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THE IMPLEMENTATION OF PERFORMANCE REVIEW REPORTS BY REGIONAL FISHERY BODIES, 2004–2014

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THE IMPLEMENTATION OF PERFORMANCE REVIEW REPORTS BY REGIONAL FISHERY BODIES, 2004–2014

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ABSTRACT

This publication provides a history, description and overview of the performance review process of regional fishery bodies (RFBs), and the implementation measures that the RFBs in question have taken, following the reviews. It is an update for, and an expansion upon, FAO Fisheries and Aquaculture Circular No. 1072, "Performance Reviews by Regional Fishery Bodies: Introduction, Summaries, Syntheses and Best Practices, Volume I: CCAMLR, CCBST, ICCAT, IOTC, NAFO, NASCO, NEAFC". That circular reviewed the performance reviews of seven organizations, mostly in the Atlantic Ocean, in 2012.

The first part of this circular offers an overview of the evolution of independent performance reviews in international fisheries management. It describes the spread of the practice among RFBs, the typical composition of performance review panels, their average timetables, cost and methodology. It also describes the criteria to which fisheries bodies are held in the reviews.

In the second part, the circular studies performance reviews completed by the 19 RFBs that, at the time of publication, had engaged in the performance review process. The report gives basic information about each RFB, and then summarizes the factual findings and recommendations of the reviews. Finally, the report recounts the efforts that each RFB has made in order to implement the recommendations of its performance reviews.

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ABBREVIATIONS AND ACRONYMS

ACAP	Agreement for the Conservation of Albatrosses and Petrels
APFIC	Asia-Pacific Fisheries Commission
ATLAFCO	Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic
B_{MSY}	long-term average biomass expected, if fishing at F_{MSY}
BCD	bluefin catch documentation
BFTRC	Bluefin Tuna Re-Export Certificate
CARICOM	Caribbean Community and Common Market
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CDS	catch documentation scheme
CECAF	Fishery Committee for the Eastern Central Atlantic
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
Code	FAO Code of Conduct for Responsible Fisheries
COFI	FAO Committee on Fisheries
COMHAFAT	Conférence ministérielle sur la coopération halieutique entre les Etats Africains riverains de l'Océan Atlantique
COREP	Regional Fisheries Committee for the Gulf of Guinea
CPCO	Comité des Pêches du Centre-Ouest du Golfe de Guinée
CPUE	catch per unit effort
CRFM	Caribbean Regional Fisheries Mechanism
CSRP	Commission Sous-régionale des Pêches
EAF	ecosystem approach to fisheries
EEZ	exclusive economic zone
ERS	ecologically related species
ERSWG	Ecologically Related Species Working Group
F_{MSY}	fishing mortality at the level of MSY
FAD	fish aggregating device
FAO	Food and Agriculture Organization of the United Nations
FCWC	Fishery Committee for the West Central Gulf of Guinea
FFA	Pacific Islands Forum Fisheries Agency
GCC	Gulf Cooperation Council
GFCM	General Fisheries Commission for the Mediterranean
HELCOM	Baltic Marine Environment Protection Commission / Helsinki Commission
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
IGO	intergovernmental organization
IOFC	Indian Ocean Fisheries Commission
IOTC	Indian Ocean Tuna Commission
IPHC	International Pacific Halibut Commission
IPOA	international plan of action
IPOA Seabirds	International Plan of Action on Reducing the Incidental Catch of Seabirds in Longline fisheries
IPOA Sharks	International Plan of Action on the Conservation and Management of Sharks
IPOA Capacity	International Plan of Action for the Management of Fishing Capacity
IPOA IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
ISC	International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean
IUU	illegal, unreported and unregulated (fishing)
MCS	monitoring, control and surveillance

MedPAN	Network of Marine Protected Area Managers in the Mediterranean
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
NEAFC	North East Atlantic Fisheries Commission
NGO	non-governmental organization
NOAA	National Oceanic and Atmospheric Administration
NPAFC	North Pacific Anadromous Fish Commission
NPFC	North Pacific Fisheries Commission
OECS	Organization of Eastern Caribbean States
OLDEPESCA	Latin American Organization for Fisheries Development
OSPAR Commission	Convention for the Protection of the Marine Environment of the North-East Atlantic Ocean / Oslo–Paris Commission
OSPESCA	Central American Fisheries and Aquaculture Organization
PICES	North Pacific Marine Science Organization
PR	performance review
PSC	Pacific Salmon Commission
RAC-MED	Regional Advisory Council for the Mediterranean
RECOFI	Regional Commission for Fisheries
RFB	regional fishery body
RFMO	regional fisheries management organization
ROPME	Regional Organization for the Protection of the Marine Environment
RSN	Regional Fishery Body Secretariats Network
SBT	southern bluefin tuna
SEAFO	South East Atlantic Fisheries Organisation
SIOFA	South Indian Ocean Fisheries Agreement
SIPAM	Information System for the Promotion of Aquaculture in the Mediterranean
SPC	Secretariat of the Pacific Community
SPREP	Secretariat of the Pacific Regional Environment Programme
SRFC	Sub-Regional Fisheries Cooperation
SSB	spawning stock biomass
SWIOFC	Southwest Indian Ocean Fisheries Commission
TAC	total allowable catch
TIS	trade information scheme
ToR	terms of reference
tRFMO	tuna regional fisheries management organization
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDOALOS	United Nations Division for Ocean Affairs and the Law of the Sea
UNEP	United Nations Environment Programme
UNEP-MAP	United Nations Environment Programme – Mediterranean Action Plan
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFSA	United Nations 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
UNGA	United Nations General Assembly
VMS	vessel monitoring system
WCPFC	Western and Central Pacific Fisheries Commission
WECAFC	Western Central Atlantic Fishery Commission
WTO	World Trade Organization

Note on acronyms and initialisms: Some RFBs are generally referred to using an acronym without the definite article (e.g. NASCO). Others are usually referred to using an initialism with the definite article (e.g. the GFCM). This publication reflects this usage.

