



Indian Ocean Tuna Commission
Commission des Thons de l'Océan Indien



IOTC – 2015 – RPSM06 – MoU on interagency cooperation

DRAFT
MEMORANDUM OF UNDERSTANDING
ON INTERAGENCY COOPERATION AND COORDINATION FOR EFFECTIVE PORT STATE MEASURES IN
RELATION TO FISHING AND FISHING RELATED ACTIVITIES

BETWEEN THE

[FISHERIES AGENCY]

AND

**[APPLICABLE AGENCIES RESPONSIBLE FOR PORTS, MARITIME TRANSPORT, CUSTOMS,
IMMIGRATION, HEALTH/SANITARY, VETERINARY, LABOUR, POLICE, COAST GUARD, NAVY,
ATTORNEY GENERAL, FOREIGN AFFAIRS]**

Note: This is a template which may be tailored to the language and circumstances used in each country. For this reason, indicative language which may be amended is shown in [square brackets] and indicative content in *italics*.

1. PURPOSE AND OBJECTIVE

1.1. The purpose of this interagency Memorandum of Understanding (MOU) is to strengthen the working relationships between the [Fisheries Agency] and [applicable agencies responsible for Ports, Maritime Transport, Customs, Immigration, Health/Sanitary, Veterinary, Labour, Police, Coast Guard, Navy, Attorney General, Foreign Affairs] in relation to exercising effective port State measures over foreign fishing vessels that call into the ports of [country].

1.2 The objective of this MOU is to strengthen the combined efforts of the agencies to effectively implement national laws and international obligations of [country] that address illegal, unreported and unregulated (IUU) fishing and fishing related activities, with a view to ensuring the long-term conservation and sustainable use of living marine resources and marine ecosystems.

1.3 Underlying the purpose and objective of this MOU is the recognition by agencies that:

- (a) port State measures provide a powerful and cost-effective means of preventing, deterring and eliminating IUU fishing and fishing related activities;
- (b) vessels involved in IUU fishing and fishing related activities may also be involved in other national or transnational criminal activities; and
- (c) integration of port State measures into the broader system of port controls at national, regional and international levels is essential to achieve maximum efficiency and effectiveness in addressing all such activities.

1.4 This MOU establishes a process and framework for notification, consultation and coordination among agencies in the procedures, actions and measures to be taken in relation to vessels seeking entry or in port and requirements for information, inspection and enforcement.

2. BACKGROUND

2.1 Port State Measures

2.1.1 This MOU provides a foundation for cooperation and coordination in the implementation of, *inter alia*, the legally binding Resolution 10/11 of the Indian Ocean Tuna Commission on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (“IOTC Resolution”). It establishes a framework for procedures, actions and measures in relation to vessels seeking entry into port or in port and incorporates requirements of the IOTC Resolution, including the following definitions:

- (a) “fishing” means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (b) “fishing related activities” means any 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;
- (c) “port” includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or resupplying;

- (d) “use of port” includes landing, transshipping, packaging, and processing of fish and for other port services including, *inter alia*, refueling and resupplying, maintenance and drydocking, and
- (e) “vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

2.1.2 The vessels which are subject to port State measures, as described in the IOTC Resolution, include those that are not entitled to fly the flag of [country] that are seeking entry to its ports or are in one of its ports, with some stated exceptions relating to artisanal vessels of neighbouring States and container vessels not carrying fish or carrying previously landed fish providing there are no clear grounds for suspecting the vessels have engaged in fishing related activities that support IUU fishing.

2.1.3 The IOTC Resolution requires integration and coordination at the national level. To this end, [country] is required, to the greatest extent possible, to:

- (a) integrate or coordinate fisheries related port State measures with the broader system of port State controls;
- (b) integrate port State measures with other measures to prevent, deter and eliminate IUU fishing and fishing related activities in support of such fishing, taking into account as appropriate the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and
- (c) take measures to exchange information among relevant national agencies and to coordinate the activities of such agencies in the implementation of the IOTC Resolution.

2.1.4 This MOU aims to facilitate such integration and coordination among agencies, integrate port State measures with other measures to combat IUU fishing and provide a platform for exchanging information and coordinating activities of all relevant national agencies in the implementation of the IOTC Resolution.

2.2 General mandates of agencies

2.2.1 The Fisheries [Agency] has the statutory responsibility for the conservation and management of fish in areas under national jurisdiction, and for ensuring the implementation of binding IOTC Resolutions which may apply to all areas in which IOTC has competence. Its responsibilities include the collection, maintenance, exchange and dissemination of fisheries-related data and information, liaison with regional fisheries bodies, including IOTC, and other countries on fisheries matters and the monitoring, control and surveillance of fisheries and related activities, including inspection and enforcement. As such, this MOU acknowledges the lead authority and responsibility of the Fisheries [Agency] to facilitate implementation of the port State measures described in the IOTC Resolution and this MOU.

