FRAMEWORK FOR HARMONIZED MINIMUM TERMS AND CONDITIONS FOR FISHERIES ACCESS IN THE AFRICAN UNION MEMBER STATES - PRECEDED BY SECTION ON METHODOLOGY AND PROCESS FOR ASSESSING FISHERIES MANAGEMENT MEASURES FOR REGULATING SHARED STOCKS
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# Acronyms

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<td>ABNJ</td>
<td>Areas Beyond National Jurisdiction</td>
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<tr>
<td>ACP</td>
<td>African Caribbean Pacific</td>
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<tr>
<td>AFRM</td>
<td>African Reform Mechanism (AFRM)</td>
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<tr>
<td>AIS</td>
<td>Automatic Identification System</td>
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<tr>
<td>ASCLME</td>
<td>Agulhas and Somali Current Large Marine Ecosystem</td>
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<tr>
<td>ATLAFCO/CONHAFAT</td>
<td>Ministerial Conference on Fisheries Cooperation among the African States Bordering the Atlantic</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>AU-IBAR</td>
<td>African Union - Inter-African Bureau for Animal resources</td>
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<tr>
<td>AU-MS</td>
<td>African Union Member States</td>
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<tr>
<td>BCC</td>
<td>Benguela Current Convention</td>
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<tr>
<td>BCLME</td>
<td>Benguela Current Large Marine Ecosystem</td>
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<tr>
<td>BRD</td>
<td>Bycatch Reduction Device</td>
</tr>
<tr>
<td>CAMFA</td>
<td>Conference of African Ministers of Fisheries and Aquaculture</td>
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<tr>
<td>CBD</td>
<td>Convention on Biological Diversity</td>
</tr>
<tr>
<td>CCLME</td>
<td>Canary Current Large Marine Ecosystem</td>
</tr>
<tr>
<td>CECAF</td>
<td>Fishery Committee for Eastern Central Atlantic</td>
</tr>
<tr>
<td>CITES</td>
<td>Convention on International Trade in Endangered Species of Wild Fauna and Flora</td>
</tr>
<tr>
<td>COFI</td>
<td>Committee on Fisheries</td>
</tr>
<tr>
<td>DFID</td>
<td>Department for International Development</td>
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<tr>
<td>DWFN</td>
<td>Distant Water Fishing Nations</td>
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<td>EAF</td>
<td>Ecosystem Approach to Fisheries</td>
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<td>EEZ</td>
<td>Exclusive Economic Zones</td>
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<td>EU</td>
<td>European Union</td>
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<td>EITI</td>
<td>Extractive Industries Transparency Initiative</td>
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<td>FAA</td>
<td>Fisheries Access Agreements</td>
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<tr>
<td>FAD</td>
<td>Fish Aggregating Device</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agriculture Organization of the United Nations</td>
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<tr>
<td>FCWC</td>
<td>Fishery Committee for West Central Gulf of Guinea</td>
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<td>FPA</td>
<td>Fisheries Partnership Agreements</td>
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<tr>
<td>GCLME</td>
<td>The Guinea Current Large Marine Ecosystem</td>
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<tr>
<td>GIFA</td>
<td>Ghana Inshore Fisheries association</td>
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<td>GITA</td>
<td>Ghana Industrial Trawlers Association</td>
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<tr>
<td>GRT</td>
<td>Gross Registered Tonnage</td>
</tr>
<tr>
<td>GTA</td>
<td>Ghana Tuna Association</td>
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<td>GWG</td>
<td>Governance Working Group</td>
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<tr>
<td>HMTCs</td>
<td>Harmonized Minimum Terms and Conditions</td>
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<td>ICCAT</td>
<td>International Commission for the Conservation of Atlantic Tunas</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and Communications Technology</td>
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<tr>
<td>IOTC</td>
<td>Indian Ocean Tuna Commission</td>
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<tr>
<td>IUU</td>
<td>Illegal, Unreported and Unregulated</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>LME</td>
<td>Large Marine Ecosystems</td>
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<tr>
<td>MCS</td>
<td>Monitoring Control and Surveillance</td>
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<tr>
<td>MPA</td>
<td>Marine Protected Area</td>
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<td>MS</td>
<td>Member States</td>
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<td>MSY</td>
<td>Maximum Sustainable Yield</td>
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<td>MTC</td>
<td>Minimum Terms and Conditions</td>
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<td>NAFAG</td>
<td>National Fisheries Association of Ghana</td>
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<td>NEPAD</td>
<td>New Partnership for Africa's Development</td>
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<td>NGO</td>
<td>Non Governmental Organization</td>
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<td>NSA</td>
<td>Non State Actors</td>
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<td>PFRS</td>
<td>Policy Framework and Reform Strategy for Fisheries and Aquaculture</td>
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<td>PSMA</td>
<td>Port State Measures Agreement</td>
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<td>RECs</td>
<td>Regional Economic Communities</td>
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<td>RFO</td>
<td>Regional Fisheries Organization</td>
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<td>RFMO</td>
<td>Regional Fisheries Management Organization</td>
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<tr>
<td>RFB</td>
<td>Regional Fisheries Body</td>
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<tr>
<td>SPS</td>
<td>Sanitary and Phytosanitary</td>
</tr>
<tr>
<td>SRFC</td>
<td>Sub-region Fisheries Commission</td>
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<tr>
<td>SWIOFC</td>
<td>South West Indian Ocean Fisheries Commission</td>
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<tr>
<td>TAC</td>
<td>Total Allowable Catch</td>
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<tr>
<td>TMT</td>
<td>Trygg Mat Tracking</td>
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<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>VMS</td>
<td>Vessel Monitoring System</td>
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Executive Summary

Many African Union Coastal and Islands Member States are endowed with very rich marine fish stocks, many of which are straddling and migratory in nature. These resources, if carefully managed through good and effective governance, would greatly benefit the AU member states that own them, in terms of their contribution to national economic development, employment, livelihoods, food and nutrition security to the populations. It is important, therefore that the countries sharing the resources jointly manage the straddling and migratory stocks to ensure their sustainability. This study analyses the challenges and strategic actions that can be put in place to ensure the AU-MS that have EEZs realize full benefits from their marine fisheries resources. The study assessed the existing AU-MS fisheries management systems, constraints faced by the member state in implementing sound fisheries management systems, and strategic actions that ought to be taken to ensure sustainable management of national and shared fisheries resources.

The AU-IBAR in collaboration with NEPAD, realizing the importance of reforming fisheries and aquaculture sector in Africa, developed the Policy Framework and Reform Strategy for Fisheries and Aquaculture (PFRS) with a view to ensuring that AU-MS align their policies with it. This is to expedite fisheries growth in Africa so that the fisheries potential in economic development, improved livelihoods and contribution to food security can be realized. The PFRS was approved in 2014, following which a number of guidelines were prepared by AU-IBAR to assist the countries reform their fisheries by aligning their policies with the PFRS.

A major issue for marine fisheries management in the AU-MS is the access to fishing in their EEZs through fisheries access agreements, fishing licences or joint ventures. It is obvious that there is dire need for the sector reform. In order to facilitate uniform implementation of the reform agenda, the AU-IBAR is in the process of developing a framework for harmonized minimum terms and conditions for access to fisheries at the continental level. Through a consultative process a framework has been developed that includes: compliance with national and international laws; licences and licensing conditions in reference to UNCLOS Articles 61 & 62 to ensure that only “surplus” is harvested; adequate information on the vessels destined to AU-MS EEZs to ensure illegal vessels are not licensed by setting standard and strategies to get necessary and updated vessel information; setting conditions that must be met to receive Certificate of Good Standing; registration of vessels with RFMOs and RFOs; control and monitoring to ensure that no transshipment occur at sea; Catch Logs and fishing areas information; artisanal fisheries sector protection that should include preservation of coastal demersal stocks for the artisanal fisheries sector; financial compensation to achieve commensurate benefits with the accessed fisheries.
resource; and retention of a percentage of the harvested catch to build processing industry for value addition.

Recommendations for short-term strategic actions:
There will be need for various institutions and AU-MS to follow up various strategic actions in the short term such as:

- Sensitization and advocacy for national fisheries policies alignment with the PFRS; circulation of the HMTCs and urge countries to adopt it as minimum standards for fishing access;
- Present HMTCs to the Ministers of fisheries for approval;
- Facilitate the setting up of the criteria for selection of regional and national fisheries access negotiation teams; and
- The need for AU to assist the AU-MS to establish an Africa’s Fisheries Voice Forum that will help the AU-MS speak with one voice on all matters of the fisheries sector and especially on exploitation of their fisheries resources and other fisheries related issues of continental and global interest.

Recommendations for long-term strategic actions:

- Evaluate all the existing minimum terms and conditions in the AU-MS and ensure they are harmonized with the continental harmonized MTCs;
- AU should take lead in facilitating the harmonization of AU-MS licensing procedures and modalities and the involvement of the regional organizations;
- There is need to ensure that requirements for reporting information on catch and fishing details are harmonized in Africa;
- The reporting formats for scientific data, legal compliance monitoring and other functions should be developed and harmonized;
- Requirements for transiting foreign fishing vessels especially with regard to stowing of fishing gear and equipment should be assessed and harmonized, AU-IBAR to take lead on this process taking into consideration the UNCLOS provisions.
- Terms and conditions for port access (Port State Measures Agreement (PSMA) and related regulations), pre-fishing inspections, country to country enforcement procedures, prosecutions, penalties, responsibilities of the flag states or fisher associations should be evaluated and the countries that have not implemented the PSMA be assisted to reach the set continental goals.
Acknowledgments

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(A) ASSESSMENT OF FISHERIES MANAGEMENT MEASURES FOR REGULATING EXPLOITATION OF SHARED STOCKS

1 Background

Africa is endowed with rich fisheries resources in all the Large Marine Ecosystems but unfortunately poverty is prevalent in the African Union Member States (AU-MS) Coastal and Island States, while the resources benefit other nations that have distant water fishing fleets. The contribution of developing countries fisheries in the global arena is significant as they contribute over 50% (FAO, 2007) of the world fish trade, according to FAO. The net earnings of foreign exchange from fish trade in developing countries make a significant contribution to the economies of those countries.

Many African Union Member States - coastal and Island states- are endowed with very rich marine fisheries stocks, many of which are straddling and migratory in nature. These resources, if carefully managed through good and effective governance, would greatly benefit the AU member states that own them, in terms of their contribution to national economic development, employment, livelihoods, and food and nutrition security to the populations. It is very important, therefore that the countries sharing the resources jointly manage these stocks to ensure their sustainability. As a first step to achieving full benefits from their marine fisheries resources, the AU-MS that have not officially claimed their EEZs should do so and lodge the maps and coordinates with the United Nations.

1.1. Overview of AU-Member States EEZ Fisheries

Many AU Coastal and Island States are not able to exploit their valuable marine fisheries resources such as Tuna, due to financial and technological constraints that impede the establishment of national fishing fleets. Some of these constraints include: the high cost of investment and operations due to high interest rates of bank loans; and markets that are dominated by Distant Water Fishing Nations (DWFN), which subsidize their fishing fleets in terms of paying access licences and other related costs. This makes Africa’s fish harvested by local fishing fleets in the same area as the subsidized fleets uncompetitive on same market. Due to these impediments, most coastal states have opted to have other nations access their fish stocks through Fisheries Partnership Agreements. Though ideally, these agreements should provide a profitable alternative to exploitation by own fleets, the countries have poor, absent or inadequate checks and balances to ensure only allowable catches are exploited, in order to sustain the Maximum Sustainable Yield (MSY). Poverty, inadequate Monitoring Control and Surveillance (MCS) systems as well as poorly negotiated financial compensation for the fisheries access agreements, usually not commensurate with the value of the harvested resource, exacerbate this situation.
1.2. Fisheries Access Agreements

Fisheries access agreements (FAA) have evolved over the years from cash for access to fisheries partnership agreement in the case of the European Union (EU). There were about 15 Fisheries Partnership Agreements in force between the EU and ACP countries in 2010 (CFFA, 2010) and almost all with a few exceptions their duration is generally between four and six years. Other agreements exist but most of these are not negotiated in a transparent manner and therefore difficult to gauge their benefits to the countries or the sector. In all fisheries agreements, countries other than the host country gain access to fish stocks through access arrangements, which could be: government to government, such as access agreements between the EU and Africa’s Coastal and Island States; government to private sector such as Pacific Island Countries and Japan Tuna Association; rights based licensing of firms that have local base in the host country e.g. Namibia; and licensing of foreign vessels without any specific policy on access fishing that is based on period and not catch levels e.g. Tanzania, Kenya. Fishing in the Exclusive Economic Zones (EEZ) of most African states, with a few exceptions such as Ghana, South Africa and Namibia, is almost entirely conducted by Distant Water Fishing Nations (DWFN) fleets, which include the EU (mainly Spain and France), Japan, South Korea, China, USA and Chinese Taipei (formally Taiwan). Through this process, the Coastal and Island states receive some financial compensation for access to their fisheries resources.

There are many challenges that impede realization of the FPA benefits by the host countries. Some of these include financial compensation, governance issues, value addition, and cost of money for Africa’s local entrepreneurs, subsidies, fisheries trade and value chain, fishing and processing limitations in African Countries. In the case of FPA, it is the country seeking access (e.g. the EU) that initiates the negotiations, rather than the host country seeking a “buyer” for its fish. This weak position is exacerbated by the paucity of information on the amount of fish available for access or their economic value. The DWFN fleets have a competitive advantage over local fleets due to the subsidies accorded to them by the EU, compared with the high cost of money in Africa for fleet purchase and operations. Senegal has allowed access to the same stocks harvested by the local fishers. The situation especially in Africa is complicated by the skewed rules of origin, where the fish harvested from ACP and EU waters belongs to the countries whose vessels conduct the fishing operations (Cotonou Agreement, 2004).

Unfortunately, due to poor fisheries management systems and inadequate surveillance of the operations of the DWFN fleets, the countries that sign these access agreements are not able to ensure that only allowable catches are exploited, in order to maintain the Maximum Sustainable Yield (MSY). Exploitation through the foreign access arrangements has also resulted in significant
loss of benefits for the countries due largely to poor or weak negotiations of the terms of the agreements. This situation is exacerbated by the poor and inadequate MCS systems and lack of information on the status of the stocks to determine the health of the stocks, leading in many instances to overexploitation of stocks.

