

[MOU/2010/DEPI/MCEB/NairobiConvention/xxxx]

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)  
AND  
SOUTHWEST INDIAN OCEAN FISHERIES COMMISSION**

1. **WHEREAS** the United Nations Environment Programme (hereinafter referred to as UNEP) is the leading organization within the United Nations system in the field of environment and has as a major area of focus of its global mandate, the conservation, protection, enhancement and support of nature and natural resources, including biological diversity, worldwide.
2. **WHEREAS** UNEP has the mandate [to describe the specific UNEP – Nairobi Convention office handling this issue]
3. **WHEREAS** Southwest Indian Ocean Fisheries Commission, hereinafter referred to as “SWIOFC ”is a [legal status of the entity] has the [describe the partner’s mandate and objectives]
4. **WHEREAS** UNEP – **Nairobi Convention and SWIOFC** (hereinafter collectively referred to as “Parties”) share common goals and objectives with regard to the conservation, protection, enhancement and support of nature and natural resources, including biological diversity worldwide and wish to collaborate to further these common goals and objectives within their respective mandates and governing rules and regulations.
5. **WHEREAS** the Parties intend to conclude this Memorandum of Understanding (hereinafter referred to as “MOU”) with the aim of consolidating, developing and intensifying their cooperation and their effectiveness to achieve the common goals and objectives in the field of environment.
6. **PREAMBLE**

**NAIROBI CONVENTION**

7. Recognizing the environmental uniqueness of the coastal and marine environment of the region, the threats and the necessity for action, the countries of the Western Indian Ocean region requested UNEP to create a regional seas programme for the region. UNEP’s Governing Council decision 8/13C of 29 April 1980 created the Eastern African Regional Seas Programme and further requested UNEP to assist the Governments of the region to formulate and implement a programme for the proper management and conservation of marine and coastal resources. Subsequent to the 8th session of the Governing Council of 1980, UNEP supported the development of the Eastern African Action Plan, and a Convention on the Protection , Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi Convention).
8. The countries of the region met in 1985, to adopt an action plan for the protection,

management and development of the marine and coastal environment of the Eastern African region. In addition, they signed the Convention and its two protocols concerning collaboration in combating pollution in cases of emergency, and concerning protected areas and wild fauna and flora. The Convention and its two protocols entered into force on 30 May 1996 and were ratified by all the signatory countries in 1999, and by South Africa in 2002.

9. The Nairobi Convention area extends from Somalia in the north to the Republic of South Africa, covering 10 States, five of which are island States in the Western Indian Ocean. The Contracting Parties are Comoros, France (La Reunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, Tanzania and the Republic of South Africa.
10. As part of a comprehensive and ambitious exercise to revitalize the Nairobi and Abidjan Conventions, one of the measures utilised by African governments was the development of a biennial work programme. The Work Programme, which is a collaborative programme developed with partners and key stakeholders, serves as a tool for the Secretariat and the collaborating partners to catalyse change in the management of the marine and coastal environment in countries that are Contracting Parties to the Nairobi Convention, thereby contributing to the achievement of agreed goals and targets as they relate to the sustainable development of coasts and oceans.
11. The first Work Programme for the Nairobi Convention was adopted at its second Conference of the Contracting Parties, held in Mauritius in November 1999. This was followed by the 2002–2003 and 2004–2007 work programmes. Based on these work programmes, the Nairobi Convention Secretariat, partners and individual countries successfully carried out a number of activities, largely with the support of the UNEP Environment Fund. These achievements have laid a solid foundation for continuous efforts in the same direction.
12. The 2004–2007 Work Programme covered two biennia, so as to be in line with other relevant ongoing programmes within UNEP and other partners. The work programme for 2008–2011 maintains this momentum by building on previous successes, and by strengthening and increasing the linkages between partners, programmes and projects. The Work Programme is highly collaborative in nature, reflecting the increased coordination among stakeholders working in marine and coastal issues. The Secretariat works closely with collaborating partners such as regional NGOs and various national and research institutions.
13. According to decision 6/6, the Contracting Parties mandated the Secretariat to seek new partnerships and enter into agreements as appropriate, including the Southwest Indian Ocean Fisheries Commission (SWIOFC).

