

PERFORMANCE REVIEWS BY REGIONAL FISHERY BODIES:  
INTRODUCTION, SUMMARIES, SYNTHESIS AND BEST PRACTICES

Volume I: CCAMLR, CCSBT, ICCAT, IOTC, NAFO, NASCO, NEAFC





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**PERFORMANCE REVIEWS BY REGIONAL FISHERY BODIES:  
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**Volume I: CCAMLR, CCSBT, ICCAT, IOTC, NAFO, NASCO, NEAFC**

By

**Marika Ceo**

FAO Consultant  
Rome, Italy

**Sarah Fagnani**

FAO Consultant  
Rome, Italy

**Judith Swan**

FAO Consultant  
Rome, Italy

**Kumiko Tamada**

FAO Intern  
Rome, Italy

**Hiroto Watanabe**

Senior Fisheries Officer  
Policy, Economics and Institutions Service (FIPI)  
Fisheries and Aquaculture Policy and Economics Division  
Fisheries and Aquaculture Department  
Rome, Italy

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## PREPARATION OF THIS CIRCULAR

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This document was prepared collaboratively by Ms Marika Ceo, Ms Sarah Fagnani, Ms Judith Swan, Ms Kumiko Tamada and Mr Hiromoto Watanabe as well as in cooperation with secretaries of relevant RFB/RFMOs through the Regional Fishery Body Secretariats Network (RSN).

### ABSTRACT

Ceo, M.; Fagnani, S.; Swan, J.; Tamada, K.; and Watanabe, H.

*Performance Reviews by Regional Fishery Bodies: Introduction, summaries, synthesis and best practices, Volume I: CCAMLR, CCSBT, ICCAT, IOTC, NAFO, NASCO, NEAFC.* FAO Fisheries and Aquaculture Circular. No.1072. Rome, FAO. 2012. 92 pp.

After introduction and background (Part 1), this publication contains a compendium of the Executive Summaries of performance reviews conducted by the Commission of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC), the Northwest Atlantic Fisheries Organization (NAFO), the North Atlantic Salmon Conservation Organization (NASCO) and the North East Atlantic Fisheries Commission (NEAFC) in Part 2.

It is followed by the synthesis of performance reviews and recommendations, which could be shared as potential best practices for future based on the experience of all performance reviews covered in this volume. While preparing this volume, additional performance reviews have been conducted on several RFBs, which are expected to be covered in the second volume of this document for the same purpose. Those two volumes of documents are expected to serve as at-a-glance reference with regard to performance reviews conducted by RFBs.



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**ACRONYMS**

ATCM	Antarctic Treaty Consultative Meeting
ATS	Antarctic Treaty system
BCD	Bluefin Catch Documentation Program
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CDP	catch documentation programme
CDS	catch documentation scheme
CM	conservation measure
COFI	Committee on Fisheries
1982 Convention	1982 United Nations Convention on the Law of the Sea
Code of Conduct	1995 FAO Code of Conduct for Responsible Fisheries
CP	Contracting Party
CPCs	Contracting Parties, Cooperating non-Contracting Parties, Entities and Fishing Entities
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CPPS	Permanent Commission for the South Pacific
C-VMS	centralized vessel monitoring system
DCD	Dissostichus catch document
E-CDS	Electronic Web-based Catch Documentation Scheme
EEZ	exclusive economic zone
ERS	ecologically related species (CCSBT)
ESC	Extended Scientific Committee (CCSBT)
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FCWC	Fishery Committee of the West Central Gulf of Guinea
FIPI	Policy, Economics and Institutions Service, FAO Fisheries and Aquaculture Department
FMSY	fishing mortality that can produce MSY
GC	General Council (NAFO)
GFCM	General Fisheries Commission for the Mediterranean
HSTF	High Seas Task Force
IATTC	Inter-American Tropical Tuna Commission
IASRB	International Atlantic Salmon Research Board (NASCO)
ICCAT	International Commission for the Conservation of Atlantic Tunas

ICES	International Council for the Exploration of the Sea
ICJ	International Court of Justice
ICP	Informal Consultative Process on Oceans and the Law of the Sea
IGO	intergovernmental organization
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
IUU fishing	illegal, unreported and unregulated fishing
IWC	International Whaling Commission
MCS	monitoring, control and surveillance
MoU	Memorandum of Understanding
MPA	marine protected area
MSY	maximum sustainable yield
NAFO	Northwest Atlantic Fisheries Organization
NAMMCO	North Atlantic Marine Mammal Commission
NASCO	North Atlantic Salmon Conservation Organization
NCP	non-Contracting Party
NEAFC	North-East Atlantic Fisheries Commission
NGO	non governmental organization
NPAFC	North Pacific Anadromous Fish Commission
OECD	Organization for Economic Cooperation and Development
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PRWG	Performance Review Working Group
RFB	regional fishery body
RFMO	regional fisheries management organization
RFO	regional fisheries organization
RP	Review Panel
RSN	Regional Fishery Body Secretariats Network
SBT	Southern Bluefin Tuna
SC	Scientific Council
SCAF	Scientific Committee on Antarctic Fishing
SCIC	CCAMLR Standing Committee on Implementation and Compliance
SCRS	ICCAT Standing Committee on Research and Statistics
SEAFDEC	Southeast Asian Fisheries Development Center

SEAFO	South-east Atlantic Fisheries Organization
SIOFA	Southern Indian Ocean Fisheries Agreement
SPRFMO	South Pacific Regional Fisheries Management Organization
STACFAC	Standing Committee on Fishing Activities of non-Contracting Parties in the Regulatory Area (NAFO)
STACTIC	Standing Committee on International Control (NAFO)
SWIOFC	South West Indian Ocean Fisheries Commission
TAC	total allowable catch
TAE	total allowable effort
TIS	trade information scheme
TOR	terms of reference
UNCLOS	United Nations Conference on the Law of the Sea
UN DOALOS	United Nations Office of Legal Affairs/Division for Ocean Affairs and the Law of the Sea
UNEP	United Nations Environment Programme
UNFSA	United Nations Fish Stocks Agreement
UNGA	United Nations General Assembly
VME	vulnerable marine ecosystems
VMS	vessel monitoring system
WCPFC	Western and Central Pacific Fisheries Commission
WG	Working Group
WTO	World Trade Organization
WWF	World Wide Fund for Nature



## PART 1

### INTRODUCTION AND BACKGROUND

#### Introduction

The role, obligations and stature of regional fishery bodies (RFBs), including regional fisheries management organizations (RFMOs), in fisheries governance are growing steadily. This is reflected, *inter alia*, in:

- a. The international fisheries instruments;
- b. the expanding number of new RFBs established or under negotiations in recent years;<sup>1</sup>
- c. the strengthened cooperative action among RFBs with common interests; and
- d. the innovative policy, legal and institutional reforms that many RFBs are taking, mainly in an effort to rebuild depleted stocks or prevent further decline.

The contribution of RFBs to fisheries governance is further shown by their wide ranging activities to implement the international fisheries instruments and their increasingly harmonized and coordinated approaches to current and emerging issues.<sup>2</sup>

Although the priorities and activities of RFBs vary, many are focusing their efforts on implementing measures that operationalize key aspects of the 1993 FAO Compliance Agreement,<sup>3</sup> the 1995 FAO Code of Conduct for Responsible Fisheries (Code of Conduct) and the 1995 United Nations Fish Stocks Agreement (UNFSA)<sup>4</sup> as well as other recently concluded international fisheries instruments, such as the International Plans of Action elaborated under the Code of Conduct and the 2009 FAO Agreement on Port State Measures.<sup>5</sup> Important steps towards the implementation of these instruments have been taken through the review and reform of RFB mandates by their Members.

Many RFBs are taking steps to strengthen fisheries governance through adopting management measures based on the ecosystem approach and/or the precautionary approach. They are also working to strengthen international cooperation, promote transparency, address non-members and enhance monitoring, control and surveillance (MCS) measures. Some key MCS initiatives have included the implementation of mandatory vessel monitoring systems (VMS), the adoption of regional schemes for port State measures and the development of vessel lists for both authorized

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<sup>1</sup> These include, since 2000: the Fishery Committee of the West Central Gulf of Guinea (FCWC), the South-East Atlantic Fisheries Organization (SEAFO), the South Indian Ocean Fisheries Agreement (SIOFA), the South Pacific Regional Fisheries Management Organization (SPRFMO), the Southwest Indian Ocean Fisheries Commission (SWIOFC), the Western and Central Pacific Fisheries Commission (WCPFC), the Central Asian and Caucasus Fisheries and Aquaculture Commission and an agreement to regulate bottom fishing on the high seas in the North Western Pacific Ocean.

<sup>2</sup> See Swan, J. "Summary Information on the Role of International Fishery Organizations or Arrangements and other Bodies Concerned with the Conservation and Management of Living Aquatic Resources", FAO Fisheries Circular No. 985, FIPL/C985, Rome, 2003 and Swan, J. Regional fishery bodies and governance: issues, actions and future directions. *FAO Fisheries Circular* No. 959, Rome, FAO. 2000.

<sup>3</sup> The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

<sup>4</sup> The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks entered into force on 11 December 2001.

<sup>5</sup> FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal Unreported and Unregulated (IUU) Fishing.

fishing vessels and those reported as engaging illegal, unreported and unregulated fishing activities (IUU).

Although considerable progress has been made at regional level, the international community has identified the need to strengthen the overall performance of RFBs to improve the management of fishery resources as well as the compliance with agreed measures. This can be regarded as the major challenge currently facing fisheries governance.

The 2008 FAO Report on the State of World Fisheries and Aquaculture referred to the concern expressed at recent international fora that some RFMOs were failing to adopt management measures even where these are based on the best scientific advice available.<sup>6</sup> The report also noted the following.<sup>7</sup>

Regional fisheries management organizations (RFMOs), the cornerstones of international fisheries governance, are struggling to fulfil their mandates despite concerted efforts to improve their performance. This situation results partly from the frameworks within which they operate and from an apparent lack of political will by members to implement decisions in a timely manner. Moreover, the effectiveness of RFMOs is impaired by: the use of consensus decision-making; placing national interests ahead of good fisheries governance; an unwillingness of members to fund research in support of management; time-lagged implementation of management decisions; a focus on crisis management rather than everyday fisheries management; and the lack of a real connection between day-to-day fisheries management requirements and an annual meeting based on diplomatic practice. However, there is a growing consensus that these fundamental issues require resolution if RFMOs are to be reinvigorated and become truly effective vehicles for sustainable fisheries management.

Renewed attention to the importance of the effective performance of these bodies is reflected in numerous international fora including the FAO Committee on Fisheries (COFI) and the biennial meetings of RFBs as well as the reviews by individual RFBs of their performance and mandates and consequent reforms. At the time of writing, five RFBs had completed their performance reviews following the criteria for reviewing the performance of RFMOs described in paragraph 18 and were in the reform phase,<sup>8</sup> and five others had either begun the reviews or agreed that they should be undertaken.<sup>9</sup> Furthermore NAFO has finalized a comprehensive reform process and developed a process to review its performance.

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<sup>6</sup> The State of World Fisheries and Aquaculture (SOFIA) Fisheries and Aquaculture Department, Food and Agriculture Organization of the United Nations, Rome, 2008, page 71.

<sup>7</sup> Page 69.

<sup>8</sup> RFMOs that have completed performance reviews at the time of writing were the: Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), Commission for the Conservation of Southern Bluefin Tuna (CCSBT), International Commission for the Conservation of Atlantic Tunas (ICCAT), Indian Ocean Tuna Commission (IOTC) and the North East Atlantic Fisheries Commission (NEAFC). The Northwest Atlantic Fisheries Organization (NAFO) and North Atlantic Salmon Conservation Organization (NASCO) have also conducted review processes although not based on criteria similar to those used by other RFMOs, and each is considering further, more comprehensive reviews.

<sup>9</sup> At the time of writing, the performance reviews of the General Fisheries Commission for the Mediterranean (GFCM) and SEAFO were underway. WCPFC conducted an Independent Review of the Interim Arrangements for Scientific Structure and Function in 2008 and decided to conduct a performance review of the Commission as a whole in 2010. As noted above in footnote 7, NAFO and NASCO are each considering further, more comprehensive reviews.

This document will review and summarize the performance review process already conducted by seven RFBs and present potential best practices based on the performance reviews.

## Background

At the Twenty-sixth Session of COFI (COFI 26) in 2005, many FAO Members agreed on the importance of establishing principles to review the performance of RFMOs in meeting their objectives as well as the obligations and principles in relevant international instruments. A cautious approach was favoured, and it was suggested that further discussion was needed on how such reviews should be undertaken and on the concept of independence, in view of RFBs' current assessment activities. Views were expressed that any review of RFMO performance should be in the form of an independent review, even in cases where RFMOs were considering internal assessments. It was thought that the process could be shaped by consultations among RFMOs, and the results fed back to COFI for further actions.<sup>10</sup>

Immediately after COFI 26, at the Fourth Meeting of RFBs (RFB 4) in 2005,<sup>11</sup> participants addressed in greater depth the role of RFBs and external factors affecting fisheries management. This was partly in response to the proposal made in COFI 26 to review the performance of RFMOs in meeting their objectives and the obligations and principles in international instruments. In this context, COFI had stressed the need to develop a process to assess the performance of RFMOs as well as to promote best practices across RFMOs. There was broad support for the COFI proposal but Members called, as a priority, for further clarification on the nature, process and use of the outcome. It was considered that the proposed performance reviews should be independent and recognize the diversities of RFMOs, but should not be an efficiency assessment of secretariats.

The Conference on the Governance of High Seas Fisheries and the UN Fish Stocks Agreement held in St. John's, Canada, in May 2005, called for the mandates of RFMOs to be broadened and strengthened. Participants also indicated that there was considerable merit in establishing effective performance review mechanisms for RFMOs<sup>12</sup> At the Conference, Ministers adopted a declaration that, *inter alia*, recognized that RFMOs today face new challenges and responsibilities and expressed a need for political will to further strengthen and modernize RFMOs.

The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP), which facilitates the review by the United Nations General Assembly (UNGA) of developments in ocean affairs and the law of the sea, addressed the role of RFMOs at its sixth meeting in 2005.<sup>13</sup> The important role of RFMOs was underlined, and a strengthening of their role and modernization of their operation was advocated. The meeting indicated that the point was not to focus on deficiencies or performance or gaps in coverage of RFBs, but to support the trend of enhancement of the performance of RFBs.

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<sup>10</sup> FAO Report of the Twenty-sixth Session of the Committee on Fisheries Rome, 7–11 March 2005, FAO Fisheries Report No. 780. Rome.FAO 2005. 88 p. paragraph 111.

<sup>11</sup> FAO. Report of the Fourth Meeting of Regional Fishery Bodies. Rome, 14–15 March 2005. *FAO Fisheries Report*. No. 778. Rome, FAO. 2005. 29p.

<sup>12</sup> Report of the Conference on the Governance of High Seas Fisheries and the UN Fish Agreement, Moving from Words to Action, hosted by Canada in St. John's from 1–5 May 2005. [www.dfo-mpo.gc.ca/fgc-cgp/conf\\_report\\_e.htm](http://www.dfo-mpo.gc.ca/fgc-cgp/conf_report_e.htm)

<sup>13</sup> Prior to 2005, the first meeting of the ICP in 2000 addressed the improvement of the environment in which regional fisheries organizations function, and recommended that the biennial conference of regional fisheries organizations should consider measures to strengthen further the role of these organizations.

The ICP outcome was followed by the 2005 UNGA Resolution on Sustainable Fisheries (UNGA 60/31), which encouraged States through their participation in RFMOs to initiate processes for their performance review and welcomed the work of FAO in the development of general objective criteria for such reviews. It called for further efforts by RFMOs, as a matter of priority, to strengthen and modernize their mandates to include an ecosystem approach to fisheries management and biodiversity considerations. The Resolution also emphasized the importance of decision-making processes in RFMOs and encouraged the incorporation of a precautionary approach and the adoption of related measures.

The Review Conference on the UNFSA, held in New York in May 2006, reviewed and assessed the adequacy of the provisions of the Agreement and proposed means of strengthening the substance and methods of their implementation.<sup>14</sup> The review and assessment of key issues included the strengthening of RFMOs' mandates and measures to implement modern approaches to fisheries management reflected in the Agreement. In addition the conference recommended a systematic review and assessment of RFMO performance.<sup>15</sup> As a result, actions were agreed that should be taken by States individually and through RFMOs to strengthen mechanisms for international cooperation, including performance reviews. States were to:

- a. urge RFMOs of which they were members to undergo performance reviews on an urgent basis;
- b. encourage an element of independent evaluation in such reviews; and
- c. ensure that the results are made publicly available.

The reviews should use transparent criteria, including best practices of RFMOs.

A call was made for a process to review the performance of RFMOs. The initiation by RFMOs of periodic performance assessments was supported and annual performance reviews were suggested. It was also suggested that organizations should report the results of their assessments and any actions taken to remedy deficiencies to FAO or resumed sessions of the Review Conference.

The UNGA Resolution on Sustainable Fisheries (UNGA 61/105) considered by the Sixty-first Session in 2006 continued to call on RFMOs to strengthen their mandates and the measures they adopt to implement modern approaches to fisheries management. This reflected the recommendation of the Seventh Meeting of the ICP in 2006, that implementation of an ecosystem approach could be achieved through, *inter alia*, where appropriate, strengthening RFMOs, adapting their mandates and modernizing their operations in accordance with international law. Moreover, the UNGA Resolution urged States through RFMOs to undertake performance reviews. It also addressed the process and the criteria for such reviews. RFMOs were encouraged to include some element of independent evaluation and make the results publicly available.

As supported by COFI 26, Japan hosted a joint meeting of tuna RFMOs, with FAO technical cooperation, in Kobe, Japan, in January 2007. The participants included the Secretariats of the five tuna RFMOs<sup>16</sup> as well as their members, cooperating non-members and observers. The RFMOs

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<sup>14</sup> Report of the Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. New York, 22–26 May 2006.

<sup>15</sup> See the recommendations adopted at the Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, 22–26 May 2006. (A/CONF.210/2006/15, Annex), in particular recommendations 32 (a) and 32 (j).

<sup>16</sup> CCSBT, the Inter-American Tropical Tuna Commission (IATTC), ICCAT, IOTC and WCPFC.



agreed to review their performance in accordance with a common methodology and a common set of criteria. Reviews would be undertaken by a team of individuals drawn from the relevant RFMO Secretariat, its Members and outside experts.

It was also agreed in Kobe that the performance reviews should commence as soon as practicable following the development of a framework containing the performance standards (criteria) based on the common elements of the tuna RFMO charters, the best practices of each tuna RFMO and relevant provisions of applicable international instruments. Each tuna RFMO should decide on the timing of its first performance review and on follow-up reviews, which should be undertaken every 3 to 5 years.

The criteria agreed as a result of the Kobe meeting were based on those used by NEAFC in its 2006 performance review. Other RFMOs have also based their reviews on the same or similar criteria, which generally include the following elements:

- a. a legal analysis of the Agreement;
- b. conservation and management (*status of living marine resources; quality and provision of scientific advice; data collection and sharing; adoption of conservation and management measures, including measures adopted at the coastal State level; compatibility of conservation and management measures; fishing allocations*);
- c. compliance and enforcement (*flag State duties; monitoring, control and surveillance activities; port State measures; follow-up on infringements; cooperative mechanisms to detect and deter non-compliance; market-related measures*);
- d. decision-making and dispute settlement;
- e. international cooperation (*transparency; relationship to cooperating non-members; relationship to non-cooperating non-members, cooperation with other RFMOs and special requirements of developing States*); and
- f. financial and administrative issues.

During the Twenty-seventh Session of COFI (COFI 27) in 2007, the issue of strengthening RFMOs and their performance was discussed as a stand-alone agenda item. The Secretariat reported on initiatives in some RFMOs that resulted in reviews or reforms. The Secretariat also noted that a number of FAO RFBs continued to review their roles and responsibilities and were taking appropriate actions to strengthen their effectiveness. Members emphasized the importance of conducting performance reviews of RFMOs and RFBs.

In discussion, several Members stressed the need to develop common criteria for the evaluation of core functions and obligations, while recognizing that flexibility was needed for each RFMO or RFB to decide independently upon the methodology, criteria and frequency of reviews. The Committee also noted that review processes should be transparent with some Members recommending a mixed panel of experts consisting of both external and internal participants.

Immediately after COFI 27, during the First Meeting of the Regional Fishery Body Secretariats Network (RSN),<sup>17</sup> RFB performance enhancement was discussed. The meeting was encouraged to reflect on how RFB members may react to the global call for performance review and how RFB members could be kept informed of developments globally. It was emphasized that it would be up to individual RFBs to decide those matters, and they may or may not agree on the need for a common global standard to underpin any future review process. Nevertheless, it was considered that information sharing and technical cooperation would assist and guide other RFBs to establish

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<sup>17</sup> This was also the Fifth Meeting of RFBs, but its designation had been changed to RSN.

performance enhancement processes. It was also noted that the process is not directed towards an assessment of Secretariats, rather it is aimed at assisting and improving institutional efficiency. The meeting noted that some flexibility is paramount in adopting criteria for the performance review process, particularly where many members of an RFMO may not be party to the UNFSA. It also recognized the value of external input into any evaluation as a means of promoting transparency and legitimacy in the process.

Independent initiatives are increasingly supportive of the actions to strengthen RFMOs. One effort that focused attention on IUU fishing on the high seas and the role played by RFMOs in attempts to combat this problem was undertaken by the Ministerially-led Task Force on IUU Fishing on the High Seas (HSTF).<sup>18</sup> The final report of the Task Force, containing nine proposals, addressed improved high seas governance and, similar to calls from within the UN system, advocated promoting a more systematic approach to the review of RFMO performance. The HSTF report proposed that a model be developed for improved RFMO governance, based on an assessment of best practices worldwide in the implementation of international fisheries instruments.

A group of stakeholders which had been part of the HSTF, namely the Governments of Australia, Canada, New Zealand and the United Kingdom and World Wide Fund for Nature (WWF), commissioned an “Independent High-level Panel: Promoting Better High Seas Governance through a Model for Improved Governance by RFMOs”. The Panel consisted of internationally recognized experts on issues relevant to high seas fisheries governance and RFMOs, and was hosted by the Royal Institute of International Affairs (Chatham House), London. The Panel addressed the proposal to develop a model for improved RFMO governance and identified a thematic approach to its work. The Panel’s report recommended, among other things, that the members of RFMOs should ensure that regular performance assessment is undertaken by each RFMO, whether through self-assessment, external review or a combined panel of internal and external reviewers. Each review should be based on widely recognized best practices and agreed indications, and the results should be made publicly available.<sup>19</sup>

During the Twenty-eighth Session of COFI (COFI 28) in 2009, many Members referred to the performance reviews being undertaken by RFMOs and urged those organizations that had already undertaken such reviews to implement the recommendations, if they had not done so already, so as to strengthen regional governance, modernize mandates and adopt improved approaches to management. Many Members also encouraged RFMOs that had not undertaken reviews to do so.<sup>20</sup>

Immediately after COFI 28, the Second Meeting of the RSN (RSN 2) addressed the theme of RFMO/RFB performance enhancement. Six RFBs reported that they had already concluded performance reviews<sup>21</sup> and several others had begun the process.<sup>22</sup> Some were planning to begin a

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<sup>18</sup> The work of the Task Force extended over a period of two years with the report published in March 2006. High Seas Task Force (2006). *Closing the net: Stopping illegal fishing on the high seas. Summary recommendations.* Governments of Australia, Canada, Chile, Namibia, New Zealand, and the United Kingdom, WWF, International Union for Conservation of Nature (IUCN) and the Earth Institute at Columbia University.

<sup>19</sup> Lodge, Michael, 2007. *Recommended Best Practices for Regional Fisheries Management Organizations: Report of an independent panel to develop a model for improved governance by Regional Fisheries Management Organizations.* The Royal Institute of International Affairs, 2007.

<sup>20</sup> FAO. Report on the twenty-eighth Session of Committee on Fisheries (COFI), 2–6 March, 2009, The Food and Agriculture Organization FAO Committee on Fisheries COFI. page 3, paragraph 15.

<sup>21</sup> CCAMLR, CCSBT, ICCAT, IOTC, NASCO and NEAFC.

<sup>22</sup> Including GFCM, North Pacific Anadromous Fish Commission (NPAFC), IATTC, and the International Council for the Exploration of the Sea (ICES).

review process at a later time, including the Western and Central Pacific Fisheries Commission. One RFB, The Southeast Asian Fisheries Development Centre (SEAFDEC), reported that it is responsible for scientific advice and technical assistance only and had not yet initiated a performance review since it was not a body responsible for management. All final reports are accessible through the public web pages of the organizations.

The RSN 2 Meeting noted the many similarities of the procedures set up by the different organizations. In all cases the review process focused on similar areas including the status of stocks under management, efficiency and adequacy of conservation and management measures, scientific assessment and advice, compliance and control and finance and administration. In some cases the Review Panel (RP) also assessed the cooperation with other organizations as well as transparency and public relations. Furthermore, all reviews compared the performance of the organization with the requirements formulated by international agreements such as the 1982 United Nations Convention on the Law of the Sea (the 1982 Convention), the UNFSA, Code of Conduct and relevant UNGA Resolutions.

Each review process involved external experts who were either tasked to carry out the assessment or who reviewed the assessment carried out by an internal panel. The results of the reviews differed considerably among organizations – some were found to operate quite satisfactorily, others were faced with substantial recommendations for improvement. Participants at RSN 2 reported that their respective organizations were committed to taking on board the suggestions made by the RPs, including those that involved serious consideration of amending the organization's Convention, as in the case of IOTC.

RSN 2 agreed that the approaches to performance reviews needed to be flexible. Each RFB was in a different position with respect to the Parties involved, the nature of its remit and its interaction with organization, the species managed, the NGO community and other stakeholders. As long as there is a real element of an external independent view of what the organization is achieving or not achieving, participants believed that each performance review should have its own characteristics.

RSN 2 recommended that FAO produce a summary report of all performance reviews carried out by regional fisheries organizations. This would enhance transparency and comparability of the process and could prove very useful for a future assessment of the effect the global review process has had on the efficiency of managing and preserving the fishery resources.

In 2007, the Organization for Economic Co-operation and Development (OECD) Committee for Fisheries conducted a study to review the experiences of a number of RFMOs that had undergone changes in recent years. The objective of the study was to identify the key lessons from these experiences in order to inform efforts to strengthen RFMOs. The study covered in particular the cases of CCSBT, ICCAT, NAFO and NEAFC. In May 2009, the Committee for Fisheries released the report on Strengthening Regional Fisheries Management Organizations <sup>23</sup> under the responsibility of the Secretary General of the OECD.

From 29 June to 3 July 2009, the Second Joint Meeting of Tuna RFMOs was held in San Sebastian, Spain. The participants of the meeting noted with concern that the independent performance reviews carried out so far had identified fundamental shortcomings in such areas as the failure to adopt measures that reflect scientific advice, lack of complete and accurate data collection, untimely provision of data, non compliance with conservation and management measures, lack of

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<sup>23</sup> Organization for Economic Co-operation and development (OECD). 2009. Strengthening Regional Fisheries Management Organizations. OECD Publishing. doi: 10.1787/9789264073329-en.

participation of important players and the need for institutional and legal reform, all of which needed to be addressed without delay.<sup>24</sup>

The extent to which recommendations of the 2006 Review Conference on the UNFSA had been implemented formed the basis for the Secretary General's Report to the May 2010 resumed Review Conference.<sup>25</sup> In this context, the 2010 Report provided an analysis of the RFMO performance reviews and noted that the process had identified cases of depleted stocks, as well as failures in meeting objectives for several species, lack of success in management and inadequate data availability or dependence on an external organization for such data. It stated that further efforts would be needed to improve data collection and sharing. Assessments of adopted conservation and management measures by the performance reviews had yielded uneven results, ranging from the adoption of a wide range of measures, to relatively few measures. Enhancements to existing monitoring, control and surveillance measures had been recommended in all cases. The analysis also identified a need for improved decision-making generally across RFMOs in various areas, including timeliness and outdated objection procedures, and report that the RPs found that dispute settlement procedures were generally unsatisfactory or unused.

