**MEMORANDUM OF UNDERSTANDING**

**For the Certification and Coordination of Southwest Indian Ocean (SWIO) Coastal State Scientific Observers at Sub-Regional Level and the Exchange of Observer Information and Data**

**The Participating States of the Indian Ocean Commission Regional Fisheries Surveillance Plan (PRSP):**

RECALLING Article 62 (*Utilization of the Living Resources),* Paragraph 4, sentence (g), of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), defining coastal States rights and obligations in the placing of Observers or trainees on board vessels that are fishing in the exclusive economic zone (EEZ) of the coastal State;

CONSIDERING Article 64 (*Highly Migratory Species*), of the UNCLOS, defining the right and obligation of coastal States to cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of the optimum utilization of highly migratory species throughout the region, both within and beyond the EEZ;

IN VIEW of the Indian Ocean Tuna Commission (IOTC) area of competence, comprising the Indian Ocean and adjacent seas, north of the Antarctic Convergence;

NOTING that Article V(2)(b) of the Agreement for the Establishment of the IOTC defines its functions and responsibilities *“to encourage, recommend, and coordinate research and development activities in respect of the stocks and fisheries covered by the IOTC, and such other activities as the Commission may decide appropriate, such as transfer of technology, training and enhancement, having due regard to the need to ensure the equitable participation of Members of the Commission in the fisheries and the special interests and needs of Members in the region that are developing countries”*.

TAKING INTO ACCOUNT paragraph 3 of IOTC Resolution 22/04 on a Regional Observer Scheme requiring a minimum observer coverage of 5%, as defined by the number of operational sets, on flag vessels of Contracting Parties and Cooperating Non-Contracting Parties (CPCs) operating in the IOTC area of competence of 24 meters length overall and above, and under 24 meters and under 24 metres if they operate outside the EEZ of their flag State;

REFERRING TO paragraph 10 of IOTC Resolution 22/04, stating that CPCs shall have the primary responsibility to obtain qualified Observers and that each may choose to use either deployed national or non-nationals of the flag State of the vessel on which they are deployed;

MINDFUL of the Regional Observer Scheme Standards developed by IOTC for accessing the national observer programmes of its CPCs;

CONSIDERING the Parties’ applicable national legislation that provides mandates to place observers on national and foreign vessels and assigns functions, authorities and duties to such observers;

DETERMINED to apply the decisions and recommendations concerning observers taken by the relevant regional fisheries management organizations (RFMOs) and agreements;

IN VIEW OF the interest and desire of all Parties to develop their capacity for cooperative action to promote the sustainable exploitation of fisheries resources and to collect independent and reliable scientific fisheries-related data, through joint and concerted action;

ACKNOWLEDGING the Administrative Arrangement signed between the Indian Ocean Commission (IOC) secretariat and its Member States from the 14th of October 2014 and the subsequent extension of this Arrangement to the East African States of Kenya, Mozambique and the Republic of Somalia;

RECOGNIZING the Declaration of the Indian Ocean Commission Fisheries Ministerial Conference 2017 in Madagascar for Combating Illegal, Unreported and Unregulated (IUU) Fishing in the SWIO, noting the establishment of the Working Group (WG) of National Observer Programme managers (NOPm) established by the IOC mechanism Regional Fisheries Surveillance Plan (PRSP).

**HAVE AGREED as follows:**

**Article 1**

**Use of terms**

For the purposes of this Memorandum of Understanding:

“a**ggregated data**” refers to raw data that has been compiled and summarized;

“**cooperative observation**” means an observation and data collection mission conducted by any sub-regionally certified Observer(s) as authorized by a Party on board a fishing vessel within the Zone of Cooperation or for a flag vessel of a Party beyond areas of national jurisdiction;

“**data**” includes facts and numbers used for analysis, including elemental coded descriptions such as for geographical location, species identification, fishing method, biometric measurements and other;

“**information**” in the context of 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 leve

“**fishing**” means:

* 1. to search for, locate, catch, take, harvest or transport fish;
	2. to attempt to search for, locate, catch, take, or harvest fish;
	3. to engage in any other activity, which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
	4. any operations at sea directly in support of or in preparation for any activity described in sub-paragraphs (i) to (iii), including any fishing related activity;

