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**FOURTH INTER-GOVERNMENTAL CONSULTATION ON THE
ESTABLISHMENT OF THE SOUTH WEST INDIAN OCEAN FISHERIES
COMMISSION**

Mahe, Seychelles, 13 – 16 July 2004

**THE PROCESS OF ESTABLISHMENT OF A REGIONAL FISHERIES COMMISSION IN
THE SOUTH WEST INDIAN OCEAN.**

SUMMARY

Following the disbandment of the Indian Ocean Fisheries Commission, the FAO Council at its Hundred and Sixteenth Session in 1999 authorised the Director-General of FAO to convene ad hoc meetings, as required, to complete the establishment of a new body and to take such interim action as may be required in the management of the fisheries resources of the areas covered by the former Committee for the Development and Management of Fisheries in the South West Indian Ocean. Four FAO *ad hoc* technical meetings and two Intergovernmental Consultations have been held. The deliberations and results of these meetings are summarized and the follow up actions to the Third Intergovernmental Consultation are presented.

BACKGROUND AND MANDATE:

Taking into account the recommendation and wishes of the Indian Ocean Fishery Commission (IOFC), the FAO Council, at its Hundred and Sixteenth Session in June 1999, abolished the IOFC and, as a consequence, all its subsidiary bodies, including the Committee for the Development and Management of Fisheries in the South West Indian Ocean (SWIO). Noting the wishes of SWIO, the FAO Council encouraged its former members¹ to proceed with the re-establishment of a regional fishery body.

The Council also authorized the Director-General of FAO to convene *ad hoc* meetings of the former members, as required, to complete the process of establishment of the new bodies and to take such interim action as may be required regarding the management of the fisheries resources of the areas covered by those former committees.

Four technical meetings and three intergovernmental consultations have been held to date.

MEETINGS

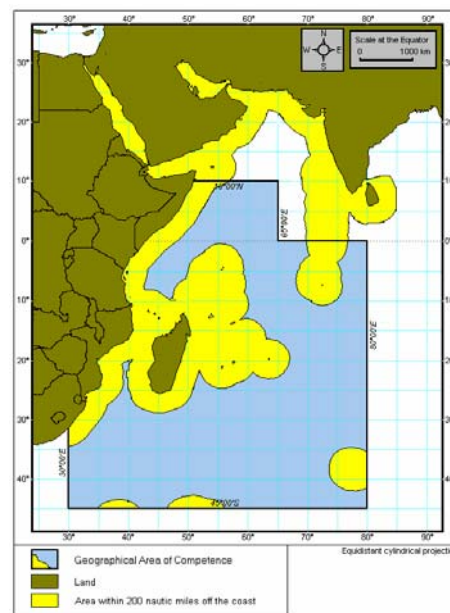
The first ad hoc technical meeting was convened in Albion, Mauritius, 24-27 January 2000, to review and advise on the opportunity to create such a fishery body. It was attended by seven of nine member countries of the former Committee (SWIO) with observers from the Southern African Development Community (SADC) and Commission de l'Océan Indien (COI).

The Meeting recognised that non-tuna resources were the major source of marine food for the peoples of the Southwest Indian Ocean region. There were regional similarities in non-tuna fisheries status, assessment, management and environmental issues. There was increasing transboundary activity due to local depletion, shifting fishing fleets and fishing incursions from outside the region.

The Meeting recommended that regional collaboration should be encouraged and strengthened. Other regional bodies concerned with fisheries such as SADC, COI and COMESA did not embrace all countries of SWIO in their membership or area of jurisdiction.

Following consideration of the financial and other contribution of possible members and of the technical assistance of FAO, the Meeting unanimously agreed to recommend to their respective Governments the establishment of a regional fishery body under Article XIV of the FAO Constitution. It made suggestions for a new draft agreement for such regional fishery body.