The analysis further found that there had been increased cooperation among existing and developing regional fisheries management organizations at many levels, including through the joint meetings of the tuna RFMOs and cooperation among secretariats of some organizations on species and geographical bases. The use of formal cooperation mechanisms such as memoranda of understanding had increased and there had been progress in developing mechanisms to encourage States to participate in regional fisheries management organizations and arrangements. The Report underscored the need for strengthened decision-making processes for more effective implementation of conservation and management measures.

In general, the analysis noted that although the performance review process had contributed to the improved functioning of regional fisheries management organizations by identifying recommendations for strengthened governance, further efforts were needed to implement the recommendations within organizations. Since the reviews had been based on identical or similar criteria, it was concluded that identification and prioritization of further follow-up could be highly useful and assist in promoting a systematic approach to the implementation of the UNFSA.

The outcome of the resumed Review Conference recognized RFMO/As as the primary mechanism for international cooperation in conserving and managing straddling fish stocks and highly migratory fish stocks. In the context of mechanisms for international cooperation and non-members, it recommended that States and regional economic integration organizations, individually and collectively through RFMO/As:<sup>26</sup>

Undertake performance reviews that include some element of independent evaluation not later than 2012 for those RFMOs where such reviews have not yet been undertaken; undertake such reviews

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<sup>24</sup> Report of the Second Joint Meeting of Tuna Regional Fisheries Management Organizations (RFMOs), San Sebastian, Spain, 29 June – 3 July 2009. [ Accessed 9 February 2012]. [www.tunaorg.org/Documents/TRFMO2/01 percent2002 percent20Report percent20and percent20Appendix percent201 percent20San percent20Sebastian.pdf](http://www.tunaorg.org/Documents/TRFMO2/01%20percent2002%20percent20Report%20and%20Appendix%201%20San%20Sebastian.pdf)

<sup>25</sup> Report submitted to the resumed Review Conference in accordance with paragraph 32 of General Assembly resolution 63/112 to assist it in discharging its mandate under article 36, paragraph 2 of the Agreement (A/CONF.210/2010/1).

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/671/80/PDF/N0967180.pdf?OpenElement>

<sup>26</sup> [www.un.org/Depts/los/convention\\_agreements/fishstocksmeetings/review\\_conference\\_english.pdf](http://www.un.org/Depts/los/convention_agreements/fishstocksmeetings/review_conference_english.pdf)

on a regular basis, for example every 5 years; and ensure that information about actions taken to implement the recommendations from performance reviews is made publicly available.

This outcome clearly reflects the momentum generated by the international community, and their commitment, to promote strengthened governance in RFBs through regular performance reviews. On a broader level, this mirrors the obligation in many international fisheries instruments to review their own implementation on a regular basis, including the 1982 Convention, UNFSA, the Code of Conduct and the FAO Port State Measures Agreement.

**PART 2****SUMMARY OF RFMO PERFORMANCE REVIEWS**

1. This Part contains a compendium of the Executive Summaries of all RFMO performance reviews carried out at the time of starting to write. They were faithfully reproduced from the reports of the respective Review Panels, but have been edited as follows for formatting purposes and to facilitate consistency and ease of reference.

- a. Information relating to the time of the review and the constitution of the Review Panel is shown in a table.
- b. All RFMOs adopted the same or similar criteria for their respective performance reviews except NAFO and NASCO. Therefore, the headings shown below appear in each report, if applicable, and reflect the criteria used by each Review Panel.
  - Conservation and management
  - Compliance and enforcement
  - Decision-making and dispute settlement
  - International cooperation
  - Financial and administrative issues
- c. Paragraph numbers have been added.

2. The Performance Reviews appear in the following alphabetical order:

- a. CCAMLR
- b. CCSBT
- c. ICCAT
- d. IOTC
- e. NAFO
- f. NASCO
- g. NEAFC

**COMMISSION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING  
RESOURCES (CCAMLR)<sup>27</sup>**

Date of Performance Review	June – August 2008	
Type of panel	Mixed	
Participants	Prof. Marcelo Kohen	Chair, external expert in legal matters
	Dr Ramiro Sanchez	External expert in fisheries management
	Dr Keith Sainsbury	External expert in science
	Amb Jorge Berguno Dr Inigo Everson Dr Enrique Marschoff Dr Mike Richardson	Recognized experts with CCAMLR experience and a thorough understanding of the Convention, and also reflecting the composition of the CCAMLR Members
	Dr Neil Gilbert	Chair Antarctic Treaty Consultative Meeting (ATCM) Committee for Environmental Protection (CEP)
	Mr Frank Meere	Expert from a CCAMLR NGO observer

**EXECUTIVE SUMMARY**

1. At its Twenty-sixth Annual Meeting (2007), CCAMLR decided to undertake a Performance Review of the organization during 2008 (CCAMLR-XXVI, Annex 7 (Appendix I)). The Review's primary purpose was to evaluate the Commission's performance against comprehensive criteria provided in Annex 7 and more generally against the objectives and principles set out in Article II of the Convention.

2. The Review Panel (RP) was required to perform its work in a short period of time. It was appointed on 11 April 2008 and had to deliver its report before the Twenty-seventh Annual Meeting of CCAMLR in October 2008. In practice, the work of the RP was condensed into the period between late June (when it met for a week in Hobart) and the end of August when the final report was transmitted to the Secretariat in time for its circulation to CCAMLR Members before CCAMLR-XXVII. The RP made use of extensive information that the Secretariat kindly provided as well as the knowledge and expertise of its members. The RP carefully followed the criteria set out in CCAMLR-XXVI, Annex 7, and adopted its report by consensus.

3. CCAMLR is an integral part of the Antarctic Treaty system (ATS) as evidenced by Articles III, V and IV.1 of the Convention. This relationship between CCAMLR, the Antarctic Treaty and its Protocol on Environmental Protection, as well as the conservation principles embedded in the Convention itself, mark a significant distinction between CCAMLR and traditional RFMOs. Nevertheless, there are increasing numbers of CCAMLR Parties that have no traditional linkages to the ATS. As such, there may be virtue in reinforcing the obligations of Articles III, V (and IV.1), particularly in relation to Acceding States.

4. The regulation and management of Antarctic marine living resources is covered by a complexity of jurisdictions between various instruments, including not only CCAMLR, but also

<sup>27</sup> [www.ccamlr.org/put/E/e-Prfrm percent20Review percent20Report percent20Jun09.pdf](http://www.ccamlr.org/put/E/e-Prfrm%20Review%20Report%20Jun09.pdf)

Convention for the Conservation of Antarctic Seals (CCAS), Advisory Committee on Albatrosses and Petrels and, where relevant, Antarctic Treaty Consultative Meeting (ATCM) measures and the Environmental Protocol. In consequence, there is a need for closer integration, understanding and communication between the respective bodies responsible for those instruments.

5. The risks and impacts associated with the introduction of alien species through fishing-related activities have received only limited attention within CCAMLR. Given that non-native species are considered, in a general sense, a high-priority issue by the Antarctic Treaty's Committee on Environmental Protection (CEP), clarity is required as to where the matter of non-native species in relation to the Antarctic marine environment should be best dealt with institutionally.

6. With respect to marine protected areas (MPAs), there appear to remain differing views within the ATCM and CCAMLR on the very principle of designating MPAs, even though that principle had been agreed by consensus through adoption of the Environmental Protocol. CCAMLR has an opportunity to take on a more proactive role with respect to the designation of MPAs, both with respect to Article 5 of Annex V to the Environmental Protocol, and Article 9.2(g) of the Convention. To date, however, CCAMLR has taken very little direct action with respect to either of these provisions despite the fact that the primary responsibility and expertise within the ATS for designating marine areas would appear to lie with CCAMLR.

7. Whilst significant progress has been made by CCAMLR towards establishing a bioregionalisation of the Southern Ocean, the momentum of this work needs to be maintained, particularly with regard to the identification of areas for protection.

8. Whilst extensive areas of CCAMLR waters are currently subject to a range of measures and controls, none of the areas subject to such controls can be considered as being, or had been specifically designed as, an International Union for Conservation of Nature (IUCN) Category I MPA. Taking a proactive approach towards the design and establishment of new MPAs would be consistent with CCAMLR's 'unique' position as a conservation-based organization and provide CCAMLR with the opportunity to provide leadership amongst RFMOs.

9. Given the extreme and hostile environment in which some CCAMLR fisheries operate, it is appropriate for CCAMLR to give due attention to the broader issues of vessel safety standards and marine pollution management. This includes the need to be alert to discussions within the ATCM and the International Maritime Organization (IMO) on such issues as the control of ballast water discharge and the Polar Shipping Code, with a possible view to extending such provisions to fishing vessels.

10. On the broader issue of the relationship between CCAMLR and the ATCM on environmental protection issues related to marine living resources, it is evident that more active engagement between these two bodies is needed.

### **Conservation and management**

11. With regard to the status of the species and resources in the Convention Area, the RP ascertained that the stock status and trends for the current target species and the retained by-catch species in both established and developing fisheries are broadly consistent with Article II of the Convention and international best practice. To ensure that these trends continue in future, there are issues with IUU fishing, and with the adequacy of information for managing both established and developing fisheries, that require further and ongoing attention. The status of many by-catch species is unknown or poorly known, the broader ecosystem monitoring of biodiversity and dependent



predators is not well connected to management decision-making, and the present monitoring and management approaches will require further development to address successfully the dual challenges of climate change and fishery development. There is need for particular attention to be directed toward the adequacy of monitoring and management of the krill fishery to ensure that its expected development is consistent with Article II, both in relation to the target species and dependent and related species.

12. CCAMLR is a world leader in developing and implementing the Ecosystem Approach to Fisheries and the Precautionary Approach. CCAMLR is particularly advanced in its development and use of methods to manage prey species so as to protect dependent predators, in assessing and limiting fishery impacts on by-catch species, and in providing a structured and precautionary process for the orderly development of new or exploratory fisheries. The quality of the scientific input is very high and scientific advice is almost always followed. Challenges remain, however, in the effective control of fishing and fishing capacity, establishing compatible conservation measures (CMs) throughout the Convention Area (and as necessary outside the Convention Area), anticipating the effects of increased fishing pressure and climate change and developing monitoring and/or precautionary management responses before undesirable effects occur. In addition, there needs to be the development of an overall strategy for protection of biodiversity, and the recovery of depleted species. There is also the need to identify the fishing capacity needed to harvest the resources sustainably and to develop management measures to prevent or eliminate excess capacity.

### **Compliance and enforcement**

13. Overall, the RP considered that the compliance and enforcement arrangements that have been developed and implemented by CCAMLR over the years have been relatively effective. The RP noted that CCAMLR operates in a dynamic environment. This inevitably requires constant adjustment and fine-tuning of regulatory arrangements and the development and implementation of new measures, as and when circumstances dictate. In order to improve current arrangements and to ensure that CCAMLR stays at the forefront of best practice, the RP has recommended some important enhancements to existing MCS measures.

14. In particular, it sees the need to further enhance the catch documentation scheme (CDS) through mandating the immediate use of Electronic Web-based Catch Documentation Scheme (E-CDS); linking and real-time reconciliation of catch data and *Dissostichus* catch documents (DCDs) by the Secretariat, and the need for a clear definition of 'transshipment' and where and under what conditions this can occur. In addition, it believes the current VMS CM 10-04 could potentially detract from effective delivery of MCS information. It should be further strengthened by mandating centralized vessel monitoring system (C-VMS) reporting directly to the Secretariat and ensuring that these data must be made available in real time for surveillance and enforcement purposes, including planning.

15. The MCS provisions of CCAMLR would also be improved by enhancing the transparency of issues such as inspections, infringements, sanctions and domestic legislation. Harmonising and clarifying reporting arrangements for catch, CDS, C-VMS and port inspection would facilitate and improve the timely exchange of information between Contracting Parties (CPs) and the Secretariat. The RP also recommended that a clear definition of 'fishing vessel' be developed. This should also address fishing support vessels and reefers.

16. The RP also considered there is an urgent need to review the operation of CMs 10-06 and 10-07 to ensure not only the seamless and timely updating of IUU vessel lists, but also that such information is then circulated as widely as possible. Finally, given the significant workload and

increasing challenges facing the Standing Committee on Implementation and Compliance (SCIC), the RP recommended that the terms of reference, the *modus operandi* and resources available to this Committee be reviewed.

### **Decision-making and dispute settlement**

17. Consensus decision-making has worked for CCAMLR over a long period of time. This is very positive but, as for any decision-making mechanism, there may have been costs associated with it. Whilst decisions possessing normative and regulatory effects must continue to be addressed on the basis of consensus, determining how such decisions were implemented could be submitted to a different procedure. This could be effected either by a majority rule within the Commission or alternatively by submission of the matter to a specially constituted independent subsidiary organ, e.g. an expert RP, which should function through majority rule.

CCAMLR dispute settlement mechanisms appear to be unsatisfactory. There is a pressing need to take substantive action to address this situation. In this regard, the binding procedures for dispute settlement set out in Part XV of the 1982 Convention can be considered by CPs in a two-fold manner, either as a benchmark that should be followed for an eventual amendment of Article XXV of the Convention, or as a mechanism to be used between CPs that are also parties to the 1982 Convention and by those CPs with regard to non-Contracting Parties (NCPs) whose vessels are engaged in illegal fishing in CCAMLR waters, and which are also parties to the United Nations Conference on the Law of the Sea (UNCLOS).

### **International cooperation**

18. CCAMLR has a sizeable number of observers (including Acceding States, NCPs, Intergovernmental organizations (IGOs) and NGOs that are invited routinely to attend meetings of the Commission and its Scientific Committee; though attendance at CCAMLR meetings varies.

19. Managing the participation of a significant (and potentially growing) number of observers remains a challenge, and opportunities to improve that engagement need to be explored. This might include a review of the Commission's and Scientific Committee's Rules of Procedure, as they relate to observers.

20. CCAMLR, and in particular its Secretariat, puts considerable effort into ensuring CCAMLR material is made publicly available in a timely fashion. However, if this standard is to be maintained, it will be essential for greater attention to be given to ensuring that meeting reports are delivered in a more synthesised fashion. Unless greater brevity can be achieved, or more resources made available to the Secretariat, the timely production and distribution of such material may well be jeopardized.

21. Given the increasing importance of Web site s as a communication tool, re-development of the CCAMLR Web site will also be required, to ensure that it adequately supports the internal workings of CCAMLR as well as providing an important educational and outreach tool.

22. CCAMLR has demonstrated a commendably proactive approach to engaging with non-Contracting Parties, as demonstrated through its Policy to Enhance Cooperation between CCAMLR and Non-Contracting Parties, and its efforts to ensure participation in the Catch documentation scheme (CDS). Such action is encouraged on an ongoing basis.

23. CCAMLR has in place a number of measures directed at, or affecting vessels of NCPs as well as measures, including those addressing the CDS that are implemented voluntarily by cooperating non-Members. Action has also been taken by CCAMLR CPs, individually and collectively, as well as by the Secretariat, with third-party States whose vessels or nationals are acting contrary to the provisions of the Convention.

24. CCAMLR has shown determination and innovation to engage with NCPs in an attempt to achieve greater regulation of the vessels of those Parties. Nevertheless, further effort should be made to examine the feasibility and likely success of a range of actions that might be taken against non-cooperating NCPs.

25. Although in ecosystem terms CCAMLR is largely self-sufficient, there are clear examples where regular and constructive dialogue with other bodies outside the Convention Area, including RFMOs and IGOs, might add value. Opportunities to ensure effective engagement with such States and organizations both at annual CCAMLR meetings and through more formal agreements in accordance with Article XXIII.4 of the Convention should be explored.

26. Through its Secretariat and Member States individually, CCAMLR has put commendable effort into engaging with developing States. Such initiatives include providing training in, e.g. the CCAMLR CDS and MCS. However, CCAMLR has few provisions in place targeted specifically at supporting developing States in areas addressed by Article 5 of the FAO Code of Conduct. As such, CCAMLR may wish to give consideration to new means for providing support to developing States.

#### **Financial and administrative issues**

27. The RP examined the extent to which financial and other resources are made available to the Secretariat to achieve the objectives set by the Commission and how efficiently these resources are used.

28. The RP reviewed the regulations that govern the financial administration of the Commission and the Scientific Committee. The review includes consideration of Members' contributions and the different sources of funding available to CCAMLR.

29. The principles of zero real growth budget and cost recovery for new and exploratory fisheries were examined. The RP recognized that although it is obviously necessary to maintain tight fiscal control over expenditures, the objective of a nominal zero growth of the budget seems unrealistic, particularly when viewed against the ever-increasing demands being placed on the Commission. The RP believed there may well be instances which require additional Members' contributions to meet such priorities.

30. Recommendations stemming from this review will require an increase in funding if they are to be implemented. In this context, the RP discussed the merits of expanding the use of cost recovery to reflect more fully the costs incurred in providing fishing operators with access to CCAMLR marine resources.

31. The RP was of the view that the Commission should consider how it might provide enhanced support to the work undertaken by SC-CCAMLR. At present there is an over-reliance on relatively few Members who undertake the relevant scientific research needed to support the work of CCAMLR. This situation may mean that CCAMLR's capacity to meet future research requirements will be limited.

32. The RP examined the extent to which CCAMLR is efficiently and effectively managing its human and financial resources, against, *inter alia*, the implications of the 1997 Management Review of the Secretariat, the 2002 Secretariat Strategic Plan and the 2004 CCAMLR Performance Management and Appraisal System.

33. The RP noted that a number of senior and long-serving Secretariat staff members were approaching retirement age. The Commission should consider how it might address the issue of succession planning to ensure the continuity of function and the transfer of essential institutional knowledge when senior and long-serving Secretariat staff members leave the organization.

34. The RP discussed practical measures to improve the administrative mechanisms of CCAMLR meetings, to avoid duplication of work carried out by the Standing Committees and the Plenary of the Commission and to upgrade the work of the Standing Committees and the discussions in the Commission's Plenary.

**COMMISSION FOR THE CONSERVATION OF SOUTHERN BLUEFIN TUNA (CCSBT)<sup>28</sup>**

Date of Performance Review	July – September 2008	
Type of panel	Mixed	
Participants	Performance Review Working Group	
	Mr Brian Macdonald	Chair Executive Secretary, CCSBT
	Dr John Kalish	General Manager Fisheries and Aquaculture Dept. of Agriculture, Fisheries and Forestry, Australia
	Mr Stephen Rowcliffe	Dept. of Agriculture, Fisheries and Forestry, Australia
	Mr Takaaki Sakamoto	Assistant Director International Affairs Division Fisheries Agency, Japan
	Mr Arthur Hore	Manager Highly Migratory Species and RFMOs Ministry of Fisheries, New Zealand
	Ms Lynda Kurnia Wardhani	Second Secretary (Economic) Embassy of the Republic of Indonesia, Indonesia
	Independent Expert Reviewer of the Performance Review Working Group	
	Ambassador David Balton (USA)	Deputy Assistant Secretary for Oceans and Fisheries Bureau of Oceans and International Environmental and Scientific Affairs Department of State, USA

**EXECUTIVE SUMMARY****Conservation and management**

The Performance Review Working Group made the following recommendations:

*Status of living marine resources*

1. The CCSBT, its members and cooperating non-members, should:
  - a. support best endeavours of the Extended Scientific Committee (ESC) to recreate historical catch and catch per unit of effort series for the fishery but give maximum priority to accurate reporting and validation of future catch and effort;
  - b. make the maximum effort to implement the items which have been identified and prioritized by the Extended Scientific Committee in the CCSBT's Scientific Research Programme;

<sup>28</sup> [www.ccsbt.org/userfiles/file/docs\\_english/meetings/meeting\\_reports/ccsbt\\_15/report\\_of\\_PRWG.pdf](http://www.ccsbt.org/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_15/report_of_PRWG.pdf)  
[www.ccsbt.org/userfiles/file/docs\\_english/meetings/meeting\\_reports/ccsbt\\_15/report\\_of\\_PRWG.pdf](http://www.ccsbt.org/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_15/report_of_PRWG.pdf)

- c. determine management objectives and rebuild strategy consistent with UNSFA requirements to guide future scientific assessments;
- d. develop and implement a strategy to address the impacts of Southern Bluefin Tuna (SBT) fisheries including the collection and sharing of data between CCSBT members and Secretariats of other RFMOs.

*Data collection and sharing*

2. Unproductive effort should not be applied to measures to improve the poor data from the past. The prospects of success appear to be low. Effort must now be focussed on improving data collection and reporting through full and urgent implementation of the conservation and management measures adopted by the CCSBT at its annual meeting in 2006.
3. The CCSBT could improve its data collection and sharing by ensuring that:
  - a. all Members and cooperating non-Members fulfil the current requirements, which are described Section 4.3.2;
  - b. clear standards are set of the level of detail and the type of data provided by Members, in order to ensure the science process has the information it requires;
  - c. appropriate data which meets the minimum UNFSA requirements are collected from all Members and cooperating non-Members;
  - d. commercial confidentiality should no longer limit the access to data within the CCSBT. Members should make every effort to ensure that domestic constraints on data provision will not undermine the conservation and management efforts by CCSBT; and
  - e. Members and Cooperating Non-Members fully comply with the confidentiality agreements and provisions within the CCSBT.
4. Some RFMOs have adopted a process whereby members provided detailed information to the Secretariat who then does the necessary analysis and provides that information to members in an acceptable format. This might be a process worth discussing further taking into account the cost-effectiveness especially because the CCSBT already has the advisory panel for its scientific process.
5. While ensuring that all data needs are met, harmonisation across five tuna RFMOs would help prevent duplication of reporting obligations, and streamline requirements through the use of appropriate data sharing mechanisms. There is an opportunity for the CCSBT to harmonize its data collection and sharing requirements with the other four tuna RFMOs.
6. It is worth noting here that despite the considerable work which the Secretariat and Members currently put into running and maintaining the trade information scheme (TIS), it is at present of probably only limited value because the TIS does not incorporate all catches (i.e. domestic landings from commercial vessels and recreational catch). Further, there is not currently a way of independently verifying monthly or annual catch reports of Members and cooperating non-Members, although an expanded TIS as is being worked towards could fulfil this purpose. The implementation of a full catch documentation scheme is recommended for urgent implementation.

*Quality and provision of scientific advice*

7. It is recommended that the current structure of the ESC, especially, the independent chairs and advisory panel, should be maintained.

8. It is recommended that, in the circumstances the CCSBT now finds itself in, scientific effort should achieve a better balance between SBT and ecologically related species (ERS). In light of the requirement to focus on future information with which to assess the stock status of SBT, the number and skill sets of independent experts required in support of the scientific process should be reviewed. Further, the need for a management procedure for the fishery in the short term should be reconsidered in light of the alternative approach of periodic stock assessments using the agreed operating model.

*Adoption of conservation and management measures*

9. The CCSBT should continue to make conservation and management measures which are consistent with scientific advice from the ESC.

10. The CCSBT should develop a strategic plan plus a management plan to implement minimum standards for the fishery.

*Capacity management*

11. No action is recommended in terms of capacity management other than for the Commission to take up with Indonesia the capacity for temporal and spatial closures in the SBT spawning ground.

*Compatibility of management measures*

12. The CCSBT's arrangements in relation to catch limits and national allocations are compatible between high seas and in areas under national jurisdiction. The CCSBT should continue to ensure that measures are compatible.

*Fishing allocations and opportunities*

13. The CCSBT's arrangements are satisfactory for the moment and do not need any amendment.

14. Once long term allocations are finalised among members, including the CCSBT Memorandum of Understanding (MoU), the CCSBT should consider moving to national allocations based on alternative principles, such as proportional allocations, rather than set tonnages.

**Compliance and enforcement***Flag state measures*

15. All members and cooperating non-members should continue to take all necessary actions to ensure compliance with conservation and management measures adopted by the CCSBT.

*Port state measures*

16. Bearing in mind the need to avoid duplication of effort, the “FAO Technical Consultation on Port State Measures” meeting which was held in Rome on 23–27 June 2008, provides the Commission with some guidance on a preferred model when considering implementation of any port state measure.

*Monitoring, control and surveillance*

17. As the CCSBT does not have its Convention area and SBT migrates into the other tuna RFMOs’ areas of jurisdiction, the CCSBT should cooperate with the other tuna RFMOs to optimise harmonisation; improve global effectiveness; and avoid duplication of work.

18. The CCSBT should prioritize the development of MCS in the context of a compliance plan.

*Follo-up on infringements*

19. The CCSBT should, as a minimum, establish agreed rules on the treatment of overcatch (requirement of payback).

20. Ideally, the CCSBT should establish a range of penalties in relation to all conservation measures.

*Cooperative mechanisms to detect and deter non-compliance*

21. All Members and cooperating non-Members should submit their national reports to the CCSBT.

22. The CCSBT allocate sufficient time to the Compliance Committee and the Extended Commission to allow them to complete both routine and development work each year.

*Market related measures*

23. The CCSBT should implement a CDS as matter of urgency.

24. Pending implementation of a CDS, all members and cooperating non-members should be required to implement the TIS.

25. The CCSBT should monitor all market and port states and encourage compliance with CCSBT monitoring and trade measures.

**Decision-making and dispute settlement***Decision making*

26. Consensus decision making does mean that some decision making is delayed but the Commission could also consider that some day to day operational decision making could be devolved to the Chair or the Executive Secretary (by unanimous decision of the Commission).



*Dispute settlement*

27. No recommendation

**International cooperation***Transparency*

28. The CCSBT and its members should improve openness by better publication of the rules for observers. One possible option would be to put the information about the current arrangements to accept observers on the CCSBT Web site .

*Relationship to cooperating non-members*

29. No change is recommended.

*Relationship to non-cooperating non-members*

30. No change is recommended.

*Cooperation with other RFMOs*

31. There are significant opportunities for the CCSBT to work more closely with and to harmonize measures with other RFMOs, especially with the other tuna-RFMOs, and this should be a priority area for the CCSBT.

*Special requirements of developing states*

32. No change is necessary

**Financial and administrative issues***Availability of resources for RFMO activities*

33. The Secretariat should maintain an efficient and cost effective operation.

34. The CCSBT should consider whether establishing a position at the secretariat to provide policy and management advice would be a useful way of addressing the current gap that exists taking into account cost effectiveness of such post. For example, the CCSBT could request the secretariat to come up with options for a priority management or policy issue for CCSBT to consider rather than relying on members to table papers in an ad hoc manner as currently occurs. This new capacity, coupled with the direction and common vision which would be provided by a CCSBT strategic plan (and a management plan) could greatly improve the functioning and performance of the CCSBT.

*Efficiency and cost effectiveness*

35. The Secretariat has run efficiently and effectively. This should be continued.

### General comments by the independent expert

36. At the outset, it should be noted that in the modern world the CCSBT, like other RFMOs, has a “dual mandate.” The original part of the mandate of an RFMO derives from the international agreement that created it; in the case of the CCSBT, that is the 1994 Convention for the Conservation of Southern Bluefin Tuna (the Convention). The objective of the Convention, and hence that original mandate of the CCSBT, is “to ensure, through appropriate management, the conservation and optimum utilization of southern bluefin tuna.”<sup>29</sup>

37. The second part of the dual mandate of the CCSBT and other RFMOs derives from commitments that member States of RFMOs have made in other international agreements or in other international fora to accomplish certain objectives through their participation in RFMOs.

38. In some cases, those commitments are legally binding on the RFMO members. Most members of the CCSBT, for example, are also States Parties to the 1995 UNFSA, which contains a number of provisions, some of which are discussed in more detail below, that require such States to take (or to refrain from taking) certain actions as members of RFMOs. Article 10 of the UNFSA, for example, requires States Parties to use RFMOs to fulfil certain functions.

