Global Environment Facility
Trust Fund Grant Agreement

(Southwest Indian Ocean Fisheries Project)

between

REPUBLIC OF KENYA

AND

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

acting as an Implementing Agency of the Global Environment Facility

Dated October 9, 2007
GLOBAL ENVIRONMENT FACILITY TRUST FUND GRANT AGREEMENT

AGREEMENT, dated October 9, 2007, between the REPUBLIC OF KENYA (the Recipient or Kenya) and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank), acting as an implementing agency of the Global Environment Facility (GEF) in respect of grant funds provided to the GEF Trust Fund by certain members of the Bank as participants of the GEF.

WHEREAS (A) the Bank, pursuant to Resolution No. 91-5 of March 14, 1991 of the Executive Directors of the Bank, established the GEF to assist in the protection of the global environment and promote thereby environmentally sound and sustainable economic development;

(B) following the restructuring of the GEF, such arrangements continued in place on the basis set forth in Resolution No. 94-2 of May 24, 1994, of the Executive Directors of the Bank, which, inter alia, established the GEF Trust Fund and appointed the Bank as trustee of the GEF Trust Fund (Resolution 94-2);

(C) a Memorandum of Understanding is expected to be signed among the Republics of Kenya, Madagascar, Mauritius, Mozambique, the United Republic of Tanzania, the Republic of Seychelles, the Republic of South Africa, and the Union of the Comoros (the Participating Countries), to acknowledge the importance of promoting the trans-boundary marine scientific research in the Southern West Indian Ocean (SWIO);

(D) the Participating Countries have agreed, in the Regional Meeting of May 12, 2005 that the Regional Management Unit for the Project will be located in Kenya, and each of the Participating Countries has also addressed a letter to the Recipient, confirming that the GEF funds available for financing the Project may be allocated directly to the Recipient on their behalf, in accordance with the terms and conditions of this Agreement;

(E) SWIOFP is part of a larger marine ecosystem management regional program designed to help the countries riparian to the Agulhas and Somali Currents Large Marine Ecosystems (ASCLME) develop a process of regionally harmonized, ecosystem-based management of offshore natural resources (the Program); other partners to the Program are the United Nations Development Program (UNDP), executing “the Agulhas and Somali Large Marine Ecosystem Project”; and the United Nations Environment Program (UNEP), executing “the Land-based Issues and the West Indian Ocean Project”;
(F) the Recipient, on behalf of the Participating Countries, having satisfied itself as to the feasibility and priority of the project described in Schedule 2 to this Agreement (the Project), has requested assistance from the resources of the GEF Trust Fund for funding the Project, and said request has been approved in accordance with the provisions of the Instrument for the Establishment of the Restructured Global Environment Facility approved under Resolution 94-2;

(G) Part A of the Project described in Schedule 2 to this Agreement will be carried out by Kenya through KMFRI, with the assistance of Comoros, Madagascar, Mauritius, Mozambique, South Africa, Seychelles, and Tanzania; Part B of the Project will be carried out by South Africa with the assistance of Kenya, Madagascar, Mozambique, and Tanzania; Part C of the Project will be carried out by Tanzania with the assistance of Kenya, Madagascar, Seychelles, and Mauritius; Part D of the Project will be carried out by Seychelles with the assistance of Comoros, Kenya, Madagascar, Mauritius, Mozambique, South Africa, and Tanzania; Part E of the Project will be carried out by Mauritius with the assistance of Kenya, Madagascar, Mozambique, Seychelles, South Africa, and Tanzania; and Part F of the Project will be carried out by Comoros, Kenya, Madagascar, Mauritius, Mozambique, Seychelles, South Africa, and Tanzania; all with the Recipient’s assistance, and, as part of such assistance, the Recipient will make available to South Africa, Seychelles, Tanzania, Madagascar, Mauritius, Comoros and Mozambique part of the proceeds of the GEF Trust Fund Grant as provided in this Agreement; and

WHEREAS the Bank has agreed, on the basis, inter alia, of the foregoing, to extend the GEF Trust Fund Grant to the Recipient upon the terms and conditions set forth in this Agreement and in the agreements of even date herewith between the Bank and South Africa, Seychelles, Tanzania, Madagascar, Mauritius, Comoros and Mozambique (the Project Agreements);

NOW THEREFORE, the parties hereto hereby agree as follows:
ARTICLE I

General Conditions; Definitions

Section 1.01 (a) The following provisions of the “General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans” of the Bank, dated May 30, 1995 (as amended through May 1, 2004), with the modifications set forth in paragraph (b) of this Section (the General Conditions) constitute an integral part of this Agreement:

(i) Article I;

(ii) Sections 2.01 (2), (3), (4), (5), (6), (7), (8), (14), (15), (16), (18) and (21), 2.02 and 2.03;

(iii) Section 3.01;

(iv) Sections 4.01 and 4.06;

(v) Article V;

(vi) Sections 6.01, 6.02 (c), (e), (f), (i), (l), (m), (n), (o) and (p), 6.03, 6.04 and 6.06;

(vii) Section 8.01 (b);

(viii) Sections 9.01 (a) and (c), 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09;

(ix) Sections 10.01, 10.03 and 10.04;

(x) Article XI; and

(xi) Sections 12.01 (c), 12.03 and 12.04.

