

Written Statement of the Sub-Regional Fisheries Commission, with Annexes I to V

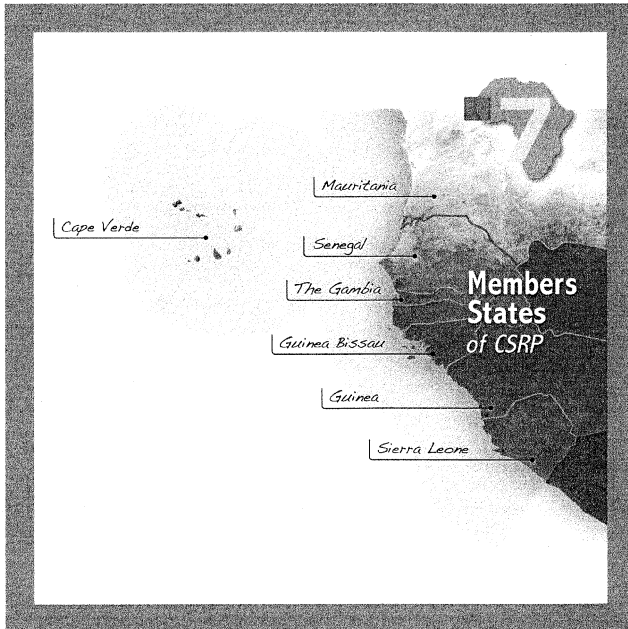


BY:                       
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**COMMISSION SOUS-RÉGIONALE DES PÊCHES  
SUB-REGIONAL FISHERIES COMMISSION**

**PERMANENT SECRETARIAT**

**REQUEST FOR AN ADVISORY OPINION  
TO THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA - ITLOS  
WRITTEN STATEMENT**



NOVEMBER 2013

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## ACRONYMS

ACP	: African, Caribbean and Pacific
ADB	: African Development Bank
ADF	: African Development Fund
AFD	: French Development Agency
AGC	: Agency Management and Cooperation Senegal - Guinea Bissau
AGRHAO	: Support for the Management of Fishery Resources in West Africa
AIS	: Automatic Identification System
ANAM	: National Agency of Maritime Navigation (Senegal)
APP	: Fisheries Partnership Agreements
AU	: African Union
BCI	: Consolidated Investment Budget
CARICOM	: Caribbean Community and Common Market
CBD	: Convention on Biological Diversity
CCPA	: Advisory committee on harmonisation of the policies and the legislation of the UEMOA for
COMHAFAT	: Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic Ocean
COREP	: /Regional Fisheries Commission of the Gulf of Guinea
COSMAR	: Operations Centre for Maritime Safety (Cape Verde)
CSP	: Fisheries Surveillance Centre
CVE	: Cape Verde Escudo
DARO	: Direction of resources management and Oceanography (Mauritania)
DGP	: Directorate General of Fisheries (Cape Verde)
DGRM	: General Directorate of Marine Resources (Sierra Leone)
DHLP	: Department Harmonization of Policies and Legislations (SRFC)
DITP	: Direction of Fisheries Processing Industries (Senegal)
DNPM	: National Directorate of Marine Fisheries (Guinea)
DPI	: Direction of Industrial Fisheries (Senegal)
DPM	: Department of Marine Fisheries (Senegal)
DPSP	: Directorate of Protection and Surveillance of Fisheries (Senegal)
DRSI	: Department of Research and Information Systems (SRFC)
DSCSA	: Department of Monitoring, Control, Surveillance and Planning (SRFC)
DSPCM	: Delegation to the Fisheries Surveillance and Control at Sea (Mauritania)
ECOWAS	: Economic Community of the West African States
EDF	: European Development Fund
EEZ	: Exclusive Economic Area
ERS	: Electronic Systems catch recording and reporting
ETA	: Estimated Time of Arrival
EU	: European Union
FA	: Fisheries Administration
FAD	: Fish Aggregating Device (FADs)
FAO	: United Nations Organization for Food and Agriculture
FCWC	: Fishery Committee for the West Central Gulf of Guinea
FISCAP	: National services for surveillance and control of fisheries (Guinea Bissau) Fisheries and aquaculture
CCRF	: Code of Conduct for Responsible Fisheries
CECAF	: Committee for the Eastern Central Atlantic Fisheries (FAO)
CEEAC	: Economic Community of Central African States
CEPIA	: Building Together a Fisheries Management including Marine Protected Areas (Project SRFC/AFD/IUCN)
CFA	: Franc of the African Financial Community
CIPA	: Applied Research Centre for Fisheries (Guinea Bissau)
CITES	: Convention on International Trade of Endangered Species of wild fauna and flora
CLS	: Collecte Localisation Satellite
CNP	: National Board of Fisheries
CNSHB	: National Centre of Fishery Sciences of Boussouira (Guinea)
CNSP	: National Centre for Surveillance and Protection of Fisheries (Guinea)
FMC	: Fisheries Monitoring Center
FPA	: Fisheries Partnership Agreement
FPV	: Fisheries Patrol Vessel
GAM	: Gambia Maritime Authority
GC	: Guarda Costeira/Coast Guards (Cape Verde)
GCM	: Garde Côte Mauritanien/Mauritanian Coast Guard
GDP	: Gross Domestic Product
GIS	: Geographic Information System
GIZ	: Gesellschaft für Internationale Zusammenarbeit / German Cooperation
GMD	: Gambian Dalasi
GNF	: Guinean Franc
GPA	: Gambia Port Authority
GPS	: Global Positioning System

GRT	: Barrels of Gross tonnage
HASSMAR	: High Authority for the Coordination of Maritime Safety, Maritime Security and Protection of the Marine Environment
IAZ	: Inshore Artisanal Zone
ICCAT	: International Commission for the Conservation of Atlantic Tunas
IFP	: Instruments of Fisheries Policy
ILO	: International Labour Organisation
IMO	: International Maritime Organisation
IMP	: Port Maritime Institute
IMROP	: Mauritanian Institute of Oceanographic Research and Fisheries (Mauritania)
INDP	: National Institute for Research and Development (Cape Verde)
IOTC	: Indian Ocean Commission for Tuna
IRD	: Institute for Research and Development (France)
ITLOS	: International Tribunal for the Law of the Sea
IUCN	: International Union for Conservation of Nature
IUU	: Illegal, unreported and unregulated fishing
JMC	: Joint Maritime Committee (Sierra Leone)
MARM	: Ministry of Environment, Rural Development and Marine resources (Cape Verde)
MEP	: Measures the responsibility of the Port State
MFMR	: Ministry of Fisheries and Marine Resources (Sierra Leone)
MoU	: Memorandum of Understanding
MPA	: Ministry of Fisheries and Aquaculture (Guinea)
MPAM	: Ministry of Fisheries and Maritime Affairs (Senegal)
MPEM	: Ministry of Fisheries and Maritime Economy (Mauritania)
MRO	: Mauritania Ouguiya
MCA	: Minimum Access Conditions
MS	: Member States
MSY	: Maximum Sustainable Yield
MCS	: Monitoring, Control and Surveillance
NEPAD	: New Partnership for Africa's Development
NGO	: Non-Governmental Organization
NAP	: National Action Plan
ONISPA	: National Office of Sanitation Inspections of Fishery Products and Aquaculture (Senegal)
ONP	: National Observatory of Fisheries
PGBZC	: Project for the Management of the Coastal Zone Biodiversity (Guinea Bissau)
PM	: Maritime Police
PSC	: Port State Control
RFMOs	: Regional fisheries Management Organization
RIM	: Islamic Republic of Mauritania
SGRH	: Management Service for Fishery Resources
SIAP	: Information System and Analysis of Fisheries
SIAQPA	: Service Assurance Industry Products Quality Fishing and Aquaculture
SB	: State Budget
SRFC	: Sub-Regional Fisheries Commission
SAP	: Strategic Action Plan (SRFC)
SE	: Senior Expert
TA	: Technical Assistance
TCP	: Technical Cooperation Project (FAO)
UFR	: Regional Facilitation Unit
UEMOA	: Economic and Monetary Union of West Africa
UNCLOS	: United Nations Convention on the Law of the Sea
UN	: United Nations
SOCU	: Coordination Unit Surveillance Operations (SRFC)
VTS	: Vessels Traffic System
VMS	: Vessels Monitoring System
WG	: Working Group
WARFP	: West African Regional Fisheries Programme
WB	: World Bank

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## INTRODUCTION

The Sub-Regional Fisheries Commission (SRFC) is an intergovernmental organization for fisheries cooperation established by the Convention of 29 March 1985. Following the extension of the area under their national jurisdiction to 200 nautical miles, with the signing in 1982 of the United Nations Convention on the Law of the Sea (UNCLOS), five countries (Cape Verde, The Gambia, Guinea Bissau, Mauritania and Senegal) have proposed strengthening their cooperation in the field of fisheries management through the creation on 29 March 1985 in Dakar (Senegal), of an organization of fisheries cooperation, namely the SRFC. Guinea joined in 1987 and Sierra Leone became a member in 2004, bringing the number of member States to seven. In July 1993, the Convention was amended to, *inter alia*, define the apportionment of the contributions of the Members States to the SRFC budget. The operating costs of the institution were covered until then by Senegal, who signed the Headquarters Agreement.

The bodies of the SRFC are:

- The Conference of the Ministers, the SRFC executive body;
- The Coordination Committee, the technical advisory body of the Conference of the Ministers;
- The Permanent Secretariat, the body in charge of the implementation of the decisions of the Conference of the Ministers.

The objectives of the SRFC as defined by Article 2 of the Convention of 29 March 1985 establishing the Commission are to:

- harmonize, in the long-term, policies with regard to the preservation, conservation and exploitation of fisheries resources in the Member States;
- strengthen cooperation for the well-being of their populations.

Since 2009, the capacities of the SRFC have been strengthened at both institutional and technical levels. This was the result of the decision of the 12th Extraordinary Session of the Conference of Ministers to reform the SRFC. The implementation of that decision has led to the followings:

- a new organisational chart with departments;
- a policy letter on the development, organization and management of human resources;
- new regulatory texts;
- the new manual of procedures for the administrative and financial management of the SRFC, which complies, with the procedures of international organizations.

The SRFC also has a Strategic Plan for the period 2011-2015 that allows the institution to have a clear vision of its future development including its strategic objectives with the ultimate aim of becoming an institution of reference and innovation for fisheries cooperation. This Plan includes priority actions and a business plan testifying the consistency and the feasibility for its implementation. Thus, it is based on four main goals broken down into strategic objectives relating to fisheries good governance and aiming at:

- Strengthening mechanisms for harmonization of policies and legislation of fisheries;
- Supporting public and private actors in the sustainable management of fisheries resources;
- Promoting innovative approaches in fisheries management;
- Strengthening cooperation and exchange with organizations active in the field of fisheries to capitalize on knowledge of the sector in the sub-region.

IUU fishing is a key concern for the Member States as they have registered it as Strategic Objective 6 of the SRFC Strategic Plan.

Taking into account the dynamic nature of the fisheries sector, the SRFC has initiated programs and projects on sustainable management of fisheries resources that it develops and implements on its own or in partnership with other institutions and donors. Indeed, it supports its Member States in:

- the management of transboundary resources or resources of common interest;
- strengthening the capacity of professional fisheries organizations;
- conducting joint surveillance operations in fishing areas to optimize the utilization of the limited surveillance resources of its Members;
- the development and updating of the legal framework on the harmonization of national legislation on monitoring, control and surveillance (MCS), on the Minimum Access Conditions to fishery resources in the sub-region;
- drafting of rules for the establishment of Marine Protected Areas (MPAs);
- studying the migration and impacts of artisanal fishermen, etc.

The lessons learned during the implementation of programs and projects, and findings resulting from the practice of Member States regarding sustainable management of fisheries resources led the Permanent Secretariat to examine the different problems regarding the enhancement and harmonization of technical and legal environment for the sector in the sub-region.

The significant results the SRFC has achieved earned it recognition by the international community for its support on harmonization of policies and legislation for sustainable management of fishery resources.

The analysis of the fisheries sector shows that most fisheries resources are either fully exploited or overexploited. It also shows that the sub-region suffers from fishing overcapacity due to an increase of both industrial and artisanal fishing efforts (large number of industrial vessels and artisanal boats). In contrast, the SRFC Member States have compelling needs and rights to develop their economies and to produce fish protein to feed their populations. Those

developments must account for the legal international instruments that guarantee those rights but also impose obligations on coastal States and fishermen.

The management of the fisheries resources is based on statistical information and reliable data, hence the need for Member States to develop a data collection system on fisheries and make them available during stock assessments. The information collection systems are quite costly in both human and financial resources but it provides the basis for relevant scientific advice when making management decisions. It is the relevance of the information system on fisheries, namely "dashboard," that the SRFC is setting up for its Member States, Ghana and Liberia, at the national and regional level. Once operational in 2014, this system will allow the Member States to exchange information on authorized or non-authorized vessels, on fishing effort and on MCS activities in the waters under their national jurisdiction.

This will be an important step to ease (i) the difficulties faced by the fisheries research in the sub-region (weak research capacity in terms of equipment and operating budget, training needs following the rapidly changing fishing sector, establishment of coherent and sustained scientific policy, strengthening of the collaboration with the private sector), and (ii) and the challenges of the IUU fishing.

The acts constituting illegal fishing are defined by the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)<sup>1</sup>. Given the subtleties and severity of the type of offenses and the technologies used by fishermen, it is conceivable that the definitions of IUU fishing will change in the short term<sup>2</sup>.

Indeed, innovations are increasingly surprising, especially to locate fish: use of aircraft and sonar in purse-seine fishing and guided trawl, use of floating trawls, new manoeuvres in the use of fishing nets, fish pumps, widespread use of synthetic fibres, new techniques for fish freezing and processing, factory vessels supported by a number of smaller boats tasked with fishing and based on an extensive network of ports of convenience or natural shelters where the unloading is conducted. It is therefore understandable that the losses in the waters of Sub-Saharan Africa are estimated at the equivalent of 1 billion U.S. dollars per year<sup>3</sup>.

In the SRFC area, it is found that the efforts made by individual Member States have not reached the expected results in the fight against IUU fishing, mainly because of:

- Lack of capacity to manage sustainably the sector (inadequacy of laws or insufficient implementation of the rules and regulations, inconsistency of the MCS policies, etc.);
- Weak national MCS structures (lack of means for air and maritime surveillance, lack of communication, detection capabilities and operational/surveillance of the vessels, low capacity level of trained staff in MCS);

1. The text is available at: [www.fao.org/DCREP/006/Y5244E/y5244e\\_0h.htm/bm17](http://www.fao.org/DCREP/006/Y5244E/y5244e_0h.htm/bm17); See also, W. Edeson, « Tools to address IUU Fishing: The Current Legal Situation » at: [www.fao.org/DCREP/005/Y03274E/Y3274E\\_0a/htm](http://www.fao.org/DCREP/005/Y03274E/Y3274E_0a/htm).

2. See the article on IUU fishing in West Africa by Professor Tafsir Malick Ndiaye, Judge at the International Tribunal on the Law of the Sea (in "Mélanges offerts au Professeur M. Raymond RANJEVA")

<sup>3</sup> See High Seas Task Force, *Closing the Net: Stopping Illegal Fishing on the High Seas* (2006), p. 3. Available at: [www.high-seas.org/docs/HSTFFinal.web.pdf](http://www.high-seas.org/docs/HSTFFinal.web.pdf). See also the article on IUU fishing of the Judge Tafsir Malick N'diaye, *Supra*.

- The low level of data and information exchange;
- Inadequate and non transparent management of the sector.

To overcome the weaknesses of the Member States, the SRFC has set up a sub-regional program for strengthening of MCS structures (infrastructure, equipment and training) and conduct of joint surveillance operations, allowing countries to pool their human and operational resources to counteract IUU fishing in the region.

The SRFC has also developed a legal framework to regulate, at regional level, the minimum access conditions to the resources. In the MAC Convention, it has also integrated the provisions of international legal instruments developed by the FAO and the United Nations to regulate fishing activity through:

- The 1993 Convention on sub-regional cooperation in the exercise of hot pursuit and its 1993 Protocol relating to the practicalities for the coordination of surveillance in the SRFC Member States;
- The 1993 Convention relating to the determination of the Minimum Conditions of Access and exploitation of fishery resources off the coasts of the Member States of the SRFC revised in 2012.

Entered into force on 16 September 2012, the MAC Convention contains numerous innovations including:

1. The utilisation of the definition of IUU fishing contained in Article 3.1 of the IPOA-IUU and the provisions of the Agreement on Port States Measures (2009) of FAO in Title IV of the Convention (Port State Measures and the fight against IUU fishing);
2. The concepts of the precautionary and ecosystem approach to fisheries defined in the Code of Conduct for Responsible Fisheries (CCRF), the Agreement on Straddling Fish Stocks and Large Migratory Fish and the Compliance Agreement;
3. Article 33 of the MAC Convention on the referral mode: it allows the implementation of Article 138 of the Regulations Procedures of the International Tribunal for the Law of the Sea (ITLOS), about the referral of this institution "...on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such opinion".

Through this Convention, SRFC Member States express their willingness to implement international legal instruments on fishing. However, difficulties are encountered when

attempting to integrate those international legal instruments into national legislation and implement them.

More particularly, the IPOA-IUU and the Agreement on Port State Measures contain important provisions to strengthen the capacities of the coastal State in the fight against IUU fishing. As such, these legal instruments, included in the MAC Convention, engage the SRFC Members States and prove a benefit to these fragile States whose economies are heavily penalized by IUU fishing.

## **PURPOSE OF THE WRITTEN STATEMENT**

This Statement is prepared at the request of the Tribunal. It aims to present the facts justifying the request for the advisory opinion decided by the 14th Special Session of the Conference of Ministers of the SRFC (Dakar, Senegal, March 28, 2013) and for the college of 21 Judges of ITLOS to better understand the overall situation of the SRFC.

**It is divided into four (4) main sections:**

- Chapter I:** Jurisdiction and applicable law, justification of the ITLOS referral, presentation of the questions;
- Chapter II:** The general status of the fisheries sector in the SRFC Member States;
- Chapter III:** IUU fishing in the SRFC Member States;
- Chapter IV:** Legal Framework and cooperation in the fight against IUU fishing in the SRFC Member States.

## **CHAPTER I: JURISDICTION AND APPLICABLE LAW, JUSTIFICATION OF THE ITLOS FULL COURT REFERRAL, PRESENTATION OF THE QUESTIONS**

### **SECTION 1: JURISDICTION AND APPLICABLE LAW**

#### **I. JURISDICTION**

The basis, the extent and the conditions of the jurisdiction of ITLOS over the request for an advisory opinion submitted by the SRFC are in the Statute and the Rules of Procedure of the Tribunal but also in UNCLOS and the MAC Convention.

##### **A. The basis of the jurisdiction of ITLOS full court**

UNCLOS and the Statute of the ITLOS do not mention the jurisdiction of the Tribunal full court. The foundation of its jurisdiction is to be found simultaneously in the Statute of the Tribunal, the Regulations of the procedures of the Tribunal, the UNCLOS and the MAC Convention.

First, the advisory function of the Tribunal is based on Article 21 of its Statute which gives the Tribunal jurisdiction on "all disputes and all requests submitted to it" and "whenever it is expressly provided for in any other agreement conferring jurisdiction on the Tribunal. "

Second, according to Article 16 of the Statute of the Tribunal, the Tribunal must determine by regulation the manner in which it performs its duties.

Finally, under Article 138 of its Rules, the Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention expressly provides that a request for such an opinion is submitted. This request must be submitted to the Tribunal by the authorized body through the agreement in question (para. 2).

Three conditions are set for the Tribunal to give an advisory opinion:

- (i) The existence of an international agreement related to the purposes of UNCLOS;
- (ii) A specific legal issue in line with Article 138;
- (iii) The authorization of referral to the ITLOS by the governing body of the institution making the request.

— Articles 288 et 287 of UNCLOS

In case of dispute as to whether a court or tribunal has jurisdiction, the court or the tribunal decides (Art 288 para. 4). Among the list of courts and tribunals concerned is the International Tribunal for the Law of the Sea (Article 287 para. 1). The latter is empowered to examine the competence of jurisdiction in case of dispute.

##### **B. The scope and terms of the Tribunal's jurisdiction**

The scope and terms of the Tribunal's jurisdiction are consistent with the SRFC Convention of June 8, 2012 relative to the determination of the "Minimum Access Conditions".

The MAC Convention is a regional legal instrument for the regulation of fishing activities that takes into consideration the following international legal instruments:

- the United Nations Convention on the Law of the Sea, 1982;
- the principles and standards contained in the Code of Conduct for Responsible Fisheries of FAO;
- the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing adopted in 2001 by the Conference of the FAO;
- The Convention of 14 July 1993 on the Determination of the Terms of Access and Exploitation of Fishery Resources off the coast of SRFC Member States (MAC Convention).

Specifically, the basis for the Tribunal's jurisdiction is in Article 33 of the MAC Convention, which reads as follows:

"The Conference of Ministers of the SRFC may authorize the Permanent Secretary of the SRFC to bring a specific legal matter before the International Tribunal for the Law of the Sea for advisory opinion".

