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SOUTHWEST INDIAN OCEAN FISHERIES COMMISSION

Ninth Working Party on Collaboration and Cooperation in Tuna Fisheries

Maldives, 29 September 2019

POLICY BRIEF ON A POSSIBLE SOUTHWEST INDIAN OCEAN FISHERIES FRAMEWORK AGREEMENT

The possible establishment of a Southwest Indian Ocean Fisheries Framework Agreement (SWIO-FFA) has been discussed by the WPCCTF and the SWIOFC Commission for several years. Following a recommendation by the 8th WPCCTF, the 9th SWIOFC Session requested Members to submit inputs for the preparation of a policy brief with a timeline of 5 months for members to submit their inputs. Only a Member Country submitted its input. A consultant¹ was requested to prepare the Policy Brief that has been summarized by the Secretariat in this working document.

Under this agenda item, the Working Party is invited to recommend the Commission to decide if starting the process of negotiation for a Southwest Indian Ocean Fisheries Framework Agreement (SWIO-FFA) or drop the proposal. In case proceeding with establishment of the SWIO-FFA would be recommended, this document includes under Appendices A and B information how the proposed agreement could take shape and a possible road map.

Background information

In 2015, through its Working Party on Collaboration and Cooperation in Tuna Fisheries (WPCCTF), the SWIOFC Commission received two proposals for an external arrangement/agreement from AU-IBAR/WWF and the newly launched SWIOFish1 project. The Commission faced difficulty with two proposals as they were advocating different trajectories. The proposals were passed back to the WPCCTF and its Task Force, which was at the time developing minimum terms and conditions (MTC) for foreign fishing access in the SWIO region, to be harmonized. Partners and projects, such as EAF-Nansen, IOC, Sida, SWIOFish1, SWIOFP, World Bank and WWF supported the whole process including attendance of the members' representatives and of experts to the Working Party meetings.

Common elements of the two proposals were consolidated and linked to the ongoing MTC process². The resulting proposal had some preliminary text for a binding subsidiary arrangement on coordination and cooperation of shared stocks and fisheries of common interest but it needed to be lodged institutionally.

¹ Mr Aubrey Harris, former SWIOFC Secretary. His consultancy was funded by the World Bank-SWIOFish1 project.

² JR Payet 2017. Processing with technical discussions on the framework Agreement for Cooperation on fisheries of common interest for the South West Indian Ocean (SWIO) countries and fisheries accord for share stocks (African Union/WWF) under the common process and driven by SWIOFish1/SWIOFC. January 2017. Report prepared for the World Bank-SWIOFish1 project.

Four options were proposed: i) within the SWIOFC; ii) within a SWIOFC developed into an FAO Article XIV body; iii) as an agreement outside the UN system, and iv) through revival of the defunct Western Indian Ocean Tuna Organization (WIOTO).

Apart from excluding the unrealistic WIOTO option, the WPCCTF was unable to decide on the three remaining options because of the obligations and consequences involved. It requested further information from the Task Force and partners on: financial implications; option details; analysis of costs against benefits; a reviewed agreement text; and a road map before it would be able to make substantive recommendations to the Commission.

A thorough analysis of the institutional context was undertaken and legal text for the agreement, as well as a possible first negotiating text, were produced³. Significant information and perspectives on the institutional arrangements and structure were provided, including the budget of a possible secretariat that would implement the agreement.

Since the region is mostly composed of developing countries with scarce resources and numerous regional membership costs, it would be difficult to proceed with a new arrangement unless the likely benefits were very clear. A subsequent cost benefit analysis⁴, examined the catch of tuna by purse seine, industrial and semi-industrial longline, and coastal/artisanal fisheries in the Western Indian Ocean (WIO) and more particularly the southwest Indian Ocean (SWIO) region. The catches and their first market value at landing were calculated (see Table 1) separated by coastal countries and Distant Water Fishing Nations (DWFNs).

