



COMPREHENSIVE REVIEW OF FISHERIES MCS LEGAL CAPACITY IN THE EA-SA-IO REGION

Judith Swan
Legal Expert

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12th April 2022

FINAL REPORT

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EXECUTIVE SUMMARY

This report presents a gap analysis of national legislation that forms the basis for essential legislation that supports monitoring, control and surveillance (MCS) activities, and recommends amendments where the legislation needs strengthening for: Comoros, Kenya, Madagascar, Mauritius, Mozambique, Seychelles and Tanzania.

The gap analysis is based on the Interim Report submitted on 4 February 2022, as reviewed by participants in the Workshop held in Nairobi, Kenya on 2 March 2022. It includes:

- (a) an assessment of international and regional requirements and agreed standards;
- (b) a framework of key elements of MCS and MCS-related fisheries legislation;
- (c) model MCS and MCS-related provisions for national fisheries legislation;
- (d) national dashboards assessing gaps in MCS legislation (compared with the model provisions) and recommending corrective action, and a composite dashboard for all countries.

Regional trends are identified in legislative strengths and weaknesses and reveal significant weaknesses.

This report also addresses the need for legal capacity to strengthen and implement legislation and provides a framework for national procedures to implement port State measures, based on that developed by the Indian Ocean Tuna Commission (IOTC), in which all participating countries are members.

ACRONYMS

| | |
|---------------|---|
| ABNJ | Areas beyond national jurisdiction |
| AIS | Automatic identification system |
| AREP | Advance request for port entry |
| CDS | Catch documentation scheme |
| ERCU | Extended Regional Coordination Unit of PRSP |
| FAO | United Nations Food and Agriculture Organization |
| ICMMs | international conservation and management measures |
| IOC | Indian Ocean Commission |
| IOTC | Indian Ocean Tuna Commission |
| IUU | Illegal, unreported and unregulated |
| MTC | Minimum Terms and Conditions for foreign fisheries access |
| PRSP | Regional Fisheries Surveillance Plan of IOC |
| PSMA | FAO Port State Measures Agreement |
| PSMR | IOTC Port State Measures Resolution 16/11 |
| SADC MCSCC | Southern Africa Development Community MCS Coordination Center |
| SIOFA | Southern Indian Ocean Fisheries Agreement |
| SWIOFC | South West Indian Ocean Fisheries Commission |
| UNCLOS | United Nations Convention on the Law of the Sea |
| UNFSA | United Nations Fish Stocks Agreement |
| VMS | Vessel Monitoring System |

1. INTRODUCTION AND BACKGROUND

1.1. Objective and methodology

The principal objective of this report is to assess a gap analysis of national legislation that forms the basis for essential legislation that supports monitoring, control and surveillance (MCS) activities, and to recommend amendments where the legislation needs strengthening for: Comoros, Kenya, Madagascar, Mauritius, Mozambique, Seychelles and Tanzania.

To achieve this objective, an interim report was prepared with the following elements and reviewed in a regional workshop described in section 1.2 below:

- (a) assess international and regional requirements and agreed standards;
- (b) identify the key elements of MCS and MCS-related legislation and provide model legislation;
- (c) identify legislative gaps in each country and propose amendments consistent with relevant national laws and policies (national dashboards are provided);
- (d) identify regional trends in MCS legislative strengths and weaknesses (a composite dashboard is provided);
- (e) assess legal capacity in each country to support implementation.

In addition to the legislative/capacity study, this report presents information on the gaps reported by some countries in national procedures to implement the Port State Measure (PSM) instruments adopted by the United Nations Food and Agriculture Organization (FAO)¹ and the Indian Ocean Tuna Commission (IOTC).² The port State measures provisions of all relevant international and regional instruments³ are almost identical.

This report suggests a framework for a uniform implementation procedure based on the IOTC publication “Procedures for the implementation of the IOTC Port State Measures” updated by this consultant in 2021.⁴

1 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. <http://extwprlegs1.fao.org/treaty/docs/tre000003E.pdf>

2 Resolution 16/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. <https://www.iotc.org/cmm/resolution-1611-port-state-measures-prevent-deter-and-eliminate-illegal-unreported-and>

3 PSMA, IOTC Resolution 16/11, SIOFA The SIOFA CMM 2020/08 on Conservation and Management Measure establishing a Port Inspection Scheme (Port Inspection) (see note 6 below) and SWIOFC MTC Guidelines (see note 9 below).

4 IOTC. 2021. Procedures for the implementation of the Indian Ocean Tuna Commission Port State Measures. Victoria, Seychelles, FAO. <https://doi.org/10.4060/cb7113en>

The national and composite dashboards provide a regional mechanism for continuing evaluation to monitor progress in implementing MCS legislation.

This report is complementary to a 2022 MCS assessment updating a 2012 report that presented a comprehensive review of MCS capacity in the ESA-IO region.⁵ The assessment was also prepared for Ecofish, which coordinated a workshop in Nairobi, Kenya on 03 March 2022 to consider the outcomes.

In this report, “legislation” refers to all instruments having legal force in a country, such as Acts, Laws, Decrees, Regulations, Orders and other.

1.2. Workshop

An MCS Capacity and Gap Analysis Training & Validation Workshop was held in Nairobi, Kenya on 2 March 2022. Participants reported some strengths and challenges in their national fisheries legislation, mindful that two countries are currently revising their legislation (Mauritius and Seychelles) and other countries had revised or updated their legislation in recent years. The body of this report reflects the discussions and conclusions. A summary of outcomes is described in the following paragraphs.

Participants identified current challenges caused by gaps in fisheries legislation. Key among them was the need to implement MCS-related measures adopted by the Indian Ocean Tuna Commission (IOTC) and Southern Indian Ocean Fisheries Agreement (SIOFA) and the Guidelines on Minimum Terms and Conditions for fisheries access adopted by the South West Indian Ocean Fisheries Commission (SWIOFC).

Other challenges included the need for: strengthened interagency MCS; trade-related measures (catch documentation schemes, catch certification); information transparency; and legislation on MCS technology (VMS, AIS and use of drones).

Presentations and discussions took place on the 53 model MCS legislative provisions based on regional and international obligations and best practices. The national gap assessments revealed that only two countries (Kenya and Tanzania) had adopted most of the model provisions, otherwise a wide range of gaps exist in other countries’ legislation with most provisions either partly or not implemented.

A template had been distributed by Ecofish to participants a week prior to the workshop that was intended to serve as a basis for their review during the workshop (in country

⁵ Available at <http://www.fao.org/3/az384e/az384e.pdf>

working groups) of their country's MCS legislative gap assessment that appeared in the interim report, as well as their legal capacity for implementing MCS legislation and procedures for port State measures.

The template requested participants from each country to:

- identify errors or omissions in the legislative gap assessment;
- assess the recommendations in the interim report for proposed amendments to their legislation;
- identify priority legal issues for addressing the legislation gaps at national level, if any;
- identify an approach, processes and a timetable for addressing the gaps;
- review national legal capacity gaps for developing and implementing MCS related legislation, taking into account the need for inputs across various agencies (fisheries, Attorney General, Public Prosecutions etc) and recommend solutions; and
- report on their procedures for implementing the agreed FAO/IOTC⁶ Port State Measures – which are almost identical, based on a manual of procedures published by IOTC. A table was provided, described below in section 6.

Participants were tasked to review the above issues in country working groups, and outcomes are reported in section 5, 6 and 7 below. Participants requested additional time to submit completed templates and were invited to do so, but only Tanzania submitted a full report.

2. INTERNATIONAL/REGIONAL REQUIREMENTS AND AGREED STANDARDS

Legally binding international MCS obligations are addressed in the 1982 UN Convention on the Law of the Sea (UNCLOS), 1995 UN Fish Stocks Agreement (UNFSA) and the 2009 FAO Agreement on port State measures (PSMA).

All countries in this study are party to UNCLOS, five to PSMA and four to UNFSA, as shown in Table 1 below. Four countries are party to all three instruments.

⁶ SIOFA's measure on a Port Inspection Scheme is very similar to that of the FAO PSMA and IOTC Resolution, but not all countries are party to SIOFA. All countries are members of IOTC, so are bound by the requirements. The SIOFA measure is described in note 3 above and is at <https://www.apsoi.org/management/CMM/08>.

The regional MCS obligations are based on the legally binding Agreement and Resolutions of the Indian Ocean Tuna Commission (IOTC)⁷ and Southern Indian Ocean Fisheries Agreement (SIOFA).⁸ IOTC has adopted a wide range of MCS-related Resolutions, listed in ANNEX 1.

MCS guidelines that form part of the agreed Guidelines on Minimum Terms and Conditions (MTCs) for foreign fisheries access have been adopted by the South West Indian Ocean Fisheries Commission (SWIOFC).⁹ They are not legally binding but were negotiated among SWIOFC members and should be implemented. Many of the Guidelines are based on legally binding obligations under IOTC and international agreements.

Two other initiatives are described below, but they do not have specific standards or guidelines to include in national laws. The legal obligations and standards in the instruments described above are sufficient for their activities.

- (a) The Extended Regional Coordination Unit (ERCU) of the Regional Fisheries Surveillance Plan (PRSP)¹⁰ administered by the Indian Ocean Commission (IOC). The PRSP pools the surveillance officers, patrol vessels and airplanes of the IOC member countries for regional joint deployment plans. It has set up a regional VMS data exchange platform, servicing the national fisheries monitoring centres and implemented a Regional Fisheries Information Exchange Hub.
- (b) The Charter of the Southern Africa Development Community MCS Coordination Center (SADC MCSCC) is not yet in force, and only two countries in this study are party (Mozambique and Tanzania). It is grounded in the 2001 SADC Protocol on Fisheries, a legally binding policy to guide the sector, and its annexed 2008 Statement of Commitment to Combat IUU fishing that enabled regional coordination in SADC waters. Note is taken of its potential regional role and is expected that there will be no legislative requirements additional to those applicable to other regional organisations.

All countries in this study are party to UNCLOS, members of IOTC and SWIOFC and participate in the PRSP. Six are party to the PSMA (but are legally bound by the nearly identical IOTC Resolution), and four are party to the SIOFA.

7 All countries in this report are members of IOTC.

8 Comoros, Kenya, Madagascar and Mozambique are parties.

9 Guidelines on Minimum Terms and Conditions for Foreign Fisheries Access to the SWIOFC Region, available at <https://www.fao.org/fishery/rfb/swiofc/en>. All countries in this report are members of SWIOFC.

10 In October 2021 discussions during an ERCU meeting focused on developing an information exchange protocol, in order to pool data and create an intelligence that will increase the region's efficiency in the fight against illegal fishing. In addition, institutionalizing the PRSP was discussed so it could be carried out over the long term. Finally, the areas of intervention were defined as regards the region's fishery resources management for the years to come. <http://www.mofbe.gov.sc/improved-efficiency-in-the-south-eastern-part-of-the-indian-ocean/>
All countries in this report participate in PSRP.

Parties to International and regional instruments

| | Comoros | Kenya | Madagascar | Mauritius | Mozambique | National | Tanzania |
|--|---------|-------|------------|-----------|------------|----------|----------|
| International obligations | | | | | | | |
| UNCLOS | | | | | | | |
| UNFSA | | | | | | | |
| PSMA | | | | | | | |
| Regional obligations | | | | | | | |
| IOTC | | | | | | | |
| SIOFA | | | | | | | |
| Regional MTC Guidelines (negotiated, not legally binding) | | | | | | | |
| SWIOFC | | | | | | | |
| Initiatives that are based on the above obligations and standards | | | | | | | |
| PRSP | | | | | | | |
| SADC | | | | | | | |

The MCS obligations in the above instruments, while not legally binding on non-parties, may be regarded as acceptable standards because they usually appear in multiple instruments and have been accepted by a wide range of countries, including non-parties. Therefore, the obligations described in this report are recommended for all seven countries across the board. In addition, best practices and norms are identified.

The international and regional instruments with requirements that are applicable to corresponding provisions in model national MCS legislation are shown above. The requirements form the basis for the model MCS legislation.

3. MODEL MCS LEGISLATION

3.1 Framework and basis for Model MCS Legislation

The main role of MCS is to provide monitoring, control, surveillance and enforcement of the fisheries conservation and management measures that are adopted by:

- (a) the country and are applicable to national waters and to its nationals (citizens and flag vessels) in areas beyond national jurisdiction;

- (b) any regional fisheries management organization (RFMO) to which the country is party or cooperating non-party and are applicable to activities relating to the species and area of competence of the RFMO.

The powers and authorities of MCS officers are governed by national legislation, which should incorporate regional and international laws and standards concerning MCS-related powers and responsibilities. MCS-related legislation is distinguished from provisions relating to fisheries conservation and management with which MCS must ensure compliance.

The ability to carry out effective MCS also depends on a number of related laws which inform and support MCS activities. They are elaborated in ANNEX 2, which shows a framework and basis for Model MCS legislation. It describes for each MCS or MCS-related provision to be included in the national legislation, its title, objective and the applicable requirement in international or regional instruments.

The issue of catch documentation schemes (CDS) and trade certification was raised at the Workshop. The legislation provides a basis for implementing the underlying principles of such schemes. The purpose of the schemes is to help determine throughout the supply chain whether fish originate from catches taken consistent with applicable national, regional and international conservation and management measures, established in accordance with relevant international obligations.

The FAO Voluntary Guidelines for CDS¹¹ suggest that when establishing such schemes, due consideration should be given to applicable MCS requirements. For example, any catch certification system must establish whether the vessel was fishing legally during harvesting and landing, and whether the MCS system/legislation provides security that the vessel was complying with the licence conditions.

The relevant fisheries MCS requirements are included in the framework below, but the systems should ensure integrated cooperation with other agencies such as those responsible for trade and sanitary/phytosanitary requirements. The Workshop noted that Ecofish is working with the European Fisheries Control Agency (EFCA) on catch certification and traceability, and that a training programme will be developed.

The following is a summary of the framework elaborated in ANNEX 2.

11 <https://www.fao.org/documents/card/en/c/a6abc11e-414a-491b-888a-7819dabdac1d/>

I. PRELIMINARY

Use of terms, application of the legislation, including areas beyond national jurisdiction.

II. MCS-RELATED MANAGEMENT MEASURES

Mechanism for implementation of RFMO measures, prohibitions for IUU listed vessels and vessels without nationality.

III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES

Compliance with Act, licenses/authorisations, international conservation and management measures (ICMMs), reporting, gear stowage, requirements for nationals in areas beyond national jurisdiction (ABNJ).

IV. REQUIREMENTS FOR FISHERIES ACCESS

Fisheries access agreements, terms and conditions, report entry to, exit from and regularly while in national waters.

V. INFORMATION

Information system establishment, information may be required, inspected, information to be true, complete and correct and destruction etc of documents prohibited Information sharing bilaterally, regionally, internationally.

V. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION

Requirements to hold licenses, etc, terms and conditions, conditions for landings and transshipments, pre-licensing inspection, standards for grant or renewal of licences, etc., grounds for denial or non-renewal.

VI. MONITORING CONTROL AND SURVEILLANCE**Division 1 – Authorised fisheries officers, inspectors, observer**

Exercise of powers and functions by officers, etc. authority and general powers of officers, powers of entry and search, to investigate activities in ABNJ, to take, detain, remove and secure information and evidence, to detain persons, vessels, gear, etc., arrest, order a vessel to port, give direction, seize vessels, aircraft and items, hot pursuit, responsibilities of observers, duty of operators, and crew members to assist observers, observers and field inspectors under an RFMO observer scheme.

Division 2 - Protection and obstruction of authorised persons

Definition of authorised person (which includes observers and authorised officers), protection of authorised persons from liability, obstruction of, failure to comply with authorised persons.

Division 3 - Inspection procedures

Pre-licensing/authorisation and unloading inspection procedures, sea inspection procedures.

Division 4 - Vessel Monitoring System and Automatic Identification System

Monitoring Systems - technical requirements, Vessel Monitoring System (VMS) – requirements of operators, Automatic identification system (AIS).

Division 5 - Port State Measures

Application and implementation, designation of ports, prerequisites for entry or use of port, denial of entry into port and use of port, force majeure or distress, denial of use of port after entry, conduct of inspections of vessels in port, denial of use of port after inspection, requirements for [country] registered vessels.

Division 6 – Miscellaneous

Presumptions of IUU fishing in contravention of international conservation and management measures, actions in relation to vessels on an RFMO IUU Vessels List.

These elements of MCS and MCS-related legislation are indicative minimum standards and, as noted above, are based on international and regional obligations and standards and best practices.

There may be additional related elements that countries wish to implement. For example, some aspects which are not included are jurisdiction and evidence because they are substantially addressed in other national legislation and are applied as a consequence of MCS activities.

Requirements for appointment of agents by vessel operators could also be considered, but some countries require this in different legislation. Their functions relate to the legal process (they act as conduits) rather than to specific fishing or related activities.

However, depending on the adequacy of their other existing laws, it could be useful for countries to consider the inclusion in fisheries legislation of related areas such as jurisdiction, evidence, agents and other.

3.2 Model MCS Legislation

Based on the framework explained in section 3.1 above and elaborated in ANNEX 2, a template of model MCS and MCS-related legislation has been developed. It appears in ANNEX 3.

Where the gap assessment, described in section 4, shows that a country does not meet the recommended standards for any given provision, the Model legislation serves as a first consideration for amending or replacing existing legislation. Countries may wish to incorporate it as written or to further adjust it as needed. Beyond this, each country must decide its priorities, situation and preferences.

4. MCS RELATED LEGISLATIVE GAPS AND PROPOSED AMENDMENTS IN EACH COUNTRY - DASHBOARD

Based on the framework and Model Legislation described in section 3, the legislation of each country was assessed and individual assessments are available in ANNEX 4. Gaps were identified and assessed according to whether the provision, in relation to the Model legislation:

Fully implements **Substantially implements** **Partly implements** **Does not implement**

In each assessment, the legal instruments examined are noted for each country. The assessment consisted of the following.

- Provision in the model legislation framework
- Objective
- National legislation, section and gaps
- Proposed amendments

Official English translations were not available for legislation from Comoros, Madagascar and Mozambique, and online translations by DeepL were used. Although much care was taken to thoroughly review all relevant instruments, there may be some inaccuracies or the matter may be addressed in another manner. For example, instead of including a requirement in legislation it may be effected in a license condition.

A dashboard of the consolidated outcomes, including outcomes of a review by Workshop participants, is given below. It shows that the fisheries legislation of Kenya and Tanzania are the most robust, with very few gaps.

In all other countries, between 19 and 30 provisions were not implemented by each and between 16 (Comoros) and 31 (Seychelles) were only partly implemented in legislation. These represent serious gaps.

In other words, of 53 Model provisions, the total of provisions either not, or only partly implemented in legislation are for: Comoros 32; Madagascar 49; Mauritius 42; Mozambique 46; and Seychelles 50. This compares with totals for Kenya at 4 and for Tanzania at 2.

| DASHBOARD Model legislation Framework | | | | | | | Comoros | Kenya | Madagascar | Mauritius | Mozambique | Seychelles | Tanzania |
|--|--|--|--|--|--|--|---------|-------|------------|-----------|------------|------------|----------|
| 1. Use of terms | | | | | | | | | | | | | |
| 2. Application of the legislation | | | | | | | | | | | | | |
| 3. Mechanism for implementation of RFMO measures | | | | | | | | | | | | | |
| 4. Prohibitions in relation to vessels on an RFMO IUU Vessels List | | | | | | | | | | | | | |
| 5. Prohibitions in relation to vessels without nationality | | | | | | | | | | | | | |
| 6. Compliance with Act, licence, authorisation or other permission, international conservation and management measures | | | | | | | | | | | | | |
| 7. Reporting requirements | | | | | | | | | | | | | |
| 8. Gear stowage | | | | | | | | | | | | | |
| 9. Requirements for citizens and (flag) vessels in areas beyond national jurisdiction | | | | | | | | | | | | | |
| 10. Fisheries access – terms and conditions | | | | | | | | | | | | | |
| 11. Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters | | | | | | | | | | | | | |
| 12. Establishment of an information system | | | | | | | | | | | | | |
| 13. Information may be required, inspected | | | | | | | | | | | | | |
| 14. Information to be true, complete and correct and destruction etc of documents prohibited | | | | | | | | | | | | | |
| 15. Information sharing bilaterally, regionally, internationally | | | | | | | | | | | | | |
| 16. Licenses, authorisations, etc required. | | | | | | | | | | | | | |
| 17. License terms and conditions | | | | | | | | | | | | | |
| 18. Conditions for landings and transshipment | | | | | | | | | | | | | |

| DASHBOARD Model legislation Framework | | | | | | | Comoros | Kenya | Madagascar | Mauritius | Mozambique | Seychelles | Tanzania |
|---|--|--|--|--|--|--|---------|-------|------------|-----------|------------|------------|----------|
| 19. Pre-licensing registration, inspection and other requirements | | | | | | | | | | | | | |
| 20. Standards for grant or renewal of licenses, authorisations, registration or other permission | | | | | | | | | | | | | |
| 21. Grounds for denial or non-renewal of licences, authorisations, registrations | | | | | | | | | | | | | |
| 22. Exercise of powers and functions by authorised officers and observers | | | | | | | | | | | | | |
| 23. Authority and general powers of authorised officers | | | | | | | | | | | | | |
| 24. Power of entry and search | | | | | | | | | | | | | |
| 25. Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction | | | | | | | | | | | | | |
| 26. Power to take, detain, remove and secure information, evidence | | | | | | | | | | | | | |
| 27. Power to detain persons, vessels, gear, etc | | | | | | | | | | | | | |
| 28. Power of arrest | | | | | | | | | | | | | |
| 29. Power to order a vessel to port | | | | | | | | | | | | | |
| 30. Power to give direction | | | | | | | | | | | | | |
| 31. Seizure of vessels, aircraft and items | | | | | | | | | | | | | |
| 32. Hot pursuit | | | | | | | | | | | | | |
| 33. Responsibilities of observers | | | | | | | | | | | | | |
| 34. Duty of operators, and crew members to assist observers | | | | | | | | | | | | | |
| 35. Observers and field inspectors under an RFMO observer scheme | | | | | | | | | | | | | |
| 36. Definition of authorised person | | | | | | | | | | | | | |
| 37. Protection of authorised persons from liability | | | | | | | | | | | | | |

| DASHBOARD Model legislation Framework | | | | | | | Comoros | Kenya | Madagascar | Mauritius | Mozambique | Seychelles | Tanzania |
|--|--|--|--|--|--|--|---------|-------|------------|-----------|------------|------------|----------|
| 38. Obstruction of, failure to comply with authorised persons | | | | | | | | | | | | | |
| 39. Pre-licensing/ authorisation and unloading inspection procedures | | | | | | | | | | | | | |
| 40. Sea inspection procedures | | | | | | | | | | | | | |
| 41. Vessel Monitoring System – technical requirements | | | | | | | | | | | | | |
| 42. Vessel monitoring system – requirements of operators | | | | | | | | | | | | | |
| 43. Automatic identification system | | | | | | | | | | | | | |
| 44. Designation of ports | | | | | | | | | | | | | |
| 45. Prerequisites for entry or use of port | | | | | | | | | | | | | |
| 46. Denial of entry into port and use of port | | | | | | | | | | | | | |
| 47. Force majeure or distress | | | | | | | | | | | | | |
| 48. Denial of use of port after entry | | | | | | | | | | | | | |
| 49. Conduct of inspections of vessels in port | | | | | | | | | | | | | |
| 50. Denial of use of port after inspection | | | | | | | | | | | | | |
| 51. Requirements for [country] registered vessels | | | | | | | | | | | | | |
| 52. Presumptions of IUU fishing in contravention of international conservation and management measures | | | | | | | | | | | | | |
| 53. Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization | | | | | | | | | | | | | |

A profile of the frequency of implementation of provisions is shown below.

Substantially or fully implemented. There are only **eight** provisions that were substantially or fully implemented by *four or five countries*. They are:

- 2. Application of the legislation
- 16. Licenses, authorisations, etc. required
- 20. Standards for grant or renewal of licenses, authorisations, registration or other permission
- 21. Grounds for denial or non-renewal of licences, authorisations, registrations
- 22. Exercise of powers and functions by authorised officers and observers
- 32. Hot pursuit
- 44. Designation of ports
- 46. Denial of entry into port and use of port

Partly implemented. The following **eleven** provisions were partly implemented by *four or five countries*.

- 1. Use of terms
- 6. Compliance with Act, licence, authorisation or other permission, international conservation and management measures
- 11. Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters
- 14. Information to be true, complete and correct and destruction etc of documents prohibited
- 15. Information sharing bilaterally, regionally, internationally
- 17. License terms and conditions
- 18. Conditions for landings and transshipment
- 23. Authority and general powers of authorised officers
- 24. Power of entry and search
- 26. Power to take, detain, remove and secure information, evidence
- 31. Seizure of vessels, aircraft and items

Not implemented. The following fourteen provisions were not implemented by *four or five countries*.

- 4. Prohibitions in relation to vessels on an RFMO IUU Vessels List
- 5. Prohibitions in relation to vessels without nationality
- 13. Information may be required, inspected
- 19. Pre-licensing registration, inspection and other requirements
- 25. Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction

- 30. Power to give direction
- 35. Observers and field inspectors under an RFMO observer scheme
- 36. Definition of authorised person
- 37. Protection of authorised persons from liability
- 39. Pre-licensing / authorisation and unloading inspection procedures
- 40. Sea inspection procedures¹²
- 47. Force majeure or distress
- 49. Conduct of inspections of vessels in port
- 51. Requirements for [country] registered vessels

Not implemented. The following **three** provisions were not implemented by *any country*.

- 5. Prohibitions in relation to vessels without nationality
- 52. Presumptions of IUU fishing in contravention of international conservation and management measures
- 53. Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization

The gaps are considerable. In moving forward to fill the gaps, countries may wish to explore their need for specific provisions in the context of the fishery, MCS operations and enforcement priorities. Where a need is established, options for approaches should be considered, for example a patchwork approach that builds on existing legislation or a more substantial revision of legislation.

¹² Six countries did not include this provision in national legislation.

5. REVIEW BY COUNTRY OF THE GAP ASSESSMENT, STRENGTHS AND CHALLENGES IN MCS LEGISLATION, PRIORITY LEGAL ISSUES IN EACH COUNTRY, REVIEW OF THE GAP ASSESSMENT

Participants from the following countries reported some strengths and challenges and priority legal issues for their MCS legislation, as requested in the template described in section 1 above. Some identified errors or omissions in the gap assessment of their country's legislation in the Interim Report, and these have been corrected in this document.

Comoros: A new fisheries law was adopted in 2020, and by-laws are being prepared. Enforcement of the laws by government (rather than associations, as in the past) needs strengthening. The activities of the Surveillance Center, as well as the sector, will be strengthened by establishing a new Chamber of Agriculture and Fisheries which is expected in the next six months. A goal is the establishment of a maritime tribunal and a legal framework for strengthening the capacity of officers. Comoros also reported that IOTC Resolutions are applied, even though there is no formal legal mechanism and note was taken about the need for such a mechanism. Vessels must be flagged to IOTC CPCs in order to fish in Comoros waters.

Mauritius: The development of a new fisheries bill is being considered, pending consultations with the Attorney General's Office. It will include provisions on VMS and AIS, and a regulation on electronic reporting and draft registration of fishing vessels have been already submitted to the Attorney General's Office. A review of the Fisheries Monitoring Centre and VMS system has been undertaken and gaps identified.

France/ La Reunion: The importance of providing legislative authority for high seas boarding and inspections was noted. SIOFA and IOTC both have adopted measures that require such authority.

Kenya: The 2016 Fisheries Management and Development Act provides authority for the establishment of a national MCS Unit and domestication of RFMO measures, among others. However, gaps included the need for adopting and gazetting regulations for marine and inland fisheries, for establishment of an interagency MCS and for development of an MCS national plan of action.

Madagascar: The adoption of the 2016 Fisheries Code and its amendment in 2018 concerning sanctioning were noted. There are plans to review the NPOA-IUU. Other key ongoing changes include strengthening of a budget for port infrastructure so vessels can be encouraged (but not forced) to land in their ports. Madagascar's national surveillance center has the support of the navy in certain circumstances. VMS data is shared regionally.

Mauritius: A new fisheries bill is being prepared. There was no comment on the legislative gap assessment as the Attorney General's Office had yet to review this.

Mozambique: Was not in attendance, did not make a report.

Seychelles: Key strengths in the current legislation are the extensive power given to enforcement officers, and its solid framework for licensing foreign vessels. The importance of information transparency and sharing was emphasized. Challenges include lack of provision for trade/traceability measures, support for port State measures, minimum domestication of IOTC and SIOFA measures, gaps in implementing the SWIOFC MTC Guidelines. Specific provisions for electronic data including VMS and AIS are needed. The value of evidentiary provisions for fisheries offices was noted, while recognizing that they are often regulated in separate legislation. The fisheries legislation in Seychelles is currently being revised.

Tanzania: Three fisheries authorities in URT were described, the Deep Sea Fishing Authority (DSFA) and the fisheries departments in Mainland Tanzania and Zanzibar. DSFA adopted a new Fisheries Act in 2020 and new regulations in 2021. The strengths include giving power of the DSFA Director General to enter into fisheries agreements and encouraging the sharing of information. The challenges include the need for harmonization among the three fisheries authorities. Priority issues include electronic traceability and a catch documentation system.

6. LEGAL CAPACITY GAPS IN EACH COUNTRY

Information on specific legal capacity for developing and addressing fisheries offences through legal advice, prosecutions, administrative determinations and others was sought through the template described in section 1 of this document, mindful that different agencies may be involved. Participants were asked to provide comments, if any, on the responsibilities in their countries related to law enforcement shown below.

Seychelles reported a general need for human resources who have a better understanding of fisheries legislation and for capacity building for prosecutions, lawyers and judges.

Tanzania noted that the main legal capacity gap for developing and implementing MCS legislation is awareness training for relevant authorities taking into account the need for inputs across various agencies.

A recommended solution was consultation with relevant authorities on how to address the identified gaps.

LEGALLY RELATED RESPONSIBILITIES¹³

| COUNTRY | Responsibility for investigation and establishment of violations | Responsibility for advice, prosecuting, administrative determinations etc |
|-------------------|--|--|
| Comoros | <p>According to Article 70 of the revised Fisheries and Aquaculture Code, the following are surveillance agents empowered to investigate and establish infractions</p> <ul style="list-style-type: none"> Sworn agents of the administration in charge of fisheries Officers and agents of the Comorian Coast Guard The sworn agents of the maritime affairs Sworn agents of the Customs Administration Ship captains and port officers Sworn agents of the national parks assigned to marine surveillance Any other person or category of persons that may be designated by the Minister in charge of fisheries and aquaculture. | <ul style="list-style-type: none"> Agence Nationale des Affaires Maritimes (ANAM) The Comorian Coast Guard, The National Center for Fisheries Control and Surveillance (CNCSP) The National Office for Quality Control and Certification of Fishery Products (ONCQCPH) |
| Kenya | <ul style="list-style-type: none"> Kenya Coast Guard Services Kenya Wildlife Service Kenya Navy National Police Service County Governments Kenya Maritime Authority Kenya Revenue Authority | <ul style="list-style-type: none"> The Office of the Directorate of Public Prosecutions The Office of the Attorney General The Judiciary The National Police Service Foreign Affairs |
| Madagascar | <ul style="list-style-type: none"> Ministry of Justice Local administrative authorities Ministry of Interior and Decentralization | <ul style="list-style-type: none"> CSP MAEP (Minister of Agriculture, Livestock and Fisheries) Minister of Justice |

¹³ Information on Mozambique not available.

| COUNTRY | Responsibility for investigation and establishment of violations | Responsibility for advice, prosecuting, administrative determinations etc |
|-------------------|--|--|
| Mauritius | <ul style="list-style-type: none"> • Mauritius Police Force • National Coast Guard Shipping Division • Mauritius Revenue Authority • Ministry of Health and Wellness • Mauritius Port Authority | <ul style="list-style-type: none"> • Controller of Fisheries Protection Service, Prosecution Unit, • State Law Office • Attorney General Office • Solicitor General Office |
| Seychelles | <ul style="list-style-type: none"> • Seychelles Coast Guard • Seychelles Police Force • any other person the Minister responsible for fisheries may consider necessary | The Attorney General's Chambers |
| Tanzania | <ul style="list-style-type: none"> • Tanzania Navy • Marine Police • Special Guard Unit (KMKM) • Department of Fisheries (Mainland Tanzania and Zanzibar) | <ul style="list-style-type: none"> • National Prosecution Services (Mainland Tanzania) • Director of Public Prosecution (Zanzibar) • Police • Court |

An IOTC project is underway which involves the preparation of a manual describing evidentiary requirements and procedures for fisheries offences and coordination of training workshops, in which this Consultant is participating. Countries have indicated a range of training needs in response to questionnaires and the project will assess the key areas where legal capacity needs to be strengthened.

7. GAPS IN NATIONAL PROCEDURE IN RELATION TO THE FAO AGREEMENT/ IOTC RESOLUTION ON PORT STATE MEASURES

As stated above, the FAO and IOTC instruments on port State measures are almost identical, and all participating countries are IOTC members.¹⁴ IOTC published an updated manual in 2021 on "Procedures for the implementation of the Indian Ocean Tuna Commission Port State measures". It describes the background about IOTC and its role and gives an overview of the Indian Ocean tuna fishery and the development of port State measures. It provides

¹⁴ Some are not party to the FAO PSMA or SIOFA which has adopted a Port Inspection Scheme.

helpful operational and technical matters important for inspectors' appointment and training. The framework is shown below.

- (a) Use of IOTC ePSM system
- (b) AREP requested
- (c) Risk assessment process
- (d) Risk assessment report
- (e) Inspection briefing
- (f) Authorization to enter port issued
- (g) Authorization to enter port received upon entry
- (h) Communications to establish whether use of port must be denied after entry (e.g. to other countries, RFMO, etc)
- (i) Where use of port denied, communications to vessel and services, etc who may be involve in supporting use of port;
- (j) Pre-boarding process – selection of fishing vessel and risk assessment
- (k) Preparation for boarding
- (l) On board inspection – SOPs
- (m) Monitoring landing and transshipments in port
- (n) Followup procedures, actions and requirements and information sharing
- (o) Information systems on port State measures

Procedures are given in relation to the required advance request to enter port (AREP) and for Standard Operating Procedures (SOPs) for on board inspection of the vessel.

The AREP, risk assessment process, procedures to assess the AREP and others are covered. The use of the electronic reporting system, or e-PSM, is referenced. IOTC has carried out extensive training to support members in its use.

On board inspection procedures cover pre-boarding processes, SOPs, monitoring landing and transshipments in port, follow-up procedures, actions and requirements and information sharing. Information systems on PSM are also included.

The IOTC guide could be a standard against which countries' procedures can be assessed for gaps. However, other assessments have taken place which should be considered, together with the situations in individual countries such as Comoros which does not currently have a need for the measures because foreign vessels do not call into its port.

Countries were invited to submit information on procedures based on the above IOTC framework as follow up by 23 March 2022, but a report was received only from Tanzania, which reports that it has formal written procedures. Its report is attached as ANNEX 5 and shows that all procedures in the framework are priorities, but that some have not been

implemented due to insufficient capacity (risk assessment process and report, inspection briefing, pre-boarding process) and others had never been experienced (communications to establish whether the use of port must be denied after entry, communications on denial of use of port).

A project completed for SWIOFC¹⁵ in which this Consultant participated surveyed all SWIOFC countries concerning their procedures for port State measures. Three countries provided information shown below, Kenya, Madagascar and Seychelles. It appears to be indicative of regional practices. Except for Seychelles (and Mauritius) the number of port calls by foreign vessels is relatively low. It appears that most countries (if not all) use the IOTC e-PSM system.

| Question | Kenya | Madagascar | Seychelles |
|---|--|--|---|
| Does your country require advance request for entry into port (AREP) forms (or similar) to be completed by vessels wishing to enter port? | Yes. | Yes. | AREP is a requirement to submit port entry form – but not the PSMA or PSMA AREP forms. Prior form in use – based on fisheries requirements. |
| Does your country use the IOTC e-PSM system? | Yes. The platform is used for tuna vessels, both foreign and national, including to respond to the request for port access. | Yes. | Using the system – to submit reports etc. but needs to improve in terms of data submission. |
| If an advance request for entry into port (AREP) is required, which agencies/authorities is it available to? | Kenya Fisheries Service currently. Historically shared AREPs with the Joint Operations Centre (JOC), but this has stopped as a formalised system was thought necessary. Under the MOU noted above | Only the CSP and the Fisheries Department. | Only Seychelles Fishing Authority at the moment – different reporting requirements under ports. |

¹⁵ Assessment of and support for the implementation of the Guidelines for Minimum Terms and Conditions for Foreign Fisheries Access by Southwest Indian Ocean Fisheries Commission Members RFP No: 002/2021 – COI/SWIOFish – SWIO1-PY06-C004 September 2021.

| Question | Kenya | Madagascar | Seychelles |
|--|--|--|---|
| | with MCS inter-agency partners. KFS is in the process of becoming part of the JOC. | | |
| If an AREP is required, is a risk assessment routinely conducted? | Yes. | Yes. | No. (minimal) |
| If yes, is there an SOP in place? | No. | No. | No. (minimum requirements established) |
| If a risk assessment is conducted, please describe the process. | The risk assessment is completed by the receiving officer, however no SOP has been developed to guide the process yet. | <p>The risk assessment depends on the flag State, the vessel type, if the vessel is licenced by Madagascar and which ports it has frequented before.</p> <p>The contents of the logbook are also considered.</p> <p>The processes are included in legislation.</p> | <ul style="list-style-type: none"> • Flag the vessel or priority inspection if required • Foreign flag higher priority (No license) the (license) • Seychelles flagged • Assessment of catch declaration (assessment of catch compositions) |
| If a risk assessment is conducted, how is the result used to grant or deny port entry? | The receiving officer reports to the regional officer in charge who then relays to the message to the DG for a decision. The DG would then communicate his/her decision to the Port Authority. | If there is a risk or suspected IUU fishing the vessel may enter port but in denied services. An inspection may be conducted. | One case only where port services denied (no denial of port entry) |
| Is there a specific pre-licencing risk assessment conducted? | Yes | Yes. | (no response) |
| If yes, is there an SOP in place? | No (being developed) | Yes. | (no response) |

| Question | Kenya | Madagascar | Seychelles |
|--|---|--|------------------------------|
| Inspection in port | | | |
| Which ports have you designated for foreign fishing and transport vessels to use for PSMA or PSMR inspections? | Mombasa, Shimoni and Lamu have been designated. Shimoni and Lamu are not yet operationalised but are gazetted. | Five designated ports: Diego, Toamasina, Toliara, Majunga, Taolagnora (Ehoala) | Victoria only |
| How many trained inspectors do you have for conducting inspections? (Please specify by port if relevant) | Three inspectors with on-the-job training in the form of experience, without any official training. All three are in Mombasa as it is the only operational designated port. | There are about 16 inspectors in total across the five designated ports. | 15 |
| How many tuna and tuna-like species fishing, supply and transport vessels enter each port in your country per year? Please estimate by port. | 4 on average annually. This varies, with 4 being an average. | Pour Diego, nous recevont en moyenne 20 navires par an | About 350-400 ¹⁶ |
| What percentage of these vessels is inspected under the PSMA/PSMR inspections? | 100% | 100% | 4% previously – this year 7% |

It is recognized that interagency cooperation is likely to be needed and MOUs may be concluded to ensure coordinated implementation of SOPs.

¹⁶ This represents the number of port calls made; vessels may make multiple port calls in Seychelles.

8. NEXT STEPS

The outcomes of the Workshop informed the finalization of this report.

It is expected there will be opportunities to strengthen complementarity with the parallel project that focuses on MCS, to receive additional information and documents from countries, to inform participants of the outcomes and recommendations to date and to encourage their input so the final outcomes are better tailored to their needs.



ANNEXES

ANNEX 1 - IOTC MCS RELATED RESOLUTIONS

The IOTC Compendium consists of 59 Active CMMs, comprised of 56 Resolutions and 3 Recommendations (as of 29 October 2019) 20 of them are primarily for MCS purposes.

RESOLUTION 19/04 (14/04) CONCERNING THE IOTC RECORD OF VESSELS AUTHORISED TO OPERATE IN THE IOTC AREA OF COMPETENCE

RESOLUTION 19/06 (14/06) ON ESTABLISHING A PROGRAMME FOR TRANSHIPMENT BY LARGE-SCALE FISHING VESSELS

RESOLUTION 18/03 (11/03) ON ESTABLISHING A LIST OF VESSELS PRESUMED TO HAVE CARRIED ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN THE AREA OF COMPETENCE OF A RELEVANT RFMO

RESOLUTION 16/05 ON VESSELS WITHOUT NATIONALITY

RESOLUTION 16/11 ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

RESOLUTION 15/01 ON THE RECORDING OF CATCH AND EFFORT DATA BY FISHING VESSELS IN THE IOTC AREA OF COMPETENCE

RESOLUTION 15/03 (06/03) ON THE VESSEL MONITORING SYSTEM (VMS) PROGRAMME

RESOLUTION 14/05 CONCERNING A RECORD OF LICENSED FOREIGN VESSELS FISHING FOR IOTC SPECIES IN THE IOTC AREA OF COMPETENCE AND ACCESS AGREEMENT INFORMATION

RESOLUTION 12/02 DATA CONFIDENTIALITY POLICY AND PROCEDURES

RESOLUTION 11/04 ON A REGIONAL OBSERVER SCHEME

RESOLUTION 10/08 CONCERNING A RECORD OF ACTIVE VESSELS FISHING FOR TUNAS AND SWORDFISH IN THE IOTC AREA

RESOLUTION 07/01 TO PROMOTE COMPLIANCE BY NATIONALS OF CPCS WITH IOTC CONSERVATION AND MANAGEMENT MEASURES

RESOLUTION 05/03 RELATING TO THE ESTABLISHMENT OF AN IOTC PROGRAMME OF INSPECTION IN PORT

RESOLUTION 01/03 ESTABLISHING A SCHEME TO PROMOTE COMPLIANCE BY NON-CONTRACTING PARTY VESSELS WITH RESOLUTIONS ESTABLISHED BY IOTC

ANNEX 2 - FRAMEWORK AND BASIS FOR MODEL MCS LEGISLATION

ARRANGEMENT OF SECTIONS

I. PRELIMINARY

- 1 Use of terms
- 2 Application of the legislation

II. MCS-RELATED MANAGEMENT MEASURES

- 3 Mechanism for implementation of RFMO measures
- 4 Prohibitions in relation to vessels on a list of illegal, unreported and unregulated vessels maintained by a regional fisheries management organization
- 5 Prohibitions in relation to vessels without nationality

III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES

- 6 Compliance with Act, licence, authorisation or other permission, international conservation and management measures, other
- 7 Reporting requirements
- 8 Gear stowage
- 9 Requirements for citizens and [country] registered vessels in areas beyond national jurisdiction

IV. REQUIREMENTS FOR FISHERIES ACCESS

- 10 Fisheries access
- 11 Fisheries access – terms and conditions
- 12 Requirements for all foreign vessels to report entry to, exit from and regularly while in [country] waters
- 13 Establishment of information system
- 14 Information may be required, inspected
- 15 Information to be true, complete and correct and destruction etc of documents prohibited
- 16 Information sharing bilaterally, regionally, internationally

V. LICENSES, AUTHORISATIONS,¹⁷ OTHER PERMISSIONS AND REGISTRATION

- 17 Licences, authorisations, other permissions, registration required
[This model section will vary based on the type of licenses that are issued by the country]
- 18 Terms and conditions of licences, authorisations, other permissions, registrations
- 19 Conditions for landing and transshipment
- 20 Pre-licensing and pre-registration inspection and other requirements
- 21 Standards for grant or renewal of licences, authorisations, registrations or other permissions
- 22 Grounds for denial or non-renewal of licences, authorisations, registrations

VI. MONITORING CONTROL AND SURVEILLANCE**Division 1 – Authorised fisheries officers, inspectors, observers**

- 23 Exercise of powers and functions by authorised fisheries officers, inspectors and observers
- 24 Authority and general powers of authorised fisheries officers
- 25 Power of entry and search
- 26 Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction
- 27 Power to take, detain, remove and secure information, evidence
- 28 Power to detain persons, vessels, gear, etc.
- 29 Power of arrest
- 30 Power to order a vessel to port
- 31 Power to give direction
- 32 Seizure of vessels, aircraft and items
- 33 Hot pursuit
- 34 Responsibilities of observers
- 35 Duty of operators, and crew members to assist observers
- 36 Observers and field inspectors under an RFMO observer scheme

17 "Authorizations" is a term used in international fisheries instruments denotes to permission to fish in areas beyond national jurisdiction. This report adopts that meaning but recognizes that countries may also use the term to describe permission for other fishing activities.

