

Proposal for a LDAC submission to the Commission on the minimum terms and condition for fisheries access within South West Indian Ocean Fisheries Commission (SWIOFC) member states' jurisdiction.

Date: 21 March 2017

On Friday the 16th of March 2017, representatives from the Long Distance Advisory Council (LDAC) participated in the consultative meeting on minimum terms and conditions for fisheries access within SWIOFC member states' jurisdiction.

The LDAC thanks the Indian Ocean Commission for organising this event and for allowing the opportunity for members of the LDAC to contribute to the finalising of the agreement. It was encouraged at the meeting that, in order to contribute to the work of the SWIOFC in finalising the text of the agreement, the LDAC should submit comments on the draft text in writing, so that these can be considered by the Commission.

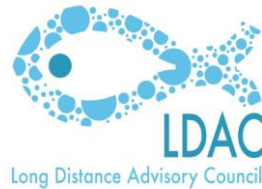
1. General observations:

The LDAC recognises that SWIO coastal States have the sovereign right to exploit the marine resources in waters under their jurisdiction for the benefits of their population, with the corresponding responsibilities to do it in line with the UNCLOS, the UN Fish Stocks Agreement and the FAO Code of Conduct for Responsible Fisheries. That includes the obligation to cooperate at regional level for the sustainable management of fisheries targeting highly migratory resources like tuna.

The LDAC agrees that an agreement between SWIO coastal States may help sub-regional cooperation and assist the IOTC in achieving some of its objectives, in particular with regards to regional programs for inspection, through implementation of the PSMA and relevant IOTC measures, and regional observer programs. We believe that the existence of such an agreement will help strengthening compliance at the sub-regional level, which can only benefit SWIO coastal States and, by extension, IOTC CPC.

We believe that any new arrangement agreed by SWIO coastal States to manage the exploitation of tuna and related species should be consistent with all applicable laws and regulations, and not undermine the mandate of the IOTC, and IOTC conservation and management measures regarding these stocks. Indeed, considering that species under the mandate of IOTC occur on the high seas as well as in waters of many other coastal States in the Indian Ocean, we believe that the SWIO countries agreement should be envisaged as a contribution to IOTC efforts and binding measures to manage fisheries sustainably.

We therefore support an agreement on minimum terms and conditions for the exploitation of tuna and tuna-like species that will strengthen regional cooperation for assisting the IOTC to fulfil its responsibilities, and will assist SWIO coastal States in the harmonisation of access agreements and monitoring and control of fishing activities in their EEZ.



In relation to the draft structure of the SWIO Fisheries Cooperation Agreement (as laid down in Annex 3 of the text), we would like to understand what the purpose of this agreement is. We reiterate our conviction that IOTC is the only competent management body for tuna and tuna-like species in the Indian Ocean. We have doubts about an agreement where funding will depend on licensing opportunities and license use for each year. Such an arrangement is likely to encourage the proliferation of licenses granted and compromise the functioning of any such agreement. We believe that countries should agree on a scheme of contributions that is not dependent on this.

2. Comments on the draft text of the agreement:

We welcome the fact that the agreement does cover all vessels, including vessels with flag of member states of SWIOFC that are fishing in another country's EEZ.

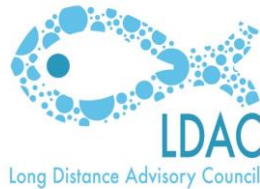
Article 4

The LDAC agrees with pre-fishing inspection protocols. However, for the sake of efficiency, we favour the adoption of regional protocols for inspection, along the lines of those already existing at the IOTC, and e-PSA requirements. Taking into account that an important part of the fleet as the purse-seine fleet carries out all its operations from ports in this region, therefore subjected to port state measures on a regular basis, inspections should be valid for a sufficiently large number of years, as well as mutual recognition of these inspections by other countries. In these circumstances, in order to avoid the costs associated with these inspections and therefore to increase fleet operational costs, consecutive inspections should be avoided if there are no substantive changes in the vessels which can be demonstrated by documentary means with the Certificates established by international maritime legislation.

