**Agreement among the participating states of the INDIAN OCEAN COMMISSION on a Regional Fisheries Surveillance Plan for the establishment of Regional Mechanisms for the Exchange of Fisheries Information for the purpose of Monitoring Control and Surveillance (MCS)**

# TABLE OF CONTENTS

[Article 1 - Use of terms 6](#_Toc132380069)

[Article 2 - Objective and regional cooperation framework 9](#_Toc132380070)

[Article 3 - Application 11](#_Toc132380071)

[Article 4 - Parties and partners to this agreement 12](#_Toc132380072)

[Article 5 - General Principles 13](#_Toc132380073)

[Article 6 - Responsibilities of the Parties 14](#_Toc132380074)

[Article 7 - Fisheries information exchange 16](#_Toc132380075)

[Article 8 - Location of the regional server and data security 17](#_Toc132380076)

[Article 9 - Access to exchanged fisheries information 18](#_Toc132380077)

[Article 10 - Procedures for the exchange and sharing of fisheries information 20](#_Toc132380078)

[Article 11 - Information protection and confidentiality measures 21](#_Toc132380079)

[Article 12 - Disclosure of confidential information 22](#_Toc132380080)

[Article 13 - Institutional services and financial arrangements 24](#_Toc132380081)

[Mauritius : Put financial arrangements in the first agreement, i.e. the parties will have to contribute to a certain extent...Administrative Arrangement 24](#_Toc132380082)

[Article 14 - Signature and accession 28](#_Toc132380083)

[Article 15 - Entry into force and consequential termination 29](#_Toc132380084)

[Article 16 - Provisional application 30](#_Toc132380085)

[Article 17 - Amendments 31](#_Toc132380086)

[Article 18 - Dispute settlement 32](#_Toc132380087)

[Article 19 - Compliance with this Agreement 33](#_Toc132380088)

[Article 19 - Compliance with this Agreement 34](#_Toc132380089)

[Article 20 - Suspension of information exchange for non compliance? breach of confidentiality 35](#_Toc132380090)

[Article 21 - Withdrawal from and suspension of this Agreement 37](#_Toc132380091)

[Article 22 - Reservations 38](#_Toc132380092)

[Article 23 - Relation to other agreements 39](#_Toc132380093)

[Article 24 - Depositary 40](#_Toc132380094)

[Article 25 - Authentic texts 41](#_Toc132380095)

[ANNEX I 42](#_Toc132380096)

[ZONE OF COOPERATION 42](#_Toc132380097)

[ANNEX II - StaRFISH 43](#_Toc132380098)

[ANNEX III - INFORMATION TO BE EXCHANGED 44](#_Toc132380099)

[ANNEX IV – CERTIFICATES 45](#_Toc132380100)

[ANNEX V – PROCEDURES FOR THE ESTABLISHMENT OF A SUB-REGIONAL SATELLITE BASED VESSEL MONITORING SYSTEM FOR INFORMATION SHARING AND PROVIDING FOR ITS CONFIDENTIALITY 47](#_Toc132380101)

**Jude: Amend articles on depositary and dispute resolution and authentic text and annex to align it with what we discussed today. Should be more or less the same.**

Mauritius, fully supports.

**The Parties to this Agreement**,

HAVING REGARD to the United Nations Convention on the Law of the Sea of 10 December 1982, the 1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995, the 1995 FAO Code of Conduct for Responsible Fisheries and in particular Article 7 on Fisheries Management and the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;

HAVING REGARD to the relevant resolutions of the Indian Ocean Tuna Commission and the Southern Indian Ocean Fisheries Agreement;

CONSIDERING the Indian Ocean Commission (IOC) Ministerial Declaration for Combating Illegal, Unreported and Unregulated (IUU) Fishing in the South West Indian Ocean Region of 23 January 2007 and the commitment to establish the IOC Regional Fisheries Surveillance Plan (PRSP);

CONSIDERING the Administrative Arrangements entered into by each Participating state in the 2007 Declaration of the Ministerial Conference for Combating Illegal, Unreported and Unregulated (IUU) Fisheries in the Southwest Indian Ocean with the Secretariat of the Indian Ocean Commission (IOC);

CONSIDERING THE 2014 Memorandum of Understanding to establish a Regional Monitoring Scheme for Fishing Activities and Data Sharing among the Member States of the Indian Ocean Commission, cooperating for the creation of a Regional Monitoring Scheme for Fishing Activities and Data Sharing and its Confidentiality, this Agreement shall replace the 2014 MOU.

CONSIDERING the Protocol on Fisheries signed by Southern African Development Community (SADC) Ministers responsible for fisheries on 14 August 2001 and the Statement of Commitment to Combat Illegal, Unreported and Unregulated (IUU) Fishing signed by SADC Ministers responsible for marine fisheries on 04th July 2008;

CONSIDERING the commitment of each State to ensure by its own means sufficient capacity to the exchange and sharing of fisheries MCS information in a near real time period;

RECALLING the endorsement on 21st October 2011 by the Permanent Liaison Officers of the IOC member States of a recommendation to enlarge the activities of the PRSP Regional Coordinating Unit to neighbouring coastal States;

RECALLING the recommendations of the Ministerial Declaration of PRSP participating States’ Fisheries Ministers of 21st July 2017;

ACKNOWLEDGING the concerns raised by the Parties regarding the ongoing problem of illegal fishing activities in the adjacent marine areas, in violation of applicable national, regional and international laws and obligations;

RECOGNIZING the need to establish a regional mechanism to exchange fisheries information for the purpose of monitoring, control and surveillance among the Parties;

HAVE AGREED as follows,

# Article 1 - Use of terms

For the purposes of this Agreement:

**“Automatic Identification System” (AIS)** means an automatic tracking system used on ships for identifying and locating vessels by electronically exchanging data with other ships, AIS base stations and satellites;

**“Authorization to Fish” means** an authorization issued by a flag State to its domestic fishing vessels to engage in fishing or fishing related activities in areas beyond its national Jurisdiction;

**“data processing”** means all operations concerning data by human or other means and processes or by using algorithms to extract and analyse the information needed to monitor fishing operations, analyse any risks pertaining to the information and detect suspicious fishing operations;

**“Enlarged Regional Coordination Unit” (ERCU)** refers to the Enlarged Regional Coordination Unit of the Regional Fisheries Surveillance Plan of the Indian Ocean Commission in which Participating States are members, and which reports to the Regional Coordination Unit in accordance with its terms of reference;