PART 1 INTRODUCTION AND METHODOLOGY

1. BACKGROUND

This circular provides an overview of independent performance reviews (PRs) of regional fishery bodies (RFBs), from 2004 to 2014, and the steps that RFBs have undertaken to implement the recommendations of their performance reviews. It is an update and an expansion of FAO Fisheries and Aquaculture Circular No. 1072, which reviewed the PRs of seven, mostly Atlantic, RFBs in 2012 (Ceo *et al*., 2012).

Part 1 of this circular offers an overview of the evolution of independent performance reviews in international fisheries management. It describes the spread of the practice among RFBs, the typical composition of performance review panels, their average timetables, cost and methodology. It also describes the criteria to which fisheries bodies are held in the reviews.

In Part 2, the circular studies performance reviews completed by the 19 RFBs that, at the time of publication, had engaged in the performance review process. The report gives basic information about each RFB, and then summarizes the factual findings and recommendations of the reviews. Finally, the report recounts the efforts that each RFB has made in order to implement the recommendations of its performance reviews

In 2005, the North Atlantic Salmon Conservation Organization (NASCO) was the first RFB to be evaluated by stakeholders and non-governmental organizations (NGOs) (NASCO, 2005). Since then, more than 19 RFBs have had their performance evaluated, and 3 of these RFBs have also completed a second PR, or are undergoing one.

The method used for the PRs was recommended in several international fora: first during the Twenty-sixth Session of the FAO Committee on Fisheries (COFI) in 2005 (FAO, 2005), then in the United Nations General Assembly (UNGA) in the same year,[1] and subsequently during the first Kobe meeting of tuna regional fisheries management organizations (tRFMOs) and in the Twenty-seventh Session of COFI in 2007 (FAO, 2007). Starting in 2010, the practice became more widespread: while only 2 RFBs completed PRs before 2007, 4 more did so in 2008–09, 5 more in 2010–2011, another 7 in 2012, and 2 more since, with another 2 undertaken while this circular was being published. Therefore, the present circular is bound to become dated quite quickly, as the international fisheries PR process expands and the criteria for evaluating fisheries management evolve further.

It is sometimes hard to determine what counts as an independent, external performance review.[2] Assessments and strategic plans for fisheries management, in the international sphere as well as for waters under coastal State jurisdiction, are nothing new. This circular only analyses the process of external PRs that have been created in furtherance of the example of NASCO, and following the methodized recommendations set down by the UNGA. These call for "using transparent criteria based on the provisions of the Agreement and other relevant instruments, including the best practices of regional fisheries management organizations or arrangements; and further encourages that such

[1] UN General Assembly Resolution A/RES/60/31, 29 November 2005, Sustainable fisheries including through the 1995 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, and related instruments, para. 60. See also: "Several delegations called for a process to review the performance of RFMOs. … Examples of performance reviews already on-going within some RFMOs, including NEAFC and ICCAT, were highlighted as examples for other RFMOs to follow. It was stated that transparency and independence were critical factors in such reviews." *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*, July 3, 2006, A/CONF.210/2006/15, p. 18, para. 88.

[2] See also Chapter 2.

performance reviews include some element of independent evaluation and that the results be made publicly available."[3]

A number of internal RFB evaluations and strategic plans, which necessarily may include points of evaluation that are not listed above, are therefore not be analysed herein.[4] At the time of writing, there are about 64 or so RFBs or other fisheries-related international bodies,[5] of which some 19 RFBs have completed independent review processes. These reviews focus on the organization, and not on its strategic plans. They also include some type of external expertise in the review process. The methodology has stayed relatively stable throughout, and this permits a collection of RFB best practices to be assembled quite easily to and provides a set of results that are comparable.

2. COMPOSITION OF REVIEW PANELS

Many of the PRs feature "external review" or "independent review" on their title page (e.g. ICES, 2012a; ICCAT, 2009; CRFM, 2013a), but the composition of the review panels is more typically mixed, including "internal" members on the panel, such as the chairs of certain committees, or panel members nominated by member States. In fact, it is sometimes hard to say whether a given expert is "internal" or "external." For example, when an FAO expert reviews an FAO fishery body (e.g. FAO GFCM, 2011; FAO, 2014a), is that expert "external" or "internal?" When a commercial consulting company does a PR, but the said consultants are closely guided by a Steering Committee, how independent are the consultants in question? (e.g. PSC, 2012; IPHC, 2012).

Not that the complete independence of experts is necessary, or even advisable, for the creation of PRs. The foreword of the North East Atlantic Fisheries Commission (NEAFC) PR noted that having internal members on the panel: "… raised the spectre of a conflict of interest and the potential to overstate performance or 'hide' non-performance. Such concerns would have been present regardless of the structure of the Panel, as no such review can proceed in ignorance and must often depend on inquiry amongst those directly involved in the activities of the organization concerned." (NEAFC, 2006a).

The foreword of the International Council for the Exploration of the Sea (ICES) PR uses almost exactly the same words to state the same concern (ICES, 2012a). In practice, however, the independent members of both panels found that: "The Panel was privileged in having three members who held key positions within the NEAFC structure and who brought to the table a wealth of institutional knowledge. This benefit cannot be overstated as it meant that the Panel could spend more of its limited time debating key performance issues rather than in researching their history." (NEAFC, 2006a; ICES, 2012a).

Of those RFBs that employed "mixed" panels, typically half, or just below half, of the review panel members were outsiders. The Commission for the Conservation of Southern Bluefin Tuna (CCSBT) decided to split the process into two, entrusting the representatives of its member States to form an internal performance review working group, then entrusting an independent expert, Mr David Balton of the United States of America, to review the working group's report (CCSBT, 2008a, 2008b; also see Section 7.2).

The composition of panels reflects the varied professional competences necessary to evaluate the work and potential of RFBs. At least one fisheries scientist, one international legal expert, and one person with long experience regarding fisheries management or RFBs are included on panels. Only two RFBs

[3] UN General Assembly Resolution A/RES/61/105, 8 December 2006, Sustainable fisheries including through the 1995 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, and related instruments, para. 73.

