**SEZ has an MOU with a fishing company, Seychelles contract betwen SFA and the private observer.**

**MODEL TEMPLATE**

**MEMORANDUM OF UNDERSTANDING**

**between x and y in relation to observation programme in (specific area) and the procurement of observer services**

**Kenya. pROPOSE THAT IN FUTURE IF THREE STATES WANT TO COME TOGETHER THERE CAN BE AN ADDITONAL SLOT.**

**Mauritius: wHO ARE THE TARGETS OF THIS DOCUMENT...can participating state make modifications.**

**does the document have to be signed and implemented in terms of time line.**

Jude: This was requested by the countries. Should be stand alone. Objective: Between a Private observer programme and a State. Standard MOU, so a State can present the standard MOU.

A State can modify it according to national legislation, policy, just a template to assist to develop MOU. Request of WG. e.g. purse seine fleets have agreements with SEZ to put observers on their fleets.

**Between**

**The [*insert the name of the 1st Party, the organisation in charge of the coastal State observer programme*], named below *[insert the acronym of the 1st Party],* with headquarters at *[insert the physical address of the 1st Party]*, represented by the *[insert the position and name and contact of 1st Party representative, the coastal State observer programme coordinator or manager]*.**

**and**

**[*insert the* n*ame of the 2nd Party, the institution/organisation in charge of the research project/observer programme*], named below *[insert the acronym of the 2nd Party"],* with headquarters at *[insert the physical address of the 2nd Party]*, represented by the *[insert the position and name of 2nd Party representative, the person responsible for the coordination, management of activities]*.**

**The Parties**,

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;

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 IOTC Resolution 22/04 on a Regional Observer Scheme (ROS);

RECALLING 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;

UNDERLINING the Regional Certification of SWIO coastal State Observers at the level of the SWIO region;

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;

UNDERLINING the interest and desire of the two Parties to promote the sustainable exploitation of fisheries resources and to collect independent and reliable scientific and fisheries data,

**HAVE AGREED as follows:**

**Article 2 - Objectives**

The objective of this Memorandum of Understanding (MoU) is to define the usage deployment, responsibilities and procedures in relation to observers from ***[insert the name of the 1st Party]*,** in the context of the ***[insert the name of the programme]***, implemented by ***[insert the* *name of the 2nd Party]***, for the collection of scientific data on board the ***[specify the fleet covered]***,including in relation to bycatch, discards and Fish Aggregation Device (FAD) operations, as required by the IOTC Resolutions 22/04 on a Regional Observer Scheme and 15/09 on a Fish Aggregating Device Working Group

**Article 1: Definitions**

For the purposes of this MoU:

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

“**fishing**” means:

(i) to search for, locate, catch, take, harvest or transport fish;

(ii) to attempt to search for, locate, catch, take, or harvest fish;

(iii) to engage in any other activity, which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;

(iv) 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;

“**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 levels;.

“**observer** **data**” refers to the facts collected, recorded and reported by observers and includes facts and numbers for analysis, including elemental coded descriptions such as for geographical location, species identification, fishing method, biometric measurements and other;

“**person day**”: is the 24-hour period an Observer spends on board a vessel at sea or in the port.

“**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;

“**operator**”, in relation to a vessel, means any person who is in charge of, responsible for the operations of, directs or controls a vessel, including the owner, charterer, master and the beneficiary of the economic or financial benefit of the vessel’s operations;

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

“**Renting out of an Observer**” is the act by the coastal State Observer Management Authority of renting out the services of their national observers and/or private observer programme to another Party as established under this MoU for the renting out of observer services, signed by the two Parties;

Kenya: Are there three parties, including a third party and two States? Jude: two parties. Signed by State and programme or fleet of vessels. Cannot be two States and one observer programme.

Jude. elg purse seine fleets, e.g. opagac, can have their own observer programe to comply with IOTC. They would prefer to recruit from the coastal State to work on their vessels. From Mada, Comoros, etc. But the contract of the MOU is different.

Kenya: How does observer programme for reefer vessels work at IOTC level? Where do they come from,

Jude: IOTC programme puts on longline, carrier vessel transhipment. Private firm has been recruited but it is the CPCs that pay for it. Payment depends on the request for transhipment at sea, IOTC uses carrier vessels, payment is based on the number of requests made.

Kenya: We may be looking at criteria about who we are talking about so we have an observer that meets certain criteria.

Jude: National programmes, they don’t put observers on French, Italian etc that have their own observer programme but recruit observers from the region. Decided to change the title.

so should delete renting out.and replace by procurement.

Kenya: This is a contract, not an MOU. Change the title so a contract is shown.

*“***Vessel P&I insurance***”* means Pr otection and Indemnity insurance, or the policy ship owners purchase to protect them against liability claims from crew, passengers and third parties, and liability claims include those such as collision, property damage, pollution, environmental damage and removal of wrecks;

“**1st party**” means the coastal State authority in charge of the management of the national observer programme (NOP), and the coordination of the observers;

“**2nd party**” means the institution, organisation in charge of the research project / observer programme that intends to rent the services of coastal State observers under the management of the 1st Party;

**Article 3: Responsibilities of the [insert the acronym of the 1st Party]**

The observer, an employee of the *[insert the acronym of the 1stParty],* is made available to the *[insert the acronym of the 2ndParty] and* is responsible for:

1. providing the observer with a travel insurance policy covering repatriation, death, disability and travel incidents;[[1]](#footnote-1)
2. guaranteeing that the observer undergoes STCW 2010[[2]](#footnote-2) Basic Sea Safety Training;
3. ensuring that the observer undertakes regular medical checks conducted by an IMO (STCW-F) recognized medical practitioner;[[3]](#footnote-3)
4. warranting that the observer undergoes Basic Observer Training Course(s) aligned with IOTC ROS Standards;
5. attesting that the observer candidate has the required competences to conduct observer work and is able to write comprehensive reports;
6. preparing the observer’s order of mission using the model provided in [Annex D](#_ANNEX_D:_Observer);
7. ensuring that the observer is signed on to the vessel’s articles with the crew, to benefit from vessel P&I insurance for the duration of the trip;[[4]](#footnote-4)
8. Providing the *[acronym of the 2nd Party]* with copies of the observer’s:
	1. passport and/or national identification card;
	2. travel insurance policy;
	3. secondary school certificate or equivalent;
	4. valid STCW 2010 basic sea safety training certificate;
	5. valid IMO compliant certificate of medical fitness;
	6. valid basic Observer training certificate for the gear type(s) in question; and
	7. order of mission, duly signed.

**Article 4: Responsibilities of the [insert acronym of the 2nd Party]**

The *[insert acronym of the 2nd Party]* will participate financially in the observer deployment costs in accordance with Annex A, including by:

1. supporting expenditures associated with the deployment of the observer (travel to/from the vessel) and living expenses (accommodation and food).;
2. paying a daily sea-going allowance of *[insert agreed rate (no lower than 40$USD)]* to the *[insert acronym of the 1st Party]* per person day;
3. providing/organizing specialized training[[5]](#footnote-5) for the observer as required for the specific mission; and
4. ensuring that the Observer is signed on to the vessel’s articles with the crew, to benefit from vessel Protection and Indemnity (P&I) insurance for the duration of the trip.

**Article 5: Vessel Operators and Masters’ Responsibilities**

The responsibilities of vessel operators, including vessel masters and captains shall include:

1. accepting any person nominated by the 1st Party as an observer under the 1st Party NOP on board the vessel;
2. informing the crew of the timing of the observer boarding as well as of observers’ rights and responsibilities;
3. assisting the observer in safely embarking and disembarking the vessel at an agreed place and time;
4. giving notice to the observer before the start of a set or haul;
5. allowing and assisting the observer to carry out their duties safely;
6. allowing and assisting the observer to communicate with the (*1st Party*) NOP Coordinator/Manager using vessel communications;
7. allowing the observer to have full access to the vessel’s records including vessel logs and documentation;
8. allowing the observer to have reasonable access toth vessel’s navigational equipment, charts and radios, and to fishing information;
9. permitting access to additional equipment, if present, to facilitate the work of the observer while on board the vessel;
10. allowing and assisting the observer in collecting and storing samples;
11. providing the observer with food, accommodation, adequate sanitary amenitie, and medical facilities of a reasonable standard equivalent to those normally available to an Officer, at no expense to the observer or the NOP;
12. providing the observer with full access to facilities and assisting with the use of equipment that the observer may determine necessary to carry out their duties, including full access to the bridge, catch, and areas that may be used to hold, process, weigh, and store the catch.
13. ensuring that the observer is not assaulted, obstructed, resisted, delayed, intimidated, interfered with, influenced, bribed or attempted to be bribed in the performance of his/her duties.
14. Comoros: List of responsibilities of captains/operators Is there sanction to be done when he doesn’t comply.
15. Tiana: Comoros asked managers of observers here to share their experience. Violations can happen on both sides.
16. Jude: Two things: MOU with the private firm, and the local authority. Once they agree on the MOU there is an agreement between the observer, the company recruiting the observer and the national authority. This agreement is at the discretion of the parties/countries, so we are not discussing that here. All conditions concerning the

**Article 6: Observer Responsibilities and Duties**

1. The responsibilities and duties of the Observer shall include the:
2. capability to perform the duties set out under this MoU.
3. accceptance and compliance with agreed confidentiality rules and procedures with respect to the fishing and fishing related operations of the vessels and any vessel operator, and shall to return to the Coordinators, at the latest at the debriefing, all collected information (forms, digital data, photos, audio or video recordings) and recognize its co-ownership by the *[insert the acronym of the 1st Party]* and *[insert the acronym of the 2nd Party]* as provided in Article 13.
4. maintenance of independence and impartiality at all times while on duty;
5. compliance with the legislation of the State that exercises jurisdiction over the vessel;
6. respect for the hierarchy and general rules of behaviour that apply to all vessel personnel;[[6]](#footnote-6)
7. performance of their duties in a manner that does not unduly interfere with the lawful operations of the vessel;
8. due consideration for the operational requirements of the vessel while carrying out its functions;
9. familiarization with vessel emergency procedures, including the locations of life rafts, fire extinguishers, and first aid kits;
10. establishment of regular communications with the vessel’s 1st officer on relevant observer issues and duties;
11. immediate reporting of any difficulties hindering their work to *[insert acronym of the 1st Party]* Coordinator/Manager and to *[insert acronym of the 2nd Party]*;
12. respect for the ethnic traditions of the crew and customs of the flag State of the vessel;
13. adherence to the International Code of Conduct for Observers (Annex)
14. The duties of the observer shall include:
15. collating all information relating to the vessel’s fishing activities and conducting the biometric and biological sampling in forms shown in Annex C or otherwise agreed under this MoU;
16. submitting a deployment report to the *[insert acronym of the 1st Party]* and the *[insert acronym of the 2nd Party]* within 24 hours of the vessel’s sailing, in accordance with the adopted procedures;
17. submitting a weekly status report to the *[insert acronym of the 1st Party]* and the *[insert acronym of the 2nd Party]*, in accordance with the adopted procedures;
18. submitting all data forms and electronic data to both Parties, in accordance with the adopted procedures;
19. promptly writing and submitting a trip report to the *[insert acronym of the 1st Party]* and the *[insert acronym of the 2nd Party]*, in accordance with the adopted procedures.