**‘’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;

**“exclusive economic zone” (EEZ)** refers to the EEZ declared by each Party in its national legislation;

**“fisheries information” or “information” in the context of fisheries activities,** 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;

**“Fisheries Monitoring Centre” (FMC)** refers to a Party’s institutional and administrative structure that is given operational powers, duties and responsibilities for fisheries monitoring, control and surveillance;

“**fishing**” means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;

**“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 fishing related activities;

“**foreign fishing vessel**” means a fishing vessel flying the flag of a State other than that of a Participating State;

**‘Indian Ocean Commission” (IOC)** means the Indian Ocean Commission created in 1982 by the Port-Louis Declaration and established in 1984 by the General Agreement of Victoria;

“**management, monitoring, control and surveillance of fisheries** “ refers to measures to conserve and manage fisheries resources, including measures to monitor and regulate fishing and fishing related activities including to prevent, deter and eliminate illegal fishing;

**“Monitoring Control and Surveillance” (MCS)** refers to monitoring, control, surveillance and enforcement of fishing and fishing related activities;

**“Participating State”** includes States that signed the 2007 Declaration of the Ministerial Conference, members of the IOC, Kenya, Mozambique, Tanzania and Somalia**.**

**“Partner”** refers to a regional or international organization that has become a partner pursuant to Article 4.3;

**“Party”** means a Participating State that has consented to be bound by this Agreement and for which this Agreement is in force, and includes any Partner that has agreed to be bound by this Agreement in accordance with Article 4.3;

“**Regional Coordination Unit**” (RCU) refers to the Regional Coordination Unit of the Regional Fisheries Surveillance Plan of the Indian Ocean Commission and in which Participating States are members;

**“Standard Real-time Fisheries Information Hub”** (**StaRFISH)** means the internet tool operated by the IOC-PRSP for storing, aggregation and sharing of data and information;

**“Suspicious fishing operation”** refers to the behaviour of one or more fishing vessel which indicates [or raise reasonable inference of] non-compliance with applicable national laws, conservation and management measures of regional fisheries management organizations or international obligations;

**“System Information Géographique Maritime ‘’ (SIGMA)** means, the system operated by the IOC for the purpose of sharing fisheries information from VMS, AIS, satellite imagery and oceanographic data;

**"Vessel Monitoring System” (VMS)** refers to a system used for monitoring the position of fishing vessels based on an embedded device that is capable of transmitting satellite data on the position and course of the vessel to a coastal State and the flag State, in accordance with protocols which may provide for transmission through the flag State or shipowner directly to a coastal State.

# Article 2 - Objective and regional cooperation framework

1. The objective of this Agreement is to establish a regional framework among the Parties within the scope of the Agreement on an administrative arrangement between the Indian Ocean Commission (IOC) and the Participating States of the Regional Fisheries Surveillance Plan (PRSP) for the management and operationalisation of the PRSP,
2. The purpose of the regional framework is to enhance fisheries information exchange for the purpose of regional cooperation in fisheries MCS in the South West Indian Ocean region that provides a web-based fisheries information exchange system with a common centralised database that aims to maintain a proper record of operational activities and share MCS fisheries information, while observing and respecting the national sovereignty and territorial integrity of each Party.

TUESDAY: Align in the rest of the document. Kenya.

1. This Agreement aims specifically to:
   1. strengthen the Parties’ knowledge of fisheries information and fisheries-related crime through a recognised MCS related information exchange mechanism in the South West Indian Ocean region;
   2. control and monitor fisheries activities in real-time or near-real-time to enhance national and regional MCS management and inform risk assessment and decision making;
   3. build the capacities of the Parties for increased knowledge about MCS technology and better use of the MCS fisheries information;
   4. enhance the culture of sharing and exchanging fisheries information for the purposes of MCS in the South West Indian Ocean region;
   5. enhance and ensure the sharing and exchange of MCS fisheries information among the national Fisheries Monitoring Centres (FMCs) through the IOC. and IOC.

Mauritius: IOC: has two centers already, can we mention them?

Maybe some mention that this would be in addition to a mechanism a member state has already. This system is complementary.

Comoros: Not just fishery... but related to political... in first paragraph crime linked to fishery. Every form of mention. All the crime committed to the fisheries is it qualified? Can we change the terms to the fisher.

To enlighten the risk assessment but not to facilitate decision taking.

Exchange of information...edit add information that we can give some information that are not well terated and processed in order for it to be..

Tanzania: subpara e. Jude: Should be between the FMCs that already exists ... share through web based system, which is already there.

Kenya: Observation: Scope of this Agreement goes beyond the zone of cooperation Sub articles a and d go beyond the region. Doesn’t apply to the SWIO Region the whole one. Focus on the zone of cooperation. Proposed SWIO removal.

Mauritius: Add a definition of zone of cooperation which would refer to Annex 1.

Jude: 2007, PRSP put into place. This was supposed to be a surveillance programme. zone of cooperation was developed where we are gonig to do surveillance, but over the years it evolved from prsp surveillance system to information sharing system. We have a working group for regioinal observers. ZoC was agreed up on only for surveillance purposes and observation, but for information sharing, 2017 Ministerial Rec. evolved, referred to other partners, such as SADC, IOTC, etc. that cover the IO region. They have vital information that covers areas beyond the ZoC. For information, it must go beyond the zone. We worked before with information coming from West Africa, e.g. Dongwon incident.

So information should not be restricted to ZoC, any information we receive from beyond ZoC valuable. We should recall that ZoC was developed for surveillance purposes, and can apply to observation. Also a regional IUU list.

Kenya: Just mentioned IUU...MCS trying to combat IUU. Even if the definitions define IUU and objective that this agreement is geared towards combating IUU fishing.

Mauritius, from legal perspective, if this is to be made pursuant to the first agreement, difficult to accept that the coverage would be larger. We might think about this further and address tomorrow. Jude’s argument is logical as phrased.

Allow information not from Zone to be processed but used.

# Article 3 - Application

This Agreement shall apply to all fisheries information originating from or related to the Zone of Cooperation described in Annex I; and information

1. originating from fishing vessels or gathered from or informed by all other relevant sources;
2. from flag vessels of Parties originating from or related to their activities in areas beyond their national jurisdiction; and
3. defined pursuant to a cooperative partnership arrangement made pursuant to Article 4.3 that is, or may potentially be related to the Zone of Cooperation or activities of flag vessels of Parties in areas beyond their national jurisdiction.

link them to the zone... pertain to any risk which may arise...

