



8th Meeting of the Compliance Committee (CC8) and 11th Meeting of the Parties (MoP11)

Seoul, Republic of Korea, 26–28 June 2024 and 01-05 July 2024

MoP-11-18_Rev1

SIOFA IOTC Collaboration

SIOFA Secretariat

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Abstract	<p>Following the conclusion of the 10th Meeting of the Parties (MoP10), the Secretariat engaged with the IOTC Secretariat to conclude the Cooperation Agreement between the SIOFA and the IOTC. However, given the IOTC's legal personality as an Article XIV body of the FAO, the SIOFA Secretariat was informed that the endorsed instrument would need to be vetted and approved by the FAO Legal Department. Following discussions between the IOTC Secretariat and the FAO Legal Office, the FAO proposed pursuing an MoU a new instrument to allow the IOTC to collaborate with other organisations, including the SIOFA.</p> <p><i>Rev1 considers some minor drafting suggestions from the IOTC Secretariat (shown in track changes).</i></p>

Recommendations (for proposals and working papers only)

- That the 11th Meeting of the Parties notes the below and attached MoU Example and provides guidance on how to proceed with the Collaboration between the SIOFA and the IOTC.

¹ Restricted documents may contain confidential information. Please do not distribute restricted documents in any form without the explicit permission of the SIOFA Secretariat and the data owner(s)/provider(s).

² Documents available only to members invited to closed sessions.

SIOFA IOTC Collaboration

Background

Following the conclusion of the 10th Meeting of the Parties (MoP10), the Secretariat engaged with the Indian Ocean Tuna Commission (IOTC) Secretariat to conclude the Cooperation Agreement between the SIOFA and the IOTC. This included several exchanges and two physical meetings between the two secretariats, one held at the SIOFA Secretariat in La Reunion and the other held in Seychelles at the IOTC Secretariat.

However, given the IOTC's legal personality as an Article XIV [body](#) of the FAO, the SIOFA Secretariat was informed that the endorsed instrument would need to be vetted and approved by the FAO Legal Department. Further to this, initial comments on the proposed text endorsed by the MoP10 were as follows:

- No arrangement can be independent from FAO. IOTC has no legal independent identity from the FAO (IOTC is an FAO Article XIV body). As such, any agreement would need to incorporate and acknowledge the FAO specifically.
- The IOTC (as part of FAO) has very limited flexibility in terms of the agreements we can enter into. The IOTC cannot sign informal arrangements that are not recognised by the FAO. The least binding arrangement available to the IOTC is the Cooperation agreement previously proposed by the IOTC. The IOTC has extremely limited flexibility in changing the wording in the body text, and only a few small revisions were approved by the FAO legal.
- The proposed text from SIOFA may not be acceptable to FAO. It changes the instrument's name (from Cooperation Agreement to Arrangement) and includes substantial amendments from the original agreement proposed.
- The original document proposed by the IOTC was endorsed by the FAO legal office and the IOTC Commission. Noting that the document had undergone substantial changes, it would prevent the ES from being able to agree to sign the document

Noting the above, the SIOFA Secretariat was informed that progressing this work might be difficult, but the IOTC Secretariat committed to seeking the FAO's views and possible validation of the text endorsed by the MoP10.

Following discussions between the IOTC Secretariat and the FAO Legal Office, the FAO proposed a [new different](#) instrument ([Annex 1](#)) to allow the IOTC to collaborate with other organisations, including the SIOFA, suggesting that the instrument is transformed from the CA originally proposed to a Memorandum of Understanding (MoU) between the SIOFA and the FAO. The new instrument would require that the SIOFA enter into an agreement with the FAO directly before there can be a collaboration between the two organisations.

It should be noted that the matter was also discussed at the 28th Session of the IOTC, where members reaffirmed their commitments to collaborating with the SIOFA. The Commission also agreed to continue discussions with the FAO on how to facilitate this endeavour.

Annex 1: MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)
AND
[Southern Indian Ocean Fisheries Agreement(SIOFA)]

WHEREAS the Food and Agriculture Organization of the United Nations (hereinafter “FAO”) is a Specialized Agency of the United Nations system established in 1945 to raise levels of nutrition and standards of living for all people in FAO Member Nations, to secure improvements in the efficiency of production and distribution of food and agricultural products, and to contribute towards expanding world economy and ensuring humanity’s freedom from hunger;

WHEREAS FAO’s actions are geared towards supporting Members in implementing the 2030 Agenda for Sustainable Development, especially with regards to ending hunger and malnutrition in all its forms;

WHEREAS the FAO Strategic Framework 2022-2031 is guided by FAO’s vision and the three Global Goals of Members and is firmly anchored in the Sustainable Development Goals (SDGs), and the organising principle of the *four betters – better production, better nutrition, a better environment and a better life, leaving no one behind* – demonstrates how FAO intends to support the achievement of the SDGs and reflect the interconnected economic, social and environmental dimensions of agrifood systems while encouraging a strategic and systems-oriented approach;