39. States have also made commitments in a growing number of soft-law instruments to pursue certain objectives through the RFMOs in which they participate. These instruments include, but are not limited to:

- a. The 1995 FAO Code of Conduct for Responsible Fisheries;
- b. The four FAO International Plans of Action (on Capacity Management, Sharks, Seabirds and IUU Fishing) and other similar FAO instruments;
- c. Various recent Ministerial Declarations and other high level statements; and
- d. Relevant resolutions of the UNGA.<sup>30</sup>

39. The Self Assessment reveals that the CCSBT has struggled to fulfill its original mandate relating to the conservation and optimum utilization of SBT. As detailed below, the Self Assessment paints a picture of an RFMO confronting very significant challenges and meeting with only limited success. Of especially grave concern is the acknowledgement that serious overfishing of SBT and under-reporting of SBT catches in past years has both undermined the health of the resource and significantly compromised the time series of data on which the CCSBT must make future management decisions. Even before the serious overfishing and under-reporting of SBT catches came to light, the inability of the CCSBT to reach agreement in many years on even the most basic management measure for a single fish stock – a total allowable catch or TAC – calls into question the political will of its member States to make the decisions necessary to ensure sustainable fishing.

40. With respect to fulfilling the second part of the CCSBT’s mandate, the Self Assessment indicates that the CCSBT has made progress in some areas (e.g. the adoption of a Trade Information Scheme, an initial VMS measure, an initial measure on transshipments), but has made very little progress in other areas. For example, the Commission has adopted few measures to:

- a. manage total fishing capacity for SBT;
- b. establish integrated measures for monitoring, control and surveillance;

<sup>29</sup> Article 3, the CCSBT Convention.

<sup>30</sup> A helpful summary of the mandates of RFMOs in the modern world can be found in Recommended Best Practices for Regional Fisheries Management Organizations (Chatham House, 2007).

- c. prevent, deter and eliminate IUU fishing through the full range of available tools;
- d. require vessels fishing for SBT to minimize the impacts of their operations on ecologically related species (e.g., sharks, sea turtles, seabirds, billfishes).

41. On the other hand, many of the recommendations set forth in the Self Assessment would, if implemented promptly and fully, represent meaningful steps forward in helping the CCSBT modernize its operations and fulfill its dual mandate.

42. Although the Convention entered into force less than 15 years ago, it nevertheless predates a number of key developments in the norms and standards for the management of international fisheries. At its core, the Convention is an agreement for the management of a single fish stock. The Convention lacks many elements that are found in such instruments as the UNFSA, the Convention for the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, and the Antigua Convention, to name just a few. The CCSBT Convention does not reflect concepts such as the precautionary approach, the ecosystem approach and other norms that guide fisheries management today.<sup>31</sup>

43. One consequence is that the CCSBT has experienced disagreements among its members concerning the Commission's mandate. In 2007, for example, the CCSBT could not reach agreement on whether the Commission had the authority to adopt binding measures concerning species that are ecologically related to SBT.

44. Faced with similar problems, some other RFMOs (such as the IATTC and the NAFO) have taken steps to amend or even renegotiate the international agreements that established them in order to bring them into line with modern standards for fisheries management. These efforts, though time-consuming and labor-intensive, will undoubtedly aid those RFMOs in the long run.

45. As discussed below, the CCSBT faces some very substantial, immediate problems. It should nevertheless take a hard look at its Convention, compare it to more modern instruments, and seriously consider the need to amend or renegotiate it. If the CCSBT concludes that the time is not ripe to undertake such an initiative, it should nevertheless be possible to incorporate many of the modern standards for fisheries management into the work of the Commission in other ways, including through the adoption of additional conservation and management measures and updated Management Procedure.

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<sup>31</sup> The CCSBT has nevertheless incorporated some elements of the precautionary approach in its management of SBT through its Management Procedure.

**INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS  
(ICCAT)<sup>32</sup>**

Date of Performance Review	November 2007 – August 2008	
Type of panel	Independent	
Participants	Dr Moritaka Hayashi	Professor Emeritus of International Law Waseda University, Japan
	Mr Glenn Hurry	Chief Executive Officer Australian Fisheries Management Authority Chairman, WCPFC
	Dr J. J. Maguire	Fisheries Scientist, Canada

**EXECUTIVE SUMMARY**

1. In response to concerns raised by the international community about the sustainable management of high seas fisheries, including where RFMOs organizations and arrangements exist, ICCAT, at its 2007 annual meeting agreed to conduct an independent review of its own performance against its objectives.
2. The terms of reference (TOR) of the RP were consistent with those developed at a Joint Meeting of Tuna RFMOs, Kobe Japan January 2007. The TOR were sufficient to allow the RP to undertake a broad review of ICCAT's performance against its objectives and to recommend approaches that if adopted would strengthen the mandate of ICCAT and improve its performance.
3. The report reviews the Basic Texts, the status of the stocks and the scientific process, the development and application of conservation and management measures and in the final part compiles the recommendations of the Panel into a compendium for easy reference.
4. ICCAT's objective is embedded in the preamble of its Convention finalised in 1966. The preamble states: "*The Governments...considering their mutual interest in the populations of tuna and tuna like fishes found in the Atlantic Ocean, and desiring to cooperate in maintaining the populations of these fishes at levels which will permit the maximum sustainable catch for food and other purposes*". ICCAT's objective is therefore to maintain populations of tunas and tuna like fishes at levels that will permit maximum sustainable yield (MSY).

**General observations and assessment of ICCAT**

5. The Panel made the following general observations.
  - a. ICCAT has developed reasonably sound conservation and fisheries management practices, which, if fully implemented and complied with by Contracting Parties, Cooperating non-Contracting Parties, Entities and Fishing Entities (CPCs), would have been expected to be effective in managing the fisheries under ICCAT's purview.
  - b. The ICCAT Convention should be reviewed, modernised, or otherwise supplemented, to reflect current approaches to fisheries management.

<sup>32</sup>[www.iccat.int/Documents/Other/PERFORM\\_percent20REV\\_TRI\\_LINGUAL.pdf](http://www.iccat.int/Documents/Other/PERFORM_percent20REV_TRI_LINGUAL.pdf)

- c. The ICCAT standing committee and panel structure is sound and the committees provide timely advice to ICCAT. However, the Panel expressed strong reservations on the performance of the Compliance Committee.
  - d. The Standing Committee on Research and Statistics (SCRS) provides sound advice to the Commission members operating under significant difficulties largely caused by CPCs failing to provide timely and accurate data.
  - e. The performance of the Secretariat is sound and well regarded as both efficient and effective by CPCs.
  - f. The fundamental problems and challenges that ICCAT faces in managing sustainably the fisheries under its purview are not unique; other tuna RFMOs also face them, but the size of the ICCAT membership adds more difficulties.
6. The Panel made the following general assessment of ICCAT performance.
- a. Fundamentally ICCAT's performance to date does not meet its objectives for several of the species under its purview.
  - b. ICCAT's failure to meet its objectives is due in large part to the lack of compliance by many of its CPCs.
  - c. CPCs have consistently failed to provide timely and accurate data and to implement MCS arrangements on nationals and national companies.
  - d. The judgement of the international community will be based largely on how ICCAT manages fisheries on bluefin tuna. ICCAT CPCs' performance in managing fisheries on bluefin tuna particularly in the eastern Atlantic and Mediterranean Sea is widely regarded as an international disgrace and the international community which has entrusted the management of this iconic species to ICCAT deserve better performance from ICCAT than it has received to date.
  - e. There are concerns about transparency within ICCAT both in decision making and in resource allocation.
  - f. Most of the problems and challenges ICCAT faces would be simple to fix if CPCs developed the political will to fully implement and adhere to the letter and spirit of the rules and recommendations of ICCAT.

### **Has ICCAT met its objective?**

7. A simple reading of the state of the stocks under ICCAT's purview would suggest that ICCAT has failed in its mandate as a number of these key fish stocks are well below MSY. However, the Panel is of the view that rather than ICCAT failing in its mandate it is ICCAT that has been failed by its members (CPCs). Most of the evidence available to the Panel is that ICCAT has with a few exceptions, adopted in its basic texts and recommendations generally sound approaches to fisheries management. However this has been undermined by systemic failures by CPCs to implement such rules and recommendations.

8. ICCAT, as a tuna RFMO, has a sound base, it has done many things well and continues to do so, but it has failed against its objective because its CPCs have failed in their responsibilities to ICCAT and to the international community for the proper management of fisheries on fish stocks under the purview of ICCAT.

9. The positive message in this report, however, is that because the fundamentals of ICCAT are generally sound, the problems of ICCAT would be readily fixed or considerably improved if CPCs changed their attitude towards implementation of and adherence to the rules and recommendations of ICCAT and the adoption of robust MCS processes.

### **Summary of Part I: Evaluation and analysis of the ICCAT Convention Basic Texts**

10. In Part I of this report, the Panel has evaluated the Basic Texts against the Review Criteria given in the TOR, which reflect essentially the global principles and standards established by the 1982 Convention, the UNFSA and other modern instruments relating to the conservation of fish stocks and management of their fisheries. Since the ICCAT Convention predates these modern instruments, the Panel has reviewed also the conservation and management measures of ICCAT since they were adopted within the broad framework of the Basic Texts.

11. Pursuant to the Review Criteria, the Panel has identified 16 issues on which the Basic Texts and conservation and management measures are to be analyzed and evaluated. Out of these 16 issues, the Panel found:

- a. adequate provisions in both the Basic Texts and conservation and management measures regarding only one issue: data collection and sharing;
- b. some but not adequate provisions both in the Basic Texts and conservation and management measures regarding three issues: MCS measures and enforcement, decision-making, and special requirements of developing States;
- c. no provision in the Basic Texts and some but not adequate conservation and management measures regarding nine issues: ecosystem approach, precautionary approach, fishing allocations and opportunities, flag State duties, port State duties, cooperative mechanism to detect and deter non-compliance, market-related measures, cooperating non-members and fishing entities, and relationship to non-cooperating non-members;
- d. no provision in either the Basic Texts or in conservation and management measures regarding two issues, compatibility of measures for areas under national jurisdiction and those for the high seas, and dispute settlement procedures; and
- e. some provision in the Basic Texts but no management measures, though in practice adequate action has been taken, regarding one issue: cooperation with other RFMOs.

12. The Panel recommends that ICCAT consider filling such gaps and inadequacies by, as appropriate, amending the Basic Texts or updating and adopting further conservation and management measures in the light of modern global instruments and current best practice in RFMOs.

### **Summary of Part II: Assessment of the achievement of ICCAT's objectives relating to fish stocks (conservation and management – status of living marine resources)**

13. Part II of this report reviews the structure and operation of the SCRS and the support it receives from the ICCAT Secretariat, discusses the objective of ICCAT, and summarizes the stock and exploitation statuses along with the Panel's evaluation of whether the ICCAT objectives are being met for the main species under the purview of ICCAT as well as for associated and dependent species.

- a. The Panel found that the lack of data and the lack of accuracy of data that was reported introduced large uncertainties in three stock assessments undertaken by the SCRS.
- b. The Panel notes that CPCs have an obligation to collect and make available relevant information to assess the status of the resources and the effect of exploitation on them, but few comply within the agreed time limits.
- c. CPCs should adopt a precautionary approach to the management of fisheries on fish stocks where data are poor or lacking.

- d. The Panel found that the objectives of ICCAT appeared to be met for 4 of the 14 stocks examined (29 percent): bigeye tuna, swordfish in the North Atlantic, swordfish in the South Atlantic, and yellowfin tuna.
- e. The Panel found that the objectives of ICCAT appeared not to be met for 7 of the 14 stocks examined (50 percent): albacore in the North Atlantic, albacore in the South Atlantic, bluefin tuna in the West Atlantic, bluefin tuna in the East Atlantic and Mediterranean, blue marlin, white marlin and swordfish in the Mediterranean.
- f. The Panel was unable to assess if the objectives of ICCAT were met for 3 of the 14 stocks examined (21 percent): albacore in the Mediterranean, sailfish and skipjack tuna.

### **Summary of Part III: Assessment of the achievements of ICCAT's objectives relating to fisheries management and the administration of ICCAT**

14. Part III of this report considers whether, in relation to conservation of species and management of fisheries, MCS and institutional practice the CPCs have actually implemented the resolutions and recommendations that have been adopted in ICCAT.

- a. The Panel found the management of fisheries on bluefin tuna in the eastern Atlantic and Mediterranean and the regulation of bluefin farming to be unacceptable and not consistent with the objectives of ICCAT. This finding coupled with the published statements from the European Community has prompted the Panel to recommend to ICCAT the suspension of fishing on bluefin tuna in the eastern Atlantic and Mediterranean until the CPCs fully comply with ICCAT recommendations on bluefin.
- b. The management of fisheries on swordfish, bigeye tuna and yellowfin tuna are largely consistent with the management objectives of ICCAT.
- c. The Panel is concerned that the current catches for albacore tuna in the North Atlantic generate fishing mortality higher than Fishing mortality that can produce MSY (FMSY). The Panel considers that total allowable catches (TACs) should be adjusted such that fishing mortality is at or below FMSY.
- d. The Panel is concerned at the lack of data on billfishes and is concerned that ICCAT may still not be able to undertake reliable billfish stock assessments in 2010.
- e. The Panel strongly recommends that ICCAT, for all fisheries under its purview, immediately discontinue the practice of allowing the carry forward of uncaught allocations in all fisheries.
- f. The Panel recommends that for all fisheries in ICCAT, fishing capacity is immediately adjusted to reflect fishing opportunities or quota allocations.
- g. The Panel believes that ICCAT should develop binding allocation criteria that are applied in a fair and transparent manner.
- h. The Panel recommends that ICCAT CPCs take the issue of recreational and sport fishing seriously and be more inclusive towards the recreational and sport fishing sector in future deliberations of ICCAT regarding fisheries management.
- i. ICCAT CPCs should immediately apply fully the rules and, measures adopted by ICCAT and through domestic arrangements, including flag and port State controls, observer programs and VMS, provide effective control over their nationals.
- j. ICCAT should investigate and develop a strict penalty regime that either has the capacity to suspend member countries that systematically break ICCAT regulations or can apply significant financial penalties for breaches. These measures need to be severe in the sense that CPCs should clearly understand that they will suffer significant economic consequences if their actions are in breach of ICCAT rules.

## **Conclusion**

15. ICCAT has existed since 1969 and the tuna and tuna like fishes in the Atlantic Ocean and Mediterranean Sea are under its purview. Civil society has in recent years taken a stronger interest in the performance of RFMOs in managing the world's fisheries on high seas fish stocks and in particular the iconic tuna species. This attention by NGOs and other stakeholders is unlikely to fade in the near future and RFMOs must find a way to be more inclusive and open in their culture. RFMOs must be prepared to take decisions that are in the genuine interests of long-term sustainability and should make every endeavour to ensure that responsible practices are adopted and that they are not undermined by members and non-members.

16. This has been the first independent review of ICCAT and ICCAT should be congratulated for having the courage and openness to allow the review to be undertaken by independent reviewers. While the findings of the independent Panel are mixed, the recommendations have been structured to move ICCAT forward. Properly functioning RFMOs are the best chance to have sustainable fisheries on high seas and migratory fish stocks. The intent of our recommendations is to help ICCAT be at the leading edge of RFMO performance.



**INDIAN OCEAN TUNA COMMISSION (IOTC)<sup>33</sup>**

Date of Performance Review	February 2008 – January 2009	
Type of panel	Mixed	
Participants	Mr Terje Lobach	Independent legal expert Chair
	Dr Gerald Scott	Independent expert scientist
	(names not available in the report)	Representatives of six IOTC Members: Australia European Community India Japan Kenya Seychelles
	Mr. Markus Burgener	NGO observer World Wide Fund for Nature (WWF) / The wildlife trade monitoring network (Traffic)

**EXECUTIVE SUMMARY**

1. In response to calls from the international community for a review of the performance of RFMOs, IOTC agreed in 2007 to implement a process of Performance Review which concluded its report to the Commission in January 2009. The Panel's review was based on the criteria developed as a result of a joint meeting of tuna RFMOs, Kobe, Japan, 2007 and concentrated on the following issues:

- a. adequacy of the Agreement for the Establishment of the IOTC Agreement relative to current principles of fisheries management;
- b. consistency between scientific advice and conservation and management measures adopted;
- c. effectiveness of control measures established by the IOTC; and
- d. efficiency and transparency of financial and administrative management.

**KEY FINDINGS OF THE PERFORMANCE REVIEW PANEL****The legal framework of the IOTC Agreement**

2. The analysis of the legal text of the IOTC Agreement identified a series of gaps and weaknesses which can be summarized as follows:

- a. The IOTC Agreement is outdated as it does not take account of modern principles for fisheries management. The absence of concepts such as the precautionary approach and an ecosystem based approach to fisheries management are considered to be major weaknesses. The lack of clear delineation of the functions of the Commission or flag

<sup>33</sup>[www.iotc.org/files/misc/performance percent20review/IOTC-2009-PRP-R\[E\].pdf](http://www.iotc.org/files/misc/performance%20review/IOTC-2009-PRP-R[E].pdf)

State and port State obligations provide examples of significant impediments to the effective and efficient functioning of the Commission.

- b. The limitation on participation to this RFMO, deriving from IOTC's legal status as an Article XIV FAO body, conflicts with provisions of the UNFSA and prevents major fishing players in the Indian Ocean from discharging their obligations to cooperate in the work of the Commission.
- c. The IOTC relationship to FAO, most notably in the budgetary context, negatively affects the efficiency of the work of the Commission, with neither Members nor the Secretariat in full control of the budget. This also raises questions relating to the level of transparency in the Commission's financial arrangements.

2. The Panel recommends that the IOTC Agreement either be amended or replaced by a new instrument. The decision on whether to amend the Agreement or replace it should be made taking into account the full suite of deficiencies identified in the Review.

### **The criteria-based analysis of the performance of the Commission**

3. The analysis based on the Performance Review criteria highlighted numerous weaknesses in the workings of the Commission, of which the most important have been identified as follows.

*a. High levels of uncertainty*

The quantitative data provided for many of the stocks under the IOTC Agreement is very limited. This is due to lack of compliance, a large proportion of catches being taken by artisanal fisheries, for which there is very limited information, and lack of cooperation of non-Members of the IOTC. The data submitted to the Commission is frequently of poor quality. This contributes to high levels of uncertainty concerning the status of many stocks under the IOTC mandate.

*b. Poor record of compliance and limited tools for addressing non-compliance*

Low levels of compliance with IOTC measures and obligations are commonplace. The Commission to date has taken very limited actions to remedy this situation – there are currently no sanctions/penalties for non-compliance in place. Moreover, the list of IUU vessels applies to non-Members only.

*c. Special requirements of developing States*

Many developing States are experiencing serious capacity/infrastructure constraints which impede their ability to comply with their obligations, especially in terms of data collection, reporting and processing. A number of developing States also lack appropriate scientific expertise and, even where such expertise is available, budgetary constraints limit their participation in Commission meetings, particularly those of the Scientific Committee and working parties.

**In light of these findings, and in addition to the specific recommendations made against each of the criteria, the RP draws the Commission's attention to the following overarching issues:**

*a. Uncertainty*

Addressing uncertainty in data and in the stock assessments is one of the most fundamental and urgent actions required to improve the performance of the Commission. This will require a variety of actions of which the most important are: application of scientific assessment methods appropriate to the data/information available, establishing a regional scientific observer programme to enhance data

collection for target and non-target species, and improving data collection and reporting capacity of developing States. Also engaging non-Members actively fishing in the area is of critical importance to addressing uncertainty. Equally important are developing a framework to take action in the face of uncertainty in scientific advice and enhancement of functioning and participation in the Scientific Committee and subsidiary bodies.

b. *Compliance*

It is imperative to strengthen the ability of the Compliance Committee to monitor non-compliance and advise the Commission on actions which might be taken in response to non-compliance. Sanction mechanisms for non-compliance and provisions for follow-up on infringements should be developed. The Resolution on the establishment of the IUU list should be amended to allow for the inclusion of vessels flagged to Members.

c. *Special requirements of developing States*

Increased financial support for capacity building should be provided to developing States. The Commission should enhance already existing funding mechanisms to build developing States' capacity for data collection, processing and reporting, as well as technical and scientific capabilities. In this context, the possibility of establishing a special fund to facilitate participation in the Commission's work, including subsidiary groups should be considered. Strengthening the Secretariat's role/ability to undertake targeted capacity building should be explored.

## NORTHWEST ATLANTIC FISHERIES ORGANIZATION (NAFO)<sup>34</sup>

At the 2005 annual meeting, NAFO agreed to a process of reform to modernize the Organization and incorporate the most recent international legal instruments.
In 2006, two meetings of the Working Group on Reform were held.
In 2007, NAFO adopted important amendments to its Convention.
In 2010, NAFO took steps to structure its performance review after the implementation of this reform process.

### EXECUTIVE SUMMARY<sup>35</sup>

1 During the Twenty-seventh Annual Meeting in 2005, the General Council (GC) of NAFO adopted the proposal on Reform of NAFO, including the establishment of an ad hoc Working Group on NAFO Reform (WG Reform) with the Terms of Reference as follows:

- a. evaluate and recommend the changes to the NAFO Convention to reform the decision-making process as outlined in paragraph 4A and B of the St. John's Declaration;
- b. examine the current structure of NAFO (constituent bodies and their subsidiary bodies) and recommend changes to streamline the structure and operation of NAFO in order to make it a more effective regional fisheries organization (RFO); and
- c. deliberate on any other matter relating to the provisions of the Convention, as NAFO Members deem appropriate.

2. The WG Reform had two meetings in April and September 2006 prior to the Twenty-eighth Annual meeting in 2006. The first meeting was held in Montreal, Canada, in April 2006.<sup>36</sup> The Chairperson of the WG Reform prepared a draft text of revised Convention called as "Chair's Working Paper" in order to stimulate debate. Several substantial issues were identified with regard to the Reform during the meeting as noted below.

#### **Ocean management issues**

3. NAFO should move towards a more integrated ocean policy and needs to take account of more modern concepts of fisheries management including:

<sup>34</sup> [www.nafo.int/publications/frames/gen-mp-05-06.html](http://www.nafo.int/publications/frames/gen-mp-05-06.html)

[www.nafo.int/fisheries/frames/reports.html](http://www.nafo.int/fisheries/frames/reports.html)

<sup>35</sup> Taken mostly from the Report of the WG on the Reform of NAFO 25–28 April 2006, Montreal, Quebec, Canada (GC Doc. 06/1) and from the Report of the WG on the Reform of NAFO, 12–15, 17 September 2006 Lunenburg Co., Nova Scotia, Canada (FC Doc. 06/3).

<sup>36</sup> Report of the Working Group on the Reform of NAFO, 25–28 April 2006, Montreal, Quebec, Canada.

- a. *Redefining the objective of the Convention*  
Some delegation preferred to replace “optimum utilization” as the objective of the Convention with “conservation and sustainable use”.
- b. *Species under NAFO management*  
The species to which the Convention applies should be reviewed, in particular with regard to possible overlaps with other RFMOs. An important distinction was made between “fisheries resources” that NAFO should manage and other species defined as “living marine resources” that need to be taken into account by NAFO when moving towards a more integrated oceans policy. The discussion specifically addressed how to deal with sharks, sedimentary species and seals.
- c. *Ecosystem consideration*  
Although it was agreed that a future fisheries management regime should explicitly take ecosystem considerations and the precautionary approach into account, the term “Ecosystem Approach” was examined because an international standard definition of this term does not yet exist. The Russian delegation offered to explore the possibility of providing a possible definition for the term in consultation with the Chair of the Scientific Council (SC).
- d. *Sanctions*  
It was proposed to include in the Convention a basic principle to the effect that sanctions applicable to infringements are adequate in severity to effectively secure compliance.

### **Structure of NAFO**

- 4. It was agreed that there is a need to re-structure and streamline the Organization. The discussion focused on the following elements.
  - a. *A merger of the General Council and the Fisheries Commission*  
It was agreed that a merger of the General Council and the Fisheries Commission into one Commission would be a desirable step.
  - b. *A merger of the Standing Committee on International Control (STACTIC) and the Standing Committee on Fishing Activities of non-Contracting Parties in the Regulatory Area (STACFAC)*  
There was broad support to merge the STACTIC and STACFAC since many of the issues dealt with by these bodies were very similar by nature. Some concerns were raised about the added work load to the resulting Committee.

### **Decision-making process**

- 5. It was agreed that the decision making process needs to be modernized but recognized that the matter will require further consideration to ensure that the whole process is coherent. Several delegates expressed the view that the relevant provisions in the SEAFO Convention could serve as an inspiration in this regard. The main issues for discussion were the following:

a. *Majority voting vs consensus*

Delegates concurred that a decision making process should in general be based on consensus. This should not exclude the possibility of a voting procedure if consensus cannot be reached which would reflect the current practice in NAFO and could therefore constitute a feasible option.

b. *Objection procedure*

Some delegates felt that the objection procedure was a concept of the past and could be replaced with more modern concept such as panel reviews. Some delegates felt that it remained a necessary instrument to safeguard the interests of all Parties. It was nevertheless agreed that if the objection procedure was to be maintained, the procedures and the post-objection behaviour of the objecting Party would have to be circumscribed to avoid that such objections undermine the objectives of the Convention.

c. *Review meeting*

Some parties suggested that a review meeting of the Commission after an objection could constitute a way to improve dialogue regarding the disputed measures among Parties. A specific procedure for “mandatory reconciliation” was proposed. Other Parties expressed doubts about the practicability of such a meeting and fears that such a meeting would only prolong the process towards a peaceful settlement of the dispute.

### **Dispute settlement procedures**

6. There was a general understanding that the introduction of dispute settlement procedure in the NAFO Convention is desirable.

### **Other matters pertaining to the Convention**

7. These matters are:

a. *Budget*

With regard to the contribution formula, a replacement of “Convention Area” with “Regulatory Area” was discussed. Such a change would result in significant changes to the financial contribution by individual Contracting Parties to the Organization.

b. *Species forming the basis for the contribution formula*

The species whose catches are used for the calculation of financial contributions by Contracting Parties are currently listed in Annex I of the Convention. The meeting proposed to take this list out of the Convention and instead introduce it in the Financial Regulations thus providing NAFO with more flexibility for future developments. Some species listed in the list were proposed to be eliminated subject to verification by the SC.

c. *Review clause*

It was proposed to include a review clause in the Convention in order to ensure reviews at regular intervals.

d. *Statistical information*

The SC Chair expressed the need to discuss the quality and timeliness of statistical information used by the SC for their assessment.

- e. *Allocation of quotas*  
Regarding with Article XI, Paragraph 4 of the current Convention in terms of factors need to be considered, a replacement of “(coastal) Contracting Party” with “(coastal) Contracting Parties (plural) was proposed.
- f. *Contracting Party/flag States/port State duties*  
Participants saw a need to improve the definition of obligations of Contracting Parties, flag States and port States in the Convention.
- g. *Cooperation with NCPs and other organizations*  
Delegates concurred that a more detailed provision to cooperate with Non-Contracting Parties as well as provision to cooperate with other organizations would be desirable in the Convention.
- h. *Headquarters Agreement*  
It was proposed to include a requirement for a Headquarters Agreement in the Convention as this is the standard for more recent multilateral organizations.
- i. *Maritime Claims*  
Some delegates pointed out that the provisions on maritime claims in Article I, paragraph 5 of the current Convention may be obsolete since the United Nations Convention of the Law of the Sea entered into force in 1994.

8. The meeting agreed that:

- a. the current 1979 NAFO Convention needed to be updated on many aspects and the preferred course of action was to amend the current Convention rather than develop a new Convention in order to avoid lengthy procedures;
- b. the amended Convention should take account of the ongoing international efforts for more sustainable use of fisheries resources and improved protection of the ecosystems in which they occur;
- c. NAFO should move towards a more integrated oceans policy that considers other marine living resources inhabiting the same ecosystem as the fishery resources managed by NAFO;
- d. there was a need for streamlining NAFO’s structure by in particular merging the GC and the Fisheries Commission into one Commission;
- e. there was a need for a modernization of the decision-making process.