As indicated by the above Article, the Tribunal must ensure that the following conditions are met: (a) the submission of a request by the Permanent Secretary of the SRFC following a request from the Conference of Ministers of the SRFC (b) the request relates to a specific legal issue.

For the first condition, the decision to request an advisory opinion from the Tribunal was taken by the Conference of Ministers of the SRFC during its Fourteenth Extraordinary Session held in Dakar (Senegal) on 27-28 March 2013. The Conference of Ministers adopted, during the Session, a resolution authorizing the Permanent Secretary of the SRFC to seize the Tribunal.

The second condition is met since all raised questions are specific legal issues that are clearly defined. The four raised questions are about the obligations of the flag State, the rights and obligations of coastal States to manage shared stocks and the responsibility of international organizations signatory of fishing agreements.

These questions, which are precise and legally framed, raise issues of international law and are perfectly able to receive a reply based on law. The Tribunal under Article 138 of its Rules, "may" give an advisory opinion even when it is not strictly required to do so. It appears that the questions put forward will allow the SRFC to have elements of legal character necessary for the exercise of its functions and for the proper conduct of its activities.

## **II. APPLICABLE LAW**

Article 293, paragraph 1, of the UNCLOS and Article 23 of the Statute of the Tribunal define the law applicable by the Tribunal.

Article 293, paragraph 1, of the UNCLOS provides:

“A court or tribunal having jurisdiction under this section [Section II of Part XV of the Convention] shall apply this Convention and other rules of international law not incompatible with this Convention”

Article 23 of the Statute of the Tribunal reads as follows:

“The Tribunal shall decide all disputes and applications in accordance with Article 293.”

It is therefore both under the UNCLOS and all other applicable rules of international law that do not contradict the provisions of the Convention that the Tribunal is asked to give its advisory opinion. The following parts of this written Statement discusses aspects of international law and applicable rules that, in the opinion of the SRFC, could comfort the opinion that the Tribunal will give.

## **SECTION 2: JUSTIFICATION OF THE REFERRAL TO THE ITLOS FULL COURT**

Despite the entry into force of the SRFC Conventions (Convention on the Right of Hot Pursuit and Convention MAC), the adoption of decisions by some RFMOs to strengthen the governance of the sector, and the regular organization of joint surveillance operations, Member States are still facing the following problems regarding IUU fishing:

- Fishing activities without authorization or without quotas;
- Fishing with prohibited or non-compliant gear;
- Falsification or fake declaration of vessel gross registered tonnage (GRT);
- Foreign vessels<sup>4</sup> operating in restricted areas;
- Foreign vessels engaged in illegal transshipment activities in waters under national jurisdiction or on the high seas;
- Change of fishing profile: example fish species not authorized on the license;
- Foreign vessels without nationality or operating without identification, (name, flag, registration number);
- Foreign vessel flying a flag of convenience ;
- Foreign vessels stopping the beacon, to escape the surveillance and control of the coastal State;
- Foreign vessels operating with fake fishing licenses;
- Foreign vessels ordered to pay fines for illegal fishing activities and fleeing at night without the possibility to be boarded;
- Absence or fake declaration on the catch or on the biological information;
- Absence of registration on the list of vessels authorized to fish at the national, sub-regional and international level;
- Registration on the list of IUU fishing vessels.

In addition to the relevant international Conventions adopted by the United Nations and its specialised agencies, the two above-mentioned SRFC Conventions (Convention on the Right of Hot Pursuit and Convention MAC) provide major innovations over conventional international



law, particularly regarding the obligations of the flag State with respect to vessels engaged in IUU fishing within its EEZ, but also in the EEZ of other countries.

Under these conditions, it is particularly useful for the SRFC Members States to know precisely their rights and obligations, especially those promoted by international fisheries law. Given its functions and powers, the Tribunal is well positioned to provide the necessary clarifications on these and other related issues to fishing authorizations and sustainable management of shared stocks or of common interest.

The request for an advisory opinion to the ITLOS aims to support the SRFC Members States and consequently assists them to derive maximum benefit, through wise and insightful advice, of the effective implementation of legal relevant instruments. It will also contribute to a greater visibility and credibility of the SRFC.

The scope, the severity and subtleties of the types of fishing offenses in the sub-region, contrasted with the weak technical and institutional MCS capacity of the Member States have strengthened the necessity to seek possible ways to fight IUU fishing. Among those possibilities, the search for international legal instruments to engage the responsibility of the States, as a coastal, flag or port State is considered. Additionally, it considers the needs to change the traditional international law to account for the possibilities of the joint responsibility of the flag State, the owner, his agent and the vessel's captain. In the sub-region, in case of infringement, the flag State of the vessel that committed an IUU offense often does not cooperate fully in the final resolution of disputes.

Based on the difficulties encountered by the Member States, the questions that are the subject of the request for an advisory opinion are:

1. What are the obligations of the flag State in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zone of third party States?
2. To what extent the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag?
3. Where a fishing license is issued to a vessel within a framework of an international agreement with the flag State or with an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by that vessel in question?
4. What are the rights and obligations of the coastal States in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?

### SECTION 3: PRESENTATION OF THE QUESTIONS

➤ **QUESTION 1. What are the obligations of the flag State in case where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zone of third States?**

This question refers to the duties of the flag State when IUU fishing activities are conducted in waters under the jurisdiction of third States.

International law requires the flag State to ensure that vessels flying its flag comply, in waters under the jurisdiction of third States, with the conservation and management measures of fishery resources. Therefore, the flag State is responsible for the control of fishing activities of the vessel flying its flag wherever it operates. It has a function to control its vessels and crews, and to sanction them in case of violations regardless of the sanctions imposed by coastal States. The obligation of the coastal State is to notify the flag State of the offense committed by a vessel flying its flag.

#### Examples of violations noted in the SRFC area

**August 2009:** Guinea-Bissau in its EEZ boarded the tanker *Virginia G*, flying the flag of Panama, after it refuelled the trawlers *Amabal I* and *Amabal II* without authorization by the competent national authorities. As a result of this violation, the inter-ministerial commission for maritime surveillance, on a proposal from the surveillance authority of Guinea Bissau, FISCAP, according to the law in force in the country, applied to the vessel the penalty of confiscation of all products on board.

The *Virginia G* while flying the flag of Panama was owned by the Spanish company Penn Lila Trading headquartered in Seville, Spain. There was no crewmember of Panamanian nationality onboard. The crew consisted of eight Cubans, including the captain, a Cape Verdean and three Ghanaians.

After the arrest of the vessel, a long process of negotiations began between the Spanish Embassy in Guinea-Bissau and the Guinean authorities. It ended a year later with the release of the vessel, on October 2010, facilitated by the special relationship in the fisheries sector between the two countries.

Afterward, Panama, citing damage done to the vessels, asked Guinea-Bissau to settle the issue through arbitration. A consultation process was engaged and led to the case being submitted to the International Tribunal for the Law of the Sea. The case has been filed by the Tribunal under the name Case *Virginia G* or Case N ° 19.

In its report, Panama alleges, among other things, that it had not been notified by Guinea-Bissau of the boarding of the vessel and of the accompanying sanctions.

In its report Guinea-Bissau alleges, among other things, that it had no obligation to inform Panama because there is no genuine link between the vessel and the State, and that instead it treated with the Embassy of Spain, representing a country for which there is a real link with the vessel.

**March 2011:** A Member State received information on alleged illegal activities carried out in the waters under its national jurisdiction by two foreign vessels. These vessels committed offenses by undertaking illegal transshipment outside the permitted areas, fled when the patrol arrived. Noticing that the vessels went away, the Member State reported the offenses to the flag States. No reaction from these flag States was recorded yet.

**June 2012:** a vessel was boarded while transshipping illegally fish products in a prohibited area. The vessel refused to obey the orders of the patrol and fled the area where the offense was committed. The flag State of the vessel responded unsatisfactorily to the inquiry of the Member State by seeking to exonerate the offending vessel, despite the evidence that was presented.

The vessel in which the fishery products were transhipped was also arrested for participating in an illegal transshipment of fish products in a prohibited area. This vessel also refused to comply with orders given by the patrol. The flag State of the vessel did not cooperate since since no reaction was observed after its diplomatic representation was contacted.

**April 2013:** A trawler transshipping fish without authorization has been observed in the EEZ of a SRFC Member State. Although, the flag State was provided a notice with the date and the estimated position where the offense was committed, there is yet no response to the request of the Member State.

### **Shortcomings of international law**

Considering the above and the extent of IUU fishing in the SRFC zone, it can be argued that the responsibilities of the flag State should be clarified for their effective implementation. Indeed, the competent authorities in the Member States have always argued that the flag State is always informed when a vessel is boarded. However, the answers provided to the coastal States by flag States are generally unsatisfactory.

Difficulties have been encountered by the Member States to enforce international law, following the arrest of fishing vessels of foreign nationality. The SRFC Members States have a different interpretation of international law regarding the responsibility of the flag State. For example, in a Member State, the flag State, once informed, cooperate only if the offense is carried out within the framework of a fisheries agreement between the Member State and the flag State of the boarded vessel. In this case only, the flag State shall cooperate in the implementation of sanctions when the offending vessel escapes.

The difficulty encountered by the SRFC Member States is to get the cooperation of the Flag State when the vessel involved in an offense was able to escape the control of the Member State. In this case, shouldn't the flag State commit to prosecute and punish the vessels flying its flag when committing serious offenses in the waters under national jurisdiction of the Member State? Couldn't the joint responsibility of the flag State with the vessel-owner and the captain be engaged?

Moreover, international law does not specify the timeframe and the form of the response expected from the flag State when it is notified of an IUU offense committed by a SRFC Member State.

It does not also specify the rights of the SRFC Member State in case of non-cooperation of the flag State for a fishing vessel committing IUU activities kept in a port of a SRFC's Member State. Similarly, international law remains unclear on the nature of penalties for the flag State, when a flag of convenience is delivered to a vessel in violation of Art. 91 al. 1 of UNCLOS.

It seems important that the Tribunal bases its opinion on the combined provisions of Articles 56 (1) (a), 58 (3), 73 (1) and 62 of UNCLOS to determine, with respect to question 1, if the flag State of the vessel must be held fully responsible for illegal activities committed by a vessel flying its flag. Indeed, the Convention does not indicate whether the flag State incurs any liability or if so, what would be its nature and associated penalties. Incidentally, the Tribunal could also clarify the content or clarify the meaning to be given to the provisions of Article 94 of the aforementioned Convention under which it is incumbent on the flag State's positive obligation to prevent and punish IUU fishing activities.

**➔ QUESTION 2. To what extent the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag?**

This is when the IUU fishing activity occurs in the high seas for a vessel sailing under the flag of any country.

In this respect, a SRFC Member State could, as part of its MCS activities, including the implementation of the provisions of the Port State measures, board vessels having engaged in IUU activities in the high seas and remaining in one of its port.

International law requires the flag State to ensure that vessels sailing under its flag and fishing on the high seas abide by measures of conservation and management of fishery resources, and avoid engaging in any activity which compromises the efficiency of those measures.

These measures focus mainly on (i) the authorization for the control over vessels flying its flag, (ii) the granting of the license/fishing permit (iii) the enrolment on the National Register of vessels (iv) the marking of vessels and fishing gear, (v) the exchange of VMS and logbook information (vi) the modalities of intervention for observers and inspectors, (vii) the regulation

of transshipment at sea (viii) the compliance with rules adopted by RFMOs (ix) the joint sanctions against the vessel, its captain and owner taken by the flag State. It must be remembered that, while recognizing to States Parties to UNCLOS the right to engage in fishing on the high seas, the provisions of Article 116 of UNCLOS aforementioned require them to take into account the rights, obligations and interests of the coastal States. Similarly, Articles 117 and 118 are a reminder on the duty of cooperation incumbent on the States in relation to the deep-sea fishing. All these texts should serve as a basis for the Tribunal to say that in situations when IUU fishing occurred on the high seas, the flag State should be held liable if it fails in its duties to take reasonable measures to prevent the vessels flying its flag to commit IUU fishing.

The UN Agreement on Straddling Fish Stocks (1995) as well as the FAO Compliance Agreement (1993) confirmed the responsibility of the flag State, if an IUU fishing offense is committed on the high seas.

It must be said that the opinions given to questions 1 and 2 are of paramount importance not only to other regional fisheries organizations, but also for the countries of registration of vessels such as the Republic of Panama, the Bahamas, Marshalls Islands etc.

### **Examples of violations noted in the SRFC zone**

Due to the weakness of the surveillance system in the Member States, offenses on the high seas have only been reported by national fishermen who observed foreign vessels operating illegally in the waters adjacent to the Economic Exclusive Zones of the Member States (vessels operating without identification marks, vessels operating with hidden or falsified identification, vessels using prohibited fishing gears, vessels not registered on the national register of vessels, vessels registered on the EU IUU blacklist, etc.).

### **Shortcomings of international law**

The Agreement on Straddling Fish Stocks has assigned to the flag State a number of obligations for fishing on the high seas. In accordance with Article 18, those States shall authorize the use of vessels flying their flag for fishing purposes on the high seas only when it can effectively exercise their responsibilities towards the fishing vessels.

The compliance Agreement in Article 3 paragraph 3 does not say anything else: "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."

The Code of Conduct for Responsible Fishing (CCRF) provides that flag States should ensure that no vessel entitled to fly their flag for fishing activities operates on the high seas or in waters under the jurisdiction of other States unless a registration certificate has been issued

and it has been authorized to fish by the competent authorities. Such vessels should carry a certificate of registration and authorization to fish.

In light of the above and in the case of an IUU fishing offense committed on the high sea, the question may be raised on the types of sanctions that SRFC Member States may take in the event of non-cooperation by the flag State ?

Given the weakness of the MCS systems in the Member States, and the recurring cases of refusal to cooperate, the Tribunal should take the opportunity of this request for an opinion to clarify the nature, the circumstances, the extent and terms of sanctions that should be taken in such cases. Indeed, the UNCLOS laid down principles which call for clarifications, especially when confronted to the inertia of a State party (in this case flag State) to control the vessels flying its flag or the reluctance to cooperate in punishing the IUU fishing activities.

➔ **Question 3. Where a fishing license is issued to a vessel within a framework of an international agreement with the flag State or with an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question?**

The question of the responsibility and the definition of the flag State, in the case of an offender flying the flag of a Member State of an international organization that signed a fisheries agreement with the coastal State, is raised. A review of fisheries agreements with SRFC Member States shows a variety of procedures to be applied in cases of IUU fishing activities in waters under their national jurisdiction. In these cases, the responsibility of the international organization as signatory of the agreement is sometimes specified. Three cases have been identified:

1. The fisheries agreement refers to the international organization signing the agreement, as the single point of contact when acts of IUU fishing are committed in waters under national jurisdiction of a SRFC Member State. In the implementation of the agreement, it is stated that the SRFC State shall notify the international organization for all boardings and penalties imposed when an offense is committed.

In this case, with reference to the international law, there is confusion in the respective responsibilities of the international organization signatory to the agreement and those of the flag State.

2. The fisheries agreement refers to both the responsibility of the flag State and the responsibility of international organization signatory of the agreement, for any boarding conducted on a vessel or penalties imposed as part of the implementation of the agreement.

In this case, it seems possible to engage the responsibility of the international organization on the one hand and that of the flag State of the vessels that has committed the offense on the other hand.

3. The fisheries agreement refers to the responsibility of the international organization signatory to the agreement, for any boarding conducted on a vessel or penalties imposed as part of the implementation of the agreement. In addition, it provides a possible participation of a representative of the concerned flag State in the exchanges between the SRFC Member State and the international organization signatory to the agreement.

In this case, could the flag State, that is participating on the exchanges between the international organization signatory to the agreement and the SRFC Member State in the waters of which an IUU fishing infringement has been committed, be held liable under international law?

### **Example of violations noted in the SRFC area**

In 2010, a Member State of the SRFC boarded, in its EEZ, two vessels fishing under a Memorandum of Understanding signed between the Member State and an international organization. The two vessels, which were flying the flag of a country that is a member of an international organization, breached the fisheries legislation of a SRFC Member State.

The vessels were fined in accordance with the legislation in force in the Member State. A part of the payment was made by the representative of the owner of the vessel, with the condition to clear the balance of the fine within a timeframe specified by the authorities of that Member State. Based both on a statement made by the representative of the owner of the vessels and the fact that the concerned vessels were operating under a Memorandum of Understanding signed with an international organization, the Member State of the SRFC released the vessel without a deposit.

At the expiry of the period agreed upon for the clearance of the balance, the owner of the vessels did not pay and the vessels never came back in the EEZ of the Member State.

Faced with this situation, the concerned Member State challenged the international organization signatory to the agreement to take appropriate measures to pay the outstanding fine. In response, the international organization declared itself incompetent to impose the flag State the payment of the fine or to pay in lieu of the flag State.

The case remains unresolved up to this day.

### **Shortcomings of international law**

International law seems to state that only a State can be considered as a flag State. An international organization being a group of States, could it therefore be subject to the same legal regime as the flag State in case of IUU fishing committed by a member of the organization?

May the flag State, not bound by an agreement to the coastal State, be held liable in case of IUU fishing, simply because it is a member of the international organization that is a signatory of the agreement?

In this case, who should be considered as a flag State? The international organization signatory of the fisheries agreement or the flag State of the offending vessel? International law is silent on the issue. Is it possible to jointly engage their responsibilities in the event of IUU fishing activity that occurred in waters under the jurisdiction of the coastal State?

### **➔ Question 4. What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stock of common interest, especially small pelagic species and tuna?**

Small pelagics species and tuna are migratory species that concentrate seasonally, depending on the environmental conditions, in the waters under national jurisdiction of several coastal States. Accordingly, the concerned States should take concerted action for their sustainable management.

It has to be highlighted that, in general, the concerned States do not consult each other when setting up management measures on those resources. In fact, these pelagic resources are subject to fishing authorization through fishing agreement signed between the coastal State and foreign companies without consultation with neighbouring coastal States that are along the migration routes of those resources.

In addition, coastal States should invest in scientific research to provide decision makers with relevant elements of decision for the management of these fisheries. This includes information on biomass, potential catch, size at first capture and the allowable effort.

Once regional biomasses are known, especially for pelagic fish, the researchers propose key distribution catches by country. If the countries want to manage the resource sustainably, they are obliged to respect their catch quotas which must be considered in the fishing effort they allow (for their nationals and for those under a fisheries agreement).

### **Example of violations noted in the SRFC area**

Several offenses were recorded in the sub-region because pelagic fishing vessels authorized by a Member State, are operating illegally in neighbouring States while following and fishing these species.



**Shortcomings of the international law**

Notwithstanding the migratory nature of these resources, the provisions of Articles 63 ° n. 1 ° and 64 ° of UNCLOS highlight the need for direct consultation or consultation through sub-regional, regional or international organizations to coordinate and ensure the conservation and the development of these species. For this purpose, the SRFC produced a strategic document to promote the sustainable exploitation and the concerted management of small pelagics in North-West Africa. Additionally, the SRFC has put in place consultation mechanisms at both national and sub-regional levels to improve the management of small pelagics. However, some Member States continue to act in isolation, issuing fishing licenses on the shared resources, thereby undermining the interests of neighbouring States and the initiatives of the SRFC.

As a State on whose territory fishing takes place, international law recognizes that a coastal State has the right to sustainably manage the fishery resources in the waters under its national jurisdiction, defining the access conditions for both domestic and foreign vessels.

This right comes with responsibilities including the management of transboundary resources or migratory stocks of common or shared interest. The review of the status of fisheries in the SRFC area (see Chap. II) shows that pelagic fisheries, especially small pelagics (sardines, mackerel, mullet, etc.) are the most consumed species in the sub-region and contribute therefore to the fight against poverty and animal protein intake of the population.

Today, the practice shows the lack of cooperation among SRFC Member States in managing sustainably the stocks of common interest or shared stocks. As part of the efforts to harmonize the fishing policies, the SRFC Member States considered it important to establish a sub-regional instance on cooperation for management of shared stocks or stocks of common interest. This body has a purely advisory mandate.

The Tribunal could, as part of the advisory opinion it will issue, bring clarifications on the rights and duties of the coastal State in the sustainable management of shared stocks or stocks of common interest. Indeed these rights and obligations need to be clarified by international law.

## CHAPTER II: GENERAL SITUATION OF FISHERIES SECTOR IN THE SRFC MEMBER STATES<sup>4</sup>

The SRFC fishing zone has favourable climatic and ecological conditions due to the upwelling phenomenon, which translates into exceptional productivity due to movement of large masses of water from the Canary Current and from the Gulf of Guinea, the winds which perpetuates the upwelling phenomenon in the northern part, and the many estuaries in the southern part. This combination of natural factors led to the coexistence of temperate and tropical marine fauna, represented by more than a thousand fish species. This rich biodiversity is boosted by the presence of a third major type of ecosystem, the oceanic archipelago of Cape Verde. The presence of shared fish stocks or of common interest is a great advantage for the Member States whose total marine fisheries sector production is estimated at 2 million tons/year, of which about 77 % are small pelagic fish (sardines, mackerel, bonga, etc). These species are of low commercial value but essential to food security at the regional level.