TUESDAY France: Participating States can accept to do monitoring for disputed zone

Madagascar: We don’t know who should have the competence.

Kenya: Defintion of SIGMA, propose footnote in English the translation.

Article 2(2): should not limit geographical jurisdicion in a and d, to be consistent with discussion that we do a slight amendment to a and d by inserting MCS related after recognize. See above.

Comoros. Issues like disputed zones, we as technicians should not get involved, leave to politicians.

Mayotte. Comoros inspector is the one who should manage inspections in M. area. It is a territory that belongs to Comoros.

Mauritius: We would like further time because it would only move the problem to a later stage, substantive issue remains there, risk of dispute would remain present. Further thought to a possible alternative may be needed. It is not something we can address in a minute.

Article 3

Mauritius, In light of Kenya’s comment to focus on zone of cooperation, rather than expand outside, could we have a first sentence

# Article 4 - Parties and partners to this agreement

1. The States and regional economic integration organization participating in the IOC-PRSP shall be eligible to sign this Agreement in accordance with Article 14(1).
2. Other cooperating States from the Eastern Africa, Southern Africa and Indian Ocean region shall be eligible to accede to this Agreement in accordance with Article 14(2) after it enters into force in accordance with Article15 and shall become Parties to this Agreement upon the entry into force of the accession.
3. Cooperative partnership arrangements may be made for the implementation of this Agreement with regional organizations or international organizations with a mandate for fisheries management, fisheries MCS or maritime safety. (List in Annex?)
4. The Parties shall cooperate in good faith in implementing the provisions of this Agreement.
5. Comoros: It is recommended to the participating states who can sign the accord would like to ask if it will be a problem if ... last para when you are.?
6. Mauritius...third para, further clearification to the subject who will be allowing approving the cooperative partnerships arrangements to be made. Jude to provide a list.

# Article 5 - General Principles

In order to promote the effective implementation of this Agreement and with due regard to appropriate confidentiality requirements, Parties shall exercise their duties and responsibilities consistent with the following principles:

1. the information exchange mechanism shall be effectively used to the greatest extent possible, including for cooperation in combating illegal, unreported and unregulated fishing, strengthening sustainable fisheries management, supporting (duly approved and authorized) legal fisheries operations and ensuring a cost (effective) reduction for information gathering;
2. complete and accurate data and information under the scope of this Agreement shall be required, collected and shared in a timely manner;
3. requirements under this Agreement relating to security, access to information and confidentiality shall be implemented in accordance with (in accordance with this Agreement, replace standard) the highest possible standards;
4. sufficient human, institutional and technological capacity shall be made available for efficiently implementing this Agreement; and
5. effective cooperation shall be pursued with other States and regional and intergovernmental organizations in matters under the scope of this Agreement.

Mauritius

b. timely...no need to specify. Details will come subsequently.

# Article 6 - Responsibilities of the Parties

1. The Parties shall endeavour to commit to implement a technological platform for the purpose of fisheries information exchange. (Art 2) MCS related information that provides a web based fisheries information exchange system
2. The Parties shall, wherever possible exchange information through the use of agreed secure protocols, between their MCS information systems and the sub-regional VMS and StaRFISH platforms.
3. The Parties shall comply with the operational procedures for StaRFISH in Annex II.
4. Each Party shall:
5. ensure that the information exchange is in accordance with their applicable national legislation; and
6. undertake to facilitate amendment of any law that impedes the implementation of information exchange in accordance with this Agreement.
7. Each Party shall ensure the necessary capacity to exchange fisheries information for the purpose of MCS in real time or near real time.
8. Each Party shall regularly update the list of vessels authorized to fish in their maritime areas in the regional database of vessels for VMS data sharing, and shall ensure that each vessel is associated with an onboard VMS beacon identification number.
9. The Parties shall guarantee compliance with the confidentiality requirements on the access and use of the fisheries information exchanged provided in Article 10 of this Agreement.
10. Each Party shall take all necessary legal and technical measures to protect confidential data against unauthorized disclosure or access.
11. Each Party shall ensure that the existing national structures and installations are maintained in constant operational condition in order to collect, process and protect fisheries information that is exchanged under this Agreement.
12. With a view to ... mauritius Each Party shall appoint one or two administrators to implement this Agreement, based on their national MCS structure.
13. Kenya: Article 2, MCS related information that provides a web based fisheries information exchange system. Don’t prescribe the kind of web based system that we used. There may be other systems used in future.
14. Even at the regional level. IOTC, new systems. Over time, there may be innovation, brining solutions that we want. In his earlier comments, make it broad. Ministerial declaration may adopt other platforms. Web based information exchange systems. Must accommodate Article 2.
15. Mauritius: Asked for draft. Then para 8, Parties shall use their best endeavours to tally with what Kenya is proposing.
16. Comoros: 10. Better to say either one or two.
17. Jude: One or two depends on the operationality of the competent authority in each country. e.g. France operates 24 hours, Seychelles does’t and doesn’t need two administrators. Administrators can change anything about information coming from their country, e.g. if an urgent update is needed.
18. Mauritius: With a view to provide round the clock MCS transmissioin, each party shall appoint a sufficient number of administrators, preferably two.

# Article 7 - Fisheries information exchange

The Parties (and Partners) shall collect and exchange the fisheries information required in Annex III, in accordance with their applicable national legislation.

**Annex III noted that in Kenya this is a multiagency activity.**

**Jude: List of information was given by RCU and was approved by ERCU. Asked Kenya for list, they will discuss at the next RCU to add in the context of MCS if it is valuable. Technical committee of PRSP will discuss and send to RCU, noting in annex.**

# Article 8 - Location of the regional server and data security

1. The regional server and all associated infrastructure for the information sharing systems shall be located within the headquarters of the Indian Ocean Commission which benefits from the privileges and immunities protection provided to the Headquarters Establishment Agreement signed with Mauritius in 1989.
2. Data security shall be ensured through:
3. a permanently available secure Internet connection which allows data to be secured and data access safeguarded during communication;
4. a Hyper Text Transfer Protocol Secure (HTTPS) Protocol and data sharing or any updated system agreed by all Parties, 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; and
5. storage of data on server based on the quality/reliability of the storage medium and the quality/reliability of access control to that server.
6. visual ... not open space. (Mauritius: IOC should look into this if it has available space, or can it outsource. Jude: System now is at IOC. PRSP is at a crossroad, based on 2017 Ministerial C. to have it formalized, new governance structure and rebranding for PRSP (now more than surveillance), consultant’s work validated and will be presented to Min. in Spet. If Mins agree will be approved by RCU. It could be hosted in another country. We must work under present situation but they will have to change documents if the situation changes. Wait for Ministerial meeting on the way forward.
7. Mauritius: Given that security is of utmost important IOC shall ensure
8. Comoros...Client? Jude: Yes, HTTPs accepted.
9. Kenya: Layman reading this agreement would not understand HTTPS Protocol, not defined. Should be defined in full. Jude: Right. Put a footnote for HTTPS

**Mauritius** Security: We need a comprehensive approach, we would like to review that part until the Minister’s meeting.