Division 2 - Protection and obstruction of authorised persons

- 37 Definition of authorised person
- 38 Protection of authorised persons from liability
- 39 Obstruction of, failure to comply with authorised persons

Division 3 - Inspection procedures

- 40 Pre-licensing / authorisation and unloading inspection procedures
- 41 Sea inspection procedures

Division 4 - Vessel Monitoring System and Automatic Identification System

- 42 Monitoring Systems - technical requirements
- 43 Vessel monitoring system – requirements of operators
- 44 Automatic identification system

Division 5 - Port State Measures

- 45 Port State Measures - application and implementation
- 46 Designation of ports
- 47 Prerequisites for entry or use of port
- 48 Denial of entry into port and use of port
- 49 Force majeure or distress
- 50 Denial of use of port after entry
- 51 Conduct of inspections of vessels in port
- 52 Denial of use of port after inspection
- 53 Requirements for [country] registered vessels

Division 6 – Miscellaneous

- 54 Presumptions of IUU fishing in contravention of international conservation and management measures
- 55 Actions in relation to vessels on an IUU Vessels List of a regional fisheries management organization

| | National legislation Framework | Objective | Applicable international, regional requirements |
|-----------------------|---------------------------------------|---|---|
| I. PRELIMINARY | | | |
| 1 | Use of terms | <p>Terms should be defined consistently with their use in international and regional instruments, including:</p> <ul style="list-style-type: none"> (a) fishing (b) fishing related activities, or “related activities” (c) fishing vessel (d) International conservation and management measures (e) vessel monitoring system (f) vessel without nationality | UNFSA,¹⁸ PSMA,¹⁹ IOTC,²⁰ MTC Guidelines.²¹ |
| 2 | Application of the legislation | <p>Legislation should be clear that it applies to national areas and areas beyond national jurisdiction (ABNJ) consistent with international law/regional obligations. This will allow MCS operations to take place in ABNJ.</p> | <p>UNCLOS high seas requirements</p> <p>Straddling stocks, highly migratory species, duties of flag State, right of hot pursuit, and high seas fishing.²²</p> <p>UNFSA high seas requirements</p> <p>Application mainly to high seas, including general principles, duties of the flag State, compliance and enforcement by the flag State, international, regional and subregional cooperation in enforcement, basic procedures for boarding and inspection and</p> |

18 Art 1.

19 Art 1.

20 Terms may be defined in Resolutions.

21 Para 3.

22 Art 63 Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it; Art 64 Highly migratory species; Art 94 Duties of the Flag State; Art. 111 Right of Hot Pursuit; Art 116 Right for nationals to fish on the high seas; Art 117 Duty of States to adopt measures for the conservation of the living resources of the high seas; Art 118 Cooperation of States in the conservation and management of the living resources; Art 119 Conservation of the living resources of the high seas.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|--|--------------------------------|-----------|--|
| | | | <p>measures to be taken by a port State.²³</p> <p>PSMA high seas requirements</p> <p>Measures may apply if there was IUU fishing or related activities in the area of competence of a relevant RFMO, including high seas.</p> <p>IOTC high seas requirements</p> <p>Apply to the defined IOTC Area of Competence (Art II) and includes high seas and areas under national jurisdiction.</p> <p>SIOFA high seas requirements</p> <p>Apply to the defined Area of Application (Art 1), and excludes areas under national jurisdiction.</p> <p>MTC Guidelines</p> <p>Apply to national jurisdiction except the Regional Observer Program may apply to vessels authorised to fish on high seas under IOTC.²⁴</p> |

23 Art 3 Scope (high seas); Art 5 (I) General principles - implement and enforce conservation and management measures through effective monitoring, control and surveillance; Art 18 Duties of the flag State; Art 19 Compliance and enforcement by the flag State; Art 20 International cooperation in enforcement; Art 21 Subregional and regional cooperation in enforcement; Art 22 Basic procedures for boarding and inspection pursuant to Article 21; Art 23 Measures taken by a port State.

24 Para 12.3.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|---|---|---|---|
| II. MCS-RELATED MANAGEMENT MEASURES | | | |
| 3 | Mechanism for implementation of RFMO measures | This facilitates and clarifies the timely implementation of ICMMs. It may be adapted to procedures in each country for implementation by regulations, Gazetting or other. | There is a general duty in international law to implement legally binding regional and international obligations. More specifically, see UNFSA ²⁵ and IOTC . ²⁶ |
| 4 | Prohibitions in relation to vessels on an RFMO IUU Vessels List | Prohibits, in relation to vessels on an IUU Vessel List ("listed vessels"), operators of [country] registered vessels from assisting, participating in transshipment or joint operations with a listed vessel or carrying out fish processing operations with listed vessels. | IOTC . ²⁷ |
| 5 | Prohibitions in relation to vessels without nationality | Implements IOTC Resolution 16/05. Vessels without nationality are prohibited from landing, transshipping and use of port in [country] and transshipping with [country] registered vessels in an area of competence of a relevant RFMO. | UNCLOS , ²⁸ IOTC . ²⁹ |
| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | | | |
| 6 | Compliance with Act, licence, authorisation or other permission, international conservation and management measures | Requires licensee or holder of authorisations and other permissions to comply with the terms of the licenses and this Act, national legislation, an applicable access agreement and ICMM. This permits cancellation of the licence, etc where there has been breach of any condition. | Best Practices to ensure compliance with licences, ICMMs. |
| 7 | Reporting requirements | This describes various reporting requirements (true, complete and correct, on time, required form and format, etc) and addresses difficult situations encountered in the region, for example: | Best Practices. |

25 More generally, the UNFSA provides "Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system." Art. 18(4).

26 Resolution 07/01 to promote compliance by nationals of CPCs with IOTC conservation and management measures.

27 Resolution 18/03 on establishing a list of vessels presumed to have carried illegal, unreported and unregulated fishing in the area of competence of a relevant RFMO, para 21.

28 Art 110.

29 Resolution 16/05 on Vessels without nationality.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|-------------------|--|---|---|
| | | (i) provides for legal action where there is improper catch reporting on quotas; (ii) fishers send receipts from companies that bought the fish, with no other information or form, instead of proper catch documentation; (iii) estimated catch, such as the proportion of yellowfin and landing declarations, must be done using a standard of proof required by the [Authority]. | |
| 8 | Gear stowage | All vessels (licensed and unlicensed) must stow gear when the vessel is in any area where it is not licensed or authorised to fish or undertake related activities. Applies to national waters and nationally registered vessels in areas beyond national jurisdiction. | Best Practices and MTC Guidelines. ³⁰ |
| 9 | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction | This allows compliance with international law and IOTC ICMMs. Nationally registered vessels and citizens must comply with access agreements and laws of other countries and must not undermine international conservation and management measures. | UNFSA,³¹ IOTC (throughout several Resolutions). |
| IV. ACCESS | | | |
| 10 | Fisheries access – terms and conditions | This can include requirements for certain non-negotiable criteria are met for fisheries access agreements: there is compliance with National regional and international obligations; there has been no IUU fishing in the previous five years, there would be no adverse impact to the resource or marine ecosystem and there are clear benefits for National. There can be no agreement or licences issued if these criteria are not met. Non-negotiable conditions for permitting fisheries access, e.g. vessel must hold authorisation from flag State, not be on IUU | UNCLOS³² IOTC,³³ MTC Guidelines. ³⁴ |

30 Para 15.1. Encourages a requirement for all foreign fishing vessel that do not maintain a license to fish to keep all fishing gear securely stowed when transiting through the waters under the jurisdiction of SWIOFC States.

31 Art 18(1).

32 Art 62.

33 Resolution 14/05 Concerning a record of licensed foreign vessels fishing for IOTC species in the IOTC area of competence and access agreement information.

34 The Guidelines, as a whole, constitute minimum terms and conditions for fisheries access by foreign vessels.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|-----------------------|--|---|--|
| | | vessel list, assurance of minimum benefits to National. Vessels are required to be on an authorised vessel list of a relevant RFMO and, to cater to the regional initiative for minimum terms and conditions for fisheries access, under a regional fisheries management agreement. | |
| 11 | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters | In accordance with best practices, <i>all</i> foreign vessels are required to have VMS and AIS operational and report <i>directly</i> to the [Authority] (not via their flag country or other). This is more stringent than the MTC Guidelines but consistent with UNCLOS rights and duties of a coastal State because the reporting is for purposes of fisheries conservation, management and MCS and does not empower the [Authority] to hinder entry or exit. | MTC Guidelines. ³⁵ |
| V. INFORMATION | | | |
| 12 | Establishment of an information system | Information required to be given and maintained in an information system is provided and relevant for MCS use. Confidentiality standards are set but allow transparency, consistent with Fisheries Transparency Initiative (FITI) standards. | Best Practices, UNCLOS,³⁶ UNFSA³⁷, PSMA³⁸ IOTC.³⁹ |
| 13 | Information may be required, inspected | This is a general provision requiring persons carrying out activities under the Act to keep and maintain such information as may be required by the [Authority] under the Act, other national legislation or an ICMM. | Best Practices |
| 14 | Information to be true, complete and | This section requires all information given under this Act (defined as including all | Best Practices |

35 Paras 15.2 and 15.3 provide: 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.

36 Art 62(4)(e).

37 Art 18, 19, 20

38 Art 6.

39 Resolution 12/02 Data confidentiality policy and procedures

| | National legislation Framework | Objective | Applicable international, regional requirements |
|---------------------|--|--|--|
| | correct and destruction etc of documents prohibited | subsidiary legislation) to be true, complete and correct and will prohibit alteration, destruction etc of documents, information, data, statistics, labels and required markings on vessels or gear and use of forged or falsified documents. It applies to any information, etc without regard to whether it is submitted to the [Authority], any person, court, body, other government authority, RFMO etc. | |
| 15 | Information sharing bilaterally, regionally, internationally | This section is important for sharing of MCS information. It empowers the [Authority] to prepare and submit information under bilateral, regional and international agreements and ICMMs. It recognizes the exchange of information should be a basic process (mindful of confidentiality requirements). | Best Practices. |
| VI. LICENSES | | | |
| 16 | Licenses, authorisations, etc required. | The legislation should specify clearly and in one section the licenses, authorisations, permissions etc that are required. This will assist general understanding and MCS efforts to monitor and control fishing and related activities. | Best Practices. |
| 17 | License terms and conditions | Licensing terms and conditions for fishing, supply and transport vessels should be required, among others. In this provision: (1) generally provides the licence, etc must be subject to the terms and conditions in the Act, as may be prescribed and to such other terms and conditions as may be specified by the [Authority] or provided in ICMMs. Amendment, entry into force and validity are addressed. | UNCLOS,⁴⁹ UNFSA,⁵⁰ MTC Guidelines.⁵¹ |

49 Art 62(4)(a).

50 Art 18(b)(2) Flag States must license or authorize vessels for high seas fishing.

51 Para 6.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|--|--------------------------------|---|---|
| | | <p><i>Regulations should include vessel and gear marking (UNFSA,⁴⁰ IOTC,⁴¹ MTC Guidelines.⁴²) and requirements for foreign vessels to carry on board only authorised gear (MTC Guidelines.⁴³)</i></p> <p>(2) requires the operator of a vessel to keep a copy of the licence etc onboard the vessel.</p> <p>(3) requires the holder of any licence, etc for activities that are not associated with vessels to display it in the registered business office.</p> <p>(4) requires National registered vessels to carry required documents at all times and while in the waters of other States comply with its legislation, or an RFMO area of competence comply with ICMMs.</p> <p>(5) requires operators to maintain log books and make reports as required under the Act (which is defined to include regulations) or by the CEO in writing or an ICMM.</p> <p><i>Regulations should require specific reporting requirements to include position, catch reports at designated times, after a fishing trip and requirements for forms and logbooks (UNCLOS,⁴⁴ UNFSA,⁴⁵ PSMA,⁴⁶ IOTC,⁴⁷ MTC Guidelines.⁴⁸)</i></p> | |

40 Art 18(3)(d), flag State duty to set requirements for vessel and gear marking.

41 Resolution 19/04 Concerning the IOTC Record of Vessels authorised to operate in the IOTC Area of Competence, para 18.

42 Para 14.

43 Para 17.

44 Art 62(4)(e).

45 Art 18(e), duty of flag State to establish requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other.

46 Art 8, Advance request for port entry.

47 Resolution 15/01 on the recording of catch and effort data by fishing vessels in the IOTC Area of Competence.

48 Para 11.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|----|---|--|---|
| 18 | Conditions for landings and transshipment | <p>Specific conditions for landing and transshipment, including:</p> <p>(1) requires a notification period.</p> <p>(2) requires activities at designated ports, and refers to pre-inspection and observers.</p> <p>(3) requires the licensee to pay all costs of an authorised fisheries officer or other person designated by the CEO where there is transshipment outside a port in [country].</p> <p>4) prohibits shark carcasses and fins from being transhipped separately.</p> <p>(5) requires Declarations of Transshipments as may be prescribed or required by an ICMM.</p> <p>(6) incorporates Regulation 24A and is expanded as instructed during consultations to include offloading fish into containers.</p> <p>(7) requires compliance with laws relating to the protection of the marine environment.</p> <p>(8) permits the [Authority] to require compliance with any applicable ICMM.</p> | UNFSA,⁵² PSMA,⁵³ IOTC,⁵⁴ MTC Guidelines.⁵⁵ |
| 19 | Pre-licensing registration, inspection and other requirements | To establish compliance, a foreign vessel must be inspected before a license is issued. | MTC Guidelines.⁵⁶ |

52 Art. 18 flag State must regulate transshipment on the high seas. Art 23, transshipment may be prohibited where the catch has been taken in a way that undermines the effectiveness of RFMO measures on the high seas.

53 Use of port for transshipping and landing to be denied where there is a reasonable belief that the catch was taken during IUU fishing activities.

54 Resolution 19/06 on establishing a programme for transshipment by large-scale fishing vessels.

55 Paras 20 and 21.

56 Para 4 for fishing vessels, 6.1(a).

| | National legislation Framework | Objective | Applicable international, regional requirements |
|--|--|---|--|
| 20 | Standards for grant or renewal of licenses, authorisations, registration or other permission | No licence would be issued where there is a record/evidence/history of IUU fishing, vessels is on an IUU Vessel List, connected to IUU fishing or fishing related criminal activities, etc. Conditions must be consistent with national, regional and international law. Vessels must be on an RFMO authorised vessel list where relevant. | IOTC,⁵⁷ MTC Guidelines.⁵⁸ |
| 21 | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations | A wide range of criteria for denial or non-renewal of licences, etc, including that the standards for grant of license, there has been non-compliance with an existing or previous licence with no submission to due process or satisfaction of judgment or determination Foreign vessel must hold Authorisation to Fish (ATF) issued by flag State. | MTC Guidelines.⁵⁹ |
| VII. MONITORING, CONTROL AND SURVEILLANCE | | | |
| Division 1 – Authorised fisheries officers, observers | | | |
| 22 | Exercise of powers and functions by authorised officers and observers | When authorised officers, observers are beyond areas of national jurisdiction the provisions of the Act are applicable as if the duties were performed in areas under national jurisdiction. They must carry and produce identification on request. | UNCLOS,⁶⁰ UNFSA,⁶¹ IOTC.⁶² |
| 23 | Authority and general powers of authorised officers | General powers of authorised officers are described, including doing such things and giving such directives that are reasonably necessary for exercising their functions, etc. under the Act. | Best Practices. |

57 Among others: Resolution 18/03 on establishing a list of vessels presumed to have carried illegal, unreported and unregulated fishing in the area of competence of a relevant RFMO. Resolution 19/04 Concerning the IOTC Record of Vessels Authorized to Operate in the IOTC Area of Competence, Resolution 10/08 concerning a record of active vessels fishing for tunas and swordfish in the IOTC.

58 Para 6.1 (b),(d) and (e) and Para 6.3(e). various IOTC Resolutions may be implemented as license conditions.

59 Para 6.1(c).

60 Art 62(4)(k).

61 Art 21 provides boarding and inspection on the high seas through subregional or regional arrangements and includes paragraph (17) which permits high seas boarding and inspection of vessels suspected to be without nationality.

62 Resolution 16/05 on vessels without nationality defines high seas MCS actions.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|----|---|--|---|
| | | Reasonable force may be used and assistance may be required. | |
| 24 | Power of entry and search | <p>The power of entry and search is given for all purposes and activities falling within the Act, consistent with general powers of MCS to ensure compliance, responsibilities for traceability etc.</p> <p>It is not limited to cases where contravention of the Act is suspected.</p> <p>It provides for the power of entry and search without a warrant, including in relation to national registered vessels beyond national jurisdiction and other vessels to which ICMMs apply as well as vessels without nationality on the high seas (the latter is consistent with international law).</p> <p>It also applies to premises or places reasonably suspected to be used for activities falling within the scope of the Act, except for dwelling houses, where evidence of non-compliance may be found.</p> <p>Persons may be stopped, records, containers, fish etc may be examined, land may be passed across and landing and transshipment operations may be monitored.</p> <p>The authorised officer may require persons to give information and exercise a range of other powers for entry and search.</p> <p>The authorised officer must have a warrant to enter a dwelling house.</p> | Best Practices. |
| 25 | Power to investigate or request investigations of | <p>Authorised Officers have the power to investigate or to request an investigation by another State.</p> | UNCLOS,⁶³ UNFSA.⁶⁴ |

63 Art 94.

64 Art 19(1).

| | National legislation Framework | Objective | Applicable international, regional requirements |
|----|---|---|--|
| | persons for activities beyond areas under national jurisdiction | This would allow relevant companies, agents and persons can be investigated for activities in areas beyond national jurisdiction and prosecutions can take place. | |
| 26 | Power to take, detain, remove and secure information, evidence | Allows the authorised fisheries officer to take, detain, remove and secure information and evidence and vessels. | Best Practices. |
| 27 | Power to detain persons, vessels, gear, etc | Power of detention for persons, vessels, gear etc. A Notice of Detention must be given to the operator of a vessel or vehicle and copied to relevant government authorities | Best Practices. |
| 28 | Power of arrest | This gives an authorised fisheries officer the power to order a person to cease and desist where he/she believes that a person is reasonably committing an offence, and to supply name, date of birth etc. and to arrest. | Best Practices. |
| 29 | Power to order a vessel to port | The power to order a vessel to port for inspection for compliance purposes | Best Practices. |
| 30 | Power to give direction | This power may be exercised without having boarded the vessel. | Best Practices. |
| 31 | Seizure of vessels, aircraft and items | The items which may be seized are elaborated and include vessels, fish, other articles and anything that may provide evidence of contravention of the Act or an ICMM, as well as passports/seamens' record books and anything that has been forfeited or unlawfully removed from custody under the Act. | Best Practices. |
| 32 | Hot pursuit | The basic requirements of Article 111 of UNCLOS are implemented. | UNCLOS⁶⁵ |
| 33 | Responsibilities of observers | Responsibilities of observers in terms of tasks and other activities, including to implement international conservation and management | UNCLOS,⁶⁶ UNFSA,⁶⁷ IOTC.⁶⁸ |

⁶⁵ Art 111.

⁶⁶ Art 62(4)(g).

⁶⁷ Art 18(3)(f).

⁶⁸ Resolutions 11/04 and 16/04 on the Regional Observer Programme.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|--|--|--|--|
| | | measures. Observers may be deployed as directed by the CEO, including in accordance with ICMMs and on or in relation to vessels, landings etc. | |
| 34 | Duty of operators, and crew members to assist observers | It requires operators and crew to assist observers for stated activities, including boarding, receiving messages, taking photographs, gathering information and disembarking. It applies at all times the observer is on board and within and beyond areas under national jurisdiction, to accommodate IOTC ICMMs. | Best Practices. |
| 35 | Observers and field inspectors under an RFMO observer scheme | Regional observer requirements to implement regional observer programme | UNFSA,⁶⁹ IOTC,⁷⁰ MTC Guidelines.⁷¹ |
| Division 2 - Protection and obstruction of authorised persons | | | |
| 36 | Definition of authorised person | Defines “authorised person” as including authorised fisheries officer and observer, including observers under an RFMO observer programme. | Best Practices. |
| 37 | Protection of authorised persons from liability | Protects authorised persons and others acting under the authority of the Authority from liability for anything done or omitted to be done in good faith in the performance of duties. ⁷² It recognizes that some personnel may not be staff members of the Authority e.g. where observers may be hired on occasional contracts. It also addresses situations where a vessel is being brought to port, and exempts persons assisting an authorised fisheries officer from liability. | Best Practices. |
| 38 | Obstruction of, failure to comply | Creates offences for various forms of obstruction of, or non-compliance with, authorised persons, including for example not allowing access to a place, not giving | UNFSA.⁷³ |

69 Art 18(3)(g).

70 Resolution 11/04, Regional observer scheme.

71 Para 12.

72 The powers of authorised officers are described in section 23 and following.

73 Art 21(3).

| | National legislation Framework | Objective | Applicable international, regional requirements |
|--|---|---|--|
| | with authorised persons | information, assaulting, kidnapping, impersonating or bribing an authorised person. | |
| Division 3 - Inspection procedures | | | |
| 39 | Pre-licensing / authorisation and unloading inspection procedures | This is a general duty to perform inspections, carry out procedures and apply standards that may be required under this Act, an ICMM, a relevant RFMO or international agreement for Pre-licensing / authorisation and unloading. The procedures, etc may be adopted by Regulation or required by the [Authority]. <i>Regulations should set out details for procedures.</i> | Best Practices. |
| 40 | Sea inspection procedures | Similar to the previous section. <i>Regulations should set out details for procedures.</i> | Best Practices. |
| Division 4 - Vessel Monitoring System and Automatic Identification System | | | |
| 41 | Vessel Monitoring System - technical requirements | Implements IOTC Resolution 15/03 and empowers the Authority to approve the technology for VMS and provides that technical requirements, including installation, may be prescribed or required. | IOTC,⁷⁴ MTC Guidelines.⁷⁵ |
| 42 | Vessel monitoring system – requirements of operators | Implements requirements of IOTC Resolution 15/03 and contains many requirements including: installation and ensure full operation at all times, registration, ensure tamper-resistant, transmission of information directly to FMC at least once every hour. A vessel must come to port within 24 hours, which could allow minimum time to continue fishing, and where the power supply to the VMS except that under subsection (4) special arrangements may be made for the continuation of fishing. | IOTC.⁷⁶ |

74 Resolution 15/03 on the Vessel Monitoring System (VMS) Programme.

75 Para 13.

76 Resolution 15/03 on the Vessel Monitoring System (VMS) Programme.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|---|---|---|--|
| | | In accordance with IOTC Resolution 15/03 the device may be switched off while the vessel is in port for more than a week under certain conditions. | |
| 43 | Automatic identification system | This permits the Authority to require (including as a licence, etc condition) that vessels maintain an AIS on board in accordance with specifications in the International Convention for the Safety of Life at Sea, and that it continually reports to the Fisheries Monitoring Center. | MTC Guidelines.⁷⁷ |
| Division 5 – Port State Measures | | | |
| 44 | Designation of ports | Requires the Minister to ensure that ports to be used to foreign vessels are designated and publicized. | PSMA,⁷⁸ IOTC.⁷⁹ |
| 45 | Prerequisites for entry or use of port | Implements paragraph 6 and 7 of IOTC Resolution 16/11, requiring an advance request for entry into port, an authorisation to enter and presentation of the authorisation. | PSMA,⁸⁰ IOTC.⁸¹ |
| 46 | Denial of entry into port and use of port | <p>Requires denial of entry into port where there is sufficient proof of IUU fishing or related activities and especially where it is on an IUU vessel list, and if there is a contravention of the Act.</p> <p>Entry into port may be allowed only for purposes of inspection in such circumstances, but use of port is prohibited.</p> <p>The CEO must communicate the decision to allow or deny entry to the vessel and as appropriate to the Ports Authority, which is obligated to implement the decision.</p> | PSMA,⁸² IOTC.⁸³ |

77 Para 13.

78 Art 7.

79 Resolution 16/11 para 5.

80 Art 8.

81 Resolution 16/11 paras 6, 7.

82 Art 9.

83 Resolution 16/11, para 7.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|----|---|--|---|
| | | The decision to deny entry or use of port must also be communicated to the flag State and others. | |
| 47 | Force majeure or distress | Allows entry into port for reasons of force majeure, but with limitations consistent with UNCLOS and international law. | PSMA,⁸⁴ IOTC.⁸⁵ |
| 48 | Denial of use of port after entry | Requires denial of port after entry on several grounds, without the need for inspection. Withdrawal of denial of use of port is provided in subsection (3), where there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply. | PSMA,⁸⁶ IOTC.⁸⁷ |
| 49 | Conduct of inspections of vessels in port | It provides for levels and prioritization of inspection, and requires fishery inspectors and authorised officers to carry out inspections in conformity with the <i>procedures and report template to be included in Regulations and Schedule</i> , and submit them to the Authority. The operator of the vessel must give authorised officers all necessary assistance, information and documents. | PSMA,⁸⁸ IOTC.⁸⁹ |
| 50 | Denial of use of port after inspection | Requires denial of use of port where there are clear grounds for believing that the vessel has engaged in IUU fishing or related activities. | PSMA,⁹⁰ IOTC.⁹¹ |
| 51 | Requirements for [country] registered vessels | National vessels, in areas beyond national jurisdiction, are to cooperate with port inspections of other States, and not to use any ports that are not compliant with port State measures. | PSMA,⁹² IOTC.⁹³ |

84 Art 10.

85 Resolution 16/11, para 8.

86 Art 11.

87 Resolution 16/11, para 9.

88 Arts 12, 13.

89 Resolution 16/11, para 11.

90 Art 18.

91 Resolution 16/11, para 15.

92 Art 20.

93 Resolution 16/11, para 17.

| | National legislation Framework | Objective | Applicable international, regional requirements |
|-----------------------------------|--|--|--|
| | | <p>The Authority must request authorities in foreign ports to inspect and take other measures where there are clear grounds to believe that a national vessel has engaged in IUU fishing or related activities, and the vessel is seeking entry into or is in their port.</p> <p>Where there is evidence of IUU fishing or related activities, the Authority must investigate and take enforcement action without delay.</p> | |
| Division 6 – Miscellaneous | | | |
| 52 | Presumptions of IUU fishing in contravention of international conservation and management measures | <p>The IOTC list of activities that describe where a vessel is presumed to have engaged in IUU fishing or related activities is incorporated in subsection (1) and the operator is prohibited from engaging in any of these activities.</p> <p>The Authority must provide information and evidence to the IOTC Secretariat of activities of any vessel that is presumed to involve IUU fishing.</p> <p>Subsections (2) and (3) apply the presumption to any vessels in national waters and national vessels in areas beyond national jurisdiction.</p> <p>Where it is presumed that any vessel in national waters has been involved in IUU fishing or related activities in any place in the IOTC Area of Competence, it may be prosecuted in the country.</p> | IOTC.⁹⁴ |
| 53 | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization | National vessels are prohibited from providing assistance, engaging in fish processing operations or participating in transshipment or joint fishing operations with any vessel on an IUU Vessel List. | IOTC.⁹⁵ |

94 IOTC Resolution 18/03, Establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC area of competence (IUU Vessels List).

95 IOTC Resolution 18/03, Establishing a list of vessels presumed to have carried out illegal, unreported and unregulated fishing in the IOTC area of competence (IUU Vessels List).

ANNEX 3 - MODEL MCS LEGISLATION

ARRANGEMENT OF SECTIONS

I. PRELIMINARY

- 1 Interpretation
- 2 Application

II. MCS-RELATED MANAGEMENT MEASURES

- 3 Implementation of international conservation and management measures
- 4 Prohibitions in relation to vessels on a list of illegal, unreported and unregulated vessels maintained by a regional fisheries management organization
- 5 Prohibitions in relation to vessels without nationality

III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES

- 6 Compliance with Act, licence, authorisation or other permission, international conservation and management measures, other
- 7 Reporting requirements
- 8 Gear stowage
- 9 Requirements for citizens and [country] registered vessels in areas beyond national jurisdiction

IV. REQUIREMENTS FOR FISHERIES ACCESS

- 10 Fisheries access
- 11 Fisheries access – terms and conditions

V. INFORMATION

- 12 Requirements for all foreign vessels to report entry to, exit from and regularly while in [country] waters
- 13 Establishment of information system
- 14 Information may be required, inspected
- 15 Information to be true, complete and correct and destruction etc of documents prohibited
- 16 Information sharing bilaterally, regionally, internationally

VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION

- 17 Licences, authorisations, other permissions, registration required

[This model section will vary based on the type of licenses that are issued by the country]

- 18 Terms and conditions of licences, authorisations, other permissions, registrations
- 19 Conditions for landing and transshipment
- 20 Pre-licensing and pre-registration inspection and other requirements
- 21 Standards for grant or renewal of licences, authorisations, registrations or other permissions
- 22 Grounds for denial or non-renewal of licences, authorisations, registrations

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- 23 Exercise of powers and functions by authorised fisheries officers, inspectors and observers
- 24 Authority and general powers of authorised fisheries officers
- 25 Power of entry and search
- 26 Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction
- 27 Power to take, detain, remove and secure information, evidence
- 28 Power to detain persons, vessels, gear, etc.
- 29 Power of arrest
- 30 Power to order a vessel to port
- 31 Power to give direction
- 32 Seizure of vessels, aircraft and items
- 33 Hot pursuit
- 34 Responsibilities of observers
- 35 Duty of operators, and crew members to assist observers
- 36 Observers and field inspectors under an RFMO observer scheme

Division 2 - Protection and obstruction of authorised persons

- 37 Definition of authorised person
- 38 Protection of authorised persons from liability
- 39 Obstruction of, failure to comply with authorised persons

Division 3 - Inspection procedures

- 40 Pre-licensing / authorisation and unloading inspection procedures
- 41 Sea inspection procedures

Division 4 - Vessel Monitoring System and Automatic Identification System

- 42 Monitoring Systems - technical requirements
- 43 Vessel monitoring system – requirements of operators
- 44 Automatic identification system

Division 5 - Port State Measures

- 45 Port State Measures - application and implementation
- 46 Designation of ports
- 47 Prerequisites for entry or use of port
- 48 Denial of entry into port and use of port
- 49 Force majeure or distress
- 50 Denial of use of port after entry
- 51 Conduct of inspections of vessels in port
- 52 Denial of use of port after inspection
- 53 Requirements for [country] registered vessels

Division 6 – Miscellaneous

- 54 Presumptions of IUU fishing in contravention of international conservation and management measures
- 55 Actions in relation to vessels on an IUU Vessels List of a regional fisheries management organization

I. PRELIMINARY**1. Interpretation**

"fishing" means:

- (a) searching for, attracting, locating, taking or harvesting of fish;
- (b) the attempted searching for, attracting, locating, taking or harvesting of fish;
- (c) engaging in any activity which can reasonably be expected to result in the locating, taking or harvesting of fish;
- (d) placing, searching for or recovering any fish aggregating device or associated electronic equipment including radio beacons;
- (e) any operation at sea in support of or in preparation for any activity in relation to a vessel described in paragraphs (a) to (d); or
- (f) any use of an aircraft which is related to any activity described in paragraphs (a) to (d), except for flights in emergencies involving the health or safety of a crew member or the safety of the vessel;

"fishing vessel" means any vessel used for, intended to be used for, equipped to be used for or of a type that is normally used for fishing or related activities;

international conservation and management measure means any legally binding measure to conserve or manage one or more species of fish that are adopted and applied by any global or regional fisheries management organization, or by any international agreement applicable to [country];

"related activities", in relation to fishing, or "fishing related activities" includes 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;

"vessel" means any boat, ship, hovercraft or other watergoing craft, and refers to vessels used or intended to be used for fishing or related activities;

"vessel monitoring system" or **"VMS"** means a satellite-based reporting system to monitor the position and activities of vessels that are engaged in activities under the scope of this Act.

"vessel without nationality" means a vessel used for fishing or related activities that is not entitled to fly the flag of any State or sails under the flag of two or more States, using them according to convenience.

2. Application

(1) This Act shall, unless the contrary intention appears, apply to:

- (a) all areas and persons over which [country] exercises sovereignty, jurisdiction or sovereign rights;
- (b) all fish, fishing and related activities, utilisation of fish and genetic material derived from fish and any other activity or matter falling within the scope of this Act or any applicable international conservation and management measure;
- (c) all persons, vessels, vehicles, aircraft, fish processing facilities, export or import facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act or any applicable international conservation and management measure;
- (d) all persons and all vessels in and in relation to areas beyond national jurisdiction:
 - (i) following hot pursuit initiated in waters under [country] jurisdiction and conducted in accordance with international law; or
 - (ii) as required pursuant to this Act or any applicable international conservation and management measure, or permitted by international law or any international agreement; and

- (e) all [country] registered vessels and all persons on them, associated with them or dealing with or having any relevant relationship to them, in and in relation to any areas beyond national jurisdiction in so far as this is not in conflict with the jurisdiction of another State.
- (2) A vessel is deemed not to be a [country] registered vessel if it is registered in a country other than [country] instead of or in addition to being registered in [country], unless it is a chartered vessel operating under a parallel registration system in accordance with a relevant charter agreement and the applicable laws and standards of the relevant countries and international agreements.
- (3) This Act has extraterritorial application according to its provisions and tenor.

II. MCS-RELATED MANAGEMENT MEASURES

3. Implementation of international conservation and management measures

- (1) The requirements of any applicable international conservation and management measure in respect of:

- (a) any owner, operator and/or master of any Seychelles vessel that holds a valid licence or authorisation issued by the [Authority] and is entered on the Record of Authorised Vessels of a relevant regional fisheries management organisation and authorised to fish for the species and in the area of competence under the mandate of such organisation;
- (b) any owner, operator and/or master of any other vessel that falls within the scope of this Act and the applicable international conservation and management measure; and/or
- (c) any [country] citizen,

shall have full legal effect under this Act upon such public notice of the applicable international conservation and management measure requirements as may be approved by the Minister, and, subject to subsection (2) the obligation to comply shall apply mutatis mutandis to each of the owner, operator and/or master of the vessel or Seychelles citizen.

- (2) Notwithstanding subsection (1), where it is not possible for a vessel to fulfil the requirements for compliance for technical reasons upon entry into force, the [Authority] may notify an extension for a reasonable period of time to allow the arrangements to be made.

(3) The CEO[Authority] shall notify all holders of licences and authorisations of the relevant obligations of each applicable international conservation and management measure upon its date of public notice.

(4) Any person who contravenes any international conservation and management measure implemented pursuant to this section or as may be provided in this Act commits an offence and shall be liable on conviction to a fine provided in the Second Schedule and any other penalty provided under this Act.

4. Prohibitions in relation to vessels on a list of illegal, unreported and unregulated vessels maintained by a regional fisheries management organization

(1) For the purposes of this section, “listed vessel” means a vessel that is included on a list of illegal, unreported and unregulated vessels maintained by an RFMO,

(2) No person shall, being the operator of a [country] registered vessel, including any fishing vessel, support vessel, refuelling (supply) vessel, mothership or cargo vessel:

- (a) provide, cause to be provided or arrange assistance to a listed vessel in any way except for the purpose of rendering assistance where such vessel, or any person on that vessel, is in danger or distress;
- (b) engage in fish processing operations with a listed vessel;
- (c) participate, cause participation in or arrange for participation in transshipment or joint fishing operations with a listed vessel; or
- (d) charter or be associated in any way with the chartering of a listed vessel.

(3) No person shall control, arrange, cause to be controlled or arranged or participate in the import, landing or transshipment of any species from the listed vessel over which the relevant RFMO has competence.

(4) No person shall:

- (a) sell a listed vessel or otherwise change legal or beneficial ownership and/or purchase another vessel with the apparent aim of continuing to maintain control of the listed vessel and/or the new vessel and continuing illegal, unreported or unregulated operations for fishing or related activities; or
- (b) operate a listed vessel which has been sold or where the legal or beneficial ownership has been changed as described in paragraph (a).

- (5) A listed vessel shall not be:
- (a) approved for or granted registration under the Merchant Shipping Act, 1992 (No. 13 of 1992) except if the vessel has changed owner and the new owner has provided sufficient information demonstrating the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel, or having taken into account and documented all relevant facts, it is determined that granting the vessel its flag will not result in IUU fishing; or
 - (b) authorised to enter any port in [country] except in case of force majeure or where the vessel, or any person on that vessel, is in danger or distress, unless it is allowed entry into port for the exclusive purpose of inspection and effective enforcement action.
- (6) Notwithstanding any provision in this section, where fish or fish products that have been associated with a listed vessel has become the property of Government through forfeiture, Court Order or other judicial process, they may be sold, processed, exported or otherwise dealt with in the same manner as other government property and shall not be considered as a product of illegal, unreported or unregulated fishing or related activities, and any purchaser for valuable consideration shall derive good and unencumbered title in respect of such fish or fish products.
- (7) Any person who contravenes any requirement of subsection (2), (3) or (4) commits an offence and is liable on conviction to [a fine, term of imprisonment, penalty etc.]

5. Prohibitions in relation to vessels without nationality

- (1) For the purposes of this Act, a “vessel without nationality” is a vessel used for fishing or related activities that is not entitled to fly the flag of any State or sails under the flag of two or more States, using them according to convenience.
- (2) Where any vessel without nationality engages in fishing or related activities in the area of competence of a relevant regional fisheries management organisation, and such organization has adopted an applicable international conservation and management measure that considers fishing or related activities by such vessel to be illegal, unreported and unregulated, such vessel:
- (a) shall be prohibited from landing or transshipping fish or fish products within areas under the jurisdiction of [country], or in areas beyond national jurisdiction involving a [country] registered vessel;
 - (b) shall be denied access to, and use of any port within [country];

- (c) notwithstanding subsection (b), may be allowed access where it is essential to the safety or health of the crew or safety of the vessel and shall be allowed exclusively for that purpose and not for any other activity or use of port.
- (3) Any operator, person on board or other person acting in association with or support of a vessel without nationality who lands, tranships or uses a port in contravention of subsection (2)(a) or (b) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.]

III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES

6. Compliance with Act, licence, authorisation or other permission, international conservation and management measures, other

- (1) The holder of a licence, authorisation or other permission issued under this Act shall:
 - (a) comply with the terms and conditions of the licence, authorisation or other permission;
 - (b) comply with this Act, all other legislation of [country], any applicable international agreement, including an agreement for fisheries access, and any applicable international conservation and management measure;
 - (c) not engage in any activity under the scope of this Act, except in accordance with such licence, authorisation or other permission as may be required.

Any person who contravenes subsection (1), (a) (b) or (c) commits an offence and, unless the same offence is otherwise provided in this Act, is liable on conviction to [a fine, term of imprisonment, penalty etc.].

7. Reporting requirements

- (1) Where any person, including the operator of any vessel, is required to make any report pursuant to this Act or an international conservation and management measure, such reports shall be:
 - (a) true, correct and complete in every respect;
 - (b) prepared by the person or vessel licensed or authorised under this Act or an accredited agent;
 - (c) submitted in the required form and format;
 - (d) submitted at the required time or times;

- (e) submitted to the designated person or body;
 - (f) certified, verified or otherwise validated as may be required.
- (2) No person shall falsify, forge, tamper with or submit any report that is false, inaccurate, misleading or incomplete in any way.
 - (3) No person shall provide sales receipts as documentation in lieu of the catch documentation required pursuant to this Act.
 - (4) Where estimates for any aspect of the catch may be made pursuant to this Act, no person shall submit an estimate unless:
 - (a) an estimation process officially recognized by the [Authority] is used; and
 - (b) any standard of proof that may be required by the [Authority] is satisfied.
 - (5) Any person that contravenes the provisions or subsection (1)(a), (b), (c), (d), (e) or (f), (2), (3) or (4) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

8. Gear stowage

- (1) The operator of a:
 - (a) vessel in [country] waters in any place or at any time where it is not licensed or authorised for fishing or related activities; or
 - (b) [country] registered vessel in areas beyond national jurisdiction where it has not been authorised for fishing or related activities pursuant to this Act,

shall ensure that all gear on board is at all times stowed or secured in such a manner that it is not readily available for fishing.

- (2) The operator of a vessel that contravenes the provisions or subsection (1)(a) or (b) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.]..

9. Requirements for citizens and [country] registered vessels in areas beyond national jurisdiction

- (1) No person shall use a [country] registered vessel:
 - (a) in areas under the national jurisdiction of other States except in accordance with the laws of that State; or

- (b) to engage in any activity on the high seas or in areas of national jurisdiction of other States that:
 - (i) does not comply with an applicable access agreement; or
 - (ii) undermines the effectiveness of applicable international conservation and management measures.
- (2) All [country] citizens and the operators of [country] registered vessels in areas beyond national jurisdiction shall comply with:
 - (f) applicable international conservation and management measures; and
 - (g) the laws of other States, when in areas under the jurisdiction of such States.
- (3) Where any [country] registered vessel is used in contravention of any requirement of subsection (1) or (2), the operator of such vessel commits an offence, and is liable on conviction to [a fine, term of imprisonment, penalty etc.].
- (4) Where any [country] citizen contravenes subsection (2) he or she commits an offence and is liable on conviction to [a fine, term of imprisonment, penalty etc.].