2.2.2 The general mandates of other agencies, as they relate to this MOU, are as follows: *(to be completed as appropriate, some suggestions are given in italics. Relevant laws establishing the agencies may be quoted)*

- (a) Port Authority *(e.g. receive requests to enter port, control entry into port, facilitate inspections, allow/deny use of port services)*

- (b) Maritime Transport (*e.g. receive reports from and inspect vessels used for fishing related activities), including carrier and supply vessels, inspect vessels to ensure certain maritime standards are met – e.g. pollution, labour and safety and as necessary detain vessels*)
- (c) Customs (*e.g. inspect and provide customs clearance as appropriate for fish, fish products and other items to be landed or transhipped in port*)
- (d) Immigration (*e.g. inspect identification documents showing nationality of master and crew, and ensure validity of documentation*)
- (e) Health/Sanitary and Veterinary (*e.g. inspect fish and fish products to ensure compliance with relevant national standards, laws and regulations*)
- (f) Labour (*e.g. inspect and investigate to ensure that relevant national and international standards for labour on board the vessels are being met*)
- (g) Police, Coast Guard, Navy (*e.g. investigate and enforce national laws in accordance with respective mandates, enforce denial of use of port*)
- (h) Attorney General (*e.g. ensure national laws are adequate to implement the IOTC Resolution, review outcomes of investigations and support legal or administrative proceedings in cases of suspected non-compliance or violations.*)
- (i) Foreign Affairs (*e.g. take necessary action pursuant to applicable international and national law and policy, including with flag States, other coastal and port States, IOTC CPCs and relevant regional and international organizations*)

2.2.3 Nothing in this Agreement is intended to diminish or other-wise affect the authority of any agency to implement its respective statutory mandate.

3. COOPERATION, COORDINATION AND INTEGRATION OF PORT STATE MEASURES

3.1. Cooperation and Coordination

3.1.1. Agencies shall exercise the fullest possible cooperation and coordination among themselves, at all organizational levels and in particular among focal contact points to be agreed pursuant to paragraph xx, in developing procedures for notifications and data and information requirements and exchange, verifying information as appropriate, maintaining databases, ensuring effective vessel inspection and enforcement and liaising with flag States, other coastal and port States, IOTC CPCs and relevant regional and international organizations and facilitating training for inspectors.

3.1.2. The Fisheries [Agency] shall facilitate a process to develop interagency procedures to cooperate and coordinate efforts at all relevant times to carry out the purpose and objective of this MOU, including:

- (a) requiring relevant information from a vessel requesting entry into port;
- (b) receiving and exchanging such information promptly;
- (c) liaising as appropriate with organizations, States or other contacts outside [country];
- (d) deciding whether to allow port entry, and if so whether it is conditional;
- (e) deciding whether to refuse use of port after entry into port but prior to inspection;

- (f) identifying which vessels to inspect;
- (g) carrying out inspections;
- (h) reporting on inspections;
- (i) deciding whether to refuse use of port after inspection and communicating the decision;
- (j) enforcing refusal of use of port;
- (k) deciding whether to take other measures;
- (l) transmittal of inspection reports and communication of any measures taken;
- (m) taking legal or administrative action, and communicating the decision to take such action;
and
- (n) establishing and maintaining a database to record and facilitate the above actions.

3.1.3. The procedures to be developed pursuant to paragraphs 3.1.1 and 3.1.2 shall take into account relevant national laws and procedures and aim to address any existing gaps. The respective agencies agree to take steps to further strengthen existing laws and procedures as appropriate.

3.1.4. To facilitate the understanding of IUU fishing, the IOTC Resolution and other IOTC Resolutions legally binding upon [country] and to support the development of such procedures, the Fisheries [Agency] shall provide the other agencies with all necessary background information.

3.1.5. The agencies agree to cooperate fully in the development of the procedures, which should be finalized by [January 1, 20**], and to implement them upon their approval.

3.1.6. The agencies agree to fully implement any decision made in accordance with the agreed procedures, and until such procedures are in place to cooperate fully to implement decisions and directions by the Fisheries [Agency] that are taken to implement the IOTC Resolution.