(b) The General Conditions shall be modified as follows:

(i) the term “Bank”, wherever used in the General Conditions, other than in Sections 2.01 (6), 6.02 (f) and 5.01 (a) thereof, means the Bank acting as an implementing agency of the GEF, except that in Section 6.02, the term “Bank” shall also include the Bank acting in its own capacity;

(ii) the term “Borrower”, wherever used in the General Conditions, means the Recipient;

(iii) the term “Loan Agreement”, wherever used in the General Conditions, means this Agreement;
(iv) the term “Loan” and “loan”, wherever used in the General Conditions, means the GEF Trust Fund Grant;

(v) the term “Loan Account”, wherever used in the General Conditions, means the GEF Trust Fund Grant Account;

(vi) a new subparagraph is added after subparagraph (o) in Section 6.02 of the General Conditions, as follows: “an extraordinary situation shall have arisen in which any further disbursement under the GEF Trust Fund Grant would exceed the resources available for disbursement from the GEF.”; and

(vii) the words “corrupt or fraudulent” in paragraph (c) of Section 6.03 are replaced with the words “corrupt, fraudulent, collusive or coercive”.

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in the Recitals to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “Annual Work Plan” means the annual work plan adopted by the RPSC (as hereinafter defined) as referred to in paragraph 5 of Schedule 4 to this Agreement;

(b) “Eligible Categories” means Categories (1) through (4) set forth in the table in Part A.1 of Schedule 1 to this Agreement;

(c) “Eligible Expenditures” means the expenditures for goods, works and consultants’ services referred to in Section 2.02 of this Agreement;

(d) “Exclusive Economic Zone” or “EEZ” means the marine zone extending two hundred (200) nautical miles from the baselines from which the breadth of the territorial water is measured;

(e) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of this Agreement;

(f) “Implementing Entity” means any of the national implementing entity responsible for carrying out part of the Project through a National Management Unit (as hereinafter defined), namely, the Comoros National Directorate for Water Resources, the Kenya Marine and Fisheries Research Institute, the Malagasy Directorate for Fisheries and Water Resources, the Ministry of Fisheries of Mauritius, the Fisheries Research Institute of
Mozambique, the Seychelles Fishing Authority, the Marine and Coastal Management of South Africa, and the Tanzania Fisheries Research Institute;

(g) “KMFRI” means the Kenya Marine and Fisheries Research Institute established pursuant to the Recipient’s Science and Technology Act, 1979 (CAP 250) to, among other things, carry out research in fisheries, aquatic biology, coastal zone management and pollution monitoring;

(h) “KMFRI Subsidiary Agreement” means the agreement to be entered into between the Recipient and KMFRI pursuant to Section 3.01 (c) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Agreement;

(i) “National Management Unit” or “NMU” means any of the national Project management units in charge of implementing the Project at the national level, and referred to in paragraph 3 of Schedule 4 to the Agreement;

(j) “Procurement Plan” means the Recipient’s procurement plan, dated May 3, 2006 covering the initial 18 month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.02 to this Agreement, to cover succeeding 18 month periods (or longer) of Project implementation;

(k) “Project Area” means the continental shelf regions of the 200 nautical mile Exclusive Economic Zone of the Participating Countries and the French Republic;

(l) “Project Implementation Manual” or “PIM” means the manual to be adopted by all Participating countries, pursuant to Section 6.01 (f) of this Agreement, and referred to in paragraph 4 of Schedule 4 to this Agreement, as such manual may be amended from time to time with the approval of the Bank;

(m) “Regional Management Unit” or “RMU” means the independent Project management unit hosted by the Recipient, in charge of the Project’s core operational and regional coordination, and referred to in paragraph 2 of Schedule 4 to this Agreement;

(n) “Regional Policy and Steering Committee” or “RPSC” means the steering committee responsible for monitoring and overseeing the implementation of the Project, and referred to in paragraph 1 of Schedule 4 to this Agreement;

(o) “Report-based Disbursements” means the Recipient’s option for withdrawal of funds from the GEF Trust Fund Grant Account referred to in Part A.5 of Schedule 1 to this Agreement;
(p) “Southwest Indian Ocean Fisheries Commission” or “SWIOFC” means the Commission established in April 2005 in Mombassa, Kenya, with the objective of enhancing the cooperation among the Participating Countries in sustainable management of fisheries resources, contribution of fisheries to economic development, and implementation of general principles contained in international fisheries agreements;

(q) “Special Account” means the account referred to in Part B of Schedule 1 to this Agreement; and

(r) “90-Day Advance Accounts” means the new, separately and independently managed second-generation accounts of the Special Account opened by each Participating Country, and referred to in Section 6.01(e) and Part B.7 of Schedule 1 to this Agreement.

ARTICLE II

The GEF Trust Fund Grant

Section 2.01. The Bank agrees to make available to the Recipient, on the terms and conditions set forth or referred to in this Agreement, the GEF Trust Fund Grant in an amount equal to twelve million United States Dollars ($12,000,000).