There have been some developments where the African countries have been dissatisfied with the concluded agreements mainly due to the inequitable levels of financial compensation; the European Union not complying with the countries’ terms and conditions; and the realization amongst African governments that their marine living resources must be sustainably managed for the benefit of future generations. These countries took actions to terminate, renegotiate or refuse to renew the access agreements. South Africa’s bilateral tuna fisheries access agreements with Japan was terminated in 2003; Angola refused to renew its EU fisheries agreement in 2004; Senegal decided not to renew its EU fisheries agreement in 2006 and this was significant as Senegal was the first African state in 1979 to conclude a foreign fisheries access agreement.

1.2.1. Terms and Conditions for Fisheries Agreements
Almost all regional fisheries organizations (RFOs) have developed minimum terms and conditions for access to the national and shared fisheries resources in their areas of jurisdiction but these are not operationalized. These minimum conditions address similar issues but the MS have neither domesticated them in their laws and regulations nor are they applied at the regional level. There is need therefore to develop and harmonize MTCs for Fishing Access in AU-MS and ensure their implementation by both MS and RFOs.

1.2.2 Fishing Nations
Except for Ghana, Namibia, Senegal, South Africa and to lesser extent, Seychelles that have sizeable national fleets, most of the other fishing vessels in Africa’s EEZs belong to DWFN. Africa therefore has a very large DWFN fleet, most of which are EU owned, but there are also Chinese and Korean fishing vessels. The foreign vessels that fish in Africa’s waters operate under the various arrangements: government-to-government agreement, private agreements, or joint ventures.

1.3. Fisheries Overexploitation
1.3.1 Global Perspective
Global marine fisheries are in crisis as 90 percent are fully fished and overfished. The result is lost economic benefits of approximately $83 billion a year (World Bank, 2017), which was referred to as the “sunken billions” (World Bank/FAO, 2009). Reducing overfishing would allow severely overexploited fish stocks to recover over time. Subsequently, the combination of larger fish stocks
and reduced but sustainable fishing activities would lead to higher economic yields. However, to reach that equilibrium, comprehensive and coordinated reforms are necessary. The Sunken Billions Revisited: Progress and Challenges in Global Marine Fisheries (World Bank, 2017) builds on The Sunken Billions elaborated by a 2009 study published by the World Bank and Food and Agriculture Organization of the United Nations (FAO) but with a deeper regional analysis of the economic justification for fisheries reforms.

The overexploitation of fishery resources is always of economic origin. Unmanaged fisheries, where access to fishery resources is open, will always be overexploited, so long as many fishery management systems continue to focus on consequences rather than causes. Unfortunately, the design of fishery management systems often tends to neglect economic factors and therefore, the goal of sustainable rational exploitation in Africa remains elusive.

The main change that is required for fisheries policy starts from a recognition that fishery resources are very valuable natural assets that are capable of generating sustainable wealth. The main challenge is to design institutional and operational systems that will allow this wealth to be generated and grown on a sustainable basis. Well-managed fisheries offer a multiple-dividend; they will continue to provide food and sustainable jobs and a host of other activity-related benefits such as foreign exchange earning. It is not a question of trading off one set of benefits for another but to ensure fisheries, which are capable of providing substantial renewable wealth, work for the African Member States that are endowed with these resources.

### 1.3.2 Africa Perspective

The Governance Working Group (GWG) of the NEPAD Partnership for African Fisheries (PAF) undertook an exercise for Africa similar to the “Sunken Billions” study which suggested that global lost fisheries opportunities were in the order of US$ 50 billion per annum then (World Bank/FAO, 2009). Instead of adopting the approach used in the World Bank/FAO study, where the concentration was on efficiency effects, the GWG used Wilen’s (2005) methodology whose approach includes gains to be expected in the value chain. Doing the exercise for Africa is difficult, first because data on African fish landings are often poor, and second because even if the data were perfect, landings are themselves an imperfect indicator of African fish resources because of catches originating in Africa but recorded against non-African fishing nations. Therefore the results of this exercise are almost certainly under-estimates. Nonetheless, the GWG estimated that African fish resources have the potential to deliver annual wealth due to cost savings and revenue gains in the order of US$ 3.8 billion. This is not a small amount of money by any standard, and therefore the need for AU-MS to reform their fisheries to realize the full potential benefits.
FAO estimates that the continent loses between US$2 - 5 billion annually due to mismanagement of the fisheries sector (FAO 2012). Although policies aimed at regulating fishing capacity are critical for maintaining production and supply of fish products, policy makers have not placed much emphasis on the importance of fisheries and aquaculture in the national economic development. The AU has in the recent past taken steps to improve performance of the sector. The Sirte Declaration (2004) encouraged the development of African fisheries resources as well as urged regional cooperation in fisheries management. In another development, one of the key recommendations of the 1st Conference of African Ministers of Fisheries and Aquaculture (CAMFA) 2010 was to create conducive and enabling environment for the fisheries sector to achieve equitable, social and economic development in Africa. This led to the formulation of the Policy Framework and Reform Strategy (PFRS) for Fisheries and Aquaculture in Africa, a major step in putting fisheries into the right perspective to attract the attention needed for the sector growth. The PFRS identified a number of policy objectives that are critical to Africa’s fisheries development with regards to Fisheries Governance. The two policy objectives relating to this study include: Strengthening Regional and Sub-regional Cooperation to develop coordinated mechanisms among RECs, RFBs and LME-based commissions to ensure coherence of fisheries and aquaculture policies and development, and Management of High Seas Fisheries to ensure sound governance and management of high seas fisheries in order to substantially enhance the benefits accruing to the Member States adjacent to the resources.

1.4. African Union Fisheries Reform initiatives

1.4.1 The Policy Framework and Reform Strategy for Fisheries and Aquaculture

The African Union, upon becoming aware of the important role the fisheries sector can play in the economic development, food and nutrition security, job creation and improved livelihoods of the continent, has made strides in developing policies and strategies aimed at reforming the sector to expedite its growth and development. The provisions of the African Union’s Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa (PFRS) incorporate best practices for sustainable fisheries management and responsible aquaculture development, which have been identified as priorities by stakeholders.

The PFRS guides the management of fisheries and development of aquaculture in Africa. The document was developed with the idea of ensuring coherence in the way Africa approaches the fisheries sector so that it is developed in tune with global best practices. It was designed to assist the AU-Member States to manage fisheries and develop aquaculture sustainably for posterity while creating wealth throughout the value chain. The PFRS is therefore Africa’s reference document that will ensure that the globally determined issues of the fisheries and proposed reforms with
respect to the continent are in tandem with it. This policy framework offers Africa the opportunity to transition its fisheries to productivity and sustainability and enhance regional collaborative management of shared resources.

The PFRS covers seven policy areas and therefore it is quite inclusive. The policy areas are: Conservation and Sustainable Resource Use; Small-Scale Fisheries Development; Sustainable Aquaculture Development; Responsible and Equitable Fish Trade and Marketing; Regional and Sub-Regional Cooperation; Awareness Enhancing and Human-Capacity Development; and High Seas Fisheries.

Through consultative process, the Member States have developed the guidelines and instruments for the sector that they feel must be taken into consideration by international institutions while formulating any new guidelines or modifying the existing ones. There is need therefore for African countries to take positions and articulate them during important global fisheries forums such as the FAO Committee on Fisheries (COFI). In this regard, it is important for AU-MS to develop common positions and speak with one voice (an African Voice) at such meetings.

The PFRS 2014 aims to create harmony in the following areas:

1. Licensing procedures and modalities,
2. Maintenance of register of foreign fishing vessels and VMS,
3. Regulations on control, monitoring and transshipment of catch,
4. Maintenance and submission of catch logs,
5. Vessel reporting requirements especially with regard to licensing country or its representative’s information on catch and fishing details,
6. Observer coverage requirements for the fishing duration, training, reporting formats for compliance, monitoring and other functions.
7. Requirements for resident agents for purposes of receipt and response to any legal processes regarding the foreign vessels,
8. Requirements for transiting foreign fishing vessels especially with regards to stowing of fishing gear and equipment in transit,
9. Terms and conditions for port access, as well as pre-fishing inspections
10. Enforcement, penalties, responsibilities of flag states or fisher associations,
11. VMS requirements,
12. Use of Fish Aggregating Devices (FADs), and marking and identification of such devices.
Although the PFRS is a well-articulated document developed through an intense stakeholder consultative process, there is general lack of knowledge by the AU Member States on what is required of them in terms of aligning their policies with this document. This was evident with the fisheries authorities in all the countries visited as well as regional fisheries organization. Some of the people, including the regional bodies interviewed were not aware of the existence of the document.

There are four PFRS distinct policy areas that cover the issues of marine fisheries exploitation, management and conservation (Table 1).

**Table 1: PFRS Capture Fisheries Policy Areas, Objectives and Strategic Actions**

<table>
<thead>
<tr>
<th>Policy Arenas</th>
<th>Objectives</th>
<th>Summary of strategic actions</th>
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</table>
| Conservation and Sustainable Resource Use | To establish national and subnational governance and institutional arrangements that ensure that the societal contribution generated by Africa's sectors have the greatest impacts at the most appropriate level | • Create an enabling environment for sustainable management and for generating the potential of the resources  
• Design and apply appropriate users rights-based systems  
• Conduct fisheries within enforceable regulatory frameworks  
• Strengthen the scientific and socioeconomic basis for fisheries management and aquaculture development |
| Small-scale Fisheries Development         | To strengthen South-South (bilateral and regional) cooperation, and develop coordinated mechanisms among RECs and RFBs to ensure coherence of fisheries policies and aquaculture development and their adoption and adaptation | • Increase strategic cooperation in capture fisheries and aquaculture development needs  
• Create synergies and complementarities in programmes at regional level  
• Establish and reinforce the role of RECs and RFBs in regional economic integration |
| High Seas Fisheries                       | Increase and consolidate the African Voice in the governance and management of high seas fisheries | • Encourage African countries to become members or cooperating parties of appropriate RFMOs  
• Encourage African countries to ratify and implement United Nations Convention on the Law of the Sea and the FAO Port States Measures Agreement  
• Consult among member states and harmonize positions on key issues before meetings of RFMOs  
• Participate in the Area Beyond National Jurisdiction (ABNJ) programme to promote efficient and sustainable management of fisheries resources and biodiversity conservation in the ABNJ  
• Participate in the newly established Global Partnership for Oceans; build relationships and political, financial and scientific support in the region for high seas fisheries |
1.4.2 Implementation Guide for PFRS
The rational implementation of the PFRS entails identification of user-friendly appropriate strategies that would facilitate alignment of national and regional fisheries and aquaculture policies to these provisions of the PFRS. In this regard therefore an implementation guide document, “Guide For The Implementation Of The Policy Framework And Reform Strategy For Fisheries and Aquaculture In Africa” has been developed as a complementary/companion document to the PFRS to provide guidance and support mechanism for its implementation. It therefore describes the criteria and parameters for alignment of national and regional policies and strategies to the provisions of the PFRS. The document further stipulates the indicators to monitor the progress of alignment, implementation and both medium and long term of sector reforms. The Guide was developed through a consultative process with stakeholders in the African Union Member States (AU MS), Regional Economic Communities (RECs), specialized regional fisheries and aquaculture institutions, development partners, experts and key institutions. Based on the information collected from the interviews conducted through this study, it is obvious that although the PFRS is a useful and practical document its application has not been embraced by the AU-MS.

1.4.3 Monitoring Control and Surveillance (MCS)
A key pillar of the African Union Policy Framework and Reform Strategy is the Conservation and Sustainable Use of fisheries resources to ensure fishing activities are conducted within enforceable regulatory frameworks that are clearly understood, enforceable and supported by resource users and others. Besides supporting the strengthening of national MCS systems, one of the anticipated outcomes from policy reforms proposed under this pillar is that effective and sustainable regional (MCS) systems are operating in all regions of the continent. The AU Guidelines for implementation of the PFRS incorporate criteria and indicators to facilitate domestication of relevant provisions in national and regional policies. These provisions of the pan African fisheries policy document incorporate important principles of relevant global fisheries management instruments.

Unfortunately, the MCS and governance in the continent are either weak or absent and therefore ineffective in combating IUU fishing, especially in their EEZs. This unchecked IUU fishing has far reaching economic, social and environmental impacts. One of the main economic impacts of IUU fishing is the loss of fisheries resources for African coastal states, as it is estimated that the total IUU fishing catch excluding discards is estimated at 4.7 million tons. The socio-economic value of lost fishing opportunities due to IUU is estimated at least $10 billion. The Economic multiplier effects from this amount exceed $30 billion, which is over 1% of the GDP of African coastal states (AU-IBAR 2016).
1.4.4 African Reform Mechanism (AFRM)
A Pan-African participatory process of research, dialogue and lesson learning towards the design and implementation of a Comprehensive African Fisheries Reform Strategy with broad Ministerial backing was established during the first Conference of African Ministers of Fisheries and Aquaculture (CAMFA) in Banjul, Gambia in 2010. The aim of this mechanism is to develop more economically rational ways of managing the fishery to ensure that resource rents from the fishery are realized.

1.5. The Role of Regional Bodies in Transboundary Fisheries
The marine resources of African countries are faced with concerns of over-exploitation; rapid degradation of the marine environment through pollution, coastal erosion; and IUU fishing, among other challenges. This has negatively impacted on benefits that could accrue from these resources. There is, therefore, an urgent need for an integrated approach to fisheries management through adoption and implementation of relevant international instruments as well as continental policy initiatives that should involve all Member States within a defined region. A number of international instruments for sustainable management of fisheries that exist are yet to be adopted and implemented at regional and national levels in Africa. The trans-boundary nature of marine resources makes it imperative for a regional approach to the management of these resources by Member States within the region. This would ensure rational exploitation and optimal utilization that would realize the sustainability of the fisheries resources.

To realize maximum benefits from high seas, there is need for the continent to speak with one voice especially in the international arena, with respect to the fisheries exploitation in the continent. This can be achieved through strengthening regional cooperation, collaboration, and coordination in the management of shared ecosystems and having a common stand on the terms and conditions of the exploitation of their fisheries resources.

Strengthening regional management of fisheries should be prioritized and the starting point is the adoption and implementation of international instruments, which are proven tools of good governance. This would require appropriate policy formulation that would facilitate harmonization of regional and national laws and regulations and terms and conditions for exploitation of marine fisheries resources. To achieve this, support is required for capacity building and development of an effective monitoring and evaluation system to ensure implementation of necessary tool that enhance regional co-operation and good fisheries governance that would ensure sound management of the shared fisheries resources.
2 Objective of the Study

The overall objective of the study is to assess fisheries management measures for regulating exploitation of shared fish stocks and to develop a framework for harmonized minimum conditions for access to fisheries in African Union Member States (AU-MS). The specific objectives are to:

- Examine the licensing procedures and modalities with a view to identifying similarities/differences for harmonization;
- Evaluate the vessel reporting requirements, especially with regard to the licensing country (home/flag state) and information on catch and fishing details;
- Identify the reporting formats for scientific, compliance, monitoring and other functions;
- Assess the requirements for transiting foreign fishing vessels especially with regard to stowing of fishing gear and equipment; and
- Assess the terms and conditions for port access (Port State Measures Agreement and related regulations), and pre-fishing inspections.