**Table 1. Summary of SWIO aggregated landed value of tuna fisheries
(mean annual for 2007-2016 in million USD)**

Type of tuna fisheries	Coastal countries	DWFNs	Entire SWIO
Industrial purse seine	143.3	440.7	584.0
Industrial longline	86.9	639.5	726.4
Semi-industrial longline	1.1	283.5	284.6
Total industrial fisheries	231.3	1363.7	1595.0
Coastal/artisanal fisheries	442.3	0	442.3
Grand Total	673.6	1363.7	2037.3
Coastal countries share on total industrial fisheries value			14.5%

Source: Sweenarain 2018

The analysis looked at license revenues obtained by those SWIO countries that allow foreign fishing by purse seiners, industrial and semi-industrial long-liners. It used transparent and well-publicized information from the EU Fisheries Partnership Agreement (FPA) as well as information for DWFNs under bilateral or private agreements (both non-transparent) using their nominal vessel catch rates as obtained from IOTC.

Example of an existing FFA – the Pacific Islands Forum Fisheries Agency

In their reviews and analyses, the authors of the previous mentioned documents considered the Pacific Islands Forum Fisheries Agency (PI-FFA) as a model for a Southwest Indian Ocean Fisheries Framework Agreement (SWIO-FFA).

³ J Swan 2017. Legal, Policy, Institutional and budgetary implications of formulating, adopting and implementing a regional fisheries cooperation and coordination agreement by the South West Indian Ocean range states. Report of December 2017 prepared for the SWIO Regional Sustainable Fisheries Project 40001192 of WWF MCO funded by NORAD.

⁴ S Sweenarain 2018. Cost-Benefit Analysis and sustainable financing of a Regional Fisheries Framework Agreement for the shared tuna fisheries resources in the South West Indian Ocean Basin. Report of October 2018 to the SWIOFish1/IOC project funded by the World Bank.

PI-FFA was established in 1979, 40 years ago, under a Convention signed by the Pacific Island countries (including Australia and New Zealand) to help sustainably manage their fishery resources within their Exclusive Economic Zones (EEZs). PI-FFA is an advisory body providing expertise, technical assistance and other support to its members who make sovereign decisions about their tuna resources while also participating in regional decision-making on tuna management through the Western and Central Pacific Fisheries Commission (WCPFC).

The PI-FFA has ensured through regional cooperation that all Pacific countries would benefit significantly from licencing to foreign countries – worth over \$3 billion a year – and ensuring the sustainable exploitation of tuna resources, important for many people’s livelihoods in the Pacific.

With approximately 80 staff and a business-orientated approach, PI-FFA’s focus is on:

- Fisheries management – providing policy and legal frameworks for the sustainable management of tuna;
- Fisheries development – developing the capacity of members to sustainably harvest, process and market tuna to create livelihoods;
- Fisheries operations – supporting monitoring, control and surveillance of fisheries as well as treaty administration, information technology and vessel registration and monitoring;
- Corporate services - supporting the organisation's work through administration, human resources, budgeting and other corporate functions.

PI-FFA assisted the establishment of the Parties to the Nauru Agreement (PNA), a binding arrangement between 8 Pacific States that together control about 80% of the total purse seine catch of the region. The other 9 Pacific States share the remaining 20% and continue to pursue their economic interest and development of their offshore fisheries through the PI-FFA.

Since its formation, PI-FFA’s has achieved consistent organisational growth. Its governance, administrative and financial management are autonomous and funded by external financial support from Australia, New Zealand and partner NGOs.

What an FFA-like agreement could give to the SWIO region

Modelled largely on the PI-FFA, a SWIO-FFA arrangement would cater for the needs of foreign-licencing countries (Comoros, Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, and Tanzania) and non-licencing countries (Maldives, South Africa, Yemen) in a cooperative technical assistance model. The cost-benefit analysis (Sweenarain, 2018) showed that from recoveries of licencing alone, there could be an increase of \$21-26 million annually to SWIO coastal states from a concerted regional approach of licensing agreements. A portion of these money should be used to support the FFA, with the possible addition of innovative financing like sustainability labels, retaining membership fees at a minimum.

Calculations of benefits that could be derived from the SWIO-FFA were made from data on status and value of tuna fisheries in the SWIO region, although there were some constrains due to a lack of consistent national data. Projections were based on the enhancement of value-added generated by the agreement as opposed to increasing the catch. The estimates indicated a significant economic benefit that could accrue to a SWIO-FFA even in the first 5 years. Over 15 years, starting with an overall annual existing estimated benefit of \$30 million, these could be increased to \$143 million through smart licencing, domestication of foreign fleets, sustainable management and modernisation of the semi-industrial longline fisheries, elimination of discards, greater utilization of bycatch and improvement of coastal and artisanal tuna value chains. All SWIO states would benefit from such an arrangement based on their differing geo-economic features, development needs and aspirations.