Section 2.02. The amount of the GEF Trust Fund Grant may be withdrawn from the GEF Trust Fund Grant Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the GEF Trust Fund Grant.

Section 2.03. The Closing Date shall be November 30, 2011 or such later date as the Bank shall establish. The Bank shall promptly notify the Recipient of such later date.

Section 2.04. The Regional Executive Secretary and any person or persons whom he or she shall designate in writing is designated as representative of the Recipient for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 of this Agreement and Article V of the General Conditions.
ARTICLE III

Execution of the Project

Section 3.01. (a) The Recipient declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, without any limitation or restriction upon any of its other obligations under the GEF Trust Fund Agreement, shall carry out Part A of the Project through KMFRI, with the assistance of South Africa, Seychelles, Tanzania, Madagascar, Mauritius, Comoros and Mozambique, with due diligence and efficiency and in conformity with appropriate financial, technical, engineering, administrative practices, and with due regard for environmental practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without any limitation or restriction upon the provisions of paragraph (a) of this Section, and except as the Recipient and the Bank shall otherwise agree, the Recipient shall enable the Implementing Entities to carry out their respective parts of the Project, in accordance with the Implementation Program set forth in Schedule 4 to this agreement and Schedule 1 of their respective Project Agreement.

(c) The Recipient shall make the proceeds of the GEF Trust Fund available to KMFRI, for the purposes of carrying out the Project, under the KMFRI Subsidiary Agreement, to be entered between the Recipient and KMFRI, under terms and conditions which shall have been approved by the Bank, such subsidiary agreement to include, inter alia:

(i) that the Recipient shall facilitate the opening of the Special Account and deposit of the proceeds of the Grant;

(ii) that the Recipient shall cause KMFRI to carry out the Project with due diligence and efficiency, and in accordance with the terms of this Agreement, particularly with respect to financial management and procurement requirements;

(iii) that the Recipient shall cause KMFRI to take out and maintain with responsible insurers, or to make other provision satisfactory to the Bank for insurance against such risks and in such amounts as shall be consistent with appropriate practice;

(iv) that the Recipient shall cause KMFRI to at all times operate and maintain its equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and environmental practices;
(v) that KMFRI shall host the Regional Management Unit (RMU) in charge of the coordination of the Project; and

(vi) that KMFRI shall cause the RMU to assist with the reporting obligations set forth in connection with the Project, including to compile quarterly reports received from each NMU of each Participating Country, including Kenya, for review and discussion and further submission to the Bank, in accordance with paragraph 6 of Schedule 4 to this Agreement, and as further detailed in the PIM.

(d) The Recipient shall exercise its rights under the KMFRI Subsidiary Agreement in such manner as to protect the interests of the Recipient and the Bank and to accomplish the objectives of the Project, and, except as the Bank shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive such subsidiary agreement or any provision thereof.

Section 3.02. (a) Except as the Bank shall otherwise agree, procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the GEF Trust Fund Grant shall be governed by the provisions of Schedule 3 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Recipient shall update the Procurement Plan in accordance with guidelines acceptable to the Bank, and furnish such update to the Bank not later than 12 months after the date of the preceding Procurement Plan, for the Bank’s approval.

Section 3.03. For the purposes of Section 9.08 of the General Conditions and without limitation thereto, the Recipient shall:

(a) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Recipient and the Bank, a plan for the sustainability of the Project; and

(b) afford the Bank a reasonable opportunity to exchange views with the Recipient on said plan.

Section 3.04. The Recipient and the Bank hereby agree that the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods, works and services, plans and schedules, records and reports, maintenance and land acquisition), in respect of the Project, shall be carried out by the Participating Countries or by KMFRI, as the case may be, pursuant to Section 2.03 of the respective Project Agreements.
ARTICLE IV

Financial Covenants

Section 4.01. (a) The Recipient shall cause KMFRI to establish and maintain a financial management system, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Bank, adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Recipient shall cause KMFRI to:

(i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Bank) audited, in accordance with consistently applied auditing standards acceptable to the Bank, by independent auditors acceptable to the Bank;

(ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Bank), (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Bank), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Bank; and

(iii) furnish to the Bank such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Bank may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the GEF Trust Fund Grant Account were made on the basis of statements of expenditure, the Recipient shall cause KMFRI to:

(i) retain, until at least one year after the Bank has received the audit report for, or covering, the fiscal year in which the last withdrawal from the GEF Trust Fund Grant Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;

(ii) enable the Bank’s representatives to examine such records; and
(iii) ensure that such reports and statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Bank), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Recipient’s progress reporting obligations set out in paragraph 6 of Schedule 4 to this Agreement, the Recipient shall cause KMFRI to prepare and furnish to the Bank a financial monitoring report, in form and substance satisfactory to the Bank, which:

(i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the GEF Trust Fund Grant, and explains variances between the actual and planned uses of such funds;

(ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and

(iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Bank not later than 45 days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Bank not later than 45 days after each subsequent calendar quarter, and shall cover such calendar quarter.