Our proposal is that inspections recorded in the IOTC e-PSA site will be valid for as many license applications as those extended within a year after the date of inspection, and vessels are re-inspected at the end of that term, unless the vessel technical characteristics, including those parameters affecting the vessel's fishing capacity, have been modified during that period.

Article 6

The LDAC fully supports the need to deny fishing authorisation to vessels that have been proven to have violated fisheries laws. However, the LDAC is concerned about point (d), which states that a petitioning vessel should only be given authorisation if it '*does not appear on any existing IUU vessel lists, has no evidence that the vessel has conducted IUU fishing or has connection to IUU fishing or other fisheries related crime activities*'. The LDAC recommends that only IUU lists compiled by RFMOs should be applicable here. It is also not clear what is meant by '*other fisheries related crime activities*' and why this is needed in the text.



It is therefore suggested that the following text replaces point (d) and (e):

(d) does not appear on any existing IUU vessel list compiled by RFMOs and complies with its obligations under all applicable national and international laws and regulations

We would further support that IMO numbers (as reliable Unique Vessel Identifiers) become a mandatory requirement to obtain a fishing license within SWIO waters, for both national and foreign vessels, provided that the vessels are eligible under the International Maritime Organisation scheme. In no case should this requirement be less restrictive than the one implemented by the IOTC (all fishing vessels over 24 meters length).

Article 7: Financial Compensation

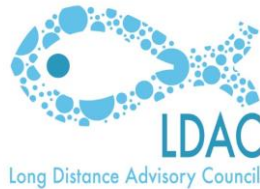
The LDAC agrees that Participating states should work towards standardisation and harmonisation of financial compensation. The draft protocol states that participating states shall establish financial compensation to at least “12% of the average prevailing market value of the tuna and tuna like species resources”. However, it is not clear whether the 12% is in relation to the value of the entire resource of tuna and tuna like species in participating states EEZs, or whether this refers to the value of specific catches made by authorised vessels. Moreover, it is not clear whether the minimum financial compensation is inclusive of payments made by vessel for fisheries management costs or not. Given that market values of tuna and tuna like species are variable it is also unclear how participating states will know what 12% of the average market value is when setting prices in advance for fishing licenses.

Our proposal would be that SWIO coastal States organise an open discussion on this issue with the operators involved in fishing in SWIO waters and other relevant stakeholders, to arrive at a fair and harmonised financial compensation. As recognised in the draft text, this should take into consideration all elements, including factors such as costs of management, the value of the fish, exploitation costs and MCS related charges.

The participating States shall work together, in consultation with industry and other stakeholders, to standardise and harmonise financial compensation for access to resources of tuna and tuna-like species within waters under their national jurisdiction, duly taking into account factors such as costs of management, the value of the fish, exploitation costs and MCS related charges.

Furthermore, in order to harmonise financial compensation, LDAC recommends that parties to the agreement should commit to disclosing, in the public domain, information on license fees payments structures, as is done for EU fishing under the Sustainable Fishing Partnership Agreements (SFPAs). Suggested text to this end is:

“Participating states shall disclose, in the public domain, all information on payment structures applicable to vessels fishing tuna and tuna like species”.



Article 8: Regional record of foreign licensed vessels

We are in full agreement with coastal States sharing a list of all licensed fishing vessels, national and foreign, and making it public. However, we consider that all references to compliance by tuna vessels shall be handled by the IOTC, for examination by the IOTC compliance committee. Therefore, we propose that the SWIO list should contain a link to the relevant information in the IOTC web page.

The revised text could read:

“The regional record shall be established and be available on the internet. It shall provide reference to relevant compliance information held by the IOTC for the listed vessels.”

The vessel IMO number should be added to the regional record of licensed vessels.

Article 9: Flag State or fishing association responsibility

The draft agreement states that fishing associations shall have the responsibility to ensure compliance of their vessels with participating state’s laws and regulations. However, this misrepresents the role and legal standing of fishing associations. The Flag state of the vessel has the sole responsibility in this regard, not the fishing associations. These are not governing bodies that could bear such responsibility. It is therefore recommended that Article 9 is entitled Flag State responsibility, and the second paragraph is deleted.

Article 11: Vessel reporting requirements

Point a) should consider the range of 3 to 24 hours (rather than 6 to 24 hours), so that this is in line with common practice.