The area covered by the Exclusive Economic Zones (EEZs) of the Member States is 1.6 million km<sup>2</sup> with a coastline stretching to nearly 3500 km. The total population of the Member States is around 37 million people with a *per capita* consumption of fisheries products not exceeding 20,7 kg per year. It is above the average world consumption which is 18,6 kg and the average for African countries of 9,1 kg. The fisheries sector contributes significantly to the economic and social development of countries of the sub-region (job creation, food, exports). The total number of jobs in this sector is estimated at more than 1 million jobs (direct and indirect) for a fishing effort in 2011 of 41 000 boats and more than 1,000 industrial vessels including 600 foreign vessels operating in the EEZs of the SRFC Member States under free license or fishing agreements with foreign nations (European Union, China and others). The estimated catch value is 1.5 billion U.S. dollars per year, while the estimated export volume amounted to 983 million USD per year for 2011.

### SECTION 1: STATUS OF FISHERY RESOURCES IN THE SRFC AREA

Fish of common interest in the SRFC area are characterized by their migration, their biological characteristics and their dependence on marine ecosystems. However, the sustainable use of these stocks could be hampered by many factors, among which is IUU fishing. To give a clear idea of the fisheries resources in the SRFC, it is necessary to give the status of different fisheries and present statistics on these fisheries. The annual potential (maximum sustainable catches) of these resources is estimated at about 2.80 million tonnes (Table 1).

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<sup>4</sup> This document was first written by Dr. Aboubacar Sidibé, scientific adviser at the SRFC, Dr. Mika Diop, Projet Coordinator of the PSRA-Requins project and Mr. Philippe Tous, Coordinator of the project "Appui à la CSRP pour le développement d'initiatives de cogestion et pour l'intégration des Aires Marines Protégées dans l'aménagement des pêches en Afrique de l'Ouest." The first version of the document was written during the workshop leading to the design of the component « sustainable management of fisheries", for the phase 2 of the PRCM in February 2007.

## I. STATUS OF FISHERIES

### A. Demersal resources

Demersal resources are very heterogeneous by definition. They include fish, molluscs and crustaceans of different trophic levels, with very complex interactions.

Overall, the biomass of demersal species has declined dramatically over the past four decades<sup>5</sup> (it was divided by three in Mauritania between 1982 and 2006<sup>6</sup>) and this decrease can lead to profound changes in the ecosystem balance. Changes in species composition sometimes occur slowly (spread of octopus) but can also be very fast (spread of triggerfish).

Assessment of demersal stocks and their potential are conducted on a regular basis in some Member States (Mauritania, Guinea). In other Member States, available data is not updated regularly. They can be old (Sierra Leone) or occasional (Guinea Bissau). Available data shows that in Senegal, for example, the situation is considered particularly serious (virtual disappearance of certain species, significant reduction in catch sizes). This situation pushes national fishermen to get an increasing share of their catches in the waters of neighbouring countries.

### B. Pelagic species

Pelagic species, that are the subject of the fourth question submitted to the Tribunal for an advisory opinion, live in almost mono-specific shoals.

Assessments of the potential of these species are carried out regularly at the regional level (including Morocco), with complementary methods (acoustic, scientific fishing). Today, some stocks are decreasing (round sardinella), others increasing (sardine). Two types of pelagic fisheries are to be found in the area: small coastal pelagic species and high sea tuna species.

**Table 1: Catch potential for different groups of species per year**

Indicators (t)	Cape-Verde	The Gambia	Guinea	Guinea Bissau	Mauritania	Senegal	Sierra Leone	Total
Total potential	45000	85000	150000	523000	1300000	500000	180000	2783000
Potential for pelagics (including tuna species)	40000	70000	100000	212000	1100000	375000	100000	1997000
Potential for demersals (clams in Mauritania are not included)	5000	15000	50000	311000	200000	125000	80000	706000

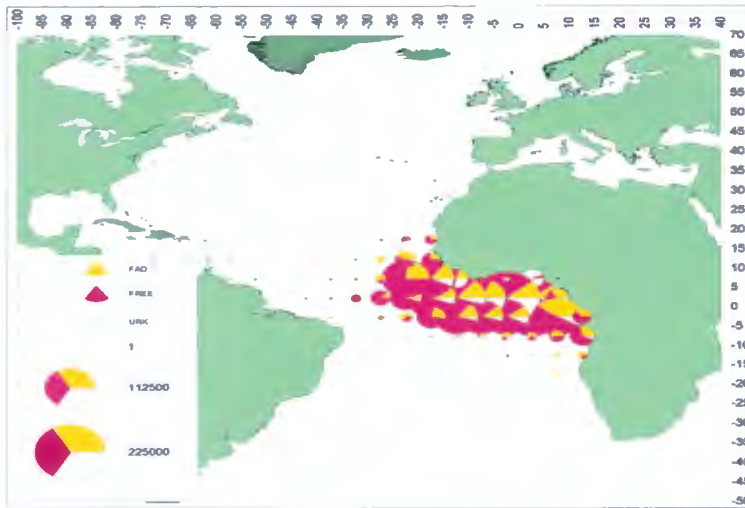
Sources: IMROP (including sardines) 2011, CNSHB 2011<sup>7</sup> CIPA<sup>8</sup> (Guinea Bissau), 2010, Guinea: Fisheries management plan for 2010 and statistical bulletin 2011

<sup>5</sup> SIAP, June 2002

<sup>6</sup> 6<sup>th</sup> WG, IMROP, dec 2006

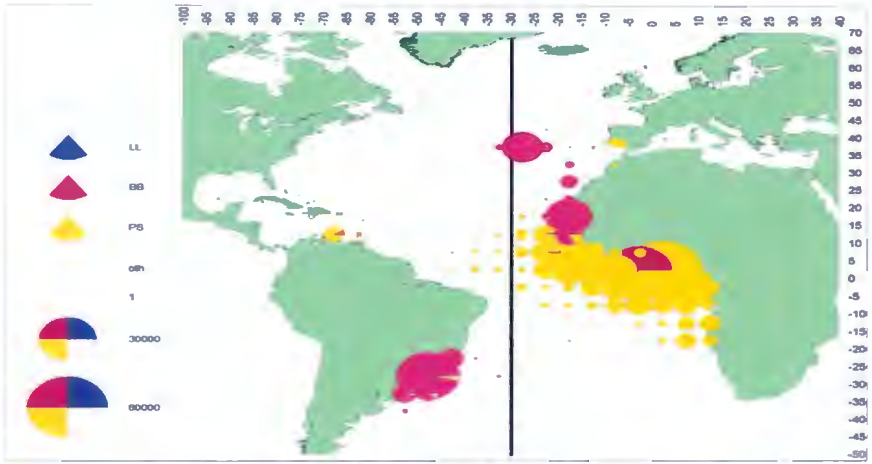
<sup>7</sup> Alkaly Doubouya, Thierno Aliou Diallo, Bakary Magassouba, Seny camara, Pablo Chavance. 2011, Etats des lieux national – Projet CEPIA. Guinee/Tristao.

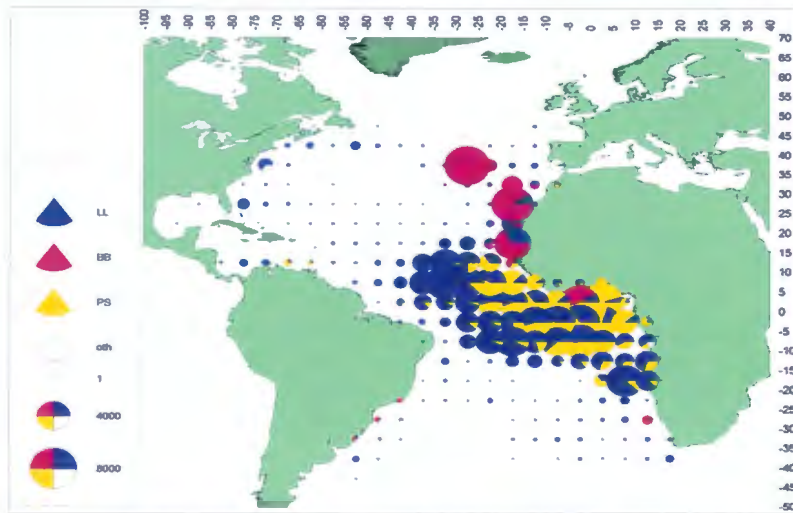
Maps 1, 2 an 3 give the geographical distribution of the cumulative catch for all States fishing in the Atlantic. The data in blue represent the longline catches, yellow indicates seiners, and the red the pole seiners.



**Map 1: Geographical distribution of Yellowfin tuna catches in the Atlantic**

<sup>8</sup> Armelle Urani, Herculano Da Silva Nhaga, Adilson Dywyna Djabula, Eduardo Luis Perreira, Josefa Pinto, Emanuel Ramos, Pablo Chavance. 2011, Etat des lieux national projet CEPIA. Guinée Bissau/UROK





Map 3: Geographical distribution of Bigeye tuna catches in the Atlantic

These figures clearly show a strong concentration of the abundance of these three species (yellowfin, bigeye and skipjack) in the Eastern Atlantic. Hence the interest of European and Asian countries to operate in the SRFC area. The very low participation of the SRFC Member States in this fishery is also observed. The concentration of these stocks along the West African coasts should oblige the Member States to be more involved in management policies of these resources.

For tuna species, ICCAT implemented restrictive regulations against IUU fishing. This has drastically reduced the unreported catches from 38,000 t in 1990 to zero in 2010 (Table 2). However, the phenomenon of unregulated and illicit fishing remains.

For small tuna species, ICCAT suggested that regional organizations (such as the SRFC and CARICOM) conduct stock assessments of these species in the Member States to improve its reliability. Indeed, available national official data are unreliable because most by-catch is discarded at sea by large purse seiners operating in the sub-region.

For large tuna species, stock assessments are based on the integration of several methods and the occurrence of these species is beyond the limits of the SRFC since these resources are managed by ICCAT.

Table 3 below shows that the amount of tuna caught by SRFC Member States is small (about 4% of total catch), hence the need for these States to encourage the sustainable management of tuna following the rules enacted by RFMOs in accordance with international law.

The different tuna species and assimilated species for the Atlantic are to be found on Annex V of the Written Statement.

**Table 2: Tunas an sharks total catch in the Atlantic, 1990 to 2011, in tonnes (Source: ICCAT)**

	Cape Verde	The Gambia	Guinea Bissau	Guinea	Mauritania*	Senegal	Sierra Leone	Total SRFC	Total General	% catches SRFC	N.E.I *
1990	3592	2	3		100	8179	90	11966	711465	1.68	38126
1991	3976	16	3		877	5839	619	11330	760927	1.49	34658
1992	2975	15	3		377	7656	614	11640	729746	1.60	39297
1993	2939		5		746	9628	601	13919	784998	1.77	43741
1994	3415		5	330	54	10520	599	14923	797022	1.87	47062
1995	3655		6		263	8739	598	13260	751327	1.76	47710
1996	2606		6		2479	8654	598	14343	758752	1.89	51409
1997	3278				2170	8249		13697	740720	1.85	41146
1998	2833				1304	10791		14928	757120	1.97	52923
1999	4143					9212		13355	764056	1.75	54539
2000	3701					9533	735	13969	720891	1.94	37997
2001	3405					14893	7097	25395	753490	3.37	35076
2002	3241					10069	542	13852	649632	2.13	21158
2003	2962					6583		9545	656763	1.45	19337
2004	5273					9813		15086	662424	2.28	18010
2005	16001					17556		33557	716335	4.68	5342
2006	18580					12724		31304	616266	5.08	1504
2007	12229					15602		27831	622218	4.47	674
2008	17653					12266		29919	583433	5.13	681
2009	14930					13526		28456	619613	4.59	404
2010	13304			730		14263		28297	649505	4.36	
2011	16011					16674		32685	682901	4.79	

N.E.I. = Officially undeclared catches estimated by the scientific committee and which could be qualified as IUU catches.

The SRFC shall follow-up the development of certain fishing techniques which impacts are considered negative for the sustainable management of tuna populations, in particular the negative impacts of the fish aggregating devices (FAD) used since 1990.

## II. STATISTICS ON FISHERIES

Overall catches in the SRFC area, calculated from the most recent available data (2011) are around 2,03 million tons, of which only twenty-three percent (23%) are demersal species.

It was estimated in the late 90s that about two thirds of the catch was due to industrial fishing while just a third was attributable to artisanal fisheries. In 2011 the share of artisanal fishing has considerably increased to 800,000 tons, and a bit more than 1,200,000 tons for industrial fishing. Due to significant increases in pelagic catches in Mauritania in recent years, the share of small-scale fisheries in the sub-regional catch is estimated at nearly 40 % (Table 3).

**Table 3: Catch tonnage following the different groups of species**

Indicators	Cape Verde	The Gambia	Guinea	Guinea Bissau	Mauritania	Senegal	Sierra Leone	Total
Total catch (t)	8,000	40,000	155,000	107,000	1,162,000	427,000	132,400	2,031,400
Total Industrial fishing	3,800	10,000	59,000	72,000	997,000	42,000	15,800	1,199,600
of which pelagic	3,800	5,000	22,000	44,000	938,000	3,000	2,500	1,018,300
of which demersal	0	5,000	37,000	28,000	59,000	39,000	13,300	181,300
Total artisanal fishing	4,200	30,000	96,000	35,000	165,000	385,000	116,600	831,800
of which pelagic	3,200	25,000	37,000	20,500	50,000	335,000	80,000	550,700
of which demersals	1,000	5,000	59,000	14,500	115,000	50,000	36,600	281,100
Total pelagics	7,000	30,000	59,000	64,000	937,000	338,000	82,500	1,569,000
Total demersals	1,000	10,000	96,000	42,500	174,000	89,000	49,900	462,400

Sources: CNSHB 2011, IMROP 2011, CRODT 2011, MFMW 2011, COPACE 2011. Source Guinea Bissau: SEP Direction de la Pêche artisanale 2011, CIPA 2011

The increase in the number of artisanal fishing boats is uncontrolled, especially in Senegal and Mauritania, where catches are increasingly sold on the international or sub-regional markets. The registration of vessels was done in some SRFC Member States which enabled them to have data on the effort of the artisanal fishing which is quite representative of the importance of the activity.

Thus, today there are more than 41,000 boats (Table 4), including 22,000 motorized. A strong concentration of this effort (around 86 %) is concentrated in Senegal, Guinea, Sierra Leone and Mauritania. The part of the Senegalese boats in the total fishing effort is estimated to be around 44%.

Artisanal fishing has seen a considerable increase in performance over the last three decades with the use of GPS, use of more powerful engines, and better fishing gears. This situation has led to an overcapacity in the sub-region, a decrease in yield and overfishing of demersal species.

The industrial sub-sector is also important in the sub-region with an estimated number of 1000 vessels, a large part fishing through fisheries agreements with third countries. Some problems



such as the importance of by-catch, discards and the impact on endangered species remain unresolved.

**Table 4: Industrial and artisanal fishing effort in the SRFC area**

Indicators	Cape-Verde	The Gambia	Guinea	Guinea Bissau	Mauritania	Senegal	Sierra Leone	Total
Industrial fishing fleet	216	30	116	217	243	129	100	1051
National or chartered vessels	90	0	61	36	120	98	40	445
Licences for foreign vessels *	126	30	55	181	123	31	60	606
Artisanal fishing fleet	1,239	1,700	6029	2,500	4784	18,000	7,000	41252
Boats with an engine	892	629	22%	500	4674	13,500	210	21731
% motorisation	72%	37%		20%	98%	80%	3%	55%

Sources: DGP 2005, GFD 2004, CNSHB 2005, DGPA 2006, IMROP 2006, DPM 2006, MFMW 2006. Source Guinea Bissau: Direction de la Pêche artisanale et annuaire de la pêche industrielle 2009.

Generally an excessive fishing effort targeting a limited fishing potential can create an unsustainable situation in the long term. This is the scenario which unfolds presently in the sub-region. The state of actual stocks, presented in the table below, no longer allows a significant quantitative expansion in terms of increase of the fishing effort. as almost without exception, the resources are fully exploited or overexploited (following the most recent assessments made by FAO, nearly 30 % of the stocks are overfished, 57% are fully exploited and 13% are underexploited)

**Table 5: Status of the stocks in the sub-region**

Fishery	Exploitation level
Pelagics	
Sardinellas	Overexploited
Mackerel	fully exploited
Bonga	fully exploited
Demersals	
Seabream	Overexploited
Catfish	Overexploited
Bars or captains	fully exploited
Thiof or groupers	collapsed in 2005
Cephalopods	
Octopus	overexploited
Cuttlefish	Overexploited
Crustaceans	
Prawns	overexploited since 2005

Source: FAO, different reports from the COPACE working group

## SECTION 2: THE PLACE OF FISHING IN THE ECONOMIES OF THE SRFC MEMBER STATES

In terms of geographic, demographic and macroeconomic indicators, fishing has a very different importance in the SRFC Members States.

The disparities in the EEZs and the continental shelf size are considerable (Table 6). Guinea and Guinea Bissau are preferred for their access to demersal resources, unlike Cape Verde which is essentially dependent on migratory routes of pelagic resources.

**Table 6: EEZs and continental shelf in the SRFC Member States**

Indicators	Cape Verde	The Gambia	Guinea	Guinea Bissau	Mauritania	Senegal	Sierra Leone	Total
Country size (km <sup>2</sup> )	4,033	10,000	24,000	36,125	1,030,400	196,722	72,326	1,595,606
Seabord (km)	1020	70	300	274	720	700	330	3414
EEZ (km <sup>2</sup> )	734,265	10,500	116,584	105,740	234,000	180,895	166,058	1,548,042
Continental shelf (km <sup>2</sup> )	3,000	4,000	56,000	45,000	34,000	24,000	25,600	191,600
% Continental shelf/ EEZ	0.4%	38.1%	48.0%	42.6%	14.5%	13.3%	15.4%	12.4%

Source: National Research centers, fisheries department, FAO.

The population of the SRFC Member States is also very unevenly distributed, Senegal and Guinea representing nearly two-thirds of the total population (Table 7). However, these two countries have only about a third of the potential fishery resources. The objectives of the fisheries sector in these two countries should naturally be more oriented towards food security and employment, unlike Mauritania, whose sector objectives are rather economic and financial through exports and contribution to the State budget revenues. But sectoral policies are not as focused and sometimes have incompatible objectives, such as maintaining employment, supplying the local market and helping to stabilize the balance of payments.

**Table 7: SRFC Member States population**

Indicators	Cape Verde	The Gambia	Guinea	Guinea Bissau	Mauritania	Senegal	Sierra Leone	Total
Year of reference	2012	2012	2012	2012	2012	2012	2012	
Total population	567,000	1,800,000	10,500,000	1,600,000	3,600,000	13,100,000	6,100,000	37,267,000
Growth rate	0.9%	2.7%	2.5%	2.1%	2.2%	2.6%	2.1%	
Projected population in 2025	647,000	2,080,000	14,100,000	2,170,000	5,351,000	16,500,000	9,050,000	49,898,000

Sources: United Nations Population Fund. 2012. «State of the World Population»

Table 8 below also shows that the number of direct employment is very high in the sub-region with about 628 000 jobs of which 87% to be found in 4 countries (Senegal, Guinea, Guinea Bissau and Sierra Leone). It also shows that the fisheries sector contribute significantly to food security with a large part (48%) of animal proteins coming from the sector.

**Table 8: Employment and fish consumption in the SRFC Member States**

Indicators	Cape Verde	The Gambia	Guinea	Guinea Bissau	Mauritania	Senegal	Sierra Leone	Total / moyenne
Employments in the fisheries sector	9,100	30,000	84,200	120,000*	40,000	220,000	125,000	574,300
Of which small-scale fishermen	4,380	4,700	80,000	10,000**	21460	59,500	25,000	205,040
% fishermen / active pop	4.6%	4.5%	2.5%	2.2%	3.1%	5.0%	5.2%	4.0%
Fish consumption (kg/pers/year)	26.0	23.3	16.1	26.0	4.3	35.4	12.3	21.3
% fish / total animal proteins	28%	61%	60%	24%	13%	47%	75%	48%

Sources: For Guinea, Senegal, Mauritania and Guinea Bissau see CEPIA reports: Etats des Lieux National. For the other countries, see the national institute of statistics. \* Andersen, P., 2009. Diagnostic social sur le travail et l'emploi dans le secteur de la pêche (INT/07/16M/SPA). Madrid, 111 p. \*\* 86% of national fishermen and 14% of foreign fishermen

With the exception of Mauritania and Senegal, the share of fisheries products in total exports is small. Senegal and Mauritania export on average nearly 983 million USD per year of fisheries products, or 96% of the value of exports of the sub-region. Overall, the sector remains very poorly integrated into the economy of most Member States and contributes little to their budgets, with the notable exception of Mauritania and marginally the Gambia (Table 9).