ARTICLE V

Remedies of the Bank

Section 5.01. Pursuant to Section 6.02 (k) of the General Conditions, the following additional events are specified:

(a) the Memorandum of Understanding shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Participating Countries to carry out the Program;

(b) France shall have taken any action so as to affect materially and adversely the ability of the Participating Countries to carry out the Program; and
as a result of events which have occurred after the date of the GEF Trust Fund Agreement, an extraordinary situation shall have arisen which shall make it improbable that any of the Participating Country will be able to perform its obligations under its respective Project Agreement.

ARTICLE VI

Effectiveness, Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the GEF Trust Fund Grant within the meaning of Section 12.01 (c) of the General Conditions:

(a) the MOU referred to in Preamble (C) has become effective;

(b) France has declared its adherence to the Project;

(c) the Regional Executive Secretary and Financial Specialist have been appointed to the Regional Management Unit, with qualification and experience satisfactory to the Bank;

(d) the National Project Implementation Units have been established and appropriate staff has been identified in each Participating Country;

(e) the 90-Day Advance Accounts have been opened by each Participating Country;

(f) the Project Implementation Manual has been adopted by all Participating Countries, in form and substance satisfactory to the Bank; and

(g) the Subsidiary Agreement with KMFRI has become effective.

Section 6.02. The following event is specified as additional matter, within the meaning of Section 12.02 of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank, namely that the Project Agreements have been duly authorized or ratified by the Participating Countries, and are legally binding upon such Participating Countries in accordance with their terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.
ARTICLE VII

Representative of the Recipient; Addresses

Section 7.01. Except as provided in Section 2.04 of this Agreement, the Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Recipient:

The Minister for Finance
Ministry of Finance
P.O. Box 30007
Nairobi, Kenya

Cable address: FINANCE
Facsimile: 254 2 240045
NAIROBI 254 2 219365

For the Bank:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address: INTBAFRAD
Telex: 248423 (MCI)
Facsimile: (202) 477-6391
Washington, D.C. 64145 (MCI)
IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Nairobi, Kenya, as of the day and year first above written.

REPUBLIC OF KENYA

By: /s/ Amos Kimunya

Authorized Representative

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
as an Implementing Agency of the Global Environment Facility

By: /s/ Colin Bruce

Authorized Representative
SCHEDULE 1

Withdrawal of the Proceeds of the GEF Trust Fund Grant

A. General

1. The table below sets forth the Categories of items to be financed out of the proceeds of the GEF Trust Fund Grant, the allocation of the amounts of the GEF Trust Fund Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount of the GEF Trust Fund Grant (Expressed in US Dollars)</th>
<th>% of Expenditures to be Financed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Goods and Works</td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>(a) Kenya</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>(b) South Africa</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>(c) Seychelles</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>(d) Tanzania</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>(e) Madagascar</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>(f) Mauritius</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>(g) Comoros</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>(h) Mozambique</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>(i) RMU</td>
<td>618,000</td>
<td></td>
</tr>
<tr>
<td>(2) Consultant Services</td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>(a) Kenya</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td>(b) South Africa</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td>(c) Seychelles</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td>(d) Tanzania</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td>(e) Madagascar</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td>(f) Mauritius</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td>(g) Comoros</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td>(h) Mozambique</td>
<td>35,000</td>
<td></td>
</tr>
<tr>
<td>(i) RMU</td>
<td>2,547,700</td>
<td></td>
</tr>
<tr>
<td>(3) Training and Workshops</td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>(a) Kenya</td>
<td>74,571</td>
<td></td>
</tr>
<tr>
<td>(b) South Africa</td>
<td>80,526</td>
<td></td>
</tr>
<tr>
<td>(c) Seychelles</td>
<td>80,526</td>
<td></td>
</tr>
<tr>
<td>(d) Tanzania</td>
<td>70,250</td>
<td></td>
</tr>
</tbody>
</table>
(e) Madagascar 80,526  
(f) Mauritius 77,798  
(g) Comoros 79,276  
(h) Mozambique 80,526  
(i) RMU 827,000  

(4) Operating Costs  

(a) Kenya 85,223  
(b) South Africa 77,448  
(c) Seychelles 37,223  
(d) Tanzania 80,723  
(e) Madagascar 85,223  
(f) Mauritius 14,925  
(g) Comoros 18,638  
(h) Mozambique 80,723  
(i) RMU 3,674,000  

(5) Unallocated  

TOTAL $12,000,000  

2. For the purposes of this Schedule:

(a) the term “operating costs” means the incremental operating costs incurred on account of Project implementation, including commercial lease of vessels, operation and maintenance costs for vessels, vehicles and equipment, communication expenses, office supplies and maintenance costs, travel cost and per diem for Project staff; and

(b) it is understood that the percentages of expenditures to be financed under the table set forth in paragraph 1 of this Schedule have been calculated on the basis of the provisions of a letter from the Ministry of Finance, based on its law, which provides for an exemption of taxes and customs duties levied in the territory of the Borrower on goods, works and services for this Project. If any change is made to said law, which would have the effect of levying taxes or customs duties on such goods, works and services, the percentages referred to above shall be decreased in accordance with the provisions of Section 5.08 of the General Conditions.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

4. The Bank may require withdrawals from the GEF Trust Fund Grant Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a)
goods costing less than $250,000 equivalent per contract; (b) works costing less than $50,000 equivalent per contract; (c) services of individual consultants costing less than $50,000 equivalent per contract; (d) services of consulting firms costing less than $100,000 equivalent per contract; and (e) training and workshops, and operating costs, all under such terms and conditions as the Bank shall specify by notice to the Recipient.

