

Report of the

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**WORKSHOP ON THE HARMONIZATION OF MARINE FISHERIES  
POLICY WITHIN COASTAL COUNTRIES OF THE SOUTHERN  
AFRICAN DEVELOPMENT COMMUNITY**

Zanzibar, United Republic of Tanzania, 24-27 July 2001



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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS  
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## PREPARATION OF THIS DOCUMENT

The report of this Workshop is the final activity of a project financed by the FAO Technical Cooperation Programme and entitled "*Harmonization of marine fisheries policy within the SADC coastal countries*" (TCP/RAF/8933). The Workshop reviewed and endorsed the technical documents being produced during project implementation. The report thus also includes the final version of those technical documents which were of a regional nature as well as elements for an Action Plan.

Project activities, including the preparation of this report were implemented through a joint project Steering Committee composed, on behalf of the Southern African Development Community (SADC), of Ms Hilda Khoeses (Sector coordinator, marine resources) and Xavier de Revier (Adviser) and, on behalf of FAO, of Alain Bonzon (FIPP/project Coordinator); Harris Aubray (SAFR); Blaise Kuemlangan (LEGN), Audun Lem (FIU) and Steve Cunningham (Consultant/team leader, IDDRA). Mr Mamadou Tall (INFOPÉCHE) also participated to the work of the Committee.

### **Distribution:**

Participants at the meeting  
SADC Mailing List  
FAO Regional and Sub-Regional Fisheries Officers  
FAO Fisheries Department

FAO.

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#### ABSTRACT

The Workshop on the Harmonization of Marine Fisheries Policy within Coastal Countries of the Southern African Development Community (SADC) was the final activity of a project (TCP/RAF/8933) requested by SADC and financed by FAO. It was held at Uroa Beach, Zanzibar, United Republic of Tanzania, from 24 to 27 July 2001.

The Workshop discussed the main working documents presented by the project steering committee: a comparative analysis of the fisheries legal frameworks of SADC coastal countries (Appendix D); an analysis of international and intraregional trade of fisheries products (Appendix E); and a synthesis of the national reports prepared by the countries (Appendix F).

Three working groups were created to discuss elements dealing with trade, legal and fisheries management issues, respectively, taking into consideration the relevant articles of the FAO Code of Conduct for Responsible Fisheries. The three working groups evaluated the documents provided by the project steering committee and improved the list of proposed activities. These were also ranked in order of priority at national and regional levels, and general mechanisms for their implementation were proposed. On the basis of the work of these subgroups, elements for an Action Plan were identified at the regional level taking into consideration the relevant provisions of the Protocol on Fisheries to the SADC Treaty (Appendix G).

## FOREWORD

Wealth from marine fisheries is not evenly distributed among the eight SADC coastal countries (namely: Angola, Congo (DR), Mauritius, Mozambique, Namibia, Seychelles, South Africa and the United Republic of Tanzania). The primary productivity of the West coast is richer, the fishery is predominantly industrial and ensures up to 90% of total catch. In contrast, the environmental conditions on the East coast are more stable, characterised by greater species diversity and higher social importance as artisanal and recreational fisheries predominate. Several workshops held by the SADC Marine Fisheries Sector Co-ordinating Unit (MFSCU) identified policy harmonization (taking cognisance of national legal frameworks) as a key issue and a major catalyst to responsible fisheries in the region.

SADC, therefore, requested FAO assistance with the harmonization of fisheries management and trade policy as well as related legal frameworks, among its member countries and in line with the FAO Code of Conduct for Responsible Fisheries (CCRF) and other recently adopted international instruments.

A TCP project was developed, the objective of which was to identify and analyse priority marine policy issues at the SADC regional level with a view to developing a strategy in support of the process of harmonization of marine fisheries policy and legal framework.

In order to deliver this objective, the project adopted the following approach. A standard questionnaire was developed by FAO and the SADC/MFSCU ("Outline for National Reports") to provide a common reporting system which would permit valid conclusions to be drawn for the entire group. On the basis of this questionnaire, seven national teams of authors (supported by briefing missions from Project Steering Committee members) prepared a report on the status of implementation of the CCRF in their country. These reports were then used as the basis for a regional synthesis report, which presented an initial identification of common needs and problems in the region.

In addition to the synthesis report, FAO produced two documents:

- a review of current status and constraints for intra-regional trade of fisheries products;
- and a comparative review and analysis of national fisheries legislation in the SADC countries.

A Regional Workshop was then convened from July 24 to July 27, 2001 in Zanzibar. On the basis of the regional synthesis report and the FAO trade and legal documents, the main objective of the workshop was to identify elements for an action plan in order to address the main fisheries management and trade policy issues which had been identified.

To achieve its objective, the workshop undertook three main activities:

- (i) a review of :
  - the level of understanding and the status of implementation of the principles contained in the Articles 7 and 11 of the Code in the SADC coastal countries, and the mechanisms which need to be put into practice by member countries to utilise the CCRF as general guidelines for the harmonization of policies with regard to responsible management of marine fisheries and trade of fisheries products;
  - changes required in national legislation to comply with the 1995 UN straddling stock agreement and the 1993 FAO Compliance Agreement, in the context of the Fishery Protocol to the SADC Treaty.

- (ii) a discussion of identified policy gaps as well as difficulties encountered in the application, in SADC context, of the principles of the Code contained in Articles 7, and 11, at national and regional level;
- (iii) on the basis of the review and discussion the proposal of a short term strategy and identification of elements for an action plan for policy harmonization at the SADC regional level which, in addition to actions already programmed through the SADC marine regional project portfolio, will support the policy convergence, in line with recent international instruments.

In designing the Workshop, the key consideration was the need to ensure the fullest involvement of participants from the administrative, academic and private sectors in each national team, in order to better reflect the views of the various stakeholders in fisheries management and trade at the national level. The Workshop was designed so as to provide a framework for discussion by the countries around the basic questions, in order to define strategies and actions. It is expected that these strategies and actions will be further developed subsequent to the Workshop at national and regional levels as well as in relation to the implementation of the Fisheries Protocol to the SADC Treaty.



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## OPENING OF THE SESSION

1. The Workshop on the Harmonization of Marine Fisheries Policy within Coastal Countries of Southern African Development Community (SADC) was held at the Zanzibar Safari Resort, Uroa Beach, Zanzibar, at the kind invitation of the Government of the United Republic of Tanzania, from 24 to 27 July 2001.
2. The workshop was attended by participants from the SADC coastal member States of Democratic Republic of Congo, Mauritius, Mozambique, Namibia, Seychelles, South Africa and Tanzania together with resource persons from FAO, INFOPÊCHE and the SADC Marine Fisheries and Resources Sector Co-ordinating Unit. The list of participants and resource persons is given in Appendix B.
3. During the opening ceremony statements were made by Honourable Chief Minister Shamsi Vua Nahodha, the Minister of Agriculture Mr. Mussa Ame Silima, Mr Omesh Khanna, the FAO representative in Tanzania and Mrs Hilda Khoeses, the Sector Co-ordinator of the SADC Marine Fisheries and Resources Unit.
4. Ms Hilda Khoeses, the Sector Co-ordinator of the Marine Fisheries Resources welcomed all participants and conveyed them greetings from Dr Iyambo, the Chairman of the Marine Fisheries Resources Sector. She thanked the Zanzibar government for agreeing to host this important workshop.
5. She briefed the participants on the progress in the sector such as the completion of the Protocol on Fisheries for both inland and marine fisheries sector. On adoption and signature by Heads of States and Government, the Protocol will become the core of the policy for the SADC Fisheries Sector.
6. She listed the projects that the Unit was currently managing; the BENEFIT programme and the Benguela Current Large Marine Ecosystem (BCLME) on the west coast; the Regional Fisheries Information System (RFIS), funded by DFID and the Monitoring, Control and Surveillance (MCS) programme, funded by EU (EDF). The total value of projects in the current SADC portfolio for the next five years exceeded 60 million US\$.
7. It was expected that these projects would contribute to the realisation of the strategy that would emerge from the Policy Harmonization workshop and would be to the benefit of the region. Ms Khoeses encouraged the participants to come up with a practical action plan for implementing the policy Harmonization project in SADC member countries in the relative short to medium.
8. Ms Khoeses also informed participants of the SADC institution restructuring process, which would involve strengthening of the SADC Secretariat based in Gaborone and the phasing out of the Sector Co-ordinating Units within the following two years. The member countries were therefore encouraged to ensure that Fisheries was clearly identified as a specific sector within the new structures and that specialised and experienced technical persons would be recruited to perform the required duties. The speech is attached as Appendix C to the report.
9. Mr Omesh Khanna, the FAO Country Representative welcomed the participants on behalf of the Director-General of FAO, Mr Jacques Diouf, the Assistant Director-General, Fisheries Department, Mr Ichiro Nomura, and the Sub-regional Representative for Southern and Eastern Africa, Ms Victoria Sekitoleko. He stated that the workshop was the result of the continuing close collaboration between the SADC Marine Fisheries Sector and FAO. He traced the origins and objectives of the current project and its contribution in the process of elaborating the detail of the SADC Fisheries Protocol which is the overarching instrument guiding the regional aspirations, relationships and responsibilities of SADC member countries in fisheries. The workshop had a catalysing role in bringing together a strategy for Harmonization and insight into the ways in which FAO and other Agencies could support SADC in the adoption of

the responsible fisheries principles set forth in the FAO Code of Conduct for Responsible Fisheries and the SADC Fisheries Protocol.

10. The Honourable Minister of Agriculture, Mr. Mussa Ame Silima described the workshop as a momentous occasion where SADC countries were charting out a new era of multilateral common strategies. The SADC countries anticipated a promising future for their fisheries industry. He hoped that the deliberations lead to better resource management and hence economic well – being.

11. The Chief Minister of Zanzibar, Honourable Mr Shamsi Vuai Nahodha welcomed the delegates to Zanzibar and officially opened the Workshop. In his speech, Mr. Nahodha stated that as the workshop is part of the implementation process of SADC Treaty, there was a crucial need to call for greater economic Co-operation between member states. Thus, there should be great interest in the exchange of fisheries information, capital and technology within the region creating a sound environment in marketing and education. In order to achieve this important role, there was a need to adjust investment policies and regulations to attract investors. The speech is attached as Appendix C to the report.

#### **DESIGNATION OF THE CHAIRPERSON, VICE-CHAIRPERSON AND RAPPORTEURS OF THE WORKSHOP.**

12. Mrs Hilda Khoeses was designated as the SADC Chairperson. The workshop unanimously elected the following office bearers:

Vice-Chairperson, Tanzania (Mr Saleh Osman/ Mr Raphael Mapunda);

Rapporteurs:

Mauritius (Mr Ismet Jehangeer)

Seychelles (Mr Joël Nageon de Lestang)

13. The agenda shown in Appendix A was adopted..

#### **PRESENTATION OF NATIONAL REPORTS BY SADC COUNTRIES**

14. Country teams from Mauritius, Mozambique, Namibia, Seychelles, South Africa and Tanzania had produced National Reports in preparation for the workshop. The team's leaders presented a briefing of the process and the main aspects of the National Reports.

#### **MAURITIUS**

15. Some aspects of the fisheries management such as formulation and implementation of fishery management plans and research programmes in Mauritius are not strictly in accordance with the FAO Code of Conduct for Responsible Fisheries and the necessity for improvements were highlighted. There was also the need for Harmonization in management of shared resources, and highly migratory fish and vessel monitoring with countries of the region.

16. In Mauritius, the Ministry of fisheries has a tradition of consultation and dialogues. Wide consultation with the stakeholders have been held during the elaboration of the Fisheries and Marine Resources Act of 1998 and the ten year fisheries Development plan. The same process facilitated the preparation of national report.

#### **MOZAMBIQUE**

17. The report had been produced by the staff of the Ministry of Fisheries and involved inputs from other relevant institutions such as the Fisheries Research Institute, Small Scale Fisheries Development Institute, and Fisheries Development Fund and the private sector.

18. Mozambique expressed dissatisfaction with the absence of simultaneous translation, as they would have difficulties in discussing in English such an important document. They recommend that, in future, SADC member States receive and discuss documents in their official language.

#### **NAMIBIA**

19. During the process of research for the document, the national team leader noted that: most monitoring activities were governed by Government policies but that institutions were not always well co-ordinated. Some functions seemed to be without a Ministry to assume complete responsibility. Other functions overlapped and were duplicated.

20. Fisheries statistics such as landings and contribution to GDP were recorded in different manner. The statistics could not always be reconciled with one another. Fish consumption data available did not seem to be soundly based as no formal survey seemed to have been done to arrive at the number currently used.

#### **SEYCHELLES**

21. Although the Seychelles Fisheries Legislation was quite comprehensive, the Management Plans were still inadequate. In most cases decisions were taken without the proper consultation of stakeholders except for the Department of Environment and some private interest groups that had an important involvement in National Marine Fisheries Policy.

22. There was some disappointment that the VMS system presently being implemented by Seychelles was not underscored as a key management tool for the near future. In fact vessels targeting tooth fish would no longer be registered in Seychelles until this system was in place.

23. New laws had been enacted in accordance with the FAO compliance agreement that would require Seychelles registered vessels fishing outside Seychelles waters to be authorised and to pay a fee.

24. The authors noted that in writing the report they were pressed for time and had to submit the report in a limited deadline. Otherwise their report could have been even more comprehensive.

#### **SOUTH AFRICA**

25. South Africa regarded the process of marine fisheries policy Harmonization as an important part of the implementation of the SADC Protocol on Fisheries. The team anticipated that the outcome of the process would result in an enhancement of fisheries management capacity and practice across the region. This was a necessary step to ensure sustainable utilisation and the ability to extract the maximum economic contribution from marine resources for the benefit of everybody in the region.

26. South Africa had recently reviewed its fisheries management legislation and enacted new legislation (Marine Living Resources Act/1998). The process of writing the national report afforded the opportunity to assess the implementation of this Act.

27. It was considered that trade and food safety aspects could have been more systematically integrated into the questionnaire.

28. Participation at this workshop was considered as an opportunity to share the South African experience and enrich their understanding of fisheries management in SADC.

## TANZANIA

29. There were delays between the filling in of the FAO – PH forms and signing of employment contracts. National authors were not released from their routine work specifically to undertake the report. It was further noted that FAO did not facilitate the process of merging the two separate reports from Zanzibar and Tanzania Mainland as national authors from both sides tackled the questionnaire as a team.

30. Several stakeholders including the private sector were consulted in preparation of the report.

## SADC FISHERIES TRADE:

### Elements for policy Harmonization

31. The presentation focused on the responses given on trade (marketing), quality and safety issues in National reports and integrated the findings with available information from the FAO and WTO. The main problem areas identified were (1) difficulties in adhering to new import requirements on food safety in the major export markets (EU and US); and, (2) constraints on individual action because of country membership in international organization such as the WTO.

32. The speaker recommended the strengthening of SADC training programme on HACCP and food safety and on the WTO trade Agreements including formalising a SADC common position on trade issues in multilateral trade negotiations.

### The role of INFOPÊCHE in strengthening fish trade flows in SADC

33. Reliable market information is a key ingredient of successful trade development for fish and fishery products. It is also one of the primary fish marketing problems for exporters and producers in developing countries.

34. To address this, FAO created in the early 80's the INFO NETWORK, which is, composed of INFOPÊCHE (Africa), INFOSAMAK (Arab world) INFOPESCA (Latin America and Caribbean); INFOFISH (South East Asia); INFOYU (China); EUROFISH (East Europe). These regional services are co-ordinated by FAO/GLOBEFISH which is a global data bank on Fish Marketing. The INFONETWORK has now become Intergovernmental Organizations for Marketing Information and Co-operation Services for Fish and Fishery Products.

35. The Government of Namibia, as co-ordinator of the Marine fisheries in the SADC region has agreed to host an INFOPÊCHE UNIT in Windhoek. This Unit will facilitate development links within SADC in addition to facilitating access to global markets that will have positive effects on region trade and offer better balance of products in the consumer markets. The UNIT, due to be established in 2001 will promote fish marketing and utilisation in the SADC region through such activities as training, publications of trade news, industry briefings.

36. The discussion following the trade presentations raised a number of questions. One question was whether it was better to try to harmonize quality standards in SADC or whether it was better to work individually. The presenters emphasised that the two approaches were not mutually exclusive and that some elements were best undertaken at the national level, others regionally. Emphasis was also placed on the crucial role of the industry. Some questions were asked as to the apparently relatively low level of intra-regional trade. It was suggested that the main reason is probably a lack of purchasing power in the region with exporters preferring to target high value markets outside the region. This was considered the appropriate response if the goal is to maximise the economic value of the fish resources of the region. The lack of infrastructure in terms of East-West roads probably inhibits intra-regional trade in lower-valued products (such as horse mackerel). The issues of Eco-labelling and risk assessment are likely to become increasingly important in the future. Delegates

suggested that SADC needed to take the lead so that SADC Member States are ready once these issues reach the WTO level.

#### **SADC MARINE FISHERIES LEGAL FRAMEWORK: ELEMENTS FOR HARMONIZATION**

37. FAO presented a synopsis of the technical report on the comparative analysis of the legal framework of the SADC coastal states. The presentation focussed on the findings of the report which urged the SADC countries to review their legal framework and to establish whether the legal framework:

- has clear statements in relation to scope of application and the authority responsible for fisheries management;
- facilitates broad participation in fisheries management including co-management;
- supports and implements policies and sets out the ability to use a wide range of fisheries management mechanisms and measures including the use of fishing rights or quotas and management planning;
- facilitates implementation of the Compliance Agreement and the Fish Stocks Agreement;
- enables the undertaking of the full range of monitoring, control and surveillance and enforcement action and, in this regard, to consider possible adoption of administrative processes and penalties to enforce fisheries laws, adjust penalty levels with the view to increase them, enhance Port state enforcement in the light of the lack of capacity and resources to undertake enforcement and other MCS activities, introduction of long arm enforcement, protecting confidentiality of information, particularly where it concerns fishing operations and where the use of VMS for vessel position and catch reports is anticipated.

Areas of possible action to harmonize laws with reference to the draft SADC Fisheries Protocol were indicated and were included in the draft action plan.

38. In the discussion that followed, the workshop commended the presenter for the quality of the report and further requested the FAO to ensure its publication and distribution.

39. The workshop reiterated the need to monitor Member State Fisheries legislation as well as relevant regulations. With regard to regulations, it was pointed out that beside technical measures, they often contain provisions of a policy nature (such as co-management mechanisms) which needed to be adjusted from time to time.

40. With regard to HACCP and other established quality assurance systems, it was recognized that those systems should be incorporated into national sanitary legislation complemented by relevant regulations dealing with the Inspecting Authority and standards for laboratories. This was identified as a possible priority field for Harmonization at regional level.

#### **OVERVIEW OF REGIONAL SYNTHESIS REPORT WITH EMPHASIS ON MANAGEMENT OF SHARED STOCKS**

41. The regional synthesis report was prepared on the basis of, and following the same structure as, the country reports. The three principal themes relating to legal, trade and fishery management issues were presented to the working group. The group worked through the report, which was revised on the basis of the various comments and corrections made. The Revised Version was adopted.

42. The common fishery management issues, drawn from the country reports, are presented in the synthesis report. Four broad issues were presented to the group. These were:

1. Integrating fisheries into coastal area management.
2. The broad area of fisheries management was broken into 5 sub-areas:
  - Shared stocks
  - Capacity control and management
  - Fishery management planning
  - Nature of fishery management systems
  - Fishery management and research
3. The broad area of socio-economies was broken into 3 sub-areas:
  - The macroeconomic role of the fisheries sector
  - Assessing the benefits and consequences of fisheries management
  - Socio-economic research
4. Possible conflicts between SADC Treaty obligations and fisheries management

For each issue, some initial suggestions were made for policy action. These suggestions were discussed in, and developed by, the sub-group on fishery management.

43. In the discussion that followed, it was drawn to the attention of the workshop that there were FAO International plans of action on excess fishing capacity, Illegal Unreported and Unregulated (IUU) fishing and shark management which placed monitoring and management requirements upon FAO members. One country pointed out that it had special provisions to grant fishing rights to other SADC member states and drew attention that such considerations would have to be conditional to the owners and crew being SADC nationals. Training of fisheries management personnel, management of artisanal fisheries were raised as priorities that needed to be included. Some initiatives such as the SADC East Coast Large Marine Ecosystem proposal and that of an LME proposed by Mozambique should be reinforced, not duplicated. It was also drawn to the meetings attention that international legal instruments required SADC member states to discuss the management of shared stocks within SADC as well as with non-SADC states.

## **WORKING GROUPS ON TRADE, LEGAL AND MANAGEMENT ISSUES**

### **Trade**

44. The group identified and prioritised several obstacles to trade. Actions to address the identified obstacles were suggested. It was suggested that the most urgent issue was the harmonization of legislation on fish quality, safety and trade.

### **Legal**

45. The legal group emphasised the need for legal practices and legal issues to be integrated into the management and trade areas under consideration. The group suggested a number of measures aimed at implementing the SADC Protocol on Fisheries and strengthening legal capacity within the region.

46. The group emphasised discussion, information sharing and capacity building in:

- MCS: it was felt that permanent committees should be established for implementation measures (particularly "Laey" type measures), effective penalties, and alternative measures.

- Trade: linkages had to be made to trade commissions established to implement the SADC Trade Protocol and further examination of individual countries' legislation with regard to trade and fisheries issues. This should be followed by regional meetings on this issue.
- Implementation of international agreements.
- Integration of legal consideration and approaches into fisheries management.

### **Management**

47. A detailed list of issues that had been prioritised according to the best elements of fisheries management in the region was presented. These were followed by a list of actions that are included in the draft action plan. Appendix H details the discussions of this sub-group.

### **CATEGORIZATION AND PRIORITIZATION FOR AN ACTION PLAN**

48. On the basis of the work of the sub-groups, a draft action plan was developed. This draft was discussed and modified in a plenary session. It is attached as Appendix G.

### **OTHER MATTERS**

49. The workshop noted a request from two member countries to have the documents of the meeting translated into the official SADC languages. The Marine Fisheries Resources Coordinating Unit (SADC) will consider the request in accordance with the usual rules for translation of documents.

50. It was noted that the DRC had not been involved in the preparation of a National Report as authors had not been available when the request had been made. This situation had since changed. DRC participants at the workshop requested that that consideration should be given to the preparation of a DRC National Report following the current workshop.

51. The workshop requested that all National Country Reports be compiled into a single report, without attached annexes, for circulation to member states.

52. Participants were reminded of the request for copies of recent fisheries legislative amendments to update the FAO legal database.

### **ADOPTION OF THE REPORT**

53. Revisions were requested of the Draft Action Plan. The report of the meeting was adopted on 27 July 2001.

54. The meeting was closed by the Minister of Agriculture, Mr Mussa Ame Silima.



**APPENDIX A****Agenda**

1. Opening: Welcome address (Host Government; SADC; FAO)
2. Designation of SADC Chairperson, Vice-Chairperson and Rapporteurs; Adoption of the Agenda
3. National teams' debriefing
4. (1) SADC Fishery Trade: elements for policy harmonization (FAO)  
(2) The role of INFOPÊCHE in strengthening trade follows in SADC region (INFOPÊCHE)
5. SADC Marine Fishery Legal Framework; elements for Harmonization (FAO)
6. Overview of the draft regional synthesis report, with emphasis on management of shared stocks (FAO)
7. Working Groups on trade, legal and management issues
8. Categorization and prioritization for draft action plan
9. Adoption of draft Report
10. Close

## APPENDIX B

## List of Participants

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## APPENDIX C

OPENING STATEMENT BY THE HONOURABLE SHAMSI VUAI NAHODHA  
CHIEF MINISTER OF ZANZIBAR

Mr. Chairman,  
FAO Representative,  
SADC Representative,  
Distinguished delegates,  
Ladies and Gentlemen,

With profound gratitude and highest appreciation, kindly allow me to take this opportunity to thank you for the honour you have bestowed upon me in officiating the opening of this important workshop.

While doing so, allow me Mr. Chairman to also extend my warm welcome to all the participants and particularly to those who have crossed Tanzanian border to come to this spice Island of Zanzibar. Your choice of this Island as a Venue for your conference has been the most appropriate and this you will prove yourselves during your short stay. I say KARIBU and you are guaranteed of the highest degree of hospitality.

Mr Chairman, I can see that all participants are set to deliberate on the agenda of this workshop. I am told this Conference will discuss issues pertaining to "Harmonization Policy and strategies" for fishing Industry in SADC Countries.

You can't be wiser than what you are in your topic selection, given the importance of co-operation that SADC countries must strive to achieve. As we continue to show our concern and seriousness on the need to achieve higher degree of fisheries Harmonization with in our region, bilateral and multilateral partners would think of extending their helping hands.

At this juncture, allow me Mr Chairman to take this opportunity to recognize the presence of our distinguished friends who represent their respective SADC member countries – Angola, Democratic Republic of Congo, Mauritius, Mozambique, Namibia, Seychelles, South Africa, and Tanzania. I am informed that our gathering here today has been made possible through the financial assistance of the FAO in particular, through collaborative hands of SADC. Let me assure you distinguished representatives, that your involvement and valuable assistance in the Implementation of this undertaking is highly appreciated by us all.

Mr Chairman, the Workshop as I am told, is part of an implementation process of SADC Treaty which calls for, enhancing, inter alia, greater economic co-operation between member states which I believe will honour this bold decision for future well being. I am therefore sure, Mr. Chairman that this workshop will take time to deliberate on this issue and will eventually find common strategies for Implementation. However, optimistic SADC Countries might be, yet they have to take special and serious concern on issues pertaining to the exchange of information on crucial issues such as research, technology so as to have consistent management systems both in territorial and deep sea grounds. We have to strive to encourage the flow of information, capital and technology into our region if we have complete in the world market.

There is a need Mr Chairman to see to it that our policies are geared towards creation of enabling environment for common trade technology and to strengthen and establish institutions for providing relevant support services and to enhance participation of the sector in order to ensure spontaneous and sustainable fisheries.

Mr Chairman, I will do injustice to this conference if I don't make my own contribution to this workshop. Mr Chairman, we have experienced that dependence on the artisanal fishery make unpredictable economy. We have to find a way out of this problem. We need to adjust our investment policies and regulation to encourage Foreign Direct Investment into our countries. Our present regulations are so bureaucratic and repulsive that they discourage investors to invest in our areas. Our human resources, the major resource we have is neither skilled nor well prepared to take up the emerging high tech employment opportunities.

Proper training and effective communication strategies among the member States are glaring needs for building human capacity in all cadres. This will make us to have an optimal expertise and human resource development, which will engage in the responsible use of the living aquatic resources on the basis of equity, participation effectiveness and mutual benefit. This should incorporate the exchange of researchers whom, among other things, their main obligation is to give information on the stock assessment and migratory species with particular emphasis in encouraging research into technologies to exploit not only unutilized but also under utilized living aquatic resources within the region.

We need to increase our investment in human capital with a view to attract export-led fisheries industry so as to enable us to plan for our place in the global market bearing in mind that investors are mobile and they always look for better environment. This is another issue that needs to be addressed in the context of National fisheries development.

Mr. Chairman, once again, I wish to reaffirm my country's support to the goal and objectives of SADC. I wish you all very successful deliberations in your workshop and a pleasant stay in Zanzibar.

With those humble remarks, I have the pleasure in declaring this workshop open.

I thank you for your attention.



**OPENING STATEMENT BY MS HILDA KHOESES  
SECTOR COORDINATOR OF THE MARINE FISHERIES RESOURCES  
WINDHOEK, NAMIBIA**

The Chief Minister,  
Hon. Shamsi Vuai Nahodha,  
Hon. Minister of Fisheries,  
Senior Officials,  
Distinguished Representatives of the Food, Agricultural Organization of the United Nations,  
Ladies and Gentlemen,

I feel honoured and privileged to address you this morning. Let me first of all welcome you all to this very important workshop where issues of policy Harmonization, for proper management of our fisheries resources will be discussed. We have been waiting for this regional workshop for a long time and it has not been so easy to organize. We thank the Food and Agriculture Organization of the United Nations for making it possible through their generous funding and technical support

I am also delighted to welcome the SADC secretariat representative who is among us today despite her busy schedule. I am sure that her presence would be of great help to this meeting especially in clarifying issues related to SADC in general and the current restructuring process in particular.

Mr Chairperson, allow me to share briefly with you the following points, which I think are crucial to the task that is ahead of us today and for the rest of this week. These are progress recently been made at the SCU level.

Of most noticeable of our progress, is the completion of the development of the Protocol on Fisheries, which took about two years of hard and participatory work at the regional level, for both inland and marine fisheries sector. This important policy and legal instrument aims at promoting the responsible use of living aquatic resources in the SADC Region. You are certainly aware that the SADC Treaty mandates all Member State to strive to move towards a greater economic integration. Part of this integration is done in the form of developing sectoral protocols. Several Protocols have already been developed and are currently been implemented, for example, the SADC Protocol on Trade. But I am aware that our friends from INFOPECHE will address this point later today.

The Ministers in charge of the Marine Fisheries and Resources in Maputo have approved/accepted the Protocol on Fisheries on 18<sup>th</sup> May 2001. The document was later scrutinised and cleared by both the Food, Agriculture and Natural Resources and Legal Sector. It is our hope that the process will be completed with the signing of the document by Heads of States and Governments, during their Summit, which will be held in Malawi in August this year. Once adopted, the Protocol will be the core of the programme of action of the Marine Fisheries Sector.

The implementation of this document has already begun through some of our current projects. I have brought with me some copies of the final version of the Protocol on Fisheries that I strongly recommend all of you to read because it forms the base for our discussion during his workshop. The document also provides a real framework and strong base for the future regional co-operation in the fisheries sector. It is evident that the Code of Conduct for Responsible Fisheries of FAO has largely inspired this regional achievement.

That is why I am so pleased to be here today and enthusiastic about working with you on this Project on Harmonization of marine fisheries policy. I am convinced that project could be the

cornerstone for the implementation of the Protocol on Fisheries and I therefore expect a lot from this workshop.

I would like to briefly remind you of the other projects that are currently underway which contribute to the achievements of the Sector: in the field of resources monitoring and assessment, we have two major projects that are covering the Benguela Ecosystem on the West Coast of our region. These are BENEFIT and the Benguela Current Large Marine Ecosystem (BCLME), funded by GEF, GTZ and NORAD. Proposals for new projects for the east coast resources assessment are currently being negotiated for. I have no doubt in my mind that the outcome will be fruitful.

Two other projects that started this year and are making good progress include:

- The Regional Fisheries Information System (RFIS), funded by the Department for International Development (DFID) of the United Kingdom. This project deals with Information Technologies and exchange of data in the region; and
- The Monitoring, Control and Surveillance (MCS) programme, funded by EU (EDF), which aims at better Monitoring, Control and Surveillance of the fishing activities within the national EEZ and high seas of interest to our Member States.

The scope of these projects goes from data exchange formats to complex law enforcement aspects through a large array of technical and institutional assistance. These projects are already striving for harmonization in range of issues.

I strongly recommend that at both national and regional levels these projects be clearly incorporated in the strategy that will emerge from this workshop, because we need to maximize the synergies and make the best use of the expertise and means provided by all sources for the benefit of the region.

To this end, allow me to underline here that the total amount of the current SADC marine fisheries projects for the next five years exceeds 60 million US\$.

Mr Chairperson, Distinguished Delegates, the main purpose of our activities is to manage our resources in a sustainable manner. I know that some members states have done progressively well regarding fisheries management. But it would be misleading to say that compliance in SADC fisheries is good. We simply do not have the necessary infrastructure, personnel or funding to do what is needed at a national level. We are bound to cooperate at a regional level if we want to achieve consistent results in management of our fisheries resources in the coming year.

I would therefore like to urge you that the strategy to be elaborated during this workshop must be practical and capable of being implemented by our countries in a relative short period of time. Prioritizing actions in relation to the extent of the threats is a rule of common sense that fully applies to the management of our complex sector.

I support that most of you are aware new challenge faced by the SADC institutions: the restructuring process. The idea, in short, is to strengthen the SADC Secretariat based in Gaborone and create there a Strategic Planning, Gender Development and Policy Harmonization Department composed of four Directorates. One of these is the Food, Agriculture and Natural Resources Directorate that will include all related sectors currently covered by the Sector Co-ordinating Units. Therefore, the phasing out of the Sector Co-ordinating Units is programmed to be effected within the next two years.

I will not dwell on with all the concerns raised by this restructuring process. But I can report here that Ministers in charge of the Fisheries Sector have expressed the will to continue to meet on annual basis and keep involved in the coordination of the regional activities. Furthermore, they have

launched a special working group, composed of representatives of our coastal countries and have tasked them to monitor the process and brief the SADC on restructuring process. Our current interest is first to ensure Fisheries will be clearly identified as a specific sector within the new structures and that a right number of specialized and experienced technical persons will be recruited to carry out the current features.

In conclusion, Mr Chairperson, I would once again like to express my heartfelt appreciation to the government and the people of Zanzibar for allowing us to hold this important workshop here and making us feel at home. I will fail in my duty as the Sector Coordinator if I do not give a special word of thanks to the FAO. Once again, I thank them for making this project a reality. I am sure that with the Protocol of Fisheries complete only waiting to be signed and ratified, we have made a start to reform the content of our policies and strategies, we count on the present project to help us to turn it soon into effective decisions.

Thank you.

## APPENDIX D

**Comparative analysis of the fisheries legal frameworks of SADC coastal countries: status and options**

by

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**ABSTRACT**

This is a brief study of existing fisheries laws on SADC Countries. The Study makes observations as to how such laws facilitate or otherwise, the effective management of fisheries using the requirements of the FAO Code of Conduct for Responsible Fisheries as a reference point. It also presents a brief description of the status of implementation, in these States, of the main international fisheries instruments, namely the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas adopted by the Conference of the Food and Agriculture Organization of the United Nations on 24 November 1993 and the Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted at New York on 4 August 1995. The areas that the SADC States may have to focus on to improve their fisheries laws both in respect of general fisheries management as well as the implementation of international fisheries instruments are briefly stated. The study also provides an overview of the opportunities at the regional level for Harmonization of fisheries laws of the States subject of this study.

**A. INTRODUCTION**

The FAO technical assistance project TCP/RAF/8933 "aims at identifying and analyzing priority marine policy issues at regional level with the view to develop a medium term strategy in support of SADC process of Harmonization of marine fisheries policy and legal framework". A component of the project involves work by a FAO/LEGN legal officer to assist in the preparation of an outline for national reports and to undertake a comparative study of the fisheries laws of SADC Member countries.

This study is neither comprehensive nor exhaustive. It is basically a condensed comparative desk study of the fisheries laws of SADC coastal states namely Mauritius, Mozambique, Namibia, Seychelles, South Africa and Tanzania.<sup>1</sup> Typically, the strength of a comparative desk study depends on the information and material made available for the purposes of the study. While the national reports of the SADC countries compiled under TCP/RAF/8933 are the main references of this study, attempt is made to present, as much as possible, an independent overview using other sources of information available to the author.

The study provides a brief synopsis of existing fisheries laws of certain SADC Countries and makes observations as to how such laws facilitate the effective management of fisheries using the requirements of the FAO Code of Conduct for Responsible Fisheries (the Code) as a reference point. It also presents a brief description of the status of implementation, in these states, of the main international fisheries instruments, namely the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas adopted by the Conference of the Food and Agriculture Organization of the United Nations on 24 November 1993 (Compliance Agreement) and the Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted at New York on 4 August 1995 (Fish Stocks Agreement). The areas recommended for the SADC States to focus on to improve their fisheries law both in respect of general fisheries management as well as the implementation of international fisheries instruments are briefly stated. The study also provides an overview of the opportunities at the regional level for Harmonization of fisheries laws of the States subject of this study.

The study is presented in this paper in 3 main parts. The first part (B) is a brief presentation and summary of the provisions and observations made on the fisheries law of each country in relation to their ability to implement national fisheries policies and whether they contain the basic features for sound fisheries management as envisaged by the Code of Conduct. This includes observations on whether the relevant law facilitates the use of proven management options and trends. Fisheries management options and trends in this context, include elements such as fishery planning and the ability to ensure broad participation in fisheries management, mechanisms for controlling access to fishing and effort control and opportunities for effective monitoring, control and surveillance including enforcement. It will be noted also that the review of the fisheries law for the purpose of the comparative study focuses on the principal fisheries legislation in each country. This part of the paper also examines whether the relevant law of each country facilitates implementation of the Compliance Agreement and the Fish Stocks Agreement. This analysis is made against the overview of the two Agreements provided in **Annex I** and the provisions of the Fish Stocks Agreement and the Compliance Agreement that are identified as having legislative implications outlined in **Annex II**. The second main part of the paper (C) is a summary of the findings of the review undertaken in B. The third main part of the study (D) presents the overview of the opportunities at the regional level for Harmonization of fisheries laws of the States subject of this study.

It should be remembered, with respect to the analysis of the implementation of international instruments, that the focus of the analysis is only on implementation of the Compliance Agreement and the Fish Stocks Agreement. These two agreements generally reinforce certain classical requirements relevant to fisheries management found in the United Nations Convention on the Law of the Sea of 10 December 1982 (1982 UN Convention). Examples of these requirements include the need to authorise vessels for fishing, reporting and enforcement. In reviewing the performance of the SADC Coastal States on the implementation of the Agreements, the study does not assess the performance of the States against these classical requirements but focuses on the additional requirements imposed by the agreements. Prominent among these additional requirements are; the prescriptive nature of the exercise of flag state responsibility particularly in relation to high seas

<sup>1</sup> Angola's fisheries laws are only slightly reviewed. The laws of the Democratic Republic of the Congo (DRC) were not available.

fishing; the need to ensure compliance with international conservation and management measures; establishment of fishing records; reporting of vessel data including the need to provide reports to FAO; establishment of boarding and inspection procedures for the high seas; enforcement against serious violations; and, setting fisheries conservation and management measures and ensuring compliance with such measures through global, regional and sub-regional cooperation including through regional fisheries management agreements or arrangements. It shall be noted that the mere review of fisheries legislation is not a satisfactory way to measure implementation of the Agreements. Evidence of this could be found, among other things, in individual State practice and the conduct of its international relations.

## **B. BRIEF SUMMARIES AND ANALYSIS OF FISHERIES LAWS**

### **1. MAURITIUS**

#### **1.1 Fisheries law and related legislation**

The *Fisheries and Marine Resources Act 1998* (FMR Act) is the principle legislation governing fisheries management and conservation in Mauritius.

The FMR Act invokes the application of the *Maritime Zones Act* and the *Public Officers Protection Act* and the *Environment Protection Act 1991* (in relation to fish farming).