9. The second meeting of the WG Reform was held immediately prior to the Annual Meeting in Canada in September 2006.<sup>37</sup> The Working Group continued discussing the Chair’s Working Paper revised based on the outcome of the first meeting and also discussed the opinions from STACTIC and the SC. The following conclusions were made, *inter alia*:

- a. WG Reform endorsed the recommendation from STACTIC to merge STACTIC and STACFAC;
- b. WG Reform endorsed the opinion of STACTIC that it would be beneficial to introduce a definition of transshipment in NAFO rules;

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<sup>37</sup> Adopted Report of the Working Group on the Reform of NAFO, 12-15 September 2006, 17 September 2006.

- c. regarding a definition of fishing activities, STACTIC had suggested two possible definitions, one for “fishing”, another for “fishing activities”. It was tentatively agreed to introduce the definition of “fishing activities” recommended by STACTIC in the convention;
- d. the list of species of Annex 1 of the Convention was confirmed to be transferred to the Financial Regulations and 12 additional species that are currently regulated under the Convention or for which advice or scientific information has been provided were listed by the SC;
- e. With regard to the Chair’ Working Paper, a provision allowing for the elaboration of a process to develop trade related measures was agreed upon with understanding that such measures would first and foremost address the activities of non-Contracting Party vessels. It was agreed that the 3<sup>rd</sup> revision of the Working Paper would be submitted to the GC with outstanding issues for further consideration include:
  - a process for implementing Commission decisions;
  - a change in the calculation of the budget contribution;
  - inclusion of the term “entities” in the definitions of “Contracting Party” and “Flag State”;
  - a re-definition of the boundaries of NAFO Subarea 3M and 3L; and
  - the use of “Contracting Parties” (plural) instead of “Contracting Party” with regard to “the special consideration to Contracting Party (Parties) whose coastal communities are primarily dependent on fishing for stocks related to these fishing banks” prescribed in Article XI, paragraph 4 of the current Convention.

10. The outcomes of the two WG meetings were reported to the 28<sup>th</sup> Annual Meeting in September 2006. While some of outstanding issues such as decision making process including establishment of an ad hoc expert Panel to deal with any objections made by Contracting Parties were agreed, some others such as the re-calculation of the budget contributions were not concluded. It was anticipated that GC would have an intersessional meeting to deal with the outstanding issues.

11. There were two intersessional meetings dealing with the NAFO Reform since then, one by the GC in April 2007 and another by a Technical Editing Working Group in May 2007. These resulted in a proposal to amend the NAFO Convention submitted to the Twenty-ninth Session of the Annual Meeting in 2007. Three outstanding issues, the issue of an “entity” as a Contracting Party<sup>38</sup>, the formula for contributions<sup>39</sup> and the area of application for certain functions of the Commission<sup>40</sup>, were discussed among interested parties and eventually concluded at the level of the Commission. A ratification process by each Contracting Parties of the amended Convention is currently undergoing.

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<sup>38</sup> This issue is solely on the status of Denmark in respect of Faroe Islands and Greenland (DFG).

<sup>39</sup> Canada proposed to include “a national wealth component” of Contracting Parties, but other CPs did not support the idea. However, it was agreed to ease the burden of Contracting Parties with small populations.

<sup>40</sup> This issue is regarding the area of application of the management decision making power of the Commission. Canada proposed to maintain it to the Regulatory Area only, but others concerned about the effective protection of straddling stocks on the basis of the UNFSA principles. It was agreed that the area of application is the Regulatory Area only but the following clarification was inserted as Article VI 8bis of the Convention: *The Commission may adopt measures on matters set out in paragraph 7 and 8 concerning an area under national jurisdiction of a Contracting Party, provided that the coastal State in question so requests and the measure receives its affirmative vote.*



## NORTH ATLANTIC SALMON CONSERVATION ORGANIZATION (NASCO)<sup>41</sup>

In 2004, NASCO initiated a comprehensive review of its working methods and structure (the 'Next Steps' for NASCO). This review was an open review involving representatives of the Parties and NASCO's accredited NGOs and consultation with stakeholders in Europe and North America. The findings of the review are publicly available on NASCO's Web site [www.nasco.int](http://www.nasco.int).

In 2005, in the light the findings of the review, the Council adopted a Strategic Approach for NASCO's 'Next Steps'.

NASCO has moved quickly to implement the wide-ranging recommendations in the Strategic Approach. Some were adopted immediately in 2005 while others were further developed through a follow-up meeting and adopted in 2006.

The first cycle of reporting and review of the actions taken by NASCO's Parties to implement its agreements, developed under the Precautionary Approach, will be completed in 2010/2011. NASCO will review the success of the 'Next Steps' process at its 2011 Annual Meeting and has committed to undertake a further performance review to be completed in 2012.

### EXECUTIVE SUMMARY

1. In 2004/2005, NASCO conducted a comprehensive review, in conjunction with its accredited NGOs, of its working methods. The objectives of this review were to:
  - a. identify challenges in managing and conserving wild Atlantic salmon and approaches to address those challenges;
  - b. review the management and organizational structure of NASCO focussing on its ability to address current and future challenges; and
  - c. review the procedural aspects of NASCO and the relationship between the Organization, its Parties and its stakeholders.
  
2. The Performance Review was conducted by a Working Group involving representation from NASCO's Parties and its accredited NGOs. NASCO's review addressed the criteria commonly used by other RFMOs referred to in paragraph 18.
  
3. As part of the review process two open consultation meetings (one in Europe and one in America) were held and all stakeholders were invited to comment on NASCO's progress and its future work. Three main priority areas were identified during the review as follows:
  - a. The need to strengthen mechanisms for implementing NASCO's agreements and for assessing their effectiveness;

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<sup>41</sup>[http://www.nasco.int/pdf/nextsteps/wg\\_report.pdf](http://www.nasco.int/pdf/nextsteps/wg_report.pdf)  
<http://www.nasco.int/pdf/nextsteps/strategicapproach.pdf>  
<http://www.nasco.int/pdf/nextsteps/taskforce.pdf>  
<http://www.nasco.int/pdf/nextsteps/reviewrep2007.pdf>  
<http://www.nasco.int/pdf/nextsteps/reviewrep2008.pdf>

- b. Improving NASCO's transparency and inclusivity; and
- c. Raising NASCO's profile to gain public and political support for its work.

NASCO has moved quickly to implement changes to address these priority topics.

### **Implementation of NASCO's agreements**

4. Under the Agreement on Adoption of a Precautionary Approach, NASCO and its Parties have agreed to adopt and apply a Precautionary Approach to the conservation, management and exploitation of salmon in order to protect the resource and preserve the environments in which it lives. In order to support the application of the Precautionary Approach, agreements have been developed in relation to:

- a. management of salmon fisheries;
- b. habitat protection and restoration; and
- c. aquaculture and related activities.

5. NASCO has also developed guidelines on Stock Rebuilding Programmes and on Incorporating Social and Economic Factors in Management Decisions.

6. In order to improve commitment to these agreements and Guidelines, each Party or jurisdiction has developed an Implementation Plan detailing the measures to be taken over a five year period commencing in 2007. These Implementation Plans were subject to review by a Group comprising representatives of the Parties and NGOs. Progress in implementing the measures detailed in these Plans is reported through brief annual updates and triennial focus area reports which examine in detail the actions taken under the three main themes of management of fisheries, habitat protection and restoration and aquaculture and related activities. These Focus Area Reports are assessed for consistency of the measures being implemented with NASCO's agreements. Review Groups comprising representatives of the NASCO's Parties and NGOs with appropriate experience in the topic under review conduct these assessments and advise where additional actions are needed. As a consequence of these reviews, guidelines on management of salmon fisheries and on habitat protection, restoration and enhancement have been adopted *inter alia* to assist in making further progress in implementing NASCO's agreements and guidelines, to facilitate an exchange of information and to assist in identifying what further actions may be required.

### **Transparency and inclusivity**

7. NASCO has moved rapidly from its establishment to admit NGO observers to its meetings and the conditions governing their participation have been gradually relaxed to allow the organization to benefit from their considerable experience in salmon management and conservation. Further changes to increase NGO involvement in NASCO's work were made as a result of the 'Next Steps' review NASCO's 34 accredited NGOs can attend all Council and Commission meetings (including intersessionals), meetings of NASCO's International Atlantic Salmon Research Board (IASRB) (and its Scientific Advisory Group) and all NASCO Working Group and Committee meetings (with the exception of the Finance and Administration Committee). Furthermore, in addition to opening statements they can contribute on all agenda items of the Council and Commissions before and after interventions by the Parties. A major programme of marine surveys has been recently launched to better understand the factors responsible for the increased mortality of salmon at sea. This is a public/private partnership and the NASCO NGOs have committed considerable resources to the research programme.

**Public relations**

8. NASCO has developed a public relations strategy and is currently redeveloping the Websites both of NASCO and the IASRB. Some of NASCO's NGOs have considerable expertise in public relations and are contributing to this work.

**Summary**

9. NASCO has conducted a comprehensive performance review of its ability to meet challenges in salmon conservation and management. This review was conducted in an open and transparent manner on two continents and with a wide representation of stakeholders through the involvement of its NGOs and through consultation meetings with its stakeholders. NASCO is probably the first RFMO to conduct such a detailed and open to the public review of its activities. Furthermore, it has moved quickly and decisively to implement the recommendations arising from the review. The first cycle of reporting and review of the actions taken by NASCO's Parties to implement its agreements will be completed in 2010/2011. NASCO will review the success of the 'Next Steps' process at its 2011 Annual Meeting and has committed to undertake a further performance review to be completed in 2012.

**NORTH EAST ATLANTIC FISHERIES COMMISSION (NEAFC)<sup>42</sup>**

Date of Performance Review	April – October 2006	
Type of panel	Mixed	
Participants	Mr Kolbeinn Arnason	Chairperson of the Working Group on the Future of NEAFC Iceland
	Mr Michel Arbuckle	Visiting Scientist at FAO seconded from the Government of New Zealand Fisheries management expert nominated by the FAO
	Mr Martin Newman	European Union (EU) Chairperson of the NEAFC Permanent Committee of Control and Enforcement (PECCOE)
	Ms Valentina Germani	Law of the Sea/Ocean Affairs Officer Deputy Secretary to the Review Conference on the UNFSA International law of the sea expert nominated by UNDOALOS
	Mr Bruce Atkinson	Retired Regional Director Science Department of Fisheries and Oceans (DFO), Newfoundland and Labrador Region, Canada Marine scientist nominated by a scientific institution based outside the North East Atlantic Area
	Mr Kjartan Hoydal	Secretary of NEAFC

**EXECUTIVE SUMMARY**

1. It was agreed at the 24th Annual Meeting of the North East Atlantic Fisheries Commission (NEAFC) that a performance review should be conducted to assess NEAFC's performance as it relates to the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries (the Convention), UNFSA and other relevant international instruments.
2. A six member RP was appointed by NEAFC. Terms of reference, including specified criteria, were approved. The Panel's task was to identify achievements and highlight areas where improvement could still be made. Three members of the Panel were selected with guidance from the international institutions and three were selected from inside NEAFC.
3. In performing this review the Panel was mindful that its role was not to review the RFMO framework itself, but rather to discharge its mandate under the terms of reference provided. As part of reviewing NEAFC's performance, the Panel remit was also to provide constructive advice on how NEAFC could improve its performance within the set framework.

<sup>42</sup>[www.neafc.org/system/files/neafc\\_review\\_final\\_march07.pdf](http://www.neafc.org/system/files/neafc_review_final_march07.pdf)

4. The Panel based its work on the obligations set out in relevant international instruments, in particular UNFSA, and the generally agreed approaches for effective fisheries management as outlined in the FAO Code of Conduct for Responsible Fishing, the supporting guidelines, as well as other relevant technical reports. This involved looking for evidence of robust systems as well as effective processes and governance when evaluating each of the review criteria. The Panel carried out the review during three workshops.

5. To support this review, the Panel conducted some early analysis of the processes and systems currently in operation in NEAFC. With all the background in mind, the Panel followed a fairly strict procedure of reviewing information, seeking clarification and agreeing statements of facts before moving on to making comments about performance. The main report was kept relatively brief. Detailed analyses are available in the Appendixes. The structure of the report is described further in Chapter 1.

6. A key objective of NEAFC is to perform its functions in the interests of the conservation and optimum utilisation of the fishery resources of the Convention Area. The Convention Area is characterised by large and highly valuable industrial fisheries which are of considerable social and economic importance to coastal States. The major straddling fish stocks NEAFC regulates – in some cases with measures which relate to the full range of stocks in the Convention Area and in others only applying to the fishery in the NEAFC Regulatory Area – comprise fisheries for pelagic redfish, herring, blue whiting, mackerel, haddock and a variety deep-sea species. The magnitude of the fisheries in 2004, the last year with full catch data, was about 4 million tonnes in the Convention Area of which one million tonnes was taken in the Regulatory Area.

7. The Panel is satisfied that the legal framework established by the Convention properly and comprehensively encompasses relevant international instruments, or at least those parts relevant to NEAFC operations. In this respect, the Convention has laid a proper foundation for the future management of fisheries in the North East Atlantic. It is therefore of considerable concern to the Panel that the Contracting Parties to the Convention (the wider coastal States) have, in many instances, been unable to take the necessary steps to effectively implement the Convention by not reaching agreed allocation arrangements in many key fisheries. Lack of progress in this regard relates directly to areas identified by the Panel as being of concern, in particular the need for increasing transparency in some key management processes.

8. The Panel found that the status of main fish stocks in the Convention Area is at a critical point and, unless effective action is taken promptly, there is a strong possibility that in the future their sustainable use will be compromised. The Panel's work was limited at this point by a lack of information on economic and social benefits. The Panel was therefore unable to make an assessment of the performance of NEAFC in terms of meeting the Convention's objective of optimal utilisation.

9. Notwithstanding the concerns identified above, the Panel found evidence of strong performance by NEAFC in specific areas of operation, such as in the implementation of the two monitoring and enforcement schemes (within the constraints of the authority given by the schemes), and in international cooperation within the RFMO framework. Some areas of improvement were identified in this respect, but the Panel's comments should not detract from NEAFC's overall successful performance in these areas. NEAFC is well placed to continue in its leadership role.

10. Looking to the future, the Panel urges NEAFC to make every effort to resolve outstanding allocation issues. In our view, this would pave the way for a change in NEAFC's approach to management, moving away from management driven, bi annual, ad hoc negotiations amongst coastal States, towards management systems driven by transparent objectives and implementation processes. NEAFC has much underused capability and should be able to assume a greater responsibility in carrying out this role.

11. The Panel was heartened by the steps already being taken in this direction, for example with the establishment of the new Permanent Committee on Management and Science, the support being provided by NEAFC in the development of international capability, and NEAFC's support of RFMO activities.

12. Towards furthering these initiatives, the Panel suggests that NEAFC takes steps to develop an annual fisheries status report which encompasses not just biological factors for the fish stocks concerned but social, environmental and economic assessments as well. Such an initiative would force greater attention on achieving the objectives of the Convention while filling the information gaps the Panel has identified. The Panel also believes that such an initiative, if implemented in a transparent manner, would offer an opportunity to draw together and strengthen industry ties, across jurisdictions, and that ultimately this would align collective fishing interests and operating incentives within Convention objectives.

### **PART 3**

#### **SYNTHESIS OF PERFORMANCE REVIEWS AND RECOMMENDATIONS**

This Part provides a synthesis of the performance reviews by RFBs. It describes the establishment and methodology for the performance reviews and provides a summary of conclusions of the reviews under each criterion including, as appropriate, summary of recommendations suggested as potential best practices for future based on the experience of all performance reviews covered in this volume.

##### **Establishment and methodology for performance reviews**

As noted in Part 1, in view of the diversity in the mandates of RFBs and in the effectiveness of their governance, initial calls for performance reviews emphasized the need for transparent criteria, an element of independent evaluation and publicly available results. This was further refined at the 2007 Kobe meeting of Joint Tuna Organizations, which agreed in principle that the RFMOs should undertake regular performance reviews in accordance with a common methodology and a common set of criteria. It was recognized two months later in the 27<sup>th</sup> Session of COFI that flexibility was needed in deciding upon the precise methodology for an independent evaluation.

Earlier initiatives between 2004 and 2006 had laid the foundation for what was to become the adoption of common methodology and a common set of criteria. There were varying degrees of transparency in these initiatives by NASCO, NAFO and NEAFC, but in all cases there were positive outcomes.

The review by NASCO in 2004–2005 involved stakeholders and NGOs who, during dedicated meetings, gave feedback on their perception of how well the organization was performing in different areas. Opportunities were also provided to question Contracting Parties on their implementation of and compliance with NASCO measures. Although the NAFO initial review in 2006 was directed at modernizing the organization and conducted in an in-house specially convened Working Group on Reform, it led to positive outcomes, including far-reaching revisions of the NAFO Convention, procedures and associated measures. In each case, the review process is ongoing and expected to adapt to the common methodology and criteria currently used by other bodies.

NEAFC in its performance review in 2006 established a leading example for others to follow. An independent review panel consisting of both internal and external members conducted the performance review according to criteria agreed in advance. The internal members held key positions within NEAFC and the external members were selected in relevant area of science, fisheries law and fisheries management. As noted above, the Kobe meeting endorsed the criteria used by NEAFC.

The other RFBs, CCAMLR, ICCAT, CCSBT and IOTC, conducted their performance reviews in 2008 and 2009 in line with the NEAFC method. Each review process involved a mixed panel that included external experts, usually drawn from scientific, legal and management fields, who worked with panel members representing the RFB or, in the case of CCSBT, an external expert who reviewed the assessment carried out by an internal panel.

In each case, the RFB had agreed the performance review methodology and adapted it to the organization as appropriate. The criteria used to a great extent by those RFBs are shown in

Appendix 1. These criteria are used as the basis of the synthesis of outcomes of the performance reviews below.

Although a common approach and common criteria are widely encouraged, the flexibility in establishing a review panel and process encouraged by COFI is equally important given the significant diversity among RFBs in their mandates, membership, area of competence, species, institutional structure and budgets. Those RFBs which have a membership exceeding, for example, twenty Members, a structure comprised of numerous committees and working groups and a mandate extending to multi-species fisheries and aquaculture would likely have different needs than smaller RFBs with a simpler mandate.

Another important consideration is the available budget for the performance review. This must be approved by RFB Members, and the costs for external experts and the review process should be reasonable in the circumstances. In any event, transparency should be assured. In an effort to, *inter alia*, address costs and promote transparency, some RFBs have agreed that the experts should be nominated by other institutions such as scientific bodies or FAO.

While the performance reviews were conducted mostly by panels of experts either composed in a mixed manner between representatives from member States of each RFB and external experts or solely composed by external and independent experts, the role of the Secretariat of each RFB in performance reviews was also very important. The Secretariats have been helpful at least in providing information and in some cases participating in the Review Panel. Although the performance reviews do not evaluate the performance of the Secretariat, any finding and recommendation with regard to the work of secretariats are normally integrated into the criterion with regard to finance and administration.

The role that the RFB Members and other stakeholders play in each performance review is equally important. Although many of the performance reviews are critical of the Members in terms of providing data and information, the views of the Members in relation to the performance of the RFB in respect of the various criteria are equally important. Some of the reviews have actively sought the views of Members in this respect, but the response has not always been optimum.

The methodology for carrying out the review may take different forms, while in most cases it consists of a couple of meetings among Panel members and intersessional review of information and documents collected. For example, where there is an independent Panel, in some cases a joint meeting of experts may be convened in the beginning of the process in order to prepare a first draft, or in other cases an organizational meeting may be held before the writing may be undertaken by each Panel member at home base and coordinated by the Chair according to the outcome of the organizational meeting. The chosen methodology depends on many factors including the composition of the panel, the simplicity/complexity of the RFB and consequently the review, as well as the budget for the review. In any case, the draft report of performance reviews was eventually subject to discussion by a commission of each RFBs for endorsement as well as consideration of follow-up actions.

The reported period of time over which each performance review was conducted has varied from around three months to one year. This is obviously an element that needs to be adapted to the conditions and budget of each RFB, as well as the composition of the Panel, methodology of work and available time of the experts.

The outcomes of all performance reviews have been made publicly available by the relevant RFB and have generally been disseminated widely in various fora, including through the UN system.



This publication is evidence of the efforts to ensure broad understanding and constructive use of the outcomes. In addition, they have been duly considered and acted upon within the relevant RFB, although for most RFBs implementation of many of the recommendations will be “work in progress” for some time to come.

Transparency has been successfully applied to all performance reviews, but in differing circumstances. It is important to establish a panel that incorporates transparent processes including agreement on criteria, establishment of the Review Panel with independent expert(s), provision of information by the Secretariat, comments by the Members and stakeholders, the methodology of working and the public availability of the report.

### **Recommendations on the establishment and methodology for performance reviews**

- It has shown to be of utmost importance to take a common approach and use common criteria as well as to maintain flexibility in establishing review panels.
- A reasonable and appropriate budget should be agreed for the performance review, considering the potential for far-reaching improvements to the RFB, and where this is not possible means should be sought to enhance the review through cooperation with other institutions.
- A proactive role by the Secretariat in the Panel, as endorsed at the Kobe meeting, should be carried out either in terms of actively serving as a resource or participating in the work of the Panel. Members and stakeholders should be encouraged to provide their views or comments in relation to the performance of the RFB in respect of the various criteria.
- In establishing the methodology of work for a Review Panel, an important consideration is provision of maximum opportunity for communication among the panel members, by one or more meetings and or through other means.
- The timeframe within which the report was carried out, as long as it is reasonable in the circumstances, is not as important as the overall efficiency of the process and effectiveness of the outcome.
- The high standard of public availability of the outcomes of the performance reviews should be continued.
- All aspects of transparency should be implemented in the process of the performance review, and the existing high standards of public availability of the reports should be maintained.

### **Synthesis of the outcomes of the performance reviews**

Because of the diversity in the RFBs reviewed, the outcomes of the performance reviews have differed among organizations. At the same time, some common themes and approaches have emerged from the comments and recommendations of the Review Panels. These, in turn, are indicators of the Panels’ assessments of existing best practices and suggestions for future best practices.

The synthesis below presents each criterion in the framework in Annex 1, provides brief background information on the practice of each relevant RFB and summarizes the comments, analyses, conclusions and/or recommendations of each Review Panel. The general framework addresses the legal framework, conservation and management, compliance and enforcement, decision-making and dispute settlement, international cooperation and financial and administrative issues. The outcomes of the performance reviews are generally reported in alphabetical order under

each criterion. For each criterion, some recommendations that emerged from the performance reviews and could be used for potential best practices for future are indicated. They may not have been formally designated as such by the relevant Panel, but the fact that more than one Panel reached the same or similar conclusions has served as a basis for identification of such practices. These are also summarized in a box at the end of each criterion.

### *Legal framework*

The legal framework underpinning the relevant RFB was a matter of deep concern for four of the performance reviews, and the weak implementation by Members of the relevant RFB Convention concerned a fifth. In fact, of the four reviews recommending amendment or updating of the Basic Texts, the texts for two of the RFBs, CCSBT and IOTC, were relatively new and had been agreed in the past fifteen years. The apparent reasons for the weaknesses ranged from the subsequent incorporation in international fisheries instruments of modern principles and approaches to fisheries management issues to the need for more comprehensive provisions in areas such as participation, as described below. With regard CCAMLR, since the status of the RFB is different from other RFBs, the matter focuses mainly on relationship with the Antarctic Treaty System.

The CCSBT review found that the Convention predated a number of key developments in the norms and standards for the management of international fisheries. It lacked many elements found in modern international fisheries instruments, and as a consequence CCSBT has experienced disagreements among its members concerning the Commission's mandate. It was recommended that CCSBT should take a hard look at its Convention, compare it to more modern instruments and seriously consider the need to amend or renegotiate it. It was noted that that if the CCSBT concludes that the time is not ripe to undertake such an initiative, it should nevertheless be possible to incorporate many of the modern standards for fisheries management into the work of the Commission in other ways, including through the adoption of additional conservation and management measures and an updated Management Procedure.

The ICCAT review identified gaps and inadequacies in the ICCAT Convention Basic Texts, and recommended filling them by, as appropriate, amending the Basic Texts or updating and adopting further conservation and management measures in light of modern global instruments and current best practice in RFMOs.

The IOTC review took a similar approach and identified a full suite of deficiencies in the IOTC Agreement which it found was outdated, allowed only limited participation and negatively affected the efficiency of the work of the Commission in terms of the IOTC-FAO relationship. It recommended that the Agreement be amended or replaced by a new instrument.

As indicated above, the initial NAFO review proposed far-reaching revisions of the Convention, procedures and associated measures as a first step before a performance review was to be carried out following common criteria and procedures. This has been achieved.

The NASCO Review considered the need for changes to the Convention and the Organization's Rules and Procedures but rather than making amendments to these documents, mechanisms were introduced to improve implementation of NASCO's agreements, to improve transparency and inclusivity, and to raise NASCO's profile.

The NEAFC review was satisfied that the legal framework established by the Convention properly and comprehensively encompassed relevant international instruments, or at least those parts relevant to NEAFC operations. Of concern was the fact that the Contracting Parties had, in many

instances, been unable to take the necessary steps to effectively implement the Convention by not reaching agreed allocation arrangements in many key fisheries.

### **Recommendations on legal framework**

- If there are apparent reasons for the weakness in a legal framework of a RFB ranged from the insufficient incorporation of modern principles and approaches to fisheries management issues to the need for more comprehensive provision in areas such as participation and transparency, the legal framework should be amended or updated as appropriate.
- Even if the time is not ripe to undertake such an initiative, the modern standards for fisheries management should be incorporated into the work of the RFB in other ways, including through the adoption of additional conservation and management measures and updated Management Procedures.

### ***Conservation and management***

#### *Status of living marine resources*

The CCAMLR review emphasized how the status of target species under its fisheries management control is consistent with the Convention and with good practices for responsible and sustainable fisheries; it had particularly well developed management measures in this respect. In fact, this was the only performance review that reported the actual recovery of the status of their major fish stocks. Nevertheless, some weaknesses were identified:

- a. the recovery of depleted species;
- b. the adequacy of the management of new or exploratory fisheries;
- c. the consistent categorization of fisheries and their assessment/management; and
- d. the systematic monitoring and assessment of resources, including retained by-catch.

The CCSBT and IOTC reviews both highlighted the lack of an accurate stock assessment due to uncertainty in past catch data caused by unreporting, or inadequate data collection and reporting mechanisms. Furthermore, CCSBT reported that the low estimates of SBT spawning stock biomass suggests that in terms of outcomes, it has not been successful in managing SBT. The CCSBT also reported that it has not investigated the trends in the status of ERS and instead, has relied on reviewing documents from Members and/or observers on stock status of ERS. It was recommended that the most accurate stock assessment possible be developed in the short term and then a strategy to address the impacts of SBT fisheries on ERS be developed, including the collection and sharing of data and the harmonization of rules with other relevant RFMOs.

The ICCAT review emphasized the usefulness of the initiatives taken to improve fisheries management. However it expressed concern that these may have been implemented as individual initiatives instead of as part of an overall plan. Furthermore it recognized that the issue of bluefin tuna was an example of lack of knowledge and little progress. It was recommended that the various ICCAT lists be consolidated in order to increase efficiency and to secure additional resources in order to support both fisheries management and scientific needs.

The IOTC review emphasized that the limitations of data and reporting made it very difficult to develop an accurate and comprehensive database of catch, effort and size statistics. The high level of artisanal catch and high frequency of CPCs with inadequate data collection and reporting

mechanisms made the development of an accurate and comprehensive database of catch, effort and size statistics very difficult. The establishment of a complete and comprehensive data set was also hampered by lack of cooperation of some of the main players in the area, which are non-Members of IOTC. Data collection mechanisms were more limited for the non-target species and the neritic tunas than for the major commercial species and therefore the ability of the Scientific Committee to provide scientific advice with a reasonable degree of confidence on the impact of fisheries on these species was quite limited.