A second ad hoc technical meeting was held in Antananarivo, Madagascar, 11-12 July 2000 to review the new draft Agreement for the establishment of a Southwest Indian Ocean Fisheries Commission (SWIOFC). It was attended by eight of nine member countries of SWIO, the European Community and an observer from the COI.



¹ Comoros, France (Reunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia and Tanzania

The Meeting agreed that the regional fishery management body (SWIOFC), to be established under Article XIV of the FAO Constitution, will have an autonomous budget. Its geographical Area of Competence was decided (see map previous²). Membership of the body would include: (i) coastal states; (ii) states whose vessels fish in the Area of Competence; (iii) regional economic integration organizations to which the relevant fisheries competence had been transferred by a State qualifying as a member.

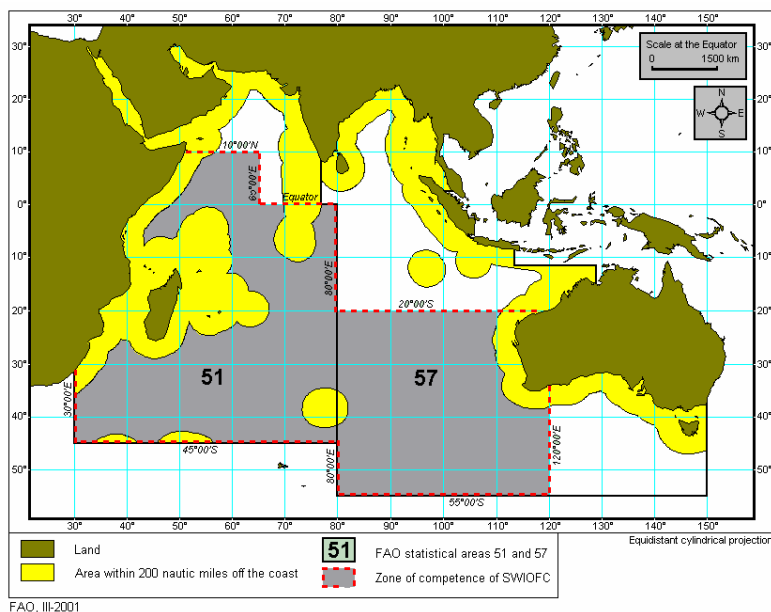
The Meeting revised the functions of the body to emphasise conservation and management of fisheries resources. Fisheries resources under its competence would include those of the deep-sea (such as orange roughy) but not of tuna or tuna-like species.

The Meeting elaborated a Preamble, reviewed other articles of the revised draft agreement and suggested that there should be a glossary of terms. FAO was requested to seek financial assistance to facilitate the organization of, and participation of coastal states at, an Inter-governmental Consultation convened under Article XIV 3(a) of the FAO Constitution.

The Intergovernmental Consultation on the establishment of a South West Indian Ocean Fisheries Commission was held at the Mercure Creolia hotel, St Denis, La Reunion, from 6 to 9 February 2001.

It was attended by fifty-four delegates from Australia, Comoros, European Community, France, Kenya, Madagascar, Mauritius, Mozambique, Namibia, New Zealand, Seychelles, South Africa, Tanzania and a representative of the Norwegian Agency for Development Cooperation.

The Consultation reviewed the objectives of the draft agreement. The geographical Area of Competence was extended (see map below). Except as otherwise provided in the draft agreement, this excluded the areas under national jurisdiction.



The functions of the proposed body were revised to provide guiding principles and to emphasise conservation and management of fisheries resources. A new article was included recognising the special requirements of developing states [in the region].

² Note that any maps of the area of competence that are presented in this document are indicative only as it is the text of the eventual agreement that will have legal status.

The Consultation requested FAO to urgently undertake a study of the compatibility of Article XIV of the FAO Constitution with the provisions of the 1995 UN Fish Stocks Agreement, in particular, those provisions concerning the membership of regional and subregional fisheries bodies.

