



POLICY BRIEF

SOUTH WEST INDIAN OCEAN
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REGIONAL SUSTAINABILITY: MINIMUM TERMS AND CONDITIONS FOR FOREIGN FISHERIES ACCESS

The ocean ecosystems are interconnected and trans-boundary. Fishing activity within the exclusive economic zone (EEZ) of one country can impact another country, especially when it comes to tuna – a highly migratory species that plays a key role in the South West Indian Ocean (SWIO) marine ecosystems and is a vital source of food and livelihood for coastal communities.

Coastal states can enter into fisheries access agreements with distant water fishing nations (DWFNs) or representative fisheries organizations/associations that allow these parties to fish in their EEZs in exchange for financial compensation or other economic benefits such as local employment opportunities.

Yet, there is a need for cooperation among SWIO countries to ensure that foreign fishing activities, as permitted under fishery access agreements, do not harm the health of their shared marine ecosystems. Such cooperations should still recognize that coastal states have sovereign rights to explore, exploit, conserve and manage all marine resources.

The **Guidelines for Minimum Terms and Conditions (MTC) for Foreign Fisheries Access in the South West Indian Ocean Fisheries Commission (SWIOFC) Region** aim to provide a framework for cooperation with DWFNs or representative fisheries organizations. The goal is to ensure the conservation and sustainable utilization of tuna and tuna-like species, including by-catch, within the SWIOFC region.

The MTC Guidelines include provisions for a harmonized approach to several key issues that need to be addressed when negotiating with foreign fishing, supply, and transport vessels seeking access to tuna and tuna-like species within the waters under the jurisdiction of an SWIOFC state.

MTC GUIDELINE OBJECTIVES

To establish a common access regime for the foreign fishing of tuna and tuna-like species in the SWIOFC Region in order to:

- Improve and generate sustainable economic benefits for the SWIOFC states
- Improve conservation and management of tuna and tuna-like species, including bycatch
- Monitor and control fishing activities more efficiently and effectively.



LEGAL BASIS FOR MTC GUIDELINES

The MTC Guidelines align with, and are based on, existing international and regional instruments, including:

- United Nations Convention on the Law of the Sea (UNCLOS)
- United Nations Fish Stocks Agreement
- Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries
- FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing



OVERVIEW OF THE GUIDELINES

The MTC Guidelines consists of 23 articles that are underscored by sets of rules, or provisions, that call for regional actions, national legislation¹ or national procedure.² The articles, their intentions and the scale and nature of their rules are outlined below.

Table 1: Overview of the MTC guidelines

RA Regional action	NL National legislation	NP National procedure
1. PRE-INSPECTION OF FISHING VESSELS RA NL NP Details pre-licensing inspection as a requisite to obtain a tuna and tuna-like species fishing license.	2. CONDITIONS TO OPERATE NL Licensing and authorization required to fish in SWIOFC state waters.	3. CONDITIONS FOR LICENSING RA NL NP Prerequisites and procedures for a foreign vessel to obtain a fishing license, with measures for vessels previously affiliated with IUU fishing.
4. FINANCIAL COMPENSATION RA NL NP Economic basis and minimum financial compensation that SWIOFC states may receive from foreign vessels.	5. REGIONAL RECORD OF FOREIGN LICENSED VESSELS RA Regional cooperation to establish a record of the foreign fishing vessels, and SWIOFC states' role to contribute.	6. FLAG STATE OR FISHING ASSOCIATION RESPONSIBILITY Foreign flag states and fishing associations' obligations to ensure compliance of their vessels.
7. FISHING ZONES NL NP Identifying and communicating areas in which foreign vessels are not permitted to operate.	8. VESSEL REPORTING REQUIREMENTS RA NL NP Approach to vessels reporting position and quantity and type of catch on board.	9. REGIONAL OBSERVERS RA NL The need for a Regional Observer Programme (ROP) and human-rights measures surrounding it.
10. VESSEL MONITORING SYSTEM (VMS) AND AUTOMATIC IDENTIFICATION SYSTEM (AIS) RA NL NP Requirements and obligations for installing and ensuring functioning VMSs and AISs on foreign vessels.	11. APPOINTMENT OF AGENT NL NP Responsibilities of certified local agents appointed by foreign vessels and overseen by SWIOFC states.	12. FOREIGN FISHING VESSEL IN TRANSIT NL NP Regulations for transiting foreign fishing vessel to prevent unlicensed fishing and ensure monitoring, overseen by SWIOFC states.
13. VESSEL AND GEAR MARKINGS NL Standards and guidelines for vessel and gear markings to be required by SWIOFC states.	14. AUTHORISED GEAR NL SWIOFC states' responsibility and required measures to ensure foreign vessels carry authorised gear.	15. USE OF FISH AGGREGATING DEVICES NL Regulation and monitoring of fish aggregating devices (FADs) on foreign vessels, enforced by SWIOFC states.
16. FOREIGN FISHING VESSELS IN PORT NL SWIOFC states' need to ensure foreign fishing vessels comply with port state measures.	17. TRANSHIPMENT RA NL Regulation and control of transshipment activities under strict conditions and oversight within designated ports or terminals.	18. LANDING RA NL Stipulations for foreign fishing vessels to land their catches, including location and required reporting.
19. BYCATCH AND DISCARDS RA NL Regulation and management of bycatch, such as landing, compliance with laws and ensuring coastal states benefit from bycatch.	20. CREW RA NL NP Promoting regional crew employment on foreign fishing vessels while ensuring fair employment conditions.	21. WORKING CONDITIONS ON-BOARD FISHING VESSELS NL Requiring international labour standards on fishing vessels to prevent human rights violations and human trafficking.
22. IMPLEMENTATION AND UPDATING RA Involving all relevant parties to fulfil objectives of the Guidelines, and the roles of SWIOFC and SWIOFC states in doing so.	23. DISPUTES RELATING TO FISHING ACTIVITIES AND PRACTICES RA Ensuring cooperative and timely resolution of disputes related to foreign fishing activities, in alignment with international agreements and provisional arrangements.	