NEAFC was a particular case because it sources scientific advice from ICES as agreed in the Memorandum of Understanding established in 2003 between the two organizations. NEAFC functions are dependent upon ICES agreed scientific knowledge and advice. In fact, the Review Panel, while interested in stock status, recognized that its mandate did not include any review of ICES and its processes, so the information on status represented only a brief summary which relied on advice provided by ICES. In this context, the review commented that the knowledge regarding the status of the resources managed by NEAFC was variable depending on species, stock, ecosystem and/or other matters, the amount of data available and/or the extent to which they may have been examined and discussed within ICES. Information flow was dependent on ICES' pace in gathering such information.

The process for development and provision of scientific advice was further examined by the Panel. Although ICES provided stock information in reports its working group meetings were closed and, as a consequence, disagreement and uncertainties associated with advice provided by ICES were not transparent, the panel recommended that NEAFC take steps, in partnership with ICES, to ensure that scientific disagreements on issues of importance to NEAFC were made clear prior to the Annual Meetings of NEAFC. In addition, it was suggested that NEAFC may wish to discuss the ICES internal peer review process with a view to allowing parties involved in the management and use of fisheries to join the process.

#### *Ecosystem approach to fisheries management*

Only CCAMLR incorporated a separate criterion for its review that was dedicated to the ecosystem approach to fisheries management. The other reviews addressed this item in the context of "conservation and management", in particular the "extent to which the RFMO has taken due account of the need to conserve marine biological diversity and minimize harmful impacts of fisheries on living marine resources and marine ecosystems".

The CCAMLR review underlined that it was a world leader in developing and implementing the ecosystem approach and encouraged the Commission to continue this focus, noting the increasing fishing pressure and environmental changes. It was recommended that CCAMLR develop:

- a. specific mechanisms, agreements and reporting in order to provide coherence and compatibility of research, monitoring and conservation measures within the Convention Area;
- b. specific mechanisms, agreements and reporting in order to provide compatibility of management measures, research and monitoring, between relevant organizations and nations, considering the Convention Area and areas outside that contain species relevant to CCAMLR;
- c. an active and explicit process anticipating threats from fishing and environmental changes;
- d. a more coordinated and coherent approach to ecosystem monitoring and research;
- e. specific recommendations addressing the monitoring of harvested species;

- f. management procedures using CEMP-like monitoring information; and
- g. mechanisms to address burden-sharing for research and monitoring among Members, reducing the current reliance on a small number of Members.

The CCSBT review found that the wider impacts of SBT fishing on the living marine resources and marine ecosystems have not been considered by the CCSBT or its subsidiary bodies.

The ICCAT review, taking into account developments in recent years, recommended that the Commission consider the need to adopt the ecosystem approach or ecosystem-based management in a more formal and systematic manner. It should also examine the question of whether there is a need to amend the Convention in this regard.

The IOTC review noted the work of the Working Party on Ecosystems and Bycatch and recommended in this context that there was a need to improve the quality and quantity of the data collected and reported by the Members, including the information necessary for implementing the ecosystem approach. The most immediate emphasis should be placed on catch, effort and size frequency. It also recommended that IOTC should develop cooperative mechanisms, such as MoUs, to work in a coordinated manner on issues of common interest, in particular non-target species and an ecosystem approach with other RFMOs especially with SIOFA.

The NEAFC Panel addressed this issue in a more general way. It considered that the steps taken by NEAFC were positive in the face of uncertainty, but it was not possible to evaluate whether they were adequate. It is important for NEAFC not only to determine the specific objectives it is trying to achieve with these different measures but also to develop a comprehensive strategy of protection that includes specific management measures with appropriate monitoring strategies to evaluate their success.

#### *Data collection and sharing*

Several reviews contained recommendations concerning *agreed formats, specifications and timeframes for data collection and sharing*. In this context the CCAMLR panel recommended the development of more integrated approaches to planning and utilising information from ecological monitoring. It was anticipated that this would be necessary because the increasing activities in certain fisheries would increase the scale and complexity of information management, and such needs should be identified and addressed.

The CCSBT review noted that unproductive effort should not be applied to measures to improve the poor data from the past. Effort must be focused on improving data collection and reporting through full and urgent implementation of the conservation and management measures adopted by the CCSBT at its annual meeting in 2006. Further, it highlighted the benefits of, and opportunity for the CCSBT to harmonize its data collection and sharing requirements with the other four tuna RFMOs. Several means of improving its data collection were recommended, and it was suggested that CCSBT further discuss a process where members provided detailed information to the Secretariat who then does the necessary analysis and provides that information to members in an acceptable format.

The reviews of CCSBT and ICCAT both recommended the need for a full catch documentation scheme. Urgent implementation of such a scheme was recommended for CCSBT, and the ICCAT Panel referred to the Recommendation Concerning the Recording of Catch by Fishing Vessels in the ICCAT Convention Area [Rec. 03-13], which required a mandatory data recording system for all commercial fishing vessels.

Regarding the *extent of data collection and sharing by members and CPCs*, the CCAMLR review recommended the development of two kinds of mechanisms, one whereby all members and Contracting Parties regularly notify CCAMLR of potentially relevant research and monitoring being carried out in the Convention Area, and other mechanisms to be developed by members and contracting parties to ensure that vessels and fishing companies under their jurisdiction adhere to CCAMLR conservation and management measures, including information reporting requirements. Finally it recommended that the Scheme of International Scientific Observation should be reviewed and supported so as to meet expanded CCAMLR monitoring and management requirements.

The ICCAT review stated that it has in place all adequate rules and procedures for data collection and sharing in its Basic Texts and management measures. The IOTC review took a general approach, and encouraged cooperative capacity building efforts among Members and, as appropriate, external organizations as well as an enhanced capacity of the Secretariat to provide support to developing States' Members. More creatively, it recommended the exploration and, as appropriate, implementation of innovative or alternative means of data collection (e.g. port sampling) as well as avenues to collect data from non-Members.

Regarding the *extent to which fishing data and fishing vessel data are gathered by the RFB and shared among members and other RFBs*, the IOTC review panel identified a poor level of compliance by many IOTC Members with their obligations and made a wide range of recommendations referring to modification of the timing of data reporting and deadlines, investigation of scheduling meetings of working parties and Committees, monitoring and sanctioning of non-compliance, improvement of the quality and quantity of data, provision of support to developing States, establishment of a Regional Scientific Observer Programme, actions to increase the participation of non-members, establishment of a statistical working party and expansion of the list of shark species.

Regarding the *extent to which the RFB is addressing any gaps in the collection and sharing of data* as required, the reviews of CCAMLR, CCSBT and IOTC all referred to addressing different gaps in data collection. The CCAMLR panel found considerable inconsistency in the monitoring and reporting requirements for different fisheries and management areas. It recommended the standardization of training and accreditation of scientific observers, clarification of the priorities for data to be collected by observers and making monitoring and reporting of the krill fishery consistent with the requirements of CCAMLR fisheries.

The CCSBT review observed that gaps in collection and exchange of ERS data had been identified and attempts to resolve these have failed in the past. These remained unresolved and there were no processes in train to resolve them.

The IOTC review focused on the enhancement of support for developing States members, on the encouragement of capacity building efforts amongst Members and on the exploration and subsequent implementation of innovative means of data collection (also for non-Members). Finally the NEAFC review recommended that efforts be directed at the development of an independent verification system examining the consistency of data from different sources.

The issue of *enhancing human capacity in RFB Members to meet data collection requirements* was addressed in the reviews of CCAMLR, CCSBT, ICCAT and IOTC. The CCAMLR review suggested that a mechanism for capacity building and cooperative programs (particularly for developing States) be established. The CCSBT Working Group noted the different capacities in members and commented that the ability to collect and report data may vary and should be

recognized when establishing data reporting requirements. The IOTC panel recommended that the Commission should enhance funding mechanisms to build developing country CPCs' capacity for data collection, processing and reporting infrastructures, in accordance with the Commission's requirements.

Only the ICCAT review indicated that appropriate action had already been taken by setting up a special fund for assisting Contracting Parties in training in data collection and other purposes, under its Resolution on Improvements in Data Collection and Quality Assurance (Resolution 03-21).

#### *Quality and provision of scientific advice*

The good quality of scientific advice was observed in the reviews of CCAMLR and CCSBT. In particular the CCAMLR review emphasized the high calibre of the scientists of its Scientific Committee and the improved effectiveness and acceptance of scientific advice. For further improvement it was recommended that CCAMLR consider mechanisms to distribute the costs of providing scientific analysis and support of the working groups and Scientific Committee more equitably among Members and alternatives to the historical structure of the report of the Scientific Committee to improve effectiveness and efficiency. The CCSBT review emphasized how the excellence of the current process for providing scientific advice on SBT from the Extended Scientific Committee to the Commission, has improved the integrity of the scientific process.

It was not in the mandate of the ICCAT Panel to undertake an independent evaluation of the stock assessments completed by the SCRS or to offer a detailed review of the advice provided by the SCRS. The SCRS had periodically reviewed its mode of operation and continued to do so and the Panel considered that if the current arrangement was not satisfactory, the mechanisms exist to make adjustments.

The IOTC review commented on the reliance by the organization on the availability of individual national scientists for research and analysis, and this did not ensure that the work requested would meet the expected standards. In addition, where high quality advice is provided, the low participation in meetings may negatively affect credibility. The review made a number of recommendations to improve the quality and provision of scientific advice.

NASCO depends mainly on ICES for its scientific advice. As a result of consultations with ICES, improvements have been made to the timeliness of the advice and its presentation. The arrangements have been formalised in a Memorandum of Understanding. In addition, however, in response to increased mortality of salmon at sea, NASCO has embarked on a major programme of innovative research at sea funded through a public/private partnership. The culmination of this programme will be an international symposium in 2011.

As noted above, NEAFC depends on ICES for scientific advice and in this regard, the panel noted that the management of some species had been hindered because of the high variability in the scientific advice provided. It was recommended that a more formal and planned approach be considered for formulating requests for scientific advice from ICES and also that the establishment of a new science/management committee of NEAFC be considered.

#### *Adoption of conservation and management measures*

The CCAMLR review emphasized how the measures adopted included some innovative approaches, such as the arrangements for new or exploratory species. Furthermore in the majority of cases there was little delay in adopting and implementing these measures. However, the Panel

noted that the situations where conservation measures cannot be either applied, or applied in a consistent way, throughout the Convention Area potentially undermined pursuit of the objectives of the Convention. Whether this actually occurred depended on the research, monitoring and management regime applied in those areas. The Panel had made recommendations through other Review criteria in relation to improving the consistent application of management, monitoring and research throughout the Convention Area.

The CCSBT review noted that measures had been agreed setting the total allowable catch and national allocations for Members, CPCs and observer States. The Panel recommended that CCSBT should continue to make conservation and management measures which are consistent with scientific advice from the Extended Scientific Committee and develop a strategic plan plus a management plan to implement minimum standards for the fishery.

The ICCAT review noted that it had developed a useful toolbox of measures to deal effectively with the management of fisheries under the mandate of ICCAT. In fact, some 110 resolutions and recommendations had been adopted that addressed these issues. However, there remained problems convincing CPCs to implement measures that have been adopted.

On the other hand the panels for IOTC Panel observed that IOTC had adopted few measures and the most significant relate to the regulation of fishing effort through the creation of a record of IOTC authorized vessels and active vessels, and measures to limit fishing capacity. The lack of adoption of adequate conservation and management measures was, inter alia, attributed to the uncertainties in the scientific advice and a lack of willingness by Members to address urgent issues. Also, there was a lack of an explicit framework under which the Commission takes decisions in light of uncertainty. Recommendations included consideration of other management approaches such as total allowable catch or total allowable effort, agreement on a deadline for the implementation of fleet development plans, development of a framework to take action in the face of uncertainty in scientific advice and using the full range of decision making processes available to it under the Agreement.

Regulatory measures adopted in NASCO have resulted in the closure or restriction to internal use harvests only of the distant water fisheries. As a result of the "Next Steps" review, NASCO is seeking greater balance and fairness in the management of distant water fisheries and those prosecuted by States of Origin. Procedures have been developed to assess progress in implementation of NASCO's agreements relating to management of fisheries. NASCO has successfully addressed an issue of fishing for salmon in international waters by vessels registered to non-NASCO Parties that emerged in the late 1980s. There have been no sightings of such activity since the early 1990s. NASCO is also addressing a range of other conservation issues including habitat protection and restoration and the impacts of aquaculture, introductions and transfers and transgenics.

The NEAFC Panel observed that it operates on the assumption that conservation as well as optimal utilization objectives are being met in the management plans developed by coastal States where such plans exist. When there is no coastal State agreement, each coastal State determines its own management plan. In these situations NEAFC has limited, or no scope for management within its Regulatory Area. The Panel noted that NEAFC could examine possible solutions for the Regulatory Area even in the absence of coastal State agreements, consistent with a precautionary approach. Separate comments were also given for specific species, and the Panel recommended addressing the situation for deep-sea species as a priority and ensuring that new exploratory or expanding fisheries develop in accordance with the precautionary approach.



Regarding the application of the *precautionary approach*, the CCAMLR Panel noted that CCAMLR was recognized internationally as a leader and had a very strong record of developing and applying the precautionary approach to the management of fisheries. However, the Panel commented that there were areas where the current approaches were weak or could benefit from further consideration and development. These related to new or exploratory fisheries, some established fisheries, persistence of fisheries for long periods in the category new or exploratory, habitats and consideration of management responses in the event of adverse environmental conditions

The CCSBT review noted that there is no reference to the precautionary approach in its Convention. Nonetheless, the CCSBT had decided to implement the precautionary approach in its management of the SBT resource through the Management Procedure, which had some aspects of the precautionary approach.

The ICCAT review observed that ICCAT had not adopted the precautionary approach as such. Although the precautionary approach was not included in the Basic Texts, but some precautionary actions had been taken in the form of resolutions and non-binding recommendations (especially for non-target species). It recommended that ICCAT formally and systematically adopt the precautionary approach.

The NEAFC Panel addressed the precautionary approach in the context of specific fisheries or measures that should be taken. It found that there had been no consideration of the precautionary approach for some species and that management plans for certain species were consistent with the precautionary approach. More generally it recommended that NEAFC should continue to play a critical role in ensuring that new exploratory or expanding fisheries develop in accordance with the precautionary approach.

The *adoption of conservation and management measures for previously unregulated fisheries* was considered by the CCAMLR Panel, which concluded that CCAMLR has an exemplary record for developing and applying management measures for new or exploratory fisheries. There were certain shortcomings in the scope of application and a need to learn from the (relatively few) cases where the CCAMLR approach did not result in development of a sustainable fishery and to modify the approach as appropriate.

For IOTC, the Panel noted that the Commission placed the emphasis, for the first three or four years of its work, on the three main tropical tuna species, and then moved also to the regulation of other species such as swordfish. Fishing for sharks was largely unregulated, and it was recommended that IOTC consider measures to regulate shark fisheries.

The CCSBT Working Group concluded that the issue of previously unregulated fisheries was not applicable, and the ICCAT and NEAFC Panels did not address it.

Regarding the *need to conserve biological diversity and minimize harmful impacts on marine living resources and marine ecosystems*, the CCAMLR Panel found that there were several measures and processes in place to manage elements of biodiversity and specific threats to biodiversity at its various levels (i.e. genetic, species and ecosystems). However, there was not an articulated intention or plan regarding the intentions and management of biodiversity overall. The Panel recommended the development of an overall strategy and plan to address conservation of biodiversity in the Convention Area and assessment of the consequences of excluding most of the relevant CCAMLR conservation measures from some areas of national jurisdiction, and, as

necessary, the establishment of mechanisms to ensure that consistent and coherent management of biodiversity in the Convention Area is achieved.

The IOTC Panel observed that the IOTC Agreement did not contain specific provisions concerning conservation of marine biodiversity and minimization of harmful impacts on ecosystems. It identified a need to develop and take into account modern principles for fisheries management, including the ecosystem based approach, protection of marine biodiversity and reducing the harmful impacts of fishing on marine environment, and recommended the integration of these concepts in the IOTC Agreement.

The reviews for CCSBT, ICCAT and NEAFC did not address this issue.

Regarding *measures to minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target marine living resources and impacts on associated or dependent species*, the CCAMLR Panel concluded that CCAMLR has taken significant measures to address the effects of lost or discarded material on the marine ecosystem, and to differentially encourage the use of fishing gears that have least environmental impact. However, the reporting and the impact of lost gear were not comprehensively addressed nor was the potential effect of the introduction of bait into the Antarctic ecosystem. It recommended the improvement and strengthening of reporting requirements for lost gear from commercial fishing operations, the assessment of the likely scale and impact of lost fishing gear on target and associated and dependent species and consideration of the risks posed by the introduction of bait into the Convention Area.

The CCSBT review reported that the organization had not adopted any measures to minimize pollution, waste, discards, or catch by lost or abandoned gear. However, members may have committed to other international agreement or may have national legislation that applies to their vessels.

The IOTC Panel noted that no specific measures have been adopted to minimize pollution, waste and discards, but recommended that the reduction of harmful impacts of fishing on the environment should be taken into account in developing and taking into account modern principles for management.

The reviews for ICCAT and NEAFC did not address this issue.

#### *Capacity management*

Regarding the *identification of fishing levels commensurate with the conservation, including rational use, of marine living resources*, the general view of the CCAMLR Panel was that the arrangements currently in place in the Convention Area had served CCAMLR well and probably not resulted in a significant increase in capacity. This was possibly due to the nature of the fisheries involved and their large distance from established infrastructure and home ports. However, this had not stopped significant IUU fishing activity and, with global stocks at all-time low levels, the pressure on healthy stocks and fisheries from IUU activity would only increase. The Panel was concerned that fisheries management in the Convention Area was entering a new phase, with significant additional interest in the krill fishery, continued high interest in finfish fisheries and the unknown impacts of climate change. The Panel was worried that the past approaches used by CCAMLR to manage fishing capacity would not be sufficient to meet these new challenges.

In addition, the Panel observed that the current management approach uses competitive catch limits which will encourage greater participation in the fisheries and a race to fish, and thus encourage

excess fishing capacity and excess fishing effort as operators seek to maximize the quantity they are able to take of the catch limits. By contrast, an allocated catch limit would ensure that each Contracting Parties and fishing operator knows exactly what they are allowed to catch prior to the commencement of fishing operations. The Panel pointed out that contemporary best-practice fisheries management should not rely just on competitive catch limits, but should also ensure it was not sending perverse economic signals to Members and Acceding States.

The Panel concluded that CCAMLR had identified and implemented binding precautionary catch limits for key target and by-catch species, but had not sought to identify the capacity needed to harvest these resources sustainably. It recommended that CCAMLR should develop and apply methods to identify fishing capacity levels that are commensurate with sustainable harvests from the fisheries in the Convention Area.

The CCSBT has used TACs and national allocations as its fundamental management tool. In this context it has not been necessary to consider controls for fishing capacity as well. However, members have used capacity management measures as part of their individual domestic responses to managing declines in national allocations. These have been reported to the CCSBT in national reports and have been discussed. The Panel reported the discussions within CCSBT relating to the increase in Indonesian fishing capacity arising from the importation of vessels from other flag states, re-registration of these vessels and transferring ownership to Indonesian fishing companies.

The ICCAT Panel noted that the management of capacity has proved to be a difficult issue in all RFMOs. The challenges between developed and traditional high seas fishing countries, the aspirational rights of small islands and coastal developing States and the emergence of large national and multi-national companies keen to establish a competitive advantage are the main drivers that contribute to this problem. The management of capacity has proved to be a difficult issue in all RFMOs. The development of allocation criteria has helped developing countries gain access to fisheries and has given them the ability to charter in vessels from existing CPCs which helps with development.

The Panel concluded that if Mediterranean bluefin is removed from the judgment then ICCAT has preformed quite well, but it needs to remain sensitive to the requirements of developing coastal States and in particular the ongoing artisanal, recreational and charter fisheries. It recommended that ICCAT should seriously consider the report of the Working Group on Capacity and adopt at its 2008 meeting a recommendation to reduce capacity in all ICCAT fisheries where over-capacity is a problem.

The IOTC Panel, analyzing the situation, noted that to date, IOTC had not identified precise fishing capacity levels. Accurate estimates of the levels of fishing capacity operating in the Indian Ocean were not available. As a result, the Commission had not linked fishing capacity to the desirable levels of exploitation of the stocks. Because of the lack of precise information on fishing capacity, it was unlikely that capacity conservation alone would be sufficient to maintain the stocks at an acceptable level.

The review of NEAFC did not address this issue.

Regarding *actions to prevent or eliminate excess fishing capacity and effort*, the CCAMLR review considered that a small group of experts should be established to explore and report on the advantages and disadvantages (including cost and feasibility) of approaches and actions to prevent or eliminate excess fishing capacity, and review and adopt appropriate approaches and actions as a matter of urgency. Some options to be explored by such a group were suggested.

The analysis of the IOTC Panel concluded that IOTC employs effort-based controls i.e. controls on fishing capacity (e.g. controlling the numbers and tonnages of vessels) as opposed to catch based controls (e.g. catch limits), and on this basis had adopted Resolutions designed to limit fishing capacity. These were however deemed not sufficient to limit the capacity at a level commensurate with long term sustainability of fisheries. In addition, developing Members were allowed to submit capacity development plans, however as there were no deadlines for submission of such plans, there was no stable projection of fishing capacity against which management controls can be considered. The provisions of the IPOA-Capacity had been considered.

The IOTC Panel recommended that IOTC should establish a stronger policy on fishing capacity to prevent or eliminate excess fishing capacity, close the loopholes in the current systems of fishing capacity limitation and endorse the recommendation of the Scientific Committee to create a Working Group on Fishing Capacity.

The reviews of CCSBT and ICCAT did not address this issue.

### **Recommendations on conservation and management**

- With regard to overall strategy for stock assessment, the most accurate stock assessment possible should be developed in the short term and then a strategy to address the impacts of relevant fisheries on ERS is to be developed, including the collection and sharing of data and the harmonization of rules with other relevant RFMOs.
- The need to adopt the ecosystem approach or ecosystem-based management should be considered in a more formal and systematic manner including cooperative mechanisms, such as MoUs, to work in a coordinated manner on issues of common interest with other RFMOs.
- With regard to data collection and sharing, standardization should be considered in formats, specifications and timeframes for data collection and sharing as well as training and accreditation of scientific observers. Capacity development effort for developing States members should be also enhanced amongst Members.
- The precautionary approach should be taken, in particular for new exploratory and expanding fisheries in the face of uncertainty in scientific.
- The reduction of harmful impacts of fishing on the environment should be taken into account in developing modern principles for management, including the improvement and strengthening of reporting requirements for lost gear from commercial fishing operations, the assessment of the likely scale and impact of lost fishing gear on target and associated and dependent species.
- The methods to identify fishing capacity levels that are commensurate with sustainable harvests from the fisheries in the Convention Area should be developed and capacity should be reduced in all fisheries where over-capacity is a problem by establishing a stronger policy on fishing capacity to prevent or eliminate excess fishing capacity.

### ***Compliance and enforcement***

#### ***Flag State duties***

The CCAMLR review observed that, in reality, there had been, and continued to be, instances of lack of flag State control and failure to discharge conservation and management obligations. This is a major problem when it comes to cooperative regional fisheries management. Lack of, or

inadequate, flag State control remained one of the major problems in high seas fisheries governance and within the Convention Area.

The history of compliance by CCAMLR Contracting Parties had been variable. With CCAMLR increasing emphasis on compliance, some operators sought to avoid or minimise regulatory control of their vessels through complex beneficial ownership arrangements and renaming and reflagging vessels. The Panel concluded that Contracting Parties continued to act in good faith in respect of the negotiation, adoption and implementation of conservation and management measures. That said, there still existed the practice of some nationals and operators exploiting loopholes through reflagging and complex beneficial ownership arrangements which circumvent CCAMLR regulations, as enacted into domestic law.

The Panel considered the Scheme to Promote Compliance by Contracting Party Nationals with CCAMLR Conservation Measures (CM 10-08) which had entered into force on 1 July 2008, and perceived that difficulties might arise over the implementation of this measure. There would need to be transparency among Contracting Parties in relation to their domestic legislative arrangements, which should be strengthened and harmonized.

The Panel recommended that Contracting Parties should cooperate in the implementation of CM 10-08 through their respective domestic legislation by (a) exchanging information, as appropriate, on their draft and final legislation in respect of controls over their nationals and (b) considering reciprocal and cooperative arrangements which might enhance the effectiveness of this measure.

The CCSBT Working Group signalled that CCSBT would need to decide on the balance between increased flag state responsibilities and centralized MCS systems administered by the Secretariat during the development of an integrated MCS strategy. Primary accountability for complying with CCSBT measures would lie with the flag state. It recommended that all members and cooperating non-members should continue to take all necessary actions to ensure the compliance with conservation and management measures adopted by the CCSBT.

The ICCAT Panel noted that there was no provision for flag State duties in the Basic Texts, but that several ICCAT measures cover most of the points contained in international fisheries instruments. It pointed out, however, that no measures have been adopted by ICCAT regarding the imposition of sanctions of adequate severity for violations. It recommended that the Commission adopt provisions on the need to apply sanctions sufficient to secure compliance, particularly in view of the fact that some fishing vessels, especially those carrying out IUU fishing activities often repeat their offences due to the lack of severe sanctions.

The IOTC Panel found, similar to the ICCAT review, that although flag State duties are not reflected in the IOTC Agreement, the IOTC has included a number of relevant provisions in its resolutions. It recommended that any amendment to or replacement of the Agreement should include specific provisions on Members' duties as flag States.

NASCO has successfully addressed an issue of fishing for salmon in international waters by vessels registered to non-NASCO Parties that emerged in the late 1980s. There have been no sightings of such activity since the early 1990s.

The NEAFC review referred to its 1998 Scheme of Control and Enforcement in respect of fishing vessels fishing in areas beyond the limits of national fisheries jurisdiction in the Convention Area. The Scheme lays down the obligations of Contracting Parties as well as various tasks to be performed by the Secretariat. Over the most recent 3 years, implementation and automation of the

Scheme had generally been satisfactory, although the Panel identified scope for improvement in some areas. As a result of the implementation of the Scheme, the Panel concluded that the Contracting Parties largely fulfil their duties as Flag States. NEAFC in fact had been in the forefront in using new technologies for monitoring fisheries. Performance could be improved, but given the innovative use of VMS and communications for control purposes some developmental hurdles were to be expected.

#### *Port State measures*

The CCAMLR review acknowledged that port State control was a relatively new and emerging role within broader fisheries management arrangements, particularly in relation to high-seas fisheries and the fight against IUU fishing. It considered that, while it is a matter for a port State to determine and implement its policy, there may be greater virtue in allowing a vessel which is suspected of having undertaken IUU fishing, or is carrying IUU catch, to enter a port and be subject to inspection rather than prohibiting its entry as is required expressly by CM 10-03. However, entry and inspection could then allow for subsequent dialogue with the vessel's flag State and the possible imposition of sanctions. Denying access to such a vessel would, in contrast, likely see the vessel land its catch elsewhere, in a third-party port, where the IUU caught fish to then enter trade. The review observed that the effectiveness of this measure was reduced by its focus on fishing vessels only, and moreover by being restricted only to vessels known to be carrying toothfish.

The Panel recommended that CCAMLR should determine the format and minimum content of inspection reports and should set minimum timelines for their submission. Enhanced port inspection reporting would also provide a further means of verification of the CDS in an enhanced catch reconciliation system. Further, CCAMLR should develop a more comprehensive approach to port inspections by defining 'fishing vessels' to include reefer and fishing support vessels and widening the obligation to inspect to any fishing vessel suspected of carrying toothfish, or of having been engaged in fishing on that species in the recent past. The Commission may also wish to consider expanding inspection arrangements to cover all species harvested within the Convention Area.

The CCSBT Working Group, noting that its Convention does not provide for port State measures, concluded that they are a crucial link in the chain of effort to combat IUU fishing and there is a need for a consistent and coordinated approach to port inspections. In considering a suite of integrated MCS measures, the port State measures are the final important link in the through-chain traceability and accountability process from the point of kill to the retail market. CCSBT had adopted a resolution relating to IUU and authorised vessels, which required members and cooperating non-members to take measures to prohibit the landing of SBT by fishing vessels not entered on the authorised vessel list. The Working Group recommended that the FAO Technical Consultation on Port State Measures would provide the Commission with some guidance on a preferred model when considering implementation of any CCSBT port State measures.