[4] For example: European Inland Fisheries Advisory Commission Options Paper: Review of the Functioning of EIFAC and Options for Long-Term Improvement, Twenty-Sixth Session, Zagreb, Croatia, 17-20 May 2010, EIFAC/XXVI/2010/Inf.4; Pacific Islands Forum Fisheries Agency Strategic Plan 2005-2020; A Joint Strategic Plan for the Management of Great Lakes Fisheries (as Revised, 10 June 1997), Great Lakes Fishery Commission, November 2007.

[5] See a comprehensive list at www.fao.org/fishery/rfb/search/en

engaged single experts for the preparation of entire reviews: the Regional Committee for Fisheries (RECOFI), which employed Mr Joseph Catanzano, an international consultant (currently an FAO consultant) (RECOFI, 2011); and the Fishery Committee for the Eastern Central Atlantic (CECAF), where the author of the Report remained unidentified.

FAO and the United Nations Division for Ocean Affairs and the Law of the Sea (UNDOALOS) are usually requested to nominate experts, and former or current directors of other RFBs are often asked to chair the panels. Only the Indian Ocean Tuna Commission (IOTC), NASCO and the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) have acted to involve NGOs or their representatives in the review process. Dr Judith Swan, a Senior Policy and Programme Officer at FAO, and Prof Fabio Hazin, professor of fisheries and aquaculture in Pernambuco, Brazil, and the former Chair of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the former Vice-Chair of COFI, are the two most-requested experts for the conducting of PRs. Dr Swan's expertise has been requested by the General Fisheries Commission for the Mediterranean (GFCM), the South East Atlantic Fisheries Organisation (SEAFO), the Western and Central Pacific Fisheries Commission (WCPFC) and NASCO, while Prof Hazin has been asked to contribute to the reports on the Northwest Atlantic Fisheries Organization (NAFO), the Southwest Indian Ocean Fisheries Commission (SWIOFC) and the WCPFC as well.

The Pacific Salmon Commission (PSC) and the International Pacific Halibut Commission (IPHC), that is the two exclusively North American RFBs to have done PRs, both entrusted private consulting companies to create their PRs. The IPHC contracted with CONCUR Inc., a private firm based near San Francisco, the United States of America that specializes in "analyzing and resolving complex disputes involving natural resources and infrastructure, and the communities and enterprises that depend on them."[6] The PSC engaged 49 Solutions, a consulting company from Ottawa, Canada, about which no further information is forthcoming.

A complete list of PR panel members and their affiliation and position at the time of the PR is available in the table in Appendix 1.

[6] From the website of CONCUR Inc. (cited 4 April 2014). www.concurinc.com/about-us/

3. PANEL MEETINGS, WORK TIMETABLES AND REVIEW COSTS

Performance review panels usually meet once in person, and conduct most of their tasks via electronic correspondence.[7] As can be seen from the information in Appendix 2, most of the panels have completed their work within six months of their initial meeting, and within two years of the RFB's decision to conduct a PR. The average time spent on a review is 7 months from the time of the panel's first meeting, and 18 months from the time of the RFB's decision to conduct a PR. Reviews also seem to be conducted in waves, with 3 RFBs finishing PRs in 2008 (CCSBT, CCAMLR, ICCAT), 3 in 2010 (RECOFI, SEAFO, NPAFC), 7 in 2012 (WCPFC, CECAF, PSC, NASCO, IPHC, ICES, SWIOFC) and another 3 which were scheduled for 2014 (WECAFC; also NEAFC and IOTC were in the process of finishing their second PRs at the time of writing; see Sections 11.3 and 16.3); but only 1 in 2009 (IOTC), 2 in 2011 (GFCM, NAFO), and one in 2013 (CRFM).

The average cost of a PR seems to be between USD50 000 and USD100 000, and that is only loosely linked to the number of experts undertaking the review. Any comparison between organizations is uncertain, not only because of the complete lack of data for many RFBs and the different currencies and economic situations in the last decade, but also because of accounting difficulties. It is generally unknown whether the amounts given include only the external experts' fees and travel expenses, or also bonuses of some sort to internal panel members, not to mention other staff and equipment costs (e.g. printing, participation by the secretariat). For example, NAFO decided to give USD15 000 in "staff bonuses to compensate staff for the extraordinary and exceptional work performed in providing support to the Performance Review Panel" in 2011, after the PR had been submitted (NAFO, 2011a). This amount was not added to the cost of the PR, but accounted as salaries.

Some figures can be provided (here given in USD to facilitate comparison). In 2005–06, NEAFC spent about USD86 000 on its PR, undertaken by six experts. In 2007–08, CCAMLR budgeted about USD94 000 for its PR, which was conducted by nine experts (CCAMLR, 2007). The CCSBT budgeted about USD45 160 for its self-assessment in 2008, but then revised it to about USD6 500 – this was presumably the independent expert's fee (CCSBT, 2007, 2008c). For its second PR in 2014, the CCSBT budgeted about USD70 500 (CCSBT, 2013). The GFCM spent USD10 000 on its PR in 2009, USD50 000 in 2010, and USD5 000 in 2011, for a total of USD65 000 over three years, for the work of three experts (FAO GFCM, 2009, 2010, 2012a). ICCAT's PR, completed in 2009, cost about USD145 500 (ICCAT, 2010). On the very low end: SEAFO originally planned to spend about USD7 500 on its PR in 2010, but then revised that figure to about USD19 670 (SEAFO, 2010a). The WCPFC budgeted USD100 000 for its PR in 2010 (WCPFC, 2011). NAFO budgeted USD75 000 in 2011 to cover all the costs of its PR ("external review panel members' fees and travel, printing, etc.") (NAFO, 2010). ICCAT engaged only 3 external experts; NAFO's panel consisted of 3 external members and 4 internal ones, and the WCPFC's panel of 3 internal and 4 external members. An attempt at comparison, with many caveats, is given in Appendix 3.