**Table 9: Contribution of fisheries products to the national GDP, to the exports and to the budget of the Member-States**

Indicators	Cape Verde	The Gambia	Guinea	Guinea Bissau	Mauritania	Senegal	Sierra Leone	Total
Share in the GDP	1.52%	2.68%	0.43%	ND	4%	2.00%*	ND	
Export value (M USD)*	14.931	5.168	9.315	3.070	455	486	9.799	983.283
Share of the sector to the exports	0.99%	0.24%	4.48%	0.32%	30%	21.53%	0.00%	
Share of the sector to the national budget	NA	NA	2.5%	ND	18%**	1.7%	0.9%	

\* FAO Fishstat \*\* outside of fishing agreements with the EU (if we included the fishing agreement with the EU, the share would rise to 25% in 2003)

### SECTION 3: GOVERNANCE OF THE FISHERIES SECTOR

#### I. FISHERIES POLICY

In some SRFC Member States, current fisheries policy documents are recent. This is explained by the fact that the previous texts had to be updated or simply because they did not exist. At the World Summit on Sustainable Development (WSSD, 2002), countries also committed themselves to bring fish stocks back to an optimum level in a specific period. Commitments invite countries to take all the necessary steps to allow the recovery of fish stocks by 2015. International institutions supported SRFC Member States in the revision of these public fisheries policy instruments (Table 10).

**Table 10: Dates of preparation and actualisation of fisheries policy instruments of the SRFC Member States**

Country	Validity period
The Gambia	2009/2013
Senegal	2007
Mauritania	2008/2012
Guinea	2009/2013
Sierra Leone	2010
Cape Verde	2013/2020

Every Member States develop their policy (Table 11) around 4-5 strategic objectives, each of these objectives are broken down into a set of strategic actions. The following table shows the main characteristics of fisheries policies<sup>9</sup>.

<sup>9</sup> Cape-Verde: document not ready yet; there is no fisheries policy document in Guinea-Bissau.

**Table 11: Main fishery policies characteristics in the SRFC Member States<sup>10</sup>**

Guinea	The Gambia	Mauritania	Senegal	Sierra Leone
<b>Reference document</b>				
Lettre de Politique de Développement de la Pêche et de l'Aquaculture (LPDPA) - 2009	Fisheries Policy of the Gambia - 2007	Stratégie de gestion durable du secteur des pêches et de l'aquaculture (2008-2012)	Lettre de politique sectorielle (2007)	Policy and Operational Framework for the Fisheries of Sierra Leone (2010)
<b>Objectives/strategic axis</b>				
<p>Three objectives:</p> <ul style="list-style-type: none"> <li>• Increase the sector's contribution to food security;</li> <li>• Creating added value and increase the resource rent;</li> <li>• Expand and diversify job opportunities.</li> </ul> <p>Three priorities:</p> <ul style="list-style-type: none"> <li>• Priority 1: Strengthening institutional and professional capacities</li> <li>• Priority 2: Sustainable management of aquatic resources</li> <li>• Priority 3: Development of fishery products and aquaculture</li> </ul>	<p>7 Objectives:</p> <ul style="list-style-type: none"> <li>• rational and long-term use of marine and inland fishery resources</li> <li>• use of fish as a means of improving the nutritional level of the population</li> <li>• increased employment opportunities in the sector</li> <li>• increase in net foreign exchange gains</li> <li>• increasing and broadening participation of Gambians in the fisheries sector</li> <li>• Aquaculture Development</li> <li>• improving institutional capacity and legal framework for the management of fisheries.</li> </ul>	<p>2 Objectives</p> <p>Fisheries resources preservation integration of the sector in national economy</p> <p>4 priorities</p> <ol style="list-style-type: none"> <li>fisheries management with rent optimization</li> <li>increased economic and social effects of the sector</li> <li>protection of the marine environment, habitats and of the coast</li> <li>legal and institutional framework.</li> </ol>	<p>5 specific objectives, with each of the strategic priorities and actions to be taken.</p> <p>Specific objective 1: sustainable management and restoration of fishery resources</p> <p>Specific Objective 2: Satisfaction of domestic demand</p> <p>Specific Objective 3: Maximising the added value of the catch</p> <p>Specific Objective 4: Improve the skills of fisheries professionals</p> <p>Specific Objective 5: Improve the system of funding for fisheries and aquaculture</p>	<p>Objective I: Conservation and Sustainable Use</p> <p>Objective II: co-management with informed and involved stakeholders</p> <p>Objective III: Diversification and increase in international trade in seafood</p> <p>Objective IV: functional extension service can provide tools for effective and efficient management</p> <p>Objective V: Promote sustainable aquaculture</p>

## II. NATIONAL FISHERIES LEGISLATION

National fisheries legislations in the SRFC Member States provide the general framework for the conservation, management and development of fisheries. This point is examined in Chapter IV – Section 1, III (Compliance of national legislation with international legal instruments to fight IUU fishing).

<sup>10</sup> Guinea-Bissau: fisheries policy documents are in the preparation phase. For Cape Verde, the Policy document is yet not available

### III. FISHERIES DEVELOPMENT STRATEGY

A development strategy gives for a given period (five to ten years) the guidelines provided in the sectoral policy document. It is divided into annual actions where the responsible institutions, the indicators and the necessary financing plans are indicated. It should logically be evaluated on an annual basis, and serve as a "dashboard" for the sector's evolution. The table below shows the chronology of development strategies for fisheries development in the sub-region.

Table 12: Fisheries development strategy in the SRFC Member States

Fisheries development strategies	Period
Senegal	2000/2004
Mauritania (stratégie de développement de la pêche et de l'aquaculture et Cadre Stratégique de Lutte contre la Pauvreté)	2008/2012
Guinea-Bissau	2011/2015
Guinea	2009
Cape-Verde	2009
The Gambia	2010-2012
Sierra Leone	2013-2014
	2012-2015
	2010

### IV. FISHERIES MANAGEMENT PLAN

A Management Plan is a document that analyzes the current situation of a fishery or a set of resources in a given area and sets out the principles that should be followed for their management. It also outlines the goals and objectives for the fishery or all of the resources, defines how they should be achieved, and how they should be monitored and evaluated. Its overall objective is to draw maximum benefit from sustainable resources use. It is established for a period that may be long, but should be evaluated every five years at least.

A Management Plan Scheme covers two different realities: i) management plans targeting a specific fishery <sup>11</sup>and ii) management plans at the national level (annual or multi-year ) for all or part of the fishery resources of a given country<sup>12</sup>.

The principle of a management plan by fishery is getting increasingly developed. But, although they exist in some Member States like Mauritania, they are still not implemented.

Table 13 below shows the general situation of the management plans in the sub-region.

<sup>11</sup> In the West African sub-region, the laws of the coastal countries define the fishery based on the CCPR, "the term refers to one or more fishery stocks of living marine species, brackish or freshwater and the operations on these stocks on the basis of their geographical economic, scientific, technical, social and/or recreational features, can be regarded as a unit for the purposes of conservation and management. "

<sup>12</sup> Only Guinea (for demersal stocks and trawling fishing) and for Cape Verde (for all the resources) have developed management plan of that kind

**Table 13: General situation of the management plans in the SRFC sub-region**

Fishery – species/group of specific species		Period
National level	(A) Sole – The Gambia	2012
	(A) Octopus – Mauritania	2006, updated in 2013
	(A) Deep sea shrimps – Senegal	2012
	(P) Coastal shrimps, octopus, cymbium – Senegal	
	(P) Small pelagics - Mauritania	2013
	(P) Sardinella – Senegal – The Gambia	
	(P) Mulletts - Mauritania, Senegal	2011
	(P) Shrimps - Mauritania	2009
	(P) Croaker - Mauritania	2013
	(P) Small pelagics – The Gambia	2013
(A) Molluscs and bivalves (cockles and oysters)	2012	
Regional level	(P) Sharks - SRFC countries	
	(P) Small pelagics - Mauritania, Senegal, The Gambia	
	(P) Mulletts, Croakers - Mauritania, Senegal	
<i>Artisanal fisheries</i> <sup>13</sup>		
	(P) Sierra Leone	
	(P) Mauritania: artisanal and small-scale fisheries	2008, updated in 2012
<i>All fisheries</i>		
	(A) Fisheries resources management plan - Cape-Verde (2013/2014 et biannual)	Biannual 2013/2014
	(A) Fisheries plans – Guinea (annual)	
	(A) Fisheries plans – Guinea Bissau (annual)	

(P) in development or anticipated; (A) adopted

This table shows the following:

At the national level, at the present day, only management plans for specific fishery are adopted and implemented. The management plan for "octopus" in Mauritania is historically the first in the region and it has recently been followed by the "sole" management plan in The Gambia.

At the national level, many management plans are under preparation or at the adoption stage - sometimes for many years as in Senegal (deep-water shrimp) and Mauritania (coastal shrimp).

Several initiatives have been developed at the regional level, under the impetus of the SRFC and FAO, and a set of management plans is in preparation (small pelagic between Senegal, Mauritania, The Gambia and Morocco; mullet/croaker/bluefish between Mauritania and Senegal) but neither is finalized.

Finally, Cape Verde and Guinea are developing management plans (annual or bi-annual) for all or part of their fisheries resources.

<sup>13</sup> In the West African region, coastal States legislation define "fisheries" using the CCRF definition "the term refers to one or more fishery stocks of living marine, brackish or freshwater species and operations based on these stocks on the basis of their geographical, economic, social, scientific, technical or recreational characteristics can be considered as a unit for purposes of conservation and management

Table 14 below provides a summary table of the fisheries policy documents existing in each country.

**Table 14: Overview of Instruments of Fisheries Policy (IPP) in the sub-region**

	Cape Verde	The Gambia	Guinea	G. Bissau	Mauritania	Senegal	Sierra L.	SRFC(Small pelagics)
Most recent fisheries law	2005	2007	1995	2011	2000	1998	2011	2013

The SRFC Member States have a strategic policy document for the promotion of the sustainable use and concerted management of small pelagic in North-West Africa. This document has been validated at the regional level and was presented at the 24th Special Session of the Coordinating Committee and the 14th Session of the Conference of Ministers held in March 2013. It defines the objective followed by the concerned States (Mauritania, Senegal and The Gambia), the species concerned, the specific objectives, the elements of strategy to achieve these objectives, the various components for the implementation process and the expected results. The proposed strategic directions are consistent with the relevant provisions of UNCLOS, the CCPR, the ecosystem approach to fisheries (EAP) and the CBD. Mauritania, The Gambia and Senegal have relied on this concerted and harmonized policy document to write their national pre-project of the management plan for small pelagics.

## V. FISHERIES INSTITUTIONAL FRAMEWORK

The institutions responsible for fisheries management are still mainly hosted by the central administrations. When advisory bodies between government and the private sector exist, they rarely collaborate effectively.

### A. The central administrations

- Fisheries management is carried out by a specific department for fisheries in all the countries. The structure and level of organization of the department (including its representation at the decentralized level) vary greatly from one country to another. The case of Mauritania is worth mentioning as it is better structured than in the other countries. Indeed the "Directorate of Management and Oceanographic Resources" was created next to the Directorates of Artisanal Fisheries and Industrial Fishing. This Directorate concentrates almost all its activities in research, statistics, regulations and fisheries management. Other directorates are concerned with exploitation and fishing units.
- Some countries, including Cape Verde and Senegal, have experienced a series of institutional changes<sup>14</sup> during the period (supervision of the fisheries department to various other departments, changing the department's structure) who have not necessarily led to improved visibility of the sector, but were rather the mark of a structural instability.

<sup>14</sup> For example, the General Direction of Fisheries of Cape Verde changed 7 times of Ministry of supervision since 2000



## B. Research Centres

Every country, with the exception of The Gambia and Sierra Leone, have established fisheries research institutions. Apart from Mauritania, human, technical and financial capacity of the research institutions are weak, or at least very inadequate to complete all the tasks entrusted to them. Only three countries have research vessels, which implies a very strong dependence on other countries to carry out stock assessments. Furthermore, the determination and definition of research priorities for the sector are insufficient because of a lack of financial means and clear policies.

## C. Professional organizations

Most professional organizations are weakly structured at national level and have limited capacity (human, technical and financial, Table 15), depriving the administration of partners for consultative and collaborative management.

**Table 15: Indicators of organizational stakeholders' countries SRFC area**

Indicators	Cape Verde	The Gambia	Guinea	Guinea Bissau	Mauritania	Senegal	Sierra Leone
Consultative body	Yes	Yes	No	No	Yes	Yes	No
Profess.Organ. IF	Yes	No	CONAPEG	No	FNP	GAIPES	No
Profess.Organ. AF							
Local	Yes	Yes	Yes	Yes	No	Yes	Yes
National	No	NAAFO, GAMFIDA	UNPAG	ANAPA	A3PAM	CONIPAS, FENAGIE, CNPS, etc.	SLAFU, SLAAFU
Organisational level	weak	weak	medium	NA	strong	medium	weak

Source: AFD/SRFC study, November 2012

For the past three years, the SRFC accompanied its Member States in the establishment of consultation mechanisms with a focus on managing stocks and fisheries of small pelagics. At present, these mechanisms exist officially in Mauritania, Senegal and The Gambia. It should be noted that the SRFC has put in place a regional consultative committee on small pelagics. Also, a joint committee was established in Guinea and discussions are underway to turn into Consultation Committee.

## SECTION 4: FISHERIES MANAGEMENT

The access right is generally framed for the industrial fishing, by annual plans defining the potential and the corresponding fishing effort (in GRT or number of vessels). However IUU fishing remains a scourge for SRFC Member States.

Regarding artisanal fisheries, access is open and often free. The lack of effort limitation is a major cause of overcapacity in a context where access to fisheries resources is done with modern technological means. In addition, monitoring the application of technical measures (gear, catch sizes) remains very difficult for small-scale fishing, because of the multiple points of landing, the poor organization of actors, and the limited means of the administration.

**Table 16: The access system of to fishery resources in the SRFC area**

Indicators	Cape-Verde	The Gambia	Guinea	Guinea Bissau	Mauritania	Senegal	Sierra Leone
Regulations	2005	1995	1995	2000	2000	1998	1994
Restricted area for Ind F	No	Yes	Yes	Yes	Yes	Yes	Yes
Art F. Access	Free	Free	Free /paying >15CV	Free/ paying	Free/ paying	Free/ paying	Free/ paying
Technical measures	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Capacity limitation IF/AF	No/No	No/No	No/Yes	No/Yes	No/No	No/No	No/Yes

### SECTION 5: FISHING AND OTHER SECTORS

The challenges of the fishing industry in the coming decades will be at crossroads with other sectors, such as trade (globalization of the markets, promotion of added-value on fisheries products, generalization of strict sanitary standards), the environment (ecosystem approach to management, conservation of biodiversity, protection of the marine environment, adaptation to climate change), but also the demography (coastal urbanization, alternative employment, migration).

Therefore, the national approach to fisheries management must be clarified, and the strengthening of regional and sub-regional technical cooperation (SRFC, ICCAT) appears increasingly essential.

## CHAPTER III: IUU FISHING IN THE SRFC AREA

The means of control and surveillance of fisheries are very unevenly distributed among SRFC Member States. Four countries have vessels for coastal surveillance (The Gambia, Guinea Bissau, Sierra Leone and Guinea) and three have airplanes (Mauritania, Senegal and Cape Verde). With the aim to pool air and sea surveillance resources available in the Member States, the SRFC conducted, with the support of technical and financial partners, joint surveillance operations. But it remain generally inadequate to monitor the EEZs, in a context of expanding illegal fishing activities in the sub-region.

### SECTION 1: IUU FISHING IN THE SRFC MEMBER STATES

In the SRFC Member States, the consequences of IUU fishing are increasingly worrying. Besides the destruction of ecosystems, the drastic decline in major stocks of fish resources in the sub-region, the massive job losses related to the bankruptcy of several fishing industries and disruption of business in fishing communities, the financial losses for West African countries is significant.

#### I. HISTORY OF IUU FISHING IN SRFC AREA<sup>15</sup>

In the SRFC area, IUU fishing was first observed in the northern part of the region (Cape Verde, Mauritania and Senegal EEZs), closer to the first European port offering quality technical facilities for conservation, processing of fishery products, repair of vessels and fishing gears.

Following the decrease of the fish stocks and the surveillance efforts of these countries, the phenomenon has gradually moved south of the SRFC area where IUU fishing vessels have benefited from periods of political instability in certain countries.

But today, the most important challenge is the involvement of the artisanal fisheries in IUU fishing. Indeed, this important segment of fishing fleets provides most of the landings for local consumption considers access to the resource as a customary right and therefore find it difficult to comply with national legislation.

More and more artisanal vessels contribute to the worsening of IUU fishing in the SRFC area. They migrate throughout the sub-region in increasingly large wooden boats with polystyrene boxes in which they put ice to preserve their catch longer, outboard engines and large reserves of fuel to go out at sea for about two weeks.

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<sup>15</sup> Information provided here are taken from the "Document stratégique pour la création d'un mécanisme de financement durable du SCS", written by Ulrich Schack and Makane Diouf (Project SCS/EU/SRFC) 2013

## II. IUU FISHING IN THE REGION

Over the last twenty years, the phenomenon of IUU fishing has grown exponentially in the sub-region. The SRFC Member States are now facing several types of threat of IUU fishing:

1. Domestic and foreign industrial fishing vessels legally authorized but taking advantage of the weak surveillance systems engage in harmful practices for the resource, such as the use of illegal fishing gears or non-complying with regulation in general and with fishing areas in particular.

With respect to Mauritania and Senegal, many foreign pelagic vessels present in Mauritania and working under fishing agreements or charter agreements represent a real threat of IUU fishing in the north of Senegal during cold periods (November-April) or when the fish goes down to southern Mauritania.

For the Gambia and Senegal, IUU fishing activities are operated by Senegalese industrial vessels that regularly cross Gambian waters. But also, foreign vessels licensed in The Gambia find the Gambian waters too narrow, covet the resources available in the nearby waters of Senegal and pose a threat to the Senegal fisheries.

With regards to Guinea and Sierra Leone, the weak capacity to monitor both EEZs and the not yet legally defined marine border makes it an easy refuge for IUU vessels in any of those countries.

2. National or foreign vessels authorized to fish legally in a SRFC Member State take advantage of the weak surveillance systems to make illegal incursions into neighbouring States. This concern was expressed at the 19<sup>th</sup> Ordinary session of the SRFC Conference of Ministers (Conakry, Guinea, 21-22 December 2012), which decided that in such circumstances it will be necessary to arrest and return the offender in the Member States where the offense was committed under international law.

3. Vessels foreign to the sub-region and non-authorized, called pirate vessels, are not respecting any regulations and are often without a homeport and fish illegally in the EEZ of the Member States

In the case of Guinea-Bissau and Senegal, particularly in the common zone, foreign fishing vessels are regularly practicing IUU fishing. However, it must be underlined that the "Agency for the cooperation and the management between Senegal and Guinea Bissau" conducts surveillance operations of the area.

At the border between Guinea-Bissau and Guinea, the waters are very popular with species such as yellow croaker or "bobo" which are searched for by Asian vessels. These species are usually found within the prohibited trawling areas at the border of both countries. These

vessels exploit the weakness of the surveillance systems of Guinea and Guinea Bissau to engage in IUU fishing.

For the so-called South countries (The Gambia, Guinea Bissau, Guinea and Sierra Leone), weak reception and treatment capacities of vessels in the ports, encourage vessels fishing illegally to perform transshipment at sea.

For all SRFC Member States, control over tuna vessels present in the area in a certain period of the year remains limited and needs to be strengthened.

■ The artisanal fishing boats practice acts of IUU fishing as harmful as industrial fishing within their own waters and the waters of the neighbouring States as follows:

With respect to Senegal and other coastal States, persistent and recurring fraudulent and irregular cross-border incursions of Senegalese boats are reported. For example, between Mauritania and Senegal, despite the regular exchanges between the two countries to counteract the practice of IUU fishing, it tends to persist.

According to the surveillance operations conducted in the SRFC area, the Member States of the south region of the SRFC (Sierra Leone, Guinea and Guinea Bissau) are the target of the IUU fishing activities. Losses attributed only to fishing without a license in these countries are estimated annually at some USD 140 million for Guinea and Sierra Leone. The amount of the loss is huge as it is equivalent to a quarter of the value of the production officially declared in both countries.

For a country like Senegal, assumed to be relatively advanced in surveillance, the number of IUU fishing vessels actually boarded for the period 1995-2007 is 556 vessels. For an estimated daily output of USD 8000/day/vessel, it indicates an estimated loss of more than USD 200 million over this period, not to mention all the other induced adverse effects.

The situation is also serious in Mauritania which has a relatively strong surveillance system, and still declares high levels of annual boardings despite the severity displayed in the legislation of that country. In 2011, more than four hundred fishing offenses have been identified for industrial and artisanal fishing.

The most visible effects of the poor use of the resource shows through declining landings in ports, the extended fishing trips with consequent additional operating expenses, changes in catch composition (species extinction), and finally the decrease in average size of fish caught. The most affected stocks by this overexploitation pattern are the coastal demersal stocks sought by artisanal fisheries in Senegal, Guinea and Sierra Leone, octopus in Mauritania and partly offshore small pelagics targeted by foreign fleets.

The disastrous consequences of IUU fishing on the economy of the States of the sub-region, is manifested by plant closures with reduced productivity due to a lack of products to be processed and unemployment in related activities (processing, fish marketing, handling and

trade in general). Food security is threatened, poverty grows bringing harmful consequences such as delinquency, violence and crime.

According to FAO estimates, it is likely that the global consumption of fish, which currently stands around 140 million tons/year, should increase until 2030, while the resources decline dangerously in all parts of the globe and especially in countries with low capacity to protect their resources.

This continuous increase in demand of fish in the global market pushes these downward trends for the resource. It is a factor that may also contribute to increased IUU fishing especially in the SRFC area.

