**IOC-PRSP REGIONAL PROTOCOL FOR THE EXCHANGE OF INFORMATION FOR THE PURPOSE OF FISHERIES MONITORING, CONTROL AND SURVEILLANCE**

**Preamble**

The preamble refers to relevant documents and decisions.

**Article 1**

**Use of terms**

This Article has been modified to add key terms used throughout the draft Agreement, including fishing and fishing related activity, and to delete terms that are not used in the text. New terms are defined according to Best Practices.

Acronyms are not normally used in agreements, but for ease of understanding some have been maintained and are identified in this Article , e.g for MCS.

Note that the following key terms are defined (among others) and should be consistently used throughout the Agreement, mindful of their meaning.

***For review:***

“exchange of information” or “information exchange” refers to any communication of fisheries information for the purpose of fisheries MCS or management, and for providing, receiving or collecting strategic intelligence for fisheries MCS and includes sharing of information”. *Therefore “exchange” includes “sharing”, which does not need to be repeated.*

“fisheries information” includes any information or data in any medium, including electronic, documented, reproduced or other that may be relevant, directly or indirectly, for any purpose of fisheries management or MCS at national, regional or international levels.” *“Information or data” was used for completeness, and “fisheries management” was added for consideration. There was uneven use of “information” and “data” throughout, so now “fisheries information” is used to include both.*

“Monitoring, control and surveillance” refers to monitoring, control, surveillance and enforcement of fishing and fishing related activities.” *This means that “fisheries MCS” is redundant, reference to MCS is sufficient. “Fishing related activities was added and is defined separately.*

**Article 2**

**Objective and regional cooperation framework**

Elaborates the general objective to establish a regional cooperation framework, and states specific aims.

**Article 3**

**Application**

The Agreement applies to the Zone of Cooperation (defined in Annex I and is specifically for fisheries surveillance and conservation purposes) and flag vessels of Parties in areas beyond their national jurisdiction.

***For review:***

In general, articles referring to VMS and observation that are specific to the Zone of Cooperation should be reviewed.

Annex I

**Article 4**

**Parties and partners to this Agreement**

This describes eligible parties and provides for accession of additional cooperating States after entry into force and in accordance with Articles 14 and 15.

Cooperative partnership arrangements may be made with regional or international organizations with a mandate for fisheries management, fisheries MCS or maritime safety.

Note that the RCU recommended that “Partners” be applied where necessary throughout the document.

***For review***:

Placement of paragraph 4, “The Parties [undertake to] shall cooperate in good faith in implementing the provisions of this Agreement.” Suggestions have been made for its placement in this Article, Article 5 “General Principles” or Article 6, “Responsibilities of the Parties”.

**Article 5**

**General Principles**

Provides general principles for promoting effective implementation of the Agreement, including to:

* effectively use the information exchange mechanism to the greatest extent possible;
* require, collect and share in a tmely manner complete and accurate data and information;
* implement requirements relating to security, access to information and confidentiality in accordance with the highest possible standards;
* make available sufficient human, institutional and technological capacity for implementation.

**Article 6**

**Responsibilities of the Parties**

This sets out a range of responsibilities of the Parties such as use of mechanisms for information exchange, national legislation, capacity, confidential data, maintenance of national structures and installations, administration and other.

Note that:

* the Article 1 definition of “exchange” of fisheries information includes “sharing”;
* paragraphs 5 and 6 can’t be extended to IOC because it is not a party to the Agreement.

***For review:***

The Chair recommended that Seychelles and Tanzania may wish to provide new language for paragraph 3, which requires that national legislation does not obstruct the sharing of information.

**Article 7**

**Fisheries information exchange**

Parties and Partners must collect and exchange the fisheries information required in annex II, in accordance with their national legislation.

***For review*:**

Annex II

**Article 8**

**Location of the regional server and data security**

The regional server and all associated infrastructure for the information sharing systems will be located at IOC HQ,

Requirements ensuring for data security are specified.

***For review***:

It has been suggested for paragraph (2)(b) (below) that “FTPS might be an option for some types of information, either use generic ters of secure information exchange protocol or an exhaustive list of the possible exchange protocol. Data security may be detailed in an annex.”

2. “Data security shall be ensured through:

1. HTTPS Protocol and data sharing, which will enable a secure permanent location between a client and server, guarantee the identity of the server that supports the encryption of information in transit, be almost synchronous and not require additional hardware;”

A technical review is needed, and clear language must be developed for the Agreement.

**Article 9**

**Access to fisheries information**

Several criteria for access to fisheries information are given, including for access to data, the database, and the server, housing of the system, identification of the users and their access and access by administrators.