IV. REQUIREMENTS FOR FISHERIES ACCESS

10. Fisheries access – terms and conditions

In addition to any other terms or conditions for fisheries access that may be prescribed or required, each agreement entered into by the Minister shall require that:

- (a) the other party to the agreement and the operator of all vessels subject to the agreement must comply with this Act and all other applicable legislation of [country];
- (b) the operator of any vessel subject to the agreement must hold, in respect of their vessel, a valid and applicable licence or authorisation from the State in which the vessel is registered to carry out fishing or related activities in areas beyond national jurisdiction including in [country] waters;
- (c) all vessels subject to the agreement must have good standing on an authorised vessel list of an applicable regional fisheries management organization or a register maintained under any applicable fisheries management agreement, and the agreement will automatically terminate should the vessel's good standing on any such register be withdrawn;

- (d) no vessel subject to the agreement is on a list of illegal, unreported or unregulated vessels maintained by a regional fisheries management organization, and the agreement and license issued thereunder will automatically terminate should any vessel be included on any such list;
- (e) the other party to the agreement and all operators of vessels subject to the agreement must take all necessary measures required to ensure compliance with the agreement and this Act;
- (f) any vessel or operator that does not comply fully with the agreement, this Act or any applicable international conservation and management measure shall be denied renewal or issuance of any licence, authorisation or other permission under the access agreement for a period of up to ten years;
- (g) in the case of an agreement entered into with a corporation, association or other body acting on behalf of its members or other persons, that the corporation, association or other body is liable for the undischarged liabilities of its members or other persons arising out of any operations under the agreement and the agreement itself, including fees;
- (h) fees, levies and other charges be fully paid at the required time, and the agreement will automatically terminate on non-payment or late payment;
- (i) the other party to the agreement shall ensure minimum specified benefits to [country] citizens including training and employing such level of qualified citizens as crew members and such other benefits as may be specified by the Minister; and
- (j) in the case of an agreement with a term of more than one year, the agreement is subject to an annual review and termination or suspension in accordance with section 44.

11. Requirements for all foreign vessels to report entry to, exit from and regularly while in [country] waters

- (1) The operator of every foreign vessel, [country] vessel, joint venture vessel and national vessel shall, upon entry into and exit from [country] waters report directly to the [Authority] through electronic means its position by latitude and longitude, purpose for entry, the time of entry and exit, speed, heading and species on board by weight and such other information, as close as possible to real time, in accordance with such requirements as may be determined by the [Authority] or the Minister by public notice or otherwise under this Act or required by a relevant regional fisheries management organisation, and shall:

- (a) make such reports using a Vessel Monitoring System and Automatic Information System required by a relevant regional fisheries management organisation, or where this is not possible by email;
 - (b) where the vessel falls within requirements by the International Maritime Organization to continuously operate an Automatic Information System, ensure that such operation is effected at maximum strength;
 - (c) report continuously at least every six hours at all times while in [country] waters directly to the [Authority] in accordance with such requirements;
 - (d) where the vessel does not hold a valid and applicable license for fishing or related activities in [country] waters proceed expeditiously and continuously through [country] waters; and
 - (e) where the vessel holds a valid and applicable license for fishing in [country] waters, prior to departing from [country] waters report the last fishing area and weight by species of fish caught in [country] waters.
- (2) Notwithstanding subsection (1), the operator shall ensure that the transit report upon first entry is effected manually.
 - (3) The operator of every foreign vessel shall ensure that the vessel does not engage in fishing in [country] territorial sea or other area that may be prohibited under this Act or the laws of [country].
 - (4) Where any operator does not comply with subsection (1), (2) or (3) he/she commits an offence and shall be liable on conviction to [a fine, term of imprisonment, penalty etc.].

V. INFORMATION

12. Establishment of information system

- (1) There shall be established and maintained an information system in the [Authority] with the objectives of meeting national, regional and international requirements relating to information and data and supporting the objectives and principles of this Act.
- (2) The information system shall be available on the website of the [Authority] and subject to designated confidentiality requirements that are determined by the [Authority], taking into account best international practices for transparency and accountability.

- (3) The information system shall include such information that supports implementation of this Act and international conservation and management measures, including such information as the [Authority] may require in relation to fisheries management, fishing and related activities, monitoring, control and surveillance, legal and administrative matters, statistical and economic aspects and other information consistent with the objective and principles of this Act.
- (4) The [Authority] shall ensure that, as appropriate, information is released from the database and communicated to other national agencies, States and regional and international organizations in a timely manner to ensure the discharge of national, regional and international obligations of [country], including as a flag State and as a member of any relevant regional fisheries management organization.
- (5) A person may, upon payment of such fee as may be prescribed, access any non-confidential information from the register.

13. Information may be required, inspected

- (1) Each person carrying out activities within the scope of this Act shall keep and maintain such records and information and supply them to the [Authority] in such form and manner as the [Authority] may require or as may be required pursuant to this Act, other [country] legislation or any applicable conservation and management measure or international agreement.
- (2) The [Authority] shall ensure the collection and analysis of statistical data and other information in relation to activities and persons within the scope of this Act and the provision of data and information to a relevant regional fisheries management organization as may be required by an applicable international conservation and management measure.
- (3) The [Authority] may, for the purposes of verifying accounts, records, documents and other information required to be kept, furnished or communicated under subsection (1) direct:
 - (a) the audit or inspection of any accounts, records, documents, data and other information or place where such information may be kept;
 - (b) the audit or inspection of any vessel, processing plant or other facility to which this Act applies; and
 - (c) that any person provide further information regarding any accounts, records, documents, data and other information kept, furnished or communicated under this Act in accordance with such time limits as may be specified or prescribed.

(4) Any person who:

- (a) fails to keep, furnish or communicate any accounts, records, documents, data and other information as required under subsection (1); or
- (b) does not facilitate, assist or comply with the requirements for an audit or inspection undertaken under subsection (3),

commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

14. Information to be true, complete and correct and destruction etc of documents prohibited

- (1) All persons shall keep records and provide information, data and statistics as required pursuant to this Act and such records, information, data and statistics shall at all times be true, complete and correct and shall not be false, misleading or inaccurate.
- (2) No person shall alter, destroy, erase or obliterate any:
 - (a) declaration, certificate, or other documents, information, data or statistics made or required to be made or issued under this Act;
 - (b) label subject to this Act; or
 - (c) required markings on vessels or gear.
- (3) No person shall submit to the [Authority] or any person, court, body or government authority in [country] or other relevant State or relevant regional fisheries management organisation, international organisation or other body or person any information or documents that are fraudulent or, in the case of written information or documents, forged.
- (4) The requirements of this section shall apply to any records, information, data and statistics required under the scope of this Act without regard to whether they are submitted to the [Authority], or any other court, body, or government authority in [country], other relevant State or relevant regional fisheries management organization, international organisation or other body or person.
- (5) Any person who does not comply with any requirement in subsection (1), (2) or (3) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

15. Information sharing bilaterally, regionally, internationally

- (1) The [Authority] may prepare and share information that falls within the scope of this Act, including fisheries statistics and vessel information, to the Food and Agriculture Organization of the United Nations, and any international organization or any regional organization to which [country] is a party or pursuant to an international agreement, as may be required by such organization or international agreement, taking into account any confidentiality requirements, and shall do so where required by international agreement or a regional fisheries management organization.
- (2) Where the information is required, it shall be shared within any time frame that may be required or promptly upon the demand or request for information.

VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION**16. Licences, authorisations, other permissions, registration required**

[This model section will vary based on the type of licenses that are issued by the country]

- (1) No person shall engage in any of the following activities without a valid and applicable licence, authorisation or permit issued in accordance with this Act:
 - (a) use of a vessel for fishing or related activities in [country] waters;
 - (b) use of a [country] registered vessel for fishing or related activities in areas beyond [country] waters, including on the high seas and in waters under the jurisdiction of another State;
 - (c) have on board, deploy, maintain or retrieve any fish aggregating device in [country] waters or, being a [country] registered vessel, in areas beyond national jurisdiction in the area of competence of a relevant regional fisheries management organization;
 - (d) use of aircraft, including drones, for the purpose of fishing;
 - (e) use of such equipment or gear as may be prescribed;
 - (f) test fishing for purposes of researching species, techniques or gear;
 - (g) aquaculture;
 - (h) marine scientific research;

- (i) marine bioprospecting;
 - (j) landing;
 - (k) transshipment;
 - (l) such other activity or requirement as may be prescribed.
- (2) Registration by the [Authority] shall be required for:
- (a) the use of any Mobile Transceiver Unit by a licensed vessel in [country] waters or a [country] registered vessel in areas beyond national jurisdiction; and
 - (b) any agent accredited under this Act.
- (3) Any operator who does not comply with any requirement in subsection (1) or (2) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

17. Terms and conditions of licences, authorisations, other permissions, registrations

- (1) A licence, authorisation, registration or other permission granted under this Act:
- (a) shall be subject to the terms and conditions provided in this Act or as may be prescribed, and to such other terms and conditions as may be specified in writing by the [Authority] or provided in applicable international conservation and management measures;
 - (b) may, upon reasonable notice determined by the [Authority], be subject to any varied, amended or additional terms and conditions consistent with the objective and principles of this Act as may be:
 - (i) prescribed;
 - (ii) specified in writing by the [Authority] where it is expedient for the management of a fishery; or
 - (iii) specified in writing by the [Authority] or Minister in accordance with the principles in this Act or with any applicable conservation and management measure;
 - (c) enters into force on the date specified in it; and

- (d) remains in force until the date on which it expires in accordance with the period approved by the [Authority] for the class of licence to which it belongs, unless sooner suspended, cancelled or revoked in accordance with this Act.
- (2) The operator of any vessel holding a licence, authorisation, registration or other permission issued under this Act shall ensure that the original or a certified scanned electronic version or certified copy of it is on board the vessel at all times during the period of validity, except where the vessel was at sea when such document was issued and has not entered port since issuance in which case an electronic copy shall suffice, and the master shall, upon request, produce it to an authorised fisheries officer or other person authorised under this Act.
- (3) The holder of a license or authorisation for any activity licensed in accordance with this Act other than activities concerning vessels shall display the license or authorisation or a certified copy thereof in the registered business office, and upon request produce it to a authorised fisheries officer or other person authorised under this Act to inspect it.
- (4) The operator of a [country] registered vessel shall:
 - (a) carry on board at all times such documents issued and certified by the [Authority] as may be prescribed or required by the [Authority] or an international conservation and management measure, and upon request produce them to an authorised fisheries officer or other person authorised under this Act, other applicable legislation or who is carrying out duties pursuant to a relevant regional fisheries management organisation;
 - (b) while in areas under the national jurisdiction of any other State comply with all legislation of that State; and
 - (c) while in an area of competence of a relevant regional fisheries management organization, comply with all applicable conservation and management measures.
- (5) The operator of a vessel holding a licence, authorisation or other permission for fishing or related activities shall, as a condition of licence or authorisation maintain log books and make such reports relating to fishing or related activities at such times, containing such information and in such format as may be prescribed or required by the [Authority] in writing or required by an applicable international conservation and management measure.
- (6) The holder of any licence, authorisation, registration or other permission shall report to the [Authority]:

- (a) the sale or transfer of any vessel company or item that is subject to or operating under the licence, authorisation, registration or other permission, upon such sale or transfer;
 - (b) any other change of information that was provided in the application form, registration form or other process or requirement to obtain the licence, authorisation, registration or other permission, within fourteen days of such sale, transfer or change.
- (7) The holder of any licence, authorisation, registration or other permission shall report to the [Authority] any change of information from that submitted in the application form shall be reported within a maximum of 14 days or the licence, authorisation, registration or other permission shall be deemed to have expired on the 15th day.
- (8) All licences, authorisations and registrations granted under this Act are not transferable, and no person shall:
 - (a) transfer, or attempt to transfer such licence, authorisation or registration to another person or vessel; or
 - (b) use or attempt to use a transferred licence or authorisation as authority for fishing or related activities.
- (9) Any person who contravenes any terms and conditions required under subsection (1)(a) or (b), subsection (2), (3), (4) (a) (b) or (c), (5), (6)(a) or (b), (7) or (8)(a) or (b) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

18. Conditions for landing and transshipment

- (1) The operator of any foreign, joint venture or [country] vessel or such other vessel required to do so by a licence condition shall transmit electronically a prior request to the [Authority] or such addressee as he or she may designate to land or tranship any or all of the fish or fish products on board at such time in advance of landings or transshipment and including such information and format as may be required by the [Authority] or prescribed.
- (2) The operator of each vessel shall carry out landing and transshipment at any port designated by the [Authority] by public notice, and shall comply with such procedures as may be required by the [Authority], including pre-inspection and the placement of any fishery inspector or observer on board prior to and during landing or transshipment, to:

- (a) obtain and verify data, including on the quantity and species landed or transhipped; and
 - (b) determine when landing or transhipment has been completed, and such other procedures as may be prescribed or any applicable international conservation and management measure.
- (3) The licensee of the vessel shall pay in full all costs of transport, accommodation and subsistence relating to the performance of the duties of an authorised fisheries officer or other person designated by the [Authority] to conduct supervision of a transhipment of fishery resources outside a port in [country] shall be borne by the licensee of the vessel.
- (4) Fresh shark fins shall not be transhipped without the carcass and vice versa, and where sharks are landed frozen, up to the first point of landing vessels shall not have on board shark fins that total more than 5% of the weight of sharks on board.
- (5) The operator of any vessel that lands or imports tuna and tuna-like species and sharks, either unprocessed or after having been processed on board and which are transhipped, shall submit at such time as may be required by the [Authority] such Declaration of Transhipment that may be prescribed or required by an international conservation and management measure until the first sale has taken place.
- (6) The vessel operator shall not land, tranship or offload fish into a container that has been caught or otherwise subject to activity in contravention of an international conservation and management measure.
- (7) During transhipment the operator of each vessel shall comply with all applicable laws relating to protection of the marine environment.
- (8) Landings and transhipments shall be subject to such further conditions as may be prescribed or otherwise required by the [Authority] and shall comply with any applicable international conservation and management measure.
- (9) Any person who contravenes any requirement in subsections (1), (2), (3), (4), (5), (6), or requirement made under subsection (8) commits an offence and upon conviction shall be liable for a fine provided in the Second Schedule or a term of imprisonment not exceeding five years or both, and any other penalty that may be provided under this Act.

19. Pre-licensing and pre-registration inspection and other requirements

- (1) The operator of a vessel in respect of which an application has been made for a licence, authorisation or other permission in accordance this Act or a vessel

registration in accordance with [country] law shall, prior to being issued any registration, licence, authorisation or other permission:

- (a) avail the vessel intended to be used for fishing or related activities for inspection, survey or other requirement either at [country] port or any other port nominated by the applicant and approved by the [Authority] in [country] or where there is an exceptional need to inspect a vessel going into or in a dry dock or to another port for repair; and
 - (b) fulfil pre-licensing and pre-registration criteria as may be prescribed or required by the [Authority].
- (2) Subject to paragraph (a) of subsection (1) the operator shall provide not less than forty-eight hours advance notice of the vessel's estimated time of arrival, weight by fish species catch onboard and port of call to the [Authority].
- (3) Where the applicant has nominated a port other than [country] port, the applicant shall bear all costs for inspection of the vessel in the nominated port, including full costs of salary, travel, inspection and any other costs that may be approved by the [Authority].
- (4) An authorised fisheries officer shall undertake and verify the pre-licensing or pre-registration inspection of any vessel in accordance with this Act and such criteria as may be approved by the [Authority], and in addition the [Authority] may designate a survey inspector to undertake such inspections.
- (5) The [Authority] shall review all relevant documentation required for the consideration and issuance of a registration, licence, authorisation or other permission.
- (6) The operator of the vessel subject to the requirements in this section shall:
 - (e) allow and assist any authorised fisheries officer and survey inspector to board and inspect the vessel and otherwise exercise his or her powers and responsibilities under this Act; and
 - (f) provide to the [Authority] all documentation and information required for consideration and issuance of a registration, licence, authorisation or other permission.

Any operator who does not comply with any requirement in subsection (1), (2), (3) or (6)(a) or (b) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

20. Standards for grant or renewal of licences, authorisations, registrations or other permissions

- (1) The [Authority] shall, within a reasonable time and taking into account the recommendations of the review of the applications and associated documents, grant or deny an application for any licence, authorisation, registration or other permission made under this Act, and issuance shall be denied where the review has so recommended.
- (2) In granting or renewing licences, authorisations, other permissions or registrations under this Act, the [Authority] shall take into account the extent to which any relevant State, operator, owner, charterer of the vessel or other relevant person or company, or the vessel, as appropriate, has:
 - (a) complied with this Act, other relevant laws of [country], applicable licensing terms and conditions and any applicable access agreement;
 - (b) complied with any applicable requirements concerning the appointment of agents and the agent(s) has complied with this Act and other relevant laws of [country];
 - (c) complied with requirements for seaworthiness and safety;
 - (d) provided all required data and information and vessel attributes promptly and accurately, including any applicable vessel monitoring system requirements;
 - (e) complied with all applicable international conservation and management measures and such other regional and international standards as may be applicable;
 - (f) been included in the record of authorised vessels of any relevant RFMO;
 - (g) not been, or is not associated with a vessel that is on a list of any relevant RFMO designating vessels that have engaged in illegal, unreported or unregulated fishing or related activities;
 - (h) is fit for the purpose for which the application has been made; and
 - (i) the ability to comply with this Act.
- (3) In this section, “vessel attributes” includes the type, construction, capacity, machinery and other attributes of a vessel, and specifications and other information in relation to its gear, equipment, aircraft and instrumentation.

21. Grounds for denial or non-renewal of licences, authorisations, registrations

- (1) Issuance or renewal of any licence, authorisation, registration or other permission under this Act shall be denied where the [Authority] determines that:
- (a) the standards set out in section 20 (2) are not been met at all or any times;
 - (b) the exploitation of the fisheries is unsustainable;
 - (c) the operator of the vessel has not complied with or fulfilled pre-licensing requirements in accordance with section 19;
 - (d) the operator of the vessel has been convicted of an offence involving dishonesty or fraud;
 - (e) notwithstanding any other provision in this Act, the operator of the vessel or the vessel is subject to an access agreement and has not fully complied with the agreement, this Act or any applicable international conservation and management measure;
 - (f) there is sufficient evidence that the operator or any person associated with the vessel has engaged in any IUU fishing or related activity or any other relevant illegal activity and has not satisfied any relevant judgement or determination or been involved in an organized criminal group or transnational crime;
 - (g) the operator of a vessel has committed an offence in [country] waters, or the vessel has been used for such an offence and any consequent process has not been concluded;
 - (h) the operator of the vessel is associated with a vessel that is on a list maintained by a relevant regional fisheries management organization of vessels that have engaged in illegal, unreported or unregulated fishing;
 - (i) a foreign vessel does not hold a valid and applicable authorisation issued by its flag State for fishing or related activities in areas beyond national jurisdiction;
 - (j) the vessel is registered under a flag that is reasonably considered to be a “flag of non-compliance” because of the failure of the flag State to exercise effective flag State responsibility based, *inter alia*, on criteria set out in paragraph 2 of the FAO Voluntary Guidelines for Flag State Performance;
 - (k) the vessel is not fit for the purpose for which application has been made;

- (l) port State measures have been taken against the vessel under an applicable conservation and management measure, there is reasonable evidence that the vessel had engaged in illegal, unreported and unregulated fishing and the operator or vessel has not submitted to such legal or other process as may be demanded by a relevant port State, coastal State or flag State in relation to such evidence;
- (m) any or all of the applicant, owner or operator has not:
 - (i) complied with the terms of an existing or previous licence or any other requirement under this Act;
 - (ii) complied with any law of [country]; and
 - (iii) submitted to due process under this Act in respect of the non-compliance or fully satisfied any applicable judgment or determination.
- (2) If the information in an application for a licence, authorisation, registration or renewal thereof is found to be false, misleading or inaccurate in any material sense, the [Authority] may decline to grant or renew the licence, authorisation or registration.
- (3) A licence, authorisation, registration or other permission shall not be granted or renewed unless all applicable fees, charges or levies required pursuant to this Act may be required have been paid.
- (4) A licence, authorisation, registration or other permission shall not be granted or renewed in relation to any foreign vessel previously licensed for fishing or related activities by a foreign State if that vessel undermined the effectiveness of applicable international conservation and management measures and:
 - (a) the foreign State suspended the previous licence, and the suspension has not expired; or
 - (b) the foreign State, within the last three years preceding the application for a licence under this Act, withdrew the previous licence.
- (5) The restriction in subsection (4) does not apply if:
 - (a) the ownership of the vessel has changed since the vessel undermined the effectiveness of applicable international conservation and management measures; and

- (b) the new owner has provided evidence to the [Authority] that, in his or her opinion, demonstrates that the previous owner has no further legal, beneficial or financial interest in the vessel.
- (6) The [Authority] shall notify in writing the applicant of its refusal to grant or renew a licence, authorisation, registration or other permission and the reasons for the refusal.

VII. MONITORING CONTROL AND SURVEILLANCE

Division 1 – Authorised fisheries officers, inspectors, observers

22. Exercise of powers and functions by authorised fisheries officers, inspectors and observers

- (1) Authorised fisheries officers and observers shall exercise monitoring, control, surveillance and compliance functions in accordance with this Act in areas to which this Act applies.
- (2) Where authorised fisheries officers, inspectors and observers exercise their functions in areas beyond national jurisdiction, the provisions of this Act are applicable as if the duties were performed in areas under national jurisdiction.
- (3) Each authorised fisheries officer and observer shall, in the course of discharging his or her duties, carry identification issued by the [Authority] in such form as may be prescribed or approved by the [Authority] and shall produce it on request for purposes of identification, and the production of identification shall, unless the contrary is proved, be sufficient authority for the exercise of powers and functions under this Act.

23. Authority and general powers of authorised fisheries officers

- (1) An authorised fisheries officer may do such acts and things and give such directives as are reasonably necessary for the purposes of performing or exercising his or her functions, powers and duties under this Act.
- (2) An authorised fisheries officer may use such force as is reasonably necessary to exercise his or her powers and duties under this Act.
- (3) An authorised fisheries officer may require any persons to assist him or her:
 - (a) to bring a vessel to a place in [country] in accordance with this Act; or

- (b) in circumstances where the need for assistance in enforcing this Act is immediate and urgent,

and that person is deemed to have the authority and powers of an authorised fisheries officer for the purposes for which, and time during which, he or she is required to act, except for the power of arrest.

- (4) Subsection (3) shall apply where a person or persons are duly appointed by another State with powers and authority similar to those of an authorised fisheries officer under this Act, and in addition the Minister may, in consultation with authorities of such other State, declare such person or persons to have the authority and powers of an authorised fisheries officer under this Act for a specified purpose, area or time except for the power of arrest.

24. **Power of entry and search**

- (1) The application of this section extends to all activities falling within the scope of this Act and areas to which this Act applies.
- (2) An authorised fisheries officer may, for purposes and activities falling within the scope of this Act, without a warrant:
 - (a) stop, board, stay on board, enter and search any vessel, vehicle or aircraft, including:
 - (i) any vessel which he/she has reason to believe has been used, is being used or is intended to be used for fishing or a related activity;
 - (ii) any [country] registered vessel beyond [country] waters;
 - (iii) any vessel without nationality on the high seas; and
 - (iv) any other vessel to which this Act, any international law, international agreement or applicable international conservation and management measure applies,

and such search may include the breaking open of any hold or compartment, container or other receptacle upon a boarded vessel that the authorised fisheries officer has reasonable grounds to believe may contain evidence of an offence under this Act;

- (b) enter, examine and search any premises or place, other than premises used exclusively as a dwelling house, including premises that are part of or attached to a dwelling house which he/she reasonably suspects are used for activities falling within the scope of this Act:

- (i) in or on which he/she has reason to suspect that evidence of an offence against this Act may be found; or
- (ii) that it is necessary or expedient to enter or search to ascertain whether this Act is being or has been complied with;
- (c) stop any person and examine any record, article, container, gear, apparatus, device or fish in the possession of that person;
- (d) pass across any land;
- (e) monitor landing and transshipment operations and take samples, photographs, videos and relevant documentation;
- (f) require a person engaged or apparently engaged in any activity for which a license, authorisation or other permission is required under this Act or an applicable international agreement or international conservation and management measure to:
 - (i) give information about the relevant activity;
 - (ii) state whether he/she holds a license, endorsement or other authorisation under this Act and, if so, to produce the license, endorsement or other authorisation;
 - (iii) state his or her name, date of birth and place of abode;
- (g) make an entry dated and signed by her/him in a vessel's log, and require the master to sign the entry, or to indicate on a chart or other document the position of the vessel at that time and initial such chart or other document accordingly;
- (h) require any person associated or apparently associated with a vessel, vehicle, aircraft, premises, facility, or other place or activity falling within the scope of this Act, to provide such information as may be reasonably required for the enforcement of this Act;
- (i) examine any gear, equipment, record or other document that is found in or on any vessel, vehicle, aircraft, premises, facility or place, that he/she has reason to believe has been used, is being used or is intended to be used for or in relation to any activity requiring a license or authorisation under this Act;

- (j) examine and/or test or cause to be examined and/or tested any electronic equipment required to be on board any vessel or used for the any purpose that falls within the scope of this Act,

and may examine and search any document, record, article, gear, equipment, apparatus, device, container, fish and contents of any kind found therein or thereon.

- (3) An authorised fisheries officer may, in respect of premises used exclusively as a dwelling house, only conduct searches and seizures in accordance with this Act and with a warrant issued by any court of competent jurisdiction, and the provisions of this section shall apply mutatis mutandis.

25. Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction

An authorised fisheries officer may:

- (a) investigate any person where there are reasonable grounds for believing that such person, natural or legal, is associated directly or indirectly with any vessel or activity that may not be complying with this Act in areas beyond national jurisdiction;
- (b) request another State to carry out investigations of any vessel or person, natural or legal, where there are reasonable grounds to believe that such vessel or person has been involved in illegal, unreported or unregulated fishing in violation of this Act, any international conservation and management measures or international agreement.

26. Power to take, detain, remove and secure information, evidence

- (1) An authorised fisheries officer may, for purposes and activities falling within the scope of this Act:
 - (a) inspect, take, detain and secure samples, documents, logbooks including electronic logbooks or other information, or copies thereof, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house, but including premises that are part of or attached to a dwelling house used for activities falling within the scope of this Act;
 - (b) make or take copies of any record, and for this purpose may take possession of and remove any records from the place where they are kept, for such period of time as is reasonable in the circumstances;

- (c) if necessary, require a person to reproduce, or assist the authorised fisheries officer to produce in a useable form, information recorded or stored in a document; and
 - (d) require any person associated or apparently associated with a vessel, premises, facilities or other place or activity falling within the scope of this Act to provide such information as may be reasonably required for the monitoring or enforcement of this Act.
- (2) Where an authorised fisheries officer is questioning a person for the purposes of subsection (1)(d), he or she may:
 - (a) require the person being questioned to provide answers including any explanation or information concerning any vessel or any place or thing or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, purchase, or possession of any fish; and
 - (b) require that person or any other person to produce any permit, authority, approval, permission, licence, certificate or other document issued in respect of any vessel or person.

27. Power to detain persons, vessels, gear, etc.

- (1) An authorised fisheries officer may detain any person, vessel, vehicle, parcel, package, record, document, article, gear, equipment, apparatus, device, container, fish or thing for such period as is reasonably necessary to enable an examination or search under this Act.
- (2) Where a vessel or vehicle is detained, including any of its gear and equipment, a Notice of Detention in such form as may be approved by the [Authority] or prescribed shall be provided to the operator or owner of the vessel or vehicle and a copy of such Notice shall be promptly transmitted to any relevant government [Authority] of [country].
- (3) Where a foreign vessel is detained, the [Authority] shall ensure that the flag State is notified.

28. Power of arrest

- (1) An authorised fisheries officer who has legal authority to make arrests, may, if he or she believes on reasonable grounds that a person is committing or has committed an offence against this Act:
 - (a) order that person to immediately cease and desist;

(b) request that person to supply to the authorised fisheries officer their name, date of birth, residential address and occupation and request such verification of those details as it is reasonable in the circumstances; and

(c) arrest that person without warrant.

(2) Where a person associated with a foreign vessel is arrested, the [Authority] shall ensure that the flag State is notified.

29. Power to order a vessel to port

(1) An authorised fisheries officer may order a vessel to port for inspection concerning compliance with this Act, any international conservation and management measure or an international agreement.

The operator of any vessel that does not immediately comply with the order to port or submit to any inspection procedures in port commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

30. Power to give direction

(1) An authorised fisheries officer who reasonably believes that a vessel, including its gear or equipment, is being or has been used in contravention of this Act, an applicable licence, authorisation or other permission, an international conservation and management measure or any agreement entered into under this Act:

(a) may take the vessel as soon as reasonably practicable to the nearest available port in [country] for purposes related to inspection or such port or place that will facilitate inspection, having due regard for the safety of the vessel and crew;

(b) may remain in control of the vessel at such port for such period as is reasonably necessary to enable the authorised fisheries officer to exercise any other powers under this Act, until the vessel is permitted to depart from the port.

(2) The vessel shall be permitted to depart within seventy two hours after arrival in port where, after full inspection of the vessel and all relevant evidence, the [Authority], in consultation with the Attorney General and relevant government officials and regional fisheries management organization, determines there are no reasonable grounds to suspect a contravention described in subsection (1).

31. Seizure of vessels, aircraft and items

(1) For the purposes of this section, a vessel's equipment, gear, furniture, appurtenances, stores, and cargo are deemed to form part of the vessel.

- (2) An authorised fisheries officer may seize:
- (a) any vessel or other conveyance, gear, implement, appliance, material, container, goods, equipment or thing which the authorised fisheries officer believes on reasonable grounds is being, has been or is intended to be used in the commission of an offence against this Act;
 - (b) any fish or fish product (and any other fish with which such fish are intermixed) that the authorised fisheries officer believes on reasonable grounds are being or have been taken, killed, transported, bought or sold or have been found in the possession of any person in contravention of this Act;
 - (c) any item, article, record or thing that the authorised fisheries officer believes on reasonable grounds may provide evidence of an offence against this Act or contravention of an applicable international conservation and management measure;
 - (d) any passport and seaman's record book:
 - (i) of the master and crew of a vessel directed to return to and remain in port pursuant to this Act until the vessel is permitted to depart;
 - (ii) of any person arrested, until that person is brought before a court; or
 - (iii) pursuant to any order of the Court; and
 - (e) any other item which the authorised fisheries officer has reasonable grounds to believe:
 - (i) has been or is being used to commit an offence against this Act;
 - (ii) has been forfeited under this Act; or
 - (iii) has been unlawfully removed from custody under this Act.
- (3) An authorised fisheries officer shall deliver anything seized under subsection (2) into the custody of the [Authority] for safekeeping under such procedures as may be prescribed.
- (4) A written notice of the seizure shall be given to the person from whom any article or thing was seized or to any other person whom the authorised fisheries officer believes is the owner or person otherwise entitled to possession of the article or thing seized, and the grounds for such seizure shall be stated in the notice.

- (5) The [Authority] shall, upon seizure of a foreign vessel, ensure that the flag State is promptly notified of any action taken and penalties imposed.

32. Hot pursuit

- (1) An authorised fisheries officer who suspects on reasonable grounds that a foreign vessel has contravened this Act, an applicable international conservation and management measure or international agreement, may undertake hot pursuit of a foreign vessel in accordance with conditions recognized under international law, including:
- (a) the authorised fisheries officer is satisfied that the foreign vessel or one of its associated boats is within [country] waters, based upon evidence from, *inter alia*;
 - (i) vessel monitoring system;
 - (ii) geographical positioning system;
 - (iii) aerial photography;
 - (iv) satellite systems; or
 - (v) any other accepted international communication system;
 - (b) the pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by persons aboard the foreign vessel;
 - (c) it is not necessary that, at the time when the foreign vessel receives the order to stop, the vessel giving the order should likewise be within [country] waters;
 - (d) the pursuit must be continuous and not interrupted;
 - (e) the right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State; and
 - (f) the right of hot pursuit may be exercise by vessels or aircraft clearly marked and identifiable as being on government service and authorised to that effect.
- (2) Any authorised fisheries officer exercising powers described in subsection (1) shall inform the [Authority], who shall, through the ministry responsible for foreign affairs, inform the flag State.

- (3) An authorised fisheries officer may, following hot pursuit outside [country] waters in areas beyond national jurisdiction in accordance with subsection (1) and international law, stop board and search outside [country] waters any vessel which he or she has reasonable grounds to believe has been used in the commission of an offence under this Act, exercise any powers conferred by this Act and bring such vessel and all persons and things on board back into [country] waters.

The operator any vessel who does not comply with the order to stop given under subsection (1)(b) or with any powers exercised by a fisheries inspector or authorised fisheries officer pursuant to subsection (3) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

33. Responsibilities of observers

- (1) The responsibilities of observers shall include observing collecting, recording and reporting the following information:
- (a) observe and record the harvesting, handling and processing of fish and fish products and related operations;
 - (b) collect and record scientific, biological and other information related to activities within the scope of this Act;
 - (c) the species, quantity, size, age and condition of fish taken, including as bycatch and whether the species is threatened or endangered;
 - (d) the methods by which, the areas in which, and the depths at which, fish are taken;
 - (e) the effects of fishing methods on fish and the environment, including where applicable cases of entanglement in nets;
 - (f) all aspects of the operation of any vessel, including activities relating to bribery, corruption or illegal activities;
 - (g) processing, transportation, transshipment, storage or disposal of any fish or fish products;
 - (h) take samples or photographs of fish harvested or anything on board a vessel;
 - (i) monitor the implementation of conservation and management measures taken pursuant to this Act, applicable international conservation and management measures and international agreements; and
 - (j) such other information as may be required under the scope of this Act.

- (2) The responsibilities of observers shall include performing:
 - (a) such other activities to implement applicable international conservation and management measures as may be assigned by the [Authority];
 - (b) such activities that may assist the [Authority] to obtain, analyse or verify information for fisheries scientific, conservation, management and compliance purposes, and as may be assigned by the [Authority].
- (3) Observers may be deployed, as may be directed by the [Authority] in accordance with this Act, any international agreement or applicable international conservation and management measure, on or in relation to any vessel used for fishing, transshipment, transportation or landing of fish or in relation to any other activity within the scope of this Act, within and beyond areas under the national jurisdiction of [country].

34. Duty of operators, and crew members to assist observers

- (1) The operator and each crew member of any vessel on which an observer is placed shall, at all times within and beyond areas under the national jurisdiction of [country], allow and assist the observer, in the performance of his or her duties, to:
 - (a) board such vessel at [country] port or any other port that the [Authority] may designate outside [country];
 - (b) provide the observer with appropriate working space, access to all spaces and communication equipment;
 - (c) receive and transmit messages and communicate with the shore and other vessels by means of the vessel's communications equipment;
 - (d) ensure that accommodation, meals and treatment of the observer is at the same standard as officers on board the vessel;
 - (e) take photographs of the fishing operations, including fish, gear, equipment, documents, charts and records, and remove from the vessel such photographs or film as the observer may have taken or used on board the vessel;
 - (f) gather such other information relating to fisheries as may be required for purposes of carrying out the objectives of this Act or any applicable conservation and management measure; and

- (g) disembark at such time and place as the [Authority] may require, provided that such disembarkation is in accordance with the safe operation of the vessel.

An operator or a crew member of any vessel on which an observer is placed in accordance with this Act commits an offence if he or she contravenes any part of subsection (1), and each part shall be considered as a separate offence, and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

35. Observers and field inspectors under an RFMO observer scheme

- (1) This Act applies to activities under the observer scheme of a relevant regional fisheries management organization and the collection of verified catch data and other scientific data related to the fisheries for tuna and tuna-like species in the Area of competence of such regional fisheries management organization.
- (2) For purposes of this section, “observer” refers to a person whose duties are on board vessels and “field inspector” refers to a person who collects information on land during the unloading of vessels.
- (3) An observer assigned to a vessel shall monitor the catches at unloading to identify the composition of bigeye tuna catches. An observer shall, *inter alia*:
 - (a) record and report fishing activities, verify positions of the vessel;
 - (b) observe and estimate catches as far as possible with a view to identifying catch composition and monitoring discards, bycatches and size frequency;
 - (c) record the gear type, mesh size and attachments employed by the master;
 - (d) collect information to enable the cross-checking of entries made to the logbooks (species composition and quantities, live and processed weight and location, where available); and
 - (e) carry out such other scientific work as requested by the Scientific Committee of the relevant regional fisheries management organization.
- (4) Field inspectors shall monitor catches at the landing place with a view to estimating catch-at-size by type of boat, gear and species, or carry out such scientific work as requested by the Scientific Committee of a relevant regional fisheries management organization.

- (5) The confidentiality rules, policy and procedures for fine-scale data set out in any applicable international conservation and management measure shall be applicable and have the force of law in [country].

Division 2 - Protection and obstruction of authorised persons

36. Definition of authorised person

For the purposes of this Division, “authorised person” includes authorised officers and observers appointed in accordance with this Act or under an observer programme of a relevant regional fisheries management organization.

37. Protection of authorised persons from liability

- (1) The [Authority], authorised persons, officers, employees and persons acting under the authority of the [Authority], including persons with delegated authority and any person assisting an authorised fisheries officer, who act or omit to act while performing or exercising functions, powers or duties under this Act or another legislative authority are not subject to any action, liability, claim or demand for anything done or omitted to be done in good faith, whether negligently or not, in the performance or exercise, or purported performance or exercise, of such functions, powers, or duties under this Act or other legislative authority.
- (2) Where a vessel is being brought to a place in [country] as directed in accordance with this Act:
- (a) if required to remain in control of the vessel, the master shall be responsible for the safety of the vessel and of each person on board until the vessel arrives at the designated place; and
 - (b) no claim may be made against an authorised person in respect of any death, injury, loss or damage that occurs while the vessel is being brought to such place.

38. Obstruction of, failure to comply with authorised persons

- (1) For the purposes of this Act, “fails” includes any effort which does not result in meeting the specified requirement.
- (2) A person commits an offence who:
- (a) is the operator or a crew member of a vessel, and fails or refuses to allow or assist an authorised person to:
 - (i) safely board the vessel;

- (ii) have full access to and use of such facilities, gear and equipment on board as the authorised person may determine is necessary to perform or exercise his or her functions, powers or duties, including the bridge, fish and fish products on board, gear and areas which may be used to hold, process, weigh or store fish;
 - (iii) have full access to the vessel's records including its logbook, charts and documentation and other information relating to fishing, whether required to be carried and maintained under this Act or otherwise, for purposes of performing or exercising his or her functions, powers or duties under this Act, including records inspection and copying;
 - (iv) have access to navigational and communications equipment;
 - (v) take, measure, store on or remove from the vessel and retain, such reasonable samples or whole specimens of any fish as may be required for scientific purposes; and
 - (vi) safely disembark from the vessel;
- (b) fails or refuses to allow, obstructs or hinders an audit, inspection, examination or search that is authorised under this Act;
- (c) fails or refuses to facilitate by all reasonable means an authorised person's entry into and any inspection of:
 - (i) any premises, facility or export facility, including storage areas and suspected storage areas, facilities or locations;
 - (ii) any fish or fish products, gear, equipment or records;
- (d) fails or refuses to comply with a lawful instruction or direction given by an authorised person;
- (e) denies a request made by an authorised person in the course of performing or exercising his or her functions, powers or duties under this Act, including a request for access to records, documents, areas, gear and equipment and a request that equipment be turned on;
- (f) fails or refuses to give the person's birth name, date of birth and place of abode to an authorised person, when lawfully required to do so;

- (g) when lawfully required to give information to an authorised person, gives information which is false, incorrect or misleading in any material respect;
- (h) resists lawful arrest for any act prohibited by this Act;
 - (i) interferes with, delays or prevents by any means, the apprehension or arrest of another person by an authorised person, if the authorised person has reasonable grounds to believe that the person has committed an offence under this Act;
- (j) fails or refuses:
 - (i) to allow an authorised person to carry out his or her duties safely; or
 - (ii) to take all reasonable measures to ensure the safety of an authorised person as appropriate in the performance of his or her functions or duties;
- (k) impersonates an authorised fisheries officer or inspector or falsely represents himself or herself to be an authorised fisheries officer or inspector or a person lawfully acting under the [Authority]'s instructions or in aid of an authorised fisheries officer;
- (l) impersonates or falsely represents himself or herself to be the master or an officer, or not to be the master or an officer, of a vessel;
- (m) if requested by an authorised fisheries officer, fails to sail a seized vessel to a place in [country] designated by the authorised fisheries officer and fails to ensure the safety of all those on board;
- (n) bribes or intentionally attempts to bribe an authorised person;
- (o) interferes with an authorised person in the performance of his or her duties;
- (p) in any other way obstructs or hinders an authorised person in the performance or exercise of his or her functions, powers or duties under this Act;
- (q) is in breach of any other duty to an authorised person as required under this Act;
- (r) obstructs, resists, hides, delays, refuses boarding or other access to, intimidates or kidnaps:

- (i) an authorised person who is carrying out his or her duties or exercising his or her powers under this Act or as a consequence of his or her having done so; or
- (ii) any person lawfully acting under an authorised fisheries officer's instructions or in his or her aid or as a consequence of his or her having done so,

or aids, incites, or encourages another person to do so; or

- (s) assaults, uses abusive or threatening language or insulting gestures or behaves in a threatening or insulting manner towards an authorised person who is performing or exercising his or her functions, powers or duties under this Act or as a consequence of his or her having done so, or towards any person lawfully acting under the authorised person's instructions or in his or her aid, or aids, incites or encourages another person to do so.
- (3) Any person who commits an offence described in::
- (a) any of subsections (2)(a) to (q), except for subsection (2)(i), and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].
 - (b) subsection (2)(i), (r) or (s) and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].
- (4) It shall be a defence to any prosecution under subsection (2)(a)(i) if it is proved that compliance with the requirement for safe boarding of the relevant vessel would have placed the safety of the vessel or the lives of its crew in imminent and overwhelming danger for reasons unrelated to such boarding.

Division 3 - Inspection procedures

39. Pre-licensing / authorisation and unloading inspection procedures

An authorised officer shall, for the purposes of pre-licensing or unloading inspection, perform such inspections, carry out such procedures and apply such standards that may be prescribed or required by the [Authority] under this Act, or by an applicable international conservation and management measure, relevant regional fisheries management organization or international agreement.

40. Sea inspection procedures

An authorised officer shall, for the purpose of at-sea inspection, perform such inspections, carry out such procedures and apply such standards that may be prescribed or required by the [Authority] under this Act, or by an applicable

international conservation and management measure, relevant regional fisheries management organization or international agreement.

Division 4 - Vessel Monitoring System and Automatic Identification System

41. Monitoring Systems - technical requirements

- (1) The [Authority] shall approve the technology to be used in relation to any monitoring system applicable to vessels which is required pursuant to this Act, which include:
 - (a) vessel monitoring system;
 - (b) electronic monitoring system;
 - (c) electronic reporting system;
 - (d) any other system or technology adopted by the [Authority] for purposes of monitoring, control or surveillance under this Act.
- (2) Technical requirements for mobile transceiver units, including installation, may be prescribed or required by the [Authority].
- (3) Any operator who does not comply with the technology or technical requirements designated by the [Authority], including installation, pursuant to subsection (1) or (2) in respect of any mobile transceiver unit used by the vessel shall, where a licence, authorisation, registration or other permission:
 - (a) has not yet been issued shall be denied such issuance, and
 - (b) has been issued, commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.], and the [Authority] may suspend or cancel the Certificate of Registration and/or licence, authorisation or other permission where it is satisfied on reasonable grounds that the operator failed to comply.