We believe that catch and other reports shall be limited to activities within the EEZ of SWIO participatory States, rather than refer to the whole trip. The activities of fishing vessels outside of the EEZ of SWIO countries are under the competence of IOTC.

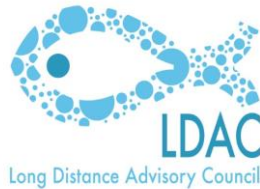
We therefore recommend the following amendment to the text:

“The participating States shall require all licensed foreign fishing vessels, operating in regards to tuna and tuna-like species, to report the quantity/type of catch harvested after each fishing trip within waters under their jurisdiction.”

Article 12: Regional Observers

LDAC is in full support of this provision and the EU fishing sector would like to offer their cooperation with a pilot programme to test implementation of the ROS. We feel the requirements of the IOTC ROS should be applied, to avoid the duplication of tasks.

With regards to e-Monitoring Systems (EMS), we believe these systems are cost efficient and reliable, and complement and facilitate the work of observers. Some of the EU boats are using it and are currently conducting a pilot in Seychelles to test the effectiveness of e-Monitoring to record data at-sea. They would be happy to share the results of this study with SWIO coastal States for their consideration and decision.



Article 13: Vessel Monitoring System (VMS) and Automatic Identification System (AIS)

The LDAC fully agrees that it must be a requirement for all vessels to maintain and operate a Vessel Monitoring System (VMS). However, the requirement to also maintain and operate an Automatic Identification System (AIS) should be removed from the agreement, without prejudice to the legislation of the flag state.

This is partly because AIS is not fully reliable as it can be tampered with. More importantly, AIS can be accessed by many parties and the sector has concerns that using it may undermine the security of their fishing operations in the region. It should be further noted that unlike VMS, AIS is not used primarily for compliance purposes, but is a system intended to facilitate safety at sea, including for avoiding collisions between vessels. All references to AIS in the agreement should therefore be removed. Moreover, the LDAC request that the reporting of VMS records shall be limited to the EEZs of the coastal countries in which the vessel operates.

Article 18: Use of Fish Aggregating Devices (FADs)

The LDAC believe that the impact of FADs on fishing capacity should be duly taken into account. In this context, any attempt from SWIO coastal States to adopt requirements for FADs should be in line by those adopted by the IOTC.

However, given the drifting nature of these devices, management efforts can only be focused on a regional level. Any restriction on the number of FADs in a particular EEZ would be impossible to achieve without regional coordination.

Beyond efforts to manage the numbers of FADs, the LDAC recommends that the SWIOFC should promote the use of non-entangling and biodegradable FADs, which will reduce the impact of FADs on the marine environment. This could be included in the agreement. The EU sector is happy to share the results of their efforts in this domain with SWIO countries.

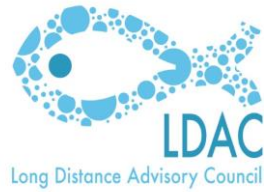
Regarding the loss of FADs, it is not always possible to know whether a FAD has been lost, as there are many FADs that are retrieved by other vessels and therefore reused without them being lost. These events are recorded in FAD logbooks and we believe that coastal countries should use these to assess the number of FADs that are actually lost.

Article 21: Landing

Landings should take place in an IOTC designated port, in line with the FAO Port State Measures Agreement, in order to facilitate control.

Article 22: By-catch and discards

We propose that SWIO coastal States follow the rules of IOTC.



Article 23: Crewing

We feel selection of crew members shall be based on skills. As skilled labour is not always available, programmes for the training of crew, according to international requirements, should be developed and supported, so that a higher percentage of local crew can be taken on board. Note that most flag States require that vessels have a minimum number of crew positions filled by nationals of that State. This requirement usually represents more than 50% of the total number of crew members.

We agree that the same Terms and Conditions for employment should be applied to the whole fishing crews, in line with International Labour Organisation (ILO) standard regardless of nationality of the crews. Furthermore, to combat human rights violations, we think that all licensed fishing, supply and transport vessels, and all vessels authorised to call in a designated port of a participating State, should comply with the minimum international labour standards, as reflected in the ILO Work in Fishing Convention 188.

END