**Article 7: Practical modalities of observer deployment at sea**

Modalities of observer deployment shall be agreed between the [insert acronym of the 1st Party] and the [insert acronym of the 2nd Party], and should include information on:

1. observer training;
2. allocation of work materials;
3. observer briefing; and
4. observer deployment.

**Article 8: Practical modalities at sea**

1. At sea, the observer shall collect fisheries and scientific information using standard collection and reporting templates provided for the mission as shown in Annex C or as may otherwise be agreed.
2. Data collection methodology to be used by *[insert acronym of the 1st Party]*, is as defined in the *[specify data collection system to be used]*.
3. Data input and data transfer to the *[insert acronym of the 2nd Party]* will be done using *[stipulate Database used]* developed by the *[specify DB developer]*.
4. Observer questions, comments or requests should be addressed to the vessel’s 1st Officer, or such person that the maaster may designate in performing his duties. to avoid disturbing the vessel Master. Comoros: what is the nature of questions that can be addressed to the first officer. Moz. Keep it like the obligation of a master to reply the requests or appoint someone that can provide the information.
5. The *[insert acronym of the 1st Party*] and the [*insert acronym of the 2nd Party*] may entrust the observer with the collection of additional information on condition that the data collection protocol is validated by both Parties.

**Article 9: Practical modalities for the end of the observer mission at sea**

The modalities for the end of the observer mission at sea will be agreed between the *[insert acronym of the 1st Party]* and the *[insert acronym the 2nd Party]*, and should include information on:

1. observer debriefing (location, responsibility, participation);
2. data verification (responsibility); and
3. observer reliability (responsibility).

**Article 10: Format and Delivery of Collected Data Change shall to will except for confidentiality (Kenya)**

1. Physical forms and digital data collected by the observer shall be given to the Party responsible for observer debriefing, data verification and storage.
2. The observer trip report shall be transmitted to both parties.
3. The Party responsible for observer debriefing and data verification shall provide the other Party with raw and/or aggregated data as follows:
4. if the “other Party” is the observer’s NOP Authority, the Party responsible for data management will provide the observer State Authority with:
5. all raw data collected by the Observer in the Observer State Authority’s EEZ;
6. aggregated data for data collected outside the Observer State Authority’s EEZ;
7. if the “other Party” is the observer’s NOP Authority and if the State Authority has signed an MoU on the sharing of observer data with one or multiple countries of the region, the Party responsible for data management will provide the observer State Authority with:
8. all raw data collected in the observer State Authority’s EEZ;
9. all raw data collected in the EEZs of the States with whom the Observer State Authority has signed an MoU on the sharing of observer data;
10. aggregated data for data collected in international waters and/or in the EEZs of states that don’t have an MoU on the sharing of observer data with the observer State Authority;
11. if the “other Party” is NOT the observer’s NOP Authority, the observer State Authority will provide the other Party with fisheries aggregated data and scientific raw data for all data collected by the observer.

**Article 11: Data property and confidentiality**

1. Knowledge, technologies, methods and know-how, photos, movies and observer data collected during the days of observation paid by the Programme shall be jointly owned in equal shares by the *[insert acronym of the 1st Party]* and the *[insert acronym of the 2nd Party].*
2. Observer data can be used by each Party to fulfil their obligations.
3. Observer data can be shared by each Party subject to the following:
4. raw data collected in the country’s EEZ can be shared with national scientific organisations, national surveillance and control organisations and with fisheries-related Regional Organisations to which the country belongs;
5. raw data collected in the country’s EEZ and in international waters can be shared with Regional Fisheries Management Organisations;
6. raw data collected in the EEZ of a coastal country can be shared with the country in question if an applicable cooperation agreement has been reached with that country;
7. aggregated data can be shared with third parties in accordance with IOTC Resolution 12/02 on Data Confidentiality Policy and Procedures or any superseding Resolution ([Annex F](#_ANNEX_F:_IOTC));
8. aggregated data collected in the EEZ of a coastal country can be shared with the country in question in line with IOTC Resolution 22/04 or any superseding Resolution (Annex G).

**Article 12: Storage and Access to Collected Data**

All information collected by observers under this MoU shall be stored under *[detail storage system]* by *[detail entity(ies) responsible for the storage of the data]* to ensure:

1. the data is saved;
2. the access to the data in the best conditions relating to time and privacy for all parts is designated by the *[insert acronym of the 1st Party]* and the *[insert acronym of the 2nd Party]* in [Annex E](#_ANNEX_E:_Data) and in the manner set out below:
	1. the observer shall, within 30 days of completion of each trip, provide a report to both Parties; and
	2. the Party responsible for observer debriefing, data verification and storing shall provide the other Party, within 150 days at the latest, access to verified data.

**Article 13: Dissemination of Information**

1. Publications and communications resulting from the collaboration defined by this MoU shall be previously agreed between the two Parties and shall mention the contribution made by each Party and shall cite *[insert acronym of the 1st Party]* and *[insert acronym of the 2nd Party]*.
2. Any scientific publication shall contain only aggregated data and shall mention the common origin of the data.
3. The copy of any publication made by one Party shall be transmitted to the other Party.

**Article 14: Suspension**

The actual execution of this MoU shall be suspended or postponed if one of the two Parties encounters difficulties in obtaining the necessary funds for its financing. Kenya, standard what about finance. Jude: This is between the Authority and fishing fleet/private programme. It is for the renting/procurement of observer. They are paying for everything. The State has no financial obligations.