42. Vessel monitoring system – requirements of operators

- (1) The operator of every vessel holding a valid and applicable licence or authorisation pursuant to this Act shall, unless the vessel falls within a category of vessels excepted by the [Authority] and unless otherwise prescribed:
 - (a) install and maintain a mobile transceiver unit in accordance with requirements in this Act or as may be prescribed or required by the [Authority], on board the vessel and ensure it is fully operational at all times;
 - (b) register the mobile transceiver unit in accordance with section 65 of this Act;

- (c) ensure that the mobile transceiver unit is tamper resistant and of a type and configuration that prevent the input or output of false positions, and not capable of being over-ridden, whether manually, electronically or otherwise, and is:
 - (i) located within a sealed unit; and
 - (ii) protected by official seals (or mechanisms) of a type that will indicate whether the unit has been accessed or tampered with.
- (d) transmit the following information directly to the [Authority] at least once every hour, or such other time as may be prescribed or required under the applicable licence or authorisation:
 - (i) the vessel identification;
 - (ii) the current geographical position of the vessel (longitude, latitude) with a position error which shall be less than 500 metres, at a confidence level of 99% or such other requirements as may be prescribed or required under the applicable licence or authorisation; and
 - (iii) the date and time (expressed in UTC) of the fixing of the said position of the vessel;
- (e) ensure that:
 - (i) VMS reports and messages are not altered in any way;
 - (ii) the antennae connected to the mobile transceiver unit(s) are not obstructed in any way;
 - (iii) the power supply of the satellite monitoring device(s) is not interrupted in any way; and
 - (iv) the mobile transceiver unit(s) are not removed from the vessel.
- (2) In the event of technical failure or non-functioning of the mobile transceiver unit, the operator shall inform the [Authority] immediately and no later than one hour after failure, and:
 - (a) where the vessel has not begun a trip the operator shall not cause the vessel to depart;

- (b) where the vessel is at sea the operator shall cause the vessel to travel to a port approved by the [Authority] within twenty-four hours and during that period shall report every half hour and shall comply with such other requirements as may be prescribed;
 - (c) shall repair or replace the unit within one month after which the operator shall not be authorised to commence a fishing trip without the unit having been repaired or replaced.
- (3) The operator shall comply, and ensure compliance by all persons associated with the vessel, with any conditions or other requirements that may be prescribed or required by the [Authority] or any applicable international conservation and management measure, including:
 - (a) the type of vessel monitoring system equipment to be used;
 - (b) installation procedures;
 - (c) operational requirements;
 - (d) information requirements;
 - (e) confidentiality; and
 - (f) declarations and reports.
- (4) Where the power supply for the vessel monitoring system in the Fisheries Monitoring Center is interrupted, or the mobile transceiver unit fails to operate for any reason and it affects the entire vessel monitoring system including electronic monitoring and electronic reporting systems, the requirements of subsection (2) shall apply except that the [Authority] may allow the vessel to continue fishing under special arrangements that shall include the following:
 - (a) reporting by any means of communication every three hours of the information required under subsection (1)(c);
 - (b) estimated time and port of arrival;
 - (c) inspection at port of the vessel and catch by an authorised fisheries officer;
 - (d) the operator shall provide a copy of the vessel's track for verification, provided that such special arrangements may only be made once in respect of each vessel, and the [Authority] shall maintain a record of the frequency of breakdown of Mobile Transceiver Units to ensure that there are no repeated uses or abuses of such arrangements.

- (5) A mobile transceiver unit may be switched off when the vessel is in port for a period of more than one week, subject to prior notification to and approval of the [Authority], provided that the first position report generated following the re-powering (activating) shows that the vessel has not changed position compared to the last report.
- (6) Any operator who does not comply with the requirements of subsections (1)(a), (b), (c) (d) or (e), (2)(a), (b) or (c), (3) (a), (b), (c) (d), (e) or (f) or a special arrangement made under subsection (4) or conditions of switching off the unit under subsection (5) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].
- (7) Any person who, without lawful excuse, renders inoperative or otherwise interferes or tampers with a mobile transceiver unit so that it does not operate automatically or accurately or in accordance with any licence conditions or otherwise in accordance with this Act commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

43. Automatic identification system

- (1) The [Authority] may require, including as a condition of licence, authorisation or other permission, that the operator of the vessel maintains an Automatic Identification System on board in accordance with the specifications in Chapter V, Regulation 19 of the International Convention for the Safety of Life at Sea, and that the vessel continually reports to the Fisheries Monitoring Center.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

Division 5 - Port State Measures

44. Designation of ports

The Minister shall ensure:

- (a) the port or ports to which foreign vessels may request entry are designated and publicised; and
- (b) list of each port designated pursuant to paragraph (a) is provided to any international organization and to any relevant regional fisheries management organization pursuant to an applicable conservation and management measure.

45. Prerequisites for entry or use of port

The operator of a foreign vessel shall not enter or use a port in [country] unless:

- (a) where ports have been designated and publicised in accordance with section 110, such port has been so designated and publicised;
- (b) the operator has requested entry into port and provided such information as may be prescribed or required by the [Authority], for licensed vessels at least 24 hours in advance of port entry where the vessel holds a licence or authorisation to fish in [country] waters and 48 hours in advance where it does not, including for purposes of landing or transhipment of any fish or fish product;
- (c) the [Authority] has authorised entry of such vessel into port and communicated such authorisation to the master of the vessel and any agent of the vessel in [country]; and
- (d) upon the vessel's arrival at port, the master of the vessel or the vessel's representative has presented the authorisation for entry into the port to a person authorised to receive it on behalf of the [Authority].

46. Denial of entry into port and use of port

- (1) The [Authority], where there is sufficient proof that a vessel seeking entry into a port of [country] has engaged in IUU fishing or fishing related activities in support of such fishing, in particular where it is an IUU listed vessel:
 - (a) shall cause the vessel not to be authorised to enter port, and shall deny entry to such vessel; or
 - (b) notwithstanding paragraph (a), may allow such vessel to enter a port exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing; and
 - (c) shall communicate any decision taken pursuant to paragraphs (a) or (b) to:
 - (i) the vessel or its representative; and
 - (ii) as appropriate, to the relevant authority at [country] Ports [Authority], which shall implement the [Authority]'s decision taken under this Act.
- (2) The [Authority] may cause entry into and use of port to be denied to any vessel that he/she has reasonable grounds to believe has violated this Act and shall communicate such decision to persons described in subsection (1)(c).

- (3) Where entry or use of port is denied under subsection (1)(a) or (b) or (2), the [Authority] shall notify the decision to the operator, flag State of the vessel and, as appropriate, to each relevant coastal State, relevant regional fisheries management organization and other international organization.

47. Force majeure or distress

- (1) Nothing in this Act affects the entry of a vessel to port in accordance with the laws of [country] for reasons of *force majeure* or distress, providing:

(a) a claim of force majeure or distress shall not apply where:

- (i) it is contrived, untrue or otherwise intentionally created; or
- (ii) its objective is to avoid liability,

and any person who makes an inapplicable claim commits an offence;

- (b) the burden of proof that a claim of force majeure or distress is valid and does not fall within prohibitions in paragraph (a) shall be on the vessel operator;
 - (c) an authorised fisheries officer or other officer with authority to inspect may board and inspect the vessel at any time for the purpose of verifying the claim of force majeure or distress; and
 - (d) a vessel that claims force majeure or distress shall be subject to the direction of the [Authority].
- (2) The [Authority] may grant a vessel that falls within the scope of this Act entry into port for reasons of *force majeure* or distress, provided that:
- (a) the vessel may enter port under its claim of force majeure or distress for such period of time necessary to remedy such claim; and
 - (b) the vessel is permitted entry exclusively for the purpose of rendering assistance to persons or vessels in danger or distress.
- (3) The operator of a foreign vessel that is authorised to enter port pursuant to subsection (2) (a) or (b) shall not allow or cause such vessel to engage in the use of port.
- (4) The operator of a vessel in respect of which an inapplicable claim described in subsection (1)(a) was made or who does not comply with the requirements of subsection (3) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

48. Denial of use of port after entry

- (1) Where a vessel that has been authorised to enter port pursuant to section 111 (c) and (d) has entered a port, the [Authority] shall cause the use of port to be denied to such vessel if:
- (a) the vessel does not have a valid and applicable authorisation or licence to engage in fishing or fishing related activities required by:
 - (i) its flag State; or
 - (ii) a coastal State in respect of areas under its national jurisdiction;
 - (b) there is clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;
 - (c) the flag State does not confirm within a reasonable period of time, on the request of the [Authority], that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization; or
 - (d) there are reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of IUU fishing unless the operator or charterer of the vessel can establish:
 - (i) that it was acting in a manner consistent with relevant conservation and management measures, including international conservation and management measures; or
 - (ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel that had engaged in IUU fishing.
- (2) Notwithstanding subsection (1), the [Authority] shall:
- (a) not deny a vessel the use of port services:
 - (i) where such services are essential to the safety and health of the crew or the safety of the vessel, provided these needs are duly proven; or
 - (ii) as appropriate, for the scrapping of the vessel; and
 - (b) where the use of port has been denied, notify the decision to the flag State of the vessel and, as appropriate, to each relevant coastal State, any relevant regional fisheries management organization and other international organization.

(3) Where the use of port has been denied pursuant to this Act, the [Authority], as appropriate on the advice of Attorney General shall:

- (a) withdraw such denial in respect of a vessel only if there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply; and
- (b) promptly notify the withdrawal to each person that was notified pursuant to this Act.

49. Conduct of inspections of vessels in port

(1) The [Authority] shall ensure that vessel inspections are conducted as necessary to achieve the objectives of this Act, and at least at a level that may be agreed pursuant to an applicable international conservation and management measure.

(2) The [Authority] shall prioritize vessel inspections based on:

- (a) vessels that have been denied entry or use of a port in accordance with an applicable conservation and management measure;
- (b) a request from another State or regional fisheries management organization to inspect a vessel, particularly where the request is supported by evidence of IUU fishing or fishing-related activities in support of IUU fishing by the vessel in question; and
- (c) whether there are clear grounds for suspecting that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing.

(3) The [Authority] shall, to the extent possible, ensure inspection of a minimum level of vessels as may be required by any applicable conservation and management measure.

(4) During inspections of a vessel in port, authorised fisheries officers shall carry out inspection in conformity with such procedures as may be prescribed or required by the [Authority], and complete a written report of the inspection in such form as may be required or prescribed and submit it to the [Authority].

(5) The operator of the vessel shall, in relation to inspection of the vessel, give authorised fisheries officers all necessary assistance and information, and present relevant material and documents as may be required, or certified copies thereof.

(6) The [Authority] shall ensure that the results of an inspection under this Act are transmitted to:

- (a) the flag State of the inspected vessel;
 - (b) as appropriate, parties to a relevant international agreement;
 - (c) relevant coastal State and the State of which the vessel master is a national;
 - (d) any relevant regional fisheries management organization; and
 - (e) other relevant international organizations.
- (7) An operator who does not comply with, or cause compliance with subsection (5) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.].

50. Denial of use of port after inspection

- (1) Where, following an inspection, there are clear grounds for believing that a vessel has been used for engaging in IUU fishing or fishing related activities in support of such fishing, the [Authority] shall:
- (a) promptly notify the flag State and, as appropriate, relevant coastal States, RFMOs and other international organizations, and the State of which the vessel's master is a national of the findings; and
 - (b) cause denial of the use of port by the vessel if these actions have not already been taken in respect of the vessel.
- (2) Notwithstanding paragraph 1(b), the [Authority] shall not deny a vessel the use of port services, where such services are essential to the safety and health of the crew or the safety of the vessel, provided these needs are duly proven.

51. Requirements for [country] registered vessels

- (1) The operator of each [country] registered vessel shall:
- (a) not enter a foreign port without requesting entry into such port at least 72 hours in advance and holding valid and applicable authorisations issued by the [Authority] and the competent authority in the relevant port State;
 - (b) cooperate fully with inspections carried out in the ports of other States in accordance with their laws and procedures; and
 - (c) not engage in any use of port, including landing, transshipping, packaging or processing fish or using other port services, in a port State identified by a relevant regional fisheries management organization as not acting in accordance with, or in a manner consistent with, applicable international or regional instruments or international conservation and management measures relating to port State measures.

- (2) Where there are clear grounds to believe that a [country] registered vessel has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, the [Authority] shall, as appropriate request such State to inspect the vessel or take other measures consistent with applicable international or regional instruments.
- (3) Where, following port State inspection in another State, there are clear grounds to believe that a [country] registered vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the [Authority] shall cause the matter to be immediately and fully investigated and, upon sufficient evidence shall cause enforcement action to be taken without delay in accordance with this Act.
- (4) Any operator of a [country] vessel that contravenes subsection (1)(a), (b) or (c) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.], and the authorisation of the vessel may be cancelled.

Division 6 – Miscellaneous

52. Presumptions of IUU fishing in contravention of international conservation and management measures

- (1) The operator of a vessel is presumed to have engaged in IUU fishing or related activities where such vessel has, in contravention of any international conservation and management measure of a relevant regional fisheries management organization and in relation to its area of competence:
 - (a) engaged in fishing or related activities and was not registered on the relevant Record of Vessels authorised to fish for such species or recorded in the Active List of Vessels;
 - (b) engaged in fishing or related activities when its flag State was without quota, catch limit or effort allocation under an applicable international conservation and management measures unless flagged to a member or cooperating non-member of such organization;
 - (c) failed to record or report its catches in accordance with any applicable conservation and management measure or has made false reports;
 - (d) taken or landed undersized fish;
 - (e) engaged in fishing or related activities during closed fishing periods or in closed areas;
 - (f) used prohibited gear;

- (g) transhipped fish to, or otherwise participated in joint operations with, supported or re-supplied vessels not included on the Record of Authorised Vessels or on the Record of Vessels Authorised to Received Transhipments At-Sea;
- (h) engaged in fishing or related activities in [country] waters in contravention of this Act or in areas under the jurisdiction of any other coastal State in contravention of the legislation of that State;
- (i) engaged in fishing or related activities while being without nationality;
- (j) engaged in fishing or related activities having intentionally falsified or concealed its markings, identity of registration; or
- (k) engaged in fishing or related activities in contravention of any other applicable international conservation and management measure,

and the [Authority] shall provide information and evidence to a relevant regional fisheries management organization where any vessel has engaged or is engaging in an activity that is presumed to involve IUU fishing.

- (2) The presumption in subsection (1) shall apply to any vessel in [country] waters and any [country] registered vessel in areas beyond national jurisdiction.
- (3) Notwithstanding subsection (2), and where it is presumed that any vessel in [country] waters has engaged in IUU fishing or related activities in any place beyond [country] waters in the area of competence of the relevant regional fisheries management organization, the operator such vessel shall be deemed to have committed an offence under this Act.

An operator of a vessel that is presumed to have engaged in any IUU fishing or related activity as defined in subsection (1) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.], and an applicable licence, authorisation, registration or other permission of the vessel may be revoked.

53. Actions in relation to vessels on an IUU Vessels List of a regional fisheries management organization

- (1) The operator of any [country] registered vessel, cargo vessel or other ship shall not, in relation to any vessel that is entered in an IUU Vessels List of a regional fisheries management organization, provide assistance in any way, engage in fish processing operations, or participate in transshipment or joint fishing operations with such vessel, except for rendering assistance where such vessel, or any person on that vessel, is in danger or distress.

- (2) The following shall be prohibited in respect of vessels included in an IUU Vessels List of a regional fisheries management organization, and an operator of such vessel shall not undertake any activity, make any request or seek any permissions in relation to:
- (a) entry into any [country] port, except in cases of force majeure or where the vessel, or any person on that vessel, is in danger or distress unless entry is permitted for the exclusive purpose of inspection and effective enforcement action;
 - (b) chartering of such vessel;
 - (c) registration of such vessel in [country], except if the vessel has changed owner and the new owner has provided sufficient evidence demonstrating the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel; or having taken into account all relevant facts, the [Authority] determines that granting the vessel its flag will not result in IUU fishing; and
 - (d) importing, landing or transshipment of species within the competence of such organization.
- (3) No person shall engage in transactions, including import, landing and transshipments, of species under the mandate of the regional fisheries management organization and caught or carried by a vessel on its IUU Vessels List.
- (4) The [Authority] shall collect and exchange with other members and cooperating non-members of a regional fisheries management organization any appropriate information with the aim of detecting, controlling and preventing false import/export certificates for fish from vessels included in the IUU Vessels List.
- (5) An operator that contravenes the provisions of subsection (1), (2) or (3) commits an offence and upon conviction shall be liable to [a fine, term of imprisonment, penalty etc.], and an applicable licence, authorisation, registration or other permission of the vessel may be cancelled.

ANNEX 4 - COUNTRY GAP ANALYSES AND PROPOSED AMENDMENTS

COMOROS

GAPS AND AMENDMENTS

FISHERIES AND AQUACULTURE LAW REVISED 2020 DECREE NO. 20-051

Fully implements **Substantially implements** **Partly implements** **Does not implement**

| MODEL LEGISLATION FRAMEWORK | |
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| I. PRELIMINARY | |
| 1. | Use of terms |
| 2. | Application of the legislation |
| II. MCS-RELATED MANAGEMENT MEASURES | |
| 3. | Mechanism for implementation of RFMO measures |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List |
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| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures |
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| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction |
| IV. REQUIREMENTS FOR FISHERIES ACCESS | |
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| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters |
| V. INFORMATION | |
| 12. | Establishment of an information system |
| 13. | Information may be required, inspected |
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited |

| MODEL LEGISLATION FRAMEWORK | |
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| 15. | Information sharing bilaterally, regionally, internationally |
| VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | |
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| 17. | License terms and conditions |
| 18. | Conditions for landings and transshipment |
| 19. | Pre-licensing registration, inspection and other requirements |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission |
| 21. | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations |
| VII. MONITORING, CONTROL AND SURVEILLANCE | |
| Division 1 – Authorised fisheries officers, observers | |
| 22. | Exercise of powers and functions by authorised officers and observers |
| 23. | Authority and general powers of authorised officers |
| 24. | Power of entry and search |
| 25. | Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction |
| 26. | Power to take, detain, remove and secure information, evidence |
| 27. | Power to detain persons, vessels, gear, etc |
| 28. | Power of arrest |
| 29. | Power to order a vessel to port |
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| 31. | Seizure of vessels, aircraft and items |
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| Division 4 – Vessel monitoring system and Automatic Identification System | |

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| 51. | Requirements for [country] registered vessels |
| Division 6 - Miscellaneous | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| I. PRELIMINARY | | | | |
| 1. | Use of terms | <p>Terms should be defined consistently with their use in international and regional instruments, including:</p> <ul style="list-style-type: none"> • fishing • fishing related activities, or “related activities” • fishing vessel • international conservation and management measures • vessel monitoring system • vessel without nationality | <p>Article 5</p> <p>(k) fishing does not include operations at sea in support of or in preparation for fishing, or reference to radio beacons or use of aircraft or engaging in any activity which can be expected to result in the harvesting of fish</p> <p>(j) related fishing operations does not include landing packaging processing, etc. of fish.</p> <p>(g) fishing vessel applies only to industrial fisheries</p> <p>Others not defined.</p> | <p>Review definitions for fishing, fishing related activities, fishing vessel, and include definitions (and relevant provisions) for international conservation and management measures, vessel monitoring system and vessel without nationality in Article 5.</p> |
| 2. | Application of the legislation | <p>Legislation should be clear that it applies to national areas and areas beyond national jurisdiction (ABNJ) consistent with international law/regional obligations. This will allow MCS operations to take place in ABNJ.</p> | <p>Article 4</p> <p>(e) Applies beyond Cormorean waters</p> <p>To any fishing vessel flying the flag of a third State in case of prosecution in accordance with international law</p> <p>In accordance with the provisions of this law, of an international conservation and management measure applicable to the Union of the Comoros, or permitted by international law or an international agreement to which the Union of the Comoros is a party,</p> | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | (f) To any vessel and any local fishing boat and the persons on board in Comorian maritime waters or beyond; (g) to any Comorian national engaged in fishing or fishing-related operations or in any other activity related to such activities or operations in a maritime space beyond the jurisdiction of the Comoros or in a foreign territory. | |
| II. MCS-RELATED MANAGEMENT MEASURES | | | | |
| 3. | Mechanism for implementation of RFMO measures | This facilitates and clarifies the timely implementation of ICMMs. It may be adapted to procedures in each country for implementation by regulations, Gazetting or other. | No provision. License conditions | Include Model legislation section 3 in national legislation. |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List | Prohibits, in relation to vessels on an IUU Vessel List ("listed vessels"), operators of [country] registered vessels from assisting, participating in transshipment or joint operations with a listed vessel or carrying out fish processing operations with listed vessels. | No provision. | Include Model legislation section 4 in national legislation. |
| 5. | Prohibitions in relation to vessels without nationality | Vessels without nationality are prohibited from landing, transshipping and use of port in [country] and transshipping with [country] registered vessels in an area of competence of a relevant RFMO. | No provision | Include Model legislation section 5 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | | | | |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures | Requires licensee or holder of authorisations and other permissions to comply with the terms of the licenses and this Act, national legislation, an applicable access agreement and ICMM. This permits cancellation of the licence, etc where there has been breach of any condition. | <p>Article 98</p> <p>Very serious offences include:</p> <p>(h) Failure to comply with the rules concerning landing or transshipment declarations, including by local fishing vessels landing or transshipping their catches in the port of a third State,</p> <p>(m) Failure to comply with the rules for recording and reporting catch data, including the intentional provision of false or incomplete data,</p> <p>(q) Failure to comply with the rules relating to the vessel and fishing vessel tracking and tracing system, including any interference with, obstruction of, or displacement of the tracking device or other equipment required to be placed on a vessel or fishing vessel.</p> <p>However, no general requirement to comply with laws, regional measures, etc, no cancellation of license etc.</p> | Include Model legislation section 6 in national legislation to the extent necessary. |
| 7. | Reporting requirements | This describes various reporting requirements (true, complete and correct, on time, required form and format, etc) and addresses difficult situations encountered in the region, for example: | <p>Article 98</p> <p>Very serious offence:</p> <p>j) The concealment, falsification or destruction of any evidence;</p> | Include Model legislation section 7 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <ul style="list-style-type: none"> provides for legal action where there is improper catch reporting on quotas; fishers send receipts from companies that bought the fish, with no other information or form, instead of proper catch documentation; estimated catch, such as the proportion of yellowfin and landing declarations, must be done using a standard of proof required by the [Authority]. | <p>(m) Non-compliance with the rules relating to the recording and provision of catch data and their transmission, including the intentional provision of false or incomplete data.</p> <p>No general responsibility to provide true complete and correct information in all cases under the Law.</p> | |
| 8. | Gear stowage | All vessels (licensed and unlicensed) must stow gear when the vessel is in any area where it is not licensed or authorised to fish or undertake related activities. Applies to national waters and nationally registered vessels in areas beyond national jurisdiction. | No provision | Include Model legislation section 8 in national legislation. |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction | This allows compliance with international law and IOTC ICMMs. Nationally registered vessels and citizens must comply with access agreements and laws of other countries and must not undermine international conservation and management measures. | No provision. | Include Model legislation section 9 in national legislation. |
| IV. REQUIREMENTS FOR FISHERIES ACCESS | | | | |
| 10. | Fisheries access – terms and conditions | Non-negotiable conditions for permitting fisheries access, e.g. vessel must hold authorisation from flag State, not be on IUU vessel list, assurance of | <p>Article 27</p> <p>Licenses will not be issued where:</p> <p>(j) The foreign fishing vessel for which a fishing</p> | Include Model legislation section 10 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | minimum benefits to National. Vessels are required to be on an authorised vessel list of a relevant RFMO and, to cater to the regional initiative for minimum terms and conditions for fisheries access, under a regional fisheries management agreement. | license is requested does not meet the minimum conditions for access to fisheries in the region and/or the technical measures adopted by a regional fisheries organization to which the Union of the Comoros is a member. However there are no specific minimum terms in the Law. | |
| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters | In accordance with best practices, <i>all</i> foreign vessels are required to have VMS and AIS operational and report <i>directly</i> to the [Authority] (not via their flag country or other). This is more stringent than the MTC Guidelines but consistent with UNCLOS rights and duties of a coastal State because the reporting is for purposes of fisheries conservation, management and MCS and does not empower the [Authority] to hinder entry or exit. | Article 98-1 Very serious offence: o) The failure to declare entries and exits in Comorian maritime waters as well as the failure to declare the positions of the vessel or the boat and the catches on board There are no requirements for VMS or AIS, or regular reporting while in Comorean waters. | Include Model legislation section 11 in national legislation. |
| V. INFORMATION | | | | |
| 12. | Establishment of an information system | Information required to be given and maintained in an information system is provided and relevant for MCS use. Confidentiality standards are set but allow transparency, consistent with Fisheries Transparency Initiative (FiTI) standards. | No provision | Include Model legislation section 12 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 13. | Information may be required, inspected | This is a general provision requiring persons carrying out activities under the Act to keep and maintain such information as may be required by the [Authority] under the Act, other national legislation or an ICMM. | No provision. | Include Model legislation section 13 in national legislation. |
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited | This section requires all information given under this Act (defined as including all subsidiary legislation) to be true, complete and correct and will prohibit alteration, destruction etc of documents, information, data, statistics, labels and required markings on vessels or gear and use of forged or falsified documents. It applies to any information, etc without regard to whether it is submitted to the [Authority], any person, court, body, other government authority, RFMO etc. | Article 98 Very serious offence: j) The concealment, falsification or destruction of any evidence; Article 98-1 Serious offence: (I) Failure to comply with the technical specifications for the marking and identification of vessels, craft and their fishing gear as well as the modification or concealment by any means of the identification marks of vessels or fishing craft. However, it does not apply to the wide range of information in the Model legislation. | Include Model legislation section 12 in national legislation to the extent necessary. |
| 15. | Information sharing bilaterally, regionally, internationally | This section is important for sharing of MCS information. It empowers the [Authority] to prepare and submit information under bilateral, regional and international agreements and ICMMs. It recognizes the exchange of information should be a basic process (mindful of confidentiality requirements). | Article 79-1: Administration in charge of fisheries cooperates with the authorities of third States and regional fisheries management organizations in investigations when a violation of an international conservation and management measure or the legislation of a State | Include Model legislation section 15 in national legislation to the extent necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>third party by a local fishing vessel or local fishing craft is alleged.</p> <p>Article 80: In order to strengthen regional cooperation to fight against illegal, undeclared and unregulated fishing, the information collected by the National Authority responsible for the control and surveillance of fisheries may be disclosed to the competent authorities in matters of control and surveillance of the States of the region in the forms and conditions that</p> <p>will be defined with these States.</p> <p>These Articles permit cooperation in investigation and disclosure, but do not extend to preparation and submission of general information under bilateral, regional or international agreements.</p> | |
| VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | | | | |
| 16. | Licenses, authorisations, etc required. | The legislation should specify clearly and in one section the licenses, authorisations, permissions etc that are required. This will assist general understanding and MCS efforts to monitor and control fishing and related activities. | <p>Article 16: The exercise of industrial or artisanal fishing or any related fishing operation in Comorian maritime waters, by means of a boat or a local or foreign fishing vessel, is subject to the prior obtaining of a fishing license.</p> <p>Article 17: No boat or local fishing vessel may</p> | Specify where other authorisations or licenses are required, e.g. for transshipment. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>engage in fishing or related fishing operations beyond Comorian maritime waters unless it holds an authorization issued by the Administration responsible for fisheries.</p> <p>Transshipment is prohibited in maritime waters except for force majeure, etc (Art. 55-4), and procedures for transshipment in port are given (Art 55-6) but no permit or license is specifically required.</p> <p>Article 55-6 (h) only requires information to be given about fishing licenses or authorisations for transshipment.</p> | |
| 17. | License terms and conditions | <p>Licensing terms and conditions for fishing, supply and transport vessels should be required, among others. In this provision:</p> <p>(1) generally provides the licence, etc must be subject to the terms and conditions in the Act, as may be prescribed and to such other terms and conditions as may be specified by the [Authority] or provided in ICMMs. Amendment, entry into force and validity are addressed.</p> <p>(2) requires the operator of a vessel to keep a copy of the licence etc onboard the vessel.</p> | <p>Article 26:</p> <p>The use of any fishing license or authorization issued under this section may be subject to certain conditions. These may relate, in particular, to</p> <p>(a) The term of the license or authorization</p> <p>(b) The type and characteristics of the fishing gear used,</p> <p>(c) The area or areas within which fishing is permitted;</p> <p>(d) The species targeted, the quantities authorised by species, and any restrictions on by-catches</p> <p>(e) The periods of opening and closing of fishing, in particular</p> | Include Model legislation section 17 in national legislation to the extent necessary |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>(3) requires the holder of any licence, etc for activities that are not associated with vessels to display it in the registered business office.</p> <p>(4) requires National registered vessels to carry required documents at all times and while in the waters of other States comply with its legislation, or an RFMO area of competence comply with ICMMs.</p> <p>(5) requires operators to maintain log books and make reports as required under the Act (which is defined to include regulations) or by the CEO in writing or an ICMM.</p> | <p>those relating to biological rest; and</p> <p>(f) Surveillance and control requirements, in particular those relating to the tracking and location of fishing vessels and craft, entry and exit from fishing areas, the embarkation of observers on board and declaration of catches</p> <p>(g) Any conditions that may be necessary to ensure the implementation of any international conservation and management obligations applicable to the Union of the Comoros.</p> <p>Minimum conditions are not specified for keeping information and making reports, carrying licenses/documents, validity, etc</p> | |
| 18. | Conditions for landings and transshipment | <p>Specific conditions for landing and transshipment, including:</p> <p>(1) requires a notification period.</p> <p>(2) requires activities at designated ports, and refers to pre-inspection and observers.</p> <p>(3) requires the licensee to pay all costs of an authorised fisheries officer or other person designated by the CEO where there is transshipment outside a port in [country].</p> | <p>Article 55-6:</p> <p>The captain of a fishing vessel who wishes to carry out a transshipment or a landing in the bay or in a Comorian port must notify the National Authority responsible for the control and surveillance of fisheries and the Port Authority, at least forty-eight (48) hours prior to disembarkation or transshipment, and provide the following information.</p> <p>a) The name of the fishing vessel to land</p> <p>b) The name of the fishing vessel and the</p> | Include Model legislation section 17 in national legislation to the extent necessary |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>4) prohibits shark carcasses and fins from being transhipped separately.</p> <p>(5) requires Declarations of Transhipments as may be prescribed or required by an ICMM.</p> <p>(6) incorporates Regulation 24A and is expanded as instructed during consultations to include offloading fish into containers.</p> <p>(7) requires compliance with laws relating to the protection of the marine environment.</p> <p>(8) permits the [Authority] to require compliance with any applicable ICMM.</p> | <p>reefer carrier involved in the transhipment operation,</p> <p>c) The name and address of the fishing company,</p> <p>d) The flag State of the vessel(s) to land or tranship,</p> <p>e) The tonnage by species to be transhipped or landed,</p> <p>f) The day of transhipment or landing,</p> <p>g) The beneficiary of the catches landed;</p> <p>h) Fishing license(s) and/or transhipment authorisation(s); and</p> <p>i) Any other information that may be requested by the National Authority responsible for fisheries control and surveillance or the Port Authority.</p> <p>Article 55-7: Any fishing vessel referred to in Article 55-6 of this law shall be inspected by a surveillance agent upon its arrival in the roadstead or in a Comorian port in order, in particular, to verify the information provided in article 55-6 above.</p> <p>Article 55-8: If the surveillance agent is satisfied that the vessel has not committed any violation of the Comorian law in force or the law of another State or an international conservation and management measure, he authorizes the vessel to begin transhipment or disembarkation.</p> | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>Rule 55-9:</p> <p>a) When the transhipment or landing is completed, a transhipment or landing declaration, in accordance with the model prescribed by the Administration responsible for fisheries, shall be drawn up and submitted to the Administration responsible for fisheries by the master of the vessel concerned.</p> <p>b) The obligation to provide a declaration of transhipment or landing to the Administration responsible for fisheries also applies to local fishing vessels operating beyond Comorian maritime waters.</p> <p>Does not specifically address the marine environment, shark carcasses or payment of costs. However the provisions have most key requirements.</p> <p>It is understood that transhipments by foreign vessels are not permitted in port.</p> | |
| 19. | Pre-licensing registration, inspection and other requirements | To establish compliance, a foreign vessel must be inspected before a license is issued. | No provision | Include Model legislation section 19 in national legislation |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission | No licence would be issued where there is a record/evidence/history of IUU fishing, vessels is on an IUU Vessel List, connected to IUU fishing | Article 27: No license or fishing authorization s 16 and 17 of this law may be issued or renewed during 15 | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>or fishing related criminal activities, etc. Conditions must be consistent with national, regional and international law. Vessels must be on an RFMO authorised vessel list where relevant.</p> | <p>(a) This is necessary to ensure the sustainable use of fishery resources or the implementation of conservation and management measures (b) The fishing vessel or craft for which a license or authorization is requested does not meet current safety and seaworthiness standards or does not comply with international standards relating to working conditions on board fishing vessels , (c) The conditions of conservation and treatment of fishery products on board the vessel or the fishing boat do not comply with the health standards in force, (d) The fishing vessel for which a license or authorization is sought has in the past engaged in illegal, unreported or unregulated fishing activities, unless the vessel has changed ownership and the new owner can establish conclusively that the previous owner or operator no longer has any legal, financial or factual interest in the vessel, nor does it exercise control over it, (e) The fishing vessel for which a license or authorization is requested is included in a list of fishing vessels presumed to be engaged in illegal, unreported or unregulated fishing activities established by a</p> | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>regional fisheries management organization or that there are serious grounds for believing that the vessel has been or is involved in illegal, unreported or unregulated fishing activities or in support of such fishing</p> <p>(f) The fishing vessel for which a license or authorization is requested has changed flag more than twice in the three years preceding the request, unless the owner can establish that these changes were legitimate and do not were in any way related to the vessel's involvement in or support of illegal, unreported or unregulated fishing</p> <p>(g) It has been established that the vessel or fishing vessel for which a license or authorization is sought has been involved in activities in violation of:</p> <ul style="list-style-type: none"> • The law and regulations in force in the Comoros or in., eq... or • An international measure of conservation and <p>Until the date on which all sanctions imposed in accordance with Comorian law or the relevant law of any other country have been discharged,</p> <p>(h) The natural or legal person applying for a license or authorization for a vessel or a fishing</p> | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>vessel has been found guilty of a serious, very serious or particularly serious violation of this law during the two years following precede the request,</p> <p>(i) The foreign fishing vessel for which a fishing license is requested does not have a valid authorization, issued by the competent authority of the flag State, allowing it to fish or to engage in related operations fishing outside the waters under the jurisdiction of that State,</p> <p>(j) The foreign fishing vessel for which a fishing license is requested does not meet the minimum conditions for access to fisheries in the region and/or the technical measures adopted by a regional fisheries organization to which the Union of the Comoros is a member</p> | |
| 21. | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations | <p>A wide range of criteria for denial or non-renewal of licences, etc, including that the standards for grant of license, there has been non-compliance with an existing or previous licence with no submission to due process or satisfaction of judgment or determination</p> <p>Foreign vessel must hold Authorisation to Fish (ATF) issued by flag State.</p> | <p>Article 27</p> <p>No provision for denial or non-renewal for non-compliance with an existing or previous licence and failure to submit to due process or satisfaction of any judgment or determination.</p> | Include Model legislation section 21 in national legislation as may be necessary. |

| MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS | |
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| VII. MONITORING, CONTROL AND SURVEILLANCE | | | | |
| Division 1 – Authorised fisheries officers, observers | | | | |
| 22. | Exercise of powers and functions by authorised officers and observers | <p>When authorised officers, observers are beyond areas of national jurisdiction the provisions of the Act are applicable as if the duties were performed in areas under national jurisdiction.</p> <p>They must carry and produce identification on request.</p> | <p>Article 73(a)(ii) Only provides limited powers on the high seas in relation to vessels of flag States party to a convention to which Comoros is party, and not generally “in areas beyond national jurisdiction”.</p> <p>This does not allow action against vessels without nationality.</p> <p>Hot pursuit is provided in Article 77. However hot pursuit under UNCLOS permits pursuit through EEZs of another State but Article 73 only permits officers to operate on the high seas.</p> <p>Article 72 requires identification to be carried, but does not refer to producing it on request.</p> | Include Model legislation section 22 in national legislation as may be necessary. |
| 23. | Authority and general powers of authorised officers | <p>General powers of authorised officers are described, including doing such things and giving such directives that are reasonably necessary for exercising their functions, etc. under the Act.</p> <p>Reasonable force may be used and assistance may be required.</p> | <p>Article 73 Powers mainly relate to activities in relation to vessels, vehicles and aquaculture and processing establishments.</p> <p>They do not extend more generally, to doing such things and giving such directives that are reasonably necessary for exercising their functions under the general scope of the Law.</p> | Include Model legislation section 23 in national legislation as may be necessary. |
| 24. | Power of entry and search | <p>The power of entry and search is given for all purposes and activities falling within the Act, consistent with general powers of MCS to ensure compliance, responsibilities for traceability etc.</p> | <p>Article 73 Power of entry and search is given, but are limited to situations described.</p> <p>Powers of entry and search are not give for all purposes</p> | Include Model legislation section 24 in national legislation as may be necessary. |

| MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | <p>It is not limited to cases where contravention of the Act is suspected.</p> <p>It provides for the power of entry and search without a warrant, including in relation to national registered vessels beyond national jurisdiction and other vessels to which ICMMs apply as well as vessels without nationality on the high seas (the latter is consistent with international law).</p> <p>It also applies to premises or places reasonably suspected to be used for activities falling within the scope of the Act, except for dwelling houses, where evidence of non-compliance may be found.</p> <p>Persons may be stopped, records, containers, fish etc may be examined, land may be passed across and landing and transshipment operations may be monitored.</p> <p>The authorised officer may require persons to give information and exercise a range of other powers for entry and search.</p> <p>The authorised officer must have a warrant to enter a dwelling house.</p> | <p>and activities falling within the Act.</p> | |
| 25. Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction | <p>Authorised Officers have the power to investigate or to request an investigation by another State.</p> <p>This would allow relevant companies, agents and persons can be investigated for activities in areas beyond national jurisdiction and prosecutions can take place.</p> | <p>No provision</p> | <p>Include Model legislation section 25 in national legislation.</p> |

| MODEL LEGISLATION FRAMEWORK | | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 26. | Power to take, detain, remove and secure information, evidence | Allows the authorised fisheries officer to take, detain, remove and secure information and evidence and vessels. | Article 75 Permits seizure of vehicle, gear or other material suspected of being used in an offence as a precautionary measure. Does not give power to take, detain, remove and secure information and evidence generally. | Include Model legislation section 26 in national legislation as may be necessary. |
| 27. | Power to detain persons, vessels, gear, etc | Power of detention for persons, vessels, gear etc. A Notice of Detention must be given to the operator of a vessel or vehicle and copied to relevant government authorities. | Article 75. | |
| 28. | Power of arrest | This gives an authorised fisheries officer the power to order a person to cease and desist where he/she believes that a person is reasonably committing an offence, and to supply name, date of birth etc. and to arrest. | Article 75(g). However infringement reports are required under Article 81. | Include Model legislation section 28 in national legislation as may be appropriate under the constitution. |
| 29. | Power to order a vessel to port | The power to order a vessel to port for inspection for compliance purposes | Article 75(a) and (b) (a) Only applies to ordering an unauthorised fishing vessel to port (b) Only empowers diverting the vessel or fishing boat on board which an offence has been committed if this measure is necessary to establish proof of the offence or to ensure the enforcement of any sentence. No general power to order a vessel to port for inspection for general purposes of compliance. | Include Model legislation section 29 in national legislation. |
| 30. | Power to give direction | This power may be exercised without having boarded the vessel. | No provision. | Include Model legislation section 30 in national legislation. |
| 31. | Seizure of vessels, aircraft and items | The items which may be seized are elaborated include vessels, fish, other articles and anything | Article (c) and (d) | Include Model legislation section 29 in national |

| MODEL LEGISLATION FRAMEWORK | | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | that may provide evidence of contravention of the Act or an ICMM, as well as passports/seamens' record books and anything that has been forfeited or unlawfully removed from custody under the Act. | <p>Allow seizure "as a precautionary measure" vehicle, fishing gear or other material or object suspected of having been used in the commission of the offence and any catch resulting from the commission of the offence, and any other document or electronic medium relating to the catch.</p> <p>This has limited scope and does not apply to anything that may provide evidence of the Law or an ICMM. This provision also appears to require that an offence has been committed and proved, rather than simply suspected. It doesn't include items removed from custody.</p> | legislation to the extent necessary. |
| 32. | Hot pursuit | The basic requirements of Article 111 of UNCLOS are implemented. | Article 77. | |
| 33. | Responsibilities of observers | Responsibilities of observers in terms of tasks and other activities, including to implement international conservation and management measures. Observers may be deployed as directed by the CEO, including in accordance with ICMMs and on or in relation to vessels, landings etc. | Article 73. | |
| 34. | Duty of operators, and crew members to assist observers | It requires operators and crew to assist observers for stated activities, including boarding, receiving messages, taking photographs, gathering information and disembarking. It applies at all times the observer is on board and within and beyond areas under national jurisdiction, to accommodate IOTC ICMMs. | No provision. | Include Model legislation section 49 in national legislation as necessary. |
| 35. | Observers and field inspectors under an RFMO | Regional observer requirements to implement regional observer programme | Article 55-3 Observers may be either a national observer or a | Include Model legislation section 35 in national |

| MODEL LEGISLATION FRAMEWORK | | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | observer scheme | | <p>regional observer under a regional observer program established under a regional convention or agreement to which the Union of the Comoros is a party.</p> <p>This does not specifically implement the regional observer scheme or refer to field inspectors agreed by IOTC.</p> | legislation as necessary. |
| Division 2 – Protection and obstruction of authorised persons | | | | |
| 36. | Definition of authorised person | Defines “authorised person” as including authorised fisheries officer and observer, including observers under an RFMO observer programme. | No provision. | Include Model legislation section 36 in national legislation as necessary to cover observers under an RFMO observer programme. |
| 37. | Protection of authorised persons from liability | Protects authorised persons and others acting under the authority of the Authority from liability for anything done or omitted to be done in good faith in the performance of duties. It recognizes that some personnel may not be staff members of the Authority e.g. where observers may be hired on occasional contracts. It also addresses situations where a vessel is being brought to port, and exempts persons assisting an authorised fisheries officer from liability. | No provision. | Include Model legislation section 37 in national legislation if necessary to protect authorised persons from liability in the performance of duties. |
| 38. | Obstruction of, failure to comply with authorised persons | Creates offences for various forms of obstruction of, or non-compliance with, authorised persons, including for example not allowing access to a place, not giving information, assaulting, kidnapping, impersonating or bribing an authorised person. | <p>Article 98 Very serious offences include: p) not respecting the rules regarding observers u) deliberate obstruction of control and surveillance operations having the effect of endangering the integrity of the surveillance vessel and the life of the crew</p> <p>Article 102</p> | Include Model legislation section 38 in national legislation to the extent necessary. |

| MODEL LEGISLATION FRAMEWORK | | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>Offence to prevent authorised officer or observer from exercising functions</p> <p>Article 202-1 Offence to threaten or use violence against authorised officers or observers.</p> <p>Bribery, kidnapping, impersonating, failure to give access not mentioned.</p> | |
| Division 3 – Inspection procedures | | | | |
| 39. | Pre-licensing / authorisation and unloading inspection procedures | <p>This is a general duty to perform inspections, carry out procedures and apply standards that may be required under this Act, an ICMM, a relevant RFMO or international agreement for Pre-licensing / authorisation and unloading. The procedures, etc may be adopted by Regulation or required by the [Authority].</p> <p><i>Regulations should set out details for procedures.</i></p> | <p>Article 27 (j)</p> <p>Provides licenses will not be issued to foreign vessels unless they comply with minimum terms and conditions of regional organizations. The SWIOFC Guidelines include pre-licensing inspections.</p> <p>The Guidelines are voluntary but specific procedures and obligations should be included in national legislation.</p> <p>Article 55-7</p> <p>All fishing vessels undertaking transshipments must be inspected by a surveillance agent on arrival in the roadstead or in a Comorian port in order, in particular, to verify the information provided in article 55-6 above.</p> <p>This only applies to transshipment authorisations, not to licensing.</p> | Include Model legislation section 39 in national legislation to the extent necessary. |
| 40. | Sea inspection procedures | <p>Similar to the previous section.</p> <p><i>Regulations should set out details for procedures.</i></p> | No provision. | Include Model legislation section 40 in national |

| MODEL LEGISLATION FRAMEWORK | | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | | legislation to the extent necessary. |
| Division 4 – Vessel monitoring system and Automatic Identification System | | | | |
| 41. | Vessel Monitoring System - technical requirements | Implements IOTC Resolution 15/03 and empowers the Authority to approve the technology for VMS and provides that technical requirements, including installation, may be prescribed or required. | Article 55(d) Licences to fish will not be issued unless the vessel is equipped with a VMS system approved by the Fisheries Administration. This allows the technical requirements to be set for purposes of licence issuance, but not in the law or for other purposes. | Include Model legislation section 51 in national legislation to the extent necessary. |
| 42. | Vessel monitoring system – requirements of operators | Implements requirements of IOTC Resolution 15/03, including: installation and ensure full operation at all times, registration, ensure tamper-resistant, transmission of information directly to FMC at least once every hour. A vessel must come to port within 24 hours, which could allow minimum time to continue fishing, and where the power supply to the VMS except that under subsection (4) special arrangements may be made for the continuation of fishing. In accordance with IOTC Resolution 15/03 the device may be switched off while the vessel is in port for more than a week under certain conditions. | | |
| 43. | Automatic identification system | This permits the Authority to require (including as a licence, etc condition) that vessels maintain an AIS on board in accordance with specifications in the International Convention for the Safety of Life at Sea, and that it continually reports to the Fisheries Monitoring Center. | No provision | Include Model legislation section 43 in national legislation to the extent necessary. |

| MODEL LEGISLATION FRAMEWORK | | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| Division 5 – Port State measures | | | | |
| 44. | Designation of ports | Requires the Minister to ensure that ports to be used to foreign vessels are designated and publicized. | Article 55-11 | |
| 45. | Prerequisites for entry or use of port | Implements paragraph 6 and 7 of IOTC Resolution 16/11, requiring an advance request for entry into port, an authorisation to enter and presentation of the authorisation. | Article 55-12, 55-13 55-14 | |
| 46. | Denial of entry into port and use of port | <p>Requires denial of entry into port where there is sufficient proof of IUU fishing or related activities and especially where it is on an IUU vessel list, and if there is a contravention of the Act. Entry into port may be allowed only for purposes of inspection in such circumstances, but use of port is prohibited.</p> <p>The CEO must communicate the decision to allow or deny entry to the vessel and as appropriate to the Ports Authority, which is obligated to implement the decision.</p> <p>The decision to deny entry or use of port must also be communicated to the flag State and others.</p> | <p>Article 55-13(b) and Article 55-15</p> <p>Requirements for denial of entry are not stated.</p> | Include Model legislation section 46 in national legislation in relation to the requirements for denial of entry into port. |
| 47. | Force majeure or distress | Allows entry into port for reasons of force majeure, but with limitations consistent with UNCLOS and international law. | Article 55-14 | |
| 48. | Denial of use of port after entry | Requires denial of port after entry on several grounds, without the need for inspection. Withdrawal of denial of use of port is provided in subsection (3), where there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply. | Article 55-17 | |

| MODEL LEGISLATION FRAMEWORK | | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 49. | Conduct of inspections of vessels in port | It provides for levels and prioritization of inspection, and requires fishery inspectors and authorised officers to carry out inspections in conformity with the <i>procedures and report template to be included in Regulations and Schedule</i> , and submit them to the Authority. The operator of the vessel must give authorised officers all necessary assistance, information and documents. | No provision. | Include Model legislation section 49 in national legislation. |
| 50. | Denial of use of port after inspection | Requires denial of use of port where there are clear grounds for believing that the vessel has engaged in IUU fishing or related activities. | No provision. | Include Model legislation section 50 in national legislation. |
| 51. | Requirements for [country] registered vessels | National vessels, in areas beyond national jurisdiction, are to cooperate with port inspections of other States, and not to use any ports that are not compliant with port State measures. The Authority must request authorities in foreign ports to inspect and take other measures where there are clear grounds to believe that a national vessel has engaged in IUU fishing or related activities, and the vessel is seeking entry into or is in their port. Where there is evidence of IUU fishing or related activities, the Authority must investigate and take enforcement action without delay. | No requirement. | Include Model legislation section 51 in national legislation. |
| Division 6 - Miscellaneous | | | | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and | The IOTC list of activities that describe where a vessel is presumed to have engaged in IUU fishing or related activities is incorporated in subsection (1) and the operator is prohibited | No provision. | Include Model legislation section 52 in national legislation. |

| MODEL LEGISLATION FRAMEWORK | | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | management measures | <p>from engaging in any of these activities.</p> <p>The Authority must provide information and evidence to the IOTC Secretariat of activities of any vessel that is presumed to involve IUU fishing.</p> <p>Subsections (2) and (3) apply the presumption to any vessels in national waters and national vessels in areas beyond national jurisdiction.</p> <p>Where it is presumed that any vessel in national waters has been involved in IUU fishing or related activities in any place in the IOTC Area of Competence, it may be prosecuted in the country.</p> | | |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization | National vessels are prohibited from providing assistance, engaging in fish processing operations or participating in transshipment or joint fishing operations with any vessel on an IUU Vessel List. | No provision. | Include Model legislation section 53 in national legislation. |

