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<td>QuatreBornes, Mauritius</td>
<td>Marcel Kroese, MCS Officer, Smartfish</td>
<td>Inception meeting, briefing and discussion</td>
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<td>Dominique Greboval, Project Manager, Smartfish</td>
<td>Inception meeting, briefing and discussion</td>
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<td>13 July 2011</td>
<td>Seychelles</td>
<td>Jude Talma, MCS Manager, Seychelles</td>
<td>Introductory meeting with Mr. Finley Racombo, CEO</td>
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| 14 July 2011, Seychelles Fisheries Authority, Victoria, Mahe Island, Seychelles | Initial Group Discussion with SFA:  
• Finley Racombo, CEO  
• Calvin Gerry, Fisheries Scientist  
• Roddy Allisop, FML Administrator  
• Freddy Lesperance, Processing Officer  
• Wendy Perreau, Processing Officer  
• J. Matombe, Licence Administrator  
• Sonny Naiken, Senior Enforcement Officer  
• Elisa Socrato, Fisheries Administrator | fracombo@sfa.sc  
[cgerry@sfa.sc; rallisop@sfa.sc; flesperance@sfa.sc; wperreau@sfa.sc; jmatombe@sfa.sc; snaiken@sfa.sc; esocrato@sfa.sc] |
| 14 July 2011, Seychelles Fisheries Authority, Victoria, Mahe Island, Seychelles | Sonny Naiken, Senior Enforcement Officer, SFA                                     | snaiken@sfa.sc  
Tel: 252 3786 or 467 0312                                               |
| 14 July 2011, Office of the Attorney General, Victoria, Mahe Island, Seychelles | David Esparons, Acting Attorney General, Seychelles                              | Contact details not available                                               |
| 15 July 2011, IOTC Offices, Victoria, Mahe Island, Seychelles | Gerard Domingue, Compliance Coordinator, IOTC                                   | gd@iotc.org  
(+248) 22 54 94  
Le Chantier Mall, P.O. Box 1011, Victoria, Mahe, Seychelles                  |
| 18 July 2011, Dar es Salaam, Tanzania | Initial group discussion with the Fisheries Directorate:  
• Fatma Sobo, Assistant Director  
• G.E. Kalikela, Assistant Director, Fisheries Resource Protection  
• M.R, Mlolwa, Assistant Director  
• Upendo Hamidu, Assistant Director  
• Julius Mairi, Focal person for IFRS/Smartfish | fsoboshi@gmail.com  
gkalikela@yahoo.com  
mrmlolwa@yahoo.com  
upendoh@yahoo.com  
jmairi2003@yahoo.com |
<p>| 18 July 2011, Dar es Salaam, Tanzania | Introduction to Hosea Gonka Mbilimi, Director of Fisheries, Tanzania            | +255 – 763743453                                                        |</p>
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<td>Dar es Salaam, Tanzania</td>
<td>Meeting with MACEMP (Marine and Coastal Environment Project);</td>
<td>Flora C. Luhanga, Comp 2 Coordinator, MECEMP</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Ritha S. Minja, Safeguard Coordinator, MECEMP</td>
<td>Ritha S. Minja, Safeguard Coordinator, MECEMP</td>
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<td></td>
<td></td>
<td>• Miraji Ngomuo, Financial Advisor, MECEMP</td>
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<td>19 July 2011</td>
<td>Dar es Salaam, Tanzania</td>
<td>Ernest M. Bupamba, Principal Skipper</td>
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<td>19 July 2011</td>
<td>Office of the Director of Public Prosecutions, Dar es Salaam, Tanzania</td>
<td>Eliezer Feleshi, Director of Public Prosecutions, United Republic of Tanzania</td>
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<td>19 July 2011</td>
<td>Marine Parks and Reserves, Dar es Salaam, Tanzania</td>
<td>Meeting with Marine Parks and Reserves Unit:</td>
<td>Dr Abdillahi Chanje, Manager, Marine Parks and Reserves Unit</td>
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<tr>
<td></td>
<td></td>
<td>• Salim Ngomuo, Marine Conservation Warden</td>
<td>Salim Ngomuo, Marine Conservation Warden</td>
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<td>• I. Masekesa, Principal Tourism Warden</td>
<td>I. Masekesa, Principal Tourism Warden</td>
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<td>20 July 2011</td>
<td>Zanzibar, United Republic of Tanzania</td>
<td>Geoffrey Frank Nanyaro, Director General, Deep Sea Fishing Authority, United Republic of Tanzania</td>
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<td>20 July 2011</td>
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<td>Meeting with Zanzibar Fisheries Department</td>
<td>Mussa Aboudjumbe, Director, Ministry of Agriculture, National Resources, Environment and Cooperatives</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Haji Shomari (?) Haji, Haed of Patrol, MCS, Zanzibar</td>
<td>Haji Shomari (?) Haji, Haed of Patrol, MCS, Zanzibar</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Ali Said Mkarafuu, Head Planning</td>
<td>Ali Said Mkarafuu, Head Planning</td>
</tr>
<tr>
<td>Date</td>
<td>Location</td>
<td>Contact Person</td>
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<tr>
<td>22 July 2011</td>
<td>Directorate of Fisheries and Fishery Resources, Antananarivo, Madagascar</td>
<td>Simon Rabearintsoa, Director-General; Tantely Harimanana Razafindrajery, Director</td>
<td>Tel: +261 20 26 254 96; Mobile: +261 32 05 027 58; E-mail: <a href="mailto:rabearintsoasim@yahoo.fr">rabearintsoasim@yahoo.fr</a>; THR: Tel: +261 20 26 254 96; Mobile: +261 32 02 116 92; E-mail: <a href="mailto:jery.tanteli@yahoo.fr">jery.tanteli@yahoo.fr</a></td>
</tr>
<tr>
<td>22 July 2011</td>
<td>Centre de Surveillance des Peches, Antananarivo, Madagascar</td>
<td>Harimandimby Rasolonjatovo, Chef de Centre, Centre de Surveillance des Peches</td>
<td>Tel: +261 20 22 400 65; Mobile: +261 32 07 467 42; E-mail: <a href="mailto:Rasolo.vevey@blueline.mg">Rasolo.vevey@blueline.mg</a></td>
</tr>
<tr>
<td>22 July 2011</td>
<td>Ministry of Agriculture and Fisheries, Antananarivo, Madagascar</td>
<td>George Rafomanana, Secretary General, Ministry of Agriculture and Fisheries</td>
<td>(261) 20 22 293 14; E-mail: <a href="mailto:rafo.geo@blueline.mg">rafo.geo@blueline.mg</a></td>
</tr>
<tr>
<td>25 July 2011</td>
<td>Groupement des Aquaculteurs et Pechers de Crevettes de Madagascar (GAPCM), Antananarivo, Madagascar</td>
<td>Andrianirina Ralison, Secretariat General, GAPCM</td>
<td>(261) 20 22 628 29; E-mail: <a href="mailto:gapcm.sg@netclub.mg">gapcm.sg@netclub.mg</a></td>
</tr>
<tr>
<td>25 July 2011</td>
<td>Centre de Surveillance des Peches, Antananarivo, Madagascar</td>
<td>Harimandimby Rasolonjatovo, Chef de Centre, Centre de Surveillance des Peches</td>
<td>Tel: +261 20 22 400 65; Mobile: +261 32 07 467 42; E-mail: <a href="mailto:Rasolo.vevey@blueline.mg">Rasolo.vevey@blueline.mg</a></td>
</tr>
<tr>
<td>25 July 2011</td>
<td>Hotel Colbert, Antananarivo, Madagascar</td>
<td>Maître Aliravaka Ramarinjanahary, Avocat a la cour and legal advisor to the Centre de Surveillance des Peches</td>
<td>(+ 261) 20 22 262 11; E-mail: <a href="mailto:aliravaka@gmail.com">aliravaka@gmail.com</a></td>
</tr>
</tbody>
</table>

**ADDITIONAL CONTACT VIA MEETINGS OR E-MAIL (not including additional e-mail contact with persons listed above)**

<table>
<thead>
<tr>
<th>PERSON</th>
<th>CONTACT DETAILS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Location</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td>10 October 2011</td>
<td>Silver Springs Hotel, Nairobi, Kenya</td>
</tr>
<tr>
<td>11 October 2011</td>
<td>Silver Springs Hotel, Nairobi, Kenya</td>
</tr>
<tr>
<td>18 October 2011, via e-mail</td>
<td></td>
</tr>
</tbody>
</table>

**AT CONFERENCE PERSON CONTACT DETAILS**

Consultations were held with the three representatives of each country

See the list of attendees.
ANNEX 3: AIDE MEMOIRE

Execution:

- **4-8 July 2011:** Desktop study of all countries
- Two briefings, one in Cape Town on 7 July 2011 and one in Mauritius on 11 July 2011.
- **12-27 July 2011:** Visited Seychelles, Tanzania (including Zanzibar) and Madagascar were visited in the period from 12-27 July 2011.
- **28 July 2011:** Debriefing in Mauritius.
- Submission of first draft
- **27-30 September 2011:** Regional workshop in Mauritius (report back on initial findings, discussions and additional consultations with each of the 7 countries).
- Assistance was provided with the drafting of ToRs to address the legal challenges and barriers identified during the study (also see Annex 5 in this regard).
- Submission of second draft and feedback
- Submission of final draft

Findings and Conclusions:

- Almost all the countries need some form of assistance to enhance the legal framework, but the degree of assistance will depend on the status of the legislation in each country.
- Training and other assistance for the fisheries inspectorate is required.
- There is a need to train and support prosecutors and legal officers on the prosecution of fisheries offences.
- There is a need to establish closer co-operation between enforcement officials, including investigators, and the prosecution authority in each country.
- There is a need to increase awareness amongst presiding officers.
- Regional fora for prosecutors and presiding officers can be helpful.
- Case specific support with investigations and prosecutions is required.
- Assistance with the revision of the IOTC resolutions is required.
- Assistance with the finalisation of the NPOA-IUU is required in some countries.
Recommendations:

- Country specific assistance to strengthen the legal framework via a combination of an international expert and a consultant from the specific country is proposed.
- Training, and the compilation of a manual and a comprehensive set of SOPs for the fisheries inspectorate in each country is proposed.
- Training, and the compilation of a guide to the prosecution of fisheries offences for the prosecuting authority and legal officers in each of the countries is proposed.
- Awareness training for presiding officers must take place in each country.
- The creation of a national fisheries crime enforcement forum combining fisheries inspectors, investigators and prosecutors should be examined.
- The creation of regional fora for presiding officers and prosecutors must be examined.
- Case specific support with investigations and prosecutions must be provided.
- Assistance with the revision of the IOTC resolutions must be provided.
- Assistance with the finalisation of the NPOA-IUU can be provided to the countries that have not yet finalised these plans.
| 4.1 | Comoros         |
| 4.2 | Kenya           |
| 4.3 | Madagascar      |
| 4.4 | Mauritius       |
| 4.5 | Seychelles      |
| 4.6 | Somalia         |
| 4.7 | United Republic of Tanzania |
### 4.1 COMOROS

<table>
<thead>
<tr>
<th>TOR</th>
<th>ISSUES</th>
<th>REVIEW</th>
<th>EVALUATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some General Remarks on the Legal Framework</td>
<td>The Fishing Law of Comoros of 2007 is the principal act governing the fisheries sector and it was reported that the legislation previously applicable, including Act No. 82-15, which regulated foreign fishing in the EEZ as well as the other fragmented and outdated legal texts, has been repealed. Unfortunately the relevant implementing text of the 2007 Act is not yet in existence (specifically the text dealing with regulation and conditions of licenses, fishing methods etc). In the artisanal fishing sector customary law is still playing a big role. The 2007 Act does provide for the regulation of the artisanal or traditional sector. It is based on a free or open access system, but fishing can be subjected to various limitations.</td>
<td>The lack of the relevant implementing text has the effect of leaving the sector largely unregulated, with the exception of the artisanal sector. The 2007 Act was however reported to provide a good basic framework, and that harmonisation with the legislation of other countries in the region was one of the objectives of the act. The lack of an implementing text must however be addressed as a matter of urgency. Please see the main text for a more detailed discussion of the 2007 Act.</td>
<td></td>
</tr>
</tbody>
</table>

#### 3 Legal Capacity to Undertake MCS

- Prosecution

In the artisanal sector, self-regulation through customary law is used to enforce the laws and the system is reported to work well. Fishing Cooperatives take disciplinary action against members that transgress. 
Due to the lack of implementing text there are currently very few matters being prosecuted.
Lawyers in private practice that are appointed by the state in specific matters conduct prosecutions.
Vessel owners hire very competent lawyers who might “intimidate” presiding officers.