Significant benefits would accrue not only to licencing countries, but also those with large coastal fisheries (Maldives and Yemen), or intending to further develop their tuna fisheries (most if not all SWIO coastal states) from the information, technical and legal advice, regulatory support, intelligence, innovation and common voice of such an arrangement.

The proposed business model aims at maximising profitability and sustainability of tuna fisheries. The FFA mission would be the conservation of tuna resources along with the maximisation of sustainable financial and economic benefits for its members. Distinct from IOTC, which is focused on the scientific aspects of stocks management, the business model puts heavy emphasis on the socio-economic factors of fisheries management and development. The model proposed is significantly smaller than PI-FFA and calculated to cost \$6 per tonne of tuna caught against \$25 for PI-FFA due to a much smaller proposed staff and infrastructure.

Secretariat costs were estimated for a slim Secretariat like the Southern Indian Ocean Fisheries Agreement (SIOFA) model, and for a more comprehensive technical team. The Secretariat would develop strategic plans, work programs and donor funding initiatives immediately on set up. Estimated annual cost for a Secretariat ranges between \$0.9 and 1.5 million in the early phase of operationalising the arrangement, and around \$3 million after 5 years when it is fully operational.

However, the members would unlikely be able to set up the Secretariat, even after agreeing to and paying contributions. There will clearly be the need of support from donors - like World Bank-SWIOFish1, WWF and/or others - for the negotiation process and establishment of a Secretariat. The cost of the negotiation process, supporting also the techno- and economic research, was estimated at \$500,000. Following signature, establishment and location of the Secretariat would depend on negotiations.

Conclusion

Through discussions over several years, SWIOFC members have been examining options for a broader response to their needs. The need for a collaborative focus of SWIO States on tuna was evidenced by the establishment of the WPCCTF. This has been, to all accounts, a most successful subsidiary structure that has galvanised SWIOFC members' positions within the IOTC, assisted their adherence to CMMs and IOTC reporting obligations, spawned the Maputo and Zanzibar declarations, and developed and adopted the Guidelines on Minimum Terms and Conditions (MTC) for Foreign Fisheries Access in the SWIOFC region.

A process ensuring that all SWIOFC members are involved and onboard has taken place. There are clear orientations for the instrument, a negotiating text and ample evidence that such a cooperation agreement could provide benefits surpassing Parties' contributions several times. Options have been examined for the process of establishment, the size and nature of the Secretariat over the short and possible long-term periods, the membership, with enough information for each country to have a fair indication of its benefits. Funding partners to support the process towards an agreement should be identified.

The preparatory phase is concluded and SWIOFC Member Countries are now requested to decide if starting the process of negotiation or drop the proposal for the establishment of the SWIO-FFA.

APPENDIX A

How the proposed agreement could take shape

The current orientation of the negotiating text is presented below:

Institutional context

The arrangement is expected to be outside of the FAO because it will be difficult for FAO to support negotiation of another Article XIV body dealing with tuna because of the management mandate of the Indian Ocean Tuna Commission (IOTC). Also, FAO advised that SWIOFC could not be host to a binding agreement. An independent advisory intergovernmental agency along the line of the PI-FFA or an agreement with binding Conservation and Management Measures (CMMs) like SIOFA was proposed.

Preamble

The Parties intend to maximise economic and social benefits from fisheries of common interest and jointly commit themselves to long term sustainable use.

Scope/Application

The scope differed along the deliberation process. Initially focusing on marine resources within national jurisdiction, it could be legally placed to fisheries, persons and fishing vessels under national jurisdiction and nationals (persons and vessels) fishing beyond national jurisdiction. In an advisory FFA context, this is proposed to extend to tuna in the EEZ and high seas of the SWIO. It could be left open the possibility of providing also services to other shared fisheries at a later stage.

States/Parties/membership

All SWIOFC Members States would be invited to join the SWIO-FFA. France and South Africa may be considered analogous to the important role that Australia and New Zealand play in technical, surveillance and financial support of the PI-FFA.

Objectives

Objectives have been adapted along the way. Later suggestions place emphasis on accelerating development of the inshore and offshore tuna fishing industry of members and strengthening their ability to get better deals from Distant Water Fishing Nations (DWFNs) across the tuna value chain.

