

**South West Indian Ocean Fisheries Governance and Shared Growth Program (SWIOFish)
Project No. P132123**

**REVIEW OF THE LEGAL AND POLICY FRAMEWORK FOR FISHERIES IN
TANZANIA**

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10 December 2013**

EXECUTIVE SUMMARY

This document was prepared under the World Bank South West Indian Ocean Fisheries Governance and Shared Growth Program (SWIOFish), Project No. P132123, and formed the basis for discussion about legal and policy framework for fisheries at the pre-appraisal meeting held in Dar es Salaam from 18 – 29 November 2013.

It addresses nine areas, including: the legal and policy framework applicable to priority fisheries management in the Mainland and Zanzibar; geographic and thematic jurisdiction between the Mainland and Zanzibar for non-union matters, status of Tanzania in relation to relevant international legal agreements and obligations; contradictions and/or gaps between the national legal framework and Tanzania's international commitments in international fisheries instruments and RFMOs; inconsistencies and gaps in the legal and policy frameworks between Mainland Tanzania and Zanzibar, in particular MCS of IUU fishing in Tanzanian waters; legislation on potential impacts associated with off-shore hydrocarbon development and fisheries conservation: potential areas of conflict; maritime boundary disputes; potential priority areas for legal work under SWIOFish; and proposals for addressing inconsistencies and gaps within national laws and between national law and Tanzania's international obligations.

The study identifies a wide range of inconsistencies among the fisheries laws and regulations in the country (for Mainland Tanzania, Zanzibar and the Deep Sea Fishing Authority), as well as gaps and a strong need to address best practices in fisheries legislation and implement Tanzania's international obligations. Initiatives in all jurisdictions of Tanzania to review and revise laws and policies are currently underway, and are at different stages of development. They would benefit from actions to promote consistency, close the gaps, apply best practices and implement international obligations.

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ACRONYMS

BMU	Beach Management Units
CFMA	Collaborative Fisheries Management Area
DSFA	Deep Sea Fishing Authority
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
IPOA-IUU	FAO International Plan of Action to prevent, deter and eliminate IUU fishing
IUU	Illegal, unreported and unregulated
IWC	International Whaling Commission
IOTC	Indian Ocean Tuna Commission
MCS	Monitoring, control and surveillance
MCU	Marine Conservation Unit
MPA	Marine Protected Areas
NPOA	National Plan of Action
RFMO	Regional fisheries management organization
SADC	Southern African Development Community
SWIOFC	South West Indian Ocean Fisheries Commission
ToRs	Terms of Reference
TSEEZ	Territorial Sea and Exclusive Economic Zone Act, 1989
VFC	Village Fishermens' Committees
VMS	Vessel Monitoring System
ZMA	Zanzibar Maritime Authority

1982 Convention United Nations Law of the Sea Convention

1. INTRODUCTION

As acknowledged in the Terms of Reference (ToRs) for this assignment, the fisheries sector of the United Republic of Tanzania is not governed in a holistic and integrated manner. However, there is a trend to move to better fisheries governance with the most recent laws, most notably the 2004 National Integrated Coastal Environment Management Strategy for Mainland Tanzania, and the Fisheries Acts, 2003 for Mainland Tanzania and 2010 for Zanzibar), and the establishment of a common governance regime for the exclusive economic zone (EEZ) through the creation of the Deep Sea Fishing Authority (DSFA), composed of members from Mainland Tanzania and Zanzibar¹.

Due to the political governance structure of Mainland Tanzania and Zanzibar, and as the fisheries sector (Inland and Territorial Sea fisheries) is not considered a union matter, Mainland Tanzania and Zanzibar manage their fisheries sectors separately.²

The main challenges for Tanzanian fisheries management described in the ToRs focus on resources (financial and human), the open access regime, research, poor integration between local and national levels and limited harmonization between Zanzibar and Mainland Tanzania fisheries management in internal and territorial waters.³

An additional challenge for fisheries management is the applicable laws, which form the basis for fisheries management including monitoring, control and surveillance and institutional cooperation. Although they represent an important step in the right direction, are generally weak, inconsistent, not harmonized with each other or those of the Deep Sea Fishing Authority Act, 1998 and the Territorial Sea and Exclusive Economic Zone Act, 1989 (TSEEZ Act), and do not incorporate best practices or international obligations, as described in Part 2 of this document which addresses key issues in the legislation.

The assignment for this consultancy focuses specifically on the legal and policy framework for the fisheries sector in the United Republic of Tanzania. As such, the analysis covers Union-level policies and laws, as well as those pertaining respectively to Zanzibar and the Mainland. The consultant's ToRs are appended in Annex A, a list of documents is in Annex B and persons consulted are in Annex C.

¹ Fisheries beyond the Territorial Sea come under joint management between the Mainland and Zanzibar through the *Deep Sea Fisheries Act* No.1 of 1998 as amended in 2007 by the *Deep Sea Fisheries Act* No.4, of 2007 which became operational February 2010. The Deep Sea Fisheries Authority (DSFA), provided for in the Act, is responsible for the management of fisheries in the country's Exclusive Economic Zone (EEZ).

² The ToRs note that the Fisheries Divisions under the Ministry of Livestock and Fisheries Development in mainland and the Ministry of Fisheries and Livestock in Zanzibar are the competent authorities responsible for both development and utilization issues pertaining to the fisheries sector. Management of fisheries is largely the responsibility of the ministries, with many functions devolved to Local Government Authorities. Efforts to strengthen co-management are also on-going, with the devolution of some management responsibilities to organized fishing communities (BMUs).

³ Specifically, the ToRs state that the main challenges for Tanzanian fisheries management include: (i) insufficient resources, including financial and human capacity to adequately execute management functions; (ii) the largely open access nature of fisheries; (iii) limited research capacity; (iv) poor integration between research and management; (v) weak integration between the local and national levels of fisheries management, with low capacity of local communities and resource users; and (vi) limited harmonization between Zanzibar and mainland Tanzania fisheries management in internal and territorial waters (with the notable exception of the common governance regime for the EEZ).

The latter does not technically constitute an exception because the regime under the Deep Sea Fishing Authority Act formally applies to the EEZ only and not internal and territorial waters. However, the Deep Sea Fishing Authority Regulations, 2009 contain a Part on "Quality Control", which is applied to processing establishments and exports and allows for designation of a competent authority. This is inconsistent with, and beyond the scope of application of the principal Act, which applies only to the EEZ, and should appear in separate legislation.

The consultant participated in a mission to Tanzania from 23-30 November, to meet with the World Bank team, national officials and others during the pre-appraisal mission.

2. LEGAL AND POLICY FRAMEWORK APPLICABLE TO PRIORITY FISHERIES MANAGEMENT IN THE MAINLAND AND ZANZIBAR

2.1 Legal framework

2.1.1 Introduction

The legal framework for fisheries should be comprehensive, precise and reflect international best practices. It consists of the principal Act and subsidiary legislation such as regulations, orders and other instruments having the force of law – together they are referred to as legislation. The legal framework of fisheries legislation in Tanzania is shown in Figure 1.

Figure 1
Legal framework of fisheries legislation in Tanzania

<p>Mainland Tanzania</p> <ul style="list-style-type: none">• The Fisheries Act, 2003• Fisheries (Amendment) Regulations, 2009• Marine Parks and Reserves Act, 1994• Tanzanian Fisheries Research Institute Act (1980) <p>Zanzibar</p> <ul style="list-style-type: none">• Fisheries Act, 2010• Draft Marine Conservation Unit Regulations, 2013• Menai Bay Conservation Area (Establishment) Order, 1997• Mnemba Island Marine Conservation Area Order, 2002• Pemba Channel Conservation Area (PECCA) Order, 2005 <p>Mainland Tanzania and Zanzibar</p> <ul style="list-style-type: none">• Territorial Sea and Exclusive Economic Zone Act, 1989• Deep Sea Fishing Authority Act (Cap No. 388) of 1998• Deep Sea Fishing Authority (Amendment) Act of 2007• Deep Sea Fishing Authority Act (Cap No. 388) Regulations, 2009

The following are typical elements of a basic framework for robust fisheries legislation.

- 1 General (including application of Act, definition of terms)
- 2 Administration
- 3 Fisheries management, conservation and development
- 4 Information, data and records
- 5 Fisheries access arrangements
- 6 Licences, authorizations and registration
- 7 Monitoring, control and surveillance
 - 7.1 Establishment of Unit
 - 7.2 Appointment and powers of authorized officers
 - 7.3 Appointment and functions of inspectors and observers

- 7.4 Application of Act to authorized officers, observers in areas beyond national jurisdiction, and to non-national authorized officers and observers in areas under national jurisdiction
- 7.5 Protection and obstruction of authorized persons
- 7.6 Requirements for vessel monitoring systems
- 7.7 Requirements for the use of ports
- 8 Evidence
- 9 Jurisdiction
- 10 Compliance

The provisions within the framework should be robust, precise and consistent. There must be consistency within the legislation in use of terms and provisions, and with other legislation in the country.

The legislation should also be consistent with international fisheries instruments and best practices and implement the international obligations of the country, including treaties and other forms of legally binding agreements. Tanzania is party to the 1982 United Nations Law of the Sea Convention (1982 Convention), the Indian Ocean Tuna Commission (IOTC) and the South West Indian Ocean Fisheries Commission (SWIOFC).

The most important elements in the framework are the application of the Act and the definition of terms used in the legislation. The Act should apply to all areas under the national jurisdiction of the country, including specifically the maritime zones declared according to law, as well as to nationals beyond areas of national jurisdiction. The latter is essential for compliance with international fisheries law which requires countries to control its nationals (persons and vessels) in such areas, including the high seas.

The definition of terms used in the legislation provides the foundation for implementation and enforcement of the law. All key words must be defined consistently and precisely, and cover any imaginable situation. Definitions must provide the maximum scope for enforcement so an alleged offender cannot easily escape conviction on a “technicality”.

For example, it is impossible to prove illegal fishing if the elements of “fishing” are not defined. And, if they are defined, they should incorporate all the elements in a best practices definition, shown in Figure 2.

Figure 2
Best practices definition for fishing

“fishing” means:

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

2.1.2 Mainland Tanzania

2.1.2.1 Fisheries Act, 2003

2.1.2.1.1 Introduction

The Fisheries Act, 2003 applies to “Mainland Tanzania” and consists of the following framework, described below:

Part I	Preliminary provisions
Part II	Registration, licensing of vessels, fishers and fish dealers
Part III	Development of the fishing industry
Part IV	Aquaculture development
Part V	Management and control of the fishing industry
Part VI	Fish and fishery products standards
Part VII	Offences and penalties
Part VIII	General provisions

SCHEDULES – A comprehensive suite of Schedules covering almost 90 pages, consisting of application forms, license forms, inspection reports, registration, registers, fees, transport, aquaculture, fish establishments, fish processing requirements, fish landing/transfer and other related topics.

It is understood that Mainland Tanzania is currently reviewing its fisheries laws with a view to updating them. In this regard, the report of a 2011 ACP Fish II project⁴ has made some highly useful recommendations on the revision of the Fisheries Act 2003, the Fisheries Regulations 2009, the TSEEZ Act, Marine Parks and Reserves Unit Act 1994⁵ and Tanzanian Fisheries Research Institute Act 1980.⁶ However they do not reflect the full range of possible or needed provisions nor do they take a holistic view of the legislation examined in this study.

The legislation for Mainland Tanzania is extensive and the most comprehensive of all three major fisheries-related Acts, including those for Zanzibar and the Deep Sea Fishing Authority. It is currently under review.

⁴ See Support to legislative development in Tanzania and Preparation of a draft Aquaculture policy in Kenya. Project Ref. N°: Ref. CU/PE1/UG/10/001. <http://acpfish2-eu.org/uploads/projects/id25/Final%20ACP%20Fish%20II%20Final%20technical%20Report%20Draft%20aquaculture%20Policy%20Kenya%20and%20legislation%20development%20tanzania%20.pdf>

⁵ The Dar es Salaam Marine Reserves were first established under the Fisheries Act of 1970 and in 1998 were transferred to the Marine Parks and Reserves (MPRs), Act No. 29 of 1994. Very little current information is publicly available on the implementation of this Act (see <http://www.marineparks.go.tz/relevant-documents/strategic-plan/>), and the Act itself does not indicate its area of application (e.g. internal waters, territorial sea, waters off Mainland Tanzania and/or Zanzibar).

The ACP Fish II Report indicated that in accordance with the Strategic Plan 2006-2010 the legal framework of the *Marine Parks and Reserves Unit Act* 1994 needed to be reviewed since there were overlapping mandates of the institutions in the Act and emerging needed to be reflected in the Act (management of beaches and small islands). The Strategic Plan also identified the following ambiguities: Inadequate autonomy of the MPRU; Distinction between MP and MR needs to be better clarified: this has not been provided for in the amended version of the Act; Extension of MPRs to cover fresh waters is indicated in Section 15 of the new Act, definition of “MP, MR and Marine”; Being responsive to international treaties on MPR; Provide for the establishment of network of MPAs and transboundary MPAS- this will depend from the arrangements that are being made with Kenya (total conservation regime) and Mozambique (similar to the Tanzanian regime).

⁶ An amended version of the *Tanzanian Fisheries Research Institute Act* had been submitted to Cabinet.

It applies to “Mainland Tanzania”,⁷ but not specifically to waters under the jurisdiction of Tanzania as described in the TSEEZ Act,⁸ or to Tanzanian nationals or others beyond areas of national jurisdiction for example after hot pursuit in accordance with international law. (Hot pursuit is not even mentioned in the Act, which restricts the geographical scope of authority for monitoring, control and surveillance (MCS).)

Both these elements are essential for fisheries laws: the waters to which the law is applied must be specifically defined, and extraterritorial jurisdiction must be exercised. The problems and a possible solution are described below.

Regarding application to waters to which the law is applied, there are some inconsistencies with the TSEEZ Act, which requires the territorial sea to be measured from the *low* water line along the coast, consistent with the 1982 UN Convention.

The term “territorial waters” is used in the Fisheries Act, rather than “territorial sea” as declared in the Territorial Sea Act. “Territorial waters” are defined in the Fisheries Act by the “*mean* low water line along the coast of Mainland Tanzania and the adjacent islands, and including all lakes, rivers, dams and fish ponds excluding private fish ponds.”

There is a problem with this definition (apart from the spelling of “excluding”) due to inconsistency with the TSEEZ Act. That Act does not use the term “*mean*” low water line, nor does it apply to lakes, rivers, dams and fish ponds. It measures the “Territorial Sea” only from the coast of the United Republic including the coast of all islands.

Apart from this inconsistency, it is unclear whether the Act applies to the EEZ. This is not expressly stated, nor is the EEZ defined. The application of the Deep Sea Fishing Authority Act, 1998 is not acknowledged.

There is a definition of “sea fishery” in the Fisheries Act: “fisheries of the waters which are to the seaward of the *high water mark*” (another inconsistency in addition to the low water line/mean low water line inconsistency described above). The definition, which does not express an outer limit, could lead to an inference that the Act applies to the EEZ. However, the term “sea fishery” is not used anywhere in the Fisheries Act, even though it is defined.

Concerning extraterritorial jurisdiction, Tanzania, as a party to the 1982 UN Convention, is bound to control its nationals in areas of the high seas, and international law is increasingly giving more precise definition to the norms and standards that should be used in all areas beyond national jurisdiction.⁹

Best practices applies fisheries legislation to well-defined “fishery waters” such as that shown below, which address the above concerns.

“fishery waters” means all waters over which (country) exercises or claims jurisdiction or sovereign rights and the bed and subsoil underlying such waters, and includes all maritime zones declared pursuant to the (Territorial Sea and Exclusive Economic Zone Act, 1989), internal waters, riverine systems and any other waters, including intertidal, inland and

⁷ Section 1(2).

⁸ This is inconsistent with the Deep Sea Fishing Authority Act which states that it must be construed in addition to the TSEEZ Act and “compliments” the Act. (Section 1(2) – it is assumed that the drafters meant “complements”.)

⁹ For example, the 1982 Convention (especially Articles 116-119 for the high seas and relevant articles regarding the duties of flag States), 1995 UN Fish Stocks Agreement and the 2013 FAO Voluntary Guidelines on Flag State Performance.

riverine, over which (country) exercises jurisdiction and any maritime waters, areas or zones that may be claimed from time to time.

Further, the application of the Act should be widely defined, for example, to all:

- a) areas over which (country/Mainland/Zanzibar) exercises jurisdiction or sovereign rights;
- b) fishing and fishing related activities, utilisation of fish and genetic material derived from them and any other activity or matter falling within the scope of this Act;
- c) persons, vessels, vehicles, aircraft, export facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act;
- d) persons (including non citizens), and vessels (including foreign fishing vessels) in and in relation to:
 - (i) the fishery waters; and
 - (ii) areas beyond national jurisdiction:
 1. following hot pursuit initiated in the fishery waters and conducted in accordance with international law; or
 2. as required pursuant to this Act or international conservation and management measures, or permitted by international law or any international agreement; and
- e) (country) fishing vessels and all persons on them or dealing with or having any relevant relationship to them or persons on them, in and in relation to any areas within or beyond national jurisdiction in so far as it is not in conflict with the jurisdiction of another State.

The Act should have extraterritorial application according to its provisions and tenor.

The above is a generic example of best practices, and in the case of Tanzania all fisheries-related legislation should be expressly applied to well defined maritime zones and areas of cooperation among the legislation should be designated, including designation of lead authority. For example the legislation of Mainland Tanzania and Zanzibar should refer to the internal waters and territorial sea claimed under the TSEEZ Act, and activities in the EEZ and beyond national jurisdiction that are complementary to the DSFA Act.

2.1.2.1.2 Definition of terms

Definitions for a comprehensive list of terms is set out in section 2 of the Act, running to around 9 pages. This provides a broad foundation for implementation and enforcement, except that some key terms should be strengthened to reflect best practices and to ensure full authority.

For example, the following key definitions are deficient and provide a weak basis for implementing and enforcing the Act:

“fish” is defined as “all forms of aquatic or amphibious life” but the examples given all relate to animals. It is standard to define fish as including plants and animals, for purposes of managing both and preserving habitat and biodiversity. The Act refers from time to time to “fish or aquatic flora”, but this is unnecessarily complicated and “aquatic flora” would refer to fresh water flora and exclude “marine” flora, mindful of the many references to “marine” in the Act to denote salt water items or activities.

“fishery” is defined by area, locality or place;¹⁰ this is very restrictive. It is standard to define fishery or fisheries as:

¹⁰ “every area, locality or place or stations in or which fishing gear is used, set or place or located and also the area, tract or stretch of water in or from which fish may be taken by such fishing gear.”

- a) one or more stocks of fish, or parts thereof, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics; or
- b) any fishing for such stocks;

“fishing” is defined as “collecting, capturing, gathering, killing, snaring or trapping of fish or aquatic flora”. This does not include the intention to fish, searching for fish or other activities which can be expected to result in fishing and means that a vessel must have its nets in the water to be considered as fishing. This is not a best practices definition used in national and international law because enforcement action could not be taken, e.g., for a vessel that does not have its gear stowed or is preparing to fish, or for use of a helicopter from a purse seiner for spotting fish.

“fishing gear” is defined as being “a net, line, (...etc...) used for the purpose of fishing”. This implies it is being or has been used, and does not refer to aircraft. (The latter is important when a purse seiner with a helicopter on board is seized. If it is considered to be gear, then it is subject to seizure, forfeiture etc together with the other gear.) A better definition for fishing gear is that it means any equipment, implement, structure, construction, installation or other article that can be used in the act of fishing, whether or not it is used in connection with a vessel, including any fishing net, line, float, buoy, trap, hook, cork, basket, winch, boat or aircraft.

“fishing vessel” is defined as a “vessel, boat, ship or any other navigable craft which is used for fishing or related activities, and includes all its equipment”. There are many problems with this. The vessel has to be “used for fishing”, but this does not include elements of best practice definitions: “used for, equipped to be used for, or of a type that is normally used for, fishing or fishing related activities other than canoes used exclusively for the transportation of items not directly or indirectly related to any activity falling within the scope of this Act”. In addition:

- “Related activities” is not defined in the Act (this is normally defined in best practices as “any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea”. In such cases “fishing vessel” would include carrier and other vessels and would therefore be subject to the Act);
- “Equipment” is not defined so it is uncertain whether this refers to gear, and/or other appurtenances;
- “Fishing gear” is not included in this definition, even though it is defined separately. Rules of statutory interpretation would therefore exclude fishing gear from the definition of fishing vessel.

There are a number of other definitions that should be improved in addition to the terms noted above, which should be better and more precisely elaborated as legislation is revised. There are also a number of gaps. The following are examples of terms that are not defined, seriously impeding implementation and enforcement: fishing related activities, fish product, buy, sell and person.

2.1.2.1.3 Administration

Administration matters are addressed, including responsibilities of the Minister, appointment of the Director and registration, licensing, enforcement officers and inspectors.

There are gaps and inconsistencies in the appointment of MCS-related personnel, which undermines their authority to perform duties under the law. Section 5 empowers the Director to:

- appoint licensing officers, enforcement officers and fish inspectors;
- allocate or delegate functions and assign offices or institutions “for the proper management of fisheries”; and
- delegate any of his functions to a public officer or local authority.

This section does not refer to “authorized officer”, the term used in Part VIII Enforcement in connection with authorities and powers.

Instead the term “authorized officer” is addressed in the definitions section and means “the Director or any fisheries officer or a member of beach management unit or other person authorized in writing by the Director to exercise any power or to discharge any duty under this Act or any subsidiary legislation made under this Act”.

However, the Act itself does not give the Director powers to authorize persons to exercise any power, discharge any duty etc.

The definition refers to “fisheries officers” but there is no provision empowering the Director, Minister or other person to appoint “fisheries officers” as such. The term “fisheries officers” is only used in the context of District Fisheries Officers.

However, section 32 empowers the Minister to provide for the “appointments of officers” in relation to the Surveillance Unit established under Part VIII, Enforcement. It is unclear whether District Fisheries Officers are part of the Surveillance Unit. In fact, the website for the Ministry Livestock and Fisheries Development refers to an MCS Section¹¹ and lists various duties not found in the legislation.

The definition of “authorized officer” therefore cannot be considered valid, and there is no provision for their appointment as such.

A related definition is similarly plagued with inconsistencies and contradictions: “Enforcement officer” is defined as an officer appointed by the Director to perform duties prescribed in Part VIII of this Act”. However, there is an inconsistency because in Part VIII, enforcement powers are given either to “members of the Unit” or “authorized officers”. No authority is given to “enforcement officer.” There is also a contradiction because the officers of the Unit are appointed by the Minister, not the Director as indicated in the definition.

The legislation is therefore invalid, inconsistent and contradictory in terms of the appointment, functions and authorities of MCS personnel.

This Part contains a basic provision on conflict of interests and in permitting information and guidance to be disseminated on the implementation of the Act. Consultations between the Director and local authorities are encouraged, and steps to take are outlined where mismanagement by the local authorities is suspected.

2.1.2.1.4 Development of the fishing industry

The Director is responsible, in cooperation with other government agencies, for promoting, encouraging and supporting all initiatives leading to the development and sustainable use of “fish stocks and aquatic resources”, and with adopting measures to maintain or restore stocks based on maximum sustainable yield and relevant environmental and economic factors.¹²

¹¹ <http://www.mifugouvuvi.go.tz/monitoring-control-and-surveillance/>

¹² Section 9.

Both of these responsibilities are folded into one section, with industry development as a priority.

Development of investment guidelines and fisheries infrastructure are at the top of the list for development and sustainable use, but other initiatives relevant to management are included at the end of the list, including an integrated programme of effective coastal zone management and strengthening regional and international collaboration in the sustainable utilization, management and conservation of resources in shared water bodies. Seven actions are given as examples of such collaboration, including introduction of species, database and information networks. However the list does not include cooperation in taking management measures or MCS.

The Act does not give authority to take management measures, provide principles upon which to base the measures, require fisheries management plans or provide a framework for the plans.

2.1.2.1.5 Aquaculture development

There is a brief part on aquaculture development (defined as including raising¹³ of marine, brackish or freshwater species), which needs to be supplemented by more extensive legislation. The Director is to regulate aquaculture, but there is no regulatory framework.

2.1.2.1.6 Management and control of the fishing industry

This Part is consistent with the industry-oriented focus of the Act. It does not specifically relate to “fisheries” management and appears after the Part on development of the fishing industry.

The Minister is empowered to impose a suite of twenty-one “conditions that are necessary for the proper management of fisheries”.¹⁴ There are several reasons why this provision is inappropriate.

- The list is restrictive and not open-ended; it does not include a general power to make such other conditions as may be appropriate or necessary to ensure sustainable use of the fisheries resources.
- Several “conditions” are not conditions to impose on fishers but are day-to-day administrative matters for the government.¹⁵
- Other conditions in the list are misplaced because they should be imposed by regulation, and not notice in the *Gazette*: this is just a notice and does not legally create an offence.¹⁶
- The Act already addresses these categories so it is difficult to see why they should be imposed by notice in the *Gazette*.
- It focuses on a restrictive list of “conditions for management” rather than on taking “management measures”, based on stated principles. In fact, the Act does not refer to fisheries management measures.
- It does not foster cooperation or joint management with other relevant fisheries authorities in Tanzania – i.e. Zanzibar and the DSFA – or implementing international obligations.

¹³ But not breeding.

¹⁴ Section 17.

¹⁵ For example monitoring the capacity of fishing fleets to avoid excessive fishing pressure, examining the performance of existing fishing gear, ensuring that traditional practices are given due regard and facilitating the formation of community management units and authorized associations for the purpose of protecting and conserving fishery resources.

¹⁶ Examples are restricting the entry of foreign fishing vessels in territorial waters, requiring all fishing vessels to be registered and licensed and requiring all fishers to be licensed.

The Director may enter into a management agreement with Beach Management Units (BMUs) and the framework for such agreements are set out, including the area and dispute settlement.¹⁷ BMUs are defined as a “group of devoted stakeholders in a fishing community whose main functions is management conservation and protection of fish in their locality in collaboration with the government”.

BMUs are not established in the Act; this should be done in future revisions to ensure proper legal authority. Regulation 133 provides for their establishment “in every fresh water body and marine coastlines in accordance with Beach Management Unit Guidelines to be made by the Director”. The Guidelines for BMUs over marine waters were published in 2009.¹⁸

Neither the Act nor Regulations refer to the marine zones in which BMUs may operate – internal or territorial waters or the EEZ.

The management agreement may be between the Director and BMUs of “the whole or part of or some specific fishery matter or activity within any water body” or with “any one or more local authorities having jurisdiction within the vicinity of any water body and derives the whole or a part of their livelihood from that water body.”¹⁹

Licenses are required for specified activities:²⁰

- (a) fishing;
- (b) collecting, gathering, processing or manufacturing fish products or products of aquatic flora;
- (c) selling or marketing of fish, fish products, aquatic flora or products of aquatic flora;
- (d) importing or exporting of fish, fish products, aquatic flora or products of aquatic flora.

This list does not distinguish subsistence²¹ or recreational fishing, nor does it refer to commercial aquaculture. Essential terms are not defined in the Act – e.g. marketing, selling. It isn’t open-ended and doesn’t provide for other activities to be licensed within the scope of the Act, for example where a licence may be required under a fisheries management plan.

There is only one section on the conservation of fisheries resources, and it empowers the Minister to “declare the conservation of any critical habitat or endangered species”.²² This is a positive step but with minimum legal effect – for example declaring the conservation of endangered species is not as strong as the power to legally declare endangered species and providing as basic offences fishing for, trading in, transport, import, export or possession of species that have been declared as endangered.

In addition, although the title of this section is “Conservation of fisheries resources”, it fails to give the Minister or Director broad powers of conservation over resources that may not be immediately endangered.

¹⁷ Section 18. Other matters include a statement of objectives, description of management activities, rules governing the use of and access to other fishers; duration of the agreement; and revision of the agreement.

¹⁸ Guidelines for Establishing Community Based Collaborative Fisheries Management In Marine Waters of Tanzania, Prepared By Fisheries Development Division And World Wide Fund For Nature, 2009.

<http://www.dlist-asclme.org/sites/default/files/doclib/Guidelines%20for%20establishing%20community%20based%20collaborative%20fisheries%20management%20in%20marine%20waters%20of%20Tanzania.pdf>

¹⁹ Section 18(1).

²⁰ Section 22.

²¹ The term “artisanal” fishing is defined in the Act to include small-scale fisheries that are “not commercially orientated”, but it is only mentioned twice; section 9, which empowers the Director to take measures to facilitate artisanal fishing, and in section 57 which allows the Minister to make regulations “regulating artisanal fishing”. There is no stated connection between non-commercial artisanal fishing and subsistence fishing.

²² Section 23.

2.1.2.1.7 Fish quality, management and standards

Conditions for quality management are addressed through empowering the Minister, by notice in the *Gazette*, to impose conditions necessary for ensuring “the right of consumers to safe, wholesome and unadulterated fish and fishery products”.²³ The conditions that the Minister may impose are listed, but the list is not open-ended, and is based on the rights of consumers, not the responsibilities of the Ministry.

The Act designates the Director as the competent authority and empowers him to “prescribe” certain standards, including for hygienic and quality placement in a market.²⁴ “Prescribe” is a technical term meaning to “make regulations”. However, the Minister is the only person legally competent to make regulations, but the Act limits him to setting conditions only by public notice in the *Gazette*, not regulations.

Notices and regulations are different in law. Gazette notices concern a range of information about legislation, including proclamations and notices of government departments and courts, and other notices required under law. Regulations are made according to legal process, usually involving Ministerial approval and laying the proposed regulations before Parliament for a specified time.

It is unclear whether these standards (made by Minister/Notice) and conditions (made by Director/Regulations, but Director normally has no authority to make regulations) can be enforced. The Act sets a penalty for persons who do not “comply with the fish quality and standards regulations made under this Act”²⁵ but there is no offence for non-compliance with a standard set by the Minister.

This section also provides for prevention of commercial fraud²⁶ and hygienic fish marketing.²⁷ The Director is responsible for each – maintaining systems to prevent commercial fraud and ensuring hygienic fish marketing and distribution. However commercial fraud and unhygienic fish marketing are not offences.

2.1.2.1.8 Financial provisions

The Act permits the Minister by notice in the *Gazette* to “prescribe fees for fishing vessel registration various licences, services permits and export royalties”.²⁸ The legal process is unclear (here it is by notice although regulations are implied by use of the term “prescribe”), and should be by regulation in accordance with best practices.

A fisheries development fund is established for specified purposes,²⁹ but unlike such funds established in fisheries laws of other countries, neither the income nor purposes relate to MCS activities. This could be an internal political issue.

Importantly, a mechanism to control the fund is not included in the Act, including audits and transparent and accountable authorities to manage the fund, including for withdrawal and payments. However, the Fisheries Regulations, 2009 contain some provisions to this effect and include MCS activities as eligible for support by the Fund.

²³ Section 24.

²⁴ Section 25.

²⁵ Section 46.

²⁶ Section 26.

²⁷ Section 27.

²⁸ Section 28.

²⁹ Sections 29 and 30.

2.1.2.1.9 Enforcement

The Minister is required to establish a Surveillance Unit after consultation with the Minister responsible for Home Affairs.³⁰ The function of the Unit is “the protection of fish and its environment, fishery products and aquatic flora against unlawful dealers and generally the enforcement of the provisions of this Act”.

There are some problems with this function as stated. It prioritizes fish and environment protection, omitting “aquatic flora”, aquaculture resources covered by the Act, etc. In technical terms, “protection” infers complete protection of resources, rather than sustainable use, and is inappropriate in the context of MCS.

The functions of the Unit should more broadly apply to monitoring, control, and surveillance, including enforcement, of all activities falling within the scope of the Act and as appropriate any other legislation or agreement relating to fisheries monitoring, control, surveillance and enforcement. This would open the door for cooperative MCS agreements within Tanzania (e.g. the DSFA or Zanzibar) or in the region.

The powers of the “officers of the Unit” are stated, but are flawed; they only have powers that can be exercised on fishing vessels,³¹ and there is no reference to powers in relation to other activities under the scope of the Act.

To confuse matters even more, the sections in the remainder of this Part³² inconsistently refer to “authorized officers” instead of “officers of the Unit”, as if there are two separate categories of officers.

It was noted in part 5.1.1.2 above that the definition of “authorized officer” could not be considered valid authority for their appointment as such. This Part allows the Minister to provide for the “appointments of officers” but does not provide for the appointment of authorized officers or officers of the Unit.

A number of other consequences flow from this apparent inconsistency and lack of standard powers, too many to enumerate in this paper. For example, “officers of the Unit” may “exercise the powers of authorized officers on board fishing or other suspicious vessels”.³³ Also, there are no general authorities:

- to do all such acts and things and give such directions as are reasonably necessary for the purposes of exercising any of his/her powers under the Act;
- on the use of force;
- relating to MCS cooperation with other national agencies, foreign countries or international organizations;
- on hot pursuit;
- to remove and secure any item that may reasonably be considered to be evidence of an offence against the Act;
- to permit detention of the vessel, vehicle, master, etc;
- in relation to assault of an authorized officer, whether or not a violation of the Act is suspected.

A “certificate of evidence” must be recorded by an authorized officer describing the scene and other particulars of the crimes as evidence.³⁴ The concerns with this section are twofold. First, fisheries

³⁰ Section 31.

³¹ Section 33.

³² Sections 34, 35, 36, 37, 38, 40.

³³ Section 33(d).

³⁴ Section 35.

offences are considered to be civil and not criminal offences and second, “certificate evidence” used in fisheries laws has a different meaning completely. The term is intended to provide requirements and procedures for the submission of certificate evidence in court to be taken as prima facie evidence – e.g. that a person on a specific date held the requisite license or that a vessel was or was not in a certain location on a certain date. A court may this “certificate evidence” under certain conditions and the fisheries officer does not have to testify.

Other provisions in this part relate to seizure,³⁵ forfeiture³⁶ and compounding offences.³⁷ The latter, in section 40, allows the Director or any authorized officer to accept a set sum of money (not exceeding 100,000 shillings) and order the release of anything seized in payment of a set amount.

Curiously, subsection 40(3) sets out a process for persons aggrieved by an order made under subsection (3). There is no such provision for an order under this subsection or any other in this section.

There are some major difficulties with this procedure, for example:

- the process for accepting money has no transparency or accountability, for example by requiring the Director to consult or decide together with a summary administrative panel or prosecutor;
- there is no provision for disposition of the money accepted;
- time limits are not set;
- this does not apply to offences with minimum levels of fine or imprisonment (all offences have such minimum levels except obstruction of officers and “possession of poison within the vicinity of any water body containing fish”, which carry a penalty of imprisonment for a maximum six/seven years and no provision for fines);
- Standard levels of fine are not set, as done in best practices, for example, twice the minimum fine for the offence committed.

2.1.2.1.10 Offences and penalties

The provisions on offences and penalties seem incomplete and focused more on foreign fishing in the territorial sea and violating fish quality standards than unlicensed fishing or violating terms and conditions of licenses.