The system is reported to work well in the artisanal sector, and no intervention is proposed.
While lawyers in private practice must be excluded from training initiatives, legal officers attached to the fisheries department must be trained to be able to assist with investigations and prosecutions. Awareness training for presiding officers must also be provided.
<table>
<thead>
<tr>
<th><strong>• Administrative penalties/ compounding / admission of guilt fines</strong></th>
<th>It was reported that the 2007 Act makes provision for compounding (&quot;transaction&quot;). It provides for a tribunal/commission consisting of members of various departments and experts to deal with these applications (not yet in place). A deposit is required before the compounding process commences.</th>
<th>No further intervention is required, but the lack of implementing text must be addressed. Also see the discussion in the main text.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal Challenges &amp; Barriers to Improving Compliance Levels with National Law and Provisions of RFBs</strong></td>
<td><strong>• Penalties</strong></td>
<td><strong>• Other measures that can serve as a deterrent (forfeiture, suspension or cancellation of licences, supplementary or other administrative orders)</strong></td>
</tr>
<tr>
<td></td>
<td>It was reported that the maximum penalties in the 2007 Act allows for a fine to the value of 50-100 times the value of the licensing fee in industrial fishing in the sector (license fees are currently at 3000 euros). Fines in the artisanal sector for local fishing are set at between 150 000 - 300 000 Comoros francs.</td>
<td>It was reported that the 2007 Act allows for confiscation and forfeiture of the catch and gear in the case of a transgression and conviction. A vessel can however only be forfeited in the case of a second or subsequent conviction.</td>
</tr>
<tr>
<td></td>
<td>Forfeiture of vessels is only allowed in the case of certain repeat offences. Ideally forfeiture of the vessel should be a possibility (at the court’s discretion) for first offenders as well as this acts as a strong deterrent. Also see the discussion in the main text.</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Legal Barriers in the Procedures for Seizure, Confiscation and Disposal &amp; Handling of Evidence</td>
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<tr>
<td></td>
<td>It was reported that the catch can be confiscated and sold or donated.</td>
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<td></td>
<td>No intervention required, though it might be expedient to look at this in more detail if the implementing text is drafted. Also see the discussion in the main text.</td>
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<table>
<thead>
<tr>
<th>6</th>
<th>Legal Barriers to Implementing an Effective Fisheries Inspectorate</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>• Appointment of Fisheries Inspectors</td>
<td>There are limited provisions on this in the 2007 Act. The repealed article 12 of Act No.82-15 provided for various officials (including Customs and Navy) to have the powers set out in the Act, but does not include any other reference to the appointments of officials. No additional information available.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Also see the discussion in the main text.</td>
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<tr>
<td></td>
<td>• SOP’s &amp; Manuals</td>
<td>There is a “regional procedures guide” for inspection, but no other manuals or SOPs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A manual and SOPs for inspectors will contribute to effective MCS.</td>
</tr>
<tr>
<td></td>
<td>• Funding from fines, penalties and sale of forfeited fish.</td>
<td>The issue of whether fines etc will go to the fisheries authority or treasury has not been determined yet.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>This issue should be addressed when the implementing text is drafted.</td>
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<table>
<thead>
<tr>
<th>2</th>
<th>Harmonisation of Legislation (Internal)</th>
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<tbody>
<tr>
<td></td>
<td>The customary rules, (which govern the artisanal sector to a large degree) and the 2007 Act causes a fragmented approach, but regulation in the artisanal sector is reported to work well in practice.</td>
<td>No intervention is required, but this issue must be addressed in the drafting of the implementing text</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4</th>
<th>Legal Challenges and Barriers to the Implementation of Effective National &amp; Regional MCS (note that the sharing of information will be addressed under (16) below)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Investigative Ability</td>
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<tr>
<td>No.</td>
<td>Section</td>
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<tr>
<td>4</td>
<td>Training</td>
</tr>
<tr>
<td>5</td>
<td>Observers</td>
</tr>
<tr>
<td>6</td>
<td>Legal Barriers to the Adoption of Risk Analysis Methodology</td>
</tr>
<tr>
<td>7</td>
<td>Career Path for Fisheries Inspectors</td>
</tr>
<tr>
<td>8</td>
<td>Legal challenges and Barriers to the Implementation/Adoption of Regional Agreements &amp; Standards</td>
</tr>
<tr>
<td>9</td>
<td>Some general remarks on Legal Challenges and Barriers to the Implementation/Adoption of Regional Agreements &amp; Standards</td>
</tr>
<tr>
<td>10</td>
<td>Implementation of the IUU NPOA</td>
</tr>
<tr>
<td>11</td>
<td>Participation in the IOC MCS Regional Plan for the South West Indian Ocean</td>
</tr>
<tr>
<td>12</td>
<td>Implementation of IOTC Port State Measure Resolutions &amp; FAO Port State Measure Agreement Provisions</td>
</tr>
<tr>
<td>11</td>
<td>Additional Legal Barriers to the Development &amp; Implementation of Existing IOTC Resolutions</td>
</tr>
<tr>
<td>15</td>
<td>Legal Barriers to the Strengthening of Other Central MCS Functions Prescribed by the IOTC</td>
</tr>
<tr>
<td>18</td>
<td>Adoption of Common ESA-IO Regional Standards for Licensing of Vessels (including a national register of vessels)</td>
</tr>
<tr>
<td>2</td>
<td>Harmonisation of Legislation (between ESA-IO countries)</td>
</tr>
</tbody>
</table>

**Legal Challenges and Barriers to Regional Co-operation & Information Sharing**

**Some general remarks on Legal Challenges and Barriers to Regional Co-operation & Information Sharing**

As a general remark not specific to Comoros, the lack of provisions on the sharing of information in legislation was highlighted as a problem area by the IOTC. Except for what is indicated below, no specific legal problems in this regard were reported or detected. In practice some countries are however reluctant to share information.

The establishment of compatible data collection or reporting systems and the sharing of data and information regionally do not necessarily require any legislative prescriptions. In view of the problems experienced in practice, it might however be expedient to incorporate some of the regional obligations in this regard into domestic legislation. This can be further explored in the drafting of implementing text for the 2007 Act.
<table>
<thead>
<tr>
<th>No.</th>
<th>Action</th>
<th>Legal Barriers Reported/Detected</th>
<th>Intervention Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Establishement of a Compatible Data Collection System (This includes data for scientific purposes and for MCS, such as a list/register of licenses, a register of fishing vessels, permits and licenses, the information collected in terms of the PSMA).</td>
<td>No legal barriers were reported or detected.</td>
<td>No intervention in terms of legal requirements is required.</td>
</tr>
<tr>
<td>13</td>
<td>Establishement of a Compatible Reporting System for Tuna Fisheries Statistics</td>
<td>No legal barriers were reported or detected.</td>
<td>No intervention in terms of legal requirements is required.</td>
</tr>
<tr>
<td>14</td>
<td>Implementation of a National VMS &amp; Sharing of Data Regionally</td>
<td>The National Centre for Control and Surveillance of Fisheries of the Union of Comoros has a VMS system, which has been operational since December 17, 2009. This is used to monitor the activity of a sample of 15 small-scale fishing vessels of the Comoros and the industrial fishing vessels licensed to fish in the waters of the Comoros.</td>
<td>Both the admissibility of VMS evidence as well as the incorporation of provisions on the sharing of data regionally must receive attention during the drafting of the implementing text.</td>
</tr>
<tr>
<td>16</td>
<td>Sharing of Operational MCS Information</td>
<td>No additional legal barriers were detected or reported, but see the comment immediately above.</td>
<td>See the comment immediately above.</td>
</tr>
<tr>
<td>17</td>
<td>Legal Challenges and Barriers to the Sharing of Data to Enable Development and Functioning of the Regional MCS Data and Operations Centre</td>
<td>No additional legal barriers were detected or reported, but see the comment under 14 above.</td>
<td>See the comment under 14 above.</td>
</tr>
</tbody>
</table>
### 4.2 KENYA

<table>
<thead>
<tr>
<th>TOR</th>
<th>ISSUES</th>
<th>REVIEW</th>
<th>EVALUATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Framework</td>
<td></td>
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</tr>
<tr>
<td>Some General Remarks on the Legal Framework</td>
<td>The principal legislation is the Fisheries Act, CAP 378, Laws of Kenya of 1989, which applies to both freshwater and marine fishing. There is a 2011 Draft Bill, and some sections on MCS in this Bill should be reinforced (see s.34 and onwards). It may be necessary to draft new regulations as well.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Legal Capacity to Undertake MCS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Prosecution</td>
<td>Most fisheries cases go to the magistrate's courts, but there are not a high number of cases in the courts. In many cases the suspects flee, and only illegal catch and gear is confiscated, but no prosecution follows. The most common offences in the artisanal marine environment are illegal nets, fishing in protected areas and illegal fishing methods. In the freshwater environment the most common offences relate to gear (mesh sizes etc), and the catching of undersized fish (mostly artisanal, and the main commercial activity is the transportation of fish). There is only one industrial Kenyan vessel fishing in the EEZ. As far as foreign longliners and purse seiners are concerned, the amount of licenses decreased from 93 in 2007 to 20 in 2010, and is still decreasing (due to the effect of piracy). There are no patrol vessels, and no vessels have been arrested for illegal fishing in the EEZ.</td>
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</tbody>
</table>
Fisheries inspectors often guide and assist prosecutors in cases, and will e.g. draft the charge sheet. It is mostly police prosecutors that are used, though the intention is to gradually replace them with graduate prosecutors. Some fisheries inspectors were trained in prosecution in 2000/2001, but they were never appointed. The head of prosecutions is the Director of Public Prosecutions. No statistics on the conviction rate were available, but it is reportedly fairly low. Police prosecutors have to face trained and experienced lawyers in such cases. Magistrates should be given awareness training, and a bench book will be valuable. In a recent case the accused was acquitted because the magistrate was unaware of the new legislation.

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<thead>
<tr>
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<tbody>
<tr>
<td></td>
<td>Administrative penalties/ compounding / admission of guilt fines</td>
<td>Compounding is a possibility under the legislation, but the process is seldom used.</td>
</tr>
<tr>
<td>1</td>
<td>Legal Challenges &amp; Barriers to Improving Compliance Levels with National Law and Provisions of RFBs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Penalties</td>
<td>Offenders in the artisanal sector are reputed to break the law with impunity because the penalties are too low. They must have fishing licenses, but the licenses are very cheap. If a license is revoked, they can simply buy another license. They have a register of licenses, but the beach management units issue these licenses, and it is difficult to control.</td>
</tr>
<tr>
<td>19</td>
<td>Legal Barriers in the Procedures for Seizure, Confiscation, Disposal &amp; Handling of Evidence</td>
<td>The Inspectorate have the power to sell or donate seized fish. A receipt is issued and kept.</td>
</tr>
<tr>
<td>6</td>
<td>Legal Barriers to Implementing an Effective Fisheries Inspectorate</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Appointment of Fisheries Inspectors</td>
<td>There are 39 fishery inspectors responsible for fish quality control and 2 port inspectors and an additional marine inspector, who has also been trained as an observer. There is not a high turnover of inspectors.</td>
</tr>
<tr>
<td></td>
<td>• SOP’s &amp; Manuals</td>
<td>There are no manuals or SOPs available or in use.</td>
</tr>
<tr>
<td></td>
<td>• Funding from fines, penalties and sale of forfeited fish.</td>
<td>All fines and proceeds from confiscated fish goes to the general state coffer.</td>
</tr>
<tr>
<td>2</td>
<td>• Harmonisation of Legislation (Internal)</td>
<td>No legal barriers were reported or detected.</td>
</tr>
<tr>
<td>4</td>
<td>Legal Challenges and Barriers to the Implementation of Effective National &amp; Regional MCS (note that the sharing of information will be addressed under (16) below)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Investigative Ability</td>
<td>Training in basic investigative techniques was requested.</td>
</tr>
<tr>
<td></td>
<td>• Training</td>
<td>Inspectors have participated in a regional patrol in 2009, but they have not been trained in boarding, disembarking, protective gear, preservation of evidence, arrest or the pressing of charges.</td>
</tr>
<tr>
<td></td>
<td>Observers</td>
<td>There are two trained observers, but currently no observers on vessels. Training of observers for vessels is required in the future for the shrimp industry specifically, as well as to generally comply with the IOTC resolutions.</td>
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<tr>
<td>9</td>
<td>Legal Barriers to the Adoption of Risk Analysis Methodology</td>
<td>Other control measures such as closed seasons and a closed number of vessels on Lake Naivasha work well.</td>
</tr>
<tr>
<td>7</td>
<td>Career Path for Fisheries Inspectors</td>
<td>See the remarks under 6 above.</td>
</tr>
</tbody>
</table>