“**fishing related activity**” means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transhipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;

“**Fishing vessel**” means any vessel designed or equipped to search for, attract, locate, catch, take or harvest fish or any activity which can reasonably be expected to result in attracting, locating, catching, taking or harvesting fish and includes vessels used for any fishing related activity;

*“***Observer***”* means a person that collects information on board fishing vessels in accordance with applicable national laws and any framework of cooperative observer programs, and that can be used inter alia for monitoring fishing activities, quantifying species composition of target species and bycatch, whether they are retained or discarded and deploying or collecting tags; and

**“Raw data”** corresponds to the verified input of observations conducted by observers on board**.**

**Article 2**

**The Institutional authorities responsible for the management and coordination of the national fisheries Observation Programmes of the Parties**

1. The designated institutional authorities responsible for the management and coordination of the national fisheries observer programmes of the Parties are in Annex 1.
2. Annex 1 may be amended upon written notification by the relevant Party to the other Parties.

**Article 3**

**Application**

This Memorandum of Understanding shall apply to all fishing and fishing-related activities and information originating from or related to the Zone of Cooperation described in Annex 2 and to all flag vessels of Parties operating in areas beyond their national jurisdiction.

**Article 4**

**Objectives**

The objectives of this Memorandum of Understanding are to:

1. implement the IOTC Regional Observer Scheme Standards as minimum criteria for:
	1. the training and certification of observers of the Parties;
	2. a common “basic observer training programme” for observers deployed on flag vessels of Parties and the artisanal fleet to meet the IOTC requirements for minimum observer coverage;
	3. the training of management staff in the national observer programme in each Party;
	4. a common “observer logistic coordination training programme” for management staff in the national observer programme in each Party;
	5. the certification of training institutions/providers;
2. establish processes to:
3. facilitate the exchange of certified observers to assist Parties in complying with the IOTC Regional Observer Scheme standards;
4. establish the procedures for the recognition of training of observers and the national observer programme management team for Partiesthat have established an operational programme aligned with the IOTC Regional Observer Scheme standards on “observer training policy”;
5. establish regional procedures for the certification of Parties’ observers;
6. establish and maintain an electronic data-sharing process for the quick and regular exchange of observation data among the Parties;
7. establish the procedures for the planning and coordination of observer deployments in the regional large pelagic fleets comprised of industrial tuna purse-seine and pelagic longline vessels;
8. develop refresher training courses for the certification of Parties’ observers to conduct cooperative observation;
9. develop observer logistic coordination training courses for Partis’ n national observer programme management/coordination staff to standardize observer briefings, debriefings and management procedures.

**Article 5**

**The Role of the IOC through the Regional Fisheries Surveillance Plan**

The role of the Indian Ocean Commission through the Regional Fisheries Surveillance Plan (IOC-PRSP) is to provide the platform for information exchange, and Parties shall undertake to cooperate with the IOC as it facilitates the implementation and coordination of the relevant activities, including to, *inter alia*:

1. provide the necessary financial and technical support for the:
2. appointment of a “Regional Observer Coordinator” who shall be responsible for monitoring the implementation and coordination of cooperative regional observer missions;
3. development, maintenance and hosting of data sharing tools for the quick and regular exchange of observation data among the Parties, as defined under [Annex 3](#_Annexe_2_-) of this Memorandum of Understanding, including storage, aggregation and exchange of received data and information through the StaRFISH database;
4. assistance in the planning and coordination of regional observer deployments, and in cooperation with the industrial vessels and their flag States wishing to embark an observer from the programme, in regional large pelagic fleets (industrial tuna purse-seine and pelagic longline), as detailed under [Annex 4](#_Annex_4_-) of this Memorandum of Understanding;
5. training of the observers accredited to operate in the SWIO region;
6. training of the SWIO coastal State NOP management teams;
7. organization of the SWIO coastal States NOPm WG meetings.
8. data analysis and interpretation;
9. participate in the SWIO coastal States NOPm WG;
10. certify sub-regional observers and issue them a certificate and an ID card which carries the IOC logo;
11. collaborate with the IOTC to provide technical and scientific support to sub-regional observer cooperation activities including development of standards, training and other activities as may be required.]