The main deliverable was a comprehensive report on the fisheries management measures for regulating exploitation of shared fish stocks and a framework for harmonized terms and conditions for fisheries access among AU-MS.

3 Methodology

The study was conducted through a desk study, workshop inputs and field visits. After briefing by the AU-IBAR in Nairobi, an inception report was prepared detailing the activities to be undertaken including the countries that would be visited, the persons who could provide the required information as well as the timelines.

The countries visited are Ghana, Senegal, Morocco, and Seychelles. These were selected as good representation of different regions of Africa, covering the coastal states that border Atlantic and Indian Oceans, the major focus of this study. The persons to be interviewed were drawn from government institutions that are in charge of fisheries; private fishing companies and associations (private sector); and Regional Fisheries Bodies (RFBs) and Regional Fisheries Management Organizations (RFMOs). The full list of persons interviewed is shown in Annex 2.

The information sought through the desk study, consultations during the workshop and the field trips included, but was not limited to, the following:

1. Assessment of current status of the application of the minimum terms and conditions for foreign fishing vessels in Africa’s marine fisheries by the Africa Union Member States (AU-MS).
2. Assessment of the countries that have acceded to the Port State Measures Agreement and the status of implementation.

3.1 Literature Review
Information, reports and other relevant documentation on the fisheries management measures for regulating the exploitation of shared resources was gathered from various institutions through web search, telephone calls, emails communication and during the field visits.

3.2 Expert Consultation Workshop
The AU-IBAR convened an expert consultation workshop on enhancing regional cooperation for the rational management of shared fisheries resources in Africa in Nairobi from 16 to 19 April 2018. The main purpose of the consultative workshop was to deliberate on and initiate the process that would lead to formulation of a framework for harmonized minimum Terms and Conditions for access to fisheries in Africa in a participatory manner in accordance with the AU Conventional Procedures, to: establish framework for regional management of Fisheries Access; and to operationalize the mechanism for coordinating common position and enhanced African voice. The expected results at the end of the workshop were the identification of the contents of a Framework for harmonized minimum terms and conditions for access to fisheries in Africa; validation of framework for establishing regional mechanism for Fisheries Access Agreements (FAA) for shared resources at the regional level; and the operationalization of a mechanism for African Voice and common position within the existing structures.

The participants of the four-day workshop included Fisheries Directors from AU-MS, representatives/Coordinators of Regional Fisheries Organizations, and Non-State Actors (NSAs) in Africa. Participants shared their views and opinions on the subject through group discussions.

3.3 Field Study
Face to face interviews were conducted with the identified persons in different countries and institutions through semi-structured questionnaires adapted for fisheries managers, staff of Regional Fisheries Bodies and operatives in the fishing industry. The detailed questionnaires are presented in Annex 1.

3.3.1 Countries Visited and People Interviewed
The following countries and institutions were visited and personnel from there interviewed:
Ghana:

- Ministry of Fisheries and Aquaculture Development: the Deputy Minister; the Director of Fisheries, and the Head of MCS (both of the Fisheries Commission).
- FAO Regional Office for Africa: the Regional Senior Fisheries and Aquaculture Officer, and the Fisheries and Aquaculture Officer.
- National Fisheries Association of Ghana (NAFAG): A meeting was organised at the premises of NAFAG, which was attended by representatives of the constituent associations and the consultants. NAFAG is an umbrella association which has the following members: Ghana Tuna Association (GTA), Ghana Industrial Trawlers Association (GITA), Ghana Inshore Fisheries Association (GIFA), Ghana National Canoe Fishermen Council (GNCFC), National Inland Canoe Fishermen Council (NICFC), and the National Fish Processors and Traders Association (NAFPTA). NAFAG's objective is to protect the interest of members within the promotion, development and protection of the fishing industry in Ghana. It has two representatives on the Board of the Fisheries Commission.
- Fisheries Committee for West Central Gulf of Guinea (FCWC): the Fisheries Technical Advisor; and the Trygg Mat Tracking (TMT)-West Africa Field Coordinator.

Senegal:

- Sub-Region Fisheries Commission (SRFC): the Permanent Secretary and a Fisheries Expert.
- Ministry of Fisheries and Maritime Affairs: A meeting with Deputy Director of Fisheries and all relevant sectional heads was organised.

Morocco:

- Ministry of Agriculture and Fisheries: the Director of Marine Fisheries, and the Director of MCS.
- Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic (ATLAFCO): the Fisheries Expert; and the Programs Manager

Seychelles

- Ministry of Fisheries and Agriculture: the Permanent Secretary.
- Indian Ocean Tuna Commission (IOTC): the Science Manager; and the Compliance Coordinator
- Seychelles Fishing Authority (SFA): the CEO; the Chief Fisheries Officer; and the MCS Manager.

The full list of the countries and institutions visited as well as the people interviewed is presented in Annex 2.
3.3.2 Questionnaires for the Interviews

The questionnaires used to guide the interviews with the various stakeholders are given in Annex 1. There were some differences in the type and nature of questions directed at the various fishing industry players. The main items covered in the various questionnaires included national and regional management measures in place; fish licensing procedures, fisheries access agreements negotiations procedures, data and information dissemination processes and the usefulness of PFRS in enhancing harmonization of regional fisheries management and policies.

4 Analysis of Africa’s EEZ Fisheries Management Systems

The fisheries management systems in Africa are as diverse as the countries and regions that own the fisheries resources. This uncoordinated style of management of fisheries resources in Africa is exacerbated by weak surveillance systems, non-deterrent penalties for wrong doers, weak governance and non-harmonized laws and regulations. This has created space for big fishing nations to overexploit the continent’s fisheries resources through unfavourable terms and conditions for access and without commensurate benefits to the resource-adjacent African States.

4.1 Fisheries Management Systems in Africa

Fisheries management system in most AU-MS is “command and control” where policy and management decisions are made at the top of the fisheries governance hierarchy and pushed down to the users at the bottom, without due consultations with the stakeholders, especially the users of the fishery resources. In these systems, the lower fisheries government officials are constrained to make simple decisions because they would have to seek authority from their seniors up the ladder. These systems, compounded by the open access fishing regimes in majority of AU-MS, have resulted in fishing overcapacity, overexploitation of the resources, unchecked IUU fishing and poorly negotiated FAA.

Except for Namibia and South Africa, where rights-based fisheries management systems are practiced, very few other AU-MS even set the total allowable catch (TAC) from their fisheries. Namibia is among the top ten countries in the world with well-managed fisheries. The country practices rights-based fisheries management system instead of open access as other AU-MS. This management paradigm limits entry to fishing to ensure sustainable yields. Fishing rights are for periods of 7, 10, 15 or 20 years in accordance with the set criteria. Right holders receive fishing quotas annually based on TACs and depending on scientific advice about stock health. Fishing rights are not transferable. Fishing by foreign investors is allowed only through joint ventures with Namibians.
The Africa fisheries reform agenda was driven by the realization of different fisheries management paradigms in the AU-MS, and the need to ensure that fisheries resources are managed sustainably. In this regard therefore, the AU-IBAR and NEPAD initiated the PFRS through an all-inclusive consultative process. The primary objective of the PFRS is to ensure sustainable use of the fisheries resources of all African states, and the AU-MS are encouraged to pursue this objective individually, bilaterally, and regionally and also at continental level. The AU-IBAR in collaboration with NEPAD has developed several guidelines, mechanism and strategies to guide the AU-MS to align their national fisheries policies, strategic plans and management plans with PFRS.

4.1.1 AU Policy Implementation Guideline Documents
Some of the instruments developed to expedite fisheries reform agenda include:

- Africa Fisheries Reform Mechanism (AFRM)
- The Pan-African Strategy on the Improvement of Fisheries and Aquaculture Data Collection, Analysis and Dissemination
- A model regional scheme for undertaking at-sea boarding and inspection of Industrial fishing vessels backed by harmonized port based pre-licensing inspections (AU-IBAR, 2017a).
- A guide for the implementation of the policy framework and reform strategy for fisheries and aquaculture in Africa

4.2 Issues and Challenges of Fisheries Management in Africa
The major challenges of fisheries management across Africa include but are not limited to: weak governance; inadequate funding of the sector; non-harmonized national policies, laws and regulations, uncoordinated policies at the regional level; inadequate penalties and penalty conditions, and weak national and regional MCs systems that encourage illegal fishing.

4.2.1 Fisheries Governance
Weak policies, laws and regulations, poor involvement of the sector stakeholders in decision-making processes (top-bottom approach in many AU-MS), lack of transparency in the development of fisheries policies, particularly in the allocation of licences and fishing authorizations, characterize the prevailing poor fisheries sector governance in Africa. There is also general lack of political will, perhaps due to inadequate knowledge of the importance of fisheries in the socio-economic development of the countries. Open access and overcapacity contribute to overexploitation of the continent’s marine fisheries resources. Due to weak management systems that have not developed strategies and policies for artisanal fisheries to ensure sustainable livelihoods of communities that
depend on them, there are often conflicts between the small scale and industrial fishing fleets. Heavy post harvest losses are all too important for small-scale fisheries but not many countries have developed policies to address this issue.

Lack of autonomy, in some cases for simple decision-making on fisheries matters where for example a director has to seek approval of minister while at the local level the field officer has to seek approval from the director for simple decisions has negative impact on sound fisheries management. There is inadequate or lack of fisheries management plans including specific stock management plan to ensure balance between fishing efforts and the resources available to sustain maximum sustainable yields (MSY). Most AU- Member States have not established MSY and/or total allowable catch (TAC) and if established, there is no control of fishing effort with the set catch limits. The inadequacy of scientific data on stock status as a result of poor access to research information and dissemination does not help in the management of the exploitation of the fisheries resources. There is also general poor coordination between environmental and fisheries management agencies. Inadequate training and capacity development programmes compound all these governance issues.

Other issues of concern in fisheries governance include:
1. Destruction of artisanal fishing gears by industrial fishing fleets;
2. Sometimes competition for the same stocks by both domestic and foreign fleets with domestic fleet disadvantaged due to the use of less efficient fishing gears,
3. Domestic fleet competing for same markets with the foreign fleet fishing in the same fishing ground. The foreign fleets have easy access to their markets while Sanitary and Phytosanitary (SPS) measures by the importing countries make it difficult for local fleets to access certain markets, even though the fish was caught in the same waters.
4. Issues of value addition and rules of origin do not favour developing countries marketing their products in those markets.
5. Subsidized fishing for foreign fleets have an advantage over local fleets who have no government subsidies and whose cost of borrowing is very high due to high interest rates on loans.
6. Lack of Policies to maximize rent capture;
7. Inadequate application of ecosystem approach to fisheries management, or the precautionary approach, especially when it comes to controlling the effort.

4.2.2 Funding and Financial Allocation for the Fisheries Sector
The fisheries sector suffers perennially from inadequate financial resources from AU-MS governments for development of the sector. Where the sector can generate self sustaining funds
from its resources, the systems of ploughing back to the sector is mainly non-existent in most AU-MS and most fisheries management agencies rely on the national exchequer for funding its activities such as MCS, inspections, observer programs, etc. which is always inadequate. This may be the reason for the lack of strategic long-term vision and planning for fisheries management in many countries.

4.2.3 National Laws and Policies for Fisheries Sector
National laws and regulations are often not harmonized and the penalties are not stringent enough to deter illegal fishing. This encourages fishing vessels to continue breaking laws with impunity, as the fines are quite low in many of the countries. Due to varying laws, regulations and penalties in different countries of the same region, the fishing vessels move from country to country in the same region and get licences to fish the same stocks. The fishing licences and licensing systems vary from country to country and this weakens regional fisheries management approaches. This needs to be addressed at the continental and regional levels.

4.2.4 Penalties and Penalty Conditions
In many AU-MS, penalties for illegal fishing activities are generally too weak to deter infractions. Some of the weak areas in the penalty conditions across the continent include:

- Obsolete and non-deterrent penalties for infractions in various regions
- Absence of harmonization of penalty regime at the regional level
- Obsolete laws resulting in unsuccessful prosecutions
- Lack of specialized courts for fast tracking trials
- Inadequate capacity of lawyers trained in fisheries and environmental issues
- Lack of mechanisms to punish or reward players depending on their degree of stock conservation practices

4.2.5 Environmental Issues due to Weak Management Systems
The following are some of the environmental problems that occur due to weak fisheries management systems.

- Pollution from fishing activities due to discarding or loss of fishing gears that also lead to ghost fishing, and vessel wreckages, for example.
- Anthropogenic pollution from land-based sources.
- Conflicts among users; industrial, conservation, artisanal fisheries; tourism, oil and gas exploration and coastal development
- By-catch problems and impact of trawling on the environment
- Not much consideration of the UN Fish Stocks Agreement (on Straddling Fish Stocks and
Highly Migratory Species) regarding implementation and enforcement of conservation and management measures through effective monitoring, control and surveillance (MCS)

- Non-adherence to port/environmental safety including handling of ballast water and safety; and the national laws on environment, wildlife and fisheries.

### 4.3 Fisheries Legislations and Fishing Licences

Lack of uniformity in fisheries legislations and fishing licences procedures opens doors for unsuitable exploitation of the continent’s fisheries resources. There are diverse fishing licensing procedures and cost of fishing licences, as there are the number of Coastal and Island States of Africa. Some MS like Ghana, issue licences according to the Gross Registered Tonnage (GRT) of the vessels, while others such as Seychelles, charge a single licence fee depending on the type of fishing, e.g. long-line or purse seining. Some countries issue only fishing licences to all vessels, including foreign vessels, while others enter into fishing access agreements or joint ventures. This study observed that in all cases where fishing access is allowed be it through licences or FAA, financial compensation for this is usually quite low and therefore not commensurate with the harvested resource. There is therefore the need for harmonization and a singularly agreed approach on licensing by AU-MS for the exploitation of Africa’s fisheries resources.