### Legal challenges and Barriers to the Implementation/Adoption of Regional Agreements & Standards

<table>
<thead>
<tr>
<th></th>
<th>Implementation of the IUU NPOA</th>
<th>There is a draft NPOA that requires finalisation. Lake Victoria has a shared IPOA.</th>
<th>Assistance with the finalisation of the draft NPOA is required.</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Participation in the IOC MCS Regional Plan for the South West Indian Ocean</td>
<td>The only barrier that was reported is a lack of resources.</td>
<td>No intervention from a legal perspective is required.</td>
</tr>
<tr>
<td>8</td>
<td>Implementation of IOTC Port State Measure Resolutions &amp; FAO Port State Measure Agreement Provisions</td>
<td>The barriers reported were not of a legal nature (the role of port inspectors is not clearly defined, lack of notification and communication, port state function of fisheries is unclear etc). They require legislation or amendments on the duty of PSM and the functions and powers of inspectors, who also require training.</td>
<td>Though some of the barriers are a practical issue, please see the main text for more comments on the barriers in the legislative framework.</td>
</tr>
<tr>
<td>Additional Legal Barriers to the Development &amp; Implementation of Existing IOTC Resolutions</td>
<td>Legal Barriers to the Strengthening of Other Central MCS Functions Prescribed by the IOTC</td>
<td>Legal Challenges and Barriers to Regional Co-operation &amp; Information Sharing</td>
<td></td>
</tr>
<tr>
<td>---</td>
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<tr>
<td>It was reported that resolutions are sometimes agreed to and passed as the country wants to cooperate, but then problems arise with the implementation thereof. A workshop for officials on the adoption, incorporation, and implementation of the IOTC resolutions was proposed.</td>
<td>Although more of a practical problem, the issue can also be addressed by incorporating certain obligations into the legislation.</td>
<td>These barriers are not of a legal nature, but some obligations in this regard can be incorporated into the legislation.</td>
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<tr>
<td>There is a national register of vessels in the lake area, which is currently being incorporated into a database. There is however a problem with registration and licensing, which is being done by different departments, and the lists not being harmonised.</td>
<td>There is a functioning data collection system, and no legal barriers were reported or detected.</td>
<td>There is a functioning data collection system, and no legal barriers were reported or detected.</td>
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<tr>
<td>Although more of a practical problem, the issue can also be addressed by incorporating certain obligations into the legislation.</td>
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</tr>
<tr>
<td>13</td>
<td>Establishment of a Compatible Reporting System for Tuna Fisheries Statistics</td>
<td>Some practical problems were reported (such as purse seiners not submitting data, while longliners usually do), but these are not due to gaps in the legislation.</td>
<td>There are no legal barriers that were reported or detected.</td>
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<tr>
<td>14</td>
<td>Implementation of a National VMS &amp; Sharing of Data Regionally</td>
<td>The VMS system was reported to be functioning, and problems experienced were of a practical nature (e.g. no payment to the service provider resulting in the service being terminated)</td>
<td>There are no legal barriers that were reported or detected. The sharing of data regionally is referred to immediately below.</td>
</tr>
<tr>
<td>16</td>
<td>Sharing of Operational MCS Information</td>
<td>The system of sharing of information in the Victoria region was reported to be working well. Also see below.</td>
<td>There are no legal barriers that were reported or detected, but legal intervention might be advantageous. See the discussion in the main text.</td>
</tr>
<tr>
<td>17</td>
<td>Legal Challenges and Barriers to the Sharing of Data to Enable Development and Functioning of the Regional MCS Data and Operations Centre</td>
<td>It was reported that data is shared with the IOTC, but that sometimes sharing of information with neighbouring countries or other countries in the region does not take place, although there is a need for it.</td>
<td>As above, there are no legal barriers that were reported or detected, but legal intervention might be advantageous. See the discussion in the main text.</td>
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### 4.3 MADAGASCAR

<table>
<thead>
<tr>
<th>TOR</th>
<th>ISSUES</th>
<th>REVIEW</th>
<th>EVALUATION</th>
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<tbody>
<tr>
<td>Legal Framework</td>
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<tr>
<td>Some General Remarks on the Legal Framework</td>
<td>The current 1993 legislation is outdated, but most of the gaps and insufficiencies are addressed via the 2007 Bill. They are also in the process of preparing a law on aquaculture and have requested assistance in this regard.</td>
<td>The 2007 Bill is not yet in force. The draft also originates from 2005, and already requires updating. In addition, the necessary implementing text must also still be drafted. The review, finalisation and implementation of the 2007 Bill must receive urgent attention. Some amendments have already been prepared and they are waiting for parliament to convene. Assistance with the preparation of the legislation on aquaculture can also be provided. The Bill has been presented to stakeholders in the fishing sector, and the deep-water shrimp industry has already hired a consultant to assist them in this regard.</td>
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### 3 Legal Capacity to Undertake MCS

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<tr>
<td>• Prosecution</td>
<td>In the last 3-4 years only one case concerning the industrial fishing sector was prosecuted. This was a matter of illegal fishing by an Indonesian vessel. While there were other cases of non-compliance, both the authorities and perpetrators prefer using the compounding process (also described as arbitration/mediation). If a fine is not paid, the vessel can be seized and sold. As far as the traditional fishing sector is concerned, typical contraventions include the use of illegal gear and</td>
<td>Knowledge of fisheries legislation in the judiciary and prosecution is very low, if not totally lacking. The lack of any retributive action against perpetrators in the traditional fishing sector is a concern. While the confiscation of gear and catch is to a certain degree a deterrent, an additional penalty, even if fairly low and paid as an admission of guilt fine, will serve as an additional deterrent,</td>
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</table>
non-compliance with the prescriptions regarding closed seasons. Some minor cases go to court, but more often than not, inspectors only confiscate the gear and catch, and do not take any further action. The reasons for this are namely that the maximum fines are very low, the perpetrators are very poor, and the effort and cost of a prosecution is therefore not justifiable.

The CSP cases are prepared by a legal advisor, and then referred to the person in charge of the competent jurisdiction. Because there are so few cases going to court (most cases are compounded), there is very little knowledge and experience amongst presiding officers and prosecutors on fisheries legislation. There is also a huge turnover amongst such officials. The local tertiary institution does not offer any courses on marine resources law.

The more serious cases are prosecuted using lawyers from private practice. There are however two lawyers at the Ministry who assist with the prosecutions, and they will benefit from such training.

In the last few years some French and Spanish vessels have preferred going to court over compounding. There have been problems with the admissibility of evidence, as well as in getting information from neighbouring countries in an effort to prove the violations. If convicted, they face a fine and possible forfeiture, but imprisonment is not a penalty option.

and should contribute to lowering the levels of illegal fishing. There does not seem to be a legal barrier preventing this, and it is rather a matter of policy.

Due to the very low amount of cases that are prosecuted, and the fact that this is done on regional level, there does not seem to be much value in training individuals within the judicial system, as it is unlikely that they will actually be dealing with such matters. As lawyers in private practice are prosecuting the more serious cases, it might be contra productive to provide training to them.

Training in prosecution for the two lawyers based at the Ministry is however required. Officials indicated that they are keen to offer capacity training in their own office. It is not quite clear whether such a system of admission of guilt fines can be accommodated by the Malagasy legal system. In addition, such a system creates a huge administrative burden, and is open to abuse.

The issues of admissibility of VMS and photographic evidence are being addressed in the new Bill.
<table>
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<tr>
<th></th>
<th>Legal Challenges &amp; Barriers to Improving Compliance Levels with National Law and Provisions of RFBs</th>
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</thead>
<tbody>
<tr>
<td>• Penalties</td>
<td>The 1993 legislation is outdated (the term &quot;obsolete&quot; has been used as well) and the maximum penalties are insufficient. Penalties given under the compounding process were reported to be too low to serve as an effective deterrent. The new 2007 Bill however addresses this issue. While imprisonment is not an option for fisheries offences in general, imprisonment is allowed by the penal system if such an offence is accompanied by fraudulent conduct. There was a report of a case where seized goods were released due to</td>
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<td>The current maximum penalties are insufficient to act as a proper deterrent. Long-term imprisonment is not a penalty option. The finalisation and the implementation of the 2007 Bill must receive urgent attention. Also see the discussion regarding this and imprisonment as a penalty option, in the country discussion.</td>
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</table>
irregular interference in the legal process by the transgressor. Such conduct can then result in imprisonment. In the case of repeat offenders, the maximum penalty is doubled.

- Other measures that can serve as a deterrent (forfeiture, suspension or cancellation of licences, supplementary or other administrative orders)

The current legislation provides for forfeiture of the instrumentalities of crime, and a Korean longliner was forfeited in 2002 and is being utilised as a patrol vessel. There was also a report about a prosecution in the nineties where the court cancelled a fishing licence after conviction. In addition, there is an administrative process allowing for the cancellation or suspension of a license (based on a set of protocols/conditions attached to the issuing of a license).

The 2007 Bill contains adequate provisions on forfeiture (see article 67). There does not seem to be any serious challenges and barriers remaining, provided the Bill is finalised and implemented. It was pointed out that the 2007 Bill already dates from 2005, and also already requires updating. The finalisation and the implementation of the 2007 Bill must receive urgent attention. This must include a re-evaluation of its provisions to ensure that all these issues are covered.

It was reported that no problems with these provisions are experienced in practice. Fisheries inspectors can however not join in joint initial visits by customs and other departments, but do their own inspections afterwards. If they confiscate large amounts of fish, they can immediately sell the fish to the best offer on tender or can donate it to a charity or other institution.

There does not seem to be any serious challenges and barriers in practice. The 2007 Bill covers these issues quite substantially, but it will be expedient to do a thorough evaluation of these provisions. The 1993 legislation however, is outdated, and these provisions must be re-evaluated and refined in the draft legislation.
<table>
<thead>
<tr>
<th>Topic</th>
<th>Description</th>
<th>Comments</th>
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<tbody>
<tr>
<td>Appointment of Fisheries Inspectors</td>
<td>The appointment requirement for fisheries inspectors is a 3-year tertiary qualification, and further in-house training is then provided. It was reported that the new Bill also reinforces the role of the CSP. There are two types of inspectors: police and civil. Inspectors are currently rotated every three years: the police inspectors rotate within the police system and the civil inspectors to a different location.</td>
<td>No legal barriers regarding the appointment of fisheries inspectors were reported or detected. This aspect is dealt with in the 2007 Bill, and while there are no apparent shortcomings, it might be expedient to include this issue as part of a general review and evaluation of the Bill prior to implementation.</td>
</tr>
<tr>
<td>Corruption</td>
<td>Reports and complaints of possible corrupt activities were received, but no prosecutions for corruption by fishery inspectors have taken place. The lack of transparency in the compounding process was also mentioned as a problem in this regard. A further concern was the cumbersome administrative provisions, which grant a lot of power to the administration, could possibly foster corruption. The rotation process for inspectors (see immediately above) is a good method of combating corruption.</td>
<td>Corruption remains a drawback to effective enforcement. The only strictly legal requirement is that corruption must be an offence in terms of Malagasy law, which is the case. The administrative provisions in the legislation, and it seems that this is also the case with the procedures in the 2007 Bill, can possibly accommodate corrupt activities. A possible intervention could be investigative and legal assistance to combat corruption. The feasibility of such assistance might however be problematic. A review of the 2007 Bill must also focus on the administrative processes in an effort to make such processes transparent and ensure that the processes do not foster corrupt practices.</td>
</tr>
<tr>
<td>• SOP's &amp; Manuals</td>
<td>There are SOPs for the patrol vessels, but not for the inspectorate (they have a manual). It was reported that these documents date from 1999 and require comprehensive updating.</td>
<td>The lack of comprehensive SOPs and manuals for inspectors is a concern.</td>
</tr>
<tr>
<td>• Funding from fines, penalties and sale of forfeited fish.</td>
<td>The major source of the budget is the revenue collected from licenses and penalties, of which a fairly large percentage is used to fund the CSP (it does however first goes to the general treasury).</td>
<td>There does not seem to be any legal challenges or barriers in this regard. No intervention is required.</td>
</tr>
<tr>
<td>2 Harmonisation of Legislation (Internal)</td>
<td>During the interviews it was pointed out that as the Bill was already drafted in 2005, it requires updating.</td>
<td>As far as internal harmonisation is concerned, the necessary implementing text must still be drafted (opinion expressed during the interviews), or the current decrees and orders must be adapted to the Bill, and ought to eventually be consolidated (information from the draft NPOA). Since the 2007 draft requires revision, and the implementing text must still be drafted, or adapted from the current decrees and orders, this aspect must also be taken into consideration during that process.</td>
</tr>
<tr>
<td>4 Legal Challenges and Barriers to the Implementation of Effective National &amp; Regional MCS (note that the sharing of information will be addressed under (16) below)</td>
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<tr>
<td>• Investigative Ability</td>
<td>The focus of enforcement is on industrial and artisanal fisheries, but traditional fisheries are not excluded. It was initially reported that inspectors are empowered to do investigations, and do have the necessary skills to do so. An additional report however contradicted this to some degree and requested that inspectors be provided with more training in investigative techniques. A related issue, though more related to the detection than the investigation of offences, is a proposal in the draft NPOA that informers should be paid a percentage of the penalty where their information or evidence leads to a conviction.</td>
<td>Inspectors require additional training on investigative techniques and skills. Regarding the proposal in the draft NPOA that informers should be paid a percentage of the penalty where their information or evidence leads to a conviction: This is a fairly common provision in legislation, but the practical effect of such a provision is often misunderstood. The fact that a witness may stand to gain financial advantage by a conviction, immediately casts doubt on the truthfulness of such evidence.</td>
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<td>• Training</td>
<td>While the more senior inspectors have undergone training, there are quite a few young recruits that require training. Also see the remarks regarding the use of VMS data as evidence under (14) below.</td>
<td>There is a need for training of inspectors. It was pointed out by an MCS specialist that the engine log, freezer log and vessel navigation system are all valuable tools in proving certain actions that might serve as evidence of the commission of the offence. The practical application of such aspects should be covered in possible training interventions. Basic training for new recruits and specialised training for more experienced inspectors, e.g. on investigation techniques and skills, will be valuable</td>
</tr>
<tr>
<td>• Observers</td>
<td>Observers are present on industrial fishing vessels. The primary role of observers is still scientific monitoring, but they do report on infractions. There is daily confidential direct communication with observers.</td>
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While non-scientific observers were initially recruited, they all had scientific degrees. There are now 8 observers appointed at various levels, and they have received additional training.

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<th>9</th>
<th>Legal Barriers to the Adoption of Risk Analysis Methodology</th>
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<td>There are no legal barriers directly influencing this issue. Related issues however include the fact that limited enforcement is done in the traditional fisheries sector. Another issue that was reported was that the Navy wants more responsibility with regard to enforcement of fisheries offences. Attempts have been made to agree to a MOU, but these have been unsuccessful.</td>
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<th>7</th>
<th>Career Path for Fisheries Inspectors</th>
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<td>It was reported that there is no formal grading system for inspectors, but that more experienced officials get a higher salary. Inspectors form part of the civil service.</td>
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### Legal challenges and Barriers to the Implementation/Adoption of Regional Agreements & Standards

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<tr>
<th>Some general remarks on Legal Challenges and Barriers to the Implementation/Adoption of Regional Agreements &amp; Standards</th>
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<tr>
<td>Article 3 of the 2007 Bill does provide for the establishment of conservation measures applicable to, and the management of, shared, straddling or highly migratory stocks, and places an obligation on the Minister of Fisheries to consult with the other states in the region or sub-region, in order to harmonise and to ensure compatibility of such measures with those adopted by each State and in accordance with the provisions of international conventions and agreements to which the Malagasy state is a party.</td>
</tr>
</tbody>
</table>
It was reported that the 2007 Bill was already drafted in 2005, and that various new resolutions have been adopted since 2005. The 2007 Bill should therefore be reviewed to ensure that all barriers to the effective implementation of regional agreements and standards are identified and dealt with.