The ICCAT review, similar to others, noted that there was no provision in the basic texts but the area was covered in part by some recommendations, including the Recommendation for a Revised ICCAT Port Inspection Scheme [Recommendation 97-10], The Recommendation Concerning the Ban on Landings and Transshipments of Vessels from Non-Contracting Parties Identified as Having Committed a Serious Infringement [Recommendation 98-11] and the Recommendation Establishing a Programme for Transshipment [Recommendation 06-11], Annex 3. The Panel noted, however, that mandatory inspection and possible prohibition of landing and transshipment in ports is limited only to non-Contracting Party vessels.

In considering implementation of port State measures by members, the Panel noted that mandatory inspection and possible prohibition of landing and transshipment in ports are limited only to non-Contracting Party vessels, port State measures are inconsistent and inspections are random. While there was no necessity for more than random inspection, capacity building in relation to port State measures was thought to provide a useful way of improving inspection and reporting.

The Panel considered that ICCAT should take further action in order to expand and strengthen port State measures in conformity with the UNFSA, taking into account the recent work of FAO to draft a new international agreement on port State measures.

The Panel concluded that the main improvement that ICCAT could make is to modernize its practices and adopt as appropriate the port State measures developed by the FAO. The other major advance would be to make sure that all CPCs have in place domestic port State arrangements and controls that allow them to comply fully with the provisions of the ICCAT Revised Port Inspection Scheme. In addition, the application of port State measures should be reported in the annual report by CPCs to ICCAT.

The IOTC review similarly pointed out that port State duties are not in the IOTC Agreement. In its analysis, it considered that IOTC had adopted a rather vague resolution relating to the establishment of an IOTC Programme of Inspection in Port (Resolution 05/03). It was out dated and will require amendments in the near future following the international developments on this issue, most notably the process for establishment of a globally binding agreement on port State measures in FAO. To date the level of compliance with this Resolution had been low.

It recommended that any amendment to or replacement of the IOTC Agreement should include specific provisions on Members' duties as port States and that IOTC should explore the possible implementation of the FAO Model Scheme on Port State Measures and duly note the outcome of the current process for establishment of a globally binding agreement on port State measures.

The NEAFC review underlined how port State measures are a key element in efforts to combat IUU fishing activities. It noted that NEAFC is in advance of other RFMOs in implementing Port State control measures, particularly in its 1998 adoption of the Scheme to promote compliance by Non-Contracting Party vessels with recommendations established by NEAFC (NCP Scheme). An amendment that introduced of an 'A'-list and 'B'-list as well as accompanying port control measures entered into force in 2004. Further work was continuing on the development of more comprehensive port State control measures.

The Panel concluded that the establishment of 'A' and 'B' lists, and the introduction of rules regulating the entry and exit of IUU vessels in port, have improved the control of IUU fishing. The Panel considered that the Scheme adequately implements relevant global instruments. However, it was noted that these instruments did not go far enough or, perhaps, were too theoretical in their construct. Therefore, the practical implementation by NEAFC of their provisions demonstrated the need to adapt them to suit the specific nature of the fishing activities in the RFMO concerned. It was evident that there was no quick and easy solution to this problem. However, NEAFC had demonstrated that it was capable of acting quickly to address specific issues, for example by closing ports to vessels on the IUU 'B' list and the developing comprehensive port State measures.

#### *Monitoring, control and surveillance*

Regarding the adoption of integrated MCS measures and the extent to which these measures are effectively implemented, the CCAMLR review panel, after a lengthy description of relevant

experience, concluded that the existing conservation and management measures, as individual elements of MCS, had variable effectiveness. This could be enhanced by the adoption of a more comprehensive and integrated approach, for example, through (a) linking reported catch data with both the CDS and Centralized VMS and (b) integrating the Centralized VMS with surveillance and inspection operations.

The Panel made a number of recommendations, including suggestions for amending the Catch Documentation Scheme, reporting VMS data for all fisheries directly to the Secretariat in real time, providing unhindered access to real-time VMS data for surveillance and inspection activities, developing a more effective and contemporary inspection regime, making greater use of multilateral inspections and providing consistency in management and enforcement measures for certain fisheries. The Panel further recommended that Contracting Parties should either apply CCAMLR measures to their flag vessels operating in the high seas north of the CCAMLR Area or in areas subject to their jurisdiction, or conclude agreements through CCAMLR to achieve a similar outcome.

The CCSBT Working Group recalled the MCS measures that had been adopted, including a Vessel Monitoring System, scientific observer program standards, and a Trade Information Scheme. There were no international observer coverage requirements, but the observer program standard had been agreed with a target of 10 percent observer coverage. A draft resolution had also been adopted for a transshipment monitoring program. It had been acknowledged by the Compliance Committee that the MCS measures were inadequate, but limited progress had been made on the priority areas agreed by the Committee. The Working Group provided separate comment on a range of components of MCS, including a catch documentation scheme, transshipment, VMS, observers and boarding and inspection. It noted that MCS measures are only effective in addressing IUU fishing if there is a comprehensive integration of measures. CCSBT should consider how the MCS measures work together and identify gaps or loopholes that facilitate IUU fishing.

The Working Group recommended that, as the CCSBT does not have a Convention Area and SBT migrates into the other tuna RFMOs' areas of jurisdiction, the CCSBT should cooperate with the other tuna RFMOs to optimise harmonisation, improve global effectiveness and avoid duplication of work. It should also prioritize the development of MCS in the context of a compliance plan.

The ICCAT Panel commented that although ICCAT had adopted broadly framed integrated monitoring measures, they were not binding on CPCs. The measures regarding international observers programs were very limited in that they were only for carriers engaged in transshipments.

No system existed for high seas inspection and boarding of non-flag vessels, other than stateless vessels. The Panel recommended that the Commission review immediately the adequacy and effectiveness of its MCS and enforcement measures with a view to adopting measures for further strengthening them, including regional on-board observer program and boarding and inspection scheme.

One of the main concerns of the Panel was that although ICCAT had developed adequate tools to effectively monitor, enforce and manage the fisheries, it was constantly let down by the lack of effective enforcement by CPCs of the ICCAT decisions and Basic Texts. This had reached chronic proportions in the Mediterranean Sea fisheries. It concluded that one of the most fundamental changes that must occur within ICCAT is a major change of attitude towards responsible fisheries management and compliance amongst a large number of its CPCs.



The Review Panel recommended that: ICCAT CPCs should immediately apply fully the rules and measures adopted by ICCAT and through domestic arrangements provide effective control over their nationals; CPCs must agree to provide accurate and timely data and information on MCS activities and arrangements to ICCAT; and CPCs should also consider immediately developing a fair and tough penalty regime that will be applied to defaulting CPCs.

The IOTC Panel, in its analysis, referred to various components of MCS activities. IOTC had recently adopted an obligatory VMS, however, its implementation was still to be verified. A programme for transshipments, adopted in 2006, had recently entered into force. A bigeye tuna statistical document scheme had been implemented for frozen products, excluding purse seine and pole and line catch destined for canneries. IOTC had no observer scheme (except the scheme limited to transshipments), catch documentation scheme or boarding and inspection scheme.

The Panel recommended that IOTC should develop a comprehensive MCS system through the implementation of the measures already in force, and through the adoption of new measures and tools such as a possible on-board regional observers' scheme, a possible catch documentation scheme and on boarding and inspection system.

The NEAFC Panel referred to the VMS database as the major element in monitoring and controlling Contracting Party vessels fishing in the Regulatory Area. The NEAFC Scheme of Control and Enforcement provides the agreed framework for VMS, and an important feature was the degree to which the automatic transmission of messages and handling of data played a part. Each Contracting Party had agreed to implement VMS for fishing vessels which exceed 20 metres between perpendiculars or 24 metres overall length which fish, or plan to fish, in the Regulatory Area, and committed themselves to certain measures and actions.

The data in the NEAFC VMS database are primarily there to assist inspection platforms from Contracting Parties on NEAFC service to obtain information on where the fisheries take place in order to enable the platform to work with maximum efficiency. However, the Panel noted that not all Contracting Parties contribute to inspection and surveillance to the extent that their fishing presence requires.

The Panel made a number of recommendations, including that more attention could be paid to quality control relating to the receipt, verification and tasking of information. There was scope for improvement in the coordination of the allocation and deployment of inspection resources, as well as for a greater use of the NEAFC database. The Panel noted that the number of reported infringements is limited by the (mainly) clean fisheries, and limited number of regulations. The main criticism of the Panel in relation to the use of new technologies was that the system was underutilized. Furthermore, the current deployment of inspection activities in the Regulatory Area meant that this was not shared equitably between Contracting Parties.

*Follow-up on infringements*

The CCAMLR Panel concluded that good practice suggested that where infringements occur they should be reported in a timely manner to enhance transparency of operation and demonstrate that Contracting Parties are fully implementing their obligations. To this end, it made a number of recommendations. First, the various reporting mechanisms within conservation measures, in relation to infringements, should be reviewed to ensure that the mechanisms of reporting are clear, concise and consistent between measures. Second, in respect of legal sanctions, reports should provide a link, preferably by electronic means, to the findings of the court (or equivalent) giving details of the penalty and sanction imposed. Such details should be archived by the Secretariat. Readily available information on CPs' domestic legislation would further aid transparency. Third, CCAMLR should create a 'library' within the Secretariat of relevant national legislation enacted by CPs. Such information should be updated as and when such domestic legislation is amended.

The CCSBT Working Party noted that it remained the flag state's responsibility to follow up on infringements of conservation and management measures by its vessels and/or nationals. The CCSBT has no provisions for penalizing infringements of its measures by members and cooperating non-members. When CCSBT Members or Cooperating Non-Members overfish their allocations of the TAC, the CCSBT practice is that they pay back that overcatch from their national allocations in following years. A paper which would formalize this process and establish agreed rules about the reparations for taking more than allocated was considered but remained to be finally agreed, and this issue was yet to be examined.

It was recommended that the CCSBT should, as a minimum, establish agreed rules on the treatment of overcatch (requirement of payback) and that ideally, the CCSBT should establish a range of penalties in relation to all conservation measures.

The IOTC had agreed in 2001 that a clear procedure to follow in the case of a potential violation needed to be developed, in accordance to international agreements. The Commission adopted a Resolution on Establishing a List of Vessels Presumed to have carried out Illegal, Unregulated and Unreported Fishing in the IOTC area. (Resolution 06/01).

The Panel Analysis noted that few technical and conservation and management measures had been adopted by IOTC that required follow-up by CPCs on infringements. There were no procedures in any resolutions to address non-compliance by CPCs and Resolution 06/01 only applied to non-Members. Detailed provisions on follow-up on infringements were not reflected in the IOTC Agreement.

The Panel recommended that Resolution 06/01 should be amended to allow the inclusion of vessels flagged to Members and that IOTC should explore options concerning the possible lack of follow-up on infringements by CPCs. In addition, IOTC should establish a sanction mechanism for non-compliance, and task the Compliance Committee to develop a structured approach for cases of infringement. Provisions for follow-up on infringements should be included in any amended/replaced Agreement.

The NEAFC Panel had addressed the issue under port State measures (above), particularly in the context of its IUU Vessel Lists, and various case studies. It stated generally that the lack of conservation and enforcement measures meant that there were in fact few infringements to follow up.

The ICCAT review did not address this issue.

*Cooperative mechanisms to detect and deter non-compliance*

The CCAMLR review noted that cooperative arrangements rely on the voluntary cooperation of the Parties, and work best when it is maximised. As CCAMLR had no dedicated surveillance and enforcement capability of its own, it must rely on Contracting Parties to provide information and services.

The Panel found that in the Convention and related key texts, direct references to cooperation between CPs are not numerous. It referred to the role of the SCIC, and concluded that in theory, the institutional procedures afforded it provided it with a ready means of sharing between CPs information on all aspects of compliance (and non-compliance). In addition, it referred to the establishment of vessel lists under Conservation Measures 10-06 and 10-07 and commented that while the lists produced through these procedures were accurate at a given time, they can quickly become obsolete. In this regard, CCAMLR should consider providing this information directly to other bodies.

The Panel noted that the vessel of any Contracting Party might be incorporated into the IUU Vessel List, and expressed concern at learning that effective implementation of this measure was being impaired by certain Members denying consensus that would see their flag vessels so listed. It called for CCAMLR to remedy this situation as a priority. More generally, the Panel considered that CCAMLR had established 'adequate' cooperative mechanisms.

The CCAMLR Panel recommended that the Commission undertake three reviews. It should review and augment (as necessary) the resources available to, and the modus operandi of, the SCIC to ensure it is able to function effectively. Second, it should review the format, consistency and timing of reports necessary to monitor compliance and detect and deter non-compliance. Finally, in relation to Conservation Measures 10-06 and 10-07, CCAMLR should review the process (including the need for consensus), timing and frequency with which vessels are added or removed from the IUU Vessel List. It should also consider how this information can be more widely disseminated.

The CCSBT review referred to the meetings of the Compliance Committee, which is tasked to monitor, review and assess compliance with conservation and management measures, exchange compliance information and report and provide recommendations to the CCSBT on addressing non-compliance. The Committee had focused on the development of an integrated MCS system since its first meeting in 2006, and it had not yet undertaken routine assessments of member and cooperating non-member compliance with CCSBT measures. In addition, all Members and Cooperating non-Members were required to submit their national reports to the Extended Commission. The Compliance Committee uses the national report to examine compliance, but there had been no national report submitted by Cooperating non-Members in recent years.

It was recommended that all Members and Cooperating non-Members should submit their national reports to the CCSBT, and that the CCSBT allocate sufficient time to the Compliance Committee and the Extended Commission to allow them to complete both routine and development work each year.

ICCAT has adopted a number of measures to detect and deter non-compliance, but the problem of lack of or non-compliance remains serious. Many CPCs had been unable due to lack of capacity or unwilling due to lack of political will to fully implement existing measures. The Panel considered that the inability to deal effectively with non-compliance by Contracting Parties was a key weakness of ICCAT.

ICCAT's rules give rise to difficulties because they can sometimes be complicated or subject to interpretation. In addition, there were so many requirements for CPCs that it was difficult for some of them to understand and comply with their obligations and for the Compliance Committee to assess non-compliance. No predetermined consequences existed for lack of compliance, and this permitted the continuation of violations.

The Panel referred to the various suggestions that had been made to improve the situation. First, the way ICCAT adopts measures in the future should be streamlined so that new and existing obligations are fully understood. Second, the compliance table and proposals should be submitted far enough in advance of the Compliance Committee's annual meeting to allow prior review and consideration. Third, the Compliance Committee should expand its function so as to analyze any information submitted by national authorities or any other entity or person. Fourth, the Compliance Committee meetings should be conducted by reviewing each case of non-compliance, and the burden of proof for compliance should be placed on the implicated Contracting Parties. And fifth, new mechanisms should be devised to ensure the identification of those Parties that accumulate a given number of proved infractions.

With regard to the mechanisms to deter non-compliance, particularly IUU fishing, it had been generally observed that ICCAT had made respectable progress in enhancing cooperation with its management programs by non-Members. There have been noticeable changes in the fishing activities of some countries and a substantial increase in ICCAT's membership over the last 10 to 15 years, including a high percentage of developing countries.

The Panel concluded that, in its view, non-compliance with ICCAT measures was one of the most serious problems that awaited urgent attention of the Commission. The effectiveness and credibility of ICCAT depended largely on how much the Commission can succeed in improving the situation in the immediate future. The Commission must squarely deal with the problem and strengthen its measures and mechanisms.

The IOTC Panel Analysis of this issue concluded that Members have a poor record of providing information against cooperative mechanisms such as, *inter alia*, the IUU and authorized vessel lists, and the port inspection scheme. Additionally, the IUU Vessel List was only applicable to non-Member vessels. The Compliance Committee work is hampered by poor reporting by Members both on actions taken pursuant to Article X of the Agreement and individual resolutions. There was a lack of commitment to implement IOTC measures, as well as a low level of compliance.

The Panel recommended that a structured, integrated approach to evaluate the compliance of each of the Members against the IOTC Resolutions in force should be developed by the Compliance Committee. CPCs should be reminded of their duty to implement in their national legislation the conservation and management measures adopted by IOTC. In addition, the requirement to present national reports on the implementation of IOTC measures should be reinforced.

The NEAFC review did not address this issue.

#### *Market-related measures*

The CCAMLR review stated that the Commission took decisive action in 1999 in developing and implementing the Catch Documentation Scheme (CDS). This was a significant compliance and market measure. It allowed product to be tracked from point of landing through to the final market, although it was noted that it did not trigger at point-of-capture, nor did it integrate with catch data reporting. Further, information available to the Panel suggested that the vast majority of CDS

information was now submitted in electronic form using the E-CDS which has improved the flow of information, reduced potential errors and reduced the scope for fraudulent activity.

The Panel noted that a number of fisheries and fishery-related schemes now use chain-of-custody arrangements to ensure the integrity of management arrangements and respond to increasing demands from wholesalers and retailers that the product has been harvested from a sustainable fishery and does not include any IUU catch. In terms of continuous improvement, and ensuring that CCAMLR maintained a lead in embracing best practice, the Panel concluded that it would seem appropriate that SCIC be asked to advise CCAMLR on the feasibility of introducing similar chain-of-custody arrangements in other toothfish fisheries in the Convention Area. Such an approach would be in line with current best practice, and would give market States greater confidence in the origins of the product.

The Panel suggested that market States might be able to assist in the fight against IUU fishing through enactment and implementation of 'Lacey Act' style legislation.<sup>43</sup> It concluded that consideration should be given to exploring the use of 'Lacey Act' style legislation more widely among Contracting Parties and market States, which could offer greater opportunities for cooperation in the prosecution of offenders.

The Panel recommended that E-CDS should become mandatory with immediate effect. To improve the integrity of the CDS, the scheme should commence from the point of capture (rather than shipment or transfer) and it should be integrated with catch reporting; the tasks of integration and reconciliation should be delegated to the Secretariat. Finally, SCIC should review and report on the possible development and implementation of a more sophisticated electronic chain-of-custody regime which could augment and might supersede the existing CDS.

The CCSBT implemented a TIS for SBT in 2000 but it had only been effective at tracking international trade. Members had not yet been able to agree the details of a CDS and work on developing a CDS continues. The CCSBT required members and cooperating non-members to deny entry of SBT shipments from vessels not on the authorized list or those not accompanied by an approved TIS form. The Secretariat maintains a database for monitoring catches and trade and reconciliation of these forms is conducted against electronic lists of exports submitted by members and cooperating non-members.

The CCSBT Working Group commented that if SBT is caught by a CCSBT member country and landed for sale in that country, it is deemed to be domestic catch and not a "trade". It is becoming increasingly important to monitor all catch and trade in SBT because of the new SBT markets that are developing. With a CDS, data would be collected for all SBT taken and landed providing a view of all global SBT catch, which is not possible with the TIS. For these reasons, it recommended that the CCSBT should implement a CDS as matter of urgency and pending implementation, all members and cooperating non-members should be required to implement the TIS. As well, the CCSBT should monitor all market and port states and encourage compliance with CCSBT monitoring and trade measures.

The ICCAT Basic Texts did not refer to market-related measures, but the Panel described relevant decisions of the Commission, including the 2007 ICCAT Recommendation on an ICCAT Bluefin Catch Documentation Program (Recommendation 07-10) which replaced the previous bluefin tuna

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<sup>43</sup> The Lacey Act is a US statute that is aimed directly at illicit trade in illegally caught fish and wildlife. The Act makes it unlawful for any person subject to the jurisdiction of the USA to "import, export, transport, sell, receive, acquire, or purchase any fish or wildlife taken, possessed, transported or sold in violation of any law or regulation of any State or in violation of any foreign law". Both criminal and civil sanctions are available under the Act, as well as forfeiture of the illegally caught fish.

statistical document program with the bluefin catch documentation (BCD) program. Under the program, CPCs must require a completed BCD for each bluefin tuna that is landed at its ports, delivered to its farms, and harvested from its farms. Each consignment of bluefin tuna domestically traded, imported into or exported or re-exported from its territories must be accompanied in principle by a validated BCD and, as applicable, an ICCAT transfer declaration or a validated Bluefin Tuna Re-export Certificate.

As part of its measures to combat IUU fishing, ICCAT has since 1996 adopted several Recommendations requiring CPCs to prohibit the import of bluefin tuna, bigeye tuna and swordfish, as well as their products in any form from those countries whose vessels were identified as fishing such species in a manner which diminishes the effectiveness of ICCAT measures. Subsequently, most of such sanctions had been lifted when the Commission found that fishing practices of the countries concerned were brought into conformity with ICCAT measures.

The more recent ICCAT Recommendation Concerning Trade Measures (Recommendation 06-13) sets out detailed, step-by-step procedures for deciding the imposition of trade restrictive measures, so that they are taken as a last resort, and implemented in accordance with international law.<sup>44</sup>

The ICCAT Panel commented that the Commission had done well in adopting market-or trade-related measures against IUU activities and the product originating in such activities. These measures were adopted carefully through multilaterally-agreed procedures, and applied in a fair, transparent and non-discriminatory manner, and consistent with World Trade Organization (WTO) rules. The Panel expected that the BCD program, if implemented fully, would be a much more effective tool than the previous program for excluding IUU products from the major markets and thus for deterring IUU fishing.

The IOTC Panel noted that the Commission had adopted management measures (one of them non-binding) that may affect trade. IOTC Recommendation 03/05 Concerning Trade Measures recommended a process of identification which identified States (rather than an individual vessel) as failing to discharge their obligations under the IOTC Agreement. In addition, the IOTC Record of Authorized Vessels enabled market States to identify whether a vessel offering tuna or tuna-like species from the Indian Ocean is legally entitled to do so, and therefore to accept or reject shipments on this basis. Shipments of frozen bigeye tuna must be accompanied by fully completed IOTC bigeye statistical documentation, and States may also accept or reject shipments on this basis.

The Panel referred to the bigeye tuna statistical document scheme, which excludes purse seine and pole and line catch destined for canneries, and concluded that the scheme in itself contains certain loopholes as it covers only traded catches. A Catch Documentation Scheme provides such a solution and is therefore a more stringent control approach. The Panel found that IOTC action in terms of measures relating to the exercise of rights and duties of its Members as market States was very weak, and recommended that the non-binding market related measure should be transformed into a binding measure. Further, the bigeye statistical document programme should be applied to all bigeye products (fresh and frozen). In addition, consideration should be given to catch documentation schemes for target species of high commercial value or alternatively expanding the scope of the current statistical document programme to address current loopholes.

The NEAFC review did not address this issue.

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<sup>44</sup> The countries against which such trade sanctions were imposed for the import of either bluefin tuna, bigeye tuna or swordfish, on some or all of them, were Belize, Cambodia, Equatorial Guinea, Georgia, Honduras, Panama, Sierra Leone, St. Vincent and the Grenadines.

## **Recommendations on compliance and enforcement**

### **Flag State duties**

- Member States and Cooperating non-member States should cooperate in exercise of their flag State duties through their respective domestic legislation by (a) exchanging information, as appropriate, on their legislation in respect of controls over their nationals and (b) considering reciprocal and cooperative arrangements which might enhance the effectiveness of this measure.
- Appropriate provisions on the need to apply sanctions sufficient to secure compliance should be considered, particularly in view of the fact that some fishing vessels, especially those carrying out IUU fishing activities often repeat their offences due to the lack of severe sanctions.
- Any amendment to or replacement of the Agreements should include specific provisions on Members' duties as flag States.

### **Port State measures**

- The format and minimum content of inspection reports as well as minimum timelines for their submission should be determined.
- A comprehensive approach to port inspections should be taken by defining "fishing vessels" to include reefer and fishing support vessels and widening the obligation to inspect to any fishing vessel suspected as appropriate based on the port State measures developed by the FAO. The application of port State measures should be reported by each member States to annual commission meetings.
- Any amendment to or replacement of the Agreements should include specific provisions on Members' duties as port States according to the FAO Agreement on Port State Measures.

### **Monitoring, control and surveillance (MCS)**

- Greater use of multilateral inspections and providing consistency in management and enforcement measures including cooperation with other RFMOs should be encouraged in order to optimise harmonisation, improve global effectiveness and avoid duplication of work. It should also prioritize the development of MCS in the context of a compliance plan.
- Each member State should immediately apply fully the rules and measures adopted by relevant RFMOs through domestic arrangements and provide effective control over their nationals including a fair and tough penalty regime as well as provide accurate and timely data and information on MCS activities and arrangements to relevant RFMOs.
- More attention should be paid to quality control relating to the receipt, verification and tasking of information with regard to MCS.
- The allocation and deployment of inspection resources should be shared equitably between member States.

### **Follow-up on infringements**

- The various reporting mechanisms within conservation and management measures, in relation to infringements, should be reviewed to ensure that the mechanisms of reporting are clear, concise and consistent between measures.
- In respect of legal sanctions, reports should provide a link, preferably by electronic means, to the findings of the court (or equivalent) giving details of the penalty and sanction imposed.

- A “library” should be established within a Secretariat of relevant national legislation enacted by member States. Such information should be updated as and when such domestic legislation is amended.
- A sanction mechanism for non-compliance and task the Compliance Committee to develop a structured approach for cases of infringement should be developed including agreed rules on the treatment of overcatch (requirement of payback) and a range of penalties in relation to all conservation measures.
- Provisions for follow-up on infringements should be included in any amended/replaced Agreement.

#### **Cooperative mechanisms to detect and deter non-compliance**

- Convention and management measures should be streamlined so that new and existing obligations are fully understood by all concerned.
- All Members and Cooperating Non-Members should submit their national reports to annual Commission meetings enough in advance for their verification.
- The Compliance Committee should be established to analyze any information submitted by national authorities or any other entity or person.
- The Compliance Committee meetings should be conducted by reviewing each case of non-compliance, and the burden of proof for compliance should be placed on the implicated Contracting Parties.
- New mechanisms should be devised to ensure the identification of those Parties that accumulate a given number of proved infractions.

#### **Market-related measures**

- Market States might be able to assist in the fight against IUU fishing through enactment and implementation of ‘Lacey Act’ style legislation. Consideration should be given to exploring the use of ‘Lacey Act’ style legislation more widely among member States and market States, which could offer greater opportunities for cooperation in the prosecution of offenders.
- E-CDS should become mandatory with immediate effect. To improve the integrity of the CDS, the scheme should commence from the point of capture (rather than shipment or transfer) and it should be integrated with catch reporting; the tasks of integration and reconciliation should be delegated to the Secretariat.
- The non-binding market related measure should be transformed into a binding measure.

### ***Decision-making and dispute settlement***

#### ***Decision-making***

The CCAMLR Panel noted that the Commission’s decision-making mechanism essentially consisted of the consensus rule for matters of substance and that it had worked well over a long period of time. The consensus procedure followed by CCAMLR was considered as transparent and consistent and, in most situations, had been used responsibly and fairly by Members and had been understood as being something more than the absence of an objection. Consensus brings with it a strong sense of cooperation and in most cases compromises had been reached on matters of difference. It has also helped to adopt a serious negotiating effort and to create a better climate for the respect and self-enforcement of decisions.



However, the consensus rule in the implementation of some conservation measures had nevertheless created problems, and the potential for conflict was growing in this respect. The Panel suggested that CCAMLR must therefore take action as soon as possible, in order to be equipped with the appropriate tools to deal with conflict before it emerged.

The Panel recommended that, in respect of the consensus rule, a distinction must be drawn between substantive issues and matters of implementation. While decisions possessing normative and regulatory effects must continue to be addressed on the basis of consensus, determining how such decisions were implemented could be submitted to a different procedure.