This study examined different countries legislations and the disparities of these licensing systems seem to create an advantage for the DWN fishing fleets. This ought to be rectified through development of the continent’s harmonized fishing licences regimes that include minimum terms and conditions for issuance of a licence including indication of the total allowable catches. This coordinated system will streamline the harvesting of marine fish in AU-MS waters by DWFN, regional and national fishing fleets. The fishing is generally open access with no clear limit on the number of vessels that should be in the fishery. There has resulted in overcapacity in the fisheries of many AU-MS. Ghana for example has seen her industrial fleet increase from 70 to 94 in a short period (NAFAG, 2018) The licensing systems in most AU-MS have no provision for consultation of resource users and other stakeholders. In the case of Ghana; the NAFAG is usually not consulted although the association represents all the fishing industry players, big and small. There is need for development of a consultative process for issuance of licences in all AU-MS as one step towards the effort to reduce fishing capacity in various fisheries of the continent.

The requirement for registration of vessels with Regional Fisheries Organizations is an excellent strategy aimed at monitoring the activities of the fishing vessels. However, in many instances, though provided for in regional policies, the requirement is not enforced by national governments making it possible for illegal vessels to move from one country to another without trace and obtain fishing
licences. Sometimes the notorious illegal vessels change their identities slightly and continue fishing in the same-shared fishery under licences of another country. This study also found out that it is mandatory for vessels to register annually with the RFMO such as Indian Ocean Tuna Commission (IOTC) and International Commission for the Conservation of Atlantic Tunas (ICCT) for them to be allowed to fish in waters within their areas of coverage.

4.3.1 Challenges and Issues of Licensing Systems

There is weakness in licensing systems across the continent and the lack of harmony in both procedure and fees has created an advantage for fishing operators who may chose to pay for fishing licence in the country with the lowest fees and least stringent compliance measures in the region and yet target the same regional, fish stock.

The following are among the challenges that impede sustainable management of the fisheries for shared resources:

1. There are no harmonized regional licensing regimes, though there is dire need for harmonized licensing conditions to deter fishing vessels from obtaining licences in the States with weak conditions.

2. Sometimes, some licensing conditions do not make provision for things like limits and monitoring conditions of the catch, landing obligations, etc.

3. Poor knowledge of, and weak capacities for background check on history of vessels applying for fishing licences, such as whether they are involved in IUU activities.

4. Lack of reference to the vessel list with complete vessel history before issuing licences. For example, ICCAT has on their website, a list of vessels authorized to fish in their area. Background information about the vessels is provided.

5. Some regions do not have a regional vessel licence register to assist in monitoring and follow up on licences.

6. Licence information not shared with regional institution (to be included in their database). For example, the SRFC monitors vessel activities, but member States do not provide the Commission with the required information on vessel licences.

7. Very limited coordination with Regional Fisheries Management Organizations (RFMOs) to adopt port inspection schemes; and

8. Non-existence of regionally operated Vessel Monitoring System, or tracking system to provides real-time information on vessel identity and activity.
4.3.2 Strategic Actions to Improve Licensing Systems
National governments, in collaboration with regional fisheries organizations, should endeavor to improve the fish licensing conditions and systems through:

- Development of harmonized protocols with the aim of improving and strengthening the processes to enhance compliance
- Mandatory registration of vessels with RFMOs and/or RFBs
- Development of an effective and efficient Vessel Monitoring System.

4.4 Illegal, Unreported and Unregulated (IUU) Fishing
Rising global demand for fish has made African waters attractive for fishing fleets from around the world, thus exacerbating the IUU fishing problem due to the continent's weak MCS systems. IUU fishing is known to have negative economic, environmental, ecological, and social impacts. Apart from draining of revenue, IUU fishing reduces fish stocks, lowers local catches and harms the marine environment. It destroys communities, who lose opportunities to catch, process and trade fish.

For developing States, especially Africa, the major challenge in addressing IUU fishing is the low capacity to manage the vast expanse of waters. The lack of enforcement capabilities exacerbated by ineffective observer programs for monitoring fishing activities of licensed vessels, poor logistics for offshore fisheries surveillance, weak systems for vessel registration and licensing, and lack of regional collaboration for the MCS systems, which allows IUU fishing to thrive in waters of many African States. IUU fishing continues to be a problem worldwide, and is seen by many developing countries as a significant constraint to their attempts to sustainably manage their resources and provide food from security and incomes from the industry.

4.4.1 Africa's Initiatives to Combat IUU
Stop Illegal Fishing,
Stop Illegal Fishing (SIF), funded by DFID, was launched in 2007 as a Working Group of the New Partnership for Africa's Development (NEPAD) project and focusing on the marine fisheries of the coastal Southern Africa Development Community (SADC) states. The initial outcome of this initiative was the formulation of a policy for SADC; “the SADC Statement of Commitment on IUU fishing”, to which the SADC Ministers responsible for marine fisheries committed in 2008. The initiative soon became a core component of the Partnership for African Fisheries, whose proposed purpose was to strengthen cooperation and coordination between governments and partners in order to support pan-African and international processes to stop illegal fishing in African waters. SIF is now a registered not-for-profit organization coordinating and supporting efforts to fight illegal fishing in African waters. The coordination team is based in Botswana and
working in partnership with governments, civil society, NGOs, intergovernmental organizations and the fishing industry to harness the necessary international support the Africa commitment to support positive change.

**SADC Protocol on Fisheries**
The SADC Member States signed the Protocol on Fisheries in 2001, which come into force in 2003. In signing this protocol the Member States agreed to harmonize their domestic legislation with particular reference to fisheries and the management shared resources, to take adequate measures to optimize resources for fisheries law enforcement and thus protect aquaculture and the aquatic environment in order to safeguard the livelihood of fishing communities. The objectives of the protocol are: to promote the responsible use of the living aquatic resources to enhance food security and human health; safeguard the livelihood systems of fishing communities; and generate economic opportunities for nationals in the region and to ensure that future generations benefit from these resources. The Protocol on Fisheries prioritizes management of shared fisheries resources and combating IUU fishing. The SADC member States approved the establishment of a Regional Fisheries MSC Centre and selected Mozambique selected to be its hosting country. The regional Center coordinates MCS and enforcement activities in the ports and at sea.

**4.4.2 Strategic Actions to Curb IUU Fishing**
The Coastal and Island AU-MS should build strong national and regional MCS systems to monitor exploitation of the resources in order to deter illegal fishing. They should also make the effort to improve upon their fishing ports in order to facilitate implementation of PSMA. This will make fishing by illegal vessels expensive and untenable if they call on port for supplies. It is important to review penalties to make them more stringent and also ensure illegal vessels are blacklisted and monitored.

**4.5 Monitoring, Control and Surveillance (MCS) Systems in Africa**
IUU fishing is rampant in the waters of AU-MS due to inefficient resource monitoring caused by weak national and regional MCS systems and lack of capacity to establish regional MCS systems. The marine fisheries sector in Africa is thus characterized by weak surveillance systems, which gives room for illegal fishing to thrive.

**4.5.1 Issues and Challenges for MCS**
- Lack of functional and harmonized regional monitoring, control and surveillance (MCS) and inadequate national MCS systems.
• Inadequate MCS tools such as Vessel Monitoring System (VMS) and Automatic Identification System (AIS) to effectively monitor fishing activities in the EEZs and other fishing areas.
• Harmonization of VMS at regional level with minimum package at national level is essential but lacking.
• Weak implementation of the Port State Measures Agreement.
• Inadequate compliance by states to national, regional and international laws and regulations related to fisheries.
• Inadequate national/regional patrol vessels for effective inspection at sea.
• Inadequate inter-agency cooperation and weak participation of non-state stakeholders in MCS.

4.5.2 AU Initiatives to improve MCS for Marine Fisheries Resources
A key pillar of the African Union Policy Framework and Reform Strategy (PFRS) is the Conservation and Sustainable Use of fisheries resources to ensure fishing activities are conducted within enforceable regulatory frameworks that are clearly understood, enforceable and supported by resource users and others. Besides supporting the strengthening of national MCS systems, one of the anticipated outcomes from policy reforms proposed under this pillar is effective and sustainable regional (MCS) systems operating in all regions. The Guidelines for implementation of the PFRS incorporate criteria and indicators to facilitate domestication of relevant provisions in national and regional policies. These provisions of the pan African fisheries policy document incorporate important principles of relevant global fisheries management instruments.

The implementation of MCS activities such as boarding, inspection, arrest and judicial proceedings is one of the coastal State powers under the United Nations Convention on the Law of the Sea (UNCLOS) to ensure the conservation and management of fisheries resources in the Exclusive Economic Zone (EEZ). Measures that include vessel registration, authorization to fish, record of fishing vessels, vessel monitoring system (VMS), observer program, boarding and inspection, port State measures, catch certification and other measures such as the acquisition, storage and dissemination of MCS data, training and education to all persons involved in MCS operations, and promoting MCS issues in national judicial systems, are all part of the AU focus on improvement of conservation and sound utilization of fisheries resources. This wide range of measures suggests that all States, whether acting as a flag, coastal, port, or market State must adopt an effective MCS system in order to address IUU fishing.

4.5.3 Strategic Actions for an Effective MCS
The national governments and RECs should develop adequate national and regional MCS System and undertake institutional strengthening.
4.6 Port State Measures Agreement (PSMA)

The Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing was adopted in 2009 and came into force in 2016. The PSMA aims to combat IUU fishing through the implementation of effective port State measures, giving emphasis to the role of port States in ensuring the long term conservation and sustainable use of living marine resources and ecosystems. The agreement applies to foreign vessels seeking entry into a coastal State’s ports, except for vessels of a neighboring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing. It also does not apply to container vessels that are not carrying fish, or if carrying fish, only fish that have been previously landed provided that there are no clear grounds for suspecting that such vessels have engaged in fishing activities in support of IUU fishing. The port State measures provided in the agreement include designation of ports where foreign vessels can seek entry, advanced notification of entry, port inspection, and port enforcement actions such as prohibition of landing and transshipment of fish, as well as denial of port entry.

A Model Scheme on Port State Measures to Combat IUU Fishing was adopted by the FAO in 2004 which provides guidelines for carrying out inspections of foreign vessels in ports, a list of information that should be provided by vessels in advance to port States, expected results from port inspections, training of port inspectors, and proposed information system among port States. The Model Scheme conforms to the measures adopted under the IPOA-IUU and all relevant rules of international law and assists States in developing common procedures for inspection and agreed measures against IUU fishing vessels.

The countries are aware of the importance of acceding to and implementing the PSMA as a tool to curb IUU fishing but are constrained due to lack of resources to put the infrastructure in place and build capacity for inspection.

4.6.1 Strategic Actions to Improve PSMA Implementation

The national governments of all the AU-MS should endeavor to accede and implement PSMA as a means of fighting IUU fishing. There is need to build both infrastructure and human capacities to conduct inspections of foreign vessels at port using the FAO guidelines.

4.7 Observer Programme

In order to ensure that fishing operations are documented and that fishing vessels comply with conservation and management measures, States are encouraged to establish observer programmes. Under the UNCLOS, States have the right to place observers on board vessels in exercising
their sovereign right over marine resources in their EEZs (Article 62). This provision applies to foreign vessels fishing in the EEZs of coastal States. There is also a duty under the UN Fish Stocks Agreement to implement national observer programmes, participate in sub-regional or regional observer programs, and permit observers of other States to carry out functions agreed under such programs (art 18). These international instruments, however, do not provide the specific functions of and the process involved in conducting observer programmes.

The primary advantage of conducting an observer program is that it collects data necessary for determining the status of living marine resources and the consequences of commercial fishing operations. Observer programmes are usually implemented in order to generate data for fishery science and compliance purposes. Implementation of an observer programme for fishery science involves the estimation of total catch and effort, including by-catch and discards, and biological sampling of catches. To ensure compliance with fisheries laws and regulations, observers may be given the right to validate logbooks and inspect documents, visit fishing vessels, and collect catch data. The information obtained from both types of observer programmes is necessary for effective fisheries management. As a component of MCS, an observer program allows for the verification of reported fisheries data, such as information recorded by fishing vessels in their logbooks, which is an effective means to detect unreported fishing. Observer records and information may also be required as evidence in the prosecution of a violation by a vessel, owner or company. Such evidence will be more admissible if the observer program has developed standardized formats, methods and protocols for recording and handling compliance-related issues. For the purpose of using observer reports in establishing a fisheries violation, there is a need for the competence of observers to be established, particularly in the event of litigation. Weakness in observer programmes, if existing, exacerbated by the modus operandi for the payment of observers by vessel operators due to inadequate national/regional observer programme package is counter-productive.

4.7.1 Strategic Actions for Effective Observer Programme
There is need for the Coastal and Island states of the AU to build a strong and financially well resourced observer programme with trained observers. It is imperative to establish and build capacity for national and regional observer teams. It is important that a fund is set aside through financial compensation from Fisheries Access Agreements (FAA) or Fisheries Partnership Agreements (FPA) or other sources to support this program. This will reduce incidences of observers being compromised or mistreated by vessel operators. Another advantage of such a funding and capacity building system for Observers is that the trained observers will not only ensure compliance but will be used to gather scientific information on the catch and location of catches while on board. This information of both compliance and fishing data would be useful during any fisheries access...
negotiations, including the FAAs.

4.8 Regional Collaboration in Fisheries Management

Regional fisheries organizations and other arrangements have significant importance and are critical in the governance of the fisheries of shared resources. All the regional fisheries players including Non-governmental organizations are potential partners for collaboration in effective fisheries management, which need to be explored, developed and strengthened. The CAMFA 2010, made recommendation for the development of a regional cooperation framework for fisheries management in Africa, in order to enhance the consistency of interventions and synergy between the different institutions and therefore the need also to strengthen collaboration with the RFBs and RECs.

4.8.1 Regional Fisheries Organizations and Related Regional Arrangements

In Africa, marine fisheries management is the responsibility of government agencies but the Regional Fisheries Bodies (RFBs), programmes and NGOs play a collaborative role, as many fish stocks are shared.

In the Atlantic coast of Africa there are six (6) regional and sub-regional Fisheries Organizations, namely: the Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic (COMHAFAT/ATLAFCO); the FAO Fishery Committee for Eastern Central Atlantic (CECAF), Fishery Committee of the West Central Gulf of Guinea (FCWC), Subregional Fisheries Commission (SRFC), Regional Fisheries Committee for the Gulf of Guinea (COREP) and the Benguela Current Convention (which is a fisheries/environment arrangement covering Angola, Namibia and South Africa). The States of the region also collaborate with the specialized international fisheries management organizations such as the International Commission for the Conservation of the Atlantic Tunas (ICCAT) and the environmental ones such as the Abidjan Convention (The Convention on Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region). The maritime waters of the countries are also included in the Guinea Current Large Marine Ecosystem (GCLME) (in the Gulf of Guinea area) and the Canary Current Large Marine Ecosystem (CCLME) (in northwest Africa). Currently, there is fairly good collaboration between the regional fisheries bodies, though quite informally, and this should be strengthened to achieve harmony in planning activities, statistical and scientific data exchange, regional and sub-regional fishing vessels’ database, joint surveillance operations, research in the area of stocks evaluation or oceanographic research, establishment and implementation of technical management measures of cross-border fish stocks and implementation of minimal access conditions to the region’s resources. COMHAFAT is in the
process of initiating formalization of collaboration with all the Africa’s regional bodies bordering the Atlantic.