There is no legal barrier to the adoption of the NPOA. As far as the implementation is concerned, the draft NPOA highlights many of the shortcomings and identifies certain measures to be undertaken, many of which are also incorporated in the main text of the review. No intervention is required, but assistance with a review of the NPOA draft will be helpful.

Problems with the participation were reported, and it was reported that the necessary resources are allocated to this task. There does not seem to be any legal barrier to participation in the IOC MCS Regional Plan for the South West Indian Ocean.

The barriers reported were of a practical nature – the IOTC PSMs are not being applied due to a lack of resources. There are some controls in place, but these are inadequate.

Though not strictly speaking a legal issue, there were some concerns expressed by the IOTC. These are addressed in the main text. The FAO-PSM and IOTC-PSM are very similar. The scope of this study does not allow for a detailed investigation.

<table>
<thead>
<tr>
<th></th>
<th>Implementation of the IUU NPOA</th>
<th>The NPOA has been finalised, but still not adopted. There was however a request that the draft requires updating. No direct reasons for this delay were be provided.</th>
<th>There is no legal barrier to the adoption of the NPOA. As far as the implementation is concerned, the draft NPOA highlights many of the shortcomings and identifies certain measures to be undertaken, many of which are also incorporated in the main text of the review. No intervention is required, but assistance with a review of the NPOA draft will be helpful.</th>
</tr>
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<tbody>
<tr>
<td>5</td>
<td>Implementation of the IUU NPOA</td>
<td>The NPOA has been finalised, but still not adopted. There was however a request that the draft requires updating. No direct reasons for this delay were be provided.</td>
<td>There is no legal barrier to the adoption of the NPOA. As far as the implementation is concerned, the draft NPOA highlights many of the shortcomings and identifies certain measures to be undertaken, many of which are also incorporated in the main text of the review. No intervention is required, but assistance with a review of the NPOA draft will be helpful.</td>
</tr>
<tr>
<td>10</td>
<td>Participation in the IOC MCS Regional Plan for the South West Indian Ocean</td>
<td>Problems with the participation were reported, and it was reported that the necessary resources are allocated to this task. There does not seem to be any legal barrier to participation in the IOC MCS Regional Plan for the South West Indian Ocean.</td>
<td>No legal barriers in this regard were reported or detected.</td>
</tr>
<tr>
<td>8</td>
<td>Implementation of IOTC Port State Measure Resolutions &amp; FAO Port State Measure Agreement Provisions</td>
<td>The barriers reported were of a practical nature – the IOTC PSMs are not being applied due to a lack of resources. There are some controls in place, but these are inadequate.</td>
<td>Though not strictly speaking a legal issue, there were some concerns expressed by the IOTC. These are addressed in the main text. The FAO-PSM and IOTC-PSM are very similar. The scope of this study does not allow for a detailed investigation.</td>
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<td>No.</td>
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<tr>
<td>11</td>
<td>Additional Legal Barriers to the Development &amp; Implementation of Existing IOTC Resolutions</td>
<td>Some of the general problem areas in this regard are discussed in the main text. The inadequate provisions on inspection are being addressed via the new draft. While a comment was made that an annual, or at least regular, revision of national legislation would be ideal, it is might be unrealistic in light of the fact the 2007 draft have not yet been finalised. Other practical issues included the fact that there are numerous resolutions, but limited resources. There was an attempt to comply, but there is also a very large area to cover due to the size of the country's coastline and sea.</td>
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</tr>
<tr>
<td>15</td>
<td>Legal Barriers to the Strengthening of Other Central MCS Functions Prescribed by the IOTC</td>
<td>No legal barriers in this regard were reported or detected.</td>
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</tr>
<tr>
<td>18</td>
<td>Adoption of Common ESA-IO Regional Standards for Licensing of Vessels (including a national register of vessels)</td>
<td>No legal barriers in this regard were reported or detected. Article 28 of the 2007 Bill provides that the registration of vessels is a prerequisite to obtaining a license. It was reported that they follow the IOC and IOTC prescriptions in this</td>
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regard, and that a national register of vessels is in place. Before a vessel is licensed, they will first determine whether it is blacklisted or not.

| 2 | Harmonisation of Legislation (between ESA-IO countries) | A remark was made that Malagasy penalties are probably the lowest in the region. Other reports and the draft NPOA also refers to the inadequacy of penalties. This is however being addressed in the new Bill. This issue is further discussed in the main text. | Intervention is required. The issue of harmonisation was highlighted as a matter requiring attention if the Bill is revised, and there is an eagerness to address this issue. See the discussion in the review document. |

### Legal Challenges and Barriers to Regional Co-operation & Information Sharing

| Some general remarks on Legal Challenges and Barriers to Regional Co-operation & Information Sharing | As a general remark not specific to Madagascar, the lack of provisions on the sharing of information in legislation was highlighted as a problem area by the IOTC. Except for as indicated below, no specific legal problems in this regard were reported or detected. In practice some countries are however reluctant to share information. | The establishment of compatible data collection or reporting systems and the sharing of data and information regionally do not necessarily require any legislative prescriptions. In view of the problems experienced in practice, it might however be expedient to incorporate some of the regional obligations in this regard into domestic legislation. This can be further explored in a review of the 2007 Bill. |

| 12 | Establishment of a Compatible Data Collection System (This includes data for scientific purposes and for MCS, such as a list/register of licenses, a register of fishing vessels, permits and licenses, the information collected in terms of the PSMA). | The data collection system for the shrimp-fishing sector has been in place for many years and is working well. Practical problems are however experienced in the traditional and foreign fishing sector. Some data from the tuna-fishing sector and on imports and exports are received, but the system is not working well and needs to be centralised. | No legal barriers were however reported or detected. Also see the general comments above. |

<p>| 13 | Establishment of a Compatible Reporting System for Tuna Fisheries Statistics | See the remarks immediately above. | See the general comments above. |</p>
<table>
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<tr>
<th></th>
<th>Implementation of a National VMS &amp; Sharing of Data Regionally</th>
<th>The VMS system is functioning well, but the data is not centralised anywhere. There are accredited personnel and inspectors to react to infractions identified via the VMS system. A related issue, which is of extreme importance to the use of VMS data in prosecutions or other proceedings, is the difficulties experienced with the admissibility of such evidence (it is seen as computer generated evidence). It was reported that there have been problems with the courts not willing to accept VMS data and similar evidence as admissible. There was a case last year where two Reunion vessels were fined, but they disputed the VMS evidence. Because it was only a few weeks before they had to renew their licenses, they eventually paid the fines. In the last few years some French and Spanish vessels have preferred going to court over compounding. There have been problems with obtaining information from neighbouring countries in an effort to prove the violations.</th>
<th>The 2007 Bill deals specifically with the admissibility of VMS and photographic evidence. Lack of assistance from other countries in the region with the gathering and presentation of evidence in court have caused problems in practice. See the general comments above.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sharing of Operational MCS Information</td>
<td>It was reported that Madagascar maintains an effective, but sometimes informal, system of communication with Reunion and Mozambique, but that some neighbouring countries do not participate freely, claiming that such information is confidential.</td>
<td>The authorities have no reservations about the sharing of information with other countries in the region. See however the general comments above.</td>
</tr>
<tr>
<td></td>
<td>Legal Challenges and Barriers to the Sharing of Data to Enable Development and Functioning of the Regional MCS Data and Operations Centre</td>
<td>See the comments above. No additional legal barriers were reported or detected.</td>
<td>See the general comments above.</td>
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### MAURITIUS

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<thead>
<tr>
<th>ISSUES</th>
<th>REVIEW</th>
<th>EVALUATION</th>
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<tbody>
<tr>
<td>Some General Remarks on the Legal Framework</td>
<td>Mauritius is in the process of updating their Fisheries and Marine Resources Act 20/2007 (definitions, powers of inspectors and the implementation of regional agreements were factors requiring attention that were specifically mentioned.</td>
<td>Assistance with the updating process was requested and is recommended.</td>
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### Legal Capacity to Undertake MCS

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<td><strong>3</strong> Legal Capacity to Undertake MCS</td>
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<tr>
<td>• Prosecution</td>
<td>The Attorney–General/DPP is at the head of prosecutions in the country. The more serious cases (of which there are about 2 or 3 a year) are usually settled via the compounding process. Many of the minor offences are however prosecuted. In such cases the fisheries inspectors conduct the prosecutions (there are about 200 such inspectors). The fisheries authority does not have an in-house lawyer or legal officer, but the state law office has a lawyer responsible for fisheries matters who assists with these matters.</td>
<td>Both prosecutors and fisheries officers conducting prosecutions require training. Awareness training for presiding officers was also highlighted as a need.</td>
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<tr>
<td>• Administrative penalties/ compounding / admission of guilt fines</td>
<td>The legislation provides for compounding, and an experienced judge heads the committee that decides on compounding. The transgressor must admit guilt in writing. In 2009 a Mauritian vessel received a 270 000 USD compounding fine for the contravention of license conditions. In 2010 there were two cases, a Mauritan vessel that fished without a license, and a Taiwanese vessel that had 124.2 kg of shark fin. The cases were</td>
<td>The compounding process is functioning well and no intervention is required.</td>
</tr>
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</table>
compounded resulting in a 1 million MR and 800,000 MR fine respectively. So far in 2011 one foreign vessel was fined 1 million MR for fishing without a license and another foreign vessel has been detained. The compounding process is only used in the case of serious transgressions, and was described as a “quick and easy” process in comparison with prosecution. There is no admission of guilt system for minor offences.

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<th>1</th>
<th>Legal Challenges &amp; Barriers to Improving Compliance Levels with National Law and Provisions of RFBs</th>
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<tbody>
<tr>
<td></td>
<td>• Penalties</td>
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<td></td>
<td>• Other measures that can serve as a deterrent (forfeiture, suspension or cancellation of licences, supplementary or other administrative orders)</td>
</tr>
<tr>
<td>19</td>
<td>• Legal Barriers in the Procedures for Seizure, Confiscation and Disposal &amp; Handling of Evidence</td>
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<tr>
<td>6</td>
<td>Legal Barriers to Implementing an Effective Fisheries Inspectorate</td>
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<tr>
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<td>• Appointment of Fisheries Inspectors</td>
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<td></td>
<td>• SOP’s &amp; Manuals</td>
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<tr>
<td></td>
<td>• Funding from fines, penalties and sale of forfeited fish.</td>
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<tr>
<td>2</td>
<td>Harmonisation of Legislation (Internal)</td>
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</tbody>
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No intervention is required.
### Legal Challenges and Barriers to the Implementation of Effective National & Regional MCS (note that the sharing of information will be addressed under (16) below)

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<th>No.</th>
<th>Challenge</th>
<th>Description</th>
<th>Intervention</th>
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<tr>
<td>4</td>
<td>Investigative Ability</td>
<td>Personnel from the Fisheries Ministry have been trained to work on the investigations leading to prosecution. They will take the statement, prepare the file/docket and hand it to the State Law Office. The person responsible for fisheries at the State Law Office refers these cases for prosecution (there are about 10 officials involved in this).</td>
<td>No intervention is required.</td>
</tr>
<tr>
<td></td>
<td>Training</td>
<td>Additional training for the “investigators” and other fisheries inspectors is required. Subject matter must include the boarding of vessels, carrying out of searches, gathering evidence, establishing the contravention, investigation techniques and preparation of files/dockets. Some of the fisheries officers also conduct prosecutions in the minor cases, and this should be addressed as well.</td>
<td>No intervention is required.</td>
</tr>
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<td></td>
<td>Observers</td>
<td>No intervention is required.</td>
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<tr>
<th>No.</th>
<th>Challenge</th>
<th>Description</th>
<th>Intervention</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Legal Barriers to the Adoption of Risk Analysis Methodology</td>
<td>No such barriers were reported or detected, but see the comment under 18 below.</td>
<td>No intervention is required.</td>
</tr>
<tr>
<td>7</td>
<td>Career Path for Fisheries Inspectors</td>
<td>In addition to the Fisheries Inspectorate, there is also a Port State Control Unit. All of these officials form part of the civil service.</td>
<td>No intervention is required.</td>
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Legal challenges and Barriers to the Implementation/Adoption of Regional Agreements & Standards

No additional challenges or barriers were reported or detected.