The *Wildlife and National Parks Act 1993* and the *Wildlife Regulations 1998* made under this Act, which implement the obligations of Mauritius under CITES, are also relevant to fisheries management.

The *Environment Protection Act 1991*, (the main legislation for the protection of the environment, including the marine environment) is particularly important because it requires the promoter of any undertaking which is likely to affect the environment to apply for an Environment Impact Assessment licence from the Department of Environment. Of equal importance is the power of the Minister responsible for environment to make regulations specifically for the purpose of preventing, reducing and controlling pollution in the coastal and maritime zone. The Director of Environment may, where he is of the opinion that an enterprise involves an imminent risk of serious pollution to the environment, serve on the person responsible for the enterprise, a prohibition notice requiring the person to take measures to remove the risk.

#### **1.2 Scope, purpose and administration**

The stated purpose of the FMR Act is to provide for the "management, conservation, protection of fisheries and marine resources and protection of the marine ecosystem."

Typically, the FMR Act vests power in the Minister to set up institutions for the exercise of certain management responsibilities. The Minister can set up Consultative Committees using this power. The FMR Act also empowers the Minister to set up Marine Protected Areas, make regulations in relation to various management measures, approve certain activities (such as approval of imports and exports of fish or fish products) and to issue authorisations. Most of the administrative and management actions are however vested in the Permanent Secretary.

#### **Observations**

*On the whole, the FMR Act is able to give fair support to implementation of policy based on the principle objective of the "management, conservation, protection of fisheries and marine resources and protection of the marine ecosystem." However the overall legal framework can be further improved so that it explicitly supports management planning as well as be made flexible to respond to changes such as the need for changes to limits on number of licences for nets.*

*The FMR Act by implication gives full mandate for fisheries management in the Minister although this could be clearly stated so that there can be no question as to who is the ultimate authority on fisheries matters.*

*Consultative Committees provide an opportunity for consultation of stakeholders. However, Section 3 which establishes these institutions gives discretionary powers to the Minister to chose who is to be on the Committees. Thus whether or not a Committee is representative and competent depends entirely on the Minister's actions.*

*There is no clear legal basis to establish broader participation beyond participation through the Consultative Committees. There could be limits placed on the mandate of the Consultative Committees and clearly, their legislative basis cannot be used to establish other management approaches such as co-management.*

*There is no logical sequence of the provisions of the FMR Act as they are currently set out and makes the Act a difficult reference document to follow. The arrangements of the provisions of the FMR Act could therefore be improved but this is not a substantive matter.*

### **1.3 Fisheries management mechanisms and measures**

The FMR Act contains provisions designed specifically for the protection of the aquatic ecosystem. The FMR Act makes it an offence to place, throw or discharge any poisonous substance into the waters of Mauritius. It also provides for the proclamation of Marine Protected Areas which, may be designated as Fishing Reserves, Marine Parks or Marine Reserves to better protect, conserve and manage the marine environment. Stringent conditions are set in relation to activities carried out in those areas.

The Minister can prescribe measures by way of regulations for the protection, conservation and management of fisheries. Typical matters that can be regulated include the prohibition of fishing by certain means, in certain areas and or during certain periods; the prohibition of fishing of a specific species, size, or gender of fish; conditions to be attached to possession, manufacture or purchase of any gear; schemes for setting and allocating quotas and for limiting entry into all or specified fisheries; and, the prohibition of an activity likely to disturb the marine ecosystems and habitats.

Licensing is used as the primary mechanism to regulate fishing. Licences are required for: the use of specified nets and within specific limits on the number of licences to be issued; the use of foreign fishing vessels in Mauritius waters subject to the pre-existence of an fishing access agreement between the Government on the one hand and an intergovernmental organization, a State or an association on behalf of the vessels to be licensed, on the other (unless this requirement is dispensed by the Minister and the applicant provides financial and other guarantees); and, the use of a Mauritian vessel for fishing or related activity in Mauritian waters or on the continental shelf, the high seas or the fishing zone of a foreign State. Boats must be registered before they can be used.

An authorisation from the Permanent Secretary is required for fish farming while approvals are needed from the Permanent Secretary for the import and export of fish and fish products and for the manufacture, sale and supply of an implement (defined as a device used or intended to be used for fishing).

#### **Observations**

*There are no provisions for management planning as has been noted. This does not prevent the fisheries authorities from adopting such a management mechanism but it would be better if management planning is institutionalised.*

*The FMR Act provides the minimum range of management options. Licensing for fishing and related activity is the main mechanism to regulate access while authorisations are needed for fish farming and the import and export of fish and fish products require approvals. There is no limitation on the issuing of Licences to foreign fishing vessels outside an access agreement where the Minister invokes Section 38 (2) and this may be open to abuse.*

*Under Section 42, it is not clear if the prohibition on the use of boats which are not registered means prohibition for use in relation to fishing or for any other purpose.*

#### **1.4 Monitoring, control and surveillance**

Sections 40 and 41 of the FMR Act enable the Minister to attach conditions, which may include MCS requirements such as reporting, to licences issued to vessels and boats.

Sections 42 and 43 provide for registration and marking and identification of vessels and boats which are important for MCS purposes. These provisions are complemented by section 50 which requires the Permanent Secretary to record the particulars of the vessel including name, international radio call sign and net registered tonnage in the register.

Section 45 provides for the ability of the minister to designate places where catches can be landed while section 46 allows an authorised person to board a vessel for the purposes of inspection and collection of information in relation to fishing activities and fisheries resources.

Sections 48 and 49 relate to reporting upon departure and arrival of Mauritian fishing vessels respectively. The Master of a fishing vessel is required to inform the Permanent Secretary of intended date and time of departure of the vessel and comply with such conditions and provide such documentation as the Permanent Secretary may require. A Mauritian fishing vessel must also advise the Permanent Secretary of the expected time of arrival into port and upon arrival in port, report on the composition of catch, information on catch and effort and location of catches, and other information as may be required as well as provide the log book for examination and make the catch available for sampling and inspection.

Part VIII of the FMR Act deals with enforcement. It contains the typical enforcement provisions found under many fisheries legislation such as those which vest powers of search and entry (ss. 51 and 53), powers of arrest and detention (s. 54) the powers of seizure of fish (s. 55) and of vessels (s. 53) and the custody of seized articles (s. 58) and disposal of seized fish (s. 59). The provisions on enforcement are complemented by section 72 under Part X which gives jurisdiction to District and Intermediate Courts to try offences under the FMR Act.

#### **Observations**

*A fairly solid MCS programme could be developed under the FMR Act using the provisions highlighted above. The requirements for registration of vessels, in particular the recording of particulars of vessels and the requirement for vessel markings enables a fisheries management authority to know the fishing capacity and to monitor the activities of licensed vessels. The power to designate ports for landing catches and for inspection enables the fisheries management authority to focus their on-shore monitoring and control activities at a specific place. The vessel reports before departure and entry into port ensure that the authority is put on notice so that inspection activities could be planned in advance. However, other reports or records such as at-sea catch records or position of vessel reports could provide a more complete picture of fishing effort for management planning purposes. If this is not already required, regulations could be made or conditions to licences could be imposed to require such reports.*

*The powers of entry and search seem adequate although entry and search would have to be normally undertaken under a warrant issued by a Magistrate. Searches can be done without a warrant but the*



*element of impracticability has to be established by the officer exercising the powers of search. It may be easier to establish impracticability of obtaining a search warrant at sea but not so easy if search is done on a vessel in port.*

*The powers for investigating an offence under the FMR Act, particularly at sea, and the need to secure evidence are not as comprehensive compared with the fisheries legislation in other jurisdictions. The provisions in relation to enforcement could be strengthened to ensure such comprehensiveness.*

*The introduction of administrative procedures and penalties could be considered as an alternative law enforcement mechanism.*

## **1.5 Implementation of Compliance Agreement and Fish Stocks Agreement**

Mauritius has not lodged its instrument of acceptance for the Compliance Agreement although it appears to apply the requirements of the Agreement. Mauritius ratified the Fish Stocks Agreement on 25 March 1997.

Section 39 of the FMR Act prohibits fishing by Mauritian vessels or boats on the continental shelf, the high seas and the fishing zone of a foreign state except under a licence issued under Section 39. The Minister may not issue a licence under section 39 unless he is satisfied that the vessel is a Mauritian vessel or that the boat is registered under section 42 or that the applicant has satisfied the conditions prescribed by regulations. Licences are valid for not more than 1 year and are not transferable. If a licence under section 39 is issued to a vessel that has ceased to be registered under the Merchant Shipping Act 1986, such licence issued to the vessel will lapse on cessation of its registration.

### **Observations**

*Section 39 only satisfies the most basic requirement under the Compliance Agreement and the Fish Stocks Agreement which is for Flag States to prohibit unauthorised use of vessels flying their flag from fishing in waters beyond their national jurisdiction.*

*Pursuit, boarding and inspection of foreign vessels can be done under section 57 but these can be done only in a "hot pursuit" situation under international law and is therefore of limited application.*

*Section 47 provides that transshipment can be regulated so regulations ought to be made to control transshipment.*

*Regulations that can be made under section 39 or amendments to the FMR Act could provide for further requirements in order to satisfy the terms of the Compliance Agreement and the Fish Stocks Agreement. Such regulations or amendments could set out requirements for compliance with international conservation and management measures including the measures established by regional or sub-regional agreements or arrangements to which Mauritius is a party, the exchange or sharing of information with other States and FAO and MCS activities including boarding and inspection procedures for Mauritius flag vessels beyond waters under national jurisdiction.*

## **2. MOZAMBIQUE**

### **2.1 Fisheries law and related legislation**

The Act 3/90 approving the Fisheries Act of 26 September 1990 is the principal fisheries legislation in Mozambique. It has been implemented by various subsidiary legislation a list of which follows:

- Decree No. 37/90 of 27/12/1990 enforcing the Fisheries Act
- Ministerial Decision of 29/02/1992 implementing Act No. 3/90 approving the fisheries Act

- *Ministerial Decision of 29 February 1992* on the application of sanctions established by Act No. 3/90 approving the Fisheries Act.
- *Ministerial Decision No. 118/91 of 13/11/1991* establishing a closed season and total allowable catch for shrimp fishing.
- *Decision of 13 November 1991* establishing fishing vessel marking requirements.
- *Decision of 18 February 1999* prohibiting catching, collecting and trading of ornamental fish and coral.
- *Decision of 20 June 1999* providing for an industrial trawl fishing restriction beyond 3 nautical miles from the coastline.
- *Decision of 16 July 1991* entitling the Provincial Supervision of Agriculture to issue licences for artisanal inland fishing.
- *Ministerial Decision No. 138/92 of 16/09/2001* establishing minimum mesh for trawl fishing for shrimps.

Related legislation include: the *Sea Law No. 4/96 of 4 January 1986*, the *Decree-Law No. 31/76* establishing rights of the Popular Republic of Mozambique on economic resources of the adjacent sea of 19 August 1976 and the *Decree-Law No. 47.771 of 27 June 1967* implementing Act 2.130 establishing the territorial sea baseline. The *Law of the Sea No. 4/96* defines the maritime zones, in particular the limits of the territorial sea, of the air space over the territorial sea and its bed and subsoil as well as the internal waters, the contiguous zone, the exclusive economic zone (EEZ) and the continental shelf. It further deals with issues relating the right of innocent passage in the territorial sea to the issues of submarine cables and pipelines under the continental shelf. Other chapters under this Law deal with the aquatic public domain (*dominio publico maritimo and dominio publico lacustre e fluvial*), the legal status and classification of vessels etc.

## 2.2 Scope, purpose and administration

The basic *Fisheries Act No. 3/90* (basic Act) is a framework law for fisheries and applies to all waters under jurisdiction of Mozambique and, as far as enforcement is concerned, to all Mozambican fishing vessels fishing in international waters or the waters of third countries (art.2). The basic Act defines 6 types of fisheries and provides guidance for their definition to the regulatory level (art. 3). These fisheries are (a) subsistence fisheries; (b) artisanal fisheries; (c) semi-industrial fisheries; (d) industrial fisheries; (e) scientific and research fisheries; (f) recreational fisheries. Title II of the basic Act relates to fisheries management and administration, and lays down the general principles. The Council of Ministers plays a key role in the overall management and development of the fisheries. It sets the general policies for the sector development at central and provincial/local level, negotiates and concludes international (especially regional) cooperation agreements (Harmonization, fishing licences, shared stocks, management measures for specific zones, etc.) and ensures the preparation and implementation of fisheries development plans. Special consideration is given also to the development of small scale fisheries, to the creation of a fisheries development fund, resolution of conflicts among fishers, the development of marine and freshwater aquaculture, inland fisheries, recreational and sports fishing as well as the fisheries processing plants. The Secretariat of State for Fisheries is vested with specific responsibilities, and in particular policy-making powers in these areas. The responsibilities of the Council of Ministers can be delegated to the Secretariat of State for Fisheries (art. 69)

### Observations

*It seems that the basic Act has wide scope. It appears to address fishing by Mozambican vessels outside the Mozambican waters including by ensuring that Mozambican vessels do not fish illegally in other countries' waters. These vessels are also registered and their high seas fishing activities are thus subject to control. It is worthy of note that the term "vessel" is defined as any type of floating construction used or capable of being used as a means for transport on water or underwater. This is a rather broad definition of fishing vessel as it may include, for example, a manually operated raft or submarine.*

*The Council of Ministers are a central figure in the management and development of fisheries from the stage of policy making through to cooperation on enforcement. It can share its responsibilities by delegation to the Secretariat of State for Fisheries. The only drawback in the power of sharing responsibilities is that it can be delegated to one person only. It is obvious that basic Act heavily relies on a top-down approach in management and there is no formal basis for stakeholder input except, to some extent, in the realm of resolution of conflicts among fishers. However, even in this area, the state agencies take a lead role.*

### **2.3 Fisheries management mechanism and measures**

Following the definition of the general principles regarding the management and administration of fisheries, the basic Act deals (in its Chapter II of Title II) exclusively with the legal regime for fishing permits. As a general principle, fishing, with the exception of subsistence fisheries, can only take place with a permit, issued by the Secretariat of State. Permitting is also used for the construction of any new Mozambican fishing vessel (art. 29(4)). There is a fishing vessel register and criteria are set for the allocation and renewal of fishing licences. Foreign fishing vessels may only operate, in principle, within the framework of a fishing agreement (art. 32(1)) or, as an exception, under a foreign fishing licence (art. 32 (3)).

Foreign fishing vessels are not allowed to fish in territorial waters (12 nautical miles) (art. 34(2)) but the Secretariat of State for Fisheries may grant special permits for specific operation (art. 34(3)(a)) or for research or scientific fishing activities (art. 34(3)(b)).

The basic Act vests general broad powers in the Secretariat of State for Fisheries to define fisheries conservation measures. Such conservation measures may include measures relating to mesh size, closed seasons, prohibited or restricted areas, use of fishing gear, maximum allowed catch per vessel or per person in a particular fishery or area, prohibited fishing methods and measures or plans limiting the access and the fishing effort. Other typical matters that can be regulated relate to the fishing of rare or endangered species or marine mammals. As a typical general principle the use of explosives or other toxic substances and electric devices for fishing are prohibited.

Under the basic Act quality of fishery products receive special attention too. The Secretary of State of fisheries can prescribe measures and promote codes of practices by way of regulations relating to quality control of fishery products. Typical matters that can also be regulated relate to the inspection of quality control for export purposes, the issuing of quality certificates, etc.

The *Marine Fisheries Decree No 16/96* is also relevant to fisheries management. The Decree regulates in detail the basic provisions laid down in the basic Act, applies to all persons, whether individuals or not and whether Mozambican or foreigner, which fish in the marine waters of Mozambique. With respect to fisheries management, it sets the required contents of fisheries management plans, mechanism for managing a particular fishery (TAC, fishing quota, criteria for setting quotas, etc.). It provides for the establishment of the Commission for Fisheries Management which is responsible for setting TAC, fish quotas, closed seasons, restricted areas and other management measures with regard to a particular or more reference fisheries.

Under the conservation measures, provision is made for the setting of marine national parks, marine nature reserves, protected marine areas, areas unsuitable for sanitary reasons and areas for marine security.

#### **Observations**

*The basic Act relies heavily on licensing and the permit mechanism for the management of fisheries (input control). However, it also provides alternative mechanisms for fisheries management (e.g. TAC, fishing quotas). These options combined with management plans and the ability to establish marine national parks, marine nature reserves, protected marine areas and marine sanctuaries could*

*be used by the authorities to establish a comprehensive management regime for general fisheries management or the management of a specific fishery.*

*It is noted again that the legal framework sets out a centrally driven management approach. Such an approach relies heavily on adequate capacity and resources of the fisheries authorities to be able to ensure effective implementation of the law and compliance with management measures*

*The power of the Secretariat of State for Fisheries to issue licences to foreign fishing vessels under an agreement ensures transparency in the process of licensing of foreign fishing vessels. The exceptional power of the Secretariat of State for Fisheries to issue a licence even if there is no agreement could compromise such transparency.*

#### **2.4 Monitoring, control and surveillance**

Control of fishing operations, is one of the cornerstones of the basic Act of 1990 (Title V). The Secretariat of State for Fisheries has exclusive authority for the control of fishing operations in the waters under jurisdiction of Mozambique. However, the Secretariat may delegate this authority to other agencies and establish appropriate co-operation mechanisms with other administrations (art. 41). The Act then goes on to define the responsible enforcement officers and the inspection powers (arts. 42 and 43). Typically these powers include powers of search, entry, seizure of fish and of vessels, custody of seized articles etc. Special provision is made for the right of hot pursuit as provided for in international law (art.45). Consistent with the provisions of the 1982 UN Convention, the Secretariat of State for Fisheries must immediately inform the relevant bodies when a foreign vessel is apprehended.

Routine inspections should not, as far as possible, encroach on normal fishing activities (art. 44). Fishing offences are listed according to their nature and seriousness. Specific fishing offences are punishable by fine or by the confiscation of the fishing gear and/or catch. The setting of the fine is left to the Secretariat of State for Fisheries so that it may reflect the particular circumstance (art. 58).

The enforcement section of the basic Act concludes with a chapter on those bodies empowered to set the penalties, including administrative and criminal penalties. The Act establishes the administrative nature of penalties by authorising the Secretariat of State for Fisheries to apply all the penalties envisaged by the Law or its implementing regulations (art. 60). However, any penalty set may be disputed in court (art. 61). Interestingly, article 66 of the basic Act allows for the State to be held responsible in the event of damages to vessel owners resulting from illegal acts from Mozambican authorities or fisheries inspection authorities, and especially from unwarranted immobilisation. The basic Act prescribes that in such situations the vessel owner shall be awarded compensation in the form of fishing rights.

Article 23 of the Fisheries Act No. 3/90 sets the basic regulatory powers for the marking of fishing vessels and fishing gear and article 138 of Decree No. 16/96 enforcing the Fisheries Act provide explicitly for the marking of industrial and semi-industrial, Mozambican or foreign fishing vessels and fishing gear.

The Marine Fisheries Regulation (Decree No16/96) regulates the control of catches and the monitoring of resources (Chapter VI). It deals with issues relating to the keeping of logbooks, the keeping and maintaining of records on catches and fishing effort, the catch details and reporting sheets. Typically, any enforcement officer may demand a person to produce such records. The Regulation contemplates further aspects relating to the reporting of entry into or departure from Mozambican waters, the position of fishing vessels and commencement and termination of harvesting operations.

### Observations

*In general, there is adequate basis for MCS activities and programmes provided in the basic Act. The basic Act appears silent on surveillance matters but these may well be dealt with under other legislation.*

*The delegation of authority by the Secretariat of State for Fisheries for the control of fishing operations in the waters under jurisdiction of Mozambique to other agencies and to establish appropriate co-operation mechanisms with other administrations (art. 41) is an interesting and useful approach in fisheries enforcement. This provides a basis for inter-agency MCS and enforcement programmes and activities.*

*The Fisheries Act does also authorise the Council of Ministers to enter into regional arrangements for statistics and enforcement but only cooperation (and not regulatory powers) is envisaged.*

*The ability of the Secretariat of State to administratively deal with a contravention and to apply the penalties set out under the basic Act is also worth noting.*

*Other interesting aspects in enforcement is the clearly set out responsibility of the State in relation to wrongful exercise of powers and the obligation of State to compensate by awarding fishing rights.*

### **2.5 Implementation of Compliance Agreement and Fish Stocks Agreement**

Mozambique is neither a party to the Compliance Agreement nor the UN Fish Stocks agreement. As the basic Act was promulgated in 1990, it is understandable that it did not envisage the implementation of the two Agreements.

### Observations

*The fact that Mozambique is not a party to the two agreements does not mean that it could not give effect to the principles of the agreements. Indeed, as regards flag state responsibility (a basic principle stated under both agreements), there is clear indication in the basic Act (art. 2) that Mozambique by ensuring that it can enforce its laws over its nationals and Mozambican vessels in international waters or waters of third parties is giving effect to flag state responsibility. This could be built upon if it is decided that Mozambique shall become party to the two agreements or give effect to them.*

## **3. NAMIBIA**

### **3.1 Fisheries law and related legislation**

The *Marine Resources Act* (MR Act) 2000<sup>2</sup> is the principle fisheries legislation in Namibia. It repeals the *Sea Fisheries Act of 1992*. Related legislation include the *Merchant Shipping Act 1951* and the *Territorial Sea and Exclusive Economic Zone of Namibia Act of 1990*. The *Merchant Shipping Act* is relevant for the purposes of establishing the nationality of vessels (in this case to establish whether or not a vessel is a Namibian vessel) while the *Territorial Sea and Exclusive Economic Zone of Namibia Act* is relevant for determining the jurisdictional scope of the MR Act.

<sup>2</sup> The review of fisheries legislation for Namibia is based on the Marine Resources Act 2000 which has been enacted by Parliament but is not yet in force. The MR Act is planned to come into operation later in 2001 with the first sections of the Act to be in operation in August 2001 (Information based on personal communications with Mr. Per Erik Berg). It should be noted that Namibia had, in general, a successful fisheries management and MCS programme under the Sea Fisheries Act.

### 3.2 Scope, purpose and administration

The MR Act is to “provide for the conservation of the marine ecosystem and the responsible utilization, conservation, protection and promotion of marine resources on a sustainable basis; for that purpose to provide for the exercise of control over marine resources; and to provide for matters connected therewith.”

The MR Act applies in Namibian waters which is defined as “the internal waters, the territorial sea, the contiguous zone and the exclusive economic zone of Namibia as defined in the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990), and includes the sea bed up to the high water mark”. The Act also applies, in as far as enforcement is concerned, to Namibian flag vessels in or outside Namibian waters and to foreign flag vessels to the extent authorised by international agreements to which Namibia is a party, outside Namibian waters.

The MR Act provides that the Minister may determine the general policy with regard to conservation and utilization of marine resources. The Minister is also vested with typical powers such as the powers of appointment of officers or persons to serve in various capacities under the MR Act, receive applications for fishing rights, set total allowable catch and management measures and make regulations under the MR Act.

The Permanent Secretary is vested with administrative powers under the MR Act including the chairing of the bodies established under the MR Act, the receiving of applications, the issuance of notice for a possible contravention, and receives reports or information required under the MR Act.

The MR Act establishes two multi-sectoral and representative institutions: the Fisheries Observer Agency, and, the Marine Resources Advisory Council. The former body deals with MCS matters and will be discussed later. The Marine Resources Advisory Council advises the Minister in relation to any matter on which the Minister is required to consult the Council and other matters referred to the Council by the Minister.

#### Observations

*The MR Act ensures that that government policies guide fisheries management in Namibia and therefore explicitly provides that the Minister determines such policy from time to time. Section 3 leaves no doubt that the management, protection and utilization of marine resources in Namibia and Namibian waters shall be subject to the MR Act.*

*Broad participation in fisheries management decision is possible under the auspices of the Fisheries Observer Agency and the Marine Resources Advisory Council.*

*There is no provision to establish other forms of participation in fisheries management, in particular, co-management. However, this may be a subject that falls under the purview of other legislation.*

### 3.3 Fisheries management mechanisms and measures

Under the MR Act, the harvest of marine resources for commercial purposes in Namibian waters is possible only under a right, an exploratory right or a fisheries agreement, or, in the case of a quota fisheries, under the terms of a quota (s. 32). Applications for rights under the Act shall be submitted within a specified period and shall be determined and granted by the Minister.

Namibia may, through the President, enter into a fisheries agreement with a member country of the Southern African Development Community to enable such country to harvest marine resources in Namibian waters (s. 35). A person who fishes under such fisheries agreement shall be apply for a quota and shall fish in accordance with the terms of the quota (as if it were a right) where such quota is granted.

The Minister may set a total allowable catch to limit the quantity which may be harvested in respect of any marine resources. (s. 38).

The Minister may subject the harvesting of marine resources to such management measures he considers necessary and such measures may include quotas (s. 39).

Persons who wish to use fishing vessels to harvest marine resources must obtain a licence (section 40). However, such licences can only be issued if the person holds a right or an exploratory right or a quota where a quota has been issued for that resource.

The MR Act prohibits the use of explosives and noxious substances to kill or disable fish. The use of drifnets is also prohibited. The Minister has powers to prescribe other management measures (s. 47).

Section 51 of the MR Act provides that the Minister may designate a specified area of Namibian waters, State land or land subject to the jurisdiction of a traditional authority to be a marine reserve for the protection or regeneration of marine resources and set requirements and objectives in respect of such reserves (s. 51).

### Observations

*Namibia has a well established and operational system of harvest rights, exploratory rights and quota system in place which is working well. This system of rights and quotas is rooted in the MR Act (formally the Sea Fisheries Act). The rights and quota system works along side the licensing system for vessels. It appears from various reports on the successes of the Namibian fishing industry that the legal framework adequately provides for management of marine resources.*

*It is noted that there is no management planning provision under the MR Act. This does not prohibit the Namibian authorities from using management plans specific to the management of each fishery and it is reported that management plans exist for the major fisheries. Broad plans such as the 1991 White paper "Towards Responsible Fisheries Development of the Fisheries Sector" and the Strategic Plan 1999-2003 have also managed to ably guide the management of fisheries in Namibia. However, it may be useful to include the requirement for the preparation of fishery specific management plans in legislation.*

### **3.4 Monitoring, control and surveillance**

The MR Act sets out matters related to MCS and enforcement in various sections. Sections 4-6 deal with the appointment of fisheries inspectors and honorary fisheries inspectors and their respective powers. Section 7 deals with the appointment of observers and their functions as well as set out the obligations of holders of a right, exploratory rights, quota or licence in respect of observers which include compliance with a request by the Minister to carry the observer on board a fishing vessel, give access to all parts of land, premises or fishing vessels, records, documents and marine resources found in these places, and to provide accommodation and equipment to observers for the purposes of carrying out observer duties. As noted earlier, Namibia has a unique Observer Agency set up under Part IV of the MR Act which is responsible for providing observers to perform observer tasks enumerated under the MR Act, provide appropriate expertise and facilities to train fisheries observers and make observers available to carry out duties outside Namibian waters pursuant to an agreement to which Namibia is a party.

Under section 48, any person holding a right, exploratory right, a quota, licence or other authorisation can be required to keep records or provide information to the Permanent Secretary as may be prescribed. In addition, any staff authorised by the Minister may demand a person to keep or maintain such record and to produce them for inspection.

Section 61 provides that Regulations can be made by the Minister in relation to: the display on any fishing gear of identification marks or information; reporting entry into or departure from Namibian waters; the position of fishing vessels and the commencement and termination of harvesting operations; registers, records or other documents to be kept for the purposes of the MR Act and the information to be recorded therein and the inspection thereof; the carrying on board fishing vessels of fisheries inspectors, honorary fisheries inspectors, observers or other persons designated by the Minister and the powers and functions of the persons so appointed; installation and maintenance of communication, safety or surveillance equipment of fishing vessels; and, the making of surveys and the gathering of information regarding the requirements and demand in respect of marine resources, the state and potential of marine resources and the harvesting, processing, transport and disposition of marine resources.

In addition to the provisions relating to the appointment of inspectors, honorary inspectors and observers (ss. 4-7), Namibia has other elaborate provisions relating to enforcement under Part IX of the MR Act. This is where fisheries offences are set out together with the penalties for each offence (s. 52). There are very detailed procedures for forfeiture (s. 54) and custody of seized items (s. 55). Section 56 provides for the jurisdiction of courts capable of dealing with fisheries offences. The section on evidence (s. 57) provides for the admissibility of information obtained by the use of charts or an instrument as evidence. The same provision allows the use of certificate evidence and information stored electronically in courts. Related to monitoring and surveillance is the confidentiality of information provided to and kept by the fisheries management authority. Section 59 assures the preservation of secrecy of such information and allows that such information can be accessed only under certain circumstances or for specific purposes.

### **Observations**

*The MR Act provides a broad base for MCS activities to take place. Regulations made under Section 61 to support specific MCS activities would help ensure that Namibia has a comprehensive MCS programme built on past programmes.*

*Unique to Namibia is the creation of a separate agency responsible for administering the fisheries observer programme as well as a fund to support the activities of the agency. It would be interesting to find out whether this institution will help improve the MCS situation in Namibia.*

*The Preservation of Secrecy clause is the only one of such clause amongst the SADC legislation that has been examined. Such clause is important in that they provide providers of information a level of comfort on privacy issues thus increasing the level of cooperation of such persons in information sharing.*

*The introduction of administrative procedures and penalties could be considered as an alternative law enforcement mechanism.*

### **3.5 Implementation of Compliance Agreement and Fish Stocks Agreement**

Namibia ratified the Fish Stocks Agreement on April 1998. On 7 August 1998, Namibia deposited its instrument of acceptance of the Compliance Agreement.

Section 37 of the MR Act is directly relevant to the implementation of the UN Fish Stocks Agreement and the Compliance Agreement. However, the provision is only generic in nature. It would need regulations to ensure that a specific international agreement is implemented. Under the Section, Namibia will be able to designate international conservation and management measures as applicable in Namibia or Namibian waters. Such international conservation and management measures will be deemed to be a regulation made under the Act.



Section 32 (5) compliments section 37 by ensuring that Namibia does not have vessels which fly its flag undertaking fishing outside Namibian waters unless Namibia grants a right, an exploratory right or allocates a quota to a person.

### **Observations**

*Namibia has made it possible under Section 37 for the implementation of the Fish Stocks Agreement and the Compliance Agreement. In order to give the agreements full effect, regulations will need to be made forthwith.*

*Section 32 (5) however can be restrictive on the application of Namibia's sovereignty over its vessels (vessels that fly the flag of Namibia). The way in which the section is worded can be taken to mean that Namibia cannot authorise or does not have the power to authorise any person to use Namibian vessels to fish beyond Namibian waters unless such right or power is granted to Namibia by an international agreement. This interpretation however is made without having discussed constitutional laws and other laws that could bear on the interpretation of section 32 (5).*

## **4. SEYCHELLES**

### **4.1 Fisheries law and related legislation**

The *Fisheries Act 1986* (the Act) is the principle fisheries legislation. The *Fisheries (Amendment) Act, 2001* amends the Act. The Act is supported by Regulations made under the Act.

The following laws are of direct relevance as the Act invokes their application to certain fisheries management activities: the *Seychelles Fishing Authority Act*, (the Seychelles Fishing Authority (SFA) is tasked with the overall management of fisheries under the Fisheries Act); the *Seychelles Licensing Authority Act* (licences under the Act are issued by the Seychelles Licensing Authority (SLA)); the *Town and Planning Authority Act* (The Town and Planning Authority gives approval for granting exclusive rights to propagate, raise and take fish and other aquatic organisms) and the *Public Officers (Protection) Act 1976* (this Act provides protection for fisheries officers).

### **4.2 Scope, purpose and administration**

The Act revises and consolidates the laws relating to fisheries. It provides a general framework for the regulation of fishing and aquaculture in the Seychelles waters, which is defined as "the exclusive economic zone, territorial waters, internal waters and all other waters subject to the fisheries jurisdiction of Seychelles". The purpose of the Act is not explicitly stated but it can be implied from its operative provisions that it is the principal legislation governing fisheries and aquaculture management in the Seychelles. The *Fisheries (Amendment) Act 2001* introduces changes for the implementation of the Compliance Agreement and the Fish Stocks Agreement.

The main management actions are vested in the SFA. Typically, the Minister responsible for fisheries is vested with the powers to make regulations for the proper management of fisheries and to establish specific management measures. The Minister can enter into agreements with other States, intergovernmental organizations and associations representing foreign fishing vessels operators for the purposes of allocating fishing rights. He can also compound offences.

### **Observations**

*Many important fisheries management powers are shared as indicated above. This could be naturally problematic as difficulties in administering legislation and fisheries management powers could occur if the various agencies that deal with different aspects of fisheries management have poor working*

*relationships. However this may not be necessarily true for small government administrations and this seems to be the case for Seychelles.<sup>3</sup>*

*The recent amendments that enable Seychelles to implement the Compliance Agreement and the Fish Stocks Agreement widens its scope and make it, relatively, the most comprehensive legislation in the SADC region in this respect but more could be done through legislation to implement the two Agreements.*

*There is no additional institutional mechanism under the Act that will enable participation by stakeholders in management decisions or that allow them to influence such decisions. Nevertheless, consultation with local fisherman and other persons could occur in the preparation of the plans. Consultation with the fisheries management authorities of other states can also influence fisheries management decisions.*

#### **4.3 Fisheries management mechanisms and measures**

The Act requires the SFA to prepare and keep under review plans for the management and development of fisheries. These plans shall indicate the current state of fisheries, the objectives to be achieved and the management, development and licensing measures to be applied including the amount of fishing to be allocated to foreign fishing vessels. Each fisheries management plan shall be submitted to the Minister for approval.

The Minister may make regulations concerning management and conservation measures such as closed seasons, closed areas, use of gear, species and size of fish. Any licence issued under the Act for the use of a vessel, net or activity shall be subject to general operating and management requirements as the Minister may prescribe and such conditions that are endorsed on the licence (s. 12).

The Act (ss. 6 to 8) authorises the Minister to enter into agreements for the allocation of fishing rights to foreigners and provides in general for foreign fishing in the Seychelles waters. Licences to foreign fishing vessels shall be granted only pursuant to an agreement except when the Minister determines that an agreement is not practical and the applicant provides sufficient financial and other guarantees for the fulfilment of obligations under this Act (s. 7). Other provisions of Part II deal with fishing by local vessels and for pleasure and with aquaculture (s. 18).

The new section 17A and amendments in sections 19, 24, 25 and 27 introduce, inter alia, the regulation of fishing by Seychelles vessels beyond Seychelles waters including in the high seas and enables boarding and inspection. (See also discussion under 4.5 *Implementation of international instruments*).

#### **Observations**

*There appears to be a minimum basis for policy support and implementation in the Act particularly if the mechanism of fisheries management and development plans is effectively used with the broad basis for regulations for fisheries conservation and management. However, the legal framework for fisheries management could be strengthened through formal establishment of a consultative body. There is no legal basis for establishment of co-management systems should there be a decision to utilise such a management approach. Co-management could be integrated into plans but these do not create an enforceable system for co-management until clear requirements are stated under the Act.*

*The Act also provides that plans should state what rights are to be allocated to foreign fishing vessels and also that total fishing rights allocated by agreements with other States, intergovernmental*

<sup>3</sup> For example, the National Report for Seychelles at p.3 states that there is a good working relationship between the SFA and the other agencies involved in certain aspects of fisheries management.

*organizations or associations should not exceed the total resources or the amount of fishing permitted to foreign fishing vessels by the applicable plan. This requirement is commendable but can be circumvented if licences are issued without an agreement as allowed by Section 7 (3) (b).*

#### **4.4 Monitoring, control, surveillance**

There is no explicit reference in the Act to observer programmes, inspection schemes (other than inspection for enforcement purposes) and vessel monitoring systems. Section 22 provides that Seychelles may enter into arrangements or agreements with other States in the Indian Ocean to provide for joint or harmonized surveillance and enforcement measures in respect of foreign fishing vessels.

Section 5 provides that the SFA can collect and analyse statistical information. It also requires that persons engaged in fishing, related activities or aquaculture shall supply information regarding those activities as is required by the SFA. Exchange of fisheries information and for Harmonization of systems for collection of such information.

Despite the absence of explicit typical MCS provisions in the Act, the powers provided in Section 5 and the licensing provisions (e.g. section 12) are broad enough for the Minister to require the undertaking of MCS activities such as the reporting of information such as vessel position and activity. Under the new amendments to the Act (s. 17A) Seychelles vessels fishing on the high seas could be required to report their position and activity if this requirement is specified in their licence as a condition.

The Minister can make regulations under Section 27 requiring any licensed vessel to be equipped with specified communications and position fishing equipment. The amendments to Section 27 also allows for such specifications and other MCS requirements to be made in Regulations in respect of Seychelles vessels fishing on the high seas.

Enforcement and related provisions of the Act are the most detailed compared with the other provisions of the Act. Section 19 as amended gives the typical powers of stopping, boarding and searching Seychelles fishing vessels in Seychelles waters and on the high seas. An authorised officer of Seychelles can, on the high seas, stop and board the fishing vessel of a State party to an international Agreement to which Seychelles is a party and if such agreement provides for such stopping boarding and searching. An authorised officer of a State party to an international agreement to which Seychelles is also a party can also stop and board a Seychelles vessel.

The Act also vests the power of seizure of vessels, its stores and cargo, fish and fishing gear; the power of hot pursuit; sale of seized fish or other perishable items; and, release of vessels on receipt of satisfactory bond or security.

The Act provides for fines only for offences under the Act. It also provides that the Minister can compound offences if the person admits the commission of the offence and if the person agrees to be dealt with under Section 26.

#### **Observations**

*A minimum of MCS activities can be undertaken through effective use of the provisions of Section 5 and those provisions relating to licensing for fishing and related activities and the power to make regulations under Section 27. A set of regulations on MCS which include requirements for licensed vessels to carry specified communications and position fishing equipment would greatly facilitate reporting needs and, when appropriate, the introduction of VMS.*

*It is noticeable that fines are a fixed amount in the Act (i.e. no minimum or maximum penalty). Most of the fines which are imposed for convictions (which range from R10,000 to R50,000) appear to be*

*inadequate particularly when it is contrasted against the fines for offences introduced by the new amendments (RS00,000). This marked difference between the fines for high seas fishing related offences and other fishing allowed under the Act is discriminatory. It may even become a disincentive for high seas fishing and is certainly counter productive if Seychelles vessels are encouraged to fish high seas stocks to relieve pressure from overfishing in Seychelles waters.*

*The SFA of Seychelles is the only legislation that provides for compounding of offences in fisheries law enforcement. The impact of such a provision is not known. The introduction of administrative procedures and penalties could be examined and considered as an alternative law enforcement mechanism.*

#### **4.5 Implementation of Compliance Agreement and Fish Stocks Agreement**

Seychelles ratified the 1982 UN Convention on 16 September 1991. Seychelles became a party to the Compliance Agreement on 7 April 2000 and the UN Fish Stocks Agreement on 20 March 1998.