It should be noted that IUU fishing is present in all SRFC Member States. This is due to both domestic and foreign industrial vessels and also the artisanal fisheries boats. Its negative impact on the economies is beyond the borders of one country. The problem of IUU fishing can only be resolved on the basis of a strong cooperation among the Member States in the sub-region. Unfortunately human, financial and material resources to fight against this scourge are not the same in every country and are globally absent in the sub-region. The volume of annual economic and financial losses incurred, as well as socio-economic problems that result, constitute a valid reason to reinvest in the MCS systems to reverse the trend.

## **SECTION 2: FISHERIES MANAGEMENT AND MCS FINANCING IN THE SRFC MS**

Regarding MCS, the situation in the Member States is the following:

■ Mauritania has achieved different levels of management plans of its fisheries (octopus, artisanal and coastal fisheries, and others), which allows to set specific targets for surveillance. The main source of funding for these initiatives is the consolidated state budget (BCI), the fines from the offending vessels, the financial counterpart of the fisheries agreements and a strong involvement of technical and financial partners. It also conducted since 2004, several studies on how to sustain the financing system of surveillance to compensate for the eventual discontinuation of the support provided by external partners or of the money coming from the fishing agreements. To make the surveillance system even more efficient, Mauritania turned it into a more independent system of coast guard that will need to be evaluated regarding its cost and relevance.

■ Senegal has defined guidance on fisheries management through the sectoral policy of fisheries and aquaculture in 2007 and after a highly critical assessment of the situation of its very overexploited resources. An action plan (2008-2010) for the implementation and mobilization of financial resources has been developed. The latter has not been reviewed or updated. However, the National Strategy for Social and Economic Development (SNDES) for 2013-2017, takes into account the financing of fisheries and aquaculture. The state budget and CEPIA funds (fuelled largely by fines from the offending vessels and the payment of the licences) are still the main sources of funding of the surveillance structure of Senegal. It should be noted that Senegal has adopted in 2012 the management plan for deep sea shrimps. Management plans for coastal shrimps and cymbium are in the preparation stage. Other

management plans already prepared are waiting to be validated and adopted (black and yellow mullet).

■ In Cape Verde, the Strategic Plan "Plano de Gestão dos Recursos da Pesca", adopted in 2005, provides the basis for fisheries management. It is updated every two years, with specific management measures for (i) small-scale fisheries, (ii) the national semi-industrial fishing, (iii) the national fishing industry and (iv) foreign fishing. The National Board of Fisheries, consisting of the Directorate General of Fisheries, the Research Institute (INDP), the Guarda Costeira, the Maritime Police, the Maritime Port Institute (IMP), the General Direction for Environment (DGE) and professional organizations give an opinion on management measures. This plan, once adopted by the Council of Ministers, is published in the Official Gazette of the Government.

■ Guinea develops every year a fisheries management plan which gives an indication of the level of exploitation of fisheries resources. The objectives defined by the plan regarding surveillance recommends (i) strengthening the system of catch certification (ii) adequate functioning of the VMS (iii) the effective application of sanctions (iv) strengthening of inspection means (v) regulatory provisions for granting the temporary flag and (vi) strengthening cooperation with fisheries management organizations.

■ In the Gambia and Sierra Leone fisheries management plans which can be used as a basis for MCS orientation have not yet been developed.

■ In Guinea Bissau, a management plan taking MCS into account was adopted in 2010. This document determines the total allowable catches for each fishery as well as surveillance plans.

The organization of an effective and efficient surveillance system of the fisheries requires a thorough knowledge of the resource, its composition and distribution, its production cycles and the rules governing its exploitation. Although there are draft annual plans for fisheries surveillance in some countries, they are not necessarily based on well-developed management plans of the resource, and it does not help in making more rational and consistent surveillance activities.

### **SECTION 3: ORGANIZATION AND FUNCTIONING OF SURVEILLANCE STRUCTURES**

To follow-up, control and monitor the exploitation of their fisheries resources, the SRFC Members States had to put up various organizational and functional frameworks for their surveillance structures in relation to the specific context of each country.

The choice of each country for a specific structure for fisheries surveillance is generally dictated by local circumstances or the context at the moment. The SRFC has not set guidelines or specific preferences on the organizational choices made in the different countries, but it recommends that all Member States provide a functional and operational structure, with real powers to manage fully coordinated surveillance activities.

### **I. MAURITANIA**

In 1994, a delegation to the Fisheries Surveillance and Control at Sea (DSPCM) was created, recently transformed into a body of Coast Guard, which supports the surveillance and control of fishing activities, the coordination of rescue at sea, the prevention and fight against marine pollution, the fight against illegal migration and other illegal trafficking. About 200 people (military and civilian) are assigned to the surveillance structure.

### **II. SENEGAL**

In Senegal, it is organized around the Direction for Protection and Surveillance of Fisheries (DPSP), central structure for planning and coordinating the surveillance. It was created in December 2000 to serve as the MCS institutional basis for Senegal replacing the Protection and Surveillance of Fisheries Project in Senegal (PSPS) which functioned for ten years (1980 -1990) with the support of the Canadian cooperation. It employs approximately 120 people for the structure, in majority civilians (besides the Director and the Chief Operating Officer).

Otherwise, the High Authority for Maritime Safety and Surety (HASSMAR) was created in 2006 and is in charge of the coordination of the security at sea and the protection of the marine environment.

### **III. CAPE VERDE**

The country is made of several islands quite distant from each other, having a resource mainly composed of offshore pelagic fish. In Cape Verde, it is organized around the versatile "Guarda Costeira" surveillance structure to fight against all forms of unlawful acts at sea including IUU fishing. The peculiar configuration of the country means that the Navy and Air Force are used to cover the vast maritime area of Cape Verde. The offshore patrol vessels for surveillance are based in Mindelo, while the COSMAR operation centre and the aerial surveillance aircraft are stationed in Praia. All MCS operations are performed by the "Guarda Costeira" through specific protocols with the Directorate General of Fisheries (DGP).

### **IV. GUINEA**

Guinea has the National Fisheries Surveillance Centre (CNSP), responsible for the protection and surveillance of fisheries resources. This structure is about 700 people strong, from administrative, inspectors and observers bodies and has its own naval units, six decentralized bases and a monitoring and tracking system of fishing vessels at sea (VMS).

Otherwise, the Prefecture Maritime was created in 2012 and is in charge of coordinating the activities at sea.



## V. SIERRA LEONE

In Sierra Leone, the Inter Maritime Committee (IMC), established in 2009 includes representatives from several administrations and coordinates all activities at sea including the protection of fishery resources against IUU fishing.

## VI. GUINEA-BISSAU

In Guinea Bissau, FISCAP is the national authority responsible for the implementation of the national system of surveillance and control of fishing activities in waters under the jurisdiction of Guinea Bissau. It has a staff of 252 people, consisting of administrative staff, fisheries inspectors and observers and has its own naval units, as well as means of radio communications.

FISCAP is under the exclusive supervision of the Ministry in charge of fisheries, but cooperates with the Navy to ensure the protection of the surveillance teams while on missions at sea. It has four surveillance bases located in strategic places like Cacine, Bubaque, Cacheu and Caravela.

## VII. THE GAMBIA

The Gambia has not yet a proper surveillance structure as in the other SRFC Member States. The Navy is responsible for ensuring the protection and the surveillance of fisheries.

# SECTION 4: STATUS OF AVAILABLE HUMAN RESOURCES FOR TECHNICAL AND OPERATIONAL MCS IN THE SRFC MEMBER STATES

## I. MCS HUMAN RESOURCES AVAILABLE IN THE SRFC MEMBER STATES

To properly implement fishery policies, including surveillance mechanisms, the Member States need human resources in sufficient number and quality at all levels. The SRFC Member States have at their disposal:

- Managers, generally well trained and having the knowledge to properly manage their surveillance structures;
- Controllers or inspectors relatively well trained, but often too short in number to accomplish the many tasks expected from them;
- Observers, without a precise status in some Member States.

Apart from the official surveillance staff, several countries collaborate with local fishing communities, civil society and other services in the management and control/surveillance of fisheries resources. This is the principle of participatory surveillance or co-surveillance generally encouraged and supported by NGOs and professional organisations for the control of fishing activities.

## II. TECHNICAL AND OPERATIONAL MEANS TO FIGHT IUU FISHING IN THE SRFC MEMBER STATES

Two groups of countries emerged in the sub-region

### A. The so-called Northern States

Mauritania, Senegal, Cape Verde, relatively well advanced in MCS, had to develop significant internal efforts in naval and air facilities and in coastal stations equipped with radar and surveillance system (VMS), which allow them to undertake a number of surveillance activities independently. These States, in addition to their national surveillance missions have repeatedly brought their equipment to support other SRFC Member States, with their naval and air means, for joint surveillance operations. Although these States have operational surveillance means they are experiencing some difficulties in the maintenance and operation of the equipment (see Table 18).

### B. the so-called Southern States

The Gambia, Guinea Bissau, Guinea and Sierra Leone, are very poorly equipped with naval means to deal adequately with the various threats of IUU fishing. These States are all aware of the importance that should be given to the protection of their resources, but the acquisition of appropriate naval means, very expensive, is often beyond the capacity of the countries. These so-called southern States naturally need a strong support of the SRFC and the solidarity of the other Member States as evidenced by the support granted in joint surveillance operations (see infra. Sect. 6) to limit the negative effects of IUU fishing.

The weight of the fisheries sector in the national economy, the support from donors for surveillance and the specific constraints in each country, partly explain the differences between the means and equipment in the SRFC Member States.

In conclusion, the analysis of the extent of IUU fishing shows that SRFC Member States do not derive sufficient benefit from fishing. It is found that the amount of illegally caught fish is almost as high as that of harvested legally in some States such as Guinea. Similarly, illegal catches are estimated to be equal to about 40% of the allowable catch in Guinea-Bissau, and 35% in Sierra Leone. Estimates vary, but the annual value of illegal catches in West Africa is in the order of USD 500 million. Countries need significant national investment in terms of surveillance means and they need to ensure they can cover the operating costs of such investments.

The SRFC felt that sharing institutional and operational capacity of the Member States is more effective to prevent and drastically reduce IUU fishing activities in the region. It is this spirit that has guided the conduct of joint surveillance operations whose results are generally satisfactory to the Member States. (see Annex IV: Summary of the sub-regional surveillance operations from 2011 to 2013).

Table 17: Staff and communication means

Designation	CAPE VERDE	THE GAMBIA	GUINEA	G-BISSAU	MAURITANIA	SENEGAL	S-LEONE
MCS staff	Inspector, Obs., Coast Guards and main police (27)	Obs. (70), Staff (04) and staff from the Gambia Navy	Insp. (48), Obs. (149), Civil servants (100), Soldiers (11), Contract. (75)	Insp. 45, Obs., Navy and protection officers, administrative and contractual staff	Insp., Obs., Seconded Navy agents and civil servants. The number increased from 400 to 700 on 11/2009	Insp, Obs, Paramilitary staff, Contractual plus staff from decentralized services	Insp. (07 ), Observers (150)
Communication means	Radio VHF + HF, Fax, RNI, ADSL, telephone	01 VHF + 01 HF. Téléx, Fax, radar. Access to internet and tel. network, AIS an SMDSM	VHF + HF, Sat Tel telephone, internet, GPS, Navigation sat. Radar. Equipments with limited functioning	10 operators (officers) radio 2 radio VHF + HF, 01 radio, mobile phone, internet	Radio VHF + HF, AIS	VHF & HF	Radio VHF + HF; AIS

Table 18: Naval and aerial means

CAPE VERDE	THE GAMBIA	GUINEA	G-BISSAU	MAURITANIA	SENEGAL	S-LEONE
PHM 52 m (1) plane Dornier (1), DO-228 non equipped for the night, 3 speedboats (15.5m, 26.8m, 11.5m) (1)	Speedboats 22m,(4) operational ad another speedboats (3)	Speedboats of which 1 of 20m, 02 speedboats of 20m (3), enhanced boats (6)	Speedboats of which 02 are functioning (12) Baleia (15 m) (4) and Baléa (10,5 m) (5)	PHM de 62 m (2) coastal speedboat (2), coastal boats (20), port speedboat (5), plane (1) and the naval means of the Navy	Airplane (1), speedboats of 20m (2) and speedboats of 12m (4), boats of 13m (5)	Speedboat (1), operational Cutters (2/3) , coastal speedboats (6)

Table 19: Summary of the equipment and infrastructures

	CAPE VERDE	THE GAMBIA	GUINEA	G-BISSAU	MAURITANIA	SENEGAL	S-LEONE
Infrastructure & Equipments	Stations with radars (2), offices for surveillance (3), with Coastal Guard agents COSMAR	Coastal station (1)with 01 VHF radio	Coastal bases (6)	Coastal bases (4) each equipped with speedboats (2) and radios (2)	Coastal stations (7) with staff and 2 boats per stations station.	Functional coastal stations (10)with radar (1) and communication means	Coastal bases (4)

**Table 20: VMS Situation**

DESIGNATION	CAPE VERDE	THE GAMBIA	GUINEA	G-BISSAU	MAURITANIA	SENEGAL	S-LEONE
SSN	Yes	Yes,	Yes	Not yet	Yes	Yes	Yes

**Table 21: National register**

DESIGNATION	CAPE VERDE	THE GAMBIA	GUINEA	G-BISSAU	MAURITANIA	SENEGAL	S-LEONE
National Register Format	Excel database with web application	Excel	Excel	Excel	Excel	Access	Excel

## **CHAPTER IV: COOPERATION AND LEGAL FRAMEWORK FOR FIGHTING AGAINST IUU FISHING IN THE SRFC AREA**

### **SECTION 1: LEGAL INSTRUMENTS TO FIGHT IUU FISHING APPLICABLE IN THE SRFC AREA**

The IUU fishing activity in the SRFC area is governed by legal instruments at the international, regional and national levels.

#### **I. THE INTERNATIONAL LEGAL INSTRUMENTS TO FIGHT AGAINST IUU FISHING**

All SRFC Members States have ratified the UN Convention on the Law of the Sea of 1982.

- Guinea, Guinea Bissau, Mauritania and Senegal have ratified the UN Fish Stocks Agreement of 1995.
- The FAO Agreement on Flag State of 1993 has been ratified only by Cape Verde and Senegal.
- Apart from the Gambia and Guinea Bissau, all the SRFC States are members of the International Commission for the Conservation of Atlantic Tunas (ICCAT).
- About the port measures, all Member States except Guinea Bissau ratified the Memorandum of Agreement of the International Maritime Organization (IMO) signed in Abuja in 1999, but none has yet ratified the FAO Agreement on Port State Measures from 2009. However this Agreement is signed by Sierra Leone. Senegal is in the adhesion process. This Agreement shall enter into force 30 days after the 25th ratification. So far, it has been ratified by 6 States and the EU, which is a member of the FAO.

Table 23 shows the status of ratification of the key agreements by SRFC Member States.

#### **A. Binding international legal instruments to fight against IUU**

##### **1. The United Nations Convention on the Law of the Sea - UNCLOS (1982)**

Adopted in 1982 and entered into force in 1994, the United Nations Convention on the Law of the Sea (UNCLOS) was the first step towards the establishment of a new framework for better management of marine resources and is as such of strategic importance as the basis for action at the national, regional and international levels for cooperation in the maritime sector. It consecrates the territorial expansion of the jurisdiction of States, through the establishment of an Exclusive Economic Zone (EEZ) of 200 nautical miles recognized through the sovereignty but also the responsibility in the management of marine and coastal resources in waters under their jurisdiction.

The Convention emphasizes the need for efficient and effective regulation of fisheries and for cooperation between coastal States. In this context, it establishes "the obligation of the coastal State to grant access to other States to capture fish which are not caught by its own fishing capacity, within the limits of the total allowable catch." It also stresses the importance of the conservation of biological resources in the high seas.

Table 22 summarizes the relevant dispositions of the UNCLOS on IUU fishing.

Table 22 - Summary of relevant provisions of UNCLOS relating to IUU fishing

Article 62 – Use of biological resources	
Paragraph 4	This paragraph states the principle that nationals of third States fishing in the EEZ of a coastal State must comply with the conservation measures and other terms and conditions established by the laws and regulations of this State. As such the coastal State may impose the exploitation of the resources to: (a) prior authorization, (b) providing information on catches and fishing effort and communicating the position of the vessel, and (c) boarding observers on vessels.
Article 73 - Enforcement of laws and regulations of the coastal State	
Paragraph 1	To ensure compliance with laws and regulations it has adopted, the coastal State may take any measures, including boarding, inspection, arrest and the introduction of a judicial proceeding.
Paragraph 2	Where a sufficient financial guarantee has been provided, the vessel and the crew shall be immediately released.
Paragraph 3	Penalties by the coastal State to foreign nationals for violations of laws and regulations on fishing in the EEZ can not include jail sentences or corporal punishment unless the concerned States agree otherwise.
Article 91 – Nationality of the vessel	
Paragraph 1	Each State sets the conditions to grant its nationality to vessels, for the registration conditions of the vessels on its territory and the required conditions to have the right to fly its flag.
Paragraph 2	Each State shall issue documents to vessels to which it has granted the right to fly its flag.
Article 94 – Obligations of the flag State	
Paragraphs 1 and 2	Any State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over vessels flying its flag. In particular: (a) maintain a register with the names and characteristics of vessels flying its flag (b) assume jurisdiction according to its internal law over each vessel flying its flag and its master, officers and crew for administrative, technical and social matters concerning the vessel.
Article 111 – Hot pursuit <sup>16</sup>	
	It is for each coastal State to organize maritime prosecution under the provisions of this Article.
Article 117 - Obligation for every State to take measures to their own nationals for the conservation of living resources of the high seas	

<sup>16</sup> Due to the length of the article, the entire article is not reproduced on the above table.

## **2. The FAO Agreement to Promote Compliance of international conservation and management measures of fishing vessels on the high seas or the Compliance Agreement (1993)**

The Agreement to promote compliance of international conservation and management measures by fishing vessels on the high seas is an international agreement, *adopted in November 1993 by the FAO Conference and in force since 23 April 2003*, to ensure compliance by all States of the obligation under UNCLOS to take all measures to ensure the conservation of biological resources on the high seas. Thus, the Agreement expressly provides the responsibility of the flag State when there is evidence that the vessel was actually registered in that State.

It refers in its preamble to the Cancun Declaration adopted by the International Conference on Responsible Fisheries in 1992 and to Agenda 21 - Chapter 17 adopted by the United Nations Conference on Environment and Development (Earth Summit 1992), which specifically requires States to take action consistent with international law, to effectively discourage their nationals to change flag to evade the rules of conservation and management on the high seas.

It also states that the vessels must only fish on the high seas by virtue of an express authorization from the flag State. And to strengthen the accountability of the latter, the Agreement provides that such permission shall not be granted if the flag State is not able to guarantee that the vessel will not threaten the conservation and management measures applicable on the high seas.

In this Agreement, the Parties may rely on a certain number of rights. Indeed, according to paragraph 2 Article 2 of the Agreement, a Party may exclude from the application of this Agreement fishing vessels of a length less than 24 meters entitled to fly its flag, unless the State determines that such an exemption would undermine the object and purpose of the Agreement.

As in any fishing region where exclusive economic zones, or equivalent zones of national jurisdiction over fisheries have not been declared by the neighbouring coastal States, coastal States parties to this Agreement, directly or through an appropriate regional fisheries organization, may agree to establish a minimum length for fishing vessels below which this Agreement does not apply to fishing vessels flying the flag of one of the coastal States and operating exclusively in this region (Article 2 al.3).

It should be noted that under this Agreement every State has the duty to effectively exercise its jurisdiction and control over vessels flying its flag, including fishing vessels and vessels engaged in transshipment of fish.

This FAO Agreement assigns to States Parties a number of obligations.



Article 3 para. 1 of the Agreement imposes an obligation to take international conservation and management measures: "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 undermine the effectiveness of international conservation and management measures."

According to Article 4 " 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."

Parties also have the obligation to "take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provisions of this Agreement" (Article 3 para. 8).

Article 5 dealing with international cooperation, carries on the port State control and details the following:

"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.

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.

3. The Parties shall, when and as appropriate, enter into cooperative agreements or arrangements of mutual assistance on a global, regional, sub-regional or bilateral basis so as to promote the achievement of the objectives of this Agreement."

It is clear that paragraph 2 of Article 5 of the Compliance Agreement paves the way for action by the port State but remains subject to the information given by the flag State. Paragraph 3 of this Article encourages cooperation agreements on a global, regional, sub-regional and bilateral basis in order to promote the objectives of this Agreement.

As for Article 7, it calls for the cooperation at the global, regional, sub-regional or bilateral level and, if necessary, with the support of FAO and other international and regional organizations, to provide assistance, including technical assistance to Parties that are developing countries to help them meet their obligations under this Agreement.

**3. Agreement for the implementation of the provisions of the United Nations Convention of the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (UN Fish Stocks Agreement, 1995)**

Adopted in 1995 but came into force in 2001, this Agreement is specifically designed to ensure the long-term conservation and sustainable use of these stocks.

Article 7 recognizes the sovereign rights of coastal States for exploitation, conservation and management of living marine resources within areas under their national jurisdiction and the right of nationals of those States to engage in fishing on the high seas in accordance with the Convention.