No intervention is required.
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<tr>
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<th>Some general remarks on Legal Challenges and Barriers to the Implementation/Adoption of Regional Agreements &amp; Standards</th>
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<tr>
<td>5</td>
<td>Implementation of the IUU NPOA</td>
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<tr>
<td>10</td>
<td>Participation in the IOC MCS Regional Plan for the South West Indian Ocean</td>
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<tr>
<td>8</td>
<td>Implementation of IOTC Port State Measure Resolutions &amp; FAO Port State Measure Agreement Provisions</td>
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<tr>
<td>11</td>
<td>Additional Legal Barriers to the Development &amp; Implementation of Existing IOTC Resolutions</td>
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<td>15</td>
<td>Legal Barriers to the Strengthening of Other Central MCS Functions Prescribed by the IOTC</td>
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<td>18</td>
<td>Adoption of Common ESA-IO Regional Standards for Licensing of Vessels (including a national register of vessels)</td>
</tr>
<tr>
<td>2</td>
<td>Harmonisation of Legislation (between ESA-IO countries)</td>
</tr>
<tr>
<td>Legal Challenges and Barriers to Regional Co-operation &amp; Information Sharing</td>
<td>Due to the existence of a confidentiality clause, while there seems to be no reluctance or unwillingness to share information, a high degree of caution is exercised before information is shared. It is respectfully submitted that the provision in the legislation is well formulated, but possibly interpreted too narrowly.</td>
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<tr>
<td>Some general remarks on Legal Challenges and Barriers to Regional Co-operation &amp; Information Sharing</td>
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</tr>
<tr>
<td>12 Establishment of a Compatible Data Collection System (This includes data for scientific purposes and for MCS, such as a list/register of licenses, a register of fishing vessels, permits and licenses, the information collected in terms of the PSMA)</td>
<td>No legal barriers were reported or detected</td>
</tr>
<tr>
<td>13 Establishment of a Compatible Reporting System for Tuna Fisheries Statistics</td>
<td>No legal barriers were reported or detected</td>
</tr>
<tr>
<td>14 Implementation of a National VMS &amp; Sharing of Data Regionally</td>
<td>No legal barriers were reported or detected and a well-formulated s.78 of the Act provides for the admissibility of VMS evidence in court proceedings. They are also in the process of revising the 2005 VMS regulations.</td>
</tr>
<tr>
<td>16 Sharing of Operational MCS Information</td>
<td>No legal barriers were reported or detected, but see the general remark above.</td>
</tr>
<tr>
<td>17 Legal Challenges and Barriers to the Sharing of Data to Enable Development and Functioning of the Regional MCS Data and Operations Centre</td>
<td>No legal barriers were reported or detected</td>
</tr>
</tbody>
</table>
## 4.5 SEYCHELLES

### TOR ISSUES REVIEW EVALUATION

#### Legal Framework

**Some general remarks on Legal Challenges and Barriers to Regional Co-operation & Information Sharing**

The main fisheries legislation is the 1987 Fisheries Act (and the Regulations published under s.4 of that Act), and in addition to that the Maritime Zone Act of 1977, the Seychelles Fishing Authority Establishment Act of 1984 and the Licenses (Fisheries) Regulations of 1987. Most importantly, a new Fisheries Bill has been prepared and we have been provided with a 2011 draft of this legislation.

Though there are limited resources, including insufficient manpower in both the SFA and the Office of the Attorney General, there does not seem to be serious legislative barriers to the effective application of the law. This was also the opinion and experience of both SFA and the Office of the AG. The new Fisheries Bill of 2011 is apparently in the final stages of development. The office of the AG has not yet perused it, though it will be referred to them in due course (the intention is to do it before the end of the year).

#### 3 Legal Capacity to Undertake MCS

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<th>REVIEW</th>
<th>EVALUATION</th>
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<tr>
<td>4.5</td>
<td>SEYCHELLES</td>
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<td>TOR</td>
<td>ISSUES</td>
<td>REVIEW</td>
<td>EVALUATION</td>
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<tr>
<td>Legal Framework</td>
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</table>

**Prosecution**

There is a good working relationship between the Attorney General’s office (responsible for prosecutions), and the SFA, and this was witnessed first hand during a joint interview.

There was an estimated 10 serious fishery cases in the past year. The most common violations were fishing without a licence, breach of authorisations for high seas fishing and illegal gear. The majority of these matters were compounded. The one case that did go on trial resulted in a...

In general, awareness about environmental and fisheries matters have increased, however both prosecutors and judges require training to create awareness and knowledge of fisheries law.

The Attorney-General’s office is experiencing staff problems as there are not sufficiently trained and experienced Seychellois citizens available to appoint as prosecutors, and they thus have to
a SR 1 000 000 fine. These statistics were verified from the official report. Compounding amounts varied between 95 000 USD (three cases), SR 400 000 (one case), SR 1 000 000 (3 cases) and SR 500 000 (3 cases). It seems that the case where the court handed down a sentence of SR 1 000 000 was a November 2009 matter. There is one ongoing serious case and the vessel is still being detained.

The sentences handed down by the court are seen as not being sufficiently severe. Where appropriate both the natural and juristic persons are prosecuted (e.g. the company with the fishing license and the captain of the vessel). Cases are directly referred for prosecution, and no undue interference in this process has been experienced.

appoint persons from other countries. Opportunities for prosecutors to be trained in the prosecution of fisheries offences will be welcomed, and the idea of ultimately getting dedicated prosecutors to deal with such offences, would be ideal.

The issue of training of prosecutors and judges was highlighted by various parties during the interviews, and this included the SFA and the AGs Office.

Training of prosecutors to specialise in fisheries legislation and prosecution is required. This can either take the form of short courses to train a few prosecutors, or even sponsoring a master’s degree for one or two prosecutors. Such a step will however have to be carefully evaluated, as that person needs to be retained in the position after having been trained.

Training to create awareness and increase knowledge of fisheries legislation amongst the judiciary is also required.

The only reservation that is expressed in this regard is the fact that there are not that many cases being prosecuted in court (due to the fact that the majority of cases are being compounded).
### Administrative penalties/ compounding / admission of guilt fines

Compounding, which is provided for in section 26 of the 1987 Fisheries Act, is preferred over prosecution, as it is a much a quicker and simpler process. About 90% of the more serious matters are compounded, and it was further reported that these usually result in the maximum fine of SR 2.5 million, which is higher than what is achieved via prosecution. The statistics for the past year do not quite show the same result – see the notes directly above.

In the case of minor offences, e.g. those occurring in the artisanal fisheries sector, transgressors are taken to court, and the court can then issue admission of guilt fines.

<table>
<thead>
<tr>
<th>1</th>
<th>Legal Challenges &amp; Barriers to Improving Compliance Levels with National Law and Provisions of RFBs</th>
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<tbody>
<tr>
<td>• Penalties</td>
<td>The maximum penalties provided for in the 1987 Fisheries Act are between SR 5000, up to an amount of SR 50 000, depending on the offence (see section 24).</td>
</tr>
</tbody>
</table>

These fines are clearly inadequate to act as an efficient deterrent. There is also no provision for imprisonment as a penalty option, keeping in mind that UNCLOS places certain limitations on such a...
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<tr>
<td></td>
<td>The fisheries legislation provides for forfeiture, as well as cancellation and suspension of licenses. In addition to the provisions in the fisheries legislation, there is a fairly recent Civil Confiscation Proceeds of Crime Act of 2008 that deals with the confiscation of the proceeds of crime. This legislation can also be utilised within the context of fisheries transgressions. There is no provision for additional or supplementary orders but see the remarks in the next column. As far as administrative enforcement tools (directives or notices) are concerned, there is a process whereby licenses can be revoked or suspended in the case of non-compliance. The SFA will first issue an ultimatum to the transgressor. It was reported that in the majority of cases the transgressor usually responds to the ultimatum and corrects their behaviour.</td>
<td>The new set of offences and penalties in section Part XII of the 2011 Fisheries Bill are quite extensive and provide for penalties of up to USD 2,500,000, and a further provision for the increase of fines in certain circumstances in terms of section 57 and 58. No further intervention is required, but refer to the discussion of harmonisation of penalties in the region.</td>
</tr>
<tr>
<td>Other measures that can serve as a deterrent (forfeiture, suspension or cancellation of licences, supplementary or other administrative orders)</td>
<td>Both the 1987 Fisheries Act and the 2011 Fisheries Bill makes provision for the suspension and cancellation of licences (s.15 of the Act and s 33 and 34 of the Bill) and forfeiture (s.25 of the Act and e.g. s.58 of the Bill, which even provides for mandatory forfeiture of vessels in the case of certain subsequent offences). There does not seem to be any serious challenges and barriers remaining, provided the Bill is finalised and implemented. The provisions in the 2011 Fisheries Bill are much more comprehensive than those in the 1987 Act. It might however be valuable to evaluate these provisions in more depth prior to the promulgation of the Bill.</td>
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Both the 1987 Fisheries Act and the 2011 Fisheries Bill makes provision for the suspension and cancellation of licences (s.15 of the Act and s 33 and 34 of the Bill) and forfeiture (s.25 of the Act and e.g. s.58 of the Bill, which even provides for mandatory forfeiture of vessels in the case of certain subsequent offences). There does not seem to be any serious challenges and barriers remaining, provided the Bill is finalised and implemented. The provisions in the 2011 Fisheries Bill are much more comprehensive than those in the 1987 Act. It might however be valuable to evaluate these provisions in more depth prior to the promulgation of the Bill.
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<tr>
<th>19</th>
<th>Legal Barriers in the Procedures for Seizure, Confiscation and Disposal &amp; Handling of Evidence</th>
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<tr>
<td></td>
<td>There are some limitations to the provisions on search and seizure, as the powers do not provide for the search of premises and vehicles. These provisions were described as being outdated and it must be ensured that this is corrected in the Bill. As far as independent action by officials is concerned, it was indicated that they do not require any special permission from a higher authority e.g. to seize a vessel, but can use their discretion based on their powers. SFA also confirmed that, based on an order from court, confiscated fish can be sold prior to the case being finalised, and the proceeds are paid into a special account pending the outcome of the case. The shortcomings with regard to the provisions on search and seizure have been addressed in the new draft Act. S.58 of the Bill provides for extensive powers for fisheries inspectors. The provisions in the 2011 Fisheries Bill are much more comprehensive than those in the 1987 Act in this regard. It might however be valuable to re-evaluate these provisions in more depth prior to the promulgation of the Bill. The ideal situation with regard to the disposal of confiscated fish prior to the finalisation of a case is a provision in the legislation that authorises this without the requirement for a court order.</td>
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<th>6</th>
<th>Legal Barriers to Implementing an Effective Fisheries Inspectorate</th>
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<tr>
<td></td>
<td>The perception is that there is less “respect” for fisheries inspectors than other law enforcement agencies. It was reported that the level of education of employees is not particularly high. This situation has lead to the situation that experienced officials leave the service for alternative appointments. It was reported that fairly recently two experienced officials left the SFA for an appointment at the drug enforcement agency. This issue must receive attention, though it does not necessarily require a legal intervention. It is however possible to stipulate certain minimum</td>
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<td></td>
<td>• Appointment of Fisheries Inspectors</td>
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<td>124 Programme SmartFish Rapport SF/2011/13</td>
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<td>2</td>
<td>Harmonisation of Legislation (Internal)</td>
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<td>Educational and training requirements for fisheries inspectors in legislation, and it might be expedient to include this issue as part of a general review and evaluation of the new Bill prior to finalisation. See s. 37 of the Bill in this regard, which deals with the appointment of such inspectors, but does not require a minimum standard.</td>
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<tr>
<td></td>
<td>A guide to enforcement and possibly a more comprehensive set of SOPs will be helpful.</td>
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<td></td>
<td>An alternative possibility is to provide that all fines, whether from compounding or resulting from prosecution, as well as income from the sale of forfeited fish, will accrue to the SFA, or a fund set up for this purpose, to manage this income and ensure that it is utilised for management and compliance efforts of the SFA. As this is however a policy decision, no legal intervention is required.</td>
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<td>As the Bill is still pending finalisation, it might be useful to ensure that all regulations published under the Act are compatible with the Bill (see section 67 of the Bill). Also see section 69(2) of the Bill,</td>
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<td>SOP's &amp; Manuals</td>
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<td>Fines generated via the compounding process goes to the SFA, and not to the general state coffers, as is the case with fines by the court. It was reported that the position would change when the new Act comes into force, and that all fines, including those generated by compounding, will go to the general state coffers. There is a suspense account for the proceeds from confiscated fish being sold, the treasury controls this, but the money goes to SFA.</td>
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<td>Funding from fines, penalties and sale of forfeited fish.</td>
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which contains a transitional provision providing that subsidiary legislation made under the Fisheries Act will stay in force.

This aspect should form part of a possible evaluation and assistance with the finalisation of the Fisheries Bill, should such an intervention be decided upon.

<table>
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<tr>
<th>4</th>
<th>Legal Challenges and Barriers to the Implementation of Effective National &amp; Regional MCS (note that the sharing of information will be addressed under (16) below)</th>
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<tbody>
<tr>
<td></td>
<td>• Investigative Ability</td>
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<td>Additional training on investigative techniques will be helpful.</td>
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Though the SFA has legal advisors, they are not necessarily knowledgeable or experienced in enforcement matters. The ideal situation is to have in-house legal support for fisheries inspectors, or for such officials to have a good line of communication with the prosecutorial service. Luckily, in Seychelles, such communication exists currently.