The recent amendments to the *Fisheries Act* introduced by the *Fisheries (Amendment) Act 2001* were specifically made to implement the Compliance Agreement and the Fish Stocks Agreement.

##### **Observations**

*The new section 17A introduces the primary obligation to institute an authorisation for high seas fishing by Seychelles vessels, thus fishing outside Seychelles waters by Seychelles vessels is now covered by the Fisheries Act. "Seychelles vessels" is defined under the amended definition section as "a vessel required to be registered under the Merchant Shipping Act and a local fishing vessel". Section 17A (2) ensures that the prerequisite conditions as required by the Compliance Agreement (Article III paragraphs 3 and 5) exist before an authorisation is issued. This may require further elaboration in regulations so as to enable easier implementation of the requirements of the two Agreements and the Act. This is envisaged as can be seen from amendments to Section 27(1) which adds the power to make regulations in respect of "fishing by Seychelles vessels beyond the limits of Seychelles waters", "the exercise of powers under the Act outside Seychelles waters" and "landing and transhipment of any fish". Requirements for reporting of vessel position and fishing activities, marking of vessels, vessel monitoring systems and other requirements of the Agreements can also be regulated. Non compliance with Section 17A (fishing without an authorisation and contravention of prescribed standards) is an offence under the amendment made to section 24.*

*The amendments to Section 19 ensures that boarding and searching can be done on the high seas in respect of any Seychelles vessel and other vessels that fly the flag of a State party to an agreement to which Seychelles is also a party. In respect of boarding searching of the latter category of vessels, a Seychelles authorised officer cannot carry out boarding and inspection until the Agreement to which Seychelles is a party provides for appropriate procedures for boarding and inspection. An authorised officer of a State party to an international agreement to which Seychelles is also a party can also stop and board a Seychelles vessel. Regulations "for the exercise of powers under the Act outside Seychelles waters" which can be made under the amendments to Section 27 is a reference to the powers added by the amendments to section 19.*

In sum, Seychelles vessels cannot be used for fishing on the high seas without an authorisation. It seems possible that the use of Seychelles vessels in another jurisdiction cannot occur without an authorisation under section 17A. It should be noted however that this does not prohibit the use of a non Seychelles vessel by a Seychellois outside Seychelles waters. Seychelles can enforce only measures introduced under Agreement to which Seychelles is a party. This a restrictive interpretation of what is an "international conservation and management measures" and the objective of the amendments can be frustrated if Seychelles is not a party to any Agreement for the conservation and management of fisheries important to Seychelles. However, this may not be of any consequence as Seychelles is fairly active in its region in respect of fisheries conservation and management. In this

respect it shall be noted that Seychelles is a party to: the South West Indian Ocean Fishery Commission which is concerned with the management of demersal stocks; the Indian Ocean Commission which is concerned with environmental programmes relating to the marine environment; the Indian Ocean Tuna Commission, and the Western Indian Ocean Tuna Organization which are concerned with the management of tuna stocks within their respective jurisdictions. Seychelles hosts the seat of the Indian Ocean Tuna Commission. Thus Seychelles is fairly active in meeting its obligations under the UN Convention on the Law of the Sea as elaborated by the Fish Stocks Agreement to cooperate in the conservation and management of fish stocks.

*The level of fines that can be imposed in relation to high seas fishing offences contrast sharply with fines imposed for offences in relation to other fishing in Seychelles waters. It is understood that the fines fixed for high seas fishing related offences should be comply with the requirement of the Fish Stocks Agreement that penalties be severe enough to deter offenders and deprive them of the benefits of their illegal conduct. However, if there is no similar increase in the level of fines for offences related to fishing in Seychelles waters, it can be discriminatory against Seychelles vessels and their owners who wish to fish on the high seas.*

## 5. SOUTH AFRICA

### 5.1 Fisheries law and related legislation

The *Marine Living Resources Act* of 1998 ("the MLR Act") is the principal fisheries legislation in South Africa. Other legislation also impact on conservation and management of marine living resources and their environment in varying degrees. These legislation include: (1) the *Sea Birds and Seals Protection Act* 46 of 1973 which, inter alia, relates to the control over the acquisition, gathering and disposal of all products of sea birds and seals within the Republic, in its territorial waters and fishing zone and on any specified island (and the Antarctica in respect of citizens) as well as protection of sea birds and seals; (2) the *Environment Conservation Act* 73 of 1989 and the *National Environmental Management Act* 107 of 1998. The latter two legislation contain general provisions relevant to the exercise of ministerial powers and other administrative powers that may have an impact on the environment.

The MRL Act gives fisheries authorities cross-cutting mandates which relates, inter alia, to resources and habitat management, protection of endangered species, the requirement for an environmental impact assessment report for the purposes of an application for a fishing right, and the duty to avoid or minimise any harmful environmental impact caused by mariculture.

### 5.2 Scope, purpose and administration.

The MLR Act clearly states its purpose, scope and the general objectives for fisheries management. The MLR Act's long title states that it provides "for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa; and to provide for matters connected therewith." It applies to all South African subjects and vessels and all persons within South African waters.

Section 2 sets out broad objectives and principles for fisheries management in the Republic which shall guide the exercise of powers under the MRL Act. This objectives and principles are: (a) the need to achieve optimum utilisation and ecologically sustainable development of marine living resources; (b) the need to conserve marine living resources for both present and future generations; (c) the need to apply precautionary approaches in respect of the management and development of marine living resources; (d) the need to utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government; (e)

the need to protect the ecosystem as a whole, including species which are not targeted for exploitation; (f) the need to preserve marine biodiversity; (g) the need to minimise marine pollution; (h) the need to achieve to the extent practicable a broad and accountable participation in the decision-making processes provided for in this Act; (i) any relevant obligation of the national government or the Republic in terms of any international agreement or applicable rule of international law; and (j) the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry.

The MRL Act also establishes the institutions through which fisheries management and administration will occur which is largely through the Minister, the Consultative Advisory Forum for Marine Living Resources, The Director General, and the Fisheries Transformation Council.

### Observations

*The MRL Act has broad scope of application. It also states objectives and principles of fisheries management in the Republic which shall be the yardstick for implementation action for as long as these objectives and principles are contained in legislation. The MRL can be labelled as the "principal fisheries policy reference document" as it provides a basis from which detailed strategies can be developed. It also provides a framework for further policy support through elaboration of the basic mechanisms for planning and regulations in support for fishing (input and output) controls through regulations.*

*Specifically, the establishment of the Consultative Advisory Forum and Fisheries Transformation Council may increase stakeholder participation in certain facets of management. Its weakness in this area is perhaps seen in the strict limitation of stakeholder participation through the Consultative Advisory Forum and the Fisheries Transformation Council. In terms of participation through the Fisheries Transformation Council, such participation has no assurance for continuation since the life of the Council depends on the wishes of the Minister who could abolish it if he wants. No clear mandate exists to broaden scope of participation through institutions and approach such as fisheries co-management. This situation does not help the government's intent to move to self regulation and co-management.*

*It may help with the organization and reading of the MRL Act if the provisions that establish the administrative and institutional mechanisms for fisheries management are grouped under one part of the legislation but this is not a substantive matter.*

### **5.3 Fisheries management mechanisms and measures**

The MRL Act sets out some typical management mechanisms that can be found in recent fisheries legislation in various parts of the world. Among these mechanisms are fisheries planning which, in South Africa's case, also involves the establishment of the total allowable catch (TAC) for a fishery) and the ability to establish fisheries management areas as a management unit. There are also established under the MRL Act typical conservation and management measures such as prohibitions on the use of explosives and noxious substances for fishing, driftnets and certain fishing gear.

The management and conservation mechanisms under the MRL Act worthy of note are the ability of the Minister to introduce emergency management measures, the establishment of priority fishing areas, the creation of marine protected areas and the allocation of fishing rights.

The MRL Act provides that a system of allocation of fishing rights, licences, and permits shall be used to grant access to and regulate fishing. Fishing rights may be allocated for local fishing or foreign fishing. Local fishing includes commercial and subsistence fishing by South African persons. A local fishing vessel that is to be used for fishing must have a fishing vessel licence. Any person can undertake recreational fishing if he has a permit.

A foreign fishing licence is required for any foreign fishing vessel wishing to fish in South African waters. In principle a foreign fishing vessel licence can be issued only if the vessels belong to a government of a flag state which has a fishery agreement with the Government of South Africa or if the vessel's owner or charterer is a member of an association which has a fishery agreement with the Government of South Africa. However, the Minister can decide to issue a foreign fishing vessel licence without a fishery agreement in place if the applicant can provide substantial financial and other guarantees.

No fishing right is exercisable and no activity that is permissible under the MRL Act can be undertaken without a permit issued under section 13.

### **Observations**

The array of management mechanisms available to fisheries authorities under the MRL Act facilitates a broad and flexible approach to management. However, a possible weakness is the need to also obtain a fishing permit under Section 13 (even if a right is obtained under Section 18) which introduces a certain complexity into the system for granting and exercising rights. Such permit is also required for other activity under the Act which raises a question whether one needs, for example, a licence for a local fishing vessel required under section 23 and a permit under section 13, to be able to use a local fishing vessel.

A possible weakness exists in the granting of foreign fishing vessel licences under Section 39 where the Minister has the ability to grant licences outside the requirement of there being in place a fishery agreement. This power, if exercised judiciously, could encourage investment and act as a conduit for long term benefits to the country. It could also bring in additional funds as access agreement fees. However, if it is indiscriminately exercised, it will encourage "one-off operations" at a cost of a license fee without long term benefits accruing to South Africa.

The MRL Act is unclear as to the status of fishery plans (although their purpose and role may be clear in the minds of the fisheries authorities). The White Paper on a Marine Fisheries Policy for South Africa stipulates that fishery plans shall be binding (with procedures to allow for amendments) but this is not specifically provided for in the MRL Act.

### **5.4 Monitoring, control and surveillance**

Section 50 of the MRL Act specifically provides for the designation of persons to be observers who shall "exercise the scientific, compliance, monitoring and other functions determined by the Minister." The observer coverage shall be for vessels licensed under the MRL Act. A fishery agreement contemplated under Section 38 can also designate such observers. Regulation 82 of the Marine Regulations elaborates the scientific, compliance and monitoring functions of the observers.

Section 42 refers to a specific MCS aspect (the provision and sharing of information on international conservation and management measures). This is discussed below under implementation of international instruments.

Under Section 76 (1) and (2), the Minister may designate "a device or machines or class of device or machines" for the purposes of obtaining information or data relating to a vessel's position or activities. Section 76 (7) provides protection for observation devices against interference or actions which will render them inoperative while Section 76 (8) protects observation devices against actions which will feed or cause the device to capture information that is not required. Regulation 76 of the Marine Regulations requires licensed foreign fishing vessels to be equipped with an automated satellite linked

vessel monitoring system (VMS). Information transmitted shall include the vessel's identification, latitude, longitude, date and time, course and speed which shall be transmitted at required intervals. Such a system shall be tamper proof, is able to be polled by the monitoring centre, has a two way messaging capability between the vessel and the monitoring centre, is fully automated and operational at all times regardless of environmental conditions.

The only other specific references to MCS matters other than enforcement powers are found in the "regulation-making" section. Under Section 77, regulations can be made regarding any matter required or permitted to be prescribed in terms of the MRL Act or which are reasonably necessary or expedient to be prescribed in order to achieve the objectives of the Act. Such regulations will no doubt deal with

MCS matters. Section 77 (2) (u) specifically provides that regulations can be made by the Minister to require the provision of statistical and other information related to fisheries including fishing logbooks, and the format in which the information is recorded.

Law enforcement and associated provisions are the most elaborate of provisions of the MRL Act. Section 51 sets out the powers that are typically exercised by fisheries enforcement officers including the powers of stopping a vessel, requiring the master to facilitate boarding, entering and searching a vessel without a warrant, bringing a vessel to port and seizing the vessel, its equipment and fish or fish products on board the vessel. A notable MCS activity associated with enforcement is the requirement for all holders of a right, licence or permit under the MRL Act to report any contravention of the Act by other persons.

Judicial provisions (in support of enforcement) are also elaborate and deal with matters including offences and penalties, security for release of vessels, vehicle or aircraft, treatment of things detained or seized, forfeiture, jurisdiction of the courts and documentary and photographic evidence. A provision relating to penalties and worthy of note is Section 77 which allows for regulations to be passed to increase the size of penalties where this is necessary due to inflation or to comply with international law (s. 77 (2)(a)). Regulations can also provide for the imposition of any additional fine representing the value of any forfeited item (s. 77 (2) (d)).

### Observations

There exists the minimum legal basis for elaborating MCS programmes and activities under the MRL Act, which are built upon by the Marine Regulations. Other MCS requirements in the Marine Regulations include the marking of fishing vessels (Reg. 77), radio call signs (Reg. 78), logbooks (Reg. 79), documents to be carried on board fishing vessels (Reg. 80), and stowage of gear (Reg. 81).

*Potential exist for MCS activities to be further elaborated and integrated with the system for fishing authorisation so that they are minimum requirements for access to fishing and related activity. Thus, vessel marking, keeping of log books, data collection, reporting and routine monitoring and inspection as part of MCS requirements can become conditions for exercise of fishing rights or for licences or permits, inter alia, under sections 18, 21, and 77 (g). This requirement could be entered on the physical authorisation as, for example, a condition of licence. This method of imposing MCS requirements can be the most effective for fisheries management as authorisation documents containing requirements are the most visible and readily available to the holder particularly if he is required to keep a copy of such authorisation with him while undertaking fishing or a related activity.*

The MRL Act provides for adequate penalties for contravention and indeed to increase penalties in the future if they are considered inadequate. Potential for the use of other administrative penalties in addition to the use of suspension and cancellation of rights licences and permits or the reduction of rights could be considered. Such administrative penalties would require the introduction of a system, which allows the chief executive of the fisheries authority to deal with a contravention and imposes penalties including monetary penalties.



## 5.5 Implementation of Compliance Agreement and Fish Stocks Agreement

South Africa is party to the 1982 UN Convention (ratified 23 December 1997). It is a signatory to the Fish Stocks Agreement and is in the process of ratification of the same. South Africa has not lodged its instrument of acceptance of the Compliance Agreement.<sup>4</sup> However it appears to implement some requirements of the Compliance Agreement and the Fish Stocks Agreement.

Section 40 contains the basic requirement of the Compliance Agreement in effecting flag state responsibility by requiring that no vessel registered in South Africa shall be used for fishing on the high sea unless it has a high seas fishing licence issued under the MRL Act. Section 41 complements section 40 by stating the basic requirements for a high seas fishing licence. Section 42 is evidence of an effort to implement Article of the Compliance agreement to ensure compliance with conservation measures but it only enables the provision and exchange of information with a regional fishery organization to which the Republic is a member or to states parties to such international conservation and management measure. Information exchanged with state members of an international conservation and management measure may include evidentiary material which can enable the state party to better implement the objects of the international conservation and management measure.

The Director General may provide authorities of a flag state of a vessel of an alleged contravention of an international conservation and management measure. If the vessel which is alleged to have contravened the international conservation and management measure is in the port of the Republic the Director General may promptly notify the authorities of the flag state of the vessel. The Minister may any international conservation and management measures or international agreement concerning marine living resources in the Gazette.

The provisions highlighted above that attempt to implement the Compliance Agreement also implement certain similar requirements under the Fish Stocks Agreement particularly the provisions relating to the requirement for fishing vessels to have an authorisation before fishing (including fishing on the high seas) and ensuring compliance with international conservation and management measures by vessels registered in South Africa, thus exercising flag state responsibility.

### Observations

*The MRL Act does not contain specific provisions or have the necessary detail to fully meet the requirements of the Compliance Agreement and the Fish Stocks Agreement*

*In respect of the Compliance Agreement, the requirements that need implementation include: the need to maintain a record of fishing vessels and to ensure that information on any change to the information in the records is provided to the fisheries authorities and also communicated to FAO ((Articles IV and VI); and, an elaboration of the conditions that must exist before a high seas fishing authorisation is issued (Article III). These requirements could be stated in regulations promulgated under the MRL Act.*

*Provisions that are needed to implement specific requirements of the Fish Stocks Agreement are those regarding boarding and inspection procedures on the high seas and enforcement of serious violations. Under Section 52, the fishery control officer can exercise the powers given him under the MRL Act outside South African waters. This facilitates boarding and inspection and in some respects implements the Fish Stocks Agreement. However, the power under Section 52 is limited in that it can only apply in situations arising out of hot pursuit in accordance with international law and as reflected in article 111 of the 1982 UN Convention.*

<sup>4</sup> This agreement will shortly be submitted to Cabinet for consideration. This is the first step in the consultation process that is required before proceeding with ratification.

South Africa, with its western SADC neighbours (Angola and Namibia), UK (on behalf of Ascension, St Helena and Tristan da Cunha) initiated negotiations to establish the South East Atlantic Fisheries Organization (SEAFO) to manage the high seas fish stocks of the South East Atlantic region. South Africa is also a party to the International Convention for the Conservation of Atlantic Tunas and the Benguela Environmental Fisheries and Training Programme (Benefit) which is consistent with the spirit and obligation envisaged by the Fish Stocks Agreement. For the same interests, South Africa is considering to become a party of the Abidjan and Nairobi Conventions and is considering participating in the Convention on the Indian Ocean Tuna; and the draft of the Convention on the High Seas Marine Living Resources of the South West Indian Ocean.

## 6. TANZANIA

### 6.1 Fisheries law and related legislation

The principal fisheries legislation in Tanzania is the *Fisheries Act 1970* and, in relation to fishing in the EEZ, the *Deep Sea Fishing Authority Act, 1998* (which establishes the Deep Sea Fishing Authority (the Authority)). The following regulations and Orders implement the *Fisheries Act*:

- *Fisheries Principal Regulations, 1989*
- *Fisheries (Amendment) Regulations 2000*
- *Fisheries (Inland Waters) Regulations, 1981*
- *Fisheries (Marine Reserves) Regulations, 1975*
- *Fisheries (General Amendment) Regulations, 1994*
- *Fisheries (Prohibition of Use of Specified Vessels or Tools) Regulations, 1994*
- *Fisheries (Amendment) Regulations, 1997*
- *Closure of Upangu Reef, Kitanga Reef and Dambwe Reef from Fishing Activities Order, 1998*
- *Fisheries (Explosives Poisons and Water Pollution) Regulations, 1982*
- *Fisheries (Authorised Officers' Identification) Regulations, 1983*
- *Fish (Quality Control and Standards) Regulations 2000*

Related legislation are the Territorial Sea and Exclusive Economic Zone Act, 1989 (which, inter alia declares the territorial sea and the EEZ of Tanzania) and the *Marine Parks and Reserves Act, 1994*.

The scheme of the *Fisheries Act* is that it provides for broad powers for fisheries management but leaves the finer details of management action to be spelt out by regulations. The *Principal Fisheries Regulations 1989* and its subsequent amendments provide much of the detail requirements in accordance with this regulatory scheme.

### 6.2 Scope, purpose and administration

Under the *Fisheries Act*, the Minister exercises most development and control powers over fisheries. These powers include the power to make orders to regulate under licence, fishing, collecting, gathering or manufacturing fish products or products of aquatic flora, selling or marketing of fish, fish products, aquatic flora or products of aquatic flora, importing or exporting fish, fish products, aquatic flora or products of aquatic flora. The Minister can also make regulations on a wide range of issues.

The *Deep Sea Fishing Authority Act* also applies to Zanzibar (s. 2). Under this Act the Authority is empowered to, *inter alia*, regulate and control fishing in the EEZ of the United Republic including the licensing of persons and ships intending to fish in the EEZ, initiate, implement and ascertain the enforcement of policies on deep sea fishing vessels, formulate and coordinate programmes for scientific research in respect of fishing, negotiate and enter into any fishing or other contract, agreement or any kind of fishing cooperation with any government, international organization or other institution in pursuance of the provisions of the Act (s. 4). The Authority acts through an Executive Committee (which is responsible for appointment of the Director General who heads the Management, formulates and determines policies, approve projects and approves application for

fishing licences – s. 5 (3)), the Advisory Committee (which is responsible for initiating policies, evaluates projects, monitor inspection and sea worthiness of ships, prepare and evaluates reports- s. 5 (7)) and the Management (which is responsible for issuing of fishing licences, prepares the budget of the Authority, prepares plans and keeps records of vessels licensed to fish in the EEZ, catches of licensed vessels and illegal practices and defaulters of rules and regulations – s. 6).

The Executive Committee is a 3 member Committee of chief executives (Permanent Secretary of the Ministry Responsible for fisheries matters, Permanent Secretary of the Ministry responsible for external affairs and international cooperation and the Principal Secretary of the Ministry responsible for fisheries in the Revolutionary Government of Zanzibar) and has a rotating chairmanship.

The Advisory Committee has 14 members representing various agencies of the Union Government and the Revolutionary Government of Zanzibar and 4 representatives of the industry (2 each from Mainland Tanzania and Tanzania Zanzibar).

The *Deep Sea Fishing Authority Act* (ss. 20 and 21) provides for consultations with the Ministry responsible for fisheries of the Revolutionary Government of Zanzibar and the Union Government agencies and agencies of the Revolutionary Government of Zanzibar.

The Minister responsible for fisheries of the government of the United Republic is empowered to make regulations under the *Deep Sea Authority Act* on various matters relating to the management of the resources in the EEZ of the United Republic.

### Observations

*It is not clear as to what is the jurisdictional scope of the Fisheries Act, however, read together with the Deep Sea Fishing Authority Act, 1998 and the Territorial Sea and Exclusive Economic Zone Act, 1989, the Fisheries Act would have to apply only in the territorial waters. It is implicit that the Fisheries Act applies to Tanzanian nationals and to vessels and fishing. Perhaps the Fisheries Acts' jurisdictional scope is provided for in other named legislation but an explicit statement in the principal legislation may be needed to clarify its scope.*

*Related to the scope of the principal legislation is the definition of the term "fishing". "Fishing" is defined as the "collection, capture, gathering, killing, snaring or trapping of fish, fish product or aquatic flora." In many jurisdictions this term has been given a much wider definition than the Tanzanian definition which ensures that the search for or attempt at capturing fish is also considered as fishing.*

*The regulatory scheme of the Fisheries Act is simple to follow i.e. that much or the detailed requirements for regulating fishing will be in regulations. One of the weaknesses of this scheme is that the Regulations attract a lesser penalty for offences and some offences are serious enough to warrant higher penalties. This creates a situation where a set of regulations can be without a severe penalty so as to have a deterrent effect such that regulations are contravened with impunity. However, the penalties under the Deep Sea Fishing Authority Act is higher for non compliance with request for information by the Authority and even much higher for fishing contrary to the Deep Sea Fishing Authority Act.*

*There is no legal basis under the Fisheries Act to introduce broad participation by stakeholders. The Deep Sea Fishing Authority Act allows the industry to be represented only on the Advisory Committee.*

### **6.3 Fisheries management mechanisms and measures**

The Minister has sweeping powers under article 4 of the *Fisheries Act* to make orders to regulate fishing, collecting, gathering or manufacturing fish products or products of aquatic flora, selling or marketing of fish, fish products, aquatic flora or products of aquatic flora, importing or exporting fish,

fish products, aquatic flora or products of aquatic flora. Licensing is the mechanism for regulating the aforementioned activities.

The orders made under article 4 of the *Fisheries Act* can apply to all or specific species or kind of fish, fish product or aquatic flora or products of aquatic flora and may specify licence fees, terms and conditions and penalties for such orders. The Minister may also restrict access to certain areas of waters declared to be a controlled area. (art. 5)

Exemptions, reservations and conditions can be made in relation to the orders made under article 4. A preference shall be given to citizens over other applicants for a licence unless a written law allows licences to be issued to non citizens (art. 6).

Article 7 of the *Fisheries Act* allows the Minister to make regulations on a broad range of matters. The *Principle Fisheries Regulations 1989* were made pursuant to this Article. The Regulations require the registration of fishing vessels (Part II ss. 3 – 10). No vessel shall be used for fishing unless it is registered. All licensing authorities shall keep a register of all fishing vessels. The Director of Fisheries appoints the licensing authority that shall be the Central Registry. Fishing vessels and fish dealers must also obtain a licence (Part III ss. 11- 13.) in an appropriate licence form. No licence shall be issued to a fishing vessel if it is not seaworthy (s. 12). The licensing authority shall keep a register of all licences issued under the Regulations.

General prohibitions and restrictions apply in respect of: import of live fish or fish products, introduction of certain species of fish and other fish not indigenous to the Tanzanian Mainland or transfer of fish from one water to another water within the Tanzanian Mainland or export any live fish which are protected or fish products from the Tanzanian mainland.

The Licensing authority may destroy fish or fish product if any water is infected with an epidemic disease.

Use of poisons and explosives are prohibited from use. Water pollution from an emission is prohibited.

Under the *Deep Sea Fishing Authority Act*, the Minister of the United Republic can make regulations on many aspects of fisheries management in the EEZ.

### Observations

*The Minister, under the Fisheries Act can make regulations on a wide range of matters relating to the management of fisheries. However, the Minister's power to make exemptions and reservations in relation to any order made under article 4 can be abused and undermine proper fisheries management.*

*The Deep Sea Fishing Authority Act does not provide the minister with similar regulation making powers. This may not place fisheries management at a disadvantage as the appropriate policies and their implementation is in the hands of an institution (the Authority) which focus only at EEZ fisheries resources management*

*Licensing powers are delegated to licensing authorities (any officer authorised under the Fisheries Act under Regulation 4). This appears to be a sharing of powers but does not ensure broad participation in management. The management approach contained in legislation is therefore centralised and is dependent on adequate capacity and resources to ensure implementation of legislation and compliance with conservation and management measures. The same can be said of the management framework under the Deep Sea Fishing Authority Act.*

*There are no provisions for management plans under the Fisheries Act and the Deep Sea Fishing Authority Act. This may be provided for under regulations implementing either of the two legislation.*

#### **6.4 Monitoring, control and surveillance**

The *Fisheries Act* provides typical powers of search and seizure (art. 9), seizure and forfeiture of things used for the commission of offences (art. 10) and forfeiture (by a magistrate) of things in respect of which offences are committed (art. 11). The Court has specific powers for the forfeiture of vessels or vehicles. As is typical of fisheries legislation, obstruction, assaults or hindrance of fisheries officers is an offence. (art. 13).

Most of the MCS related matters could be dealt with under regulation through the exercise of the Ministers powers to make regulations in relation to, *inter alia*, prescribing terms and conditions of licences, registration of fishing vessels, use and description of fishing gear and controlling of foreign fishing vessels in territorial waters (art. 7). The *Principle Fisheries Regulations* gives some substance to MCS requirements in terms of the requirements to: register fishing vessels (Regs. 3-10); and, registration of fishing licences.

Article 8 of the *Fisheries Act* provides that the general penalty for offences committed against regulations is a fine not exceeding 20,000 shillings or imprisonment for a term not exceeding 5 years.

The *Deep Sea Fishing Authority Act* does not provide monitoring or surveillance mechanisms or measures such as inspections or observations although this could be matters for which the authority could formulate policies and programmes and the Minister could regulate in accordance with his powers under section 23. This power can be buttressed by section 17, which provides the power of the Authority to request information (which may include catch and position reports). The same section provides hefty penalties for failing to furnish the requested information (fine of not less than 250 000 shillings or a term of not less than 6 months or both fine and imprisonment for first offence, fine of not less than 5,000,000 shillings or a term of not less than 3 years or both fine and imprisonment for subsequent offence, and forfeiture for any further subsequent offence).

For fishing in contravention of the *Deep Sea Fishing Authority Act*, section 18 provides a fine of not less than 1 billion shillings or to imprisonment for a term not less than 20 years or to both fine and imprisonment and in addition to both fine and imprisonment, the Court may order the forfeiture of the vessel etc. There is also a hefty penalty for obstruction, hindrance etc. of an authorised officer (s. 19).

There is no enforcement provisions under the *Deep Sea Fishing Authority Act* presumably because the powers to enforce measures which relate to the EEZ are already specified in the *Territorial Sea and Exclusive Economic Zone Act*. Part IV (ss. 13-14) of the latter Act designates authorised officers and provides the powers of these officers. Typically the powers specified relate to boarding and search and the seizure of vessels and catch or other equipment used in the commission of the offence and the power to direct a vessel to port for further enforcement action.

#### **Observations**

*There are no specific or clear provisions under the Fisheries Act or the Principle Fisheries Regulations relating to MCS. The same can be said of the Deep Sea Fishing Authority Act except that the latter Act can be applied, with some imagination, to require MCS related information.*

*The penalties under the Fisheries Act are generally inadequate.*

*Surveillance activities (e.g. VMS) may be regulated but it is unclear whether information from VMS or other modern surveillance equipment could be relied upon in court to secure a conviction. A review of laws and in particular the MCS provisions of the various legislation that impact on fisheries may be in order.*

*The introduction of administrative procedures and penalties could be considered as an alternative law enforcement mechanism.*

## **6.5 Implementation of Compliance Agreement and Fish Stocks Agreement**

Tanzania accepted the Compliance Agreement on 17 February 1999. It has not ratified the Fish Stocks Agreement.

### **Observations**

*The Fisheries Act, enacted in 1970 and the Territorial Sea and Exclusive Economic Zone Act enacted in 1989 clearly do not have provisions relating to the implementation of the Compliance Agreement or the Fish Stocks Agreement as these agreements were not envisaged at that time. Licensing efforts is focussed in waters under national jurisdiction. The Deep Sea Fishing Act enacted in 1998 only relates to fishing within the EEZ. In order for the 2 agreements to be effectively implemented, amendments to existing legislation or the enactment of new legislation or regulations is needed.*

## **C. SUMMARY OF FINDINGS**

The findings summarised hereunder are those that can be made based on a review of the principal fisheries legislation in the forgoing part of the Report.

### **Clear statement of scope of legislation and the authority for fisheries management**

- Namibia has very clear provisions in legislation in respect of the scope of legislation and the authority responsible for fisheries matters. Tanzania's Fisheries Act is unclear in terms of its application. Seychelles' fisheries management powers are shared by several institutions. Fisheries management is best served if principal fisheries legislation clearly sets out the limits of jurisdiction as well as the ultimate authority in respect of fisheries management. Such clarity is required for most of the SADC countries. (Reference: The 1982 UN Convention, the Code art. 7.3.1, art. 7.3.2, art. 7.7.1)

### **Broader participation in fisheries management (by stakeholders) including co-management**

- Fisheries is largely centrally regulated or managed (by government Ministries or agencies) in all the SADC countries. Participation by representatives of stakeholders (in the private sector) is possible in certain countries through representative bodies but is not adequate. There is no basis in fisheries legislation for taking participatory management options such as using co-management. It is noted that this broader participation may not be a matter to be prescribed in fisheries legislation. However, where there are no fundamental legal difficulties (e.g. in the constitution) that restricts the adoption of co-management approaches in management, the SADC countries should make available such an option in fisheries legislation. (Reference: The Code – 6.13, 6.16, 7.1.2, 7.6.6, The SADC Protocol on Fisheries (the Fisheries Protocol) – art. 7.7)

### **Support and implementation of policies and fisheries management mechanisms and measures**

- Generally, law (legislation) can lay down the foundations of initiating or making policies or give support to policies. With respect to the latter function, the type of laws that have this characteristic, particularly in common law based jurisdictions, are subsidiary legislation (e.g. regulations). However, as can be seen in the analysis of the laws (in Part B), it is not common that laws clearly express this function. It is noted that while Namibia's fisheries legislation clearly states that the Minister responsible for fisheries can make policies from time, Tanzania's

Deep Sea Fishing Authority can initiate and make policies, and fisheries management in South Africa is guided by general principles of management stated in its principal fisheries legislation, the legislation of other jurisdictions are silent on these matters. This does not mean that other jurisdictions' fisheries legislation do not give effect to national policies on fisheries. Where fisheries laws are silent on this issue, it may be that this is a matter dealt with in the administrative framework or other laws. Where it is possible and can help in better fisheries management, general policies or principles of management should be stated in the principle fisheries legislation as is the case in South Africa but this depends on the practice in the jurisdiction concerned. The best option cannot be stated without a broader study, which reviews more than the fisheries law. (Reference: The Code – art. 2, art. 6.13, art. 7.1.1, art. 7.2.1, art. 7.3.3)

- With respect to management, the fisheries law can set out management mechanisms or approaches, specific measures which are well established in the fisheries management world such as prohibitions on use of explosives and poisons for fishing, and provide the basis for establishing further measures using prescribed mechanisms. The SADC countries subject of this study are uniform in stating the prohibited fishing methods but are not consistent when it comes to stating the choice of mechanisms for generating further management measures. (Reference: The Code – art. 7.1.1)
- The power to issue foreign fishing vessel licences in the absence of an access agreement in Mauritius, Mozambique, Seychelles and South Africa, needs reviewing with the view to remove the exception. In addition, the SADC States may need to review their laws with the aim of setting out or giving effect to minimum requirements for access by foreign fishing vessels to waters under national jurisdiction considering that minimum requirements for access is envisaged under Article 10 of the Fisheries Protocol.
- The power of the Minister to make exemptions and reservations in relation to any order made as is the case in Tanzania should be avoided as it may undermine sound fisheries management if it is abused. (Reference: The Code – art. 7.1.1, art. 7.1.7, art. 7.1.9)

#### **Licensing and fishing rights**

- Licensing or permitting as an input control mechanism is common for the SADC countries. However, it is not the principal control mechanism for all the countries. In Namibia and South Africa, it is used in conjunction with and supports fishing rights. Mozambique uses licensing as the principal control mechanism but sets out the possibility of using fishing rights. The jurisdictions can learn from each other and decide what control mechanism is best suited for their fisheries. Setting out the management mechanisms as alternatives for future use as is done in Mozambique legislation could be considered. (Reference: The Code – art. 7.1.1)

#### **Management planning**

- Seychelles and South Africa are the only jurisdictions that have institutionalised fishery management planning in their principal fisheries legislation. Other countries use fishery management planning in varying degrees but the status of fishery plans in these countries is not clear. (Reference: The Code – art. 7.3.3)

#### **Monitoring, control and surveillance and enforcement**

- In general, the fisheries legislation of all the countries are more detailed in matters relating to MCS compared to the treatment in legislation given to other management matters. There is a noticeable inadequate basis for monitoring and surveillance aspects of MCS activities in the principal fisheries legislation in Tanzania only. However, the fisheries legislation of the jurisdictions other than Namibia, South Africa, and Seychelles, will need to be strengthened

particular in ensuring that fisheries authorities can undertake the full range of MCS activities including observer programmes, vessel and gear markings, and reporting of vessel position and catch reports as well as reports on entry and exit of fishing areas or the waters under national jurisdiction. In the case of vessel position and catch reports, legislative provisions are needed to enable the use of modern communication and surveillance technology such as satellite-based vessel monitoring systems. (Reference: The Code – art. 6, 10, art. 7.1.7, art. 7.4.4, art. 7.4.7, art. 7.7.3, art. 8.1, art. 8.2, art. 8.3, The Fisheries Protocol – art. 9)

- Most of the legislation will need to be strengthened with respect to the provisions concerning the powers of officers to inspect or investigate vessels at sea in particular the powers to board and inspect national vessels beyond waters under national jurisdiction. This power is needed also in respect of implementation of the Compliance Agreement and Fish Stocks Agreement. (Reference: The Code – art. 7.1.7, art. 7.7.1, 7.7.3, 8.1.4, the Compliance Agreement (generally), the Fish Stocks Agreement – art. 21, art. 22)
- Only Seychelles has compounding of offences as an alternative to enforcement of the fisheries law in courts. Mozambique has an administrative procedure and penalties system that can be used instead of enforcing the fisheries law in the courts. These options should be considered by the other jurisdictions for possible adoption as it has the potential of introducing efficacy in dealing with a contravention.<sup>5</sup> (Reference: The Code – art. 7.7.1, art. 7.7.3)
- Where it is intended to use electronically generated or stored information in courts as evidence, legislative provisions will need to explicitly state that the use of such information as evidence is permitted so as to circumvent the rules against hearsay (particularly in common law jurisdictions).<sup>6</sup> Only the legislation of South Africa and Namibia enable the use of such information as evidence in court. (Reference: The Code – art. 7.7.1, art. 7.7.3)
- The SADC countries could follow the example of Namibia and South Africa by introducing provisions in legislation that permit the use of certificate evidence in courts in order to facilitate speedier trials. The use of such certificates must be accompanied by safeguards to protect the rights of the accused and to avoid the situation where certificate evidence become convenient tools for the prosecution and as a substitute for excellent case preparation. (Reference: the Code - art. 7.7.1, art. 7.7.3)
- For many of the SADC countries, the penalties for fisheries offences will need to be revised upwards particularly in respect of the countries which have not revised their legislation in recent years. (References: The Fish Stocks Agreement – art. 19.2, the Code – art. 7.7.1, art. 7.7.2, art. 7.7.3)
- The SADC countries may need to enhance Port state enforcement in the light of the lack of capacity and resources to undertake enforcement and other MCS activities over and above cooperation in MCS and enforcement activities through the options of extradition and cross-authorisation for enforcement purposes as outlined in the Fisheries Protocol. In this regard, the SADC countries can learn from the United States and the South Pacific Island Countries in introducing Lacey and Lacey type clauses (long arm enforcement). A State which introduces this

<sup>5</sup> See description and use of administrative penalties in Kuemlangan B, National legislative options to combat IUU Fishing, AUS.IUU/2000/9 at pp.10-13 (reproduced in this Report as an information paper in Annex III)

<sup>6</sup> See Caucaud, Legal issues relating to vessel monitoring systems in FAO FISHCODE/MCS Report of a Regional Workshop on Fisheries Monitoring, Control and Surveillance, Kuala Lumpur and Kuala Terengganu, Malaysia 29 June-3 July 1998, Supplement 2 Technical papers. See also: Mollenaar and Tsamenyi, Satellite-based vessel monitoring systems (VMS) for Fisheries Management, International Legal Aspects and Development in State Practice, FAO Legal Papers on line: <http://www.fao.org/>; and, Kuemlangan B, Legal Aspects of Implementing the FFA Vessel Monitoring System, Current Fisheries Issues and the Food and Agriculture Organization of the United Nations, Ed. Nordquist M. H. and Moore N. J.



clause makes it an offence for any person to bring into its area of jurisdiction, fish (or animals) that have been caught contrary to the laws of another State<sup>7</sup> or a sub-regional, regional or global fisheries organization or arrangement (Reference: The Fish Stocks Agreement – art. 23)

- Only Namibia has a secrecy clause in its principal fisheries legislation that assures the confidentiality of information. The need to ensure the confidentiality of information, particularly where it concerns fishing operations and commercial secrets is paramount if the providers of such information are to be comfortable providing such information in the interest of better fisheries management. Secrecy in other jurisdictions may be a matter that is dealt with under other laws (e.g. secrecy laws). Where secrecy is not assured in other laws, the SADC countries may wish to consider introducing secrecy provisions in fisheries legislation. Confidentiality is particular important if a State is considering the use of VMS for vessel position and catch reports. (Reference: The Code – art. 7.4.4, art. 7.4.7, art. 12.3)

#### **Implementation of the Compliance Agreement and the Fish Stocks Agreement**

- Seychelles has the most elaborate of provisions in the new amendments to its fisheries legislation introduced in March 2001 that implement the Compliance Agreement and the Fish Stocks Agreement. South Africa has basic provisions to implement the two agreements in respect to prohibition of fishing on the high seas without authorisation and could pass further regulations to control fishing on the high seas by South African nationals and vessels. Namibia has made it possible for it to implement the two agreements by regulations under its new fisheries legislation. The other countries will need to amend legislation or make regulations to effectively implement the two agreements as they only have very basic and inadequate provisions in principal legislation in this respect.<sup>8</sup> (Reference: The Code – art. 1.1, art. 3.2, art. 8.2.6, The Fisheries Protocol art. 6.2)

#### **D. OPPORTUNITIES FOR HARMONIZATION OF LAW AT THE REGIONAL LEVEL**

##### **1. The SADC commitment to harmonize laws**

The objective of Harmonization of laws or policies among a number of states inherently requires cooperation among these states. Cooperation in fisheries management which may include actions such as a Harmonization of fisheries laws among the cooperating states is an obligation for the parties to the 1982 UN Convention.