The CCAMLR Panel recommended how this could be achieved within the existing framework of the CCAMLR Convention. First, conservation measures should provide that decisions regarding their implementation will be adopted by majority rule, or that any State concerned will abstain from participating in the decision, or that these decisions are not matters of substance (hence not requiring consensus), as envisaged by Article XII.2 of the Convention. Second, CCAMLR could establish, as a subsidiary body, a panel composed of independent experts to deal with the determination of factual matters, such as compliance with a conservation measure (e.g. the inclusion of a vessel on the IUU Vessel List) in accordance with Article XIII.6 of the Convention. The decision of such a panel would be binding. Another alternative was to follow the World Trade Organization dispute settlement procedure, where panel decisions would be binding unless a negative consensus is reached subsequently by CCAMLR.

The above alternatives were considered preferable to the triggering of procedures under Article XXV in the case of a dispute as to the implementation of a measure.

Regarding the existence of an informal mechanism of cooperation between Contracting Parties based on reciprocities, the Panel supported informal mechanisms of cooperation that are for the benefit of CCAMLR and in conformity with the Convention and general international law. By contrast, any inter-member States' cooperation based on reciprocity in order to pursue particular interests must be avoided, and should be condemned.

The CCSBT Working Group commented that consensus decision-making formed the basis of all CCSBT decisions. This could not be changed without amendment to the Convention. However, consensus decision-making had led to some sub-optimal outcomes for the Commission and members might consider how they manage the decision making process to improve the timeliness and effectiveness of decisions, particularly those that relate to the status of the SBT stock.

The Panel recommended that although the consensus rule means that some decision-making is delayed, the Commission could consider that some day to day operational decision making could be devolved to the Chair or the Executive Secretary (by unanimous decision of the Commission).

The ICCAT Panel commented that, with regard to the voting procedure, in practice ICCAT has taken most decisions by consensus. According to the Secretariat, the 40 years of ICCAT's existence, six Parties have presented and confirmed objections to three Recommendations. It had been pointed out that the consensus procedure may lead to blocking effective decision-making. It was also considered that achieving consensus was becoming more difficult due to increasing membership and that the decision-making procedure may not always be able to ensure the adoption of conservation and management measures "in a timely and effective manner".

The ICCAT Panel recommended that the Commission should review its decision-making procedure with a view to creating mechanisms for minimizing the objections and reviewing the objections through an expert body, taking into account the recent trends in other RFMOs.

The Panel examined issues relating to fairness, equity and transparency. Concern had been expressed that there was a tendency for ICCAT to use more closed meetings with limited participation. This could lead to decisions that are not well understood or well considered and could also decrease accountability. It was also pointed out that the participation fee for NGOs to attend every ICCAT meeting is perceived as a way to effectively discourage observer participation and should be replaced by one single payment a year. Given the broader role these groups have in representing special interest groups of importance in the ICCAT decision-making process, the Panel questioned the practice of charging NGOs for each meeting. The NGOs were also concerned that in most RFMOs they struggle to have their views heard and discussed and are often frustrated that they are not taken seriously in the decision-making process.

In the context of fisheries management the Panel recommended means to ensure that participants were aware of the issues being decided, and called upon ICCAT to seriously consider the structure and basis of its decision-making framework particularly in relation to fisheries management. It stated that a decision-making framework should be adopted that guides the outcome of decisions and forces discipline consistent with the objectives of ICCAT on CPCs.

The IOTC Panel Analysis concluded that the IOTC Agreement followed a rather modern approach to decision-making (that is a recourse to voting procedures), yet it contained a weak and out-dated objection procedure which allowed Members to opt out of any measure at their will, with no justification and consequences. More modern objection procedures included obligations such as clear and limited admissibility of the objection for specific reasons. This was considered to be a fundamental flaw of this Agreement, with the potential to severely weaken the implementation and compliance mechanisms.

The Panel recommended that, in order to improve the IOTC practices of decision-making and adoption of measures, when every effort to achieve consensus has been exhausted, invoking the procedure of voting should be explored. It also recommended amending the objection procedure so that it is more rigorous, and in line with other RFMO Conventions, featuring restricted grounds for the bases to object is recommended.

NASCO has 34 accredited NGOs which contribute significantly to its work. As a result of the 'Next Steps' review these NGOs can now attend all NASCO meetings (including intersessionals) and contribute on all agenda items (other than finance and administration matters).

The NEAFC Panel noted that in the case of the Regulatory Area, while NEAFC has a decision-making role in terms of the management of resources, in practice decisions on a number of stocks are made outside NEAFC. This left NEAFC with a limited residual role in decision-making in respect of the management of stocks.

The Panel considered that the NEAFC Parties should ensure that the use of the objection procedure does not undermine conservation of the resources and is supported by the dispute settlement mechanism which can assist Parties to resolve the underlining reasons for the objection. Furthermore, interim measures should be agreed upon and implemented while disputes are being resolved.

At its 24th Annual Meeting in 2005 it was agreed to amend the NEAFC Convention on the basis of a proposal presented by Iceland in order to modernize the Convention and bring it in line with policy and legal developments since 1982. The Panel noted that the amendment was successfully adopted and Contracting Parties have agreed to use the amendments on a voluntary and provisional basis, pending ratification.

#### *Dispute settlement*

The CCAMLR review referred to the dispute settlement mechanism relating to interpretation or application of the Convention that has never been effectively used, in Article XXV of its Convention. It was based on the Antarctic Treaty, and was clearly unsatisfactory, as it prevented the dispute from being considered if a State was not willing to submit it to third party resolution. The Panel considered that, while this kind of soft mechanism has not created major problems with regard to the Antarctic Treaty, the same cannot necessarily be advanced with regard to the CCAMLR Convention, given the essential fact that natural resources are at stake. As a matter of course, Article XXV or any modification thereof, is not applicable to non-Contracting parties.

The Panel identified an urgent need to take action to address this situation. In this regard, the Panel recommended that the binding procedures for dispute settlement set out in Part XV of UNCLOS could be considered by Contracting Parties in a two-fold manner. First, as a benchmark that should be followed for an eventual amendment of Article XXV of the Convention. This could allow for compulsory procedures entailing binding decisions to be followed if no agreement can be reached. Second, as a possibility to be used between Contracting Parties that are also Parties to UNCLOS pending an amendment to the Convention, and by those Parties with regard to non-Contracting Parties also Parties to UNCLOS whose vessels are engaged in illegal fishing in CCAMLR waters.

It further recommended that the Annex for an Arbitral Tribunal appended to the CCAMLR Convention contained some particularities that should be maintained, notably with regard to other Parties' intervention in the proceedings. In addition, it recalled its recommendation under "decision-making" to establish a panel of independent experts with power to take binding decisions.

The CCSBT Working Group commented that the dispute resolution provisions in the CCSBT Convention required disputing members to agree to proceed to binding dispute resolution. This had the potential to bind members into a stalemate with no avenue for achieving resolution other than continuing to talk. The report on 'Recommended Best Practices for RFMOs' has recognized that this situation is not appropriate for an RFMO. However, with the entry into force of the UNFSA in 2001, an additional set of dispute settlement rules apply to disputes concerning the interpretation or application of the Convention, including a dispute concerning the conservation and management of SBT, at least for States Parties to the UNFSA. Consequently, it may not be necessary for the CCSBT to amend the Convention to achieve a compulsory and binding regime.

ICCAT had no provision on dispute settlement in its Basic Texts or decisions. The Panel pointed out that there had never been any disagreement with legal repercussions within the framework of ICCAT, but there is no guarantee that disputes will not arise between CPCs in the future. It noted that the recent practice of RFMOs shows the growing trend to incorporate the dispute settlement system of the UNFSA or to adopt other mechanisms. The Panel recommended that the Commission consider establishing dispute settlement procedures, including the possible use of an expert panel and compulsory proceedings entailing binding decisions, either by amending the Convention or otherwise.

The IOTC Panel Analysis considered that the dispute settlement procedure in Article XXIII of the Agreement represented a major gap in the Agreement with no reference to a compulsory/binding

dispute settlement mechanism. This conflicted with the UNFSA which placed an obligation on RFMOs to either introduce compulsory and binding dispute settlement procedures or to agree to apply, as between the Contracting Parties, the dispute settlement procedures in Part VIII of UNFSA. This aspect of the Agreement requires substantial amendment in order to have in place a comprehensive system drawing on the provisions of UNFSA.

The Panel recommended that the provision on dispute settlement should be amended in line with the requirements of UNFSA.

The NEAFC Panel described the fast track dispute settlement procedure agreed in the form of a 2005 amendment to the NEAFC Convention in order to facilitate a conclusive end to disputes. The amendment made it mandatory to explain the reasons for any objections, which in the past had been done on a voluntary basis, and established the procedures for setting up arbitration panels to settle disputes. Rules of procedure for arbitration panels had also been agreed but no arbitration panels had been established to date.

The NEAFC Panel concluded that the development of a dispute settlement mechanism was an important element in the modernization of the NEAFC Convention and would hopefully be used by the Contracting Parties to achieve the resolution of outstanding elements of disagreement that hamper NEAFC's conservation and management rules.

#### **Recommendations on decision-making and dispute settlement**

- In respect of the consensus rule, a distinction should be drawn between substantive issues and matters of implementation. While decisions possessing normative and regulatory effects should continue to be addressed on the basis of consensus, determining how such decisions were implemented could be submitted to different procedures such as devoting day to day operational decision making to the Chair or the Executive Secretary and/or creating mechanisms for minimizing the objections and reviewing the objections through an expert body. In order to improve the practices of decision-making and adoption of measures, when every effort to achieve consensus has been exhausted, invoking the procedure of voting should be explored.
- It should ensure that participants are well aware of the issues being decided, and a decision-making framework should be adopted that guides the outcome of decisions and forces discipline consistent with the objectives of each organization..
- The objection procedure should be also improved so that it is more rigorous and featuring restricted grounds for the bases to object is recommended. The use of the objection procedure should not undermine conservation of the resources and is supported by the dispute settlement mechanism which can assist Parties to resolve the underlining reasons for the objection. Furthermore, interim measures should be agreed upon and implemented while disputes are being resolved.
- The binding procedures for dispute settlement set out in Part XV of UNCLOS could be considered by member.
- Dispute settlement procedures, including the possible use of an expert panel and compulsory proceedings entailing binding decisions, should be established or amended in line with the requirements of UNFSA.

## ***International cooperation***

### *Transparency*

The CCAMLR review, addressing operational transparency, noted that with the increasingly constrained time available during the annual CCAMLR meetings, managing the participation of a significant (and potentially growing) number of observers remained a challenge, particularly in providing adequate time for the presentation and discussion of observer reports and for the participation of observers more actively in the meeting overall. It acknowledged CCAMLR's efforts to engage with a wide range of observers and encouraged CCAMLR to continue its efforts to maximise its transparency and seek broader input to decision-making, particularly through the engagement of observers at its annual meetings.

The Panel suggested some options to improve transparency with respect to the engagement of observers, including reviewing and, as appropriate, amending the relevant Rules of Procedure of the Commission and giving consideration as to the appropriate timing for observer reports to be taken, as well as providing explicit advice to observers on the expected nature and scope of their reports. It also suggested that CCAMLR may wish to consider aligning the Rules of Procedure of the Scientific Committee with those of the Commission with regard to the participation of observers in restricted sessions.

Regarding the public availability of information, the Panel noted that CCAMLR's work had clearly expanded over its 26 year history, both in terms of its breadth and complexity. This was likely to continue into the future. Against this trend, it will be essential for greater attention to be given to ensuring that meeting reports are delivered in a more synthesised fashion. Unless greater brevity can be achieved, the timely production and distribution of such material may well be jeopardized.

The CCAMLR Panel suggested that that CCAMLR's efficiency in making information available in a timely manner would likely deteriorate unless either greater focus was made on ensuring the succinctness of meeting reports or considerably more resources were made available to the Secretariat to enable it to continue to meet the current timelines for report production and distribution. The Panel favoured the former of these two options.

In addition, the Panel saw virtue in CCAMLR agreeing a more 'streamlined' structure for its reports (as had been done for the Scientific Committee on Antarctic Fishing (SCAF) Report in 2002), and also recommended a redevelopment of the CCAMLR Web site so as to improve its utility in supporting its work and its accessibility as a tool for education and broader outreach purposes.

The CCSBT Working Group commented that current arrangements were fair and transparent. However, the arrangements, including CCSBT Rules of Procedure, might not be popular among possible observers such as NGOs. It recommended that the CCSBT and its members should improve openness by better publication of the Rules for observers. One possible option would be to put information on the CCSBT Web site about the current arrangements for accepting observers.

The ICCAT Panel expressed concern with regard to the question of transparency, above all regarding a tendency that to use more closed meetings with limited participation. It recommended preparing a discussion paper on transparency, fairness and equity to be prepared within ICCAT and that the policy on attendance at ICCAT meetings should be reviewed.

The ICCAT Panel reported that, in discussion with CPCs and in submissions received, concerns were raised in relation to both transparency and to the fairness and equity of decisions taken by

ICCAT. It recommended that the preparation of a discussion paper on transparency, fairness and equity within ICCAT. The perceptions were potentially damaging to ICCAT and working through the issues in a mature and informed way would strengthen ICCAT for the future. In addition, the Panel recommended that ICCAT review its policy on NGO attendance at ICCAT meetings.

The IOTC Panel found that the Agreement offered a good level of transparency and openness, providing for participation of observers, IGOs and NGOs in the IOTC meetings. All IOTC processes were described in the IOTC Agreement, the Rules of Procedure and the various management resolutions and recommendations adopted by the Commission as well as other documents publicly available on the IOTC Web site . Data sets for replicating some of the analysis of the Scientific Committee were generally available through the IOTC web site . However, some data critical to the construct of scientific advice to the Commission were unavailable at IOTC, which could result in diminished transparency in the process of developing scientific advice. The only exception to the public availability of information was the IOTC active vessels list.

While the open participation model for scientific work promoted transparency, it also resulted in low and sometimes inconsistent participation by the scientific delegations from the CPCs, and work largely conducted at intersessional meetings, with an annual plenary review. This approach was considered appropriate but tends to aggravate the already low participation rate by scientists.

The IOTC Panel recommended that the active vessels list should be made available on the IOTC Web site . In addition, the Commission, in consultation with the Scientific Committee, should review the availability of critical data sets used in development of scientific advice and take steps to assure that these data are held at the Secretariat and available for the validation of analyses, subject to the appropriate confidentiality requirements.

The NEAFC Panel noted the steps already taken to improve the transparency of information and decisions within the Commission. It considered the situations regarding Contracting Parties and observers. Issues relating to transparency arose for Contracting Parties in relation to processes not controlled by NEAFC that have a major bearing on the management of NEAFC fisheries. In particular the scientific review processes adopted by ICES and the various coastal State negotiations on access to Convention Area fisheries fell into this category. Regarding observers, in 2005 some NGOs requested NEAFC to change the Rules of Procedure to enhance NEAFC's transparency by granting observers access to meeting documents prior to meetings of the Commission and of the various Committees and Working Groups. The Commission had declined the request concluding that the current arrangements were satisfactory.

The NEAFC Panel considered that some improvements could be made. In particular, more transparency should be provided for meetings between coastal States on allocation issues and further consideration should be given to providing documents to NGOs prior to Commission meetings. The Panel could see no specific reasons to restrict NGO access to information prior to Commission Meetings, except in special circumstances of confidentiality, and considered that in most instances provision of such information would help inform debate rather than detract from it.

The Panel also considered that the development of an annual report on the status of Convention Area stocks would help improve overall transparency.

#### *Relationship to cooperating non-Contracting Parties*

The CCAMLR Panel concluded that the Commission had demonstrated a commendably proactive approach to engaging with non-contracting parties, as demonstrated through its Policy to Enhance

Cooperation between CCAMLR and non-Contracting Parties. This was designed to encourage and build capacity of non-Contracting Parties to cooperate with CCAMLR. However, the extent of uptake by CCAMLR Members of this policy had not been widespread. The Panel encouraged CCAMLR to maintain its proactive approach of engaging with non-Contracting Parties so as to ensure the effectiveness of its conservation measures, especially the Catch Documentation Scheme. The Panel also reiterated its suggestions made with respect to ensuring that new Parties or prospective Parties were fully aware of their obligations under the CCAMLR Convention.

The CCSBT Convention provides for new members with an interest in the SBT fishery to accede to the Convention and a CCSBT Resolution has also been adopted to allow formal participation by Cooperating Non-Members. In addition, the 2000 CCSBT Action Plan was adopted and the Trade Information Scheme was introduced placing pressure on those outside the CCSBT system to join. The Action Plan requests non-members catching SBT to cooperate with the CCSBT, provides that the CCSBT will identify at each annual meeting those non-members involved in fishing for SBT and request that they cooperate fully with the CCSBT. It also provides for the imposition of trade-restrictive measures on non-members identified under the action plan.

The CCSBT Working Group noted that, as a result, the main coastal States and fishing States for SBT are all either members or cooperating non-members of the CCSBT and the Action Plan had not been invoked in the past two meetings. The current system to accept cooperating non-members was adequate. It provided cooperating non-Members with full involvement in CCSBT activities, receiving catch allocations consistent with the rules applying to Members. The CCSBT arrangements did not require cooperating non-Members to make a financial contribution, often a barrier to participation in RFMOs by developing States.

The ICCAT Panel noted that ICCAT had made respectable progress in enhancing cooperation with its management programs by non-members, which had helped them to improve their compliance. There was, however, no mechanism in the Basic Texts for allowing full participation by a fishing entity, which accordingly has no right to participate in the decision-making. The Panel noted that recent RFMO conventions contained provisions concerning cooperating non-Members of the Commission or non-Parties to the Convention and fishing entities, and allowed them benefits to enjoy participation in the fishery commensurate with their commitment to comply with, and their record of compliance with, the RFMO's measures.

The ICCAT Panel considered that the Commission should take note of these developments in other RFMOs and consider further cooperative measures with Chinese Taipei, Taiwan Province of China, in view of its significant level of fishing activities in the Convention Area.

Since 1999, IOTC has had a mechanism to assess and grant/reject cooperating status as well as a mechanism to allow non-Members to participate in IOTC meetings, which are typically well attended by a range of non-Member countries and bodies. However, some fishing fleets with significant catches of IOTC species were not flagged to IOTC Members and it was not clear whether these fisheries were being operated in accordance with IOTC management measures.

The IOTC Panel concluded that a major weakness was the fact that important fishing countries were not cooperating with the organization. In addition, The IOTC/FAO situation had so far impeded attempts to find any solution on the issue concerning the possibility of relations with Taiwan, Province of China. IOTC was in a unique situation among all tuna RFMOs due to its integration in the United Nations system.

The IOTC Panel recommended that the legal framework of the IOTC Agreement should be amended or replaced in order to enable fishing entities active in the area to discharge their obligations in line with the UNFSA.

NEAFC adopted rules for obtaining cooperating NCP status in 2004, and the Panel considered that NEAFC had transparent and appropriate rules for allocating cooperating NCP status and that these rules have been applied accordingly.

The Panel also considered that further obligations may be put on cooperating NCPs, for example applying restrictions to IUU vessels in a way comparable to those obligations applied by Contracting Parties.

#### *Non-cooperating non-Contracting Parties*

The CCAMLR Convention provides in Article X for the Commission to draw to the attention of any non-Contracting Party, actions undertaken by its nationals or vessels which affect the implementation of the objectives of the Convention. Action has been taken by CPs, individually and collectively, as well as by the Secretariat, with third-party States through diplomatic initiatives. In addition, CCAMLR has in place a number of measures directed at, or affecting, non-Contracting Party vessels, as well as measures, including the CDS that are implemented voluntarily by cooperating non-Members. In addition the Panel noted that CCAMLR also annually reviews information on IUU fishing activities in the Convention Area and has established a list of non-Contracting Party IUU fishing vessels.

The CCAMLR Panel recommended that CCAMLR may wish to ensure that the details of its engagement with third party States in respect of Article X of the Convention are, on a regular basis, formally brought to the attention of FAO and any other relevant international organization. In addition, CCAMLR may wish to consider establishing an expert panel to examine the feasibility and likely success of a range of actions that might be taken against non-Cooperating Parties. One of those options might include a formal Declaration on the applicability of Part XV of UNCLOS to vessels of non-Contracting Parties, that are Parties to UNCLOS, fishing within CCAMLR waters.

The CCSBT Working Group reported that, from 1989, catch had been reported from a range of States who were outside the current group of the CCSBT's members and cooperating non-members. In response to what appeared to be a growing problem of flag of convenience fishing, the CCSBT introduced the Trade Information Scheme and commenced an Action Plan against a list of identified flag of non-compliance States. The CCSBT had also introduced a list of vessels authorized to fish for SBT and Members agreed not to land SBT from vessels not on the CCSBT list. Only Members and cooperating non-Members may place vessels on the CCSBT list.

The Working Group concluded that these activities had been successful in deterring fishing by States outside the management and conservation measures of the CCSBT.

Although there was no relevant provision in the ICCAT Basic Texts, the Panel found that Commission had adopted strong measures requiring CPCs to take a number of strict actions to deter IUU activities of the vessels of non-cooperating non-members, particularly Recommendation Amending the Recommendation to Establish a List of Vessels Presumed to Have Carried Out IUU Fishing Activities in the ICCAT Convention Area (Recommendation 06-12). In addition, ICCAT had imposed trade sanctions on several non-Parties whose fishing vessels were identified as being engaged in IUU fishing activities.



The ICCAT Panel commented that the ICCAT measures against non-Parties had generally been regarded as effective as evidenced by the facts that the number of IUU fishing vessels flying their flag have been reduced considerably over the last several years, and that a number of non-Parties which had previously been non-Cooperating have become Parties to the Convention.

The IOTC Panel reviewed the operation of the Commission's IUU Vessel List, and noted that listed vessels had a range of restrictions imposed including transshipment, chartering, flagging and not being authorized to land, tranship, re-fuel, re-supply, or engage in other commercial transactions in the ports of IOTC Members. The Panel noted that Non-Member, non-cooperating vessels catch a significant amount of the species of highest commercial value, and while Taiwan, Province of China remained a unique case, other non-Members were important players and they had not yet joined the Commission.

The Panel recommended that although the IOTC had strengthened its action towards non-Members in order to have all important fishing players included under its remit, diplomatic approaches should be made by IOTC Members to non-Members with active vessels in the area. When non-cooperation is identified and all reasonable efforts to improve the situation are exhausted, any non-Members continuing not to cooperate should be adequately sanctioned by, for example, market related measures.

The NEAFC review acknowledged the progress made, above all between 2001 and 2006, in addressing fishing activities by non-cooperating non-contracting parties; in particular, tightening measures against vessels on NEAFC's IUU Vessel Lists, has had a distinct effect.

The NEAFC Panel noted that the 'B' list on the NEAFC Web site, which contains a full case history for each vessel on the list, represented the extent of the problem of IUU fishing by NCP vessels.

Between 2001 and 2006, the NEAFC President had written to ten different countries pointing out that their vessels have undermined NEAFC regulatory measures, and in some cases these letters were backed by diplomatic demarches. All the countries involved had been invited to the 25th Annual Meeting in November 2006 as observers.

The Panel concluded that tightening measures against vessels on the NEAFC IUU Vessel Lists has had a distinct effect, as a number of vessels were still being detained in the ports of NEAFC's Contracting Parties. In 2006 a rule prohibiting the entry of any vessel on the 'B' list into NEAFC ports further exacerbated the consequences for IUU vessels. In addition, Contracting Parties had been very active in monitoring the movements of individual vessels, collecting information on vessels and contacting authorities in countries which were not Contracting Parties to NEAFC. The Panel acknowledged the progress being made in addressing fishing activities by non-contracting and non-cooperating parties.

#### *Cooperation with international organizations and other RFMOs<sup>45</sup>*

The CCAMLR Panel reported that, in accordance with Article XXIII.3 of the Convention, CCAMLR had developed a dialogue with NCPs, IGOs and NGOs and other organizations, including inviting some RFMOs as well as other key international organizations to attend its annual meetings. However, the role of observers was not necessarily extended to the workings of the

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<sup>45</sup> Some reviews addressed international cooperation and considered cooperation with other RFMOs under this heading. Others focused on cooperation with other RFMOs, as shown in the text.

Scientific Committee and its subsidiary groups, and the frequency of attendance of these States or organizations was variable. Further the Panel considered that, due to time pressures during CCAMLR meetings, the degree of dialogue between the Commission and observers may be somewhat superficial and largely restricted to a one-off opportunity during the meeting. It was not apparent to the Panel that the observer mechanism was delivering effective results.

In addition, although Article XXIII.4 of the Convention provided the opportunity for CCAMLR to enter into agreements with other organizations, no such agreements had been concluded.

The Panel recommended that, in relation to observers, CCAMLR should now critically re-examine its relationship with a range of organizations providing observers to ensure that of the exchange of information is maximised and the working relationship with the bodies they represent is transparent, effective and dynamic. Further, it should heighten the priority of examining the need for, and concluding agreements with, other organizations to enhance its own effectiveness and pursue its objectives. At routine intervals, CCAMLR should compare its own regulatory provisions with contemporary developments either in RFMOs or in wider instruments applicable to fisheries, environment and broader governance to ensure to the extent possible best practice continues to be adopted and achieved by CCAMLR.

The CCSBT Working Group considered that the competence of CCSBT to manage SBT had been formally recognized under Memoranda of Understanding between ICCAT, IOTC and the WCPFC and the CCSBT. They recognized that the CCSBT is the appropriate body to manage SBT.

The CCSBT had been unable to agree on arrangements with the CCAMLR concerning SBT fishing in CCAMLR's Convention Area. The Working Group noted that cooperation with other RFMOs was determined by operational needs, mostly in the form of data sharing.

The Working Group noted that there were significant opportunities for the CCSBT to work more closely with and to harmonize measures with other RFMOs, especially with the other tuna-RFMOs, and recommended that this should be a priority area for the CCSBT.

The ICCAT Convention, in Article XI (2), provides that the Contracting Parties agree that there should be cooperation between the Commission and other international fisheries commissions and scientific organizations which might contribute to the work of the Commission. To this end, ICCAT has taken a number of measures, including cooperation with other RFMOs through the RSN and the Joint Meeting of Tuna RFMOs as well as by creation and management of a joint Web site with other tuna organizations ([www.tuna-org.org](http://www.tuna-org.org)).

The Panel commented that ICCAT had been making commendable efforts in cooperating with other RFMOs, particularly those dealing with tuna and recommended that these efforts should be continued and expanded.

The IOTC Panel observed that the IOTC Secretariat did not attend many other RFMO meeting due to limitation of resources. No mutual recognition of the IUU Vessel List had been so far established with other RFMOs. The IOTC Agreement provided for cooperation with other RFMOs, but it seemed that the cooperation with other tuna RFMOs could be improved to address the issue of overlapping competences, including both geographical areas and species. This was particularly relevant for the relations of IOTC with RFMOs with areas of overlapping competences such as WCPFC and CCSBT. Moreover, the Panel noted the imminent entry into force of the South Indian Ocean Fisheries Agreement (SIOFA) which would manage non-highly migratory fish stocks in largely the same area as that of IOTC.

The Panel recommended that IOTC should establish mechanisms for a mutual recognition of IUU Vessel Lists with other RFMOs. It should also develop cooperative mechanisms, such as MoUs with other RFMOs, especially SIOFA to work in a coordinated manner on issues of common interest, in particular non-target species and an ecosystem approach. Finally, IOTC should annually agree on a Member attending other tuna RFMO meetings as an observer on its behalf and reporting back to the Commission on matters of interest.

The NEAFC Panel acknowledged the active role NEAFC and its Secretariat has played in global and regional cooperation. The Panel recommended that this cooperation should continue and that NEAFC should become involved in future cooperation at this level as the opportunity arose. The Panel also noted a wide range of contexts in which NEAFC was cooperating, including with other RFMOs, through the UN system and with other international and regional organizations.

The Panel noted that NEAFC is committed to more resource intensive cooperative initiatives with a range of other international and regional organizations, including the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) Commission established to manage the work underpinning the Convention for the Protection of the Marine Environment of the North-East Atlantic. Discussions had been held between the Secretariat of the OSPAR Commission and NEAFC in 2002 on the possibility of cooperating and maintaining effective lines of communication. In 2003, NEAFC decided that contacts between NEAFC and OSPAR should be maintained at the Secretariat level. However, so far, as an organization, NEAFC had decided not to discuss areas of collaboration. Instead the views of NEAFC's Contracting Parties would be handled directly and individually with OSPAR. Discussions between the Secretariats on future arrangements for the two organizations remained ongoing.