In addition, it was reported that a post for a legal officer has been created, though they still need the funding for this. If this post is filled, it is important that such an official will also attend the proposed prosecutor’s course, as he/she will have to assist in investigations and prosecutions (the duties of such an official will include...
| • Training | Training of inspectors was highlighted as the most important and urgent issue to be addressed. Aspects that were required to be included in the training were the legal background, practical aspects of boarding and searching of vessels at sea and training in port state measures. Such training should have both a theoretical as well as a practical component. Training sessions with fisheries inspectors of neighbouring countries in the region as well as the creation of a training manual were also mentioned. | The training of inspectors is supported fully, as the success of prosecutions or other enforcement measures are heavily dependant on the correct procedures being followed by fisheries inspectors, and sufficient evidence being gathered to prove the commission of an offence. While the idea of a regional training course for inspectors is fully supported, it must also be kept in mind that per country training is also necessary and valuable. This is especially where, as in this case, new legislation is enacted, requiring the officials to be “retrained” on their domestic legislation. It was also reported that fisheries inspectors do not have the power to arrest under the current legislation (the situation was confirmed by a perusal of s.19 of the Act), the new draft Act does contain this power (this is correct- see section 37(5) of the Bill). Inspectors will therefore be required to be trained on procedures of arrest. |
| • Observers | S.46 of the Bill makes it mandatory that an observer programme must be established by advising on cases and the revision of legislation) Additional training on investigative techniques will also be helpful. | There does not seem to be any legal challenges or barriers in this regard. |
| 9 | Legal Barriers to the Adoption of Risk Analysis Methodology | There are no legal barriers directly influencing this issue. The licensing authority is however separate from the Inspectorate. Because application is first made to the SFA before going to the licensing authority, it was not reported as problematic by the SFA. In addition, it was reported that the system is about to change, and that in future the SFA will become the issuing authority for licences. | No legal barriers in this regard were reported or detected. |

| 7 | Career Path for Fisheries Inspectors | The career path is based on the generally applicable public service provisions. One of the first issues highlighted during consultations was the need to increase human capacity and to attract more people to the sector, inter alia by providing training. Also see the remarks under 6 above. | This makes the appointment as a fisheries officer a less attractive one, and it might also lead to more experienced and/or better-qualified officials leaving the service for alternative appointments. It was pointed out that two experienced inspectors resigned and joined the drug enforcement agency, which provide for better prospects outside of the normal public service provisions. This issue must first be addressed on a senior management or ministerial level before any legal intervention can be contemplated. |

| Legal challenges and Barriers to the Implementation/Adoption of Regional Agreements & Standards | | S. 48 of the Fisheries Bill, provides for the Minister to enter into agreements with other States in the Indian Ocean, either directly or through an | The failure to adopt and implement regional agreements and standards, and the incorporation of relevant provisions |
international organisation, providing for joint or harmonised surveillance and enforcement measures in respect of foreign fishing vessels.

Section 67(1) of the Fisheries Bill provides for the Minister to promulgate by notice in the Gazette any conservation or management measure adopted by a RFMO or any other regional fisheries body or arrangement to which Seychelles is a party.

The failure to do so is however often a question of poor management, rather than an inadequate legal framework.

S. 48 and 67(1) of the Bill deals specifically with this issue. In addition, the powers granted to inspectors in the Bill are quite extensive (keeping in mind that it was not possible within the ambit of this review to look at all these aspects in detail, and that there are some weaknesses in this regard).

It will be expedient to do a more comprehensive review of the Fisheries Bill to ensure that the provisions are sufficient to ensure the implementation of regional agreements and standards, and that it grants sufficient powers to inspectors to be able to detect non-compliance and take appropriate enforcement action.

| 5 | Implementation of the IUU NPOA | Seychelles has a NPOA for the Conservation and Management of Sharks (SFA, 2007). The report (see p.23-24) discusses the applicable legislation, and concludes that additional legislation does not seem to be necessary (p.30) | No legal challenges or barriers were reported or detected, and although not strictly speaking a legal office, assistance with the drafting of a general IUU NPOA is a possible intervention. |
| 10 | Participation in the IOC MCS Regional Plan for the South West Indian Ocean | No legal barriers in this regard were reported or detected. | There does not seem to be any legal barrier to participation in the IOC MCS Regional Plan for the South West Indian Ocean. No intervention is required. |
| 8  | Implementation of IOTC Port State Measure Resolutions & FAO Port State Measure Agreement Provisions | S.45 of the 2011 Fisheries Bill deals specifically with port state measures. It was reported that fishery inspectors have attended training on the IOTC and FAO PSMs, and no barriers were reported. | The NFDS Africa Legal and Capacity Assessment identified specific issues with regard to the implementation of the IOTC PSM Resolution 10/11. This is discussed in more detail in the country review document. S.45 of the 2011 Fisheries Bill should be reviewed to ensure that it fully accommodates the implementation of the PSM measures. Please refer to the discussion in the country review document. |
| 11 | Additional Legal Barriers to the Development & Implementation of Existing IOTC Resolutions | No such barriers were reported or detected, but see the comments on the IOTC resolutions in the main text. It was reported that care is taken with the implementation of the IOTC resolutions via the focal point. | See the general remarks above. |
| 15 | Legal Barriers to the Strengthening of Other Central MCS Functions Prescribed by the IOTC | No legal barriers in this regard were reported or detected. | No intervention is required. |
| 18 | Adoption of Common ESA-IO Regional Standards for Licensing of Vessels (including a national register of vessels) | No legal barriers in this regard were reported or detected. Article 28 of the 2007 Bill provides that the registration of vessels is a prerequisite to obtaining a license and there is a national register of vessels. This register however falls under the maritime safety authority and not the SFA. This is not a barrier created by legislation, nor the lack thereof, and no intervention is required from a legal perspective. |
| 2  | Harmonisation of Legislation (between ESA-IO countries) | Please see the remarks on penalties above under 1. Even where countries have similar maximum penalties, they tend to differ in their approach and calculation of penalties. | Intervention on a regional basis is required. See the discussion in the review document. |
### Legal Challenges and Barriers to Regional Co-operation & Information Sharing

| 12 | Establishment of a Compatible Data Collection System (This includes data for scientific purposes and for MCS, such as a list/register of licenses, a register of fishing vessels, permits and licenses, the information collected in terms of the PSMA). | See the general comments above and s. 7 of the 2011 Bill that provides for the SFA to make and maintain a record of fishing vessels that have been granted a licence, permit or authority. It was however reported that though comprehensive data is available, the data is not properly compiled and evaluated, due to a shortage of resources. | See the general comments above. |
| 13 | Establishment of a Compatible Reporting System for Tuna Fisheries Statistics | It was reported that the statistics are gathered and reported to the IOTC. See the general comments and comments immediately above. | See the general comments above. |
| 14 | Implementation of a National VMS & Sharing of Data Regionally | No legal barriers in this regard was reported or detected. | The 2011 Fisheries Bill contains fairly detailed provisions on the |
A related issue, which is of extreme importance to the use of VMS data in prosecutions or other proceedings, is the difficulties experienced with the admissibility of such evidence (it is seen as computer generated evidence) of VMS and vessel monitoring device evidence (as well as photographic evidence). See sections 64-66 of the Bill. Also see the general comments above.

<p>| 16 | Sharing of Operational MCS Information | As a general remark, and not specific to Seychelles, there is a certain amount of reluctance to share information in the region. | This reluctance seems to be based on a misinterpretation of applicable legislative clauses, as well as agreements with boat owners on this issue. This issue must be addressed. |
| 17 | Legal Challenges and Barriers to the Sharing of Data to Enable Development and Functioning of the Regional MCS Data and Operations Centre | See the general comments above. | See the general comments above. |</p>
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<tr>
<th>4.6</th>
<th>SOMALIA</th>
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<tbody>
<tr>
<td>TOR</td>
<td>ISSUES</td>
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<tr>
<td>Legal Framework</td>
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<tr>
<td><strong>Some General Remarks on the Legal Framework</strong></td>
<td>The main framework legislation is the Somali Fishing Law 23 of 1985, which is in need of a revision and update. A Maritime Security Bill, with the intention to establish an EEZ, and which incorporates some IUU aspects is currently being drafted.</td>
</tr>
<tr>
<td>3</td>
<td>Legal Capacity to Undertake MCS</td>
</tr>
<tr>
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<tr>
<td>9</td>
<td>Legal Barriers to the Adoption of Risk Analysis Methodology</td>
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<tr>
<td>7</td>
<td>Career Path for Fisheries Inspectors</td>
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</table>

### Legal challenges and Barriers to the Implementation/Adoption of Regional Agreements & Standards

#### Some general remarks on Legal Challenges and Barriers to the Implementation/Adoption of Regional Agreements & Standards

- The numerous Constitutions do provide for the ratification of treaties. See the main text for more details.
- Somalia only became a member of the IOTC this year, and requires assistance with the incorporation and implementation of the IOTC and other regional agreements and standards.

<table>
<thead>
<tr>
<th></th>
<th>Implementation of the IUU NPOA</th>
<th>There is no IUU NPOA in place.</th>
<th>Assistance with the drafting of an IUU NPOA is required.</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Participation in the IOC MCS Regional Plan for the South West Indian Ocean</td>
<td>No legal barriers in this regard were reported or detected.</td>
<td>No intervention is required if the other weaknesses in the legislation are addressed.</td>
</tr>
<tr>
<td>11</td>
<td>Additional Legal Barriers to the Development &amp; Implementation of Existing IOTC Resolutions</td>
<td>Somalia only became a member of the IOTC this year. See the remark immediately below.</td>
<td>See the remark above.</td>
</tr>
<tr>
<td>No.</td>
<td>Issue Description</td>
<td>Details</td>
<td>Remarks</td>
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<td>15</td>
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<td>See the remark above.</td>
</tr>
<tr>
<td>18</td>
<td>Adoption of Common ESA-IO Regional Standards for Licensing of Vessels (including a national register of vessels)</td>
<td>No national register of vessels is in place, but a register of licenses is prescribed by article 6. No legal barriers in this regard were reported or detected.</td>
<td>See the remark above.</td>
</tr>
<tr>
<td>2</td>
<td>Harmonisation of Legislation (between ESA-IO countries)</td>
<td>The harmonisation of certain provisions, and especially penalties, throughout the region is a requirement, as it is set out in the discussion of the main text.</td>
<td>Harmonisation with other countries in the region should receive priority.</td>
</tr>
<tr>
<td></td>
<td><strong>Legal Challenges and Barriers to Regional Co-operation &amp; Information Sharing</strong></td>
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<td></td>
<td><strong>Some general remarks on Legal Challenges and Barriers to Regional Co-operation &amp; Information Sharing</strong></td>
<td>There are no provisions in the legislation specifically dealing with these issues, but the policy and strategy of 2004 deals with this issue.</td>
<td>These issues must be addressed in the proposed legal revision and update.</td>
</tr>
<tr>
<td>12</td>
<td>Establishment of a Compatible Data Collection System (This includes data for scientific purposes and for MCS, such as a list/register of licenses, a register of fishing vessels, permits and licenses, the information collected in terms of the PSMA).</td>
<td>See the general comments above.</td>
<td>See the general comments above.</td>
</tr>
<tr>
<td>13</td>
<td>Establishment of a Compatible Reporting System for Tuna Fisheries Statistics</td>
<td>See the general comments above.</td>
<td>See the general comments above.</td>
</tr>
<tr>
<td>14</td>
<td>Implementation of a National VMS &amp; Sharing of Data Regionally</td>
<td>There are no provisions on the admissibility of VMS data in prosecutions or other proceedings.</td>
<td>These issues must be addressed in the proposed legal revision and update.</td>
</tr>
<tr>
<td>16</td>
<td>Sharing of Operational MCS Information</td>
<td>See the general comments above.</td>
<td>See the general comments above.</td>
</tr>
<tr>
<td>17</td>
<td>Legal Challenges and Barriers to the Sharing of Data to Enable Development and Functioning of the Regional MCS Data and Operations Centre</td>
<td>See the general comments above.</td>
<td>See the general comments above.</td>
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### 4.7 THE UNITED REPUBLIC OF TANZANIA

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<th>TOR</th>
<th>ISSUES</th>
<th>REVIEW</th>
<th>EVALUATION</th>
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<tr>
<td>Legal Framework</td>
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<tr>
<td><strong>Some General Remarks on the Legal Framework</strong></td>
<td>The 2003 Fisheries Act and the Regulations published under s.57 of that Act applies to Mainland Tanzania. The Marine Parks and Reserves Act 29 of 1994 deals with the establishment of marine parks and reserves. As far as Zanzibar is concerned, the Fisheries Act of 1988 was recently replaced with the 2010 Fisheries Act. This 2010 Act corrected deficiencies and the punishment levels were reported to be adequate. There is also additional legislation dealing with marine protected areas in Zanzibar, which falls under the authority of the Marine Conservation Unit. The Deep Sea Fishing Authority Act of 1998 (amended in 2007) establishes the Deep Sea Fishing Authority and regulates deep-sea fishing in the EEZ. The Deep Sea Fishing Authority Regulations of 2009 was promulgated in terms of this Act. These apply to both Tanzania Zanzibar as well as Mainland Tanzania.</td>
<td>There are limited resources, including insufficient financial resources in the office of the DPP (responsible for prosecutions), the Tanzania Fisheries Department (responsible for MCS in Mainland Tanzania) and the Marine Parks and Reserves Unit, which hampers effective MCS operations, and slows down the prosecution process. There are challenges and barriers in the legal framework, but many of these have been addressed, or are in the process of being addressed. While support for this process is required, the barriers in the legal framework do not seem to be a major impediment to affective MCS, save for the fact that inadequate penalty provisions should be addressed as a matter of urgency. It was reported that both the 2003 Fisheries Act and the Marine Parks and Reserves Act will be reviewed in the near future, and that the maximum penalties will be increased. Though fairly recent legislation, the DSFA has indicated that they would appreciate assistance with the revision and strengthening of the Act and Regulations.</td>
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<td>3</td>
<td>Legal Capacity to Undertake MCS</td>
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<td></td>
<td><strong>Prosecution</strong></td>
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There is a good working relationship between the Office of the Director of Public Prosecutions (responsible for prosecutions in Mainland Tanzania), and the Tanzania Fisheries Department.