¹ National legislation comprises binding legal frameworks enacted through a formal legislative process.

² National procedures are administrative or operational protocols derived from legislation, designed to facilitate its implementation.



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STATUS OF IMPLEMENTATION

The status of implementation for each article of the MTC Guidelines differs according to the article itself, the scale and clarity of its provisions, and the SWIOFC state in question. In a series of reports prepared for the SWIOFC Secretariat in 2021, a method to monitor MTC implementation status was outlined. In particular, the reports suggest a review and monitoring process for regional actions and measures, and a dashboard and monitoring process for national implementation.

REGIONAL COLLABORATION

Table 1 indicates which MTC article require regional actions or measures – either as stipulated in their rules or as a prerequisite for national MTC articles. The implementation of the MTC articles that serve as a foundation for regional collaboration is the responsibility of the SWIOFC Secretariat and the Working Party on Collaboration and Cooperation in Tuna Fisheries (WPCCTF).

In particular, the implementation actions assigned to the SWIOFC Secretariat mostly consist of drafting reports, which the WPCCTF is primarily responsible for reviewing and assessing. However, specific actions assigned to the Secretariat include facilitating collaboration between SWIOFC states, aligning SWIOFC initiatives with those of other regional organizations or ongoing continental initiatives and endorsing SWIOFC states' compliance with IOTC resolutions.

NATIONAL IMPLEMENTATION

The majority of the MTC articles (19) require action by SWIOFC states themselves, either by integrating MTCs into legislation or by including them in fishing license conditions, fishery access agreements or standard procedures. Ultimately, national implementation is measured by whether these national articles are entrenched in legislation – either fully or partially, seeing as the articles often consist of multiple rules.

In 2021, Kenya led in terms of SWIO countries that had full implemented national MTC articles (10), followed by Madagascar (9), Tanzania (6) and Mozambique (3). South Africa had not fully implemented any national articles – an observation that may be attributed to the fact that South Africa does not engage in bilateral agreements for foreign fishing access in its EEZ.

Table 2: Number of MTC articles met, partially met or not met for SWIO countries

Country	MTC fully met	MTC partially met	MTC not met
Kenya	10	9	0
Tanzania	6	12	1
Mozambique	3	12	4
Madagascar	9	10	0
South Africa	0	8	11

CONCLUSION

Ultimately, a prominent obstacle for the implementation of the MTC Guidelines, especially those related to national legislation and procedures, is a lack of clarity. A technical legal review of the Guidelines in 2021 found that this lack of clarity was due to several factors. Key terms, including “foreign fishing” and “fishing vessels”, lack technical definitions, which gives way to ambiguity and misinterpretations. There is also inconsistency in term usages, such as “fishing related activities” and “fishery related activities” or “supply” and “support” vessels being used interchangeably. Lastly, the articles’ requirements, practical implications and implementation are not consistently or sufficiently detailed throughout, which prevents countries from developing clear strategies or action plans to adopt these articles. Until the Guidelines are revised and amended to address this lack of clarity, national implementation by SWIOFC countries will likely remain hindered, as the provisions do not clearly reflect their intentions.

A “LEGAL SCRUB” IS REQUIRED FOR FURTHER IMPLEMENTATION

The MTC Guidelines could benefit from a comprehensive expert review and revision, or a “legal scrub”, to address the gaps in clarity that were highlighted in the 2021 technical legal review. This would likely include several non-substantive changes such as adding definitions for technical terms and refining term use. Substantive amendments may include developing legislation or frameworks that countries can readily adopt to implement the articles.

For example, a recent case study on a foreign fisheries access agreement in Madagascar highlighted how ambiguities in the article on fair financial compensation (Article 4 in Table 1) prevented state authorities from ensuring that “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” are considered when entering into fisheries access agreements with DWFNs, and how the article’s approach to determining exact pricing does not sufficiently compensate for the fluctuating market value of tuna and tuna like species. Developing a standardized framework for calculating financial compensation would not only help SWIOFC states ensure that they benefit equally from foreign fisheries access agreements but would also help states harmonize their compensation rates across the region to prevent subregional competition.

RECOMMENDED NEXT STEPS

In practice, a legal scrub would entail convening expert stakeholders in a series of targeted workshops with structured discussions to provide clear, actionable guidance on complex regulatory areas. It would also benefit from establishing specialized working groups within the MTC Task Force. This can streamline the process of revising the MTC Guidelines by allowing experts to focus on specific provisions and craft recommendations that are both practical and enforceable across SWIOFC member states.

These working groups can also help harmonize implementation of the MTC Guidelines by ensuring they represent all stakeholders involved and reflect the latest in sustainable fisheries management practices.



For more information

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