***For review***:

1. The list is preceded by “Parties agree that”. It is suggested that “Parties agree that” is superflous because the language is already mandatory.
2. The criterion in paragraph (a)(iv) provides that the access to exchanged data and its use shall be strictly refers to access to the shared data and its use shall be strictly reserved for authorised IOC personnel who possess the relevant signed certificate of confidentiality. *A template exists for VMS data only, but it needs to be updated to reflect all other information*. *Review whether a template for the certificate of confidentiality should be annexed, parties should be empowered to approve a template later, or other.*
3. The criterion in paragraph (c) provides that access to the server, the username shall have sufficiently long passwords to ensure a high level of security. *Should this form part of an annex that details data security?*

**Article 10**

**Procedures for the exchange and sharing of fisheries information**

This Article provides:

* The exchange and sharing of fisheries information must primarily take place through the StaRFISH and SIGMA and/or verbally, visually in writing, or in any other secure form.
* The reception by IOC and the Parties of the information through StaRFISH and SIGMA must take place securely and under encryption via electronic means, and be accessible only to authorized personnel holding a certificate of confidentiality signed by a relevant user or administrator.
* The parties must exchange VMS data in accordance with the protocol in Annex XXX.

***For review*:**

1. Concerning the reception of the information, it is suggested that the use of secure information sharing protocols must be substantially detailed, to ensure that protocol adopted allows for the most secure data exchange. A technical review and recommendation is needed.
2. The Protocol on data exchange should be reviewed and a decision made whether to annex it to this Agreement. Advantages of integrating it would include clear and accessible reference and avoidance of duplication and cross references.

**Article 11**

**Information protection and confidentiality measures**

This Article describes six rules to protect information and maintain confidentiality, allows information to be released to non-State third parties, requires a confidentiality agreement to be signed by all users, encourages non-disclosure agreements and states circumstances in the event there is actual or suspected loss or disclosure of the shared information. IOC and the Parties are to keep one another mutually informed.

***For review:***

It has been suggested to review the entire Article, noting that IOC cannot be bound by this Agreement, and technical input is needed. Considerations include:

* The provision should better define to whom the information/data should be released.
* It should be clear whether the release of information may be made upon request or otherwise (e.g. if it is necessary for enforcement of regional measures or national legislation).
* Criteria for the release of information should be introduced.
* The procedure for release of information/data in Article 12 a and b should apply in all cases.
* For paragraph 4, expand to include firewalls, databases, and other technical components. "IT Infrastructure" may be considered as part of the definition as well, and may require the input of an IT / Networking/ Server Expert.

**Article 12**

**Release of confidential information**

This relates to the previous Article and governs the release of confidential information, but does not include needed specific information which is indicated in brackets :

“Notwithstanding the provisions in Article 11, confidential information may be released (note criteria if any) to (xxxx) in the event of (e.g. an official investigation or request for purposes related to any legal process or matter by designated authorities that may be agreed by the Parties (e.g. national or international police, mandated defence, force, judicial, legal, fisheries enforcement or related authorities) or otherwise upon agreement of all Parties, providing:..”

Consent for release is required by (i) the Party or Partner that exchanged or shared the information through StarFISH, SIGMA or other as may be agreed and (ii) the State that carried out the operation, inspection, observation and/or investigation.

***For Review:***

1. Technical input is needed, for example:
* criteria for release;
* to whom release may be made (is it a party, authorized person in party, etc);
* should it be released only under an official investigation/request?
* should the parties agree on the authority to which the information is released or should a minimum standard be provided?
1. Clarify if this is limited to StaRFISH, SIGMA or other, or should be more specific?
2. Would consent also be required from an REIO or other under (ii)?

**Article 13**

**Secretariat services and financial arrangements**

This provides that there shall be no additional cost for the Participating States for the implementation and maintenance of the fisheries information exchange system.

IOC is to provide the system and support certain costs, ensure maintenance, manage the database, support capacity building etc.

***For Review:***

1. Clarify if there is no additional cost to the “Parties” or “Participating States”.
2. The IOC is not party to this Agreement, so this needs to be revised. If the IOC is going to provide Secretariat services for the system it should be stated. This is slightly different from actually being the Secretariat. A decision needs to be made on institutional arrangements in this regard.
3. Consideration should be given to expanding the Secretariat’s role.
4. Support for the cost of HTTPS for securing information and data exchange should be detailed (as suggested above), possibly in an annex with all data protection and security rules.

**Article 14**

**Signature and accession**

This relates back to Article 4, which identifies eligibility for signature and accession, and provides the process. It requires detailed information from States that wish to accede. acceding

It does not include regional or international organizations because it is standard for separate cooperative partnership agreements to be made with them for implementation of the Agreement, as provided in Article 4.

***For review*** :

It could be useful to consider combining articles 4 and 13 into one Article to ensure coherence and full understanding.

**Article 15**

**Entry into force and consequential termination**

This provides for entry into force of the Agreement when it is signed by a specified number of States.

***For review****:*

A decision must be taken on how many States must sign the Agreement for entry into force.