#### **SOUTHWEST INDIAN OCEAN FISHERIES COMMISSION**

14. SWIOFC was established in 2004 by Resolution 1/127 of the FAO Council under Article VI 1 of the FAO Constitution. Its Rules of Procedures were adopted by the Commission at its First session in 2005.
15. The main objective of the Commission is to promote the sustainable utilization of the

living marine resources of the South West Indian Ocean region, by the proper management and development of the living marine resources, without prejudice to the sovereign rights of coastal States and to address common problems of fisheries management and development faced by the Members of the Commission. The Commission is composed of such Members and Associate Members of the Organization that are coastal States, whose territories are situated wholly or partly within the area of the Commission, such as Comoros, France, Kenya, Madagascar, Maldives, Mauritius, Mozambique, Seychelles, Somalia South Africa, Tanzania, and Yemen. The functions and responsibilities of the Commission include:

16. To contribute to improved governance through institutional arrangements that encourage cooperation amongst members;
17. To help fishery managers in the development and implementation of fishery management systems that take due account of environmental, social and economic concerns;
18. To keep under review the state of the fishery resources in the area and the industries based on them;
19. To promote, encourage and coordinate research related to the living marine resources in the area and draw up programmes required for this purpose, and to organize such research as may be necessary;
20. To promote the collection, exchange, dissemination and analysis or study of statistical, biological, environmental and socio-economic data and other marine fishery information;
21. To provide a sound scientific basis to assist Members in taking fisheries management decisions;
22. To provide advice on management measures to member governments and competent fisheries organizations;
23. To provide advice and promote co-operation on monitoring, control and surveillance, including joint activities, especially as regards issues of a regional or sub-regional nature;
24. To encourage, recommend and coordinate training in the areas of interest of the Commission;
25. To promote and encourage the utilization of the most appropriate fishing craft, gear, fishing techniques and post harvesting technologies.

**NOW THEREFORE, UNEP AND SWIOFC HAVE AGREED TO COOPERATE UNDER THIS MEMORANDUM OF UNDERSTANDING AS FOLLOWS:**

**Article 1  
Interpretation**

26. Any Annex to this MOU shall be considered part of this MOU. Unless the context otherwise requires, references to this MOU shall be construed as a reference to this MOU including the Annex hereto, as varied or amended in accordance with the terms of this MOU.
27. Implementation of activities/projects/programmes pursuant to this MOU shall necessitate the execution of appropriate legal agreements between the Parties.
28. This MOU supersedes all prior MOUs, communications and representations, whether oral or written, concerning the subject matter thereof.

## **Article 2**

### **Purpose**

29. The purpose of this MOU is to provide a framework of cooperation and understanding and to facilitate collaboration between the Parties to further their shared goals and objectives in regard to the conservation, protection, enhancement and support of nature and natural resources, including biological diversity worldwide.
30. The objectives of this MOU will be achieved through:
  - a. Regular dialogue meetings between UNEP – Nairobi Convention and SWIOFC;
  - b. Execution of a separate legal instrument between the Parties to define and implement joint activities, projects and programmes pursuant to Articles 2 and 3.

## **Article 3**

### **Areas of Cooperation**

31. Areas of Cooperation are agreed jointly through the cooperation mechanism in the MOU. Policies and Priorities under this MOU may also be jointly reviewed [annually] by the Parties pursuant to Article 4. This would allow the Parties to respond to newly emerging issues in the realm of environment and sustainable development.
32. The Parties have agreed the following preliminary overarching themes for this MOU:
  - a.
  - b.
  - c.
33. These areas form part of UNEP – Nairobi Convention’s mandate and programme of work and have been approved by UNEP’s Governing Council. They are also priorities for SWIOFC. Some activities under these abovementioned fields are already ongoing, but are in need of additional support.
34. The above list is not exhaustive and should not be taken to exclude or replace other forms of cooperation between the Parties on other issues of common interest.