[7] For example, "The Review Panel met during the week of the 15th February to 19th February 2010 at the SEAFO offices in Walvis Bay. All subsequent tasks were conducted by correspondence." (SEAFO, 2010). More tellingly, "The Performance Review Panel met for one day at GFCM headquarters in Rome on 1 February 2010, together with members of the GFCM Secretariat. They agreed on … the need to communicate further using electronic or teleconferencing means available given the absence of a budget for subsequent meetings in person." (FAO GFCM, 2011).

4. CRITERIA FOR PERFORMANCE REVIEWS

The review panels charged with implementing the PRs were usually given terms of reference (ToR) that included a list of criteria for the review. The legal instruments that created RFBs, as well as the basic UN Conventions and secondary instruments on fisheries,[8] also contain normative criteria according to which well-run fisheries can be judged, and were also used by the panels as benchmarks. The PRs contain the exact ToR in their text or annexes (NEAFC, 2006a; ICES, 2012a), but panels could in certain cases amend or interpret criteria to give a more complete picture of the functioning of the RFB.[9]

While the wording of the criteria given varies from report to report, the areas of interest are much the same in all of them. A general list of criteria, representing currently accepted global best practices, can be given as follows:

- Conservation and management of fish stocks:

What is the state of the fish stocks under the RFB's jurisdictional area? How much information does the RFB receive about these stocks, and how reliable is that information? Do member States abide by recommendations made by the RFB regarding total allowable catch (TAC) levels? What are the interactions between the fished and non-fished elements of the marine biosphere – does the RFB take into account the ecosystem approach to fisheries (EAF)? Does the RFB adopt the precautionary approach?

- Compliance with and enforcement of international obligations:

Is the RFB, and its member States, able to enforce the restrictions on fishing (marine protected areas [MPAs], fishing equipment regulation, fishing periods, TAC, etc.) and prevent illegal, unreported and unregulated (IUU) fishing? What international legal instruments have the member States ratified or adopted to this end, and how are they enforcing them?

- Legal framework, financial affairs, organization:

Do the RFB's decision-making procedures make it an effective venue for fisheries decisions? Is the RFB adequately staffed and funded? Is the functioning of the RFB transparent?

- Cooperation with other international organizations and non-member States:

How does the RFB interact with other RFBs that share the same jurisdictional area, and with RFBs that have exclusive jurisdiction over one or several species (tRFMOs, salmon RFMOs)? Can the RFB harmonize its management plans with those of coastal States that share stocks across exclusive economic zones (EEZs) and the high seas? How does the RFB interact with non-member States that fish in its area, and which do or do not wish to cooperate with the RFB?

Further criteria in some PRs, include the socio-economic aspects of fishing, the duties of RFBs towards developing countries, and the possible effects of fleet modernization. A comprehensive and unified list of criteria was developed in January 2007 during the first Kobe meeting of tRFMOs, by the United States Ambassador David Balton (CCSBT, 2008a), for the use of said tuna organizations' reviews. The "Kobe criteria" are listed in Appendix 4 below. Beyond their use by tuna bodies, they have become the criteria of choice for a large number of RFBs, including the NAFO (2011b),

[8] 1982 UN Convention on the Law of the Sea (UNCLOS), 1992 Rio Declaration on the Environment and Development, 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1995 FAO Code of Conduct for Responsible Fisheries (and the international plans of action [IPOAs] established under the Code), 1995 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. These instruments are more fully described in Appendix 5 of this publication.

[9] For example, "It had been agreed in principle that the Panel members would review the criteria and Terms of Reference agreed in 2009 at the Thirty-third Session of the Commission. In its review, the Panel took into consideration the important and increasing role of aquaculture in the Commission and included the following criteria …" (FAO GFCM, 2011).

GFCM (2011), NASCO (2011) and SEAFO (2010b) PRs. Other organizations had criteria of a smaller scope. The mandates of the Western Central Atlantic Fishery Commission (WECAFC) and the North Pacific Anadromous Fish Commission (NPAFC) mandates, for example, do not include the management of stocks. The IPHC and PSC set the ToR of their PRs to investigate only financial and administrative practices, without any enquiry into their fisheries management task (PSC, 2012; IPHC, 2012). Conversely, CCAMLR had a set of criteria slightly wider than the Kobe criteria, including questions on environmental protection and marine pollution (CCAMLR, 2008a).

In order to present the RFB coherently to readers who are not familiar with the RFB in question, PRs also contain a brief history of the organization in question, and a description of the area of jurisdiction, the principal species and stocks under its management, its member States and their dates of accession, and similar basic information.

A universalization of the legal criteria for PRs may seem improbable given not only the differences in geography and economic development between RFBs and their member States, but also because in certain cases not all members of the RFB concerned have ratified or adopted the relevant international conventions and other normative instruments. Nevertheless, in 2007, COFI "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."[10] In practice, PRs often base their criteria on international instruments that at times only a minority of their member States have ratified (e.g. FAO GFCM, 2011; CRFM, 2013a). Doing otherwise would not represent global best practices. PR panels urge member States to ratify all relevant conventions in order to close possible gaps in legality (e.g. FAO GFCM, 2011; CRFM, 2013a).

The normative instruments that contain minimum requirements for fisheries management are not many. These international agreements include the 1982 UN Convention on the Law of the Sea (UNCLOS), the 1993 FAO Compliance Agreement (on effective control by the flag State over fishing vessels), the 1995 UN Fish Stocks Agreement (UNFSA; relates to straddling fish stocks and highly migratory fish stocks), and the 2009 FAO Agreement on Port State Measures. These are supplemented by a number of soft law instruments, notably the 1995 FAO Code of Conduct for Responsible Fisheries (the Code), and its four international plans of action (IPOAs): the International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA Seabirds), the International Plan of Action for the Conservation and Management of Sharks (IPOA Sharks), the International Plan of Action for the Management of Fishing Capacity (IPOA Capacity) (FAO, 1999), and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA IUU) (FAO, 2001). A description of the key provisions of each, taken from the RECOFI PR by Mr Joseph Catanzano, can be found in Appendix 5.[11]

[10] See note 4, para. 87.
[11] For the original, see RECOFI (2011).