The highest maximum fine in the Act - USD 400 000 - is set for using a foreign fishing vessel in territorial waters without a licence (mindful that it is prohibited to licence a foreign fishing vessel to fish in territorial waters under the Act, so the language “without a licence” is superfluous).

The second highest maximum fine of 30 million shillings (USD 18,000) is set for exporters’ non-compliance with fish quality standards. However this is only for offences subsequent to the first offence, which carries a maximum penalty of 10 million shillings.

Unlicensed fishing and violating licence terms and conditions are not specifically mentioned but would fall under a general “other offences” provision³⁸ with a maximum fine of one million shillings (USD 600).

Three offences do not provide for fines, just imprisonment. They are obstruction of officers,³⁹ possessing or using explosives⁴⁰ and possessing poison within the vicinity of any water body

³⁵ Section 38.

³⁶ Section 39.

³⁷ Section 40.

³⁸ Section 47.

³⁹ Section 41.

⁴⁰ section 43.

containing fish.⁴¹ The latter is especially curious and out of place because it could apply, for example, to poison for use on rodents, not fish.

A provision indemnifying the Director and authorized officers exercising functions under the Act against liability is in this Part rather than under the Parts on administration, enforcement or miscellaneous matters where it is normally placed.

Generally, the offences are not well described, many offences considered in best practices to be “serious offences” are not mentioned, it is not possible to create offences for non-compliance with standards required under the Act to be set out in the *Gazette* (which should instead be in Orders or Regulations) and the minimum/maximum levels of fine are unrealistic for purposes of deterrence or punishment.

2.1.2.1.11 General provisions

A curious general provision concerns sovereignty over “biological resources and their intangible products”.⁴² It provides:

“(1) All *biological resources* and their intangible products whether naturally occurring or naturalized within fisheries including genetic resources belonging to the Government in accordance with Article 27 of the Constitution, shall be conserved and utilized for the people of this country in accordance with the provisions of this Act and any other written law on biological resources.”

In fact the Constitution refers to “natural resources” in section 27, *Duty to safeguard public property*:

“(1) Every person has the duty to protect the *natural resources* of the United Republic, the property of the state authority, all property collectively owned by the people, and also to respect another person’s property.

It is difficult to understand why the term “biological resources” was used in the Act. It is inconsistent with the use of “natural resources” in the Tanzanian Constitution and in international law⁴³ and has a different meaning.

A natural resource occurs in a natural state and has economic value, and is a material source of wealth such as fish or timber. A biological resource is a substance or object required by an organism for normal growth, maintenance and reproduction, such as food, water and territory.

This section is therefore inconsistent with the Constitution and Law of the Sea, and its application is vague at the very least. It refers to genetic resources, but this should be addressed in separate provisions including defining genetic resources and regulating genetically modified species.

In another section, development activities in the Act are prohibited without an Environmental Impact Assessment in accordance with other written laws of Tanzania.⁴⁴ This is unenforceable because “development activities” are not defined – they could relate to markets, for example – and enforcement should be carried out under the other laws.

⁴¹ Section 44.

⁴² Section 51.

⁴³ For example Article 56 of the 1982 Convention provides that States have sovereign rights for the purpose of exploring and exploiting, conserving and managing the *natural resources*, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.”

⁴⁴ Section 52.

There is a significant gap because there are no requirements or processes for environmental impact assessments for fisheries-related activities under the Act, such as aquaculture.

Research is addressed in a somewhat elaborate manner, but not clearly.⁴⁵ There is no relation between the requirement for the Director to collaborate with research institutions and stakeholders to outline areas that require research, and the actual carrying out of research. Requirements for the Director's clearance to carry out research do not contain undertakings for training Tanzanian nationals and sharing results on a real-time basis.

There is a significant gap in the implementation of international law because the relevant provisions of the 1982 Convention in relation to marine scientific research are not included. They cover, *inter alia*, extensive requirements on the duty to provide information to the coastal State,⁴⁶ and the duty to comply with a range of specified conditions.⁴⁷

Curiously, the Director is empowered to require licensees to provide documents and information within 30 days of delivery of a notice. The notice has to be "sent in writing or delivered by registered post". This is archaic, difficult to enforce and contrary to best practices, which simply allow the Director, for purposes of verification of accounts, records, documents, returns, or information required to be kept, furnished or communicated in any manner or form under the Act, to:

conduct audits or inspections and require from any person further information, clarification or explanation regarding any accounts, returns or information kept, furnished or communicated in accordance with such time limits as may be specified or prescribed.

⁴⁵ Section 53.

⁴⁶ e.g. Article 248 provides that States and competent international organizations which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall, not less than six months in advance of the expected starting date of the marine scientific research project, provide that State with a full description of:

- (a) the nature and objectives of the project;
- (b) the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment;
- (c) the precise geographical areas in which the project is to be conducted;
- (d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;
- (e) the name of the sponsoring institution, its director, and the person in charge of the project; and
- (f) the extent to which it is considered that the coastal State should be able to participate or to be represented in the project.

⁴⁷ For example, Article 249 includes the following requirement:

1. States and competent international organizations when undertaking marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall comply with the following conditions:

- (a) ensure the right of the coastal State, if it so desires, to participate or be represented in the marine scientific research project, especially on board research vessels and other craft or scientific research installations, when practicable, without payment of any remuneration to the scientists of the coastal State and without obligation to contribute towards the costs of the project;
- (b) provide the coastal State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;
- (c) undertake to provide access for the coastal State, at its request, to all data and samples derived from the marine scientific research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;
- (d) if requested, provide the coastal State with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;
- (e) ensure, subject to paragraph 2, that the research results are made internationally available through appropriate national or international channels, as soon as practicable;
- (f) inform the coastal State immediately of any major change in the research programme;
- (g) unless otherwise agreed, remove the scientific research installations or equipment once the research is completed...

A significant and major gap in the Act is failure to include a requirement that all information provided under the Act must be true, complete and correct. It is not an offence to provide misleading, false or incorrect information.

The Minister is empowered to exempt requirements of the Act:⁴⁸

“in order to entitle the holder to engage in fishing and to do such other things as may be specified in the order for any of the following purposes:

- (a) scientific research and display museums, zoo or similar establishments;
- (b) educational and cultural activities;
- (c) supply of good in case of emergency where no other adequate food supply is available;
- and
- (d) compliment.”

There are no guidelines for exemption, nor is there a transparent and accountable process. The language is unclear, which calls into question the enforceability and application of this provision:

- “specified in the order” is unclear because no order is required;
- “compliment” has no meaning.

The Minister is empowered to make regulations which are “necessary and expedient” for a number of activities described in the chapeau, except that “fishing” is not among them.⁴⁹ There follows a list of 36 activities for which regulations may be made, but it is not open-ended to address unforeseen areas where regulations may be needed, e.g. “any other activity within the scope of this Act”.

2.1.2.2 Fisheries (Amendment) Regulations, 2009

2.1.2.2.1 Introduction

The Fisheries (Amendment) Regulations, 2009 are extensive and repeal those promulgated in 2005. They are reasonably well written, and contain eight Parts and a wide range of Schedules. The Parts reflect those in the Fisheries Act, 2003, except that Part II (Registration and Licensing) is not in the Act:

Part I	Preliminary provisions
Part II	Registration, licensing of fishing vessels, fishers and fish dealers
Part III	Development of the fishing industry
Part IV	Aquaculture development and management ⁵⁰
Part V	Management and control of the fishing industry
Part VI	Fish and fishery products standards ⁵¹
Part VII	Offences and penalties
Part VIII	General provisions

2.1.2.2.2 Preliminary provisions

A wide range of definition of terms is given, but there is no standard reference to the applicability of definitions in the Fisheries Act to the Regulations, as is normally done. However it is normally the case that subsidiary legislation is interpreted in the framework of the principal Act, unless the context

⁴⁸ Section 56.

⁴⁹ Section 57.

⁵⁰ The Fisheries Act only refers to “Aquaculture Development”.

⁵¹ The Fisheries Act refers instead to “Fish Quality, Management and Standards”.

otherwise requires. In this case, the concerns about the definitions in the Act, noted above, would apply also to the Regulations.

The definitions are basically sound, except for the terms “unregulated fishing” and “unreported fishing”. It was a positive step forward to attempt definitions, as the use of these terms in the Regulations is in the context of implementing the 2009 Agreement on Port State Measures – which apply to illegal, unreported and unregulated (IUU) fishing. However, the:

- definitions given in the Regulations change the meaning of the terms as defined in the FAO International Plan of Action to prevent, deter and eliminate IUU fishing (IPOA-IUU); and
- use of the terms in the Regulations is erroneous – in every case the reference is to “illegal, unreported *and* unregulated” fishing, when the context should require “illegal, unreported *or* unregulated” fishing.⁵² Use of “and” makes enforcement almost impossible because all three elements must be proved.

The terms as defined in the IPOA-IUU apply unregulated fishing to contravention of conservation and management measures adopted by a regional fisheries management organization (RFMO). Such measures could be implemented within or beyond areas under national jurisdiction.

Tanzania, as a Member of the IOTC, is obliged to implement and enforce its conservation and management measures, but cannot do so with the restrictive definition in the Regulations which would only apply to measures “stipulated in this Act and the regulations”. There is no mechanism in either to incorporate legally binding measures of IOTC, a major gap. One such measure is IOTC Resolution 10/11 on Port State Measures which is almost identical to the FAO Agreement on Port State Measures.

In addition, neither the Act nor the Regulations permit Tanzania to exercise MCS beyond areas of national jurisdiction, contrary to international obligations as described above, despite the legal obligation in international law to do so.

The Regulations are therefore inconsistent with Tanzanian obligations under IOTC and the 1982 Convention in this regard.

2.1.2.2.3 Registration, licensing of fishing vessels, fishers and fish dealers

There is a range of requirements for the registration of fishing vessels. Vessels less than 11 meters must apply through a BMU or a Village Authority, which recommends whether to register a fishing vessel. A major problem for enforcement is that the term “fishing vessel” is not properly defined, as discussed above.

There are no requirements for coordination of registration with other government agencies such as those responsible for shipping, or for those responsible for fisheries in Zanzibar or the DSFA. It is important to ensure that the vessel to be registered is not likely to undertake IUU fishing.

The licensing of fishing vessels, fishers and fish dealers are briefly addressed. There are different requirements depending on the size of the vessel (e.g. registration of vessels over eleven meters or “twenty Gross Tonnage” must have the Director’s prior approval). There is a strange requirement that has nothing to do with licensing – i.e. prohibiting persons to use trawlers in the territorial waters – and should be instead a condition of license.

⁵² For example, Regulation 56 allows the Director to deny use of any Tanzanian port for landing, transshipping or processing of fish if the vessel- (a) at the relevant time was engaged or supported illegal, unreported *and* unregulated fishing and trade. In fact, it should be denied if the vessel supported any one of the elements – illegal, unreported *or* unregulated fishing.

Importantly, there is no transparent and accountable licensing system established, as the Licensing Officer is responsible for all actions. There are no obligations to process licenses within a certain time frame or to explain reasons for license denial.

A Licensing Officer or the Director may suspend a license⁵³ but there are no criteria for suspension. Similarly, there are no criteria given for refusal to issue a license.

A license may be cancelled or revoked for certain reasons, but they do not include failure to provide true, accurate and complete information as required.

There are some required, non-negotiable conditions but these are not well drafted. For example, the Director is *required* to impose conditions such as closed periods and number of fishers, but these should not be required if not needed for sustainability, and how can the number of fishers be an enforceable licence condition instead of a management measure?

License conditions that are included in best practices of other countries, such as telling the truth, reporting etc. do not appear here.

The Director may attach conditions to licenses “for carrying into effect the objectives and purposes of the Act”, but it has no stated objectives and purposes except for general references in its formal title. However, the formal title should not be relied upon as it only sets out a framework and there is uneven follow up to its references in the text of the Act. For example, the title includes: An act to make provision for ...“sustainable development”... , but the only time this term is used in the Act is to indicate how money from a certain fund may be spent. It does not appear in the context of fisheries management.

An appeals procedure is set out for suspension, revocation of a licence or conditions or restrictions on the licence. There is no appeal for licence denial.

2.1.2.2.4 Development of the fishing industry

This Part consists of five sections, four of which relate to investors and stakeholders, guidelines to be developed for investment, fisheries research and training activities.

Importantly, Regulation 25 establishes BMUs. Every fishing community, in collaboration with a relevant village government, is required to form BMUs “to provide for collaborative fisheries management for the purpose of managing, protecting and conserving fishery resources, biodiversity and the environment.”

Fisherfolk who meet conditions in Regulation 133(4) must be registered members of the Unit, and non-citizens will not be granted membership unless in possession of a work permit and approval for investment. Dago fishers are not allowed to be members of BMUs.

Fisherfolk are defined as a person or group of people involved in aquaculture, fishing, net mending, boat building and repair, fish trading, fish processing or any other activity related to artisanal level. Dago fishers are defined as legal fishers who move from Mainland Tanzania to Zanzibar or vice versa for the purpose of fishing for a duration of not more than three months consecutively.

2.1.2.2.5 Aquaculture development and management

Regulations 29-45 address aquaculture and set out a respectable range of requirements, but some fundamental issues do not appear, such as:

⁵³ Regulation 16.

- prevention of and response to escapement of fish
- requirement for an aquaculture development plan
- prohibited to deprive community of traditional access to fisheries
- prevention and response to escapement of aquaculture waste
- Director may obtain information, data, etc. on wild, genetically modified species
- prohibited to interfere with aquaculture facility
- transboundary aquaculture ecosystems in general⁵⁴

“Large scale aquaculture” is defined in terms of area covered, but the Regulations refer to “large-scale aqua-farms”. It is important to use terms consistently, and this is not done for aquaculture.

Along the same lines, and even more seriously:

- “aquaculture” is defined in the Act as “the practice of breeding and raising aquatic organisms in a controlled aquatic environment until they attain the appropriate size as per need, and includes the raising of marine, brackish or freshwater organisms, either caught from their natural or artificial environment as seed and kept until they reach the desired size”;
- The Regulations define “aquaculture establishment” as any premise in which fish, molluscs or crustaceans are raised and kept for breeding, stocking, growing or marketing.

Neither of these definitions takes into account farming of aquatic vegetation but the Regulations refer to seaweed farming.⁵⁵

A best practices definition of aquaculture that would cover these activities would be “cultivation, propagation or farming of fish, aquatic vegetation, or other living aquatic resources whether from eggs, spawn, spat or seed or by rearing fish lawfully taken from the wild or lawfully imported into (country), or by other similar process.”

2.1.2.2.6 Management and control of the fishing industry

This Part focuses on the use of poison and explosives, water pollution and the use of genetically modified organisms, but also addresses compounding offences. For the latter, an authorized officer is to fill out a form upon the seizure of items as a result of an offence. A form is also to be filled out upon the acceptance of money not exceeding 100,000 shillings.⁵⁶

The Regulations permit an authorized officer to sell perishable seized goods,⁵⁷ but does not require the proceeds to be put in a trust fund pending disposition of the case, and if the accused is found not guilty to return the same to him.

Foreign fishing vessels are not authorized to enter territorial waters for any purposes unless it is authorized under the Act, other law or treaty.⁵⁸ It is implied that they may pass through territorial waters to enter ports if they do so under a treaty.

⁵⁴ The Act addresses this in section 16 in a limited way and only in relation to freshwater systems by requiring the Director to initiate dialogue with riparian states to ensure ecosystems that governments and aqua farmers are obliged to protect trans-boundary aquatic ecosystems from (a) escapees of cultured species into shared water bodies; and (b) effluents that might affect trans-boundary aquatic ecosystems.

⁵⁵ Regulations 44, 45.

⁵⁶ This corresponds to an amount set in section 40 of the Act, but as written this does not refer to the Act and there are no requirements for filling out forms if a higher amount is accepted.

⁵⁷ Regulation 50(6).

⁵⁸ Regulation 56.

There are some other requirements for foreign fishing vessels in the territorial sea which duplicate the prohibitions of fishing already contained in the Act and Regulations.⁵⁹

The Regulations require advance notification of entry into port, together with information requirements,⁶⁰ as well as denial of port is provided for landing, transshipping or processing of fish,⁶¹ but the requirements for notification are incomplete and the drafting for denial of use is confusing and implementation would be difficult, if not impossible.

In addition, the uses of port which vessels may be denied are narrow compared to those accepted by the international community under the FAO Agreement on Port State Measures. It requires denial, under stated circumstances, for “landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refuelling and resupplying, maintenance and drydocking.”

As noted above, the Agreement and IPOA-IUU are applied where activities are illegal, unreported *or* unregulated, but the Regulations require all three. However, the port inspection form in the Schedules implements Annex C of the Agreement.

Vessel monitoring system (VMS) requirements are in this Part,⁶² but they are quite basic and should be updated and in a separate part on MCS. There are also inconsistencies – VMS is required for the “industrial sea fishery” but this is not defined or used elsewhere in legislation. Unprofessionally, it also requires the “VMS gadgets” to be switched on.

2.1.2.2.7 Fish and fishery products standards

This Part consists of the following elements, which relate to fish quality, and not directly to IUU fishing and MCS and as such fall beyond the scope of this paper.

- (a) Fish quality management and standards
- (b) Fish health attestation
- (c) Approvals (include fish and aquaculture establishments)
- (d) Safety, quality and own checks
- (e) Placing fish and fishery products in a market
- (f) General conditions of hygiene

⁵⁹ e.g., Regulation 57 and 60. The latter requires stowage of gear, already provided in the Act.

⁶⁰ Regulation 56(5). “A fishing vessel that intends to use any of the designated ports for the purpose of landing fish, transshipping catch or for any fisheries related transaction shall provide advance notification and information as prescribed in Form 26 set out in the First Schedule.” No ports have been designated according to the 2013 IOTC Compliance Report for Tanzania. Form 26 complies with international requirements, but there is no requirement for the advance time for request for entry into port (not “notification”) – e.g. no later than 48 hours in advance.

⁶¹ Regulation 56(7) provides the following, which would be unenforceable given that the vessel must have engaged in or supported *all three* of the elements of IUU fishing “and *trade*” – noting that inclusion of trade is not consistent with international fisheries instruments.

The Director may deny use of any Tanzanian port for landing, transshipping or processing of fish if the vessel-

- (a) at the relevant time was engaged or supported illegal, unreported and unregulated fishing and trade;
- (b) has been sighted as being engaged in, or supporting illegal, unreported and unregulated fishing and trade;
- (c) has been reported to have engaged or supported illegal, unreported and unregulated fishing and trade.

⁶² Regulation 69.

2.1.2.2.8 Offences and penalties

This Part provides for offences where no specific penalty is provided, and different levels are given for first and subsequent offences. They are expressed as minimums and maximums, with 200,000 shillings being the lowest and 2 million shillings the highest.⁶³

For offences relating to violating large scale aquaculture practices and false documents, there is no maximum fine, just a minimum fine – usually 1 million shillings - or term of imprisonment. There is no provision for a fine and a term of imprisonment.

2.1.2.2.9 General provisions

General provisions permit the Director to issue guidelines for the implementation of the Regulations, and require a range of specified guidelines to be issued, including establishment of BMUs.⁶⁴ MCS operations are not included in required guidelines.

Concerning MCS, precautionary action may be taken by a Fish Inspector by closing a fish establishment under certain conditions⁶⁵ and the powers of an authorized officer are set out that build on sections 33-37 in the Act.⁶⁶

BMUs and Zonal Enforcement Units are established,⁶⁷ however it would be better to provide for the establishment of each, together with their functions, in the Act rather than Regulations.

Eleven functions of the BMUs are described,⁶⁸ including authority, in collaboration with the village council, to develop by-laws and engage in monitoring, control and surveillance in such a way as to reduce the incidence of illegal fishing and fish trading practices and environmental degradation within the BMU areas.

The Zonal Enforcement Units consist of centres and their purposes are “to protect fish and its environment, fishery products and aquatic flora against unlawful dealers and the enforcement of the provisions of these regulations.”

⁶³ Regulation 128.

⁶⁴ Regulation 132.

⁶⁵ Regulation 139.

⁶⁶ Regulation 145.

⁶⁷ Regulations 133 and 137 respectively.

⁶⁸ Regulation 134. The functions include: (a) develop a Beach Management Unit; Constitution, fisheries management plan and fish landing station development plan in accordance with higher level fisheries management plans; (b) develop annual and quarterly work plans and budgets to implement the management and development plans; (c) collaborate in fisheries Catch Assessment Surveys, and frame surveys; (d) in collaboration with village council shall develop by-laws and engage in monitoring, control and surveillance in such a way as to reduce the incidence of illegal fishing and fish trading practices and environmental degradation within the Beach Management Unit areas; (e) ensure sanitary and hygienic conditions at the fish landing stations within the Beach Management Unit area, in accordance with standards set by the Competent Authority; (f) ensure good leadership; (g) participate in selection processes for the issuance of fishing vessels licence and fishing within the Beach Management Unit jurisdictional area to ensure equitable access to resources; (h) ensure fisheries licence fees are paid by Beach Management Unit members in a timely manner to the officer in charge of fisheries in the local government authority; (i) arbitrate to settle fisheries disputes amongst Beach Management Unit members, between Beach Management Units and between the Beach Management Unit and other institutions; (j) fill in a standard tally book indicating fish weight, value and price of fish and submit the data to an Authorized Officer in their locality by second day of the following month; (k) keep an updated register and submit quarterly reports on fisheries management and development activities to an Officer in charge of fisheries in the Local Government Authority.

As written, the purpose of Zonal Enforcement Units implies that fish must be protected against the enforcement of the provisions of the Regulation, but this is a question of language that should be corrected in future.

The Zonal Enforcement Units are described geographically in the Seventh Schedule⁶⁹ but there are no provisions on authorized persons, powers and processes. Taken together, these oversights create a significant MCS loophole that could result in result in weak or nonexistent authority to enforce.

The Fisheries Act, 2003 (section 18 – “Beach Management Units”) provided for community fisheries management by empowering the Director to enter into a:

“management agreement with beach management units of the whole or part of or some specific fishery matter or activity within any water body or with any one or more local authorities having jurisdiction within the vicinity of any water body and deriving the whole or a part of their livelihood from that water body.”⁷⁰

The term “Beach Management Units” is defined in the Act as:

“a group of devoted stakeholders in a fishing community whose main function is management conservation and protection of fish in their locality in collaboration with the government”;

Regulation 25 clearly has a much broader scope than the definition in the Act. It requires that every fishing community, “in collaboration with relevant village government, form Beach Management Units to provide for Collaborative Fisheries Management for the purposes of managing, protecting and conserving fishery resources, biodiversity and the environment.”

The express *functions* of the Beach Management Units⁷¹ do not include making a management agreement with the Director as referenced in section 18 of the Fisheries Act, nor do the Regulations refer to that provision; this results in an inconsistency and/or a disconnect between the two instruments.

The Director’s main roles in the Regulations, as they relate to BMUs, refer instead to making BMU Guidelines, making random spot-check monitoring of Beach Management Units activities and receiving quarterly reports on BMU fisheries management and development activities.

Key BMU functions⁷² include, in collaboration with Village Councils, to develop:

- a Beach Management Unit; constitution, fisheries management plan and fish landing station development plan in accordance with higher level fisheries management plans; and
- by-laws and engage in monitoring, control and surveillance in such a way as to reduce the incidence of illegal fishing and fish trading practices and environmental degradation within the Beach Management Unit areas”.⁷³ The by-laws are approved by the District Council.

The area of the BMU, is to be “in every fresh water body and marine coastlines in accordance with Beach Management Unit Guidelines to be made by the Director”. The jurisdictional area *on land*

⁶⁹ Locations under the following zones are described: Lake Victoria, Western, Southern Highlands, South Eastern Coastal Zone, North Eastern Coastal Zone.

⁷⁰ Section 18.

⁷¹ Regulation 134.

⁷² Regulation 134. There are in total eleven functions, many of them focused on administration.

⁷³ Regulation 134(1)(d).

must be as agreed upon by fishers community, community based organisations, village councils, local government authority and the Central Government.⁷⁴

Concerning the jurisdiction over *water*, it is determined under section 18 of the Act: where local authorities have jurisdiction within the vicinity of any water body and derive the whole or a part of their livelihood from that water body.

There are no guidelines, requirements or limits for the maritime zones over which the BMU may exercise jurisdiction (internal, territorial, EEZ), nor general authority to set the outer limits. This could give rise to conflicts with Zanzibar or the DSFA.

Any person “engaging in fishery activities” who meets certain qualifications must be registered as a BMU member.⁷⁵ Personal qualities such as honesty and trustworthiness are included. There are institutional requirements for tenure of office, sources of funds, association with other BMUs and co-management structures, self-monitoring and establishment of a BMU assembly. Fisherfolk are bound to follow the by-laws and conditions set by the BMUs in their respective areas.

A Fisheries Development Fund was established under section 29 of the Fisheries Act, and the objects and purposes of the Fund appeared in section 30. The Regulations provide twelve activities that the Fund shall support, including fisheries MCS. Some activities are consistent with the objects and purposes in section 30 and others are new. The list is open ended so other activities may qualify for support.

It is beyond the scope of this study to review the Schedules individually; they are extensive and cover 154 pages. A strong consideration for compatible or harmonized fisheries management and MCS should be to ensure the consistency of relevant forms, as well as laws and regulations. If Mainland Tanzania and Zanzibar require similar data and information for areas such as management of shared fish stocks, licensing, registration and MCS, it could be easily shared with positive outcomes for fisheries management.

2.1.2.3 Marine Parks and Reserves Act, 1994⁷⁶

An amended version of the Marine Parks and Reserves Act, 1994 was prepared in 2010 but a copy was not available, and it has not yet been passed. A 2011 ACP Fish II study⁷⁷ concluded the following, which this report supports.

In accordance with the Strategic Plan 2006-2010 the legal framework needs to be reviewed since there is overlapping mandates of the institutions in the Act and there are emerging issues that need to be reflected in the Act, namely with regard to management of beaches and small islands.

The Strategic Plan also identified the following ambiguities:

- Inadequate autonomy of the MPRU;
- Distinction between MP and MR needs to be better clarified: *this has not been provided for in the amended version of the Act.*

⁷⁴ Regulation 133.

⁷⁵ Regulation 133(4).

⁷⁶ It is understood that amended version from 2009 had been presented to Cabinet for review and approval.

⁷⁷ Final Report, Support to legislative development in Tanzania and Preparation of a draft Aquaculture policy in Kenya. Project Ref. N°: Ref. CU/PE1/UG/10/001. <http://acpfish2-eu.org/uploads/projects/id25/Final%20ACP%20Fish%20II%20Final%20technical%20Report%20Draft%20aquaculture%20Policy%20Kenya%20and%20legislation%20development%20tanzania%20.pdf>

- Extension of MPRs to cover fresh waters is indicated in Section 15 of the new Act, and definition of “MP and MR” include freshwater. The term of “Marine” now is not really adapted and shall be changed.
- Being responsive to international treaties on MPR;
- The Act needs to provide for the establishment of network of MPAs and transboundary MPAS- *this is not clear in the amended version and will depend from the arrangements that are being made with Kenya (total conservation regime) and Mozambique (similar to the Tanzanian regime).*

Having as a basis the proposed amendments made to the Act (which are presently at Cabinet for review and approval) recommendations are made under Annex XV through the perspective of fisheries.

The following amendments were proposed to the Marine Parks and Reservations Unit Act (1994) in the report:

Establishment of the MPRU: the Unit has been within the Division of Fisheries (Section 3 (2)). Since that has changed and the board to be consulted for the purpose of appointing the Unit Manager also includes the DF the new amendment Act is proposing that Unit becomes and Authority to be established as a corporate body and appointed by the Permanent Secretariat. This is a policy issue that should be discussed with Director of Fisheries Development.

Village Committee: their role is defined under Part V, and since their attributions overlap with those of the BMUs it is important to clarify that within the Marine Parks and Reserves the competence falls with the Village Councils which have jurisdiction over those areas and not with the BMUs.

Cross reference to the EIA Act: Section 12 referring to fisheries and environmental management, including the exploration of natural resources and marine pollution within the EEZ, should make express reference to the Fisheries Act and the EIA Act.

Notification on the adoption and restriction on allocation in buffer zones: Section 16 should be amended – the proposed amendment (new Section 22) should expressly refer that: An EIA of the activity is conducted and approved, pursuant to the EIA Act, 2004 or any other written laws of Tanzania, policy, practice and pursuant to any applicable management plan or regulations made under this Act.

Penalties: should be differentiated in accordance with the type of contravention since the damage caused is different. The same approached as proposed to the Fisheries Act should apply but the team was told that the proposed amendments have already been submitted to the Cabinet and at this stage it was not possible to change them.

In order to have an integrated discussion and assessment of the different pieces of legislation that regulate the fisheries sector, it was recommended that the proposed amendments be presented to Cabinet together as a package. Since both proposed amendments to the Tanzanian Fisheries Research Institute Act (see below) and this Act had been made and submitted to Cabinet it was recommended that the amendments proposed for each should be included in this package.

It was emphasized that definitions need to be standardized, in order to strengthen the link and interaction between the acts and regulations, and to avoid misinterpretations. It was recommended that a Committee constituted from officers and legal officers elaborate on these definitions and prepare a glossary to be used for all legal documents on fisheries and connected activities. Modification or new definitions should be approved by this Committee.

2.1.2.4 Tanzanian Fisheries Research Institute Act (1980)⁷⁸

An amended version of this Act has been prepared but not yet passed. Based on the new amended version (not available in this study), the report provided the following comments.

The Tanzanian Fisheries Research Institute (TAFIRI) is in charge of promoting and conducting research and consultancy in fisheries and aquaculture.⁷⁹

Update of definitions: most of the proposed definitions were modified in the amended TAFIRI Act in line with the Fisheries Act (2003). As it is being proposed, the present definitions from Fisheries Act need to be upgraded/modified considering the new development of the fisheries sector. TAFIRI should therefore consider reviewing its amended version of the Act in accordance with the proposed definitions contained in the present Report and the new definitions of the Fisheries Regulations (2009).

Linkages with the Fisheries Act: as stated above recommendation is being made that management measures are taken based on best scientific evidence to be provided by TAFIRI and other institutions. Therefore the linkages between the Fisheries Act and the TAFIRI Act need to be strengthened.

Ensure TAFIRI's involvement in the management of the resources: the functions of TAFIRI should be clarified and focused on scientific research. TAFIRI Act is from 1980 and some of the functions attributed to the Institute are presently the competence of:

- DF: statistics related to fisheries and the fishing industry (Sec 6 (2) b))- the role of TAFIRI with regard to the "collection, preparation, publication and distribution of statistics" should be clarified.
- DA: establishment of fish farms (Sec 6 (2) C) (i).

The report concluded that the nature of TAFIRI should therefore be focused on providing assistance on best scientific practice to the Directors of Fisheries and Aquaculture.

2.1.3 Zanzibar

2.1.3.1 Fisheries Act, 2010

2.1.3.1.1 Introduction

The Fisheries Act, 2010 applies to Zanzibar, and consists of the following framework, described below:

Part I	Preliminary provisions
Part II	Administration
Part III	Development and control of the fishing industry
Part IV	Licensing of fishing operations
Part V	Conservation measures
Part VI	Offences and penalties
Part VII	Miscellaneous provisions

It is an exceptionally weak fisheries law; it does not generally include best practices and standards agreed by the international community and contains inconsistencies within the document and with laws of Mainland Tanzania. There is significant lack of precision in the language which will unnecessarily make implementation and MCS very difficult. It has many inconsistencies and

⁷⁸ It is understood that amended version from 2010 had been presented to Cabinet for review and approval.

⁷⁹ Section 2, 2011 amended version.

conflicts with the Mainland Tanzania Fisheries Act and Fisheries (Amendment) Regulations and the Deep Sea Fishing Authority Act and Regulations as described below.

It formally applies to “Zanzibar”, but not specifically to maritime waters under the jurisdiction of Zanzibar or to nationals beyond areas of national jurisdiction. However, various sections refer to maritime zones in which powers may be exercised, such as that empowering the Minister to declare controlled areas in internal waters, the territorial sea and the EEZ.⁸⁰

Added to this, it could be very difficult for Zanzibar to establish jurisdiction over activities in the maritime zones because:

- the definition of internal waters is unintelligible;⁸¹
- the definitions of exclusive economic zone, internal waters and territorial waters are inconsistent with each other and with definitions in the Fisheries Act, 2003;
- the definitions of exclusive economic zone, internal waters and territorial waters conflict with the provisions declaring these maritime zones in the TSEEZ Act (described below in section 5.2.1.1);
- the existence of the DSFA is not acknowledged, nor its mandate in the EEZ;
- there is reference to Zanzibar waters, but they are not officially delineated and there is no agreement with Mainland Tanzania on maritime boundaries between them.

Some significant concerns about the legislation are described below.

2.1.3.1.2 Definition of terms

The definition of terms in the Fisheries Act, 2010⁸² is inconsistent, imprecise and incomplete, and often in conflict with the same terms defined under the Mainland Tanzania Act.

A total of 40 terms used in the Zanzibar Act and of these, 21 are also defined in the Mainland Fisheries Act. Of those, only 8 terms share the same general definition. The 13 terms that are defined differently are: aquaculture, beach seine, director, explosives, fish, fisheries, fishing vessel, fishing, industrial fishing, landing, poison, product of aquatic flora and territorial waters. These terms are fundamental to effective implementation of management and MCS, and there should be general consistency throughout the United Republic.

There is almost no inconsistency in definitions between the Fisheries Act, 2010 and the Deep Sea Fishing Act and Regulations, sadly, because the latter does not define essential terms such as fishing, fishing related activities, fishing vessel and fishing gear.

“Fishing”, a pivotal term that underpins the entire Act, is described only as “collection, capture, gathering, killing, snaring, injuring or trapping of fish *or fish product*”, and fails to refer to activities described in Figure 2. It is difficult to understand why “fish product” was included, which generally means processed fish and itself is defined as “anything made, collected or obtained from fish and includes fish meal...”.

More seriously, the definition of “fishing” does not include the intention to fish, searching for fish or other activities which can be expected to result in fishing – just the act of collection, capture,

⁸⁰ Section 10.

⁸¹ “...the waters on the landward side from the baseline of the territorial water and the water of equidistant between Tanzania Zanzibar and Mainland Tanzania”. The provision in the TSEEZ Act, which applies to Zanzibar, is that internal waters “include any areas of the sea that are on the landward side of the baseline of the territorial sea of the United Republic” (section 4). The baseline is the “low water line along the coast of the United Republic including the coast of all islands, as marked on a large-scale chart or map officially recognized by the government of the United Republic” (section 5). Equidistance does not apply to internal waters.

⁸² Section 3.

gathering etc of fish. Essentially this means that a vessel would have to have its nets in the water to be considered as fishing.

As noted above in discussion on the Mainland Tanzania Act, this is not a best practices definition in national or international law because enforcement action could not be taken, e.g., for a vessel that does not have its gear stowed or is preparing to fish, or for use of a helicopter from a purse seiner for spotting fish.

As noted above, the definitions of “internal waters” and “territorial waters” are inconsistent.⁸³

The Fisheries Act does not incorporate or refer to relevant provisions in the TSEEZ Act. The Fisheries Act, 2003, which served as a model for some of the provisions for the Zanzibar legislation, is similarly flawed, as noted above.