The Consultation provided guidance on key issues to be taken into account in further revision of the draft Agreement. These would be considered in a further Intergovernmental Consultation to take place in Madagascar before the end of 2001. As a result of informal meetings during the Consultation, Mozambique offered to host an FAO workshop on the management of penaeid shrimp and Namibia offered to host an FAO workshop on the deepwater resources of the southern Indian Ocean.

The first ad hoc technical meeting on management of deepwater fisheries resources of the Southern Indian Ocean was organised and hosted by Government of Namibia in Swakopmund 30 May to 1 June with the technical co-operation of FAO. The meeting reviewed the status of information available and the events in their recent development. The perspectives that were discussed tried to include those of Governments whose vessels were fishing on the high seas in the study area and those of the industry with commercial operations in the area.

A major concern of those present was how to move to a responsible form of management in the absence of a treaty system, though it was unanimously agreed that preparations for the future technical meetings able to undertake stock assessments should begin immediately

A major focus of the meeting was how data could be made available given the informal status of discussions. General agreement was reached that government fisheries scientists who had access to these data would bring such information to future stock assessment workshops on the basis that circulation of the information would not go beyond the meeting venue and that no permanent records of the data would be made available to other participants.

Discussion covered various other relevant topics, including movement towards a standard of data collection and involvement of other international agencies in activities in the area, e.g. the Global Environment Facility.

The Second Intergovernmental Consultation on the establishment of a South West Indian Ocean Fisheries Commission, held at the Ministry of Foreign Affairs Conference Centre, Antananarivo, Madagascar, from 25 to 28 September 2001. It was attended by fifty-six delegates from Australia, China, Comoros, European Community, France, Iran, Japan, Kenya, Madagascar, Mauritius, Mozambique, Namibia, New Zealand, Seychelles, South Africa, Tanzania and United Kingdom as well as four observers from the Commission de l'océan Indien, the Norwegian Agency for Development Co-operation and Russia.

The Consultation reviewed a substantially revised draft Agreement with supporting working documents. New delegations considered all articles of the agreement were open for discussion. After extensive discussions and several proposals, the objectives and the zone of competence of the organisation were left unchanged. The consultation visited most of the other articles of the agreement and considered written proposals from Australia, European Community, Japan, Mauritius, Namibia, New Zealand and United Kingdom. Discussion on some articles was deferred until the structure of the body in relation to FAO was decided. Developing states made a statement expressing their concerns in relation to a proposal by high seas countries on this issue.

Reservations were placed on some articles such as on Finances and on the inclusion of the future body within the FAO framework. Many reservations were related to proposals made during the consultation to modify or change existing articles such extending the Zone of Competence, on Obligations of Contracting Parties, on Flag State Responsibilities and on Relation to Other Agreements.

Significant differences still remained between parties to the Consultation. Three substantive issues needed to be resolved for progress in subsequent consultations: accommodating all interests within an agreement or agreements on high seas fisheries and straddling stocks; a framework for co-operation in the sustainable development of fisheries under the jurisdiction of coastal developing states; the role of FAO in the future Agreement.

Delegations were asked to provide to the Secretariat, their views of avenues for progress on the three substantive issues that would be used to provide the next Consultation with options on issues central to the negotiation. A selection committee (Australia, Mauritius, Mozambique, and South Africa) was formed to shortlist nominated candidates for election of a permanent chairman at the start of the next Consultation. South Africa offered to host the next consultation which was planned to be held within a period of six months and which would be partly funded by the European Community.

The second ad hoc technical meeting on the management of demersal fisheries resources of the Southern Indian Ocean was organized and hosted by Agriculture, Fisheries and Forestry – Australia with the technical assistance of FAO. It was held in Fremantle, Western Australia, Australia, from 22 to 24 May 2002.