5. METHODOLOGY OF PERFORMANCE REVIEWS

Panels rely primarily on official documents of the RFB, interviews of officials working for the RFB who are nationals of the members of the RFB, and questionnaires sent to the members. PRs include analysis of the foundational texts of the RFB, which are examined *vis-à-vis* the international conventions and soft-law fishery instruments. An evaluation of cooperation is done both by looking at the documentary records of the RFB and through interviews with officials. The evaluation of conservation and management measures is done directly, by looking at the amount and type of catch data submitted by member States, and indirectly, by interviewing both scientists working for the RFB and representatives of members receiving data, predictions and scientific advice from the RFB.

No panel annexes the full record of data used to create its report,[12] and the vague language used ("some countries …", "a number of Member States …", etc.) creates the impression that a deliberate effort is being made not to mention members by name and that confidentiality was a prerequisite for the interviews. Some PRs include the questionnaires sent to member States (e.g. RECOFI, 2011; CRFM, 2013a); the questionnaires themselves contain some quantifiable aspects, such as asking member States to evaluate the functions of the RFB, or to assess the importance of certain functions to the member in question. The RECOFI PR consistently uses a scale of three possible answers (very good / satisfactory / very bad; low importance / medium importance /high importance; etc.), whereas the CRFM PR alternates yes/no questions with scales of 3 and 4 possible answers. Nevertheless, not even the questionnaires are open to statistical evaluation, for a number of reasons. First, not all members fill in and return the questionnaires – the CRFM PR records 9 returned questionnaires, out of 17 members, "representing a good sample" (CRFM, 2013a).[13] Second, the anonymity of the answers does not allow for the answers to be linked to other data about member States' fishing capacities, fish consumption and other relevant statistics. Third, the simple 3- or 4-scale answer paradigm seems to have been developed without considering any statistical models.

[12] Although the RECOFI (2011) report contains a summary of the interviews conducted.
[13] However, see RECOFI PR, where all eight Members of RECOFI returned the questionnaires (RECOFI, 2011).

PART 2 FINDINGS OF PERFORMANCE REVIEWS AND THEIR IMPLEMENTATION

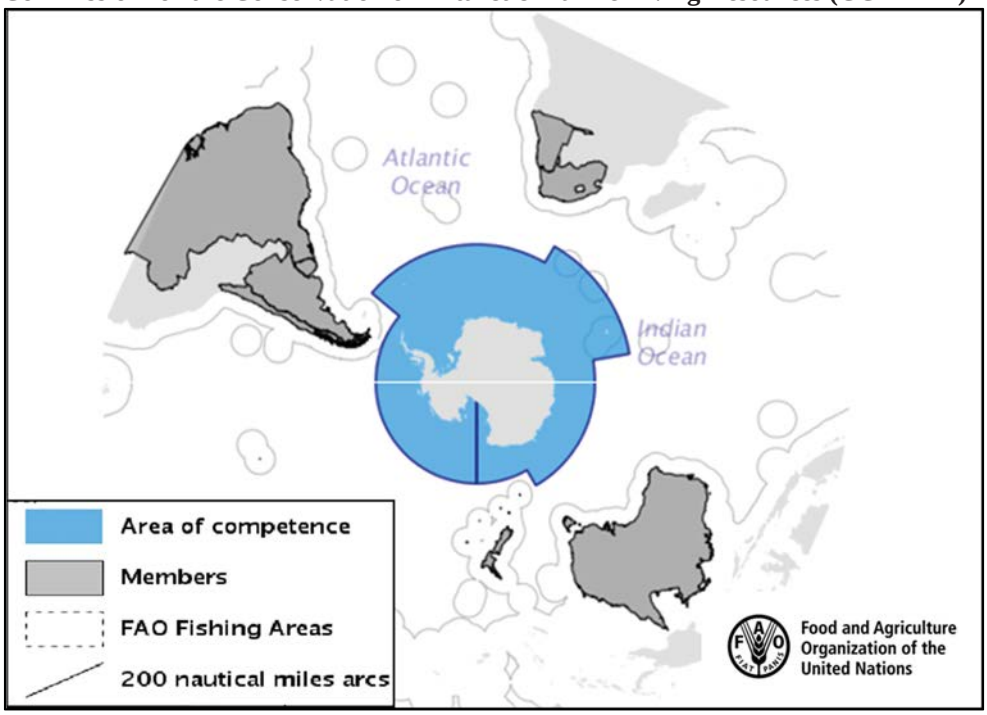
6. COMMISSION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES (CCAMLR)

6.1 Basic information

The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) is part of the Antarctic Treaty System, a network of international treaties regulating the peaceful use of Antarctica and its surrounding oceans. The framework Antarctic Treaty was signed in 1959. Conventions for the protection of Antarctic surface and marine life were signed in 1964 (general framework treaty) and 1972 (treaty on the protection of Antarctic seals); CCAMLR was established in 1982. CCAMLR has jurisdiction over all marine life except whales and seals, but including seabirds, south of the Antarctic Convergence (CCAMLR, 2008a).[14] However, member States regularly exempt certain islands, which comprise their sovereign territory within CCAMLR's regulatory area, from CCAMLR conservation measures, which frustrates some of CCAMLR's ecosystem-based conservation attempts.

The current members of CCAMLR are Argentina, Australia, Belgium, Brazil, Chile, China, the European Union,[15] France, Germany, India, Italy, Japan, Namibia, New Zealand, Norway, Poland, the Republic of Korea, the Russian Federation, South Africa, Spain, Sweden, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and Uruguay. States that have acceded to its convention but are not members are Bulgaria, Canada, the Cook Islands, Finland, Greece, Mauritius, the Netherlands, Pakistan, Panama, Peru, and Vanuatu. Seychelles is a non-contracting party that is voluntarily participating in CCAMLR's catch documentation scheme.

