

An occasional newsletter to update members of SWIOFP on current developments.

The SWIOFP Project Brief was advanced with the development of an incremental costs analysis and log-frame. The first meeting of the Legal Instruments Theme held in La Reunion from 9 to 11 February 2005

Administration

- The secretariat was strengthened with the appointment of Ms. Sandra Bebe, who replaces Ms. Paula Boane as secretary. This should ease the growing workload.

Project activities

- Minutes from the 4th Plenary in Maputo were compiled and circulated. This proved to be an extensive and detailed record of deliberations, containing many important opinions and decisions.
- Proposals for hosting the future SWIOFP regional office were submitted to Madagascar by three countries. The original deadline for submission was extended by two weeks at the request of some countries.
- Informal discussions and deliberations were held in several quarters to develop a more defined approach to ships' time.
- The SWIOFP secretariat was able to attend the 26th Session of the Committee of Fisheries (COFI) which strengthened the linkages with FAO and hence long-term viability of both SWIOFP and the SWIO Fisheries Commission.

Legal Instruments Theme meeting in La Reunion: 9-11 March 5

Updated Table of Activities reflecting approximate time schedules

INTERIM PROGRESS & PLANS			
<i>Task / Theme</i>	<i>Action</i>	<i>Status</i>	<i>Deadline</i>
<i>Secretariat</i>	4 th plenary (Pre-appraisal)	Complete: minutes to be circulated	End January 2005
	Plan for 5 th plenary (final appraisal)	Preliminary stage only	June/July 2005
	Maintain SWIOFP website;	Complete	Ongoing
	Final version of project proposal	Basic framework conceived	Mid 2005
	Incremental cost analysis	Draft complete	End- February 2005
	Additional workshop to finalise outstanding issues, including ships, gear, funding, legal	To be planned Maputo?	April/May 2005
	Interface with other WIO projects; establish links	Ongoing	Ongoing
	Facilitate visit to Comoros to engage ministry	Planned	Aril 2005
	Circulate draft WB-country contract for comment and future guidance.	Underway	End February 2005

	Project Launch	-	Early 2006
Science Plan (MCM-S.Afr)	Integrate new information into Version 3 of the Draft Science Plan.	Underway Project advisor	End March 2005
	Incorporate other workshop recommendations– revise activities cost estimates	Underway Project advisor	End March 2005
Data Management (KMFRI-Kenya)	Country questionnaire analysis	Completed	-
	Draw up TORs for Component 1 activities and staffing (2006)	Underway	June 2005
	Facilitate evaluation of StatBase and alternatives	Underway	June 2005
Operations & Procurement (TAFIRI- Tanzania)	Harmonise procurement procedures	Ongoing	-
	Finalise and update procurement plan	Underway	June 2005
	2 nd Specialist workshop	Completed	
Legal issues (France)	Focal point questionnaire analysed	Underway	Mid February 2005
	Assist with demonstration of StatBase fisheries software	Underway	June 2005
	Workshop & minutes circulated	Completed	8-10 Feb: Reunion
Project management (Madagascar)	Draft management plan developed	Achieved	
	Circulate plan for comment.	Underway	
	Specialist workshop, minutes circulated.	Completed- minutes circulated	-
	Arrange for criteria and submissions to hosting Regional PMU.	Achieved	-
	Submit selection of PMU to secretariat.	Underway	End March 05
National Focal Points (countries)	Consider and verify country-level participation in Components and Regional Unit.	Achieved	Sustain
	Submit letter of project endorsement to World Bank country office – copied to Secretariat.	Urgent	Mid February 2005
	Workshop to develop country needs and expectations; document prepared	Achieved, need for confirmation.	
	Review and confirm draft budget	Underway	



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Legal Issues Workshop- La Reunion - 8 to 10 February 2005

Hosted by France and facilitated by Dr Elie Jarmache, the meeting was attended by experts from Comoros, France, Madagascar, Mauritius, Mozambique, Seychelles, South Africa and Tanzania. Unfortunately, Kenya was unable to attend due to transportation problems.

Mr Yan Giron, consultant to the French Authorities, sketched the context within which the legal workshop had to conduct its deliberations. This was followed by several contributions relating to main international conventions and obligations, including:

- United Nations Convention on the Law Of the Sea (UNCLOS),
- 1995 Fish Stocks Agreement,
- Convention on Biodiversity,
- The 1995 FAO Code of Conduct for Responsible Fisheries
- WSSD- Plan of Action adopted in Johannesburg in August 2002
- Monitoring and Surveillance

Although full documentation is available, these are some of the main issues discussed-

UNCLOS

- The important role of UNCLOS in establishing sovereign rights over natural resources, jurisdiction over marine research and protection of marine environment in EEZs.
- Emphasis placed on the provisions of international conventions strengthening regional cooperation, such as Articles 246/5 and Article 249/2.