The Meeting reviewed the status of information available relating to the demersal fisheries of the southern Indian Ocean and the events in their recent development. Participants attended from Australia, European Union, France, New Zealand, Namibia, Japan, South Africa, Seychelles, Ukraine and the FAO. The meeting addressed the following main points:

- review of the results of the 2001 meeting in Swakopmund, Namibia
- reports of country activities in the study area (SIO)
- examination of fishery and stock status reports and
- discussion of the reporting needs to other organizations.

Reports are tabled on interim catch and effort data on a species basis for *Hoplostethus atlanticus* (Orange roughy), *Allocyttus niger* (Black oreo), *Neocyttus rhomboidalis* (Spiky oreo), *Pseudocyttus maculatus* (Smooth oreo), *Beryx splendens* (Alfonsino), *Pseudopentaceros richardsoni* (Boarfish), *Epigonus telescopus* (Cardinalfish) and *Hyperoglyphe antarctica* (Bluenose). Further presentations addressed the distribution of resources and predictive resource mapping in relation to fishing zones and bathymetric ridges; catch trends and CPUE indices and fishing activity.

The meeting reviewed issues of databases; management and specification of statistical areas; documentation of fishing methods; availability of oceanographic data; and research cruises in the Southern Indian Ocean, especially those undertaken by the Russian Federation. The meeting discussed proposals and plans for future collection, archiving and reporting of data, the securing of missing data and future stock assessment work. The meeting was of the view that the fisheries of the study area were now generally “depleted” and possibly no longer of major interest to those who had pioneered the expansion of the fishery.

In a fairly long interim period between the second and the third Intergovernmental Consultation, delegations provided the Secretariat with their views on the three substantive issues. Also a permanent chairperson was chosen to guide the future negotiation process. The **Third Intergovernmental Consultation on the Establishment of a Southwest Indian Ocean Fisheries Commission**, was held in Nairobi, Kenya, 27-31 January 2004. The Consultation was attended by delegates from Australia, Comoros, Egypt, European Community, France, Italy, Japan, Kenya, Mauritius, Mozambique, Namibia, New Zealand, Seychelles, Somalia and Tanzania. Representatives of the World Conservation Union (IUCN), the Norwegian Agency for International Development (NORAD), the Swedish International Development Cooperation Agency and the United Nations Development Programme (UNDP) were observers to the Consultation.

The Consultation addressed the substantive issues raised at the Second Consultation based on several options for progress that the Secretariat had prepared based on views communicated in writing. The consultation made good progress and it agreed that there should be separate coastal and high seas arrangements with linkages between the two. For waters under the sovereignty of coastal States, it agreed that a regional body for the management and development of coastal fisheries with advisory powers only, should be set up under Article VI of the FAO Constitution. For the high seas, it agreed that there should be a separate instrument, outside of the FAO, with the power to take binding decisions on conservation and management measures. The consultation recognised the right of involvement of coastal states in the high seas instrument and identified linkages between the proposed coastal state and the high seas arrangements. The consultation also agreed on the draft text for a resolution to the FAO Council and for the Statutes of a regional body for the management and development of coastal fisheries. Possible elements of a draft agreement for the high seas were briefly discussed. The next consultation was proposed to take place in Seychelles over the period between May to July 2004.

FOLLOW UP ACTIONS TO THE THIRD INTERGOVERNMENTAL CONSULTATION

The Chairperson provided an initial draft of the instrument for the high seas that was circulated to the Secretariat and members of the Drafting Committee. The comments received from the Drafting Committee and Secretariat (SAFR/DM/SWIO2/04/ 4) were used by the Chairperson in a draft of the Southern Indian Ocean Fisheries Agreement (SAFR/DM/SWIO2/04/ 3).

Seychelles accepted to host the next consultation from the 13-16 July 2004 at the Mahe Beach Resort, Port Glaud. The period of mid-July 2004 was favoured by most delegations that responded to the Secretariat.

New Zealand provided a contribution to the Seychelles towards host preparations for the Fourth Consultation, following initial contact through the Secretariat.

The European Community provided a contribution to FAO towards the organization of the Fourth Consultation.