Mauritius: First article on Provision of consideration, monetary amounts, should be in the first article, in the annex, then a clause of supsension or termination in case of breach of monetary consideration. Comoros: The second party is supposed to guard the funds.

**Article 15: Termination Due to Default/Breaching by One of the Parties**

1. In case of default/breaching by either Party of any of its obligations, this MoU shall be automatically terminated by the aggrieved Party, without prejudice to its right to compensation, three months after the forwarding of a formal notice to the defaulting Party by registered letter with acknowledgment of receipt.
2. This MoU shall remain in whole or in part without effect unless the defaulting Party brings proof of incapacity to honour these obligations and subsequently leads to a case of force majeure.

**Article 16: Termination by Common Agreement**

1. The Parties may agree, by mutual consent, to terminate this MOU at any time.
2. The Parties shall then decide by common agreement on the terms of termination of the programme and, where appropriate, of any compensation due to the other Party by the one terminating the agreement.
3. Termination of this MoU for any reason whatsoever shall not affect the obligations already due.
4. From the date of termination each party will be individually responsible for the payment of any expenses it has occurred pursuant to the termination.

**Article 17: Transfer**

This MoU is concluded *intuitu personae*, therefore neither Party may assign in any way the rights or obligations arising from this MoU to a third Party without the prior written consent of the other Party.

**Article 18: Invalidity of a Clause**

If one or more provisions of this MoU is held to be invalid or declared as such under a treaty, law or regulation, or following a final decision of a competent court, the other provisions shall remain in full force and effect. The Parties shall then proceed without delay to make the necessary changes respecting, to the fullest extent possible, the commitments taken at the time of signature of this MoU.

Comoros, asked Mauritius point of view regarding MOU. This Agreement might have some power compared to a regulation. Can we regulate?

Mauritius: It is possible because it allows the other provisions of this document to survive and only the provisions that are contradictory to the document to be frozen. If an internal law prevents a specific act allowed in another document, State will be breaching its own law.

Therefore this article is OK. No issue.

**Article 19: Validity**

1. This MOU will come into effect upon the signatures of the parties.
2. This MOU is valid for the period of *[specify MoU duration period]*  from *[specify MoU implementation date]*, after which the MoU can be automatically renewed or amended upon mutual consent of both Parties.
3. Notwithstanding paragraph 1, statements given under this MoU shall continue to apply at the due or anticipated end of the MoU.

Done in duplicate,

|  |  |
| --- | --- |
| Date:Location: | Date:Location: |
| For *[insert acronym of the 1st Party]*[insert position of 1st Party representative]***[insert name of 1st Party representative]*** | For *[insert acronym of the 2nd Party]*[insert position of 2nd Party representative]***[insert name of 2ndParty representative]*** |

**ANNEX A**

**FINANCIAL ARRANGEMENTS**

1. **Expenditures associated with Observer deployment**
2. Expenditure associated with movements of the Observer and living expenses (accommodation and food) as part of their boarding are directly supported by the *[insert acronym of the 2nd Party]*.
3. Flight tickets – economy class – necessary for the implementation of the mission will be funded [choose: *and/or*] made available by the *[insert acronym of the 2nd Party]*. The *[insert acronym of the 1st Party]* must provide the *[insert acronym of the 2ndParty]* with boarding pass stubs, as proof of the realisation of such flights (International and/or National).
4. **Reimbursement of expenses**
5. Travel and accommodation costs (nights and meals) in the course of the execution of this MoU are eligible for reimbursement by the *[insert acronym of the 2nd Party]* on presentation of receipts to the *[insert acronym of the 1st Party]*, and in the following conditions:
6. taxi transportation is only authorized when no other transportation allows the Observer to conduct an expected displacement within the programme implementation framework and delays;
7. hotel accommodation whose reservation has not been made by the *[insert acronym of the 2nd Party]*;
8. meals not supported by the *[insert acronym of the 2nd Party]* in the amount of up to 15 EUR per meal.
9. **Daily sea-going allowance**
10. The accounting of the Observer’s units of work (daily sea-going allowance) for invoicing will be based on the definition of a man-day.
11. A man-day is defined as a day of presence of the Observer on board a fishing vessel at sea or in port. All interruptions during the fishing trip (port call without unloading for crew changing, collection of supplies, or mechanical break) are included in Observer man-days.
12. The following situations are not to be accounted as an Observer man-day and are therefore not to be accounted in the invoicing:
13. days spent on land after the vessel arrives in port for unloading.
14. days spent on land before the vessel leaves port after unloading.
15. Allowances are to be paid no later than [X weeks], after the debriefing of the Observer and reception of Observer data and trip report, by bank transfer made by the [insert acronym of the 2nd Party] to the official bank account of the [insert acronym of the 1st Party].
16. The [insert acronym of the 1st Party] agrees to pay at least 70% of the sea-going allowances received by the Observer. The remaining 0-30% can be used for the support of the [insert acronym of the 1st Party] Observer Programme activities.
17. Living expenses are to be paid no later than [X weeks] after reception by the [insert acronym of the 2nd Party] of all the supporting relevant documents.
18. Bank details (IBAN and SWIFT) of the [insert acronym of the 1st Party]’s official bank account are as follows:

|  |  |
| --- | --- |
| Bank name |  |
| **Name of the beneficiary** |  |
| **IBAN** |  |
| **SWIFT** |  |

**ANNEX B**

**INTERNATIONAL CODE OF CONDUCT FOR OBSERVERS UNDER IOTC REGIONAL OBSERVER SCHEME STANDARDS**

Observers are required to conform to the following standards of the IOTC Regional Observer Scheme.