Transboundary operations

Two kinds of transboundary operations were identified:

Marine scientific cruises using research vessels

Private commercial ship chartered for scientific purposes

There were special challenges when dealing with Marine Protected and otherwise restricted areas.

- data access and data availability (with a mention to the issue of property rights).
- links to be established with other projects /the need of harmonisation at different levels (technical tools, procedures for data collection) and coordination with respect to national MCS procedures.
- It was proposed that an agreement be entered into between countries to give consent of all Member States for the conduct of SWIOFP scientific cruises.
- Operations of restricted areas would only be undertaken under strict conditions and subject to validation by national authorities.
- SWIOFP needs to elaborate a data policy based on the principles of availability and free access of data within context. This should be achieved through the SWIOFP data management working group.
- The need for continued legal support was identified.
- The South African legal expert offered to undertake a preliminary drafting of a multi-national MOU for circulation.

Legal workshop proposals to the Plenary

The SWIOFP legal issues working group, which met in La Reunion on 8 to 10 February, express its opinion to convey to the Plenary, through the appropriate channel, propositions to be discussed and, when adopted, to be integrated to the final Project Document of SWIOFP.

While recognising the relevance of the international Law of the Sea about the coastal States jurisdiction on marine scientific research and the coastal States sovereign rights on the natural resources in the EEZ :

The working group proposes a common approach at SWIOFP level by adopting an agreement (it could be a "letter of agreement") by which the SWIOFP Member States decide to grant the consent for conducting such cruises.

This agreement should last for the whole period of SWIOFP.

This agreement should include all the information on scientific needs and purposes, inter alia information on the uses of private commercial ships.

Transboundary operations should be based on the **following principles** :

- Each cruise should be based on a minimum set of relevant information in particular research schedule to be detailed in an annex to the agreement.
- The presence on board ships of scientific observers both national and from SWIOFP's "component working group"
- The sharing of the data collected from research cruises, leading to **common** property rights at SWIOFP level.
- The allocation of reasonable period of time (6 months ?) to the relevant SWIOFP's "component working group" for interpretation of the data before dissemination and sharing among SWIOFP's Member States including those not directly involved in the cruise.

Operating in restricted or Marine Protected Areas

While recognising the importance of MPAs or Reserved marine areas for the goals of SWIOFP as "reference points", the working group proposes to admit the conduct of scientific research and monitoring operations in such areas, provided that an application is made to the appropriate (national) authority, and a particular procedure is agreed upon by a scientific committee (SWIOFP level ?). The scope of the procedure should cover the preparation of the cruise, its undertaking as well as regular report to the appropriate (national) authority.

Private commercial ships could be used as scientific chartered vessels in MPAs and marine reserves, provided that they are exclusively committed to scientific or monitoring operations and that no commercial fishing gears are in technical position to be used.

Particular regard must be had to the issue of sampling sensitive species in such areas for SWIOFP purposes.

Data availability and access, and property rights

The working group recalls the international rules of the Law of the Sea Convention stating that Coastal States must be consulted by researchers in case of publication of data collected in their EEZ dealing with natural marine living resources. This rule is an indication of the way the property rights issue is dealt within the context of marine science. Therefore, the working group is of the opinion that it should not be necessary to address this issue which appears not being significant in the context of the monitoring function of SWIOFP.

The working group acknowledges the importance of data in the process of increasing the scientific knowledge needed to fulfil the function of monitoring in a sustainable management of natural renewable resources.

The working group recommends the promotion of a **data policy**, within the SWIOFP, aimed at the availability of and free access to the data.

The working group recommends that :

- historical data be included in the scope of the data collected and owned by a particular Member State of SWIOFP. The transfer of those historical data should be considered, due to their value, as a contribution in kind from this particular Member State. The above principles of availability and free access apply to those historical data.
- special arrangements be established by SWIOFP with other holders of historical data to recover those data.

Specific proposals

The working group considers that Monitoring should be implemented jointly with Control and Surveillance to facilitate the collection of the same data.

This requires harmonisation :

- of SWIOFP with other projects in the SWIO,
 - of the technical tools with regard to ongoing projects in the area,
 - of the procedures for data collection,
- and co-ordination of SWIOFP with national MCS procedures.

The working group considers that the establishment of agreed procedures for surveillance in SWIO area should be a relevant component of the joint implementation mentioned above.

Capacity building on legal matters is one major concern to be dealt with in the scope of the Project. The working group recommends that particular attention should be given to that issue by granting and facilitating the access

-to training courses on legal aspects organised by Member States,

-to training seminars on specific legal issues when organised by international competent organisations.

The question of a **Memorandum of Understanding** - MOU - to be drafted as an agreement between Member States of SWIOFP arose at the beginning of the workshop. While understanding the need for such a MOU, the working group was not in a position to enter in a discussion on this issue whose implications are beyond its mandate and expertise.