**Article 6**

**The Role of the RFMOs and Agreements**

1. Parties shall afford Regional Fisheries Management Organizations and Agreements an opportunity to contribute to the SWIO coastal States NOPm WG as partners.

**Article 7**

**The Responsibilities of the Parties**

The Parties shall:

1. nominate a national observer programme manager/coordinator and a data manager, who shall be the contact points on matters related to the implementation of the activities under this Memorandum of Understanding, including the participation to the South West Indian Ocean National Observer Programme Managers Working Group (SWIO NOPm WG);
2. nominate national observers that meet minimum criteria as defined in [Annex](#_Annex_5_-) 5, to undergo a sub-regional certification process as defined in Annex 6, in order to be able to join the pool of sub-regionally accredited observers;
3. forward the list of national observers certified at sub-regional level to the IOTC Secretariat for registration;
4. coordinate observer deployment in association with the IOC and the other Parties;
5. work towards aligning national observer programmes with IOTC Regional Observer Scheme standards, including the safety-at-sea standard, and report to the IOTC Secretariat any incidents involving observers;
6. Ensure compliance with IOTC Resolution 22/04 and report observer information to the IOTC Secretariat in the required format(s).

**[Article 8**

**The Role of the SWIO NOPm WG**

The Parties may designate the role of the SWIO NOPm WG, consistent with its terms of reference, which should include to:

1. share observer deployment planning at the sub-regional level;
2. plan observer deployments at the sub-regional level;
3. report on the deployments of observers within the coastal States for the small-scale fleets;
4. develop standards for the implementation and coordination of cooperative sub-regional observer activities;
5. develop formal observer certification processes; and
6. such other role as may be designated.

**Article 9Cooperative observation missions**

1. The objective of cooperative observation missions is to pool and optimize the observer resources and information of the Parties, and such missions shall be subject to the conditions required in this Memorandum of Understanding.
2. An Observer taking part in a cooperative observation mission outside their national jurisdiction shall continue to report to its national authority, and such authority shall share data through StaRFISH with the other Party or Parties associated with the cooperative observation mission.

**Article 10**

**Data Sharing and Confidentiality**

1. Sub-regionally certified observers shall# deliver all data (physical and digital) collected during any cooperative observation mission to their national authority designated in Annex 1.
2. The designated authority of each Party will be responsible for the debriefing of their certified observers, data verification, forwarding and storage.
3. The designated authority of each Party shall forward raw data (where appropriate), aggregated data, and other data considered for exchange, to the relevant information sharing platform operated by IOC/PRSP and such exchange shall be effected in accordance with the Party’s confidentiality legislation and the IOC/PRSP Agreement for the Establishment of Regional Mechanisms for the exchange of fisheries information for the purpose of MCS.
4. Raw data collected by sub-regionally certified observers shall be the property of the Party responsible for its collection. Data collected by an observer of one of the Parties in the waters under the jurisdiction of another Party shall be transmitted to the latter in sufficient detail and grouped by 1° x1°, to allow its use for scientific purposes and/or for reporting to the IOTC.
5. Raw data made available to the IOC by a Party for aggregation and sharing (after being aggregated) through the PRSP Internet tool StaRFISH, shall not be shared or used for other purposes than those provided under this Memorandum of Understanding without the explicit approval of the Party responsible for its collection.
6. Any data with clear elements of a commercial or private nature such as the geographical position of fishing operations shall be strictly confidential and shall not be disclosed or made available to other Parties or entities external to this Memorandum of Understanding without the express agreement of all Parties.
7. Aggregated data collected by sub-regionally certified observers during their cooperative observation missions shall only be exchanged with non-Parties if data exchange is approved by all Parties. Sharing of aggregated data with non-Parties shall will have be conducted in line with the IOTC Resolution 12/02 on Data Confidentiality Policy and Procedures.
8. Any Party that publishes scientific information shall only use aggregated data, citing the common origin of the data, and shall transmit a copy to the other Parties.