The DPP makes use of police prosecutors in minor cases, and is busy with the process of replacing these prosecutors with graduated personnel. In some matters they even appoint private lawyers to conduct prosecutions on behalf of the DPP. Currently there are no other serious transgressions under fisheries legislation on the court role, but the Tawariq I case is ongoing. The High Court is however not currently in session, and is awaiting the new national budget allocation before it can commence sessions again. The DSFA reported that another reason for the delay in finalising the case, is the constant objections, which are lodged by the defence in the matter, and that the state attorneys and prosecutors have done very well in the matter. They hope that the vessel will be forfeited and can then be used as a patrol vessel.

Regarding transgressions and prosecutions in marine parks and reserves, it was reported that compliance levels are very high in certain areas e.g. Mafia Island, while it is substantially lower in other areas, especially closer to the urban areas. In many cases the transgressors flee, and only the catch and equipment is seized. Some matters are compounded and some are prosecuted before a district level magistrate.

The Director of Public Prosecutions for Mainland Tanzania appealed for support to strengthen capacity to ensure an efficient prosecution service, possibly with specialised units. There has been an increase in environmental crimes, including fisheries offences, and he feels the time is ripe for specialisation by prosecutors in that field.

Training of prosecutors to specialise in fisheries legislation and prosecution is required, but the process of replacing prosecutors with suitably qualified personnel is a long and ongoing process. There are also very few serious cases in court, but with increased MCS effort, this situation can change in future.

Awareness programs and training for prosecutors and presiding officers on fisheries issues and legislation was also proposed, and strongly emphasised, by the various fisheries role-players. In Mainland Tanzania they have already commenced with an awareness program for magistrates.

The idea of regional working groups for prosecutors and magistrates was discussed and supported.
Various sources indicated a low level of conviction (one estimate indicated a 20% conviction rate), or totally inadequate sentences being handed down for offences committed on Mainland Tanzania by small scale or artisanal fishermen, with allegations of magistrates receiving bribes. These prosecutions are done on district court level with police officials serving as magistrates and fisheries inspectors drafting the charge sheets and acting as witnesses.

The need for expert prosecutors on a district level for these types of cases was expressed. The patrol vessels (under Mainland Fisheries Department) reported 12 transgressions out of 40 vessels inspected in an operation in June 2011 (these are not tuna vessels, but rather smaller inshore craft). Nine of these transgressions were fishing without a licence, all of which were compounded for amounts between 20 000-50 000 TS (the law allows for a maximum of 100 000 TS). The other 3 cases concerned dynamite fishing, and these cases are still being prosecuted (no patrols were undertaken since then due to lack of funding).

In Zanzibar, the fishery communities form part of the MCS system, and every village has a patrol team. The Zanzibar Fisheries Department, while reporting a huge increase in the amount of fishermen in the artisanal sector, indicated an almost 100% conviction rate.

<p>| Administrative penalties/ compounding / admission of guilt fines | Compounding is provided for in the various different pieces of legislation and the compounding process was reported to function very well. | There does not seem to be any challenges and barriers in this regard. |</p>
<table>
<thead>
<tr>
<th></th>
<th>Legal Challenges &amp; Barriers to Improving Compliance Levels with National Law and Provisions of RFBs</th>
<th>No additional legal barriers were reported or detected, but foreign vessels are not obliged to come into port.</th>
<th>Depending on various practical implications (such as the fact that the ports do not cater for foreign fishing vessels), this matter should receive attention.</th>
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<tr>
<td></td>
<td>• Penalties</td>
<td>Maximum penalties under the 2003 Fisheries Act and the Marine Parks and Reserves Act were reported to be too low, with unconfirmed reports that the process to revise and increase the penalties has already commenced (and that fines will be increased to 500 000TS).</td>
<td>The fines are inadequate to act as an effective deterrent (this was also a concern expressed by all role players). There is also no provision for imprisonment as a penalty option, keeping in mind that UNCLOS places certain limitations on such a possibility.</td>
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<td></td>
<td>• Other measures that can serve as a deterrent (forfeiture, suspension or cancellation of licences, supplementary or other administrative orders)</td>
<td>S.18 of the DSFAA makes provision that any person who carries out fishing activities contrary to the Act or the DSFAR, commits an offence and is liable to a fine of up to one billion shillings or to imprisonment of up to 20 years, or to both.</td>
<td>Should the legislation be revised and updated, it will be expedient to also properly review these aspects.</td>
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<tr>
<td></td>
<td></td>
<td>S.18 of the DSFAA makes provision that any person, who carries out fishing activities contrary to the Act or the DSFAR, commits an offence and in addition to the maximum penalty, the Court “may,” order forfeiture of the vessel, structure, equipment or thing in connection to the offence committed.</td>
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<td></td>
<td></td>
<td>Mainland Tanzania has started to implement the Proceeds of Crime Act (it only contains criminal, and not civil, forfeiture measures). The lack of a civil forfeiture provision is problematic, and needs to be addressed via an amendment, as was pointed out by the DPP.</td>
<td></td>
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<tr>
<td>19</td>
<td>Legal Barriers in the Procedures for Seizure, Confiscation and Disposal &amp; Handling of Evidence</td>
<td>The Zanzibar legislation provides for forfeiture of a catch, gear and vessels.</td>
<td>It was reported that tuna vessels rarely come into port in Mainland Tanzania, and inspections of such vessels therefore do not generally form part of their tasks (apparently many landings take place in Mombasa). Fish processing establishments and markets are inspected, but restaurants are not. The Mainland Tanzania Fisheries Inspectorate also has a presence at certain border posts. Conflicting reports were received regarding the catch on the Tawariq I – it was either sold off or became rotten, or a combination of the two. Fish cannot be disposed of, or sold back to the owner, without a court order.</td>
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<tr>
<td>6</td>
<td>Legal Barriers to Implementing an Effective Fisheries Inspectorate</td>
<td></td>
<td>No legal barriers were detected or reported.</td>
</tr>
</tbody>
</table>
The idea of a comprehensive set of SOPs and a comprehensive manual was discussed and welcomed.

- Funding from fines, penalties and sale of forfeited fish.

It was reported that all licensing fees, fines paid etc go to the Treasury. S. 29 of the Mainland Fisheries Act of 2003 establishes a Fisheries Development Fund, but there is no mention of penalties, fees or fines that must be paid into the fund.

S. 10 of the DSFAA deals with funds of the authority, and also does not contain such a provision. It does however provide that where any sum of money does accrue to the Authority as a result of “discharging its duties under this Act”, the Authority is only allowed to retain 50% of those funds. All court fees go to the treasury. Confiscated fish are not usually sold, but rather donated.

An alternative possibility is providing that all fines, fees and income from the sale of forfeited fish, will accrue to the various fishing authorities (Mainland, Zanzibar and DSFA), or that a fund should be set up for this purpose, to manage this income and ensure that it is utilised for the management and compliance efforts of the authorities.

A provision allowing the sale of confiscated fish will be valuable and is an aspect that should be looked at if the legislation is updated or amended.

<p>| 2 | Harmonisation of Legislation (Internal) | The DPP pointed out that the Regulations under the 2003 Fisheries Act only came into operation in 2009. There is a need to harmonise some of the provisions, e.g. some of the penalty provisions in the regulations are more severe than those under the Act. | The 2003 Fisheries Act and the 2009 Regulations are not harmonised. There is a need to review and update the 2003 Fisheries Act, and ensure harmonisation with the 2009 Regulations, especially with regard to the penalty provisions. |
| 4 | Legal Challenges and Barriers to the Implementation of Effective National &amp; Regional MCS (note that the sharing of information will be addressed under (16) below) | | |</p>
<table>
<thead>
<tr>
<th>• Investigative Ability</th>
<th>The National Prosecutions Service Act, Act 27 of 2008 makes it clear that it not only applies to criminal prosecutions, but also to the &quot;coordination of investigation of crimes in Mainland Tanzania&quot; and that this is the duty of the Director of Public Prosecutions (see section 2 and 4(3)). This provision creates the potential for very close cooperation between agencies responsible for investigation (such as the Fisheries Department and the DSFA), and the DPP, and can be a huge advantage in driving effective investigations and prosecutions.</th>
<th>Training in basic investigative techniques should be presented. See the comments immediately below.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Training</td>
<td>Training of inspectors and other enforcement officials (such as the police force, navy and coastguard, all play a supporting role) was highlighted as an important issue to be addressed. Note that in the &quot;smaller&quot; cases on district level, police officials are also conducting the prosecutions. Specific issues to be covered by training was &quot;how to state the case&quot;, including aspects such as basic crime scene management, drafting of statements, how to testify in court and basic investigation skills. The need for training on providing oral testimony in court was mentioned repeatedly during interviews with various officials. Training of inspectors from the Fisheries Department and the Marine Parks and Reserves Unit can be combined, due to similar needs.</td>
<td>The success of a prosecution or other enforcement measures heavily depend on the correct procedures being followed by fisheries inspectors, and sufficient evidence being gathered to prove the commission of an offence. Specific areas that should be covered were basic training for new entrants, inspection and search, handling of evidence and investigation. Training efforts are supported and discussed in the review.</td>
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</table>
Regional training courses were previously presented via Mbegani under the SADC-EU project. One of the institutions reported that a total of 49 inspectors from both Mainland and Zanzibar were trained during this period. Mbegani FDC currently presents various relevant courses such as a national enforcement course, a junior and senior inspectors course, a sea fishery inspector’s course etc. Mbegani also has all the necessary facilities to act as a possible training venue. The one aspect that is not included in the Mbegani program is a course on investigation of fisheries offences.

Other aspects that were required to be included in training interventions were MCS, legal background to fisheries legislation and prosecution.

Also see the remarks on awareness training for magistrates in the main text.

<table>
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<tr>
<th>Observers</th>
<th>R. 34 of the DSFAR deals with the appointment and tasks of observers. The DSFA has observers, but vessels do not call into port, as there are no facilities.</th>
<th>There does not seem to be any legal challenges or barriers in this regard.</th>
</tr>
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<tr>
<td>9 Legal Barriers to the Adoption of Risk Analysis Methodology</td>
<td>No legal barriers directly influencing this issue were reported or detected. A related issue, and one that deserves attention, was the fact that it was reported that the intention is to establish marine parks and reserves within the freshwater lakes as well, and that the 2003 Act is being reviewed to accommodate this.</td>
<td>No legal barriers in this regard were reported or detected.</td>
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The establishment of such parks and reserves will create some relief for the enforcement efforts by the Fisheries Department. They do however require funding to establish these.

Another related issue is the functioning of the 172 beach management units, providing for a decentralised co-management structure.

### 7 Career Path for Fisheries Inspectors

See the remarks under 6 above.

No intervention is required

### Legal challenges and Barriers to the Implementation/Adoption of Regional Agreements & Standards

The Deep Sea Fishing Authority was established in 2007 to ensure a single governance regime for fishing in the EEZ, and became functional in 2009. The Deep Sea Fishing Authority (“the Authority”) is governed by the Deep Sea Fishing Authority Act of 1998, as amended in 2007 (“the DSFAA”), and the Deep Sea Fishing Authority Regulations of 2009 (“the DSFAR”).

S.4 of the DSFAA provides for the functions of “the Authority” to include negotiating and entering into bilateral, regional or international fisheries agreements, and, based on a 2007 amendment, to implement any agreement reached at regional or international level.

The powers granted to various officials mandated to enforce the DSFAA and DSFAR are quite extensive. Interestingly however, these powers are contained in the DSFAR, and not in the DSFAA, as one would expect. The DSFAA empowers the Minister to make Regulations on certain matters, but does not refer to the matter of powers of enforcement powers.

The fact that the powers granted to various officials mandated to enforce the DSFAA and DSFAR are contained in the DSFAR, and not in the DSFAA, is a matter of concern.
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<th>Section</th>
<th>Description</th>
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<tr>
<td>5</td>
<td><strong>Implementation of the IUU NPOA</strong>&lt;br&gt;The IUU NPOA has not been finalised (there is however a NPOA on seabirds and seals). Support to finalise a draft IUU NPOA was requested.</td>
</tr>
<tr>
<td>10</td>
<td><strong>Participation in the IOC MCS Regional Plan for the South West Indian Ocean</strong>&lt;br&gt;Due to a lack of an EU agreement, Tanzania was reported to not participate in the program, but has expressed the wish to do so.</td>
</tr>
<tr>
<td>8</td>
<td><strong>Implementation of IOTC Port State Measure Resolutions &amp; FAO Port State Measure Agreement Provisions</strong>&lt;br&gt;There is no section or regulation specifically dealing with PSMs, but the DSFAR deals extensively with related obligations. It was reported that the Port Authority does not apply these measures and that assistance is required to establish a MOU between the port and fishing authorities.&lt;br&gt;Also see the discussion in the main text.&lt;br&gt;No such additional barriers were reported during the in-country visit and consultations, but some general problem areas (not country specific) in this&lt;br&gt;The NFDS Africa Legal and Capacity Assessment identified specific issues with regard to the implementation of the IOTC PSM Resolution 10/11. Intervention might be required. Please refer to the discussion in the country review document.&lt;br&gt;The provisions in the DSFAR granting powers to enforcement officials are quite extensive, but see the general remarks above.&lt;br&gt;See the general remarks above.</td>
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The CEO of the Authority is responsible for monitoring and surveillance in the EEZ and territorial sea (see s. 6(3)(e), as amended in 2007). International cooperation is one of the principles guiding the management of a sustainable fishery (r. 19(d) of the DSFAR). There are specific provisions on cooperation with other states where the laws of such states were contravened. These provisions, in r.42(4) and 43, though not quite Lacey type provisions, places an obligation to hand over persons to the country where the violation took place. Such powers are usually set out in the Act, and not in the Regulations made under the Act, and in addition, the Act does not specifically allow for regulations to be made on this subject. This might lead to an attack on the validity of the enforcement powers. This issue should be looked at in more detail should the legislation be revised and updated.
<table>
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<tr>
<th></th>
<th>Legal Barriers to the Strengthening of Other Central MCS Functions Prescribed by the IOTC</th>
<th>No legal barriers in this regard were reported or detected.</th>
<th>No intervention is required.</th>
</tr>
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<tr>
<td>15</td>
<td>Adoption of Common ESA-IO Regional Standards for Licensing of Vessels (including a national register of vessels)</td>
<td>No legal barriers in this regard were reported or detected. R.15 of the DSFAR provides that the DG must appoint a registrar of fishing licences who must keep a register in respect of licenses issued and particulars of licensed fishing vessels.</td>
<td>No intervention is required.</td>
</tr>
<tr>
<td>2</td>
<td>Harmonisation of Legislation (between ESA-IO countries)</td>
<td>In addition to penalties that should be harmonised in the region, other issues that cause problems were also mentioned e.g. the harvesting of sea cucumber is allowed in Mozambique and Zanzibar, but is illegal in Mainland Tanzania.</td>
<td>Intervention on a regional basis is required. See the discussion in the review document.</td>
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Legal Challenges and Barriers to Regional Co-operation & Information Sharing

Some general remarks on Legal Challenges and Barriers to Regional Co-operation & Information Sharing

The lack of provisions on the sharing of information in legislation was highlighted as a problem area by the IOTC. R. 26 of the DSFAR provides that the DG "may prepare fisheries statistics and vessels information and submit it to the Food and Agricultural Organisation of the United Nations and other bilateral agreements, regional or international organisations to which the United..."