KENYA

GAPS AND AMENDMENTS

FISHERIES MANAGEMENT AND DEVELOPMENT ACT 2016

Fully implements
Substantially implements
Partly implements
Does not implement

National Oceans and Fisheries Policy, 2008

Kenya MCS Fisheries Monitoring, Control and Surveillance Strategy and Development Plan 2017-2027 for the Coastal and Marine Sectors

Draft Fisheries Management and Development (Marine and Inland Fisheries) Regulations

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| 42. | Vessel monitoring system – requirements of operators |
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| Division 5 – Port State measures | |
| 44. | Designation of ports |
| 45. | Prerequisites for entry or use of port |
| 46. | Denial of entry into port and use of port |
| 47. | Force majeure or distress |
| 48. | Denial of use of port after entry |
| 49. | Conduct of inspections of vessels in port |
| 50. | Denial of use of port after inspection |
| 51. | Requirements for [country] registered vessels |
| Division 6 - Miscellaneous | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|--|---|--|--|--|
| I. PRELIMINARY | | | | |
| 1. | Use of terms | Terms should be defined consistently with their use in international and regional instruments, including: <ul style="list-style-type: none"> • fishing • fishing related activities, or “related activities” • fishing vessel • international conservation and management measures • vessel monitoring system • vessel without nationality | 2. Interpretation “vessel without nationality” not defined. | Include Model legislation definition of “vessel without nationality” in section 1. |
| 2. | Application of the legislation | Legislation should be clear that it applies to national areas and areas beyond national jurisdiction (ABNJ) consistent with international law/regional obligations. This will allow MCS operations to take place in ABNJ. | 4. Application | |
| II. MCS-RELATED MANAGEMENT MEASURES | | | | |
| 3. | Mechanism for implementation of RFMO measures | This facilitates and clarifies the timely implementation of ICMs. It may be adapted to procedures in each country for implementation by regulations, Gazetting or other. | 31. Notification by the Director-General | |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List | Prohibits, in relation to vessels on an IUU Vessel List (“listed vessels”), operators of [country] registered vessels from assisting, participating in transshipment or joint operations with a listed vessel or carrying out fish processing operations with listed vessels. | No provision. | Include Model legislation section 4 in national legislation. |
| 5. | Prohibitions in relation to vessels without nationality | Vessels without nationality are prohibited from landing, transshipping and use of port in [country] and transshipping with [country] registered vessels in an area of competence of a relevant RFMO. | No provision. | Include Model legislation section 5 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|---|---|--|--|--------------------------------|
| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | | | | |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures | Requires licensee or holder of authorisations and other permissions to comply with the terms of the licenses and this Act, national legislation, an applicable access agreement and ICMM. This permits cancellation of the licence, etc where there has been breach of any condition. | 90(3). Terms and conditions of licences and authorizations | |
| 7. | Reporting requirements | This describes various reporting requirements (true, complete and correct, on time, required form and format, etc) and addresses difficult situations encountered in the region, for example: <ul style="list-style-type: none"> provides for legal action where there is improper catch reporting on quotas; fishers send receipts from companies that bought the fish, with no other information or form, instead of proper catch documentation; estimated catch, such as the proportion of yellowfin and landing declarations, must be done using a standard of proof required by the [Authority]. | 79. Information to be true, complete and correct | |
| 8. | Gear stowage | All vessels (licensed and unlicensed) must stow gear when the vessel is in any area where it is not licensed or authorised to fish or undertake related activities. Applies to national waters and nationally registered vessels in areas beyond national jurisdiction. | 126. Stowage of fishing gear Fisheries (Foreign Fishing Craft) Regulations, 1991 Reg. 19 | |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction | This allows compliance with international law and IOTC ICMMs. Nationally registered vessels and citizens must comply with access agreements and laws of other countries and must not undermine international | 4(e). Application | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|--|--|---|---|------------------------|
| | | conservation and management measures. | | |
| IV. REQUIREMENTS FOR FISHERIES ACCESS | | | | |
| 10. | Fisheries access – terms and conditions | Non-negotiable conditions for permitting fisheries access, e.g. vessel must hold authorisation from flag State, not be on IUU vessel list, assurance of minimum benefits to National. Vessels are required to be on an authorised vessel list of a relevant RFMO and, to cater to the regional initiative for minimum terms and conditions for fisheries access, under a regional fisheries management agreement. | 129. Fisheries access requirements No reference to specific criteria relating to minimum benefits to national country, but (k) permits other requirements so formal amendment is not needed. | |
| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters | In accordance with best practices, <i>all</i> foreign vessels are required to have VMS and AIS operational and report <i>directly</i> to the [Authority] (not via their flag country or other). | To be met when draft Regulations enter into force. | |
| V. INFORMATION | | | | |
| 12. | Establishment of an information system | Information required to be given and maintained in an information system is provided and relevant for MCS use. Confidentiality standards are set but allow transparency, consistent with Fisheries Transparency Initiative (FITI) standards. | 75. Information, data and records 81. Registers of licences and authorizations 83. Information available to the public | |
| 13. | Information may be required, inspected | This is a general provision requiring persons carrying out activities under the Act to keep and maintain such information as may be required by the [Authority] under the Act, other national legislation or an ICMM. | 75. Information, data and records | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|---|--|--|---|--------------------------------|
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited | This section requires all information given under this Act (defined as including all subsidiary legislation) to be true, complete and correct and will prohibit alteration, destruction etc of documents, information, data, statistics, labels and required markings on vessels or gear and use of forged or falsified documents. It applies to any information, etc without regard to whether it is submitted to the [Authority], any person, court, body, other government authority, RFMO etc. | 79 Information to be true, complete and correct 180. Interference with evidence and avoidance of seizure 181. Tampering with item, etc. that may be used in evidence of noncompliance with the Act. | |
| 15. | Information sharing bilaterally, regionally, internationally | This section is important for sharing of MCS information. It empowers the [Authority] to prepare and submit information under bilateral, regional and international agreements and ICMMs. It recognizes the exchange of information should be a basic process (mindful of confidentiality requirements). | 32. Implementation of international conservation and management measures | |
| VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | | | | |
| 16. | Licenses, authorisations, etc required. | The legislation should specify clearly and in one section the licenses, authorisations, permissions etc that are required. This will assist general understanding and MCS efforts to monitor and control fishing and related activities. | 84. Licences and authorizations required | |
| 17. | License terms and conditions | Licensing terms and conditions for fishing, supply and transport vessels should be required, among others. In this provision: (1) generally provides the licence, etc must be subject to the terms and conditions in the Act, as may be prescribed and to such other terms and conditions as may be specified by the [Authority] or provided in ICMMs. | 90. Terms and conditions of licences and authorizations 94(1)(a). Suspension or cancellation of licence or authorization | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|--|--|---|--------------------------------|
| | | <p>Amendment, entry into force and validity are addressed.</p> <p>(2) requires the operator of a vessel to keep a copy of the licence etc onboard the vessel.</p> <p>(3) requires the holder of any licence, etc for activities that are not associated with vessels to display it in the registered business office.</p> <p>(4) requires National registered vessels to carry required documents at all times and while in the waters of other States comply with its legislation, or an RFMO area of competence comply with ICMMs.</p> <p>(5) requires operators to maintain log books and make reports as required under the Act (which is defined to include regulations) or by the CEO in writing or an ICMM.</p> | | |
| 18. | Conditions for landings and transshipment | <p>Specific conditions for landing and transshipment, including:</p> <p>(1) requires a notification period.</p> <p>(2) requires activities at designated ports, and refers to pre-inspection and observers.</p> <p>(3) requires the licensee to pay all costs of an authorised fisheries officer or other person designated by the CEO where there is transshipment outside a port in [country].</p> <p>4) prohibits shark carcasses and fins from being transhipped separately.</p> | <p>84. Licences and authorizations required</p> <p>87. Standards for approval, renewal and issuance of licences and authorizations</p> <p>107. Requirements for transshipment</p> <p>127. Transshipment</p> | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|--|---|---|--------------------------------|
| | | <p>(5) requires Declarations of Transshipments as may be prescribed or required by an ICMM.</p> <p>(6) incorporates Regulation 24A and is expanded as instructed during consultations to include offloading fish into containers.</p> <p>(7) requires compliance with laws relating to the protection of the marine environment.</p> <p>(8) permits the [Authority] to require compliance with any applicable ICMM.</p> | <p>at sea prohibited</p> <p>158. Use of port without authorization prohibited</p> <p>100. Reporting requirements for industrial fishing vessels</p> | |
| 19. | Pre-licensing registration, inspection and other requirements | To establish compliance, a foreign vessel must be inspected before a license is issued. | 87(1)(d). Standards for approval, renewal and issuances of licences and authorizations | |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission | No licence would be issued where there is a record/evidence/history of IUU fishing, vessels is on an IUU Vessel List, connected to IUU fishing or fishing related criminal activities, etc. Conditions must be consistent with national, regional and international law. Vessels must be on an RFMO authorised vessel list where relevant. | 88(1)(m) and (3). Requirements for denial of licences and authorizations Licences and authorizations for transshipment, etc. must not be issued, renewed etc, but may be | |
| 21. | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations | A wide range of criteria for denial or non-renewal of licences, etc, including that the standards for grant of license, there has been non-compliance with an existing or previous licence with no submission to due process or | 88. Requirements for denial of licences and authorization | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|--|---|--|---|--------------------------------|
| | | satisfaction of judgment or determination Foreign vessel must hold Authorisation to Fish (ATF) issued by flag State. | | |
| VII. MONITORING, CONTROL AND SURVEILLANCE | | | | |
| Division 1 – Authorised fisheries officers, observers | | | | |
| 22. | Exercise of powers and functions by authorised officers and observers | When authorised officers, observers are beyond areas of national jurisdiction the provisions of the Act are applicable as if the duties were performed in areas under national jurisdiction. They must carry and produce identification on request. | 136(5). Authority and general powers of authorised officers 137. Identification of authorised officers 149. Application of Act to observers in areas beyond national jurisdiction | |
| 23. | Authority and general powers of authorised officers | General powers of authorised officers are described, including doing such things and giving such directives that are reasonably necessary for exercising their functions, etc. under the Act. Reasonable force may be used and assistance may be required. | 136. Authority and general powers of authorised officers | |
| 24. | Power of entry and search | The power of entry and search is given for all purposes and activities falling within the Act, consistent with general powers of MCS to ensure compliance, responsibilities for traceability etc. It is not limited to cases where contravention of the Act is suspected. | 140. Powers of entry and search of authorised officers | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|---|--|--|--------------------------------|
| | | <p>It provides for the power of entry and search without a warrant, including in relation to national registered vessels beyond national jurisdiction and other vessels to which ICMMs apply as well as vessels without nationality on the high seas (the latter is consistent with international law).</p> <p>It also applies to premises or places reasonably suspected to be used for activities falling within the scope of the Act, except for dwelling houses, where evidence of non-compliance may be found.</p> <p>Persons may be stopped, records, containers, fish etc may be examined, land may be passed across and landing and transshipment operations may be monitored.</p> <p>The authorised officer may require persons to give information and exercise a range of other powers for entry and search.</p> <p>The authorised officer must have a warrant to enter a dwelling house.</p> | | |
| 25. | Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction | <p>Authorised Officers have the power to investigate or to request an investigation by another State.</p> <p>This would allow relevant companies, agents and persons can be investigated for activities in areas beyond national jurisdiction and prosecutions can take place.</p> | 136(1) and (4). Authority and general powers of authorised officers | |
| 26. | Power to take, detain, remove and secure information, evidence | Allows the authorised fisheries officer to take, detain, remove and secure information and evidence and vessels. | 141. Power to take, detain, remove and secure information and evidence | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|---|---|--|--------------------------------|
| 27. | Power to detain persons, vessels, gear, etc | Power of detention for persons, vessels, gear etc. A Notice of Detention must be given to the operator of a vessel or vehicle and copied to relevant government authorities | 167. Notice of detainment or seizure of property 168. Treatment of items detained or seized | |
| 28. | Power of arrest | This gives an authorised fisheries officer the power to order a person to cease and desist where he/she believes that a person is reasonably committing an offence, and to supply name, date of birth etc. and to arrest. | 142. Power of arrest | |
| 29. | Power to order a vessel to port | The power to order a vessel to port for inspection for compliance purposes | 143(1)(a). Power to give direction | |
| 30. | Power to give direction | This power may be exercised without having boarded the vessel. | 143(1) and (2). Power to give direction | |
| 31. | Seizure of vessels, aircraft and items | The items which may be seized are elaborated and include vessels, fish, other articles and anything that may provide evidence of contravention of the Act or an ICMM, as well as passports/seamens' record books and anything that has been forfeited or unlawfully removed from custody under the Act. | 144. Seizure of vessels, etc | |
| 32. | Hot pursuit | The basic requirements of Article 111 of UNCLOS are implemented. | 139. Powers of hot pursuit. | |
| 33. | Responsibilities of observers | Responsibilities of observers in terms of tasks and other activities, including to implement international conservation and management measures. Observers may be deployed as directed by the CEO, including in accordance with ICMMs and on or in relation to vessels, landings etc. | 147. Observer programme | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|--|--|--|--|--------------------------------|
| 34. | Duty of operators, and crew members to assist observers | It requires operators and crew to assist observers for stated activities, including boarding, receiving messages, taking photographs, gathering information and disembarking. It applies at all times the observer is on board and within and beyond areas under national jurisdiction, to accommodate IOTC ICMMs. | 151. Duties of operators. etc, to inspectors and observers | |
| 35. | Observers and field inspectors under an RFMO observer scheme | Regional observer requirements to implement regional observer programme | 149. Application of Act to observers in areas beyond national jurisdiction | |
| Division 2 – Protection and obstruction of authorised persons | | | | |
| 36. | Definition of authorised person | Defines “authorised person” as including authorised fisheries officer and observer, including observers under an RFMO observer programme. | 153. Authorised persons | |
| 37. | Protection of authorised persons from liability | Protects authorised persons and others acting under the authority of the Authority from liability for anything done or omitted to be done in good faith in the performance of duties. It recognizes that some personnel may not be staff members of the Authority e.g. where observers may be hired on occasional contracts. It also addresses situations where a vessel is being brought to port, and exempts persons assisting an authorised fisheries officer from liability. | 154. Protection of authorised persons from liability | |
| 38. | Obstruction of, failure to comply with authorised persons | Creates offences for various forms of obstruction of, or non-compliance with, authorised persons, including for example not allowing access to a place, not giving information, assaulting, kidnapping, impersonating or bribing an authorised person. | 156. Obstruction, etc of authorised persons | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|--|---|--|--|--|
| Division 3 – Inspection procedures | | | | |
| 39. | Pre-licensing / authorisation and unloading inspection procedures | This is a general duty to perform inspections, carry out procedures and apply standards that may be required under this Act, an ICMM, a relevant RFMO or international agreement for Pre-licensing / authorisation and unloading. The procedures, etc may be adopted by Regulation or required by the [Authority]. <i>Regulations should set out details for procedures.</i> | No provision. | Include Model Section 40 in Regulations |
| 40. | Sea inspection procedures | Similar to the previous section. <i>Regulations should set out details for procedures.</i> | No provision. | Include Model legislation section 41 in Regulations. |
| Division 4 – Vessel monitoring system and Automatic Identification System | | | | |
| 41. | Vessel Monitoring System - technical requirements | Implements IOTC Resolution 15/03 and empowers the Authority to approve the technology for VMS and provides that technical requirements, including installation, may be prescribed or required. | 157. Vessel Monitoring Systems | |
| 42. | Vessel monitoring system – requirements of operators | Implements requirements of IOTC Resolution 15/03 and contains many requirements proposed in the SFA draft proposal for management of VMS on local vessels, including: installation and ensure full operation at all times, registration, ensure tamper-resistant, transmission of information directly to FMC at least once every hour. A vessel must come to port within 24 hours, which could allow minimum time to continue fishing, and where the power supply to the VMS except that under subsection (4) special arrangements may be made for the continuation of fishing. | 157. Vessel Monitoring Systems May be required under 157(5) | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|---|--|--|--|--|
| | | In accordance with IOTC Resolution 15/03 the device may be switched off while the vessel is in port for more than a week under certain conditions. | | |
| 43. | Automatic identification system | This permits the Authority to require (including as a licence, etc condition) that vessels maintain an AIS on board in accordance with specifications in the International Convention for the Safety of Life at Sea, and that it continually reports to the Fisheries Monitoring Center. | 100(1)(c). Reporting requirements for industrial fishing vessels Applicable only to industrial fishing vessels. | Apply Model section 44 to all foreign vessels, and as appropriate to national vessels other than industrial. |
| Division 5 – Port State measures | | | | |
| 44. | Designation of ports | Requires the Minister to ensure that ports to be used to foreign vessels are designated and publicized. | 158(1)(a). Use of port without authorization prohibited | |
| 45. | Prerequisites for entry or use of port | Implements paragraph 6 and 7 of IOTC Resolution 16/11, requiring an advance request for entry into port, an authorisation to enter and presentation of the authorisation. | 158. Use of port without authorization prohibited | |
| 46. | Denial of entry into port and use of port | Requires denial of entry into port where there is sufficient proof of IUU fishing or related activities and especially where it is on an IUU vessel list, and if there is a contravention of the Act. Entry into port may be allowed only for purposes of inspection in such circumstances, but use of port is prohibited. The CEO must communicate the decision to allow or deny entry to the vessel and as appropriate to the Ports Authority, which is obligated to implement the decision. | 159. Vessels may be prohibited from entering port | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|---|--|--|------------------------|
| | | The decision to deny entry or use of port must also be communicated to the flag State and others. | | |
| 47. | Force majeure or distress | Allows entry into port for reasons of force majeure, but with limitations consistent with UNCLOS and international law. | 135. Force majeure or distress | |
| 48. | Denial of use of port after entry | Requires denial of port after entry on several grounds, without the need for inspection. Withdrawal of denial of use of port is provided in subsection (3), where there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply. | 160. Denial of the use of port to a foreign fishing vessel | |
| 49. | Conduct of inspections of vessels in port | It provides for levels and prioritization of inspection, and requires fishery inspectors and authorised officers to carry out inspections in conformity with the <i>procedures and report template to be included in Regulations and Schedule</i> , and submit them to the Authority. The operator of the vessel must give authorised officers all necessary assistance, information and documents. | 161. Inspection of foreign fishing vessels in port | |
| 50. | Denial of use of port after inspection | Requires denial of use of port where there are clear grounds for believing that the vessel has engaged in IUU fishing or related activities. | 160(1)(e). Denial of the use of port to a foreign fishing vessel | |
| 51. | Requirements for [country] registered vessels | National vessels, in areas beyond national jurisdiction, are to cooperate with port inspections of other States, and not to use any ports that are not compliant with port State measures. The Authority must request authorities in foreign ports to inspect and take | 90(3)(a). Terms and conditions of licences and authorizations | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----------------------------------|--|--|--|---|
| | | other measures where there are clear grounds to believe that a national vessel has engaged in IUU fishing or related activities, and the vessel is seeking entry into or is in their port. Where there is evidence of IUU fishing or related activities, the Authority must investigate and take enforcement action without delay. | | |
| Division 6 - Miscellaneous | | | | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures | <p>The IOTC list of activities that describe where a vessel is presumed to have engaged in IUU fishing or related activities is incorporated in subsection (1) and the operator is prohibited from engaging in any of these activities.</p> <p>The Authority must provide information and evidence to the IOTC Secretariat of activities of any vessel that is presumed to involve IUU fishing.</p> <p>Subsections (2) and (3) apply the presumption to any vessels in national waters and national vessels in areas beyond national jurisdiction.</p> <p>Where it is presumed that any vessel in national waters has been involved in IUU fishing or related activities in any place in the IOTC Area of Competence, it may be prosecuted in the country.</p> | No provision. | Include Model legislation section 53 in national legislation. |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization | National vessels are prohibited from providing assistance, engaging in fish processing operations or participating in transshipment or joint fishing operations with any vessel on an IUU Vessel List. | No provision. | Include Model legislation section 54 in national legislation. |

MADAGASCAR

GAPS AND AMENDMENTS

LAW No. 2015 – 053 establishing the Fishing and Aquaculture Code

Fully implements

Substantially implements

Partly implements

Does not implement

| | MODEL LEGISLATION FRAMEWORK |
|--|---|
| I. PRELIMINARY | |
| 1. | Use of terms |
| 2. | Application of the legislation |
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| 3. | Mechanism for implementation of RFMO measures |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List |
| 5. | Prohibitions in relation to vessels without nationality |
| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures |
| 7. | Reporting requirements |
| 8. | Gear stowage |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction |
| IV. REQUIREMENTS FOR FISHERIES ACCESS | |
| 10. | Fisheries access – terms and conditions |
| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters |
| V. INFORMATION | |
| 12. | Establishment of an information system |
| 13. | Information may be required, inspected |
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited |
| 15. | Information sharing bilaterally, regionally, internationally |

| MODEL LEGISLATION FRAMEWORK | |
|---|---|
| VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | |
| 16. | Licenses, authorisations, etc required. |
| 17. | License terms and conditions |
| 18. | Conditions for landings and transshipment |
| 19. | Pre-licensing registration, inspection and other requirements |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission |
| 21. | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations |
| VII. MONITORING, CONTROL AND SURVEILLANCE | |
| Division 1 – Authorised fisheries officers, observers | |
| 22. | Exercise of powers and functions by authorised officers and observers |
| 23. | Authority and general powers of authorised officers |
| 24. | Power of entry and search |
| 25. | Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction |
| 26. | Power to take, detain, remove and secure information, evidence |
| 27. | Power to detain persons, vessels, gear, etc |
| 28. | Power of arrest |
| 29. | Power to order a vessel to port |
| 30. | Power to give direction |
| 31. | Seizure of vessels, aircraft and items |
| 32. | Hot pursuit |
| 33. | Responsibilities of observers |
| 34. | Duty of operators, and crew members to assist observers |
| 35. | Observers and field inspectors under an RFMO observer scheme |
| Division 2 – Protection and obstruction of authorised persons | |
| 36. | Definition of authorised person |
| 37. | Protection of authorised persons from liability |
| 38. | Obstruction of, failure to comply with authorised persons |
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| | MODEL LEGISLATION FRAMEWORK |
|--|--|
| 39. | Pre-licensing / authorisation and unloading inspection procedures |
| 40. | Sea inspection procedures |
| Division 4 – Vessel monitoring system and Automatic Identification System | |
| 41. | Vessel Monitoring System - technical requirements |
| 42. | Vessel monitoring system – requirements of operators |
| 43. | Automatic identification system |
| Division 5 – Port State measures | |
| 44. | Designation of ports |
| 45. | Prerequisites for entry or use of port |
| 46. | Denial of entry into port and use of port |
| 47. | Force majeure or distress |
| 48. | Denial of use of port after entry |
| 49. | Conduct of inspections of vessels in port |
| 50. | Denial of use of port after inspection |
| 51. | Requirements for [country] registered vessels |
| Division 6 - Miscellaneous | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----------------------|-----------------------------------|---|--|---|
| I. PRELIMINARY | | | | |
| 1. | Use of terms | <p>Terms should be defined consistently with their use in international and regional instruments, including:</p> <ul style="list-style-type: none"> • fishing • fishing related activities, or “related activities” • fishing vessel • international conservation and management measures • vessel monitoring system • vessel without nationality | <p>Article 1</p> <p>“fishing vessel” definitions relate only to use for small-scale artisanal and industrial fishing, do not include vessels intended to be used for fishing.</p> <p>No definitions for other terms.</p> | Include Model legislation section 1 in national legislation to define all key terms. |
| 2. | Application of the legislation | <p>Legislation should be clear that it applies to national areas and areas beyond national jurisdiction (ABNJ) consistent with international law/regional obligations. This will allow MCS operations to take place in ABNJ.</p> | <p>Article 3</p> <p>Applies to areas beyond the areas of national jurisdiction concerning :</p> <ul style="list-style-type: none"> - persons under Malagasy law and vessels, insofar as there is no contradiction with the jurisdiction of a third State; - third party vessels in the event of prosecution, in accordance with international law; - conservation and management measures, under international law or an international agreement. <p>This does not cater for third party vessels for purposes of compliance and inspection.</p> | Include Model legislation section 2 in national legislation as applicable to compliance activities. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|---|--|---|---|---|
| II. MCS-RELATED MANAGEMENT MEASURES | | | | |
| 3. | Mechanism for implementation of RFMO measures | This facilitates and clarifies the timely implementation of ICMMs. It may be adapted to procedures in each country for implementation by regulations, Gazetting or other. | Article 5 Refers to cooperation in fisheries management and coordination of monitoring and control of vessel activities, etc., but no specific mechanism to implement ICMMs is provided. | Include Model legislation section 3 in national legislation as appropriate. |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List | Prohibits, in relation to vessels on an IUU Vessel List ("listed vessels"), operators of [country] registered vessels from assisting, participating in transshipment or joint operations with a listed vessel or carrying out fish processing operations with listed vessels. | Article 40 Requires licence denial, but there is no provision that prohibits flag vessels or others from carrying out activities . | Include Model legislation section 4 in national legislation. |
| 5. | Prohibitions in relation to vessels without nationality | Vessels without nationality are prohibited from landing, transshipping and use of port in [country] and transshipping with [country] registered vessels in an area of competence of a relevant RFMO. | Article 68(a) Fisheries inspectors may, on the high seas, stop, board and inspect any "foreign fishing vessel without a flag, or flying the flag of more than one State..." But there are no prohibitions against them in national law so they cannot be brought to port. | Include Model legislation section 5 in national legislation. |
| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | | | | |
| 6. | Compliance with Act, licence, authorisation or other permission, | Requires licensee or holder of authorisations and other permissions to comply with the terms of the licenses and this Act, national | Article 58 Requires any fishing vessel authorised to fish in maritime waters under national | Include Model legislation section 6 in national legislation to require broadest compliance. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | international conservation and management measures | legislation, an applicable access agreement and ICMM. This permits cancellation of the licence, etc where there has been breach of any condition. | jurisdiction to comply with certain conditions, but this is not a general provision that relates to other national legislation, applicable access agreement etc. | |
| 7. | Reporting requirements | <p>This describes various reporting requirements (true, complete and correct, on time, required form and format, etc) and addresses difficult situations encountered in the region, for example:</p> <ul style="list-style-type: none"> provides for legal action where there is improper catch reporting on quotas; fishers send receipts from companies that bought the fish, with no other information or form, instead of proper catch documentation; estimated catch, such as the proportion of yellowfin and landing declarations, must be done using a standard of proof required by the [Authority]. | <p>Article 86</p> <p>Requires any person who engages in fishing and fishing-related activities without providing the relevant information.</p> <p>Article 91 (k) and (l)</p> <p>It is an offence to (k)falsify documents and information relating to the technical specifications of fishing vessels; (l) falsify or fail to enter required data in fishing logs, landing declarations, sales notes and transport documents, or fail to hold or present the above documents</p> <p>There is no provision that all information given under the Act must be true, complete and correct.</p> | Include Model legislation section 7 in national legislation. |
| 8. | Gear stowage | All vessels (licensed and unlicensed) must stow gear when the vessel is in any area where it is not licensed or authorised to fish or undertake related activities. Applies to | <p>Article 61</p> <p>Requires unlicensed transiting foreign fishing vessels to stow fishing gear.</p> <p>This does not apply to all vessels in areas</p> | Include Model legislation section 8 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | national waters and nationally registered vessels in areas beyond national jurisdiction. | where they are not licensed to fish or to flag vessels in areas beyond national jurisdiction. | |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction | This allows compliance with international law and IOTC ICMMs. Nationally registered vessels and citizens must comply with access agreements and laws of other countries and must not undermine international conservation and management measures. | No provision. | Include Model legislation section 9 in national legislation. |
| IV. REQUIREMENTS FOR FISHERIES ACCESS | | | | |
| 10. | Fisheries access – terms and conditions | Non-negotiable conditions for permitting fisheries access, e.g. vessel must hold authorisation from flag State, not be on IUU vessel list, assurance of minimum benefits to Nationals. Vessels are required to be on an authorised vessel list of a relevant RFMO and, to cater to the regional initiative for minimum terms and conditions for fisheries access, under a regional fisheries management agreement. | Article 35 Requires access agreements to obligate foreign vessels to adopt measures to ensure that the vessels respect the terms and conditions of “other international conventions” and relevant provisions of Malagasy legislation, and comply with minimum conditions of access defined by regulation. However, specific terms and conditions are not listed. | Include Model legislation section 10 in national legislation as may be necessary. |
| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in | In accordance with best practices, <i>all</i> foreign vessels are required to have VMS and AIS operational and report <i>directly</i> to the [Authority] (not via | Article 58 Requires authorised vessels to communicate entry into and exit from Malagasy waters. | Include Model legislation section 11 in national legislation to require VMS, AIS, etc. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | [country] waters | <p>their flag country or other).</p> <p>This is more stringent than the MTC Guidelines but consistent with UNCLOS rights and duties of a coastal State because the reporting is for purposes of fisheries conservation, management and MCS and does not empower the [Authority] to hinder entry or exit.</p> | <p>This is not applicable to all vessels, just the authorised ones.</p> <p>VMS and AIS are not specifically required.</p> | |
| V. INFORMATION | | | | |
| 12. | Establishment of an information system | <p>Information required to be given and maintained in an information system is provided and relevant for MCS use.</p> <p>Confidentiality standards are set but allow transparency, consistent with Fisheries Transparency Initiative (FiTI) standards.</p> | <p>Article 9(k)</p> <p>Requires the Ministry to apply measures for the preservation and management of fishery resources, including through the implementation of a system of monitoring, control and surveillance of fishing activities in the waters.</p> <p>And within the framework of which this is an element, requires the Ministry to set up information systems. But there are no specific criteria or standards.</p> | Include Model legislation section 12 in national legislation. |
| 13. | Information may be required, inspected | This is a general provision requiring persons carrying out activities under the Act to keep and maintain such information as may be required by the [Authority] under the Act, other national legislation or an ICMM. | No provision. | Include Model legislation section 13 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 14. | Information to be true, complete and correct and destruction etc of documents prohibited | This section requires all information given under this Act (defined as including all subsidiary legislation) to be true, complete and correct and will prohibit alteration, destruction etc of documents, information, data, statistics, labels and required markings on vessels or gear and use of forged or falsified documents. It applies to any information, etc without regard to whether it is submitted to the [Authority], any person, court, body, other government authority, RFMO etc. | Article 91 Prohibits: (g) the falsification, concealment or destruction of evidence that may be used in an investigation for the purpose of a judicial proceeding. (k) falsification of documents and information relating to the technical specifications of fishing vessels (l) falsification or failing to enter required data in fishing logs, landing declarations, sales notes and transport documents. However, there is no duty to ensure all information provided under the Law is true, complete and correct. | Include Model legislation section 14 in national legislation. |
| 15. | Information sharing bilaterally, regionally, internationally | This section is important for sharing of MCS information. It empowers the [Authority] to prepare and submit information under bilateral, regional and international agreements and ICMMs. It recognizes the exchange of information should be a basic process (mindful of confidentiality requirements). | Article 70(d) Where a foreign fishing vessel is suspected of having participated in fishing operations on the high seas in violation of ICMMs, etc. it is required to inform the RFMOs that have included the vessel on their IUU Vessel List. There is no broad obligation to share MCS information. | Include Model legislation section 15 in national legislation. |
| VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | | | | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 16. | Licenses, authorisations, etc required. | The legislation should specify clearly and in one section the licenses, authorisations, permissions etc that are required. This will assist general understanding and MCS efforts to monitor and control fishing and related activities. | Article 39 The different categories of fishing authorizations as well as the procedures for applying for, suspending or withdrawing them are specified by regulation. | Consider whether to ensure Model legislation section 16 should be in regulations. |
| 17. | License terms and conditions | <p>Licensing terms and conditions for fishing, supply and transport vessels should be required, among others. In this provision:</p> <p>(1) generally provides the licence, etc must be subject to the terms and conditions in the Act, as may be prescribed and to such other terms and conditions as may be specified by the [Authority] or provided in ICMMs. Amendment, entry into force and validity are addressed.</p> <p>(2) requires the operator of a vessel to keep a copy of the licence etc onboard the vessel.</p> <p>(3) requires the holder of any licence, etc for activities that are not associated with vessels to display it in the registered business office.</p> <p>(4) requires National registered vessels to carry required</p> | <p>Article 38</p> <p>The Ministry in charge of fisheries and aquaculture defines the additional general conditions to which fishing licenses or certain categories of fishing licenses are subject.</p> <p>No specific minimum conditions are available.</p> | Include Model legislation section 17 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | documents at all times and while in the waters of other States comply with its legislation, or an RFMO area of competence comply with ICMMs. (5) requires operators to maintain log books and make reports as required under the Act (which is defined to include regulations) or by the CEO in writing or an ICMM. | | |
| 18. | Conditions for landings and transshipment | Specific conditions for landing and transshipment, including: (1) requires a notification period. (2) requires activities at designated ports, and refers to pre-inspection and observers. (3) requires the licensee to pay all costs of an authorised fisheries officer or other person designated by the CEO where there is transshipment outside a port in [country]. (4) prohibits shark carcasses and fins from being transhipped separately. (5) requires Declarations of Transshipments as may be prescribed or required by an ICMM. | Article 60 All transshipments by foreign vessels must be carried out at port. The relevant procedures must be established by regulation. The landing of fishery products is subject to controls by the fisheries authority. Procedures are not available, and this does not apply to flag vessels. Landings relate only to fishery products, do not include fish, and are only subject to controls in accordance with provisions on port State measures and nothing more. | Include Model legislation section 18 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>(6) incorporates Regulation 24A and is expanded as instructed during consultations to include offloading fish into containers.</p> <p>(7) requires compliance with laws relating to the protection of the marine environment.</p> <p>(8) permits the [Authority] to require compliance with any applicable ICMM.</p> | | |
| 19. | Pre-licensing registration, inspection and other requirements | To establish compliance, a foreign vessel must be inspected before a license is issued. | <p>Article 37</p> <p>The Ministry in charge of fisheries and aquaculture shall define the terms and conditions for the granting of fishing licenses by regulation.</p> <p>Regulations have not been identified.</p> | Include Model legislation section 19 in national legislation. |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission | No licence would be issued where there is a record/evidence/history of IUU fishing, vessels is on an IUU Vessel List, connected to IUU fishing or fishing related criminal activities, etc. Conditions must be consistent with national, regional and international law. Vessels must be on an RFMO authorised vessel list where relevant. | No provision. | Include Model legislation section 20 in national legislation. |
| 21. | Grounds for denial or non-renewal of licenses of licences, | A wide range of criteria for denial or non-renewal of licences, etc, including that the | Article 40 Provides for a wide range of criteria for denial, but does not include non-compliance | Include Model legislation section 4 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | authorisations, registrations | standards for grant of license, there has been non-compliance with an existing or previous licence with no submission to due process or satisfaction of judgment or determination Foreign vessel must hold Authorisation to Fish (ATF) issued by flag State. | with an existing or previous licence with no submission to process etc. | |
| VII. MONITORING, CONTROL AND SURVEILLANCE | | | | |
| Division 1 – Authorised fisheries officers, observers | | | | |
| 22. | Exercise of powers and functions by authorised officers and observers | When authorised officers, observers are beyond areas of national jurisdiction the provisions of the Act are applicable as if the duties were performed in areas under national jurisdiction. They must carry and produce identification on request. | Article 66 Power to investigate and establish infractions of the law is given. Article 67 Qualifications and appointment of fisheries inspectors are provided. Article 68 Power in relation to high seas is explained. There is no reference to functions and duties to ensure routine compliance, distinct from investigating infractions. Without nationality | Include Model legislation section 22 in national legislation as necessary. |
| 23. | Authority and general powers of authorised officers | General powers of authorised officers are described, including doing such things and giving such directives that are reasonably necessary for exercising | Article 68 The powers relate mainly to vessels, but (h) relates to entry and inspection of premises. There is no general power to do things and | Include Model legislation section 23 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>their functions, etc. under the Act.</p> <p>Reasonable force may be used and assistance may be required.</p> | <p>give directions reasonably necessary for exercising their functions under the Act.</p> <p>Also, the general functions in relation to ensuring compliance in all activities with all requirements under the scope of the Act are not clearly stated.</p> <p>There is no provision on reasonable force.</p> | |
| 24. | Power of entry and search | <p>The power of entry and search is given for all purposes and activities falling within the Act, consistent with general powers of MCS to ensure compliance, responsibilities for traceability etc.</p> <p>It is not limited to cases where contravention of the Act is suspected.</p> <p>It provides for the power of entry and search without a warrant, including in relation to national registered vessels beyond national jurisdiction and other vessels to which ICMMs apply as well as vessels without nationality on the high seas (the latter is consistent with international law).</p> <p>It also applies to premises or places reasonably suspected to be used for activities falling within the scope</p> | <p>Article 68(l)</p> <p>Inspectors can enter and inspect any premises, building, vehicle and place for professional or private use, and to seize or take copies of any administrative or technical documents relating to the offences.</p> <p>However this is narrow and does not apply to other places suspected of being used for activities under the scope of the Act, does not include powers to stop and question persons, examine fish, etc.</p> | Include Model legislation section 24 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>of the Act, except for dwelling houses, where evidence of non-compliance may be found.</p> <p>Persons may be stopped, records, containers, fish etc may be examined, land may be passed across and landing and transshipment operations may be monitored.</p> <p>The authorised officer may require persons to give information and exercise a range of other powers for entry and search.</p> <p>The authorised officer must have a warrant to enter a dwelling house.</p> | | |
| 25. | Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction | <p>Authorised Officers have the power to investigate or to request an investigation by another State.</p> <p>This would allow relevant companies, agents and persons can be investigated for activities in areas beyond national jurisdiction and prosecutions can take place.</p> | No provision. | Include Model legislation section 25 in national legislation. |
| 26. | Power to take, detain, remove and secure information, evidence | Allows the authorised fisheries officer to take, detain, remove and secure information and evidence and vessels. | <p>Article 1 Seizure Defined as detaining confiscating or consigning materials and/or products that are the object of an offence</p> | Include Model legislation section 26 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>Article 68(i) For purposes of investigation of infractions, agents are empowered to seize or take copies of ... documents relating to the offences</p> <p>Article 69 (b), (c) Where an infringement is established: (b) Seizure of vehicles, etc use in the commission of an offence (c) Seizure of logbooks, documents etc.</p> <p>No general provision to seize, take, detain, remove or secure "evidence or information" without referring to specific items.</p> | |
| 27. | Power to detain persons, vessels, gear, etc | Power of detention for persons, vessels, gear etc. A Notice of Detention must be given to the operator of a vessel or vehicle and copied to relevant government authorities | No provision. | Include Model legislation section 27 in national legislation as necessary. |
| 28. | Power of arrest | This gives an authorised fisheries officer the power to order a person to cease and desist where he/she believes that a person is reasonably committing an offence, and to supply name, date of birth etc. and to arrest. | <p>Article 67 In the exercise of his duties, the fisheries inspector may, if he deems it necessary, request the forces of law and order for the prosecution and recording of offences as well as for the seizure of prohibited gear and materials and of products caught in</p> | Include Model legislation section 28 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>violation of the provisions of this law.</p> <p>It is unclear who has the power of arrest, or whether “prosecution” refers to the power of arrest.</p> | |
| 29. | Power to order a vessel to port | The power to order a vessel to port for inspection for compliance purposes | <p>Article 68(c) To investigate infractions, agents are empowered to direct the fishing vessel to any zone, port, offshore terminal or roadstead to carry out or continue the inspection when technical or meteorological conditions do not allow the inspection of the said vessel to be carried out properly.</p> <p>There is no general power to order a vessel to port for inspection for general purposes of ensuring compliance. Instead, an infraction is a precondition of the power to order to port for inspection.</p> | Include Model legislation section 29 in national legislation as necessary to expand the power to address general compliance purposes. |
| 30. | Power to give direction | This power may be exercised without having boarded the vessel. | No provision. | Include Model legislation section 24 in national legislation. |
| 31. | Seizure of vessels, aircraft and items | The items which may be seized are elaborated and include vessels, fish, other articles and anything that may provide evidence of contravention of the Act or an ICMM, as well as passports/seamens’ record books and | <p>Article 68 (i) seizure of documents permitted</p> <p>Article 69 (b), (c) Where an infringement is established permits: (b) Seizure of vehicles, etc used in the commission of an</p> | Include Model legislation section 31 in national legislation as necessary to expand powers of seizure. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | anything that has been forfeited or unlawfully removed from custody under the Act. | <p>offence and catches resulting from the offence.</p> <p>(c) Seizure of logbooks, documents etc.</p> <p>Article 100 Fishery products that were collected without authorization, etc. must be seized ex officio.</p> <p>There is no provision to seize other articles and anything that may provide evidence of contravention of the Act or an ICMM, as well as passports/seamens' record books and anything that has been forfeited or unlawfully removed from custody under the Act.</p> | |
| 32. | Hot pursuit | The basic requirements of Article 111 of UNCLOS are implemented. | No provision. | Include Model legislation section 24 in national legislation. |
| 33. | Responsibilities of observers | Responsibilities of observers in terms of tasks and other activities, including to implement international conservation and management measures. Observers may be deployed as directed by the CEO, including in accordance with ICMMs and on or in relation to vessels, landings etc. | No provision. | Include Model legislation section 24 in national legislation. |
| 34. | Duty of operators, and crew members to assist observers | It requires operators and crew to assist observers for stated activities, including boarding, receiving messages, taking | <p>Article 93(j) It is an offence to deliberately obstruct observers in the performance of their duties.</p> | Include Model legislation section 34 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | photographs, gathering information and disembarking. It applies at all times the observer is on board and within and beyond areas under national jurisdiction, to accommodate IOTC ICMMs. | This does not place a duty on operators, crew members to provide positive assistance. The duties of observers are not described in the Law. | |
| 35. | Observers and field inspectors under an RFMO observer scheme | Regional observer requirements to implement regional observer programme | No provision. | Include Model legislation section 24 in national legislation as necessary. |
| Division 2 – Protection and obstruction of authorised persons | | | | |
| 36. | Definition of authorised person | Defines “authorised person” as including authorised fisheries officer and observer, including observers under an RFMO observer programme. | No provision. | Include Model legislation section 36 in national legislation as necessary. |
| 37. | Protection of authorised persons from liability | Protects authorised persons and others acting under the authority of the Authority from liability for anything done or omitted to be done in good faith in the performance of duties. It recognizes that some personnel may not be staff members of the Authority e.g. where observers may be hired on occasional contracts. It also addresses situations where a vessel is being brought to port, and exempts persons assisting an authorised fisheries officer from liability. | No provision. | Include Model legislation section 37 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 38. | Obstruction of, failure to comply with authorised persons | Creates offences for various forms of obstruction of, or non-compliance with, authorised persons, including for example not allowing access to a place, not giving information, assaulting, kidnapping, impersonating or bribing an authorised person. | Articles 91(h), 92(i) and 93(j) provide offences for different fisheries and with different penalty levels, for deliberately obstructing surveillance and monitoring operations. This does not include non-compliance or various activities that may not be deemed as "obstruction". | Include Model legislation section 38 in national legislation as necessary. |
| Division 3 – Inspection procedures | | | | |
| 39. | Pre-licensing / authorisation and unloading inspection procedures | This is a general duty to perform inspections, carry out procedures and apply standards that may be required under this Act, an ICMM, a relevant RFMO or international agreement for Pre-licensing / authorisation and unloading. The procedures, etc may be adopted by Regulation or required by the [Authority]. <i>Regulations should set out details for procedures.</i> | No provision. | Include Model legislation section 39 in national legislation as necessary. |
| 40. | Sea inspection procedures | Similar to the previous section. <i>Regulations should set out details for procedures.</i> | No provision. | Include Model legislation section 40 in national legislation as necessary. |
| Division 4 – Vessel monitoring system and Automatic Identification System | | | | |
| 41. | Vessel Monitoring System - technical requirements | Implements IOTC Resolution 15/03 and empowers the Authority to approve the technology for VMS and | Article 59: Requires vessels authorised to fish in maritime waters under national jurisdiction and | Include Model legislation section 41 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | provides that technical requirements, including installation, may be prescribed or required. | <p>any national fishing vessel authorised to operate beyond these waters to use a vessel monitoring system.</p> <p>The a system must make it possible to transmit information automatically to the Fisheries Monitoring Centre, enabling the position of the fishing vessel to be constantly monitored.</p> <p>The conditions and procedures relating to this shall be established by regulation.</p> <p>Regulations were not available for review.</p> | |
| 42. | Vessel monitoring system – requirements of operators | <p>Implements requirements of IOTC Resolution 15/03, including: installation and ensure full operation at all times, registration, ensure tamper-resistant, transmission of information directly to FMC at least once every hour. A vessel must come to port within 24 hours, which could allow minimum time to continue fishing, and where the power supply to the VMS except that under subsection (4) special arrangements may be made for the continuation of fishing.</p> <p>In accordance with IOTC Resolution 15/03 the device may be</p> | <p>Article 59 (see description above under 41)</p> <p>Regulations were not available for review.</p> | Include Model legislation section 42 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | switched off while the vessel is in port for more than a week under certain conditions. | | |
| 43. | Automatic identification system | This permits the Authority to require (including as a licence, etc condition) that vessels maintain an AIS on board in accordance with specifications in the International Convention for the Safety of Life at Sea, and that it continually reports to the Fisheries Monitoring Center. | No provision | Include Model legislation section 43 in national legislation. |
| Division 5 – Port State measures | | | | |
| 44. | Designation of ports | Requires the Minister to ensure that ports to be used to foreign vessels are designated and publicized. | Article 63 | |
| 45. | Prerequisites for entry or use of port | Implements paragraph 6 and 7 of IOTC Resolution 16/11, requiring an advance request for entry into port, an authorisation to enter and presentation of the authorisation. | Article 62 When a foreign fishing vessel that has carried out fishing activities beyond the maritime waters under national jurisdiction wishes to have access to a Malagasy fishing port or to a terminal installation off the coast, in particular for the purposes of refueling, bunkering, transshipment and landing, it must make an application to the competent service of the Ministry in charge of Fisheries and Aquaculture There are no requirements for an | Include Model legislation section 45 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>authorisation to be issued, or for presentation of the authorisation upon entry.</p> <p>Information requirements for requesting port entry are not stated.</p> | |
| 46. | Denial of entry into port and use of port | <p>Requires denial of entry into port where there is sufficient proof of IUU fishing or related activities and especially where it is on an IUU vessel list, and if there is a contravention of the Act.</p> <p>Entry into port may be allowed only for purposes of inspection in such circumstances, but use of port is prohibited.</p> <p>The CEO must communicate the decision to allow or deny entry to the vessel and as appropriate to the Ports Authority, which is obligated to implement the decision.</p> <p>The decision to deny entry or use of port must also be communicated to the flag State and others.</p> | No provision | Include Model legislation section 46 in national legislation as necessary. |
| 47. | Force majeure or distress | Allows entry into port for reasons of force majeure, but with limitations consistent with UNCLOS and international law. | No provision. | Include Model legislation section 47 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 48. | Denial of use of port after entry | Requires denial of port after entry on several grounds, without the need for inspection. Withdrawal of denial of use of port is provided in subsection (3), where there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply. | No provision. | Include Model legislation section 24 in national legislation. |
| 49. | Conduct of inspections of vessels in port | It provides for levels and prioritization of inspection, and requires fishery inspectors and authorised officers to carry out inspections in conformity with the <i>procedures and report template to be included in Regulations and Schedule</i> , and submit them to the Authority. The operator of the vessel must give authorised officers all necessary assistance, information and documents. | No provision. | Include Model legislation section 49 in national legislation. |
| 50. | Denial of use of port after inspection | Requires denial of use of port where there are clear grounds for believing that the vessel has engaged in IUU fishing or related activities. | Article 70 Following inspection, if there is suspicion that a foreign fishing vessel has violated ICCM of an RFMO in which it and Madagascar are party, or is on an IUU vessel list of RFMOs, and transhipping in port or roadstead, and access to port facilities must be prohibited. | Include Model legislation section 50 in national legislation as necessary. |