# Article 9 - Access to exchanged fisheries information

1. Access to and use of the exchanged fisheries information shall be strictly reserved for:
2. persons authorized by the national Competent Authority of a Party to know and use the information, including authorized staff of the national Fisheries Monitoring Centre, persons in charge of fisheries MCS and managers of Parties’ observer programs;
3. persons authorized by Partners; These persons be subject to prior approval of all parties (3)
4. authorized IOC MCS personnel,

and any such authorized person shall have access only where s/he possesses a valid and applicable signed certificate of confidentiality issued in the form in Annex IVXX or such other form and according to such requirements as may be agreed by all Parties.

1. Notwithstanding paragraph (1), access to and use of the exchanged fisheries information may be permitted, through a process of acceptance and conditions to be agreed among all Parties, to authorized compliance personnel of any regional fisheries management organisation and other regional organizations that provide fisheries MCS and maritime security.
2. Access to the fisheries information database shall be available only to Parties contributing towards the exchange and sharing of such information.
3. Following in an annex: “shall” and integral part.
4. The server shall only be accessed with a username that has a sufficiently long password to ensure a high level of security, and such passwords shall be updated frequently, at least every three months.
5. The system shall be housed within the IOC PRSP technical unit, the Regional Coordination Unit, unless all Parties agree otherwise.
6. The users defined in paragraphs 1 and 2 shall have access to the fisheries information described in Article 6 and may view and/or input data depending on their user rights.
7. The administrators shall have access to the technical data, may use the administrative module and are the code list editors that:
8. entails fish species, country codes and associated information;
9. manages the respective country and organisation lists and other associated elements such as ports and fisheries zones; and
10. manages the users and groups.

Mauritius:

Tanznaia: define users and they must sign confidentiality certificate as well.

propose 3ff to remain, rather than annex.

Mauritius: not proper to require a State how to administer passwords “as may be necessary or agreed”, eg. RCU may decide.

If the paragraphs are to proceed in an annex, can add: The annexes form an integral part of the agreement”.

Mozambique. Annex: para 3 should remain and start from 4. 3 states that access is to be available only to parties... etc, a central part of the article.

Said: operator and administrator should be included in annex

Jude: Need consensus. Like to hear from Tanzania re annex. Otherwise we go to steering committee.

# Article 10 - Procedures for the exchange and sharing of fisheries information

1. The exchange and sharing of fisheries information shall primarily take place through the StaRFISH and SIGMA and/or verbally as followed up by email/electronic exchange, visually in writing, or in any other secure form agreed or authorized by all parties.
2. The reception by IOC and the Parties of the information sent by the Parties through StaRFISH and SIGMA shall 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.
3. The parties shall exchange VMS data in accordance with the procedures in Annex V.
4. Comoros This information may be given by means of starfish sigma orally or written .. add which monitors the security that it be secured by starfish which can transmit the information. Introduce for confidentiality and security.
5. Kenya: Proposed to delete
6. any other secure form agreed to or authorized by all other parties

# Article 11 - Information protection and confidentiality measures

1. The information exchanged under this Agreement and any agreement thereunder shall at no time be freely accessible to the public or commercial domain, and shall not be exchanged except in accordance with this Agreement.
2. The information processed using StaRFISH, or other tools to be agreed among all Parties, shall be confidential and shall be used for internal non-commercial purposes only,
3. Information may be released, upon prior agreement by all Parties and in accordance with such procedures that they may determine, to [non-state] third parties that have submitted a written request, and where released such information shall be used by them exclusively in accordance with Article 12. There is no obligation on a arty to disclose/accede to a request by a non party or to release information.
4. A confidentiality agreement shall be signed by all users, including persons designated to manage the servers and IT infrastructures.
5. Parties shall take all necessary measures, such as the adoption of Non-Disclosure Agreements, to prevent the disclosure of information.
6. In the event of actual or suspected loss or disclosure of the shared information and it is within the effective non-releasable window, an inquiry shall be ordered. IOC and the Parties shall keep one another mutually informed of the progress and conclusions of the inquiry. Maruitius: Who will order the inquiry, what will be the role of the ioc in this ERC should order. It is a matter of policy,,, the Parties shall agree to an enquiry to be conducted.
7. Jude: Proposal for parties to decide, valid, but should decide at the level of ERCU. which will request the IOC.. At the level of ERCU.
8. Kenya “Management” does not include conservation and
9. Change the name of the certificate in Annex IV to confidentiality agreement Tanzania.... Mauritius

# Article 12 - Disclosure of confidential information

Absent the obligation to disclose, (kenya)

Notwithstanding the provisions in Article 11, confidential information may be disclosed upon the agreement of all Parties and in accordance with any criteria and a process they may agree.

Kenya suggestion about withdrawal/public domain.

1. .
2. the authorization for the release of information shall be in writing. (but Mauritius, who will sign for the party, what will be the tenor of the correspondence. Too much exposure that could happen, better to deal with this on a case by case basis. Parties already understand the need, best to let them address according to their own specificities.
3. confidential information shared between the parties shall be confidential even after withdrawal from the Agreement. (Kenya) In another place, information known to all the parties prior to the agreement should not be confidential...global information. If the parties authorize other parties to access confidential information deemed to be public and not confidential.

Mauritius:

Are we targeting third parties or our own authorities.

Would prefer a sentence setting out there is no obligation to disclose to any thrid party

items in paras a and b may be removed, leave it at the discretion of the parties to decide on another basis whether to disclosed and on what terms and conditions.

.e.g. IOC level may be immunities. Officers who have gathered information may be from another jurisdiction, this may render the matter more complex. Better to leave it to the members to decide on another basis.