The definition of the EEZ is erroneous and inconsistent with both the TSEEZ Act and the 1982 Convention. The latter provides that the EEZ:

- is an area beyond and adjacent to the territorial sea;⁸⁴ and
- shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.⁸⁵

The former provides that the EEZ is “contiguous to the territorial waters”,⁸⁶ consistent with the 1982 Convention.

The Fisheries Act, 2010 erroneously claims that the EEZ is measured “from the baseline of the territorial waters”, without explaining that it is contiguous to the territorial waters. This technically results in an overlap between the EEZ and the territorial sea.

Some key definitions that are inconsistent with best practices include fish, fisheries and fishing gear, as described in relation to the Mainland Tanzania Act. The definition of “person” refers to individuals, groups of people and institutions but does not specifically include legal and natural persons, which severely limits the application of the Act. For example, bodies corporate, organizations, governments and associations would be exempt from the Act under this definition. However, there is no definition of “person” in the Mainland Tanzania legislation or the DSFA legislation.

Key terms used in the legislation and required for effective implementation are not defined, such as related activities, trade, sell, buy, local fishing, import, export.

Different words are used to describe the same or similar activities, but not all of them are defined. For example, “aquaculture” is defined, but cultivation (undefined) is also used in the text.

2.1.3.1.3 Administration

This Part establishes the Department, but its functions do not include fisheries cooperation with Mainland Tanzania or the DSFA, nor does it state a relationship with local authorities. Its functions include to “promote, develop, control and monitor for the purpose of proper management of all

⁸³ “Territorial waters” is defined as measured from the “mean low water line along the coast of Zanzibar and the adjacent islands”, whereas “internal waters” are measured from the “baseline of the territorial water and the water of equidistant between Tanzania Zanzibar and Mainland Tanzania”.

⁸⁴ Article 55: “Specific legal regime of the exclusive economic zone”.

⁸⁵ Article 57: “Breadth of the exclusive economic zone”.

⁸⁶ Section 7(1).

fisheries and related activities in artisanal and semi industries”, but artisanal and semi are not defined in the Act.

The functions of the Director are not stated, and there are no provisions on conflict of interest. There is no provision for the appointment or functions of persons authorized to enforce and monitor under the Act.

2.1.3.1.4 Development and control of the fishing industry

This part has only seven sections, does not directly provide for fisheries development⁸⁷ or for “control” in the sense of MCS. The latter is only addressed under Part V, “Conservation measures”, where limited powers of authorized officers are described in section 23.

Fisheries management is not in the title to this Part, or any other Part of the Act, but is addressed in a very restrictive and largely undefined manner. The Director has a vague obligation to make and review management plans for the management and development of fisheries in Zanzibar.⁸⁸ However, there are no provisions requiring a specified framework, a process for developing the plans (including specified consultations) or ultimate legal status.

In this part, the Director is empowered to take some limited management measures through regulation of the fishing industry⁸⁹ and setting licence conditions from a list of seven types of conditions.⁹⁰ This includes:

- The Director may “regulate the fishing industry” by notice in the Gazette, including imposing conditions for:
 - collecting, gathering and manufacturing fish products etc (*but not fish or fishing activities*);
 - selling (*but not buying*) fish products (*but not fish*) etc;
 - importing and exporting *fish and* fish products.

This is more geared towards fish products than fish, except for imports and exports, and fails to accord general powers to the Director to manage fisheries.

- The Director may impose by order or licence condition impose specified measures for the “management of fish and fishing industry”, as listed in section 9 (a) – (f) including by:
 - seasons, methods, areas, gear, amount/size etc of fish, establishing marine parks/sanctuaries/prevent obstruction and pollution.

This is considerably less extensive than the management conditions listed in section 17 (a)-(u) in the Fisheries Act, 2003, there are no principles of fisheries management such as those found in the DSFA Regulations⁹¹ including those relating to the precautionary and ecosystem approaches, international cooperation, public participation and polluter pays. There is also no general power to take other measures, consistent with stated principles, necessary for the management of fisheries.

The Minister is also given some management-type powers in this part. He/she may:

⁸⁷ Section 9 of the Fisheries Act, 2003 of Mainland Tanzania properly addresses development measures such as investment guidelines, code of practice, etc.

⁸⁸ Section 8.

⁸⁹ Section 7.

⁹⁰ Section 9.

⁹¹ Section 19.

- by order declare controlled areas in areas under national jurisdiction under section 10 – including the internal waters, territorial sea and EEZ - but there is no provision on the purpose or objective of such control, or control mechanisms;⁹²
- in cooperation with other Government agencies, regulate local and industrial fishing and related activities in Zanzibar and ensure that local fishing is not damaged⁹³ (it is not clear whether Zanzibar includes maritime zones, as “areas under national jurisdiction” was not stated in accordance with best practices, and there is no definition of local fishing).

The Act establishes fish landing sites which the Department must identify in collaboration with relevant government institutions, and which will be owned by the Ministry.

Foreigners are prohibited from carrying out “fisheries activities” in Zanzibar except with the Minister’s consent in writing. This is *inconsistent* with the Fisheries Act, 2003 which prohibits foreign fishing vessels to be licensed for fishing in the territorial waters.⁹⁴ It *conflicts* with the Deep Sea Fishing Authority Act, 1998 which includes as a function of the DSFA to promote, regulate and control fishing in the EEZ of the United Republic.⁹⁵

There is no definition of “fisheries activities”, also used in the context of a Departmental function. It could not be based on the definition of “fishing” because its definition is too narrow.

2.1.3.1.5 Licensing of fishing operations

This part sets out requirements for licensing fishing vessels, general conditions for licensing, “other” licenses, specific gear used without vessels and scientific research. It *duplicates* the Deep Sea Fishing Authority Act and Regulations by requiring all fishing vessels to be licensed under its requirements, without excepting licenses issued by the DSFA or recognizing other forms of control in that Act.

It does not set out comprehensively the licensing process, as done in the Deep Sea Regulations.⁹⁶ This means that a fishing vessel would need a license from the Government of Zanzibar as well as the DSFA for carrying out fishing in the EEZ, and would be subject to the MCS regimes of both authorities. Another possible consequence is that a vessel could be subject to “double jeopardy” and prosecuted for the same offence under the Zanzibar legislation and the DSFA Act and Regulations.

The Mainland Fisheries Act, 2003 describes the activities for which licenses are required in addition to fishing, including processing and manufacturing, selling, marketing, importing and exporting. Also, certain fishing methods are prohibited in that Act which are not prohibited in the Zanzibar legislation.⁹⁷

Although the Zanzibar legislation refers to related activities, which normally include transshipment, refuelling, supply etc., there is no definition or requirement to control or license such activities.⁹⁸

A significant gap in the Zanzibar legislation is that, under section 15, license conditions must include that the “licence shall comply with such requirements as the Director may establish concerning the making of statistical returns and the collection of information”.⁹⁹ This is unenforceable because:

⁹² Section 10.

⁹³ Section 11.

⁹⁴ Section 19.

⁹⁵ Section 4(4)(a).

⁹⁶ Part II, sections 4-17.

⁹⁷ Section 22.

⁹⁸ Section 5 includes as a function of the Department “to build capacity for effective management of fishing and related activities;” and section 11(1) requires the Minister, in co-operation with the other agencies of the Government, to regulate local and industrial fishing and related activities in Zanzibar.

- inaccurate language was used; the provision should require the licensee, not the licence, to comply – it is not possible to prosecute a licence;
- there is no offence for failing to comply with the conditions of licenses in section 15; there are penalties for offences related to licenses in relation to other sections, but not to section 15.¹⁰⁰

In best practices, there is a separate part on requirements for information and data, including that all information must be true, complete and accurate, but no such requirements are included in the Zanzibar legislation in relation to licensing or more generally for all activities under the Act.

2.1.3.1.6 Conservation measures

This Part is misnamed. It addresses conservation measures, but also includes a number of provisions that relate to other matters. These matters should be under other headings which are not included in the framework of the Zanzibar legislation.

Concerning conservation, it establishes a Marine Conservation Unit, sets out prohibited gear and methods of fishing (in addition to those in the previous part, the Act is not well organized in this regard) and prohibits “catching immature”. The latter is the full title of section 22, which describes prohibitions in relation to fish of less than the minimum size. However, minimum size and immature fish are not the same thing.

Concerning other matters, powers of authorized officers are set out,¹⁰¹ but they are “bare bones” and no provisions are made for appointment, functions, duties of others towards him/her, as set out in Part VIII of the Fisheries Act, 2003 and Part V of the DSFA Regulations. Best practices include a suite of powers and authorities, but here only five are listed. More extensive powers – although still not the fullest powers under best practices - are given in the Fisheries Act, 2003¹⁰² and the DSFA Regulations.¹⁰³

Interestingly, the appointment of authorized officers is not provided in the Zanzibar legislation, but they have the power of arrest; this is inconsistent with principles of transparency and accountability. The DSFA Regulations do not accord enforcement officers the power of arrest, but authorized officers have such powers under the Fisheries Act, 2003.¹⁰⁴ The appointment of authorized officers is provided in the DSFA Regulations¹⁰⁵ and the Fisheries Act, 2003.¹⁰⁶

Other provisions in this part include the sale of seized fish (but there is no provision for the release of funds to the owner of the fish if s/he is found not guilty), sending an arrested person before a court as soon as reasonably practicable, release of a vessel etc on bond and forfeiture/destruction of prohibited gears.

There are no provisions on evidence or jurisdiction. The former includes best practices provisions on the onus of proof and certificate evidence (the latter is in the Fisheries Act, 2003¹⁰⁷) and are specifically geared towards fisheries offences. For example, the onus of proof would require the master of a vessel to prove that he held a license at the relevant time, rather than the prosecution to prove that he didn't.

⁹⁹ Section 15(3).

¹⁰⁰ Section 29 refers to section 14 and 16 only.

¹⁰¹ Section 23.

¹⁰² Section 33.

¹⁰³ Sections 32 and 33.

¹⁰⁴ Section 36(d).

¹⁰⁵ Section 35.

¹⁰⁶ Section 5.

¹⁰⁷ Section 35.

Provisions relating to jurisdiction of the court are important, particularly for activities in the EEZ, under hot pursuit and on the high seas which are not normally addressed in national law.

2.1.3.1.7 Offences and penalties

There are only four categories of offence: fishing by explosive and noxious substances, offences related to licences, other offences and obstructing authorized officers. Foreigners may pay a fine in United States dollars or euros but, unlike many fisheries laws, are not required to do so.

This part is particularly weak. Minimum and maximum fines are set and expressed in Tanzanian shillings, and the levels are not high or particularly deterrent. Converting them to US dollars at the rate available on 4 November 2013, they range from a minimum of USD 60 (for using prohibited methods of fishing) to USD 12,000 for owners of vessels, etc. used in an offence. Fines of USD 1 – 2 million have been imposed by a number of countries on foreign fishing vessels, including Mozambique.

Offences do not specifically apply to a number of activities otherwise controlled under the Act, but may be a “general” offence, which does not carry a deterrent fine or penalty. It is not an offence to:

- violate conditions imposed by the Minister by notice in the Gazette under section 7 relating to fishing, selling, import and export of fish (in contrast to section 10(2) which requires compliance with an order made by the Minister declaring a controlled area);
- violate a condition of licence imposed the Director by order under section 9, relating to declaring closed seasons, areas and limitations on gear and fish, establishing marine parks and prohibiting obstruction and pollution of water (also in contrast to section 10(2));
- violate a licence condition made under section 15 (see above under section 5.2.1.4).

There is no specific penalty set out for the following, it can be assumed that they fall under section 30(3), which sets out a fine and imprisonment for contravention of “any provision of this Act” other than those with specified penalties, which include:

- section 17(3) which prohibits import, etc of beach seines, fishing weirs or spear guns;
- section 18 (3) which requires persons or vessels to apply to the Minister for a permit to conduct scientific research or activities “related thereto” (note this only covers application for a license, it does not create an offence for carrying on scientific activities without a licence);
- section 21(2) which requires fishing gear to be stowed “in the prescribed manner” (but there are no regulations – normally the language is “so it is not readily available for use”¹⁰⁸) where it is being transported through a prohibited area;
- section 22(1) and (2) regulating minimum size fish.

However, to complicate matters, section 30(3) is poorly drafted and may be interpreted so as not to apply where only one provision of the Act was contravened. It requires a person to contravene multiple provisions of the Act, other than those with specified penalties, to commit an offence:

“any person who contravenes *any provisions* of this Act commits an offence and upon conviction, other than those with specified penalties, shall be liable...”

Proper drafting would read:

“any person who contravenes *any provision* of this Act, other than those with specified penalties as described in sections xxxx, commits an offence and upon conviction shall be liable...”

¹⁰⁸ Section 39 of the DSFA Regulations contains a best practices provision.

Interestingly, section 31 attempts to create an offence for obstruction of an authorized officer and for failing to produce licences, documents, fishing gear or comply with any enquiry, but this is drafted neither correctly nor comprehensively and a court would be justified in declaring it does not constitute an offence.

Concerning correctness, among other things, the word “Paragraph” in section 31(b)(ii) does not belong.¹⁰⁹ It may, however, indicate where a paragraph is needed for proper drafting; if one were inserted properly then the drafting would be correct and the provision could be enforced.

Concerning comprehensiveness, the standard suite of provisions normally used in best practices is not included (e.g. bribery, providing false, inaccurate or misleading information, duty to assist the authorized officer, etc).

The other relevant Tanzanian fisheries laws are more comprehensive, but still don’t go the distance normally found in best practices. The Fisheries Act, 2003 covers situations where a person hinders, assaults or resists¹¹⁰ and the DSFA Regulations covers assault, resisting, or intimidating an authorized officer.¹¹¹

Best practices describe the liability of persons for contraventions of the Act, and normally attach liability to the master, owner and operator of a vessel, rather than a “person”. The Zanzibar Act does not do this and by excluding bodies corporate from application of the Act would also likely exclude the owner which, for larger vessels, is normally a body corporate.

2.1.3.1.8 Miscellaneous provisions

This part addresses exemptions, regulations, compounding of offences and repeal and savings. There are significant concerns in all three areas.

Concerning exemptions, a surprising provision allows the Minister, for the purpose of public interest, to exempt any person or organization from any provisions of the Act or regulation.¹¹² There are no controls, transparency or accountability and the concept of public interest is vague. There is no duty to ensure sustainability of the resource.

The authority to make regulations:

- establishing the conditions to be observed by foreign fishing vessels within the internal or territorial waters or EEZ of Zanzibar;¹¹³ and
- prohibiting, regulating or controlling the activities of foreign fishing vessels within internal waters, territorial waters and the EEZ of Zanzibar,¹¹⁴

conflicts with the DSFA and, in respect of the definition of the EEZ, the TSEEZ Act. As noted above, these maritime zones in respect of Zanzibar have not been delineated.

Concerning the compounding of offences, the Director may accept a “reasonable payment of a sum of money to compensate the damage caused”, and order the release of items seized on payment of a sum

¹⁰⁹ “Any person who fails to produce or request by an authorized officer any fishing net or fishing gear; or fails to comply with any enquiry or requirement made by any authorized officer in accordance with the provisions of this Act, Paragraph commits an offence and upon conviction shall be liable to a fine of not less than five hundred thousand shillings and not more than five million shillings or imprisonment for a term of not less than one year and not more than six years or both such fine and imprisonment.”

¹¹⁰ Section 41.

¹¹¹ Section 69.

¹¹² Section 33.

¹¹³ Section 34(c).

¹¹⁴ Section 34 (r).

not exceeding the existing market value of the item as well as the destruction of gear “or other thing will cause marine environmental destruction”.

Apart from the poor language used that is probably not enforceable,¹¹⁵ it gives the Director absolute authority to determine and accept money to “compensate the damage caused”, without accounting for it. There are several problems with this.

- Compensation for damage refers, for example, to payment for cleanup of environmental damage or compensation to another fisher for fouling his nets. It is a distinct legal concept, separate from payment of a fine or other penalty, so there is no provision for punishment/deterrence.
- Standard levels of fine are not set, as done in best practices, for example, twice the minimum fine for the offence committed.
- There is no accountability or transparency, for example by requiring the Director to consult or decide together with a summary administrative panel or prosecutor.
- There are no procedures for compounding, according to best practices; the Fisheries Act, 2003¹¹⁶ contains some procedures but they are unsatisfactory as noted above.

Under repeal and savings, although the Fisheries Act, 1988 is repealed, there is no mention of the legal status of subsidiary instruments issued under that Act such as Orders to establish conservation areas. A legal challenge could therefore be made as to the continuing validity of the Orders.

2.1.3.2 Draft Marine Conservation Unit Regulations, 2013

2.1.3.2.1 Introduction

The Zanzibar Marine Conservation Unit (MCU) was established in November 2005 by the Department of Fisheries and Marine Resources Zanzibar and recognized by the Fisheries Act, 2010.¹¹⁷ It was established as the entity responsible for coordinating the management of all marine conservation areas in Zanzibar and also for promoting the coordination role with other forms of marine managed areas such as privately managed sanctuaries.¹¹⁸

Draft Marine Conservation Unit (MCU) Regulations have been prepared under section 19(3) of the Fisheries Act to consolidate and repeal Orders previously made establishing conservation areas, including:

- Menai Bay Conservation Area (Establishment) Order, 1997
- Mnemba Island Marine Conservation Area Order, 2002
- Pemba Channel Conservation Area (PECCA) Order, 2005

These Orders will remain in force until the MCU Regulations are promulgated, and are described below.

The draft MCU Regulations are comprised of seventeen sections and two schedules setting out the areas and fees for permits. Some concerns, described below, include:

- a lack of clarity in the application and interpretation of the Regulations;

¹¹⁵ e.g. It will be necessary to prove that a “thing will cause marine environmental destruction”, but marine environmental destruction is not defined nor are standards given or activities included. Language normally used is that there are reasonable grounds to believe that an item or activity will cause an “adverse impact on the marine environment”.

¹¹⁶ Section 40.

¹¹⁷ Section 19.

¹¹⁸ <http://www.mcu.go.tz/index.php>

- an absence of general principles or objectives relating to the sustainability of the resource that should serve as a basis for implementation;
- a blanket authority for “enforcement” of management measures by shehia fishermen’s committees without designation of specific enforcement powers or their relationship with other fisheries MCS authorities under Tanzanian legislation; and
- the Director of Fisheries may allow any activities to take place in the controlled area without payment of a fee.

2.1.3.2.2 Application and interpretation

The application of the Regulations is unclear; there are no provisions describing the application, e.g. only to a maritime zone, to activities on land that could affect the maritime zone or both. The term “controlled area” is used throughout the Regulations; this is defined entirely as waters, but also includes “Latham Island and its surrounding waters”.¹¹⁹ However, offences include camping within the controlled area;¹²⁰ this is a land-based activity and the controlled areas do not include land except for Latham Island. It therefore seems that enforcement of the no-camping prohibition may be possible on Latham Island but anywhere else would be technically possible.

In the interpretation regulation,¹²¹ “MCU officers” are defined as:

“a Coordinator, Managers, District Fisheries officers, Patrol officers, Fisheries lawyer, Investors and other government or non government institutions related along the MPAs if deems necessary”.

There are two concerns with this definition apart from the improper use of English. First, the term “MCU officers” is not used in the Regulations. Second, it is inconsistent with the regulation setting out the establishment and functions of the MCU, which contains a similar, but not identical list of persons as comprising the MCU.¹²²

2.1.3.2.3 Functions and responsibilities of the Unit

The functions of the MCU are to:

“manage the controlled areas established under the Fisheries Act and its newly establish controlled areas (emerging ones) in ways that benefit local communities and facilitate their active participation in the management,”¹²³

and the Unit is:

“overall responsible for the development, management, regulation enforcement and implementation of all activities within the established controlled areas prescribed in the SCHEDULE ‘A’ of these Regulations...”¹²⁴

There is no mention of any general objective or principles in terms of the resources in order to define the goals of management and development – e.g. sustainability, precautionary and ecosystem

¹¹⁹ “...any portion of internal and Territorial waters declared under this Regulations to be a park, reserve, sanctuary for the purpose of protection or conservation area (MPAs) otherwise restricted for any purpose whatsoever including Latham Island and its surrounding waters”. (Original spelling and grammatical errors included.)

¹²⁰ Regulation 13 (i) and (vi), which are repetitive/identical.

¹²¹ Regulation 2.

¹²² Regulation 3(2).

¹²³ Regulation 3(3).

¹²⁴ Regulation 4.

approaches, biodiversity. This could result in legitimately developing the controlled areas for purposes of enriching the local communities but to the possible detriment of the marine resources.

The only such reference to general principles is at the level of fishermen's executive committees, which have among their functions the protection and conservation of marine ecosystems within the controlled area.¹²⁵ Otherwise, this is not mentioned in a broader manner.

2.1.3.2.4 Institutional aspects

The institutional aspects of the Regulations are reasonably well thought out as transparent and accountable bodies, and include an MCU coordinator, and for each controlled area a manager and fishermen's executive committee, and for each shehia a fishermen's committee. The fishermen's executive committees take management decisions and the shehia committee identify and refer management issues to fishermen's shehia committee (although this would more reasonably be referred to an executive committee). Both committees are charged with keeping information, and identifying and resolving conflicts.

2.1.3.2.5 Management and enforcement

Enforcement powers appear to be given to the shehia fishermen's committee. Its functions include:

- “to curb all illegal fishing practices and enforce by laws that have been established in their respective shehia’s which will be related to this regulation”;¹²⁶ and
- “to accept and implement all decisions made by the fishermen’s executive committee within their respective controlled areas”.¹²⁷

Management measures may be set under the by-laws¹²⁸ and the by the fishermen's executive committee, so it is clear that a function of the shehia fishermen's committee is to enforce such measures. However, specific enforcement powers or procedures are not designated – e.g. seizure, detention, prosecution, notification, release, determination, fines, penalties, cooperation with authorized officers. This could result in abuse of authority and selective enforcement activities and at worst eventually jeopardize the rule of law.

To complicate matters, there is no provision for coordination with MCS operations established under the Fisheries Act, 2010 or the DSFA Act.

Even more seriously, there is also no oversight mechanism for the activities of the shehia fishermen's committee, unlike the controls for members of the fishermen's executive committee. The principal secretary responsible for fisheries may appoint a person to investigate allegations against an executive committee member on the execution of his responsibilities, and the director may then suspend, remove or dismiss such member if there is reason to believe that the member did not execute responsibilities in accordance with the Regulation.¹²⁹

An Advisory Committee is established as an “advisory organ for management issues of the unit”.¹³⁰ Other Regulations address funds for the MCU and the controlled areas,¹³¹ auditing,¹³² fees imposed for activities,¹³³ prohibitions¹³⁴ and penalties.¹³⁵

¹²⁵ Regulation 7(2)(c).

¹²⁶ Regulation 8(2)(d).

¹²⁷ Regulation 8(2)(e).

¹²⁸ Shehia fishermen's committees may make bylaws with the approval of the fishermen's executive committee, to manage fishing and fisheries related activities for their area. Regulation 8(4)(b).

¹²⁹ Regulation 14(3) and (4).

¹³⁰ Regulation 9.

Activities may be undertaken in a controlled area without paying the required fees where written authority is issued by the Director of Fisheries.¹³⁶ This could potentially undermine the revenue because no indication is given as to the circumstances under which the Director may waive the requirement, and there are no requirements for transparency.

2.1.3.2.6 Prohibitions

Prohibitions include camping, destructive fishing, anchoring/mooring for water sports, filming and research except under written permit, remove corals, causing pollution, destruction of marine ecosystems or environment. It could be difficult to enforce “destructive fishing”, “causing pollution” and “destruction of marine ecosystems or environment”, among others, because these terms or the elements of such offences are not defined. “Coral” is likewise undefined, even though there is a suitable definition in the Mainland Tanzania Fisheries Act.

2.1.3.3 Menai Bay Conservation Area (Establishment) Order, 1997

This Order was made under section 7(1) of the 1988 Fisheries Act, and contains four sections: citation, interpretation, declaration of the Area and offences and penalties.

In the interpretation section, there is no provision stating that terms used have the same meaning as in the parent Fisheries Act, 1988 (now repealed). Some terms have slightly different meanings from terms defined in the current Fisheries Act, including explosive, person, poison and spear gun. Generally, the terms are better defined in this Order than in the current Fisheries Act, being more consistent with best practices.

The area is declared starting from the “high water mark”. There could be a problem for enforcement unless the high water mark is published on large scale charts or otherwise defined. It is unlikely that this has been done, because the TSEEZ Act requires publication of the *low* water mark on large scale charts. The latter forms the baseline for measurement of the territorial sea, in accordance with international law.

Offences and penalties include use of certain gear (beach seines, spear guns, explosive, poisons), causing pollution or making dago. The latter is defined as camping within or in the proximity of the Area for the purpose of launching fishing trips. Permits are required for sport fishing, water sports, sun bathing on beaches or sandbanks and other tourism-oriented activities, except for local communities as long as they follow the prescribed management procedures.

For fines and imprisonments, the Order refers to those “provided in the Act”. As noted above, the 1988 Act is now repealed and the status of the Orders established under the Act is legally uncertain because there was no savings clause. If it is considered to be valid because it was not expressly repealed, there would then be no provision for fines or penalties because the Act was repealed.

The Order does not state an objective or purpose, but in 2007, a government publication¹³⁷ noted that the many small islands and peninsulas of Menai Bay served as camping grounds to reach offshore

¹³¹ Regulation 10.

¹³² Regulation 11.

¹³³ Regulation 12.

¹³⁴ Regulation 13.

¹³⁵ Regulation 14.

¹³⁶ Regulation 12 (1) and (2).

¹³⁷ Guide to Marine Conservation Areas in Zanzibar. 2007. Department of Fisheries and Marine Resources in collaboration with EcoAfrica Environmental Consultants and with the participation of local NGOs and coastal communities. Supported by Global Environmental Facility
http://www.dlist-asclme.org/sites/default/files/doclib/booklet_161107.pdf

fishing areas. However, the late 1980s saw an increased use of destructive fishing methods, and the Area was created to protect the habitats of the bay and livelihoods of the inhabitants. It is now a major tourist attraction.

According to the publication, conservation efforts are rooted in the bay's traditional fisheries management including seasonal closure of fishing areas and control of fishing gear and visiting fishers. It is "managed by community and local government units facilitated by the WWF of Tanzania" and has succeeded in reducing destructive fishing. A system of permits and fees for use of the area by non-residents was established and the revenue is allocated to management and community development.

2.1.3.4 Mnemba Island Marine Conservation Area Order, 2002

This Order was made under sections 7(1) and 32 of the 1988 Fisheries Act and has ten sections: citation, interpretation, declaration of the Mnemba Island Marine Conservation Area, prohibitions, offences, management committee, advisory committee, the Fund, suspension of a member and repeal of Legal Notice 18/22.

Terms used are generally different from those in the Fisheries Act 2010, and those used are better defined and more consistent with best practices.

The area only has an outer boundary, so it is consistent with the baselines set in the TSEEZ Act. Prohibited activities include fishing, mooring and causing pollution, as well as water sports or mooring that may lead to destruction of marine ecosystems. A permit is required for water sports, filming research and study tours. Proposals for these activities are to be submitted to the Management Committee and Fisheries authorities. Fines under the Order are set and required to be deposited to the Fund.

A Management Committee is established that will, inter alia, take decisions on all management issues for the area. Its membership requirements and terms of reference are comprehensive, and a transparent and accountable system is established. Importantly, the Order also provides for suspension of a member if s/he does not execute responsibilities effectively or in accordance with the Order; this type of provision, and other similar requirements prohibiting conflict of interest, are sadly not found elsewhere in Zanzibar legislation. An Advisory Committee is also established, to be an advisory organ for all management issues.

The 2007 Government publication noted above reported that recently, Chwaka Bay and Mnemba Island have been joined together in one single conservation area, the Mnemba-Chwaka Bay Conservation Area. This stretch of marine habitats along the east coast's fringing barrier reef provides a crucial corridor ensuring a healthy ecosystem. Relevant legislation was not available at the time of writing.

2.1.3.5 Pemba Channel Conservation Area (PECCA) Order, 2005

This Order was made under sections 7(1) and 32 of the 1988 Fisheries Act and has twelve sections, most of them unnumbered and all of them untitled.

The definitions of terms are consistent with those defined in the Mnemba Island Marine Conservation Area Order. Also, Similar to that Order, an area is established with reference to an outer boundary only, a Management Committee and Advisory Committee are established, and fees are charged for various activities. Transparency and accountability are maintained and fees for various activities required in a Schedule, but there is no provision for a fund to be established.

The Manager of PECCA and any person hired by the Management Committee may undertake duties under the Order, including to stop or restrict any operator from entering the Area if there are reasonable grounds to believe that provisions of the Order “is contravened or have been contravened”.

2.1.4 Mainland Tanzania and Zanzibar

2.1.4.1 Deep Sea Fishing Authority Act, 1998, as amended by the Deep Sea Fishing Authority (Amendment) Act, 2007

2.1.4.1.1 Introduction

The DSFA Act consists of six Parts:

Part I	Preliminary
Part II	Establishment of the DSFA
Part III	Management of the DSFA
Part IV	Financial provisions
Part V	Offences and penalties
Part VI	Miscellaneous provisions

They are addressed below as amended by the Deep Sea Fishing Authority (Amendment) Act, 2007.

2.1.4.1.2 Preliminary

The Act applies to Tanzania Zanzibar as well as Mainland Tanzania, and is in addition to and not in derogation of the TSEEZ Act, and complements that Act.¹³⁸ However, there is still a significant gap because the Act is not expressly applied to the waters declared under the TSEEZ Act, nor to Tanzanian nationals (persons and vessels) in areas beyond national jurisdiction.

The Act does not contain interpretation for key terms that appear in its provisions, including “fish”, “fishing”, “fishing vessel” and “person”.

The term “authorized officer” is defined as “officers of the Authority, fisheries officers of the Governments Ministries responsible for fisheries, members of police force (KMKM), members of defence force, officers of Customs and Revenue department or any other person approved by the Minister.” It is essentially the same definition in the TSEEZ Act.¹³⁹ However, this term is only used in relation to the offence of assaulting, interfering with etc an authorized officer in the execution of his duties.¹⁴⁰ No powers or duties of authorized officers are provided, so there is no offence.

Authorized Officers are given a number of powers in the TSEEZ Act,¹⁴¹ but a lead agency is not designated, and the powers of authorized officers are not directly referenced or acknowledged in the DSFA or Regulations.

Furthermore, the Regulations do not use this term in the text, but further complicate the matter by using terms “enforcement officer” and “fishery inspectors” without clarity.

The Act does not apply to, or define, “related activities” which, in international best practices, include transshipment, resupply, refuelling etc. This is a major gap because Tanzania has no legal authority to

¹³⁸ Section 2. As noted above, neither of the fisheries acts for Mainland Tanzania and Zanzibar refers to the TSEEZ Act, and both are inconsistent with it.

¹³⁹ Section 11. (Note there are two sections 11, this is the second one, and it is placed between section 12 and 14. It is likely meant to be section 13 but is misnumbered.)

¹⁴⁰ Section 19.

¹⁴¹ Section 14.

enforce international obligations such as IOTC Resolution 12/05 On Establishing a Programme for Transshipment by Large-Scale Fishing Vessels, which calls for all transshipment operations of tuna and tuna like species and sharks species in the IOTC Area (which includes Tanzanian waters) to take place in port except under special conditions.

2.1.4.1.3 Establishment of the DSFA, Management of the DSFA, Financial provisions

The functions of the Authority include to:¹⁴²

- (a) promote, regulate and control fishing in the Exclusive Economic Zone of the United Republic;
- (b) regulate the licensing of persons and ships intending to fish in the Exclusive Economic Zone;
- (c) initiate, implement and ascertain the enforcement of policies on deep sea fishing vessels;
- (d) formulate and coordinate programmes for scientific research in respect of fishing;
- (e) formulate fisheries policies;
- (f) negotiate and enter into any fishing or other contract, agreement or any kind of fishing cooperation with any government, international organization or other institution in pursuance of the provisions of this Act;
- (g) do or undertake any other act or thing required or permitted to be done in furtherance of the purposes and provisions of this Act.

The functions of the Authority to “promote, regulate and control fishing” do not include fisheries management,¹⁴³ or the taking of management measures based on management plans or decisions and international principles such as sustainable use.

Similarly, the functions of the Technical Advisory Committee¹⁴⁴ and the Director-General¹⁴⁵ do not include fisheries management. Functions of the Executive Committee include approving and determining fisheries policies, and approving criteria for the issuance of licences.¹⁴⁶ Neither of these constitutes decisions relating to management measures, mindful that policies only serve as guides for such decisions and licensing criteria are equally broad and normally relate to matters such as the registration and safety of vessels, whether it has been involved in an offence or is reasonably believed to have undertaken IUU fishing.

There is therefore no express mechanism for issuing licenses based on fisheries management plans, measures or other decisions, and no authority expressly designated to take fisheries management decisions. Similarly, the DSFA Regulations focus on licence issuance and do not designate such a mechanism or authority.

However, the Minister is empowered to make regulations *inter alia* concerning the “management of resources” in the EEZ – even though it is not included in the functions of the Authority. The term “resources” is not defined, nor is it qualified, e.g. “fisheries resources” (also not defined).

¹⁴² Section 4.

¹⁴³ For example, different *management measures* must be taken to *regulate* a certain aspect of management, e.g. fishing capacity. Regulating fishing capacity requires an understanding of links between capacity and several related aspects of fisheries management: the way in which access to the fish stocks is regulated, the way in which participants in a fishery react to different types of regulations, and the way in which subsidies affect participation in fisheries. See <http://www.fao.org/fishery/topic/14857/en>

¹⁴⁴ The functions of the Committee refer only to making proposals for fisheries policies, evaluating fisheries projects, advising on the type of fishing vessels, fishing gears and sustainable fishing methods and evaluating reports of performance by the management of its functions and considering the budget. Section 4(9).

¹⁴⁵ The Director-General’s functions focus on licence issuance, preparation of the budget, preparation of short and long term plans for the Authority, record keeping and monitoring and surveillance in the EEZ. Section 6(1).

¹⁴⁶ Section 5(3)(d) and (e).

Concerning MCS, the functions of the Authority to “regulate and control” fishing in the EEZ provide sufficient legal authority. In addition, the Director-General is answerable to the Executive Committee, *inter alia*, for monitoring and surveillance in the EEZ beyond twelve miles and the territorial sea. He is also responsible for keeping and maintaining the following MCS-related records:

- vessels licensed to carry out fishing activities in the EEZ of the United Republic (but there is no mention of related activities);
- catches of fish by vessels licensed to carry out fishing activities;
- illegal practices and defaulters of rules and regulations made under the DSFA Act.

The provision is not open-ended, and there is no reference to information required to be kept under international agreements or by relevant RFMOs such as the IOTC. “Illegal practices” is not defined; it would be important to apply this to Tanzanian-flagged vessels that have violated international conservation and management measures (e.g. of IOTC), whether within or beyond the EEZ.