The corresponding regional arrangements in the Eastern African region (i.e. Indian Ocean riparian countries) are the South West Indian Ocean Fisheries Commission (SWIOFC), the Indian Ocean Tuna Commission (IOTC) and the Nairobi Convention for the Development, Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean and the Agulhas and Somali Currents Large Marine Ecosystems (ASCLME) programme.

Through the EAF-Nansen Programme of FAO, fisheries assessment surveys are carried out periodically in the waters of the countries and in collaboration with the functional Large Marine Ecosystem (LME) programmes. The countries have adopted the implementation of ecosystem approach to fisheries (EAF) management, though there is need for institutional capacity building to ensure its full and effective implementation. Human and financial resources for proper policy implementation and management are often inadequate. Management of tuna fisheries is spearheaded by ICCAT (in the Atlantic area) and IOTC (in the Indian Ocean). Although most AU-MS in the two regions are members of ICCAT and IOTC they do not have a strong voice in the management process and negotiations.

All the Regional and Sub-regional fisheries bodies have developed minimum conditions for access to the fisheries in their areas of competence, which is a positive step towards building a powerful voice on how they wish to see the resources in the regions harvested to ensure sustainability.

**4.8.2 Issues and Challenges Facing Regional Collaboration**

Though the regional organization are ideally placed in terms of ensuring coordinated approach to fisheries management by their Member States, this is not the case due to many constraints. These include:

- Weaknesses in regional collaboration and coordination for fishing access negotiations, especially with regard to access to common stock such as tuna. RECs/RFBs also have weak capacity for involvement in and facilitation of the countries' negotiation for access agreements.
- Weak regional collaboration in the implementation of the countries’ agreements including poor information sharing among countries and the RECs or the RFBs/RFOs.
- Absence of regional participation on partnership agreements for shared resources.
- Lack of ability to identify institutional regional priorities and common issues and therefore develop coordination mechanism and regional platform of networking.
• Lack of regional collaboration on total catch off-take, especially of the migratory and straddling stocks by individual countries and collectively.
• Illegal, Unreported and unregulated (IUU) fishing and related activities threaten national, regional and international efforts to secure long-term sustainable fisheries in the regions.

4.8.3 Strategic Actions to Improve Regional Collaboration
The following are the essential steps that must be taken by AU, MS and regional organizations to improve regional collaboration in fisheries management:
• Strengthen mandates of RECs and RFBs and provide material resources to implements their mandates;
• Develop common regional platform of coordination and networking;
• Enhance capacity of the countries in the region with respect to effective communication mechanisms;
• Develop and strengthen a regional approach to negotiations of fishing access arrangements
• Strengthen capacity of countries in the region to benefit more from the EEZ/ tuna resources
• Develop and implement regional fisheries policies, legislation and management plans for shared and transboundary fisheries resources
• Enhance the enforcement of the policy and regulatory framework, through adequate funding for MCS activities;
• There is need to improve the fisheries statistical data collection and sharing, especially on fishing vessels;
• Strengthen the national and regional research institutions and develop regional research protocols especially for stock assessment to always assess the health of the fish stocks.
• There is need for concerted effort to address the high postharvest losses in small pelagic fisheries as this fishery is critical to food security.
• There is need to build national and regional capacities for MCS to curb the IUU fishing challenge.
• Joint efforts among the coastal and Island States of Africa together with the African Union and the international community should collectively work on curbing IUU fishing and piracy, especially in the Indian Ocean.
• Regional vessels registration and compliance should be made mandatory by the region AU-Member states
• Develop and implement frameworks for minimum terms and conditions for fishing and consistent with the AU-IBAR HMTCs for fisheries access.
4.9 Fisheries Access Agreements

It is important that Africa’s political and policy decision makers become aware of the importance of the African fisheries resources and their impact on the EU fishing fleet. The EU would not maintain its entire fishing fleets without the fisheries resources from Africa and other non-EU waters, which means EU States would be forced to decommission a number of its fishing fleets and this would have a very big negative impact on EU fisheries sector. Africa, therefore, is in a very strong and advantageous position to negotiate profitable access agreements, but unfortunately, many AU-MS negotiate the agreement from a weak position with weak negotiation teams and little information on the fish stocks being considered. This needs to change, to ensure Africa is in control of its resources and speaks in one voice, an African Voice on how the continent’s fisheries resources should be harvested by national, regional and DWFN fleets. There is need therefore for a fundamental change of the guiding principles and framework for EU and other fishing nations fisheries relations with the AU-MS. The guiding framework should give priority to good governance and environmental sustainability and provide an enabling environment for developing countries’ fishing sector operations, particularly the small-scale fishing communities.

The AU-MS ought to make deliberate interventions to ensure that access agreements benefit their national fisheries sector. The intervention could include transparency on earnings by using a mechanism similar to the one for extractive industry. The Extractive Industries Transparency Initiative (EITI) (EITI, 2018) is premised on the principle of establishing multi-stakeholder processes that ensure information flows on the revenues earned from extractive industries such as oil, gas and mining. This could be extended to fisheries. Improvement of negotiation skills and inclusivity would enhance transparency and thus realize for fair price and value of the accessed resource. All fish should be offloaded in a designated State Port which has the facilities and ensure transshipment at sea is prohibited and enforced.

FAAs must be designed to target only the TAC to ensure maximum sustainable yield, or a set quota to avoid overfishing and ecosystem damage. There is therefore a need to establish TAC and relate the tonnage to be caught to the TAC. Consultations with domestic interested parties such as fisheries associations, NGOs, and regional bodies is essential to determine the social, economic and ecological impacts; and evaluate the benefits of concluding a fisheries access agreement.

The most ideal and beneficial position for host countries is to have all fish caught in their waters processed locally, as this would create employment, and shift significant value of the fish to the local
level. At the moment, many African countries largely have no access to even a small percentage of the fish caught by DWFN from their waters. It is important therefore to structure and negotiate Agreements with DWFN that would provide for retention of some percentage of the fish to be used to build a local processing and value addition industry.

It is important to note that there have been endeavours by the RFOs to develop their own MTCs for access to various fisheries. All the regional and sub regional fisheries commissions/committees and organizations in Africa have therefore developed their own MTCs but most are not fully implemented as required. There are some similarities as well as differences in the terms and conditions for fishing access in different regions depending on the types of fisheries and other considerations. If left as it is for each RFO to develop their own MTCs, it would create loopholes that make Africa vulnerable to manipulation by the fishing nations to their advantage. There is therefore dire need for the continent to develop a framework for harmonized minimum terms and condition for access to fishing that would be applied uniformly across the continent but would not preclude the MS from developing more stringent conditions.

4.9.1 Issues and challenges facing FAA

There are many challenges preventing AU-MS from achieving maximum benefits from the Fisheries Access Agreements mainly due to their weak negotiating positions. Some of these challenges characterise the concluded agreements (as listed below); there is the need to improve possible future Access Agreements.

Concluded Fisheries Access Agreement

- Lack of transparency in the negotiations, conclusion and implementation of the agreements, due to lack of stakeholder involvement. In some cases, information on agreements is inaccessible.
- Usually the agreements do not take into account the value of the fishery when negotiating compensation for the harvested stocks.
- Weakness in institutional and legal framework to monitor compliance with the agreements.
- Insufficient knowledge of the status of the stock and therefore usually no information of the surplus stocks available for access in accordance with UNCLOS Article 62. Countries also have weak catch statistics to monitor the implementation of agreements.
- In cases of joint ventures, there is capital flight and absence of reinvestment to the sector and to the coastal communities.
- No control over the fishing zones accessible to foreign trawlers, which lead to overexploited stocks;
• No considerations of catch retention to the participating countries to build processing and value addition industry.

**Capacity for Negotiations**

• Serious challenge of lack of negotiation skills/techniques/capacity in general;

• Weak and inconsistent negotiation teams, inadequate preparation and lack of consultation. This results in imbalance of the negotiation teams, with the DWFN having stronger team and therefore stronger bargaining power;

• Weak or absence of stakeholder participation in the negotiation process.

• Representatives of state negotiation team have conflicting interest for example Foreign Affairs Ministry and/or Ministry of Finance may take prominence in the negotiations and yet they may not have adequate knowledge on the sector for effective negotiations. Though essential, legal representation is very weak or absent in the negotiation teams.

• Poor knowledge of the resource abundance (lack of stock assessment) and value, leading to inability to balance between sustainability of the resource and financial compensation.

• Lack of knowledge on IUU vessels or IUU fishing in the AU-Member sates EEZs to influence direction of negotiations.

**Financial Compensation**

• Lack of cost benefit analysis to inform policy on the impact of agreement on the stocks and the benefits to the countries.

• Lack of AU harmonized regime on Fisheries Access Agreements (FAA) financial compensation for the participating nations.

• Inadequate reinvestment in small-scale fisheries development and in the fisheries sector in general from agreement.

• Not much consideration of local employment.

• No consideration for fish catch retention for local processing and value addition industry.

**Socio-economic impacts of Agreements**

• Ideally, the fishing communities should enjoy benefits such as modern landing ports, ice production plants and improved roads, from the agreements but this is usually not the case.

• No Fund from the Agreement is allocated for affordable credit to fishers to purchase equipment and gear and develop their trade to improve the under developed domestic fishing capacity
4.9.2 Strategic Actions Recommendations

There are several ways that could help AU-MS overcome the challenges and ensure that FAAs for African fishery resources benefit their communities and substantially contribute to the national economies. Some recommendations for strategic actions to achieve well negotiated and beneficial FAAs are elaborated below.

Establishment of Framework for Fisheries Access Agreements with MTC

There is need to establish a Framework for Harmonized Minimum Terms and Conditions (MTCs) for access to Africa’s fish by fishing fleets. The AU-MS should have the responsibility for adopting and amending MTCs to fit their needs. The HMTCs would adopt minimum standards for access and would not preclude any member from adopting more stringent standards. These FFA MTCs should be used as a strategic tool to regulate access to Africa’s fishery waters. MTCs would therefore be a fundamental mechanism for setting standards leading to AU member states to protect, as well as maximize their benefits from their fisheries resources. The AU-IBAR has embarked on the development of MTCs and this study is designed to facilitate the development of a framework for continental HMTCs. It is important to develop an evaluation and control mechanism over foreign fleet fishing activities.

Establishment of Negotiation Teams

There is need for AU-MS and Regional organizations to ensure good governance with the full participation of all stakeholders. The host country negotiation teams ought to be established and developed to be equal in the skills and capacities to their counterparts interested in their resources. For this to happen, AU-MS must invest in: reliable and up-to-date fisheries data collection and management; improving fisheries management and surveillance information systems; and building negotiation capacity through, training and equipping negotiators to able to negotiate at the same level with their counterparts. Such teams could for example include representatives from: Line fisheries ministries; Ministries of Finance and planning; governments’ legal authorities; small-scale fisheries, fishing and processing industry; relevant NGOs.

Cost and Benefits Considerations

Africa’s Coastal and Island states must ensure that they fully understand and appreciate the complete cost-benefit analysis of the proposed access agreement, including the actual, and total ecosystem as well as social costs of harvesting the proposed quantities of fish by a foreign fleet of vessels. This should be weighed against the actual and total financial, social, political and biological benefits of the proposed agreement.
Implementation of Access Agreements:
FAAs should only be concluded on the strict condition that the African state concerned would channel some of the resources from the FAA to fully administer, manage and monitor fisheries activity in its waters to ensure the fishing fleets adhere to international and regional best practices, as well as international and national laws and regulations.

Re-negotiations
There is need to develop a strategy for re-negotiating poorly concluded access agreements. Because African states still lack capacity to fully exploit their surplus stocks access agreements may need to be re-negotiated. African states must therefore consciously find out if there is need to conclude any form of the foreign access/partnership agreements, taking into account the advantages and disadvantages of the arrangement. The FAAs that are due for renewal must be re-negotiated in a more transparent and accountable atmosphere than was initially done. Involvement of Africa’s civil societies and interested groups and NGOs would enhance transparency and result in a better deal for the MS. Transparency helps to eliminate the possibility for money to corrupt and distort responsible decision-making processes.

4.10 Harmonized Minimum Standards for Fishing Access
It is important to set and harmonize minimum standards for access that do not preclude any member from adopting more stringent standards. Some examples of elements of MTCs for consideration include:

- **Compliance:** with national and international Laws
- **Licences and conditions:** (use of UNCLOS Article 61 & 62) to ensure only surplus is harvested (there is need to insist on assistance to assess the stocks covered by the agreement).
- **Adequate Vessel information:** on the vessel to ensure illegal vessels are not licensed: Set standard and strategies to get necessary vessel information.
- **Certificate of good standing:** Set conditions that must be met to achieve this. No vessel shall be licensed unless they meet the set conditions
- **Registration:** important to ensure all vessels that seek to be licensed are registered with the RFMOs or RFOs and meet minimum set standards.
- **Control and Monitoring:** of Transshipment; no transshipment at sea under any circumstances
- **Catch Logs and fishing areas information:** must be made available
- **Artisanal fisheries sector protection:** Preservation of coastal resources (particularly demersal and small pelagics) for the artisanal fisheries sector.
- **Financial compensation:** to include development of SSF to create wealth
- **Retention of a percentage of the catch:** from DWFN for development local processing
industry. The need to encourage domestic processing by taxing raw material exports and giving tax concessions to locally-based fish processing factories, regardless of the nationality of their ownership.

- **The HMTCs development**: should take into consideration the existing regional MTCs that are already done by FCWC, SRFC, SWIOFC (for Tuna); and the views of the participants of the AU-IBAR April 16-19th Expert Consultative Workshop on Enhancing Regional Cooperation for the Rational Management of Shared Fish Resources in Africa

- **The AU-MS HMTCs**: for fishing access should be applicable to all fishing access arrangements.

### 4.11 Transshipments and Transiting Vessels

In all the AU-MS, transshipment at sea is not allowed by law, but enforcement remains weak. Likewise, by international laws, the transiting vessels are expected to report entry into and exit out of AU-MS areas of jurisdiction but there is lack of capacity to monitor in most countries. Some of the challenges that the AU-MS face with regard to the implementation of the measures for transshipment and port entries and exits information include: weak implementation of the regulation forbidding transshipment at sea due to poor enforcement infrastructure, weak human capacity to monitor transshipments and inadequate MCS systems which encourage at sea transshipments and therefore results in significant IUU fishing, as there is no mechanism in place to report or stop illegal fishing and illegal transshipment.