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| | | | This does not target IUU fishing generally, or include denial of all uses of port as required in the FAO/IOTC instruments on Port State Measures. | |
| 51. | Requirements for [country] registered vessels | <p>National vessels, in areas beyond national jurisdiction, are to cooperate with port inspections of other States, and not to use any ports that are not compliant with port State measures.</p> <p>The Authority must request authorities in foreign ports to inspect and take other measures where there are clear grounds to believe that a national vessel has engaged in IUU fishing or related activities, and the vessel is seeking entry into or is in their port.</p> <p>Where there is evidence of IUU fishing or related activities, the Authority must investigate and take enforcement action without delay.</p> | No provision. | Include Model legislation section 51 in national legislation. |
| Division 6 - Miscellaneous | | | | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures | The IOTC list of activities that describe where a vessel is presumed to have engaged in IUU fishing or related activities is incorporated in subsection (1) and the operator is prohibited from engaging in any of these activities. | No provision. | Include Model legislation section 52 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>The Authority must provide information and evidence to the IOTC Secretariat of activities of any vessel that is presumed to involve IUU fishing.</p> <p>Subsections (2) and (3) apply the presumption to any vessels in national waters and national vessels in areas beyond national jurisdiction.</p> <p>Where it is presumed that any vessel in national waters has been involved in IUU fishing or related activities in any place in the IOTC Area of Competence, it may be prosecuted in the country.</p> | | |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization | National vessels are prohibited from providing assistance, engaging in fish processing operations or participating in transshipment or joint fishing operations with any vessel on an IUU Vessel List. | <p>Article 70 The Authority responsible for fisheries control and surveillance must prohibit landings and transshipments.</p> <p>This does not directly prohibit vessel operators from providing assistance, etc. to such vessels.</p> | Include Model legislation section 53 in national legislation as necessary. |

MAURITIUS

GAPS AND AMENDMENTS

FISHERIES ACT 2007

Fisheries and Marine Resources (Vessel Monitoring System) Regulations 2005

Fisheries and Marine Resources (Licence and Fees) Regulations 2013

Fisheries and Marine Resources (Automatic Identification System) Regulations 2016

Fisheries and Marine Resources (Licence and Fees) (Amendment) Regulations 2017

Fully implements

Substantially implements

Partly implements

Does not implement

| | MODEL LEGISLATION FRAMEWORK |
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| | I. PRELIMINARY |
| 1. | Use of terms |
| 2. | Application of the legislation |
| | II. MCS-RELATED MANAGEMENT MEASURES |
| 3. | Mechanism for implementation of RFMO measures |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List |
| 5. | Prohibitions in relation to vessels without nationality |
| | III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures |
| 7. | Reporting requirements |
| 8. | Gear stowage |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction |
| | IV. REQUIREMENTS FOR FISHERIES ACCESS |
| 10. | Fisheries access – terms and conditions |
| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters |
| | V. INFORMATION |
| 12. | Establishment of an information system |

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| 13. | Information may be required, inspected |
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited |
| 15. | Information sharing bilaterally, regionally, internationally |
| VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | |
| 16. | Licenses, authorisations, etc required. |
| 17. | License terms and conditions |
| 18. | Conditions for landings and transshipment |
| 19. | Pre-licensing registration, inspection and other requirements |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission |
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| VII. MONITORING, CONTROL AND SURVEILLANCE | |
| Division 1 – Authorised fisheries officers, observers | |
| 22. | Exercise of powers and functions by authorised officers and observers |
| 23. | Authority and general powers of authorised officers |
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| 32. | Hot pursuit |
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| Division 2 – Protection and obstruction of authorised persons | |
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| | MODEL LEGISLATION FRAMEWORK |
| 38. | Obstruction of, failure to comply with authorised persons |
| | Division 3 – Inspection procedures |
| 39. | Pre-licensing / authorisation and unloading inspection procedures |
| 40. | Sea inspection procedures |
| | Division 4 – Vessel monitoring system and Automatic Identification System |
| 41. | Vessel Monitoring System - technical requirements |
| 42. | Vessel monitoring system – requirements of operators |
| 43. | Automatic identification system |
| | Division 5 – Port State measures |
| 44. | Designation of ports |
| 45. | Prerequisites for entry or use of port |
| 46. | Denial of entry into port and use of port |
| 47. | Force majeure or distress |
| 48. | Denial of use of port after entry |
| 49. | Conduct of inspections of vessels in port |
| 50. | Denial of use of port after inspection |
| 51. | Requirements for [country] registered vessels |
| | Division 6 - Miscellaneous |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| I. PRELIMINARY | | | | |
| 1. | Use of terms | <p>Terms should be defined consistently with their use in international and regional instruments, including:</p> <ul style="list-style-type: none"> • fishing • fishing related activities, or "related activities" • fishing vessel • international conservation and management measures • vessel monitoring system • vessel without nationality | <p>2. Interpretation</p> <p>"fishing" definition is weak.</p> <ul style="list-style-type: none"> • Does not include transportation of fish, "attempt" to search for fish. • Restricts "searching for fish" to certain purposes. • Does not include (iii) or (iv) in Model Legislation. <p>The Fisheries Act refers throughout to fishing "boats" and "vessels".</p> <ul style="list-style-type: none"> • "fishing boat" means a boat used for fishing and fishing related activities but excludes a boat used for fishing as sport, water sport or for any other recreational purpose; • "fishing vessel" means a vessel used for, or equipped to be used for, fishing or related activity, other than a fishing boat <p>This document only refers to fishing vessels for simplicity and to reflect usage in international agreements.</p> <p>"International fishery conservation and management measure" used, but not defined.</p> <p>"vessel monitoring system" not defined in Act or regulations.</p> <p>"vessel without nationality" not defined.</p> | <p>Include Model legislation definitions in national legislation for: fishing</p> |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 2. | Application of the legislation | Legislation should be clear that it applies to national areas and areas beyond national jurisdiction (ABNJ) consistent with international law/regional obligations. This will allow MCS operations to take place in ABNJ. | <p>No provision.</p> <p>However, two provisions indicate some extraterritorial effect.</p> <p>36. Licence issued to a Mauritian fishing boat or fishing vessel</p> <p>Licenses are issued for any fishery on the high seas</p> <p>58. Power of search and seizure</p> <p>Fishery control officer may stop, board search and inspect Mauritian flag vessels and flag vessels of States party to an international agreement to which Mauritius is also party.</p> | Include Model legislation section 2 in national legislation. |
| II. MCS-RELATED MANAGEMENT MEASURES | | | | |
| 3. | Mechanism for implementation of RFMO measures | This facilitates and clarifies the timely implementation of ICMMs. It may be adapted to procedures in each country for implementation by regulations, Gazetting or other. | <p>No provision.</p> <p>57. Implementation of international fishery conservation and management measures</p> <p>Only prohibits landing and transshipments without clearance, and port use may be prohibited where a foreign fishing vessel contravenes an ICMM.</p> | Include Model legislation section 3 in national legislation. |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List | Prohibits, in relation to vessels on an IUU Vessel List ("listed vessels"), operators of [country] registered vessels from assisting, participating in | No provision. | Include Model legislation section 4 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | transshipment or joint operations with a listed vessel or carrying out fish processing operations with listed vessels. | | |
| 5. | Prohibitions in relation to vessels without nationality | Vessels without nationality are prohibited from landing, transshipping and use of port in [country] and transshipping with [country] registered vessels in an area of competence of a relevant RFMO. | No provision. | Include Model legislation section 5 in national legislation. |
| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | | | | |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures | Requires licensee or holder of authorisations and other permissions to comply with the terms of the licenses and this Act, national legislation, an applicable access agreement and ICMM. This permits cancellation of the licence, etc where there has been breach of any condition. | No provision. 70(1)(e) Offences and penalties This only applies to failure to comply with terms and conditions imposed under certain sections. | Include Model legislation section 6 in national legislation. |
| 7. | Reporting requirements | This describes various reporting requirements (true, complete and correct, on time, required form and format, etc) and addresses difficult situations encountered in the region, for example: <ul style="list-style-type: none"> provides for legal action where there is improper catch reporting on quotas; fishers send receipts from companies that bought the fish, with no other information or | 41. Reporting The only reports required is to keep a fishing logbook and catch data. | Include Model legislation section 7 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>form, instead of proper catch documentation;</p> <ul style="list-style-type: none"> estimated catch, such as the proportion of yellowfin and landing declarations, must be done using a standard of proof required by the [Authority]. | | |
| 8. | Gear stowage | All vessels (licensed and unlicensed) must stow gear when the vessel is in any area where it is not licensed or authorised to fish or undertake related activities. Applies to national waters and nationally registered vessels in areas beyond national jurisdiction. | <p>52. Stowage</p> <p>Applies only to unlicensed foreign fishing vessels anywhere in maritime zones or to licensed foreign fishing vessels in places where they are not authorised to fish.</p> | Include Model legislation section 8 in national legislation. |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction | This allows compliance with international law and IOTC ICMMs. Nationally registered vessels and citizens must comply with access agreements and laws of other countries and must not undermine international conservation and management measures. | <p>No provision.</p> <p>36. Licence issued to a Mauritian fishing boat or fishing vessel</p> <p>Licenses are issued for any fishery on the high seas but the only requirement is that the vessel owner must notify the Permanent Secretary before starting to fish in the "fishing zone of a foreign State".</p> <p>A license won't be issued where there is a history of non-compliance.</p> <p>There is no provision for future compliance with ICMMs, other.</p> | Include Model legislation section 9 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| IV. REQUIREMENTS FOR FISHERIES ACCESS | | | | |
| 10. | Fisheries access – terms and conditions | Non-negotiable conditions for permitting fisheries access, e.g. vessel must hold authorisation from flag State, not be on IUU vessel list, assurance of minimum benefits to National. Vessels are required to be on an authorised vessel list of a relevant RFMO and, to cater to the regional initiative for minimum terms and conditions for fisheries access, under a regional fisheries management agreement. | No provision. 35. Licence and international agreement Requires an international agreement before licenses are issued to foreign vessels but there are no terms and conditions or other criteria. | Include Model legislation section 10 in national legislation. |
| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters | In accordance with best practices, <i>all</i> foreign vessels are required to have VMS and AIS operational and report <i>directly</i> to the [Authority] (not via their flag country or other). This is more stringent than the MTC Guidelines but consistent with UNCLOS rights and duties of a coastal State because the reporting is for purposes of fisheries conservation, management and MCS and does not empower the [Authority] to hinder entry or exit. | 81. Consequential amendment The National Coast Guard Act is amended by adding new section 12A requiring the master or owner of any foreign fishing boat or foreign fishing vessel or his agent to, by letter, fax or email – (a) at least 24 hours before entry into, or exit from, the maritime zones, inform the National Coast Guard of its position at time of entry into, or exit from, such zone and the quantity of fish on board by species. (b) at least 72 hours before entering a port, inform the National Coast Guard of its entry and furnish a copy of the boat's or vessel authorisation to fish, the quantity of fish on board and the purpose of call in the port | Include Model legislation section 11 in national legislation and adapt as appropriate to consider the National Coast Guard Act. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | This does not cover continuous reporting by VMS and AIS. | |
| V. INFORMATION | | | | |
| 12. | Establishment of an information system | Information required to be given and maintained in an information system is provided and relevant for MCS use. Confidentiality standards are set but allow transparency, consistent with Fisheries Transparency Initiative (FITI) standards. | No provision. | Include Model legislation section 12 in national legislation. |
| 13. | Information may be required, inspected | This is a general provision requiring persons carrying out activities under the Act to keep and maintain such information as may be required by the [Authority] under the Act, other national legislation or an ICMM. | No provision. | Include Model legislation section 13 in national legislation. |
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited | This section requires all information given under this Act (defined as including all subsidiary legislation) to be true, complete and correct and will prohibit alteration, destruction etc of documents, information, data, statistics, labels and required markings on vessels or gear and use of forged or falsified documents. It applies to any information, etc without regard to whether it is submitted to the [Authority], any person, court, body, other | 72. Giving false information and tampering with evidence It is an offence to (a) knowingly fail to supply any information required under the Act or provides false, incorrect or misleading information; or (b) falsifies, conceals, destroys or tampers with evidence which can be used in the course of inquiries or judicial proceedings. These requirements should be further elaborated to ensure broader scope, and to provide a duty to give true, correct | Include Model legislation section 14 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | government authority, RFMO etc. | and complete information (which has a different standard of proof than falsification, etc.). | |
| 15. | Information sharing bilaterally, regionally, internationally | This section is important for sharing of MCS information. It empowers the [Authority] to prepare and submit information under bilateral, regional and international agreements and ICMMs. It recognizes the exchange of information should be a basic process (mindful of confidentiality requirements). | <p>No provision.</p> <p>7. Confidentiality</p> <p>Fisheries control officers or other officers having access to information under the Act are prohibited from using or disclosing the information except for purposes of the Act or fulfilling Mauritius' obligations under international agreements or conventions.</p> <p>This discourages information sharing, for example where transparency is preferred under the Fisheries Transparency Initiative FiTI or for bilateral agreements. there are effective regional.</p> <p>It would be useful to take a more open approach which provides for the designation of confidential information and allow the rest to be shared.</p> | Include Model legislation section 15 in national legislation. |
| VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | | | | |
| 16. | Licenses, authorisations, etc required. | The legislation should specify clearly and in one section the licenses, authorisations, permissions etc that are required. This will assist general understanding and MCS efforts to monitor and control fishing and related activities. | <p>Part VI – Licensing</p> <p>Different sections address gear licenses (s. 28), foreign fishing boat or foreign fishing vessel licence (s. 34), licence issued to a Mauritian fishing boat or fishing vessel (s. 36) and authorisation of</p> | As appropriate, to facilitate understanding of the authorisations and licenses required under the Act, a review is suggested to |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>transshipment (s. 39(2)) and entry into port (s. 54).</p> <p>A foreign vessel must notify the vessel's authorisation to fish prior to entering into port but it is not clear (s. 81(2)(b)) whether this is a flag State authorisation.</p> <p>Other authorisations are required, or may be issued, e.g. for underwater fishing (s. 13) and landing certain fish (e.g. undersize) (s. 17) but the requirements are not consolidated, the differences between licences and authorisations are unclear and language for many sections empowers the Permanent Secretary to issue authorisation but does not clearly provide the obligation on the person undertaking the activity to hold an authorisation.</p> <p>Offences and penalties are listed separately. (s. 70)</p> <p>For the above reasons, requirements for licences and authorisations are not easily understood.</p> | <p>explain the specific requirements, obligations and processes.</p> |
| 17. | License terms and conditions | <p>Licensing terms and conditions for fishing, supply and transport vessels should be required, among others. In this provision:</p> <p>(1) generally provides the licence, etc must be subject</p> | <p>No provision for minimum terms and conditions.</p> <p>Throughout the Act, terms and conditions may be imposed by the Permanent Secretary as they "deem fit" – or the Minister in case of foreign or Mauritian fishing vessels.</p> | <p>Include Model legislation section 17 in national legislation.</p> |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>to the terms and conditions in the Act, as may be prescribed and to such other terms and conditions as may be specified by the [Authority] or provided in ICMMs. Amendment, entry into force and validity are addressed.</p> <p>(2) requires the operator of a vessel to keep a copy of the licence etc onboard the vessel.</p> <p>(3) requires the holder of any licence, etc for activities that are not associated with vessels to display it in the registered business office.</p> <p>(4) requires National registered vessels to carry required documents at all times and while in the waters of other States comply with its legislation, or an RFMO area of competence comply with ICMMs.</p> <p>(5) requires operators to maintain log books and make reports as required under the Act (which is defined to include regulations) or by the CEO in writing or an ICMM.</p> | <p>37. Conditions of licences</p> <p>Some classifications of typical terms and conditions are given, such as closed periods, reporting obligations but there is nothing specific.</p> | |
| 18. | Conditions for landings and transshipment | <p>Specific conditions for landing and transshipment, including:</p> <p>(1) requires a notification period.</p> | <p>47. Landing</p> <p>This section only provides for the place of landing catch.</p> <p>39. Transshipment</p> | <p>Include minimum conditions in Model legislation section 18 in</p> |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>(2) requires activities at designated ports, and refers to pre-inspection and observers.</p> <p>(3) requires the licensee to pay all costs of an authorised fisheries officer or other person designated by the CEO where there is transshipment outside a port in [country].</p> <p>4) prohibits shark carcasses and fins from being transhipped separately.</p> <p>(5) requires Declarations of Transshipments as may be prescribed or required by an ICMM.</p> <p>(6) incorporates Regulation 24A and is expanded as instructed during consultations to include offloading fish into containers.</p> <p>(7) requires compliance with laws relating to the protection of the marine environment.</p> <p>(8) permits the [Authority] to require compliance with any applicable ICMM.</p> | <p>The Permanent Secretary may authorise transshipment subject to terms and conditions he deems fit.</p> <p>There are no specific requirements.</p> | national legislation. |
| 19. | Pre-licensing registration, inspection and other requirements | To establish compliance, a foreign vessel must be inspected before a license is issued. | No provision. | Include Model legislation section 19 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission | No licence would be issued where there is a record/evidence/history of IUU fishing, vessels is on an IUU Vessel List, connected to IUU fishing or fishing related criminal activities, etc. Conditions must be consistent with national, regional and international law. Vessels must be on an RFMO authorised vessel list where relevant. | No provision. | Include Model legislation section 20 in national legislation. |
| 21. | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations | A wide range of criteria for denial or non-renewal of licences, etc, including that the standards for grant of license, there has been non-compliance with an existing or previous licence with no submission to due process or satisfaction of judgment or determination Foreign vessel must hold Authorisation to Fish (ATF) issued by flag State. | No provision. | Include Model legislation section in national legislation. |
| VII. MONITORING, CONTROL AND SURVEILLANCE | | | | |
| Division 1 – Authorised fisheries officers, observers | | | | |
| 22. | Exercise of powers and functions by authorised officers and observers | When authorised officers, observers are beyond areas of national jurisdiction the provisions of the Act are applicable as if the duties were performed in areas under national jurisdiction. They must carry and produce identification on request. | 61. Duties of fishery control officers Requires officers to produce identification on request. There is no provision in relation to areas beyond national jurisdiction, although hot pursuit is allowed. (s.62) | Include Model legislation section 22 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 23. | Authority and general powers of authorised officers | <p>General powers of authorised officers are described, including doing such things and giving such directives that are reasonably necessary for exercising their functions, etc. under the Act.</p> <p>Reasonable force may be used and assistance may be required.</p> | <p>No provision.</p> <p>Specific powers are given to fishery enforcement officers such as arrest and detention and seizure, but no general powers are given.</p> | Include Model legislation section 23 in national legislation. |
| 24. | Power of entry and search | <p>The power of entry and search is given for all purposes and activities falling within the Act, consistent with general powers of MCS to ensure compliance, responsibilities for traceability etc.</p> <p>It is not limited to cases where contravention of the Act is suspected.</p> <p>It provides for the power of entry and search without a warrant, including in relation to national registered vessels beyond national jurisdiction and other vessels to which ICMMs apply as well as vessels without nationality on the high seas (the latter is consistent with international law).</p> <p>It also applies to premises or places reasonably suspected to be used for activities falling within the scope of the Act, except for dwelling houses, where</p> | <p>58. Power of search and seizure</p> <p>This power may only be exercised where it is believed that an offence has been, is being or is about to be committed.</p> <p>It applies to searches, etc of vessels and vehicles but does not apply to land-based searches and seizures of premises or places.</p> <p>It cannot be exercised for purposes of routinely ensuring compliance.</p> <p>It can also be exercised on the high seas in relation to Mauritian fishing vessels and flag vessels of a State party to an international agreement to which Mauritius is also party.</p> | Include Model legislation section 24 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>evidence of non-compliance may be found.</p> <p>Persons may be stopped, records, containers, fish etc may be examined, land may be passed across and landing and transshipment operations may be monitored.</p> <p>The authorised officer may require persons to give information and exercise a range of other powers for entry and search.</p> <p>The authorised officer must have a warrant to enter a dwelling house.</p> | | |
| 25. | Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction | <p>Authorised Officers have the power to investigate or to request an investigation by another State.</p> <p>This would allow relevant companies, agents and persons can be investigated for activities in areas beyond national jurisdiction and prosecutions can take place.</p> | No provision. | Include Model legislation section 25 in national legislation. |
| 26. | Power to take, detain, remove and secure information, evidence | Allows the authorised fisheries officer to take, detain, remove and secure information and evidence and vessels. | <p>58.(2) Power of search and seizure</p> <p>Searches are only permitted on vessels and vehicles. The fishery control officer's powers are therefore limited to examining and taking copies of document related to the boat or vessel and its fishing activities, examining gear,</p> | Include Model legislation section 26 in national legislation, and ensure that the power to search extends to areas under and beyond the jurisdiction of |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|---|---|--|--|
| | | | fish, communication equipment etc on board. There is no general power to take evidence elsewhere than on a vessel. | Mauritius in accordance with international law. |
| 27. | Power to detain persons, vessels, gear, etc | Power of detention for persons, vessels, gear etc. A Notice of Detention must be given to the operator of a vessel or vehicle and copied to relevant government authorities | 59. Power to arrest and detain The text of this section does not give the power to detain, it is only in the title. | Mauritius must determine whether fishery control officers should have the authority to detain. If so, include model legislation section 15 in national legislation. |
| 28. | Power of arrest | This gives an authorised fisheries officer the power to order a person to cease and desist where he/she believes that a person is reasonably committing an offence, and to supply name, date of birth etc. and to arrest. | 59. Power to arrest and detain The text of this section does not give the power to arrest, it is only in the title. | Mauritius must determine whether fishery control officers should have the authority to detain. If so, include model legislation section 15 in national legislation. |
| 29. | Power to order a vessel to port | The power to order a vessel to port for inspection for compliance purposes | 58(5). Power of search and seizure Any seized vessel must be taken to Port Louis or other port in Mauritius. | Include Model legislation section 29 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | This does not give power to order a vessel to port for inspection for compliance purposes. | |
| 30. | Power to give direction | This power may be exercised without having boarded the vessel. | No provision. | Include Model legislation section 30 in national legislation. |
| 31. | Seizure of vessels, aircraft and items | The items which may be seized are elaborated and include vessels, fish, other articles and anything that may provide evidence of contravention of the Act or an ICMM, as well as passports/seamens' record books and anything that has been forfeited or unlawfully removed from custody under the Act. | <p>58. Power of search and seizure</p> <p>This power may only be exercised where it is believed that an offence has been, is being or is about to be committed.</p> <p>It does not apply to land-based searches and seizures, or "anything that may provide evidence of contravention of the Act or an ICMM".</p> <p>It can also be exercised on the high seas in relation to Mauritian fishing vessels and flag vessels of a State party to an international agreement to which Mauritius is also party.</p> <p>It applies to violations of ICMMs; (3) Where a fishery control officer has reason to believe that a violation of a fisheries management measure under an international agreement to which Mauritius is a party has been committed on the high seas, and considers that it would be impracticable to apply for a warrant, the</p> | Include Model legislation section 31 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>fishery control officer may, without a warrant – (a) seize and detain any Mauritian boat or vessel; (b) where authorised by an international agreement to which Mauritius is a party, seize and detain a foreign boat or foreign vessel, together with its gear, store and cargo, fish, or other article which he has reason to believe has been used in the commission of the violation.</p> <p>General powers to seize items that had been forfeited or unlawfully removed from custody are not included.</p> | |
| 32. | Hot pursuit | The basic requirements of Article 111 of UNCLOS are implemented. | 62. Pursuit beyond the maritime zones | |
| 33. | Responsibilities of observers | Responsibilities of observers in terms of tasks and other activities, including to implement international conservation and management measures. Observers may be deployed as directed by the CEO, including in accordance with ICMMs and on or in relation to vessels, landings etc. | <p>No provision.</p> <p>74(1)(s). Regulations</p> <p>Regulations may be made providing for the placing of observers on board any fishing boat or fishing vessel licensed under this Act to fish or carry out any related activity in the maritime zones or beyond as the case may be and prescribing rules relating to observers.</p> <p>This does not refer to responsibilities of observers.</p> | |
| 34. | Duty of operators, and crew members | It requires operators and crew to assist observers for stated activities, including boarding, receiving | No provision. | Include Model legislation section 34 in |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | to assist observers | messages, taking photographs, gathering information and disembarking. It applies at all times the observer is on board and within and beyond areas under national jurisdiction, to accommodate IOTC ICMMs. | | national legislation. |
| 35. | Observers and field inspectors under an RFMO observer scheme | Regional observer requirements to implement regional observer programme | No provision. | If Mauritius participates under the IOTC observer scheme, include Model legislation section 35 in national legislation. |
| Division 2 – Protection and obstruction of authorised persons | | | | |
| 36. | Definition of authorised person | Defines “authorised person” as including authorised fisheries officer and observer, including observers under an RFMO observer programme. | No provision. | If relevant for Mauritius, include Model legislation section 36 in national legislation. |
| 37. | Protection of authorised persons from liability | Protects authorised persons and others acting under the authority of the Authority from liability for anything done or omitted to be done in good faith in the performance of duties. It recognizes that some personnel may not be staff members of the Authority e.g. where observers may be hired on occasional contracts. It also addresses situations where a vessel is being brought to port, and | No provision. | Unless protected under national law, include Model legislation section 37 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | exempts persons assisting an authorised fisheries officer from liability. | | |
| 38. | Obstruction of, failure to comply with authorised persons | Creates offences for various forms of obstruction of, or non-compliance with, authorised persons, including for example not allowing access to a place, not giving information, assaulting, kidnapping, impersonating or bribing an authorised person. | No provision. | Include Model legislation section 38 in national legislation. |
| Division 3 – Inspection procedures | | | | |
| 39. | Pre-licensing / authorisation and unloading inspection procedures | This is a general duty to perform inspections, carry out procedures and apply standards that may be required under this Act, an ICMM, a relevant RFMO or international agreement for Pre-licensing / authorisation and unloading. The procedures, etc may be adopted by Regulation or required by the [Authority]. <i>Regulations should set out details for procedures.</i> | No provision. | Include Model legislation section 39 in national legislation. |
| 40. | Sea inspection procedures | Similar to the previous section. <i>Regulations should set out details for procedures.</i> | No provision. | Include Model legislation section 40 in national legislation. |
| Division 4 – Vessel monitoring system and Automatic Identification System | | | | |
| 41. | Vessel Monitoring System - technical requirements | Implements IOTC Resolution 15/03 and empowers the Authority to approve the technology for VMS and provides that technical requirements, | VMS Regulation 6 Requires the equipment to be approved by the Permanent Secretary. | Include Model legislation section 41 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | including installation, may be prescribed or required. | However, it sets out minimal functions of the equipment and does not include installation or IOTC technical requirements. | |
| 42. | Vessel monitoring system – requirements of operators | <p>Implements requirements of IOTC Resolution 15/03, including: installation and ensure full operation at all times, registration, ensure tamper-resistant, transmission of information directly to FMC at least once every hour. A vessel must come to port within 24 hours, which could allow minimum time to continue fishing, and where the power supply to the VMS except that under subsection (4) special arrangements may be made for the continuation of fishing.</p> <p>In accordance with IOTC Resolution 15/03 the device may be switched off while the vessel is in port for more than a week under certain conditions.</p> | <p>VMS Regulation 7.</p> <p>Requires transmission at least once every 2 hours and requirements for when vessel is in port.</p> <p>Does not provide all the other requirements for operators.</p> | Include Model legislation section 42 in national legislation. |
| 43. | Automatic identification system | This permits the Authority to require (including as a licence, etc condition) that vessels maintain an AIS on board in accordance with specifications in the International Convention for the Safety of Life at Sea, and that it continually reports to the Fisheries Monitoring Center. | <p>The Fisheries and Marine Resources (Automatic Identification System) Regulations 2016 do not apply to foreign vessels.</p> <p>They provide an obligation to install and use an Automatic Identification Systems (AIS) by a fishing boat or fishing vessel to which a licence is issued under section 36 of the</p> | Include Model legislation section 43 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | Act (i.e. a Mauritian vessel used for fishing or any related activity – (a) within the maritime zones; (b) in any fishery on the high seas. | |
| Division 5 – Port State measures | | | | |
| 44. | Designation of ports | Requires the Minister to ensure that ports to be used to foreign vessels are designated and publicized. | No provision. | Include Model legislation section 44 in national legislation. |
| 45. | Prerequisites for entry or use of port | Implements paragraph 6 and 7 of IOTC Resolution 16/11, requiring an advance request for entry into port, an authorisation to enter and presentation of the authorisation. | <p>No provision.</p> <p>There is no provision for a “request” for entry into port or requirement for an authorisation to enter and presentation of the authorisation.</p> <p>There is no compliance with the Advance Request to Enter Port (AREP) required under Resolution 16/11.</p> <p>54. Entry into a Mauritian port and 81. Consequential amendment. Amends the National Coast Guard Act)</p> <p>Require foreign fishing vessels to “notify” or “inform” the Coast Guard at least 72 hours in advance of its entry and furnish a copy of the authorisation to fish, quantity of fish on board and purpose of the port call.</p> | Include Model legislation section 45 in national legislation. |
| 46. | Denial of entry into port and use of port | Requires denial of entry into port where there is sufficient proof of IUU | No provision. | Include Model legislation section 46 in |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>fishing or related activities and especially where it is on an IUU vessel list, and if there is a contravention of the Act.</p> <p>Entry into port may be allowed only for purposes of inspection in such circumstances, but use of port is prohibited.</p> <p>The CEO must communicate the decision to allow or deny entry to the vessel and as appropriate to the Ports Authority, which is obligated to implement the decision.</p> <p>The decision to deny entry or use of port must also be communicated to the flag State and others.</p> | | national legislation. |
| 47. | Force majeure or distress | Allows entry into port for reasons of force majeure, but with limitations consistent with UNCLOS and international law. | No provision. | Include Model legislation section 47 in national legislation. |
| 48. | Denial of use of port after entry | <p>Requires denial of port after entry on several grounds, without the need for inspection.</p> <p>Withdrawal of denial of use of port is provided in subsection (3), where there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply.</p> | <p>No provision.</p> <p>57(3). Implementation of international fishery conservation and management measures</p> <p>The Permanent Secretary can prohibit landings or transshipments, but only after inspection and there is reason to believe that the foreign fishing vessel was involved in a contravention of an ICMM.</p> | Include Model legislation section 48 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 49. | Conduct of inspections of vessels in port | <p>It provides for levels and prioritization of inspection, and requires fishery inspectors and authorised officers to carry out inspections in conformity with the <i>procedures and report template to be included in Regulations and Schedule</i>, and submit them to the Authority.</p> <p>The operator of the vessel must give authorised officers all necessary assistance, information and documents.</p> | <p>No provision.</p> <p>57(2). Implementation of international fishery conservation and management measures</p> <p>Inspection may take place only for purposes of the Permanent Secretary's decision to issue a clearance for landing and transhipment.</p> <p>Conduct of inspection in accordance with the procedures required under IOTC Resolution 16/11 is not required.</p> <p>The operator is not required to assist or otherwise give information.</p> | Include Model legislation section 49 in national legislation. |
| 50. | Denial of use of port after inspection | Requires denial of use of port where there are clear grounds for believing that the vessel has engaged in IUU fishing or related activities. | <p>57(3). Implementation of international fishery conservation and management measures</p> <p>Permits the Permanent Secretary to prohibit landings and transhipments where an inspected foreign fishing vessel was involved in a fishing activity in contravention of an ICMM. However, prohibition of use of port more generally as required in IOTC Resolution 16/11 is not required.</p> | Include Model legislation section 50 in national legislation. |
| 51. | Requirements for [country] registered vessels | National vessels, in areas beyond national jurisdiction, are to cooperate with port inspections of other States, and not to use any ports that are not compliant with port State measures. | No provision. | Include Model legislation section 51 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>The Authority must request authorities in foreign ports to inspect and take other measures where there are clear grounds to believe that a national vessel has engaged in IUU fishing or related activities, and the vessel is seeking entry into or is in their port.</p> <p>Where there is evidence of IUU fishing or related activities, the Authority must investigate and take enforcement action without delay.</p> | | |
| Division 6 - Miscellaneous | | | | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures | <p>The IOTC list of activities that describe where a vessel is presumed to have engaged in IUU fishing or related activities is incorporated in subsection (1) and the operator is prohibited from engaging in any of these activities.</p> <p>The Authority must provide information and evidence to the IOTC Secretariat of activities of any vessel that is presumed to involve IUU fishing.</p> <p>Subsections (2) and (3) apply the presumption to any vessels in national waters and national vessels in areas beyond national jurisdiction.</p> <p>Where it is presumed that any vessel in national</p> | No provision. | Include Model legislation section 52 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | waters has been involved in IUU fishing or related activities in any place in the IOTC Area of Competence, it may be prosecuted in the country. | | |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization | National vessels are prohibited from providing assistance, engaging in fish processing operations or participating in transshipment or joint fishing operations with any vessel on an IUU Vessel List. | No provision. | Include Model legislation section 53 in national legislation. |

MOZAMBIQUE

GAPS AND AMENDMENTS

Law No. 22/2013: Approves the Fisheries Law and revokes Law no. 3/90, of 26 September.