There is adequate basis for cooperation in fisheries, including MCS, both within Tanzania and internationally. The following provisions form the basis for cooperation, which could be further elaborated in instruments such MOUs/agreements, establishment of joint committees or in a range of other forms.

- The Authority is required to hold consultations with the Ministries responsible for fisheries in Mainland Tanzania and Zanzibar.¹⁴⁷
- The Authority may “establish and maintain a system of collaboration, affiliation, consultation and cooperation with Navy, KMKM, Marine Police, Treasury, Planning Commission, Customs, Research Institutions like the Tanzania Fisheries Research Institute, Institute of Marine Science of Zanzibar, the Commission for Science and Technology and any other person or body of persons ... having functions related to those of the Authority.”¹⁴⁸

This replicates in part the list of persons described as “Authorized officers” under the TSEEZ Act, where certain powers are given to the officers but no lead agency is designated. The appointment or powers of authorized officers are not given in the Act and are addressed in a confusing manner in the Regulations, as discussed below.

- The Authority may negotiate and enter into any “fishing or other contract, agreement or any kind of fishing cooperation with any government, international organization or other institution”.¹⁴⁹ and more general linkages are fostered in other provisions that require geographical balance and consultations, noted below.
- The Act requires geographical balance in its institutional framework. The Minister responsible for the DSFA is the Minister responsible for fisheries in Mainland Tanzania, and the positions of Director General and Deputy Director General (each of which have a term of only three years) are to be divided between Mainland Tanzania and Zanzibar. The members of the Executive Committee and Technical Advisory Committee are similarly geographically balanced. The Authority is required to hold consultations with the ministries responsible for fisheries in Mainland Tanzania and Zanzibar.¹⁵⁰

The Act addresses other administrative and financial matters including budgets, funds and employment.

¹⁴⁷ Section 20.

¹⁴⁸ Section 21.

¹⁴⁹ Section 4(f).

¹⁵⁰ Section 20.

2.1.4.1.4 Offences and penalties

Offences and penalties are set out for failure to furnish information or produce documents,¹⁵¹ but there is no requirement that information be true, complete and correct.

There is also a general penalty for carrying out fishing activities in the EEZ contrary to the Act or regulations.¹⁵² This would be difficult to enforce because “fishing activities” are not defined in the Act or Regulations and, as noted above, related activities are not addressed in the Act. The general penalty has a minimum fine of one billion shillings (around USD 600,000) or imprisonment for not less than twenty years, but no maximum.

This level of penalty is unreasonable for a minor infraction, for example some small mistakes in record-keeping. In keeping with best practices, punishments should be tailored to fit the crime, and “serious violations” as defined in international best practices, such as the UN Fish Stocks Agreement, should carry higher penalties.

There is an offence for assaulting, interfering with, bribing etc an authorized officer in the execution of his duty.¹⁵³ However, as noted above the Act only defines authorized officers and does not provide for their powers or duties, and the Regulations do not refer to authorized officers at all, so this section has no effect and does not create an offence. This is a serious gap for the protection of any person who is officially appointed to exercise duties under the Regulations.

Authority to compound offences was added in 2007,¹⁵⁴ but no controls over the process were required except that the alleged offender must admit commission of the offence in writing. The process is not transparent or accountable.

2.1.4.1.5 Miscellaneous provisions

The Act provides for authority to hold consultations and affiliations, described above, and for appeals to the Minister by any person aggrieved by any decision, order, or term or condition in a license issued under the Act.¹⁵⁵

The Minister is empowered to make regulations in relation to certain matters,¹⁵⁶ but there is a gap because MCS is not among those matters – even though it is among the duties of the Director General as described above.

The Act provides that Regulations may be generally made “for any matter which may be prescribed under this Act”, but this carries no legal meaning. “Prescribed” is a legal term of art meaning included in regulations. So, the provision means that regulations may be made for matters which may be in regulations under the Act, but the list of matters which may be in regulations doesn’t include MCS. Perhaps what was meant is “any matter which falls within the scope of this Act”.

2.1.4.2. Deep Sea Fishing Authority Act, Regulations, 2009

2.1.4.2.1 Introduction

The DSFA Act Regulations, currently under review, consist of six Parts:

¹⁵¹ Section 17.

¹⁵² Section 18(1).

¹⁵³ Section 19.

¹⁵⁴ Section 18(2).

¹⁵⁵ Section 22.

¹⁵⁶ Section 23.

Part I	Preliminary
Part II	Licensing of fishing operations
Part III	Management of fishery resources and protection of marine environment
Part IV	Quality control
Part V	Monitoring, control and surveillance
Part VI	Administration of the Authority
Part VII	Financial provisions
Part VIII	Appeals and manner of lodging appeals
Part IX	Capacity building, awareness and research
Part X	Offences and penalties
Part XI	General provisions
Schedules	

2.1.4.2.2 Preliminary

The Regulations apply to “fishing and related activities in the Exclusive Economic Zone of the United Republic.”¹⁵⁷ However, “related activities” are not defined (a best practices definition appears in Part 5.1.1.1, above).

The application extends beyond the scope of the application and authority of the Act, because the latter does not specify “related activities” in its mandate and application.

Concerning interpretation, the definition of “fish” is similar to that used in the Fisheries Act, 2003, and the same concerns described above apply.¹⁵⁸

“Related activities” are not defined, but “transshipment” (which is a component of related activities) is defined as the “offloading of fish, fishing gear or provisions from one vessel to another or to shore based facilities”. This definition is inconsistent with international usage and best practices, which do not include fishing gear (undefined in the Regulations) and provisions, but do include fish products, not in the definition. A typical best practices definition is:

transferring any fish or fish products to or from any vessel, whether or not the fish or fish products have first been taken on board the vessel from which the fish has passed, excluding situations where the transferral takes place to a smaller vessel for purposes of landing at port.

Confusingly, definitions of “enforcement officers”, “authorized officers” and “fishery inspectors” appear in the Regulations, but it is only the fishery inspectors that are clearly given powers and authority, the others are hardly mentioned in the Regulations. They are all defined simply in terms of the specific Regulation authorizing their respective appointments by the Director General. This causes possible contradictions within the Act and Regulations, and with the TSEEZ Act, as discussed below in Part 5.3.2.5.

The terms “fishing”, “fishing gear”, “fishing vessel” and “person” are not defined.

2.1.4.2.3 Licensing of fishing operations

This is a comprehensive Part which provides for license issuance, conditions, fees, inspections, suspension, and related matters. Some criteria for license issuance are provided.

¹⁵⁷ Regulation 2.

¹⁵⁸ i.e., “fish” is defined as “all forms of aquatic or amphibious life” but the examples given all relate to animals. It is standard to define fish as including plants and animals, for purposes of managing both and preserving habitat and biodiversity.

Concerning MCS aspects of licensing, licensing officers are appointed by the Director General, and his/her duties are to keep and maintain records for applications received, vessels inspected and licenses issued and to process application forms. There is no authority for officers to review applications or compliance by licence holders and make recommendations on issuance, suspension, etc., or to enforce.

Applications must be made by “a person who wishes to conduct fishing in the EEZ” for a (fishing) licence and registration of an Automatic Location Communicator.¹⁵⁹ However, this may be difficult to enforce, as it is applied to persons who wish to conduct fishing in the EEZ, rather to an owner, operator or charterer of a vessel.

The same person must notify reports to the Director General, and only enter the EEZ after receipt of notification is acknowledged. This is seriously flawed because it does not clearly indicate if this applies only to unlicensed vessels or allow the Director General an opportunity to deny entry into the EEZ. It is confusing whether this applies to unlicensed vessels in transit; do they also need to notify the Director General of similar matters and if not why are licence applicants only targeted?

2.1.4.2.4 Management of fishery resources and protection of marine environment

As noted above, the Act does not assign the DSFA a specific function to manage fishery resources, but it does empower the Minister to make regulations on the management of “resources” in the EEZ.¹⁶⁰

Although this Part of the Regulations refers to management, there is still no clear mechanism for formulating and taking management decisions, although principles of sustainable fisheries management are outlined,¹⁶¹ and the responsibilities of stock assessment and imposing measures for restoration of fish stocks are given to the Director General. There is no provision for maintenance of stocks at maximum sustainable yield or optimum yield, as required in the 1982 Convention.

Section 18 declares that all fishery resources “acquired” from the EEZ shall remain the property of the United Republic in accordance with the Act, TSEEZ Act or any other written law. This is inconsistent with international law and does not appear in other legislation, including the Acts cited.

In particular, it is inconsistent with Section 9 of the TSEEZ Act which vests in the United Republic “sovereign rights” (considerably different from property rights) for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and its subsoil, and with regard to other activities for the economic exploration and exploitation of the Zone, such as the production of energy from the water, currents and winds. It also vests jurisdiction, inter alia, with regard to marine scientific research and the protection and preservation of the marine environment. This is consistent with the 1982 Convention.

The language in section 18 is not only inconsistent with national and international law but is tantamount to providing that any fish caught in the EEZ is the property of the United Republic, no matter who catches them or what they paid for a license to catch.

Landing and transshipment of “fishery resources” are addressed,¹⁶² but this does not cover fish products, as required in international fisheries instruments and best practices. There are some concerns in relation to MCS aspects:

¹⁵⁹ Regulation 11.

¹⁶⁰ Section 23 (1)(a). Note it doesn't specify the type of resources to be managed.

¹⁶¹ Regulation 19.

¹⁶² Regulation 24.

- This provision is inconsistent with the definition of transshipment discussed above, which refers to offloading of “fish, fishing gear or provisions”.
- Transshipment is to be carried out at designated ports, but there is no provision for supervised transshipment at sea in accordance with IOTC Resolution 12/05, discussed above.
- There is a requirement for a 48 hour notification prior to landing in order that inspection may be organized. A request for entry into port is not required, in accordance with international best practices and requirements under the FAO Agreement on port State measures. There is no provision for a “request” to land, simply a “notification” of landing.

Water pollution and degradation of the marine environment are prohibited.¹⁶³

Information sharing is permitted, but only with FAO, and not regional organizations in which Tanzania is member, or other relevant bodies or institutions.

Standard information-related provisions essential for fisheries management and MCS and for a transparent approach to fisheries management are not included, such as:

- ownership of information;
- authority to require persons to keep and furnish certain information (e.g. any information and data, including information relating to fishing, fisheries, aquaculture, landing, research, storage, food safety, processing, buying, selling, exports and other related transactions);
- general categories of persons who may be required to keep and furnish information (e.g. holders of licences or authorizations, owners, operators, legal representatives, and masters of licensed vessels, owners and persons in charge of any premises where fish or fish products are received, bought, stored, transported, processed, sold, etc.);
- power to audit and inspect information.

2.1.4.2.5 Quality control

The Minister is given power to impose conditions for export including processing establishments, and in cooperation with the Minister for fisheries in Zanzibar, designate a competent authority.¹⁶⁴

The only implications this could have for MCS is information about the fish exported, as there is currently no provision giving Tanzania ownership of information on fish caught in the EEZ.

Otherwise, this is inconsistent with the application of the Act which is expressly limited to fishing and related activities in the EEZ.

2.1.4.2.6 Monitoring, control and surveillance

The paramount concern with this Part is the confusion in the Act and Regulations regarding the appointment, roles and responsibilities of “enforcement officers”, “authorized officers”, and “fishery inspectors”. All of these categories are defined¹⁶⁵ in relation to the various regulations under which they may be respectively appointed. Apart from providing for appointment, the Regulations are unclear, very basic or non-existent as to their authorities and powers.

The establishment, powers and functions of a Surveillance Unit are clearly described,¹⁶⁶ and it is to consist of a number of “enforcement officers” as the Director General may determine. However:

¹⁶³ Regulation 25.

¹⁶⁴ Regulation 27.

¹⁶⁵ Regulation 3.

¹⁶⁶ Regulations 31 and 32.

- There is no explanation of who might be an enforcement officer – e.g. are they comprised of enforcement officers, fishery inspectors and/or authorized officers? There is a significant gap in the Regulations because this question is unanswered.
- Under the powers and functions of the Surveillance Unit,¹⁶⁷ the Regulations provide that “enforcement officers” may exercise the powers of an “authorised officer”, but such powers are not provided anywhere.

Careful consideration of each category as it is used in the Regulations and Act do not dispel the confusion, and reveal more conflicts and gaps:

- “Enforcement officer” is only used twice in the text of the Regulations: in relation to the Surveillance Unit as described above, and the *definition* of long arm jurisdiction¹⁶⁸ (but not the corresponding *provision* describing who may enforce long arm jurisdiction¹⁶⁹). There are no powers or authorities of enforcement officers stated in the Regulations.
- “Fishery inspectors” appointed by the Director General have a range of enforcement powers under Regulation 33, many of which overlap with the functions of the Unit. The powers are limited in comparison with best practices. They are mentioned also in the context of:
 - Regulation 40: logbook inspection;
 - Regulation 42: long arm jurisdiction;
 - Regulation 69: which makes it an offence to assault, etc a fishery inspector in execution of his duty;
 - various Schedules.
- “Authorized officers” are designated (not appointed) under Regulation 35, which is consistent with the provisions of the Act (see Part 5.3.1.2 above expressing concerns with the Act). Neither the Act nor the Regulations set out the powers and authorities of authorized officers. They are only mentioned in the context of:
 - Regulation 32(d): erroneously assigns “enforcement officers” the “powers of an authorised officer” (there are no such powers set out in the Act or Regulations);
 - Regulation 35: designates categories of authorised officers (not their appointment);
 - Regulation 42: gives an authorised officer the power of hot pursuit;
 - Regulation 64: provides for training of authorised officers;
 - Regulation 69: makes it an offence to assault, etc an authorised officer in execution of his duty (but no duties are described in the Act or Regulations).

The difference between authorities given to “enforcement officers” (if any) “fishery inspectors” and “authorised officers” is therefore unclear and very confusing. None has the power of arrest in the EEZ or generally, and categories of authorized officers who have the power of arrest on land in the territorial sea, e.g. police officers, do not have such powers in the EEZ.

Unless clarifications are made, arrests, detentions and other MCS activity could easily be challenged by the alleged violator.

There is a very weak provision for fishery observers.¹⁷⁰ It does not elaborate the rights of the observer, or provide for duties of the vessel owner or operator to pay for the observer’s salary,

¹⁶⁷ Regulation 32(3)(d).

¹⁶⁸ Regulation 3. This definition merely refers to “the process in which an enforcement officer or a fishery inspector is empowered to pursue a fishing vessel within and beyond the jurisdiction of the United Republic.”

¹⁶⁹ Regulation 42, which refers to a fishery officer or authorized officer, not an enforcement officer.

¹⁷⁰ Regulation 34.

training, travel, insurance or give him/her a certain standard of work space, accommodation and food while on a vessel. It does not have requirements for embarkation and disembarkation or duties of the master and crew towards him/her. Importantly, the functions of the observer (scientific, monitoring, compliance) are not stated.

This provision does not meet the standard of international best practices or provide a legal foundation for IOTC obligations¹⁷¹ and is a severe constraint to MCS operations.

Basic procedures are provided for pre-licensing,¹⁷² offloading¹⁷³ and sea¹⁷⁴ inspections. There are no requirements for port inspections that implement IOTC Resolution 10/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

A captain of a fishing vessel, while in an unauthorised fishing area or time in the United Republic, must ensure that fishing gear and other equipment onboard used for fishing are covered and secured in such a manner that they can not be used in fishing.¹⁷⁵ The general intent that fishing gear should be stowed and not readily available for fishing is clear, but what is not so clear is:

- “unauthorised fishing area or time in the United Republic”, as this does not cover all conceivable management tools. It is usually stated that gear must be stowed “unless the vessel is authorized to engage in fishing in that area.” Normally it is the master, owner and/or operator who is/are liable for this, and these terms are normally defined in the law.
- “United Republic” – would this apply to vessels in the territorial sea and if so who would be responsible for enforcement?

A captain must maintain a logbook with certain very basic information,¹⁷⁶ but there is no standard form given in a schedule for logbooks. Reference is made to “logbook sheet copies” and there is no reference to electronic logbooks. Fisheries management and MCS would require more elaborate information and controls for logbooks and reporting by vessels prior to entry, while in the zone and upon exit.

Requirements for displaying radio call signs are given¹⁷⁷ but not for vessel marking generally, which is another impediment for effective MCS.

A regulation on hot pursuit is included that is contrary to requirements in international law and best practices¹⁷⁸ and is unworkable in MCS operations. Some of the many elements that are incorrect or incomplete:

- power is given to pursue a vessel “beyond waters of the United Republic”, but the Regulations do not specify that the pursuit should not extend to the territorial sea of another country, as required under Article 111 of the 1982 Convention;¹⁷⁹
- the pursuit must be based on evidence from VMS, GPS and other “accepted international technological communication system”, but no legal basis for the pursuit is given as required in Article 111 of the 1982 Convention, i.e. “hot pursuit of a foreign ship may be undertaken

¹⁷¹ e.g. IOTC Resolution 11/04 on a Regional Observer Scheme which provides, *inter alia*, the duty for Tanzania to ensure that the vessel on which an observer is placed shall provide suitable food and lodging during the observer's deployment at the same level as the officers, where possible. Vessel masters must ensure that all necessary co-operation is extended to observers in order for them to carry out their duties safely including providing access, as required, to the retained catch, and catch which is intended to be discarded.

¹⁷² Regulation 36.

¹⁷³ Regulation 37.

¹⁷⁴ Regulation 38.

¹⁷⁵ Regulation 39.

¹⁷⁶ Regulation 40.

¹⁷⁷ Regulation 41.

¹⁷⁸ Regulation 42.

¹⁷⁹ The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.

when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State.”

- there is no provision on the commencement of hot pursuit, as provided in Article 111 of the 1982 Convention;¹⁸⁰
- there are no requirements for when hot pursuit is deemed to have begun, as provided in Article 111 of the 1982 Convention;¹⁸¹
- there is no provision for what MCS officers are authorized to do in relation to the pursued vessel in areas beyond national jurisdiction, as provided in Article 111 of the 1982 Convention;¹⁸²

The regulation on hot pursuit contains a largely legally unworkable sub-regulation on long arm jurisdiction, and provides that a fishing vessel that has:

“violated laws of another State and flees to the United Republic shall be arrested and charged in accordance with the provisions of the Act and these Regulations or any other written law or handed over to the State where the offence has been committed.”

This type of provision is very different from hot pursuit and should not be joined to it. There is no legal basis to arrest and charge such a vessel because the Act and Regulations do not provide for charging a vessel that has violated the laws of another State. It is not in best practices of international law to do so without any agreement of the other State, as it could be taken as a violation of their sovereignty and, if the vessel is flying the flag of a third State, would violate the jurisdiction of that State over the vessel.

The alternative, to hand it over to the State where the offence has been committed is viable under certain circumstances. There is also a wide range of other actions that should be considered, including requesting the flag State to take action or cooperate by sending an inspection team. The possibility of proposing such a vessel on an IUU Vessel List (e.g. of IOTC) should also be considered.

A regulation, on “Prohibition of fishery resources trade” is mistitled¹⁸³ and its paragraphs are contradictory.¹⁸⁴ It seems to be based on a provision in the well-known US law called the “Lacey

¹⁸⁰ Hot pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

The right of hot pursuit shall apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

¹⁸¹ Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

¹⁸² An authorized officer may, following hot pursuit outside the fisheries waters in accordance with international law and commenced within the fisheries waters, stop board and search outside the fisheries waters any vessel which he/she has reasonable grounds to believe has been used in the commission of an offence under this Act, exercise any powers conferred by this Act and bring such vessel and all persons and things aboard back into the fishery waters.

¹⁸³ It should be titled “Prohibited activities relating to fish taken contrary to the laws of another State”.

¹⁸⁴ Regulation 43.

Act”, which has been included in national fisheries legislation by countries worldwide. That provision prohibits any person to:

take, import, export, tranship, land, transport, sell, receive, acquire or buy any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of international conservation and management measures.

This Regulation generally prohibits persons from landing, transporting, selling, receiving, acquiring or purchasing any fish taken, possessed transported or sold contrary to the laws of another State and requires such persons to be arrested and handed over to the State where the offence was committed.

This would not apply to the previous Regulation, which focuses on fleeing vessels, not persons, and on violating the laws of another State, not dealing with IUU-caught fish in Tanzanian waters.

There are some major deficiencies in this provision, which should be repealed as it cannot be enforced, or if it were would not be consistent with international law:

- It does not consider that the person dealing in IUU caught fish in Tanzania did not commit the offence in the other country (he/she is only the importer, transporter, seller etc.).
- It does not create an offence in Tanzania to deal in IUU-caught products (which Lacey Act provisions do) because the only recourse is to hand the person over to another State. The person did not engage in IUU fishing in the other State and probably was never physically in that other State.
- If the person were handed over to the other State, there would be no grounds on which to take legal proceedings against him/her because he/she did not commit the offence but received the fish or fish products in another jurisdiction.
- It only applies to “fish”, and not to fish products.

Paragraph (2) in this Regulation describes an evidentiary presumption which is contradictory to the first paragraph and does not belong here. It provides that any fish found on board a fishing vessel within the EEZ shall be presumed to have been taken within the EEZ by such vessel.

It is standard for fisheries legislation to contain a separate part on evidence, including presumptions, onus of proof, certificate evidence, destruction of evidence, tampering with evidence and other relevant matters.

Paragraph (2) would belong in such a Part, but it is defective because:

- it does not recognize that vessels must declare the catch on board when they enter Tanzanian waters or are inspected – it would be illogical to accept the declaration then presume the fish were caught in the EEZ;
- it does not apply only to fish on board a fishing vessel that has been found to have committed an offence;
- it does not allow the contrary to be proved;
- it does not apply to Tanzanian waters, just the EEZ.

The standard language for such a presumption is: “All fish found on board any fishing vessel which has been used in the commission of an offence under this Act shall be presumed to have been caught during the commission of that offence, unless the contrary is proved.”

Paragraph (2) is illogical, impedes enforcement and should be repealed.

2.1.4.2.7 Administration of the Authority, Financial provisions, Appeals and manner of lodging appeals

The provisions in this part relate to the management and administration of the DSFA, and to the process of appeal by persons aggrieved in relation to licenses, and are not directly related to fisheries MCS.

2.1.4.2.8 Capacity building, awareness and research

This Part permits the Director General to issue special permits for fisheries scientific research on the basis of receiving a proposal and being copied on the final research report.¹⁸⁵ This does not provide the benefits to the coastal State that are envisioned in the 1982 Convention, as described in Part 5.1.1.10 above. There should be much broader conditions. It is also not clear how this may be enforced, or whether the controls are adequate to prevent commercial fishing from being undertaken under the guise of scientific research.

The Director is also empowered to support public awareness creation, education programs and training institutions.¹⁸⁶ The Authority may offer scholarships for training “staff, authorised officers or any other person to enhance capacity for the management of the fishery resources and enforcement of the Act.”

2.1.4.2.9 Offences and penalties

Specific offences are provided for falsification of documents¹⁸⁷ (but not destruction of evidence or giving false, incomplete or misleading information) and possession of shark fins.¹⁸⁸ The former has no penalty, but just declares this activity to be an offence. The latter is for possession of shark fins without a carcass onboard a vessel; this does not recognize Tanzania’s obligations under IOTC to fully utilise sharks caught in association with fisheries managed by the IOTC (IOTC Resolution 05/05, paragraph 3) and to ensure that shark fins make up no more than five per cent of the total weight of sharks onboard (IOTC Resolution 05/05, paragraph 4).¹⁸⁹

Further offences are described in relation to fishing (i.e. unlicensed fishing),¹⁹⁰ licence conditions,¹⁹¹ obstruction of inspectors and observers,¹⁹² and pollution and degradation of the marine environment.¹⁹³

There is no specific offence for fishing or carrying out related activities contrary to the Act and Regulations, and no offences are created in relation to Tanzanian nationals in areas beyond national jurisdiction or violation of international conservation and management measures such as IOTC resolutions.

There is a Regulation on general penalties¹⁹⁴ which applies where no specific penalty has been provided (e.g. for falsification of documents). However there are gaps that could result in problems in implementation. For example, some requirements place responsibility on a fishing vessel rather than a person, such as Regulation 28. It provides that “A fishing vessel licensed under these Regulations shall be equipped with an Automatic Location Communicator”. There is no indication who should be prosecuted if the fishing vessel is not so equipped – the master, owner, operator, charterer? All of them? None of them, just the vessel? Inclusion of best practices provisions on the liability of the

¹⁸⁵ Regulation 62.

¹⁸⁶ Regulations 63 and 64.

¹⁸⁷ Regulation 65.

¹⁸⁸ Regulation 66.

¹⁸⁹ Other requirements for sharks are under review at IOTC. Current practices are to ensure that fins are attached to the carcasses in a certain way.

¹⁹⁰ Regulation 67.

¹⁹¹ Regulation 68.

¹⁹² Regulation 69.

¹⁹³ Regulation 70.

¹⁹⁴ Regulation 71.

owner, operator and master, directors of companies, etc. (not done in the Act or Regulations) would close this type of gap.

Fines and penalties are described unevenly.

- no fine is provided for falsification of documents;
- Levels of fines and penalties are minimum one billion shillings or twenty years in prison for offences on:
 - shark fins;
 - licence conditions.
- Levels of fines and penalties are minimum one million shillings or two years in prison for:
 - obstruction of inspectors etc (assault of officers is considered to be a “serious offence” in international law and should be subject to the highest possible fine);
 - general penalties.
- Maximum or minimum fines and terms of imprisonment are *not set* for offences relating to:
 - fishing (fines are five billion shillings and imprisonment twenty years); and
 - pollution (fines are twenty billion shillings and imprisonment ten years, but there is no provision for compensation/cleanup).

Such an apparently arbitrary, incomplete and vague approach towards describing offences and penalties is a clear constraint on the effectiveness of fisheries MCS. There is little indication that consideration was given to deterrent effect or making the punishment fit the crime. Judges are often reluctant to award minimum penalties where the economic value of the offence was much lower and it was a first-time offence, so some flexibility is needed, together with criteria for the determination of fines and penalties.

There are no “continuing offence” provisions (each day of a continuing offence is a separate offence), nor the usual suite of presumptions for evidence. In fact there are no rules for evidence.

There is no elaboration in the Act or Regulations of conditions for setting performance bonds for foreign vessels as part of conditions for fishing, for requirements relating to agreements under which foreign vessels may fish or for releasing

2.1.4.2.10 General provisions

The general provisions do not directly affect fisheries MCS, but Regulation 75 has some relevance. It permits the public “on showing reasonable cause and on payment of a fee...access entries from the registers”. It is difficult to understand why reasonable cause must be shown.

Other Regulations in this Part allow the Director General to issue guidelines, etc to assist the implementation of the Regulations and requires him to prepare annual reports of the Authority’s activities. The Minister may amend the Schedules by Order, and social responsibility is described in a vague way: “The Authority may promote and assist, through grants community based fishery management programme and social services initiatives.”

2.2 Policy framework

2.2.1 Introduction

There are several government policies and strategies that affect fisheries,¹⁹⁵ but this Part will focus only on those with a focus on fisheries because they describe the sectoral priorities and objectives of Government.

¹⁹⁵ They include: Tanzania Development Vision 2025; National Strategy for Growth and Reduction of Poverty 2010; Millennium Development Goals 2000; Rural Development Policy 2003; National Trade Policy 2003; National Empowerment Policy 2004; Investment Policy 1997; National Land Policy 1005; Fisheries Master

2.2.2 National Fisheries policy

The Government of Tanzania website addresses reform in the Fisheries Sector as follows:¹⁹⁶

The fisheries resources are renewable resources, which are limited, and therefore they have to be conserved, managed and developed on sustainable basis. The present fisheries policy has addressed clearly the problems faced by the sector and the actions to be undertaken. The major focus is on the promotion of sustainable exploitation, utilization and marketing of fish resources to provide the intended national social economic objectives and achieve effective protection of the aquatic environment to sustain development.

The 1997 National Fisheries Policy and Strategy Statement had as its overall goal to promote conservation, development and sustainable management of the fisheries resources for the benefit of the present and future generations. It had a number of objectives through fisheries management,¹⁹⁷ and set out policy and strategy statements in relation to thirteen areas.¹⁹⁸ Its programme expressed a need for revised fisheries legislation, called for the development of a national fisheries programme to be known as the Tanzania Fisheries Action Plan to address the implementation of the policy strategies and the establishment of a Fisheries Development Advisory Committee.

A new policy is under development and in November, 2011 a National Fisheries Policy Draft was completed. That draft has been reviewed and improved/amended by Government over the past two years, and the final policy is expected to be a public document in mid-2014.

The reported rationale in 2011 for a new policy was that the 1997 National Fisheries Sector Policy and Strategy Statement was outdated. There had been significant changes since 1997, both from within and outside the country including the introduction of commercial fishing, processing and marketing in the domestic and foreign markets that require compliance with international quality and

Plan Report of 2002; Environment Management policy 1997; National Water Policy 2002; National Irrigation Policy 2010.

¹⁹⁶ <http://www.tanzania.go.tz/naturalresources.html>

¹⁹⁷ The objectives were:

- (i) To put into efficient use available resources in order to increase fish production so as to improve fish availability as well as contribute to the growth of the economy;
- (ii) Enhanced knowledge of the fisheries resource base;
- (iii) Improving fisheries product utilization and their marketability;
- (iv) To encourage and support all initiatives leading to the protection and sustainable use of the fish stocks and aquatic resources;
- (v) To protect productivity and biological diversity of coastal aquatic ecosystems through prevention of habitat destruction, pollution and over exploitation;
- (vi) Promote small scale semi-intensive aquaculture systems with simple technologies and low capital investment;
- (vii) Promote effective farm and fish health management practices favouring hygienic measures;
- (viii) Improved involvement of fisher communities in the planning development and management of fishery resources;
- (ix) Pursue a continuing integrated programme for fisheries in the coastal zones to meet the ecological and social economic needs of present and future generations;
- (x) To strengthen regional and international collaboration in the sustainable exploitation, management and conservation of resources in shared water bodies;
- (xi) To promote and achieve effective utilisation of the EEZ.

¹⁹⁸ They included: resource management and control mechanism; improved knowledge of the fisheries resource base; applied/strategic research; efficient resources utilisation and marketing; training and education; fisheries resources and aquatic environment protection; aquaculture development; community participation; fisheries information management; gender and fisheries sector development; intersectoral collaboration, integration of fisheries into coastal area management; and regional and international cooperation.

standards requirements. There was also a need to cope with regional and international conventions, protocols and agreements, and to involve stakeholders. Other concerns included climatic and ecosystem changes, fisheries and its environment, regional and international conflicts on the utilization of shared resources and fish trade that threaten the long term sustainability of fisheries and its contribution to the national economy.

The 2011 draft policy was formulated as a result of an evaluation conducted during the thirteen years of implementation of the 1997 Policy and Strategy Statement.¹⁹⁹ The Foreword, by Dr. David M. David (MP), Minister for Livestock and Fisheries Development, Dar es Salaam noted that the preparation of the policy was made possible through teamwork and collaboration with relevant stakeholders.

Constraints to fisheries and aquaculture development were generally thought to include inadequate control, enforcement and prosecution of offences related to unsustainable and destructive fishing techniques as well as open access fisheries leading to excessive fishing pressure on selected fisheries, especially those with high export or market value.

Legal issues²⁰⁰ were not thought to be among the constraints to fisheries and aquaculture development. However, they could present a challenge to the Fisheries and Aquaculture Department, together other policy objectives. A key legal challenge could be the legal and regulatory framework that guided the fisheries management systems and harmonization to obligations and rights emerging from the multilateral and regional trading system arrangements.

The policy review was meant to accommodate the changes since 1997 and the dynamics of the fisheries sector. The changes generally took place in the following areas:

- (a) Resource management, utilization and marketing controls
- (b) Applied strategic research, knowledge of the fisheries resource base and its dynamics
- (c) Training, extension and information services
- (d) Aquaculture development and aquatic environmental protection
- (e) Inter and cross sectoral collaboration
- (f) Regional and international cooperation
- (g) Cross cutting and cross-sectoral policies

The long term objective could address achieving sustainable fisheries that will lead to food security, poverty reduction and increase in national income. For implementation, a strategy and development programme would need to be developed.

The policy development process has considered a range of areas, such as the following. Issues, objectives and statements would need to be developed for each, together with institutional arrangements and monitoring and evaluation of the policy.

- Management and control of the fisheries resources
- Demand driven and collaborative research
- Fisheries extensions services
- Protection of fisheries resources and aquatic environment
- Legal and regulatory framework
- Commercial and environmental sustainable aquaculture
- Fisheries and aquaculture infrastructure

¹⁹⁹ It was done through various for a, including stakeholder meetings in 2009, 2010 and 2011, projects and programmes evaluation reports and annual sectoral performance reports.

²⁰⁰ e.g. weak laws, need for better harmonization/integration of laws between local and national levels and among Mainland Tanzania, Zanzibar and DSFA, need for improved understanding, implementation and compliance with laws.

- Information on the fisheries resource base
- Institutional framework
- Human resources development
- Regional and international organisation cooperation
- Cross-cutting issues

Community level fisheries, the environment and trade would be important cross-cutting themes. Protected areas to be established in the EEZ may also be a focus.

- Issues relating to *management and control of the fisheries resources* could include destructive fishing practices, community user rights, alternative livelihoods, control over open access fisheries and promoting the establishment of protected areas in marine and fresh waters, including the EEZ.
- For *protection of fisheries resources and aquatic environment*, considerations could focus on strengthening fisheries management in all national water bodies and regulating cross-border fishing, fish and fishery products trade. It also includes a draft policy statement to strengthen mechanisms to curb IUU fishing and promote/support good governance on the management of habitats/resources that have an impact on fisheries.
- Concerning a *legal and regulatory framework*, trade and private sector issues would need to be addressed given the increased trade and export activities in the past decade. Effective and transparent legal systems would need to be developed.
- The *institutional framework* would need to address local communities and organizations, as well as coordination of the existing institutional framework to effectively manage the fisheries sector.
- *Regional and international organisation cooperation* would need to aim at strengthened cooperation by the Government with regional and international organisations, *inter alia* including fisheries resource management, research, training, information exchange and trade, and strengthening capacity to timely act on emerging issues.
- *Cross-cutting issues* could include access to finance in fisheries and aquaculture, sustainable environmental management and conservation and gender and equity in fisheries.

It is anticipated that the policy will be comprehensive and far-reaching.

2.2.3 Zanzibar

The Fisheries Sector Policy 2002 focused on two main areas: sub-sector issues; and trade, marketing and prices. The latter is largely irrelevant to this study, and the former contained the issues shown below. For each issue, the policy outlined an objective, issues, constraints, policy statement and policy strategies.

The sub-sector issues in Zanzibar are more oriented towards specific structural improvements than the areas identified in the 2011 National Fisheries Policy Draft. They include vessels, raw materials, gear, and storage facilities. Sustainability and harmony are emphasized and community participation encouraged. The sub-sector issues and their objectives are:

1. **Fish catch:** To increase fish catches in artisanal fisheries in a sustainable manner.
2. **Fishing vessels:** To promote the artisanal fishers to use larger seaworthy vessels to enable them to fish offshore grounds.