The need to cooperate in fisheries and in particular in working towards Harmonization of fisheries legal frameworks is not lost on the members of SADC. The Fisheries Protocol clearly stipulates that in relation to shared resources, the State Parties shall cooperate with one another to ensure that the objective of the Fisheries Protocol is met. Article 6 of the Fisheries Protocol further states that Member States shall endeavour to establish joint positions and undertake coordinated and complementary actions with regard to international fora, conventions and agendas of relevance to the Fisheries Protocol. The Member States undertake to bring in line provisions in their fisheries laws and other relevant legislation to the 1982 UN Convention, the Fish Stocks Agreement and the Compliance Agreement. Most of the international treaties and conventions of relevance to the Fisheries Protocol and the two aforementioned agreements underscore the duty for states to cooperate. More importantly, Article 8 of the Fisheries Protocol clearly imposes the duty on Member States to harmonize their legislation.

<sup>7</sup> See the description and use of the Lacey Clause in Kuemlangan B, National legislative options to combat IUU Fishing, AUS:IUU/2000/9 at pp.13-16 (reproduced in this Report as an information paper in Annex IV)

<sup>8</sup> See Annex II on the requirements of the Compliance Agreement and the Fish Stocks Agreement which have legislative implications.

## 2. Areas for harmonization of laws

Article 8 of the Fisheries Protocol stipulates the undertaking for harmonization of legislation as follows:

1. State Parties shall take measures required to harmonize legislation with particular reference to the management of shared resources.
2. All illegal fishing and related activities by nationals and juridical persons of a Member State shall be made an offence in the national laws of the State Party.
3. State Parties shall establish appropriate arrangements to enable co-operation on hot pursuit of vessels that violate the laws of one State Party and enter the jurisdiction of another State Party.
4. State Parties shall co-operate in such matters as the following:
  - (a) procedures for the extradition to another State Party of persons charged with offences against the fisheries laws of that other State Party or serving a sentence under the laws of that State Party;
  - (b) establishment of region-wide comparable levels of penalties imposed for illegal fishing by non-SADC-flag vessels and with respect to illegal fishing by SADC-flag vessels in the waters of other State Parties;
  - (c) consultation with regard to joint actions to be taken when there are reasonable grounds for believing that a vessel has been used for a purpose that undermines the effectiveness of measures adopted under this Protocol and such actions shall include notification of the Flag State and the undertaking by Port States of such investigatory measures as may be considered necessary to establish whether the vessel has indeed been used contrary to the provisions of this Protocol; and
  - (d) establishment of a mechanism for the registration of international and national fishing vessels as an instrument of compliance and as a means of sharing information on fishing and related activities.

Related to the commitment to harmonize legislation is Article 9 on enforcement:

1. Taking account of national responsibilities pursuant to Article 5 of this Protocol:
  - a) State parties shall take adequate measures to optimise use of existing fisheries law enforcement resources;
  - b) State Parties shall co-operate in the use of surveillance resources with a view to increasing the cost effectiveness of surveillance activities and reducing the costs of surveillance to the Region and two or more State Parties may conclude an arrangement to co-operate in the provision of personnel and the use of vessels, aircraft, communications, databases and information or other assets for the purposes of fisheries surveillance and law enforcement;
  - c) State Parties may designate competent persons to act as fisheries enforcement officers or on-board observers, in order to carry out activities on behalf of two or more State Parties;
  - d) A State Party may permit another State Party to extend its fisheries surveillance and law enforcement activities to its inland water bodies and the Exclusive Economic Zone and, in such circumstances, the conditions and method of stopping, inspecting, detaining, directing to port and seizing vessels shall be

governed by the national laws and regulations applicable to the waters where the fisheries surveillance or law enforcement activity is carried out;

- c) State Parties shall strive to harmonize the technical specifications for vessel monitoring systems and emerging technologies of interest to fisheries surveillance activities; and

2. In applying the provisions of paragraph 1, State Parties shall co-operate, either directly or through international fisheries organizations or arrangements, to ensure compliance with and enforcement of applicable international, management measures.

Brief commentaries on the areas for harmonization of legislation and enforcement follows:

- **harmonization of legislation with particular reference to the governance of shared resources.** This commitment relates to the commitment under Article 7, in particular paragraph 10. It requires that the shared stocks must be identified as is implicit in paragraphs 1 and 2 of Article 7 and the negotiation and agreement on a multilateral arrangement for conservation and management of the shared stock. In some respects, cooperation to this end is made easy given that there is the obligation to cooperate and there is ample guidance on the nature of cooperation that can be found in 1982 UN Convention and the Fish Stocks Agreement. Harmonization of laws may not pose too much difficulty as it may require only that the States ensure the implementation of conservation and management measures agreed under the auspices of the arrangement. The difficulty is in reaching agreement on specific conservation and management measures and the sharing of fishing rights (if any) as cooperation for the management of shared stocks will not only involve SADC Countries but may include States with fishing interests in the region.
- **illegal fishing and related activities by nationals and juridical persons of a Member State shall be made an offence in the national laws of the Member State.** Giving effect to this commitment is relatively easy and can be done through amendments to legislation or the passing of new laws. Many SADC countries already have laws that make it an offence for their nationals or vessels to fish in the waters of another State. This commitment could be broadened to ensure that any person who catches fish in contravention of the law of a third State and brings it into the area under jurisdiction of the Member State shall be guilty of an offence (the introduction of the so called long arm enforcement. i.e. the Lacey Clause).
- **appropriate arrangements to enable cooperation on hot pursuit.** This may seem on its face an easy task to undertake but could be more involved in reality. While hot pursuit in certain situations are allowed under the 1982 UN Convention, an agreement to elaborate on hot pursuit will primarily involve lawyers and other law enforcement agencies and experts, particularly those experts that are knowledgeable on the rules/procedures of boarding and inspection and engagement at sea.
- **cooperation on procedures for the extradition to another State Party of persons charged with offences against the fisheries laws of that other Member State or serving sentence under the laws of that State Party.** This matter may also seem easy to achieve but requires a lot of effort in reality as it also involves the application of international law or other international arrangements on extradition (and noting that fisheries offences are not typical extraditable offences).
- **establishment of region-wide comparable level of penalties imposed for illegal fishing activities by non-SADC vessels and with respect to illegal fishing by SADC-flag vessels in the waters of other State Parties.** This commitment is relatively easy to realise as it would need an exchange of information between Member States or a simple review of the penalties provisions and the making of necessary adjustments by the Member States.

- *consult with regard to joint actions, to be taken when there are reasonable grounds for believing that a vessel has been used for a purpose that undermines the effectiveness of measures adopted.* Consultation can be achieved with little effort and therefore this commitment is easy to give effect to. Actions could include denial of port access, which is possible in some Member States who already require notification and permission to enter their ports.
- *establish a mechanism for registration of international and national fishing vessels as an instrument of compliance and as a means of sharing information on fishing and related activities.* A regional register can be easily agreed upon. Such regional registry which could be similar to that operated by the South Pacific Forum Fisheries Agency (FFA) will need a designated authority or secretariat to manage the registry. However, it requires that a regional institutional arrangement for the implementation of the register is necessary. The success of the register will also depend on implementation at the national level including legislative support in the granting of a responsible status or "good standing" and the commitment to refuse a fishing authorisation by all the Member States if the vessel does not have "responsible status" or loses "responsible status" through "black listing".<sup>9</sup>
- *optimise use of existing fisheries law enforcement resources.* This commitment is primarily a national one but it may include regional law enforcement. The sharing of law enforcement information and experiences through an agreed forum may kick-start the process for cooperation on this matter. External assistance may have to be sought to give effect to this commitment.
- *co-operate in the use of surveillance resources with a view to increasing the cost effectiveness of surveillance activities and reducing the costs of surveillance to the Region and two or more State Party may conclude an arrangement to co-operate in the provision of personnel and the use of vessels, aircraft, communications, databases and information, or other assets for the purposes of fisheries surveillance and law enforcement;* this commitment implies pooling of resources and may require an examination of options for surveillance that could reduce MCS costs for Member States. The option that has been hailed as cost saving and which could complement conventional MCS mechanisms is the use of satellite-based vessel monitoring system. The use of satellite based VMS also has legislative implications which would need consideration by member states. Bilateral arrangements for joint surveillance and enforcement could also be considered.
- *designate competent persons to act as fisheries enforcement officers or on-board observers, in order to carry out activities on behalf of two or more State Parties.* This commitment requires cross-authorisation and designation of competent persons and needs legislative support.
- *A Member State may permit another Member State to extend its fisheries surveillance and law enforcement activities to inland water bodies and the Exclusive Economic Zone of that State Parties and in such circumstances, the conditions and method of stopping, inspecting, detaining, directing to port and seizing vessels shall be governed by the national laws and regulations applicable in the waters where the fisheries surveillance or law enforcement activity is carried out;* This commitment also requires cross-authorisation and designation of competent persons and needs legislative support. Further, it would need good dissemination of laws and information of individual State practice in law enforcement. A lot of training may be required to ensure that the enforcing State officers can competently carry out enforcement activities in another State.
- *harmonize the technical specifications for vessel monitoring systems and emerging technologies of interest to fisheries surveillance activities.* Satellite-based vessel monitoring system is an emerging technology that is worth considering. The use of satellite based VMS also has

<sup>9</sup> T. Aqorau, discusses the background and operational aspects of the FFA Regional Register in *Illegal Fishing and Fisheries Law Enforcement in Small Island Developing States: The Pacific Islands Experience*, The International Journal of Marine and Coastal Law, Vol. 12, No.1, 37-63. See also G. Moore, "Enforcement without Force: New Techniques in Compliance Control for Foreign Fishing Operations Based on Regional Cooperation" (1993) 24 Ocean Development and International Law 19-203.

legislative implications which would need consideration by Member States including ensuring that information generated by such technologies can be admissible in judicial proceedings.

- *member states shall co-operate, either directly or through international fisheries organizations or arrangements, to ensure compliance with and enforcement of applicable international, management measures.* Many of the SADC countries are also members of international fisheries organizations and arrangements. Close coordination by Member States with their counterparts in the relevant international organization or arrangement may be required on conservation and management and MCS matters, particularly in relation to the management of shared stocks that are also occur on the high seas.

Clearly, the Member States of SADC have set themselves an agenda for harmonization of fisheries laws and which points to specific areas for such harmonization. However, Articles 8 and 9 of the SADC Fisheries Protocol lean towards cooperation in the area of law enforcement.

While cooperation in the area of fisheries law enforcement remains valid, the commitment for cooperation and harmonization of laws should be applied more broadly to cover other areas. A more complete picture for the cooperation to harmonize fisheries laws will involve a general sharing of legal information and resources that will eventually lead to legislative action by each Member State to address the areas identified in Part C of this Report. Generally, the harmonization of legislation should occur in the following broad areas (but not necessarily undertaken in this order):

- ensuring that national fisheries legal regimes generally support policy and management directives and to specifically facilitate adoption/adaptation of fisheries management trends such as:
  - management planning,
  - enabling broader participation by stakeholders in fisheries management (including co-management),
  - use of fishing rights,
  - minimum terms and conditions for fisheries access agreements,
  - post harvest activities (e.g. seafood safety and quality issues)
  - effective implementation of international fisheries instruments and management measures; and,
- compliance with and enforcement of fisheries laws.

It should be remembered above all that harmonization of legislation is not a matter of simply standardising text but rather in ensuring that the laws have the agreed desired effect.

### 3. A pragmatic approach to harmonization of fisheries legislation

Harmonization of laws requires legislative action, which is a matter within the domestic domain of Member States. Thus the Member States can individually take action to satisfy their commitments under the Fisheries Protocol. However, impetus can be given to domestic action through a simple and practical approach for the exchange and sharing of information. Much can be learnt from the developing countries that are members of the South Pacific Forum (the Forum) who have the harmonization of fisheries laws on their agenda. Under the auspices of the Forum, an annual meeting of senior state lawyers (usually a delegation led by the head of justice departments)<sup>10</sup> is convened to discuss topical issues relating to administration and enforcement of law in their own countries. At this meetings, the delegates share information and experiences that could assist their colleagues better administer the laws of their countries.

<sup>10</sup> The Pacific Islands Legal Officers Meeting (PILOM).

In relation to legal issues concerning fisheries, the subsidiary body of the Forum on fisheries, the FFA,<sup>11</sup> coordinates the sharing of information and resources on fisheries management amongst members and facilitates training including MCS and law enforcement. The FFA's governing body, the Forum Fisheries Committee receives and reviews technical information and advice and makes recommendations which the member governments undertake to implement pursuant to their commitments under the FFA Convention.<sup>12</sup>

The Member States clearly draw on the experience of the FFA countries on many aspects for cooperation stipulated in the Fisheries Protocol. It could also learn from the same experience on matters of implementation. An arrangement similar to that of the FFA for legal information and resource sharing set up under the institutional framework of the Fisheries Protocol could facilitate further cooperation towards harmonization of fisheries laws and the effective implementation thereof. The arrangement could be set up initially as an ad hoc working group for information exchange and resource sharing could suffice in the initial stage of giving effect to the Member States' commitments. The ad hoc forum could eventually become a formal institution.

The ad hoc working group could prioritise issues to focus on and/or evolve a strategy to fulfil the commitment of Member States for cooperation in fisheries legal matters. Initially, the areas for cooperation and harmonization of laws could be those that are listed in Article 9 of the Fisheries Protocol but as recommended above, it should not be restricted to these areas. Legal information, which may be shared initially, could include the announcement of legislative reviews and new laws and associated procedures, compliance and enforcement action including judicial decisions and discussion of emerging trends and issues and experiences.

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<sup>11</sup> The Forum Fisheries Agency (FFA) is established by South Pacific Forum Fisheries Agency Convention, 10 July 1978. The 16 members of FFA are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. (<http://www.ffa.int>).

<sup>12</sup> South Pacific Forum Fisheries Agency Convention, 10 July 1978.

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## ANNEX I

OVERVIEW OF THE COMPLIANCE AGREEMENT  
AND THE FISH STOCKS AGREEMENT

## COMPLIANCE AGREEMENT

The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement) was adopted by the Conference of the Food and Agriculture Organization in November 1993. It is open to acceptance by members of FAO and other bodies of the United Nations system and will come into force upon receipt of the twenty-fifth instrument of acceptance.

The Compliance Agreement covers similar ground to the Fish Stocks Agreement, but with some differences. The most significant is that it applies generally to fishing on the high seas, not just to straddling and highly migratory stocks. On the other hand, a party may exempt vessels less than 24 metres long. A party to the Compliance Agreement may not normally register a fishing vessel that has "undermined the effectiveness" of international management measures under its previous flag.

A register of high-seas fishing vessels is established under the Compliance Agreement and parties are required to report relevant information to FAO for inclusion in the register and, subject to requirements of confidentiality, for circulation to the other parties.

Like the Fish Stocks Agreement, the Compliance Agreement obligates the parties to require an authorization for high seas fishing (in this case, for all species) and prohibits a state from authorizing vessels that it cannot control.

The parties are to require their high-seas fishing vessels to be marked and to report on their fishing activities. The parties are required to take enforcement action for violators (i.e. those that undermine the effectiveness of international management measures), including explicitly to make violations a criminal offence "where appropriate". Sanctions for serious violations must include refusal, suspension or withdrawal of the high seas authorization.

## UN FISH STOCKS AGREEMENT

The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement) was adopted in New York in December 1995. It will come into force thirty days after the deposit of the thirtieth instrument of ratification or accession.

In general, the Fish Stocks Agreement applies to straddling stocks (i.e. those occurring both within and beyond the fishing jurisdiction of coastal nations) and highly migratory species "beyond areas under national jurisdiction". So, except as specified, the Fish Stocks Agreement does not apply to non-straddling, non-highly migratory stocks and does not apply to any stocks within areas under national jurisdiction.

Parties to the Agreement are required to "cooperate" to manage the relevant stocks, and in particular to :

- (a) adopt measures to ensure long-term sustainability . . . ;
- (j) collect and share, in a timely manner, . . . data . . . on . . . position, catch and fishing effort . . . ;



- (l) implement and enforce . . . measures through effective monitoring, control and surveillance.

Both national and international actions are set out to implement these requirements. The main national obligation is to require an authorization for vessels flying the national flag to fish on the high seas (by implication, for straddling and highly migratory stocks).

The authorization may be granted only where the flag state is "able to exercise effectively its responsibilities" under the agreement. The authorization must be subject to conditions "sufficient to fulfil any [international] obligations of the flag state".

Other obligations of the flag state include requiring reporting of position, catch and effort in accordance with applicable standards, requiring vessels to be marked, monitoring, control and surveillance through various means including vessel monitoring systems and ensuring that its vessels do not engage in unauthorized fishing (apparently for any species) in other countries' waters.

International actions are focussed on "subregional and regional fisheries management organizations or arrangements". States are required to establish an organization or arrangement where none exists. They are required to work through the organization or arrangement to establish management measures, data standards and "appropriate mechanisms for effective monitoring, control, surveillance and enforcement." Where an organization or arrangement with competence to establish management measures exists, both coastal and fishing states must either join the organization or arrangement or give effect to the measures. States that refuse to do either may not authorize their vessels to fish for the stocks covered by the organization or arrangement.

There are rather involved provisions for regional surveillance and enforcement. In general, members of a regional body may board and inspect a vessel of any party to the Fish Stocks Agreement, whether or not it is a member of the regional body. Where there is evidence of a violation, the flag state should be informed and it may either investigate the suspected violation or allow the inspecting state to do so. In the latter case, the results of the investigation are communicated to the flag state which, again, may either take "enforcement action" or allow the inspecting state to do so. If a serious violation as defined by the Agreement is discovered and the flag state does not respond, the vessel may be taken into port. Regional bodies may also establish alternative procedures, as long as they are consistent with the Fish Stocks Agreement. The same provisions apply to boarding in national waters where the coastal state believes a vessel has violated regional management measures on the high seas during the same fishing trip. Port states are also authorized to inspect vessels and catches and to prohibit landings and transshipments in cases where the catch "undermines the effectiveness" of international measures.

Where a vessel violates management measures on the high seas, the flag state is required to "institute proceedings." Sanctions for violations should be severe enough to deter violations and to deprive the offender of the benefits of his illegal fishing. The flag state must ensure that the violator does not fish again on the high seas (presumably by withdrawing its authorization) until the sanction has been purged. The flag state should also have the means to suspend or withdraw the authorization of offending masters and officers to serve on fishing vessels.

## ANNEX II

LEGISLATIVE IMPLICATIONS OF THE COMPLIANCE  
AGREEMENT AND THE FISH STOCKS AGREEMENT

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## COMPLIANCE AGREEMENT

**Principal Provisions with Legislative Implications**

The FAO Compliance Agreement is simpler than the Fish Stocks Agreement and has correspondingly fewer provisions that require legislation for their proper implementation. They are set out below.

**Art. III - Flag State Responsibility**

(1) (a) This paragraph requires each party to take necessary measures to ensure that its vessels do not undermine the effectiveness of international conservation and management measures. This would be complied with by legal requirements by individual SADC States that designate or which enables the SADC State to designate what international conservation and management measures are recognised and this is linked to the system of authorisation for fishing so that such authorisations are subject to appropriate conditions (including compliance with the recognised international conservation and management measures), sanctions for violation of the conditions including being able to suspend or cancel the licence.

(2) This paragraph requires parties to prohibit fishing on the high seas by their vessels without authorization and requires the authorized vessel to fish in accordance with the conditions of the authorization. This would be complied with by requiring an authorization to fish on the high seas, imposing appropriate conditions, applying sanctions for violation of the conditions including being able to suspend or cancel the licence.

(3) This paragraph requires parties to be able to exercise effective control over their vessels. This would require legal requirements that ensure that vessels which the State cannot exercise effective control over is not authorised to fish or which enable the cancellation of an authorization to fish if the fisheries or licensing authority can no longer exercise effective control over such vessel.

(4) This paragraph provides that the authorization is deemed cancelled when the vessel ceases to fly the party's flag.

(5) This paragraph requires parties to refuse an authorization to reflagged vessels that have had an authorization cancelled or suspended for undermining international conservation and management measures, subject to various conditions.

(6) This paragraph requires that vessels be marked according to generally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.

(7) This paragraph requires vessels to supply information on area, catches and landings.

(8) This paragraph requires enforcement measures including refusal, suspension or withdrawal of the authorization.

**Art. IV - Records of Fishing Vessels**

This article requires records of authorized vessels.

Art. V - International Cooperation

- (1) The parties are required to exchange information including evidence.
- (2) This paragraph requires parties to notify the flag state where a vessel in port has undermined an international management measure.

This paragraph also provides for parties to arrange for port state investigations. In any case, it would appear that a port state may inspect fishing vessels.

Art. VI - Exchange of Information

This article provides for supply of information to FAO. Legislation may not be necessary, but the provisions could amplified the need for additional information listed if this is not already required.

## UN FISH STOCKS AGREEMENT

### Principal provisions with legislative implications

The Fish Stocks Agreement is a complex instrument. It should be noted that it relates only to the conservation and management of straddling and highly migratory fish stocks. The provisions which could be reflected in legislation are numerous, but many of them can be dealt with by the same legislative measure. Existing legislative provisions could be able to implement the requirements of certain provisions of this Agreement such as those relating to the provision of data. The Agreement also recapitulates some provisions of the Compliance Agreement so that legislative provisions that are suggested for one Agreement for such provisions are also relevant for the other.

Art. 5 - General principles

This article requires coastal and fishing states to cooperate in a variety of ways in relation to straddling and highly migratory stocks. Later articles spell this out in greater detail. The only obligation of article 5 that requires specific action is to collect and share data in accordance with Annex I of the agreement (art. 5(j)). This is more particularly dealt with in articles 10(f) and 14.

Art. 6 - Application of the precautionary approach

This article requires states (by implication both coastal and fishing) to apply the precautionary approach to conservation, management and exploitation of straddling and highly migratory stocks. The approach is set out in the form of guidelines in Annex II, which essentially requires the establishment of reference points. This can be fully provided for through the fishery management and development plans (if this are provided for in legislation).

States are required to take action if reference points are approached, presumably reducing or restricting allowed catches or effort. Actions that may be taken include application of additional conservation and management measures and cancellation or suspension of certain rights (including fishing). Legislative provisions must enable fisheries authorities "to take action" where reference points are approached.

Art. 7 - Compatibility of conservation and management measures

This article restates the rights and obligations of coastal and fishing states under the 1982 UN Convention on the Law of the Sea. It then requires "agreement" (compatibility) between conservation and

measures for straddling and highly migratory fish on the high seas and areas under national jurisdiction. If measures cannot be agreed on, dispute-settlement provisions of the Agreement may be invoked. None of this appears to require legislation, although the measures finally applied would have to be made applicable to SADC States' vessels through their legislation. Assuming that the power to establish conservation and management measures for straddling and migratory stocks is founded in each SADC State legislation, they would have to, in establishing compatible measures within areas under national jurisdiction, "take into account" measures for straddling and migratory stocks on the high seas determined by coastal and fishing states and organizations (art. 7(2)(b)-(c)).

#### Art. 8 – Cooperation for conservation and management

This article is associated with article 7. It creates an obligation for coastal and fishing states establish an organization or arrangement where none exists for the conservation and management of straddling and highly migratory fish stocks and to join or to accept the measures of an organization or arrangement with competence for the relevant straddling or migratory stock. It makes all states with a "real interest" in the fishery eligible to join the organization or arrangement and excludes non-members or non-accepting states from the fishery. These obligations do not require legislation.

However, the individual SADC State would have to be able to give effect to the conservation and management measures of the organization or arrangement to which it is a party or to the measures which it recognises as international conservation and management measures (including measures established by organizations or arrangements to which it is not a party). The SADC state must also be able to prohibit its vessels from fishing in a fishery that was covered by an arrangement that the SADC State had not joined or accepted. These powers would have to be provided by legislation. (See legislative proposal for giving effect to international measures under Article III (1) of the Compliance Agreement [in ANNEX II])

#### Art. 10 – Functions of subregional and regional fisheries management organizations and arrangements

This article provides for the matters on which states should agree, and therefore enforce on their vessels, in cooperating on straddling and migratory stocks. The paragraphs with legislative implications are:

- (a) management measures (see discussion under Art. 8 (above) and the legislative proposal for giving effect to international measures under Article III (1) of the Compliance Agreement [in ANNEX II]);
- (b) catch and effort (This could be effected through fishery plans);
- (c) adopt and apply minimum standards. (This could be required in legislation as conditions for authorisations);
- (f) compile statistical data in accordance with Annex I (see discussion of art. 14)
- (h) establish cooperative mechanisms for surveillance and enforcement – at a minimum, individual SADC States would have to be responsible for assuring compliance by their own vessels and punishing violations. If joint or "regional" enforcement is agreed to, the ability to give effect to this must be provided in legislation (For example, a regional observer or authorised officer, if appointed under an established regional observer or enforcement programme, may be given enforcement powers in respect of vessels of a SADC which allows this through its legislation).

#### Art. 14 – Collection and provision of information and cooperation in scientific research

This article requires parties to collect and exchange information in accordance with Annex I, as well as to agree on data requirements. Annex I obligates states to collect data from their vessels fishing

straddling and migratory stocks and to make them available to relevant fisheries management bodies. At a minimum the data should comprise time series of catch and effort statistics by fishery and fleet, total catch by number or weight and species, discards, effort statistics and fishing location and time. Other information should be collected and provided as appropriate. Parties are also required to collect a variety of vessel data. They should ensure that their vessels submit logbook data to the national administration or a fisheries management organization. They should establish systems for verification, of which vessel monitoring systems, observers and port sampling are given as examples. (This could be required in legislation as conditions for authorisations or as specific legislative requirements)

#### Art. 17 – Non-members of organizations and non-participants in arrangements

This article provides that non-member, non-complying states shall not authorize their vessels to fish for straddling and migratory stocks subject to international measures. Members are to take action consistent with international law to deter such non-entitled vessels, but it is not clear what actions would fit this definition.

#### Art. 18 – Duties of the flag state

This article essentially recapitulates the FAO Compliance Agreement (see Annex II). It obligates flag states to ensure that their vessels do not undermine international fisheries conservation and management measures on the high seas. They are required to prohibit fishing on the high seas without an authorization, to require vessels fishing on the high seas to carry the authorization, to apply conditions to the licence in order to fulfil obligations of the flag state, and to ensure that their vessels do not conduct unauthorized fishing in the waters of other states.

Other requirements are to maintain a record of authorized vessels, marking and reporting. Monitoring, control and surveillance requirements may include observers, inspection, vessel monitoring, and regulation of transhipment.

#### Art. 19 – Compliance and enforcement by the flag State

This article requires the flag state to take action against its vessels that violate international measures for straddling or migratory stocks. Sanctions would have to include the possibility of disqualifying masters or officers from serving on such vessels. The basic requirement can be met through requiring an authorization for the high seas, imposing a condition of complying with applicable international measures, and making unauthorized fishing or violation of conditions an offence. Disqualification of masters and officers can be made an additional penalty on conviction.

#### Art. 20 – International cooperation in enforcement

This article provides generally for cooperation and specifically requires the flag state to investigate and eventually prosecute violations of other states' fisheries legislation committed in coastal state waters by vessels subsequently found on the high seas. This would require an authorization to fish in other states' waters and making conditions of the authorization, including obedience of coastal state laws, enforceable. This article also authorizes action in accordance with international law to deter vessels that have violated international management measures (not limited to straddling or migratory stocks) from fishing until the flag state acts, but does not indicate what international law might permit.

#### Art. 21 – Subregional and regional cooperation in enforcement

This article authorizes a member or participant in a subregional or regional organization or arrangement to board and inspect vessels of any party to the Fish Stocks Agreement, even if it is not party to the organization or arrangement. This power may be exercised in the high seas or in the waters of the boarding state. The purpose is limited to ensuring compliance with measures relating to straddling or migratory stocks. The action permitted is to notify the flag state of violations, although if there is no

response, if the flag state fails to act or if the flag state so authorizes, the boarding party may bring the vessel into port in order to continue the investigation in the case of a serious violation. The boarding state may only report the results of its investigation to the flag state; this article does not authorize the inspecting state to institute criminal proceedings. The flag state, on the other hand, is required either to investigate and prosecute or to authorize the boarding state to do so. Any state may also board and inspect a vessel on the high seas suspected of being without nationality.

Art. 22 – Basic procedures for boarding and inspection pursuant to article 21

This article provides procedures for exercising the powers under article 21 unless the regional fisheries body agrees on its own procedures. The article can be implemented by granting extraterritorial powers in respect of foreign vessels subject to international law.

This article also requires the flag state to ensure that its vessels cooperate and, if one does not, to suspend the vessel's authorization and order it to return to port immediately.

Art. 23 – Measures taken by a port State

This article authorizes port states to inspect fishing vessels when they are voluntarily in port, as well as to prohibit landing and transshipment of catches taken in a manner that undermines international measures for the high seas, not limited to straddling and migratory stocks.

The remaining articles of the Agreement do not have any necessary implications for legislation, although they do contain provisions for developing countries and for the settlement of disputes that SADC States may find pertinent to their situation. Article 31 in particular authorizes a tribunal to prescribe provisional measures to preserve rights or "to prevent damage to the stocks in question".

## ANNEX III

**Information Paper 1**  
**The use of administrative/civil penalties and**  
**compounding of offences and in fisheries law enforcement**  
 by

Blaise Kuemlangu, Legal Officer, Development Law Service, FAO

1. Civil and administrative processes and penalties for fisheries violations are in use in the US and certain FFA member countries. These procedures are alternatives to normal criminal proceedings for fisheries enforcement and may be judicious as they allow a reasonable/lower standard of evidence to be used in proceedings as well as the swift and economic settlement of violations, including negotiated settlements. Such processes are relevant where lengthy delays are experienced in having matters heard by Courts and the undesirability of criminalisation of persons who breach fisheries laws.

### **1 Administrative/civil processes and penalties in enforcement**

2. One of FFA options in response to, inter alia: 1) the difficulties in using evidence generated by GPS or VMS due to the hearsay rule; 2) the high standard of proof in criminal cases; and 3) the delay in dealing with criminal wrongs in many jurisdictions, is that countries adopt US civil and administrative processes and penalties for dealing with fisheries offences. This approach presents the advantages of permitting hearings, which do not necessarily follow strict rules of evidence, expedited proceedings and lower standard of proof.

3. Another attractive aspect of using civil and administrative processes for fisheries law violations is that it allows for a negotiated settlement. This entails the ability of the fisheries agency or the appropriate government authority to: notify the offender of the breach committed; present a summary of its case with an indication of penalties (usually fines); and, request the offender to show cause. If the offender considers that there is indeed a breach committed, the fisheries agency may then negotiate with the offender on the penalty to be paid. While there may be little or no negotiation on the fine, bargaining can be done on the number of breaches that can be substantiated by the fisheries agency. Bonds may be lodged so that a vessel is released to continue fishing.

#### **1.1 The scheme for the use of civil penalties for fisheries law violations**

4. Based on the legal framework for administrative action in the US, the first necessary element is the legal basis for the executive to exercise legislative and judicial powers. The Administrative Procedures Act (APA)<sup>13</sup> sets out the basic Congressional intent for such exercise of powers.

5. The second element is that the act or omission, which is considered a violation of a fisheries law, must be clearly specified. Connected to this is the need to clearly distinguish, in the relevant legislation, between the criminal offence and the civil penalty. The relevant legislation in the US is the Magnuson-Stevens Fishery Conservation and Management Act.

6. In addition to the use of different provisions to create the two types of liability (one criminal and the other civil) the relevant provisions in the Magnuson-Stevens Fishery Conservation and Management Act are carefully drafted so that the usual terms used in a provision that creates an offence (criminal liability) are avoided. Section 1857 is an example of careful legal drafting that avoids making a breach of a law solely criminal or solely civil. The relevant part of Section 1857 states as follows:

<sup>13</sup> 5 USC (Subchapter II – Administrative Procedure)

*It is unlawful -*

(1) for any person -

(A) *to violate* any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

.....  
.....  
.....*(emphasis added)*

Section 1859 creates criminal liability and provides as follows:

(a) Offences. A person *is guilty of an offence* if he commits any act prohibited by-

- (1) Section 307(1)(D), (E), (F), or (H) [16 USCS ss. 1857(1) (D), (E), (F) or (H)]; or
- (2) section 307 (2)[16 USCS ss 1857(2)]."

*(emphasis added)*The provision that creates civil liability and enables the use of administrative penalties is Section 1858.  
"Section 1858 Civil Penalties

(a) Assessment of Penalty. Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code [5 USCS ss 554], to have committed an act prohibited by section 307 [16 USCS ss 1857] *shall be liable to the United States* for a civil penalty. The amount of the penalty shall not exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate offence. The amount of the civil penalty shall be assessed by the secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offences, ability to pay, and such other matters as justice may require."

*(emphasis added)*

7. It shall be noted that the use of the words "it is unlawful" and "to violate" in the prohibition section (Section 1857) provides the choice to invoke a civil or criminal process for enforcement. In complementing Section 1857, Section 1858, on one hand, uses the words, "shall be liable to the United States" (creating the basis for use of civil penalties) while Section 1859, on the other hand, uses "is guilty of an offence" (which establishes criminal liability).

8. The process for use of civil penalties is established. It includes issuance of notice by the designated authority to the person alleged to have committed a violation after detailed investigation is conducted and there is enough evidence to support the finding that the violator committed a prohibited act.



9. There must be provision for hearing. All interested parties must be given an opportunity to be heard including the opportunity for the submission and consideration of facts and arguments or offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and public interest permit it. Where the parties are unable to determine a controversy by consent, hearing and the decision on notice will ensue.

10. Settlement and other alternative dispute resolution are encouraged. The fact that the resulting liability is civil enables the parties to settle just like the parties would in litigation in civil suits. This can be compared to a criminal proceeding in some common law jurisdictions where the only form of settlement allowed is plea bargaining.

11. It shall be noted that the majority of the fisheries cases using APA procedures to impose civil penalties are settled.<sup>14</sup>

## 1.2 Use of civil penalties outside the US

12. Marshall Islands has a simplified procedure for the use of civil penalties. Such procedures apply to violations by foreign vessels only. The provisions relating to a contravention for which a civil penalty may be imposed reflect the ability for any breach to have a criminal or civil liability. Civil penalties that are imposed shall not exceed \$1,000,000. Fishing vessels used in any contravention of the fisheries law and fish taken in the course of such contravention may be forfeited in accordance with a civil proceeding.<sup>15</sup>

13. In New Zealand, section 113z of the Fisheries Act 1996 provides for the use of administrative penalties for offences that have a penalty of a fine not exceeding \$250,000 and where no information or charge is laid in respect of an alleged offence. However the use of the administrative penalties applies only in respect of minor offences and where it would be appropriate to impose an administrative penalty in the light of previous conduct of the vessel and the accused person. The procedure involves: the issuance of notice of violation which includes the date and time of the alleged violation, summary of facts and information on the sections on administrative penalties; and, the admission of offences and submissions by the person to whom notice is served. The maximum penalty that can be imposed is one third of the maximum monetary penalty to which the person may be liable if the person was convicted of the offence in court.<sup>16</sup>

14. Papua New Guinea has a more complex administrative enforcement proceeding that involves: the establishment of a Summary Administrative Panel; issuance of notice; right of the person to whom notice is served to opt for court proceedings; authorisation from the Public Prosecutor to allow a violation to be dealt with by summary administrative proceedings and notice of final settlement under summary administrative proceedings to a court of competent jurisdiction.<sup>17</sup>

## 2. Compounding of offences

15. While only a few countries have adopted the US administrative proceedings approach, many States in the Indian Ocean, Caribbean and South Pacific regions have adopted the compounding of offences<sup>18</sup>

<sup>14</sup> Information from a talk on civil penalties in the US by Mr. Paul Ortiz, Prosecutor, National Oceanic and Atmospheric Agency of the US at the In-Country Fisheries Prosecution Workshop at Kavieng held from 9-13 September 1996. See also William Pank, 24 Seton Hall L. Rev 1 who argues that APA Procedures for administrative penalties are not time consuming and costly because one of the reasons is that virtually all cases are settled rather than tried.