1. Observers may not participate in any activity that would cause a reasonable person to question the impartiality or objectivity with which the ROS is administered.
* Observers may not have a direct financial interest in the observed fishery, other than the provision of Observer services. This includes, but is not limited to, vessels or shore-side facilities involved in the catching or processing of the fishery products, companies selling supplies or services to those vessels or shore-side facilities or companies purchasing raw or processed products from these vessels or shore-side facilities. The interests of a spouse or minor child are considered those of the Observer.
* Observers may not solicit or accept, directly or indirectly, any gratuity, gift, favour, entertainment, loan or anything of monetary value from anyone who conducts activities that are regulated by the IOTC, or who has interests that may be substantially affected by the performance or non-performance of the Observer’s official duties.
* Observers may not solicit or accept employment as a crew member or an employee of the vessel in any fishery while employed as an Observer.
* Observers may not serve as Observers on any vessel owned or operated by a person who previously employed the Observer in any capacity.
* A person may not serve as an Observer in a fishery during the 3 consecutive months following the last day of his/her employment as a paid crew member or employee in that fishery.
1. Observers may not participate in any activity that could impair the Observer’s ability to perform his/her duties. This includes, but is not limited to:
* Engaging in the drinking of alcoholic beverages while on duty.
* Engaging in the use or distribution of illegal substances.
* Becoming physically or emotionally involved with vessel personnel.
1. Observers may not participate in any activity that could adversely affect the efficient accomplishment of the Scheme’s mission.
* Observers must refrain from engaging in any illegal actions according to the laws and regulations of the flag State that exercises jurisdiction over the vessel to which the Observer is assigned.
* Observers must avoid any behaviour that could adversely affect the confidence of the public in the integrity of Observers, the IOTC ROS or the IOTC.
* Observers must record all scientific data accurately and honestly.
* If the Observer chooses to report any suspected violations of regulations that they have witnessed relevant to the conservation of marine resources or their environment, it must be done honestly.
* Observers must preserve the confidentiality of the collected data and observations made on board the fishing vessels, in accordance with Resolution 12/02, and shall treat as confidential all information with respect to the fishing operations of the vessel on which they are deployed.
1. Observer involvement in vessel operations:
* Observers shall respect the hierarchy and general rules of behaviour that apply to all vessel personnel, providing such rules do not interfere with the duties of the Observer under this scheme.
* In all aspects involving vessel operations and safety at sea the Observer will fall under the authority of the captain.
* Scientific Observers will have no authority to advise or direct any of the vessel operational activities or have any authority over any of the vessel personnel.
* Scientific Observers should have access to all operational areas of the vessel necessary to complete their work, including the bridge, navigation and communication equipment. However, the Observer should attempt to secure co-operation with officers to ensure that their work does not interfere with normal fishing and operational activities.

**ANNEX C**

**DATA COLLECTION PROTOCOLS, FORMS AND REPORT TEMPLATES**

*[Insert data collection protocols, forms and report templates to be used under this MoU]*

**ANNEX D**

**OBSERVER ORDER OF MISSION**

**Order of Mission/Mandate**

Madagascar. Observers are there to monitor the fish, not just for databases. Crimes too.

Jude: WG is based on scientific observer, but NOP of different countries .. some are scientific, some are scientific and compliance. At national level, given this is between the State and second party, it would be a negotiation beween the State and the other for including science and compliance. NOP can be both, rental is for scientific only.

Mauritius: given this is only a template, propose a disclaimer at beginning setting out that this does not reflect the position of the State or the IOC but is only a document of guidance and will not attract liability for use or amendment by a party.

**The undersigned**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter called the “Mandatary”**

**Gives order of mission to:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereinafter designated the “Observer”**

**For the realization of the following mission:**

1. **MISSION**

The Observer is responsible for carrying out an observation mission on board the *[insert* *vessel type] [insert vessel name*] in the context of the programme *[insert programme name]* as established under the MoU signed with *[insert acronym of the 2nd Party]* and whose implementation, organization and technical supervision was entrusted to *[insert name of the entity, organization, company entrusted with the implementation of the programme]*.

The Observer mission includes:

* The collection of:
	+ scientific/statistical data on fishing effort, catch, bycatch and rejections;
	+ fishing data on vessel activity (monitoring fishing effort, etc.).
* [*other as per stipulated under the MoU*]
1. **DURATION**

This order of mission is granted and accepted for a period of about *[insert number of days]* at-sea days plus travel time to and from the vessel, corresponding to a trip on board a *[insert vessel type]* (between two crew rotations).

The vessel is expected to depart on the *[insert vessel date of departure]* from port of *[insert vessel port of departure]*.

1. **DAILY SEA-GOING ALLOWANCE**

Observer daily sea-going allowance is of: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_EUR* per “sea-day” defined as a day of presence of the Observer on board a fishing vessel or awaiting debriefing.