International legal instruments, Conservation and Management measures

Detailed legal text should be included to spell out protection of the sovereignty of Parties and ensure the strength and compatibility of CMMs under a binding agreement.

Cooperation with other bodies

SWIOFC would co-exist with the new instrument. From early general text, the proposed agreement now goes into the detail of how Parties coordinate and cooperate between themselves, other states, RFBs and RECs. Among other things, it includes the ability to produce binding Minimum Terms and Conditions (MTCs) for foreign fishing access, trade, investment, and technical assistance.

Internal arrangements meetings of Parties, and decisions

Provision is made for an annual Meeting of Parties and extraordinary meetings with other organisation such as SWIOFC. Decisions are primarily by consensus. Decisions other than on matters of substance are by a simple or 2/3 majority. The Agreement shall have its own Rules of Procedures, Financial Regulations and Budget approved by the Parties as of its First Meeting.

Functions of the meetings of Parties

The binding agreement text has elaborate inclusion of the functions of the Meetings of Parties, giving it significant power and responsibility.

Reservations, Amendment, Withdrawal, Termination, Depository

Administrative arrangements for Reservations, Amendments, Withdrawal, Termination and Depository are included. The binding agreement text does not allow any reservations or exceptions.

Dispute settlement

Dispute settlement is by peaceful means of negotiation and conciliation. However, the text also provides for a graduated process, separating technical disputes (resolved through an *ad hoc* technical panel) from differences in interpretation of the agreement or of other disagreements that eventually would be submitted to a judicial panel for a binding decision based on UNCLOS or the Fish Stocks agreement.

Signature, Ratification, Acceptance, Approval, Accession, Entry into force

Depending of the requirement of SWIOFC countries, there can be a formal ratification process with the agreement coming into force 60 days after the third ratification. In the situation of an advisory framework agreement, there would be signing of the agreement without ratification (like PI-FFA).

Negotiations and institutionalising the proposed agreement

Four intergovernmental consultations for negotiations over 1.5–2 years were envisaged. The first would seek political engagement and endorsement to proceed, the fourth for finalisation and signature. A ratified agreement could take some further time (e.g. SIOFA).

APPENDIX B

Possible road map toward the establishment of a SWIO-FFA

Step	Action
1	Decision at the 10 th SWIOFC to proceed with an SWIO-FFA agreement as an intergovernmental organizations (IGO). Agreement on a Member to formally contact FAO on behalf of other Members.
2	A Member formally submits a request to FAO expressing the desire to establish an Agreement as an IGO, requesting support towards the negotiation of the agreement ⁵ , and for continuing support to the SWIOFC.
3	FAO formally notes the decision of the SWIOFC members, agrees (or otherwise) to support the negotiation process ⁶ , and affirms the continuing support of the SWIOFC.
4	Identification of a donor to support the negotiation process and the establishment of a Secretariat.
5	Intergovernmental Consultations in 2020 to further negotiate, finalize and endorse: i) the Convention; ii) the Rules of Procedures (RoPs) and Financial Regulations, including the scheme and scale of contributions to the administrative/autonomous budget; and iii) the first Programme of Work.
6	The depositary of the new Convention notifies the potential Members of the Agreement and invites them to become Member of the Commission through depositing an “instrument of acceptance”/ratification of the Convention. According to the terms of the instrument, a conference of plenipotentiaries would need to be convened for signature and ratification by the agreed number of Parties before the instrument enters into force. The members would then be responsible for financially sustaining the organization.
7	The members follow internal processes of ministerial/cabinet approval of the Convention and inform the depositary in a timely manner.
8	A meeting of Plenipotentiaries is held for the signing of the Agreement.
9	Arrangements are made for an interim structure in a host country that could also be the host of the eventual agreement.
10	2022/2024 Inaugural Session of the new IGO. The SWIOFC members that have not yet accepted/ratified the agreement may attend as observers under conditions decided in the ROPs.

⁵ FAO has facilitated the establishment of independent IGOs such as the Southern Indian Ocean Fisheries Agreement (SIOFA); the Lake Victoria Fisheries Organisation (LVFO); the Network of Aquaculture Centres in Asia-Pacific (NACA); INFOPECSA and the INFOfish/Globefish network.

⁶ FAO is more likely to support the negotiation process if most of the costs are met by members and/or partners.