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SOUTH WEST INDIAN OCEAN FISHERIES COMMISSION

Third Session

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PROPOSED INSTITUTIONAL ARRANGEMENTS FOR REVIEWING IMPLEMENTATION AND COMPLIANCE

This document provides elements of information for the discussion on the possibility of establishing a Compliance Committee or some agreement on compliance within an advisory structure such as SWIOFC, in response to the request for advice made by the Commission during its first session. This document invites consideration of this issue as well as review of a Draft Recommendation on the establishment of an Implementation [Committee] [Permanent Working Group].

Introduction

1. During the First Session of the Southwest Indian Ocean Fisheries Commission (SWIOFC) (Mombasa, Kenya, 18-20 April 2005), under Agenda item 5 "Review of fisheries management in the southwest Indian Ocean", the delegation of South Africa expressed that it would support the Commission's setting up of a Compliance Committee as one of the subsidiary bodies of the Commission¹. The delegation of Seychelles also supported the establishment of a Compliance Committee to monitor fishing activity, particularly in relation to IUU fishing². When the programme of work of the Commission was discussed, under Agenda item 8, there was a requirement for advice on the possibility of having a Compliance Committee or some agreement on compliance within an advisory structure such as the present Commission; it was also noted that the Secretariat was tasked to examine these matters and bring them to the Agenda of the next Session³.

¹ See Report of the First Session of the Commission, par. 21

² Ibidem, par. 25

³ Ibidem, par. 62

2. During the Second Session of the SWIOFC (Maputo, 22-25 August 2006), the Secretariat presented the document entitled “Proposed institutional arrangements for reviewing implementation and compliance”, which had been prepared at the request of the Commission at its last session. After recalling the origin of the proposal, its feasibility and its desirability or appropriateness within the framework of an advisory body such as SWIOFC, the Secretariat presented the draft terms of reference for an implementation committee or permanent working group, as a starting point and as a basis for discussion. The Secretariat described the options available to the Commission including allowing more consultations to be carried out with the competent national authorities. After a short discussion, the Commission agreed to postpone decision on that matter and consider this issue at its Third Session.

3. There is no doubt that the Commission may establish such body, if it so wishes, once the financial and administrative implications are clear and it is ascertained that the necessary funds are available, as stated in Article 6 of its Statutes⁴ and in Rule X of its Rules of Procedure⁵.

4. The only question that must be raised therefore is whether it is appropriate or convenient to establish a “*Compliance Committee*”, as such, or if another kind of institutional arrangement might not be made instead.

5. It is a fact that many, if not most, Regional Fisheries Management Organizations (RFMOs) or arrangements have established a Compliance Committee or an equivalent body, either by adopting a decision to that effect⁶ or through the insertion of a specific provision in their respective statutes⁷.

6. It is important to stress, however, that these RFMOs have competence to adopt measures which are binding upon their members.

7. Such is not the case of SWIOFC, which is a “*fisheries advisory commission*”⁸. It is convenient to recall that, in addition to its functions to “*promote*” and “*encourage*” “*cooperation amongst its members*”, “*research*”, “*the collection, exchange, dissemination and analysis or study of ... data and ... information*”, the role and responsibility of the Commission is primarily to “*help*”, “*assist*” and “*provide advice*”⁹.

⁴Article 6 of the Statutes of the SWIOFC, entitled “Institutions”, stipulates in its paragraph 3 that “The Commission may establish, on an ad hoc basis, such other committees or working parties as it may consider necessary on problems of major importance or of a specialized nature.” Paragraph 4 of that article also provides that “The establishment of any subsidiary body shall be subject to the determination by the Director-General that the necessary funds are available in the relevant chapter of the budget of the Organization. Before taking any decision involving expenditure in connection with the establishment of subsidiary bodies the Commission must have before it a report from the Director-General on the administrative and financial implications thereof.”

⁵ See Report of the First Session, Appendix F.