**Article 11**

**Signature and accession**

1. This Memorandum of Understanding shall be open for signature by all Participating States of the IOC PRSP.
2. After this Memorandum of Understanding enters into force in accordance with Article 12(1), it shall be open for accession by XXX where the Parties have unanimously agreed to permit accession.

**Article 12**

**Entry into force**

1. This Memorandum of Understanding shall enter into force on the date of its signature by the (number) Participating State described in Article 11(1).
2. After entry into force, States described in Articles 11(2) may accede to the Agreement in accordance with procedures described in Article 11(2) and shall deposit their instruments of accession with the Depositary.

**Article 13**

**Withdrawal**

Any Party may withdraw from this Memorandum of Understanding by delivering written notification of its intention to withdraw to the Depositary at least 90 days prior to the proposed date of withdrawal.

**Article 14**

**Amendment**

1. Any Party may, at any time after the entry into force of this Memorandum of Understanding, propose amendments to this Memorandum of Understanding and its Annexes by communicating the text of its proposal to the Depositary which shall promptly circulate any such proposal to all Parties.
2. Amendments shall be proposed at least three months before a meeting of the SWIO NOPm WG and adopted at such meeting by consensus of the Parties represented.
3. Amendment shall enter into force thirty (30) days after the decision of the meeting in paragraph 2 of this Article and the Depositary has received instruments of acceptance or approval from two thirds of the Parties and the IOC/PRSP Expanded Regional Coordination Unit.
4. The delegated authorities may, by mutual agreement, in particular at a meeting of the NOPm WG of the SWIO coastal States, define other procedures for the amendment of this Memorandum of Understanding for approval of the IOC/PRSP Expanded Regional Coordination Unit.

**Article 15**

**Relation to other agreements and areas under national jurisdiction**

1. This Memorandum of Understanding shall not alter the rights and obligations of Parties which arise from other agreements compatible with this Memorandum of Understanding and which do not affect the enjoyment by other Parties of their rights or the performance of their obligations under this Agreement.
2. This Memorandum of Understanding shall not affect the rights, claims or views of any Party in relation to areas under its national jurisdiction.

**Article 16**

**Dispute settlement**

Disputes between the Parties which may arise from the implementation of this Memorandum of Understanding shall be settled through diplomatic channels.

In the event of doubts or disputes between two or more Parties arising from the interpretation or implementation of this Memorandum of Understanding and/or its Annexes, the Parties shall consult in order to settle the dispute by means of negotiations or any other peaceful means of their choosing.

**Article 17**

**Validity**

The MoU shall be valid for a period of five years and thereafter shall renew automatically for another five (5) years if a Party does not object.

If a Party objects to the renewal, Parties shall review this Memorandum of Understanding which shall remain valid for the Parties that do not object until the adoption of a new Memorandum of Understanding .

**Article 18**

**Disclaimer**

The certification and coordination of Parties’ observers at sub-regional level and the exchange of observer data agreed in this Memorandum of Understanding , or any other provision herein, does not relieve Parties of their responsibilities towards the IOTC, in particular IOTC Resolution 22/04 and the IOTC Regional Observer Scheme,

**Article 19**

**Depositary**

The Indian Ocean Commission shall serve as the Depositary.

**Article 20**

**Authentic texts**

The English and French texts of this Memorandum of Understanding are equally authentic.

IN WITNESS WHEREOF, the undersigned Ministers, being duly authorized thereto, have signed this Memorandum of Understanding.

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 languages.

IN WITNESS WHEREOF, THE UNDERSIGNED, DIRECTLY AUTHORIZED BY THEIR RESPECTIVE GOVERNMENTS, HAVE SIGNED THIS MEMORANDUM OF UNDERSTANDING.

Done in three (3) copies, in French, English and Portuguese, the texts being equally authentic.