The Panel was impressed with the high level of engagement that NEAFC, through its Secretariat, had with other RFMOs and international organizations and with the leadership role it was taking. The only area identified for potential improvement, given the potential overlap in resource management goals and responsibilities, was with the relationship and future links between NEAFC and OSPAR.

#### *Special requirements of developing States*

The CCAMLR Panel noted the commendable effort put into engaging and developing cooperation with NCPs, including a number of developing States. Such initiatives included efforts by CCAMLR (through the Secretariat) and by Members individually to provide training in, for example, the CCAMLR CDS and MCS. However, CCAMLR had few provisions in place targeted specifically at supporting developing States in areas addressed by Article 5 of the FAO Code of Conduct, which includes assistance with access to fisheries as well as financial aid.

The Panel recommended that CCAMLR may wish to give consideration to new means for providing support to developing States, including: (a) establishing a dedicated fund to support developing States, and referencing the establishment and accessibility to such a fund in its literature and Web site, including the Cooperation Enhancement Program; (b) identifying current best practice and existing arrangements elsewhere, particularly within RFMOs, in relation to developing States; and (c) exploring and making available information on other funding sources to assist developing States who wish to engage with CCAMLR.

The CCSBT Working Group noted that although the Convention does not differentiate between the needs of developing and developed states, in practice CCSBT does recognize the needs of the

former. For example, the decision to create the status of formal cooperating non-member was motivated in large part by the recognition that full membership was financially difficult for developing States. It has allowed participation without the obligation to make a financial contribution.

In addition, developed CCSBT members had been involved in providing assistance to developing States involved in SBT through direct bilateral support and other bilateral programs to help build capacity in fishery administration.

The ICCAT Panel noted that the Convention, in Article X (2), provides that in adopting the scheme for its annual budget, the Commission should consider *inter alia* the degree of economic development of the Parties. The Resolution on Improvements in Data Collection and Quality Assurance [Res. 03-21] had established a special fund for training in data collection and for supporting scientific participation in data preparatory and stock assessment sessions by scientists from Contracting Parties with insufficient capacity to meet data collection, quality assurance, and reporting obligations. In addition, criteria had been established for quota allocations among CPCs which gave special consideration to developing States from the region.

The Panel stated that ICCAT had provided technical assistance to its developing member States through a number of assistance funds, including the UNFSA Part VII Assistance Fund, for the establishment of a system of statistical data, the participation of developing coastal States in scientific meetings, the collection of historical data, scientific observation programs and the collection of biological information, as well as the delivery of training programs. However, despite these efforts, it had been repeatedly pointed out that the effective implementation of ICCAT measures depends much on adequate human and financial resources of particularly developing States. The Panel considered that efforts in assistance to developing States should be further strengthened, with the expanded participation of donors.

The IOTC Panel Analysis concluded that the needs of developing States were taken into account by the Commission in the development of its management and conservation measures ( e.g. fleet development plans) as well as in the IOTC scheme for calculation of contributions to the administrative budget.

There was no specific IOTC fund to assist developing Member States. However, developing States had been variously assisted through the IOTC-Overseas Fisheries Cooperation Foundation (of Japan) Project, the Secretariat on a case by case basis, and the European Community through the Indian Ocean Commission (MCS project for Comoros, Madagascar, Mauritius and Seychelles). However, the Panel considered that the special requirements of developing States were not properly addressed in the IOTC Agreement, compared to other RFMO agreements as well as global instruments.

The Panel recommended that a specific fund to assist capacity building should be put in place and Members that are Parties of UNFSA, should make use of the Part VII Fund established under UNFSA.

The NEAFC review did not address this issue.

## **Recommendations on international cooperation**

### **Transparency**

- Member States should improve openness by better publication of the Rules for observers. One possible option should be to put information on a Web site of each organization about the current arrangements for accepting observers.
- The preparation of a discussion paper should be encouraged on transparency, fairness and equity within an organization, in particular with regard to a policy on NGO attendance at meetings.
- The active vessels list should be made available on a Web site. In addition, the Commission, in consultation with the Scientific Committee, should review the availability of critical data sets used in development of scientific advice and take steps to assure that these data are held at the Secretariat and available for the validation of analyses, subject to the appropriate confidentiality requirements.
- The development of an annual report on the status of Convention Area stocks should be considered in order to improve overall transparency.

### **Relationship to non-contracting parties**

- The legal framework should be amended or replaced in order to enable fishing entities active in the area to discharge their obligations in line with the UNFSA.
- The details of its engagement with third party States in respect of the Convention should be, on a regular basis, formally brought to the attention of FAO and any other relevant international organization.
- An expert panel should be established to examine the feasibility and likely success of a range of actions that might be taken against non-Cooperating Parties. One of those options might include a formal Declaration on the applicability of Part XV of UNCLOS to vessels of non-Contracting Parties, that are Parties to UNCLOS, fishing within the convention areas.
- Diplomatic approaches should be made by member States to non-Members with active vessels in the areas. When non-cooperation is identified and all reasonable efforts to improve the situation are exhausted, any non-Members continuing not to cooperate should be adequately sanctioned by, for example, market related measures.

### **Cooperation with international organizations and other RFMOs**

- The relationship with observers should be reviewed in order to ensure that the exchange of information is maximised and the working relationship with those bodies is transparent, effective and dynamic. Comparison should be carried between its own regulatory provisions and contemporary developments either in RFMOs or in wider instruments applicable to fisheries, environment and broader governance to ensure to the extent possible best practice continues to be adopted and achieved.
- In particular among RFMOs targeting the same species such as tuna-RFMOs, they should work more closely with and to harmonize measures with each other RFMOs.
- Mechanisms should be established for a mutual recognition of IUU Vessel Lists with other RFMOs. Cooperative mechanisms, such as MoUs with other RFMOs, should be also established to work in a coordinated manner on issues of common interest, in particular non-target species and an ecosystem approach as well as agree on a Member attending other tuna RFMO meetings as an observer on its behalf and reporting back to own Commission on matters of interest.

### **Special requirements of developing States**

- Consideration should be given to new means for providing support to developing States, including: (a) establishing a dedicated fund to support developing States, and referencing the establishment and accessibility to such a fund in its literature and Web site ; (b) identifying current best practice and existing arrangements elsewhere, particularly within RFMOs, in relation to developing States; and (c) exploring and making available information on other funding sources to assist developing States.
- A specific fund to assist capacity building should be put in place and Members that are Parties of UNFSA should make use of the Part VII Fund established under UNFSA.

### ***Financial and administrative issues***

#### *Availability of resources for RFMO activities, efficiency and cost effectiveness*

Regarding the availability of resources, the CCAMLR Panel considered that CCAMLR will increasingly come under financial pressure in pursuing the Convention's objectives, and highlighted many areas which will require greater attention and financial resources over coming years. In addition, it appeared that the growth in fishing operations (if not for finfish then certainly for krill) will continue. In these circumstances, the Panel saw significant merit in the Commission seeking to expand its financial base through identifying and charging for the full cost of services which are provided for commercial fishing operations. This would require the development of a cost-recovery policy and an assessment of how this should be implemented.

The Panel further recommended that CCAMLR establish an expert group to develop a cost-recovery policy which would be applied to all commercial fishing operations. The expert group should be asked to review CCAMLR services and decide which services relate directly to fishing operations under the ecosystem approach to management pursued by CCAMLR (and would thus be chargeable) and which relate to the broader conservation objectives and would continue to be funded from general funds. The CCAMLR Panel also recommended that special consideration be given to the distinction between developing and developed States when establishing the amount of each Member's contribution to the budget.

Regarding the extent to which CCAMLR is efficiently and effectively managing its human and financial resources, the Panel considered that major new initiatives and the recommendations of the Panel in such areas as conservation and management and Compliance and Enforcement, will inevitably have additional resource implications. This matter needed to be considered against the ongoing policy of zero real growth. The Panel concluded that the Commission may need to identify high-priority items and then allocate additional funds for these items specifically in excess of the zero-growth threshold. Without such an approach, the RP considered that CCAMLR's capacity to address new initiatives may well be constrained.

In addition, the Panel recommended that the Commission consider how it might provide enhanced support to the work undertaken by the Scientific Committee, given the over-reliance on relatively few Members who undertake the relevant scientific research needed to support the work of CCAMLR. The means to ensure a more equitable contribution to scientific research from all CCAMLR Members should be investigated and Members should renew efforts to encourage their scientists to engage in the Scientific Committee and in research in the Convention Area. The Panel also encouraged the Commission to consider how it might address the issue of succession planning to ensure the continuity of function and the transfer of essential institutional knowledge when senior and long-serving Secretariat staff members leave the organization.

The CCSBT Working Group commented that the Commission had been adequately funded for its activities. Any decisions to improve performance by funding research directly or by enhancing the Secretariat's role in the fishery's day-to-day administration would require additional funding and adjustment of roles.

It recommended that the Secretariat should maintain an efficient and cost effective operation. In this regard, the CCSBT should consider whether establishing a position at the secretariat to provide policy and management advice would be a useful way of addressing the current gap that exists taking into account cost effectiveness of such post. This new capacity, coupled with the direction and common vision which would be provided by a CCSBT strategic plan (and a management plan) could greatly improve the functioning and performance of the CCSBT.

It was difficult to assess the efficiency and effectiveness of the CCSBT Secretariat compared to other RFMOs. Nonetheless, it seemed that the efficiency and effectiveness of the CCSBT Secretariat was high among the five tuna RFMOs. The Panel considered that, in relation to the Secretariat's support role, the current staffing could not be reduced without impacting services to Members.

The ICCAT Panel considered ICCAT performance with institutional arrangements, and concluded that the Secretariat was very well regarded by CPCs and was very capable. It performed very well in preparing reports for annual and intercessional meetings. Its financial management arrangements were well established and there was a strong sense of accountability. The Secretariat's scientific and expert staff was well regarded by CPCs and provided a good service. The staff members were always available for Commission CPCs to consult and obviously were conscious that they had been appointed to provide a good service to CPCs. One issue raised with the Panel was that the Commission should always ensure that there is appropriate representation at the Secretariat from Members to reflect the diverse membership base of ICCAT.

Improvements in institutional arrangements were suggested by the ICCAT Panel, which considered that ICCAT should review at regular intervals the staffing profile of the Secretariat and if necessary adjust it to changes and to reflect workloads. It should ensure that the Secretariat and the Commission are granted privileges and immunities in all its Members and, where practical, the availability of application for Secretariat staff positions by all Members of ICCAT.

The IOTC Panel Analysis considered that the evolution of the workload and the needs for capacity building would probably have to be addressed with the availability of additional financial resources to IOTC. In the current institutional and legal IOTC framework, notwithstanding the budget is funded directly by Members, the Executive Secretary was not in a position to fully control all the budget components, in particular the more relevant one which is the staff costs. The Analysis showed, in a number of ways, how FAO *de facto* controlled the IOTC budget and retained 4.5 percent of it. Modifications are in the hands of FAO and the Executive Secretary is not always kept informed in due time to elaborate the budget forecast and consequently inform the IOTC Members. This situation resulted in a lack of transparency and accountability. There was similar lack of transparency in the auditing of the financial management undertaken internally by FAO.

The Panel recommended that the IOTC Agreement as well as financial management rules should be amended or replaced in order to increase Members' as well as Secretariat's control of all the budget elements, including staff costs of the budget. This would also improve transparency. Prior to the Commission assuming full control of the budget, the Commission meeting at which the budget is considered should be held as close as possible to the commencement of the financial year to which this budget relates and if possible in advance of that year. The Panel further recommended

consideration of a fee system as a possible funding mechanism for possible new activities, and implementation of the agreed external financial audit as soon as possible. The latter should include a focus on whether IOTC is efficiently and effectively managing its human and financial resources, including those of the Secretariat.

The review of NEAFC did not address these issues.

### **Recommendations on financial and administrative issues**

- A Commission should seek to expand its financial base through identifying and charging for the full cost of services which are provided for commercial fishing operations. This would require the development of a cost-recovery policy and an assessment of how this should be implemented. An expert group to develop a cost-recovery policy should be established to review the services provided by the Commission with identification of high-priority areas and how they should be funded.
- The means to ensure a more equitable contribution from all members States should be investigated with the special consideration given to the distinction between developing and developed States when establishing the amount of each Member's contribution to the budget. A fee system as a possible funding mechanism for possible new activities should be considered as one of potential options.
- The Secretariat should maintain an efficient and cost effective operation including improvements in institutional arrangements based on review at regular intervals the staffing profile of the Secretariat and if necessary adjust it to changes and to reflect workloads.
- Implementation of the agreed external financial audit should be conducted, if necessary.

### **Toward the Volume II**

The purpose of this document is to review and summarize the performance review process already conducted by seven RFBs and present potential best practices for future based on the performance reviews. It is not an evaluation of the findings and recommendations by each review. Although the criteria for review are generally similar for most RFBs, the outcomes of each review vary given the wide range of RFB mandates, membership, history and performance. At the same time, it is noted that there are some commonalities among the recommendations based on performance reviews which serve among RFBs, as appropriate, as potential best practices for future. The compilation of the recommendation, which could be shared by other organization, is attached as Appendix 2.

Since this document was prepared, additional performance reviews have been conducted or considered by several RFBs. To ensure comprehensive coverage of ongoing developments, this document will be followed by a second volume with the financial support of the Government of Japan. The two volumes are expected to serve as clear reference guides for most, if not all, performance reviews conducted by RFBs.



## APPENDIX 1

## Criteria for performance reviews

Area	General criteria	CCAMLR	CCSBT	ICCAT	IOTC	NEAFC
<b>Conservation and management</b>	Status of living marine resources	√	√	√	√	√
	Ecosystem approach	√	X	X	X	X
	Quality and provision of scientific advice	√	√	√	√	√
	Data collection and sharing	√	√	√	√	√
	Adoption of conservation and management measures, including measures adopted at Coastal State level	√	√	√	√	√
	Capacity management	√	√	√	√	X
	Compatibility of management measures	X	√	√	√	√
	Fishing allocations	X	√	√	√	√
<b>Monitoring and enforcement</b>	Flag State duties	√	√	√	√	√
	Monitoring, surveillance and control activities	√	√	√	√	√
	Port State measures	√	√	√	√	√
	Follow-up on infringements	√	√	√	√	√
	Cooperative mechanisms to detect and deter non-compliance	√	√	√	√	X
	Market-related measures	√	√	√	√	X
<b>Decision-making and dispute settlement procedures</b>	Decision-making	√	√	√	√	√
	Dispute settlement	√	√	√	√	√
<b>Cooperation</b>	Transparency	√	√	√	√	√
	Participatory rights of newcomers	X	X	X	X	√

	Relationship to cooperating non-members	√	√	√	√	√
	Relationship to other non-members	√	√	√	√	√
	Cooperation with other RFMO/As	X	√	X	√	√
	Cooperation with other international organisations	√	X	X	X	X
	Cooperation with other regional organisations	X	X	X	X	√
	Special requirements of developing States	√	√	X	√	X
<b>Financial and administrative issues</b>	Availability of resources, efficiency and cost effectiveness	√	√	√	√	X

**Note: (√): applied, (X): not applied**

## Compilation of the recommendations

### Recommendations on establishment and methodology for performance reviews

- It has shown to be of utmost importance to take a common approach and use common criteria as well as to maintain flexibility in establishing review panels.
- A reasonable and appropriate budget should be agreed for the performance review, considering the potential for far-reaching improvements to the RFB, and where this is not possible means should be sought to enhance the review through cooperation with other institutions.
- A proactive role by the Secretariat in the Panel, as endorsed at the Kobe meeting, should be carried out either in terms of actively serving as a resource or participating in the work of the Panel. Members and stakeholders should be encouraged to provide their views or comments in relation to the performance of the RFB in respect of the various criteria.
- In establishing the methodology of work for a Review Panel, an important consideration is provision of maximum opportunity for communication among the panel members, by one or more meetings and or through other means.
- The timeframe within which the report was carried out, as long as it is reasonable in the circumstances, is not as important as the overall efficiency of the process and effectiveness of the outcome.
- The high standard of public availability of the outcomes of the performance reviews should be continued.
- All aspects of transparency should be implemented in the process of the performance review, and the existing high standards of public availability of the reports should be maintained.

### Recommendations on legal framework

- If there are apparent reasons for the weakness in a legal framework of a RFB ranged from the insufficient incorporation of modern principles and approaches to fisheries management issues to the need for more comprehensive provision in areas such as participation and transparency, the legal framework should be amended or updated as appropriate.
- Even if the time is not ripe to undertake such an initiative, the modern standards for fisheries management should be incorporated into the work of the RFB in other ways, including through the adoption of additional conservation and management measures and updated Management Procedures.

### **Recommendations on conservation and management**

- With regard to overall strategy for stock assessment, the most accurate stock assessment possible should be developed in the short term and then a strategy to address the impacts of relevant fisheries on ERS is to be developed, including the collection and sharing of data and the harmonization of rules with other relevant RFMOs.
- The need to adopt the ecosystem approach or ecosystem-based management should be considered in a more formal and systematic manner including cooperative mechanisms, such as MoUs, to work in a coordinated manner on issues of common interest with other RFMOs.
- With regard to data collection and sharing, standardization should be considered in formats, specifications and timeframes for data collection and sharing as well as training and accreditation of scientific observers. Capacity development effort for developing States members should be also enhanced amongst Members.
- The precautionary approach should be taken, in particular for new exploratory and expanding fisheries in the face of uncertainty in scientific.
- The reduction of harmful impacts of fishing on the environment should be taken into account in developing modern principles for management, including the improvement and strengthening of reporting requirements for lost gear from commercial fishing operations, the assessment of the likely scale and impact of lost fishing gear on target and associated and dependent species.
- The methods to identify fishing capacity levels that are commensurate with sustainable harvests from the fisheries in the Convention Area should be developed and capacity should be reduced in all fisheries where over-capacity is a problem by establishing a stronger policy on fishing capacity to prevent or eliminate excess fishing capacity.

### **Recommendations on compliance and enforcement**

- Flag State duties
  - Member States and Cooperating non-member States should cooperate in exercise of their flag State duties through their respective domestic legislation by (a) exchanging information, as appropriate, on their legislation in respect of controls over their nationals and (b) considering reciprocal and cooperative arrangements which might enhance the effectiveness of this measure.
  - Appropriate provisions on the need to apply sanctions sufficient to secure compliance should be considered, particularly in view of the fact that some fishing vessels, especially those carrying out IUU fishing activities often repeat their offences due to the lack of severe sanctions.
  - Any amendment to or replacement of the Agreements should include specific provisions on Members' duties as flag States.
- Port State measures
  - The format and minimum content of inspection reports as well as minimum timelines for their submission should be determined.
  - A comprehensive approach to port inspections should be taken by defining "fishing vessels" to include reefer and fishing support vessels and widening the obligation to inspect to any fishing vessel suspected as appropriate based on the port State measures developed by the FAO. The application of port State measures should be reported by each member States to annual commission meetings.

- Any amendment to or replacement of the Agreements should include specific provisions on Members' duties as port States according to the FAO Agreement on Port State Measures.
- Monitoring, control and surveillance (MCS)
  - Greater use of multilateral inspections and providing consistency in management and enforcement measures including cooperation with other RFMOs should be encouraged in order to optimise harmonisation, improve global effectiveness and avoid duplication of work. It should also prioritize the development of MCS in the context of a compliance plan.
  - Each member State should immediately apply fully the rules and measures adopted by relevant RFMOs through domestic arrangements and provide effective control over their nationals including a fair and tough penalty regime as well as provide accurate and timely data and information on MCS activities and arrangements to relevant RFMOs.
  - More attention should be paid to quality control relating to the receipt, verification and tasking of information with regard to MCS.
  - The allocation and deployment of inspection resources should be shared equitably between member States.
- Follow-up on infringements
  - The various reporting mechanisms within conservation and management measures, in relation to infringements, should be reviewed to ensure that the mechanisms of reporting are clear, concise and consistent between measures.
  - In respect of legal sanctions, reports should provide a link, preferably by electronic means, to the findings of the court (or equivalent) giving details of the penalty and sanction imposed.
  - A "library" should be established within a Secretariat of relevant national legislation enacted by member States. Such information should be updated as and when such domestic legislation is amended.
  - A sanction mechanism for non-compliance and task the Compliance Committee to develop a structured approach for cases of infringement should be developed including agreed rules on the treatment of overcatch (requirement of payback) and a range of penalties in relation to all conservation measures.
  - Provisions for follow-up on infringements should be included in any amended/replaced Agreement.
- Cooperative mechanisms to detect and deter non-compliance
  - Convention and management measures should be streamlined so that new and existing obligations are fully understood by all concerned.
  - All Members and Cooperating Non-Members should submit their national reports to annual Commission meetings enough in advance for their verification.
  - The Compliance Committee should be established to analyze any information submitted by national authorities or any other entity or person.
  - The Compliance Committee meetings should be conducted by reviewing each case of non-compliance, and the burden of proof for compliance should be placed on the implicated Contracting Parties.
  - New mechanisms should be devised to ensure the identification of those Parties that accumulate a given number of proved infractions.

- Market-related measures
  - Market States might be able to assist in the fight against IUU fishing through enactment and implementation of ‘Lacey Act’ style legislation.<sup>46</sup> Consideration should be given to exploring the use of ‘Lacey Act’ style legislation more widely among member States and market States, which could offer greater opportunities for cooperation in the prosecution of offenders.
  - E-CDS should become mandatory with immediate effect. To improve the integrity of the CDS, the scheme should commence from the point of capture (rather than shipment or transfer) and it should be integrated with catch reporting; the tasks of integration and reconciliation should be delegated to the Secretariat.
  - The non-binding market related measure should be transformed into a binding measure.

### **Recommendations on decision-making and dispute settlement**

- In respect of the consensus rule, a distinction should be drawn between substantive issues and matters of implementation. While decisions possessing normative and regulatory effects should continue to be addressed on the basis of consensus, determining how such decisions were implemented could be submitted to different procedures such as devoting day to day operational decision making to the Chair or the Executive Secretary and/or creating mechanisms for minimizing the objections and reviewing the objections through an expert body. In order to improve the practices of decision-making and adoption of measures, when every effort to achieve consensus has been exhausted, invoking the procedure of voting should be explored.
- It should ensure that participants are well aware of the issues being decided, and a decision-making framework should be adopted that guides the outcome of decisions and forces discipline consistent with the objectives of each organization. .
- The objection procedure should be also improved so that it is more rigorous and featuring restricted grounds for the bases to object is recommended. The use of the objection procedure should not undermine conservation of the resources and is supported by the dispute settlement mechanism which can assist Parties to resolve the underlining reasons for the objection. Furthermore, interim measures should be agreed upon and implemented while disputes are being resolved.
- The binding procedures for dispute settlement set out in Part XV of UNCLOS could be considered by member.
- Dispute settlement procedures, including the possible use of an expert panel and compulsory proceedings entailing binding decisions, should be established or amended in line with the requirements of UNFSA.

### **Recommendations on international cooperation**

- Transparency
  - Member States should improve openness by better publication of the Rules for observers. One possible option should be to put information on a website of each organization about the current arrangements for accepting observers.

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<sup>46</sup> The Lacey Act is a US statute that is aimed directly at illicit trade in illegally caught fish and wildlife. The Act makes it unlawful for any person subject to the jurisdiction of the USA to ‘import, export, transport, sell, receive, acquire, or purchase any fish or wildlife taken, possessed, transported or sold in violation of any law or regulation of any State or in violation of any foreign law’. Both criminal and civil sanctions are available under the Act, as well as forfeiture of the illegally caught fish.

- The preparation of a discussion paper should be encouraged on transparency, fairness and equity within an organization, in particular with regard to a policy on NGO attendance at meetings.
- The active vessels list should be made available on a website. In addition, the Commission, in consultation with the Scientific Committee, should review the availability of critical data sets used in development of scientific advice and take steps to assure that these data are held at the Secretariat and available for the validation of analyses, subject to the appropriate confidentiality requirements.
- The development of an annual report on the status of Convention Area stocks should be considered in order to improve overall transparency.
- Relationship to non-contracting parties
  - The legal framework should be amended or replaced in order to enable fishing entities active in the area to discharge their obligations in line with the UNFSA.
  - The details of its engagement with third party States in respect of the Convention should be, on a regular basis, formally brought to the attention of FAO and any other relevant international organization.
  - An expert panel should be established to examine the feasibility and likely success of a range of actions that might be taken against non-Cooperating Parties. One of those options might include a formal Declaration on the applicability of Part XV of UNCLOS to [vessels of] non-Contracting Parties, that are Parties to UNCLOS, fishing within the convention areas.
  - Diplomatic approaches should be made by member States to non-Members with active vessels in the areas. When non-cooperation is identified and all reasonable efforts to improve the situation are exhausted, any non-Members continuing not to cooperate should be adequately sanctioned by, for example, market related measures.
- Cooperation with international organizations and other RFMOs
  - The relationship with observers should be reviewed in order to ensure that the exchange of information is maximised and the working relationship with those bodies is transparent, effective and dynamic. Comparison should be carried between its own regulatory provisions and contemporary developments either in RFMOs or in wider instruments applicable to fisheries, environment and broader governance to ensure to the extent possible best practice continues to be adopted and achieved.
  - In particular among RFMOs targeting the same species such as tuna-RFMOs, they should work more closely with and to harmonise measures with each other RFMOs.
  - Mechanisms should be established for a mutual recognition of IUU Vessel Lists with other RFMOs. Cooperative mechanisms, such as MoUs with other RFMOs, should be also established to work in a coordinated manner on issues of common interest, in particular non-target species and an ecosystem approach as well as agree on a Member attending other tuna RFMO meetings as an observer on its behalf and reporting back to own Commission on matters of interest.
- Special requirements of developing States
  - Consideration should be given to new means for providing support to developing States, including: (a) establishing a dedicated fund to support developing States, and referencing the establishment and accessibility to such a fund in its literature and website; (b) identifying current best practice and existing arrangements

elsewhere, particularly within RFMOs, in relation to developing States; and (c) exploring and making available information on other funding sources to assist developing States.

- A specific fund to assist capacity building should be put in place and Members that are Parties of UNFSA should make use of the Part VII Fund established under UNFSA.

### **Recommendations on financial and administrative issues**

- A Commission should seek to expand its financial base through identifying and charging for the full cost of services which are provided for commercial fishing operations. This would require the development of a cost-recovery policy and an assessment of how this should be implemented. An expert group to develop a cost-recovery policy should be established to review the services provided by the Commission with identification of high-priority areas and how they should be funded.
- The means to ensure a more equitable contribution from all members States should be investigated with the special consideration given to the distinction between developing and developed States when establishing the amount of each Member's contribution to the budget. A fee system as a possible funding mechanism for possible new activities should be considered as one of potential options.
- The Secretariat should maintain an efficient and cost effective operation including improvements in institutional arrangements based on review at regular intervals the staffing profile of the Secretariat and if necessary adjust it to changes and to reflect workloads.
- Implementation of the agreed external financial audit should be conducted, if necessary.





After introduction and background (Part 1), this publication contains a compendium of the Executive Summaries of performance reviews conducted by Commission of Antarctic Marine Living Resources (CCAMLR), Commission for the Conservation of Southern Bluefin Tuna (CCSBT), International Commission for the Conservation of Atlantic Tunas (ICCAT), Indian Ocean Tuna Commission (IOTC), Northwest Atlantic Fisheries Organization (NAFO), North Atlantic Salmon Conservation Organization (NASCO) and North East Atlantic Fisheries Commission (NEAFC) in Part 2. It is followed by the synthesis of performance reviews and recommendations, which could be shared as potential best practices for future based on the experience of all performance reviews covered in this volume. While preparing this volume, additional performance reviews have been conducted several RFBs, which are expected to be covered in the second volume of document for the same purpose. Those two volumes of documents are expected to serve as at-a-glance reference with regard to performance reviews conducted by RFBs.

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