WHEREAS FAO has the mandate to [...];

WHEREAS *[Southern Indian Ocean Fisheries Agreement]* (“SIOFA”) is a *[Regional Fisheries Management Organisation]* and has *[describe SIOFA’s mandate and/or objectives]*;

WHEREAS FAO and *[SIOFA]* (collectively referred to as “Parties” and individually “Party”) share common objectives with regard to *[list broad common objectives]*;

WHEREAS the Parties intend to conclude this Memorandum of Understanding (“MoU”) with the aim of consolidating, developing and detailing their cooperation and effectiveness to achieve their common objectives in the field of *[include primary field of collaboration]*;

WHEREAS the Parties intend their cooperation to cover a broad range of activities, which may include, but not be limited to, capacity building, knowledge exchange, provision of resources and development of financing initiatives for the advancement of their common goals and objectives;³

FAO AND *[SIOFA]* HAVE AGREED TO COOPERATE AS FOLLOWS:

Article 1: Interpretation and purpose

1. The purpose of this MoU is to provide a framework for collaboration between the Parties to further their shared goals and objectives with regard to the *[include broad statement of objective]*, as further elaborated under Article 2 below.

2. Any Annex to this MoU shall be considered an integral part of this MoU. References to this MoU shall be construed as including any Annexes, as varied or amended in accordance with the terms of this MoU.

3. The present MoU implies no financial commitment by either Party except as specified in this MoU. Activities to be implemented under this MoU are subject to the availability of personnel and financial resources. Implementation of any projects and programmes pursuant to this MoU, including

those involving the transfer of funds between the Parties, shall require the execution of appropriate separate legal agreements between the Parties in accordance with their respective rules and regulations. The terms of such agreements shall be subject to the provisions of this MoU.

4. Separate legal agreements between the Parties as expressed in Article 1 (3) above shall set out detailed and specific technical, financial and other appropriate conditions for collaboration, as well as conditions relating to each Party's role, responsibilities and liability. Such arrangements will be jointly formulated and concluded on a case-by-case basis between the Parties.

Article 2: Areas of cooperation and activities

1. The Parties have agreed to the following areas of cooperation for this MoU, which are areas of common interest to FAO and [SIOFA]. The Parties consider that progress in these areas could be strengthened through cooperation:

- a) *[Identify the themes or areas of cooperation, which can, inter alia, include development of financial mechanisms and instruments, and/or mobilization of financial and other resources];*
- b) [...];
- c) [...]; and
- d) [...].

2. The Parties will develop a work plan outlining specific activities of collaboration. The work plan is attached to this MoU as Annex I and will constitute an integral part thereof. The work plan will be jointly reviewed on a regular basis between the Parties. Amendments to the work plan will be made, upon mutual agreement, through an Exchange of Letters between the Parties.

3. The list of activities outlined in this MoU and in the work plan should not be taken to exclude or replace other forms of cooperation between the Parties, as may be agreed by the Parties pursuant to Article 3 to allow the Parties to respond to newly emerging issues of common interest.

Article 3: Mechanisms for coordination and review

1. The Parties shall hold regular bilateral meetings on matters of common interest, in accordance with an agenda agreed to in advance by the Parties, for the purpose of developing and monitoring collaborative activities, projects and programmes. Such meetings shall take place at least once every *[specify the timeframe]* months to:⁴

- a) discuss technical and operational issues related to furthering the objectives of this MoU;
- b) provide overall strategic guidance for the implementation of this MoU;
- c) monitor the progress in the implementation of the MoU and exchange views on the lessons learned; and
- d) review progress of work undertaken by [SIOFA] pursuant to a separate legal agreement in the areas of cooperation mentioned in Article 2 above.

2. In identifying joint activities, projects and programmes to be executed under this MoU, due regard shall be given to [SIOFA]'s geographic coverage, capacity for implementation and experience in the related field.

3. Within the context defined above, further bilateral meetings at the desk-to-desk and expert levels shall be encouraged and set up on an ad hoc basis, as deemed necessary by the relevant FAO divisions and [SIOFA] for the implementation of joint activities, projects and programmes in specific areas, countries and regions.

4. The objectives of this MoU shall also be achieved through the following activities [*Or*: through the activities detailed in Annex I to this MoU).

- a) *[describe other activities that could be carried out by the parties];* and
- b) [...].

4. [5]. To implement activities, projects and programmes in the agreed areas, the Parties shall execute separate legal agreements appropriate for the implementation of each initiative in accordance with Article 1 (3) above.