Travel and accommodation costs (nights and meals) in the course of the execution of the present mission are eligible for reimbursement on presentation of receipts and under the following conditions: *[detail conditions* (*ex: visa, hotel, transport, accommodation, food, etc.)].*

1. **INSURANCE**

The Observer that has been made available to the *[insert acronym of the 2nd Party]* is employed by the *[insert acronym of the 1st Party].* As such, the *[insert acronym of the 1st Party]* is responsible for:

1. Providing the Observer with a legal social cover and the following:
* an insurance in civil and professional liability to cover damages possibly caused by its Observer in the course of its on-board mission;
* professional travel assistance insurance (repatriation, death/disability, travel incidents) subscribed for this type of mission.
1. Ensuring that the Observer holds a valid IMO (STCW-F) compliant Certificate of Medical Fitness and a valid STCW 2010 Basic Safety Training Certificate.
2. **OBSERVER RESPONSIBILITIES AND DUTIES**
3. The responsibilities of observers include the:
4. capability to perform the duties set out under this MoU;
5. acceptance and compliance with agreed confidentiality rules and procedures with respect to the fishing operations of the vessels and vessel owners. As such, the observer agrees to return to the coordinators, at the latest at the debriefing, all collected information (forms, digital data, photos, audio or video recordings) and recognizes its co-ownership by the *[insert the acronym of the 1st Party]* and *[insert the acronym of the 2nd Party]* as required in Article 13;
6. maintenance of independence and impartiality at all times while on duty;
7. compliance with the laws and regulations of the State that exercises jurisdiction over the vessel;
8. respect for the hierarchy and general rules of behaviour that apply to all vessel personnel;[[7]](#footnote-7)
9. performance of their duties in a manner that does not unduly interfere with the lawful operations of the vessel;.
10. due consideration given to the operational requirements of the vessel while carrying out its functions;
11. familiarization with vessel emergency procedures, including the locations of life rafts, fire extinguishers, and first aid kits;
12. establish regular communications with the vessel’s 1st Officer on relevant observer issues and duties;
13. report immediately any difficulties in achieving their mission to *[insert acronym of the 1st Party]* Coordinator/Manager and to *[insert acronym of the 2nd Party]*;
14. respect the ethnic traditions of the crew and customs of the flag State of the vessel.
15. adhere to the International Code of Conduct for Observers.
16. The duties of the Observer include:
17. collating all information relating to the vessel fishing activities and conducting the biometric and biological sampling as agreed under this MoU;
18. submitting a deployment report to the *[insert acronym of the 1st Party]* and the *[insert acronym of the 2nd Party]* within 24 hours of the vessel’s sailing, in accordance with the adopted procedures;
19. submitting a weekly status report to the *[insert acronym of the 1st Party]* and the *[insert acronym of the 2nd Party]*, in accordance with the adopted procedures;
20. submitting all data forms and electronic data to both Parties, in accordance with the adopted procedures;
21. promptly writing and submitting a trip report to the *[insert acronym of the 1st Party]* and the *[insert acronym of the 2nd Party]*, in accordance with the adopted procedures.

**At** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**the**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**The Mandatary The Observer**

**(Read and approved, good for mission and signature) (Read and approved)**

**ANNEX E**

**DATA ACCESS**

*[To be defined by the two Parties]*

**ANNEX F**

**IOTC RESOLUTION 12/02 DATA CONFIDENTIALITY POLICY AND PROCEDURES**

**The Indian Ocean Tuna Commission (IOTC),**

RECOGNIZING the need for confidentiality at the commercial and organizational levels for data submitted to the IOTC;

CONSIDERING the provisions set forth in Resolution 10/02 [superseded by [Resolution 15/02](http://www.iotc.org/cmm/resolution-1502-mandatory-statistical-reporting-requirements-iotc-contracting-parties-and)] on mandatory statistical reporting requirements for IOTC Contracting Parties and Cooperating Non-Contracting Parties (CPCs);

CONSIDERING the provisions set forth in [Resolution 11/04](http://www.iotc.org/cmm/resolution-1104-regional-observer-scheme) *in a ROS*;

ADOPTING in accordance with paragraph 1 of Article IX of the IOTC Agreement, that:

1 The following policy and procedures on confidentiality of data will apply:

**DATA SUBMITTED TO THE IOTC SECRETARIAT**

The policy for releasing catch-and-effort, length-frequency and Observer data will be as follows:

**Standard stratification**

1. Catch-and-effort and length-frequency data grouped by 5° longitude by 5° latitude by month for longline and 1° longitude by 1° latitude by month for surface fisheries stratified by fishing nations are considered to be in the public domain, provided that the catch of no individual vessel can be identified within a time/area stratum. In cases when an individual vessel can be identified, the data will be aggregated by time, area or flag to preclude such identification, and will then be in the public domain.

**Finer level stratification**

1. Catch-and-effort and length-frequency data grouped at a finer level of time-area stratification will only be released with written authorisation from the sources of the data. Each data release will require the specific permission of the IOTC Executive Secretary.
2. Observer data grouped by 1° longitude by 1° latitude for surface fisheries and by 5° longitude by 5° latitude for longline, stratified by month and by fishing nation are considered to be in the public domain, provided that the activities/catch of no individual vessel can be identified within a time/area stratum.
3. A Working Party will specify the reasons for which the data are required.
4. Individuals requesting the data are required to provide a description of the research project, including the objectives, methodology and intentions for publication. Prior to publication, the manuscript should be cleared by the IOTC Executive Secretary. The data are released only for use in the specified research project and the data must be destroyed upon completion of the project. However, with authorisation from the sources of the data, catch-and-effort and length-frequency data may be released for long-term usage for research purposes, and in such cases the data need not be destroyed.
5. The identity of individual vessels will be hidden in fine-level data unless the individual requesting this information can justify its necessity.
6. Both IOTC Working Parties and individuals requesting data shall provide a report of the results of the research project to the IOTC for subsequent forwarding to the sources of the data.

3 The policy for releasing tagging data will be as follows:

1. Detailed tagging and recovery data are considered to be in the public domain, with the exception of any vessel names or identifiers and detailed information about the person who recovered the tag (name and address), however, requests for tagging data should be made to the IOTC Executive Secretary through the application form provided at Annex I.