#### 4.11.1 Strategic Action Recommendation

The coastal and island AU-MS states should develop dedicated national and regional strategy on transshipment and ensure implementation.

### 4.12 Fisheries Data and Information

Knowledge of the status and trends of fisheries and aquaculture, including socio-economic aspects, is key to the development of sound policy, more informed decision-making and responsible fishery management and aquaculture development. At the national level, information on fisheries is essential in putting into perspective the social and economic benefits of the sector including food and nutrition security contribution and thus assist in prioritization of fisheries in the decision making processes. The fisheries statistical data collection, analysis and dissemination are not well developed in Africa. This inadequacy in fisheries statistical data even by Africa countries whose fisheries are considered an important sector has been noted by FAO in Garibaldi (2012). For the same reasons, the Conference of African Ministers of Fisheries and Aquaculture (CAMFA, 2010), urged AU Member States and Development Partners to put in place efforts to improve scientific knowledge and build capacity to ensure adequate informed decision-making process for the sector.
4.12.1 Issues and Challenges Facing Information Generation and Sharing

On the continent, reliable data on total catches, catch composition, fishing effort, size of fleets, catch rates and socio-economic information for both industrial and small-scale fisheries are often lacking or unreliable. There are several constraints related to data collection, of which the key ones are the following:

- Inadequate tools and skills for information generation (i.e. weak research for generation of biophysical, social and economic information) and inadequate skills in statistical data collection, analysis and dissemination.
- Inadequate recording and analysis of statistical data on fisheries.
- Weak information and communications technology (ICT) for data dissemination and sharing.
- Member states not regularly updating information on the regional fisheries information dashboard.
- Inadequate dynamic legal framework for information sharing.
- Inadequate public funds for sustainable information generation and sharing. Funding for data collection through scientific surveys is inadequate and often donor dependent.
- Weak institutional arrangement at national level and poor linkages to national statistics bureaus, the regional and international organizations, national planning and financing authorities.
- Fishing data submission by the fishing fleets is left at the mercy of the vessels operators who choose which data to submit, leaving most AU-MS with unreliable information on the amount and species of fish harvested in their EEZs.

Due to the foregoing concerns, there is a need to develop a common strategic framework for improvement of fisheries statistics. “The Pan-African Strategy on Improvement of Fisheries and Aquaculture Data Collection, Analysis and Dissemination” has been developed in response to this call. The implementation of this strategy is expected to provide an accurate picture of fisheries and aquaculture in Africa for decision makers.

4.12.2 Strategic Actions Recommendation

It is recommended that the AU-IBAR promotes the implementation of the “The Pan-African Strategy on Improvement of Fisheries and Aquaculture Data Collection, Analysis and Dissemination”. The information by the fishing vessels should be real-time submission preferably through an e-reporting system that ought to be developed and implemented expeditiously.

4.13 Areas Beyond National Jurisdiction (ABNJ)

Africa needs to have a strong voice on the management of fish stocks in areas beyond their national jurisdiction. This is because in many instances, the unchecked exploitation of these resources...
Encourages IUU fishing even in the EEZ hence impacting negatively on the fish stocks. Due to Africa’s limited MCS capacity and capability, the high seas around Africa have been the springboard for IUU fishing by almost all fishing nations.

In its resolution 69/292 of 19 June 2015, the UN General Assembly (UNGA) decided to develop an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. As identified in Resolution 69/292, discussions focused on: Marine Genetic Resources, including access and benefit sharing; area based management tools, including marine protected areas; environmental impact assessments and capacity building and transfer of technology.

FAO has been making effort to build capacity on the current governance system for fisheries in areas beyond national jurisdiction. There are on-going meetings and Intergovernmental Conferences on ABNJ to be convened in 2018, 2019, 2020. Africa should be involved in these meeting to articulate their stand on management of the ABNJ and the need to be empowered in terms of necessary capacity to carry out the role effectively.

4.14 Africa's Fisheries Voice Forum
Establish a credible and sustainable forum that can audibly voice out Africa’s interest in getting maximum benefits from its fisheries resources. It is important that the constituents of this forum are well informed on the importance and the impact of Africa’s fisheries resources to the interested parties to build a strong position for negotiations on all matters pertaining to fisheries.

5 Recommendations
From the foregoing discussions, a number of recommendations have been made for consideration; these are presented below.

5.1 Short Term Recommendations
1. Sensitization and advocacy to AU-MS by the AUC to expedite alignment of national fisheries policies with the PFRS
2. The AU-IBAR shall facilitate approval of the HMTCs by the Ministers of Fisheries
3. When adopted, AU should circulate the HMTCs and urge countries to adopt it as minimum standards for fishing access in their waters
4. The AU must facilitate the setting up of criteria for selection of national and regional fisheries access negotiation teams. These teams should be inclusive and could include representatives from fisheries line ministries; regional organizations; Ministries of Finance and Planning; National
Legal Ministries/Authorities; relevant NGOs; fishing industry; and small scale fisheries

5. AU should assist the AU-MS to establish an Africa Fisheries Voice Forum that will help the AU-MS speak with one voice on all matters of the fisheries sector and especially on exploitation of their fisheries resources. Other areas that the Forum could cover include fish trade and marketing, ecolabelling, and fish quality assurance.

5.2 **Long Term Recommendations**

1. Evaluate all the existing minimum terms and conditions in the AU-MS and regional bodies and ensure they are harmonized with the continental HMTCs

2. AU should take lead in facilitating the harmonization of AU-MS licensing conditions, procedures and modalities and the involvement of the Regional Fisheries Bodies.

3. There is need to ensure that vessel reporting requirements for information on catch and other fishing details in Africa are harmonized;

4. The reporting formats for scientific data, legal compliance monitoring and other functions should be developed and harmonized;

5. Requirements for transiting foreign fishing vessels especially with regard to stowing of fishing gear and equipment should be assessed and harmonized.AU-IBAR to take lead on this process;

6. Terms and conditions for port access (Port State Measures Agreement and related regulations), pre-fishing inspections, country to country enforcement procedures, prosecutions, penalties, responsibilities of the flag states or fisher associations should be evaluated and the countries that have not implemented be assisted to do so in order to reach the set continental goals.

6 **Conclusion**

The overexploitation of fishery resources is always and everywhere of economic origin due to profitability. Unmanaged fisheries, where access to fishery resources is free and open, will always be economically overexploited and therefore there is the need for Africa’s refocus on fisheries reforms to change the declining trend of fish stocks. Many fishery management systems, by focusing on consequences such as fishing overcapacity and IUU fishing rather than causes of overexploitation, worsen the initial problem. Regrettably, the design of fishery management systems in Africa continues to neglect economic factors of change of management paradigm such as rights-based management systems or catch allocation as opposed to open access. The result of this is that the goal of sustainable and/or rational exploitation will remain elusive unless the reforms agenda is embraced by the AU-MS.

Governments around the world for the longest time have been trying to prevent overfishing and to conserve fish stocks using biologically based approaches. Over that period, significant advances
have been made in stock assessment techniques but the basic problem of overexploitation has not been resolved. It is therefore imperative that Africa begins to do things differently in order to benefit fully from their fisheries resources whether the AU-MS harvests fish with its own national fleet or grants other nations access to fish in its waters.

The main change that is required is for fisheries policy to be based on the recognition that fishery resources are very valuable natural assets that are capable of generating sustainable wealth. The main challenge is then to design institutional and operational systems that will allow this wealth to be generated and grown on a sustainable basis in the particular circumstances of the country and the fishery. The PFRS and the harmonized MTCs offers a framework within which to do this without being prescriptive about what precisely should be done.

Well-managed fisheries offer a multiple dividend because they continue to provide economic benefits in terms of wealth creation, food, employment and many other fisheries activity-related benefits. Experience from countries that have reformed their approach to fisheries suggests that the process is long and gradual but achievable. The AU-Member States must therefore embrace the current fisheries reform agenda and support its implementation for the benefit of their people.
(B) FRAMEWORK FOR MINIMUM TERMS AND CONDITIONS (MTC) FOR ACCESS TO FISHERIES IN THE AFRICAN UNION MEMBER STATES

PREAMBLE

The Governments of the African Union Member States:

• **Aware** of the potential wealth of their marine fisheries resources;

• **Prompted** by the desire to harmonise the access to marine fisheries resources in the continent for the optimum benefit of the countries;

• **Conscious** that the issues of shared resources are closely interrelated and need to be managed collectively and uniformly;

• **Affirming** the sovereign right to explore, exploit, conserve and manage all marine resources and the responsibilities to utilise these resources sustainably;

• **Considering** shared commitment to the implementation of the relevant provisions of the 1982 UN Law of the Sea Convention, the UN Fish Stocks Agreement and the FAO Code of Conduct for Responsible Fisheries;

• **Recognizing** the AU agenda to support food security in the continent through implementation of the Comprehensive Africa Agricultural Development Programme (CAADP) and the PFRS by Member States;

• **Recognizing** the need to establish a durable and equitable framework for cooperation with Distant Water Fishing Nations (DWFN);

• **Recognizing** the need to increase seafood supply while making effort to restore the overfished stocks, the AU encourages its Member States to improve their fisheries access agreements with foreign fleet in their Exclusive Economic Zones (EEZs) to benefit posterity;

• **Acknowledging** the need for co-operation among the AU Member States and regional fisheries organizations in managing fisheries and enforcing fisheries laws and regulations;

• **Taking cognizance** of the need to generate and share credible data and information on fish stocks, fishing operations and MCS activities;

• **Fully aware** that Member States have different specific objectives for their local fisheries, and without prejudice to national sovereignty the concerned parties of the AU Members have reached an understanding on the MTCs for fisheries access in their EEZs;

• **Affirming** that matters not regulated by these MTCs continue to be governed by the rules, regulations and principles of general national and international laws;

These MTCs are adopted as minimum standards of access.
PART I: INTRODUCTION

ARTICLE I

Definitions
These definitions shall, unless otherwise specified, apply to these MTCs and are recommended to the AU Member States for incorporation into their national regulatory frameworks.

i. “automatic identification system” or “AIS” means an automatic tracking system used on ships and by vessel traffic services for identifying and locating vessels by electronically exchanging data with other nearby ships, AIS base stations, and satellites.

ii. “by-catch” means all living and non-living organisms incidentally caught while fishing for target species, including any by-products and discards forming part of the catch not retained on board the vessel during such fishing operation;

iii. “fish aggregating device” or “FAD” means an object or group of objects, of any size, that has or has not been deployed, that is living or non-living, including but not limited to buoys, floats, netting, webbing, plastics, bamboo, logs and whale sharks floating on or near the surface of the water that fish may associate with;

iv. “fishing” means:
   a. searching for, catching, taking or harvesting fish;
   b. engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish for any purpose;
   c. placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
   d. any operations at sea directly in support of, or in preparation for, any activity described in sub-paragraphs (i) to (iii);
   e. use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in sub-paragraphs (i) to (v)

v. “Fishing trip” means any period, during which a fishing vessel is searching for, attracting, locating, catching, taking or harvesting fish or in preparation for, fishing, including the landing, packaging, processing and transhipping.

vi. “foreign fishing vessel” means any vessel, ship or other craft which is used for, equipped to be used or of a type that is normally used for fishing, which operates in the fisheries waters of an AU member state and is not part of the domestic fleet of that AU member state.

vii. “Member State” means AU Member State;

viii. “non-compliant vessel” or “IUU vessel” means any fishing vessel, supply vessel, or transport vessel that has engaged or currently engages in fishing or related activities in contravention of national and international laws and regulations, or more broadly, IUU fishing, including those
vessels named in the IUU lists of RFMOs.

ix. “operator” means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master;

x. “supply vessel” means any vessel that is engaged in carrying, deploying, retrieving searching for, or monitoring fish aggregating device, as well as those that assist fishing vessels with re-supplying, changing or transferring crew, and other supporting services;

xi. “transport vessel” means any vessel, refrigerated or not, that is engaged in transporting goods, including harvested fish, from a fishing vessel to other vessels, to port, or to an offshore terminal;

xii. “transshipment” means the transfer of all or any of the fish on board a fishing vessel to another vessel either at sea or in port, and does not include net sharing;

xiii. “vessel monitoring system” or “VMS” means a system that transmits automatically data on the fishing vessel identification, geographical position, date, time, course and speed by satellite-tracking devices installed on board fishing vessels to the fishing monitoring Centre of the flag State.

**ARTICLE 2**

**Purpose**
The Harmonized Minimum Terms and Conditions (HMTCs) for access by fishing vessels constitute a key strategic tool to regulate access to the AU Members States’ fishery waters. They form the basic but fundamental mechanism for setting standards for the AU Member States to protect, while optimizing the benefits from their fisheries resources. The Member States have the responsibility to adopt and amend the MTCs according to their needs, which could be more stringent conditions than these MTCs.

**ARTICLE 3**

**Scope**
This Minimum Terms and Conditions for Access (MTCA) Framework applies to the conservation and sustainable utilization of fisheries resources including by-catch of the AU member States and to fishing vessels seeking access to fisheries resource within the fisheries waters of Africa.

**ARTICLE 4**

**Objective**
The objective of this Framework is to establish a common access regime for fishing vessels to improve socio-economic conditions of the African Union Member States in order to:

a. create job opportunities in the fisheries sector;

b. ensure conservation and sustainability of the fisheries resources;
c. monitor and control fishing activities in EEZs more efficiently and effectively;
d. serve as an instrument of reference to help States to establish or improve the legal and institutional framework required for equitable exploitation of their marine resources;
e. provide guidance in the formulation and implementation of fisheries access agreements;
f. facilitate and promote technical, financial and other cooperation in conservation, management and development of fisheries resources;
g. provide standards for all countries interested in fisheries access agreements; and
h. improve market access to the Africa’s fisheries commodities.