Article 4: Status of the Parties and their personnel

1. The Parties acknowledge and agree that [*SIOFA*] is an entity separate and distinct from FAO. The employees, personnel, representatives, agents, contractors or affiliates of [*SIOFA*], including the personnel engaged by [*SIOFA*] to carry out any of the activities, projects or programmes conducted pursuant to this MoU, shall not be considered in any respect or for any purposes whatsoever as being employees, personnel, representatives, agents, contractors or affiliates of FAO, nor shall any employees, personnel, representatives, agents, contractors or affiliates of FAO be considered, in any respect or for any purposes whatsoever, as being employees, personnel, representatives, agents, contractors or affiliates of [*SIOFA*].

2. The Parties shall undertake the activities under this MoU in accordance with the rules and regulations to which they are subject. Where compliance with rules may lead to a difficulty in performing under the MoU, or adhering to its provisions, the Party concerned undertakes to draw this to the attention of the other Party with a view to resolving the matter appropriately and amicably.

3. Neither Party shall be entitled to act or make legally binding declarations on behalf of the other Party. Nothing in this MoU shall be deemed to constitute a joint venture, agency, interest grouping or any other kind of formal grouping or entity between the Parties.

Article 5: Acknowledgment and publicity

1. [*SIOFA*] may refer to its collaboration with FAO in its internal documents and will seek and receive FAO's written clearance in advance of any other documents, in particular, materials intended to be made public relating to the collaboration with FAO.

2. At or near a time to be mutually agreed upon by the Parties, [*SIOFA*] and FAO may each issue a press release and make public statements regarding their collaboration, the content of which will be subject to the written agreement of the other Party, which will not unreasonably be withheld or delayed. Neither Party will issue any press release or promotional material, hold any press conference or make any public announcement concerning this MoU and/or the relationship of the Parties hereunder, without obtaining the approval of the other Party.

3. In all cases of acknowledgment and publicity on the collaboration under this MoU, the Parties will use neutral language that accurately reflects the actual contribution of each Party.

4. This MoU or information about this MoU may be published on FAO's website after it has entered into force consistent with its policies on transparency, as amended or updated from time to time. [*SIOFA*] may also publish the MoU or information about this MoU on its website after it has entered into force.

Article 6: Use of name and logo

The Parties agree not to use the other Party's name or logo in any press release, memo, report, or other published disclosure related to this MoU without the prior written consent of the Party concerned.

Article 7: Confidentiality

1. It is acknowledged that each Party may possess confidential information, including personal data, which is proprietary to it or to third parties collaborating with it. Any information provided by one Party (as the "Disclosing Party") to the other Party (as the "Receiving Party") in the context of this

MoU shall be treated by the Receiving Party as confidential and shall only be used by the Receiving Party for the purpose for which it was provided.

2. The Receiving Party shall take all reasonable measures to keep information pursuant to paragraph 1 above confidential and shall only use the information for the purpose for which it was provided. The Receiving Party shall ensure that any persons having access to said information shall be made aware of and be bound by the obligations of the Receiving Party hereunder.

3. Notwithstanding the foregoing, there shall be no obligation of confidentiality or restriction on use where: (i) the information is publicly available, or becomes publicly available otherwise than by action of the Receiving Party; or (ii) the information was already known to the Receiving Party (as evidenced by its written records) prior to its receipt; or (iii) the information was received from a third party not in breach of an obligation of confidentiality owed to the Disclosing Party; or (iv) the Disclosing Party has given its written consent to disclosure to the Receiving Party.

Article 8: Intellectual property rights

1. Intellectual property rights, in particular copyright, in material such as information, software and designs, made available by [SIOFA] and FAO to be used to carry out activities under this MoU shall remain with the originating Party. Appropriate authorizations for use of such materials by the other Party will be addressed in the agreements concluded in accordance with Article 1 (3) above.

2. **Option 1:** Intellectual property rights in materials developed under this MoU, such as information, software and designs, shall be vested in FAO. [SIOFA] will enjoy a royalty-free, non-exclusive and non-transferable license to use, publish, translate and distribute, privately or publicly, any item or part thereof for non-commercial purposes, provided that FAO is acknowledged as the source and copyright owner.

Option 2: Intellectual property rights in materials developed under this MoU, such as information, software and designs, and appropriate authorizations for use of such materials by either of the Parties will be addressed in the agreements concluded in accordance with Article 1 (3) above.

Option 3: Intellectual property rights in materials developed under this MoU, such as information, software and designs, shall be jointly owned by FAO and [SIOFA], including, without any limitations, the right to use, publish, translate, sell or distribute, privately or publicly, any item or part thereof for non-commercial purposes.

Article 9: Responsibility

Each Party will be responsible for dealing with any claims or demands arising out of its actions or omissions, and those of its personnel, in relation to this MoU.