⁶ For instance, decision 95-15 adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT), on the mandate and terms of reference of the “*ICCAT Conservation and Management Measures Compliance Committee*”, to be generally known as the “*Compliance Committee*”.

⁷ For instance, the *Committee for the Review of Implementation of Measures Adopted by the Commission*, established in Article X of the 2003 Antigua Convention for the strengthening of the Inter-American Tropical Tuna Convention (IATTC) or the *Technical and Compliance Committee* established in Article 14 of the 2000 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

⁸ FAO Council, Resolution 1/127, Statutes of the South West Indian Ocean Fisheries Commission, adopted 25 November 2004.

⁹ Statutes of the South West Indian Ocean Fisheries Commission (SWIOFC), Article 4, Objectives and functions of the Commission.

“b. to help fishery managers in the development and implementation of fishery management systems;

(...)

f. to provide a sound scientific basis to assist Members in taking fisheries management decisions;

8. Rather than the decision taken by the countries that participated in the negotiations to establish SWIOFC under Article VI.I of the FAO Constitution, the main reason behind the advisory nature of the Commission is the fact that its geographical area of competence, as defined in Article 1 of its Statutes, lies fully “within the national jurisdiction of coastal States within the area of competence”. As a consequence, in absence of a delegation of competence to a supranational body or to a regional grouping, only the coastal States can adopt conservation and management measures in their respective areas under national jurisdiction and their sovereign rights, which significantly Article 4 of the SWIOFC Statutes refer to, cannot be diminished nor hampered by their obligations regarding access or cooperation.

9. This was made very clear to the participants in the negotiation process which led to the adoption of the statutes of the Commission and their subsequent endorsement by the FAO Council. The document in which were presented the various options available¹⁰ not only emphasized that “*the right to manage fisheries within the limits of national jurisdiction lies with the coastal states concerned*” (par. 33), but also stressed the following:

*“a) The focus for regional fisheries arrangements for **coastal fisheries** would need to be on fisheries development issues and common responses to common fisheries management issues as well as shared assessment of stocks. **In view of the fact that such fisheries are under national jurisdiction, management of the stocks is a matter for individual coastal states.** In so far as individual stocks are shared between neighbouring coastal States, management measures may need to be coordinated with the neighbouring States concerned.*

*b) For coastal state fisheries, **there is no need, and indeed no room for the establishment of a regional fisheries management machinery that has the power to take binding decisions on management measures.** In principle then, there is no need to set up a regulatory fisheries management body under Article XIV of the FAO Constitution.”¹¹*

10. In such circumstances and because the only binding decisions on management measures are those to be adopted by the coastal States, individually, and not by the Commission, it seems difficult, if not inappropriate, to contemplate the establishment of a “Compliance Committee” modelled after those established by RFMOs as referred to above.

11. There is certainly much interest, however, in carrying out, within the framework of the Commission, a review and monitoring of the follow-up actions taken by members in response to the advice provided by the Commission or its other initiatives in the exercise of its functions and responsibilities. Additionally, because of the great importance of ensuring compliance with the conservation and management measures that are adopted individually by the members of the

g. to provide advice on management measures to member governments and competent fisheries organizations;
h. to provide advice and promote co-operation on monitoring, control and surveillance, including joint activities, especially as regards issues of a regional or sub-regional nature;”

¹⁰ See Document “Possible options regarding issues central to the negotiations for the establishment of a Southwest Indian Ocean Fisheries Commission”, which was submitted to the Third Meeting of the Technical Consultation on the establishment of a regional fishery body in the Southwest Indian Ocean (Nairobi, Kenya, 25-30 January 2004)

¹¹ Ibidem, par. 57. This point was stressed again further in the document: “60. *Given the implications of the legal regime applicable to the management of fisheries within the limits of national jurisdiction, there would appear to be no need to establish any machinery at the regional level for coastal fisheries that would have the power to take binding decisions on management measures. The need would therefore seem to be more for the establishment of a light consultative machinery that would bring coastal states together to discuss common problems and issues of development and management, perhaps with the presence of potential donor countries.*”

Commission in the areas under their respective jurisdiction, there might a great deal of interest in establishing a mechanism aimed at monitoring and exchanging information on IUU fishing¹² and at promoting and facilitating its prevention, deterrence and elimination, including through cooperation between the coastal States concerned.