3. **Acquisition of raw materials:** To ensure the availability of affordable fishing materials for fishers.
4. **Industrial fisheries:** To exploit offshore resources in order to raise the economic well-being of fishers, raise the nutritional status and contribute to foreign exchange earnings.
5. **Misallocated credit facilities:** To ensure that credit facilities promote Maximum Sustainable Yield.
6. **Fishing gear:** To stop the use of destructive fishing gear and techniques in artisanal fisheries.
7. **Conflicts:** To ensure the fishing communities live in harmony.
8. **Export of fisheries resources:** To increase exports of marine resources.
9. **Aquaculture:** To increase the production of seaweed, cultured finfish, crustacean and mollusc species to complement the declining production from capture fisheries.
10. **Storage facilities:** To establish adequate cold storage facilities.
11. **Economic status of fishers:** To improve the economic conditions of fishers.
12. **Conservation:** To promote the conservation of the marine environment.
13. **Integrated coastal zone management:** To establish harmony between institutions involved in using coastal zone areas.

Two of the issues referred to legal matters in addressing policy strategies:

- Strategies for “Conflicts” included involving community groups and/or fishers associations to enforce relevant laws and regulations, and promoting the establishment of by-laws to guide local fishing.
- Strategies for “Conservation” included to ensure effective enforcement of fisheries legislation, and legislate against all activities leading to degradation of the quality of the aquatic environment and develop effective programmes to monitor, control and provide surveillance of the same.

Issues where there might be more attention to legislative needs include promotion of offshore fishing/vessels/industrial fishing so the fishers know and understand the DSFA requirements, regulation of an increased artisanal catch and conservation.

The 1992 National Environmental Policy for Zanzibar²⁰¹ does not specifically mention fisheries, but does refer to establishing a programme for integrated coastal zone management and enacting environmental legislation.

The promotion of sustainable fishing is an objective in Zanzibar Vision 2020²⁰². The promotion of sustainable fish production for domestic consumption and export is declared to be important for diversifying the Zanzibar economy and increasing Zanzibaris welfare and the fisheries’ contribution to the GDP. The Vision states that sustainable fishing should take into consideration the importance of environment, the socio-economic structures and the needs of the people. Among its objectives are:

- Efficiency in utilization of the existing fishing potential and ensure ecological balance through establishment of community based management areas for marine resources and development of professional groups, joint-venture, partnership and cooperative associations relevant to the development of fishing activities.
- Promoting public awareness on the scenic value of marine habitats.
- Establishing aquaculture activities.
- Improving international competitiveness by providing incentives, supportive market research and extension services to fishermen.
- Preparing and disseminating a code of fishing practice and processing methods, which allow for health, safety handling, storage, marketing and environmental concerns.

²⁰¹ <http://www.tzonline.org/pdf/nationalenvironmentalpolicyforzanzibar.pdf>

²⁰² http://zanzibar.go.tz/admin/uploads/Zanzibar_Vision_2020.pdf

- Encouraging foreign and domestic investors to establish large scale, deep sea fishing business and fish processing factories.

3. GEOGRAPHIC AND THEMATIC JURISDICTION BETWEEN THE MAINLAND AND ZANZIBAR FOR NON-UNION MATTERS

3.1 Geographic jurisdiction

Union matters with some relevance for fisheries set out in Schedule 1 of the Constitution of the United Republic include:

- Foreign Affairs.
- Defence and Security.
- Police.
- Service in the Government of the United Republic.
- Harbours, matters relating to air transport, posts and telecommunications.
- Industrial licensing and statistics.
- Mineral oil resources, including crude oil other categories of oil or products and natural gas (as they affect the marine environment).
- Civil aviation (as it relates to fishing operations).
- Research.
- Statistics.
- The Court of Appeal of the United Republic.

All other matters are non-union matters.

As indicated in Part 2, the application provisions in the Mainland Tanzania, and Zanzibar fisheries Acts and the DSFA Act do not specify the geographic areas of water to which they respectively apply. There are some inconsistencies among these Acts and the TSEEZ Act:

- The Tanzanian Fisheries Act refers specifically to the territorial sea in the context of foreign vessels.
- Tanzanian Fisheries Regulations only refer to the EEZ in the context of unexploited fin fish potential under potential investment opportunities.
- The Zanzibar Fisheries Act refers frequently to internal waters, territorial sea and EEZ of Zanzibar, including empowering authorized officers to exercise their functions in those zones.
- The Zanzibar Fisheries Act, in the interpretation section, incorrectly describes the EEZ, contrary to the TSEEZ Act.
- The Zanzibar Fisheries Act provides inconsistent definitions of “internal waters” and “territorial waters”.
- The application provision in the DSFA Act refers to Mainland Tanzania and Zanzibar, but not to any specific maritime zone. In the text, the functions of the DSFA are applied only to the EEZ. The Regulations also provide that a licensed fishing vessel is prohibited from fishing in the internal waters and territorial sea. This would prevent a vessel from being permitted to do so under any other Act.

- The Regulations also provide for a quality management programme, allowing the Minister to impose conditions relating to the export of fishery resources including processing establishments.
- The Marine Parks and Reserves Act, 1994, provides that the Minister may...declare “any area within territorial waters or exclusive economic zone or any island or coastal area to be a marine park”.²⁰³
- The TSEEZ Act however designates and gives powers to authorized officers “for the purposes of this Act”, but does not specify offences which the authorized officers can enforce other than assault, etc of authorized officers. The Act applies to Mainland Tanzania and Zanzibar but does not expressly specify that it applies to all maritime zones or designate responsibility for managing resources in the EEZ, or the extent to which Mainland Tanzania and Zanzibar may do so.²⁰⁴ It does not specify the court that has jurisdiction over offences in the EEZ.
- Maritime zones between Mainland Tanzania and Zanzibar do not appear to have been agreed, and this may affect the implementation of the respective laws and the declaration of marine parks and reserves where there is any apparent overlap.
- There is no apparent restriction on the outer limits of areas to be governed by BMUs and Village Fishermens’ Committees (VFCs).

The various instruments should be clarified so their areas of application and authorities are consistent with each other and with the TSEEZ Act. This would provide a sound foundation for future cooperation.

3.2 Thematic jurisdiction

The establishment of co-management mechanisms has taken place in both Mainland Tanzania and Zanzibar. The former has enacted legislation and guidelines to establish BMUs, and the latter to establish marine protected areas that include VFCs.

They each have different legal structures and authorities, but both are empowered to adopt by-laws and enforce them as described below. In the case of Mainland Tanzania, the by-laws are developed at BMU, Village and District level, and in Zanzibar they are developed in VFC and promulgated by the Government.

Despite the legal framework, it has been observed that there is a lack of integration between the local and national levels of fisheries management:²⁰⁵

“Co-management initiatives in Tanzania correctly attempt to bring local communities and resource users into the process of fisheries management, but it is unclear whether they have the capacity and the necessary resources to execute the management responsibilities devolved to them. It may be the case that local communities are given an unfunded mandate through

²⁰³ Section 8.

²⁰⁴ The issue of appointment and authorities of authorized officers, fisheries officers, fisheries inspectors and other MCS personnel was discussed above, and it was noted that the terms are used interchangeably within legislation and between the various Acts. This results in confusing and overlapping MCS authorities among the different legislations, *inter alia* because of gaps in the definition of terms, appointment requirements and uncertain geographical application.

²⁰⁵ ‘Untangling the Nets’ The Governance of Tanzania’s Marine Fisheries. Mariam January and Honest Prosper Ngowi. I SAIIA February 2010. <http://www.africaportal.org/dspace/articles/untangling-nets-governance-tanzania%E2%80%99s-marine-fisheries>

co-management initiatives, and responsibility is handed over to them precisely because the government does not have the resources to carry out effective management itself.”

This type of situation should be addressed in policies, and legal linkages and support mechanisms should, as appropriate, be strengthened. It is understood that the World Bank is undertaking a performance review of BMUs and VFCs.

3.2.1 Beach Management Units

The legal framework for Beach Management Units is described above in Parts 2.1.2.6 and 2.1.2.2.9.

As noted above, the Act provides for a management agreement between the Director and BMUs or one or more local authorities,²⁰⁶ and the Regulations²⁰⁷ provide for BMU establishment and functions, conflict of interest and a national register of BMUs.

The Regulations require every fishing community, in collaboration with relevant village government, to form BMUs. Non-citizens are only allowed membership under certain conditions, including holding a work permit and “Dago” fishers²⁰⁸ are not allowed membership.

Neither the Act nor Regulations refer to the marine zones in which BMUs may operate – internal or territorial waters or the EEZ. The area is determined solely in the management agreement with the Director, and the Guidelines only refer to the duty of the BMU Executive Committee to identify Collaborative Fisheries Management Areas (CFMAs) with adjacent villages as agreed by the respective stakeholders.

The Guidelines for establishing community based collaborative fisheries management in marine waters of Tanzania²⁰⁹ provide guidance on fisheries policy and legislation, management, co-management, good leadership and governance and conflict management. There is no guidance on designation of areas.

The Guidelines describe the key institutional roles and responsibilities as shown below. Development of co-management BMU by-laws involves the first three levels of government, and the Village Government is tasked with supporting BMUs in their enforcement.

As noted above, Regulation 134 empowers the BMUs, in collaboration with village councils, to “develop by-laws and engage in monitoring, control and surveillance in such a way as to reduce the incidence of illegal fishing and fish trading practices and environmental degradation within the Beach Management Unit areas.”

Beach Management Unit (BMU)

- (a) Enforcement of the Fisheries Act and Fisheries Regulations.
- (b) Preparation of by-laws to supplement the implementation of Fisheries Act and Regulations.
- (c) Ensures beach sanitation and hygiene.
- (d) Collection of fisheries data/information.

²⁰⁶ Section 18.

²⁰⁷ Regulations 25, 133-136.

²⁰⁸ Defined in the Regulations as

“dago fisherman” means a legal fisherman who moves from Mainland Tanzania to Zanzibar or vice versa for the purpose of fishing for a duration of not more than three months consecutively.

²⁰⁹ Guidelines for Establishing Community Based Collaborative Fisheries Management In Marine Waters of Tanzania, Prepared By Fisheries Development Division And World Wide Fund For Nature, 2009.

<http://www.dlist-asclme.org/sites/default/files/doelib/Guidelines%20for%20establishing%20community%20based%20collaborative%20fisheries%20management%20in%20marine%20waters%20of%20Tanzania.pdf>

- (e) Educate other fishers on the negative impact of illegal fishing practices and other environmental issues that affect the fishery resources and the general environment.
- (f) Prepare and implement economic sub- projects.
- (g) Ensure security of the people and property.

Village Government

- (a) Approving of by-laws submitted by BMUs.
- (b) Submission of BMUs by-laws to WDC for approval and onward submission to the District Council.
- (c) Support BMUs in the preparation and enforcement of bylaws to supplement the implementation of the Fisheries Act and Regulations.
- (d) Support all BMU activities.

Local Governments (District Councils):

- (a) Enforcement of Fisheries Act and Fisheries Regulations.
- (b) Approving co-management by-laws submitted.
- (c) Provision of extension services.
- (d) Fisheries data collection.
- (e) Provision of technical support to stakeholders implementing fisheries sub- projects.
- (f) Preparation of District long-term and short-term development plans for the fisheries sector and other related sectors in the District.
- (g) Collection of the appropriate revenues generated from the fishing industry.

Central Government (Fisheries Development Division)

The Fisheries Development Division is the custodian of the Fisheries Act and provides guidelines on the management of the fishery resources. Other roles include:

- (a) Preparation and review of Fisheries Policy, Fisheries Act and Fisheries Regulations.
- (b) Preparation of Fisheries long-term and short-term development plans.
- (c) Monitoring implementation of Fisheries development plans.
- (d) Enforcement of the Fisheries Act and Fisheries Regulations.
- (e) Fisheries staff and other stakeholders training on issues related to fishery resources conservation, protection, sustainable utilization and management.
- (f) Collection of revenues generated from the fishing industry.
- (g) Awareness creation on community based collaborative fisheries management
- (h) Collection of data/information.
- (i) Information dissemination to stakeholders.
- (j) Facilitation of extension services.
- (k) Training of BMU members on preparation of by-laws, business skills, financial management skills, leadership skills and cooperatives, and
- (l) Any other training relevant to BMU members.

A number of suggested improvements to the co-management system made in 2011 by a working group under an ACP Fish II project are shown below, and they are would benefit from continuing consideration.²¹⁰

- Decisions regarding access to, and sharing of the benefits from nearshore fisheries resources should be agreed between the Director of Fisheries (DF), the District Councils, and Village Councils.

²¹⁰ Support to legislative development in Tanzania and Preparation of a draft Aquaculture policy in Kenya. Project Ref. N°: Ref. CU/PE1/UG/10/001. <http://acpfish2-eu.org/uploads/projects/id25/Final%20ACP%20Fish%20II%20Final%20technical%20Report%20Draft%20aquaculture%20Policy%20Kenya%20and%20legislation%20development%20tanzania%20.pdf>

- Decisionmaking should be provided in the event that agreement is not reached between the above parties.
- Where the fisheries resources within a given area are routinely used by two or more communities of fishers (where each has a BMU), two or more BMUs should collaborate to propose and implement integrated management measures for that Collaborative Fisheries Management Area (CFMA).
- Whenever two or more BMUs collaborate in the management of a CFMA, there shall be a co-ordination mechanism.
- The boundaries of a CFMA shall be agreed upon by the fishers' community, village councils, district councils and the DF.
- BMUs may not be equipped with weapons that ordinarily inflict serious or lethal injury (ie. guns). However, BMU Surveillance Unit may be equipped with equipment enabling them to restrain and arrest perpetrators of illegal activities in a non-lethal manner.

The following were proposed to be included in the Act to strengthen co-management.

- Clarify Ownership of resources by communities and define fisheries management area.
- Due to its importance both their establishment and functions of BMUs should be defined in the Act by reviewing and integrating provisions from the Regulations.
- Establishment of a network of BMUs and fishermen associations at local, regional and national level, which would represent their interests through the constitution of a national association which would, *inter alia*, attend the Advisory Body of Fisheries Management.
- Review MCS functions and links with Surveillance Unit.
- Ensure that revenues and fees under Regulation 133 (9) at the local level are collected by the BMUs and at the same time that they perform their duties. For that purpose it is proposed that the following requirement is added to Regulation 134 (2): “ ensure that they perform their functions”.
- Clarify the links of BMUs with the Village Committees and ensure that the jurisdiction within the Marine Parks belongs to the Village Committee.

3.2.2 Village Fishermens' Committees

Co-management mechanisms in Zanzibar in draft Regulations and Orders are reviewed in Parts 2.1.3.2 – 2.1.3.5 above,²¹¹ and they are elaborated in an excellent review of co-management operations in Southern Unguja by Nathaniel Colbert-Sangree.²¹² The only authority in the Zanzibar Fisheries Act for co-management is the power of the Minister to make regulations “describing procedures and requirements for the villages and districts in order to establish by-laws under this Act”.²¹³ No regulations had been made to date at the time of writing.

²¹¹ They address the draft Martine Conservation Unit Regulations, 2013 Menai Bay Conservation Area Establishment Order, 1997, Mnemba Island Marine Conservation Area Order, 2002 and Pemba Channel Conservation Area (PECCA) Order, 2005.

²¹² Colbert-Sangree, Nathaniel, "The State of Artisanal Fisheries in Southern Unguja: Governance, Conservation and Community"(2012). *Independent Study Project (ISP) Collection*. Paper 1279. http://digitalcollections.sit.edu/isp_collection/1279.

²¹³ Section 34.

The draft Marine Conservation Unit Regulations describe the powers and authorities of Fishermen's Executive Committees. Orders establishing Marine Conservation Units (to be replaced by the former when promulgated) provide some authority for cooperative management but are generally in need of greater legal precision as discussed above.

A recent World Bank report²¹⁴ notes that there are 137 Village Fisheries Committees in Zanzibar.

Sangree notes that VFCs have generally improved the lives of fishermen. Solutions to the management issues are agreed upon and regulations applicable across the Conservation Area are approved and promulgated by the Fisheries Department. These regulations are then adapted to each village by their respective VFC. Each VFC holds monthly or bi-monthly meetings with the fishermen they represent, relaying information concerning policies, and creating a space for discussion of issues.

Fishermen now act as enforcers of the regulations, notifying the patrols when bad practices have been sighted and this in turn reduces the time, effort and petroleum expended by the patrol boats. By including fishermen in the enforcement strategy, patrols have more effectively stopped intrusions by mainland boats as well as the use of illegal gears.

Sangree reports that the VFC organize fisheries patrols within their areas, and report illegal fishing activities to the government" whose trained patrols are responsible for arresting violators. Fishermen from their respective VFCs engage in:

- reef monitoring, data collection, and a number of volunteering activities like beach and coral reef cleaning; and
- collecting information to improve conservation, encouraging fishermen to adopt conservation ideas and practices, and acting as liaisons, like *bwana dikos*, between local communities and the Fisheries Department.

However, Sangree reported that the VFCs have created some problems.

"Occasionally, VFCs have made decisions out of line with conservation principles, including decisions to continue using destructive methods, which sacrifice future benefits for the present. (El Kharousy and Juma, 2006) Also, "opportunism has been repeatedly observed" as self interested VFC members allow illegal practices to go on, share patrol schedules with wrongdoers or warn them of unscheduled patrols. (El Kharousy and Juma, 2006)

One other consideration for community-based management policies is kinship: effectively restricting enforcement to non-community members as friends and family fail to report each other's violations.

Potentially the most damaging failure of the VFC management system occurs when the committees fail to act as the intermediary between government and communities of fishermen. (El Kharousy and Juma, 2006) If VFCs stop representing the views of their communities fishermen cooperation within the management system disintegrates. (El Kharousy and Juma, 2006)"

It is understood that the World Bank was recently in the process of contracting a study to review performance of existing BMUs and CVFs, the results of which will feed into the new regional project

²¹⁴ Evaluation of the Marine and Coastal Environment Management Project in Tanzania, February 2013.
http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/08/23/000445729_20130823112059/Rendered/PDF/ICR27540ICR0Ta000OUO0900Box379808B0.pdf

design. Future legal, institutional and management adjustments will need to address these types of problems in view of the outcomes of the performance reviews of BMUs and VFCs.

4. STATUS OF TANZANIA IN RELATION TO RELEVANT INTERNATIONAL LEGAL AGREEMENTS AND OBLIGATIONS

Tanzania is party to the regional and international fisheries instruments shown in Annex D. For information, some key agreements to which Tanzania is not party are also shown, together with agreements relating to shipping, pollution and oil spillage and environment which indirectly affect fisheries.

Tanzania's implementation of binding legal obligations under fisheries-related international instruments is addressed in Part 5, below.

In this regard, the key legally binding fisheries instruments with which Tanzania must comply are the:

- 1982 United Nations Convention on the Law of the Sea;
- 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement);
- 2001 Southern African Development Community (SADC) Fisheries Protocol.

Tanzania is a member of the IOTC and must implement its legally binding conservation and management measures. It is also a member of the International Whaling Commission (IWC) which has competence to make binding regulations provided that the regulations are "necessary to carry out the objectives and purposes of the Convention" and based on scientific findings.

Similarly, Tanzania is a member of the Southern African Development Community and bound by its Protocols. The SADC Fisheries Protocol is a subsidiary Protocol to the South African Development Community Treaty. The Protocol is adopted under Article 22 of the SADC Treaty, which mandates SADC members to conclude such Protocols as may be necessary in each area of cooperation under the Treaty, which includes fisheries. It seeks to provide a coordinated framework for a variety of fisheries issues amongst the member countries of the Southern African Development Community and entered into force in August 2003.²¹⁵

The South West Indian Ocean Fisheries Commission is FAO advisory body is not empowered to adopt decisions which are binding on its members, including Tanzania. Members agreed at a special session in February, 2013 to transform the body into a FAO body with a management mandate which may take decisions that are legally binding on its members. It is expected that the transformation process will take several years.

Concerning its continental shelf, Tanzania made a Partial Submission on the Continental Shelf beyond 200 nautical miles to the United Nations Commission on the Limits of the Continental Shelf²¹⁶ pursuant to Part VI and Annex II of the 1982 Convention on 10 January 2012.²¹⁷

²¹⁵ <http://esa.icsf.net/en/regional-instruments/article/14-sadc-protocol-o.html?limitstart=0>.

²¹⁶ The purpose of the Commission on the Limits of the Continental Shelf (the Commission or CLCS) is to facilitate the implementation of the United Nations Convention on the Law of the Sea (the Convention) in respect of the establishment of the outer limits of the continental shelf beyond 200 nautical miles (M) from the baselines from which the breadth of the territorial sea is measured. Under the Convention, the coastal State shall establish the outer limits of its continental shelf where it extends beyond 200 M on the basis of the recommendation of the Commission.

The Commission makes recommendations to coastal States on matters related to the establishment of those limits; its recommendations and actions shall not prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts.

In accordance with article 76(8), the Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a

The Ministry responsible for Fisheries was not among the six ministries involved. Tanzania has invoked Article 76 of the 1982 Convention which set out specific formulae and constraints by which a coastal State such as Tanzania may establish the outer edge of its continental margin, and its legal continental shelf, wherever the margin extends beyond 200M from the territorial sea baselines.

5. CONTRADICTIONS AND/OR GAPS BETWEEN THE NATIONAL LEGAL FRAMEWORK AND TANZANIA'S INTERNATIONAL COMMITMENTS IN INTERNATIONAL FISHERIES INSTRUMENTS AND RFMOS

The focus of this Part is the contradictions and/or gaps between the national legal framework and Tanzania's legal obligations under binding international fisheries instruments and RFMOs with a management mandate. The instruments are described in Part 4, above, and a table in Annex E sets out the full provisions in which Tanzanian legislation is mostly non-compliant due to failure to implement the obligations. They include:

1982 Convention

- Tanzanian legislation generally doesn't provide well for fisheries management, or require the following to be considered: total allowable catch, maximum sustainable yield, cooperation at various levels, associated and dependent species and the exchange of information through competent international organizations
- Tanzanian legislation does not require optimum utilization
- Tanzanian legislation partly covers to a reasonable extent the national laws suggested in paragraph 4 (a) – (k) to regulate fishing by non-nationals. A legislative review should take these areas into account for completeness as there are a number of gaps such as regulating the conduct of research, terms and conditions of joint venture or other cooperative arrangements, landing of catches in ports, training requirements and transfer of technology.
- Tanzanian legislation does not require or set guidelines for the management of shared stocks.
- Tanzania cooperates in the management of highly migratory species through IOTC, but does not implement all binding conservation and management measures.
- The DSFA caters for these measures in part, and the Zanzibar Act, although it claims to license fishing in the EEZ, does not provide for any of them.
- The power of arrest is not stated in most of the fisheries related legislation.
- Legislation does not comply with Article 73 (Enforcement of laws and regulations of the coastal State) paragraph 3, as penalties of imprisonment are applicable in the EEZ, or paragraphs 2 and 4 regarding release of arrested vessels and their crew upon posting of a reasonable bond and notification of the flag State in cases of arrest.
- The 2012 FAO Voluntary Guidelines on Flag State Performance are based on the Article 94 requirement relating to the duties of the flag State to control its ships, including beyond

coastal State on the basis of these recommendations shall be final and binding.

http://www.un.org/depts/los/clcs_new/commission_purpose.htm#Purpose

²¹⁷ It was prepared under the Tanzanian Continental Shelf Delineation (TCSD) Project. In preparing the submission, Tanzania consulted with the Republics of Kenya and Seychelles.

national jurisdiction. Tanzania does not have legal authority to do this in relation to fishing vessels, and is non-compliant with Article 94.

- Hot pursuit is defined in the DSFA Regulations, but incompletely and erroneously and the Regulations are inconsistent with and do not implement the comprehensive provisions in Article 111.
- Tanzanian fisheries legislation does not comply with Articles 116-119 relating to high seas fishing, because it does not control nationals (persons and vessels) in areas beyond national jurisdiction, including on the high seas.
- Tanzanian legislation does not implement requirements for marine scientific research, which are beneficial to Tanzania as a coastal State.
- Tanzanian legislation does not require States and international organizations to provide the information in Article 248 regarding marine scientific research.
- Tanzanian fisheries-related legislation in relation to marine zone delimitation should not be based on the Convention, but on the TSEEZ Act, which is based on the provisions in the Convention. However the Mainland Tanzania and Zanzibar legislation ignore both the TSEEZ Act and relevant provisions in the Convention.

FAO Compliance Agreement

- Tanzanian legislation does not comply with requirements for flag State responsibility in Article III (based on Article 94 of the 1982 Convention, above, for which there is also non-compliance).
- Tanzanian legislation does not require the maintenance of a record of fishing vessels entitled to fly its flag and authorized for fishing on the high seas.
- Tanzanian legislation does not implement requirements for international cooperation in the implementation of the Agreement, including the exchange of information including evidentiary material.
- Tanzanian legislation does not implement requirements for the exchange of specific information in Article VI.

SADC Fisheries Protocol

- Tanzanian legislation does not comply with requirements relating to national responsibilities, including control of nationals beyond areas of national jurisdiction
- Tanzanian legislation does not comply with requirements relating to shared resources, particularly Article 7 paragraph 10 which provides “State Parties shall introduce relevant legislation enabling rapid and appropriate responses with respect to the provisions of this Article.”
- Tanzanian legislation does not comply with requirements relating to the harmonization of legislation, but they are useful for harmonizing legislation within Tanzania as well, including establishment of a mechanism for the registration of international and national fishing vessels as an instrument of compliance and as a means of sharing information on fishing and related activities.

- Tanzanian legislation does not implement requirements relating to cooperation in law enforcement, which are also useful for harmonizing national legislation.

Contradictions include the delineation of maritime zones in fisheries legislation and failure (except by the DSFA Act) to recognize the zones declared in the TSEEZ Act. .

Indian Ocean Tuna Commission

Conservation and management measures adopted by the IOTC become binding upon Tanzania under the circumstances set out in Article IX of the IOTC Agreement. Unless Tanzania objects, it is required to implement the measures in its national laws and procedures and otherwise comply with IOTC measures. Under Article X, it is required to submit a Report of Implementation, which was done for the 2013 session, but not for 2012.

In 2012, IOTC reported that Tanzania complied with only 16.67% of its obligations.²¹⁸ It is beyond the scope of this study to identify in detail the vast number of obligations with which it has not complied, but many involved failure to submit reports for which there are inadequate laws.

The 2012 IOTC Compliance Report for Tanzania²¹⁹ provided feedback to Tanzania on the level of implementation of IOTC Conservation and Management Measures identified by the 8th Session of the Compliance Committee in 2011. The Chair of the Committee advised Tanzania of issues relating to its level of compliance by to the decisions of the Commission that required attention in a letter dated 22nd March, 2011, but no response was provided. They included the following (comments *in italics* added):

- Not compliant with the IOTC data reporting requirements (nominal catch, catch and effort, size frequency, bycatch) (Res. 10/02). *Laws and licence conditions need to require this data.*
- Has not implemented requirements of IOTC Conservation and Management Measures on marine turtles, seabirds and thresher sharks into domestic legislation as a binding requirement (Res. 09/06, 10/06, 10/12). *No specific provision on turtles, seabirds and thresher sharks in Acts and Regulations, could be in separate instruments.*
- One vessel from Tanzania, which is not participating in the IOTC transshipment program (Res. 08/02), transhipped catches (800 t) on the high seas in 2010. At the time of the transshipment this vessel was operating with an expired fishing license. *There is no provision in Tanzanian law for application of legislation to Tanzanian nationals (vessels and persons) beyond areas under national jurisdiction.*
- Has not reported a list of designated ports as required by Resolution 10/11. *No legal requirement to designate ports for foreign fishing vessels. No definition of fishing vessels.*

Feedback to Tanzania for discussion in the 9th Session of the Compliance Committee in 2012 was similar to the above,²²⁰ based on The IOTC 2 April 2013 Compliance Report for Tanzania.²²¹ Additional concerns were that:

- The official logbook requirements are short of requirements in Resolution 12/03.
- Information was not provided on implementation of vessel marking (*not clearly provided in DSFA and Regulations – just marking of radio call sign*), gear marking, FAD marking, logbook requirements not to IOTC standard.

²¹⁸ <https://docs.google.com/viewer?attid=0.3&pid=gmail&thid=1418021f0a5353de&url>

²¹⁹ [http://www.iotc.org/files/proceedings/2012/coc/IOTC-2012-CoC09-CR27_Rev2\[E\].pdf](http://www.iotc.org/files/proceedings/2012/coc/IOTC-2012-CoC09-CR27_Rev2[E].pdf)

²²⁰ [http://www.iotc.org/files/proceedings/2013/coc/IOTC-2013-CoC10-IR27\[E\].pdf](http://www.iotc.org/files/proceedings/2013/coc/IOTC-2013-CoC10-IR27[E].pdf)

²²¹ [http://www.iotc.org/files/proceedings/2013/coc/IOTC-2013-CoC10-CR27\[E\]-Tanzania.pdf](http://www.iotc.org/files/proceedings/2013/coc/IOTC-2013-CoC10-CR27[E]-Tanzania.pdf)

- Tanzania is non compliant for all aspects of port inspections *IOTC Resolution 10/11 not implemented in legislation; it is almost identical to the 2009 FAO Agreement on Port State Measures.*

IOTC has worked with Tanzania to draft with them a compliance action plan to address all non-compliance issues against IOTC Resolutions. Legislation has also been discussed and IOTC has expressed concern that Tanzania has not implemented IOTC Resolutions or the FAO Compliance Agreement (including licensing Tanzanian vessels for high seas fishing).²²²

Another point discussed between IOTC and the DSFA is the need for an arrangement between DSFA and Zanzibar Maritime Authority to deal with registration of fishing vessels. The objective is to avoid registration of IUU fishing vessels, so the ZMA should not register a fishing vessel without the approval of the DSFA.

In brief, a full review is needed to address IOTC matters and MCS tools, including provisions on port State measures.

International Whaling Commission

The International Whaling Commission has a mandate to pass binding regulations as set out in the Schedule to its Convention, except for members that object. The Schedule covers a broad range of whaling regulations that can be organized into the following categories:²²³

- quota limitations on the size and species hunted;
- areas open and closed for whaling;
- seasonal and geographical limitations for pelagic operations;
- treatment after killing whales; and
- supervision and control."

The Mainland Tanzania Fisheries Act applies to whales because it defines "fish" as including whales; the Zanzibar legislation does not include whales in its definition of fish or otherwise apply to marine mammals. The DSFA Act and Regulations are silent on the matter.

Because the Mainland Tanzania legislation appears to apply only to the territorial sea (with the exception of the finfish industry), it can be concluded that the only maritime zone in which IWC regulations can apply is the territorial sea around Mainland Tanzania.

Technically, therefore, Tanzania would be unable to comply with the regulations adopted by the IWC except in the territorial sea adjacent to Mainland Tanzania. However, whaling activities do not take place in Tanzanian maritime zones so this would not be an issue.

²²² Information provided in communications from Mr. Florian Giroux, IOTC.

²²³ Article V(1) of the ICRW grants the IWC authority to adopt binding regulations, also called amendments to the Schedule, if several requirements are met. First, Article V(1) permits the IWC to adopt regulations "with respect to the conservation and utilization of whale resources," fixing: (a) protected and unprotected species; (b) open and closed seasons; (c) open and closed waters, including the designation of sanctuary areas; (d) size limits; (e) time, methods, and intensity of whaling; (f) gear specifications; (g) methods of measurement; and (h) catch returns and other statistical and biological records Article V(2) requires that amendments to the Schedule "shall be such as are necessary to carry out the objectives and purposes of this Convention and to provide for the conservation, development, and optimum utilization of the whale resources." In addition, Article V(2) requires that a regulation "shall be based on scientific findings." It must also "take into consideration the interests of the consumers of whale products and the whaling industry."

6. INCONSISTENCIES AND GAPS IN THE LEGAL AND POLICY FRAMEWORKS BETWEEN MAINLAND TANZANIA AND ZANZIBAR, IN PARTICULAR MCS OF IUU FISHING IN TANZANIAN WATERS

The analysis of the inconsistencies and gaps in the legal and policy frameworks between Mainland Tanzania and Zanzibar is based on legislation described in Part 2 and policies described in Part 3. In particular, the report focuses on monitoring, control and surveillance of IUU fishing in the EEZ, territorial sea and internal waters.

6.1 Legal framework

6.1.1 Gaps

There are various elements of fisheries legislation that combine to form a basis for MCS activities and tools, in addition to the provisions appointing and empowering MCS officers. They include those in the indicative framework shown in Figure 3.

Figure 3
Indicative framework of fisheries legislation important for MCS

I.	GENERAL
III.	INFORMATION, DATA AND RECORDS
IV.	MONITORING, CONTROL AND SURVEILLANCE
V.	EVIDENCE
VI.	JURISDICTION
VII.	OFFENCES AND PENALITIES

A table of indicative/model provisions that should be included in the framework shown in Figure 3 is attached in Annex F. It also indicates where the general intent of each model provision appears in the legislation of Mainland Tanzania, Zanzibar and the Deep Sea Fishing Authority. Where this occurs, it is most often in the legislation or only one or two of the three.

and the fact that it does only indicates that the subject matter is in the legislation but not necessarily a full robust provision. As noted in Part 2, much of the legislation needs strengthening because of weak or flawed drafting.

Of the 69 model provisions relevant to MCS in Annex F, 41, or about 60% were *not* implemented in any of the three jurisdictions,²²⁴ and Zanzibar implemented only one in the Fisheries Act, 2010. Those *not* implemented by any of the three are shown below.

- Definitions/ Interpretation²²⁵
- Objective of Act
- Jurisdiction
- Application of Act²²⁶
- International, regional, bilateral cooperation

²²⁴ Although definitions and jurisdiction were implemented there were significant gaps and no legislation could be considered to have implemented them effectively.

²²⁵ All legislation had definitions of terms, but they were all inadequate as a whole for effective MCS and implementation.

²²⁶ All legislation had provisions on application of the Act, but not to maritime zones.

- Possession of prohibited fishing gear, substance
- Implementation of international conservation and management measures
- Information to be true, complete and correct
- Information on legal, administrative action taken under the Act
- Confidential information
- Exchange of information
- Power to take, detain, remove and secure information and evidence
- Removal of parts from seized vessels, etc.
- Observer programmes
- Conditions for observers
- Observer costs
- Embarkation and disembarkation of observer
- Requirements for monitoring of offloading
- Application of Act to authorized officers and observers in areas beyond national jurisdiction
- Application of Act to non-national authorized officers and observers under agreement in national waters
- Duties of operators, etc, to authorized persons
- Use of port without authorization prohibited
- Vessels may be prohibited from entering port
- Validity and procedure for certificate
- Certificate as to the location of a vessel
- Electronic location device
- Photographic evidence
- Presumptions
- Onus of proof
- Interfering with evidence
- Tampering with evidence
- Jurisdiction of Courts
- Continuing offences and repeat offenders
- Banning order
- Cancellation or suspension of licence
- Liability of operator
- Costs incurred by State
- Compensation for loss or damage
- Deprivation of monetary benefits
- Default for non-payment of fines
- Non-payment of pecuniary penalties

Concerning the framework of general elements essential for MCS, and as described throughout this document, definitions are given so enforcement can be carried out effectively. The legislation must formally apply to defined waters, including maritime zones as declared by legislation, and to the country's nationals (vessels and persons) in areas beyond national jurisdiction. Information, data and records are key to effective MCS and all requirements should be carefully spelled out, including for purposes of confidentiality and transparency.

