



GUIDELINES FOR MINIMUM TERMS AND CONDITIONS (MTC) FOR FOREIGN FISHERIES ACCESS IN THE SOUTHWEST INDIAN OCEAN FISHERIES COMMISSION (SWIOFC) REGION

THE SOUTHWEST INDIAN OCEAN FISHERIES COMMISSION,

AFFIRMING that SWIOFC States have sovereignty and sovereign rights to explore, exploit, conserve and manage all marine resources and the corresponding responsibility to sustainably utilise these resources in waters under their jurisdiction;

CONSIDERING our shared commitment to the implementation of the relevant provisions of the *United Nations Convention on the Law of the Sea of 10 December 1982*, the *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, and the FAO Code of Conduct for Responsible Fisheries;

RECOGNISING the need for rational and responsible exploitation of tuna fisheries resources for the benefit of the peoples of the SWIOFC States;

ACKNOWLEDGING the need to distribute these benefits in an equitable and fair manner, recognising the needs of genders, youth and vulnerable groups alike, for the purpose of promoting economic and social development and resilience in the SWIOFC Region;

FURTHER RECOGNISING our shared concern for and commitment to the conservation of the living resources of the high seas;

ALSO ACKNOWLEDGING the need for co-operation between and among SWIOFC States in enforcing laws governing tuna fisheries;

DESIRING more effective control of foreign fishing and the need to establish a durable and equitable framework for cooperation with Distant Water Fishing Nations (DWFN) and/or representative fisheries organisations/associations; and

FULLY AWARE that SWIOFC States have different specific objectives for their tuna fisheries sectors, and without prejudice to the sovereignty and sovereign rights of SWIOFC States agree as follows:

1. Definitions

For the purpose of these Guidelines:

- (a) “automatic identification system” or “AIS” means an automatic tracking system used on ships and by vessel traffic services for identifying and locating vessels by electronically exchanging data with other nearby ships, AIS base stations, and satellites;
- (b) “by-catch” means all living and non-living organisms incidentally caught while fishing for tuna and tuna-like species, including any by-products, Endangered, Threatened and Protected Species and discards of the catch;
- (c) “FAO” means the Food and Agriculture Organization of the United Nations;
- (d) “fish aggregating device” means any device, whether natural, partially man-made, or completely man-made, whether anchored or not, that is deployed and monitored for the purpose of aggregating fish to assist with “fishing” operations;
- (e) “fishing” means:
 - (i) to search for, locate, attract, 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; or
 - (iv) any operations at sea, including by air, directly in support of or in preparation for any activity described in sub-paragraphs (i) to (iii).
- (f) “*fishing trip*” means any period, during which a fishing vessel is 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 or is in operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping 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. The fishing trip:
 - (i) Commences when the vessel
 - a. Leaves any place at which that vessel is moored or berthed or launched; or
 - b. After transshipment of part or whole catch.
 - (ii) Ends when the vessel
 - a. Returns from the sea to a place at which the license holder using the vessel is licenced or authorised to land fish and any fish are removed from the vessel or the vessel with the fish on board is removed from the water; or
 - b. When a vessel transships at sea under the overall coordination of IOTC and/or under the relevant Regional Fisheries Bodies.