5. The Recipient may request withdrawals from the GEF Trust Fund Grant Account to be made on the basis of reports to be submitted to the Bank in form and substance satisfactory to the Bank, such reports to include the FMR and any other information as the Bank shall specify by notice to the Recipient. In the case of the first such request submitted to the Bank before any withdrawal has been made from the GEF Trust Fund Grant Account, the Recipient shall submit to the Bank only a statement with the projected sources and applications of funds for the Project for the six-month period following the date of such request.

6. If the Bank shall have determined at any time that any amount of the GEF Trust Fund Grant was used in a manner inconsistent with the provisions of this Agreement, the Recipient shall, promptly upon notice from the Bank, refund to the Bank for deposit into the GEF Trust Fund Grant Account an amount equal to the amount so used.

B. Special Account and 90-Day Advance Accounts

1. The Recipient shall, for the purposes of the Project, open and maintain a special deposit account in Dollars in the Project’s name and managed by KMFRI, in a commercial bank acceptable to the Bank, on terms and conditions satisfactory to the Bank, including appropriate protection against set-off, seizure and attachment.

2. After the Bank has received evidence satisfactory to it that the Special Account has been opened, withdrawals from the GEF Trust Fund Grant Account of amounts to be deposited into the Special Account shall be made as follows:

   (a) if the Recipient is not making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex A to this Schedule 1; and

   (b) if the Recipient is making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex B to this Schedule 1.

3. Payments out of the Special Account shall be made exclusively for Eligible Expenditures. For each payment made by the Recipient out of the Special Account, the Recipient shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for Eligible Expenditures.

4. Notwithstanding the provisions of Part B.2 of this Schedule, the Bank shall not be required to make further deposits into the Special Account:
(a) if the Bank, at any time, is not satisfied that the reports referred to in Part A.5 of this Schedule 1 adequately provide the information required for Report-based Disbursements;

(b) if the Bank determines at any time that all further withdrawals for payment of Eligible Expenditures should be made by the Recipient directly from the GEF Trust Fund Grant Account; or

(c) if the Recipient shall have failed to furnish to the Bank, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Bank pursuant to said Section in respect of the audit of: (A) the records and accounts for the Special Account; or (B) the records and accounts reflecting expenditures with respect to which withdrawals were Report-based Disbursements or were made on the basis of statements of expenditure, as the case may be.

5. The Bank shall not be required to make further deposits into the Special Account in accordance with the provisions of Part B.2 of this Schedule if, at any time, the Bank shall have notified the Recipient of its intention to suspend in whole or in part the right of the Recipient to make withdrawals from the GEF Trust Fund Grant Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Bank shall determine, in its sole discretion, whether further deposits into the Special Account may be made and what procedures should be followed for making such deposits, and shall notify the Recipient of its determination.

6. (a) If the Bank determines at any time that any payment out of the Special Account was made for an expenditure which is not an Eligible Expenditure, or was not justified by the evidence furnished to the Bank, the Recipient shall, promptly upon notice from the Bank, provide such additional evidence as the Bank may request, or deposit into the Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment. Unless the Bank shall otherwise agree, no further deposit by the Bank into the Special Account shall be made until the Recipient has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank determines at any time that any amount outstanding in the Special Account will not be required to cover payments for Eligible Expenditures during the six-month period following such determination, the Recipient shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) The Recipient may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Bank made pursuant to subparagraph (a), (b) or (c) of this paragraph 6 shall be credited to the GEF Trust Fund Grant Account for subsequent withdrawal or for cancellation in accordance with the provisions of the GEF Trust Fund Grant Agreement.
7. **90-Day Advance Accounts**

(a) The Recipient may withdraw from the Special Account and deposit into each 90-Day Advance Account sufficient funds to facilitate implementation of the Project, provided that the Recipient shall at no time cause the amount held in any 90-Day Advance Account to exceed the equivalent of $36,000 for KMFRI for the national component, $40,000 for South Africa, $34,000 for Seychelles, $44,000 for Tanzania, $44,000 for Madagascar, $24,000 for Mauritius, $28,000 for Comoros and $44,000 for Mozambique.

(b) Payments out of 90-Day Advance Accounts shall only be made for eligible expenditures in respect of Categories (1) to (4) set forth in the table in Part A.1 of Schedule 1 to this Agreement.

(c) Any withdrawal from any 90-Day Advance Account must be justified to the Recipient by the same documentation and other evidence regarding eligible expenditures provided for under paragraph 3 of this Schedule.