3.1.7. By [January 1, 20**] and at the beginning of each succeeding fiscal year, the agencies will develop an annual work plan to identify and define the priorities to be addressed during the year. The workplan will include, *inter alia*:

- (a) a report of port State measures taken in the previous year, including successes, constraints and solutions to constraints; and
- (b) a plan for strengthening cooperation and coordination to implement port State measures in the ensuing year, including identification of specific procedures, training and information exchange, including:
 - i. risk management;
 - ii. relevant laws and procedures, and their adequacy to achieve the purpose and objectives of this MOU;
 - iii. operations and compliance;
 - iv. intelligence and information sharing;
 - v. funding;
 - vi. information and communications technology;
 - vii. human capacity development;
 - viii. joint communications; and
 - ix. international relations.

3.1.8. The [Senior manager] of the Fisheries [Agency] shall coordinate interagency meetings to develop and review procedures and the implementation of the work plan agreed pursuant to this MOU and address matters of general cooperation and coordination. Meetings shall be held at least [monthly] and each agency agrees to attend at the most senior level possible.

3.1.9. Each agency agrees to designate a focal contact for carrying out interface activities, with responsibilities that include ensuring and facilitating prompt and effective communication, decisionmaking, cooperation and coordination in taking actions and measures and reporting on outcomes in order to aid the control and enforcement process.

3.1.10. Each agency agrees to prepare and distribute to all relevant personnel a suitable directive concerning the effective implementation of this MOU. The agencies will update this information as the need arises and will ensure that relevant managers and personnel are provided with a copy of this MOU and the applicable directive.

3.1.11. All information shall be kept up to date by all agencies.

3.1.12. Resolution of interagency policy issues concerning this MOU and specific areas of implementation will be coordinated by the [Office of the Cabinet]. Resolution of issues concerning inspection and enforcement activity involving the mandate of any agency jurisdiction will be coordinated by [the Attorney General].

3.2. Information and data exchange

3.2.1. The agencies agree to promptly exchange all data and information falling within the purpose and objective of this MOU, including that relating to vessels (including *inter alia* their requests for and authorization of entry into port, duration of port call, proof of IUU fishing or related activities and all other information), planned inspections, results of inspections, reasonable grounds to believe non-compliance with IOTC Resolutions or national laws, denial of port use, legal or administrative action and all other information necessary to ensure effective and coordinated law enforcement.

3.2.2. The agencies agree to integrate relevant data and information falling within the purpose and objective of this MOU into existing databases or registers of information as appropriate, and to provide for interagency access to such databases.

3.2.3. This MOU contemplates data exchange through both hard copy and computer data bases, in accordance with procedures to be established in accordance with paragraph 3.1.2.

3.3. Inspections

3.3.1. The agencies may conduct joint inspections as necessary in accordance with their mandates and the purpose and objective of this MOU. Such inspections may be in accordance with an annual work plan which is developed in accordance with paragraph 3.1.6, priorities agreed at [monthly] meetings held in accordance with paragraph 3.1.7 and/or scheduled on an *ad hoc* basis.

3.3.2. Where inspectors, in the course of conducting separate inspections, discover situations involving potential violations of the other agency's laws or regulations, or non-compliance with IOTC Resolutions, referrals to the appropriate office will be undertaken as described below.

3.4. Referrals

3.4.1. For law enforcement purposes, the agencies agree to identify a system to track and manage referrals of proof or reasonable belief that IUU fishing or related activities in support of such fishing have occurred, potential violations of national laws or IOTC Resolutions, allegations of violations, or situations requiring inspection, evaluation or follow up, as appropriate.

3.5. Training

3.5.1. The agencies agree to support joint inspection and enforcement initiatives by cooperating in the development and conduct of periodic training programs for each other's personnel in the respective laws, regulations, and compliance requirements of each agency, as appropriate, to ensure that valid referrals are made when proof or reasonable belief that IUU fishing or related activities in support of such fishing have occurred or potential violations are found.

3.5.2. This MOU contemplates exchanges of appropriate training materials and information and development of specialized training activities in accordance with procedures that may be established separately.

3.6. Financial arrangements

3.6.1. Except where otherwise provided in this MOU or agreed separately, each agency shall bear its own costs of fulfilling its commitments pursuant to this MOU.

4. ENTRY INTO FORCE, AMENDMENT, PERIOD OF VALIDITY

4.1. Entry into force

4.1.1. This MOU enters into force upon signature of all parties. Until such time as all parties have signed, each agency shall ensure provisional implementation in the spirit of cooperation and coordination.

4.2. Amendment

4.2.1. This MOU may be amended in writing by the consent of all parties.

4.3. Period of validity

4.3.1. This MOU shall continue in effect unless modified in writing by mutual consent of both parties or terminated by either party upon 30 days advance written notice to the other.