Decree No. 60/2018: Amends and republishes the Regulation for the Granting of Fishing Rights and Fishing Licensing, approved by Decree No. 74/2017, of December 29

Decree No. 89/2020: Approves the Maritime Fishing Regulation (REPMAR) and revokes Decree 43/2003, 10 December.

Fully implements

Substantially implements

Partly implements

Does not implement

| | MODEL LEGISLATION FRAMEWORK |
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| I. PRELIMINARY | |
| 1. | Use of terms |
| 2. | Application of the legislation |
| II. MCS-RELATED MANAGEMENT MEASURES | |
| 3. | Mechanism for implementation of RFMO measures |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List |
| 5. | Prohibitions in relation to vessels without nationality |
| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures |
| 7. | Reporting requirements |
| 8. | Gear stowage |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction |
| IV. REQUIREMENTS FOR FISHERIES ACCESS | |
| 10. | Fisheries access – terms and conditions |

| | MODEL LEGISLATION FRAMEWORK |
|---|---|
| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters |
| V. INFORMATION | |
| 12. | Establishment of an information system |
| 13. | Information may be required, inspected |
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited |
| 15. | Information sharing bilaterally, regionally, internationally |
| VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | |
| 16. | Licenses, authorisations, etc required. |
| 17. | License terms and conditions |
| 18. | Conditions for landings and transshipment |
| 19. | Pre-licensing registration, inspection and other requirements |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission |
| 21. | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations |
| VII. MONITORING, CONTROL AND SURVEILLANCE | |
| Division 1 – Authorised fisheries officers, observers | |
| 22. | Exercise of powers and functions by authorised officers and observers |
| 23. | Authority and general powers of authorised officers |
| 24. | Power of entry and search |
| 25. | Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction |
| 26. | Power to take, detain, remove and secure information, evidence |
| 27. | Power to detain persons, vessels, gear, etc |
| 28. | Power of arrest |
| 29. | Power to order a vessel to port |
| 30. | Power to give direction |
| 31. | Seizure of vessels, aircraft and items |
| 32. | Hot pursuit |
| 33. | Responsibilities of observers |
| 34. | Duty of operators, and crew members to assist observers |
| 35. | Observers and field inspectors under an RFMO observer scheme |
| Division 2 – Protection and obstruction of authorised persons | |

| | MODEL LEGISLATION FRAMEWORK |
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| 36. | Definition of authorised person |
| 37. | Protection of authorised persons from liability |
| 38. | Obstruction of, failure to comply with authorised persons |
| Division 3 – Inspection procedures | |
| 39. | Pre-licensing / authorisation and unloading inspection procedures |
| 40. | Sea inspection procedures |
| Division 4 – Vessel monitoring system and Automatic Identification System | |
| 41. | Vessel Monitoring System - technical requirements |
| 42. | Vessel monitoring system – requirements of operators |
| 43. | Automatic identification system |
| Division 5 – Port State measures | |
| 44. | Designation of ports |
| 45. | Prerequisites for entry or use of port |
| 46. | Denial of entry into port and use of port |
| 47. | Force majeure or distress |
| 48. | Denial of use of port after entry |
| 49. | Conduct of inspections of vessels in port |
| 50. | Denial of use of port after inspection |
| 51. | Requirements for [country] registered vessels |
| Division 6 - Miscellaneous | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization |

Unless otherwise indicated, the Articles cited are from the Law No 22/2013.

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----------------------|--------------------------------|---|---|---|
| I. PRELIMINARY | | | | |
| 1. | Use of terms | <p>Terms should be defined consistently with their use in international and regional instruments, including:</p> <ul style="list-style-type: none"> • fishing • fishing related activities, or “related activities” • fishing vessel • international conservation and management measures • vessel monitoring system • vessel without nationality | <p>Glossary</p> <p>“fishing” definition is weak and only refers to harvesting, searching for or attempting to capture aquatic species and operations in connection with or in preparation for the capture of aquatic species.</p> <p>It does not refer to attracting, locating taking or harvesting of fish, or attempting to do or engaging in any activity resulting in the above, or operations at sea in support of or the above (e.g. transshipment, supply, other).</p> <p>“fishing vessel” definition should include a vessel that is “intended to be used for” fishing activities.</p> <p>Terms not defined:</p> <ul style="list-style-type: none"> • international conservation and management measures; • vessel without nationality. <p>Terms satisfactorily defined:</p> <ul style="list-style-type: none"> • Related activities (operations related to fisheries) • vessel monitoring system | Include Model legislation section 1 in national legislation as necessary. |
| 2. | Application of the legislation | <p>Legislation should be clear that it applies to national areas and areas beyond national jurisdiction (ABNJ) consistent with international law/regional obligations. This will allow MCS operations to take place in ABNJ.</p> | <p>Article 2</p> <p>Applies to fishing in waters of third States and fishing on high seas by Mozambican fishing vessels.</p> <p>Does not include</p> <ul style="list-style-type: none"> • Mozambican nationals in areas beyond national jurisdiction; • activities other than fishing (e.g. transshipment); • reference to regional/international obligations. | Include Model legislation section 2 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | It refers to fishing in waters “under the jurisdiction of third countries” but does not specify whether it applies only to Mozambican nationals or foreign flagged vessels or others who are fishing and does not take into account the jurisdictional difference between EEZs and territorial waters of third States. | |
| II. MCS-RELATED MANAGEMENT MEASURES | | | | |
| 3. | Mechanism for implementation of RFMO measures | This facilitates and clarifies the timely implementation of ICMMS. It may be adapted to procedures in each country for implementation by regulations, Gazetting or other. | <p>Article 99 It is a serious fishing offence for Mozambican fishing vessels authorised to fish on the high seas to fail to comply with ICMMS.</p> <p>This only applies to authorised fishing vessels on the high seas and does not cover related activities.</p> <p>There is otherwise no mechanism to implement RFMO measures in national waters.</p> | Include Model legislation section 3 in national legislation as necessary. |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List | Prohibits, in relation to vessels on an IUU Vessel List (“listed vessels”), operators of [country] registered vessels from assisting, participating in transshipment or joint operations with a listed vessel or carrying out fish processing operations with listed vessels. | <p>Regulations 2020 Article 120 RFMO IUU Vessel Lists are recognized, and fishing vessels are prohibited from a number of activities, e.g. importing, transshipping, landing etc.</p> <p>Prohibitions do not apply to Mozambican registered vessels from assisting participating in transshipment activities etc with IUU vessel.</p> | Include Model legislation section 4 in national legislation. |
| 5. | Prohibitions in relation to vessels without nationality | Vessels without nationality are prohibited from landing, transshipping and use of port in [country] and | No provision. | Include Model legislation section 5 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | transshipping with [country] registered vessels in an area of competence of a relevant RFMO. | | |
| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | | | | |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures | Requires licensee or holder of authorisations and other permissions to comply with the terms of the licenses and this Act, national legislation, an applicable access agreement and ICMM. This permits cancellation of the licence, etc where there has been breach of any condition. | <p>Article 100 Describes as a simple fishing infringement the failure to comply with the conditions and terms in a fishing license.</p> <p>This does not cover all activities under the Act, national legislation, ICMMs etc.</p> <p>2020 Regulations: ARTICLE 31 (Longline Fishing) 2. Mozambican fishing vessels, authorised to practice fishing on the high seas and/or in the marine waters of third States, must observe international conservation and management measures, comply with international norms on fishing on the high seas, as well as the norms in force in the third States in whose marine waters they operate.</p> | Include Model legislation section 6 in national legislation. |
| 7. | Reporting requirements | <p>This describes various reporting requirements (true, complete and correct, on time, required form and format, etc) and addresses difficult situations encountered in the region, for example:</p> <ul style="list-style-type: none"> provides for legal action where there is improper catch reporting on quotas; | <p>Article 99 It is a serious fishing offence to (j) provide false statistical information about catches and fishing effort; k) the falsification or concealment of information about the installed power or the unauthorised introduction of devices that alter it</p> <p>2020 Regulations Annex VII Surveillance agents must verify fishing vessel documents are true complete and accurate.</p> | Include Model legislation section 7 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <ul style="list-style-type: none"> fishers send receipts from companies that bought the fish, with no other information or form, instead of proper catch documentation; estimated catch, such as the proportion of yellowfin and landing declarations, must be done using a standard of proof required by the [Authority]. | <p>Provision of false statistical information and falsification or concealment of information about power are prohibited but there is no duty to provide true, complete and correct information in all cases under the scope of the Act.</p> <p>Surveillance agents must make true, etc reports in verification of documents, but there is no duty on a person submitting the information.</p> | |
| 8. | Gear stowage | All vessels (licensed and unlicensed) must stow gear when the vessel is in any area where it is not licensed or authorised to fish or undertake related activities. Applies to national waters and nationally registered vessels in areas beyond national jurisdiction. | Article 40 Fishing gear must be stowed on board. | |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction | This allows compliance with international law and IOTC ICMMs. Nationally registered vessels and citizens must comply with access agreements and laws of other countries and must not undermine international conservation and management measures. | <p>Article 99 Serious offences are: o) the failure of Mozambican fishing vessels authorised to fish in the high seas to comply with international measures on the conservation and management of the high seas;</p> <p>2020 Regulations Article 31 (Longline Fishing) 2. Mozambican fishing vessels, authorised to practice fishing on the high seas and/or in the marine</p> | Include Model legislation section 9 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>waters of third States, must observe international conservation and management measures, comply with international norms on fishing on the high seas, as well as the norms in force in the third States in whose marine waters they operate.</p> <p>ARTICLE 127 (Related fishing operations)</p> <p>1. The use of semi-industrial, industrial, artisanal and cargo transport fishing vessels is allowed in related fishing operations beyond 12 nautical miles from the Mozambican coast or on the high seas, subject to the procedures provided in the regulation on granting fishing rights and licensing and the conservation and management measures issued by the RFMO.</p> <p>Compliance with ICMMs is required for longline fishing and specified classifications of fishing vessels.</p> <p>Compliance with ICMMs is required for Mozambican vessels but only on the high seas, not in the area of competence of a relevant RFMO.</p> <p>There is no general duty for national vessels and persons in areas beyond national jurisdiction to comply with/not undermine ICMMs and comply with the laws of other States.</p> | |
| IV. REQUIREMENTS FOR FISHERIES ACCESS | | | | |
| 10. | Fisheries access – terms and conditions | Non-negotiable conditions for permitting fisheries access, e.g. vessel must hold authorisation | Regulations 2020 Article 4 Central Administration for Fishing must establish and keep updated the terms and conditions for | Include Model legislation section 10 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | from flag State, not be on IUU vessel list, assurance of minimum benefits to National. Vessels are required to be on an authorised vessel list of a relevant RFMO and, to cater to the regional initiative for minimum terms and conditions for fisheries access, under a regional fisheries management agreement. | <p>licensing foreign fishing vessels under fisheries agreements, in accordance with ICMMs, RFMOs etc.</p> <p>No specific terms and conditions are established.</p> <p>Fishing rights and Licensing Decree 2018 ARTICLE 30 Minimum terms and conditions for Fisheries Agreements must include certain levels of financial compensation, financing cost of on-board observer programme, conducting unloading of the accompanying fauna and part of the target resource in national ports; hiring national crew and payment of a fee for the transmission of the Fishing Vessel Monitoring System (SMEP) signal by fishing vessel.</p> <p>The above conditions are all financial in nature, they do not relate to MCS requirements.</p> | |
| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters | <p>In accordance with best practices, <i>all</i> foreign vessels are required to have VMS and AIS operational and report <i>directly</i> to the [Authority] (not via their flag country or other).</p> <p>This is more stringent than the MTC Guidelines but consistent with UNCLOS rights and duties of a coastal State because the reporting is for</p> | <p>Regulations 2020 Article 129 Licensed fishing vessels must request exit permits, and upon re-entry must proceed immediately to port.</p> <p>Article 130 To ensure the monitoring of fishing activities, the following means and instruments are adopted: (e) and (g) and (l) refer to VMS, AIS and report of entry and exit of foreign vessels in the EEZ respectively.</p> | Include Model legislation section 11 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | purposes of fisheries conservation, management and MCS and does not empower the [Authority] to hinder entry or exit. | Entry reports are only required from foreign and licensed fishing vessels. There are no requirements concerning continuous transmission of VMS or AIS and direct reports to the Authority. | |
| V. INFORMATION | | | | |
| 12. | Establishment of an information system | Information required to be given and maintained in an information system is provided and relevant for MCS use. Confidentiality standards are set but allow transparency, consistent with Fisheries Transparency Initiative (FiTI) standards. | Regulations 2020 Article 136 Establishes a fishing vessel monitoring system, composed of a Monitoring and Surveillance Center. This relates to monitoring and does not have requirements for information. | Include Model legislation section 12 in national legislation. |
| 13. | Information may be required, inspected | This is a general provision requiring persons carrying out activities under the Act to keep and maintain such information as may be required by the [Authority] under the Act, other national legislation or an ICMM. | No provision. | Include Model legislation section 13 in national legislation. |
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited | This section requires all information given under this Act (defined as including all subsidiary legislation) to be true, complete and correct and will prohibit alteration, destruction etc of documents, information, data, | Article 52 Master of fishing vessel must make declarations, etc on catches and landings correctly and truthfully. Article 99 Serious fishing offences include: j) providing false statistical information about catches and fishing effort; | Include Model legislation section 14 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | statistics, labels and required markings on vessels or gear and use of forged or falsified documents. It applies to any information, etc without regard to whether it is submitted to the [Authority], any person, court, body, other government authority, RFMO etc. | This only relates to landings and statistical information and does not obligate all persons providing any information under the Act to give true, complete and correct information. | |
| 15. | Information sharing bilaterally, regionally, internationally | This section is important for sharing of MCS information. It empowers the [Authority] to prepare and submit information under bilateral, regional and international agreements and ICMMs. It recognizes the exchange of information should be a basic process (mindful of confidentiality requirements). | <p>Article 4 The law is to be interpreted in consonance with the specific guidelines adopted by regional and international organizations to which Mozambique is party.</p> <p>Article 5 The following principles are observed in the application of the Law h) principle of institutional cooperation and coordination, which consists of a close relationship with regional and international organizations and the harmonization of internal sectoral policies to ensure responsible fishing and aquaculture.</p> <p>The above indirectly include information sharing but no clear obligation exists.</p> | Include Model legislation section 15 in national legislation as necessary. |
| VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | | | | |
| 16. | Licenses, authorisations, etc required. | The legislation should specify clearly and in one section the licenses, authorisations, permissions etc that are required. This will assist general | <p>Fishing rights Regulations Article 32 1. The following types of fishing license are approved: a) For commercial fishing: i) Local artisanal fishing license; ii) Artisanal coastal fishing license; iii) Semi-industrial fishing license; iv)</p> | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | understanding and MCS efforts to monitor and control fishing and related activities. | Industrial fishing license; v) License for related fishing operations. b) For non-commercial fishing: i) Scientific research fishing license; ii) Experimental fishing license; iii) Fishing license for training and education; iv) Recreational and sport fishing license. 2. Fishing licenses are valid for the occasional conduct of related fishing operations, subject to prior notification and authorization by the nearest fishing or maritime authority. 3. The fishing license for related fishing operations is, however, mandatory for fishing vessels carrying out related fishing operations as their exclusive or main activity 4. It is up to the Minister who oversees the area of fisheries to approve, by Ministerial Diploma, the models of fishing licenses foreseen in number 1 of the present article. 5. The recreational and sport fishing license has its own legal regime. | |
| 17. | License terms and conditions | <p>Licensing terms and conditions for fishing, supply and transport vessels should be required, among others. In this provision:</p> <p>(1) generally provides the licence, etc must be subject to the terms and conditions in the Act, as may be prescribed and to such other terms and conditions as may be specified by the [Authority] or provided in ICMMs.</p> | <p>Article 39</p> <p>Fishing licenses will be granted under the terms and conditions in the Law and Regulations.</p> <p>Article 100</p> <p>Simple fishing offences include:</p> <p>a) failure to comply with the conditions and terms set forth in the fishing license; b) failure to fulfil the obligation to make the logbooks available to the competent authorities; c) the lack of cooperation with enforcement agents and investigation technicians; d) the loss or deterioration of the fishing logbook and other log books relating to navigation and machinery; e) the</p> | Include Model legislation section 17 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>Amendment, entry into force and validity are addressed.</p> <p>(2) requires the operator of a vessel to keep a copy of the licence etc onboard the vessel.</p> <p>(3) requires the holder of any licence, etc for activities that are not associated with vessels to display it in the registered business office.</p> <p>(4) requires National registered vessels to carry required documents at all times and while in the waters of other States comply with its legislation, or an RFMO area of competence comply with ICMMs.</p> <p>(5) requires operators to maintain log books and make reports as required under the Act (which is defined to include regulations) or by the CEO in writing or an ICMM.</p> | <p>lack of copy of fishing license on board or any other legally required document;</p> <p>Regulations 2020 Terms and conditions for vessel marking are in Annex VI.</p> <p>Other than the above, there are no specific licence conditions.</p> <p>For example, there is no specific condition requiring a copy of the “fishing licence” on board, yet it is an offence not to do so.</p> <p>There are no terms and conditions for supply and transport vessels.</p> | |
| 18. | Conditions for landings and transhipment | <p>Specific conditions for landing and transhipment, including:</p> <p>(1) requires a notification period.</p> | <p>Article 52 Master of fishing vessel making landing must provide declarations etc that are correct and truthful.</p> <p>Regulations 2020 Article 125 Sets out conditions for transhipment in port.</p> | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>(2) requires activities at designated ports, and refers to pre-inspection and observers.</p> <p>(3) requires the licensee to pay all costs of an authorised fisheries officer or other person designated by the CEO where there is transshipment outside a port in [country].</p> <p>4) prohibits shark carcasses and fins from being transhipped separately.</p> <p>(5) requires Declarations of Transshipments as may be prescribed or required by an ICMM.</p> <p>(6) incorporates Regulation 24A and is expanded as instructed during consultations to include offloading fish into containers.</p> <p>(7) requires compliance with laws relating to the protection of the marine environment.</p> <p>(8) permits the [Authority] to require compliance with any applicable ICMM.</p> | <p>Article 126 Sets out conditions / prohibitions for transshipment at sea</p> <p>Does not address many of the recommended conditions.</p> | |
| 19. | Pre-licensing registration, inspection and | To establish compliance, a foreign vessel must be | No provision. | Include Model legislation section 19 in |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | other requirements | inspected before a license is issued. | | national legislation. |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission | No licence would be issued where there is a record/evidence/history of IUU fishing, vessels is on an IUU Vessel List, connected to IUU fishing or fishing related criminal activities, etc. Conditions must be consistent with national, regional and international law. Vessels must be on an RFMO authorised vessel list where relevant. | <p>Article 42 Requirements relate to the holder (e.g. of fishing right, must be registered and enrolled)</p> <p>Article 43 Conditions for license denial, include where: a) fishing rights have not been granted; b) is deemed necessary to ensure sustainable management of the fishery resource covered by the requested fishing license; c) the applicant has been a repeat offender for a very serious fishing violation during the year prior to the date of application; d) the fishing gear to be used does not correspond to that typified in the national fishing legislation; e) the fishing vessel has been reported as having engaged in illegal, unreported, and unregulated fishing or is on an international list as a result; f) there are unfulfilled obligations to the Fisheries Administration; g) other reasons indicated by regulations.</p> <p>There is no reference to RFMO obligations.</p> | |
| 21. | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations | A wide range of criteria for denial or non-renewal of licences, etc, including that the standards for grant of license, there has been non-compliance with an existing or previous licence with no submission to due process or satisfaction | No provision. | Include Model legislation section 21 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | of judgment or determination Foreign vessel must hold Authorisation to Fish (ATF) issued by flag State. | | |
| VII. MONITORING, CONTROL AND SURVEILLANCE | | | | |
| Division 1 – Authorised fisheries officers, observers | | | | |
| 22. | Exercise of powers and functions by authorised officers and observers | When authorised officers, observers are beyond areas of national jurisdiction the provisions of the Act are applicable as if the duties were performed in areas under national jurisdiction. They must carry and produce identification on request. | Article 2 The Law applies to “fishing” in waters under the jurisdiction of third states and on the high seas by Mozambican fishing. Article 73 Provides that the supervision of fishing activities in Mozamabican waters is the exclusive competence of the State, and the State can establish international agreements for the pooling of enforcement efforts. The scope of the law only applies to fishing activities, and the law does not expressly give authority to inspection agents to carry out activities in areas beyond national jurisdiction. | |
| 23. | Authority and general powers of authorised officers | General powers of authorised officers are described, including doing such things and giving such directives that are reasonably necessary for exercising their functions, etc. under the Act. Reasonable force may be used and assistance may be required. | Article 72 Inspection agents powers are described, but they mainly focus on vessel inspections and processing establishments and movement of fish products. There is no general power to do such things and give such directives necessary for exercising their functions. | Include Model legislation section 23 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 24. | Power of entry and search | <p>The power of entry and search is given for all purposes and activities falling within the Act, consistent with general powers of MCS to ensure compliance, responsibilities for traceability etc.</p> <p>It is not limited to cases where contravention of the Act is suspected.</p> <p>It provides for the power of entry and search without a warrant, including in relation to national registered vessels beyond national jurisdiction and other vessels to which ICMMs apply as well as vessels without nationality on the high seas (the latter is consistent with international law).</p> <p>It also applies to premises or places reasonably suspected to be used for activities falling within the scope of the Act, except for dwelling houses, where evidence of non-compliance may be found.</p> <p>Persons may be stopped, records, containers, fish etc may be examined, land may be passed across and</p> | No provision. | Include Model legislation section 24 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>landing and transshipment operations may be monitored.</p> <p>The authorised officer may require persons to give information and exercise a range of other powers for entry and search.</p> <p>The authorised officer must have a warrant to enter a dwelling house.</p> | | |
| 25. | Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction | <p>Authorised Officers have the power to investigate or to request an investigation by another State.</p> <p>This would allow relevant companies, agents and persons can be investigated for activities in areas beyond national jurisdiction and prosecutions can take place.</p> | No provision. | Include Model legislation section 25 in national legislation. |
| 26. | Power to take, detain, remove and secure information, evidence | Allows the authorised fisheries officer to take, detain, remove and secure information and evidence and vessels. | No provision. | Include Model legislation section 26 in national legislation as necessary. |
| 27. | Power to detain persons, vessels, gear, etc | Power of detention for persons, vessels, gear etc. A Notice of Detention must be given to the operator of a vessel or vehicle and | No provision. | Include Model legislation section 27 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | copied to relevant government authorities | | |
| 28. | Power of arrest | This gives an authorised fisheries officer the power to order a person to cease and desist where he/she believes that a person is reasonably committing an offence, and to supply name, date of birth etc. and to arrest. | No provision. | Include Model legislation section 28 in national legislation as necessary. |
| 29. | Power to order a vessel to port | The power to order a vessel to port for inspection for compliance purposes | Article 72(f) Inspection agents may order a vessel which has been arrested under the Law and other applicable legislation to go to or be taken to port. This does not provide the power to order the vessel to port for routine compliance or inspection purposes or where an offence is suspected. | Include Model legislation section 42 in national legislation. |
| 30. | Power to give direction | This power may be exercised without having boarded the vessel. | No provision. | Include Model legislation section 30 in national legislation. |
| 31. | Seizure of vessels, aircraft and items | The items which may be seized are elaborated and include vessels, fish, other articles and anything that may provide evidence of contravention of the Act or an ICMM, as well as passports/seamens' record books and anything that has been forfeited or unlawfully removed from custody under the Act. | Article 76 Where surveillance agents have strong evidence of an infraction of the Law, as a preventive measure they may a) seize any fishing vessel with the respective materials, fishing gear and catches on board that they suspect have been used in the commission of the said offense; b) order the closure of fish processing establishments; This does not cover other important items that may provide | Include Model legislation section 31 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | evidence of the contravention of the Act or an ICMM, or anything removed unlawfully from custody. | |
| 32. | Hot pursuit | The basic requirements of Article 111 of UNCLOS are implemented. | No provision. | Include Model legislation section 32 in national legislation. |
| 33. | Responsibilities of observers | Responsibilities of observers in terms of tasks and other activities, including to implement international conservation and management measures. Observers may be deployed as directed by the CEO, including in accordance with ICMMs and on or in relation to vessels, landings etc. | <p>Regulations 2020 Glossary 59. Fishing observer: technician, scientist and researcher, accredited for the purpose of collecting, on board fishing vessels, and reporting information, according to the fishing legislation.</p> <p>Article 142 Scientific functions of observers are listed.</p> <p>Article 143 Describes obligations of fishing observers, including to: b) comply with the requirements set forth in the laws and regulations of the flag state that exercises jurisdiction over the fishing vessel to which the fishing observers are assigned; f) treat as confidential all information regarding to the fishing operations in whose monitoring it participates; g) prepare and submit reports on fishing activities and transshipment operations on the high seas, according to the deadlines to be defined in the specific procedures.</p> <p>There are limitations not usually included in national practice, e.g.: There are no functions for purposes of monitoring or compliance (i.e. make reports to</p> | Include Model legislation section 33 in national legislation as necessary. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>surveillance agents) or references to ICMMs.</p> <p>Confidentiality requirements should be clear, e.g. can an observer report to an RFMO in a regional observer programme, and for high seas activities?</p> <p>Deployment not addressed (e.g. landings, transshipments, fishing trips etc).</p> <p>This is more specific about the obligations of the observer to the vessel and crew than to Mozambique or RFMOs.</p> | |
| 34. | Duty of operators, and crew members to assist observers | <p>It requires operators and crew to assist observers for stated activities, including boarding, receiving messages, taking photographs, gathering information and disembarking.</p> <p>It applies at all times the observer is on board and within and beyond areas under national jurisdiction, to accommodate IOTC ICMMs.</p> | Article 144 | |
| 35. | Observers and field inspectors under an RFMO observer scheme | Regional observer requirements to implement regional observer programme | <p>Regulations 2020 Glossary</p> <p>59. Fishing observer: technician, scientist and researcher, accredited for the purpose of collecting, on board fishing vessels, and reporting information, according to the fishing legislation.</p> <p>This does not extend to and RFMO observer scheme.</p> | Include Model legislation section 35 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| Division 2 – Protection and obstruction of authorised persons | | | | |
| 36. | Definition of authorised person | Defines “authorised person” as including authorised fisheries officer and observer, including observers under an RFMO observer programme. | No provision. | Include Model legislation section 36 in national legislation. |
| 37. | Protection of authorised persons from liability | Protects authorised persons and others acting under the authority of the Authority from liability for anything done or omitted to be done in good faith in the performance of duties. It recognizes that some personnel may not be staff members of the Authority e.g. where observers may be hired on occasional contracts. It also addresses situations where a vessel is being brought to port, and exempts persons assisting an authorised fisheries officer from liability. | No provision. | Include Model legislation section 37 in national legislation. |
| 38. | Obstruction of, failure to comply with authorised persons | Creates offences for various forms of obstruction of, or non-compliance with, authorised persons, including for example not allowing access to a place, not giving information, assaulting, kidnapping, impersonating or bribing an authorised person. | Article 79 Whoever assaults or obstructs with violence or threat of violence, the action of an inspection or sampling agent or research technician in the performance of their duties, will be punished under the criminal law in force. This does not define obstruction or include non-compliance. | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | It only applies to an inspection or sampling agent or research technician and not to observers. | |
| Division 3 – Inspection procedures | | | | |
| 39. | Pre-licensing / authorisation and unloading inspection procedures | <p>This is a general duty to perform inspections, carry out procedures and apply standards that may be required under this Act, an ICMM, a relevant RFMO or international agreement for Pre-licensing / authorisation and unloading. The procedures, etc may be adopted by Regulation or required by the [Authority].</p> <p><i>Regulations should set out details for procedures.</i></p> | No provision. | Include Model legislation section 39 in national legislation. |
| 40. | Sea inspection procedures | <p>Similar to the previous section.</p> <p><i>Regulations should set out details for procedures.</i></p> | No provision. | Include Model legislation section 40 in national legislation. |
| Division 4 – Vessel monitoring system and Automatic Identification System | | | | |
| 41. | Vessel Monitoring System - technical requirements | <p>Implements IOTC Resolution 15/03 and empowers the Authority to approve the technology for VMS and provides that technical requirements, including installation, may be prescribed or required.</p> | <p>Regulations 2020 Article 137</p> <p>An automatic tracking device must be installed and licensing depend son the certification of operational capacity of the system.</p> <p>This indicates that technical details for operational capacity need to be certified, but does not indicate what they are.</p> | Include Model legislation section 41 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 42. | Vessel monitoring system – requirements of operators | <p>Implements requirements of IOTC Resolution 15/03, including: installation and ensure full operation at all times, registration, ensure tamper-resistant, transmission of information directly to FMC at least once every hour. A vessel must come to port within 24 hours, which could allow minimum time to continue fishing, and where the power supply to the VMS except that under subsection (4) special arrangements may be made for the continuation of fishing.</p> <p>In accordance with IOTC Resolution 15/03 the device may be switched off while the vessel is in port for more than a week under certain conditions.</p> | No provision. | Include Model legislation section 42 in national legislation. |
| 43. | Automatic identification system | This permits the Authority to require (including as a licence, etc condition) that vessels maintain an AIS on board in accordance with specifications in the International Convention for the Safety of Life at Sea, and that it continually reports to the Fisheries Monitoring Center. | <p>Regulations 2020 Article 137 An automatic tracking device must be installed on board and in an operational state.</p> <p>This does not specifically refer to AIS or require continual reports.</p> | Include Model legislation section 43 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| Division 5 – Port State measures | | | | |
| 44. | Designation of ports | Requires the Minister to ensure that ports to be used to foreign vessels are designated and publicized. | Fisheries Regulations 2020 Article 121 The Minister must designate ports to which foreign fishing vessels may request entry. | |
| 45. | Prerequisites for entry or use of port | Implements paragraph 6 and 7 of IOTC Resolution 16/11, requiring an advance request for entry into port, an authorisation to enter and presentation of the authorisation. | Fisheries Regulations 2020 Article 119 A Ministerial Decree may adopt measures to prevent, deter and eliminate IUU fishing that are applicable to foreign fishing vessels requesting entry into a Mozambican port. An applicable Ministerial Decree was not available. | Include Model legislation section 45 in national legislation or a Ministerial Decree as necessary. |
| 46. | Denial of entry into port and use of port | Requires denial of entry into port where there is sufficient proof of IUU fishing or related activities and especially where it is on an IUU vessel list, and if there is a contravention of the Act. Entry into port may be allowed only for purposes of inspection in such circumstances, but use of port is prohibited. The CEO must communicate the decision to allow or deny entry to the vessel and as appropriate to the Ports Authority, which is obligated to implement the decision. | Article 124 | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | The decision to deny entry or use of port must also be communicated to the flag State and others. | | |
| 47. | Force majeure or distress | Allows entry into port for reasons of force majeure, but with limitations consistent with UNCLOS and international law. | No provision. | Include Model legislation section 47 in national legislation. |
| 48. | Denial of use of port after entry | Requires denial of port after entry on several grounds, without the need for inspection. Withdrawal of denial of use of port is provided in subsection (3), where there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply. | No provision. | Include Model legislation section 48 in national legislation. |
| 49. | Conduct of inspections of vessels in port | It provides for levels and prioritization of inspection, and requires fishery inspectors and authorised officers to carry out inspections in conformity with the <i>procedures and report template to be included in Regulations and Schedule</i> , and submit them to the Authority. The operator of the vessel must give authorised officers all necessary assistance, information and documents. | Fisheries Regulations 2020 Article 123 Port inspection procedures and reporting forms are in Annex VII and VIII respectively. | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 50. | Denial of use of port after inspection | Requires denial of use of port where there are clear grounds for believing that the vessel has engaged in IUU fishing or related activities. | No provision. | Include Model legislation section 50 in national legislation. |
| 51. | Requirements for [country] registered vessels | <p>National vessels, in areas beyond national jurisdiction, are to cooperate with port inspections of other States, and not to use any ports that are not compliant with port State measures.</p> <p>The Authority must request authorities in foreign ports to inspect and take other measures where there are clear grounds to believe that a national vessel has engaged in IUU fishing or related activities, and the vessel is seeking entry into or is in their port.</p> <p>Where there is evidence of IUU fishing or related activities, the Authority must investigate and take enforcement action without delay.</p> | No provision. | Include Model legislation section 51 in national legislation. |
| Division 6 - Miscellaneous | | | | |
| 52. | Presumptions of IUU fishing in contravention of international conservation | The IOTC list of activities that describe where a vessel is presumed to have engaged in IUU fishing or related activities is | No provision. | Include Model legislation section 52 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | and management measures | <p>incorporated in subsection (1) and the operator is prohibited from engaging in any of these activities.</p> <p>The Authority must provide information and evidence to the IOTC Secretariat of activities of any vessel that is presumed to involve IUU fishing.</p> <p>Subsections (2) and (3) apply the presumption to any vessels in national waters and national vessels in areas beyond national jurisdiction.</p> <p>Where it is presumed that any vessel in national waters has been involved in IUU fishing or related activities in any place in the IOTC Area of Competence, it may be prosecuted in the country.</p> | | |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization | National vessels are prohibited from providing assistance, engaging in fish processing operations or participating in transshipment or joint fishing operations with any vessel on an IUU Vessel List. | <p>Article 120</p> <p>4. Fishing vessels that are on an IUU fishing vessel list are prohibited from carrying out the following activities in Mozambique:</p> <p>a) importing, landing, transshipping, refuelling, re-supplying, or conducting other commercial transactions while in port;</p> <p>b) flag, unless the fishing vessel concerned has changed ownership and the new owner has provided sufficient evidence that the previous owner and operators no</p> | Include Model legislation section 53 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | <p>longer have any benefit, legal or financial interest in, or control over, the fishing vessel, or the Minister responsible for fisheries considers, in the light of all relevant factors, that flagging will not result in IUU fishing.</p> <p>It is only the listed vessels that are prohibited from carrying out the above activities, national vessels are not prohibited from engaging in the activities with the listed vessels.</p> | |

SEYCHELLES

GAPS AND AMENDMENTS

FISHERIES ACT 2014

Fisheries Regulations, 1987

Foreign Fishing Vessel Regulations, 1979

Fully implements **Substantially implements** **Partly implements** **Does not implement**

Seychelles Fisheries Sector Policy and Strategy 2019

Fisheries Comprehensive Plan 2019

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| 1. | Use of terms |
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| 3. | Mechanism for implementation of RFMO measures |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List |
| 5. | Prohibitions in relation to vessels without nationality |
| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures |
| 7. | Reporting requirements |
| 8. | Gear stowage |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction |
| IV. REQUIREMENTS FOR FISHERIES ACCESS | |
| 10. | Fisheries access – terms and conditions |

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| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters |
| V. INFORMATION | |
| 12. | Establishment of an information system |
| 13. | Information may be required, inspected |
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited |
| 15. | Information sharing bilaterally, regionally, internationally |
| V. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | |
| 16. | Licenses, authorisations, etc required. |
| 17. | License terms and conditions |
| 18. | Conditions for landings and transshipment |
| 19. | Pre-licensing registration, inspection and other requirements |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission |
| 21. | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations |
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| 26. | Power to take, detain, remove and secure information, evidence |
| 27. | Power to detain persons, vessels, gear, etc |
| 28. | Power of arrest |
| 29. | Power to order a vessel to port |
| 30. | Power to give direction |
| 31. | Seizure of vessels, aircraft and items |
| 32. | Hot pursuit |
| 33. | Responsibilities of observers |
| 34. | Duty of operators, and crew members to assist observers |

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| | MODEL LEGISLATION FRAMEWORK |
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| 50. | Denial of use of port after inspection |
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| Division 6 - Miscellaneous | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|--|---|---|---|---|
| I. PRELIMINARY | | | | |
| 1. | Use of terms | <p>Terms should be defined consistently with their use in international and regional instruments, including:</p> <ul style="list-style-type: none"> • fishing • fishing related activities, or "related activities" • fishing vessel • international conservation and management measures • vessel monitoring system • vessel without nationality | <p>3. Interpretation</p> <p>Definitions of "fishing" and "related activities" need broadening strengthening.</p> <p>"vessel without nationality" is not included.</p> | <p>Include Model Section 1 definitions in national legislation of "fishing", "related activities" and "vessel without nationality".</p> |
| 2. | Application of the legislation | <p>Legislation should be clear that it applies to national areas and areas beyond national jurisdiction (ABNJ) consistent with international law/regional obligations. This will allow MCS operations to take place in ABNJ.</p> | <p>2. Application of Act</p> <p>This needs strengthening, among others it does not refer to regional obligations, or all activities under the scope of the Act.</p> | <p>Include Model legislation Section 2 in national legislation.</p> |
| II. MCS-RELATED MANAGEMENT MEASURES | | | | |
| 3. | Mechanism for implementation of RFMO measures | <p>This facilitates and clarifies the timely implementation of ICMs. It may be adapted to procedures in each country for implementation by regulations, Gazetting or other.</p> | <p>Include Model legislation Section 3 in national legislation.</p> | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List | Prohibits, in relation to vessels on an IUU Vessel List ("listed vessels"), operators of [country] registered vessels from assisting, participating in transshipment or joint operations with a listed vessel or carrying out fish processing operations with listed vessels. | No provision. Section 4 of the Act provides for refusal of license to IUU vessels, but does not prohibit Seychelles vessels from assisting an IUU vessel. | Include Model legislation section 4 in national legislation. |
| 5. | Prohibitions in relation to vessels without nationality | Vessels without nationality are prohibited from landing, transshipping and use of port in [country] and transshipping with [country] registered vessels in an area of competence of a relevant RFMO. | No provision. | Include Model legislation Section 5 in national legislation. |
| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | | | | |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures | Requires licensee or holder of authorisations and other permissions to comply with the terms of the licenses and this Act, national legislation, an applicable access agreement and ICM. This permits cancellation of the licence, etc where there has been breach of any condition. | Various sections require compliance with the terms of specific types of licenses, authorisations etc., but there is no general requirement to comply with the Act and international conservation and management measures. | Include Model legislation Section 6 in national legislation. |
| 7. | Reporting requirements | This describes various reporting requirements (true, complete and correct, on time, required form and format, etc) and addresses difficult situations encountered in the region, for example: | No provision. There is only a requirement for reporting as a license condition in section 29(1)(e). | Include Model legislation Section 7 in national legislation. |

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| | | <ul style="list-style-type: none"> provides for legal action where there is improper catch reporting on quotas; fishers send receipts from companies that bought the fish, with no other information or form, instead of proper catch documentation; estimated catch, such as the proportion of yellowfin and landing declarations, must be done using a standard of proof required by the [Authority]. | | |
| 8. | Gear stowage | All vessels (licensed and unlicensed) must stow gear when the vessel is in any area where it is not licensed or authorised to fish or undertake related activities. Applies to national waters and nationally registered vessels in areas beyond national jurisdiction. | 15. Stowage Gear stowage only applies to unlicensed foreign fishing vessels. | Include Model legislation Section 8 in national legislation. |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction | This allows compliance with international law and IOTC ICMMs. Nationally registered vessels and citizens must comply with access agreements and laws of other countries and must not undermine international conservation and management measures. | 63. Penalty for landing, selling or receiving, etc. The penalty only applies to failure to comply with terms and conditions of an authorisation, and does not require broader compliance. | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| IV. REQUIREMENTS FOR FISHERIES ACCESS | | | | |
| 10. | Fisheries access – terms and conditions | Non-negotiable conditions for permitting fisheries access, e.g. vessel must hold authorisation from flag State, not be on IUU vessel list, assurance of minimum benefits to National. Vessels are required to be on an authorised vessel list of a relevant RFMO and, to cater to the regional initiative for minimum terms and conditions for fisheries access, under a regional fisheries management agreement. | <p>No provision.</p> <p>The Act only requires an agreement to be in force as a prerequisite to licensing foreign fishing vessels. Section 12(a).</p> <p>Some terms and conditions are in the 1987 Regulations which prescribe license conditions for foreign fishing vessels, rather than general terms of access that may be used in agreements and licenses. The Regulations do not address most of the requirements suggested here, e.g. flag State authorisation, IUU and authorised vessel lists are not included. The regulations are only partially implemented.</p> | Include Model legislation Section 10 in national legislation. |
| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters | <p>In accordance with best practices, <i>all</i> foreign vessels are required to have VMS and AIS operational and report <i>directly</i> to the [Authority] (not via their flag country or other).</p> <p>This is more stringent than the MTC Guidelines but consistent with UNCLOS rights and duties of a coastal State because the reporting is for purposes of fisheries conservation, management and MCS and does not empower the [Authority] to hinder entry or exit.</p> | <p>13. Entry into and exit from Seychelles waters</p> <p>Only licensed foreign fishing vessels must report by fax or email or other means approved by the Authority at entry and exit to/from Seychelles waters.</p> | Include Model Section 11 in Regulations |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| V. INFORMATION | | | | |
| 12. | Establishment of an information system | <p>Information required to be given and maintained in an information system is provided and relevant for MCS use.</p> <p>Confidentiality standards are set but allow transparency, consistent with Fisheries Transparency Initiative (FiTI) standards.</p> | <p>No provision.</p> <p>However, Seychelles has established an information system, is cooperating with FITI , and has recently submitted its second report.</p> | Include Model legislation Section 12 in Regulations |
| 13. | Information may be required, inspected | This is a general provision requiring persons carrying out activities under the Act to keep and maintain such information as may be required by the [Authority] under the Act, other national legislation or an ICMM. | <p>7(2). Collection and analysis of statistics and information</p> <p>It only applies to persons engaged in fishing, related activities or aquaculture, not to all activities under the Act.</p> <p>It only applies to supplying information in a form or manner that is provided in regulations. This would not apply to many situations, e.g. where authorised officers and observers are requesting same but there are no applicable regulations.</p> | Include Model Section 13 in national legislation. |
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited | This section requires all information given under this Act (defined as including all subsidiary legislation) to be true, complete and correct and will prohibit alteration, destruction etc of documents, information, data, statistics, labels and required markings on vessels or gear and use of forged or falsified documents. It applies to | <p>64(1). Penalty for removing, tampering or damaging to detained fishing vessel, etc.</p> <p>This sets a penalty for falsifying, concealing or destroying evidence, but it is limited and the Act does not require all information submitted to be true, complete and correct.</p> | Include Model legislation Section 14 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | any information, etc without regard to whether it is submitted to the [Authority], any person, court, body, other government authority, RFMO etc. | | |
| 15. | Information sharing bilaterally, regionally, internationally | This section is important for sharing of MCS information. It empowers the [Authority] to prepare and submit information under bilateral, regional and international agreements and ICMMs. It recognizes the exchange of information should be a basic process (mindful of confidentiality requirements). | <p>7(5). Collection and analysis of statistics and information.</p> <p>The Minister is empowered to enter into arrangements with other States to provide for information exchange.</p> <p>This is limited and does not recognize other mechanisms through which information should be shared.</p> <p>57. Regional cooperation in surveillance and enforcement</p> <p>The Minister may enter into regional arrangements or agreements for joint or harmonised surveillance and enforcement measures, but only in respect of foreign fishing vessels.</p> | |
| Vi. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | | | | |
| 16. | Licenses, authorisations, etc required. | The legislation should specify clearly and in one section the licenses, authorisations, permissions etc that are required. This will assist general understanding and MCS efforts to monitor and control fishing and related activities. | <p>16. Fishing vessel licence or permit</p> <p>Requires licences for joint venture, local and Seychelles fishing vessels</p> <p>Sport fishing, competitive sport fishing and recreational fishing licences are addressed in separate sections 18, 19</p> | Consolidate licensing requirements. |