Map 1
Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)



[14] Performance review for the RFB in question cited at first mention in chapter. Unless otherwise stated, the PR of the respective RFB is the source of the information in the chapters in Part 2.
[15] FAO usually refers to this organization as the European Union (Member Organization). However, to avoid possible confusion arising from the use of the word "member" as pertaining to regional fishery bodies rather than FAO, this publication uses the form European Union.

6.2 Findings of the performance review

CCAMLR has the reputation of being the model regional fisheries management organization (RFMO) for responsible fisheries management, as well as being more akin to a conservation intergovernmental organization (IGO) than an RFMO. Both of these aspects of CCAMLR's vision are emphasized in the PR. CCAMLR pioneered both the ecosystem approach and the precautionary principle in international fisheries management, and has also been a leader in developing catch documentation schemes (CDSs) and mitigation measures to prevent seabird mortality. At the same time, the PR notes that differences between CCAMLR and other RFMOs have lessened over time, as other RFMOs have adopted CCAMLR's groundbreaking regulations, and fishing has risen in importance both for CCAMLR member States and their representatives (who are increasingly officials from ministries responsible for fisheries and aquaculture rather than being officials from ministries responsible for foreign affairs).

CCAMLR manages fisheries in Antarctic krill, mackerel icefish and some other icefish, various species of rockfish, toothfish, whiptails, crabs and squid. The managed toothfish stocks "are in the process of decreasing to the planned long-term biomass, or have recently reached approximately that level." IUU fishing of toothfish is substantial, and may upset CCAMLR's planned stock trajectories. The mackerel icefish fishery is fully fished, with no IUU fishing detected. Overfished finfish fisheries in the CCAMLR area (rockfish, mackerel icefish and other icefish stocks) are not being monitored. The TACs for crabs and squid are small, but the actual catch and fishing effort has been even lower. The krill fishery was small at the time of the PR, but was expected to expand rapidly owing to demand for feed from aquaculture. The PR advised focused monitoring of the krill stock, which may fluctuate significantly owing to climate change and natural variability.

Today, CCAMLR employs a wide range of conservation measures. Fisheries are divided into new/exploratory/developing fisheries, established/directed fisheries, and lapsed/depleted/overfished fisheries.[16] No fishing is allowed in depleted fisheries, and special precautionary rules are in effect for exploratory fisheries. Exploratory fisheries operate with precautionary catch limits, which may be arbitrary but have to be low enough not to have a significant impact on the stock in question. One problem with this approach is that new fisheries are vulnerable to IUU fishing, and the estimated IUU catch tends to be larger than the TAC by an order of magnitude. CCAMLR also has restrictions in place for bottom trawling (forbidden in waters less than 550 m deep and near vulnerable marine areas), and mitigation measures to reduce seabird and marine mammal mortality. There are also measures in place to monitor and report debris on beaches, and discarded and lost fishing gear. One significant problem is seabird mortality from vessels that fish outside the CCAMLR jurisdictional area, but the seabirds affected nest within Antarctic waters.

Krill pose a particular challenge because they are the basis of the entire Antarctic Ocean "krill-centric ecosystem", which provides the prey, directly or indirectly, for all other marine species. The PR noted with apprehension that a number of measures that are in force for other fisheries have been recommended but not yet implemented for the krill fishery. These include bycatch limits, gear and mesh size limits, vessel monitoring system (VMS) reporting and verification by scientific observers. The TAC for krill is large, but still small compared with the estimated biomass of krill, and the catch between 1992 and 2008 was well below the TAC.

Regulations for bycatch from certain species are also stringent: "Specifically derived by-catch limits are in place in those areas where significant by-catch is expected. Directed fishing is required to stop in an area if the by-catch limit for any species or species group is reached, and vessels are required to move their fishing location by at least 5 n[autical] miles if by-catch rates exceed set limits. These by-catch conditions apply to all new or exploratory fisheries, to established icefish fisheries and to demersal fisheries."[17]

[16] Lapsed fisheries are those that were depleted before CCAMLR was established and fishing in the Antarctic Ocean was restricted.

[17] However, bycatch from other species is not monitored at all.

The PR criticized CCAMLR for not having any plans in place for the rebuilding of depleted stocks. Stocks that were depleted 20 or more years ago have showed no signs of recovery. At the time of the PR, the designation of vulnerable MPAs that are completely off-limits for fishing was under way. The PR also called upon CCAMLR to work out capacity reduction measures that "would … ensure it was not providing perverse economic signals to Members and Acceding States … 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 … ."

CCAMLR receives data from a wide range of sources, which include individual and aggregated data on catch, retained and discarded bycatch and fishing effort; acoustic survey data; research data from scientific observers and research cruises; data from vessel registries, the CDS and the VMS; and data on sea-ice. While the PR had a number of minor recommendations on timeliness and precision, it acknowledged that the system of data collection is working well: "The quality of the scientific consideration and advice is very high." The PR had concerns about vague information, and the size and legibility of scientific reports.

CCAMLR also has a wide range of enforcement measures in place, but IUU fishing is still untenably high – estimated to be about 3 500 tonnes/year in 2005–07. CCAMLR employs flag State measures, port State measures, a CDS for toothfish, a centralized VMS ("C-VMS"), vessel and gear marking, and a "black" (negative) list to combat IUU fishing. Flag States have been wavering in the implementation of their duties, and port State measures were quite experimental in 2008, before the adoption of the FAO Port State Measures Agreement. Given the size of the Southern Ocean, observers and at-sea inspections were inefficient and expensive, and the C-VMS programme operates with a large time-lag and significant exceptions. The CDS for toothfish was praised, but its gaps still left ample opportunities for fraud or illegal transshipments. Finally, the IUU lists were updated irregularly, with some members even blocking the updating process to allow their ships to fish illegally, unimpeded.