- (g) “foreign fishing vessel” means any foreign flagged vessel engaged in “fishing,” as defined in these Guidelines, for tuna and tuna-like species within Exclusive Economic Zone the waters under the jurisdiction of a SWIOFC State other than its flag State;
- (h) “ILO” means the International Labour Organization;
- (i) “IMO” means the International Maritime Organization;
- (j) “IOTC” means the Indian Ocean Tuna Commission;
- (k) “IOTC Resolutions” means any conservation and management measure or other decision adopted by the IOTC and binding on its Members;
- (l) “IOTC Resolution on PSM” means the IOTC Resolution 16/11 on *Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, and any subsequent amendment thereto;
- (m) “IUU fishing” refers to activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;
- (n) “non-compliant vessel” or “IUU vessel” means any fishing vessel, supply vessel, or transport vessel that engaged or currently engages in fishing or related activities in contravention of the relevant national and international laws and regulations, including those vessels listed in the IUU lists of RFMOs;
- (o) “supply vessel” means any vessel that is engaged in carrying, deploying, retrieving, searching for, or monitoring FADs, as well as those that assist fishing vessels with re-supplying, changing or transferring crew, and other supporting services;
- (p) “SWIOFC” means Southwest Indian Ocean Fisheries Commission;
- (q) “SWIOFC State” means a Member of SWIOFC;
- (r) “transshipment” means transfer from one vessel to another vessel, directly or indirectly, of fish or fish products, gears, provisions and crew;
- (s) “transport vessel” means any vessel, refrigerated or not, that is engaged in transporting goods, including harvested fish, from a fishing vessel to other vessels, to port, or to an offshore terminal;
- (t) “vessel monitoring system” or “VMS” means a system that transmits automatically data on the fishing vessel identification, geographical position, date, time, course and speed by satellite-tracking devices installed on board fishing vessels to the fishing monitoring center of the flag State;
- (u) “vessel operator” means any person who is in charge of, directs, or controls a vessel, including the owner, charterer and master;

2. Scope

- 2.1 These Guidelines are voluntary in nature. These Guidelines also contain provisions that may be or have already been given binding effect by means of other obligatory legal instruments amongst

the SWIOFC States, such as the *Agreement for the Establishment of the Indian Ocean Tuna Commission* (“the IOTC Agreement”), the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (“PSMA”).

- 2.2 These Guidelines are consistent with, and draw on, international and regional instruments, including the *United Nations Convention on the Law of the Sea of 10 December 1982*, the *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (UNFSA), the FAO Code of Conduct for Responsible Fisheries (“the Code of Conduct”), and the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (“the International Plan”).
- 2.3 These Guidelines are addressed to SWIOFC States, at all levels of the country, as well as to flag States of vessels operating in the SWIOFC Region, fishing associations, sub-regional, regional and global organizations, whether governmental or non-governmental, and all persons, including vessel operators, engaged in fishing and fishery-related activities.
- 2.4 The Guidelines should apply to the conservation and sustainable utilisation of tuna and tuna-like species, including by-catch, of the SWIOFC Region.
- 2.5 These Guidelines should apply to foreign fishing, supply and transport vessels seeking access to tuna and tuna-like species within the waters under the jurisdiction of a SWIOFC State.
- 2.6 [Nothing in these Guidelines shall prejudice the rights, jurisdiction and duties of SWIOFC States under international law.]
- 2.7 These Guidelines should be interpreted and applied in accordance with national legal systems and their institutions.

3. Objective

The objective of these Guidelines is to establish a common access regime for the foreign fishing of tuna and tuna-like species in the SWIOFC Region in order to:

- a. improve and generate sustainable economic benefits for the SWIOFC States;
- b. improve conservation and management of tuna and tuna-like species, including by-catch; and
- c. monitor and control fishing activities more efficiently and effectively.

4. Pre-inspection of fishing vessels

- 4.1 Prior to granting a license to fish for tuna and tuna-like species, a participating State shall ensure that the petitioning vessel has been pre-inspected by a participating States’ designated authority. Participating States will identify and publicize designated ports suitable for pre-inspection.

- 4.2 The validity of this inspection should be 12 months. In the event of a change in the vessel's name, flag, characteristics or ownership, a new inspection should be conducted.
- 4.3 SWIOFC States endeavour to develop a framework to ensure that pre-inspection of fishing vessels to be licensed to operate in the SWIOFC Region is conducted according to an annual agreed pre-inspection plan.

5. Conditions to operate

All foreign fishing vessels, including supply and transport vessels, operating in the waters under the jurisdiction of a SWIOFC State in regards to tuna and tuna-like species should:

- a. maintain registration on the IOTC Record of authorized vessels;
- b. maintain a valid authorisation to fish (ATF) issued by their respective flag State; and
- c. possess a valid license issued by the relevant SWIOFC State and carry it on board at all times.