(d) If the Bank or the Recipient shall have determined at any time that any amount outstanding on any 90-Day Advance Account will not be required to cover further payments for eligible expenditures, the relevant implementing agency shall, promptly upon notice from the Bank or the Recipient, refund to the Special Account such outstanding amount.
Annex A

to

SCHEDULE 1

Operation of Special Account
When Withdrawals Are Not
Report-based Disbursements

1. For the purposes of this Annex, the term “Authorized Allocation” means the amount of US$1,500,000 initially, and increasing to US$3,000,000 once Financial Management Reporting-based disbursement is approved (or 12 months after Effectiveness, whichever comes first), to be withdrawn from the GEF Trust Fund Grant Account and deposited into the Special Account pursuant to paragraph 2 of this Annex.

2. Withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

   (a) For withdrawals of the Authorized Allocation, the Recipient shall furnish to the Bank a request or requests for deposit into the Special Account of an amount or amounts which in the aggregate do not exceed the Authorized Allocation. On the basis of each such request, the Bank shall, on behalf of the Recipient, withdraw from the GEF Trust Fund Grant Account and deposit into the Special Account such amount as the Recipient shall have requested.

   (b) For replenishment of the Special Account, the Recipient shall furnish to the Bank requests for deposit into the Special Account at such intervals as the Bank shall specify. Prior to or at the time of each such request, the Recipient shall furnish to the Bank the documents and other evidence required pursuant to Part B.3 of Schedule 1 to this Agreement for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Recipient, withdraw from the GEF Trust Fund Grant Account and deposit into the Special Account such amount as the Recipient shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for Eligible Expenditures. Each such deposit into the Special Account shall be withdrawn by the Bank from the GEF Trust Fund Grant Account under one or more of the Eligible Categories.

3. The Bank shall not be required to make further deposits into the Special Account, once the total unwithdrawn amount of the GEF Trust Fund Grant minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions shall equal the equivalent of twice the amount of the Authorized Allocation. Thereafter, withdrawal from the GEF Trust Fund Grant Account of the remaining unwithdrawn amount of the GEF Trust Fund Grant shall follow such procedures as the Bank shall specify by notice to the Recipient. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for Eligible Expenditures.
Annex B

to

SCHEDULE 1

Operation of Special Account When Withdrawals Are Report-based Disbursements

1. Withdrawals from the GEF Trust Fund Grant Account shall be deposited by the Bank into the Special Account in accordance with the provisions of Schedule 1 to this Agreement. Each such deposit into the Special Account shall be withdrawn by the Bank from the GEF Trust Fund Grant Account under one or more of the Eligible Categories.

2. Upon receipt of each application for withdrawal of an amount of the GEF Trust Fund Grant, the Bank shall, on behalf of the Recipient, withdraw from the GEF Trust Fund Grant Account and deposit into the Special Account an amount equal to the lesser of: (a) the amount so requested; and (b) the amount which the Bank has determined, based on the reports referred to in Part A.5 of this Schedule 1 applicable to such withdrawal application, is required to be deposited in order to finance Eligible Expenditures during the three-month period following the date of such reports.
SCHEDULE 2

Description of the Project

The objectives of the Project are to: (i) identify and study exploitable offshore fish stocks within the Project Area, and differentiate between environmental and anthropogenic impacts on shared fisheries; (ii) develop institutional and human capacity through training and career building; (iii) develop a regional fisheries management structure and associated harmonized legislation; and (iv) mainstream biodiversity in national fisheries management policy and through national participation in regional organizations that promote sustainable exploitation of fisheries resources.

The Project consists of the following parts, subject to such modifications thereof as the Recipient and the Bank may agree upon from time to time to achieve such objectives.

Part A: Data Gap Analysis, Data Archiving, and Information Technology

Establishment of a regional data management system, through: (i) consolidation and evaluation of key national datasets of fish and fisheries, repatriation and consolidation of data from various national and international sources; (ii) compiling of a data atlas and conducting a gap analysis to determine actions to be taken; and (iii) establishment of information technology, data handling and communications at the regional and national levels; all through technical advisory services, training, purchase of equipment, and workshops to consolidate data collection.

Part B: Assessment and Sustainable Utilization of Crustaceans

Assessment of the stock dynamics of shallow and deep water crustaceans and their fisheries, including: (i) distribution, stock discrimination and biological reference points of key resources; (ii) ship-based surveys to assess the potential of new and existing fisheries; and (iii) preparing a by-catch assessment including utilization, reduction and ecosystems impacts; all through provision of technical advisory services, wet leasing of ships time, aerial surveys, trawl gear, logistical expenses associated with ship cruises, remote sensing, trainings, workshops, pilot studies, and data analysis.

Part C: Assessment and Sustainable Utilization of Demersal Fish

Assessment of the stock dynamics of demersal species and their fisheries, including: (i) distribution, stock discrimination and biological reference points of key resources; (ii) ship-based surveys to assess the potential of new and existing fisheries; and (iii) preparing a by-catch assessment including utilization, reduction and ecosystems impacts; all through the provision of technical advisory services, wet leasing of ships time, aerial surveys, trawl gear,
logistical expenses associated with ship cruises, remote sensing, trainings, workshops, pilot studies, and data analysis.