<sup>15</sup> Marshall Islands, Marine Resources Act, Title 33 Chapter 4 Part V1 s 40

<sup>16</sup> New Zealand, Fisheries Act 1996 ss.113ZA-113ZC

<sup>17</sup> Papua New Guinea, Fisheries Management Act 1998 Part VII ss 64-66

<sup>18</sup> In historical terms, compounding of offences is associated with private prosecutions of crime (private law enforcement). It is the equivalent of "an out of court settlement" in a civil suit. In compounding an offence, the prosecutor agrees, in exchange for some sort of compensation, not to press charges. Compounding a felony becomes illegal once a prosecutor has filed his charges as he is supposed to carry the case through to trial. Compounding an offence provided an incentive to prosecute. See David Friedman, *Making Sense of Law Enforcement in the 18<sup>th</sup> Century*, at the internet site <http://www.lgu.ac.uk/lawlinks/history.htm>

process in order to deal swiftly with fisheries offences. The main component in compounding of offences is that the person in whom powers to compound offences is vested (usually the Minister responsible for fisheries or the chief executive officer in the fisheries administration (Director or Secretary)) decides to accept sums of money (usually not more than the maximum of fines allowed) from the offender if it is believed that an offence has been committed. Other requirements in more recent legislation are that offences may be compounded only with the consent of the person found by the Minister or Director to have committed the offence and that notifications of the compounding of an offence may be made to the appropriate courts. The Minister or Director may also be empowered to release any article seized in relation to the offence if he compounds such offence.

16. Seychelles has a provision that allows the Minister to compound an offence committed under the Fisheries Act.

17. It should be noted that few States have used the compounding of offences provisions in their fisheries legislation. SADC countries could consider introducing in national legislation the ability to compound offences or the effective use of existing provisions. A caveat is necessary for any decision to opt for the use of compounding of offences. As noted in respect of the use of administrative penalties, the process of compounding of offences involves an exercise of judicial powers. Therefore, constitutional and administrative law implications for such options need to be comprehensively examined before using the compounding of offences as an option in enforcement.

## ANNEX IV

## Information Paper 2

## Long-arm approach to enforcement: The "Lacey Act" provision

by

Blaise Kuemlangan, Legal Officer, Development Law Service, FAO

1. A mechanism for fisheries law enforcement which has been considered and adopted by some of the member countries of FFA, is an offence creating provision that can be introduced in national fisheries legislation commonly referred to as the "Lacey Clause". The provision basically makes it unlawful to import fish that has been taken contrary to the laws of another country. The provision derives its name from its origin, the Lacey Act of the US. This mechanism should, if given a wider application, buttress cooperation in enforcement to stem illegal fishing operations in the region. Outside the US only three countries namely Papua New Guinea, Solomon Islands and Nauru, have adopted this so called "long arm" mechanism in enforcement.

**Brief background**

2. The Lacey Act<sup>19</sup> was originally passed to outlaw interstate traffic in birds and other animals illegally killed in their State of origin. There have been several amendments to the original Act. These amendments to the Lacey Act combine the Lacey Act and Black Bass Act into a single comprehensive statute to provide more effective enforcement of State, Federal, Indian tribal, and foreign conservation laws protecting fish, wildlife, and rare plants and strengthen Federal laws and improve Federal assistance to States and foreign governments in enforcement of fish and wildlife laws.<sup>20</sup> The amendments also strengthen the Lacey Act by, inter alia: (1) expending underlying violations so that they are not, under certain provisions of the Lacey Act, restricted to acts or attempted acts of taking or possession but also transportation or sale of wildlife contrary to State or foreign law, (2) explicitly defining the sale of wild life to include the provision or purchase of guiding or outfitting services for the illegal acquisition of wildlife, (3) expending the underlying violations to include the intended violation rather than just actual violations, and (4) requiring a felony violation to be committed only with the prerequisite knowledge of the import or export of fish, wild life or plants or the sale of fish, wildlife or plants with a market value greater than US\$ 350.<sup>21</sup>

3. The relevant provision of the Lacey Act makes it unlawful<sup>22</sup> for any person to: import, export, transport, sell, receive, acquire, possess, or purchase any fish, wildlife, or plant taken, possessed, transported, or sold in violation of any Federal, State, foreign, or Indian tribal law, treaty, or regulation (referred to as underlying laws); import of live wild animals and birds to occur under inhumane and unhealthful conditions; make or submit any false record, account, or identification of any fish, wildlife, or plant which has been, or is intended to be imported, exported, sold, purchased, or received from any foreign country; or transported in interstate or foreign commerce.<sup>23</sup> Federal agents are authorised to seize any wildlife which they have reasonable grounds to believe was taken, possessed, transported, or imported in violation of any provisions of the underlying laws.

**Dealing with a Lacey Act contravention.**

4. With the exception of the marking offences, none of the offences under the Act stand on their own. There must first be a violation of an underlying Federal, State, foreign, or Indian Tribal law, treaty, or regulation relating to fish, wildlife, or rare plants.

<sup>19</sup> U.S.C. Title 16, Chapter 53. The Lacey Act was passed in 1900. The Lacey Act is named after its sponsor, Iowa Congressman Lacey

<sup>20</sup> The 1981 Amendments.

<sup>21</sup> The 1998 Amendments. See Ortiz, P. Model International Fisheries Enforcement Act, FFA Port State Enforcement Workshop, Honara Solomon Islands 3-5 December 1996 for background to the Lacey Act.

<sup>22</sup> *Ibid.* s. 3372. Prohibited acts.

<sup>23</sup> These offences are commonly referred to as marking offences.

5. Both criminal and civil penalties can be assessed, depending upon the nature and type of the violation. A civil penalty can be as much as \$10,000 if there is evidence that the violator should have known that the fish, wildlife, or plants were taken, possessed, transported, or sold in violation of any underlying law.
6. Vehicles, aircraft, vessels, or other equipment used during the commission of the crime may be forfeited to the government in cases involving felony convictions. Any fish, wildlife, or plants involved in violations of the Act are also subject to forfeiture.
7. The Lacey Act has become a vital tool in efforts to control smuggling and trade in illegally taken fish and wildlife. In particular, the Lacey Act is useful in enabling the Federal government to aid other governments in enforcing their own conservation laws.<sup>24</sup>

#### Overview of the use of the "Lacey Act provision" outside the US

8. Under an understanding between the United States and FFA members called the Agreed Minute on Cooperation on Surveillance and Enforcement (the Agreed Minute), the parties agree to exchange fisheries information including information on violations, exchange personnel and develop vessel monitoring system to generally enhance surveillance and enforcement. Cooperation under the auspices of the Agreed Minute has enabled the US to frequently use the Lacey Act to prosecute vessels importing fish taken contrary to the laws of the FFA member States and to provide assistance to FFA members to develop their own Lacey Act provisions.
9. The suggestion for use of the Lacey Act provision first arose in an FFA regional legal consultation in October 1993 where it was agreed that the FFA Secretariat examine the potential for use of a Lacey clause in enforcement by FFA members. Papua New Guinea first incorporated a Lacey Act provision in the Fisheries Act of 1994 followed by Nauru in 1997 and Solomon Islands in 1998 following further discussion on the Lacey Act provision and potential for its use under the auspices of assistance provided under the Agreed Minute.
10. A typical Lacey Act provision may be drafted as follows:

- (1) Subject to subsection (3), a person who, in (insert name of country) or in fisheries waters –
  - (a) on his own account, or as partner, agent or employee of another person, lands, imports, exports, transports, sells, receives, acquires or purchases; or
  - (b) causes or permits a person acting on his behalf, or uses a fishing vessel, to land, import, export, transport, sell, receive, acquire or purchase,

any fish taken, possessed, transported or sold contrary to the law of another State shall be guilty of an offence and shall be liable to a fine not exceeding (insert monetary value).

- (2) This section does not apply to fish taken on the high seas contrary to the laws of another State where (insert name of country) does not recognise the right of that State to make laws in respect of those fish.
- (3) Where there is an agreement with another State relating to an offence referred to in subsection (1) (b), the penalty provided by subsection (1), or any

<sup>24</sup> Ortiz, *supra* note 9.

portion of it according to the terms of the agreement, shall, after all the costs and expenses have been deducted, be remitted to that State according to the terms of the agreement.<sup>25</sup>

11. A common example of violation of the laws of another State is the taking of fish without a licence where such licence is required by that State's fisheries legislation.

12. So far, only one prosecution of an offence committed against a Lacey Act provision has been conducted in Papua New Guinea where the master of a fishing vessel with a Papua New Guinea fishing licence was convicted and penalised for catching fish in Solomon Island waters without a Solomon Islands fishing licence and then bringing the catch into Papua New Guinea waters. Some issues that arose from that prosecution and which are worth noting are: (1) the need to prove foreign law and in this respect, the need for expert witness on or the availability of certified copies of the foreign law in question; (2) the need for broad interpretation of terms such as "imports" and "exports" so as to include the casual import or export of a shipment of fish even if it is not for commercial import or export purposes; and, (3) that the offence committed under the Lacey Act provision is not an enforcement of the other State's laws but the enforcement of the law of the country that has the Lacey Act provision.

### Conclusion

13. It is too early to gauge the success of the use of Lacey Act provisions. Nevertheless, the Lacey Act provision has the potential for application in the instance where the fish imported into a country is taken in violation of internationally agreed conservation and measures applicable on the high seas and as reflected in regional regulations. It enhances control over chartered vessels when they are fishing on the high seas and Port State control (routine checks of fishing vessels including examination of log books could reveal illegal activity in other States' waters). In addition, there is the potential for reciprocity in the application of the Lacey Act provision where such provision exists in the law of neighbouring States or through bilateral agreements as envisaged by the provision relating to remittance of penalties. Extensive adoption of the Lacey Act provision could also become a direct deterrent for illegal fishing wherever it occurs.

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<sup>25</sup> Solomon Islands Fisheries Management 1998 Act s.56 and Nauru Fisheries Act 1997 s.26 are recent examples of how the Lacey Act provision is drafted.

**APPENDIX E****A review of current status and constraints for international and intraregional trade of fisheries products**

by

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**1. INTRODUCTION**

This report is based upon the country reports from participating SADC countries and integrated with data from FAO trade and production statistics, FAO GLOBEFISH Research Programme reports as well as material from the FAO Umbrella training programme on the Uruguay Round Agreements. The text of the Code of Conduct for responsible fisheries, article 11 has been consulted as has the text of the various WTO agreements, the SADC Trade Protocol and the SADC Draft Protocol on Fisheries. National legislation on trade has not been consulted.

**2. EXECUTIVE SUMMARY**

All participating SADC countries are WTO members or WTO observers with the obligation of initiating membership negotiations. As such they are all party to the WTO trade agreements. Observance of the WTO agreements is also embedded in the Code of Conduct for responsible fisheries, in the SADC Trade Protocol and the SADC Draft Protocol on Fisheries. Scope for national or regional deviance from WTO agreements is therefore minimal.

The WTO Enabling Clause opens for preferential access for products from developing countries to developed countries on non-reciprocal basis. The Enabling Clause is the legal basis for regional arrangements among developing countries.

SADC intra-regional trade in fish and fishery products is limited, although formal trade barriers on a regional level have not been reported. Most trade is in exports to the EU and US markets. The main difficulty encountered in exporting to these markets is adhering to requirements on HACCP. As reflected in the country reports, there is a need for most countries to increase national capabilities in HACCP training as well as in fish inspection and laboratory services.

There is also a general need to strengthen national and regional training activities on the WTO agreements. This would include training on WTO member countries' rights and obligations under the WTO agreements and on the workings of the WTO Dispute Settlement Mechanism. Such training programmes could also prove beneficial in the case of preparing joint SADC positions in international multilateral trade negotiations.

### 3. SPECIFIC TRADE ISSUES FOR SADC WORKSHOP ON MARINE POLICY ISSUES

#### Problem area 1 for Trade: Quality/food safety.

Most countries identified in their country reports various problems in adhering to import requirements regarding food safety in major markets, and in particular for exports to the EU. This became a crucial issue after the mandatory introduction of HACCP in 1998 in the EU and the USA.

HACCP introduction proved a true paradigm shift in international food safety and quality standards as they differ fundamentally from previous systems of sampling and control of end product. HACCP systems are recognised by international organizations such as FAO and WHO and have been adopted by the Codex Alimentarius Commission, the body responsible for implementing the Joint FAO/WHO Food Standards Programme.

The responsibility of fulfilling HACCP requirements lies first and foremost with the industry, as it is the industry itself which must implement and continuously maintain the HACCP programs. In many countries, the problem of maintaining quality and safety standards in fish handling or processing is exacerbated by lack of institutional capacity in inspection services and unavailability of laboratory services. This is especially the case for countries on EU list 2 from which only a few companies are exporting to EU markets.

#### **SADC Countries included in the EU lists authorising the import of fishery products for human consumption:**

| Country      | List (Commission Decision 2001/111/EC) | Number of authorised companies for list 1 Countries | Exports in 1999 (thousands USD) |
|--------------|--|---|---------------------------------|
| Tanzania     | 1                                      | 38  | 60,202                          |
| Mozambique   | 2                                      |   | 76,861                          |
| South Africa | 1                                      | 242   | 260,056                         |
| Namibia      | 1                                      | 89  | 344,017                         |
| Angola       | 2                                      |   | 10,043                          |
| Seychelles   | 1                                      | 17  | 12,318                          |
| Mauritius    | 1                                      | 8   | 38,558                          |

EU imports from list 2 countries are treated on a case by case basis.

Whereas it is easy to sympathise with the problems encountered by industry in many developing countries, this is not likely to bring any relief for exporting companies. Food safety issues in major import markets are consumer driven, and political or diplomatic efforts will, at best, only have a minimal effect. In the long run, with increasing trade in food products and rise in third country processing, food safety concerns will probably increase and food safety standards expected to be tightened even further.

On one hand, this gives competitive advantages of producers with good safety records; on the other hand it calls for added investment in processing lines as well as in inspection services.

As reported in the country reports, intra-regional trade is limited with the major export markets being the EU, followed by NAFTA. Formal barriers to intra-regional trade have not been reported.

Possible actions:

- create additional training programmes on HACCP for industry personnel and inspection service staff;
- support industry initiatives where public laboratory capabilities are insufficient;
- encourage industry organizations in carrying out training programmes.

Problem area 2 for Trade: Constraints on individual action because of international obligations under WTO and other agreements

All coastal SADC countries are WTO members (Angola, Namibia, South Africa, Mozambique, Tanzania, Mauritius) or observers with the obligation to negotiate membership (Seychelles). They are therefore bound by the specific agreements that are part of the WTO multilateral trade agreements. It is important to underline the fact that fish and fishery products are not covered by the Agreement on Agriculture but are treated as industrial goods in the context of international trade.

The most relevant agreements for fish and fishery products are: the General Agreement on Tariffs and Trade (GATT), the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), Agreement on Subsidies and Countervailing Measures (Subsidies), Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (antidumping), and the Agreement on Technical Barriers to Trade (TBT). In addition to these, it is expected that the issue of investment (equal treatment of foreign investors) will be highlighted in the new Round of Multilateral Trade Negotiations expected to start later this year. This could have implications for restrictions on foreign ownership in fishing vessels, fish processing or licences for aquaculture production.

In addition to their individual obligations as WTO members, the SADC Trade Protocol also makes specific reference to the WTO agreements, and the various articles in the Protocol have references to their relevant counterpart agreements of the WTO. Further, the SADC Draft Protocol on Fisheries refer to the binding principles of the Code of Conduct for Responsible Fisheries, which states in its article 11.2.1 on Responsible International Trade. The Provisions of this Code should be interpreted and applied in accordance with the principles, rights and obligations established in the World Trade Organization (WTO) Agreement.

The specific reference to the various WTO agreements in the SADC protocol should also preclude national legislation from including barriers to trade. In any case, no country has reported the existence of formal barriers to intra-regional trade in the SADC region.

**Conclusion:** the actions of SADC countries are bound by their commitments as members of WTO. It is therefore of extreme importance that there is a thorough understanding among member countries of the WTO and the agreements, not only for ensuring that national legislation or procedures are not in conflict with international obligations but also to fully understand their rights of member countries in possible trade disputes and how such disputes can be settled. In addition, a thorough understanding among countries is also needed in order to negotiate effectively in trade negotiations, both as individual countries and as the SADC region.

FAO is offering its member countries technical assistance concerning a wide range of WTO-related issues under the Umbrella training programme. Especially the obligations of WTO members associated with the SPS and TBT Agreements have resulted in a significant upturn in requests for FAO technical assistance. Specific regional workshops on fish trade may also be organised where feasible, as fish and fisheries products are not covered by the Agreement of Agriculture.



The WTO and the EU also offer support and assistance to developing countries on the WTO agreements.

Possible actions:

- Intensify and request support for training activities on WTO agreements for fishery and trade department officials as well as for industry representatives from FAO/WTO/EU.
- Strengthen government and SADC capabilities in multilateral trade negotiations and discuss elements of a SADC position with regard to trade in fishery products.

#### 4. SYNTHESIS OF COUNTRY REPORTS ON TRADE AND MARKETING

The numbering in this section follows the responses as given in the synthesis report.

##### 3.5 Trade in fishery products

###### 3.5.1 Marketing

###### 3.5.1.1 Exports to and imports from SADC countries over the past 5 years

The statistics reported are generally incomplete. As a rule, trade with other SADC countries is only a very small fraction of total trade in fish products. The major export market is the EU. The exceptions given are imports of frozen tuna from SADC countries for tuna canning in Mauritius and some trade in small pelagics and canned fish. Unfortunately, the national report for Namibia, the main exporting country did not report any statistics.

###### 3.5.1.2 Contribution of fishery products to the balance of trade and to foreign exchange earnings

Export earnings from fisheries are generally very important to the SADC countries, especially for the island states (in Seychelles for instance fisheries exports represent around 94% of total exports). Regrettably, statistics for Namibia were not reported but FAO fisheries statistics show total Namibian fish exports in 1999 at 230,000 tonnes with a value of US\$344 million.

###### 3.5.1.3 Efforts to promote increased fish consumption, particularly for health reasons

There is a large variation in current consumption of fish in SADC countries and the need for active promotion of fish differs accordingly. Only Tanzania and Namibia report activities to promote increased fish consumption. FAO statistics show that fish consumption in 1997 for SADC varied from 65 kg in the Seychelles and 21 kg in Mauritius to 2 kg in Mozambique<sup>20</sup>

###### 3.5.1.4 Impact of trade controls on fish products

Most reporting countries indicate that trade controls improve quality. Only South Africa certifies that fish exported has been caught legally.

###### 3.5.1.5 Constraints on the international marketing of fish products, especially where due to foreign attitudes towards the environmental acceptability of fishery management or exploitation practices.

Potential problems are related to difficulties in following standards of export markets in general and the EU in particular but they relate to quality, packaging and labelling, and not to environmental issues

<sup>20</sup>Angola 6.6 kg, Congo Dep Rep 5.7 kg, Mauritius 21.2 kg, Mozambique 2.0kg, Namibia 12.4 Kg, Seychelles 65.6 kg, South Africa 7.8 kg, Tanzania 10.3 kg

or sustainability. It was sometimes felt (Tanzania) that embargoes by importing nations were not scientifically motivated.

#### 3.5.1.6 Hidden barriers to the international trade of fish products

Potential problems are related to difficulties in following standards of export markets in general and the EU in particular but relate to quality and food safety. The EU accepts Angolan certificates only for unprocessed fish whilst South Africa is not allowed to export shellfish to the EU due to the lack of adequate water monitoring programmes. Tanzania suffered an EU embargo in 1999, although as mentioned in section 3.5.1.5. the motivation for the embargo is considered unscientific.

#### 3.5.2 Quality and safety assurance

##### 3.5.2.1 Consideration by the fishing sector of the importance of food safety in its harvesting and production.

All countries report the importance of food safety in general and how the following of regulations and standards is necessary in order to export, especially to the EU.

##### 3.5.2.2 Incentives, and current control system, to ensure the nutritional value, quality and safety of fishery products.

The quality and safety of fish products has improved through increased requirements from export markets. Most countries report the use of HACCP systems. It is unclear though how this has been translated into national legislation with subsequent improvements in quality for domestically marketed products.

##### 3.5.2.3 Co-operation between the fishing industry and other relevant actors to define rules and organise the control of quality

There seems to be no formalised co-operation between the fishery sector and other sectors. However, new legislation concerning food safety applying to all food products is forcing closer relationships between sectors, as many of the perceived health hazards are the same for all foods.

##### 3.5.2.4 Availability of trained staff to support the fishing industry in the implementation of quality assurance programmes and to verify their effectiveness

Responses vary between countries. Some countries report adequate personnel levels but most report inadequacies in both numbers and qualifications. All countries report improvements and ongoing training activities.

##### 3.2.5.5 Effectiveness of the application of HACCP principles and the Codex Alimentarius

All countries report the required use of HACCP programmes and most consider the application to be effective. Mozambique and Mauritius report deficiencies in the effective application of HACCP.

##### 3.5.2.6 Certification of shellfish-producing coastal areas

Several countries do not have any production of shellfish; most of those who do report monitoring of water quality.

### 3.5.2.7 Initiatives on the certification of fish products (as “being produced in an environmentally acceptable manner”)

All countries report that the main focus is on food safety and not on environmental issues. Domestic consumers are mostly price oriented.

## 5. TRADE POLICY IN MARINE FISHERIES FOR SADC COUNTRIES

### 5.1 SADC and WTO membership

All coastal SADC countries are WTO members or observers committed to start membership negotiations.

The following countries are members of the WTO: Angola, Namibia, South Africa, Mozambique, Tanzania, and Mauritius. Seychelles is an observer to the WTO, and as observer must commence negotiations within 5 years of getting observer status.

### 5.2 SADC and fish trade

SADC countries are net fish exporters. The main potential problem in trade lies in the importing countries and are linked to regulations on food quality and safety, including specific requirements to handling and processing. For this reason, many exporting countries perceive food safety regulations in importing countries as potential trade barriers.

The introduction of HACCP in EU and US in 1998 has accentuated the problem. Today, Namibia, South Africa, Tanzania, Mauritius and the Seychelles are on EU list 1 with a total of almost 400 approved production facilities. Angola and Mozambique are on EU list 2 and imports from these two countries are admitted on a case by case basis.

Based on the national reports, there is clearly a need for upgrading institutional capacity in many countries to comply with new food safety rules in export markets. WTO, FAO and EU can upon request all give assistance on these issues.

International duties applicable to fish and fishery products were reduced as a result of the Uruguay Round and are currently reported to average around 4 %. However, the averages hide many tariff peaks as well as the problem of tariff escalation which in many cases can be a significant problem to value addition.

On a general level, duties have ceased to be a major obstacle to international fish trade, also helped by an overall growth in imports in major markets. The result is that regulations covering other aspects of trade such as quality and safety issues take on a growing importance.

### 5.3 SADC regional trade

SADC intra-regional trade is limited. Formal barriers to intra-regional trade have not been reported, but other export markets such as the EU and NAFTA are able to pay higher prices, despite the longer distance involved. However, one can not exclude *a priori* a possible lack of efficient regional distribution systems or inadequate infrastructure as partly responsible for the limited regional trade. In several other regions, traditional trade patterns for export products are with international markets only and with little concern given to the development of regional trade links.

Of crucial importance to the development of increased regional trade are of course improved infrastructure and communications, but also stable economies, well-working financial systems and a tranquil political situation.

#### 5.4 Links to WTO trade agreements

SADC countries that are WTO members have to comply with WTO agreements (SPS, TBT, etc). The Protocol of Trade and the Protocol on fisheries seem to take well into account the overriding principles of WTO. In addition, the albeit voluntary Code of Conduct 11.2.1 stresses WTO compliance:

"The provisions of this Code should be interpreted and applied in accordance with the principles, rights and obligations established in the World Trade Organization (WTO) Agreement".

#### 5.5 Food safety and quality

The country reports are short on trade and marketing issues but this fact probably reflects the design of the questionnaires. Problems with food quality and safety and adherence to import requirements in EU markets are mentioned by several respondents. As a consequence of increased standards in export markets, several respondents report increased levels of food quality and safety also for products to domestic markets. This is in line with FAO experience in other developing countries.

#### 5.6 Fish trade and the WTO agreements

Fish and fishery products are not covered by the WTO Agreement on Agriculture, and fish is, by default, treated as an industrial product.

This has implications for subsidies in fisheries but is probably of limited relevance for fisheries in SADC countries.

The issue of national preferences, whether or not linked to subsidies, could arise with the new round of multilateral trade negotiations, in particular in the discussion of investment. This could have consequences for national policy regarding ownership of fishing vessels, fishing licenses and processing operations.

#### 5.7 SADC as part of ACP (Africa Caribbean Pacific) Countries

With the expiration of the Lomé Convention in 2000, a new Partnership Agreement between the European Community and the African, Caribbean and Pacific (ACP) States was concluded. The agreement will regulate trade between the two groups of countries and define development co-operation strategies. The Partnership agreement applies to all SADC countries except South Africa, which has a separate agreement with the EC.

As the EC-ACP agreement gives preferential treatment for products originating in ACP countries, a waiver has been requested from WTO. This is possible under the so-called Enabling Clause, which gives preferential treatment to products from developing countries.

The Enabling Clause, officially called the "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" was adopted under GATT in 1979 and enables developed members to give differential and more favourable treatment to developing countries.

The Enabling Clause is the WTO legal basis for the Generalized System of Preferences (GSP) and the Global System of Trade Preferences (GSTP).

Under the Generalised System of Preferences, developed countries offer non-reciprocal preferential treatment (such as zero or low duties on imports) to products originating in developing countries. Preference-giving countries unilaterally determine which countries and which products are included in their schemes.

Under the Global System of Trade Preferences, developing countries which are members of the Group of 77 exchange trade concessions among themselves. UNCTAD provides technical assistance to beneficiaries and conducts analyses of the various schemes.

The Enabling Clause is the legal basis for regional arrangements among developing countries.

#### **5.8 EU Programme for the least developed countries**

The recent EU initiative of giving improved access for the world's 48 poorest countries would also benefit some SADC member countries. The amendment regarding the gradual duty-free inclusion of certain commodities does not apply to fish and fishery products, which as such, would have immediate quota-free duty-free access to EU markets.

## SADC TRADE IN FISH AND FISHERY PRODUCTS WITH EU AND NAFTA

Source: GLOBEFISH Report on Regional trade agreements, chapter on SADC. (FAO, 2001, in press)

Author: Linn Helland.

### The Southern African Development Community (SADC)

#### General information

##### Establishment and Member states

The Declaration and Treaty establishing the SADC, which replaced the Southern African Development Co-ordination Conference, was signed in August 1992 with the objective of working towards economic liberation between the member states. The current member states are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe (Underlined countries with marine coastal waters).

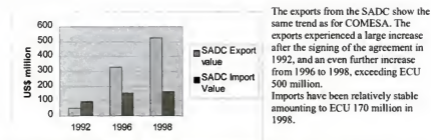
##### Objectives

The Treaty does not only cover economical issues but also functions as a political organization with principles of inter alia equality, solidarity, human rights and democracy. The trade and development contract signed in 1996 seeks to establish a SADC free trade area within eight years, i.e., 2004 and the gradual elimination of tariffs and non-tariff trade barriers to trade in the interim. Originally ratified by five member states, the aim is achievement of free trade by the year 2008. Others are in agreement on a tariff liberalisation program, currently being negotiated, and this program is less ambitious than the one under CBI and COMESA. Also, unlike agreements under the CBI, these trade liberalisation agreements among SADC countries allow for special treatment of sensitive products, agricultural products in particular.

##### Recent developments

COMESA member states have proposed merging with SADC to avoid duplicating their economic development efforts. SADC might be concentrating on the improvement of the economy through increased trade. According to COMESA members a free trade area in the region will create a wider market for goods produced in the region to the outside world. SADC is also currently involved in an institutional restructuring to meet the challenges of the international environment. An option for SADC is to position itself in a world of accelerating global integration by forming regional blocks to facilitate trade with other regional trade blocks. Mozambique has also proposed the establishment of a Southern Africa Free Trade Zone. This would include liberalisation of trade, of foreign exchange regulations and of the financial sector in general.

### Total trade of fish



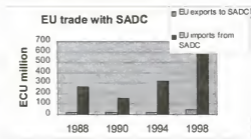
**Figure 1: Total value of imports and exports from SADC of fish and fishery products (in US\$ million)**

### Trade with other regions (EU and NAFTA)

Trade between SADC and the EU has been increasing over the last decade, with an exception for exports to the EU from 1988 to 1990. Imports of fish products to the EU from SADC have been increasing heavily, exceeding ECU 600 million in 1998. This

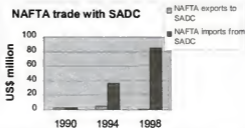
corresponds to a doubling of values every four years and shows the increasing importance of fish trade with the EU for the economies of the SADC countries.

Exports from the EU to SADC have increased as well, although not at the same pace, but remain at low absolute levels.



**Figure 2: EU's trade with SADC in fishery products 1988-1998 (in ECU million)**

The same trend shows for NAFTA. Exports to Canada and the U.S. from the SADC region have more than doubled every four years, reaching a value of over US\$ 80 million in 1998. SADC imports from NAFTA are, however, minimal. This result is similar to the one observed for COMESA and demonstrates the enormous increase in NAFTA's imports from African countries.



**Figure 3: NAFTA's trade of fishery products with SADC (In US\$ million)**

## EXPORTS FROM SELECTED SADC COUNTRIES OF FISH AND FISHERY PRODUCTS

|                     |         |         |         |         |         |         |         |         |         |         |
|---------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| <b>Tanzania</b>     | 1990    | 1991    | 1992    | 1993    | 1994    | 1995    | 1996    | 1997    | 1998    | 1999    |
| Usd (,000)          | 6,383   | 7,922   | 7,024   | 12,775  | 19,118  | 20,381  | 41,344  | 64,691  | 82,221  | 60,202  |
| Mt                  | 1,719   | 1,540   | 1,398   | 7,763   | 12,491  | 17,350  | 22,596  | 27,213  | 46,489  | 28,679  |
| <b>Mozambique</b>   | 1990    | 1991    | 1992    | 1993    | 1994    | 1995    | 1996    | 1997    | 1998    | 1999    |
| Usd (,000)          | 50,629  | 63,240  | 66,453  | 70,802  | 59,475  | 65,113  | 68,692  | 85,400  | 71,548  | 76,861  |
| Mt                  | 6,336   | 7,841   | 8,610   | 8,699   | 7,990   | 9,672   | 7,767   | 10,367  | 9,382   | 9,549   |
| <b>South Africa</b> | 1990    | 1991    | 1992    | 1993    | 1994    | 1995    | 1996    | 1997    | 1998    | 1999    |
| Usd (,000)          | 117,393 | 154,559 | 181,239 | 199,030 | 255,996 | 242,284 | 201,620 | 219,054 | 244,248 | 260,056 |
| Mt                  | 60,362  | 73,870  | 150,568 | 122,671 | 177,993 | 95,913  | 85,420  | 97,200  | 128,882 | 123,679 |
| <b>Namibia</b>      | 1990    | 1991    | 1992    | 1993    | 1994    | 1995    | 1996    | 1997    | 1998    | 1999    |
| Usd (,000)          | 0       | 0       | 0       | 0       | 270,580 | 291,704 | 200,678 | 238,223 | 300,587 | 344,017 |
| Mt                  | 0       | 0       | 0       | 0       | 118,554 | 136,233 | 205,268 | 209,752 | 252,920 | 226,108 |
| <b>Angola</b>       | 1990    | 1991    | 1992    | 1993    | 1994    | 1995    | 1996    | 1997    | 1998    | 1999    |
| Usd (,000)          | 3,490   | 4,830   | 5,657   | 4,932   | 7,165   | 5,768   | 3,922   | 9,273   | 11,618  | 10,043  |
| Mt                  | 1,044   | 1,224   | 1,456   | 2,279   | 2,221   | 2,883   | 1,358   | 3,680   | 5,790   | 5,307   |
| <b>Seychelles</b>   | 1990    | 1991    | 1992    | 1993    | 1994    | 1995    | 1996    | 1997    | 1998    | 1999    |
| Usd (,000)          | 13,255  | 16,119  | 17,446  | 14,323  | 21,694  | 22,713  | 39,733  | 33,350  | 27,306  | 12,318  |
| Mt                  | 5,727   | 7,627   | 6,644   | 5,189   | 9,066   | 6,846   | 14,625  | 19,482  | 11,414  | 9,200   |
| <b>Mauritius</b>    | 1990    | 1991    | 1992    | 1993    | 1994    | 1995    | 1996    | 1997    | 1998    | 1999    |
| Usd (,000)          | 10,772  | 20,217  | 20,106  | 23,108  | 30,391  | 38,137  | 42,613  | 45,416  | 42,793  | 38,558  |
| Mt                  | 3,742   | 6,748   | 7,567   | 8,511   | 9,899   | 13,569  | 14,122  | 15,912  | 13,019  | 15,203  |

Source: FAO



## APPENDIX F

## Synthesis of the national reports

by

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## BACKGROUND

## Code of Conduct for Responsible Fisheries

The historical development of the Code of Conduct for Responsible Fisheries (the Code) is recorded in the Preface and Annex 1 of the Code. In summary, it records the following. The fact that aquatic (and other) resources, though renewable, are finite and need to be properly managed has recently formed a topic of global focus. Fish are now recognised as providing vital sources of food, employment, recreation, trade and economic well-being for people throughout the world, both for present and future generations. From 1991 onwards a series of FAO actions have been taken by the Committee on Fisheries (COFI), the Council, and the Conference which have culminated in the adoption at the 28th Session of the FAO Conference of the Code on 31 October 1995. The first six of the twelve Articles of the Code are general in nature.

Article 1 of the Code, in describing its nature and scope, states that it is voluntary (although some parts of it which refer to marine capture fisheries are based on relevant rules of international law) and is global in scope. The Code, which provides a series of principles and standards, is directed towards members and non-members of FAO, sub-regional, regional and global organizations (both governmental and non-governmental) and all persons concerned with the conservation of fishery resources and their management, including producers and those engaged in the processing of fishery products and other users of the resources which fisheries utilise.

Article 2 records the objectives of the Code, which can be paraphrased as being to:

- establish principles for responsible fishery activities, taking into account all relevant biological, technological, economic, social, environmental and commercial aspects;
- establish principles and criteria for the elaboration of national policies for fisheries exploitation;
- serve as an instrument of reference to assist States to establish or improve the legal and institutional framework for responsible fisheries exploitation and in the formulation and implementation of appropriate measures;
- provide guidance which may be used where appropriate in the formulation and implementation of international agreements and other legal instruments, both binding and voluntary;
- facilitate and promote technical, financial and other co-operation in conservation of fish resources, management and development;
- promote the contribution of fish to food security and food quality, giving priority to the nutritional needs of local communities;
- promote the protection of living aquatic resources and their environments in coastal areas;
- promote the trade of fish and fishery products in conformity with relevant international rules and avoid the use of measures that constitute hidden barriers to such trade;
- promote research on fisheries, as well as on associated ecosystems and relevant environmental factors; and
- provide standards of conduct for all persons involved in the fisheries sector.

Article 3 concerns the relationships of the Code with other instruments and states that the Code is to be interpreted and applied in conformity with the relevant rules of international law. Nothing in the Code prejudices the rights, jurisdiction and duties of States under international law.

Article 4 of the Code concerns the implementation, monitoring and updating of the Code. *Inter alia*, it notes that all members and non-members of FAO, fishery entities and relevant sub-regional, regional and global organizations, whether governmental or non-governmental, and all persons concerned with the conservation, management and utilisation of fisheries resources and trade in fishery products should collaborate in the fulfilment and implementation of the objectives and principles contained in the Code. In accordance with its role within the United Nations system, FAO will monitor the application and implementation of the Code and its effects on fisheries and the Secretariat will report accordingly to COFI. All States, whether members or non-members of FAO, as well as relevant international organizations, whether governmental or non-governmental should actively co-operate with FAO in this work. FAO, through its competent bodies, may revise the Code, taking into account developments in fisheries as well as reports to COFI on the implementation of the Code. States and international organizations, whether governmental or non-governmental, should promote the understanding of the Code among those involved in fisheries, including, where practicable, the introduction of schemes which would promote voluntary acceptance of the Code and its effective application.

Article 5 notes the special requirements of developing countries in relation to the Code. The capacity of developing countries to implement the recommendations of the Code should be taken into account. Thus, in order to achieve the objectives of the Code and to support its effective implementation, countries, relevant international organizations, whether governmental or non-governmental, and financial institutions should give full recognition to the special circumstances and requirements of developing countries. They should also work for the adoption of measures to address the needs of developing countries, especially in the areas of financial and technical assistance, technology transfer, training and scientific co-operation and in enhancing their ability to develop their own fisheries.

The general principles of the Code are contained in the 19 sub-sections of Article 6 and may be summarised as follows:

- conserving living aquatic resources;
- conducting relevant research and collecting appropriate data;
- applying the precautionary approach;
- maintaining the nutritional value, quality and safety of fishery products during harvesting, processing and distribution, reducing wastes and minimising negative impacts on the environment;
- protecting (and rehabilitating where necessary) ecosystems such as wetlands, mangroves, reefs, lagoons, nursery and spawning areas;
- taking into account the multiple uses of coastal zones and integrating fisheries into coastal area management, planning and development;
- conducting international trade in fishery products in accordance with the World Trade Organization (WTO) Agreement and other relevant international agreements;
- resolving disputes in a timely, peaceful and co-operative manner;
- promoting awareness of responsible fisheries through the education and training of fishers and involving them in the policy formulation and implementation process, as well as the implementation of the Code itself;
- providing safe, healthy and fair working conditions for fish workers;
- protecting the rights of fish workers, as well as those involved in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood; and
- ensuring that resources are used responsibly and that adverse impacts on the environment are minimised, in order that fisheries provide a means to promote diversification of income and diet.

Articles 7-12 contain the specifics of the Code. These Articles, whose contents form the subject of the Consultation to which this national report contributes (and are therefore not summarised here), cover the following topics:

- Article 7 refers to fisheries management;
- Article 8 concerns fishing operations;
- Article 9 covers aquaculture development;
- Article 10 refers to the integration of fisheries into coastal area management;
- Article 11 concerns post-harvest practices and trade; and finally,
- Article 12 relates to fisheries research.

FAO have also issued technical guidelines for responsible fisheries covering:

- Fishing operations;
- Precautionary approach to capture fisheries and species introductions;
- Integration of fisheries into coastal management;
- Fisheries management;
- Aquaculture development;
- Inland fisheries;
- Responsible fish utilization; and
- Indicators for sustainable development.

## 1. ADMINISTRATION, LEGISLATION AND FISHERIES POLICY

### 1.1 Administrative framework

#### 1.1.1 Administrative systems and forms of government

In general, the Government of SADC countries is based on centralised rather than federal systems. South Africa is something of an exception because, although not federal, it does have nine Provinces with authority in certain areas. These areas are established in the Constitution and may involve power-sharing with the central government (Schedule 4 of the Constitution) or exclusive Provincial competence (Schedule 5). Mozambique also has a provincial organization. The United Republic of Tanzania has a union government involving the Tanzanian mainland and Zanzibar. So-called "union matters" guide the administration of both governments but fisheries is not included, meaning that each side of the Union has separate fisheries institutional frameworks.