12. Whilst it is clear that such activities may be carried out by the Commission itself, in plenary session, it may be considered more desirable, including on the basis of experience gathered in other bodies, to delegate this work to an ad hoc subsidiary body, which might be either a Committee or a Permanent Working Group. Furthermore, costs would be negligible or kept at a minimum if it would be agreed that this body should meet during the sessions of the Commission, to which it would immediately report.

13. For the sake of providing a starting point for discussion, draft provisions for the establishment of that body are attached to this document, following the general structure of the provisions referring to the Scientific Committee as laid down in Rule IX of the Rules of Procedure of the Commission.

Suggested Action by the Commission

14. The Commission is invited to review the proposed establishment of a subsidiary body or another kind of arrangement to ensure, among others, the review and monitoring of the follow-up actions taken in response to the advice provided by the Commission, as well as monitoring and exchanging information on IUU fishing and promoting and facilitating its prevention, deterrence and elimination.

15. The Commission is also invited to review the *Draft Recommendation on the establishment of an Implementation [Committee] [Permanent Working Group]*, which is attached to the present document.

¹² At least by vessels fishing in areas under the jurisdiction of States other than those of their respective flag.

APPENDIX

Draft Recommendation on the establishment of an Implementation [Committee] [Permanent Working Group]

1. The Commission agrees to establish an Implementation [Committee] [Permanent Working Group].
2. Each Member of the Commission shall have the right to appoint a representative and an alternate, if needed, both with suitable qualifications, who may be accompanied by experts and advisers.
3. The Members of the Commission shall finance the participation of their representatives, alternates, experts and advisers at the Implementation [Committee] [Permanent Working Group] meetings. The Members of the Commission shall also finance any out of Session work carried out within the framework of the Implementation [Committee] [Permanent Working Group]. The Commission may finance the participation of experts invited to participate in meetings of the Implementation [Committee] [Permanent Working Group] or its working parties in their individual capacity.
4. The Implementation [Committee] [Permanent Working Group] shall elect, preferably by consensus, a Chairperson and a Vice-Chairperson from among its members for a term of two years. The Chairperson and the Vice-Chairperson shall be eligible for re-election.
5. The Chairperson of the Implementation [Committee] [Permanent Working Group] shall have, during the meetings of the [Committee] [the Working Group], the same powers and duties as the Chairperson of the Commission has in relation to the Sessions of the Commission itself.
6. Meetings of the Implementation [Committee] [Permanent Working Group] shall be convened by its Chairperson after consultation with the Chairperson of the Commission and the Director-General.
7. The Secretary of the Commission shall act as Secretary to the Implementation [Committee] [Permanent Working Group].
8. The Implementation [Committee] [Permanent Working Group] shall:
 - a) In relation to the implementation of the advices and recommendations of the Commission as well as with compliance with conservation and management measures adopted by the Members within their respective areas of national jurisdiction:
 - i) gather and review the relevant information;
 - ii) identify and discuss problems related to such implementation or compliance;
 - iii) provide the Commission with the relevant information, technical advice and recommendations;
 - b) provide advice on monitoring, control and surveillance, and promote cooperation on these matters, including joint activities, especially with regard to issues of a regional or sub-regional nature;
 - c) recommend to the Commission means of promoting compatibility among the fisheries management measures of the members of the Commission,

including infractions and sanctions, and promote and facilitate harmonizing of relevant national laws and regulation, as appropriate;

- d) carry out other relevant technical activities and consider any other matter referred to it by the Commission.