Regarding the administration of CCAMLR, the PR praised the consensus-based decision-making procedure. However, it suggested a secondary mechanism, featuring a panel with the power to make binding decisions (modelled somewhat after the World Trade Organization [WTO]), for the **interpretation** of past CCAMLR decisions and for ascertaining facts. The PR also suggested a compulsory dispute resolution mechanism, modelled on UNCLOS, to replace the current, weaker one. The panel approved of CCAMLR's transparency. CCAMLR cooperates with a wide range of IGOs, including the Agreement for the Conservation of Albatrosses and Petrels (ACAP), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), FAO, United Nations Environment Programme (UNEP) and other RFMOs (CCSBT, IATTC, ICCAT, SEAFO, WCPFC, International Whaling Commission). The PR had few comments to make on relations with non-cooperating non-members, and on provisions for the assistance of developing States, both of which CCAMLR is handling adequately. CCAMLR's budget is based on the principle of zero real growth, which the PR opines is unrealistic given CCAMLR's growing membership and responsibilities, and the growing pressure on Antarctic fisheries. Instead, the PR proposes reducing the size and complexity of reports, and eliminating duplications in work and responsibilities within CCAMLR bodies, to make the organization more cost-effective.

6.3 Implementation of recommendations

The PR was acknowledged and referenced many times during discussions at CCAMLR's twenty-seventh annual meeting, in October 2008. New Zealand and Australia cited the PR during the discussion on the establishment of MPAs (CCAMLR, 2008b). Flag State duties, port State measures, market-related measures and monitoring, control and surveillance (MCS) were mentioned as particularly important issues by the Standing Committee on Implementation and Compliance in 2008 (CCAMLR, 2008b). At the same meeting, the Standing Committee on Administration and Finance cited the PR's preference for allocations above zero real growth, in budgeting for 2009. At the following annual

meeting, in 2009, Norway and the Coalition of Legal Toothfish Operators donated AUS110 000[18] for increasing general scientific capacity, also as a follow-up to the PR's recommendations (CCAMLR, 2009).

Nevertheless, in the most important matters, CCAMLR seemed to be stalling the implementation of the PR's recommendations. From 2009 to 2012, MPAs were still under consideration (CCAMLR, 2009, 2010, 2011, 2012), and not even a special meeting in July 2013 was successful in persuading members to agree on designating them (CCAMLR, 2013a). There was no agreement regarding the expansion of market-related measures in 2012, despite substantial discussion (CCAMLR, 2012). In 2013, some members argued for the need for a second PR, while the Antarctic and Southern Ocean Coalition "identified 14 incomplete recommendations [from the 2008 PR] that require further action from CCAMLR… and other working groups." (CCAMLR, 2013b).

[18] At that time AUS 110 000 was equivalent to approximately USD 77 500

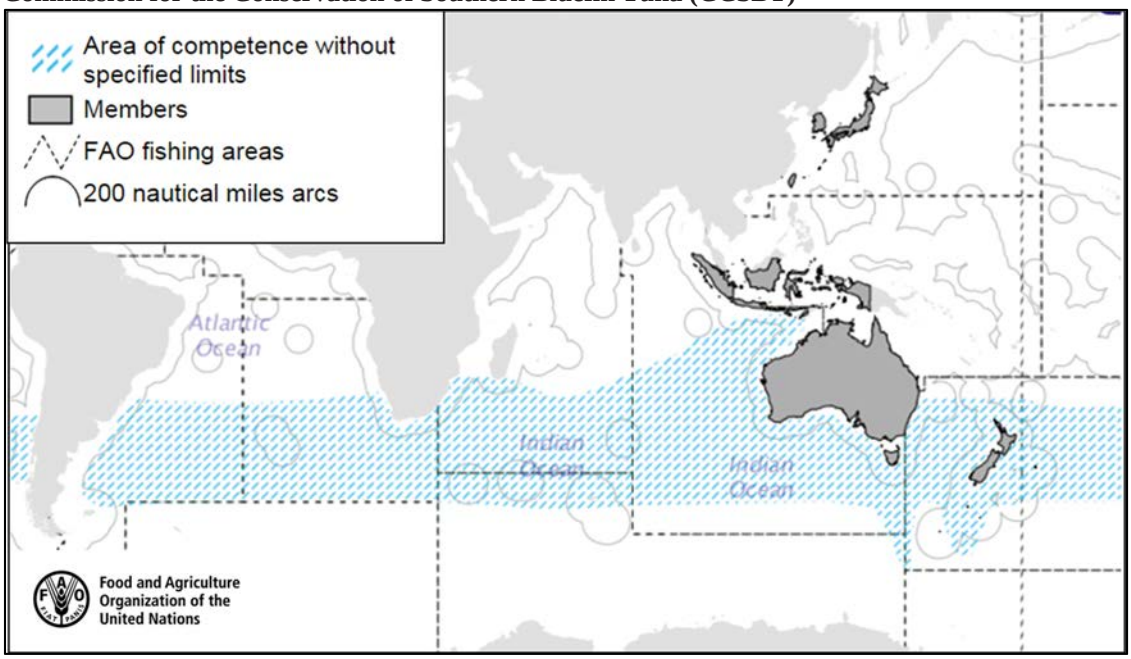
7. COMMISSION FOR THE CONSERVATION OF SOUTHERN BLUEFIN TUNA (CCSBT)

7.1 Basic information

The three principal nations engaged in fishing for southern bluefin tuna (SBT), Japan, Australia and New Zealand, started imposing quotas on fishing for the species in 1985, and saw the need for international cooperation in managing fishing for SBT in the early 1990s. The Commission for the Conservation of Southern Bluefin Tuna (CCSBT) was created in 1994. The current members are Australia, Indonesia, Japan, New Zealand and the Republic of Korea. Taiwan Province of China participates in an Extended Commission under the title of the "Fishing Entity of Taiwan". All members of the Extended Commission have equal voting rights, and all decisions of the Extended Commission become decisions of the Commission, unless the Commission objects.[19] The CCSBT also has three co-operating non-members: the European Union, the Philippines and South Africa. Co-operating non-members have the right to participate in CCSBT meetings, and can be allotted parts of the TAC, but do not have the right to vote.[20]

The CCSBT has no geographic limits to its area of competence; instead, it has competence to regulate fishing activity for SBT wherever they may be found. In practice, SBT "spawns south off Java, Indonesia, from where juveniles migrate east through the southern part of the Australian Fishing Zone towards New Zealand. Some other juveniles from the same spawning ground migrate west through the Indian Ocean towards South Africa." (Guggisberg and Lugten, forthcoming). Regarding overlaps with other RFMOs, "CCSBT has had agreements or MOU (Memorandum of Understanding) with other RFMOs which clarify that the CCSBT has primary competence for the management of SBT." (CCSBT, 2008a).