**ARTICLE 5**

**General Principles**

1. These harmonized MTCs are adopted as minimum standards of fishing access to AU member states and do not preclude any member from adopting more stringent standards.
2. The right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of the fisheries resources.
3. Prevention of overfishing by Member States, RFMOs and RFBs through implementation of management measures that will ensure the fishing effort is commensurate with the productive capacity of the fishery resources and their sustainable utilization.
4. Application of precautionary approach to conservation, management and exploitation of fisheries resources by Member States, RFMOs and RFBs in the areas of jurisdiction to protect the resources and preserve the aquatic environment.
5. Compliance with conservation and management measures by Member States and regional bodies to establish effective mechanisms for monitoring and control of fishing vessels and fishing support vessels activities in their areas of competencies.
6. Authorization of fishing and fishing support vessels by Member States to fly their flags should be accompanied by effective control over these vessels in accordance with these MTCs.
7. All vessels fishing in Member States’ fishery waters should fulfill their obligations with respect to collection and provision of data relating to their fishing activities;
8. Member States should ensure that decision-making processes are transparent.
PART 2: LICENCES AND COMPLIANCE RELEVANT LAWS AND OBLIGATIONS

ARTICLE 6
Pre-inspection and Inspections of Fishing Vessels
1. A pre-inspection shall be carried out in a designated port of the participating Member States in accordance with national legislation and FAO Port State Measures Agreement.
2. The validity of this inspection shall be 12 months. However, in the event that the vessel has a change of name, flag, vessel characteristics and/or ownership, a new inspection shall be conducted.
3. The criteria for the vessels and fishing gears to access the fisheries resources shall be defined.

ARTICLE 7
Application for fishing licences
1. A foreign fishing vessel applying for a licence to fish in AU Member States’ waters shall provide the required information as per the set schedule by the member state (see Annex).
2. The operator shall make an application in specified period of application to allow adequate time for due diligence. The applicant shall comply with the set criteria for application. Only registered vessels and those that have undergone pre-inspection shall be eligible for consideration.

ARTICLE 8
Conditions for Licensing
1. The fishing vessel operators shall comply with the national laws of the Member State. The operators shall be responsible for the compliance by its crew with such national laws, and the vessel shall be operated in accordance with those laws.
2. Prior to granting a licence to fish, the Member State shall ensure that the fishing vessel:
   a. has been pre-inspected and has a certificate of pre-inspection;
   b. maintains registration on the respective RFMO and/or RFB records of authorized vessels;
   c. maintains a valid authorization to fish (ATF) issued by its flag State;
   d. does not appear on any existing IUU vessel list, has no evidence that the vessel has conducted IUU fishing or has connection to IUU fishing or other fisheries related crime activities;
   e. does not have a history of IUU fishing and maintains good standing in terms of compliance with its legal obligations; and
   f. In the event a vessel does have a history of IUU fishing, but has changed name, flag, vessel specifications owner or operator, a Member State may or may not issue it with a fishing licence. If a licence is issued the Member State shall ensure more stringent monitoring and
surveillance of the vessel.

3. When issuing a licence to fish Member State shall ensure that:
   a. the licence application process is consistent with the standardized process outlined in this MTC Framework, including a standardized application form and timeline;
   b. the licence is issued to an operator for a designated fishing vessel;
   c. the licence is valid for a specified period and is not transferable. In case of force majeure or of any accident that renders the vessel nonoperational or results in the loss of the vessel, a new licence may be issued to the applicant for another vessel with similar specification;
   d. the licence outlines a set of conditions and obligations that define its use, which are consistent with national and international law together with regional instruments and any access agreements that are in place.

**ARTICLE 9**

Operating Conditions

All foreign fishing vessels, including supply and transport vessels, operating in the AU Member States waters shall be required to:

a. comply with national and regional Regulations;

b. comply with fishing operations, maritime safety and other requirements;

c. comply with the international labour conditions such as those stipulated in the Work-in-Fishing-Convention 2007 as well as conditions, regulations, and requirements governing local fishing crew;

d. maintain registration on the relevant RFMO and/or RFB record of authorized vessels;

e. maintain a valid authorization to fish (ATF) issued by its flag State; and

f. possess a valid licence issued by the Member State and carry it on board at all times.

**ARTICLE 10**

Ecosystem and Environment protection

All fishing vessels and the participating Member States shall ensure that the fishing environment and the ecosystems are protected during fishing operations. The fishing fleets and the States are therefore required to:

a. apply ecosystem approach to exploitation and management of fisheries resources;

b. ensure adequate coordination between fisheries and environment departments RFMOs and RFBs;

c. adhere to port and environmental safety including management of ballast water in accordance with International Convention for the Control and Management of Ships’ Ballast Water and Sediments, national environmental, wildlife and fisheries laws;
d. adhere to law of the sea (UNCLOS) requirements for protection of marine environment and marine resources;
e. comply with MPAs laws and related legislations including CITES, CBD etc.;
f. develop and enforce management measures for offshore stocks susceptible to over-exploitation.

ARTICLE 11
Fishing Area/Zones

To reduce resource user conflicts the Member States shall:
a. define fisheries zone for different fisheries such as long line, purse seine and local fishing, preferably through spatial mapping and zoning of the fisheries and marine resources;
b. demarcate the industrial and small-scale fishing areas with the help of research initiatives on habitats and ecosystems.

PART III: FISHERIES MANAGEMENT

ARTICLE 12
Stock Assessments Requirements

Stock assessment of offshore fishery resources is fundamental for any access agreement and therefore imperative to ensure inclusion in the financial compensation for fisheries access and/or development funds during the negotiation process. The funds shall be used:
a. to quantify the value of the fisheries resource under consideration;
b. to strengthen research with emphasis on regional approaches especially for shared stocks;
c. to conduct stock assessment with an emphasis on regional approaches especially for shared stocks;
d. to strengthen national/regional data and information gathering and sharing for proper valuation of the fisheries;
e. for capacity building for researchers and establishment of regional stock assessments technical teams;

ARTICLE 13
Catch-Effort Legislations and Regulations

The Member States shall ensure:
a. target species measures, such as total allowable catch (TAC) and quotas are determined and observed through monitoring compliance, transferability and promotion of precautionary approach where scientific knowledge is inadequate.
b. fishing capacity and effort control management by allowing only surplus fish stocks are availed for access;

c. that fishing vessels submit accurate reports in the prescribed format and intervals for all catch taken in the fishery waters of the Member States;

d. conditions for Fish Aggregating Devices (FAD) are specified, using scientific information on impact of FADs on target species.

**ARTICLE 14**

**By-catch and Discards**

1. All licensed fishing vessels shall land all by-catch at a designated port and shall not discard at sea, except for endangered threatened and protected species (ETPs), which shall be released immediately after capture to minimize mortality;

2. The Member States shall require all licensed fishing vessels to comply with national and regional organisations resolutions and international laws, including international best practices on by-catch mitigation solutions and devices;

3. The Member States shall enact and enforce regulations such as use of by-catch reduction devises (BRDs);

4. The Member States shall promote and monitor by-catch utilisation schemes in consideration of the social dimensions;

5. The Member States shall develop monitoring system for by-catch and discards and conduct periodic assessments of the impacts of by-catch and discards on other fisheries, habitats and the socio-economics of the inshore communities.

**ARTICLE 15**

**Financial Compensation**

1. Member States shall receive financial compensation for permitting a fishing vessel to operate within the waters under their national jurisdiction with due consideration of potential catch, its potential value based on a prevailing market price, and the cost of management the fisheries resources;

2. Member States shall work together to standardise and harmonise financial compensation for access to target resource within waters under their national jurisdiction;

3. Any financial compensation shall be paid into a designated government account of the Member State and the following shall be considered:
   a. reinvestment in fisheries sector development with respect to support for small-scale fisheries development and infrastructure improvement such as fishing harbours;
b. setting up a fund from fisheries access agreement financial compensation to support small-scale fisheries and other activities such as observer program;
c. value chain development e.g. onshore processing infrastructure;
d. adequate compensation for the sector’s lost value as a result of the FPAs/FAAs with due consideration of the interests of inshore communities and coastal economies.

ARTICLE 16
Local Fishing Crew Conditions and Requirements
1. Member States shall apply and enforce Africa’s harmonised policy and regulations for employment of local crew;
2. Fishing vessels shall observe the terms and conditions for employment of fishing crews in line with International Labour Organization (ILO) standard regardless of nationality of the crew;
3. Member States shall work together to create incentives for the vessels that comply with the set conditions and requirements.

ARTICLE 17
Regional Coordination and Information Sharing
1. A regional record of the foreign fishing vessels, licensed to operate in the waters of AU Member States shall be compiled and published.
2. Member States shall submit periodical updated list of their licensed foreign fishing vessels to ensure that the regional record is current and valid.
3. A dedicated regional system of information sharing (dashboard) shall be established and be available on the Internet. It shall include relevant compliance information for the listed vessels, such as being on good standing list.
4. Member States shall establish a legal framework for information sharing.
5. RFMOs and RFBs shall develop and strengthen regional strategies and protocols on MCS systems, research protocols, policies and regulations, and statistics, to provide platform for data & information sharing between Member States and taking into consideration data ownership and confidentiality.
6. Develop harmonized negotiation framework and follow-up on Member States’ commitment to support agreed actions.

ARTICLE 18
Stakeholder Participation in Negotiating FAAs
1. Member States shall ensure inter-agency cooperation, including participation of non-state actors in the co-management.
2. There shall be established and strengthened national and regional capacities for stakeholder engagement at all levels and stages in the Fisheries Access Agreements (FAA) negotiation processes
3. Member States shall create awareness to stakeholders on resource valuation to ensure their active role in the stakeholder engagement process.

PART IV: MONITORING, CONTROL AND SURVEILLANCE

ARTICLE 19
Vessel Reporting Conditions
1. Member States shall set conditions for identification of the licensed fishing vessels.
2. Member States shall make it mandatory for foreign fishing vessels to provide the position and where applicable, quantity and type of catch by species on board the vessel.
3. All licensed foreign fishing vessels, shall report entry into and departure from waters under jurisdiction of the Member States that issued the Licence.
4. All licensed foreign fishing vessels shall report the quantity and type of catch harvested after each fishing trip.
5. Member States shall establish standardized reporting conditions such as catch logs and fishing locations, and the fishing vessels shall adhere to accurate and speedy submission. Electronic reporting shall be enforced.

ARTICLE 20
Vessel Registration
1. Member States shall keep and maintain a strong national and regional vessel registration record.
2. Mandatory deposition of the Vessel Registration record with relevant RFMO and/or RFB
3. Member states shall contribute to updating the records of Regional Fisheries Bodies with respect to vessel registration.

ARTICLE 21
Vessel Identification and Flag State responsibility
1. The flag State of foreign fishing vessels licensed to operate in waters under jurisdiction of a Member State shall ensure compliance of its flagged vessels with the Member State’s laws and regulations as well as those of the flag State, in accordance with the FAO guidelines.
2. Flag State shall ensure comprehensive monitoring of its flagged vessels through acceptable electronic tracking systems and ensure compliance with international agreements.
3. Flag States shall have responsibility to ensure their vessels comply with the Member State’s
laws and regulations and the terms of any access agreements. Appropriate actions shall be taken against non-compliant vessels.

4. In situations where vessels receive fishing licences to operate in waters under the jurisdiction of the Member States through fishing associations, the associations shall have responsibility to ensure that their vessels comply with the Member State’s laws and regulations.

5. Member States shall monitor flags of convenience with the aim of reducing or eliminating these vessels from fishing in their waters.

6. Fishing vessels shall have a Universal Vessel Identifier (International Maritime Organization (IMO) number)

7. Member States shall contribute to FAO global record of vessels and shall implement Flag state responsibility.

**ARTICLE 22**

**Law Enforcement at National and Regional levels**

1. Member States and RFMOs shall harmonize and strengthen the national and regional Monitoring, Control and Surveillance laws and systems and develop a robust law enforcement mechanism at both regional and national levels.

2. Member States and regional bodies shall enforce use of Vessel Monitoring System (VMS) and Automatic Identification System (AIS).

3. Member States shall develop legal framework for VMS and AIS data sharing.

4. The member countries of RFMOs shall establish compatible VMS system in order to share data and monitor implementation of the international instruments;

5. Members States shall be required to acquire advanced equipment and to train personnel to implement and enforce the VMS and AIS

**ARTICLE 23**

**Observer Programs - Onboard and at the Port**

1. There shall be established robust national and regional observer programmes for Member States and RFMOs to monitor the on-board fishing vessels activities.

2. The observers shall be fully accommodated on board the vessel and provided with conditions of a level accorded to officers in line with international legal instruments (under ILO and IMO) regardless of the nationality of the observer.

3. Without prejudice to penalties prescribed by national legislation of the Member State and those of the flag State, sanctions of the regional observer programme and the protection of observers against bribing, threats, intimidation, assault and/or sexual harassment shall include but not limited to the suspension of the fishing vessel’s access to all AU-Member States fisheries.
4. Capacity building for the observer programme shall be built in the FAA financial compensation.

5. Member States shall provide good remuneration for observer programme.

6. The operator and the members of the crew of a vessel shall allow and assist any person identified by Member States as an observer to:
   a. board the vessel for scientific, compliance, monitoring and other functions;
   b. embark at a place and time agreed upon;
   c. have full access to and use of all facilities and equipment on board which the observer may determine is necessary to carry out his or her duties, including full access to the vessel’s records including its logs and documentation for the purpose of records inspection and copying.

7. The operator or any crewmember of the vessel shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an observer in the performance of his or her duties.

8. The operator shall be responsible for the health and safety of the observer while he or she is onboard the vessel throughout the duration of the trip.

**ARTICLE 24**

**Foreign Fishing Vessel in Transit**

1. Foreign fishing vessels transiting the exclusive economic zone of Member States shall be required to have all fishing equipment on board stowed or secured in such a manner that it is not readily available to use for fishing.

2. The operator of any transiting foreign fishing vessel, shall report electronically or manually its name, flag registration, date and time, position, compliment, intended activity, and catch on board to the designated authority of the respective member state.

3. The foreign fishing vessels shall maintain valid satellite and coastal AIS transmission at maximum strength while transiting in waters under jurisdiction of a Member State and specify entry and exit.

4. The transiting vessels shall adhere to the national laws (Coastal/Port state) and the UNCLOS 1982 regulations on safe passage, Marpol 72-78 on pollution and waste dumping and restrictions on transshipment.

5. Member States shall ensure establishment of protocols for vessels in transit, which might be calling at the Member States ports for supplies and fuelling.

**ARTICLE 25**

**High Seas Fishing Adjacent to AU Member States’ EEZ**

Member States shall play a proactive role in the fishing vessels access to the stocks adjacent to their EEZs, especially the straddling and highly migratory stocks.
ARTICLE 26

Port State Measures and Requirements

1. The Member States shall ensure that all foreign fishing vessels that utilize their port or offshore terminal comply with all Port State measures, in line with the FAO PSMA, including the requirement for advanced notice, cooperation and compliance with inspection procedures.
2. Member States shall ensure MTC are applied for all fishing vessels that call at their ports.
3. Member States shall strive to ascend and domesticate the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and related legislation of the International Plans of Actions (IPOAs).
4. Member States shall seek assistance through negotiation for access agreements to improve their Ports in order to realize the incremental benefits that accrue from functioning ports, such as transhipments and supplies.