6. Conditions for licensing

- 6.1 Prior to granting a license to fish for tuna and tuna-like species or operate as an affiliated supply or transport vessel, a SWIOFC State should ensure that the applying vessel, including support and transport vessels:
 - a. has been pre-inspected by the relevant authorities of ~~the~~ a SWIOFC State;
 - b. maintains registration on the IOTC Record of authorized vessels;
 - c. maintains a valid authorization to fish (ATF) issued by its flag State; and
 - d. does not appear on any existing IUU vessel list, has no evidence that the vessel has conducted IUU fishing or has connection to IUU fishing or other fisheries related crime activities;
 - e. does not have a history of IUU fishing and maintains good standing in terms of compliance with its legal obligations.
- 6.2 In the event a vessel does have a history of IUU fishing, but has changed name, flag, vessel specifications owner or operator, a State may refuse to issue it with a fishing license in accordance with the applicable national laws and regulations, as well as any international instruments applicable to the issuing State. If a license is issued, the State should take all necessary measures to ensure a more stringent MCS action of the said vessel.
- 6.3 When issuing a license to fish for tuna and tuna-like species or to operate as a supply or transport vessel affiliated to a foreign licensed fishing vessel, a State should ensure that:
 - a. the license application process is consistent with the standardized process outlined in these Guidelines, including a standardized application form and timeline;

- b. the license is issued to an operator for a designated vessel;
- c. the license is valid for a specified period and is not transferable. In case of force majeure or of any accident that renders the vessel inoperative or results in the loss of the vessel, a new license may be issued to the applicant for another vessel with similar specification.
- d. the license outlines a set of conditions and obligations that define its use, which are consistent with national and international law together with regional instruments and any access agreements, as applicable.

7. Financial compensation

- 7.1 States may receive financial compensation for permitting a fishing, supply or transport vessel to operate within waters under their national jurisdiction with due consideration of, *inter alia*, potential catch, its potential value based on a prevailing market price, and the cost of management in regard to tuna and tuna-like species resources.
- 7.2 States will strive to work together to standardise and harmonise financial compensation for access to resources of tuna and tuna-like species within waters under their national jurisdiction with at least a minimum of twelve (12%) percent of the average prevailing market value of the tuna and tuna-like species resources.
- 7.3 Any financial compensation should be paid into a designated Government account of the licensing State.

8. Regional record of foreign licensed vessels

- 8.1 SWIOFC States should compile and publish a regional record of the foreign fishing vessels, including supply and transport vessels, licensed to operate in the SWIOFC Region in regards to tuna and tuna-like species.
- 8.2 States should submit daily an update to the list of their licensed foreign fishing vessels when licences are issued, including supply and transport vessels, in order to ensure that the regional record is current and valid.
- 8.3 The regional record should be established and be available on the internet. It should include relevant compliance information for the listed vessels, including compliance information such as a good standing list.

9. Flag State or fishing association responsibility

- 9.1 The flag State of foreign fishing vessels licensed to operate in waters under jurisdiction of a SWIOFC State should collaborate with SWIOFC States to ensure the compliance of its flagged vessels with the applicable international law, laws and regulations of the SWIOFC State and the flag State, respectively. This includes comprehensive monitoring of its flagged vessels through adequate electronic tracking systems, cooperation and international agreements with the relevant

SWIOFC States (such as timely responses to queries and the sharing of information), and investigations and actions taken against vessels believed or found to be non-compliant.

- 9.2 The fishing associations through which vessels received licences to operate in waters under jurisdiction of a SWIOFC State should ensure compliance of their vessels with the SWIOFC State's laws and regulations and the terms of any access agreements under which they operate.

10. Fishing zones

- 10.1 No licensed foreign fishing vessels, including supply and transport vessels, should be permitted to operate within the internal waters, archipelagic waters (in the case of an archipelagic State), or territorial sea, or in any other restricted or protected area of a SWIOFC State.
- 10.2 SWIOFC States should provide to the foreign licensed fishing vessels with geographical coordinates of the licencing states' restricted and protected areas.