**Date:**

|  |  |
| --- | --- |
| For the Union of Comoros\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Director General of the National Centre for Fisheries Control and Surveillance (CNCSP)  | For Kenya\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Director General of the Kenya Fisheries Service (KeFS)  |
| **For France**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Director of the Direction of the South Sea Indian Ocean (DMSOI) | **For the United Republic of Tanzania**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Director General of the Deep-Sea Fishing Authority (DSFA) |
| **For Madagascar**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Executive Director of the Fisheries Monitoring Centre (CSP) | **For Mozambique**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Director of the National Research Institute (IIP) |
| **For Mauritius**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Director of the Fisheries Division (FD) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **For the Seychelles**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Chief Executive Officer of the Seychelles Fishing Authority (SFA) | **For Somalia**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Director general of Fisheries and Marine Resources  |
|  |  |

**ANNEX 1**

**The Institutional Authorities Responsible for the Management and Coordination of the National Fisheries Observation Programmes of the Parties**

The following institutional authorities are responsible for the management and coordination of the national fisheries observation programmes.

*Union of Comoros*

The **National Centre for Fisheries Control and Surveillance** (in French: Centre National de Contrôle et de Surveillance des Pêches - CNCSP**)**, under the supervision of the Ministry of Agriculture, Fisheries, Environment, Tourism and Handicrafts (in French: Ministère de l'Agriculture, de la Pêche, de l'Environnement, du Tourisme et de l’Artisanat).

*France*

The **Direction of the South Sea Indian Ocean** (in French: Direction de la Mer Sud Océan Indien - DMSOI), under the supervision of the Ministry of Agriculture and Food (in French: Ministère de l’Agriculture et de l’Alimentation).

*Kenya*

The **Kenya Fisheries Service** **(KeFS)** under the supervision of the State Department for Fisheries and Blue Economy of the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

*Madagascar*

The **Fisheries Monitoring Centre (in French: Centre de Surveillance des Pêches - CSP)**, under the supervision of the Ministry of Fisheries and Blue Economy (in French: Ministère de la Pêche et de l’Economie Bleue).

*Maldives*

The **Fisheries Compliance Section** **(FCS),** under the supervision of the Fisheries Department (FD) of the Ministry of Fisheries, Marine Resources and Agriculture (MoFMRA.

*Mauritius*

The **Fisheries Division (FD)**, under the supervision of the Ministry of Blue Economy Marine Resources, Fisheries and Shipping.

*Mozambique*

The **National Research Institute** (IN PORTUGUESE: Instituto Nacional de Investigação – IIP), under the supervision of the Ministry of the Sea, Inland Waters and Fisheries (in Portuguese: Ministério do Mar, Aguas Interiores e Pescas).

*Republic of Seychelles*

The **Seychelles Fishing Authority (SFA),** under the supervision of the Ministry of Fisheries and Blue Economy.

*Somalia*

The **Fisheries Management Department,** under the supervision of the Federal Ministry of Fisheries and Blue Economy.

*South Africa*

The **Directorate of Offshore & High Seas Fisheries** of the **Department of Forestry, Fisheries and the Environment (DFFE)**, under the Chief Directorate of Marine Resources Management.

*United Republic of Tanzania*

The **Deep-Sea Fishing Authority (DSFA)**, under the supervision of the Ministries responsible for Fisheries.

**ANNEX 2**

**ZONE OF COOPERATION**

**(Chart with coordinates to be added)**

**ANNEX 3**

**DEVDEVELOPMENT, MAINTENANCE AND HOSTING OF DATA SHARING TOOLS FOR THE QUICK AND REGULAR EXCHANGE OF OBSERVATION DATA AMONG THE PARTIES**

**(Details of development, maintenance and hosting to be added)**

**ANNEX 4**

**PLANNING AND COORDINATION OF REGIONAL OBSERVER DEPLOYMENTS IN COOPERATION WITH THE INDUSTRIAL VESSELS AND THEIR FLAG STATES WISHING TO EMBARK AN OBSERVER FROM THE PROGRAMME**

**FOR REGIONAL LARGE PELAGIC FLEETS (INDUSTRIAL TUNA PURSE-SEINE AND PELAGIC LONGLINE)**

**(Details of planning and coordination to be added)**

**ANNEX 5**

**MINIMUM CRITERIA FOR NATIONAL OBSERVERS**

**(Minimum criteria to be added)**

**ANNEX 6**

**SUB-REGIONAL CERTIFICATION PROCESS**

**(Certification process to be added)**