Kenya: Line three

ODILE

In relation to the provision of secretariat services in art. 13(2), the following was proposed:

"2.    Secretariat services for the purpose of this Agreement and those made thereunder shall be as set out in Annex VI. The ERCU shall agree on the securing and provision of secretariat services on such terms and conditions it deems necessary."

or

"2.  The ERCU shall agree on the securing and provision of secretariat services as set out in Annex VI, for the purpose of this Agreement and any other agreement made thereunder, on such terms and conditions it deems necessary."

# Article 13 - Institutional services and financial arrangements

# Mauritius : Put financial arrangements in the first agreement, i.e. the parties will have to contribute to a certain extent...Administrative Arrangement

1. Financial arrangements for the implementation and maintenance of the fisheries information exchange system, secretariat services for administration of this Agreement and operational and technical administration of the fisheries information exchange system shall be subject to the approval of Ministers representing Participating States from time to time, and shall have as an objective the securing of sustainable funding.
2. Secretariat services for the administration of this Agreement shall be securedprovided by the ERCU in accordance with any procedures that may be agreed by all Parties.Mauritius: It is difficult to reconcile secretariat services...with the steering committee role. Link this to Annex VI para 5 Jude: have a point. ERCU draft the report, submit to IOC. Whoever is hosting server has management responsibility and that has secretariat responsibilities so is IOC. For the present where the server is hosted at IOC they have the responsibility to manage it, must provide secretariat.
3. Services for the operational and technical administration of the fisheries information exchange system shall be provided by the Indian Ocean Commission or such other entity as all Parties may agree from time to time and an agreement between the Parties and administrator for such services shall require the administrator to provide for:
   1. the acquisition and upgrade of the server;
   2. HTTPS connections for securing information and data exchange;
   3. the duplication of data stored on the server by an automatic backup system;
   4. the acquisition of software for the operation of the information exchange system and for data visualization on client computers;
   5. the continuous development and technical support of the StaRFISH software;
   6. provision of an air-conditioned computer room, connected to electrical networks and a reliable internet connection;
   7. protection of the server and server room against fire and water sources;
   8. maintenance of the server and the server room, including the capability to repair or reboot the server in less than 12 hours;
   9. maintenance of the computer system;
   10. management of the database and its regular maintenance;
   11. taking all the protective measures commensurate with the sensitivities of data and IT infrastructure against intrusions and restrictions on access control measures; Jude: only national/local or also IOC, we should consider including IOC and in l below too.
   12. providing a secure space restricted for authorised users and administrators that contains a visual display of the VMS information exchange system; require the provision an aequately secure space strictly restricted for authorised users to further strenthen the need for protection.
   13. supporting capacity building for administrators and users; and
   14. such other services as Parties may require.
4. Parties shall be responsible for administration and financial resources for: (later) all parties may, upon agreeing to cooperate with a partner, extend administrative and financial matters to the extent that they may agree
   1. the operational maintenance of their national VMS systems, whose technical characteristics must allow automatic and immediate transmission of position data to the regional server;
   2. the arrangements for the restriction of access to client computer workstations of the regional server;
   3. adequate internet connectivity, energy supplies and running costs; and
   4. transmission of national VMS data to the VMS information exchange system.
5. Annual reports shall be made by the ERCU and IOC (prefer a hierarchy to be descrbied in provision of annual reports) or other authorized entity on their activities, financial arrangements and plans for the following year to implement the VMS information exchange system.

**What is position of IOC on ERCU designating Secretariat. PRSP is a programme of the IOC.**

Marc: Funding. What would happen to the capacity of IOC to carry on the activity. Allow amendment where participating country gives it to the IOC.

Mauritius: IOC would prefer to have a participating State designating secretariat services at the level of ercu.

Clause: participating states must agree on one of their members to have persons there for secretariat services. There will be labour implications etc to be laid out to present to governments.

Tanzania. Secretariat services...worry is whether participating states can make the selection unless they participate in ercu.

Jude: Technically, now it is IOC who is the Secretariat of RSP, it is not the project. The project provides financial and technical support. True that problem comes after the project. That’s why in 2017 the Ministers requested formalization. When institutionalzations occurs, the secretariat will fall under that institution. Between now and the insitution it is the responsibility of IOC. Can’t say that a country will take the responsibility of the Secretariat. It can only do so if it accepts that the S’t is in its country. We must work with the reality of today.

Mauritius, look at whether we are aiming at short, medium, long term. If full blown...host, privileges and immunities etc. We are not aiming at that step now. IOC must decide in short medicum term to provide assistance. If not, fallback position that there will have to be external, nonIOC services. IOC shall cooperate and provide all relevant information to that e.g. person. We can’t have ERCU function without relevant information. Decide what to do about this.

IOC reflecting on the future of PRSP, short term, IOC is doing secretariat work now. We should think beyond the project.

Mauritius, not possible to finalize this part until options are included and a formal decision is taken.

Jude: Initial proposal from Mauritius, that ERCU shall secure / obtain secretariat services. Tomorrow if the ministers decide to institutionalize and name the country to host it then the Ministers will decide.

Mauritius, agree, but given the very fundamental nature and financial implications, would like IOC reply to be set out in detail in the report. Must be set out in the report.

Kenya agrees, asked IOC Secretariat to explain how operations are fun.

Kenya ... budgetary implications. Financial implications should be subject to approval at the national level.

Jude: In 2017 when Minister’s committed us to institutionalize PRSP there was a financial commitment as well. There was an obligation to identify financial supuport.

Under Ecofish, two Ministerial meetings. First in September. We will propose administrative and financial aspects. We want Ministers to work on this. Once the structure is agreed upon and all the administrative and legal issues are sorted, we are in second phase when we work on financial aspects of it. Then we need to develop agreement for hosting of the centre.

We must seek national level approval as well.

# Article 14 - Signature and accession

1. This Agreement shall be open for signature by States and the regional economic integration organization referred to in Article 4(1).
2. After this Agreement enters into force in accordance with Article 15, it shall be open for accession by all States referred to in Article 4(2) which have submitted information on:
   1. the compatibility of its national legislation and any fisheries access agreements in force with the requirements for the exchange of fisheries information under this Agreement;
   2. its national MCS scheme, including the effectiveness of its operation and its technical compatibility with the exchange of fisheries information in accordance with this Agreement;
   3. upon providing the details, the instrument requiring accession would correspond to an undertaking of the state to implement the agreement and abide by confidentiality. its ability to implement this Agreement, and in particular the requirements of confidentiality in Article 10 and of restriction of use and access to shared data in Article 11; and
   4. the list of client computers authorized to connect to the regional information database,
   5. Should there be a need for further information the Parties may request.

and where the Parties have unanimously decided to permit accession.