**PROCEDURES FOR THE SAFEGUARD OF RECORDS**

4 Procedures for safeguarding records and databases will be as follows:

1. Access to logbook-level information or detailed Observer data will be restricted to IOTC staff requiring these records for their official duties. Each staff member having access to these records will be required to sign an attestation recognizing the restrictions on the use and disclosure of the information.
2. Logbook and Observer records will be kept locked, under the specific responsibility of the Data Manager. These sheets will only be released to authorised IOTC personnel for the purpose of data input, editing or verification. Copies of these records will be authorised only for legitimate purposes and will be subjected to the same restrictions on access and storage as the originals.
3. Databases will be encrypted to preclude access by unauthorised persons. Full access to the database will be restricted to the Data Manager and to senior IOTC staff requiring access to these data for official purposes, under the authority of the IOTC Executive Secretary. Staff entrusted with data input, editing and verification will be provided with access to those functions and data sets required for their work.

**DATA SUBMITTED TO IOTC WORKING PARTIES AND THE IOTC SCIENTIFIC COMMITTEE**

5 Data submitted to IOTC Working Parties and the IOTC Scientific Committee will be retained by the IOTC Secretariat or made available for other analyses only with the permission of the source.

6 The above rules of confidentiality will apply to all members of the IOTC Working Parties and the IOTC Scientific Committee.

7 This Resolution supersedes Resolution 98/02 *Data Confidentiality Policy and Procedures*.

**ANNEX G**

**IOTC RESOLUTION 22/04 ON A REGIONAL OBSERVER SCHEME**

 The Indian Ocean Tuna Commission (IOTC),

TAKING INTO ACCOUNT the need to increase the scientific information, in particular to provide the IOTC Scientific

Committee (SC) working material in order to improve the management of the tuna and tuna-like species fished in the Indian Ocean;

REITERATING the responsibilities of flag States to ensure that their vessels conduct their fishing activities in a responsible manner, fully respecting IOTC Conservation and Management Measures;

CONSIDERING the need for action to ensure the effectiveness of the IOTC objectives;

CONSIDERING the obligation of all IOTC Contracting Parties and Cooperating Non-Contracting Parties (hereinafter CPCs) to fully comply with the IOTC Conservation and Management Measures;

AWARE of the necessity for sustained efforts by CPCs to ensure the enforcement of IOTC's Conservation and Management Measures, and the need to encourage Non-Contracting Parties (NCPs) to abide by these measures;

UNDERLINING that the adoption of this measure is intended to help support the implementation of Conservation and Management Measures as well as scientific research for tuna and tuna-like species;

CONSIDERING the provisions set forth in Resolution 11/04 On A Regional Observer Scheme, adopted by the Commission;

CONSIDERING Resolution 16/04 On the implementation of a pilot project in view of promoting the regional observer scheme of IOTC;

FURTHER CONSIDERING the deliberation of the 21st Session of the IOTC Scientific Committee held in Seychelles, from 3 to 7 December 2018;

RECALLING the discussion of the 23rd session of the IOTC held in Hyderabad, India, from 17 to 21 June 2019;

FURTHER RECALLING that the 23rd session of the IOTC Scientific Committee expressed the concern on the low observer coverage level at 2.15% and on the fact that there is no coverage of the artisanal fleet, which comprise a large portion of catches taken in the Indian Ocean;

CONSIDERING the recurrent non-compliance of multiple fleets to the minimum observer coverage since the adoption of Resolution 11/04;

ADOPTS, in accordance with the provisions of Article IX, paragraph 1 of the IOTC Agreement, the following:

Definition

1. In this Resolution:

a. “field sampler” means a person who collects information on land during the unloading of fishing vessels and field sampling programs can be used inter alia for quantifying catch, retained bycatch and collecting tag returns; and

b. “observer” means a person who collects information on board fishing vessels, in the framework of observer programs, 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.

c. “Electronic Monitoring System” (EMS) means an integrated system of hardware and software that supports acquisition of video footages of fishing activity, positional data and/or sensor, that allows the analysis and reporting of EM records.

d. “Pool of observers” means a list of IOTC recognised observers that have been allocated an IOTC registration number and trained according to IOTC standards who may be called upon by other flag States.

Objective

2. The objective of the IOTC Regional Observer Scheme (ROS) shall be to collect verified catch data and other scientific data related to the fisheries for tuna and tuna-like species in the IOTC area of competence.

Observer Scheme

3. In order to improve the collection of scientific data, each CPC shall ensure that all fishing vessels of 24 meters length overall and above and under 24 meters, if they operate outside the exclusive economic zone (EEZ) of the flag CPC and in the IOTC area of competence, comply with the minimum observer coverage of 5% as defined by the number of operations/sets.

4. The IOTC Scientific Committee, in collaboration with the Compliance Committee, shall develop and agree on minimum standards for the use of EMS for purse seine, longline, bait boat (pole and line), handline, and gillnet fleets by 2023 at the latest, including on modalities of the substitution of the human observer coverage by an EMS, taking into account factors such as, the principles and regulations regarding minimum safe manning requirements. The Commission may consider and adopt these standards by 2024 in a separate Resolution.

5. Once the EMS standards are adopted and providing CPCs meet the minimum mandatory ROS data reporting standards, the minimum human observer coverage provided for in paragraph 3 may be complemented or substituted by means of an EMS. To ensure the minimum mandatory ROS data reporting standards are met, the EMS may be complemented by port sampling and/or other Commission approved data collection methods. CPCs are encouraged to use an EMS to improve the collection of scientific data before the standards mentioned in paragraph 4 are adopted.

6. CPCs shall endeavor to provide a list of observers to the IOTC Secretariat constituting the basis for the development of a regional pool of observers. The regional pool of observers shall be composed of observers registered through authorised observer providers according to the IOTC ROS standards. Each observer shall be allocated an IOTC registration number that must be included on reported data.