The States have an obligation to ensure the conservation and management of straddling fish stocks and highly migratory fish.

According to Article 19: "A State shall ensure compliance by vessels flying its flag with sub-regional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks".

Article 23 states:

"1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of sub-regional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.

2. A port State may, *inter alia*, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of sub-regional, regional or global conservation and management measures on the high seas.

4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law."

A significant progress is clearly perceptible in paragraph 1 of this Article which does not make the action of the port State conditional to prior information of the flag State. This action not

only become a right but an obligation to ensure the effectiveness of sub-regional, regional and global regulations.

In addition, the port State may inspect documents, fishing gear and catch on board fishing vessels when they are voluntarily in its ports and may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments to ensure the effectiveness of sub-regional, regional and international regulations. States are also required to develop relations of cooperation.

According to Article 8, "Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate sub-regional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the sub-region or region, to ensure effective conservation and management of such stocks".

1. A State which is not a member of a sub-regional or regional fisheries management organization or is not a participant in a sub-regional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks" (Article 17).

As for Article 20, al. 6, it provides that "Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention".

For its part, Article 21, al 1. provides that " 1. In any high seas area covered by a sub-regional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement".

To ensure the implementation of the precautionary approach, Article 6, al 1 and 2, provides:

"1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures".

Article 14 details the obligation of States to ensure that fishing vessels flying their flag provide the information that may be necessary for them to perform their obligations. These obligations refer to collecting and exchanging scientific, technical and statistical information about the exploitation of straddling and highly migratory fish stocks.

#### **4. The 2009 Agreement on Port State Measures to Port State to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) fishing.**

This Agreement aims to prevent the sale of illegal catches on international markets. It applies only to vessels flying foreign flags and innovates on the prior notification and permission to enter a port, the number of port inspections to be carried out in accordance with the minimum standards, to ban offending vessels to benefit from port services, and the creation of networks for the exchange of information.

The 2009 Agreement expressly refers to the Convention on the Law of the Sea (1982) and the International Action Plan to prevent, deter and eliminate IUU fishing (2001) which intends to be the first legal basis in the fight against IUU fishing.

It provides that the Parties:

- Integrate measures of the Agreement on Port State in a larger system of Port State control;
- Integrate the measures of the port State Agreement in other measures to prevent, deter and eliminate IUU fishing and;
- Take measures to share information among relevant national agencies and to coordinate the activities of such agencies in the implementation of this Agreement.

It organizes a wide network of cooperation and exchange of information. It defines the requirements before entry into port (port designation, prior notification).

Article 16 states, al. 1 that: "To facilitate implementation of this Agreement, each Party shall,

where possible, establish a communication mechanism that allows for direct electronic exchange of information, with due regard to appropriate confidentiality requirements".

"FAO shall request relevant regional fisheries management organizations to provide information concerning the measures or decisions they have adopted and implemented which relate to this Agreement for their integration, to the extent possible and taking due account of the appropriate confidentiality requirements, into the information-sharing mechanism referred to in paragraph 2 of this Article".

For this purpose, it should be noted that the SRFC has initiated the development of a Guide for the application of the Agreement to facilitate and adapt its implementation in each Member State. Sessions on capacity building for the agents in charge of surveillance are underway.

For Article 20 para. 5 "each Party shall, in its capacity as a flag State, report to other Parties, relevant port States and, as appropriate, other relevant States, regional fisheries management organizations and FAO on actions it has taken in respect of vessels entitled to fly its flag that, as a result of port State measures taken pursuant to this Agreement, have been determined to have engaged in IUU fishing or fishing related activities in support of such fishing."

The Agreement sets out the rules for using ports (denial of access to any vessel identified as being engaged in or supporting IUU fishing within the area of a regional fisheries management organization or in the waters under the jurisdiction a coastal State, or any vessel on a "black list").

According to Article 11 para. 1 "where a vessel has entered one of its ports, a Party shall deny, pursuant to its laws and regulations and consistent with international law, including this Agreement, that vessel the use of the port 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 dry-docking, if:

- a. the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by its flag State;
- b. the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by a coastal State in respect of areas under the national jurisdiction of that State;
- c. the Party receives clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;
- d. the flag State does not confirm within a reasonable period of time, on the request of the port State, that the fish on board was taken in accordance with applicable requirements

of a relevant regional fisheries management organization taking into due account paragraphs 2 and 3 of Article 4; or

- e. the Party has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of such fishing, including in support of a vessel referred to in paragraph 4 of Article 9".

The Agreement also regulates the inspections and follow-up actions as well as the responsibility of the flag State.

Thus, each Party shall inspect in its ports the number of vessels required to reach an annual level of inspections sufficient to achieve the objective of this Agreement (Article 12 parag.1).

Article 18 al. 1 states that:

"Where, following an inspection, there are clear grounds for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the inspecting Party shall:

(a) promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel's master is a national of its findings; and

(b) deny the vessel the use of its port 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 dry docking, if these actions have not already been taken in respect of the vessel, in a manner consistent with this Agreement, including Article 4".

And Article 20 adds:

Para. 2: "When a Party has clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, it shall, as appropriate, request that State to inspect the vessel or to take other measures consistent with this Agreement".

Para.4: "Where, following port State inspection, a flag State Party receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations".

For developing States, "Parties shall give full recognition to the special requirements of developing States Parties in relation to the implementation of port State measures consistent

with this Agreement. To this end, Parties shall, either directly or through FAO, other specialized agencies of the United Nations or other appropriate international organizations and bodies, including regional fisheries management organizations" (Article 21 parag.1).

**5. Other international legal instruments affecting the sustainable management of fisheries resources in the SRFC area**

**5.1. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Washington Convention) is an international agreement between States, to ensure that international trade of specimens of wild animals and plants does not threaten the survival of the species to which they belong.

Adopted in 1963 and entered into force in 1975, CITES, although binding, remains a framework that each Party shall comply with by implementing legislation to ensure compliance with the Convention at national level.

Since then, CITES is one of the conservation agreements that has the largest membership and currently has 178 Parties, including all the SRFC Members States.

Article II (Fundamental principles) defines the content of each Appendix to CITES.

"Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances".

"Appendix II shall include:

(a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and

(b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control".

Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade".

The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention".

It is with these provisions that the SRFC has contributed to the international effort to the conservation and sustainable management of sharks by including (1) an update of the IUCN Red List for the Sharks in West Africa (in 2006) and (2) support for the registration at the 16<sup>th</sup> CITES Conference of States Parties (Bangkok, Thailand, 3-14 March 2013) of sawfish and other species of sharks on CITES Appendices. In fact, most species of sharks are overexploited although they play a key role in ecosystems in the SRFC Member States.

#### **5.2. Convention governing the area covered by the International Commission for the Conservation of Atlantic Tunas (ICCAT)**

The International Commission for the Conservation of Atlantic Tunas (ICCAT), signed in 1966 and entered into force in 1969, was amended in 1984 and 1992. Its jurisdiction extends geographically to the Atlantic Ocean and adjacent seas and to their resources in tuna and associated species. Its objective is to maintain tuna and other tuna populations at a level that allows maximum sustainable yield for food and economic purposes.

Currently, the SRFC has the status of observer status at ICCAT. Every SRFC Member State are members of ICCAT except for The Gambia and Guinea Bissau.

Two key issues were raised by Member States during the negotiations on the tuna agreements:

- The requirement for foreign vessels to board, in accordance with national legislation, a scientific observer or a controller, and a certain number of nationals crew members.
- The obligation of landing by-catch to provide for the local fish market.

#### **5.3. Indian Ocean Tuna Commission (IOTC)**

The Indian Ocean Tuna Commission (IOTC) is an intergovernmental organization that was created in 1993. It is mandated to manage tuna and tuna-like species in the Indian Ocean and adjacent areas. The area of competence of the Commission is FAO areas 51 and 57.

IOTC is very concerned by the overexploitation of tuna. In fact, about 740,000 tonnes of tuna, a value of 2 to 3 billion Euros, are fished every year in the western Indian Ocean.

The Commission promotes cooperation between its members in order to ensure, through appropriate management, the conservation and optimum utilization of stocks and encourage sustainable development in their exploitation. The SRFC monitors the activities of the Commission because of the status of Senegal as a Member State of the two Commissions (SRFC and IOTC) and the scale of IUU fishing and piracy faced by IOTC Member States.

#### **5.4. The Convention on Biological Diversity (CBD)**

The Convention on Biological Diversity, the first global agreement on the long-term conservation of biodiversity, was signed during the United Nations Conference on Environment and Development in Rio de Janeiro (Brazil) in 1992. Quickly and widely accepted, the treaty



came into force on 29 December 1993 and is so far ratified by 175 countries, including all SRFC Members States.

The Convention has three main goals:

- conservation of biodiversity;
- the sustainable use of its components;
- the fair and equitable share of benefits arising from the use of genetic resources.

Its goal is to develop national strategies for the conservation and sustainable use of biological diversity. The CBD is regarded as the key document regarding sustainable development.

This Convention is a milestone in international law by recognizing, for the first time, that the conservation of biological diversity is "a common concern of humankind" and an integral part of the development process.

For a long time, the Convention had only limited binding effect, but it began in the late 1990s, to be put into practice in some countries and supranational communities like the European Union. It introduces the precautionary principle.

The Convention covers all ecosystems, species and genetic resources. It establishes the principle of fair and equitable share of the benefits arising from the utilization of genetic resources, including for commercial purposes. It also extends to the field of biotechnology in addressing issues of transfer and the development of biotechnology, the share of derived benefits and biosafety.

It links traditional conservation efforts to economic objectives by promoting balanced and sustainable management of biological resources.

While past conservation efforts aimed specifically at the protection of species and habitats, the Convention recognizes that the ecological processes, ecosystems, species and genes must be protected to be sustainably used for the benefit of mankind, and in a manner and at a pace that does not cause a long-term decline of biological diversity.

## **6. Relevant fisheries instruments of the International Maritime Organization (IMO)**

These include the Memorandum of Understanding on the control of vessels by the port State (1999), the Convention on Marine Pollution (MARPOL 73/78) and the STCW- F 1995.

### **6.1. The Memorandum of Understanding on the Control of Vessels by the Port State, OMI, 1999.**

The Memorandum of Understanding on the control of vessels by the port State in the West Africa and Central region (Abuja MoU) was signed at a ministerial conference by representatives of sixteen coastal States of West and Central Africa including South Africa and Namibia, in Abuja, Nigeria, October 22, 1999. It comes in response to the global initiative taken

by the International Maritime Organization (IMO) for the dismantling of sub-standard vessels, the life and work conditions of seafarers and preservation of the marine environment.

The Abuja MoU is the legal instrument under which the countries of West and Central Africa have agreed to develop and implement a common mechanism for the activities on the control of vessels by the port State. The main activity of the Abuja MoU is the harmonization of practices and procedures of port State control in all countries of the region, to dismantle the operation of substandard vessels, to ensure maritime safety and security, to protect the marine environment from pollution, to improve living conditions and work of the crew, to facilitate regional cooperation and exchange of information between Member States.

West Africa is then ahead in the implementation of control measures by the port State, before the introduction of the Agreement on Port States measures in 2009. Of the seven members of the SRFC, only Guinea Bissau is not yet a party to this Memorandum of Understanding.

#### **6.2. The International Convention for the Prevention of Pollution from Vessels of 1973, as modified by the 1978 protocol (MARPOL 73/78)**

The International Convention on Marine Pollution (MARPOL) was initiated by the International Maritime Organisation to replace the OILPOL Convention of 1954 on the pollution of the sea by oil which was not very effective.

Established by the International Convention for the Prevention of Pollution from Vessels, signed in London on 2 November 1973, by a memorandum from 1978 and two amendments of 1985 and 1987, the MARPOL Convention was finally ratified with difficulties by 136 countries. .

Too restrictive, it was shunned, but the oil disasters like *Metula* in 1974 or *Amoco Cadiz* in 1978 eventually led to react. Finally, the MARPOL 73/78 entered into force on October 2 1983.

Its main objective is to fight against all pollution by vessels that can have different causes: hydrocarbons, chemicals, containers, sewage and garbage and CO<sub>2</sub> emissions. The Convention MARPOL is not only repressive; it also imposes rules to design vessels more safely. For example, they must have double hulls and must be equipped with an oil and water separator. It also develops regulations detailing how parties should fulfil their administrative records, as well as cleaning the ports and imposes rules to handle their waste. It also gives information on the conduct of inspections on vessels.

The Convention MARPOL tries its best to be implemented, but as it is not always easy to impose severe constraints, especially to oil carriers essential to the economy and industry of a country, it prefers to restrict rather banning.

For example, regarding the ballasting of the vessels, it is only prohibited in enclosed seas and also limits it elsewhere, provided that the spilled oil corresponds to the volume required for

normal operation of the vessel and the degassing takes place at 50 nautical miles from the shore.

The Convention MARPOL does not carry out enough checks on the effective implementation of the rules it edicts. It delegates this authority to the States, which if they have a strong oil industry will remain fairly lenient. It also invites the States to sanction vessels who commit offenses without giving them financial and human resources to do so.

All vessels being subject to the rules of MARPOL, the poor state of many of IUU fishing vessels in the waters of the sub-region should be noted. Indeed, in addition to the destruction of marine habitats, these vessels freely pollute the marine and coastal environment. In addition to the inability of the SRFC Member States to fight IUU fishing they could also face a possible ecological and economic disaster. This is the case of a Spanish fishing vessel which, in August 2013, capsized inside the Senegalese waters with a significant amount of fuel on board and no possibility to remove the wreck under the Convention 2007 on the removal of wrecks.

All the SRFC Member States, except for the Gambia, are parties to the MARPOL Convention.

### **6.3. The International Convention on Standards of Training, Certification and Watch-keeping for Seafarers (STCW-F, 1995)**

Adopted in 1995 and entered into force in 2012, the STCW-F Convention introduces, besides training standards and certification, a number of related regulatory obligations that involve governments and vessels-owners. The obligations of the vessels-owners are reinforced by provisions establishing the responsibility for the inspectors of the port State, among other tasks, to check the qualifications and skills of seafarers. The inspectors are empowered to control the following: that seafarers hold the required certificates or an exemption, that visas are issued in the case of seafarers from a different nationality than that of the flag State, that the number of seafarers is the same as the list imposed by the flag State.

Only Mauritania and Sierra Leone are party to STCW-F.

## **7. The instruments on fisheries of the International Labour Organization**

### **7.1. The Maritime Labour Convention (MLC, 2006) and the Guidelines for Agents and control officers carrying out Port State inspections (2008).**

The Maritime Labour Convention (MLC) emphasizes in its preamble on the obligation of security and safety of seafarers and their vessels as enacted in the 1974 International Convention for the Safety of Life at Sea (SOLAS), as amended, and the 1972 Convention on the International Regulations for Preventing Collisions at Sea, as amended, as well as the requirements for the training and skills required of seafarers that are in the 1978 International Convention on Standards Training of Seafarers, Certification and Watch-keeping, as amended.

The Convention of 2006 recalls the Article 94 of UNCLOS which defines the duties and obligations of the flag State in particular with regards to working conditions, staffing and social issues on vessels flying its flag.

Article 5 of the MLC (Implementation and Enforcement Responsibilities) states that:

- " Each Member shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention, including regular inspections, reporting, surveillance and legal proceedings under the applicable laws (par.2)
- Each Member shall ensure that vessels that fly its flag carry a maritime labour certificate and a declaration of maritime labour compliance as required by this Convention (par.3).
- A vessel to which this Convention applies may, in accordance with international law, be inspected by a Member other than the flag State, when the vessel is in one of its ports, to determine whether the vessel is in compliance with the requirements of this Convention (par. 4)."
- "Each Member shall implement its responsibilities under this Convention in such a way as to ensure that the vessels that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the vessels that fly the flag of any State that has ratified it (para.7)".

The Guidelines for the Agents in charge of control by the Port State (2008) carrying out inspections made under the 2006 MLC Convention, give practical advice for the agents in charge of control by the port State verifying the compliance of vessels following the requirements of the MLC.

### **7.2. The Labour Agreement in the fisheries sector (C. No. 188, ILO, 2007)**

C. No.188 of the ILO specifies the minimum requirements to work on board fishing vessels (operating conditions, housing, food, health protection and social security). It also raises the terms of compliance and enforcement of these requirements against the responsibilities of the flag State, port State and possibly the coastal State, in particular as regards to:

- The issuance and control of certificates of compliance;
- Inspection of living and working conditions on board;
- The treatment of complaints received.

Both ILO instruments are signed by the SRFC Members States.

## **B. Voluntary international agreements**

### **1. The Code of Conduct for Responsible Fisheries (1995).**

Adopted in 1995 by the FAO, the Code of Conduct for Responsible Fisheries (CCRF) is voluntary. States should ensure that only authorized fishing vessels fish in waters under their national jurisdiction. Fishing should be conducted responsibly and comply with all laws and regulations that could have been implemented by any country.

The Code of Conduct for Responsible Fisheries attaches particular importance to the system of "Monitoring, Control and Surveillance" (MCS). Under the Code, "monitoring" covers the process of collection and processing of data relating to fishing activities and resources, "control" is the regulation of fishing activities, "surveillance" is the process of checking rules.

Countries whose vessels fish beyond the waters under their national jurisdiction have the responsibility of ensuring that these vessels hold appropriate certificates and they are allowed to fish. Countries should keep detailed records of vessels fishing beyond their national waters.

Although voluntary, CCRF is a major innovation for the sustainable management of fisheries resources. Indeed, it requires compliance with certain approaches such as the precautionary principle, the participatory approach and the ecosystemic approach. It encourages cooperation through regional fisheries organizations, especially for the sustainable management of transboundary fish stocks, or shared stock.

Major responsibilities of the flag State are specified in particular with regard to the vessels and crews that operate on the high seas or in waters under the jurisdiction of other States. Vessels and fishing gears should be registered and marked properly and be authorized to fish by the competent authorities. If a vessel flying the flag of a particular State practice IUU fishing, sanctions leading to the removal or suspension of the license may be imposed.

About the responsibilities of the port State, the CCRF requires assistance of the flag State for offenses including conservation and management of fisheries resources both in high seas and in waters under the national jurisdiction of a third State.

The application of these provisions, despite being voluntary, remains a priority for the international community which has renewed its contents in the International Plan of Action to fight against IUU fishing in 2001.

### **2. The International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated 2001 (IPOA-IUU).**

The IPOA-IUU is designed as an optional instrument. It incorporates and strengthens the rights and obligations of the States in the fight against IUU fishing.

The measures contained in the IPOA-IUU specify the responsibilities of the flag State, the port State measures of the coastal State, the measures of the port State, the internationally agreed measures relating to trade, the research organizations, the regional fisheries management organizations as well as the special needs of developing countries and the role of FAO. The IPOA-IUU provides several measures for the port State in paragraphs 52 to 64.

The paragraph 52 specifies that the port State should provide for regulations consistent with international law enabling the port State to control fishing vessels and prevent, deter and eliminate IUU fishing. These regulations should be implemented in a fair, transparent and non-discriminatory manner.

Other regulations relate to:

- Prior request of authorization for port access are given on time by providing information on the quantity of fish on board (para. 55);
- Refusal of access to the port of a vessel by the port State in the event of IUU fishing activities are established and the concerned flag State is informed (para. 56);
- The designation of ports open to foreign vessels, and the capacity of these ports to make the necessary inspections (para. 57);
- Communication of the results of the inspection to the flag State, the coastal State and the competent RFMOs (para. 58 and 59);
- The confidentiality of information collected in accordance with the national laws (para. 60);
- The preparation and publication of a national strategy and procedures governing the control by the port State, the training and capacity building of agents in charge of control in the port (para. 61);
- Multilateral, bilateral cooperation or through regional fisheries management organizations for the establishment of mechanisms for the control, the sanctions and the share of information between members (para. 62, 63 and 64).

The International Plan of Action (IPOA-IUU) must be broken down into national action plans. To date, the only SRFC Member State which has a National Action Plan to fight against IUU fishing (NPOA-IUU) is the Gambia. However, it should be noted that the SRFC MCS Strategy 2012-2015 provides the necessary support for this purpose for all Member States.

### **3. The Model Scheme on Port State Measures of the State Port of the FAO (2005)**

The Model Scheme on Port State Measures in the context of the fight against IUU fishing is addressed to all States, fishing entities and regional fisheries management organizations.

It aims to facilitate the implementation of effective action by port States to fight against IUU fishing. After the preamble, the scheme addresses general considerations, issues related to the inspection of vessels in port, the measures to be taken when an inspector finds that there is a good reason to suspect that a foreign fishing vessel engaged in or supported IUU fishing activities and the information the port State should communicate to the flag State. The measures adopted under the Scheme should be implemented in a fair, transparent and non-discriminatory manner.

## II. REGIONAL LEGAL INSTRUMENTS TO FIGHT IUU FISHING IN THE SRFC AREA

At the regional level, the rights and obligations of the SRFC Member States as a coastal State, flag State or port State are set out in legal instruments, some of which were put together by the SRFC.