**Mauritius**. Policy and presentation.

Kenya: explain “fisheries access agreement”

# Article 15 - Entry into force and consequential termination

1. This Agreement shall enter into force on the date of its signature by the 6 XX State described in Article 4(1).
2. After entry into force, States described in Articls 4(2) may accede to the Agreement in accordance with procedures described in Article 14(2) and shall deposit their instruments of accession with the depositary.
3. Upon entry into force, this Agreement shall replace the 2014 Memorandum of Understanding among the Member States of the Indian Ocean Commission on a Regional Monitoring Scheme for Fishing Activities and Data Sharing and its Confidentiality.

Mauritius it’s for the parties to decide the number of States, the ideal would be that all the States that signed the Memo also sign. 2/3

Fail to see the need for Article 16.

Tanzania Delete 3. Two different things. Jude, yes, but one supercedes the other.

SEZ: Technical consultation, we decided to counting on having our legal advisers here today to explore this further.

Mauritius: 2/3 would be a middle ground.

MOU. Iportant to keep 3. Provisional application...we have it.

2014 is only VMS, ERCU wanted more general.

Tanzania, still propose deletion. Jude, but two instruments that might contradict each other.

Mauritius ... Tanzania not signatories to MOU, will not concern Tanzania.

# Article 16 - Provisional application

1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.
2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.
3. In case of contradiction for parties to MOU (PRSP countries) the later would prevail.
4. Mauritius, delete
5. Jude: This replaces another protocol, countries are already sharing a certain level of information voluntarily. We wanted to allow for continuity of sharing information even though a country has not yet signed.
6. Kenya: Entry infor force, vieena conv 24 art.
7. Mauritius: For signatories, should they choose provisional application route prior to the formal entry into force, should there be a conflict then the provisions of this Agreement shall prevail.

# Article 17 - Amendments

1. Any Party may, at any time after the entry into force of this Agreement propose amendments to this Agreement and/or 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 adopted during a meeting of the States Parties, by consensus of all the Parties .
3. Amendments shall enter into force thirty (30) days after the Depositary has received instruments of acceptance or approval from all Parties.
4. Mauritius. Parties represented, may be Flxibililty of amending annex, take note, need instructions.
5. Kenya: Amendments hsould be in writing and signed by the Parties. They must form part of this Agreement as an addendum and attached to the agreement by an addendum. Art 41 on the Vienna Convention on the Law of Treaties.
6. France: If one State doesn’t want to sign or participate?
7. Mauritius, State could convey its position in writing.

# Article 18 - Dispute settlement

1. In the event of doubts or disputes between two or more Parties arising from the interpretation or implementation of this Agreement 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.
2. If any doubt or dispute referred to in paragraph 1 is not settled within ninety days, the Parties shall refer it to the
3. ERCU which, after investigation and impartial consultation with each Party to the dispute, shall facilitate settlement by such means as providing appropriate advice or making recommendation on a process, terms and conditions for the settlement of the dispute.

The Parties to the dispute shall use their best endeavours to implement the recommendation of the ERCU in good faith.

# Article 19 - Compliance with this Agreement

Each Party shall take all appropriate measures commensurate with its resources, in accordance with its obligations, and with current international law in order to comply and ensure compliance with this Agreement.

**New article 20 – Compliance and suspension**

1.      Initial para. 21(1)

2.      Initial para. 21(2)

3.      Initial para. 21(3)

**New Article 21 -  information exchange and suspension**

1.      Initial para. 20(1) with amendments:

“Any party that is satisfied that a breach of confidentiality by another Party has occurred in violation of this Agreement, which on reasonable grounds could foreseeably undermine the fisheries information exchange system, shall notify all Parties and the IOC through the ERCU of the breach and relevant evidence, and may call for an immediate suspension of information exchanges between the Party concerned and the IOC in order to safeguard the regional information exchange system.

2.      Initial para. 20(2)

**New Para. 22 – Withdrawal**

1.      Initial para. 21(4)

2.      Initial para. 21(5) with amendments:

“This Agreement shall continue to apply after withdrawal in relation to any administrative or judicial proceedings at national level arising from measures taken under this agreement concerning the withdrawing party, until such proceedings are concluded, insofar as is reasonably feasible or the Parties agree otherwise.”

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“This Agreement shall continue to apply after withdrawal in relation to any administrative or judicial proceedings at national level arising from measures taken under this agreement concerning the withdrawing party, until such proceedings are concluded, insofar as is reasonably feasible or the Parties agree otherwise.”

# Article 20 - Suspension of information exchange for non compliance? breach of confidentiality

1. Any Party that is satisfied that a breach of confidentiality by another Party in violation of this Agreement has occurred, and which on reasonable grounds could foreseeably undermine the fisheries information exchange system for that Party , shall notify all Parties and the IOC through the ERCU of the breach and the relevant evidence, and call for an immediate suspension of information exchanges between the Party concerned and the IOC in order to safeguard the regional information exchange system.
2. Upon agreement through the ERCU by all other Parties, such information exchanges between the Party concerned and the IOC shall be immediately suspended until such time as the violation has been investigated and all Parties agree that it is secure to resume them.
3. Kenya: The Party that has breached be given an opprotunity to respond on the allegation of breach. Secretariat may make a determination.
4. Mauritius. Same comment. “clear proof” might also be a suspicion. Any pa
5. Comoros, is it pssible to take coercive measures to safeguard the agreement and put more security because the suspension and threshhold is a bit lighter.
6. In the event any Party fails to implement this Agreement, particularly in relation to rules of confidentiality, usage restrictions, data access, updating the database and ensuring the maintenance of infrastructure, or has committed a serious breach of the provisions in this Agreement the Party, and all other Parties, shall be informed immediately in writing.
7. The Party that has failed to implement this Agreement in accordance with paragraph (1) or has breached this Agreement shall be requested to urgently provide information concerning such failure or breach and any measures taken to correct the failure or breach.
8. This Agreement may be fully or partially suspended in relation to a Party that has failed to implement this Agreement, has been so informed in accordance with paragraph 1 and has not provided sufficient explanation for such failure or corrective measures in accordance with paragraph 2, upon the agreement of all other Parties. Penalty penalizing disciplinary form.
9. Kenya: This may be used ... Parties may force another party to withdraw based on this. We put aside the system of sanction in IOTC area for a perioid of time to encourage parties to comply Better to find positive language. Encourage parties to share information. It reduces IUU fishing.
10. Breach of