7. When purse seiners are carrying an observer in accordance with paragraph 3, this observer shall also monitor the catches at unloading to identify the species composition of targeted tuna species. The requirement for the observer to monitor catches at unloading is not applicable to CPCs already having a sampling scheme, with at least the coverage set out in paragraph 3.

8. Landings from artisanal fishing vessels shall also be monitored at the landing place by field samplers. The indicative level of the coverage of the artisanal fishing vessels shall be 5% of the total levels of vessel activity (i.e. total number of vessel trips or total number of active vessels).

9. Field samplers shall monitor catches at the landing place with a view to estimating catch-at-size by type of boat, gear and species, or carry out such scientific work as may be requested by the IOTC Scientific Committee.

10. CPCs shall:

a. have the primary responsibility to obtain qualified observers and each CPC may choose to use either deployed national or non-national of the flag State of the vessel on which they are deployed;

b. ensure that the minimum level of coverage is met;

c. take all necessary measures to ensure that observers are able to carry out their duties in a competent and safe manner;

d. endeavour to ensure that the observers alternate vessels between their assignments;

e. ensure that observers perform duties described in paragraphs 7, 15 and 16. If observers are entrusted with complementary tasks by the relevant CPC fisheries research institutes, this shall in no way affect their performance on the above-mentioned duties;

f. ensure that the vessel on which an observer is placed shall provide suitable food and lodging during the observer's deployment at the same level as the officers, where possible; and

g. require vessel masters to ensure that all necessary cooperation is extended to observers in order for them to carry out their duties safely including providing access, as required, to the retained catch, and catch which is intended to be discarded.

11. If the coverage referred in paragraphs 3 is not met by a CPC, any other CPC may, subject to the consent of the CPC who has not met its coverage, place an observer to fulfil the tasks defined in the paragraphs 7, 15, 16 and 17 until that CPC provides a replacement or the target coverage level is met.

12. CPCs shall provide to the IOTC Secretariat and the IOTC Scientific Committee, annually in their national scientific reports, a description of the protocols supporting their observer programs and sampling schemes mentioned in paragraphs 3, 5, 7 and 8, the number of fishing vessels and of fishing effort sampled, as well as the coverage achieved by gear type in accordance with the provisions of this Resolution.

13. Observers shall:

a. record and report fishing activities, verify positions of the vessel;

b. observe and estimate catches as far as possible with a view to identifying catch composition and bycatch and to monitoring discards including their fate (e.g. released alive) and size frequency;

c. record the gear type, mesh size and attachments employed by the master;

d. collect information to enable the cross-checking of entries made to the logbooks (species composition and quantities, live and processed weight and location, where available); and

e. carry out such scientific work (e.g. collecting samples), as requested by the IOTC Scientific Committee.

14. The IOTC Scientific Committee shall adopt by 2023 the IOTC ROS Observer Manual and the IOTC Observer Forms used for reporting (including minimum data fields) and provide advice on a training program.

15. Once adopted by the IOTC Scientific Committee, observers shall use the IOTC ROS Minimum Standard Data Fields, the IOTC data collection forms, the IOTC Species identification cards, the IOTC Regional Observers Scheme (ROS) Observer Manual and the IOTC Observer Forms when carrying out their duty. The Secretariat shall publish this information in a dedicated area of the IOTC website.

16. Each observer shall provide, within 30 days of completion of each trip, a report to the flag CPC of the vessel. If the vessel was fishing in the EEZ of a coastal State, the part of the observer report covering fishing activities in the EEZ shall be also submitted to that coastal State.

17. Each CPC shall provide, to the IOTC Secretariat within 150 days the latest, each report and observer data, following IOTC observer reporting templates and standards. The Executive Secretary shall make the information available to the IOTC Scientific Committee.

18. The data referenced in paragraph 17 shall be provided by 1°x1° square and month. CPC shall endeavor to send these data in an electronic format suitable for automated data extraction.

19. The confidentiality rules set out in Resolution 12/02 Data confidentiality policy and procedures for fine-scale data shall apply.

20. The funds available from the IOTC balance of funds may be used to support the implementation of this program in developing coastal CPCs, notably the training of observers and field samplers.

21. The elements of the Observer Scheme, notably those regarding its coverage and the adoption of EMS standards, are subject to review and revision, as appropriate, for application in 2023 and subsequent years.

22. All provisions in this resolution related to the deployment of observers onboard fishing vessels, shall apply mutatis mutandis to the use of EMS, as applicable.

23. This Resolution supersedes Resolution 11/04 On A Regional Observer Scheme.

1. This insurance is usually taken by the Observer’s contracting organisation. It covers the Observer for the period traveling to or from the vessel. [↑](#footnote-ref-1)
2. The International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel (STCW-F) Personnel establish basic requirements for Fishing Vessel Personnel on an international level, of which countries are obliged to meet or exceed. [↑](#footnote-ref-2)
3. Ensures that the Observer is able to endure normal conditions of life at sea and that their health will not endanger the health and safety of other people aboard. [↑](#footnote-ref-3)
4. Confirm that Observers are signed on in a category where they will be fully covered by the vessel’s P&I insurance. [↑](#footnote-ref-4)
5. Training such as the use of forms and databases different to the one the Observer is used to, the collection of biological samples, the deployment of tags, etc. [↑](#footnote-ref-5)
6. When on-board the vessel the Observer is under the authority of the captain. [↑](#footnote-ref-6)
7. When on board the vessel the Observer is under the authority of the captain. [↑](#footnote-ref-7)