### A. The SRFC legal instruments

#### 1. The Convention on sub-regional cooperation in the exercise of maritime hot pursuit (1993)

Taking the provisions of Article 111 of UNCLOS on the right of hot pursuit, the SRFC Convention main purpose is to define "the general principles governing the right of action exercised by any State party to the Convention towards any vessel operating in the waters under its national jurisdiction and, after unsuccessful summons, has been trying to escape the control exercised by an aircraft or a vessel in the service of the State". In this context, it sets out the basic principles of cooperation between the Parties in connection with the exercise of the right of hot pursuit, including the regulation of the acts resulting from the exercise of this right.

Article 3 states that the pursuit must be exercised without interruption:

- Without limit beyond the territorial sea;
- Inside the territorial sea, within the protocols agreed by the Parties concerned.

#### 2. The Protocol on the practical arrangements for the coordination of surveillance in SRFC Member States (1993)

This protocol defines the coordination measures between the SRFC Members States in the control and surveillance of its fisheries. In this respect, it provides a broad cooperation framework for the organization of joint surveillance operations, particularly against foreign vessels flying the flag of States not members of the SRFC operating in waters under the jurisdiction of States parties to the Protocol, without holding a license issued by any of these States.

The Protocol sets out the terms of cooperation in communication, training, equipment, boarding procedure, port facilities and collaboration with observers from the Member States.

The Protocol refers to the right of action, as provided under the Convention on sub-regional cooperation in the exercise of hot pursuit.

The Convention on the right of hot pursuit and its Protocol on the coordination of joint surveillance operations strengthens the implementation of Article 111 of the Convention on the Law of the Sea. Indeed the Convention allows extension of this right within the territorial sea of Member States.

However, this Convention is currently being revised to take into account, in a single instrument, integral concerns of the Member States in the fight against IUU fishing, including illegal

incursions in the waters under national jurisdiction of offending vessels, exchanges of VMS information, harmonization of the procedures of inspection, control and sanctions. The revised Convention will specify Titles IV and V of the MAC Convention.

**3. The Convention on the Determination of Minimum Conditions of Access and Exploitation of Fisheries Resources within the seas under the jurisdiction of members of the SRFC, as revised and adopted in June 2012 (MAC Convention)**

In July 1993, the SRFC adopted the Convention on the Determination of Conditions of access and exploitation of fishery resources off the coasts of the Member States. It is an instrument of sub-regional cooperation to regulate the concerted management conditions of the fisheries resources within the areas under national jurisdiction. It is in fact not a "minimum common law" to Member States, but it gives points of agreement between Member States on the conditions of access to resources for all States in relation to third countries and the various measures to integrate into their respective national laws.

In this regard, the MAC Convention frames the principle of international law on access of foreign vessels to fisheries surplus, limiting the duration of the agreements to two years. It specifies certain aspects of the licensing regime (form, duration), fishing conditions (mesh size, vessel marking, catches declaration), the boarding of marine and domestic observers, the landing of the products, the offenses and penalties.

This instrument soon proved inadequate due to overfishing by both industrial and artisanal fishing, the alarming situation of IUU fishing and the existence of a new regional and international legal environment. This justified the revision of this legal instrument that led to the existence today of the *Convention on the Determination of Minimum Conditions of Access and Exploitation of Fisheries Resources within the maritime areas under jurisdiction of the members of the SRFC* adopted and signed in June 8, 2012 by the 13th Special Session of the Conference of Ministers of the SRFC. It entered into force on 16 September 2012, one hundred days after the date it was signed by all members in accordance with its Article 40.

The MAC Convention aims to define, by consensus, the minimum conditions of access and exploitation of fisheries resources to ensure responsible fishing in the sub-region and to prepare the conditions for the integration of sub-regional policies and strategies of Member States in order to promote the conservation, management and sustainable use of fisheries resources.

The Convention provides that "any Member State may authorize the access of fishing vessels of a third country for the surplus of the allowable catch in the sea under its jurisdiction through agreements and other arrangements (Article 3 al.1)". It defines the conditions for issuing fishing authorization (Article 7), and for fisheries management (Article 9).

The specificity of the MAC Convention resides in:

- Including artisanal fisheries;



- The inclusion of maritime safety and the protection of the marine environment (IMO Convention);
- The introduction for the first time in an international legal instrument of the terms of the International Plan of Action to prevent, deter and eliminate IUU/IPOA-IUU;
- The introduction of the provisions of the FAO Agreement of 2009 on measures of the port State to prevent, deter and eliminate IUU fishing;
- The inclusion of a clause allowing the SRFC to seize the ITLOS for an advisory opinion on issues that come under UNCLOS.

**4. The 2001 Declaration to prevent, deter and eliminate IUU fishing called the Nouakchott declaration.**

Under the Declaration adopted during the 14<sup>th</sup> Session of the Conference of Ministers of the SRFC (Nouakchott, Mauritania, 19-20 September 2001) refers to "the spirit, principles and purposes" of the UNCLOS, to the "objectives and principles" of the CCRF and the adoption of the IPOA-IUU by the Committee on Fisheries of the FAO in its twenty-fourth session.

The Member States emphasize the dangers of IUU fishing, affirm their full support to the IPOA-IUU and the willingness to protect, by strict control, the activities of fishing vessels operating in the sub-region.

On this, the Ministers in charge of Fisheries asked the SRFC Permanent Secretary to examine the mechanisms of implementation of the IPOA-IUU and launched a solemn appeal to the international community to support the SRFC Member States and Sierra Leone in their fight against IUU fishing.

**B. The instruments developed under the auspices of other regional institutions but applicable in the SRFC area**

**1. African Convention (African Union) on the Conservation of Nature and Natural Resources (Maputo Convention 2003)**

The African Convention on the Conservation of Nature and Natural Resources requires the access regulation to the resource by a system of authorization and adoption of conservation measures (introduction of seasonal closure, temporary or localized ban of fishing and on operating destructive techniques).

According to Article 1, the Convention applies:

- to all areas that lie within the limits of national jurisdiction of any Party (al. 1) and
- to the activities undertaken under the jurisdiction or control of any Party whether it is within the area under its national jurisdiction or beyond the limits of national jurisdiction (al. 2).

The Convention establishes a fundamental requirement in its Article 4 which is to take and implement preventive measures to improve the protection of the environment, promote conservation and sustainable use of natural resources and to harmonize and coordinate policies.

These measures will permit, in accordance with the precautionary principle and, among others, the duty of the States, individually and collectively, to ensure the exercise of the right to development and to ensure that the needs of development and the environment are met in a sustainable, fair and equitable manner (Article 3).

Article 9 requires the Parties to maintain and promote the diversity of marine species located only in areas under the jurisdiction of a State Party to the agreement, including the implementation of policies for conservation and sustainable use. Particular attention will be given to species of social, economic and ecological value.

## **2. Convention on cooperation for the protection and development of marine and coastal areas in West and Central Africa (Abidjan Convention, 1981)**

The Convention aims to prevent, reduce, fight and control pollution in marine and coastal areas, in particular the pollution from vessels and aircrafts such as those related to the exploration and exploitation of the seabed and its subsoil (discarding waste, destruction of marine habitats etc.).

Twenty two States are part of this Convention of which the seven Members of the SRFC. The cooperation agreement signed in 2012 between the Secretariat of the Abidjan Convention and the SRFC essentially aims to support the SRFC Members States in the following fields:

- The delineation of the outer limits of the continental shelf in accordance with Article 76 of UNCLOS;
- The fight against IUU fishing;
- Fisheries policy coherence;
- The establishment of a functional network of marine protected areas taking into account the ecosystem-based approach to fisheries;
- Capacity building;
- Awareness campaigns and exchange of information.

## **3. Regional Convention on Fisheries Cooperation among African States Bordering the Atlantic Ocean (ATLAFCO)**

Adopted in 1991 and entered into force in 1995, ATLAFCO is a regional fisheries organization whose area covers 23 African States bordering the Atlantic Ocean (from Morocco to Namibia), of which the seven members of the SRFC.

In its preamble, it refers to UNCLOS and the need for coordination of fisheries policies among its Member States, given the special nature of the marine environment, the need for sound management of stocks and therefore the sustainable development of fisheries.

The need for coordination is specified in terms of: marketing of fishery products; planning and financing of the fisheries sector; development of marine scientific research; protection and preservation of the marine environment; harmonization of policies; cooperation agreements in the fisheries sector; setting up of a database and maritime information.

Article 16 encourages coastal States to show solidarity with landlocked African and geographically disadvantaged States in the region.

#### **4. Directive on the common rules for the sustainable management of fisheries resources in the Member States of the UEMOA, and the Directive establishing a common system for Monitoring, Control and Surveillance (MCS) of fisheries within the UEMOA**

The Economic and Monetary Union of the West African States (UEMOA) is a sub-regional organization which is comprised of West African States, of which two members of the SRFC, namely Guinea-Bissau and Senegal. In recent years its interest lies in the harmonization of policies and laws of the Member States relating to fisheries.

The UEMOA, through its Advisory Committee on Harmonization of Policies and Legislation in UEMOA Member States for Fisheries and Aquaculture, initiated in 2010 a draft Regulation for the Harmonization of legislation relating to fisheries and aquaculture. The Draft Regulation provides access conditions with the same regime for vessels of Member States of the UEMOA and the harmonization of offenses and penalties.

To date, the Draft Regulation is not yet approved by the UEMOA Member States. Instead it seems that UEMOA worked towards the implementation of two directives which were approved by the Member States in October 2013<sup>17</sup>:

- Directive on the common rules for the sustainable management of fisheries resources in the UEMOA Member States.
- Directive establishing a common system for Monitoring, Control and Surveillance (MCS) of fisheries within the UEMOA.

After two years devoted to sensitizing stakeholders in the Member States, the guidelines will enter into force in the UEMOA area.

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<sup>17</sup> The UEMOA Member States approved the project in October 2013 for a Directive on common rules for the sustainable management of fisheries resources in the UEMOA and the draft Directive establishing a common system of Monitoring, Control and Supervision (MCS) within the UEMOA/WAEMU.

### **5. Regulation 1005/2008 of the Council of Europe**

The European Union is a partner of the SRFC Member States to which it is bound by fisheries agreements. The European countries and the countries of the SRFC have common interest in fighting IUU fishing which depletes fish stocks, destroys marine habitats, and weakens coastal communities.

Adopted in 2008 and entered into force in 2010, the Regulation (EC) No 1005/2008 of 29 September 2008 establish a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing amends the Regulations (EEC EEC) No 2847 /93, (EC) No 1936 /2001 and (EC) No 601/ 2004 and repeal the Regulations (EC) No 1093 /94 and (EC) No 1447 /1999.

The EU Regulation on IUU fishing which is based on FAO instruments applies to all vessels engaged in the commercial exploitation of fishery resources. It aims to prevent, deter and eliminate all trade of IUU fishing products within the EU, all EU waters, and prohibits the participation of EU citizens in IUU fishing in any country whatsoever.

The Regulation introduces a system of catch certification to improve the traceability of all fish products sold or purchased by the EU and facilitates the control of their compliance with the rules of conservation and management, in collaboration with third countries. Now only fishery products validated as legal by the flag State or the exporting country may be imported into the EU or exported from the EU.

In addition to the certification system of capture, the Regulation also contains provisions on the control of the port State, mutual assistance and the establishment of a community alert system, a community list of IUU fishing vessels and a list of non-cooperative third countries. The Regulation also includes an harmonized system of penalties commensurate with the economic value of the catch and dissuasive for serious offenses.

Under this text, Regulation (EU) No 468/2010 of 28 May 2010 issued the Community list of IUU fishing vessels in which no reference to any vessel of a SRFC Member State is made.

### **III. COMPLIANCE OF NATIONAL LEGISLATION WITH INTERNATIONAL LEGAL INSTRUMENTS TO FIGHT IUU FISHING**

The SRFC Member States have developed, according to their own legal traditions, coherent legal systems built around national fisheries laws with an arsenal of implementing regulations. These texts provide a set of principles and management measures such as the principle of fisheries management plans, the generalisation of the license for industrial fishing, the content of fisheries international agreements, conservation and management measures (fishing gears, fishing periods and prohibited areas, entry and exit declaration, marking and identification of vessels, offenses and sanctions, etc.).

The review of the legal framework of maritime fisheries in the SRFC Member States (see Annex I - List of national laws) shows that three of the seven members of the SRFC Member States have adopted a new generation of laws and regulations governing the activities of sea fishing.

Cape Verde, The Gambia and Guinea Bissau have adopted a new outline law on fisheries in the last ten years, in 2005, 2007 and 2011 respectively. In addition, Senegal and Sierra Leone have prepared draft legislation, although for the moment, it has not yet been submitted to Parliament for discussion and adoption. Four countries have national fisheries legislation adopted over the last ten years, Sierra Leone in 1994, Guinea in 1995, Senegal in 1998 and Mauritania in 2000 (modified and completed in 2007).

It is necessary to assess the degree of compliance of national legislation with international standards in the fight against IUU fishing as reflected in international and regional instruments for fisheries as described in Section 1 of this document. For that purpose, the summary tables outlining the main provisions relating to IUU fishing contained in national laws governing marine fisheries for each SRFC Member State should be reviewed (Annex II of this document).

In general, all Member States have transferred most measures regulating access to resources into their national legislation such as the obligation to provide information on fishing activities, the boarding of observers and sailors, the control and follow-up of transshipment, the register of fishing vessels, the marking of vessels, the strengthening of fisheries research and the declaration of the entrance and exit of areas of national jurisdiction.

Thus, all Member States regulate the practice of fishing in the waters under their jurisdiction with license or authorization to fish. This requirement is generally applicable to industrial fishing and for artisanal fishing in some countries.

## **SECTION 2: THE SHORTCOMINGS OF CLASSIC INTERNATIONAL LAW IN THE FIGHT AGAINST IUU FISHING**

The shortcomings of traditional international law and the new economic and scientific uses of coastal and marine resources (as described in Part B below) do not promote the integrated and sustainable management of fishery resources and it has led the SRFC to review its strategy to support its Member States to strengthen the mechanism of sub-regional cooperation. The request for an advisory opinion envisaged by the SRFC aims to support the SRFC Members States to derive the maximum benefit from the effective implementation of international<sup>18</sup> and sub-regional<sup>19</sup> legal instruments, and to ensure better management in the context of widespread IUU fishing. The current responsibilities of the coastal States, the flag States and port States result from existing legal instruments at the national, regional and international level.

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<sup>18</sup> The United Nations Convention on the Law of the Sea of 10 December 1982; the FAO Code of Conduct for Responsible Fisheries; and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and unregulated of 2001 of the FAO; the FAO Agreement on Measures of Port State for the fight against undeclared and unregulated illegal in 2009.

<sup>19</sup> The MAC Convention of June 2012 and the Convention on the exercise of hot pursuit of July 1993 and other regional instruments mentioned above

### **I. SHORTCOMINGS IN THE IMPLEMENTATION OF THE RESPONSIBILITIES OF THE COASTAL STATE**

International law grants the coastal State sovereign rights in the management of fishery resources in waters under their national jurisdiction, but at the same time imposes them responsibilities in the fight against IUU fishing.

As a State on whose territory fishing is occurring, international law recognizes the coastal State the right to secure the fishery resources in the waters under national jurisdiction by defining access conditions for both national and foreign vessels.

International law also recognizes that the coastal State can:

- Inspect foreign vessels fishing in its waters, if warranted;
- Bring the offending vessel and its crew to the port for investigation and imposition of sanctions, if warranted;
- Inform the competent RFMO if there is a violation of its regulations for conservation and fisheries management;
- Inform the flag State of the vessel of any offense committed in its waters;
- Inform the port State when seeking information on vessels that fished in the waters of other coastal States.

These rights come with obligations and responsibilities including the management of transboundary and migratory resources or of common interest. Indeed, an examination of the situation of fisheries in the SRFC area (See Chap. II) shows that pelagic fisheries, especially small pelagic fish (sardines, mackerel, mullet) are the species the most valued in the sub-region as they contribute to the fight against poverty and to the animal protein intake of the population.

However, there is recognition that these pelagic resources are subject to fishing agreements between the coastal State and foreign companies without consultation with neighbouring coastal States on whose territories these species are migrating.

International law on the issue is governed by Articles 63 and 64 of the UNCLOS. However these dispositions do not solve the problem.

### **II. SHORTCOMINGS IN THE IMPLEMENTATION OF THE RESPONSIBILITIES OF THE FLAG STATE**

As the flag State is the State of registration, international law requires to ensure that vessels flying its flag comply, in its waters or outside its waters, including the high seas, with applicable conservation and management measures. Therefore, the flag State has a supervisory function over its nationals (vessel and crew) and the power to sanction for violations.

The Agreement on Straddling Fish Stocks of 1995 describes in detail the steps that the flag State must take for high seas fishing. These provisions could be extended to waters under national jurisdiction and to waters under the jurisdiction of a third country. These provisions

focus on (i) the authorization for the control over vessels flying its flag, (ii) the granting of the license/fishing permit (iii) registering on the National Register of vessels (iv) the marking of vessels and fishing gear (v) exchange of VMS information and logbook (vi) the intervention modalities for observers and inspectors (vii) the regulation of transshipment at sea (viii) the compliance with rules adopted by RFMOs (ix) the flag State is also entitled to take joint sanctions against the vessel, its captain and owner.

Considering the above and the extent of IUU fishing in the SRFC area, it can be argued that the responsibilities of the flag State deserve to be clearly defined with respect to the effective implementation of its obligations. Indeed, the competent authorities in the Member States surveyed, argue that the flag State is almost always informed when a vessel is boarded but it does not provide satisfactory answers to the coastal State. Difficulties have been encountered by Member States to enforce international law, following the boarding of fishing vessels of foreign nationality.

Conversely, if the flag State has not issued the offending vessel a fishing authorization outside its waters, that is to say that the vessel conducts pirate activities, support for the Member State is nonexistent.

Furthermore, the case of an offending vessel flying the flag of a Member State of an international organization that signed a fisheries agreement with the coastal State has occurred. According to international law, the international organization as a flag State shall take appropriate measures to ensure that vessels flying its flag comply with laws and regulations relating to fishing and the environment of the coastal State. It must commit to prosecute and punish vessels flying the flag of one of its Member States committing serious offenses in the waters of the coastal State.

In this case, who must be regarded as a State flag? The international organization signatory of the fisheries agreement or the flag State of the offending vessel? Is it possible to jointly engage their responsibilities. International law is not accurate on the issue

### **III. SHORTCOMINGS IN THE IMPLEMENTATION OF THE RESPONSIBILITIES OF THE PORT STATE**

As a State in whose territory the vessel lands its catches (or catches are landed via another vessel after transfer), and upon the entry into force of the Agreement on Port States Measures, the port State will have constraining responsibilities if one refers to the evolution of international law. This trend begins with the CCRF which specifies the duties of the port State in particular to assist the flag State to monitor compliance with conservation and management measures and other uses of the seas. These provisions were then taken over by another voluntary instrument, the IPOA-IUU before becoming mandatory through the 2009 Agreement. It poses certain requirements for port State, such as:

- To designate the ports of landing and refuelling for foreign fishing vessels;

- To inspect vessels and report to the flag State in case of infringement or denial of authorization to fish;
- To ensure that the neighbouring States refuse access to their resources for offending vessels.

This significant progress to strengthen the responsibilities of the port State is welcome. However, international law is not accurate on the possibility of the port State to escort the offending vessel, at the expense of the owner or the flag State, to the water of the coastal State where the infringement occurred to ensure the effectiveness of the sanctions.

### **SECTION 3: LEGAL CONTROVERSY ON THE STATUS OF NEW ECONOMIC AND SCIENTIFIC USE OF THE SEAS**

Although not directly related to the questions submitted to ITLOS for its advisory opinion, the legal status of new technical and economic uses of the seas raises new issues and the answers remain controversial. New developments call for new legal responses that the ITLOS can provide through its advisory opinions.

These economic uses of the seas are:

- Laying underwater cables and pipelines on the continental shelf and the construction of other facilities authorized under international law fall under the regime of freedom of the high seas, subject to the right of innocent passage for navigation;
- The impact of the exploitation and use of renewable marine energy sources have environmental impacts that remains to be controlled and their status is unclear at the national, regional and international levels on the institutional and legal, economic or financial plans<sup>20</sup>. The framework for cooperation and coordination is limited to States with scientific research means and advanced marine technology. The Members of the SRFC are still struggling to take advantage of these resources, in addition to climate change of which the consequences on fisheries are increasingly felt in the SRFC area;
- In addition, the development of increasingly rapid maritime transport, tourism and the exploration and exploitation of mineral resources raise the issue of joint responsibility of the flag State, the vessel-owner or the captain when the impact on its resources are weighted. Similarly, the consequences of research on marine genetic resources and their exploitation are still unknown and they deserve the establishment of a legal framework defining the rights and obligations of the various stakeholders and operators.

### **SECTION 4: STRENGTHENING THE SUB-REGIONAL COOPERATION FOR SUSTAINABLE FISHERIES RESOURCES MANAGEMENT IN THE SRFC AREA**

Traditional international law requires the development of regional and international cooperation for the conservation and sustainable management of fishery resources in the

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<sup>20</sup> For more information on the issue of renewable energy, see the Report of the 13th Meeting on the Informal Consultative Process on Oceans and the Law of the Sea (June 2012 - A/67/120 Ref)



waters under national jurisdiction or on the high seas. This cooperation is even more important as the SRFC area is considered to be one of the richest fishing grounds in the world.