#### 1.1.2 Administrative arrangements for marine fisheries

Sometimes the fisheries portfolio is held within a Ministry with broader responsibilities (Tanzania - Natural Resources and Tourism; Zanzibar - Agriculture, Natural Resources, Environment, and Co-operatives; South Africa - Environmental Affairs and Tourism; Seychelles - Agriculture and Marine Resources; Congo - Agriculture, Fisheries and Livestock). Other countries have dedicated Ministries of Fisheries (Mozambique and Mauritius), whilst in Namibia, there is a Ministry of Fisheries and Marine Resources and in Angola a Ministry of Fisheries and Environment.

#### 1.1.3 Administrative arrangements for related sectors

As a general rule, the larger the country, the more complicated the administrative arrangements and hence the greater the need to ensure collaboration between potentially overlapping, or even conflicting, authorities. Considering, for example, the areas of inland fisheries, ports, harbours, fish markets, trade and commerce, public health, coastal area management, and inland and marine water quality, all of which are likely to have some relationship with marine capture fisheries, in South Africa

for example, it might be necessary for the fishery authorities to consult with 6 other Ministries (Departments) as well as municipalities and local authorities.

#### 1.1.4 Relationship between fisheries authorities and other related authorities

Where co-operative arrangements are formalised, it is usually in terms of standing and ad-hoc committees. Often however the fisheries authorities act as lead agency for the sector and try to involve other authorities on the basis of invitations to meetings and requests to comment on proposed legislation. The other Ministries may also help to set goals and standards (e.g. on health-related matters or for trade purposes). Relationships seem to be informal in many cases, based on collaboration/co-operation between government departments. However, given the dependence of the fishing industry on so many other sectors for a productive working environment, both at sea and onshore, it may be worth considering a more formal approach to this issue.

#### 1.1.5 Administrative constraints with respect to responsible fisheries

The important issue of lack of compliance with regulations is raised in almost all national reports. The problem has two aspects. The first is that MCS systems are inadequate, partly at least because resources are inadequate to ensure enforcement. This aspect is being partly addressed through the SADC-wide MCS project, for some countries.

However, a second important aspect concerns the philosophy underlying the design of management systems. Where MCS resources are limited (which is the case almost everywhere), a more cost-effective approach is to design fishery management systems that, so far as possible, provide incentives to fishers to fish responsibly without the need for expensive enforcement activities. The most common way of achieving this is to implement some kind of co-management system; another is to implement management based on use rights of some kind. One difficulty raised is that there are currently inadequate structures to ensure a high level of co-management in the SADC region. A particular problem in the case of island states, raised by Seychelles, is that the inevitable dispersion of the industry has made it difficult for fishers to set up proper representational organizations. In South Africa, attempts are being made to address the compliance and co-management issues in the case of management plans that are being revised. It would appear worth while considering this second aspect of the compliance problem alongside the MCS issue.

## 1.2 Legal framework

### 1.2.1 General

#### 1.2.1.1 Principal fisheries legislation

All the national reports identify a principal fisheries legislation with titles that vary from country to country. Not all such legislation refer to "long term conservation and sustainable utilisation" as an objective. However, some of the legislation which does not, for instance the Seychelles Fisheries Act and the Tanzania Fisheries Act, strives to support long term conservation and sustainable use of fisheries resources through its operative provisions.

#### 1.2.1.2 Consultation with interested parties in drafting legislation

The national reports indicate that broad consultation for the purposes of drafting fisheries legislation is not a matter that is specified in fisheries legislation or that is legally required of concerned authorities. However, most of the SADC coastal countries, according to the National Reports, do consult with other government agencies and stakeholders in the process of reviewing fisheries legislation.

### 1.2.1.3 Collaboration on legal issues foreseen within SADC

In the context of fisheries and the relations of SADC members under the auspices of the Treaty of the Southern African Development Community, countries generally view collaboration on legal matters, and in particular harmonization of legislation, as a natural consequence of the Treaty. Specifically, Mauritius considers that harmonization of fisheries laws, assistance in judicial and legal matters (over and above co-operation on extradition) and enforcement (including cross-authorisation to prosecute) are important. Seychelles notes that harmonization of laws would include removal of custom barriers and removal of legal barriers to trade. South Africa notes the need to achieve compatibility between national and regional strategies and programmes, to promote and maximise utilisation of natural resources in the region, to achieve sustainable utilisation of natural resources and effective protection of the environment; and identifies the areas of co-operation of significance to fisheries as: food security, land tenure and agriculture, infrastructure and services; industry, trade, investment and finance; and natural resources and environment. Tanzania associates the SADC collaboration with what is necessary to achieve a holistic approach in conservation and management of resources and their use in a sustainable manner.

### 1.2.1.4 Bilateral, sub-regional or regional fisheries organizations or arrangements

Many of the countries are also members of other regional fisheries management organizations or arrangements or implement programmes under arrangements to which they are not parties. Mauritius notes that the organizations or arrangements to which it is a party do not envisage co-operation in legal matters while other countries (Seychelles, South Africa) hint at co-operation in a wide range of issues under the auspices of the organizations or arrangements to which they are parties. South Africa lists numerous arrangements that it intends to join. Tanzania identifies the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Life Flora and Fauna, 1994, and the Agreement on Technical Barriers to Trade as relevant in the context of co-operation on legal matters relating to fisheries management.

### 1.2.1.5 Mechanisms to disseminate laws, regulations and other legal rules

Many countries mention various means for the dissemination of laws including the use of radio programmes, newspapers, brochures, booklets, television (Seychelles), internet websites (South Africa), seminars, workshops, courses and informal consultations. Mauritius reports no established mechanism for dissemination of laws but the government conducts informal discussions with stakeholders. Mozambique, Seychelles, and South Africa report that their laws are published in official bulletins or national gazettes.

## 1.2.2 Management Objectives

### 1.2.2.1 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

All the countries except Angola are parties to CITES. Insofar as it relates to fisheries, some countries (Seychelles, South Africa) report a combined application of the principal fisheries legislation and other legislation relating to the protection of wildlife and national parks or the environment. Mauritius reports that its Wildlife and National Parks Act 1993 and the Wildlife Regulations 1998 are specific to the implementation of CITES. Mozambique and Tanzania, in contrast, mention that there is no legislation specifically enacted for the implementation of CITES but consider that their fisheries laws do give effect to some requirements of CITES.

### 1.2.2.2 Convention on Biological Diversity (CBD)

All the countries are parties to the CBD. None of the countries have specific legislation for its implementation although some countries report that their fisheries laws (Mauritius, South Africa), marines parks and reserves or conservation legislation (Seychelles, Tanzania) or environment legislation (Mozambique) give effect to some requirements of the Convention.

### 1.2.2.3 Control over environmental impacts on the resources from human activities

Control and regulation of the environmental impacts of fishing and related activities is non-existent in a few jurisdictions while it exists and is complex in others. Many of the jurisdictions (Mauritius, Seychelles, South Africa, Tanzania) have environmental protection legislation that can apply to post-harvest and other activities related thereto. Such laws require the production of environmental impact assessments before certain proposed activities are approved or undertaken. The principal fisheries laws and regulations in Mauritius, South Africa and Tanzania also provide for the protection of the aquatic environment from fishing and related activities. The Marine Living Resources Act of South Africa specifically states that the Minister may require an environmental impact assessment report to be submitted by an applicant for a right to undertake any fishing activities.

Most countries' fisheries legislation require that the authorities should establish measures that take into account selectivity, environmentally safe and cost effective fishing gears and catch of non-target species.

## 1.2.3 Management Framework and Procedures

### 1.2.3.1 The Compliance Agreement and the Fish Stocks Agreement

On record, only Namibia and Seychelles are parties to the Compliance Agreement. Similarly, only Mauritius, Namibia and Seychelles have ratified the Fish Stocks Agreement. However, most countries claim to give effect to some extent to the two agreements through legislation. Only Seychelles has more elaborate provisions in the new amendments to its fisheries legislation introduced in March 2001 to implement the two agreements. South Africa has basic provisions to implement the two agreements in respect to prohibition of fishing on the high seas without authorisation and could pass further regulations to control fishing on the high seas by South African nationals and vessels. Namibia has made it possible for it to implement the two agreements by regulations under its new fisheries legislation. The other countries will need to amend legislation or make regulations to effectively implement the two agreements as they only have very basic and inadequate provisions in principal legislation in this respect.

## 1.2.4 Data Gathering and Management Advice/Precautionary Approach

### 1.2.4.1 The Precautionary Approach

Only South Africa has specific reference in legislation which requires that measures be made with regard to scientific advice and the precautionary approach. However, all the countries have taken or can take scientific advice and the precautionary approach into consideration in the drafting of laws.

## 1.2.5 Management Measures

### 1.2.5.1 Licensing

All the countries report that licensing is a common mechanism for input control which is entrenched in legislation. Therefore, no fishing can take place without some form of authorisation (rights, licensing or permits) regardless of whether such authorisations are in respect of use of gear (e.g. nets) or vessels.

Namibia and South Africa combine licensing with a system of fishing rights. In Namibia vessels can be licensed only if the licence applicant also has a right of harvest, an exploratory right or a quota is issued in respect of a fishery and the applicant is granted a quota. In South Africa, local fishing rights and foreign fishing rights have to be granted in order for fishing to take place. However, no such right can be exercised without a permit. In principle, foreign fishing vessel licences can only be issued under an access agreement in Mauritius, Namibia, Seychelles, South Africa and Tanzania. Namibia can issue foreign fishing licences only to SADC member countries with whom it has access agreements. In the case of Mauritius, Seychelles and South Africa, foreign fishing vessel licences can be issued without an access agreement if financial and other guarantees are made.

The licensing procedures are more or less common in many of the SADC countries. Applicants apply to the licensing authority (usually the chief executive of the fisheries authority e.g. Permanent Secretary receives the application and the Minister responsible for fisheries matters issues the licences) in accordance with procedures specified in the principal fisheries legislation or regulations.

#### 1.2.5.2 Extension of licensing to fishing on the high seas

Licences in relation to fishing on the high seas fishing can be issued in Mauritius, Seychelles, South Africa and Namibia.

#### 1.2.5.3 Fishing licence registers

There is some form of registration for fishing vessels or authorisations for most countries. In Mauritius, registration is required for fishermen and fishing vessels but not for fishing licences. Mozambique registers licences in its database at the Ministry. There is a register of rights, exploratory rights and licences in Namibia (which may include high seas fishing licences in the future). There are no regulations on registration of vessels or licences as yet in Seychelles although a high seas fishing vessels record is envisaged under the new amendments to the Fisheries Act. South Africa requires that a register be maintained for all rights of access, other rights, permits and licences with the registration system and format to be determined by the Minister. Such register shall be open to the public. Registration of fishing vessels and fishing licences is required in Tanzania.

### 1.2.6 Implementation

#### 1.2.6.1 Sanctions in the event of non-compliance with conservation and management measures

All countries seem to report general satisfaction with the adequacy of sanctions in respect of violations of fisheries laws although there is a noticeable marked difference in fines for fisheries offences from small amounts in some countries to huge monetary penalties in others. The penalties are fines and/or imprisonment. Forfeiture of vessels, gear or fish are possible in Mauritius, Namibia, Seychelles and South Africa. Enforcement powers are common in all jurisdictions which include the basic power of search and entry of fishing vessels in respect of violations.

#### 1.2.6.2 References in fisheries laws and/or regulations to MCS, observer programmes, inspection schemes and vessel monitoring systems

Most of the laws and regulations of the countries allow conditions to be attached to authorisations or rights to fish, which, by inference, allows the imposition of MCS requirements. The law of Mauritius permits authorised officers to board and remain on vessels for purposes of inspection and collection of information. In addition, fishing vessels are specifically required to make departure and entry reports. Namibia has introduced in new legislation a specific agency to administer its observer programme and a specific fund to support it. There is also provision to require surveillance equipment to be installed on vessels. Seychelles has the power to require the installation of position fixing equipment on board a vessel and have stopped issuing licences to certain foreign vessels until they install VMS. South

Africa's law provides for inspection (in relation to enforcement) and observer schemes. It also requires that all foreign fishing vessels be equipped with VMS.

### 1.2.7 Legal framework for post harvest practices and trade.

#### 1.2.7.1 General matters and national safety and quality assurance systems

All the countries have a food safety and quality assurance system in place but differ in the degree of control and regulation, ranging from what appears to be a simple regulatory system in Mozambique to an extensively regulated and complex food safety and quality assurance system in South Africa. All the national reports with the exception of Mozambique mention the combined operation of a food legislation and a legislation or set of regulations specific to fish and fish products safety and quality whether for import, export or for domestic consumption. Common with this concurrent application of food and fish and fish-products-specific laws is the joint or concurrent mandates of the Ministry responsible for health matters and the Ministry responsible for fisheries matters over fish and fish products safety and quality. Some countries (Mauritius, Seychelles, South Africa and Tanzania) have principal fisheries regulations that also affect aspects of post harvest and trade practices particularly in the case of imports and exports of fish and fish products. In a handful of countries, there is a Standards Bureau (Mauritius, South Africa, Tanzania) and standards legislation which set standards for food processing for safety and quality considerations and ultimately consumer protection. A veterinary services certificate is required in Mauritius, Seychelles and Tanzania for exports of fish and fish products. Most countries have quality standards and sanitary and phytosanitary measures in place which do not discriminate between imports and fish food produced domestically.

Non compliance with the requirements or standards for food safety and quality assurance of fish and fish products constitutes an offence in all the countries. However the severity of penalties varies from country to country and is largely inadequate. Most countries implement standards or ensure compliance through an inspectorate within the government Ministry responsible for fisheries, the Ministry responsible for health matters or the standards agency. Unique to South Africa is a compliance system under which powers are delegated to the Local Authorities to implement health and food stuff legislation in respect of locally produced and consumed products.

Only South Africa and Tanzania detail the problems and issues that need addressing in the post harvest and trade regulatory sector. South Africa reports that legislation is fragmented and there are difficulties in determining the responsible authority. Different levels of government are also involved in enforcing different laws – from local authorities to National Departments, which creates differences in quality and approach to inspections, enforcement, prosecutions etc.

Tanzania reports a series of problems in enforcement due to:

- inadequate knowledge of the law by enforcers,
- lengthy delays and a lack of standing (*locus standi*) for ordinary people in courts,
- no clear linkage and co-ordination between sectors,
- no inventory mechanism relating to fisheries and fisheries management,
- no incentives for people to volunteer information concerning fisheries crimes,
- no legal mandate for various policy statements contained in the National Fisheries Policy,
- inadequate support services including research and extension personnel, proper fishing equipment and a lack of handling and transport facilities,
- and the lack of market information on the demand and supply of fish.

#### 1.2.7.2 Commercial fraud

Commercial fraud is an offence punishable by law in most countries by virtue of a standards legislation or penal/criminal codes.



### 1.2.7.3 Minimum standards for safety and quality assurance

All national reports indicate the implementation of HACCP and the quality standards agreed within the context of the FAO/WHO Codex Alimentarius Commission with the exception of Mauritius and Seychelles which do not implement HACCP requirements through legislation. South Africa is a member of the Commission and is represented on the Codex Alimentarius Committee on Fish and Fishery Products. The only country that has HACCP specific regulations is Tanzania (i.e. Fish (Quality Control and Standards) Regulations 2000). Tanzania's regulations require establishments to employ a person trained in HACCP and such a person will be responsible for, inter alia, drafting HACCP plans and assembles the HACCP team. Notwithstanding the absence of HACCP specific legislation, many countries which export fish and fish products particularly to the EU (e.g. South Africa) voluntarily implement HACCP principles through published standards and certifications and envisage the formalisation of HACCP principles in regulations in the near future.

### 1.2.7.4 Environmental damage

The situation in the region concerning control and regulation of environmental impacts of fishing and related activities ranges from the non-existence of such control and regulation in one or two jurisdictions to complex control and regulatory regime in others. Many of the jurisdictions (Mauritius, Seychelles, South Africa, Tanzania) have environmental protection legislation that can apply to post harvest and other activities related thereto. These environmental protection laws require the production of environmental impact assessments before certain proposed activities (e.g. construction of processing facilities or establishments) are approved or undertaken. The principal fisheries laws and regulations in Mauritius, South Africa and Tanzania also provide for the protection of the aquatic environment from fishing and related activities. The Marine Living Resources Act of South Africa specifically states that the Minister may require an environmental impact assessment report to be submitted by an applicant for a right to undertake any fishing activities which could include a processing facility licence. Congo's legislation on marine parks also serves to protect the environment.

### 1.2.7.5 Trade in fish and fishery products

Most countries' principal fisheries legislation or regulations impact on trade by requiring that approvals be obtained before imports or exports of fish and fish products can occur. Such controls are targeted primarily at ensuring compliance with food safety and quality standards. The SADC Protocol on Trade encourages the increase in trade in fish and fish products among the members but this has not been implemented or its implementation has been minimal. Exports to the EU have to meet HACCP requirements and be processed under regimes that meet EU equivalency in food safety standards as can be seen in the case of South Africa.

Current data indicate that trade in fish and fish products is not particularly important amongst the SADC members. This is reflected also in the non-existent or weak regulatory framework in the member countries to facilitate such trade despite the fact that members of SADC are aware of the call to enhance trade and to implement effective regional compliance measures under the SADC Protocol on Trade and the Draft Fisheries Protocol. Some countries (e.g. Mauritius, Seychelles) have preferential trade arrangements with countries outside the SADC region but the socio-economic impact of these arrangements as well as the existence or otherwise of necessary national regulatory frameworks to support the arrangements are not mentioned.

The dissemination of information regarding regulatory frameworks concerning post harvest practices and trade is not mentioned in some national reports (e.g. Mozambique, Namibia) while others report ineffective dissemination of such information. There are plans to review laws relating to post harvest practices and/or trade in Mauritius, South Africa and Tanzania.

### 1.3 Fisheries policy

#### 1.3.1 Broad goals

In common with many countries, SADC Member States generally have a range of potentially conflicting objectives for the fishery sector. It is not uncommon to find for instance that policy aims to increase domestic fish supply in order to contribute to food security goals whilst attempting at the same time to increase foreign exchange earnings from the sector. Although achieving both goals simultaneously is not always impossible, as resource exploitation levels increase, trade-offs between goals are increasingly required if the sustainability constraint is to be respected. Most countries explicitly recognise the need to ensure conservation and sustainability, but the implications of this constraint for the nature of the contribution that the sector might make to economic development could benefit from further reflection. In particular, the role of fisheries within the macroeconomic context of the different SADC countries could be usefully explored. In Mauritius, the 1998 10-year plan explicitly recognises that the potential for further development (in capture terms) of marine capture fisheries is limited and that therefore the focus must switch to maximising returns from existing fisheries.

#### 1.3.2 Stakeholders

There is a tendency in SADC States to see the fishers who exploit the resource as the principal stakeholders. Emphasis may be placed on fisher groups (such as co-operatives and associations) because these are easier to identify and assist. However, it is acknowledged that a wide range of potential stakeholders exist in fisheries.

#### 1.3.3 Participation in the definition of fisheries policy

SADC countries tend to consult widely in the formulation of fisheries policy. In South Africa, stakeholder input is channelled to the Minister through a statutory body (the Consultative Advisory Forum) and Mozambique uses a similar approach with the Minister advised by a Fisheries Administrative Commission. In Mauritius a very broad consultative process, involving a series of workshops on key issues with stakeholders, was followed in the development of the 10-year plan, and Tanzania and Zanzibar follow a similar approach when developing policy. Countries which do not yet utilise similar approaches might usefully draw on the experience of other SADC Member States in order to develop mechanisms to incorporate a broader range of stakeholders into policy-making.

#### 1.3.4 Gender issues

Where the gender issue is specifically addressed it is in terms of ensuring equality of rights. In the case of both Seychelles and Mauritius, the issue is not specifically addressed but this seems to be because it is felt that gender has never been a barrier to access to jobs or business opportunities. Where gender might be a problem, it is not clear from the national reports to what extent women suffer either because they are paid less than men (or nothing at all) for doing the same work or because they do not, de facto if not de jure, have the same opportunities as men to attain posts of responsibility and better-paid work generally.

#### 1.3.5 Prioritization of the goals of national fisheries policy

When asked to prioritise the goals set out in the Code of Conduct section 7.2.2 paragraphs a-g, it is interesting that almost all national reports placed first the objective of ensuring that "excess fishing capacity is avoided and the exploitation of the stocks remains economically viable". Countries should therefore be encouraged, and where necessary assisted by FAO, to implement the International Plan of Action on Overcapacity. In pursuing the goal of avoiding excess capacity, countries should take into

account the fact that only economically-based management instruments appear capable of achieving it. SADC Member States might consider the possible use of such instruments.

## 2. FISHERIES STRATEGIES AND PLANS

### 2.1 Fisheries management

#### 2.1.1 Fishery management plans

##### 2.1.1.1 Marine fishery management units

On the whole, fishery management units are clearly defined. However, the basis on which they are defined needs careful consideration. Within the same country, the definition sometimes depends on the species (for instance, the octopus fishery) and sometimes depends on the production method (for instance, the small boat trap fishery). Such an approach runs the risk of defining overlapping units which will complicate management, especially when adjustment, e.g. in effort, is required. There is a need to ensure coherence between management units, and to allow for adjustment both within and between units.

##### 2.1.1.2 Existence of fishery management plans

The extent to which plans have been developed is quite variable from one country to another. In both South Africa and Namibia, fishery management plans have been introduced for all important commercial fisheries, and plans are currently being developed for the remaining fisheries. Tanzania also has fishery management plans in place for the 4 main fisheries but the definition of these fisheries appears very broad, which may hinder effective management. In other countries, the planning process has been less comprehensive to date and generally plans exist only for one or two major fisheries. There is a need to consider therefore extending this process.

##### 2.1.1.3 Nature of fishery management plans

In South Africa, the aim of plans is to ensure sustainable use. Where necessary, a precautionary approach is adopted, including rebuilding strategies to as to optimise the sustainable yield. The foundation stone of plans is either the TAC or the TAE, which are set for all fisheries on the basis of annually-updated analyses of cpue and biological data.

In Namibia, the fishery management planning process is very advanced. In order to exploit a fishery, a fisher requires an exploitation right, a fishing licence and, in the case of the seven species comprising over 90% of Namibian catch, a quota from the TAC. Fishing is also subject to technical restrictions such as mesh-sizes, depth, areas, seasons, and so on.

In Tanzania, in the case of prawn trawling, management is effort-based. Trawlers must not exceed 25 metres and 150 GRT, with engine power restricted to 500 HP. Daily fishing time is also restricted and there is a 3-month closed season. Finally, 3 zones have been defined with vessels assigned to zones to avoid clustering and congestion in particular areas. In the case of reef fisheries, a co-management approach has been adopted.

In Mozambique, the only management plan is in the case of the shallow-water shrimp fishery. Management is based on the control of total effort (a TAC is established as a reference point only). Technical conservation measures are also used, such as a minimum mesh size, a closed season, zoning and so on.

In Seychelles, the only specific management plan relates to the mother-ship line fishery. The plan aims to ensure the sustainable exploitation of the resource and to optimise the economic benefit to the nation, but it is not clear from the national report precisely how this is to be achieved. An inshore

fishery management strategy is being developed within which other plans might be put into place. The strategy is comprehensive but appears to require significant work in order for it to be implemented.

In Mauritius, the banks fishery is managed within a de facto management plan. The aim is to ensure the long term viability of the fishery. The basic approach has been to limit entry, with only 6 companies permitted to exploit the fishery. With so few participants, it is to be expected that a sustainable, economically-rational exploitation level should emerge. The development of a management plan for the St. Brandon group of islets is ongoing.

In summary, the planning process is underway but there is scope for development, particularly in the case of the Indian Ocean SADC member states.

#### 2.1.1.4 Use of the precautionary approach in plan formulation

SADC countries are well aware of the precautionary approach and it has been widely used in developing fishery management systems, both in the case of formal plans and more generally.

However, notwithstanding its widespread influence, it appears that application of the precautionary approach might be strengthened further, particularly in the difficult but important area of negotiating pre-agreed management measures that will automatically be implemented in the event of limit reference points being exceeded.

#### 2.1.1.5 Promotion of responsible fishing by fishery management plans

In the national reports, this issue was generally understood in terms of controls placed on the fishing industry. For instance, the range of technical conservation measures was listed and the severity of monitoring, control and surveillance systems was emphasised. These aspects are clearly important in any fishery management system.

However, although mention was made of liaison with the industry, the impression is of a traditional management approach where essentially fishers must be prevented from overfishing. Insufficient attention appears to have been paid to the alternative approach where the fishery management system is designed in such a way that fishers are provided with incentives to fish responsibly. The area of promotion of responsible fishing is one that requires attention.

#### 2.1.1.6 The main benefits and beneficiaries of fishery management plans

Overall, a wide range of potential benefits and beneficiaries were identified in the national reports.

Benefits were seen in terms of:

- resource and habitat conservation;
- increased fish size;
- improved knowledge of the fishery (data and research);
- economic benefits through value-addition, licensing in order to capture some of the resource rents, job creation both at sea and onshore;
- reduced illegal fishing;
- increased catches leading to increased incomes (but it is not clear to what extent this is a sustainable situation either biologically or economically).

Beneficiaries were seen as:

- the fishery management agency (availability of data enabling improved management in the future);
- fishers (reduced conflicts, higher incomes, more jobs);

- coastal communities;
- tourism.
- government (revenue generation),
- country (foreign exchange),
- fish consumers (improved and more stable fish supply).

No single report included all aspects. In some cases, benefits were seen rather more narrowly as simply preventing the fishery from becoming overcapitalised with the main beneficiaries seen as the fishers themselves through the maintenance of their activities.

Responses to this question reflect the state of advancement of fisheries management in different countries. One interesting feature of the responses is that they reveal the reasons why management is implemented in different countries. The whole area of the purpose of fishery management is one that has been much debated, but it is crucial for the development of sound management systems. For this reason, it may be worth while to consider again the various biological, economic and social factors driving the need for management, and in particular to clarify the macroeconomic role that the fishery sector might play.

#### 2.1.1.7 The role of relevant domestic parties in the planning process

The planning process is generally top-down with the Ministry providing the lead. A variety of other parties may provide some input, generally in the form of advice to the Minister/Ministry. In South Africa, some prestigious research institutions contribute mainly through the provision of research results, and by advocating conservation. In Mauritius also it is the Ministry of Fisheries that has been the driving force in the implementation of fishery management plans. Similarly in the Seychelles where the process is government led. In Namibia although the process has been led by the government, through the Sea Fisheries Act of 1992, there is heavy involvement by the industry in fishery management planning.

Tanzania appears to be an exception, using a wider bottom-up planning process. The Ministry is responsible for policy formulation and implementation, but there is widespread local involvement through the use of village management committees.

In Mozambique, the process followed in the development of the shallow-water shrimp plan was for the Ministry to develop a draft plan, with all stakeholders then invited to participate in hearings leading to the formulation of the final document submitted to the Minister.

#### 2.1.1.8 Formal and informal structures to involve stakeholders in the planning process

The kinds of structure which exist in each country reflect the role of domestic parties in the planning process.

In some countries (Seychelles, Mozambique, South Africa), the only formal body is a Ministerial advisory forum. In Mozambique, this is apparently the only consultative mechanism because informal channels are not common in Mozambique and do not exist in the case of fisheries. In Seychelles, informal meetings are held when the need arises. South Africa has stakeholder participation in resource working group proceedings which make recommendations on TACs and TAEs. Informal meetings are also held.

In Namibia, a statutory body, the Sea Fisheries Advisory Council provides advice to the Minister. It comprises representatives of government, fishing industry, labour unions, and NGOs. In major fisheries, joint Ministry/Industry working groups design and conduct research and evaluate the results, as a way of enhancing common understanding of the fisheries resources and plans, and hence to develop and achieve shared goals.

In Mauritius two consultative committees (offshore and coastal) have been formally established to discuss fishery matters and advise the Minister. Fishers are represented on these committees. Informal meetings are also held.

In Tanzania, the bottom-up approach used in planning means that problems are first identified at fisher community level. There are frequent consultative meetings and seminars from village up to district level.

In the answers to this question, it is interesting that stakeholders is often equated to fishers. Consideration of appropriate stakeholders in fishing might be useful.

#### 2.1.1.9 Improvements resulting from the use of plans

A number of improvements were identified.

For the fishing sector:

- Plans provide some transparency, certainty and stability which helps industry to plan its activities.
- Where planning has contributed to resource recovery, more jobs are available.

For administrators:

- Plans help to promote responsible fishing.
- Increase the awareness of resource users of their role in the management process.

For society in general:

- Knowledge that fishery resources being sustainably used.
- Revenue raised from licence fees used to manage the resource.

In general planning is seen as useful because it establishes a basis for dialogue between different stakeholders.

#### 2.1.2 Fishery management strategy

##### 2.1.2.1 Reasons for lack of plans in some fisheries

A significant constraint is insufficient human and financial resources (Tanzania, Zanzibar, Mozambique). Partly this constraint relates to the fact that staff are relatively inexperienced, with a particular lack of senior staff with experience in fishery management planning, although it also relates simply to inadequate numbers of staff. In Seychelles, it is felt that human resources are adequate but not financial, and the decision-making process itself could be improved with greater consultation with senior staff.

In Mauritius, the example is given of the coastal (lagoon) fisheries. This fishery has long been managed so that in a sense a plan exists, it is simply that it has not been formalised. One suggested reason for this is that the advantages of a formalised plan are not clear to the managers in a situation where current measures work satisfactorily. Another factor is different perceptions of what constitutes an acceptable plan from the viewpoint of the FAO Code of Conduct, coupled with a lack of concrete examples of the design and implementation of plans in the region.

In South Africa, management planning is relatively advanced. It is in the artisanal and subsistence fisheries that plans remain to be developed, the focus to date having been on high volume and high value commercial fisheries.

In Namibia on the other hand all commercial fisheries are now subject to management plans.

This discussion suggests that it would be useful to have a workshop on the nature of fishery management plans, including their design and implementation, at least for the Indian Ocean SADC countries and particularly in the artisanal fishery context.

#### 2.1.2.2 Arrangements for future management plans

In South Africa the intention is to improve existing plans and to introduce, where appropriate, plans where none currently exist. A Subsistence Fishery Task Force was established in 1999 to develop a management model for the sector.

Namibia is developing a shark management plan. Seychelles expects to have a sea cucumber plan soon.

Some countries (Tanzania, Zanzibar, Mozambique) intend to introduce further plans in the future but it is not always clear how this is to be achieved. In Tanzania, a number of training activities are underway, including improved MCS, and an FAO project is due to commence with the specific aim of producing fishery management plans.

#### 2.1.2.3 Fishery management when formal plans do not exist

In many cases, the informal management system constitutes de facto a plan, or at least contains the groundwork for such a plan. For instance, in the case of Seychelles, the national report states that where there is no formal management plan, the broad approach is to use effort limitation, closed seasons or gear restrictions. The situation under a formal plan is unlikely to be very different to this. The case of Mauritius is similar, with most fisheries managed either using licensing or through standard conservation measures (gear, area and/or time restrictions etc). Tanzania also relies on licensing, whereas Zanzibar uses a co-management approach. In South Africa a precautionary approach is adopted, with precautionary catch limits being established.

The discussion in this section, together with the examples given in the national reports of how fisheries are managed in the absence of "plans", tends to reinforce the conclusion reached above (section 2.1.2.1.) that it would be useful to organise a workshop to discuss the precise nature of fishery management planning under the Code of Conduct.

#### 2.1.2.4 Formal and informal structures to involve stakeholders in the process

The arrangements seem to be similar to the case where formal plans have been developed. Often, formal arrangement exist for consultation between government departments. Consultation with other stakeholders may be undertaken formally (South Africa, Namibia) as well as informally (Seychelles, Mauritius).

In Tanzania and Zanzibar, even where no formal plan exists, exchanges of views between various stakeholders is facilitated through workshops, seminars and meetings.

### 2.1.3 Benefits and consequences

#### 2.1.3.1 Assessment of the benefits and consequences of fishery management

In most countries, benefits and consequences are assessed through the compilation of catch, effort and other statistics which are analysed and the results published in an annual report. This report is available to all stakeholders.

In South Africa, a number of economic impact criteria are used to assess benefits, including the following:

- Contribution of the fishery sector to GDP
- Generation of foreign exchange
- Number of people directly and indirectly employed
- Number of permits that can be issued with jeopardising sustainability

whilst the consequences of management are evaluated annually through:

- Stock assessments
- Revised TACs and TAEs

There would seem to be general scope for the development of socio-economic indicators of the consequences of fishery management. At the moment, most attention seems focussed on the biological state of the resource. Whilst clearly an important indicator, it tends to be a consequence of economic activities being undertaken. It seems important therefore to begin to develop economic indicators. Even in South Africa, which appears to have gone the farthest in this direction, economic indicators are restricted to impact; some indication of economic efficiency would be useful, particularly with regards to resource rent generation, given the primordial role of rent in overfishing and in determining the potential macroeconomic contribution of the sector.

#### 2.1.3.2 Adequacy of human and capital resources to implement the Code

In most cases resources are considered inadequate to fulfil all the tasks demanded by the Code.

Areas highlighted generally as causing concern include:

- Collection and analysis of essential data
- Development and implementation of operational fishery management plans
- Effective MCS

Suggestions made to address this problem include:

- Undertaking an assessment of training needs
- Seeking more financial assistance
- Providing researchers with effective equipment
- Improving practical MCS capabilities
- Co-operation between SADC member states to improve capabilities of key personnel

Specific problems were raised by Tanzania where there is a need also to improve fish landing sites and educate small-scale fish processors to ensure hygiene. There is a related need for a quality assurance programme.

In Zanzibar, it was suggested that the fisheries sector should have its own budget, and should keep some percentage of the revenue collected.

The situation was a little different in Mauritius and in Namibia where it was felt that resources were probably adequate. In both cases however it was felt that training programmes were required in a number of areas. In Mauritius, the following were mentioned: resource assessment including the determination of reference points, assessment of gear performance, socio-economic impact assessment, assessment of critical habitats, assessment of fish quality and food analysis. In Namibia, training is also required but the government is in the process of addressing the problem through the creation of Namibian training institutes.



## 2.2 Awareness, co-operation, co-ordination and participation in responsible fisheries

### 2.2.1 Strategies to promote awareness of the importance of responsible fisheries exploitation

Throughout the SADC area, quite a wide range of strategies is being pursued by different countries. It would be an interesting exercise to exchange experiences so as to identify the most cost-effective methods of getting the Code of Conduct message across.

One fairly widespread feature is the equation of responsible exploitation with conservation. It is important perhaps not to overplay the conservation card, given the widespread benefits that come from the exploitation of fishery resources. The over-riding focus of the Code is not on conservation per se but on the sustainable and economically rational use of fishery resources.

In the conservation context, South Africa has an annual Marine Week and Marine Day designed to give wide publicity to marine issues (especially conservation) and galvanise public opinion. T-shirts with a conservation message are distributed, especially to school children. Mauritius has arranged seminars for secondary schools on marine conservation and the need for marine protected areas.

### 2.2.2 Promotion of responsible fisheries and the Code of Conduct within the fisheries sector

In most SADC countries, promotion of the concept of responsible fisheries and the Code of Conduct has so far focused mainly on the fishery sector.

Tanzania has encouraged the formation of fisher associations, and the involvement of fisher communities in policy formulation and implementation. In Zanzibar, there has been an attempt to increase the awareness of fishing communities of the need for sustainable exploitation. Traditional management systems have also been encouraged so as to empower local communities. In Mauritius, half-day seminars have been organised for artisanal fishers to raise awareness of the need to conserve the marine environment. South Africa requires all applicants for fishing rights to sign a Code of Conduct for responsible fishing practices in South African waters. In Namibia, the use of working groups where all stakeholders are involved in the design of fisheries research offers a mechanism for improved understanding of the need for responsible fishing. Seychelles has undertaken extension programmes to train fishers on the construction and effective operation of some gears. Both Mozambique and Congo are assisting fishers to organise themselves into associations.

### 2.2.3 Co-operation between the fisheries sector and other stakeholders

Some of the activities mentioned in section 2.1. could also be included here. South Africa has also facilitated discussions between the fisheries sector and the oil and gas exploration sector in order to improve sector-specific responsibility. Tanzania organises frequent meetings, workshops and seminars involving various stakeholders and uses the mass-media to inform the public of the issues concerning the fisheries sector. In general, however, this is an area where specific strategies remain to be developed.

### 2.2.4 Information on responsible fisheries available to the fisheries sector

Official policy documents (Acts of Parliament, Policy and Strategy documents) are available. Posters and brochures are also produced although often the focus is on what the sector must NOT do, in terms of prohibited activities. More positive views of responsible fishing seem absent. FAO Code of Conduct-related documents are also available.

There seems scope both to improve dissemination of existing material and to produce new material to explain simply the basic ideas involved in responsible fishing, and particularly to present it as a positive approach to fishery exploitation, rather than a set of constraints for fishers. It is very important

to stress what benefits fishers can expect by sticking to the Code, as well as the sanctions if they do not.

#### 2.2.5 Comprehension, acceptance and application of precaution and responsible fisheries

In all SADC countries, the managers seem to be well aware of the concepts. The situation concerning resource users varies somewhat from one SADC country to another. In South Africa, resource users may be faced with a conflict between the application of the concepts and their personal interest. Managers have been under pressure from a number of directions to increase catch – e.g. from traditional users who wish to maintain their previous level of activity and from potential users who were excluded under previous political arrangements and who now wish to participate. This is one aspect of the adjustment problem in fisheries, but it is a particularly acute problem in the South African case.

In Namibia, the Ministry, in adopting and using the Code-of-Conduct-based white paper, has indicated its understanding, acceptance and willingness to implement the concept of precautionary approach. It is this framework that led to the establishment of the present-day fisheries exploitation regulation.

In some countries (Seychelles), the long tradition of open access makes it difficult to get these concepts across effectively to users.

In Mauritius, fishing companies have been co-operating with managers to try to fish more responsibly. For instance, they do not supply small hooks to fishers in an attempt to avoid catching smaller fish, and if these are caught the companies refuse to buy them. There appears to be general awareness of the dangers of overexploitation in the case of lagoon fisheries.

In Tanzania, where fishing communities have been sensitised to the importance of these concepts, they seem to be generally well accepted throughout the system.