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| | | | <p>and 21 which repeat many of the same requirements in section 16.</p> <p>Section 20 provides that other licences etc may be in regulations, which is the case.</p> <p>The general understanding and efficiency of MCS to monitor and control licensing compliance is therefore not as strong as it could be.</p> | |
| 17. | License terms and conditions | <p>Licensing terms and conditions for fishing, supply and transport vessels should be required, among others. In this provision:</p> <p>(1) generally provides the licence, etc must be subject to the terms and conditions in the Act, as may be prescribed and to such other terms and conditions as may be specified by the [Authority] or provided in ICMMs. Amendment, entry into force and validity are addressed.</p> <p>(2) requires the operator of a vessel to keep a copy of the licence etc onboard the vessel.</p> <p>(3) requires the holder of any licence, etc for activities that are not associated with vessels to display it in the registered business office.</p> | <p>29. Conditions relating to licence, permit or authorisation</p> <p>Requires fishing vessel and fishing gear for which licenses are required to be used in accordance with the Act and subject to terms and conditions relating to certain items, such as area, target species etc.</p> <p>However, the minimum terms and conditions in the Model legislation are not specified.</p> | Include Model legislation Section 17 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>(4) requires National registered vessels to carry required documents at all times and while in the waters of other States comply with its legislation, or an RFMO area of competence comply with ICMMs.</p> <p>(5) requires operators to maintain log books and make reports as required under the Act (which is defined to include regulations) or by the CEO in writing or an ICMM.</p> | | |
| 18. | Conditions for landings and transshipment | <p>Specific conditions for landing and transshipment, including:</p> <p>(1) requires a notification period.</p> <p>(2) requires activities at designated ports, and refers to pre-inspection and observers.</p> <p>(3) requires the licensee to pay all costs of an authorised fisheries officer or other person designated by the CEO where there is transshipment outside a port in [country].</p> <p>4) prohibits shark carcasses and fins from being transhipped separately.</p> | <p>11. Fishing by foreign fishing vessel prohibited without licence</p> <p>The Authority may grant a license with terms and conditions, but otherwise there no specific requirement.</p> <p>55. Implementation of international conservation and management measures</p> <p>Foreign vessels require authorisation to land or tranship.</p> <p>60. Penalty for landing, transshipping or importing fish to Seychelles</p> <p>Applies only to fish caught in contravention of the laws of another State or ICMM.</p> | Include Model legislation Section 18 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>(5) requires Declarations of Transshipments as may be prescribed or required by an ICMM.</p> <p>(6) incorporates Regulation 24A and is expanded as instructed during consultations to include offloading fish into containers.</p> <p>(7) requires compliance with laws relating to the protection of the marine environment.</p> <p>(8) permits the [Authority] to require compliance with any applicable ICMM.</p> | | |
| 19. | Pre-licensing registration, inspection and other requirements | To establish compliance, a foreign vessel must be inspected before a license is issued. | <p>11. Fishing by foreign fishing vessel prohibited without licence</p> <p>The Authority may grant a license with terms and conditions, but otherwise there no specific requirement.</p> <p>There are applicable procedures.</p> | Include Model legislation Section 19 in national legislation. |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or other permission | No licence would be issued where there is a record/evidence /history of IUU fishing, vessels is on an IUU Vessel List, connected to IUU fishing or fishing related criminal activities, etc. | <p>11 Fishing by foreign fishing vessel prohibited without licence</p> <p>Only requirements for foreign vessels.</p> <p>No standards for grant, except that it must be made in the</p> | Include Model legislation Section 20 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>Conditions must be consistent with national, regional and international law.</p> <p>Vessels must be on an RFMO authorised vessel list where relevant.</p> | <p>prescribed form and manner and a fee must be paid.</p> <p>Does not refer to record/evidence/history of IUU fishing, only vessel list.</p> <p>Note section 17 prohibits licence issuance to vessels “where the fishing vessel in respect of which the licence is sought is not included” in an IUU Vessel List. So a license is not issued unless the vessel is listed. This appears to be an error.</p> | |
| 21. | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations | <p>A wide range of criteria for denial or non-renewal of licences, etc, including that the standards for grant of license, there has been non-compliance with an existing or previous licence with no submission to due process or satisfaction of judgment or determination</p> <p>Foreign vessel must hold Authorisation to Fish (ATF) issued by flag State.</p> | <p>11 (6) Fishing by foreign fishing vessel prohibited without licence</p> <p>Only requirements for foreign vessels, denial of licences</p> <p>No requirements for denial of authorisations, other permissions.</p> | Include Model legislation Section 21 in national legislation. |
| VII. MONITORING, CONTROL AND SURVEILLANCE | | | | |
| Division 1 – Authorised fisheries officers, observers | | | | |
| 22. | Exercise of powers and functions by authorised officers and observers | <p>When authorised officers, observers are beyond areas of national jurisdiction the provisions of the Act are applicable as if the duties were performed in areas under national jurisdiction.</p> | <p>49. Authorised fishery officer</p> <p>May stop, board and inspect vessels on high seas subject to conditions.</p> <p>Does not expressly provide for the applicability of the provisions of the Act or general powers in areas beyond national jurisdiction</p> | Include Model legislation Section 22 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | They must carry and produce identification on request. | including EEZs of other countries. | |
| 23. | Authority and general powers of authorised officers | <p>General powers of authorised officers are described, including doing such things and giving such directives that are reasonably necessary for exercising their functions, etc. under the Act.</p> <p>Reasonable force may be used and assistance may be required.</p> | <p>48. Appointment of authorised fishery officers</p> <p>Requirements are provided for producing identification use of reasonable force.</p> <p>Otherwise there are no broader general powers.</p> | Include Model legislation Section 23 in national legislation. |
| 24. | Power of entry and search | <p>The power of entry and search is given for all purposes and activities falling within the Act, consistent with general powers of MCS to ensure compliance, responsibilities for traceability etc.</p> <p>It is not limited to cases where contravention of the Act is suspected. It provides for the power of entry and search without a warrant, including in relation to national registered vessels beyond national jurisdiction and other vessels to which ICMMs apply as well as vessels without nationality on the high seas (the latter is consistent with international law).</p> | <p>49. Authorised fishery officers</p> <p>Applies to activities on fishing vessels.</p> <p>Does not generally apply to vessels without nationality on the high seas.</p> <p>51(1). Power of entry and search on land of authorised fishery officers</p> <p>Applies to activities on land.</p> | Include Model legislation Section 24 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>It also applies to premises or places reasonably suspected to be used for activities falling within the scope of the Act, except for dwelling houses, where evidence of non-compliance may be found.</p> <p>Persons may be stopped, records, containers, fish etc may be examined, land may be passed across and landing and transshipment operations may be monitored.</p> <p>The authorised officer may require persons to give information and exercise a range of other powers for entry and search.</p> <p>The authorised officer must have a warrant to enter a dwelling house.</p> | | |
| 25. | Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction | <p>Authorised Officers have the power to investigate or to request an investigation by another State.</p> <p>This would allow relevant companies, agents and persons to be investigated for activities in areas beyond national jurisdiction and prosecutions can take place.</p> | <p>49(1) Authorised fishery officer</p> <p>Authorised fishery officers may stop, board, search and inspect a Seychelles registered fishing vessel on the high seas or a flag vessel of a bilateral/ international agreement to which Seychelles is party. This does not directly address investigations for activities under the scope of the Act in areas beyond national jurisdiction.</p> | Include Model legislation Section 25 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 26. | Power to take, detain, remove and secure information, evidence | Allows the authorised fisheries officer to take, detain, remove and secure information and evidence and vessels. | <p>49(3) Authorised fishery officer</p> <p>Evidence may be seized if there is belief of offence.</p> <p>51(2) Powers of entry and search on land of authorised fishery officer</p> <p>Evidence may be seized if there is belief of offence.</p> <p>However, there is no general power to take, detain, remove and secure information and evidence.</p> | Include Model legislation Section 26 in national legislation. |
| 27. | Power to detain persons, vessels, gear, etc | Power of detention for persons, vessels, gear etc. A Notice of Detention must be given to the operator of a vessel or vehicle and copied to relevant government authorities | <p>49(4). Authorised fishery officer</p> <p>Detention may take place where there is belief of a contravention of an ICMM on the high seas.</p> <p>It is not expressly allow detention to occur on the high seas and no procedure is provided.</p> | Include Model legislation Section 27 in national legislation. |
| 28. | Power of arrest | This gives an authorised fisheries officer the power to order a person to cease and desist where he/she believes that a person is reasonably committing an offence, and to supply name, date of birth etc. and to arrest. | <p>48(7). Appointment of authorised fishery officers</p> <p>There is a power to arrest a person where there are reasonable grounds to believe s/he has committed an offence under the Act.</p> <p>There is no power to order a person to cease and desist or provide other information where there is reasonable believe of an offence.</p> | Include Model legislation Section 28 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 29. | Power to order a vessel to port | The power to order a vessel to port for inspection for compliance purposes | 49(6). Authorised fishery officers Authorised fishery officers may require the master to take a seized vessel to port for investigation. There is no general power to order a vessel to port simply for inspection or compliance purposes, it must have been seized. | Include Model legislation Section 29 in national legislation. |
| 30. | Power to give direction | This power may be exercised without having boarded the vessel. | There is no power to give direction to a vessel without having boarded it. | Include Model legislation Section 30 in national legislation. |
| 31. | Seizure of vessels, aircraft and items | The items which may be seized are elaborated and include vessels, fish, other articles and anything that may provide evidence of contravention of the Act or an ICMM, as well as passports/seamens' record books and anything that has been forfeited or unlawfully removed from custody under the Act. | 49(3), (4) Authorised fishery officers General seizure and detention of fishing vessels, fish etc Where there is violation of an ICMM on the high seas, seizure and detention of <ul style="list-style-type: none"> • a fishing vessel other than a foreign vessel and • a foreign vessel where authorised under an ICMM 51(2). Powers of entry and search on land of authorised fishery officers When there is belief of an offence, vehicles, documents, gear, article, fish or fish products | Include Model legislation Section 31 in national legislation. |
| 32. | Hot pursuit | The basic requirements of Article 111 of UNCLOS are implemented. | 50. Pursuit beyond Seychelles waters | |

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| | | | Hot pursuit in accordance with Article 111 of UNCLOS is provided. | |
| 33. | Responsibilities of observers | Responsibilities of observers in terms of tasks and other activities, including to implement international conservation and management measures. Observers may be deployed as directed by the CEO, including in accordance with ICMMs and on or in relation to vessels, landings etc. | 56. Establishment of observer programme Requires the establishment of an observer programme "for the purpose of collecting and reporting reliable and accurate information on the activities of fishing vessels". Does not elaborate other responsibilities, functions (e.g. scientific, monitoring, compliance) | Include Model legislation Section 33 in national legislation. |
| 34. | Duty of operators, and crew members to assist observers | It requires operators and crew to assist observers for stated activities, including boarding, receiving messages, taking photographs, gathering information and disembarking. It applies at all times the observer is on board and within and beyond areas under national jurisdiction, to accommodate IOTC ICMMs. | 63(1) Penalty for landing, receiving, selling etc. Penalty for threatening, intimidating or assaulting an authorised fishery officer or observer. It does not require the crew to assist observers, or refer to duties in areas beyond national jurisdiction. | Include Model legislation Section 34 in national legislation. |
| 35. | Observers and field inspectors under an RFMO observer scheme | Regional observer requirements to implement regional observer programme | No provision. | Include Model legislation Section 35 in national legislation. |

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| Division 2 – Protection and obstruction of authorised persons | | | | |
| 36. | Definition of authorised person | Defines “authorised person” as including authorised fisheries officer and observer, including observers under an RFMO observer programme. | 77(2)(n) Regulations Regulations may be made for the placing of observers on board a fishing vessel licensed under the Act to fish or carry out fishing related activities “in Seychelles waters or beyond~ and the rules relating to observers. However, there is no direct mention of a regional observer programme where the duties may involve high seas transshipments of vessels not licensed under the Act. | Include Model legislation Section 36 in national legislation. |
| 37. | Protection of authorised persons from liability | Protects authorised persons and others acting under the authority of the Authority from liability for anything done or omitted to be done in good faith in the performance of duties. It recognizes that some personnel may not be staff members of the Authority e.g. where observers may be hired on occasional contracts. It also addresses situations where a vessel is being brought to port, and exempts persons assisting an authorised fisheries officer from liability. | No provision. However it may be in legislation concerning Public Officers. | Include Model legislation Section 37 in national legislation. |
| 38. | Obstruction of, failure to comply with authorised persons | Creates offences for various forms of obstruction of, or non-compliance with, authorised persons, | 63(1) Penalty for landing, receiving, selling etc. Penalty for threatening, intimidating or assaulting an | Include Model legislation Section 38 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | including for example not allowing access to a place, not giving information, assaulting, kidnapping, impersonating or bribing an authorised person. | authorised fishery officer or observer, or for bribing or personating an authorised fishery officer. This is minimum criteria and needs further elaboration. | |
| Division 3 – Inspection procedures | | | | |
| 39. | Pre-licensing / authorisation and unloading inspection procedures | This is a general duty to perform inspections, carry out procedures and apply standards that may be required under this Act, an ICMM, a relevant RFMO or international agreement for Pre-licensing / authorisation and unloading. The procedures, etc may be adopted by Regulation or required by the [Authority]. <i>Regulations should set out details for procedures.</i> | No provision | Include Model legislation Section 39 in national legislation. |
| 40. | Sea inspection procedures | Similar to the previous section <i>Regulations should set out details for procedures.</i> | | Include Model legislation Section 40 in national legislation. |
| Division 4 – Vessel monitoring system and Automatic Identification System | | | | |
| 41. | Vessel Monitoring System - technical requirements | Implements IOTC Resolution 15/03 and empowers the Authority to approve the technology for VMS and provides that technical requirements, including installation, may be prescribed or required. | No provision. | Include Model legislation Section 41 in national legislation. |

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| 42. | Vessel monitoring system – requirements of operators | <p>Implements requirements of IOTC Resolution 15/03, including: installation and ensure full operation at all times, registration, ensure tamper-resistant, transmission of information directly to FMC at least once every hour. A vessel must come to port within 24 hours, which could allow minimum time to continue fishing, and where the power supply to the VMS except that under subsection (4) special arrangements may be made for the continuation of fishing.</p> <p>In accordance with IOTC Resolution 15/03 the device may be switched off while the vessel is in port for more than a week under certain conditions.</p> | <p>No provision.</p> <p>However VMS requirements are listed in a Protocol that forms a license condition.</p> <p>64.(1) (c). Penalty for removing, tampering or damaging to detained fishing vessel, etc</p> <p>A violation to tamper with, interfere etc a vessel monitoring device or vessel tracking device of a fishing vessel.</p> <p>This does not address technical requirements.</p> | Include Model legislation Section 42 in national legislation. |
| 43. | Automatic identification system | This permits the Authority to require (including as a licence, etc condition) that vessels maintain an AIS on board in accordance with specifications in the International Convention for the Safety of Life at Sea, and that it continually reports to the Fisheries Monitoring Center. | No provision. | Include Model legislation Section 43 in national legislation. |

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| Division 5 – Port State measures | | | | |
| 44. | Designation of ports | Requires the Minister to ensure that ports to be used to foreign vessels are designated and publicized. | No provision. However, Victoria is the only port and it is referenced in the Act. | Optional: Include Model legislation Section 44 in national legislation. |
| 45. | Prerequisites for entry or use of port | Implements paragraph 6 and 7 of IOTC Resolution 16/11, requiring an advance request for entry into port, an authorisation to enter and presentation of the authorisation. | No provision. 14. Entry into harbour or Port Victoria Foreign fishing vessels are required to “notify” the Authority and provide a position report. No requirements for a request or authorisation. | |
| 46. | Denial of entry into port and use of port | Requires denial of entry into port where there is sufficient proof of IUU fishing or related activities and especially where it is on an IUU vessel list, and if there is a contravention of the Act. Entry into port may be allowed only for purposes of inspection in such circumstances, but use of port is prohibited. The CEO must communicate the decision to allow or deny entry to the vessel and as appropriate to the Ports Authority, which is obligated to implement the decision. | 55. Implementation of international conservation and management measures The Authority must deny a foreign fishing vessel the use of port where there are reasonable grounds to believe that it has engaged in or supported IUU fishing or is on an RFMO IUU Vessel list. There is no provision for denial of entry. | Include Model legislation Section 46 in national legislation. |

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| | | The decision to deny entry or use of port must also be communicated to the flag State and others. | | |
| 47. | Force majeure or distress | Allows entry into port for reasons of force majeure, but with limitations consistent with UNCLOS and international law. | No provision. | Include Model legislation Section 47 in national legislation. |
| 48. | Denial of use of port after entry | Requires denial of port after entry on several grounds, without the need for inspection. Withdrawal of denial of use of port is provided in subsection (3), where there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply. | 55. Implementation of international conservation and management measures The Authority must deny a foreign fishing vessel the use of port where there are reasonable grounds to believe that it has engaged in or supported IUU fishing or is on an RFMO IUU Vessel list. The other specific grounds required in the PSMA and IOTC Resolution 16/11 are not stated. Withdrawal of denial of use of port is not included. | Include Model legislation Section 48 in national legislation. |
| 49. | Conduct of inspections of vessels in port | It provides for levels and prioritization of inspection, and requires fishery inspectors and authorised officers to carry out inspections in conformity with the <i>procedures and report template to be included in Regulations and Schedule</i> , and submit them to the Authority. | No provision. Instead, the flag State must be requested to investigate. | Include Model legislation Section 49 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|---|--|--|---|
| | | The operator of the vessel must give authorised officers all necessary assistance, information and documents. | | |
| 50. | Denial of use of port after inspection | Requires denial of use of port where there are clear grounds for believing that the vessel has engaged in IUU fishing or related activities. | No provision. Also no provision for inspection in port. | Include Model legislation Section 50 in national legislation. |
| 51. | Requirements for [country] registered vessels | <p>National vessels, in areas beyond national jurisdiction, are to cooperate with port inspections of other States, and not to use any ports that are not compliant with port State measures.</p> <p>The Authority must request authorities in foreign ports to inspect and take other measures where there are clear grounds to believe that a national vessel has engaged in IUU fishing or related activities, and the vessel is seeking entry into or is in their port.</p> <p>Where there is evidence of IUU fishing or related activities, the Authority must investigate and take enforcement action without delay.</p> | No provision. | Include Model legislation Section 51 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| Division 6 - Miscellaneous | | | | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures | <p>The IOTC list of activities that describe where a vessel is presumed to have engaged in IUU fishing or related activities is incorporated in subsection (1) and the operator is prohibited from engaging in any of these activities.</p> <p>The Authority must provide information and evidence to the IOTC Secretariat of activities of any vessel that is presumed to involve IUU fishing.</p> <p>Subsections (2) and (3) apply the presumption to any vessels in national waters and national vessels in areas beyond national jurisdiction.</p> <p>Where it is presumed that any vessel in national waters has been involved in IUU fishing or related activities in any place in the IOTC Area of Competence, it may be prosecuted in the country.</p> | No provision. | Include Model legislation Section 52 in national legislation. |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization | National vessels are prohibited from providing assistance, engaging in fish processing operations or participating in transshipment or joint fishing operations with any vessel on an IUU Vessel List. | No provision. | Include Model legislation Section 53 in national legislation. |

TANZANIA

GAPS AND AMENDMENTS

THE DEEP SEA FISHERIES MANAGEMENT AND DEVELOPMENT ACT, 2020

The Deep Sea Fisheries Management And Development Act Regulations

Fully implements

Substantially implements

Partly implements

Does not implement

National Fisheries Policy of 2015

Statement: The Government shall strengthen monitoring, control and surveillance as well as promoting collaboration in the management of the deep sea water resources

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| MODEL LEGISLATION FRAMEWORK | |
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| 50. | Denial of use of port after inspection |
| 51. | Requirements for [country] registered vessels |
| Division 6 - Miscellaneous | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization |

References to the Act are shown as a section number.

References to the Regulations are shown as "Regulation".

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|--|---|---|---|---|
| I. PRELIMINARY | | | | |
| 1. | Use of terms | <p>Terms should be defined consistently with their use in international and regional instruments, including:</p> <ul style="list-style-type: none"> • fishing • fishing related activities, or "related activities" • fishing vessel • international conservation and management measures • vessel monitoring system • vessel without nationality | <p>2. Application</p> <p>"Vessels without nationality" not defined.</p> | <p>Include Model legislation definition of "vessel without nationality" in section 1.</p> |
| 2. | Application of the legislation | <p>Legislation should be clear that it applies to national areas and areas beyond national jurisdiction (ABNJ) consistent with international law/regional obligations. This will allow MCS operations to take place in ABNJ.</p> | 4. Scope of Act | |
| II. MCS-RELATED MANAGEMENT MEASURES | | | | |
| 3. | Mechanism for implementation of RFMO measures | <p>This facilitates and clarifies the timely implementation of ICMMs. It may be adapted to procedures in each country for implementation by regulations, Gazetting or other.</p> | <p>s. 23(1)</p> <p>Implementation of Regional conservation and management measures.</p> | |
| 4. | Prohibitions in relation to vessels on an RFMO IUU Vessels List | <p>Prohibits, in relation to vessels on an IUU Vessel List ("listed vessels"), operators of [country] registered vessels from assisting, participating in</p> | <p>S. 46 Foreign fishing vessels to comply with legislation of United Republic.</p> | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | transhipment or joint operations with a listed vessel or carrying out fish processing operations with listed vessels. | | |
| 5. | Prohibitions in relation to vessels without nationality | Vessels without nationality are prohibited from landing, transshipping and use of port in [country] and transshipping with [country] registered vessels in an area of competence of a relevant RFMO. | No provision. | Include Model legislation section 5 in national legislation. |
| III. GENERAL REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES | | | | |
| 6. | Compliance with Act, licence, authorisation or other permission, international conservation and management measures | Requires licensee or holder of authorisations and other permissions to comply with the terms of the licenses and this Act, national legislation, an applicable access agreement and ICMM. This permits cancellation of the licence, etc where there has been breach of any condition. | s. 36(1) Terms and conditions for compliance by holders of licenses, authorizations or other permissions Regulation 28(2)(e), Terms and conditions of license, authorization or permission Requires compliance with ICMMs | |
| 7. | Reporting requirements | This describes various reporting requirements (true, complete and correct, on time, required form and format, etc) and addresses difficult situations encountered in the region, for example: <ul style="list-style-type: none"> • provides for legal action where there is improper catch reporting on quotas; • fishers send receipts from companies that bought the fish, with no other information or form, instead of proper catch documentation; | Regulation 36. Logbooks and reporting. | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <ul style="list-style-type: none"> estimated catch, such as the proportion of yellowfin and landing declarations, must be done using a standard of proof required by the [Authority]. | | |
| 8. | Gear stowage | All vessels (licensed and unlicensed) must stow gear when the vessel is in any area where it is not licensed or authorised to fish or undertake related activities. Applies to national waters and nationally registered vessels in areas beyond national jurisdiction. | 38. Gear stowage | |
| 9. | Requirements for citizens and (flag) vessels in areas beyond national jurisdiction | This allows compliance with international law and IOTC ICMMs. Nationally registered vessels and citizens must comply with access agreements and laws of other countries and must not undermine international conservation and management measures. | 41. Requirements for nationals, fishing vessels in areas beyond national jurisdiction | |
| IV. REQUIREMENTS FOR FISHERIES ACCESS | | | | |
| 10. | Fisheries access – terms and conditions | Non-negotiable conditions for permitting fisheries access, e.g. vessel must hold authorisation from flag State, not be on IUU vessel list, assurance of minimum benefits to National. Vessels are required to be on an authorised vessel list of a relevant RFMO and, to cater to the regional initiative for minimum terms and conditions for fisheries access, under a regional fisheries management agreement. | Regulation 41. Fisheries access agreement terms and conditions | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| 11. | Requirements for all foreign vessels to report entry into exit from and regularly when in [country] waters | <p>In accordance with best practices, <i>all</i> foreign vessels are required to have VMS and AIS operational and report <i>directly</i> to the [Authority] (not via their flag country or other).</p> <p>This is more stringent than the MTC Guidelines but consistent with UNCLOS rights and duties of a coastal State because the reporting is for purposes of fisheries conservation, management and MCS and does not empower the [Authority] to hinder entry or exit.</p> | Regulation 43. Reporting of fishing vessel operation upon entry and exit. | |
| V. INFORMATION | | | | |
| 12. | Establishment of an information system | <p>Information required to be given and maintained in an information system is provided and relevant for MCS use.</p> <p>Confidentiality standards are set but allow transparency, consistent with Fisheries Transparency Initiative (FITI) standards.</p> | Regulation 82. Information system of Authority. | |
| 13. | Information may be required, inspected | This is a general provision requiring persons carrying out activities under the Act to keep and maintain such information as may be required by the [Authority] under the Act, other national legislation or an ICMM. | Regulation 80. Record keeping | |
| 14. | Information to be true, complete and correct and destruction etc of documents prohibited | This section requires all information given under this Act (defined as including all subsidiary legislation) to be true, complete and correct and will prohibit alteration, destruction etc of documents, information, data, statistics, labels and | Regulation 80. Record keeping | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|---|--|--|---|------------------------|
| | | required markings on vessels or gear and use of forged or falsified documents. It applies to any information, etc without regard to whether it is submitted to the [Authority], any person, court, body, other government authority, RFMO etc. | | |
| 15. | Information sharing bilaterally, regionally, internationally | This section is important for sharing of MCS information. It empowers the [Authority] to prepare and submit information under bilateral, regional and international agreements and ICMMs. It recognizes the exchange of information should be a basic process (mindful of confidentiality requirements). | Regulation 84. Information sharing | |
| VI. LICENSES, AUTHORISATIONS, OTHER PERMISSIONS AND REGISTRATION | | | | |
| 16. | Licenses, authorisations, etc required. | The legislation should specify clearly and in one section the licenses, authorisations, permissions etc that are required. This will assist general understanding and MCS efforts to monitor and control fishing and related activities. | Regulation 22. Fishing licenses. Only fishing licenses are addressed in this provision, but other regulations also refer to authorizations or permissions: Regulation 32. Special purpose license (for specific activities). Regulation 35. Permissions | |
| 17. | License terms and conditions | Licensing terms and conditions for fishing, supply and transport vessels should be required, among others. In this provision: | Regulation 28. Terms and conditions of license, authorization or permission. | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>(1) generally provides the licence, etc must be subject to the terms and conditions in the Act, as may be prescribed and to such other terms and conditions as may be specified by the [Authority] or provided in ICMMs. Amendment, entry into force and validity are addressed.</p> <p>(2) requires the operator of a vessel to keep a copy of the licence etc onboard the vessel.</p> <p>(3) requires the holder of any licence, etc for activities that are not associated with vessels to display it in the registered business office.</p> <p>(4) requires National registered vessels to carry required documents at all times and while in the waters of other States comply with its legislation, or an RFMO area of competence comply with ICMMs.</p> <p>(5) requires operators to maintain log books and make reports as required under the Act (which is defined to include regulations) or by the CEO in writing or an ICMM.</p> | | |
| 18. | Conditions for landings and transshipment | <p>Specific conditions for landing and transshipment, including:</p> <p>(1) requires a notification period.</p> <p>(2) requires activities at designated ports, and refers</p> | <p>Regulation 38. Conditions for landing and transshipment</p> <p>[Relevant: Regulation 63. Landing or off-loading inspection procedures]</p> | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | <p>to pre-inspection and observers.</p> <p>(3) requires the licensee to pay all costs of an authorised fisheries officer or other person designated by the CEO where there is transshipment outside a port in [country].</p> <p>4) prohibits shark carcasses and fins from being transhipped separately.</p> <p>(5) requires Declarations of Transshipments as may be prescribed or required by an ICMM.</p> <p>(6) incorporates Regulation 24A and is expanded as instructed during consultations to include offloading fish into containers.</p> <p>(7) requires compliance with laws relating to the protection of the marine environment.</p> <p>(8) permits the [Authority] to require compliance with any applicable ICMM.</p> | | |
| 19. | Pre-licensing registration, inspection and other requirements | To establish compliance, a foreign vessel must be inspected before a license is issued. | <p>Regulation 24. Pre-licensing inspection requirements.</p> <p>[Relevant: Regulation 62. Procedures for pre-licensing inspection]</p> | |
| 20. | Standards for grant or renewal of licenses, authorisations, registration or | No licence would be issued where there is a record/evidence/history of IUU fishing, vessels is on an IUU Vessel List, connected to IUU fishing or fishing | Regulation 25. Grant or refusal of licenses, authorizations or permissions. | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | other permission | related criminal activities, etc. Conditions must be consistent with national, regional and international law. Vessels must be on an RFMO authorised vessel list where relevant. | Regulation 26. Grounds for refusal to grant licenses, authorizations or permissions. | |
| 21. | Grounds for denial or non-renewal of licenses of licences, authorisations, registrations | A wide range of criteria for denial or non-renewal of licences, etc, including that the standards for grant of license, there has been non-compliance with an existing or previous licence with no submission to due process or satisfaction of judgment or determination Foreign vessel must hold Authorisation to Fish (ATF) issued by flag State. | Regulation 26. Grounds for refusal to grant licenses, authorizations or permissions. Regulation 31. Suspension and cancellation of license, authorization or permission Regulation 37. Permission for Fish Aggregating Device | |
| VII. MONITORING, CONTROL AND SURVEILLANCE | | | | |
| Division 1 – Authorised fisheries officers, observers | | | | |
| 22. | Exercise of powers and functions by authorised officers and observers | When authorised officers, observers are beyond areas of national jurisdiction the provisions of the Act are applicable as if the duties were performed in areas under national jurisdiction. They must carry and produce identification on request. | Regulation 48. Identification of fishery inspectors, authorised officers, licensing officers or observers. Regulation 50(4). Powers of authorised officers | |
| 23. | Authority and general powers of authorised officers | General powers of authorised officers are described, including doing such things and giving such directives that are reasonably necessary for exercising their functions, etc. under the Act. | Regulation 50. Powers of authorised officers | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|--|---|--|--------------------------------|
| | | Reasonable force may be used and assistance may be required. | | |
| 24. | Power of entry and search | <p>The power of entry and search is given for all purposes and activities falling within the Act, consistent with general powers of MCS to ensure compliance, responsibilities for traceability etc.</p> <p>It is not limited to cases where contravention of the Act is suspected.</p> <p>It provides for the power of entry and search without a warrant, including in relation to national registered vessels beyond national jurisdiction and other vessels to which ICMMs apply as well as vessels without nationality on the high seas (the latter is consistent with international law).</p> <p>It also applies to premises or places reasonably suspected to be used for activities falling within the scope of the Act, except for dwelling houses, where evidence of non-compliance may be found.</p> <p>Persons may be stopped, records, containers, fish etc may be examined, land may be passed across and landing and transshipment operations may be monitored.</p> <p>The authorised officer may require persons to give information and exercise a</p> | Regulation 51. Power of entry and search. | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | range of other powers for entry and search. The authorised officer must have a warrant to enter a dwelling house. | | |
| 25. | Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction | Authorised Officers have the power to investigate or to request an investigation by another State. This would allow relevant companies, agents and persons can be investigated for activities in areas beyond national jurisdiction and prosecutions can take place. | Regulation 50(1) and (4). No express power to request an investigation by another State, but this is indicated under paragraph (1). | |
| 26. | Power to take, detain, remove and secure information, evidence | Allows the authorised fisheries officer to take, detain, remove and secure information and evidence and vessels. | Regulation 52. Power to take, detain, remove and secure information and evidence. | |
| 27. | Power to detain persons, vessels, gear, etc | Power of detention for persons, vessels, gear etc. A Notice of Detention must be given to the operator of a vessel or vehicle and copied to relevant government authorities | Regulation 53. Power to detain persons or seize vessels or gear. | |
| 28. | Power of arrest | This gives an authorised fisheries officer the power to order a person to cease and desist where he/she believes that a person is reasonably committing an offence, and to supply name, date of birth etc. and to arrest. | Regulation 54. Power of arrest | |
| 29. | Power to order a vessel to port | The power to order a vessel to port for inspection for compliance purposes | Regulations 50-55. | |
| 30. | Power to give direction | This power may be exercised without having boarded the vessel. | Regulations 50-55 | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|--|---|--|--------------------------------|
| 31. | Seizure of vessels, aircraft and items | The items which may be seized are elaborated and include vessels, fish, other articles and anything that may provide evidence of contravention of the Act or an ICMM, as well as passports/seamens' record books and anything that has been forfeited or unlawfully removed from custody under the Act. | 66. Seizure of vessels, aircraft, etc. Regulation 53. Power to detain persons or seizure vessels or gear The authority to "seize" is erroneously written to "seizure". | |
| 32. | Hot pursuit | The basic requirements of Article 111 of UNCLOS are implemented. | 64. Hot pursuit | |
| 33. | Responsibilities of observers | Responsibilities of observers in terms of tasks and other activities, including to implement international conservation and management measures. Observers may be deployed as directed by the CEO, including in accordance with ICMMs and on or in relation to vessels, landings etc. | 56. Fishery observer | |
| 34. | Duty of operators, and crew members to assist observers | It requires operators and crew to assist observers for stated activities, including boarding, receiving messages, taking photographs, gathering information and disembarking. It applies at all times the observer is on board and within and beyond areas under national jurisdiction, to accommodate IOTC ICMMs. | Regulation 58. Duty of operator to assist fishery observers | |
| 35. | Observers and field inspectors under an RFMO observer scheme | Regional observer requirements to implement regional observer programme | Regulation 56(2). Observers Regulation 38(5) and (11). Conditions for landing and transshipment | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| Division 2 – Protection and obstruction of authorised persons | | | | |
| 36. | Definition of authorised person | Defines “authorised person” as including authorised fisheries officer and observer, including observers under an RFMO observer programme. | Regulation 60. Obstruction or failure to comply with authorised persons. | |
| 37. | Protection of authorised persons from liability | Protects authorised persons and others acting under the authority of the Authority from liability for anything done or omitted to be done in good faith in the performance of duties. It recognizes that some personnel may not be staff members of the Authority e.g. where observers may be hired on occasional contracts. It also addresses situations where a vessel is being brought to port, and exempts persons assisting an authorised fisheries officer from liability. | 18. Limitation of liability. This protects a “person authorised to perform the functions of the Authority” from liability for anything done in good faith. | |
| 38. | Obstruction of, failure to comply with authorised persons | Creates offences for various forms of obstruction of, or non-compliance with, authorised persons, including for example not allowing access to a place, not giving information, assaulting, kidnapping, impersonating or bribing an authorised person. | Regulation 60. Obstruction or failure to comply with authorised persons. This provision only disallows <i>obstruction and hindrance</i> by “operators and other persons” . It does not elaborate the responsibility of all persons towards authorised persons (officers and observers), such as by bribing, impersonating an authorised person, etc. and could be strengthened. | Review the need to strengthen this provision to protect authorised officers, as provided in Model legislation section 38. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
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| | | | Observers are protected to a much greater extent than authorised officers under Regulation 58, Duty of operator to assist fishery observer. | |
| Division 3 – Inspection procedures | | | | |
| 39. | Pre-licensing / authorisation and unloading inspection procedures | This is a general duty to perform inspections, carry out procedures and apply standards that may be required under this Act, an ICMM, a relevant RFMO or international agreement for Pre-licensing / authorisation and unloading. The procedures, etc may be adopted by Regulation or required by the [Authority]. | Regulation 24. Pre-licensing inspection requirements Regulation 62. Procedures for pre-licensing inspection Regulation 63. Landing or off-loading inspection procedures | |
| 40. | Sea inspection procedures | Similar to the previous section. | Regulation 64, Sea Inspection Procedures | |
| Division 4 – Vessel monitoring system and Automatic Identification System | | | | |
| 41. | Vessel Monitoring System - technical requirements | Implements IOTC Resolution 15/03 and empowers the Authority to approve the technology for VMS and provides that technical requirements, including installation, may be prescribed or required. | 55. Technical requirements for Vessel Monitoring System Regulation 66. Technical requirements for Mobile Transceiver Units | |
| 42. | Vessel monitoring system – requirements of operators | Implements requirements of IOTC Resolution 15/03, including: installation and ensure full operation at all times, registration, ensure tamper-resistant, transmission of information directly to FMC at least once every hour. A vessel must come to port within 24 hours, which could allow minimum time to continue | Regulation 67. Mobile Transceiver Unit requirements for operators. | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|---|---|--|--|------------------------|
| | | <p>fishing, and where the power supply to the VMS except that under subsection (4) special arrangements may be made for the continuation of fishing.</p> <p>In accordance with IOTC Resolution 15/03 the device may be switched off while the vessel is in port for more than a week under certain conditions.</p> | | |
| 43. | Automatic identification system | This permits the Authority to require (including as a licence, etc condition) that vessels maintain an AIS on board in accordance with specifications in the International Convention for the Safety of Life at Sea, and that it continually reports to the Fisheries Monitoring Center. | 68. Automatic Identification System | |
| Division 5 – Port State measures | | | | |
| 44. | Designation of ports | Requires the Minister to ensure that ports to be used to foreign vessels are designated and publicized. | 63. Designation of ports | |
| 45. | Prerequisites for entry or use of port | Implements paragraph 6 and 7 of IOTC Resolution 16/11, requiring an advance request for entry into port, an authorisation to enter and presentation of the authorisation. | Regulation 71. Prerequisites for entry or use of port. | |
| 46. | Denial of entry into port and use of port | Requires denial of entry into port where there is sufficient proof of IUU fishing or related activities and especially where it is on an IUU vessel list, and if there is a contravention of the Act. Entry into port may be allowed only for purposes of | Regulation 72. Denial of entry into port and use of port | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|---|---|--|------------------------|
| | | <p>inspection in such circumstances, but use of port is prohibited.</p> <p>The CEO must communicate the decision to allow or deny entry to the vessel and as appropriate to the Ports Authority, which is obligated to implement the decision.</p> <p>The decision to deny entry or use of port must also be communicated to the flag State and others.</p> | | |
| 47. | Force majeure or distress | Allows entry into port for reasons of force majeure, but with limitations consistent with UNCLOS and international law. | Regulation 73. Force majeure or distress | |
| 48. | Denial of use of port after entry | <p>Requires denial of port after entry on several grounds, without the need for inspection.</p> <p>Withdrawal of denial of use of port is provided in subsection (3), where there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply.</p> | Regulation 74. Denial of use of port after entry | |
| 49. | Conduct of inspections of vessels in port | It provides for levels and prioritization of inspection, and requires fishery inspectors and authorised officers to carry out inspections in conformity with the <i>procedures and report template to be included in Regulations and Schedule</i> , and submit them to the Authority. | Regulation 75. Inspections of vessels in port | |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----------------------------------|--|--|---|---|
| | | The operator of the vessel must give authorised officers all necessary assistance, information and documents. | | |
| 50. | Denial of use of port after inspection | Requires denial of use of port where there are clear grounds for believing that the vessel has engaged in IUU fishing or related activities. | Regulation 76. Denial of use of port after inspection | |
| 51. | Requirements for [country] registered vessels | <p>National vessels, in areas beyond national jurisdiction, are to cooperate with port inspections of other States, and not to use any ports that are not compliant with port State measures.</p> <p>The Authority must request authorities in foreign ports to inspect and take other measures where there are clear grounds to believe that a national vessel has engaged in IUU fishing or related activities, and the vessel is seeking entry into or is in their port.</p> <p>Where there is evidence of IUU fishing or related activities, the Authority must investigate and take enforcement action without delay.</p> | 44. Requirements for Tanzanian vessels to provide cooperation other states' Ports. | |
| Division 6 - Miscellaneous | | | | |
| 52. | Presumptions of IUU fishing in contravention of international conservation and management measures | The IOTC list of activities that describe where a vessel is presumed to have engaged in IUU fishing or related activities is incorporated in subsection (1) and the operator is prohibited from engaging in any of these activities. | Section 46 of the DSFMD Act and Regulations 26 (f) and 41 (c) & (d) prohibit such vessels to be issued with license, permission or authorization to fish. | Include Model legislation section 52 in national legislation. |

| | MODEL LEGISLATION FRAMEWORK | OBJECTIVE | NATIONAL LEGISLATION SECTION AND GAPS | PROPOSED AMENDMENTS |
|-----|--|--|---|---|
| | | <p>The Authority must provide information and evidence to the IOTC Secretariat of activities of any vessel that is presumed to involve IUU fishing.</p> <p>Subsections (2) and (3) apply the presumption to any vessels in national waters and national vessels in areas beyond national jurisdiction.</p> <p>Where it is presumed that any vessel in national waters has been involved in IUU fishing or related activities in any place in the IOTC Area of Competence, it may be prosecuted in the country.</p> | | |
| 53. | Actions in relation to vessels on an IUU Vessels List of a relevant regional fisheries management organization | National vessels are prohibited from providing assistance, engaging in fish processing operations or participating in transshipment or joint fishing operations with any vessel on an IUU Vessel List. | <p>No provision.</p> <p>s. 46 of the DSFMD Act and regulations 26 (f) and 41 (c) & (d) prohibit such vessel to be issued with license, permission or authorization to fish. However, they do not prohibit licensed vessels from providing assistance etc to any vessel on an IUU vessel list.</p> | Include Model legislation section 53 in national legislation. |

ANNEX 5 - TANZANIA RESPONSE ON NATIONAL PORT STATE MEASURES PROCEDURES

| PROCEDURE | Implemented Y/N | No Procedure: Reasons, obstacles | Priorities for your country |
|--|--------------------|--|-----------------------------------|
| (a) Use of IOTC ePSM system | N | Insufficient capacity and experience | Y |
| (b) AREP requested | Y | Y | Y |
| (c) Risk assessment process | N | Insufficient capacity | Y |
| (d) Risk assessment report | N | Insufficient capacity | Y |
| (e) Inspection briefing | Y | | Y |
| (f) Authorization to enter port issued | Y | | Y |
| (g) Authorization to enter port received upon entry | Y | | Y |
| (h) Communications to establish whether use of port must be denied after entry (e.g. to other countries, RFMO, etc) | N | Never experienced | Y |
| (i) Where use of port denied, communications to vessel and services, etc who may be involve in supporting use of port; | N | Never experienced | |
| (j) Pre-boarding process – selection of fishing vessel and risk assessment | N | Insufficient capacity | Y |
| (k) Preparation for boarding | Y | | Y |
| (l) On board inspection – SOPs | Y | | Y |
| (m) Monitoring landing and transshipments in port | Y | | Y |
| (n) Followup procedures, actions and requirements and information sharing | Y | | Y |
| (o) Information systems on port State measures | Y | | Y |
| ALL OF ABOVE | | | |



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