All components of MCS activities must be provided by legislation, including appointment, powers, authorities and implementation of international obligations. MCS officers must gather evidence to prove IUU fishing, and because fisheries offences are different from most land-based offences certain presumptions and evidentiary rules must apply. The evidence must be protected by law from interference, tampering and destruction. The jurisdiction of the courts and authority to compound offences (often part of MCS operations) need to be stated with clarity, and the various costs and

monetary considerations should be set out to ensure that MCS operations result in both punishment and deterrence.

A major gap in the legislation in relation to MCS is failure to define or use the terms “master, owner, operator and charterer”. They have robust definitions in best practices, and bear responsibility individually and collectively for offences relating to the semi-industrial and industrial size vessels.

6.1.2 Inconsistencies

There are many inconsistencies among the legislation of Mainland Tanzania, Zanzibar and the Deep Sea Fishing Authority. This was addressed to an extent in Part 2, and for purposes of clearly defining the major inconsistencies the table shown in Annex G presents provisions in six key pieces of legislation that are intended to address the same matters.

Application. The application provisions in each Act refer only to, respectively, Mainland Tanzania, Zanzibar and the EEZ. The DSFA Act states that it is in addition to the TSEEZ Act, but the other two do not acknowledge the maritime zone delimitations established in that Act and attempt definitions that conflict with it, as shown in Annex G. Another problem is that the Mainland Tanzania Act defines “sea fishery” using the wrong baseline but the term is not used in the text. Definitions in the Zanzibar Act are unintelligible and the definitions of the zones conflict with the TSEEZ Act and are inconsistent with each other.

The outer maritime limits for establishment of BMUs and VFCs is not provided anywhere.

Definitions. As shown in Annex G, various definitions are given for terms essential for implementation and MCS, including fish, fishery, fishing, fishing gear and fishing vessel.

There is a dramatic inconsistency between definitions used in the Mainland Tanzania and Zanzibar Acts; in the latter 40 terms are defined, of those 21 are also defined in the former, but only 8 have the same general definition. As discussed in Part 2, most of these terms are not well defined and would not provide a strong basis for enforcement.

A number of key words were not defined in any legislation, as shown in Annex G, including “person”. It is normally defined as a natural or legal person, and gives broad application to the offences (“No person shall...”). Another serious omission was “related activities”, which are regulated in the legislation. It has a technical best practices meaning (e.g. including transshipping, supply, services, processing, etc.) and this is needed to prove whether something falls into that category or not.

One of the weakest and most inconsistent and contradictory areas in all legislation concerns the definition, appointment and powers of MCS officers. It is very complicated, and discussed in Part 2 above as well as in Annex G for each jurisdiction. In several cases involves definition of x, appointment of y and description of powers for z. It should define, appoint and give powers to x.

For example “fishery officer” could be defined, the Unit could consist of “enforcement officers” without provision for their appointment and the powers to enforce could be given to “authorized officers”.

In all legislation across the board there were problems with the correlation between the terms defined and their use in the text. Sometimes the defined terms were not used in the text, and various other terms were used in the text to describe the same thing (e.g. “fish” was defined, but “fishery resources” or “fisheries resources” or “resources” were used for no apparent reason).

Administration. The functions of the DSFA and the Zanzibar Department of Fisheries are both to “promote regulate and control”. The functions for Mainland Tanzania are not similarly stated.

- The DSFA is to promote, regulate and control fishing in the EEZ;
- Zanzibar must “promote, develop, control and monitor for the purpose of proper management of all fisheries and related activities in artisanal and semi industries”, but artisanal and semi industries are not defined.

Registration and licensing Concerning the requirement to register vessels, this is required under the Mainland Tanzanian Regulations only, but is important for coordination of MCS at national level for certain classes of vessels. In addition, DFSA and the Zanzibar Maritime Authority (ZMA) need to coordinate on the registration of fishing vessels so that ZMA does not register an IUU fishing vessel. They should first receive approval from DFSA before issuing a fishing vessel registration.

There is inconsistency in licencing requirements among the various legislations.

- Mainland Tanzania requires licencing of fishing vessels, fishers, and fish dealers. It prohibits licencing foreign fishing vessels for fishing in the territorial sea.
- Licenses for foreign fishing vessels, local fishing vessels and a special licence “may be issued” under the DSFA Regulations, and it is an offence to carry out “fishing activity without licence” issued under the Regulations.
- Zanzibar requires licences for “any fishing vessel operating in the internal waters, territorial waters and EEZ of Zanzibar whatever their size or method of propulsion.” The Minister may also make regulations requiring a licence, “ in addition to any licence required by section 14 of this Act, for fishing with any gear or method with or without the use of vessel, or for processing fish or other marine organism.”

Fisheries management. No legislation provides a clear authority or mechanism for formulating and taking fisheries management measures in general or for implementing international conservation and management measures taken by a relevant RFMO. Most don’t contain principles for fisheries management or requirements for fisheries management plans.²²⁷

- Mainland Tanzania sets out a restrictive and flawed list of conditions that the Minister may impose “necessary for the proper management of fisheries”. The Director may make agreements with BMUs and the use of poisons, explosives etc is prohibited, and there is general conservation authority but only for habitat and endangered species.
- Zanzibar gives the Minister management authority for specified areas, and for local and industrial fishing and related activities. The Director may impose certain licence conditions, but they are insufficient for management purposes. Use of explosives, poisons etc is prohibited. A Marine Conservation Unit is responsible for the “coordination towards sustainable management of controlled areas established under this Act.”
- The DSFA does not have a specific function on fisheries management. Principles for management are in the Regulations, but the Director-General is only assigned responsibility for stock assessment and restoration of stocks. However, the Regulations

MCS. Mainland Tanzania and the DFSA establish surveillance units for similar, but not identical purposes. Zanzibar does not provide for such a Unit.

²²⁷ Note Zanzibar Fisheries Act is an exception, section 10 requires the Director to prepare and make review plans for the management and development of fisheries in Zanzibar, and requires that each plan, on the basis of the best information available, must assess the state of exploitation of each resource, its potential average, annual yield and measures necessary to achieve its optimum utilization, and determine the amount of fish, if any, to be taken by foreign fishing vessels.

- Mainland Tanzania: The Surveillance Unit is established for “protection of fish and its environment, fishery products and aquatic flora against unlawful dealers and generally the enforcement of the provisions of this Act”. The exercise of powers by various officers is confusing, and there are no standard powers for MCS.
- DSFA: A Surveillance Unit is established for the “protection of fishery resources and marine environment against illegal, unreported and unregulated fishing in the Exclusive Economic Zone and general enforcement of the provisions of the Act”.
- Zanzibar: No Unit, only one provision on the powers of authorized officers.

All legislation reviewed has a number of weak and inconsistent provisions in relation to the designation and powers of authorized officers, enforcement officers, fishery inspectors and others. Although the Zanzibar Act has only one “bare bones” and very skimpy provision relating to authorized officers/MCS in general, there are two challenges to comprehensively identifying inconsistencies in the other legislation. First, the provisions are confusing and contradictory within each piece of legislation. Second, it would take a separate study to sort through everything, but much is described in Part 2 and Annex G of this document. The bottom line is that consistency is badly needed, both within each piece of legislation and among them all. They also do not implement international obligations and those of IOTC.

Evidence. Evidentiary provisions are weak or non-existent throughout the legislation. There are inconsistencies in this regard. There are many gaps, as shown above.

Environment All legislation has environmentally-related provisions to counter pollution and protect the marine environment or ecosystems.

International cooperation. International cooperation is provided for specific matters/areas in the Mainland Tanzanian Act, but this does not include management measures and MCS. Interestingly, the DSFA Regulations require the captain of a vessel to comply with national and international law. Unless international law is implemented in national law, this is would likely be unenforceable; it should be up to Tanzania to implement international law, even if to make it an offence to breach certain specified standards or requirements at regional or international level (e.g. where a vessel does not comply with IOTC conservation and management measures).

Offences. Offences are largely not well described and penalties are low as indicated in Annex G. There are a number of gaps, as shown above.

6.2. Policy

6.2.1 Gaps

An indicative framework for a policy on fisheries and aquaculture, including areas addressed in the FAO Code of Conduct for Responsible Fisheries, is in Figure 4.

Figure 4
Indicative framework for a policy on fisheries and aquaculture

1. INTRODUCTION TO THE FISHERIES AND AQUACULTURE SECTOR
 - (a) History of the sector
 - (b) Importance of the sector
 - (c) Overview of the sector

(d) Challenges and opportunities of the sector

2. POLICY FRAMEWORKS

- (a) The international policy framework
- (b) The national policy framework
- (c) The fisheries and aquaculture policy framework

3. POLICY

- (a) Sustainable management and development of fisheries
- (b) Aquaculture development and management
- (c) Fisheries information, technology and research
- (d) Monitoring control and surveillance
- (e) Co-management structures, stakeholders and participatory processes
- (f) Post harvest activities and trade
- (g) Institutional strengthening
- (h) Human resource development
- (i) Conflict avoidance and resolution
- (j) Legal and regulatory framework
- (k) Collaboration, coordination, communication and harmonization at national level
 - a. Fisheries management
 - b. Environmental aspects of fisheries management
 - c. Legal and policy framework
- (l) Bilateral, sub-regional, regional and international cooperation

4. IMPLEMENTING ENVIRONMENT

- (a) Legal framework
- (b) Sector strategy
- (c) Monitoring, evaluation and updating of policy

It is more difficult to identify gaps in fisheries policies than in legislation, because policies are developed with a view to meeting specific needs and priorities across the sector. The policy framework in Figure 4 reflects best practices and provides a methodical approach that should guide policy development and be clear at national and international levels.

The 1997 National Fisheries Policy and areas under consideration in the policy revision process in Mainland Tanzania touch upon many, if not most, of the policy issues above, as described in Part 2.2.2 above. Notable exceptions were fisheries MCS, a holistic legislative framework that extends beyond trade issues and ensuring national cooperation, coordination and harmonization in the fisheries sector.

The Zanzibar Fisheries Sector Policy has a very different orientation. It takes more of a piecemeal “shotgun” approach, and of its 13 issues and objectives (shown in Part 2.2.3 above), eight are more oriented towards industry, trade and infrastructure than general objectives for fisheries and aquaculture management.²²⁸

For the others, the policy focuses on issues that are components of some broader headings shown in Figure 4, therefore creating gaps in considering each heading. For example, it addresses sustainably increasing the artisanal fish catch (but not managing the resource), destructive fishing gear (but not environmentally friendly gear), addressing conflicts (but only for fishing communities) and

²²⁸ These areas concern fishing vessels, acquisition of raw materials, industrial fisheries, misallocated credit facilities, export of fisheries resources, aquaculture production, storage facilities and the economic status of fishers.

establishing harmony between institutions involved in using coastal zone areas (although this doesn't directly address coastal zone management).

There is one broad area in the policy: to promote the conservation of the marine environment (but this does not include fisheries). The 1992 National Environmental Policy for Zanzibar has as objectives enacting environmental legislation and integrated coastal zone management, but there is no cross-referencing between this and the Fisheries Sector Policy in either instrument.

The policy does not address fisheries information, technology and research, MCS, co-management structures, stakeholders and participatory processes, post harvest activities and trade or a legal and regulatory framework.

The four main headings in Figure 4 are not all included in the current National Policy or the Zanzibar policy documents. In future policy development these areas should be considered for inclusion.

6.2.2 Inconsistencies

The two policies have different priorities, and are inconsistent in their approaches to policy formation as described above, with the 1997 Mainland policy document taking a more general approach. The latter is more oriented towards fisheries management and trade, and the former towards economics - increasing production and the economic condition of fishers.

7. LEGISLATION ON POTENTIAL IMPACTS ASSOCIATED WITH OFF-SHORE HYDROCARBON DEVELOPMENT AND FISHERIES CONSERVATION: POTENTIAL AREAS OF CONFLICT

The objective of this Part is to review key (i) fisheries-related legislation to highlight weaknesses with regard to management of and compensation for potential impacts associated with off-shore hydrocarbon development and (ii) fisheries conservation legislation (particularly related to governance – draft Marine Protected Areas (MPA) laws²²⁹), identify potential areas of conflict and recommend areas where fisheries legislation could be strengthened to address the conflicts.

The Constitution of the URT provides that the following are union matters: Mineral oil resources, including crude oil other categories of oil or products and natural gas.²³⁰ Liquid hydrocarbons usually refer to crude oil and natural gas condensate

Fisheries-related legislation falls under non-union matters, so the focus is on the impacts of hydrocarbon development on fisheries management and resources. This should be assessed in the context of key provisions of the following laws and policy, which primarily control offshore hydrocarbon development:

- The Petroleum (Exploration and Production) Act 1980, which applies to Mainland Tanzania and Zanzibar, requires the registered holder of a licence to “prevent the pollution of any water-well, spring, stream, river, lake, reservoir, estuary harbour or area of sea by escape of petroleum, salt water, drilling fluid, chemical additive, gas (not being petroleum), or any other waste product or effluent”.²³¹
- The overall objectives of the **National Environmental Policy, 1997** include the need to: [1] ensure sustainability, security and equitable use of resources for meeting the basic needs of the present and future generations without degrading the environment or risking health or safety; [2] prevent and control degradation of land, water, vegetation,

²²⁹ The draft laws were unavailable.

²³⁰ Article 4(3) and Schedule 1 (15).

²³¹ Section 58(2)(f).

and air which constitute our life support systems; and [3] conserve and enhance our natural and man-made heritage, including the biological diversity of the unique ecosystems of the country.

- The **Environmental Management Act of 2004**, applies to Mainland Tanzania and provides a legal and institutional framework for sustainable management of environment. It outlines principles for management, impact and risk assessments, prevention and control of pollution, waste management, environmental quality standards, public participation, compliance and enforcement. It also serves as a basis for implementation of international instruments on environment and of the National Environment Policy.

Several pieces of fisheries legislation in Tanzania contain provisions relating to the marine environment, but none provides specifically for assessment of damages from impacts of off-shore hydrocarbon development, or compensation. Some considerations appear below.

Mainland Tanzania Fisheries Act

The Director is tasked with assessing adverse environmental impacts when adopting management measures. This provides the power to assess such impacts, but nothing further.

- Section 9(2)(f) The Director shall, based on the best scientific evidence available, adopt such appropriate measures to maintain or restore stocks at levels capable of producing maximum sustainable yield pursuant to relevant environmental and economic factors including: assessment of adverse environmental impacts and remedial measures on the resource.

The Minister may declare the conservation of critical habitat; conservation measures could include compensation, damages and cleanup responsibilities for any adverse impacts.

- Section 23.(1) The Minister shall, after consultation with such competent persons within the public and private sectors knowledgeable on environment issues, by order in the Gazette, declare the conservation of any critical habitat or endangered species.

The functions of the Surveillance Unit include protecting “fish and its environment”, so environmentally-related measures could be enforced.

- Section 32.(1) The function of the Surveillance Unit shall be the protection of fish and its environment, fishery products and aquatic flora against unlawful dealers and generally the enforcement of the provisions of this Act.

Mainland Tanzania Fisheries (Amendment) Regulations

Similar to the Surveillance Unit, a function of the Zonal Enforcement Units is to protect “fish and its environment.”

- **137.** - (1) The Director shall establish Zonal Enforcement Units in order to protect fish and its environment, fishery products and aquatic flora against unlawful dealers and the enforcement of the provisions of these regulations.

Zanzibar Fisheries Act

Functions of the Department do not include environmentally related issues or the impact of pollution on fisheries. The Director may “prevent the obstruction and pollution of internal and territorial waters of Zanzibar”.²³² However prevention does not include addressing the consequences of pollution.

The Minister may by Order declare a controlled area in the internal waters, territorial sea or EEZ in relation to fish, fish products or aquatic flora.²³³ There are no stated purposes for a controlled area, such as protection of the environment, and the Department does not have a mandate for such activity. Technically, it is the Director, not the Minister who may prevent pollution, but only in the internal waters and territorial sea.

However, the power to declare such an area in relation to fish might be a useful vehicle for setting up an area addressing prevention of pollution from any source and compensation/damages/fines should adverse impacts be assessed through a stated procedure.

DSFA Regulations

The Regulations apply to *fishing and related activities* in the Exclusive Economic Zone of the United Republic, and not to the control of adverse impacts to the marine environment.

However, the environment is addressed in the text of the Regulations, but damages and compensation are not provided:

- “management measures” means laws, decisions or guidelines set out to ensure the protection of marine environment and sustainable use of fishery resources;
- Section 25(1) A person shall not cause or willingly flow or pass into marine waters of the United Republic any solid, liquid or gaseous material or cause water pollution.

There are some options for approaches to addressing potential conflicts between the fisheries and hydrocarbon development sectors.

An institutional approach could be taken that involves persons responsible for fisheries in Mainland Tanzania, Zanzibar and the DSFA (mindful that hydrocarbon development is a Union matter), environment law and policy and hydrocarbon development, as well as the industry, to identify a cooperative mechanism (e.g. an MOU, committee or other form of cooperation) to ensure the protection of fisheries resources from the perspective of prevention of damage, and as appropriate to negotiate a jointly agreed regime in terms of areas, preventive measures, environmental standards, conflict resolution and other relevant matters.

A legal approach could be taken that builds on the environmentally-related provisions in existing legislation and, where possible through regulation, order or other subsidiary instrument contains environmental safeguards, assessment processes and compensation requirements.

It is difficult to say whether declaration of a MPA could prohibit hydrocarbon exploration or exploitation, as the latter is a union matter. This would need to be resolved at government level.

The following “best practices” provision could be enacted as appropriate into fisheries legislation or marine protected areas, but the fishery waters to which this applicable should be clear and not overlapping – which is not the case in current legislation.

²³² Section 9.

²³³ Section 10.

Pollution of the fishery waters:

(1) No person shall prepare for the introduction of, attempt to introduce or introduce into the (fishery waters), directly, indirectly, deliberately or accidentally, any deleterious substance, including substances which may have toxic, hazardous or other harmful properties or effects in relation to fish or the marine environment, and which may adversely affect the habitat or health of the fish.

(2) A person who contravenes subsection (1) is guilty of an offence and shall be liable on conviction to fine or to a term of imprisonment or to both, and in addition shall be liable for full compensation in respect of any resulting loss or damage as well as the full cost of restoring the affected habitat and fishery resources to their previous state.

Legislation could also provide guidelines for determination of compensation and for standards of restoration.

8. MARITIME BOUNDARY DISPUTES

There are no reported recent maritime boundary disputes between Tanzania and other countries.

Tanzania deposited with the United Nations on 8 January 2013 a chart and coordinates showing the straight baselines of the United Republic of Tanzania, pursuant to its obligation under Article 16(2) of the 1982 Convention.

Tanzania has maritime boundary delimitation agreements with Kenya, Seychelles and Mozambique.²³⁴ It has also concluded an agreement with Comoros.²³⁵

Tanzania's Partial Submission on the Continental Shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf addressed above in Part 4 referred to the agreement between Tanzania and Kenya concerning the delimitation of maritime boundaries between them through an *Exchange of Notes between the United Republic of Tanzania and the Republic of Kenya concerning the Delimitation of the Territorial Waters Boundary Between the Two States, 17 December 1975 and 9 July 1976*. A single line of delimitation for the territorial sea and EEZ boundary was agreed. The two countries have an agreement signed on 2 June 2009 to extend the maritime boundary from the 1976 agreement to the outermost limits of the continental shelf, and such other outermost limits of national jurisdiction as may be determined by international law.

An agreement is in place between Tanzania and Seychelles, signed on 23rd January 2002, regarding the Delimitation of the Maritime Boundary of the EEZ and Continental Shelf limits between the two countries on areas where the two zones overlap. Tanzania and Seychelles also signed a MoU dated 2nd May 2011 spelling out a no prejudice to each Submission in areas where there could be potential overlaps.

Tanzania hence declared that there are no disputes in the region relevant to the submission on the outer limits of the continental shelf beyond 200 M which are determined without prejudice to the delimitation of continental shelf boundaries between neighbouring States in accordance with paragraph 10 of Article 76 of the 1982 Agreement.

There is also a boundary delimitation Agreement between Tanzania and Mozambique dated 28 December 1988.²³⁶

²³⁴ They can be found at:

http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn93ef.pdf

²³⁵ Advised by officials of the Mainland Tanzania Fisheries Department, a copy of the note was not available.

9. POTENTIAL PRIORITY AREAS FOR LEGAL WORK UNDER SWIOFish

Following are some specific, legal priority areas for which work needs to/could be done under SWIOFish.

- (a) Strengthen and harmonize all fisheries legislation to the extent possible, including introducing legislation on fishing with explosives, bombs, etc. and associated provisions shown in Annex H, as discussed during the pre-appraisal meeting.
- (b) Establish dedicated coordination authorities and information/training programmes in priority areas, e.g. for
 - MCS issues of joint interest
 - areas or arrangements for joint management (BTUs, VFCs, marine conservation areas)
- (c) Review, strengthen and as appropriate harmonize legislation providing for co-management including BTUs, VFCs and marine conservation areas, provide for clarification of maritime zones in which they operate and any cooperation and coordination that may be necessary with national fisheries agencies and authorities.
- (d) Establish an initiative involving relevant stakeholders to develop cooperation between fisheries managers and hydrocarbon exploration/exploitation activities, and make amendments to fisheries laws as appropriate.

10. PROPOSALS FOR ADDRESSING INCONSISTENCIES AND GAPS WITHIN NATIONAL LAWS AND BETWEEN NATIONAL LAW AND TANZANIA'S INTERNATIONAL OBLIGATIONS

Following are some specific proposals on how any inconsistencies and gaps within national laws and between national law and the country's international obligations would be addressed.

- (a) Establish processes, and/or build on existing processes and proposals, as shown in Annex I, to revise and strengthen national laws to address inconsistencies and gaps, adopt best practices and implement Tanzania's international obligations. Some considerations that should be taken in such processes include:
 - i. Ensure the geographical scope of application of the legislation is clear, including to maritime zones that are described consistently with the TSEEZ Act.

²³⁶ <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/TZA-MOZ1988TM.PDF>

- ii. Generate a list of terms used in fisheries legislation and define them in a consistent manner and in accordance with best practices and international usage and obligations.
- iii. Provide express authority and processes for taking management measures that are based on specific internationally recognized principles.
- iv. Provide a general framework and obligations for the management of fisheries resources, including co-management and for resources shared among national jurisdictions and with other countries.
- v. Provide for the conservation of fisheries resources, including the marine and aquatic environment and habitat, including by developing NPOAs for seabirds and sharks and supporting existing initiatives on sea turtles.²³⁷
- vi. Extend jurisdiction over nationals in areas beyond national jurisdiction and comply with requirements for flag State performance.
- vii. Harmonize basic requirements for aquaculture to ensure the integrity of species and the environment.
- viii. Develop harmonized information requirements and databases, for purposes of national management and implementing international obligations.
- ix. Ensure the laws have a mechanism to permit implementation of IOTC or other RFMO international conservation and management measures, e.g. by regulation or automatic incorporation and Notice, and that binding obligations are promptly implemented, and that relevant MCS personnel enforce them.
- x. Develop complementary databases and information systems for priority and shared species, and ensure a capability for transparency and common access.
- xi. Develop transparent and complementary licensing and registration procedures as appropriate, and licensing information systems and requirements between national agencies.
- xii. Fully review MCS authorities and tools for robustness and consistency among jurisdictions, including appointment and powers of authorized officers, duties of others towards them, evidentiary provisions and port State measure;
- xiii. Establish lines of communication and coordination among the fisheries MCS officers responsible for activities in the territorial sea and EEZ in order to ensure international obligations are met.

²³⁷ In this respect, there is a Tanzania National Marine Turtle Task Force or similar which is convened under the Convention on Migratory Species and is mandated to come up with a national strategy on marine turtle protection. Rashid Hoza rbhoza@yahoo.com is the Chair and focal person in Govt. Lindsey West lindsey@seasense.org from an NGO called Sea Sense is also heavily involved and has specific turtle expertise. She is also the Deputy Chair of the WIO Task Force of IOSEA Marine Turtle MoU (also under CMS).

- xiv. Establish a working group to identify offences and penalty levels consistently for offences in the territorial sea and EEZ and by foreign fishing vessels, taking into account internationally recognized serious offences and best practices.

TERMS OF REFERENCE

The assignment is expected to cover the following issues:

1. Clarify the legal and policy framework applicable to priority fisheries management in the Mainland and in Zanzibar. These should include the primary pieces of legislation as well as subsidiary legislation such as Ministerial Regulations and District By-Laws.²³⁸
2. Review geographic and thematic jurisdiction between the Mainland and Zanzibar for non-Union matters (i.e., Inshore and Territorial Sea fisheries), including with regard to the establishment of co-management mechanisms such as Beach Management Units (BMU) on the Mainland and Village Fisheries Committees (VFC) in Zanzibar.
3. Clarify the status of signature, ratification or accession to the relevant international legal agreements and obligations such as the UN Convention on the Law of the Sea, FAO Compliance Agreement, UN Fish Stocks Agreement and FAO Agreement on Port State Measures, fisheries aspects of MARPOL if any, as well as membership in Regional Fisheries Management Organizations (RFMOs) and processes relevant to extension of the continental shelf.
4. Highlight, in table form, where there may be contradictions and/or gaps between the national legal framework and Tanzania's international commitments in international fisheries instruments and RFMOs to which Tanzania is party or signatory.
5. Comprehensively identify and highlight any inconsistencies and gaps in the legal and policy frameworks between Mainland Tanzania and Zanzibar. In particular, the report should focus on potential contradictions in the laws and policies between Mainland Tanzania and Zanzibar regarding Monitoring Control and Surveillance (MCS) of Illegal Unregulated and Unreported (IUU) fishing (including dynamite fishing) in the EEZ, Territorial waters and Internal waters.
6. Review key (i) fisheries-related legislation to highlight weaknesses with regard to management of and compensation for potential impacts associated with off-shore hydrocarbon development and (ii) fisheries conservation legislation (particularly related to governance – draft Marine Protected Areas (MPA) laws), identify potential areas of conflict and recommend areas where fisheries legislation could be strengthened to address the conflicts.
7. Highlight any maritime border disputes, if any, with neighbouring countries, in particular, Kenya, Mozambique, Comoros, Latham Island and others.
8. Recommend specific, legal priority areas for which work needs to/could be done under SWIOFish.
9. The report should also include specific proposals on how any inconsistencies and gaps within national laws and between national law and the country's international obligations would be addressed.

²³⁸ This ToR originally included the following task but was dropped from the assignment by agreement: In particular, the study should assess the implication of the lack of ratification of the DSFA Act by the Zanzibar Parliament.

LIST OF DOCUMENTS

1. LAWS

Mainland Tanzania

- The Fisheries Act, 2003
- Fisheries (Amendment) Regulations, 2009
- Marine Parks and Reserves Act, 1994
- Tanzanian Fisheries Research Institute Act (1980)

Zanzibar

- Fisheries Act, 2010
- Draft Marine Conservation Unit Regulations, 2013
- Menai Bay Conservation Area (Establishment) Order, 1997
- Mnemba Island Marine Conservation Area Order, 2002
- Pemba Channel Conservation Area (PECCA) Order, 2005

Mainland Tanzania and Zanzibar

- Territorial Sea and Exclusive Economic Zone Act, 1989
- Deep Sea Fishing Authority Act (Cap No. 388) of 1998
- Deep Sea Fishing Authority (Amendment) Act of 2007
- Deep Sea Fishing Authority Act (Cap No. 388) Regulations, 2009

Constitution of the United Republic of Tanzania

Constitution of Zanzibar

2. POLICIES

Mainland Tanzania

- National Fisheries Sector Policy and Strategy Statement 1997

Zanzibar

- Fisheries Sector Policy 2002
- National Environmental Policy for Zanzibar 1992
- Zanzibar Vision 2020

2004 National Integrated Coastal Environment Management Strategy

3. INTERNATIONAL INSTRUMENTS

1982 Convention

1993 FAO Compliance Agreement

1995 UN Fish Stocks Agreement

1995 FAO Code of Conduct for Responsible Fisheries

2001 FAO IPOA-IUU

2001 SADC Fisheries Protocol

2009 FAO Agreement on Port State Measures

Daffa, J.M., Policy and governance assessment of coastal and marine resources sectors within the framework of the large marine ecosystems for ASCLME in Tanzania, February 2011

Support to legislative development in Tanzania and Preparation of a draft Aquaculture policy in Kenya. Project Ref. N°: Ref. CU/PE1/UG/10/001. <http://acpfish2-eu.org/uploads/projects/id25/Final%20ACP%20Fish%20II%20Final%20technical%20Report%20Draft%20aquaculture%20Policy%20Kenya%20and%20legislation%20development%20tanzania%20.pdf>

Guide to Marine Conservation Areas in Zanzibar. 2007. Department of Fisheries and Marine Resources in collaboration with EcoAfrica Environmental Consultants and with the participation of local NGOs and coastal communities. Supported by Global Environmental Facility http://www.dlist-asclme.org/sites/default/files/doclib/booklet_161107.pdf

‘Untangling the Nets’ The Governance of Tanzania’s Marine Fisheries. Mariam January and Honest Prosper Ngowi. I SAIIA February 2010. <http://www.africaportal.org/dspace/articles/untangling-nets-governance-tanzania%E2%80%99s-marine-fisheries>

IOTC Resolution 11/04 on a Regional Observer Scheme; data reporting requirements (nominal catch, catch and effort, size frequency, bycatch) (Res. 10/02); Conservation and Management Measures on marine turtles, seabirds and thresher sharks (Res. 09/06, 10/06, 10/12), port State measures (Res. 10/11).

Guidelines for Establishing Community Based Collaborative Fisheries Management In Marine Waters of Tanzania, Prepared By Fisheries Development Division And World Wide Fund For Nature, 2009. <http://www.dlist-asclme.org/sites/default/files/doclib/Guidelines%20for%20establishing%20community%20based%20collaborative%20fisheries%20management%20in%20marine%20waters%20of%20Tanzania.pdf>

Evaluation of the Marine and Coastal Environment Management Project in Tanzania, February 2013. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/08/23/000445729_20130823112059/Rendered/PDF/ICR27540ICR0Ta000OUO0900Box379808B0.pdf

Colbert-Sangree, Nathaniel, "The State of Artisanal Fisheries in Southern Unguja: Governance, Conservation and Community"(2012). *Independent Study Project (ISP) Collection*. Paper 1279. http://digitalcollections.sit.edu/isp_collection/1279.

LIST OF PERSONS MET

The consultant attended all sessions of the SWIOFC pre-appraisal mission in Dar es Salaam, 25-26 and 28-29 November, and in addition travelled to Zanzibar and held consultations with the following persons outside the session in Dar es Salaam.

Deep Sea Fishing Authority

Zahor El Kharousy Director General

Department of Fisheries Development

Mussa Jumbe	Director of Fisheries
Ramla Ta Omar	SWIOfish Coordinator
Makame Haji	MIMCA
Mchanga Said	Fisheries Officer
Semeni Mohd	Communication Officer
Hashim Muumin	Aqua culturist
Simai N	Accountant
Muumin Iddi Hamad	Aqua culturist
Shemsa G Bilal	Fisheries Officer
Jaala S Khamis	MCS Officer
Mkubwa S Khamis	Planning Officer
Mkarafuu A S	Planning Officer
Anas M Othman	Manager MBCA
Haji S Haji	MCS Officer

INTERNATIONAL AND REGIONAL FISHERIES-RELATED AGREEMENTS²³⁹

Legal Instrument	Scope	General	Tanzania
		Adoption (A) Entry into Force (E)	Signature (S) Ratification (R) Entry into force (E)
FISHERIES			
United Nations Convention on the Law of the Sea (1982 Convention) ²⁴⁰	Global	(A) 10.12.1982 (E) 16.11.1994	(S) 10.12.1982 (R) 30.09.1985 (E) 16.11.1994
United Nations Fish Stocks Agreements ²⁴¹	Global	(A) 04.08.1995 (E) 11.12.2001	Not a Party
Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing ²⁴²	Global	(A) 22.11.2009	Not a Party
Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement) ²⁴³	Global	(A) 29.11.1993 (E) 24.04.2003	(S) I.N.A (R) 17.02.1999 (E) 24.04.2003

²³⁹ This information is based on the table in Annex III in the ACP Fish II Final Report, Support to legislative development in Tanzania and Preparation of a draft Aquaculture policy in Kenya. Project Ref. N°: Ref. CU/PE1/UG/10/001. <http://acpfish2-eu.org/uploads/projects/id25/Final%20ACP%20Fish%20II%20Final%20technical%20Report%20Draft%20aquaculture%20Policy%20Kenya%20and%20legislation%20development%20tanzania%20.pdf>

²⁴⁰ http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

²⁴¹ http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm

²⁴² <http://www.fao.org/Legal/treaties/037t-e.pdf>

²⁴³ <http://www.fao.org/DOCREP/MEETING/003/X3130m/X3130E00.HTM>.

Legal Instrument	Scope	General	Tanzania
		Adoption (A) Entry into Force (E)	Signature (S) Ratification (R) Entry into force (E)
Indian Ocean Tuna Commission (IOTC) ²⁴⁴	Regional	(A) 11.1993 (E) 03.1996	Party
Southwest Indian Ocean Fisheries Commission (SWIOFC) ²⁴⁵	Regional	(A) 2004 (E) 2005	Party
International Whaling Commission ²⁴⁶	Global	(A) 02.12.1946	Party
SADC Protocol on Fisheries ²⁴⁷	Regional	(A) 14.08.2001 (S) 14.08.2001	(R) 16.03.2003 (E) 08.08.2003

SHIPPING

International Maritime Organization (IMO) Convention ²⁴⁸	Global	(A) 06.03.1948 (E) 17.03.1958	(R) 08.01.1974 (E) 08.01.1974
International Convention for the Safety of Life at Sea (SOLAS)	Global	(A) 01.11.1974 (E) 25.05.1980	(R) 28.03.2001 (E) 28.06.2001

POLLUTION AND OIL SPILLAGE

International Convention for the Prevention of Pollution From Ships,	Global	(A) 17.02.1978 (E) 02.10.1983	Not a Party
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²⁴⁴ <http://www.iotc.org>.

²⁴⁵ <http://www.fao.org/fishery/rfb/swiofc/en>

²⁴⁶ <http://iwcoffice.org/>.

²⁴⁷ <http://www.sadc.int/index/browse/>.

²⁴⁸ <http://www.imo.org/About/Conventions/Pages/Home.aspx>.