## **Article 4**

### **Organization of the Cooperation**

35. The Parties shall hold regular bilateral meetings on matters of common interest, in accordance with an agenda agreed in advance by the parties, aiming also at the development/monitoring of a joint project. Such meetings will take place at least once every 3 months to:
  - discuss technical and operational issues related to furthering the objectives of this MOU;

- review progress of work undertaken by SWIOFC pursuant to a separate legal instrument in the priority areas of cooperation mentioned in Article 3 above.
36. Within the context defined above, further bilateral meetings at desk-to-desk and at expert level will be encouraged and set up on an ad hoc basis as deemed necessary by the relevant UNEP – Nairobi Convention and SWIOFC to address priority matters of common interest regarding the preparation for implementation of activities in specific areas, countries and regions.
37. In implementing activities/projects/programmes in the agreed priority areas, the Parties shall execute a separate legal instrument appropriate for the implementation of such initiatives. In identifying the areas of cooperation under this MOU, due regard shall be given to SWIOFC's geographic coverage; capacity for implementation and experience in the related field.
38. Where SWIOFC is organizing a meeting with external participation at which policy matters related to the aims of this MOU will be discussed, SWIOFC shall, where appropriate, invite UNEP – Nairobi Convention.

#### **Article 5**

##### **Status of the Partner and its Personnel**

39. The Parties acknowledge and agree that SWIOFC is an entity separate and distinct from the United Nations, including UNEP. The employees, personnel, representatives, agents or contractors of the Partner, including the personnel engaged by SWIOFC for carrying out any of the project activities pursuant to this MOU, shall not be considered in any respect or for any purposes whatsoever as being employees, personnel, representatives, agents, contractors or other affiliates of the United Nations, including UNEP, nor shall any employees, personnel, representatives, agents and other affiliates of UNEP be considered, for any purposes whatsoever, as being employees, personnel, representatives, agents or other affiliates of the SWIOFC.
40. No agents or employees of SWIOFC shall be considered in any respect as agents or staff members of UNEP. SWIOFC shall advise in writing its personnel that they are solely employees of SWIOFC and that UNEP shall not be responsible for any salaries, wages, insurance or other benefits due or payable to the partner's personnel. SWIOFC shall be solely responsible for all such salaries, wages, insurance and benefits, including without limitation, any severance or termination payments to such personnel. UNEP shall entertain no claims and have no liability whatsoever in respect thereof.

#### **Article 6**

##### **Fundraising**

41. Neither party shall engage in fund raising with third parties for activities to be carried out within the framework of this MOU in the name of or on behalf of the other.

**Article 7**  
**Dispute settlement**

42. Any dispute arising out of or in connection with this MOU shall be settled amicably between the two parties. Should attempts at amicable negotiation fail, any such dispute shall, upon request by either party, be referred to arbitration in accordance with the UNCITRAL arbitration rules then prevailing.

**Article 8**  
**Official emblems and logos**

43. Neither Party shall use the name, emblem or trademarks of the other Party, its subsidiaries, affiliates, and/or authorized agents, or any abbreviation thereof, in publications and documents produced by the Parties, without the express prior written approval of the other Party in each case.
44. In no event will authorization of the UNEP name or emblem, or any abbreviation thereof, be granted for commercial purposes.

**Article 9**  
**Intellectual Property Rights**

45. The Parties shall consult with each other regarding the Intellectual Property Rights as appropriate relating to any project or benefits derived thereof in respect of activities carried out under a separate legal instrument pursuant to this MOU.

**Article 10**  
**Notification and Amendments**

46. 1. Each Party shall notify one another in writing, within [3 months] of any proposed or actual changes that the Party deems necessary for the execution of this MOU.
47. Upon receipt of such request, the other Parties shall consult each other with a view to reaching an agreement on any actual or proposed measure(s) suggested by the other Party under Article 10(1).
48. This MOU may be amended only by mutual agreement of the Parties reflected in writing.

**Article 11**  
**United Nations Privileges and Immunities**

49. Nothing in or relating to this MOU shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

**Article 12  
Termination**

50. This MOU may be terminated by either party by giving [three months] prior notice to the other Party in writing.
51. Unless agreed otherwise, upon termination of this MOU, the rights and obligations of the Parties defined under any other legal instrument pursuant to this MOU, will cease to be effective.

**Article 13  
Duration**

52. This MOU shall be effective upon the last date of signature of the approving officials and remain in force until [ ], unless terminated in accordance with Article 12 above. Its content shall be reviewed every 5 years.
53. **IN WITNESS WHEREOF**, the duly authorized representatives of the Parties affix their signatures below.

54. **For United Nations Environment Programme**

**For SWIOFC**

**UNEP**

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**SWIOFC**

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Date:.....

Date:.....