#### 2.2.6 Provisions to make the fishing sector aware of the potential risks of resource exhaustion or irreversible adverse changes

Practice differs somewhat between SADC countries. In order to convince fishers of the risks of resource exhaustion, Tanzania and Zanzibar appear to rely on the fact that regulations are required, for instance to ban dynamite fishing, and to point to the poor state of the industry. Seychelles ensures that research results are quickly disseminated, and in case of new ventures fishers are advised of the potential impact of non-responsible practices. In Mauritius, awareness-building workshops are held at the research centre. Some short videos on aspects of marine environment and fishing techniques have been produced. In South Africa, there is communication between the Ministry and industry representatives but there is a need for much broader dissemination according to a communication plan. Namibia is an exception because its fishing industry is well aware of the problems, and there has been no need for special programmes to make them aware. On the whole, however there appears to be much more that could be done in this area.

#### 2.2.7 Co-ordination and funding of awareness-raising strategies

Funding for such activities appears to be very limited. In general, what funds are available are centrally-provided, although in some cases NGO and donor funding may be available.

It is difficult to assess the impact of such activities. The evaluation of effectiveness tends to be limited to indicators such as attendance at meetings and participation in discussions.

## 2.2.8 Transparency within fishery management systems: some examples

In South Africa, the Promotion of Access to Information Act 2000 ensures that information on processes and decisions by Government are accessible to the public. One example concerns the setting of TACs. Representatives and user groups are involved and may make representations at various points in the process. A similar process is followed in Namibia and in Mauritius (in the case of the banks fishery).

In Seychelles also, information regarding various aspects of fisheries management is in the public domain. And stakeholders can appeal decisions made by the Minister or management authority.

In Tanzania, a licensing advisory committee exists which includes stakeholders from the industry, fishery communities and fishery managers.

## 2.2.9 Suggestions for greater transparency

Notwithstanding the transparent approaches mentioned in the previous section, it is possible to identify areas where greater transparency would be useful. In order to achieve greater transparency, two broad strategies are suggested:

- One is to broaden participation, for instance by involving more NGOs in the planning process.
- The other is to develop better communication strategies: more publicity for conservation measures, more explanatory notes to improve understanding of the Ministry's management schemes (including the research modelling on which decisions are based).

Namibia is an exception, in the national report it is argued that the current process is sufficiently transparent and that transparency is not an issue.

## 2.3 Incentives and deterrents

### 2.3.1 Incentives for fishers to operate in a more responsible manner

One approach, which has both carrot and stick elements, is to include previous behaviour as one aspect of the allocation process when distributing use rights. This approach is used in South Africa where one of the criteria used in the allocations process is: Conservation & resource utilization. It questions whether the applicant has a record of transgression of laws and regulations and whether catch statistics are submitted. Poor performance on this criterion could result in withdrawal or reduction of an allocation. A good record could result in retention and increase in the allocation.

Financial incentives are also used where fishers who exploit under-utilised species receive tax breaks. Seychelles uses this method giving fishers who engage in specialised fishing techniques tax rebates, duty free fuel, duty free import of spare parts etc.

Namibia has no specific incentives but there are some built-in mechanisms that can be equated to incentives. These are the possibility of renewal, extension or upgrading of Right of Exploitations. In Mauritius also there are no specific incentives for responsible fishing, although the government has compensated those who have been prepared to give up lagoon net licences and re-train to fish outside the lagoon, since this contributes to reduce pressure on over-exploited lagoon stocks.

### 2.3.2 Deterrents or disincentives to discourage non-responsible actions by fishers

All countries have the standard range of fines and/or imprisonment for serious fishery offences. These penalties are supplemented by others, depending on the nature of the fishery in different countries.

For instance, in Tanzania, habitual offenders are blacklisted at the community level and they may also be tried by village councils. In Tanzania, Mauritius and South Africa, in certain cases, the vessel and its catch may be seized. And in most countries, licences and other rights can be revoked.

At the moment, fisheries management in the SADC region (as in most countries around the world) operates much more through systems of deterrents than through incentives. The extent to which incentives might be more widely used in order to achieve the goals of fishery policy is something that is worth considering across the SADC area.

## 2.4 Research

### 2.4.1 Aspects of research absent or under-represented from the Code viewpoint

Most countries (except Namibia) identified areas where research needs strengthening. The most common need was for socio-economic research to underpin fishery management, evaluating the costs and benefits of alternative management options. Seychelles, Mozambique and Tanzania appear to require support to develop research in a wide range of areas. It would seem of interest for SADC Member States to investigate the possibilities for joint research on topics of mutual interest.

### 2.4.2 Aspects of research absent or under-represented of importance to fishery management

In most countries the research needs are fairly similar. Past research has focused on biological parameters. There is a need now to develop other areas. Some countries want to see more socio- and bio-economic work (Mauritius, Seychelles). Tanzania needs to improve information on the status of fish stocks so as to enable managers to take appropriate measures to avoid overexploitation.

In South Africa, the priority has been on high value commercial species. As a result, there is a lack of knowledge of low value species.

### 2.4.3 SADC co-operation as the solution to the problem of insufficient research

A number of national reports (South Africa, Seychelles, Tanzania, Mozambique) suggested that there should be a programme to identify common research needs for the region, followed by co-operation in research programmes to address those needs on a regional basis. The Zanzibar report dissented however arguing that SADC co-operation had not so far resolved the problem. The issue of funding was raised in the Seychelles report. In the Namibian one, it was pointed out that Namibia already participates in a number of regional research programmes. And the Mauritius report points out that SADC Marine Fisheries Sector project portfolio already has seven regional projects in various stages of implementation. These projects may provide a good basis for solving the problem of insufficient research.

### 2.4.4 Relevance of research to the productive fishery sector

The Tanzanian report argues that the relevance is minimal. A lack of co-ordination between policy-makers and research institutions has resulted in institutes doing research in isolation, and most of it is not of an applied nature. The Zanzibar report makes a similar point. In the case of Mozambique, it is argued that the research can be relevant but very little is published.

In Mauritius it is felt that the research is relevant but that nonetheless there is need for more stakeholder participation in defining research programmes in order to meet their needs. In Seychelles it is argued that research is necessary to assess the status of the resource, and ensure sustainable exploitation.

The situation is different in South Africa and Namibia because the research undertaken is very focused, being used to calculate TACs and also to identify productive fishing areas. Such research is clearly relevant.

As research funding tends to stagnate and decline around the world, fishery research institutes are increasingly being faced with the problem of how to prioritise their research and how to ensure that it is relevant to the needs of users. At the same time, fishery managers need to ensure that researchers are able to respond to the pressing fishery management questions that they face. It seems that most, if not all, SADC countries are faced with this problem. Consideration of mechanisms to prioritise research and develop effective links between research and users would seem worth while.

#### 2.4.5 Links between the academic sector, national fishery research institutes and management authorities

In South Africa, there is a high level of co-operation which has been formalised into the South African Network for Coastal and Oceanographic Research (SANCOR). SANCOR interacts directly with fishery management authorities and with the national research funding body.

Seychelles Fishing Authority functions as both the management authority and the research institute, so there is necessarily a close link. It also co-operates with a number of foreign research institutes.

In Namibia there are no formal links but strong informal ones between national fishery management authorities and the academic sector. The situation is similar in Mauritius where the Albion Fisheries Research Centre, which operates as both the research and management arms of the Ministry of Fisheries, has strong informal links with the academic sector.

In Mozambique, only informal links exist. These depend strongly on the individuals involved.

In Tanzania and Zanzibar, frequent consultative meetings are held.

These links are greatly to be encouraged and where they are of an informal nature, it may be worth considering formalising them.

#### 2.4.6 Dissemination of research results

Mechanisms used to disseminate research results include research reports, research publications, consultations between researchers and others, extension services, meetings and workshops, and the use of the mass media.

A number of suggestions were made for improvement, including improved linkages between researchers and the users of information, more stakeholder participation in the planning and review stages of research programmes, more funds allocated to research, use of the internet (websites), communications in plain language and possibly travelling roadshows to present the results of research.

#### 2.4.7 Translation of research results into fishery management action

In general, it is reported that management measures are based on the best available research results and scientific evidence. However, it is not always clear what the process is by which the latter are translated into management measures.

In South Africa, research working groups make recommendations to the Department. These go to an advisory body where stakeholders can make an input before final submission of recommendations to the Minister. In Zanzibar, extension services are used to disseminate and encourage uptake of results at community management level.

Overall, it might be useful to look at the process via which research results become management action. How, for instance, should research results that are not from government research institutes be incorporated into the process?

#### 2.4.8 Prioritization of fisheries research by the fishery management authorities

Only South Africa has a formalised system. Activities are prioritised by fisheries managers through their annual research budgets. Their plans are submitted to the advisory committee where they are assessed on the basis of their balance in addressing fishery management needs and supporting policy formulation. Otherwise, ad-hoc rules are followed for the choice of research projects. The problem of prioritization of research could usefully be addressed in order to ensure that the limited research funds available produce the greatest return possible.

### 2.5 Data

#### 2.5.1 Improving data sets to bring them into line with the requirements of the Code

The data situation differs quite widely between SADC Member States. At the one end are countries such as Namibia, South Africa and Mauritius whose data sets already appear to meet the requirements of the Code. One interesting suggestion made in the South African report is that in order to be able to achieve regional collaboration, agreement should be sought on data verification systems and long-term archiving so as not to lose valuable information.

The system in Seychelles needs to provide more social, economic and market data.

In Zanzibar and Mozambique, there is a need for a general improvement in the data that are available.

Finally, the Tanzanian report highlighted the important point that improving data sets will only happen if sufficient personnel are available.

#### 2.5.2 Data sharing arrangements exist with other SADC countries

Most countries provide statistical reports to the SADC co-ordinating unit. There has also been some sharing of environmental data between some SADC states in the context of different research projects.

## 3. RESPONSIBLE FISHERIES PRODUCTION

### 3.1 Responsibility in fisheries management

#### 3.1.1 The environment

##### 3.1.1.1 Coastal resource users competing with the fisheries sector

The fisheries sector in SADC countries faces serious threats from a variety of sources for the use of coastal resources. A pervasive problem is tourism and general recreational development. The tourism sector is generally much more significant economically (in terms of contribution to GDP for instance) than the fisheries sector. Hotel developments tend to use inshore waters both for recreational activities and for effluent discharge. The problems associated with tourism are often made worse due to growing domestic population.

Urbanisation, often accompanied by land reclamation is also a widespread problem. Such developments generally contribute to land-based marine pollution and where reclamation is involved destroy fish habitat including marshlands, beaches, grass beds and areas of coral reef.

Land-based pollution may also come from industrial development and agriculture. In Mauritius the textile industry is a particular problem with effluents from dyeing often being pumped into the sea. Fertilisers and pesticides used in agriculture also find their way into coastal waters.

The development of other natural resources may also conflict with fishing. Oil and gas exploration is ongoing in most countries, and offshore diamond mining on the Atlantic coast.

Aquaculture may also compete with fishing. In Seychelles, a planned pearl culture activity was stopped due to conflict with artisanal fishing. In Mozambique, it is expected that the aquaculture sector will develop over the next few years increasing competition for coastal resources. And in Congo, both offshore oil production and the establishment of a marine park represent constraints on fishing activity.

### 3.1.1.2 Integrating fishing with other coastal area activities

A number of approaches are used to try to integrate fishing with other activities.

A common approach is to encourage the adoption of fishing and other practices which avoid conflict. One way of doing this is through zoning (e.g. marine parks) of coastal and marine areas for fisheries eco-tourism, and for sport fisheries (Zanzibar, Seychelles).

Some countries (Seychelles, Mauritius) require an EIA to be carried and made public before development projects in the coastal area can be approved. In South Africa, the EIA framework is at the planning stage.

Tanzania involves fishing communities in decision making and in other coastal-related management, planning and development.

In South Africa, coastal zone management and marine resources are the responsibility of the same Ministry.

Despite these elements, it appears that this area could be further developed. Some national reports recognised this explicitly: in Mozambique, there is as yet no policy in this area, and in Mauritius there is a need to develop a more comprehensive coastal area management policy. It appears that this same need applies fairly generally in the SADC area.

### 3.1.1.3 Links between public institutions responsible for environmental monitoring and national fisheries authorities

In South Africa a number of institutions are involved.

In the case of Mauritius, the lead institution on environmental matters is the Department of the Environment. The Albion Fisheries Research Centre is responsible both for fisheries monitoring and for the monitoring the marine environment and marine ecosystem. This Centre is part of the Fisheries Ministry and collaborates with the Fisheries Protection Service which is responsible for enforcing legislation. The Environmental Protection Act established an inter-ministerial Environment Co-ordinating Committee on which the Ministry of Fisheries is officially represented.

In Zanzibar also, the various Departments concerned (Environment, Fisheries, Cash Crops, Fruit and Forestry, together with the Institute of Marine Science, and Municipal Councils) are linked through their membership of steering and planning committees.

In other countries (Seychelles, Tanzania, Namibia), whilst there is close collaboration between the different agencies involved, the links tend to be limited to meetings, workshops and seminars together with informal consultations as the need arises.

In Mozambique, three Ministries (Fisheries, Transport and Communications, and Environmental Affairs) are concerned with lines of communication between them (e.g. information on licences is communicated to the Transport Ministry and on processing plants to Environmental Affairs).

Overall, it might be worth while reviewing the situation to try to strengthen the position of the marine fisheries sector by formalising the need for the line Ministry to be involved in decisions concerning other sectors that may potentially have an impact on fishing.

#### 3.1.1.4 Constraints faced by the public sector in the monitoring process

By far the most common problem identified in the national reports is the inadequacy of human and financial resources in order to fulfil the complex task (Tanzania, Zanzibar, Mozambique, Seychelles, Mauritius, South Africa)

The fact that Government has traditionally been organised along sectoral lines with no real culture of inter-governmental collaboration adds to the problem, particularly at the operational level where they may be no clearly established lines of intra-ministerial communication (Namibia, South Africa).

In Tanzania, the problem is complicated by poverty among fishing communities and a lack of awareness of the need to protect and conserve the environment leading to environmental degradation.

In order for Governments to meet their commitments to the Code of Conduct, new ways of addressing problems institutionally must be gradually developed in order that cross-cutting issues can be dealt with effectively. The generally identified lack of resources is probably a reflection of the low priority that has so far been accorded to this problem by most governments.

#### 3.1.1.5 Awareness in the fishing sector of the importance of monitoring environmental conditions to protect itself against problems caused by other resource users.

Partly as a result of Government awareness-building campaigns, fishers throughout the SADC region seem well aware of the issue.

#### 3.1.1.6 Possibilities for fishers who identify unfavourable environmental impacts caused by others

In Mauritius, fishers have formed associations and pressure groups to protect their rights and seek redress against polluters whose activities have negatively impacted the fisheries sector. A case is ongoing concerning development of three areas around Port Louis, but the principle of compensation has already been accepted.

Generally, fishers are simply able to report the incident to the Fisheries Authorities, who then decide what action to take. In Tanzania, Director of Fisheries is required to consult with appropriate institutions in order to ensure that a polluter cleans polluted water at his expense and within a specified time period.

This area appears to need further consideration in the SADC Member States. The fundamental issue is the rights that fishers have. The Mauritius case makes it clear that fishers have rights that can be protected legally. This is very important for the fisheries sector. Other countries might explore the extent to which a similar approach might be developed and/or encouraged.

#### 3.1.1.7 Concerns of NGOs about the environmental consequences of fishing, and the impact of other users of the same resources on the environment

The NGO situation varies substantially within the SADC area. In some cases, there appears to be no NGO interest in the fishing industry (Mauritius, Namibia, Tanzania – marine).



In others, NGOs are concerned with both the direct and indirect impacts of fishing (South Africa, Zanzibar). It is reported that in South Africa, some NGOs do not consider fishing not a legitimate activity.

In Seychelles, NGOs may represent sectoral interest (e.g. conservation of sharks to promote viewing by tourists).

### 3.1.1.8 Legal constraints on those who would cause environmental damage

This is a very difficult area in practice. In many countries (Tanzania, Zanzibar, Mozambique, Seychelles), there is no real constraint, because legislation is inadequate, or the representatives of the legal system are not sufficiently aware of problem, or the penalties are too low to represent a real deterrent or it is difficult to obtain convictions. However, in Seychelles, foreign fishing activity is very well monitored.

In Mauritius the law is clear but establishing cause and effect in environmental problems is difficult so that in practice the legal provisions are ineffective. The situation is similar in South Africa.

To some extent, the problem reflects the lack of manpower and financial resources in this area but the problem is more difficult than that. There is clearly a need to identify the legal and practical requirements in order to bring this problem under control.

### 3.1.2 Conflicts and overcapacity

#### 3.1.2.1 Conflicts in resource use

Various kinds of conflict exist. The most serious appear to be between different segments of the fishing industry itself. In Zanzibar, there has been conflict between fishers over dragnets which are used illegally, destroying fixed gears and causing environmental damage. The conflicts have been very serious. The authorities are attempting to control the situation through bye-laws which will be jointly enforced by villagers and the military. In Mozambique, the conflict is between inshore artisanal fishers and trawlers. An attempt has been made to resolve the problem by setting aside a 1-mile zone for the artisanal sector but this is difficult to enforce. A similar problem exists in Tanzania.

Conflict between commercial and recreational fishing is fairly widespread. And conflict between fishing and other coastal activities is mentioned above and is also widespread.

#### 3.1.2.2 Actions being taken within the fishery sector to alleviate resource wastage by reducing the excessive use of inputs (overcapacity, subsidies,...)

In general, the control of capacity is in its infancy in the region. In South Africa, the Ministry has established an effort limitation committee with responsibility to match effort to TAC. The Committee also attempts to match each vessel's "capacity" with its allocation.

In other countries, traditional management measures are adopted, including non-transferable vessel licensing coupled with no new entry (Mauritius) but this leads to constant demands for new licences; limitations on the size and number of trawlers (Tanzania), gear restrictions such as encouragement to use fuel-efficient engines (Seychelles) and regulations on the rigging of trawls to control the swept area (Tanzania).

Only Mauritius reports the use of a buy-back programme (in the case of the lagoon-based net fishery).

In order to meet the requirements of the Code of Conduct, and the International Plan of Action on Capacity, it appears that SADC countries will have to develop much further the instruments that they have available for the management of fishing capacity.

### 3.2 Issues of public concern

#### 3.2.1 Socio-economic issues

##### 3.2.1.1 Programmes to support the adoption of technologically and economically appropriate exploitation practices by local communities.

A wide variety of programmes have been adopted in the SADC area.

In Zanzibar, a co-management approach has been used. The Menai Bay Conservation Area (a project funded by WWF) has successfully reduced illegal fishing by involving local fishers in monitoring. And the Misali Island Conservation Project, also co-management, appears to be working well. It might, however, be noted that both projects are of recent origin; the challenge will be to ensure that they are sustainable.

In Mauritius, one approach has been to encourage the development of offshore fishing (using FADs) accompanied by the development of a new fishing technique (vertical longlines). The idea is to reduce pressure on overexploited traditional demersal species.

Seychelles has used technical conservation measures to achieve these goals (licensing, closed areas, gear restrictions, closed seasons, encourage selective gear). And similarly South Africa and Tanzania have both encouraged the use of less destructive (and more labour intensive fishing methods): for instance, in the case of the former, the use of ring nets instead of traps in the rock lobster fishery, and in the case of the latter the phasing out destructive fishing methods by providing environmentally friendly gear in Mafia Island Marine Park. Tanzania has also, in the Tanga Coastal Zone Management Programme, replaced beach seines with gill nets, and encouraged the development of alternative income-generating activities in coastal waters.

In Mozambique, there have been some programmes managed by the Institute for Small Scale Fisheries Development but the national report does not give details.

Only Namibia is a special case where this kind of programme has not been necessary (because of the absence of artisanal fishing).

##### 3.2.1.2 Credit, subsidies and the like available to the small-scale fishery sector

The situation differs quite widely among SADC Member States. The most comprehensive support seems to be in the case of Mauritius, where fishers are eligible for subsidies (no customs duty on outboards, on fishing gear and safety equipment, fisher associations pay no duty on ice-making machines, ice-boxing and vehicles, free life jackets), welfare (allowances for bad weather, closed season, training, some scholarships for fisher family children) and credit (loans available to go offshore fishing, the aim being to reduce pressure on lagoon resources. These loans require vessel or engine and bad weather allowance as collateral which gives rise to some complaints but otherwise the system functions well.

In Seychelles, some credit in form of interest-free loans for vessel and engine up to US\$10,000 is available. The Development Bank also provides loans with low interest rates and long repayment periods. There are fuel subsidies. Fishing gear, boats and engines obtained through Grant Aid are sold to fishers at cost price. In addition, fishers can purchase vessels, equipment and spares duty free. The

credit schemes generally work well but the repayment record to the Development Bank is not good (over half of loans are in arrears). Registered fishers also qualify for social security benefits in case of illness.

In Mozambique, several NGOs providing micro credit to small scale fishery sector.

In South Africa, the Department of Trade and Industry has a loan guarantee scheme but this has not functioned well to date. The main problem is the lack of collateral as access rights are only granted on an annual basis. However, the Minister has announced that longer term rights will be issued in the future.

Tanzania and Zanzibar both previously operated such schemes but they did not function well. Repayment and lack of collateral were the major constraints.

In Namibia, no credit scheme exists. However, quota allocation used as a method to favour access for previously disadvantaged groups to fishing.

### 3.2.1.3 Organization of local communities into associations or other groupings

Most countries have such organizations and on the whole they appear to function well. In Zanzibar, it is reported that there are over 132 although some have collapsed due to lack of capital. Some of these groups were formed as the result of a loan or other assistance, and the members were not particularly committed. Experience in Mauritius suggests that it is easier to organise larger-scale activities, since over three-quarters of the banks fishers are in one of two associations. The rate of membership of artisanal fishers is much lower (in one of three main associations).

In South Africa, local community associations are primarily for artisanal fishers. They have only recently been constituted and are experiencing some teething problems. It is intended that they will eventually become the vehicle for co-management.

Seychelles is something of an exception. Associations have existed in the past but have not lasted. Currently only one association exists but there has recently been increasing interest on the part of fishers.

In Congo, the Government offers assistance to establish and develop fishers' associations.

### 3.2.1.4 Research on the socio-economic effects of fishing

The amount of research being undertaken on the socio-economic effects of fishing is very uneven. Most countries report relatively little current work. In South Africa, there was some socio-economics in the past, but there is no such programme at present. However, the Department has commissioned an industry-wide economic study by sector and this is currently underway. In Mauritius, there has been no recent socio-economic research, although a proposal has been made to FAO/UNDP for a socio-economic study of the entire fisher community. Tanzania reports a very limited amount of such research, and Zanzibar none.

In the Seychelles, on the other hand, many such studies have been undertaken by local and foreign consultants, whilst in Mozambique, there are several research programmes directed towards socio-economics.

The national report for Namibia argues that because there is continuous monitoring by Ministry and other Government branches of the socio-economic effects of fishing, there need has not been felt for such research. Nonetheless, Namibia would be interested in participating in such research in the future.

On the whole, the impression gained is that this is an area that could be strengthened. Perhaps a SADC workshop to compare experiences and seek common elements of approach (e.g. survey design, analytical methods, interpretation of results) would be useful.

### 3.2.1.5 The rights, health and safety of fishery sector employees

This is an area that appears to require urgent attention in most countries. The best situation seems to be found in the cases of Seychelles and Mauritius but even here it is recognised that conditions in the fishing sector are below national norms.

Often health and safety in fishing is not included in legislation (Zanzibar, Mozambique, South Africa). In Namibia, there is no specific fisheries legislation, instead fishers are covered by general labour law. This may not be enough however when one considers that, in South Africa at least, fishing is considered the most dangerous activity of all sectors.

### 3.2.2 The public climate for fisheries exploitation

#### 3.2.2.1 Responsiveness of the fishery sector to consumer needs

On the whole the sector seems responsive to its customers. In some SADC countries (Mauritius, Seychelles, Mozambique) there is very heavy demand for fish which is the main animal protein consumed.

In South Africa, the bulk of high value resources go to demanding foreign markets.

In Namibia, the main problem has been to stimulate fish demand since Namibians are not traditional fish consumers. The Government has successfully implemented a policy to gradually increase consumption, and per capita fish consumption has increased since independence from 4kg per annum to 8-12 now.

#### 3.2.2.2 Government and fisheries sector attitudes to eco-labelling and marine stewardship

Attitudes ranged from positive (Tanzania, Namibia, Mauritius), favourable (Seychelles) to not opposed (South Africa). The South African national report felt that South Africa would follow the consensus of intergovernmental fora to which it is affiliated. In two national reports, it was felt that the issue was not relevant (Zanzibar, Mozambique)

#### 3.2.2.3 Publicity by the fisheries sector of its adoption of responsible fishing

Where the fishing industry finds it useful, it has publicised its use of the concept. The best example is in the case of canned tuna from Seychelles. South Africa and Tanzania also report use of the concept.

On the other hand, Mauritius and Namibia say that it has not yet been used, whilst Mozambique and Zanzibar feel it to be irrelevant.

### 3.2.3 Role of NGOs

#### 3.2.3.1 NGOs in the fisheries sector

The general impression is that NGOs are not particularly active in fisheries in the SADC area. Where they exist, they tend to fulfil one of two roles. Either, they focus on conservation, or they represent a lobby group for the sector in general or some element of it. In Mauritius the aim of the main NGO is to assist seamen in distress.

### 3.2.3.2 General attitude of NGOs towards fisheries exploitation

On the whole NGOs do not seem to be against exploitation, although some issues are mentioned in the national reports. In South Africa, NGOs are concerned by the impact on non-target species, and in Namibia, Greenpeace has expressed concern over seal-culling.

### 3.2.3.3 General attitude of Government and national fishing authorities towards NGOs

In general, Governments appear willing to collaborate with NGOs and to listen to their advice, provided that it is based on sound scientific principles. There is general recognition that NGOs are a legitimate expression of democratic rights and may be important to ensure that all stakeholder interests are represented in decisions on fisheries policy.

### 3.2.3.4 Activities by individual fishers or organizations in co-operation with NGOs to increase responsibility in fishing

Although the fisheries sector is seen to have a generally constructive relationship with NGOs, the number of activities at this level remains relatively small. In South Africa, exporters have adopted the codes of the Marine Stewardship Council and actively support its work. In Seychelles, the Fishing Authority has collaborated with an NGO in replacing shark nets by more selective longlines.

## 3.3 Co-operation at national, sub-regional and regional level

### 3.3.1 Regional and sub-regional co-operation programmes

The national reports are a little uneven on this question because some interpreted it to relate only to SADC initiatives, whilst others took a wider view. In the Tanzania report, SADC itself was seen as a regional co-operation programme ranking alongside others such as the Indian Ocean Tuna Commission.

One thing which emerges clearly is the existence of two groupings with distinct interests: the Atlantic seaboard states (Angola, Namibia, South Africa) and the Indian Ocean states.

On the Atlantic side, apart from activities foreseen through the South East Atlantic Fisheries Organization (SEAFO), a number of regional programmes were mentioned, particularly the Benguela Current Large Marine Ecosystem Project (BCLME), the Benguela Environment Fisheries Interaction Training Programme (BENEFIT). In addition, Namibia became a member in 1996 of the Intergovernmental Organization for Fisheries Marketing in Africa, and is considering a request to host the SADC regional unit of INFOPECHE, which is expected to be operational by end-2001.

On the Indian Ocean side, SADC Member States are generally members of organizations having a much broader membership. The question arises therefore of the potential interest of developing a SADC "position" within the context of such organizations and, if this is of interest, how to express it.

Examples of Indian Ocean organizations include the Indian Ocean Tuna Commission (IOTC) which has its HQ in Seychelles and members from all over the Indian Ocean; the Indian Ocean Marine Affairs Co-operation (IOMAC); the South West Indian Ocean Fishery Commission (SWIOFC) which is concerned with the management of demersal stocks, and which has Mozambique, Tanzania, Seychelles, and Mauritius as SADC members together with Madagascar, Kenya and Réunion; and the Regional Co-operation Programme of the Indian Ocean Commission (COI), which is concerned mainly with environmental programmes such as Coastal Zone Management and Coral Reef Monitoring and has Seychelles and Mauritius as SADC members together with Comoros and Madagascar.

Within SADC itself a number of regional programmes are being developed including the MCS project and the Regional Information Project launched in 2001. BENEFIT is also a SADC project.

Given the existence of the Atlantic and Indian Ocean interest groups, a big challenge facing SADC in the marine fisheries area appears to be the development of a SADC logic which encompasses the two groups.

### 3.3.2 Common actions among SADC countries in technical, economic, social, legislative and marketing aspects to increase the acceptance of the Code.

Although there is a general willingness to collaborate, it is clear that SADC faces a number of challenges in order to clarify its fisheries role and ensure that Member States obtain services from SADC that are useful to them. Different national reports tend to emphasise different aspects in line with national concerns. In the Indian Ocean, management of shared stocks, especially tuna, is seen as a key issue but of course a forum other than SADC exists to deal with this issue, so it is not clear precisely the role foreseen for SADC. Zanzibar and to a lesser extent Tanzania are the national reports that suggest the most extensive programmes for SADC. The former mentions a host of possibilities including MCS, joint utilisation of research results, joint technical and advisory committees on resource management, joint stock assessment, personnel exchange, reduced trade barriers, and marketing standards for products of SADC origin in addition to the management of shared resources. Tanzania mentions some of the same, and adds licence fee harmonization as another issue.

In South Africa, on the other hand, the national report suggests that there is a willingness to co-operate but cites as an example the fact that there is already extensive co-operation with neighbouring countries Namibia and Mozambique. But the importance of SADC membership (if any) in such co-operation is not clear. The Namibian report points to SEAFO and BCLME as examples of regional co-operation.

### 3.3.3 Sharing between SADC countries of information concerning the application of the Code

Generally responses to this question are positive. It is interesting to note however that the South African national report points out that the Regional Information project would lead to the establishment of a regional fisheries database but this project is not referred to in the other national reports. This suggests that there may be a need for wider dissemination of SADC activities, or possibly that different SADC countries have different expectations of the regional information project.

### 3.3.4 Institutions that might play an active role in promoting collaboration

The reports are unanimous that the impetus is expected to come from the Government institutions (including universities and research centres). Only the Zanzibar report suggests a very wide range of possible players.

### 3.3.5 Constraints to co-operation

The most common constraint was reported to be either a lack of human and financial resources or different levels of capacity between SADC member states. The South African report also suggested that the lack of common fisheries might be a problem whilst the Mauritian report indicated that the physical distance between countries might be a constraint, albeit not insurmountable.

### 3.3.6 MCS mechanisms

Mechanisms appear to differ quite widely between SADC member states. In Namibia, MCS is the responsibility of the Ministry of Fisheries, which makes use of patrol vessels, aircraft, and specialised

vehicles along the coast, together with satellite-based monitoring. In South Africa, a system of fishing permits is supported by inspection at sea by the Navy together with onshore inspections. VMS is in the early stages of development.

In other countries also there is collaboration in MCS. In Seychelles, MCS is jointly undertaken by the Seychelles Fishing Authority and the Coastguard. In Mauritius, MCS comes under the Fisheries Protection Service of the Ministry of Fisheries. All registered fishers must land at designated fish landing stations. The National Coastguard is empowered to control the EEZ but lacks the resources to cover such a huge area.

The national reports for Tanzania and Zanzibar suggest that MCS currently poses a problem.

### 3.3.7 The main shared stocks

The situation differs quite markedly between the Indian Ocean and Atlantic SADC seaboard. In the Indian Ocean, shared stocks seem to be limited to tuna and tuna-like species.

On the Atlantic, the South African report suggests that hake, pilchard, and prawns are shared whilst the Namibian report identifies pilchard as the most important shared stock.

### 3.3.8 Management of shared stocks

In the Indian Ocean, management comes under the Indian Ocean Tuna Commission (IOTC).

On the Atlantic coast, the three countries have different management regimes so that there is no formal common management plan in place and each country manages its stock on its own. Namibia manages its pilchard stock as a quota species. The South African report points out that there is nonetheless co-operation between scientists in stock assessment.

### 3.3.9 Improving the management arrangements

In the Indian Ocean it is suggested that more countries should become IOTC members and that vessels should comply with the reporting requirements.

In the case of the Atlantic, the South African report suggests the joint management of shared stocks. Although the Namibian report goes along the same lines, it emphasises the need for scientists to determine the nature and extent of sharing in order for joint management to be possible.

### 3.3.10 Highly migratory and high seas stocks

For the Indian Ocean, this issue is covered in sections 3.3.7. to 3.3.9. above.

For the Atlantic, the South African report identifies the following stocks: tuna, swordfish, orange roughy, alfonso and patagonian toothfish. The Namibian report emphasises tuna and swordfish.

Such stocks are managed internationally mainly through ICCAT and CCAMLR. A regional organization SEAFO exists. The South African report sees the ratification of SEAFO as the main hope for improved management.

## 3.4 Access arrangements

### 3.4.1 Access arrangements with foreign countries

A number of SADC countries have access agreements for the fishing of tuna. These include:

- Mauritius: EU (43 purse seiners and 40 surface longliners), Japan (10 longliners).
- Seychelles: EU (45 French and Spanish purse seiners and 25 longliners), Japan (longliners) Taiwan (longliners).
- South Africa: Japan (80 permits) Taiwan (20 permits) both for tuna.

In addition there is a small bilateral agreement between Mauritius and Seychelles which allows 5 Mauritian vessels to fish in Seychelles waters.

The Tanzanian national report suggests that Tanzania has some agreements but no details are given.

Both Zanzibar and Namibia appear to have no formal intergovernmental agreements.

#### 3.4.2 Concessionary access arrangements with foreign countries

Only in the case of Seychelles is it reported that concessionary arrangements exist. Two cases are identified: one where vessels are prepared to register under the Seychelles flag, the other in the case of regional preferences in the case of Mauritius and Kenya.

#### 3.4.3 Advantages of being a SADC Member State

No country reports any particular advantage in the negotiation of access rights of being a SADC Member State. The Seychelles report suggests that this could become important in the future.

#### 3.4.4 Fishing agreements between SADC Member States

The only agreement is that between Mauritius and Seychelles mentioned in 3.4.1. above.

#### 3.4.5 Arrangements for companies from SADC Member States

There are no reports of particular arrangements for companies from one SADC Member State to invest in the fishing industry of another. Companies from SADC countries must follow the same arrangements as companies from any other country. However, as pointed out by the Seychelles national report, the entry into force of the SADC Trade Protocol may change things.

#### 3.4.6 Arrangements for individuals who are nationals of SADC Member States

The general response is that foreign workers in the fisheries sector must comply with immigration rules in the same way as workers in any other sector. Nowhere does there appear to be an advantage to being a national of a SADC Member State.

In Tanzania and Zanzibar, it is reported that foreigners may work under normal conditions, but as in the case of the other SADC Member States, there are no special arrangements for SADC workers.

### 3.5 Trade in fishery products

#### 3.5.1 Marketing

##### 3.5.1.1 Exports to and imports from SADC countries over the past 5 years

The statistics reported are generally incomplete. As a rule, trade with other SADC countries is only a very small fraction of total trade in fish products. The major export market is the EU. The exceptions given are imports of frozen tuna from SADC countries for tuna canning in Mauritius and some trade in small pelagics and canned fish. Unfortunately, the national report for Namibia, the main exporting country did not report any statistics.



### 3.5.1.2 Contribution of fishery products to the balance of trade and to foreign exchange earnings

Export earnings from fisheries are generally very important to the SADC countries, especially for the island states (in Seychelles for instance fisheries exports represent around 94% of total exports). Regrettably, statistics for Namibia were not reported but FAO fisheries statistics show total Namibian fish exports in 1999 at 230,000 tonnes with a value of US\$344 million.

### 3.5.1.3 Efforts to promote increased fish consumption, particularly for health reasons

There is a large variation in current consumption of fish in SADC countries and the need for active promotion of fish differs accordingly. Only Tanzania and Namibia report activities to promote increased fish consumption. FAO statistics show that fish consumption in 1997 for SADC varied from 65 kg in the Seychelles and 21 kg in Mauritius to 2 kg in Mozambique.

### 3.5.1.4 Impact of trade controls on fish products

Most reporting countries indicate that trade controls improve quality. Only South Africa certifies that fish exported has been caught legally.

### 3.5.1.5 Constraints on the international marketing of fish products, especially where due to foreign attitudes towards the environmental acceptability of fishery management or exploitation practices.

Potential problems are related to difficulties in following standards of export markets in general and the EU in particular but they relate to quality, packaging and labelling, and not to environmental issues or sustainability. It was sometimes felt (e.g : Tanzania) that embargoes by importing nations were not scientifically motivated.

### 3.5.1.6 Hidden barriers to the international trade of fish products

Potential problems are related to difficulties in following standards of export markets in general and the EU in particular but relate to quality and food safety. The EU accepts Angolan certificates only for unprocessed fish whilst South Africa is not allowed to export shellfish to the EU due to the lack of adequate water monitoring programmes. Tanzania suffered an EU embargo in 1999, although as mentioned in section 3.5.1.5. the motivation for the embargo is considered unscientific.

## 3.5.2 Quality and safety assurance

### 3.5.2.1 Consideration by the fishing sector of the importance of food safety in its harvesting and production.

All countries report the importance of food safety in general and how the following of regulations and standards is necessary in order to export, especially to the EU.

### 3.5.2.2 Incentives, and current control system, to ensure the nutritional value, quality and safety of fishery products.

The quality and safety of fish products has improved through increased requirements from export markets. Most countries report the use of HACCP systems. It is unclear though how this has been translated into national legislation with subsequent improvements in quality for domestically marketed products.

### 3.5.2.3 Co-operation between the fishing industry and other relevant actors to define rules and organise the control of quality

There seems to be no formalised co-operation between the fishery sector and other sectors. However, new legislation concerning food safety applying to all food products is forcing closer relationships between sectors as many of the perceived health hazards are the same for all foods.

### 3.5.2.4 Availability of trained staff to support the fishing industry in the implementation of quality assurance programmes and to verify their effectiveness

Responses vary between countries. Some countries report adequate personnel levels but most report inadequacies in both numbers and qualifications. All countries report improvements and ongoing training activities.

### 3.5.2.5 Effectiveness of the application of HACCP principles and the Codex Alimentarius

All countries report the required use of HACCP programmes and most consider the application to be effective. Mozambique and Mauritius report deficiencies in the effective application of HACCP.

### 3.5.2.6 Certification of shellfish-producing coastal areas

Several countries do not have any production of shellfish; most of those who do report monitoring of water quality.