In practice some countries are reluctant to share certain information, but except for the remarks in the next column, no other legal barriers were reported or detected. The provision in R.26 of the DSFAR is not only somewhat vague, but is also discretionary, and not obligatory.
|   | Establishing of a Compatible Data Collection System (This includes data for scientific purposes and for MCS, such as a list/register of licenses, a register of fishing vessels, permits and licenses, the information collected in terms of the PSMA). | See the general comments above. Also see r. 15. There is a register of vessels and a basic database, but the contents largely depend on information submitted by the vessels. | No intervention from a legal perspective is required. |
|   | Establishing of a Compatible Reporting System for Tuna Fisheries Statistics | See the general comments above. Another issue that came to light is the lack of sharing of information internally between the different fisheries authorities. | No intervention from a legal perspective is required. |
|   | Implementation of a National VMS & Sharing of Data Regionally | The VMS system located in Zanzibar and financed by the MACEMP project was reported to function well. R.28-30 of the DSFAAR deals with VMS (including the establishment of the vessel monitoring operation centre). R.30 specifically deals with the confidentiality of VMS information. However, it makes it clear that information may be revealed for inter alia purposes of investigation and prosecution. It may also be divulged to a person who is empowered to ensure compliance of Tanzania with "obligations under international law". While section 30(2) provides that a person who obtains such information may share it with any other person "for the same purpose". | R.30 is a valuable provision, but it might be too narrow to accommodate sharing information with other countries in the region. |
| 16 | Sharing of Operational MCS Information | See the general comments above. | See the general comments above. |
| 17 | Legal Challenges and Barriers to the Sharing of Data to Enable Development and Functioning of the Regional MCS Data and Operations Centre | See the general comments above, as well as the comments on the sharing of VMS data. | See the general comments above. |

A related issue, which is of extreme importance to the use of VMS data in prosecutions or other proceedings, is the difficulties experienced with the admissibility of such evidence (it is seen as computer generated evidence). Apparently the VMS evidence in the Tawariq I case was put in dispute.
ANNEX 4: PROPOSED TERMS OF REFERENCE

The following is intended to assist in the drafting of terms of reference for assistance to be provided. Further assistance on any of these or other possible interventions will be provided as is required.

The Updating / Strengthening / Redrafting of Fisheries Legislation to Ensure Effective MCS in the Country and Region

This process must ensure that the following aspects are carefully examined, and that the necessary provisions are drafted to clearly provide for the following:

- The provisions dealing with the powers of inspection of fisheries inspectors: This must set out sufficiently wide powers of inspection of vessels (in port and at sea), fish processing establishments, fish markets and restaurants. This power must not be linked to any suspicion of non-compliance, but must clearly grant the power to inspect at any time, without a warrant and without a requirement to give notice. Similar powers should be granted in relation to any mode of transport used to convey fish.
- The provisions dealing with the power to search, seize and arrest: This must clearly set out when a warrant is required or not and make provision that these powers can be exercised without a warrant in certain circumstances.
- The above powers must accommodate all actions required to be taken in order to enforce the provisions of international and regional agreements.
- The right of hot pursuit as set out in article 111 of UNCLOS.
- The creation of prohibitions and offences;
- Evidentiary provisions that allows for VMS and other computer generated evidence, as well as photographic and video material to be admissible in court.
- The penalty clauses and supplementary orders at conviction;
- Forfeiture orders: In some countries the forfeiture of a vessel is only allowed in the case of a second conviction. It is strongly suggested that this discretion is left to the court, but that forfeiture of the vessel will be a possibility on a first conviction.
- As far as compounding is concerned, it must be provided that compounding can only take place after an admission of guilt, and that the payment of such a fine will serve as a previous conviction for the purposes of sentencing.
- Provisions on the disposal of confiscated fish: These should allow for confiscated fish to be sold off or donated prior to the finalisation of the case. A system to ensure that the necessary proof will still be available at court, must be devised. This can include e.g. the use of photographs, identification by an expert and retaining a random representative sample of the confiscated catch;
- The incorporation of international and regional agreements in the legislation: Specific attention must be given to the incorporation of the IOTC and FAO port state measures and the IOTC resolutions;
- The incorporation of clear provisions on regional information sharing: This must clearly set out what information might be shared and in which circumstances such information can/must be shared.
In addition:

- All the above provisions must be clearly formulated and it must be ensured that all terms are clearly defined in the definitions section of the legislation;
- It is advantageous to have a "catch-all" offence in the legislation;
- Penalties must preferably be defined in such a way that it will adjust to inflation without the need for an amendment (see the Comoros example);
- As far as is possible, the legislation must be harmonised with other countries in the region, and especially with regard to the maximum penalties allowed for specific offences;
- The possible incorporation of a Lacey–type provision must be evaluated as such a provision can hugely contribute to harmonisation in the region.

The Training of Prosecutors and the Drafting of A Guide to the Prosecution of Fisheries Offences

It is proposed that the training program (to cover the material below will require a 5-day training course) and guide contain the following subject matter:

Introduction:

- The prosecution of fisheries offences within the context of environmental crime
- The motivation for the commission of fisheries offences and its implication for investigations and prosecutions
- Relationship with other crimes
- The importance of effective prosecution of fisheries offences

The International Dimension:

- International and Regional Agreements and Assistance
- Relevance to prosecutions
- Process of adoption
- Membership and incorporation into domestic law
- Proving the existence and contents of international and regional agreements
- International assistance in the prosecution of fisheries offences

National Fisheries Legislation:

- Powers of fisheries inspectors relating to inspections, search and seizure
- Offences created by the legislation
- Provisions on compounding
- Evidentiary provisions in the legislation
- Maximum penalties under the legislation
• Provisions on sentencing, forfeiture and other orders.

Inspections, Search and Seizure in Fisheries Offences:
• Unique factors pertaining to fisheries offences
• Inspections, search and seizure provisions in national legislation
• Chain of Evidence

The Decision to Prosecute:
• Guiding Factors
• Alternatives to Prosecution
• Compounding and Admission of Guilt Fines
• Charging of corporate bodies and juristic persons

Aspects of the Trial:
• Plea and Sentence Agreements/Plea bargaining
• Preparing for Trial
• Expert Testimony

Sentencing, Forfeiture and Other Orders:
• Issues to be considered in sentencing
• Evidence in Aggravation
• Forfeiture orders regarding the instrumentalities of crime
• Orders regarding the proceeds of crime or advantage gained
• Orders regarding the cancellation of licenses or other authorisations
• Orders affecting the status of the accused
• Orders regarding specific actions and the payment of damage, cost and compensation

Case Studies:
• Case Study: The Hout Bay-Bengis Case – international cooperation in fisheries investigations and prosecutions
• Case Study: The role of the Environmental Court in the Protection of Marine Living Resources in South Africa
• Case Study: The Tawriq Case in Tanzania: Lessons learnt

More case studies can be added.
Open Discussion:

- The need for specialised and/or dedicated prosecutors to conduct prosecutions of fishery offences
- The need for a national fisheries enforcement forum to increase the effectiveness of the enforcement of fisheries legislation (consisting of prosecutors, fishery managers, fishery inspectors and other agencies involved in enforcement, e.g. the Police, Coastguard and Customs, with a view to enhance cooperation, identify problems and seek solutions, comment and advise on legislative amendments etc)
- The need for a regional fisheries enforcement forum to increase the effectiveness of the enforcement of fisheries legislation in a specific region (consisting of senior personnel from the Director of Public Prosecutions/ Attorney General of each country).

Further issues can be added to the proposed subjects above.

Course evaluation and feedback

The Drafting of a Comprehensive Set of SOPs for the Inspectorate

The SOPs must be concise and contain clear provisions dealing with the following subject matter, which is not intended as a comprehensive or final list, and might have to be adapted to a particular country’s needs. It also mostly deals with subject matter relevant in the legal context, and not with all aspects that might be required. It is proposed that the inputs of the MCS specialist and other appropriate persons be obtained to finalise this. Many of these aspects should also be included in the training program for inspectors.

1. Code of Conduct
2. Guidelines on the Taking of Appropriate Enforcement Action
3. Agreements with Other Organisations (this will e.g. be MOUs with other organs of state involved in the enforcement of fisheries legislation)
4. General Operating Procedures
   - Use of Equipment
   - Hostile People and Situations
   - Handling of Confidential Information
   - Use of Pocket Book
   - Taking Statements
5. Standard Operating Procedures for Compliance Monitoring and Inspections
   - Conducting Surveillance
   - Inspection of Vessels at Port
   - Inspection of Vessels at Sea
   - Inspection of Vehicles
   - Inspection of Fish Processing Establishments
   - Inspection of Fish Markets and Restaurants
6. Standard Operating Procedures for Enforcement
   • Search and Seizure
   • Interviewing Witnesses and Suspects
   • Arrest
   • Crime Scene Management
   • Collection and Handling of Evidence
   • Compiling a Case Docket / File
   • Interaction with the Prosecution Service
   • Testifying in Court
   • Taking of Administrative Enforcement Measures
LIST OF PUBLICATIONS – LISTE DES PUBLICATIONS

SmartFish Programme


La bonne gouvernance et de la gestion des pêches et de l’aquaculture permettent d’améliorer la contribution du secteur à la sécurité alimentaire, au développement social, à la croissance économique et au commerce régional ; ceci en assurant par ailleurs une protection renforcée des ressources halieutiques et de leurs écosystèmes.

La Commission de l’Océan Indien (COI) ainsi que la COMESA (Common Market for Eastern and Southern Africa), l’EAC (East African Community) et l’IGAD (Inter-Governmental Authority on Development) ont développé des stratégies à cette fin et se sont engagés à promouvoir la pêche et l’aquaculture responsable.

SmartFish supporte la mise en œuvre de ces stratégies régionales en mettant l’accent sur le renforcement des capacités et des interventions connexes visant à :

- mettre en place des mécanismes pour la gestion et le développement durable des pêches ;
- développer un cadre de gouvernance des pêches au niveau régional ;
- renforcer le suivi-contrôle-surveillance pour les pêcheries partagées ;
- développer des stratégies et supporter des initiatives propres à accroître le commerce régional du poisson ;
- contribuer à la sécurité alimentaire en particulier par la réduction des pertes après captures et la diversification de la production.

SmartFish est financé par l’Union Européenne dans le cadre du 10ème Fond Européen de Développement.

SmartFish est mis en œuvre par la COI en partenariat avec la COMESA, l’EAC et l’IGAD et en collaboration avec la SADC. Une collaboration étroite a également été développée avec les organisations régionales de pêche de la région. L’assistance technique est fournie par la FAO et le consortium Agrotec SpA.

By improving the governance and management of our fisheries and aquaculture development, we can also improve food security, social benefits, regional trade and increase economic growth, while also ensuring that we protect our fisheries resources and their ecosystems.

The Indian Ocean Commission (IOC), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Inter-Governmental Authority on Development (IGAD) have developed strategies to that effect and committed to regional approaches to the promotion of responsible fisheries and aquaculture.

SmartFish is supporting the implementation of these regional fisheries strategies, through capacity building and related interventions aimed specifically at:

- implementing sustainable regional fisheries management and development;
- initiating a governance framework for sustainable regional fisheries;
- developing effective monitoring, control and surveillance for transboundary fisheries resources;
- developing regional trade strategies and implementing regional trade initiatives;
- contributing to food security through the reduction of post harvest losses and diversification.

SmartFish is financed by the European Union under the 10th European Development Fund.

SmartFish is implemented by the IOC in partnership with the COMESA, EAC, and IGAD and in collaboration with SADC. An effective collaboration with all relevant regional fisheries organisations has also been established. Technical support is provided by Food and Agriculture Organization (FAO) and the Agrotec SpA consortium.

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