**Article 16**

**Amendments**

The process for making amendments is described and involves acceptance by all Parties.

**Article 17**

**Interpretation**

If there is a dispute on interpretation of implementation, Parties must consult to settle through peaceful means.

**Article 18**

**Compliance and effective implementation**

Parties must take measures commensurate with their resources to comply and ensure compliance.

**Article 19**

**Withdrawal and suspension**

There are many lacunae and ambiguities in this draft Article.

Parties shall be immediately informed in writing of any failure to implement the Agreement and the Agreement may be suspended in the event of breaches (but it isn’t clear whether it is suspended among all parties or just the one(s) that failed to implement or both).

If there is non-settlement or reported breach, the Agreement may be terminated (but one party cannot terminate an agreement. One party can withdraw from the Agreement or can be terminated but this would require the agreement of other Parties which isn't provided. This is unclear as written).

Any Party may withdraw from the Agreement, 12 months after receipt of the notification of withdrawal by the Depositary.

The Agreement will continue to apply after withdrawal in relation to any administrative or judicial proceedings arising from measures taken under this Agreement concerning the withdrawing Party (but it is not clear that it will continue to apply after the withdrawal Notice only, and do there have to be judicial proceedings?

***For review***:

It is suggested that this be redrafted to clear up the ambiguities described above.

**Article 20**

**Protective measures of suspension**

A Party that has clear proof of a breach of confidentiality by another Party in violation of the Agreement, and which on reasonable grounds could foreseeably undermine the entire fisheries information exchange system, must notify in writing all other Parties and IOC of the breach and call for an immediate suspension of data exchanges between the Party concerned and the IOC in order to safeguard the regional data exchange system.

**For review**:

1. IOC is not Party to the Agreement and would not have power to suspend. The power to suspend should be given to (all, or other) Parties, which should direct IOC to suspend data exchanges. Draft paragraph addresses this and draft paragraph 1 should be amended accordingly.
2. “Data exchanges” is amended to “information exchanges” in view of the title and definition of “information” to include data.
3. The title, “Protective measures of suspension” should be reconsidered to “Suspension of information exchanges” because “protective” could apply to many other situations.

**Article 21**

**Reservations and exceptions**

Parties may make reservations unless they are incompatible with its objectives.

***For review:***

The title addresses “Exceptions” but this is not included in the text.

**Article 22**

**Relation to other Agreements**

This does not alter rights and obligations of Parties arising from other agreements compatible with this one.

Two or more Parties may conclude agreements that modify or suspend the operation of provisions of the Agreement applicable soley to the relations between them, providing that such agreements “do not relate to a provision derogation from which is incompatible with the effective execution of the object ad purpose of this Agreement”.

***For review:***

The language concerning modification or suspension of the Agreement in quotations is unclear. An option would be “do not relate to a provisional derogation incompatible with the effective execution of the objective of this Agreement”. An Article provides for an objective, but not the “object and purpose”.

**Article 23**

**Depositary**

This provision requires the original of the Agreement to be deposited with IOC, “which shall serve as the Cepositary”, and requires the Depositary to transmit certfied copies of the Agreement to all signatories.

***For review:***

The Best Practice is to simply indicate the following: “The IOC shall be the Depositary of this

Agreement and any amendments or revisions thereto.” This is because the Depositary has many duties, not just transmitting certified copies to all signatories, and specifying one duty indicates there are no others.

**(New Article 24 Authentic texts )**

***For review:***

There is no provision for Authentic texts. For example, “The English and French texts of this Agreement are equally authentic.” This should be included if both languages are to be used.

IN WITNESS WHEREOF, the undersigned Ministers, being duly authorized

thereto, have signed this Agreement.

OPENED FOR SIGNATURE at xxx, this xxx day of xxx, two thousand two

hundred and twenty-three, in a single original, in the English and French.

**ANNEX 1 ZONE OF COOPERATION**

This draft Annex should be reviewed and specific coordinates or other references included.

**ANNEX II DATA TO BE EXCHANGED**

This draft Annex should be reviewed and where appropriate details added.

It should be titled “Information to be exchanged” for consistency with the definition of “information” and title of the Agreement.

Note that Innocent passage does not take place in the EEZ, UNCLOS defines it as taking place in the territorial sea. There is transit through the EEZ and innocent passage through the Territorial Sea. This should be amended.

**ANNEX III THE DRAFT MEMORANDUM OF UNDERSTANDING AMONG THE PARTICIPATING STATES OF THE IOC PRSP FOR THE ESTABLISHMENT OF A SUB-REGIONAL SATELLITE BASED VMS FOR DATA SHARING AND PROVIDING FOR ITS CONFIDENTIALITY**

To be considered for inclusion as an Annex, and finalized**.**

Among others, it provides for the responsibilities of Parties, management of shared data, operation of the Regional Fishing Activities Data Sharing Scheme and Comitology, finances and internal and external institutional relations.