ARTICLE 27

Transshipment

1. Member States shall only allow transshipment to occur at designated ports or offshore terminals in accordance with FAO Port State Measures Agreement.
2. No at-sea transshipments by any fishing vessel shall be permitted within waters under jurisdiction of a Member State unless the safety of the vessel and crew is at risk, and authorization is issued by the licensing Member State.
3. Member States shall strive to develop and improve facilities and infrastructure for fish handling at the designated landing ports. Comprehensively equipped fishing ports are necessary in streamlining of the issues of transshipment.
4. Member States shall strengthen legislation and penalties to deter illegal and/or unauthorised transshipment either at sea or at port.
5. In order to transship within a Member State's designated ports or offshore terminals, the fishing vessel shall:
   a. Submit a request for permission to transship in port or at an offshore terminal at least 24 hours in advance, providing the details of the quantity and species of catch to be transshipped and the desired time and designated port or offshore terminal and the name of receiving vessel;
   b. If authorized, the fishing vessel shall pay the associated fee upon arrival in port or offshore terminal;
   c. Facilitate the activities and inspections of the Member States' competent authorities without interference, intimidation or obstruction and allow the competent authorities access to all relevant areas of the vessel and information, including holds, records, and gear;
d. Submit a transshipment declaration to the Port State, fishing vessel's Flag State, and any other body as required, such as the RFMO.

**ARTICLE 28**

**Conflict Resolution**

1. Member States and Regional organisations and bodies shall identify sources of conflicts that could include but not limited to industrial, artisanal fisheries, oil exploration, tourism, and coastal development.
2. Member states shall develop mechanisms for conflict resolutions between the various resource users that could include establishment of arbitration committees and establishment of stakeholders’ platform to discuss challenges and reconciliation.
3. Establish conflict prevention mechanisms through awareness campaigns and information sharing.
4. Mitigate conflicts through stakeholder inclusivity in management plans, spatial planning, zonation and demarcation of fishing grounds that include enforcement mechanisms to minimise overlaps of various fisheries.
5. Establish and develop capacity for inclusive national and regional negotiation teams for FPA/FAAs to reduce conflicts within the target fisheries and ensure resource sharing between the industrial and small-scale fisheries.

**ARTICLE 29**

**Sanctions and Offenses**

1. Infractions of the set rules and regulation of the FAA by the fishing vessels shall attract heavy penalties and could lead to withdrawal of fishing licences and blacklisting of the vessels to fish in the entire AU-Members fisheries waters.
2. Member States shall impose appropriate and deterrent penalties for fishing vessels that wilfully break the national laws and the conditions of the FAA, and share this information with all the RFMOs and RFBs.

**ARTICLE 30**

**Amendment and Assessment of MTCs**

1. AU Member States shall set harmonised criteria for amendments of MTC and through consultative process amend the MTC as necessary.
2. AU Member States shall set harmonised criteria for assessment of the MTCs applicability and usefulness in order to constantly review the effectiveness and recommend amendments as necessary.
**ARTICLE 31**

**Technical Measures**

1. Technical measures of broad set of rules, which govern how, where and when fishing is conducted shall be developed and applied for all fishing vessels in the AU Member States, but they may differ from one region to another, in accordance with the regional conditions.

2. The technical measures may include but not limited to:
   - minimum landing sizes of fish;
   - specifications for design and use of gears;
   - minimum gear mesh sizes;
   - requirement of selective gears to reduce unwanted catches;
   - closed areas and seasons;
   - by-catches and discards limitations and utilization
   - measures to minimize the impact of fishing on the marine ecosystem and environment.

3. The Technical Measures Regulations in the AU-Member States shall be commensurate with the MTCs. To this effect, the AU shall lead its Members States in developing a framework proposal for technical measures that will ensure sustainable exploitation of the their EEZs and adjacent waters

**Note:**

List of Minimum Vessel Information Required for Foreign Vessel Fishing Licence

a. Name of Fishing Vessel
b. Flag of vessel
c. International Radio Call Sign
d. Flag State Registration Number
e. RFMO Vessel Register ID number
f. RFMO Vessel Registration Start and End Dates
g. Vessel Type
h. Size of Vessel
i. Gross Registered Tonnage or GRT
j. Year Built (Year of manufacture and first launch); Make, Model, Serial Number
k. Global Record (International Maritime Organization (IMO) number).
l. Name of Licence Holder
m. Full Address of Licence Holder
n. Vessel Contact details (including Phone, email etc)
o. Licence/Permit Number; including start and end dates
p. Authorized Fishing Method
q. Authorized Target Species
r. Registration number of support vessels including aircraft, if any.
s. Name and full address of the operator of support vessels and any aircraft used in association with fishing activities.
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Annex 1: Questionnaires

A. Questions for fisheries management institutions

Background of the mission
The aim of the mission is to assess fisheries measures for regulating shared fish stocks with the overall objective of developing a framework for harmonized terms and conditions for access to fisheries in AU-Member countries

1. **PSMA status in your country.**
   i) Has your country ratified the PSMA?
   ii) If it has acceded the PSMA, is the implementation of the measures in place?
   iii) Is the instrument effective in helping to combat IUU fishing?

2. **Fishing Licences**
   i) The procedure and modalities in place for:
      a. Local owned fishing vessels,
      b. Local and foreign jointly owned fishing vessels
      c. Foreign-owned fishing vessels
   ii) Licence fees, are they adequate and is the money ploughed back to the sector?
   iii) Are vessels fishing in your waters registered by the Regional Fisheries Body (e.g. SWIOFC, CECAF)?

3. **Fisheries Partnership/Access Agreements**
   i) How many foreign vessels have FAA in your country?
   ii) Do you consider the process of allowing foreign owned vessels to access the fisheries in your waters transparent?
   iii) Is there a negotiating team for these Agreements?
   iv) Are the small-scale fisheries sector and other stakeholders represented in the negotiations?
   v) Is financial compensation for these agreements adequate and do the funds trickle back to the sector?
   vi) Do you allocate allowable catch? If you do, do you have research information on stock status to determine the allowable catch that would ensure stock sustainability?
   vii) In allocating the TAC, do you take into account the access arrangements existing in the other countries with whom you share the fisheries resources?
4. **Statistical data and information**  
   i) Is there a mandatory data and information reporting mechanism by all the vessels?  
   ii) Is the reporting mechanism adequate and effective?  
   iii) How would you like to see this improved?

5. **Observer programme**  
   i) Do you have an observer programme for the fishing vessels?  
   ii) Who pays the observers?  
   iii) Is there training and capacity building for observers?  
   iv) How do you ensure that they are not compromised by vessel owners and operators?

6. **Transshipment**  
   i) What is your policy on transshipment?  
   ii) How do you monitor to ensure compliance?  
   iii) How do you handle transiting vessels?

7. **Regional bodies membership and linkages**  
   i) Is your country a member of any RFMO or RFB?  
   ii) Do you have strong linkages with the regional fisheries organizations?  
   iii) Do you provide fisheries information to the RFBs and do they reciprocate?

8. **ABNJ**  
   i) What is your take on ABNJ?  
   ii) Should countries adjacent to the high seas have responsibilities for its management and how?

9. **Fisheries management**  
   i) How would you propose to strengthen management of:  
      a. National fisheries resources?  
      b. Shared fisheries resources?  
   ii) Structure of government with respect to fisheries management of EEZs. Is it convenient and effective? Is there interference from other sectors, especially with respect to the use of funds derived from the sector?  
   iii) Would you say that your fisheries legislation and policy documents are adequate to guide the sector?
10. **Policy Framework for Reform Strategy (PFRS)**
   i) Are you aware of this AU Policy Reform strategy?
   ii) If so, are you aligning your fisheries policies and strategies with this tool that you contributed to its development?
   iii) Any recommendations on how AU should assist the countries to align the fisheries sector with PFRS?

B. **Questions for Regional Fisheries Bodies**

1 **Fishing and Fishing Vessels Statistics;**
   i) Are fisheries statistical data and information transmitted to the regional bodies by the member countries? If so, are they regular and reliable?
   ii) Are the information and data collection and dissemination methodology from various countries harmonized?
   iii) Has the regional body developed a strategy and modality for disseminating consolidated data and information to the countries? If not are there plans underway to achieve this?

2 **Fishing vessels**
   i) Do you keep record of fishing vessels operating in the region?
   ii) Is registration of vessels operating in your region mandatory?
   iii) Would it be advisable that all fishing vessels are registered with your regional body for identification?
   iv) Would regional registration help with combating IUU fishing?
   v) Do you blacklist IUU fishing vessels and if you do, how do you get the information on the vessels carrying out IUU fishing?
   vi) Do you have a strategy of informing and sending alerts of illegal vessels to your member states and if you do, are actions by member states adequate?
   vii) Are you as a regional body in anyway involved in Fisheries Access Agreements negotiations?

3 **Observer Programme**
   i) Do you have in place a regional observer programme?
   ii) If you do, who funds the programme and is there a Code of Conduct for the Observers?
   iii) Do you have a training programme for the observers?
4 Fishing in shared waters
i) What is your role in the management of transboundary (migratory and straddling species) fisheries resources?
ii) Do you have regional working groups on research, statistics, MCS and ocean governance?
iii) If you do, how effective are the working groups in generating and disseminating information and how do you use the information?
iv) Do you have a regional Monitoring Surveillance and Control (MCS) system in your region and if you do, how effective is it?
v) Do you have in place Minimum Terms and Condition (MTCs) for fishing in the regional?
vi) If you do, is their implementation by member countries on course?

5 Ports State Measures Agreement (PSMA)
i) Have all the countries in your region ratified the PSMA?
ii) If they have acceded to the agreement, is the implementation effective?
iii) Has the PSMA assisted in combatting IUU?
iv) What measures have the region and the countries put in place to ensure IUU fishing vessels do not call on port of your member states for any service?
v) Any recommendation on PSMA implementation by your member states?

6 Overfishing
i) Are there any concerns on overfishing in your waters?
ii) If you do have concerns what are your views on the causes and how to overcome them?
iii) Is fishing capacity increasing in your region? Are there measures in place to check this?
iv) Have you put in place measures to combat illegal fishing in the region and are they effective?

7 If overfishing is a concern, what are your recommendations for reduction to achieve sustainable fishing in the region?
C. **Questions for the Fishing industry**

1. **Number of vessels and types**
2. **Fisheries associations**: are there fisheries associations and if so:
   a. What is the membership?
   b. Are the associations recognized by the government?
3. **Any Constraints and conflicts**
   a. Any issues with the governments or appointed authorities
   b. Regional fisheries bodies
   c. Different types of vessels
   d. Any conflicts between local and foreign fishing vessels.
4. **Collaboration with regional bodies**:
   a. Do you register vessels with the regional bodies?
   b. Do fishing vessels submit fisheries data to the national governments and regional organizations
5. **Licensing system. Is it convenient?**
6. **Is there a well developed information generating and dissemination system?**
7. **Does e-reporting exist?**
8. **How are the associations/ organizations sustained financially?**
### Annex 2: Institutions Visited and Persons interviewed

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<tr>
<th>Date</th>
<th>Institution</th>
<th>Name of person interviewed</th>
<th>Position</th>
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<td><strong>GHANA</strong></td>
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<tr>
<td>11th June 2018</td>
<td>Ministry of Fisheries and Aquaculture Development</td>
<td>1. Hon. Kingsley Ato Codjoe</td>
<td>Deputy Minister</td>
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<td></td>
<td></td>
<td>2. Michael A. Dadzie</td>
<td>Director of Fisheries</td>
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<td>3. Godfrey Baido-Tsibu</td>
<td>Head of MCS Division</td>
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<td>11th June 2018</td>
<td>FAO Regional Office</td>
<td>1. Ndiaga Gueye</td>
<td>Senior Fisheries Officer</td>
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<td></td>
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<td>2. Martin Van der Knaap</td>
<td>Fisheries Officer</td>
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<td>12th June 2018</td>
<td>FCWC</td>
<td>1. Abena Serwah Asante</td>
<td>Fisheries Technical Advisor</td>
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<td></td>
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<td>2. Viviane Koutob</td>
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<td>12th June 2018</td>
<td>NAFAG</td>
<td>1. John A. Farmer</td>
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<td>2. Simon Agah</td>
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<td>3. Frank K. Aihoon</td>
<td>GITA Member</td>
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<td>4. Sammy Quaye</td>
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<td>5. J.K Nketsha</td>
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<td>6. Daniel Yaw Owusu</td>
<td>NAFAG Coordinating Secretary</td>
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<td>7. Cynthia Comme</td>
<td>NAFAG Member (Fishmonger)</td>
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<td>8. Madam Ocansey</td>
<td>NAFAG Member (Fishmonger)</td>
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<td>9. Jacob T. Aguke</td>
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<td>11. Joe Kramo</td>
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<td>12. Flt. Lt. M. Tackey</td>
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<td>14th June 2018</td>
<td>SRFC</td>
<td>1. Malal Sane</td>
<td>Permanent Secretary</td>
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<td>2. Dienaba Beye</td>
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<td>3. Ibrahim Turay</td>
<td>Fisheries Expert (Visiting from Sierra Leone)</td>
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<td>14th June 2018</td>
<td>Ministry of Fisheries and Maritime Affairs</td>
<td>1. Sidiya Diouf</td>
<td>Deputy Director Maritime Fisheries</td>
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<td>2. Cherif Samboli</td>
<td>Artisanal Fisheries Department</td>
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<td>4. Modou Mbengue</td>
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<td>Directorate of Maritime Fisheries/</td>
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<td>COMHAFA T</td>
<td>1. Mohammed Semlali</td>
<td>Head of Cooperation and Information Systems</td>
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<td>2. Mohammed Sadiki</td>
<td>Fisheries Expert</td>
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<tr>
<td>18th June 2018</td>
<td>Directorate of Strategy and Cooperation</td>
<td>Aomar Bourhim</td>
<td>Head of Multilateral Cooperation Service</td>
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<td>Department of Marine Fishery</td>
<td>Mr. Mohamed El Aroussi</td>
<td>Head of Cooperation Division</td>
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<td>21st June 2018</td>
<td>Ministry Fisheries &amp; Agriculture</td>
<td>Jude Talma</td>
<td>Principal Secretary</td>
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<td>22nd June 2018</td>
<td>IOTC</td>
<td>1. Gerard Domingue</td>
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<tr>
<td>22nd June 2018</td>
<td>Seychelles Fish Authority</td>
<td>1. Rony Renaud</td>
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<td></td>
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<td>2. Vincent Lucas</td>
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<td>3. Jonny Lowys</td>
<td>MCS Manager</td>
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