11. Vessel reporting requirements

- 11.1 SWIOFC States should require all licensed foreign fishing vessels, including supply and transport vessels, operating in regard to tuna and tuna-like species to provide the position of, and, where applicable, quantity and type of catch by species on board the vessel as follows:
- a. Within 6 to 24 hours prior to the entry into and departure from waters under their respective jurisdiction; and
 - b. At least 24 hours prior to the entry into or departure from one of its ports.
- 11.2 SWIOFC States should require all licensed foreign fishing vessels, operating in regards to tuna and tuna-like species to report the quantity and type of catch by species harvested after each fishing trip.
- 11.3 SWIOFC States should collaborate to establish standardized reporting forms, in line with those adopted by the IOTC, including the IOTC Resolutions and reporting requirements_on logbooks. These forms should be fully and accurately completed prior to their timely submission. The logbook should be kept current at all times, in the English or French language(s), and produced on demand to authorised officers during inspection and whenever required.

12. Regional Observers

- 12.1 SWIOFC recommends that, subject to the applicable rules and procedure and the availability of the necessary resources, a Regional Observer Programme (ROP) is to be established within the framework of the SWIOFC. To the extent possible, the SWIOFC should make the necessary arrangements with on-going initiatives in other regional organizations as well as at continental level for the implementation of such a programme.
- 12.2 The objectives of the ROP should be to collect both scientific and fisheries data for scientific and management purposes in line with relevant IOTC Resolutions.

- 12.3 The ROP may apply to fishing vessels authorized to fish in the waters under the national jurisdiction of States of the SWIOFC and on high seas under the provisions of IOTC. A regional observer on-board a fishing vessel operating in the waters under the jurisdiction of SWIOFC States as well as on the high seas in the same fishing trip will need to be authorised also by the flag State of the fishing vessel.
- 12.4 The observer coverage will be at a level that is equitable between fishing methods, such as purse seine, longline and pole and line, and in line with the relevant IOTC Resolutions on observer coverage.
- 12.5 SWIOFC States may consider recovering costs for implementing the ROP through levies imposed by national licencing authorities on the fishing industry.
- 12.6 Irrespective of his/her nationality, the observer should be fully accommodated on board the vessel and provided with conditions of a level accorded to officers in line with the applicable international legal instruments, including those developed by the ILO and the IMO.
- 12.7 In case of non observance or breach of the international rules for the safety and protection of observers against bribing, threatening, intimidation, assault and/or sexual harassment, the relevant coastal and flag States may collaborate and adopt in a coordinated manner penalties and sanctions under their respective jurisdictions. These penalties may include, but not be limited to, the suspension of fishing access to the SWIOFC Region.

13. Vessel Monitoring System (VMS) and Automatic Identification System (AIS)

- 13.1 SWIOFC States should require all licensed foreign fishing vessels, supply and transport vessels, to maintain and operate an approved and functioning VMS and satellite AIS.
- 13.2 SWIOFC States should decide upon and require licensed foreign fishing vessels, supply and transport vessels to maintain standardised and compatible VMS and satellite AIS.
- 13.3 SWIOFC States should undertake all necessary measures to build capacity for receiving, compiling, and sharing all transmission data in a standardised and harmonized format.
- 13.4 To the extent possible, SWIOFC States should share VMS data according to jointly agreed principles and the applicable confidentiality rules.
- 13.5 SWIOFC States should require licensed foreign fishing vessels, supply and transport vessels to transmit VMS position data, or agree for the coastal States to re-transmit its VMS data to all SWIOFC States, at a minimum interval of every two hours, when located within the waters under jurisdiction of a SWIOFC State.
- 13.6 Licensing States should require licensed vessels to transmit data through other means in the case of a VMS or AIS malfunction, and commit to repairing any such malfunction within seven (7) days to reinstate regular data transmissions, or to return to a port designated by the licencing coastal State. The relevant SWIOFC State may agree on special arrangements to allow the vessel to continue fishing. Such special arrangements may include:

- a. Reporting of the vessel's hourly positions at least once every 4 hours by electronic means to the relevant national authorities, including the following: date, time (UTC), latitude and longitude in degrees, minutes and decimal minutes, course (true direction), and speed (knots);
 - b. Notice of estimated time and port of arrival; and
 - c. A copy of the vessel track for the voyage for verification purposes.
- 13.7 Each SWIOFC State should keep a record of the frequency of VMS breakdowns in order to discourage repeated use or abuse of these special arrangements.
- 13.8 SWIOFC States should agree on a minimum VMS administrative fee, unless this fee is included in the licence fee.

14. Appointment of Agent

- 14.1 Each coastal State should require the flag States' fishermen's associations, and operators of licensed foreign fishing vessels, supply and transport vessels to appoint a certified agent from the coastal State. The coastal State should hold the agent legally accountable for the vessel and its activities, including the ability to receive documentation of and respond to legal processes.
- 14.2 Coastal States should establish and maintain a public list of agents. Coastal States should require agents to provide a bond, be a continuous resident of good standing, without a criminal record or any historical or present involvement in IUU fishing and associated activities.

15. Foreign Fishing Vessel in Transit

- 15.1 SWIOFC States should require any foreign fishing vessel that does not maintain a license to fish to keep all fishing gear securely stowed when transiting through the waters under the jurisdiction of SWIOFC States.
- 15.2 SWIOFC States should require any foreign fishing vessel transiting through waters under their jurisdiction to communicate the purpose, date, time, geographical position, and quantity and type of fish on board upon entry to and departure from the waters under their jurisdiction. A vessel that does not provide this report should be subject to inspections at the next port of call.
- 15.3 SWIOFC States should require the transiting foreign fishing vessel to maintain valid satellite and coastal AIS transmission at maximum strength while transiting in waters under jurisdiction of a SWIOFC State.

16. Vessel and gear markings

SWIOFC States should require:

- a. all licensed, foreign fishing vessels to be clearly marked in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, and the relevant IOTC Resolutions; and

- b. the gear marking to be based on relevant FAO guidelines, standards, and recommendations on the marking of fishing gears.

17. Authorised gear

SWIOFC States should require all licensed foreign fishing vessels to only carry on board authorized fishing gears when in waters under the jurisdiction of any SWIOFC State.

18. Use of Fish Aggregating Devices (FADs)

- 18.1 SWIOFC States should require that all licensed foreign fishing vessels, and supply and transport vessels that carry, deploy, retrieve, or in any other way operate with FADs to maintain a standardized FAD logbook, or equivalent, within the Southwest Indian Ocean region in accordance with the relevant IOTC Resolutions.
- 18.2 SWIOFC States should require FAD logbooks to be submitted to the competent authority of the licensing State on a monthly basis.
- 18.3 SWIOFC States should require that all FADs are clearly marked in accordance with the relevant IOTC Resolutions and international best practices.
- 18.4 SWIOFC States should require that all deployed drifting FADs be locatable by satellite and retrievable, and any lost FADs should be reported by the operator or agent to the licensing State.
- 18.5 SWIOFC States may decide the number of FADs deployed by licensed vessels in waters under their jurisdiction. This number should not exceed the number of drifting FADs set in the relevant IOTC Resolutions.

19. Foreign fishing vessels in port

SWIOFC States should require that all foreign fishing vessels that utilize one of their ports or offshore terminals should comply with all applicable port State measures, in line with the PSMA and the IOTC Resolution on PSM, including any relevant requirement for advance notice and cooperation and compliance with inspection procedures.

20. Transshipment

- 20.1 SWIOFC States should require all transport vessels to be registered on the IOTC Record of authorised vessels.
- 20.2 SWIOFC States should only allow transshipment to occur at designated ports or offshore terminals, in accordance with the PSMA and the IOTC Resolution on PSM. At-sea transshipments by any fishing vessel should be prohibited within waters under the jurisdiction of a SWIOFC State, unless the safety of the vessel and crew is at risk, and authorization is issued by the licensing State.