# Article 21 - Withdrawal from and suspension of this Agreement

1. Any Party may withdraw from this Agreement by giving written notificiation to the Depositary. Withdrawal shall take effect twelve (12) months after receipt by the Depositary of the written notification of withdrawal.
2. This Agreement shall continue to apply after withdrawal in relation to any administrative or judicial proceedings at national level arising from measures taken under this Agreement concerning the withdrawing Party, until such proceedings are concluded.
3. Kenya: There should be a sufficient notice of withdrawal. In 4, there is no withdrawal notice by the depositary. notice approval
4. Jude: Agree with Kenya proposal and Mauritius, rather than going straight into suspension, wants to add that whoever will be hosting the PRSP to provide technical support to the Parties for them to be able to fully implement this agreement. Including to raise funds to assist the countries. There will be a need to provide technical support to countries.
5. Mauritius: Maybe the objective to assist, cooperate and work together in Art 4 or 5, then suspension etc the parties will bear in mind that the parties need to cooperate and strengthen their links. So idea of being pushed out is a last resort.

# Article 22 - Reservations

Each Party may, in accordance with its constitution and legislation and in compliance with international law, make reservations to this Agreement unless they are incompatible with its objectives.

# Article 23 - Relation to other agreements

* ​This Agreement shall not alter the rights and obligations of Parties​ which arise from other agreements compatible with this Agreement and which do​ not affect the enjoyment by other Parties of their rights or the​ performance of their obligations under this Agreement.
* Two or more Parties may conclude agreements modifying or suspending​ the operation of provisions of this Agreement, applicable solely to the​ relations between them, provided that such agreements do not relate to a​ provisional derogation incompatible with the effective execution of​ the objective of this Agreement.

# Article 24 - Depositary

The original of this Agreement shall be deposited with the Indian Ocean Commission, which shall serve as the Depositary.

# Article 25 - Authentic texts

The English. French and Portugese texts of this Agreement are equally authentic.

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 languages.

Kenya; Art 41 VC on law of treaties, make suggestions on modifications.

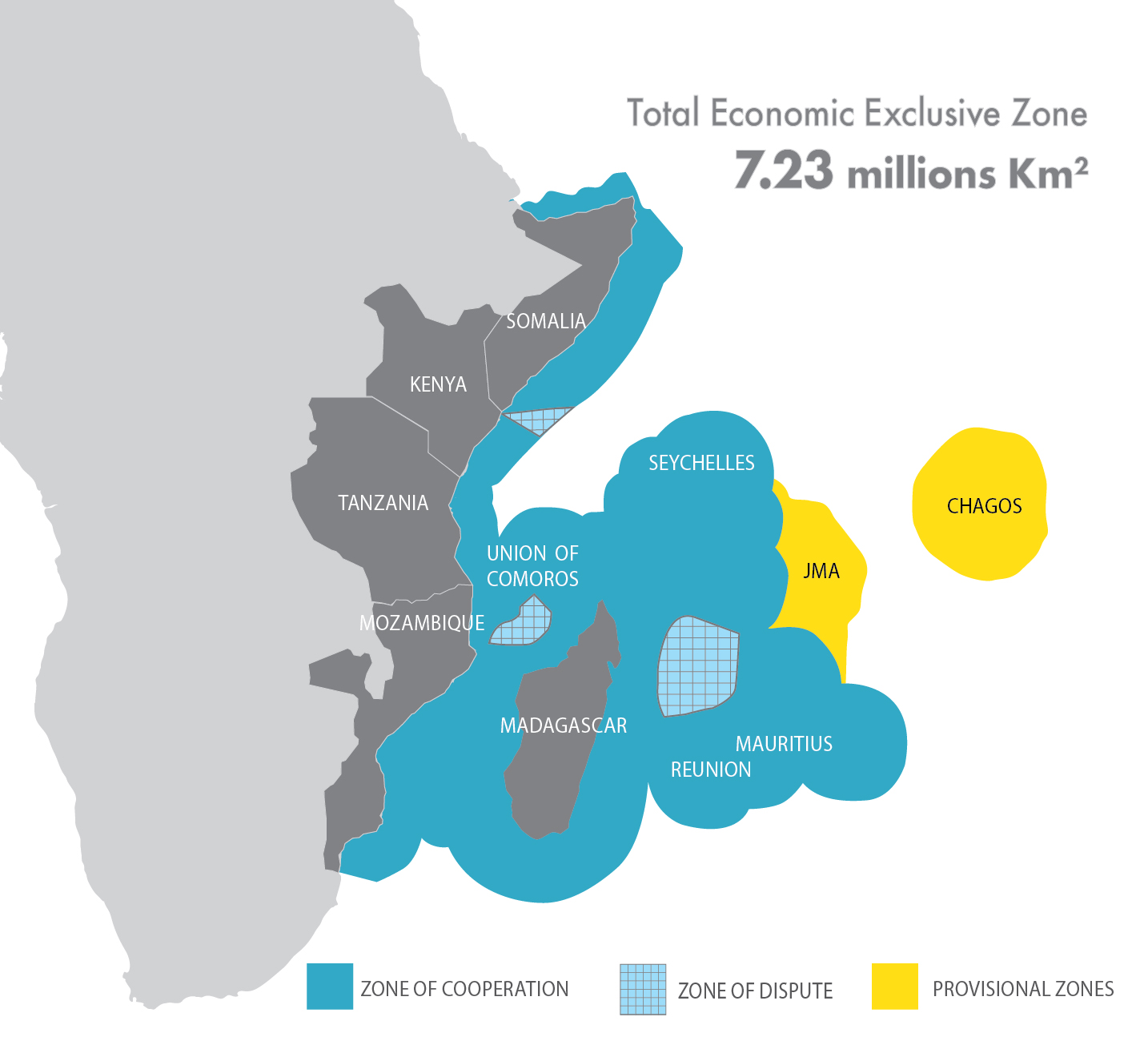
# ANNEX I

# ZONE OF COOPERATION

TO BE REVISED WITH COORDINATES OF ZONE OF COOPERATION AND ZONE OF DISPUTE.

COUNCIL OF MINISTERS TO DECIDE IF ANY OTHER ZONE SHOULD BE ADDED.

[Chagos Archipelago to be shown as undisputed EEZ of Mauritius, Somalia to be added.]



# ANNEX II - StaRFISH

StaRFISH OPERATIONAL PROCEDURES TO BE ANNEXED(StaRFSIH system being updated)

# ANNEX III - INFORMATION TO BE EXCHANGED

Parties shall exchange the following information in accordance with this Agreement.