**Part D: Assessment and Sustainable Utilization of Pelagic Fish**

Assessment of the stock dynamics of large, small and meso-pelagic species, and development of strategies to optimize small and large-scale pelagic fisheries, including: (i) ship-based surveys to assess the potential of new and existing pelagic fisheries; (ii) studies on migration of selected large pelagic species; and (iii) study on optimization and development of fish aggregating devices for large and small scale pelagic fisheries; through the provision of technical advisory services, wet leasing of ships time, aerial surveys, ships gear, logistical expenses associated with ship cruises and data collection, remote sensing, trainings, workshops, pilot studies on gear optimization, and data analysis.

**Part E: Mainstreaming Biodiversity in National and Regional Fisheries Management**

Carrying out of: (i) assessment of the state of knowledge of non-consumptive resources and marine biodiversity for inclusion in the data atlas; (ii) identification of key biodiversity values; (iii) baseline assessments of fisheries interactions with other marine species; (iv) GIS mapping of key marine species; and (v) assessments of marine biodiversity as alternative sources of income.

**Part F: Strengthening Regional and National Fisheries Management**

Strengthening national and regional fisheries management institutions, through: (i) identification of relevant national and international legislation and other instruments relevant to the Project’s objectives; (ii) assistance in the harmonization of legislation between countries; and (iii) development of regional resource management structures and capacity by working closely with the SWIOFC.

* * *

The Project is expected to be completed by May 31, 2011.
SCHEDULE 3

Procurement and Consultants’ Services

Section I. General

A. All goods, works and services (other than consultants’ services) shall be procured in accordance with the provisions of Section I of the “Guidelines: Procurement under IBRD Loans and IDA Credits” dated May 2004 and October 2006 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants’ services shall be procured in accordance with Sections I and IV of the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” dated May 2004 and October 2006 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Bank of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants’ Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts for goods shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Recipient.

B. Other Procurement Procedures

1. National Competitive Bidding. Goods estimated to cost less than $250,000 equivalent per contract may be procured under contracts awarded on the basis of National Competitive Bidding.

2. Shopping. Contracts for goods and works estimated to cost less than $50,000 equivalent per contract, may be procured under contracts awarded on the basis of Shopping.

3. Direct Contracting. Goods which the Bank agrees meet the requirements for Direct Contracting may be procured in accordance with the provisions of said procurement method.
Section III. Particular Methods of Procurement of Consultants’ Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants’ services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than $200,000 equivalent per contract may comprise entirely national consultants of the Participating Countries.

B. Other Procedures

1. Least-cost Selection. Services for assignments which the Bank agrees meet the requirements of paragraph 3.6 of the Consultant Guidelines may be procured under contracts awarded on the basis of Least-cost Selection in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

2. Selection Based on Consultants’ Qualifications. Services estimated to cost less than $100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

3. Single Source Selection. Services for tasks in circumstances which meet the requirements of paragraph 3.10 of the Consultant Guidelines for Single Source Selection, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraphs 3.9 through 3.13 of the Consultant Guidelines.

4. Individual Consultants. Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis, subject to prior review by the Bank.

Section IV. Review by the Bank of Procurement Decisions

Except as the Bank shall otherwise determine by notice to the Recipient, the following contracts shall be subject to Prior Review by the Bank: (a) each contract for goods estimated to cost the equivalent of $250,000 or more and all contracts under the Direct Contracting method; and (b) each contract for consultants’ services provided by a firm estimated to cost the equivalent of $100,000 or more and each contract awarded under sole source. In addition, with respect to each contract for the employment of individual
consultants estimated to cost the equivalent of $50,000 or more, the report on the qualifications and experience of all evaluated candidates, the terms of reference and the terms of employment of the consultants shall be subject to prior approval by the Bank. All other contracts shall be subject to Post Review by the Bank.
SCHEDULE 4

Implementation Program

1. Overall Project Implementation

The Regional Policy and Steering Committee (RPSC) shall be responsible for reviewing the proposed annual work plans and budgets, monitoring implementation performance, making operational recommendations, and fostering inter-ministerial and regional cooperation in the management of the Project. It shall meet in person at least once a year and shall be comprised of senior permanent members from the Ministries supervising the National Management Units in each Participating Country and France.

2. Regional Management Unit

(a) The Recipient shall host the RMU, within KMFRI, for the purposes of: (i) carrying out Part A of the Project with the assistance of South Africa, Seychelles, Tanzania, Madagascar, Mauritius, Comoros and Mozambique; (ii) providing financial management, regional procurement, ship coordination and harmonization services to the National Management Units; and (iii) taking overall responsibility for Project management and coordination, including consolidating monitoring reports from the National Management Units and integrating results in the annual work plans.

(b) Without limitation upon the provision of paragraph (a) of this Section, the Recipient shall maintain the RMU throughout the period of implementation of the Project, in form and with staffing, functions and resources satisfactory to the Bank, including: (i) a Regional Executive Secretary; (ii) a regional financial manager; and (iii) a Ships Manager.