- 20.3 In order to tranship within a SWIOFC State's designated ports or offshore terminals, the fishing vessel should:
- a. Submit a request for permission to tranship in port or at an offshore terminal at least 24 hours in advance, providing the details of the quantity and species of catch to be transhipped and the desired time and designated port/offshore terminal and the name of receiving vessel;
 - b. If authorised, the fishing vessel should be required to pay the associated fee upon arrival in port or offshore terminal;
 - c. Facilitate the activities and inspections of the SWIOFC States' competent authorities without interference, intimidation, or obstruction and allow the competent authorities access to all relevant areas of the vessel and information, including holds, records, and gear;
 - d. Submit a transhipment declaration to the port State, the vessel's flag State, and any other body as required, such as the IOTC.

21. Landing

- 21.1 SWIOFC States should require that all foreign fishing vessels land all their catch in one of their designated ports.
- 21.2 SWIOFC States should require that all foreign fishing vessels that intend to land fish in any of their designed ports provide at least 24-hour advance notice to the competent authority of the port State for inspection purposes. The advance notice should include the quantities, weight, and species on board and the location where the catch was made. In addition, the logbook should be submitted to the competent port State authorities for inspection and verification.

22. By-catch and discards

- 22.1 All licensed fishing vessels should land all bycatch at a designated port and should not discard at sea fish except for endangered threatened and protected species (ETPs) which should be released immediately after capture to minimize mortality.
- 22.2 SWIOFC States should require all licensed fishing vessels to comply with the relevant national and international laws, including relevant IOTC Resolutions and international best practices on bycatch mitigation solutions and devices.
- 22.3 To the extent possible, SWIOFC States and vessel operators should endeavour to make the maximum benefits on the use of by-catch for food security and value addition. SWIOFC States should undertake adequate measures to ensure that the SWIO is the final destination for by-catch.
- 22.4 Coastal States are encouraged to put in place an appropriate mechanism for sharing benefits arising from by-catch caught by vessels fishing in their respective waters.

23. Crew

- 23.1 SWIOFC States should encourage at least 10% employment of regional crews on foreign fishing vessels licensed in the region.
- 23.2 SWIOFC States should also require that terms and conditions for employment of fishing crews be in line with the relevant ILO standards and be applied without any discrimination and regardless of the nationality of crew members. SWIOFC States will strive to collaborate and create incentives for those vessels complying with the requirements set out herein.

24. Working conditions on-board fishing vessels

In order to combat human rights violations and human trafficking, SWIOFC States should require all licensed foreign fishing vessels, supply and transport vessels, and all vessels authorised to call in one of their designated ports to comply with the minimum international labour standards, as reflected in the ILO Work in Fishing Convention No. 188.

25. Implementation and updating

- 25.1 All SWIOFC States, at all levels of the country, as well as to flag States of vessels operating in the SWIOFC Region, fishing associations, sub-regional, regional and global organizations, whether governmental or non-governmental, and all persons, including vessel operators, engaged in fishing and fishery-related activities, should collaborate in the fulfilment and implementation of the objectives and principles contained in these Guidelines.
- 25.2 SWIOFC, in accordance with its Statutes, will advise its Members on the application and implementation of these Guidelines.
- 25.3 SWIOFC may revise the Guidelines, taking into account developments in fisheries.
- 25.4 SWIOFC States should promote the understanding of the Guidelines among those involved in fisheries, including, where practicable, by the introduction of schemes, which would promote voluntary acceptance of the Guidelines and their effective application.

26. Disputes relating to fishing activities and practices

SWIOFC States should cooperate in order to prevent disputes. All disputes relating to fishing activities and practices should be resolved in a timely, peaceful and cooperative manner, in accordance with applicable international agreements or as may otherwise be agreed between the parties concerned. Pending settlement of a dispute, the States concerned should make every effort to enter into provisional arrangements of a practical nature, which should be without prejudice to the final outcome of any dispute settlement procedure.