1. satellite based tracking and monitoring information;
2. electronic Monitoring System (EMS) data;
3. EEZ Entry / exit reports;
4. transit of non-flag vessels through the EEZ;;
5. inspection reports at sea and in port;
6. sighting information;
7. observation details;
8. flagged vessel registration details;
9. catch, landing and transhipment details;
10. licensed vessels used for fishing or related activities;
11. vessel history;
12. applicable national legislation; and
13. any other information that may be approved by the Parties.
14. Mauritius authorized/licensed vessels.
15. Tanzania: information to be provided in the annex to be shared...fishing vessels arriving and leaving port
16. Immigration, port health, IMO information identifier, maritime, pollution, garbage plan

Maritime security etc Jude: Make sure that IMO etc are there. A lot of info already shared by maritime security centers. We may have access to a lot of those informations from maritime security.

# ANNEX IV – CERTIFICATES





# ANNEX V – PROCEDURES FOR THE ESTABLISHMENT OF A SUB-REGIONAL SATELLITE BASED VESSEL MONITORING SYSTEM FOR INFORMATION SHARING AND PROVIDING FOR ITS CONFIDENTIALITY

1. **Application of procedures**

These procedures shall apply to:

1. foreign fishing vessels licensed to fish in at least one participating State; and
2. flag vessels of Participating States operating in areas beyond national jurisdiction.
3. **Objectives of procedures**

The general objectives of these procedures are to:

1. establish a sub-regional satellite-based Vessel Monitoring System for information sharing relevant to the Zone of Cooperation and provide for its confidentiality;
2. provide Participating States with a real-time view of the activity of fishing vessels throughout the Zone of Cooperation described in Article 3 and Annex I of this Agreement;
3. facilitate and improve fisheries management, monitoring, control and surveillance activities through improved monitoring of the movements of fishing vessels and targeting of inspections at sea and port especially in relation to high risk vessels and those that rarely use ports in the sub-region;
4. provide a risk analysis tool to better prevent, deter and eliminate lUU fishing;
5. increase the overall safety at sea and in the context of maritime security in the Zone of Cooperation; and
6. assist in search and rescue operations.
7. **Confidentiality and security**
8. Confidentiality shall be applicable to information in accordance with this Agreement and the following requirements and procedures:
9. information on fishing and fishing related activities shall be exchanged confidentially and may only be used for purposes of fisheries management and MCS;
10. information exchanged among the Parties shall be subject to at least the same level of protection as VMS information in each Party;
11. information may not at any time fall into the public or commercial domains, or be freely accessible and reusable without prior authorization established in accordance with this Agreement. Mauritius: This is a fundamental principle, could it be placed as a paragraph in the form of obligation on states or recipient states Place it in the body.
12. Access to exchanged information and its use shall be open to Parties and subject to the restrictions described in Article 9 of this Agreement.
13. The exchanged information can be viewed, but cannot be manipulated, altered or made available to non-approved third parties unless they have been approved pursuant to Article 11(3) of this Agreement.
14. Information shall be exchanged automatically and without delay after reception by the national VMS, and shall be viewed in the same way by all Parties’ Fisheries Monitoring Centres and such other monitoring systems as may be approved pursuant to this Agreement.
15. **Management of information exchange**
16. The organisation of the information exchange shall be based on:
17. functional and operational national VMS systems to automatically transmit position data of vessels subject to this Agreement;
18. a sub-regional computer server receiving and disseminating VMS data provided by national VMS, which integrates data from the national VMS into a single database accessible to client computers authorised to connect to it;
19. client computers to connect to the sub-regional computer server;
20. transmissions through the internet using a secure channel; and
21. HTTPS connections, in accordance with Article 8(2)(b), to guarantee the identity of correspondents during communication through the use of digital certificates or Virtual Private Networks.
22. The data format for each position message for a fishing vessel sent to the regional server must contain at least:
23. the identification of the vessel;
24. the most recent geographical position of the ship (latitude & longitude in WGS 84), with an error of less than 500 meters;
25. the date and UTC time of the recorded position;
26. instantaneous speed; and
27. instantaneous heading of the ship.
28. Position messages sent to the sub Regional Server shall be configured according to a format to be agreed among Parties.
29. Each Party and Partner shall ensure that its Fisheries Monitoring Centre automatically and without delay transmits the required position messages to the Regional Information System at an email designated by the ERCU.
30. Any change in the Internet address of a Fisheries Monitoring Centre or of the Regional Information System shall be notified immediately to ERCU, which shall notify all Parties and Partners.
31. **Operation of the Regional Fishing Activities Data Sharing Scheme and Comitology**
32. The Secretariat services to be provided by the ERCU, in accordance with its duties under Article 13(2) shall include:
33. coordinating the sharing of information in line with national and regional fisheries monitoring operations;
34. proposing the list of client computers authorized and accredited to consult and use regional VMS data. This list will be regularly updated and made available to the competent authorities of the participating States;
35. ensuring the automatic and immediate exchange of data and, in general, of the regional fishing activities data sharing scheme’s good operation;
36. identifying training needs on the use of the regional VMS and on data security;
37. ensuring compliance with the rules of confidentiality applying to data transmission and restricted access to data and, generally, to the regional server;
38. ensuring compliance with the principles agreed in this Agreement;
39. establishing, in conjunction with the RCU, the list of vessels covered by this Agreement and the corresponding list of on-board VMS Beacon Numbers;
40. validating the propositions made by the RCU;
41. approving any technical recommendation from the RCU;
42. making any necessary policy recommendations on the operation of the sub-regional VMS information exchange scheme; and
43. reporting to the IOC Secretariat.
44. Mauritius: Do the ToR of the RCU include
45. Administrative arrangement, role of ERCU Make it clear that whatever body provides secretariat services we have to retain it To review after we look at ToRs of ERCU and RCU
46. Have one paragraph in main agreement to ensure it is set up in fundamental agreement.
47. **National legislation and implementation**
48. Parties shall, as appropriate, include in national legislation and/or licensing conditions a requirement that ensures recognition of the obligation to exchange fisheries information for MCS purposes, including VMS data, to the coastal States in accordance with laws and confidentiality requirements.
49. Parties shall not grant any license or authorisation for fishing or fishing related activities to a vessel that refuses to or does not provide VMS information, as agreed among Parties, in the Zone of Cooperation or, for national flag vessels, in areas beyond national jurisdiction.