1973 as modified by the Protocol of 1978 (MARPOL 73 – 78)

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (MARPOL) (London Convention)	Global	(A) 29.11.1969 (E) 19.06.1975	(R) 28.07.2008 (E) 27.08.2008
International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC)	Global	(A) 30.11.1990 (E) 13.05.1995	Not a Party

ENVIRONMENT

Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi Convention) ²⁴⁹	Regional	(A) 21.06.1985 (E) 30.05.1996	(S) 01.03.1996
Nairobi Convention - Amended Convention Text - as adopted in 2010 ²⁵⁰	Regional	(A) 31/03/2010 (S) 31/03/2010	(S) 31/03/2010
Protocol for the Protection of the Marine and Coastal Environment (LBSA Protocol)	Regional	(A) 31/03/2010 (S) 31/03/2010	(S) 31/03/2010
Convention on Biological Diversity (CBD) ²⁵¹	Global	(A) 22.05.1992 (E) 29.12.1993	(S) 12.06.1992 (R) 08.03.1996

²⁴⁹ http://www.unep.org/french/nairobiconvention/nairobi_abidjan_secretariat/more.asp.

²⁵⁰ http://www.unep.org/french/nairobiconvention/nairobi_abidjan_secretariat/more.asp

²⁵¹ <http://www.cbd.int/secretariat/>.

			(E) 08.06.1996
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) ²⁵²	Global	(A) 03.03.1973 (E) 01.07.1975	(S) 30.04.1973 (R) 29.11.1979 (E) 27.02.1980
Convention on Wetlands of International Importance (Ramsar Convention) ²⁵³	Global	(A) 22.05.1992 (E) 29.12.1993	(S) I.N.A (R) 13.04.2000 (E) 13.08.2000

²⁵² <http://www.cites.org/eng/disc/sec/index.shtml>.

²⁵³ http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1_4000_0__.

GAPS BETWEEN THE NATIONAL LEGAL FRAMEWORK AND TANZANIA'S INTERNATIONAL COMMITMENTS IN LEGALLY BINDING INTERNATIONAL FISHERIES INSTRUMENTS

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA	
<p style="text-align: center;">Article 61 Conservation of the living resources</p> <p>1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.</p> <p>2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall co-operate to this end.</p> <p>3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.</p> <p>4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become</p>	<p>Tanzanian fisheries-related legislation, including the DSFA Act and Regulations, does not provide for determining the total allowable catch, or for fisheries management in the EEZ as required in this Article.</p> <p>In particular, there is no reference to total allowable catch, maximum sustainable yield, cooperation at various levels, associated and dependent species and the exchange of information through competent international organizations.</p>

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>seriously threatened.</p> <p>5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.</p>	
<p style="text-align: center;">Article 62 Utilization of the living resources</p> <p>1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.</p> <p>2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.</p> <p>3. In giving access to other States to its exclusive economic zone under this article the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial</p>	<p>Tanzanian legislation does not require optimum utilization</p> <p>Tanzanian legislation partly covers to a reasonable extent the national laws suggested in paragraph 4 (a) – (k) to regulate fishing by non-nationals. A legislative review should take these areas into account for completeness as there are a number of gaps such as regulating the conduct of research, terms and conditions of joint venture or other cooperative arrangements, landing of catches in ports, training requirements and transfer of technology.</p>

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>efforts in research and identification of stocks.</p> <p>4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, inter alia, to the following:</p> <ul style="list-style-type: none"> (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry; (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period; (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used; (d) fixing the age and size of fish and other species that may be caught; (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports; (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data; (g) the placing of observers or trainees on board such vessels by the coastal State; (h) the landing of all or any part of the catch by such vessels in the ports of the coastal State; (i) terms and conditions relating to joint ventures or other co-operative arrangements; (j) requirements for the training of personnel and the transfer of 	

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research; (k) enforcement procedures.</p> <p>5. Coastal States shall give due notice of conservation and management laws and regulations.</p>	
<p style="text-align: center;">Article 63</p> <p style="text-align: center;">Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it</p> <p>1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to co-ordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.</p> <p>2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.</p>	<p>Tanzanian legislation does not require or set guidelines for the management of shared stocks.</p>
<p style="text-align: center;">Article 64</p> <p style="text-align: center;">Highly migratory species</p> <p>1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive</p>	<p>Tanzania cooperates in the management of highly migratory species through IOTC, but does not implement all binding conservation and management measures.</p>

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work.</p> <p>2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.</p>	
<p style="text-align: center;">Article 73 Enforcement of laws and regulations of the coastal State</p> <p>1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.</p> <p>2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.</p> <p>3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.</p> <p>4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.</p>	<p>The DSFA caters for these measures in part, and the Zanzibar Act, although it claims to license fishing in the EEZ, does not provide for any of them.</p> <p>The power of arrest is not stated in most of the fisheries related legislation.</p> <p>Legislation does not comply with Article 73 paragraph 3, as there is no exception for the imprisonment penalties.</p> <p>Legislation does not contain requirements to ensure compliance with Article 73 paragraph 2 and 4.</p>
<p style="text-align: center;">Article 94 Duties of the flag State</p> <p>1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.</p>	<p>The 2012 FAO Voluntary Guidelines on Flag State Performance are based on the Article 94 requirement relating to the duties of the flag State to control its ships, including beyond national jurisdiction. Tanzania does not have legal authority to do this in relation to fishing vessels, and is non-compliant with</p>

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
	Article 94.
<p style="text-align: center;">Article 111 Right of hot pursuit</p> <p>1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.</p> <p>2. The right of hot pursuit shall apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.</p> <p>3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.</p> <p>4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive</p>	<p>Hot pursuit is defined in the DSFA Regulations, but incompletely and erroneously and the Regulations are inconsistent with and do not implement the comprehensive provisions in Article 111.</p>

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.</p> <p>5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.</p> <p>6. Where hot pursuit is effected by an aircraft:</p> <p>(a) the provisions of paragraphs 1 to 4 shall apply mutatis mutandis,</p> <p>(b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.</p> <p>7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.</p> <p>8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.</p>	
<p>CONSERVATION AND MANAGEMENT OF</p>	

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
THE LIVING RESOURCES OF THE HIGH SEAS	
<p style="text-align: center;">Article 116 Right to fish on the high seas</p> <p>All States have the right for their nationals to engage in fishing on the high seas subject to:</p> <ul style="list-style-type: none"> (a) their treaty obligations; (b) the rights and duties as well as the interests of coastal States provided for, inter alia, in article 63, paragraph 2, and articles 64 to 67; and (c) the provisions of this section. <p style="text-align: center;">Article 117 Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas</p> <p>All States have the duty to take, or to co-operate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.</p> <p style="text-align: center;">Article 118 Co-operation of States in the conservation and management of living resources</p> <p>States shall co-operate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.</p>	<p>Tanzanian fisheries legislation does not comply with Articles 116-119, because it does not control nationals (persons and vessels) in areas beyond national jurisdiction, including on the high seas.</p>

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p style="text-align: center;">Article 119 Conservation of the living resources of the high seas</p> <p>1. In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall:</p> <p>(a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;</p> <p>(b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.</p> <p>2. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned.</p> <p>3. States concerned shall ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.</p>	
<p style="text-align: center;">Article 245 Marine scientific research in the territorial sea</p>	

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>Coastal States, in the exercise of their sovereignty, have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State.</p>	<p>Tanzanian legislation does not implement requirements for marine scientific research, which are beneficial to Tanzania as a coastal State.</p>
<p style="text-align: center;">Article 246 Marine scientific research in the exclusive economic zone and on the continental shelf</p> <p>1. Coastal States, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf in accordance with the relevant provisions of this Convention.</p> <p>2. Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State.</p> <p>3. Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects by other States or competent international organizations in their exclusive economic zone or on their continental shelf to be carried out in accordance with this Convention exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all mankind. To this end, coastal States shall establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably.</p> <p>4. For the purposes of applying paragraph 3, normal circumstances may exist in spite of the absence of diplomatic relations between the coastal State and the researching State.</p> <p>5. Coastal States may however in their discretion withhold their consent to the conduct of a marine scientific research project of another State or competent international organization in the exclusive economic zone or on</p>	<p>Tanzanian legislation does not implement requirements for marine scientific research, which are beneficial to Tanzania as a coastal State.</p>

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>the continental shelf of the coastal State if that project:</p> <ul style="list-style-type: none"> (a) is of direct significance for the exploration and exploitation of natural resources, whether living or non-living; (b) involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment; (c) involves the construction, operation or use of artificial islands, installations and structures referred to in articles 60 and 80; (d) contains information communicated pursuant to article 248 regarding the nature and objectives of the project which is inaccurate or if the researching State or competent international organization has outstanding obligations to the coastal State from a prior research project. <p>6. Notwithstanding the provisions of paragraph 5, coastal States may not exercise their discretion to withhold consent under subparagraph (a) of that paragraph in respect of marine scientific research projects to be undertaken in accordance with the provisions of this Part on the continental shelf, beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, outside those specific areas which coastal States may at any time publicly designate as areas in which exploitation or detailed exploratory operations focused on those areas are occurring or will occur within a reasonable period of time. Coastal States shall give reasonable notice of the designation of such areas, as well as any modifications thereto, but shall not be obliged to give details of the operations therein.</p> <p>7. The provisions of paragraph 6 are without prejudice to the rights of coastal States over the continental shelf as established in article 77.</p> <p>8. Marine scientific research activities referred to in this article shall not unjustifiably interfere with activities undertaken by coastal States in the exercise of their sovereign rights and jurisdiction provided for in</p>	

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
this Convention.	
<p style="text-align: center;">Article 248 Duty to provide information to the coastal State</p> <p>States and competent international organizations which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall, not less than six months in advance of the expected starting date of the marine scientific research project, provide that State with a full description of:</p> <ul style="list-style-type: none"> (a) the nature and objectives of the project; (b) the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment; (c) the precise geographical areas in which the project is to be conducted; (d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate; (e) the name of the sponsoring institution, its director, and the person in charge of the project; and (f) the extent to which it is considered that the coastal State should be able to participate or to be represented in the project. 	<p>Tanzanian legislation does not require States and international organizations to provide the information in Article 248 regarding marine scientific research.</p>
<p>Note: Legal regime, delimitation of maritime zones</p>	<p>Tanzanian fisheries-related legislation in relation to marine zone delimitation should not be based on the Convention, but on the TSEEZ Act, which is based on the provisions in the Convention. However the Mainland Tanzania and Zanzibar legislation ignore both the TSEEZ Act and relevant provisions in the Convention.</p>
1993 FAO COMPLIANCE AGREEMENT	

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p style="text-align: center;">ARTICLE III Flag State Responsibility</p> <p>1. (a) Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.</p> <p>(b) In the event that a Party has, pursuant to paragraph 2 of Article II, granted an exemption for fishing vessels of less than 24 metres in length entitled to fly its flag from the application of other provisions of this Agreement, such Party shall nevertheless take effective measures in respect of any such fishing vessel that undermines the effectiveness of international conservation and management measures. These measures shall be such as to ensure that the fishing vessel ceases to engage in activities that undermine the effectiveness of the international conservation and management measures.</p> <p>2. In particular, no Party shall allow any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority or authorities of that Party. A fishing vessel so authorized shall fish in accordance with the conditions of the authorization.</p> <p>3. No Party shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.</p> <p>4. Where a fishing vessel that has been authorized to be used for fishing on the high seas by a Party ceases to be entitled to fly the flag of that Party, the authorization to fish on the high seas shall be deemed to have been cancelled.</p> <p>5. (a) No Party shall authorize any fishing vessel previously registered in the territory of another Party that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that</p>	<p>Tanzanian legislation does not comply with requirements for flag State responsibility in Article III (based on Article 94 of the 1982 Convention, above, for which there is also non-compliance).</p>

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>(i) any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and</p> <p>(ii) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years.</p> <p>(b) The provisions of subparagraph (a) above shall also apply in respect of fishing vessels previously registered in the territory of a State which is not a Party to this Agreement, provided that sufficient information is available to the Party concerned on the circumstances in which the authorization to fish was suspended or withdrawn.</p> <p>(c) The provisions of subparagraphs (a) and (b) shall not apply where the ownership of the fishing vessel has subsequently changed, and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the fishing vessel.</p> <p>(d) Notwithstanding the provisions of subparagraphs (a) and (b) above, a Party may authorize a fishing vessel, to which those subparagraphs would otherwise apply, to be used for fishing on the high seas, where the Party concerned, after having taken into account all relevant facts, including the circumstances in which the fishing authorization has been withdrawn by the other Party or State, has determined that to grant an authorization to use the vessel for fishing on the high seas would not undermine the object and purpose of this Agreement.</p> <p>6. Each Party shall ensure that all fishing vessels entitled to fly its flag that it has entered in the record maintained under Article IV are marked in such a way that they can be readily identified in accordance with generally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.</p> <p>7. Each Party shall ensure that each fishing vessel entitled to fly its flag shall provide it with such information on its operations as may be necessary to enable the Party to fulfil its obligations under this Agreement, including in particular information pertaining to the area of its fishing operations and to its catches and landings.</p> <p>8. Each Party shall take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provisions of this</p>	

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>Agreement, including, where appropriate, making the contravention of such provisions an offence under national legislation. Sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Agreement and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorization to fish on the high seas.</p>	
<p style="text-align: center;">ARTICLE IV Records of Fishing Vessels</p> <p>Each Party shall, for the purposes of this Agreement, maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing on the high seas, and shall take such measures as may be necessary to ensure that all such fishing vessels are entered in that record.</p>	<p>Tanzanian legislation does not require the maintenance of a record of fishing vessels entitled to fly its flag and authorized for fishing on the high seas.</p>
<p style="text-align: center;">ARTICLE V International Cooperation</p> <p>1. The Parties shall cooperate as appropriate in the implementation of this Agreement, and shall, in particular, exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures, so as to fulfil its obligations under Article III.</p> <p>2. When a fishing vessel is voluntarily in the port of a Party other than its flag State, that Party, where it has reasonable grounds for believing that the fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures, shall promptly notify the flag State accordingly. Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions of this Agreement.</p> <p>3. The Parties shall, when and as appropriate, enter into cooperative</p>	<p>Tanzanian legislation does not implement requirements for international cooperation in the implementation of the Agreement, including the exchange of information including evidentiary material.</p>

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<p>agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of this Agreement.</p>	
<p style="text-align: center;">ARTICLE VI Exchange of Information</p> <p>1. Each Party shall make readily available to FAO the following information with respect to each fishing vessel entered in the record required to be maintained under Article IV:</p> <ul style="list-style-type: none"> (a) name of fishing vessel, registration number, previous names (if known), and port of registry; (b) previous flag (if any); (c) International Radio Call Sign (if any); (d) name and address of owner or owners; (e) where and when built; (f) type of vessel; (g) length. <p>2. Each Party shall, to the extent practicable, make available to FAO the following additional information with respect to each fishing vessel entered in the record required to be maintained under Article IV:</p> <ul style="list-style-type: none"> (a) name and address of operator (manager) or operators (managers) (if any); (b) type of fishing method or methods; (c) moulded depth; (d) beam; (e) gross register tonnage; (f) power of main engine or engines. <p>3. Each Party shall promptly notify to FAO any modifications to the information listed in paragraphs 1 and 2 of this Article.</p> <p>4. FAO shall circulate periodically the information provided under paragraphs 1, 2, and 3 of this Article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information on request individually to any global, regional or</p>	<p>Tanzanian legislation does not implement requirements for the exchange of specific information in Article VI.</p>

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<p>subregional fisheries organization.</p> <p>5. Each Party shall also promptly inform FAO of -</p> <p>(a) any additions to the record;</p> <p>(b) any deletions from the record by reason of -</p> <p>(i) the voluntary relinquishment or nonrenewal of the fishing authorization by the fishing vessel owner or operator;</p> <p>(ii) the withdrawal of the fishing authorization issued in respect of the fishing vessel under paragraph 8 of Article III;</p> <p>(iii) the fact that the fishing vessel concerned is no longer entitled to fly its flag;</p> <p>(iv) the scrapping, decommissioning or loss of the fishing vessel concerned;</p> <p>or</p> <p>(v) any other reason.</p> <p>6. Where information is given to FAO under paragraph 5(b) above, the Party concerned shall specify which of the reasons listed in that paragraph is applicable.</p> <p>7. Each Party shall inform FAO of (a) any exemption it has granted under paragraph 2 of Article II, the number and type of fishing vessel involved and the geographical areas in which such fishing vessels operate; and</p> <p>(b) any agreement reached under paragraph 3 of Article II.</p> <p>8. (a) Each Party shall report promptly to FAO all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures, including the identity of the fishing vessel or vessels involved and measures imposed by the Party in respect of such activities. Reports on measures imposed by a Party may be subject to such limitations as may be required by national legislation with respect to confidentiality, including, in particular, confidentiality regarding measures that are not yet final.</p> <p>(b) Each Party, where it has reasonable grounds to believe that a fishing vessel not entitled to fly its flag has engaged in any activity that undermines the effectiveness of international conservation and management measures, shall draw this to the attention of the flag State concerned and may, as</p>	

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<p>appropriate, draw it to the attention of FAO. It shall provide the flag State with full supporting evidence and may provide FAO with a summary of such evidence. FAO shall not circulate such information until such time as the flag State has had an opportunity to comment on the allegation and evidence submitted, or to object as the case may be.</p> <p>9. Each Party shall inform FAO of any cases where the Party, pursuant to paragraph 5(d) of Article III, has granted an authorization notwithstanding the provisions of paragraph 5(a) or 5(b) of Article III. The information shall include pertinent data permitting the identification of the fishing vessel and the owner or operator and, as appropriate, any other information relevant to the Party's decision.</p> <p>10. FAO shall circulate promptly the information provided under paragraphs 5, 6, 7, 8 and 9 of this Article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information promptly on request individually to any global, regional or subregional fisheries organization.</p> <p>11. The Parties shall exchange information relating to the implementation of this Agreement, including through FAO and other appropriate global, regional and subregional fisheries organizations.</p>	
SADC FISHERIES PROTOCOL	
<p style="text-align: center;">ARTICLE 5 NATIONAL RESPONSIBILITIES</p> <p>1. State Parties shall take measures, at national and international levels, suitable for the harmonisation of laws, policies, plans and programmes on fisheries aimed at promoting the objective of this Protocol.</p> <p>2. State Parties shall adopt measures to ensure that their nationals and juridical persons act in a responsible manner in the use of living aquatic resources in areas within and beyond the limits of national jurisdiction.</p> <p>3. A State Party shall authorise the use of vessels flying its flag, for fishing in waters, to which this Protocol applies, only where it is able to effectively</p>	<p>Tanzanian legislation does not comply with requirements relating to national responsibilities, including control of nationals beyond areas of national jurisdiction.</p>

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<p>exercise its responsibilities under this Protocol in respect of such vessels.</p> <p>4. A State Party, whose vessels or nationals fish in waters to which this Protocol applies, shall take such appropriate steps as to ensure that they comply with measures adopted under this Protocol and that they do not engage in any activity that undermines the effectiveness of such measures.</p> <p>5. State Parties, taking into account the best scientific evidence available shall, through proper conservation and management measures ensure that aquatic living resources in the areas under their national jurisdiction are not endangered by over exploitation.</p>	
<p style="text-align: center;">ARTICLE 7 MANAGEMENT OF SHARED RESOURCES</p> <p>1. Where there is a dispute as to whether a resource is shared between State Parties, such dispute shall be referred to the Integrated Committee of Ministers for determination.</p> <p>2. In applying the provisions of paragraph 1 of this Article, due consideration shall be given to the rights and obligations of State Parties which arise from UNCLOS and other agreements compatible with UNCLOS and which do not affect the enjoyment by other State Parties of their rights or the performance of their obligations under this Protocol.</p> <p>3. State Parties shall co-operate in exchange of information on:</p> <ul style="list-style-type: none"> a) the state of the shared resources; b) levels of fishing effort ; c) measures taken to monitor and control exploitation of shared resources; d) plans for new or expanded exploitation; and e) relevant research activities and results. <p>4. Two or more State Parties may establish instruments for co-ordination, co-operation, or integration of management of shared resources, including:</p> <ul style="list-style-type: none"> a) specialist scientific advisory groups; b) joint programmes and projects, in particular on integrated assessment of shared stocks; c) joint technical or advisory committees on resources management; 	<p>Tanzanian legislation does not comply with requirements relating to shared resources, particularly Article 7 paragraph 10 which provides “State Parties shall introduce relevant legislation enabling rapid and appropriate responses with respect to the provisions of this Article.”</p>

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<p>d) joint ministerial commissions with powers to allocate shared resources among State Parties and agree on management measures; and</p> <p>e) collaboration in enforcement of management plans for shared resources.</p> <p>5. State Parties may agree on management plans, for shared resources, which may include the following components:</p> <p>a) harmonised, or integrated systems to monitor resources and their exploitation, joint fish stock assessment programmes, agreed scientific methodologies for determination of the state of the stocks and preparation of best scientific advice on sustainable levels of exploitation;</p> <p>b) agreed management measures and specification of means for implementing and enforcing such measures;</p> <p>c) principles, policies, and means for allocation of shared resources; and</p> <p>d) means for fostering joint venture enterprises.</p> <p>6. State Parties shall develop, implement and enforce management plans, towards the development and management of shared inland water bodies, by balancing the needs of industrial enterprises, artisanal fishers, subsistence fishers, recreational fishers, and aquaculture practitioners, in a politically, environmentally and economically sustainable manner.</p> <p>7. State Parties shall endeavour to ensure that all stakeholders participate, at the appropriate level, in decision-making processes that affect the management of shared resources.</p> <p>8. State Parties shall take measures to prevent and eliminate overfishing and excess fishing capacity in the Region and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fish resources.</p> <p>9. State Parties shall adopt measures to prevent the deployment of excess fishing capacity from outside the Region if such fishing capacity would adversely impact upon the fish resources of Member States.</p> <p>10. State Parties shall introduce relevant legislation enabling rapid and appropriate responses with respect to the provisions of this Article.</p>	
<p align="center">ARTICLE 8</p> <p align="center">HARMONISATION OF LEGISLATION</p> <p>1. State Parties shall take measures required to harmonise legislation with</p>	<p>Tanzanian legislation does not comply with requirements relating to the</p>

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>particular reference to the management of shared resources.</p> <p>2. All illegal fishing and related activities by nationals and juridical persons of a Member State Party shall be made an offence in the national laws of the State Party.</p> <p>3. State Parties shall establish appropriate arrangements to enable co-operation on hot pursuit of vessels that violate the laws of one State Party and enter the jurisdiction of another State Party.</p> <p>4. State Parties shall co-operate in such matters as the following:</p> <p>a) procedures for the extradition to another State Party of persons charged with offences against the fisheries laws of that other State Party or serving a sentence under the laws of that State Party;</p> <p>b) establishment of region-wide comparable levels of penalties imposed for illegal fishing by non-SADC-flag vessels and with respect to illegal fishing by SADC-flag vessels in the waters of other State Parties;</p> <p>c) consultation with regard to joint actions to be taken when there are reasonable grounds for believing that a vessel has been used for a purpose that undermines the effectiveness of measures adopted under this Protocol and such actions shall include notification of the Flag State and the undertaking by Port States of such investigatory measures as may be considered necessary to establish whether the vessel has indeed been used contrary to the provisions of this Protocol; and</p> <p>d) establishment of a mechanism for the registration of international and national fishing vessels as an instrument of compliance and as a means of sharing information on fishing and related activities.</p> <p>5. Should two or more State Parties wish to provide that a penalty imposed by one State Party under its fisheries laws be enforced by another State Party, they may agree on the procedures for that purpose consistent with their national laws.</p>	<p>harmonization of legislation, but they are useful for harmonizing legislation within Tanzania as well, including establishment of a mechanism for the registration of international and national fishing vessels as an instrument of compliance and as a means of sharing information on fishing and related activities.</p>
<p style="text-align: center;">ARTICLE 9 LAW ENFORCEMENT</p> <p>1. Taking account of national responsibilities pursuant to Article 5 of this Protocol: a) State Parties shall take adequate measures to optimise use of existing fisheries law enforcement resources;</p>	<p>Tanzanian legislation does not implement requirements relating to cooperation in law enforcement, which are also useful for harmonizing national legislation.</p>

INTERNATIONAL REQUIREMENT	TANZANIAN LEGISLATION
<p>b) State Parties shall co-operate in the use of surveillance resources with a view to increasing the cost effectiveness of surveillance activities and reducing the costs of surveillance to the Region and two or more State Parties may conclude an arrangement to co-operate in the provision of personnel and the use of vessels, aircraft, communications, databases and information or other assets for the purposes of fisheries surveillance and law enforcement;</p> <p>c) State Parties may designate competent persons to act as fisheries enforcement officers or on-board observers in order to carry out activities on behalf of two or more State Parties;</p> <p>d) a State Party may permit another State Party to extend its fisheries surveillance and law enforcement activities to its inland water bodies and the exclusive economic zone and, in such circumstances, the conditions and method of stopping, inspecting, detaining, directing to port and seizing vessels shall be governed by the national laws and regulations applicable to the waters where the fisheries surveillance or law enforcement activity is carried out;</p> <p>e) State Parties shall strive to harmonise technical specifications for vessel monitoring systems and emerging technologies of interest to fisheries surveillance activities; and</p> <p>2. In applying the provisions of paragraph 1, State Parties shall co-operate, either directly or through international fisheries organisations or arrangements, to ensure compliance with and enforcement of applicable international management measures.</p>	

INDICATIVE GAPS IN TANZANIAN FISHERIES LEGISLATION
SELECT MODEL LEGAL PROVISIONS RELATING TO FISHERIES MCS
AND THEIR IMPLEMENTATION IN NATIONAL LEGISLATION

The title and summary content of select model provisions for some key areas of fisheries MCS are given in the table below.

The model provisions are based on international fisheries instruments and on best practices in national fisheries legislation. They are indicative of existing needs in general for harmonization and may be elaborated further. They do not represent the entire suite of provisions that may be considered under each area addressed.

Where part or all of the model provisions appear in the Acts and regulations of Mainland Tanzania, Zanzibar or the Deep Sea Fishing Authority, this is indicated with reference to specific sections or regulations for the relevant laws of each country. **The provisions are mostly not identical to the indicative model provision, and usually only partially implement the indicative provision.**

The select provisions are arranged in the following framework. A number of areas not addressed that are normally found in fisheries legislation include fisheries management, licensing procedures, responsibility for administration, institutional arrangements, requirements for arrested/seized persons and items, activities such as trade, fish processing and aquaculture and level of fine or penalty.

The information is indicative of Tanzanian legislation, and generally shows

MTA Mainland Tanzania Fisheries Act Section
MTR Mainland Tanzania (Amendment) Regulations
DSR Deep Sea Fishing Authority Regulations
Z Zanzibar Fisheries Act, 2010

Title	Summary	Legislation
I GENERAL		
1. Definitions/ Interpretation	Ensure consistency with international instruments, best practices; should define all key terms in Act.	Incomplete or inconsistent with best practice ²⁵⁴
2. Objective of Act	Ensure consistency with international instruments; long-term sustainable use.	
3. Jurisdiction	Describe area of jurisdiction for purposes of implementing the Act including maritime zones; as appropriate refer to law claiming boundaries/marine zones.	None ²⁵⁵
4. Application of Act	Extend application to nationals and national vessels undertaking activities in areas beyond national jurisdiction.	
5. International, regional, bilateral cooperation	Promotes cooperation to fulfil general international, regional, bilateral obligations, including MCS	
6. Stowage of gear ²⁵⁶	All vessels in the fishery waters should have their gear stowed so it is not readily available for use when they are in an area where they do not hold a license to fish.	MTR 60 DSR.39
7. Prohibited fishing gear and methods	Sets out prohibited fishing gear and methods, such as beach seining and fishing with explosives, poisons etc.	MTA.17(f), 43, 44 R.48 R.66 Z.20, 21
8. Possession of prohibited fishing gear, substance	Prohibits possession of prohibited fishing gear or substance, may allow for possession with permission in writing from the Director.	
9. Implementation	Provides a mechanism for implementation of international conservation and management measures of RFMOs to	

²⁵⁴ All have definitions, but many gaps and inconsistencies exist (see Part 2 of this document).

²⁵⁵ None provides for application to marine zones, DSFA refers to TSEEZ Act.

²⁵⁶ Legislation generally applied this to foreign fishing vessels only, but it should be applied to fishing vessels in areas where they are not licensed to fish.

Title	Summary	Legislation
of international conservation and management measures	which the country is party, and a duty to facilitate information.	
	II INFORMATION, DATA AND RECORDS	
10. Information, data and records	Requires persons carrying out activities under the scope of the Act to furnish such information, data and records that may be required.	MTAS.55
11. Information to be true, complete and correct	Any information given, furnished or maintained etc. must be true, complete and correct and no such information shall be false, misleading or inaccurate.	
12. False or forged documents	No person shall unlawfully alter, destroy, erase, obliterate, forge or falsify any document made or required under the Act.	MTR.130
13. Registers of licences and vessels	Director to establish and maintain registers, including of licences vessels, gear, fishers, etc.	DSR.15
14. Information on legal, administrative action taken under the Act	Information to maintained and made publicly available on actions resulting in a judgment or administrative determination.	
15. Public access to information	Subject to the next section, information to be made available to public.	MTA.7
16. Confidential information	General requirements for identifying confidential information, duty not to breach, etc.	(DSFR.30 ²⁵⁷)
17. Exchange of information	Requires Director to exchange information with other States, organizations in general to promote effective fisheries management, and in accordance with international obligations.	
	III MONITORING, CONTROL AND SURVEILLANCE	

²⁵⁷ But only in relation to VMS information, not generally.

Title	Summary	Legislation
18. Establishment of MCS Unit	<p>Establishment of an MCS Unit and a description of its functions may be appropriate, depending on institutional arrangements in each country.</p> <p>It would indicate the fisheries agency as that the lead authority for MCS, but cooperation with other agencies could be encouraged as appropriate.</p>	MTAS. 31, 32 DSR. 31,32 Z.19
19. Appointment of authorised officers	Procedures for the appointment of authorised officers are set out.	MTA. 2 ²⁵⁸ and 5(b) - (c) ²⁵⁹ DSR.35
20. Authority and general powers of authorised officers, inspectors, etc.	<p>Authorised officers, inspectors may do all such acts and things and give such directions as are reasonably necessary for the purposes of exercising any of his/her powers under the Act.</p> <p>Powers without a warrant are described.</p> <ul style="list-style-type: none"> • Also should address use of force, assistance, application of act where duties are carried out in areas beyond national jurisdiction and potential cooperation in MCS. 	MTA.33 MTR.72 MTR.147 Z.23
21. Identification of authorised officers	Authorised officers must identify themselves upon request and produce evidence that he/she is an authorised officer.	MTR.146
22. Powers of hot pursuit	Authorised officer may, following hot pursuit outside the fishery waters in accordance with international law.	DSFA.42
23. Powers of entry and search	For vessels, premises, etc. ,detaining any person, vessel, vehicle, aircraft, document, gear, fish, etc.;	MTA.33, 36
24. Power to take, detain, remove and secure information and evidence	Authorised officers have the power to take, detain, remove and secure information or evidence for purposes and activities falling within the scope of the Act.	
25. Power of arrest	Specifies conditions under which an authorised officer may make an arrest.	MTA. 36(d)

²⁵⁸ There is an anomaly: the Director is not given authority in the Act to appoint authorised officers, but the interpretation section defines “authorised officers” as being appointed by the Director. The interpretation section cannot give authority to the Director to appoint authorised officers; it must be done clearly by law. Responsibilities and requirements for the appointment must be set out in the body of the Act and not as a definition.

²⁵⁹ There is another anomaly; the Director appoints an “enforcement officer” but the term “authorised officer” is used throughout the rest of Act. It is not clear whether they are different or the same.

Title	Summary	Legislation
26. Power to give direction	An authorised officer may, upon belief that the vessel is being or has been used in contravention of the Act, take the vessel to the nearest available port in the country, and remain in control of the vessel for a reasonable period of time.	
27. Power of seizure	Gives power of seizure of authorized officer and identifies items that may be seized (e.g. vessel, conveyance, gear, fish, article, record etc) and retained (e.g. passports and seaman's books).	MTA.37 MTR.145(3))
28. Removal of parts from seized vessels, etc.	An authorised officer may remove any part from a seized vessel for the purpose of immobilizing it.	
29. Authority of authorised officer or inspector in relation to abandoned fishing vessels, fishing gear, fish or fish products	<p>Where an authorised officer has reason to believe that any fishing vessel, gear or fish product has been abandoned to avoid prosecution, he/she shall apply to the Court for an order to dispose of it.</p> <p>He/she may also investigate the area/premises where fishing vessel, gear, products are abandoned and he/she believes that a person has done so to avoid investigation.</p>	MTA.48
30. Observer programmes	May be established for collecting, recording and reporting reliable and accurate information for scientific, management and compliance purposes.	
31. Appointment of, and identification by inspectors and observers	Director may appoint inspectors for monitoring, compliance and management, and observers for purposes of the observer programme. Inspectors and observers must identify themselves on request and produce evidence of their appointment.	DSR.33, 34
32. Conditions for observers	The operator and licence holder of any vessel upon which an observer is placed must provide the observer with a certain standard of accommodation, work space, assistance, etc.	
33. Observer costs	All observer costs are itemized and to be paid by or on behalf of the vessel upon which the observer is placed including salary, travel, insurance and training.	
34. Embarkation and disembarkation of observer	<p>The Director must give reasonable notice of intention to place an observer on a vessel, and the vessel must comply with the instruction.</p> <p>The vessel must disembark the observer at the time and place required by the Director.</p>	
35. Requirements for monitoring	Where a fishing vessel is required as a condition of licence to be subject to the monitoring of offloading, the offloading shall take place at a port where an inspector or observer is available for such monitoring.	