Article 10: Commitment to respect FAO's principles and values

1. [SIOFA] agrees to respect FAO's constitutional principles and values, and warrants that nothing in its governance or operational activities, or those of its affiliates, is incompatible with FAO's constitutional mandate, principles and policies, or with internationally recognized principles concerning human rights, the environment and anti-corruption as reflected in the United Nations Global Compact Principles.⁵

2. [SIOFA] warrants that it has zero tolerance for all forms of sexual wrongdoing, and acknowledges that sexual exploitation and abuse and sexual harassment violate human rights and are incompatible with the core values of the United Nations system. [SIOFA] confirms that it has in place appropriate and effective mechanisms to prevent and address conduct incompatible with those core values. It undertakes to promptly inform FAO of allegations against its employees and any other

persons involved in the implementation of activities in relation to this MoU and which have been found to be credible under [*SIOFA*]'s mechanisms.

Article 11: Privileges and immunities and applicable law

1. Nothing in or relating to this MoU or in any document or arrangement relating thereto shall be construed: (i) as a waiver, express or implied, of any of the privileges and immunities of FAO, nor as extending any privileges or immunities of FAO to the other Party, or to its personnel; (ii) as the acceptance by FAO of the applicability of the laws of any country to FAO; or (iii) as the acceptance by FAO of the jurisdiction of the courts of any country.

2. The present MoU and any document or arrangement relating thereto shall be governed by general principles of law, to the exclusion of any single national system of law. Such general principles of law shall include UNIDROIT General Principles of International Commercial Contracts 2016.

Article 12: Settlement of disputes

Any dispute between the Parties concerning the interpretation and execution of this MoU, or any document or arrangement relating thereto, shall be settled by negotiation between the Parties. Any differences that may not be so settled shall be brought to the attention of the Executive Heads of the two institutions for final resolution.

Article 13: Contacts for correspondence

All correspondence regarding the implementation of this MoU, including notifications made pursuant to this MoU, shall be addressed to:

For FAO:	<i>[Insert functional title, full address, telephone and generic email address]</i>
For [<i>Other Party</i>]	<i>[Insert functional title, full address, telephone and generic email address]</i>

Article 14: Notification and amendments

1. Each Party shall promptly notify the other in writing of any anticipated or actual material changes that shall affect the execution of this MoU.

2. This MoU may be amended by mutual consent in writing at any time at the request of either Party. Such amendments shall enter into force one (1) month following notifications of consent by both Parties to the requested amendments or on a date otherwise agreed in writing for the amendment to enter into force. If the written mutual consent occurs on two (2) different dates, amendments will take effect on the date of the second notification. Each Party shall give sympathetic consideration to any amendment proposed by the other.

Article 15: Entry into force, duration and termination

1. This MoU shall be signed by the duly authorized representatives of the Parties and shall enter into force upon the date of last signature. It shall remain in force for a period of [**three (3)**][**five (5)**] years, unless terminated in accordance with the terms of this Article.

2. Subject to satisfactory past implementation, this MoU may be renewed for similar periods thereafter by written agreement between the Parties through an Exchange of Letters.

- 3. This MoU may be terminated by either Party upon the provision of three (3) months' written notice to the other Party.
- 4. Upon termination of this MoU, the rights and obligations of the Parties defined under any other legal agreement executed pursuant to this MoU shall cease to be effective.
- 5. Notwithstanding the foregoing, any termination of this MoU shall be without prejudice to: (i) the orderly completion of any ongoing collaborative activity; and (ii) any other rights and obligations of the Parties accrued prior to the date of termination under this MoU or any legal agreement executed pursuant to this MoU.
- 6. The provisions of Articles 7, 8, 11 and 12⁶ shall survive the expiry or termination of this MoU.

This MoU is done in the English and [*French?*] languages, both texts being equally authentic].

IN WITNESS WHEREOF, the duly authorized representatives of the Parties affix their signatures below.

[To be used for signature of the MoU:

Option 1 – if the Parties decide to sign the MoU electronically: [The Parties agree that electronic signature of this MoU using the Adobe-Acrobat tool shall be treated as valid and legally binding. This MoU shall be treated as an original for all purposes.]

Option 2 – if the Parties decide to conclude the MoU through an exchange of emails attaching the scanned versions of the MoU signed in hard copy: [The Parties agree that this MoU will be concluded electronically via email exchange of scanned signed copies and that the signed copies exchanged in this manner shall be treated as originals.]

For the Food and Agriculture Organization of the United Nations (FAO)

For [*Southern Indian Ocean Fisheries Agreement*]

.....
[Insert name]
[Insert title]

.....
[Insert name]
[Insert title]

Date:.....

Date:

⁶ LEG instruction: These Articles should refer to: Confidentiality, Intellectual Property Rights, Privileges and Immunities and Applicable Law and Dispute Settlement.