Cooperation is realized at the bilateral, regional and international levels, and aims at:

- The implementation and coordination of programs and projects for the conservation and sustainable management of fishery resources;
- A better contribution of fisheries agreements to the well-being of the SRFC Member States population;
- Greater harmonization of fisheries policy;
- Greater cohesion and solidarity between SRFC Member States.

### **I. STRENGTHENING COOPERATION THROUGH THE FISHERIES AGREEMENTS**

The terms of cooperation in fisheries may be reflected in

- fisheries agreements known as reciprocal agreements or sub-regional agreements or South-South agreements;
- the fisheries agreements with other partners. Today a number of fisheries agreements exist between the Members of the SRFC or with third countries (see Annex III of the present document).

#### **A. Bilateral fisheries agreements or the so-called reciprocity agreements**

Several fisheries agreements were signed between the SRFC Member States to seal their commitment to preserve the marine and inland fishery resources, to promote their sustainable exploitation and to strengthen good-neighbourly relations.

These agreements<sup>21</sup> usually cover the conditions of access to resources for artisanal and industrial fishing, fishing areas, seasonal closures, meshes and fishing gear authorized, compulsory declarations of catches, capacity building, fisheries research, fisheries surveillance, boarding of observers, and safety at sea for seafarers and their vessel.

It is imperative to emphasize the importance of the SRFC Convention of 2012 on Minimum Conditions of Access (MAC) which allows Member States to agree on the establishment of a concerted and harmonized regulatory instrument which now governs the minimum elements to be provided by a foreign vessel to access the fisheries resources located within the maritime zones under the jurisdiction of the SRFC Member States.

In addition, protocols were signed between the SRFC Member States to define the practical arrangements for coordination of surveillance operations. The objective is to optimize the

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<sup>21</sup> See Annex III – List of the fishing agreements on the SRFC Member States

operational and institutional capacity of each Member State and to promote joint surveillance of the SRFC area. This is the spirit of joint surveillance operations organized by the SRFC<sup>22</sup>.

### **B. International fisheries agreements**

This section is about fisheries agreements concluded between the SRFC Member States with the EU and with other partners.

They are agreements signed between a SRFC Member State and a partner. These agreements, can be mixed (several species) or focus on a group of species. They generally have a validity of four to six years and provide access to either a specific number of vessels or for a fishing area and a specific fishing quota. Besides the payment of licenses by the owners, the agreement may contain targeted actions such as infrastructure construction, supply of materials and fishing equipment, strengthening of fisheries research and MCS.

With the entry into force of the revised Convention on Minimum Access Conditions to fishery resources in the SRFC Member States, the new fishing agreements signed by the Member States should take into account:

Scientific assessments on the status of exploitable resources and the conditions governing the access of a distant-water fishing fleet to exploit the fisheries resources. To that aim, the Member States should highlight the existence of non-harvestable surplus by the national fleet.

The establishment of a legal and institutional framework to achieve responsible fisheries and rational exploitation of the fishery resources from an environmental, economic and social point of view;

The need for fisheries policies consistency at regional level;

The need to create a favourable investment context and encourage the necessary economic, social, technical and scientific transfers for the sustainable management of fisheries resources in the waters under the jurisdiction of the Member States.

In conclusion, fisheries agreements are often cited as a problem in fisheries management. They are in fact of different types, depending on whether one considers:

- Bilateral agreements between SRFC Member States, which provide a framework for some of the fleet movements in the sub-region;
- Bilateral agreements, private or public, with third countries like Asian countries and;
- Negotiated agreements with the European Union, subject to significant financial compensation, are accompanied by targeted actions in support of research and surveillance, and establish a binding framework for vessels-owners.

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<sup>22</sup> See Chapter II, Section 7, Summary of joint sub-regional surveillance operations between 2001 and 2003

In theory, all the agreements should be included in fisheries management plans, and also meet the harmonized access conditions at the sub-regional level and follow the OECD guidelines for foreign investment in sustainable fisheries.

## II. STRENGTHENING THE INSTITUTIONAL COOPERATION

### A. Mechanisms of institutional sub-regional cooperation

The achievement of the sub-regional cooperation is mainly on research and surveillance, through two projects implemented by the SRFC.

- The SIAP (Système d'Information et d'Analyse des Pêches) project has largely contributed to the assessment of the impacts of fishing on demersal fish resources, and has developed tools and information systems tailored for the region.
- The projects funded by Luxembourg, the FAO and the European Union in the area of MCS led to the establishment and operation of the Unit for Coordination for Operations of Surveillance (UCOS), a permanent structure of the SRFC.

In recent years, the cooperation with the SRFC has enabled the establishment of consultation mechanisms (AFD, Dutch Cooperation), the development of a public policy instrument such as the Convention on Minimum Access Conditions (PRCM), the regional policy document for the sustainable management of small pelagics (AFD and Dutch cooperation) and several management plans (IUCN, PRCM, AFD, Dutch cooperation and World Bank).

The institutional reforms that occurred at the SRFC, in 2009, helped strengthen the Permanent Secretariat with the introduction of:

- three technical departments (Harmonization of Policies and Legislation Fisheries/DHPL, Research and Information System/DRSI and Monitoring, Control and Surveillance of Fisheries Management/DMCSA) whose heads were recruited following the same international standards as those of the United Nations;
- an administrative and accounting manual of procedure approved by the European Union and the World Bank in accordance with their guidelines.

In addition, the SRFC is currently working to establish a cooperation agreement with three other regional fisheries organizations located on the central east Atlantic: the ATLAFCO, the FCWC and the COREP created respectively in 1991, 2006 and 1984.

- The ATLAFCO comprises 22 countries from Morocco to Namibia,
- The FCWC (Fishery Committee for the West Central Gulf of Guinea) is composed of six Member States (Benin, Cote d'Ivoire, Ghana, Liberia, Nigeria and Togo)
- The COREP (Regional Fisheries Committee for the Gulf of Guinea) is composed of five Member States (Gabon, Congo Brazzaville, Democratic Republic of Congo, Equatorial Guinea and Cameroon) and two countries with the observer status (Sao Tome and Principe, Angola).

However, 6 of the 7 SRFC Member States (except Mauritania) are members of the Economic Community of West African States (ECOWAS) and two members of the SRFC (Guinea Bissau and Senegal) are members of the Economic and Monetary Union (UEMOA). ECOWAS and UEMOA being economic integration organizations for the SRFC area, the need to strengthen and formalize collaboration with these two entities is urgent if we consider that:

- The financial contributions from Member States to these two entities are withdrawn directly from taxes;
- They are not specialized in fisheries;
- They have fisheries programs almost similar with those of RFMOs in the region;
- The experts of the RFMOs participate in the development programs of these economic integration organizations;
- Their technical and financial partners are the same as those of the SRFC;
- The TFPs for fisheries are generally entrusted to regional economic integration organizations.

In conclusion, despite the considerable progress which are recognized by the international community, and the gains made in sustainable management of fisheries resources, the SRFC remains an organization of fisheries cooperation. It is composed of Members States who have come together to address the common problem of fisheries conservation and management by harmonizing their fisheries policy. Whereas some SRFC Member States are part of ECOWAS (all countries except Mauritania) and UEMOA (Guinea Bissau and Senegal), it would be rational to establish strong mechanisms of cooperation between them and the SRFC.

The SRFC now needs to strengthen its mandate to become a regional fisheries management organization (RFMO) to fully play its role in the dynamic and evolving context of fisheries. Indeed, the Convention of 1985 creating the SRFC is no longer adapted to the current legal environment. It should be updated to include elements such as:

- The precautionary approach and ecosystem-based approach applied to fishing;
- The evolution of its objectives in fisheries policies harmonisation and the strengthening of cooperation in the management of fisheries resources in the SRFC area, for at least shared resources or common interest;
- IUU fishing.

In addition, ECOWAS and UEMOA could play a decisive role in the institutional development and the capacity-building of the SRFC making it their technical arm. This would not only be to ensure greater consistency in the implementation of regional projects and programs, but also to avoid the SRFC to face recurring financial difficulties.

#### **B. Institutional mechanisms for international cooperation with the MS and the SRFC**

Multilateral cooperation is primarily the result of the FAO, which intervenes mainly through Technical Cooperation Programmes (TCP) with its own funds, for short-term institutional support at national or regional level. FAO acts much less as the executing agency of major projects such as the Sustainable Fisheries Livelihoods Project in than in the past. From 2010 to date, the SRFC received the TCP project TCP/RAF/3212/FAO: "Support to the implementation of the International Plan of Action on Illegal, Unreported and Unregulated fishing".

The African Development Bank (AfDB), which only intervenes at the national level and in the form of loans, is still focused primarily on support for training, infrastructure, and for small-scale fisheries. There is no project in partnership with the AfDB at the sub-regional level.

Excluding fisheries agreements, the EU funds national projects in support of the sector in fisheries surveillance and development of quality standards. At the sub-regional level, it has funded the research sector (SIAP) and surveillance (MCS).

The World Bank has done a remarked come-back in fishery since 2004 through global or regional trust funds<sup>23</sup>, and national projects, especially in the field of biodiversity management (with a fisheries component in the case of GIRMAC in Senegal and PGBZC in Guinea-Bissau) using the GEF funds. Currently, the World Bank finances the West African Regional Fisheries Programme (WARFP), which covers the Members States of the SRFC, plus Ghana and Liberia.

The GEF funds a Canary Current Large Marine Ecosystem conservation project (last LME project in Africa). The preparation phase was completed in 2006. The first implementation phase began in 2010 and covers the SRFC Member States and Morocco.

Bilateral cooperation interventions are very uncoordinated and tend to decrease in favor of multilateral cooperation (through the EU or the World Bank).

Japan remains the largest donor, mainly supporting research (vessels, laboratories) and the artisanal fisheries (infrastructure).

France and Germany are specialized in institutional support and are involved in resources management in Mauritania. France particularly supports research (Mauritania, Guinea) through the IRD. The Agence Française de Développement (AFD) also intervenes in institutional strengthening of the Member States (Mauritania, Senegal). France has also funded a regional project on co-management and the use of MPAs as a tool for fisheries management.

Spain is very active at the local level to support the artisanal fisheries (training, safety at sea) and also in maritime infrastructure. The Netherlands focus more their cooperation towards research and conservation of the environment.

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<sup>23</sup> Project "ProFish" et Project "Strategic Partnership for Sustainable Fisheries Management in the LME of Sub-Saharan Africa"

**Table 23-1: Status of ratification of major international and regional agreements on the fight against IUU fishing (A: adhesion, R: ratified S: Signed)**

SRFC MEMBER STATES	INTERNATIONAL LEGAL INSTRUMENTS				
	The United Nations Convention on the Law of the Sea of 10 December	Agreement on Straddling Stocks and Stocks of Large Migratory Fish	The Compliance Agreement (effective in 2003)	Agreement on Port State Measures to prevent, deter and eliminate PINN	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
Cape-Verde	10/12/82 Signed 10 August 1987	Not yet Party	27/01/2006 (A)	Not yet party	10/08/2005 (A)
The Gambia	10/12/82 Signed 22 May 1984	16 September 2005 (A)	Not yet party	Not yet party	26/08/1977 (A)
Guinea	04/10/84 Signed 6 September 1985	16 September 2005 signed (A)	Not yet party	Not yet party	21/09/1981 (A)
Guinea-Bissau	10/12/82 Signed 25 August 1986	4 December 1995 Signed	Not yet party	Not yet party	16/05/1990 (A)
Mauritania	10/12/82 Signed 17 July 1996	21 December 1995 Signed	Not yet party	Not yet party	13/03/1998 (A)
Senegal	25/10/82 Signed 25 October 1984	4 December 1995 Signature 30 Jan 1997 (R)	08/09/2009 (A)	Membership in progress	05/08/1977 (A)
Sierra Leone	10/12/82 Signed 12 December 1994	Not yet Party	Not yet Party	23 november 2009 Signed	28/10/1994 (A)

Table 23-2: Status of ratification of major international and regional agreements on the fight against IUU fishing (A: adhesion , R: ratification , S: Signature)

SRFC MEMBER STATES	INTERNATIONAL LEGAL INSTRUMENTS					
	International Commission for the Conservation of Atlantic Tunas-ICCAT	Indian Oceans Commission on Tunas (IOTC)	Convention on Biological Diversity (CBD) (Effective 29/12/ 1993)	IMO , Abuja MoU on port 1999	Convention on Marine Pollution (MARPOL 73/78) (Effective 02/10/ 1983)	International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995 (effective 29/09/ 2012)
Cape-Verde	Member (11/10/1979)	Not yet party	Ratified	Signed	Signed	Not yet party
The Gambia		Not yet Party	Ratified	Signed	Signed	Not yet party
Guinea	5/6/1991	Not yet party	Ratified	Signed	Signed	Not yet party
Guinea-Bissau	Not yet Party	Not yet party	Ratified	Not party yet	Not party yet	Not yet party
Mauritania	04/12/2008	Not yet party	Ratified	Signed	Signed	Ratified
Senegal	21/12/2004	Member cooperating non-contracting	Ratified	Signed	Signed	Not yet party
Sierra Leone	1 July, 2008	01/07/2008		Signed	Ratified	Joined (10 March 2008)

Table 23-3: Status of ratification of major international and regional agreements on the fight against IUU fishing (part 2)

SRFC MEMBER STATES	Code of Conduct for Responsible Fisheries 1995	International Plan of Action to Prevent, Deter and Eliminate PINN 2001	African Convention on the Conservation of Nature and Natural Resources Status as of 03/02/2010	State Convention on cooperation for the protection and development of marine and coastal areas in the region of West Africa and Central (Abidjan Convention) (Effective 05/05/1984)
Cape Verde	Adopted	Adopted	Not yet party	Signed/ratified
The Gambia	Adopted	Adopted	24/12/2003	Signed/ratified
Guinea	Adopted	Adopted	16/12/2003 Signed	Signed/ratified
Guinea-Bissau	Adopted	Adopted	08/03/2005 Signed	Signed/ratified
Mauritania	Adopted	Adopted	Not yet Party	Signed/ratified
Senegal	Adopted	Adopted	16/01/2004 Signed	Signed/ratified
Sierra Leone	Adopted	Adopted	09/12/2003 Signed	Signed/ratified



Table 23-4: Status of ratification of the main regional Agreements on the fight against IUU fishing (part 3)

SRFC MEMBER STATES	REGIONAL LEGAL INSTRUMENTS				
	Regional Convention on Fisheries Cooperation among African States Bordering the Atlantic Ocean (ATLAFCO) (effective 11/08 1995)	Convention on sub- regional cooperation in the exercise of hot pursuit	Protocols on practical arrangements for the coordination of surveillance in SRFC Member States	Revised MAC Convention MAC Effective: 16 September 2012	Declaration to prevent, deter and eliminate PINN (the Nouakchott Convention) 2001
<b>Cape Verde</b>	30 September 1992 Signed 8 august 2001 Ratified	1 <sup>st</sup> September 1993 Signed	1 <sup>st</sup> September 1993 Signed	8 June 2012	Adopted
<b>The Gambia</b>	4 December 1992 Signed	1 <sup>st</sup> September 1993 Signed	1 <sup>st</sup> September 1993 Signed	8 June 2012	Adopted
<b>Guinea</b>	4 December 1992 Signed 5 august 1993 Ratified	1 <sup>st</sup> September 1993 Signed	1 <sup>st</sup> September 1993 Signed	8 June 2012	Adopted
<b>Guinea-Bissau</b>	12 July 1995 (A)	1 <sup>st</sup> September 1993 Signed	1 <sup>st</sup> September 1993 Signed	8 June 2012	Adopted
<b>Mauritania</b>	9 October 1992 Signed	1 <sup>st</sup> September 1993 Signed	1 <sup>st</sup> September 1993 Signed	8 June 2012	Adopted
<b>Senegal</b>	5 July 1991 Signed 6 April 1994 Ratified	1 <sup>st</sup> September 1993 Signed	1 <sup>st</sup> September 1993 Signed	8 June 2012	Adopted
<b>Sierra Leone</b>	Signed on 5 July 1991 17 November 1993 (A)		1 <sup>st</sup> September 1993 Signed	8 June 2012	Adopted

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**Annex I**

**Main national fisheries regulations in the SRFC Member States (revised version reproduced as Annex I to the Written Statement of the SRFC, Version 2)**

**Annex II**

**Summary table of the different measures taken to fight against IUU fishing in the SRFC Member States (reproduced as Annex II to the Written Statement of the SRFC, Version 2)**

**Annex III**

**List of fisheries agreements (revised version reproduced as Annex III to the Written Statement of the SRFC, Version 2)**

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**CHAPTER IV: COOPERATION LEGAL AND FRAMEWORK FOR FIGHTING AGAINST IUU FISHING IN THE SRFC****SECTION 1: LEGAL INSTRUMENTS TO FIGHT IUU FISHING APPLICABLE IN THE SRFC AREA****I. THE LEGAL INSTRUMENTS TO FIGHT IUU FISHING APPLICABLE IN THE SRFC AREA**

*A. Binding international legal instruments to fight against IUU*

1. The United Nations Convention on the Law of the Sea - UNCLOS (1982)
2. The FAO Agreement to Promote Compliance in international conservation and management measures of fishing vessels on the high seas or the Agreement on Conformity (1993)
3. The Agreement for the application of the provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of fish stocks whose movements are performed both inside and beyond the exclusive economic zones (straddling stocks) and stocks of highly migratory fish (1995)
4. The 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) fishing
5. Other international legal instruments for the sustainable management of fisheries resources
  - 5.1. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
  - 5.2. The Convention governing the zone covered by the International Commission for the Conservation of Atlantic Tunas (ICCAT)
  - 5.3. Tuna Commission in the Indian Ocean (IOTC)
  - 5.4. The Convention on Biological Diversity (CBD)
6. Relevant fisheries instruments of the International Maritime Organization (IMO)
  - 6.1. The Memorandum of Understanding on the control of vessels by the port State, OMI, 1999
  - 6.2. The Convention on Marine Pollution (MARPOL 73/78)
  - 6.3. The International Convention on Standards of Training, Certification and

Watchkeeping for the crew of a fishing vessel (International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel) (STCW-F), 1995

7. The fisheries instruments of the International Labour Organization
  - 7.1. The Maritime Labour Convention (MLC), 2006 and the Guidelines for Agents and control officers carrying out Port State inspections, 2008
  - 7.2 The labour Agreement in the fisheries sector (CM No. 188) ILO, 2007
- B. *Other voluntary international agreements*
  1. The Code of Conduct for Responsible Fisheries (1995)
  2. The International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated 2001 (IPOA-IUU)
  3. The Model Scheme on Port State Measures of FAO (2005)

## II . REGIONAL LEGAL INSTRUMENTS TO FIGHT IUU FISHING IN THE SRFC AREA

### A. *The sub-regional instruments put in place by the SRFC*

1. The Convention on sub- regional cooperation in the exercise of hot pursuit (1993)
2. The Protocol on the practical arrangements for coordination of surveillance in Member States of the SRFC (1993).
3. The Convention on the Determination of Minimum Conditions of Access and Exploitation of Fisheries Resources within the sea areas under the jurisdiction of members of the SRFC, as revised and adopted in June 2012 (Convention MCA)
4. The 2001 Declaration to prevent, deter and eliminate IUU fishing called the Nouakchott Declaration

### B. *The instruments developed under the auspices of other regional institutions but applicable in the SRFC area*

1. African Convention (AU) on the Conservation of Nature and Natural Resources (Maputo Convention 2003)
2. , The Convention for the Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention into force in 2004)
3. Ministerial Conference on Fisheries Cooperation Among African States Bordering the Atlantic c Ocean (ATLAFCO/COMHAFAT )
4. UEMOA 2013 Draft Directive on the common regime for the sustainable management of marine resources in the UEMOA Member States, and the UEMOA 2013 Draft Directive establishing a common MCS regime in the UEMOA Member States
5. Regulation 1005/2008 of the Council of Europe

## III. COMPLIANCE OF NATIONAL LEGISLATION WITH INTERNATIONAL LEGAL INSTRUMENTS TO FIGHT AGAINST IUU FISHING

### SECTION 2: THE SHORTCOMINGS OF CLASSIC INTERNATIONAL LAW IN THE FIGHT AGAINST IUU FISHING

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- B. Shortcomings in the implementation of the responsibilities of the flag State

C. Shortcomings in the implementation of the responsibilities of the Port State

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A. Bilateral fisheries agreements or the so-called reciprocity agreements

B. International fisheries agreements

I. Bilateral fisheries agreements

II. International fisheries agreements

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A. Mechanisms of institutional sub-regional cooperation

B. Institutional mechanisms for international cooperation with the MS and the SRFC

**ANNEX I**

MAIN NATIONAL LEGISLATION FISHERIES IN THE SRFC MEMBER STATES

**ANNEX II**

SUMMARY OF RELEVANT PROVISIONS TO FIGHT IUU FISHING IN THE SRFC MEMBER STATES

**ANNEX III**

LIST OF FISHERIES AGREEMENTS

**ANNEX IV**

SUMMARY OF JOINT SURVEILLANCE OPERATIONS CONDUCTED FROM 2011 2013

**ANNEX V**

LIST OF TUNAS AND SHARK SPECIES