### 3.5.2.7 Initiatives on the certification of fish products (as "being produced in an environmentally acceptable manner")

All countries report that the main focus is on food safety and not on environmental issues. Domestic consumers are mostly price oriented.

## 3.6 New fisheries

### 3.6.1 Management policy towards new or exploratory fisheries

All countries naturally would like to see new fisheries developed, but there is general awareness of the need for precaution in such developments. Both Namibia and Seychelles require the use of an exploratory or trial period to demonstrate the viability of a new fishery before full commercial fishing can commence.

### 3.6.2 Approval process for new fishing ventures

The same basic principle is followed in all SADC countries, with local differences. Essentially, the system involves applications being made to the fishery management authorities who then consider the application against current policy and the current condition of the fishery involved, and advise the Minister as to the appropriateness of the proposal.

### 3.6.3 Access concessions granted to successful companies in the case of exploratory fishing

There is general recognition of the pioneer in cases where exploratory fishing leads to the development of a new fishery or a profitable new technique. This recognition generally involves preferential licence rights and may go so far, in Mauritius, as operators being granted sole rights for a limited period when they have carried out the preliminary survey and the exploratory fishing.

## APPENDIX G

### Elements of an action plan for the harmonization of marine fisheries policies

This Appendix addresses the areas of concern identified in the synthesis report (on the basis of the national reports) and further elaborated during the discussions at the Workshop. The issues are divided into three main categories: fisheries management, fish utilisation and marketing, and related areas highlighted in the SADC Protocol on Fisheries. Issues are presented in each category in order of priority, as identified by the workshop.

In developing a draft action plan, the workshop first suggested a short-term strategy that should be followed in order to enhance the contribution of SADC to responsible fisheries exploitation in the region. The workshop then turned to the development of a detailed actions in order for the SADC countries to progress towards the harmonization of their marine fisheries policy in line with their commitments under Articles 7 and 11 of the FAO Code of Conduct for Responsible Fisheries.

#### SHORT-TERM STRATEGY

1. Implement relevant provisions of the SADC Protocol on Fisheries with due attention to priorities set out in the Action Plan.
2. Ensure sound co-ordination of the SADC Marine Fisheries Project Portfolio, balancing as far as possible the priority needs of all member countries.
3. Strengthen the institutional framework at regional and national levels (ad hoc senior fisheries officer committee; stakeholder institutions and networks; shared stocks bilateral or multilateral arrangements) to guide the SADC Secretariat in the implementation of the Protocol on Fisheries.
4. Ensure adequate co-ordination and liaison with other institutions dealing with areas affecting fisheries management and related activities (e.g. Fisheries Management Organizations; Coastal Area Management institutions; Standards Authorities).

#### ACTION PLAN

##### 1. Fisheries management

###### 1.1 MCS

The assessment of MCS in SADC Member States indicated that there was inadequate capacity to ensure proper compliance with responsible fisheries management. There appears to be a wide disparity in MCS capacity between the Member States.

There is a lack of capacity and insufficient exchange of experience in giving effect to national legislation. Ineffective and outdated enforcement measures provide an inadequate basis to manage the resource and combat illegal unreported and unregulated and, potentially, unsustainable fishing. Insufficient consideration is given to the range of legal mechanisms available to ensure the effective implementation MCS measures.

This situation conflicts with Article 7.1.7 of the Code of Conduct: "*States should establish...effective mechanisms for fisheries monitoring, surveillance, control and enforcement to ensure compliance with their conservation and management measures, as well as those adopted by subregional or regional organizations or arrangements*".

## ACTION

1. The group recognised that the SADC Marine Coordinating Unit already has an MCS project. It was noted that at the last SADC Ministers' meeting, other countries requested to be part of the project. The working group endorsed this request.

It was also recommended to:

2. Establish a SADC fisheries legal data base that is accessible through the use of the internet as a means of disseminating information to stakeholders and monitor legal developments relating to MCS including judgements and legal processes and translation of laws in the three SADC official languages.
3. Strengthen capacity including training of senior fisheries officers, authorised officers or inspectors, and legal personnel on MCS matters.
4. Through the previous two actions, discuss and develop expertise in the full range of options to strengthen national and regional MCS including the implementation of the MCS objectives under Articles 8 and 9 of the Fisheries Protocol. Other options include the consideration of measures to enable swift response by governments to policy changes (such as the use of licence terms and conditions, regulations, notices and orders or administrative guidelines), alternative enforcement mechanisms such as administrative procedures and penalties or compounding of offences, strengthening of Port State responsibilities such as the use of Lacey type clauses in legislation, confidentiality of information particularly in the context of data base management related to VMS and regional register of fishing vessels, and, implementation of international and relevant regional fisheries agreements and instruments.
5. Investigate the establishment of a regional observer programme and develop cross-authorisation programmes.

### 1.2 Access limitation and capacity control

Of the possible goals set out in the Code of Conduct section 7.2.2 paragraphs a-g, the priority identified in the national reports was to ensure that *"excess fishing capacity is avoided and the exploitation of the stocks remains economically viable"*.

In general, the control of capacity is in its infancy in the region. In order to meet the requirements of the Code of Conduct (cf. Articles 7.1.8, 7.2.2 and 7.6.3), and the International Plan of Action on Capacity, it appears that most SADC countries will have to develop much further the instruments that they have available for the management of fishing capacity. It might be noted that only economically based management instruments appear capable of avoiding excess capacity in the long run. SADC Member States might consider the possible use of such instruments.

There also appears to be inadequate implementation and enforcement of existing legislation for limiting access to fishing and over capacity. And there is currently no uniform policy or legal framework within the SADC countries for limiting access to fishing within zones under national jurisdiction. This has implications for resource management within the region and does not provide an adequate basis for progress in harmonization.

## ACTION

1. SADC should request FAO assistance to organise a regional workshop on the International Plan of Action on Overcapacity, including the situation of artisanal fisheries. This regional workshop should identify the needs in order to develop a national and regional action plan for the control of fishing capacity. The importance of developing a regional approach must be emphasised in order

to ensure that capacity controlled or removed from one country's fisheries does not "spill-over" into another country. As preparation, each member country should prepare a report of their situation in regard to fishing capacity and its control.

2. SADC countries should implement existing legislation to ensure that access to fisheries resources is controlled to avoid overfishing. This should be undertaken in the context of the Code of Conduct and the SADC Fisheries Protocol.
3. In relation to fisheries access agreements, SADC countries should initiate consultation leading to the development of common definitions (for example of, local and foreign vessels) and a minimum terms and conditions for access by foreign fishing vessels and SADC flag vessels within the context of the obligations on free trade arising under the SADC Treaty, SADC Protocol on Trade and other international agreements. Such consultation should consider the need to ensure that policies adopted do not encourage vessels to adopt flags of convenience and to avoid the potential for "quota hopping" problems or that adversely affect the sustainable utilisation of fisheries resources.

### 1.3 Subsistence and small-scale fishery management

A large proportion of the total fishery activity within SADC consists of subsistence and small scale commercial fisheries. Indications are that most of the management effort so far has been directed at industrial scale fisheries. This is recognised by Article 12 of the Fisheries Protocol and programmes need to be launched to address this area. It is also stressed in Article 7.6.6 of the Code of Conduct: *"When deciding on the use, conservation and management of fisheries resources, due recognition should be given...to the traditional practices, needs and interests of indigenous people and local fishing communities which are highly dependent on fishery resources for their livelihood"*.

#### ACTION

1. Parts of existing projects (RFIS & MCS) relate specifically to SSF, and the recommendation on capacity also emphasises SSF. It is recommended that care be taken and appropriate mechanisms established to ensure that the results of RFIS be relevant to all SADC countries as not all are directly involved in this project.
2. The 1995 SADC Marine Fisheries Policy and Strategy proposed an Artisanal Fisheries Programme. This programme should be developed into a project and implemented. Care should be taken to consider aspects related to the management of SSF in line with Article 12 of the Fisheries Protocol (including co-management systems). The Marine Fisheries SCU should work with the SADC Hub to identify appropriate funding. The need to develop business skills amongst small-scale fishers as part of this project is emphasized.

### 1.4 Fishery management and research

Research is the lynch-pin of fishery management (cf Code of Conduct Article 7.4.2). In order to enhance the role of research, its scope might be widened, particularly to develop socio-economic research in support of fishery management. Articles 7.4.3, 7.4.5 and 7.6.7 of the Code of Conduct stress the need for such research. Although the situation differed between countries, research could be better focussed on the needs of the industry and that the results of research might be more fully taken into consideration in policy development.

#### ACTION

1. The importance of research for the fishery management process (Code of Conduct 7.4.1), and the existence of a new EU-ACP project, which aims to facilitate this aspect of fisheries management in ACP countries should be better acknowledged. Marine Fisheries SCU should further investigate

and assimilate information concerning this project. An important aim would be to assist SADC Member States to develop and implement mechanisms to prioritise research and to develop and enhance links between research and users.

- Each Member State should present to the SADC/SCU a report detailing its fishery management units, how they are currently managed and what research is on-going concerning each unit. This would allow the identification of research areas where collaboration would be fruitful.

### **1.5 Role of economics in fishery management**

A common need is to strengthen the economic dimension of fishery management and analysis. In addition to the need for research referred to in 1.4 above, economic analysis could usefully be undertaken of the role of fisheries within the macroeconomic context of the different SADC countries, and socio-economic indicators of the consequences of fishery management could be developed. The need for economic analysis is a common thread in the Code of Conduct and many Articles refer to it.

#### **ACTION**

- Organise a workshop to clarify needs and priorities in economics in fishery management.
- Use output of the economics workshop to inform the process of reformulating the SADC Training project.

### **1.6 Stakeholder consultation**

Participatory management is recognised as an important management tool (cf Code of Conduct Article 7.1.6) and the assessment indicated that there were weaknesses in this area across the Member States. Addressing this area is necessary for better management.

#### **ACTION**

- In their reports to SADC (point 1.4.2 above), Member States should explain the nature of stakeholder consultation in each fishery management unit.
- SADC/SCU should then prepare an inventory of stakeholder organizations and their constraints in contributing effectively to fisheries management.

### **1.7 Fishery management plans (FMP)**

The use of FMPs (as advocated in Article 7.3.3 of the Code of Conduct) differs widely from one SADC country to another. This difference offers the opportunity for a useful intra-SADC project where those countries who are developing their planning process might draw on the experience of those where this process is more advanced. A primary reason for the lack of plans is inexperienced staff. However, there may also be some misunderstanding of what is involved in the management planning process. Often, the elements for a plan seem to exist and only its formalisation is lacking. It would appear useful to have a workshop on the nature of fishery management plans, including their design and implementation, particularly in the artisanal fishery context.

There is widespread awareness and use of the precautionary approach. However, its application might be strengthened further, particularly in the difficult but important area of negotiating pre-agreed management measures that will automatically be implemented in the event of limit reference points being exceeded.

**ACTION**

1. The SADC report (point 1.4.2 above) should include an inventory of fishery management plans in existence for the identified fishery management units.
2. Organise a SADC Regional workshop to consider the nature of the fishery management planning process and support that may be required for improvement/implementation of plans. This workshop should be organised at the same time as the economics workshop (point 1.5.1 above).

**1.8 Legal capacity in fisheries management**

There is a lack of legal expertise on the regional and international aspects of fisheries resource management and the interrelationship between fisheries resource management and trade. Certain SADC countries also felt that there was a lack of legal expertise in fisheries resource management in the national context.

**ACTION**

Initiate a regional network for fisheries legal specialists for the exchange of information, and experience and views on fisheries law development, implementation and enforcement. The network should also serve as a resource base for SADC countries requiring information and expertise in this area.

**2. Fish utilization and marketing****2.1 Harmonization of legislation**

Article 16 on Trade and Investment of the Protocol on Fisheries says that Member States shall cooperate in establishing regional capacity to implement the World Trade Organization Agreement on Technical Barriers to Trade (TBT) and the World Trade Organization Agreement on Sanitary and Phytosanitary Measures (SPS). At present, there is an inadequate level of co-operation between the trade protocol implementation committees and the SADC Fisheries sectors. In addition, fish sanitary and safety legislation does not follow a common approach.

**ACTION**

Commission an analysis, by country, of fisheries trade issues covering food safety, including HACCP, SPS and TBT, with a view to harmonising quality assurance and sanitary legislation based on HACCP (or other quality assurance systems such as ISO 9000 or Total Quality Management). This process should be linked with other SADC committees on issues related to trade, SPS and TBT.

**2.2 Regional training in quality assurance**

There is a lack of skilled fish inspectors and quality assurance personnel in HACCP procedures to serve the industry needs in the region.

**ACTION**

SCU should liaise with INFOPÊCHE and other relevant institutions to assess the training needs before developing training programmes on HACCP procedures. Consequently, a number of training sessions could be undertaken both for government fish inspectors and industry fish quality controllers.

### 2.3 Strengthening of quality control laboratories

In Article 16 of the Protocol on Fisheries, Member States agree to establish basic infrastructure for the fishery sector. This would include the construction of laboratories.

There is a need to extend the services of the existing quality control laboratories at the regional level. Because of the new sanitary requirements, there is also a need for certified reference laboratories at a regional level to monitor and control analytical techniques in use.

#### ACTION

1. SCU in co-operation with relevant institutions should assess the needs of quality control laboratories relating to equipment and training of laboratory technicians at the regional level.
2. SCU should promote co-operation among the existing quality control laboratories through the collection, process and dissemination of information.

### 2.4 Intra-regional trade information

There is a lack of timely and reliable information on fish and fishery products being traded within the region. There is substantial unreported trade in fish and fishery products in the region. The lack of such reliable data makes policy planning difficult, in both food security within SADC and marine fisheries policy, and also has an impact on freshwater fish marketing and on aquaculture.

#### ACTION

1. Carry out an assessment study on the marine fish trade flows within the region including fish prices, volume and value traded, and on product forms and species concerned. The study will be undertaken by SCU in co-operation with the INFOPÊCHE unit in the SADC region as well as with other relevant institutions.
2. The findings of the study should be used to assess the opportunity to establish a database suitable to the monitoring of intra-regional fish trade.

### 2.5 Coordination of the private sector

There is a lack of corporation between operators from industrial and artisanal sectors and a lack of coordination and expression of the needs of the private sector at a regional level. Lack of information is also felt as essential limiting factor to economic integration and particularly intra regional trade.

#### ACTION

1. Identify forms of representation of the private sector and stimulate promotion of national and regional professional organisations networks.
2. Produce a Regional Directory of Professional Organisations in the fisheries sector. Promote the organisation of a regional fisheries Forum for the Private Sector aiming at strengthening cooperation between the operators, develop awareness and adopt common positions on trade issues such as Fair Trade, Ecolabelling, Quality Control.

### 2.6 SADC private sector forum

In most countries of the region, co-operation between operators from the artisanal and industrial sub-sectors is weak, hindering the sectors in reaching their full potential. Regional co-operation of



operators on trade matters in general, including labelling issues, is in its infancy. This state of affairs stems partly from a lack of adequate professional organizations of fishery sector operators in some countries.

#### ACTION

1. Promote, with the support of the INFOPÊCHE/SADC unit, the creation and/or strengthening of professional organizations of fish operators, in order to encourage regional cooperation and promote intra-regional trade.
2. Organize awareness campaigns on trade issues through the establishment of information networks, e.g. on labelling, on fair trade principles.
3. **Related areas (SADC Protocol on Fisheries)**

#### 3.1 Shared stocks

The situation differs quite markedly between the Indian Ocean and Atlantic SADC seaboard. In the Indian Ocean, shared stocks seem to be limited principally to tuna and tuna-like species which come under the Indian Ocean Tuna Commission (IOTC).

On the Atlantic, the South African report suggests that hake, pilchard, and prawns are shared whilst the Namibian report identifies pilchard as the most important shared stock together with the Kob stock. Angola, Namibia and South Africa have different management regimes so that there is no formal common management plan in place and each country manages its stock on its own. Namibia manages its pilchard stock as a quota species. Article 7 of the Protocol on Fisheries invites, in paragraph 4, two or more member States to establish instruments for co-ordination, co-operation or integration of management of shared resources. Article 7.3.2 of the Code of Conduct refers.

#### ACTION

The importance of the management of shared stocks should be further acknowledged. Member States should formally identify these stocks and enter when relevant into bilateral and multilateral arrangements in accordance with the provisions of Article 7 of Protocol on Fisheries

#### 3.2 Integrating fisheries into coastal area management (ICAM) (article 14 protocol)

The fisheries sector in SADC countries faces serious threats from a variety of other users of coastal and marine resources, including tourism and general recreational development, urbanisation, land-based pollution and the exploitation of other natural resources (oil, gas, diamonds). The need to address such issues is stressed in Article 7.2.2 paras f and g of the Code of Conduct. There is currently inadequate information on the extent of the problem and the nature of the conflicts to develop a common approach to this issue. Although a number of approaches are used to integrate fishing with other activities, the position of the marine fisheries sector could be strengthened.

#### ACTION

1. Strengthen the position of the line Ministry:
  - Formalise the need for the line Ministry to be involved in decisions concerning other sectors that may potentially have an impact on fishing.
  - Consider more formal inter-Ministerial collaborative arrangements within countries to ensure the appropriate management of fisheries within the wider exploitation of coastal and marine resources.

2. Although national legal frameworks set out the basis for property, access and use rights; and although coastal management issues will be partly addressed in the SADC BCLME (Benguela Current Large Marine Ecosystem) and MCS Projects, the legislative framework for the integration of fisheries in coastal area management should be considered by all countries. This will require:
  - a review (with external assistance and expertise as appropriate) of existing legislation and practice to establish the extent to which they facilitate integrated coastal area management and to enhance the access and use rights of fishers (including co-management, subsistence and small scale fishers) in the coastal area in the context of Articles 12 and 14 of the SADC Protocol on Fisheries;
  - corrective action where necessary through amending or drafting legislation to achieve integrated coastal area management and strengthening of fishers' access and use rights and to facilitate inter Ministry co-ordination to ensure the appropriate management of fisheries within the wider exploitation of coastal and marine resources.

### 3.3 Implementation of international fisheries instruments

International instruments impose increasingly complex obligations on parties which require implementation at the national level. Implementation is a prerequisite for progress in the harmonization process.

#### ACTION

At a regional level, establish ongoing review mechanisms to monitor how far SADC countries have progressed in giving effect to international instruments in fisheries and the resource sector including the technical aspects of these instruments. The review process should include the exchange of ideas on implementation and capacity building.

### 3.4 Marine Protected Areas (MPAs)

It is recognised that the use of MPAs is one of the important management measures in a fishery and marine environment management programme. The implementation of MPAs to ensure the protection of the marine environment is a responsibility Member States have under Article 14 of the Protocol on Fisheries. There is no regional database on MPAs or on development methodology and management implementation in respect of MPAs.

#### ACTION

1. Member States should submit a list of all MPAs in their waters for the compilation of a database of current MPAs across the region.
2. Arrange a workshop in order to share expertise on the use of, development and management of MPAs in marine fishery and environment management in order to build capacity across the region. Such a workshop could also set regional objectives for the establishment of MPAs."

## APPENDIX H

## Report of the Working Groups on Management

The Management sub-group began by discussing the issues which had been raised in the presentation of the synthesis report, and identified a set of nine fisheries management issues in the region. These issues were:

1. Access limitation and capacity control. In order for management to be effective, it was considered essential for the management authorities to have the ability to limit access and control capacity and to do so in practice.
2. Fisheries management planning. The extent to which fisheries management planning was formalised and used in practice was considered to have an impact on the effectiveness of management.
3. Stakeholder consultation. It was considered important that provision be made for widespread stakeholder consultation and that such consultation occur.
4. ICAM. The need to ensure the integration of fisheries concerns into coastal area management was highlighted.
5. Economics. Given that the root cause of the overfishing problem is economic, it was felt important that economic factors be integrated into fisheries management systems.
6. Research. Effective management depends on the correct research being undertaken and its results implemented.
7. MCS. No management system will succeed unless there are effective mechanisms for monitoring, control and surveillance.
8. Artisanal fisheries management. Given the widespread importance of small-scale fisheries in the region (with the exception of Namibia), the group felt it important to consider the extent to which such fisheries are taken into account in the management system.
9. MPAs. The group attached particular importance to marine protected areas as a management mechanism.

In order to establish priorities, the group decided to undertake a simple scoring exercise. A matrix was established, the columns of which represented the nine issues above.

The group assessed the ability of the management authorities to deal with each issue. Three factors which determined this ability were assessed separately. First, does the legal framework allow the issue to be addressed in principle? Second, does the institutional capacity exist to allow the issue to be addressed in practice? And third, to what extent is the issue currently addressed? These factors constitute the rows of the matrix.

Each national team thus had to score 27 cells. Each cell was scored from 0 to 5, where 5 meant that current performance was very good and 0 meant that current performance required substantial improvement. Thus for instance the first cell required that the team assess the current legal instruments to control access and fishing capacity. A score of 5 indicates that the current legal framework is sufficient to enable such control to be exercised, if the management authorities so decide.

It must be emphasised that the scores represent a very rudimentary assessment of fishery management in each of the countries. First, it is a broad assessment across all sectors, with no attempt made to

highlight discrepancies between sectors. Second, no weightings were used. Third, the scoring for each country is inevitably subjective and the use of the range of values (0 to 5) does not necessarily mean the same in each case. Not too much should therefore be read into the precise values, the relative values are much more important for both individual countries and the region.

#### Country priorities

Tables 1 to 7 present the results by country.

Table 1: Congo

|                           | Access Limitation/<br>Capacity Control | Fishery<br>Management<br>Planning | Stakeholder<br>Consultation | ICAM     | Economics | Research | MCS      | Artisanal Fisheries<br>Management | MPAs      | TOTAL     |
|---------------------------|--|-----------------------------------|-----------------------------|----------|-----------|----------|----------|-----------------------------------|-----------|-----------|
| Legal Framework           | 3                                      | 3                                 | 3                           | 0        | 2         | 0        | 2        | 4                                 | 5         | 22        |
| Institutional<br>Capacity | 4                                      | 3                                 | 3                           | 2        | 2         | 0        | 2        | 4                                 | 4         | 24        |
| Management<br>Practice    | 2                                      | 3                                 | 2                           | 2        | 2         | 0        | 2        | 3                                 | 3         | 19        |
| <b>TOTAL</b>              | <b>9</b>                               | <b>9</b>                          | <b>8</b>                    | <b>4</b> | <b>6</b>  | <b>0</b> | <b>6</b> | <b>11</b>                         | <b>12</b> | <b>65</b> |

Table 2: Mauritius

|                           | Access Limitation/<br>Capacity Control | Fishery<br>Management<br>Planning | Stakeholder<br>Consultation | ICAM     | Economics | Research  | MCS      | Artisanal Fisheries<br>Management | MPAs      | TOTAL     |
|---------------------------|--|-----------------------------------|-----------------------------|----------|-----------|-----------|----------|-----------------------------------|-----------|-----------|
| Legal Framework           | 3                                      | 3                                 | 3                           | 3        | 2         | 3         | 3        | 5                                 | 5         | 30        |
| Institutional<br>Capacity | 1                                      | 4                                 | 4                           | 3        | 2         | 4         | 2        | 4                                 | 4         | 28        |
| Management<br>Practice    | 2                                      | 3                                 | 3                           | 3        | 1         | 4         | 2        | 4                                 | 3         | 25        |
| <b>TOTAL</b>              | <b>6</b>                               | <b>10</b>                         | <b>10</b>                   | <b>9</b> | <b>5</b>  | <b>11</b> | <b>7</b> | <b>13</b>                         | <b>12</b> | <b>83</b> |

Table 3: Mozambique

|                           | Access Limitation/<br>Capacity Control | Fishery<br>Management<br>Planning | Stakeholder<br>Consultation | ICAM     | Economics | Research  | MCS      | Artisanal Fisheries<br>Management | MPAs     | TOTAL     |
|---------------------------|--|-----------------------------------|-----------------------------|----------|-----------|-----------|----------|-----------------------------------|----------|-----------|
| Legal Framework           | 5                                      | 5                                 | 5                           | 2        | 5         | 5         | 5        | 5                                 | -        | 37        |
| Institutional<br>Capacity | 3                                      | 3                                 | 3                           | 0        | 3         | 4         | 2        | 3                                 | -        | 21        |
| Management<br>Practice    | 4                                      | 3                                 | 3                           | 2        | 3         | 4         | 2        | 3                                 | -        | 24        |
| <b>TOTAL</b>              | <b>12</b>                              | <b>11</b>                         | <b>11</b>                   | <b>4</b> | <b>11</b> | <b>13</b> | <b>9</b> | <b>11</b>                         | <b>-</b> | <b>82</b> |

NB No ranking was given for MPAs as these are the responsibility of a different Ministry

Table 4 : Namibia

|                           | Access Limitation/<br>Capacity Control | Fishery<br>Management<br>Planning | Stakeholder<br>Consultation | ICAM     | Economics | Research  | MCS       | Artisanal Fisheries<br>Management | MPAs      | TOTAL      |
|---------------------------|--|-----------------------------------|-----------------------------|----------|-----------|-----------|-----------|-----------------------------------|-----------|------------|
| Legal Framework           | 5                                      | 5                                 | 4                           | 3        | 4         | 5         | 5         | -                                 | 5         | 36         |
| Institutional<br>Capacity | 5                                      | 5                                 | 5                           | 2        | 3         | 5         | 4         | -                                 | 4         | 33         |
| Management<br>Practice    | 5                                      | 5                                 | 5                           | 2        | 3         | 4         | 4         | -                                 | 4         | 32         |
| <b>TOTAL</b>              | <b>15</b>                              | <b>15</b>                         | <b>14</b>                   | <b>7</b> | <b>10</b> | <b>14</b> | <b>13</b> | <b>-</b>                          | <b>13</b> | <b>101</b> |

NB No ranking was given for artisanal fisheries management due to the absence of such fisheries in Namibia

Table 5: Seychelles

|                           | Access Limitation/<br>Capacity Control | Fishery<br>Management<br>Planning | Stakeholder<br>Consultation | ICAM     | Economics | Research  | MCS      | Artisanal Fisheries<br>Management | MPAs      | TOTAL     |
|---------------------------|--|-----------------------------------|-----------------------------|----------|-----------|-----------|----------|-----------------------------------|-----------|-----------|
| Legal Framework           | 5                                      | 3                                 | 2                           | 4        | 2         | 3         | 2        | 2                                 | 5         | 28        |
| Institutional<br>Capacity | 3                                      | 2                                 | 1                           | 1        | 4         | 4         | 2        | 3                                 | 4         | 24        |
| Management<br>Practice    | 2                                      | 3                                 | 2                           | 3        | 5         | 3         | 3        | 4                                 | 4         | 29        |
| <b>TOTAL</b>              | <b>10</b>                              | <b>8</b>                          | <b>5</b>                    | <b>8</b> | <b>11</b> | <b>10</b> | <b>7</b> | <b>9</b>                          | <b>13</b> | <b>81</b> |

Table 6 : South Africa

|                           | Access Limitation/<br>Capacity Control | Fishery<br>Management<br>Planning | Stakeholder<br>Consultation | ICAM      | Economics | Research  | MCS      | Artisanal Fisheries<br>Management | MPAs      | TOTAL     |
|---------------------------|--|-----------------------------------|-----------------------------|-----------|-----------|-----------|----------|-----------------------------------|-----------|-----------|
| Legal Framework           | 5                                      | 5                                 | 2                           | 5         | 3         | 3         | 5        | 3                                 | 5         | 36        |
| Institutional<br>Capacity | 3                                      | 4                                 | 3                           | 3         | 3         | 4         | 2        | 2                                 | 4         | 28        |
| Management<br>Practice    | 3                                      | 4                                 | 3                           | 2         | 2         | 4         | 2        | 2                                 | 3         | 25        |
| <b>TOTAL</b>              | <b>11</b>                              | <b>13</b>                         | <b>8</b>                    | <b>10</b> | <b>8</b>  | <b>11</b> | <b>9</b> | <b>7</b>                          | <b>12</b> | <b>89</b> |

**Table 7 : Tanzania**

|                           | Access Limitation/<br>Capacity Control | Fishery<br>Management<br>Planning | Stakeholder<br>Consultation | ICAM     | Economics | Research | MCS      | Artisanal Fisheries<br>Management | MPAs      | TOTAL     |
|---------------------------|--|-----------------------------------|-----------------------------|----------|-----------|----------|----------|-----------------------------------|-----------|-----------|
| Legal Framework           | 5                                      | 5                                 | 4                           | 4        | 4         | 5        | 2        | 5                                 | 5         | 39        |
| Institutional<br>Capacity | 1                                      | 4                                 | 5                           | 2        | 4         | 2        | 1        | 2                                 | 4         | 25        |
| Management<br>Practice    | 2                                      | 3                                 | 4                           | 2        | 4         | 1        | 2        | 2                                 | 4         | 24        |
| <b>TOTAL</b>              | <b>8</b>                               | <b>12</b>                         | <b>13</b>                   | <b>8</b> | <b>12</b> | <b>8</b> | <b>5</b> | <b>9</b>                          | <b>13</b> | <b>88</b> |

These tables are useful at the individual country level and enable the identification of priority areas for future work. The workshop, however, was more concerned with regional (SADC) priorities. In order to try to identify these, the results were aggregated across countries for each of the three rows, i.e. legal framework, institutional capacity and management practice.

The results of the regional aggregations are presented in tables 8 to 10.

**Table 8: Legal Framework**

|              | Access Limitation/<br>Capacity Control | Fishery<br>Management<br>Planning | Stakeholder<br>Consultation | ICAM | Economics | Research | MCS  | Artisanal Fisheries<br>Management | MPAs |
|--------------|--|-----------------------------------|-----------------------------|------|-----------|----------|------|-----------------------------------|------|
| CONGO        | 3                                      | 3                                 | 3                           | 0    | 2         | 0        | 2    | 4                                 | 5    |
| MAURITIUS    | 3                                      | 3                                 | 3                           | 3    | 2         | 3        | 3    | 5                                 | 5    |
| MOZAMBIQUE   | 5                                      | 5                                 | 5                           | 2    | 5         | 5        | 5    | 5                                 | -    |
| NAMIBIA      | 5                                      | 5                                 | 4                           | 3    | 4         | 5        | 5    | -                                 | 5    |
| SEYCHELLES   | 5                                      | 3                                 | 2                           | 4    | 2         | 3        | 2    | 2                                 | 5    |
| SOUTH AFRICA | 5                                      | 5                                 | 2                           | 5    | 3         | 3        | 5    | 3                                 | 5    |
| TANZANIA     | 5                                      | 5                                 | 4                           | 4    | 4         | 5        | 2    | 5                                 | 5    |
| AVERAGE      | 4,43                                   | 4,14                              | 3,29                        | 3,00 | 3,14      | 3,43     | 3,43 | 4,00                              | 5,00 |
| RANKING      | 8                                      | 7                                 | 3                           | 1    | 2         | 4        | 4    | 6                                 | 9    |

**Table 9 : Institutional Capacity**

|              | Access Limitation/<br>Capacity Control | Fishery<br>Management<br>Planning | Stakeholder<br>Consultation | ICAM | Economics | Research | MCS  | Artisanal Fisheries<br>Management | MPAs |
|--------------|--|-----------------------------------|-----------------------------|------|-----------|----------|------|-----------------------------------|------|
| CONGO        | 4                                      | 3                                 | 3                           | 2    | 2         | 0        | 2    | 4                                 | 4    |
| MAURITIUS    | 1                                      | 4                                 | 4                           | 3    | 2         | 4        | 2    | 4                                 | 4    |
| MOZAMBIQUE   | 3                                      | 3                                 | 3                           | 0    | 3         | 4        | 2    | 3                                 | -    |
| NAMIBIA      | 5                                      | 5                                 | 5                           | 2    | 3         | 5        | 4    | -                                 | 4    |
| SEYCHELLES   | 3                                      | 2                                 | 1                           | 1    | 4         | 4        | 2    | 3                                 | 4    |
| SOUTH AFRICA | 3                                      | 4                                 | 3                           | 3    | 3         | 4        | 2    | 2                                 | 4    |
| TANZANIA     | 1                                      | 4                                 | 5                           | 2    | 4         | 2        | 1    | 2                                 | 4    |
| AVERAGE      | 2,86                                   | 3,57                              | 3,43                        | 1,86 | 3,00      | 3,29     | 2,14 | 3,00                              | 4,00 |
| RANKING      | 3                                      | 8                                 | 7                           | 1    | 4         | 6        | 2    | 4                                 | 9    |

**Table 10: Management Practice**

|              | Access Limitation/<br>Capacity Control | Fishery<br>Management<br>Planning | Stakeholder<br>Consultation | ICAM | Economics | Research | MCS  | Artisanal Fisheries<br>Management | MPAs |
|--------------|--|-----------------------------------|-----------------------------|------|-----------|----------|------|-----------------------------------|------|
| CONGO        | 2                                      | 3                                 | 2                           | 2    | 2         | 0        | 2    | 3                                 | 3    |
| MAURITIUS    | 2                                      | 3                                 | 3                           | 3    | 1         | 4        | 2    | 4                                 | 3    |
| MOZAMBIQUE   | 4                                      | 3                                 | 3                           | 2    | 3         | 4        | 2    | 3                                 | -    |
| NAMIBIA      | 5                                      | 5                                 | 5                           | 2    | 3         | 4        | 4    | -                                 | 4    |
| SEYCHELLES   | 2                                      | 3                                 | 2                           | 3    | 5         | 3        | 3    | 4                                 | 4    |
| SOUTH AFRICA | 3                                      | 4                                 | 3                           | 2    | 2         | 4        | 2    | 2                                 | 3    |
| TANZANIA     | 2                                      | 3                                 | 4                           | 2    | 4         | 1        | 2    | 2                                 | 4    |
| AVERAGE      | 2,86                                   | 3,43                              | 3,14                        | 2,29 | 2,86      | 2,86     | 2,43 | 3,00                              | 3,50 |
| RANKING      | 3                                      | 8                                 | 7                           | 1    | 3         | 3        | 2    | 6                                 | 9    |

Note that in order to determine the rankings, a low score implies relatively poor current performance and hence a high priority.



The overall averages were 3.76 for the legal framework, 3.02 for institutional capacity and 2.93 for current management practice. In terms of broad themes, therefore, the group identified that the management system tends to be enabling, it is in the implementation that the most pressing problems are to be found.

The rankings were very similar between institutional capacity and management practice but rather different in the case of the legal framework. However, given that it is the first two that give most cause for concern, the sub-group decided to focus attention on the priorities which emerged from these.

The exercise was very useful for the group as a first attempt to establish priorities. In developing its contribution to the action plan (cf. chapter 4), the sub-group discussed the results in depth. It was decided to organise actions to reflect management priorities, distinguishing between those that related to fishery management strictly under the control of the fisheries ministry (section 1 of the Action Plan) and those which appeared to have wider implications (section 3 of the Action Plan).

## APPENDIX I

## Summary of marine fisheries and resources sector projects

| Project Title   | Estimated cost and Duration   | Status of Funding  | Project Status  |
|---|---|--|---|
| Regional Fisheries Information System (RFIS)                          | 1.8 million £ sterling (approx. 2.7 million US\$)<br>Duration of 5 years from July 2000   | Funded by DFID (1.8 million £ sterling)  | Project underway since July 2000. 3 long-term TA's in position, first year plan approved  |
| SADC Monitoring, Control and Surveillance of Fishing Activities (MCS) | 16.1 million US\$<br>Duration of 5 years from 2001  | Funded by EU (8 <sup>th</sup> EDF) 6.3 million US\$ and National Indicative Funds 9.8 million US\$ | Project started February 2001 – inception phase underway. First year plan due August 2001   |
| Support to the SADC Marine Fisheries Sector Co-ordinating Unit (SCU)  | 2 advisers are required for an estimated period of 2-5 years from 2000 at approximately 100,000 US\$ per year   | NORAD funded adviser for 3 years<br>Cooperation Française adviser for 2 years                      | Both advisers in position since 1999 and 2000.  |
| Assessment of Marine Fisheries Resources in SADC Region               | Estimated 20 million US\$ for West Coast (BENEFIT) for 10 years from 1997. East coast still in development stage.   | Funding for Benefit programme from GTZ, NORAD, FAO, ICEIDA, Cooperation Française, National funds  | Project underway and developing momentum. Entering 3 <sup>rd</sup> year of activities and new work programmes with key donors                                 |
| Benguela Current Large Marine Ecosystem (BCLME)                       | 15 million US\$ over 5 years from 2000  | Funded by GEF 15 million US\$ but signing of programme to complete funding process                 | Due to start in late 2001 once all pre-project administrative activities have been completed  |
| Harmonization of Marine Fisheries Policy                              | 253,000 US\$ for approximately 12 months  | Funded by FAO 253,000 US\$   | Final workshop due in July 2001 to complete this work. National consultants completed or finalising their activities  |
| Marine Fisheries Training   | No estimates or durations developed yet   | Not funded   | Not started   |
| East Coast Large Marine Ecosystem and research collaboration (ECLME)  | 1. Initial workshop SADC – cost 30,200 US\$<br>2. Larger stakeholder workshop and review – 100,000 US\$ 6 months<br>3. GEF Block B Grant for development of proposal – 250,000 US\$ 2 years | 1. Funded by FAO<br>2. Not Funded<br>3. Not Funded   | Contact has been made with many donors and support for piecemeal projects is available but to date no donor has accepted to support the larger LME initiative |
| Policy Study for Sustainable Mariculture Development                  | 150,000 US\$ for 6 months   | Under discussions with UNDP for funding through Nordic Fund  | Currently finalising the documentation with UNOPS for the project approval  |

The Workshop on the Harmonization of Marine Fisheries Policy within Coastal Countries of the Southern African Development Community (SADC) was the final activity of a project (TCP/RAF/8933) requested by SADC and financed by FAO. It was held at Uroa Beach, Zanzibar, United Republic of Tanzania, from 24 to 27 July 2001.

The Workshop discussed the main working documents presented by the project steering committee: a comparative analysis of the fisheries legal frameworks of SADC coastal countries; an analysis of international and intraregional trade of fisheries products; and a synthesis of the national reports prepared by the countries.

Three working groups were created to discuss elements dealing with trade, legal and fisheries management issues, respectively, taking into consideration the relevant articles of the FAO Code of Conduct for Responsible Fisheries. The three working groups evaluated the documents provided by the project steering committee and improved the list of proposed activities. These were also ranked in order of priority at national and regional levels, and general mechanisms for their implementation were proposed. On the basis of the work of these subgroups, elements for an Action Plan were identified at the regional level taking into consideration the relevant provisions of the Protocol on Fisheries to the SADC Treaty.

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