(c) Not later than 6 months after the Effectiveness Date, the Recipient shall cause the RMU to establish a financial management system, in form and substance satisfactory to the Bank.

3. National Management Units

(a) In order to facilitate the implementation of each component, each Participating Country shall establish and maintain, throughout the period of implementation of the Project, a National Management Unit pursuant to the relevant Project Agreement, for the purpose of: (i) the day-to-day administration of part of the Project in accordance with the annual work plan, including procurement, financial management, monitoring and reporting on activities; (ii) preparing regular assessment of data and samples derived from the activities undertaken under the Project and annual progress reports for review by the RMU; and (iii) ensuring effective coordination with the other entities involved in the implementation of the Project.
(b) Without limitation to subparagraph (a) of this Section, each Participating Country shall maintain the National Management Unit throughout the period of implementation of the Project, in form and with staffing, functions and resources satisfactory to the Bank, including: a National Coordinator, a National Procurement and Financial Manager, National Component Coordinators and Sub-component Coordinators.

4. **Project Implementation Manual**

   (a) The Recipient shall adopt the Project Implementation Manual (PIM), in form and substance satisfactory to the Bank, including the Monitoring and Evaluation Manual (M&E Manual) and containing detailed arrangements and procedures for: (i) institutional coordination and day-to-day implementation of the Project; (ii) disbursement and financial management; (iii) procurement; and (iv) reporting; and such other administrative, financial, technical and organizational arrangements and procedures as shall be required for the Project.

   (b) The Recipient shall carry out the Project in accordance with the arrangements and procedures set out in the PIM, provided, however, that in case of any conflict between the arrangements and procedures of said manuals and the provisions of this Agreement, the provisions of this Agreement shall prevail, and, except as the Bank shall otherwise agree, shall not amend, abrogate or waive any provision of said manuals, if such amendment, abrogation or waiver may, in the opinion of the Bank, materially or adversely affect the implementation of the Project.

5. **Annual Work Plans**

   The Recipient shall, with the assistance of South Africa, Seychelles, Tanzania, Madagascar, Mauritius, Comoros and Mozambique, pursuant to the relevant Project Agreement, prepare Annual Work Plans for approval by the RPSC. The National Component Coordinators will be responsible for providing annual work plans for the component they are coordinating.

6. **Monitoring and Reporting**

   The Recipient shall cause KMFRI to:

   (a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators set forth in Schedule 5 to this Agreement, and in more detail in the PIM, the carrying out of the Project and the achievement of the objectives thereof;

   (b) furnish to the Bank, an annual report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph 6 (a) of this Schedule, as well as the reports prepared by each Participating Country in accordance with the relevant Project Agreement, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure
the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Bank, the annual report referred to in paragraph 6 (b) of this Schedule, and thereafter act promptly and diligently in order to take, or cause to be taken, any corrective action deemed necessary to remedy any shortcoming identified in the implementation of the Project, or to implement such measures as may have been agreed between the Recipient and the Bank in furtherance of the objectives of the Project.

7. Midterm Review

(a) The Recipient shall, with the assistance of South Africa, Seychelles, Tanzania, Madagascar, Mauritius, Comoros and Mozambique, pursuant to the relevant Project Agreement, carry out, jointly with the Bank, not later than December 31, 2008, a comprehensive midterm review aimed at: (i) documenting progress toward achieving the Project objectives; (ii) identifying and resolving obstacles to Project implementation; (iii) adjusting, in agreement with the Bank, targets and corresponding programs to reflect progress achieved in the implementation of the Project as of the date of the review; and (iv) an overall evaluation of the Project against the indicators set forth in the PIM.

(b) The Recipient shall, not later than four weeks prior to the midterm review referred to in paragraph (a) above, with the assistance of South Africa, Seychelles, Tanzania, Madagascar, Mauritius, Comoros and Mozambique pursuant to the relevant Project Agreement, furnish to the Bank a midterm report, in such detail as the Bank shall reasonably request, including an evaluation of the progress achieved in the Project implementation.

3. Promptly after completing the midterm review, the Recipient shall take, or cause to be taken, all measures required to fulfill the recommendations arising out of said review for the efficient completion of the Project and the achievement of the objectives thereof, with due diligence and efficiency and in accordance with appropriate practices, taking into account the Bank’s comments thereon.
SCHEDULE 5

Performance Indicators

The Recipient shall implement the Project in accordance with, *inter alia*, the performance indicators set forth below:

1. Adoption of at least one national or multi-national management plan for a specific demersal, pelagic or crustacean fishery by each Participating Country by the end the Project.

2. Regional fisheries database fully operational and inclusive of new and historic data, which contributes to the development of regional management plans for at least two (2) fisheries by the end of the Project.

3. Production of a baseline assessment (accompanied by database) that defines the current status of relevant crustacean, demersal and pelagic fisheries in each of the Participating Countries by the end of the Project.

4. Production of a sustainable fisheries management framework leveraged onto the agenda of regional fisheries management bodies that include biodiversity conservation as an underlying principle.