Title	Summary	Legislation
of offloading		
36. Application of Act to authorized officers and observers in areas beyond national jurisdiction	National authorized officers and observers carrying out duties under the Act beyond national jurisdiction in accordance with any international agreement, international conservation and management measures or international law shall be subject to the provisions of the Act.	
37. Application of Act to non-national authorized officers and observers under agreement in national waters	Provides for recognition of non-national authorized officers and observers where they are carrying out MCS duties under an agreement to which Seychelles is party, and gives them full authorities under the Act.	
38. Protection of authorised persons from liability	Persons carrying out their duties under the Act are not subject to action, liability or claim. In respect of vessels brought to port, where the master is in control he/she is responsible for the safety of the vessel and persons on board. (Authorised persons includes officers, inspectors and observers.)	MTA. 42
39. Duties of operators, etc, to authorized persons	The operator and crew aboard a vessel or others carrying out activities under the Act to which an inspector or observer has been assigned have specified duties to allow and assist the inspector or observer to effectively carry out his/her duties under the Act.	
40. Obstruction, etc of authorised persons	A wide range of prohibited actions are described which would result in the obstruction, etc. of an authorised person.	MTA.41 DSR.69
41. Vessel Monitoring Systems	Director may establish and operate vessel monitoring systems for monitoring, control and surveillance, and managing the operation of fishing vessels. Requirements are set out.	MTR.69 DSR.28-30
42. Use of port without authorization	Requires notification of entry into port and certain information to be given and an authorization prior to entering port. Otherwise the use of port is prohibited for the landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including refuelling and resupplying, maintenance and	

Title	Summary	Legislation
prohibited	drydocking.	
43. Vessels may be prohibited from entering port	Vessels may be prohibited from entering port where there is sufficient proof of IUU fishing	
44. Denial of the use of port to a foreign fishing vessel	Sets out reasons why the use of port either must be denied, or may be denied for activities listed in previous section. It may be denied either before or after inspection for applicable reasons.	DSR.24 ²⁶⁰
45. Inspection of foreign fishing vessels in port	Inspection must take place according to certain procedures, and the reports of inspection must contain specified information.	DSR.37 ²⁶¹
	IV EVIDENCE	
46. Certificate evidence	The Director or any person designated in writing by him may give a certificate stating specified things, e.g. whether a person held a licence, that a document is a true copy of the licence, a particular location is within the fishery waters, an item is fishing gear, the cause and manner of death and injury to any fish, etc.	MTA. 35 ²⁶²
47. Validity and procedure for certificate	A document issued under previous section shall be deemed such a certificate. a process of service on the defendant is set out, and where there is no objection the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.	
48. Certificate as to the location of a vessel	A certificate as to the location of a vessel shall be evidence, unless the contrary is proved, of the place or area in which a vessel was at the relevant date and time.	
49. Electronic location device	The readings of any mobile transceiver unit or other electronic location device integral to a vessel monitoring system may be used as <i>prima facie</i> evidence unless the contrary is proved.	
50. Photographic evidence	If a photograph is taken of any activity under the Act, and the date and time are superimposed, it is prima facie evidence that the photograph was taken on that date, under certain conditions.	
51. Presumptions	A range of rebuttable evidentiary presumptions are given, e.g. all fish on board a vessel used to commit an offence are presumed to have been caught during the commission of the offence, unless the contrary is proved.	
52. Onus of proof	Circumstances in which the onus of proof is reversed are given, e.g. the charged person must prove that he/she held a	

²⁶⁰ Landings and notification only.

²⁶¹ Inspection only relates to landing and offloading, not to use of port generally.

²⁶² Provides for a “certificate of evidence” relating to the scene of the alleged offence but not to the various matters identified.

Title	Summary	Legislation
	requisite licence.	
53. Interfering with evidence	Interfering with evidence is prohibited and various circumstances are given, e.g. destroy gear, fish etc with intent to avoid seizure, remove from legal custody vessel, fish etc.,	
54. Tampering with evidence	Prohibited to tamper with, destroy etc. any item, document or other thing that may be used in evidence of non-compliance with the act.	
	V JURISDICTION OF COURTS	
55. Jurisdiction of Courts	Specifies the jurisdiction of the court for offences committed in areas within and beyond national jurisdiction, and deems the offence to have been committed within the jurisdiction of the court.	
56. Compounding	Allows compounding of an offence and establishes a transparent and accountable process.	MTA.40 DSFR. Z.35
57.	VI OFFENCES AND PENALTIES	
58. Offences and fines	The offences and level of fines may be set in one section or in each section of the Act that describes an offence, or in a Schedule, which can be amended as a Regulation.	S.41-48 DSR.Part VIII
59. Court may order imprisonment	Provision for imprisonment (Should also refer to Article 73 of the 1982 UN Law of the Sea Convention, relating to imprisonment of foreigners for fisheries offences in the EEZ, but no legislation does this).	Yes
60. Court may order forfeiture	Provision for forfeiture.	MTA.38
61. Continuing offences and repeat offenders	Each day of a continuing offence shall be considered a separate offence, and repeat offenders shall be given at least twice the amount of the fine as in the previous conviction or determination.	
62. Banning order	A Court may order that a convicted person shall be banned from going on or remaining on board a fishing vessel, or carrying out specified activities for a period (e.g. of up to five years)	
63. Cancellation or suspension of licence	A Court may order that a convicted person's licence be cancelled or suspended.	
64. Liability of operator	Act or omission of crew member is deemed to be that of the operator	

Title	Summary	Legislation
65. Costs incurred by State	The operator and charterer of a vessel shall bear the costs to the Government in connection with seizures, prosecutions, costs of maintaining seized items and imprisonment.	
66. Compensation for loss or damage	A person who commits an offence may be liable for loss or damage caused by the offence and the amount may be awarded by the Court as compensation or restitution in addition to a fine.	
67. Deprivation of monetary benefits	Where a Court has convicted a person, it may impose an additional fine equal to the court's estimation of a monetary benefit gained.	
68. Default for non-payment of fines	In addition to any other fine or penalty, the Court may order a default penalty for non-payment of fines or determinations, not to exceed (e.g. 1%) per day of the total amount.	
69. Non-payment of pecuniary penalties	All fines, etc. not paid may be sued for.	

**INDICATIVE PROVISIONS FOR SIMILAR MATTERS IN LEGISLATION GOVERNING FISHERIES FOR
MAINLAND TANZANIA, ZANZIBAR AND THE EXCLUSIVE ECONOMIC ZONE**

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
Preliminary <i>Defines geographical application of Act</i>	Application To MT: no general reference to maritime zones or delimitation.		Application To Zanzibar: no general reference to maritime zones or boundaries	Application Unclear: no reference to land and/or water.	Application To MT and Zanzibar But no application to Tanzanian nationals (vessels or persons) beyond areas of national jurisdiction.	Application To fishing and related activities in the EEZ of the United Republic. <i>But the Act does not apply to “related activities” and they are not defined.</i>
	Territorial waters ²⁶³ : 12 NM seaward of “mean low water line” ²⁶⁴ “Sea fishery”: Seaward of <i>high</i> water mark, ²⁶⁵ term not used in text of Act.	“Exclusive Economic Zone” used only in relation to investment.	Internal waters definition unintelligible Definitions of EEZ, internal waters and territorial waters: • are inconsistent with each other and with	“controlled area” defined entirely as waters, but Regulations relate to land (e.g. Latham Island, camping activities)	"Exclusive Economic Zone" has the meaning ascribed to it by the Territorial Sea and Economic Zone Act, 1989. Applies in addition to, no derogation from TSEEZ Act.	

²⁶³ Does not refer to the “territorial sea” as declared in the Territorial Sea and Exclusive Economic Zone Act, 1989 (TSEEZ Act).

²⁶⁴ Definition different from TSEEZ Act, “low water line”.

²⁶⁵ Term defined but not used in Act.

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
	<p>“Exclusive Economic Zone” (EEZ) not used in Act.</p> <p>The TTSEEZ Act and DSFA Act are not acknowledged.</p>		<p>definitions in the Fisheries Act, 2003;</p> <ul style="list-style-type: none"> • conflict with the declaration of zones in the TSEEZ Act. <p>The TTSEEZ Act, DSFA Act and MT Act are not acknowledged.</p> <p>The term “Zanzibar waters” is used, but they are not officially delineated and there is no agreement with MT on maritime boundaries between them.</p>			
<p>Definition of terms</p> <p><i>Defines key terms used</i></p>	<p>Concerns with definition:</p> <p>Fish Fishery Fishing Fishing gear</p>	<p>Concerns with definition:</p> <p>Unreported fishing Unregulated fishing (<i>Definition</i>²⁶⁶ and <i>use</i>²⁶⁷ makes</p>	<p>Concerns with definition:</p> <p>Inconsistency with terms in MT Act.</p> <p>40 terms defined.</p>	<p>“MCU Officers”:</p> <ul style="list-style-type: none"> • defined, but not used in the text; • inconsistent with the establishment 	<p>“Authorized Officers” is essentially same definition used in TSEEZ Act, but only used for offence of</p>	<p>Concerns with definition:</p> <p>Fish (<i>similar to flawed definition in MT Act</i>) Transshipment</p>

²⁶⁶ The meaning of the terms, as defined in the FAO International Plan of Action to Combat IUU Fishing (IPOA-IUU), is changed, and they do not cover RFMO Conservation and Management measures (e.g. IOTC) so are inconsistent with international obligations.

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
<i>in Act</i>	Fishing vessel	<i>enforcement almost impossible</i>	Of these: <ul style="list-style-type: none"> 21 also defined in MT Act. Of these: <ul style="list-style-type: none"> 8 have same general definition. 	and functions of the MCU, which includes a similar but not identical list of persons.	assaulting, etc an AO in the course of his duties. No powers of duties of AOs are provided.	Definitions are given but terms are not used in text: Authorized Officers Enforcement Officers
	No definition Fish product Buy Sell Person Import Export Related activities		No definition Fish product Buy Sell Import Export Fishing or fisheries- related activities	No definition Fish product Buy Sell Person Import Export Related activities or fisheries-related activities	No definition Fish Fishing Fishing vessel Person Resources	No definition Fishing Fishing gear Fishing vessel Buy Sell Import Export Person Related activities
Administration ²⁶⁷ <i>Responsibilities of Minister, appointment of personnel</i>	Director appoints: <ul style="list-style-type: none"> Licensing Officer Enforcement officer (no authority in Enforcement Part VIII) 		Department: establishment, functions Functions do not specifically refer to fisheries MCS. ²⁶⁹	Functions and responsibilities of Unit: No reference to general objectives or principles. Institutional aspects well provided.	DSFA and institutional committees etc established Functions do not expressly include fisheries	Licensing Officers appointed by Director-General.

²⁶⁷ A person must have committed all three – illegal, unreported *and* unregulated fishing, and not just one of the elements.

²⁶⁸ DSFA: Establishment of the DSFA, management of the DSFA and financial provisions.

²⁶⁹ They include: “promote, develop, control and monitor for the purpose of proper management of all fisheries and related activities in artisanal and semi industries;” But artisanal and semi industries are not defined.

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
	<ul style="list-style-type: none"> Fish Inspector <p>Conflict with Part VIII Minister (not Director) appoints officers of the Unit.</p> <p>Enforcement authority given to “authorized officer” (not enforcement officer) , but does not provide for their appointment</p>		<p>Appointment of Director</p> <p>No provision for appointment, duties of personnel.</p>		<p>management for:</p> <ul style="list-style-type: none"> DSFA (to “promote, regulate and control” fishing in the EEZ) Technical Advisory Committee Director-General Executive Committee <p>No management principles, plans required</p> <p>But Minister may make regulations on “management of resources” (<i>undefined</i>) in the EEZ.</p> <p>Balanced geographical representation in institutional framework</p>	
Registration	(Licensing	Registration of	Licences required			No authority for

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
, licensing of vessels, fishers and fish dealers²⁷⁰	requirements under “Management”, below)	<p>vessels (including in BMUs)</p> <p>Licensing of fishing vessels, fishers, fish dealers.</p> <p>Licensing Officer responsible for all actions, suspension of license but no transparent system with timelines, etc.</p> <p>Some required conditions but unclear.²⁷¹</p> <p>Director may attach conditions to effect the objectives and purpose of the Act. However these are not stated in the Act.</p> <p>Appeals procedure, but not for license denial.</p>	<p>for “any fishing vessel operating in the internal waters, territorial waters and Exclusive Economic Zone of Zanzibar whatever their size or method of propulsion.”</p> <p>General conditions for licensing, “other” licenses, specific gear used without vessels.</p> <p><u>Duplicates</u> functions of DSFA by requiring all vessels to be licensed under the Act for fishing in the EEZ, without making exception. Implications for MCS and “double jeopardy” for vessels.</p>			<p>Licensing Officers to review licence applications or compliance with licence conditions and make recommendations on issuance, etc.</p> <p>Licence applications to be made by persons “who wish to conduct fishing in the EEZ”, rather by an owner, operator, master, charterer, etc.</p> <p>Licence applicants must notify D-G prior to entry into EEZ, but no provision for licensed holders or unlicensed vessels to notify.</p> <p>DG can issue special permits for fishing for scientific research on the basis of a</p>

²⁷⁰ Zanzibar Fisheries Act: “Licensing of Fishing Operations”

²⁷¹ e.g. how can the number of fishers be an enforceable license condition rather than a management measure?

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
		No coordination with other government agencies.	<p>Provides for suspension of licences, not cancellation, revocation.</p> <p>Requires licence (not licensee) to comply with information requirements (to be established by Director)</p> <p>Non-compliance with conditions of license not an offence.</p> <p>Prohibits use of beach seine, fishing weir or spear gun or any electrical or diving device for fishing.</p> <p>Does not set out licensing process comprehensively.</p> <p>Refers to regulation</p>			proposal, but benefits to coastal State required under 1982 Convention not included.

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
			of related activities, they are undefined.			
<p>Development of the fishing industry²⁷²</p> <p><i>Promoting industry development, sustainable use</i></p>	<p>Industry development takes priority.</p> <p>International cooperation for specific areas, not including management measures, MCS</p> <p>No provision for taking management measures, management principles, fisheries management plans</p>	<p>Primarily concerns investors, stakeholders, fisheries research and training.</p> <p>BMUs established, requirements for fisherfolk.</p> <p>Dago fishers not allowed to be members.</p>	<p>No direct provision for fisheries development or “control” in the sense of MCS.</p> <p>No provision for taking management measures, except the Director may impose three general types of conditions for regulating the fishing industry and seven types of license conditions, considered insufficient for management of the resource.</p> <p>The Minister has management authority to: declare controlled areas (but purposes,</p>			

²⁷² For Zanzibar: “Development and control of the fishing industry”.

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
			<p>mechanisms, areas not defined); and regulate local and industrial fishing and related activities in Zanzibar and ensure that local fishing is not damaged.</p> <p>Fish landing sites established.</p> <p>Minister must consent in writing to foreigners carrying out fisheries activities. (Conflicts with MT Act – prohibits licensing in territorial sea).</p>			
Aquaculture development <i>General powers to</i>	Briefly addressed, no regulatory framework, Director has authority to regulate “aquaculture practices”. Includes mariculture.	A range of regulations set out requirements. “aquaculture” is defined in the interpretation section, but instead				

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
<i>regulate</i>		the undefined term “aqua-farms” is used in the Regulations. Definition does not include plants, but Regulations refer to “seaweed farming”.				
Management and control of the fishing industry (including licensing for MT)	No provision for “fisheries” management; just a restrictive and flawed list of conditions that Minister may impose, “necessary for the proper management of fisheries” Director may make agreement with BMUs (not established, no requirements for marine zones) License requirements, including activities	Use of poisons and explosives, water pollution, genetically modified organisms Compounding offences Incomplete provision on sale of perishable goods. Provisions of Act, other regulations duplicated. ²⁷⁴ Notification on entry into port and denial of port use, incomplete and partly unenforceable. ²⁷⁵	Provision under “development of the fishing industry” above.	Management measures may be set under the by-laws.	No specific fisheries management function (described above) Authority may negotiate and enter into fishing or other agreement etc. with other governments etc.	No clear mechanism for formulating and taking management measures. Management principles set out. D-G responsible for stock assessments, restoration of stocks but no reference, e.g. to MSY requirements in 1982 Convention or broader management powers. Landing and transshipment provisions deficient (do not cover fish products, do not

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
	<p>required to be licensed²⁷³ and prohibited activities</p> <p>No foreign fishing vessel shall be licensed to fish in the territorial waters.</p> <p>General conservation authority for habitat, endangered species.</p>	<p>VMS requirements basic, need updating; apply to “industrial sea fishery” not defined or used elsewhere.</p>				<p>comply with IOTC requirements or international standards)</p> <p>Information sharing only permitted with FAO, not e.g. other Tanzanian authorities or regional arrangements.</p> <p>Many standard information requirements not included.</p> <p>No provision on ownership of information relating to fish caught in EEZ.</p> <p>Director may support public awareness creation, education programmes and training institutions.</p>

²⁷⁴ e.g. Foreign fishing vessels not authorized to enter territorial waters for any purpose unless authorized, stowage of gear.

²⁷⁵ These requirements are incomplete, partly unenforceable and inconsistent with several requirements of IOTC Resolution 10/11.

²⁷³ Licenses are required for (a) fishing; (b) collecting, gathering, processing or manufacturing fish products or products of aquatic flora; (c) selling or marketing of fish, fish products, aquatic flora or products of aquatic flora; (d) importing or exporting of fish, fish products, aquatic flora or products of aquatic flora.

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
Fish quality, management and standards	Minister may make conditions. Director may “prescribe” ²⁷⁶ standards	Fish quality regulations, no direct relation to IUU fishing and MCS.				Minister can impose conditions for fish export, including processing establishments – possibly ultra vires the Act which applies to fishing and related activities in the EEZ.
Financial provisions	Minister to “prescribe” fees for vessel registration, licenses etc. Fisheries development fund established					
MT: Enforcement Zanzibar: Conservation measures	Minister to establish Surveillance Unit for “protection of fish and its environment, fishery products and aquatic flora against unlawful dealers and generally the enforcement of the provisions of this Act”		Marine Conservation Unit established Prohibited gear and fishing methods (also included under “licensing” Part) Bare bones powers of authorized officers	Enforcement authority to shehia fishermen’s committees, but no specific enforcement powers or procedures. No provision for coordination with MCS operations under Fisheries Act, 2010 or DSFA.	D-G answerable to Executive Committee for monitoring and surveillance and keeping MCS-related records. No requirements to keep information required by RFMOs or under international obligations.	Conflicts and gaps in the use of terms “fishery officers”, “enforcement officers” and “authorized officers” None has power of arrest in the EEZ. Observer provisions weak, do not protect them.

²⁷⁶ Technical term for making regulations, which is normally reserved for Ministers.

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
	<p>Powers of “officers of unit” can only be exercised on vessels. Other powers to be exercised by “authorized officers”.</p> <p>No standard powers for MCS, many general authorities not stated.²⁷⁷</p> <p>Certificate of evidence may be recorded by authorized officer but this is inconsistent with the use of “certificate evidence” in fisheries legislation.</p> <p>Compounding procedures problematic, no transparency, accountability.</p>		<p>No provisions on appointment, functions, duties of others towards him/her. (Inconsistent with MT Act and DSFA Regulations)</p> <p>Only five powers listed (fuller powers given in MT and DSFA Acts).</p> <p>Sale of seized fish (nothing on release of funds to owner)</p> <p>No provisions on evidence or jurisdiction of court.</p>		<p>Authority may establish and maintain system of collaboration etc with Navy, etc. having functions related to those of the Authority.</p>	<p>Basic procedures for pre-licensing, offloading and at-sea inspections, but do not implement port inspection required by IOTC.</p> <p>Gear stowage requirement unclear.</p> <p>No standard logbook form, or electronic logbooks.</p> <p>No general requirements for vessel marking.</p> <p>Hot pursuit provision incorrect under international law and incomplete.</p> <p>“Lacey Act” type of provision mistitled, misunderstood, flawed and inapplicable.</p>

²⁷⁷ e.g. use of force, MCS cooperation, hot pursuit, removal of evidence etc.

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
						Evidentiary presumption defective.
Offences and penalties	<p>Offences are not well described</p> <p>Many “serious offences” are not mentioned</p> <p>Not possible to create offences for non-compliance with standards required under the Act to be set out in the <i>Gazette</i> (which should instead be in Orders or Regulations)</p> <p>The minimum/maximum levels of fine are unrealistic for deterrence or punishment.</p>	<p>Most offences have minimum and maximum fines, but low levels.</p>	<p>There are four categories of offence: fishing by explosive and noxious substances, offences related to licences, other offences and obstructing authorized officers.</p> <p>A number of activities are not offences.</p> <p>A general offence requires contravention of multiple provisions: any person who contravenes <i>any provisions</i> of this Act commits an offence.</p> <p>Generally poor drafting.</p>	<p>Prohibitions include camping, destructive fishing, anchoring/mooring for water sports, filming and research except under written permit, remove corals, causing pollution, destruction of marine ecosystems or environment.</p> <p>It could be difficult to enforce “destructive fishing”, “causing pollution” and “destruction of marine ecosystems or environment”, among others, because these terms or the elements of such offences are not defined.</p>	<p>Offence for failing to furnish information, produce documents, but no offence for failing to provide information that is true, complete and correct.</p> <p>Offence to carry out fishing or related activities in the EEZ contrary to the Act, but “fishing” and “related activities” not defined.</p> <p>Offence to assault, etc authorized officers in the execution of duties, but the Act does not describe the duties of authorized officers.</p> <p>Authority to compound offences but no controls over</p>	<p>Offence to falsify documents, but not destruction of evidence of giving false, misleading or inaccurate information (<i>but no penalty is attached</i>)</p> <p>Offence to possess shark fins without a carcass onboard a vessel. Does not meet IOTC requirements (e.g. comprise no more than 5% of the total shark weight. on board).</p> <p>Also offences regarding fishing, licence conditions obstruction of inspectors and observers, pollution and degradation of marine environment.</p>

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
					the process.	<p>No specific offence for carrying out prohibited related activities.</p> <p>General offence regulations where no other penalties apply, but gaps exist.</p> <p>Fines and penalties are described unevenly. Many have minimum fines, no maximum. They are not significant for serious offences.</p> <p>No provisions on “continuing offences”, no rules of evidence (e.g. presumptions, certificate evidence) or requirements for performance bonds for foreign fishing vessels.</p>

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
General/ Miscellaneous provisions	<p>“Biological resources” belonging to Government to be conserved; inconsistent with natural resources provided in Constitution and international law.</p> <p>Development activities²⁷⁸ require EIA (no requirements or process for EIA).</p> <p>Research not clearly addressed, do not implement 1982 Convention.</p> <p>Information requirement for documents and information within 30 days of delivery of notice.</p> <p>No provision that</p>	<p>Director to issue Guidelines to implement Regulations, including for BMU establishment.</p> <p>Fish inspectors can close fish establishments.</p> <p>Powers of “authorized officers” set out.</p> <p>Establishment of BMU, Zonal Enforcement Units (should be in Act).</p> <p>BMU functions, include by-laws and MCS.</p> <p>BMU partly inconsistent with Act (broader scope, no reference to Act/Director’s</p>	<p>Minister may exempt any person, organization.</p> <p>Authority to make regulations conflicts with DSFA, extends to activities of foreign fishing vessels within internal waters, territorial waters and EEZ of Zanzibar.</p> <p>Compounding: Director may accept money and order the release, no accountability of best practices.</p> <p>Fisheries Act, 1988 repealed but no mention of subsidiary legislation, orders etc made under it.</p>			

²⁷⁸ These activities are undefined.

	Mainland Tanzania (MT) Fisheries Act, 2003	Fisheries (Amendment) Regulations, 2009	Zanzibar Fisheries Act, 2010	Draft MCU Regulations	DSFA Act, 1998	DSFA Regulations, 2009
	<p>information to be true, complete and correct.</p> <p>Minister may exempt requirements of Act for scientific research, education, emergency supply of goods and “compliment”.</p> <p>Minister may make regulations (but not in relation to fishing).</p> <p>No provisions on jurisdiction of court.</p>	<p>authority)</p> <p>BMU jurisdiction over water not limited to zones, just to livelihood of local authorities.</p> <p>Membership of BMU</p> <p>Zonal Enforcement Units: no provisions on authorized persons, powers and processes.</p> <p>Activities to be supported by the Fisheries Development Fund, including MCS.</p>				

PROPOSED PROVISIONS FOR FISHERIES LEGISLATION

FISHING WITH EXPLOSIVES, BOMBS, ETC, and associated provisions on evidence, deprivation of monetary benefits and definitions

Fishing with explosives, bombs, etc and related matters

1. (1) No person shall:
 - a) permit to be used, use or attempt to use any explosive, bomb, poison or other noxious substance for the purpose of fishing, including killing, stunning, disabling, stupefying, damaging, destroying or harvesting fish, or in any way rendering fish more easily caught or direct or indirect damage to the marine environment;
 - b) carry or have in his/her possession or control any explosive, bomb, electric shock device, poison or other noxious substance in circumstances indicating an intention of using such device or substance, directly or indirectly, for any of the purposes referred to in subparagraph (a).
- (2) No person shall on his/her own account, through a person acting on his/her behalf, or in any other capacity plan, provide direct or indirect support to, assist, supply or encourage any person involved in, or be otherwise involved in, any activity described in paragraph (1).
- (3) No person shall, on his/her own account, through a person acting on his/her behalf, or in any other capacity, possess, import, export, tranship, land, transport, sell, receive, acquire or buy any fish or fish product taken, possessed, transported or sold in violation of any activity described in paragraph (1), where such person had reasonable cause to believe that such fish was so taken, possessed, transported or sold.
- (4) For the purposes of this Act, where a vessel or vehicle is used in contravention of paragraph (1), (2) or (3), the owner and operator shall each be deemed to have committed the offence.
- (5) Unless the contrary is proved, any person who is found in possession of any explosive, bomb, poison or any device capable of producing an electric shock on or near the fishery waters shall be presumed to be undertaking an unlawful activity contrary to this section.
- (6) A person who contravenes paragraph (1) (a) or (b) or (3) shall:
 - a) for the first offence, be fined an amount of not less than one million TSh or be subject to a term of imprisonment of not less than three months;
 - b) for the second offence, be subject to a term of imprisonment of 12 months;
 - c) for the third or subsequent offence, be subject to a term of imprisonment of not less than 5 years,

and in addition any and all items used in the offence shall be automatically forfeit.

- (6) A person who contravenes subsection (2) shall:
 - a) for the first offence, be fined an amount of not less than ten million TSh or be subject to a term of imprisonment of not less than three months;

- b) for the second offence, be subject to a term of imprisonment of 12 months;
- c) for the third or subsequent offence, be subject to a term of imprisonment of not less than 5 years,

and in addition any and all items used in the offence shall be automatically forfeit.

Evidence of the cause and manner of death/injury to fish

2 In any proceedings for any offence under section 1, a certificate as to the cause and manner of death or injury of or damage to any fish, signed by the Director or any person authorized by him in writing shall be *prima facie* evidence of the facts averred in it unless the contrary is proved.

Deprivation of monetary benefits

3 (1) A Court that has convicted a person of an offence under this Act may summarily and without pleadings inquire into the pecuniary benefit acquired or saved by the person as a result of the commission of the offence and may, upon reliable expert evidence otherwise admissible in a court of law and in addition to other penalty imposed, impose a fine equal to the Court's estimation of that pecuniary benefit, despite any maximum penalty elsewhere provided.

(2) The Court shall, in imposing a fine pursuant to subsection (1), report fully in writing on details of the expert evidence upon which its judgment was based.

Relevant definitions

“fish” means any marine or aquatic animal or plant, living or not, and any of their parts and includes any shell, coral, reptile and marine mammal;

“fishing” means:

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

but does not include aquaculture or the transportation of fish;

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

POTENTIAL PROCESSES TO REVISE AND STRENGTHEN NATIONAL LAWS TO ADDRESS INCONSISTENCIES AND GAPS, AND IMPLEMENT TANZANIA'S INTERNATIONAL OBLIGATIONS

1. Summary introduction

Each of the three fisheries jurisdictions (Mainland Tanzania, Zanzibar and DSFA) are in the process of reviewing their respective fisheries laws and/or policies, as described below.

Concerning *legislation*, Mainland Tanzania's revision process has apparently been very comprehensive and best practices are being considered, using a template provided by this consultant in another project. Zanzibar does not appear to be focusing on a revision of its Fisheries Act, passed in 2010, but much could be done to improve it. The DSFA established a Task Force to review its legislation, and a report has been completed. It has requested donor assistance with the next stages, including for an expert and meetings, but to date this has not been forthcoming.

It is recommended that processes be considered to support each initiative separately, as well as together. For the latter, the objective would take into account shared fish stocks and aim to promote clarity and consistencies, according to best practices and Tanzania's international obligations, in essential areas of legislation such as application/scope, definitions, management of shared species, information and databases, MCS and fine/penalty levels.

The respective laws should allow for coordination and cooperation in priority areas identified by the jurisdictions, e.g. information, MCS and others.

Concerning *policy*, it is recognized that each jurisdiction has different priorities, and policy review is in various stages of development with a policy for Mainland Tanzania in advanced stages (government review and stakeholder consultations are taking place, at the end of some years of review and development), for Zanzibar policy review is in early stages (two meetings have been held) and for the DSFA a process has yet to be identified.

2. Recommended processes for supporting legislative and policy development

Recommended processes for supporting development of fisheries legislation and policy take a two-track approach; (i) one for the legislation and as appropriate policy of each of the three jurisdictions, and (ii) another to promote consistency among them. In addition, there may be a need for activities unforeseen at present, as described in 2.5 below.

The financial aspects of the processes are not given, as this task is not in the consultant's ToRs, nor is she aware of the World Bank in-country standards, costs and practice in this regard. It is also recognized that details for the process will need to be worked out with each jurisdiction. It is hoped that the indicative detail below, often expressed as a conservative maximum estimated input, will provide sufficient information for costing. It is highly likely that adjustments will need to be made.

The proposed timeframes for the consultants are an estimate only and further consideration may need to be given to ensure appropriate time for each task.

2.1 DSFA

The DSFA has budgeted costs for the preparation of the DSFA Act revision in the current financial year (2013/14) as follows for operational costs towards meetings, workshops and consultations:

- Task force meeting between Mainland, Zanzibar and DSFA to review DSFA Policy, Act and Regulations (US\$30,000)
- Policy needs research and stakeholders meetings to formulate a new policy (US\$25,000)

Concerning the *Act and Regulations*, it is foreseen that an international expert would be needed, *as soon as possible* and possibly prior to project startup to review the output of the Task Force for gaps, consistencies with other national laws, best practices and implementation of international obligations and prepare a draft of the Act and Regulations, together with explanatory notes, for consideration by the Task Force. The urgency is due to the long period of time DSFA has been waiting for such support, and the current process with IOTC in which an action plan is under development, based upon Tanzania's low level of compliance with its IOTC obligations. The action plan identifies areas which must be implemented in law and procedures.

The consultant would take into account the output of the Task Force and the IOTC Action Plan, as well as developments in legislative and policy review in the other jurisdictions and amendments needed to a wide range of forms required in the Schedules of the Regulations so they meet international standards.

This could be done in consultation with national experts (one from each of Mainland Tanzania and Zanzibar), the Director General and staff of DSFA, as appropriate the Task Force members and Attorney General's Office.

The recommendations would be circulated to the Task Force for review and a national workshop held to consider the recommendations and provide further input and comments.

The international expert would therefore undertake a preliminary desk study and then meet with the national counterparts and other key stakeholders before the first report is finalized. The expert would assist with setting the agenda for the national workshop, and attend/present at the workshop, and afterwards would finalize the documents together with national consultants.

It is estimated that the experts would each work a maximum of 60 days over a two year period, including reviewing Task Force outputs, drafting final versions of the Act and Regulations and explanatory notes, holding consultations, arranging and attending a validation workshop, finalizing documents and subsequently liaising with Parliamentary Counsel and the Attorney General's Office as the final legal documents are prepared for legislative review.

Concerning *policy* development, the 2007 amendments to the DSFA Act has the following requirements:

- section 5(3)(d) tasks the Executive Committee to "approve and determine fisheries policies".
- section 5 (9)(a) mandates the Technical Advisory Committee (TAC) to "make proposals for fisheries policies to be formulated by the Executive Committee".

One option might be to establish a small policy team to develop a policy framework for preliminary consideration by members of the TAC and/or as appropriate members of the Executive Committee. After preliminary consideration, a full policy document could be elaborated by the team, stakeholders could be consulted and the document transmitted to the Executive Committee for approval.

The team would work closely with the Director-General and could include, for example, officials responsible for policy development in the Mainland and Zanzibar, select members of the TAC/Executive Committee and an international expert. Key players would be one expert from each of Mainland Tanzania and Zanzibar, and an international expert.

It is estimated that the experts would each work a maximum 40 days over a two year period, including preparation of policy documents, taking into account the need for NPOAs to implement international standards and obligations (e.g. in relation to sharks and seabirds), arranging and holding stakeholder consultations and liaising with governments and other stakeholders.

It is anticipated that the timeframes for the development of the law and policy may differ, considering the advanced state of the work of the Task Force on the legislation to date, but if possible they should be considered together in a final validation workshop.

2.2 Mainland Tanzania

The law reform and policy development processes in Mainland Tanzania are well underway and the main area for potential support would be, as appropriate, for an international expert to review the draft Act to ensure best practices are included, together with consistency with national laws and implementation of international obligations. This could occur during the development process and at a final validation workshop if necessary. It is estimated that a maximum of 30 days would be needed for an international expert, including consultations, drafting and preparation of explanatory notes, but there is no estimate for possible revision of the Regulations.

The policy is in advanced stages in development, and it may not be necessary for input from an international expert.

2.3 Zanzibar

The existing Fisheries Act, 2010 should be reviewed and revised in a number of respects, including best practices, consistency with other national legislation and implementation of international obligations as shown in this document, but there does not seem to be a process in place for this. However, the Director of Fisheries expressed a need for the law to be harmonized across the various fisheries sub-sectors, including artisanal and semi-industrial fisheries, and regarding vessels that have been fishing in the EEZ but pass through the territorial sea around Zanzibar and enter into its port.

There are no fisheries regulations. If the project supports these activities, it would likely require a legal team to be established consisting of an international expert and a national legal expert which could assist to strengthen existing laws and develop regulations. The process would require consultations led at the national level, with international expert input as necessary, and would likely take two or three years at the outside. It is estimated that a maximum of 60 days over three years would be needed for each consultant, including consultation processes and workshops.

Concerning policy, the process is also nascent. An international expert could work with national officials and stakeholders to develop a framework, and the national consultants would elaborate or amend the framework through holding consultations. Two workshops could be scheduled, one to consider a proposed framework, after which the national consultations could be held. As appropriate, the policy development process should lead and guide the process to strengthen the law. It is estimated that a maximum of 30 days would be needed for an international consultant over three years, and 60 days for a national consultant.

2.4 Coordination and cooperation in the development of legislation

It is recommended that a mechanism be established to promote consistency among jurisdictions in specified areas as the legislation is being developed. This could be achieved through a process that would include preparation of a template and recommendations for legal consistency in certain areas by an international expert, in consultation with national experts, for consideration and guidance by senior level officials from each jurisdiction (e.g. including permanent secretaries and/or directors of fisheries).

It could involve a workshop where such areas are designated by officials, and recommendations made for inclusion of the areas in the draft, or existing legislation as appropriate. National consultants would then be well positioned to promote the implementation of such areas in their respective legislation. It is estimated that a maximum of 25 days would be needed for this task over three years for an international consultant, and 20 days for national consultants.

2.5 General

Continuing legal assistance may be necessary for development of Regulations, implementation of new international obligations, development of legal MOUs (e.g. for inter-jurisdictional cooperation in MCS) etc. and should be considered for the duration of the project. It may be necessary to develop regulations for areas such as fisheries trade, marine protected areas and aquaculture. No estimates can be given on the possible areas of law or timeframe at this stage.

As acknowledged in the pre-appraisal mission, there should be a component aiming at sensitization of the judiciary. This could involve a two day workshop for judges as well as the training of judges and government lawyers in all aspects of fisheries laws applicable to their jurisdiction.

There should be a process to develop compounding procedures that are similar in all jurisdictions (i.e. an administrative process allowing acceptance of a fine upon admission of guilt, and providing controls) and set consistent and meaningful penalty levels among jurisdictions.

Establishment of an intergovernmental mechanism in relation to pollution from hydrocarbon development (including measuring the impact, compensation and cleanup) should be considered and costed as appropriate.