Map 2
Commission for the Conservation of Southern Bluefin Tuna (CCSBT)



[19] See the Resolution to Establish an Extended Commission and an Extended Scientific Committee and Rules of Procedure for the Extended Commission for the Protection of Southern Bluefin Tuna, adopted at the Seventh Annual Meeting (18–21 April 2001) and replaced at the Twentieth Annual Meeting (14–17 October 2013) (CCSBT, 2013, paras. 1–5).
[20] See the Resolution to Establish the Status of Co-operating Non-Member of the Extended Commission and the Extended Scientific Committee, adopted at the Tenth Annual Meeting, 7–10 October 2003, paras. 1–7.

7.2 Findings of the performance review

For its independent PR, the CCSBT decided to split the process into two: an internal panel composed of member States' representatives and the executive secretary would do a "Self Assessment", and an external independent expert would "review the Self Assessment and other information relevant to the performance of the Commission." (CCSBT, 2008b). This circular discusses the two reports in their original order, also taking into consideration that the report of the external independent expert consists mostly of comments upon the self-assessment.

The PR captured the CCSBT at a moment of chaos and consternation regarding its aims and their plausibility. In 2006, following the CCSBT's introduction of a trade information scheme (TIS) to track the international sale of SBT products, it became apparent that SBT catch information had been significantly under-reported during the previous decades, by almost 100 000 tonnes (CCSBT, 2008a). By comparison, the total spawning biomass of SBT was estimated in 2007 to be between 112 000 and 166 000 tonnes. This information threw the stock models and SBT biomass estimates that the CCSBT had been working with into disarray, and upended its formal plan to rebuild the SBT stock to 1980 levels by 2020. In the words of the self-assessment: "The estimates of the depletion of the spawning stock biomass suggest that, in terms of outcomes, the CCSBT has not been successful in managing SBT. In addition, due to the uncertainty in past under-reported catches, the data holdings of the CCSBT are compromised and their utility for scientific stock assessment to inform management decisions is significantly diminished."

The key goal of the CCSBT, to manage and rebuild the stock of SBT to 1980 levels (when the total catch was about 80 000 tonnes), was found to be untenable in the self-assessment.

In theory, members provide data through a number of ways: scientific data exchanges, formal national reports by member States, the TIS, monthly catch reports, reports by vessel or quota-holding company, and the CCSBT's authorized vessel list. The Commission enforces these obligations by allocating the TAC only to members that fulfil their obligations to provide timely data. The above-mentioned under-reporting nevertheless suggests that the data provided are not always accurate. The panel provided recommendations to improve data collection and management, including the harmonization of data collection and exchange between tRFMOs, making all fishing data publicly available, the replacement of the TIS with a complete CDS, and entrusting the secretariat with the necessary data analysis tasks.

Even before the collapse of the catch data and the models built upon it, the CCSBT had experienced severe crises regarding the allocation of the TAC between members. "There is a history of the CCSBT failing to agree on a TAC and national allocations," continuously between 1997 and 2002, and again in 2005. Moreover, the CCSBT relies almost exclusively on the TAC to maintain and preserve the SBT stock, and the self-assessment criticizes the Commission for having: "no agreed management principles (e.g. the precautionary and ecosystems approaches, efficient use, best scientific information, maintaining biodiversity, and minimising effects on the marine environment) [and] no management objectives or standards setting a rebuild strategy for the SBT stock. … Finally, there is no monitoring or evaluation of performance against objectives."

The self-assessment also notes the lack of capacity management measures, but considers that in the case of high seas tuna fishing, this is best left to national administrations. The report is also equivocal about the introduction of MCS measures that are overseen by the secretariat, versus increased flag State monitoring. The self-assessment did urge the CCSBT to adopt port State measures, a comprehensive CDS, a centralized VMS, and a negative list (i.e. a list of vessels suspected of IUU fishing). It further criticized the lack of penalties for infringements by member States.[21]

Regarding ecologically related species (ERS) – "Seabirds, sharks, marine mammals and other tuna species [that] are known to interact with both purse seine and longline SBT fisheries", the CCSBT has

[21] With the exception of "paying back" overcatch, by reducing the following year's quota.

received and reviewed documents from members, but has not done any evaluations. This is related to the debate between members regarding the proper role and functions of the Ecologically Related Species Working Group (ERSWG). Specifically, the debate is whether the ERSWG can or should make binding resolutions, and whether it can or should examine the impact of tuna farming by Australia on ERS.

The CCSBT is the only RFMO under review where dispute resolution procedures were invoked. That is, in 1998–2000, a dispute occurred between Australia and New Zealand, as applicants, and Japan, as respondent, concerning Japan's experimental tuna-fishing programme. The case ended up before an arbitral tribunal, which ruled in the end that it did not have jurisdiction under the CCSBT.[22] The PR panel noted the potential for stalemates under the CCSBT's somewhat vague dispute resolution clauses, and noted that an amendment of the Convention would be necessary to resolve the issue of jurisdiction, but it failed to recommend such an amendment (CCSBT, 2008a). The panel similarly noted that "consensus decision making has led to some sub-optimal outcomes for the Commission," but only recommended as an alternative that "some day to day operational decision making could be devolved to the Chair or the Executive Secretary." The panel approved the transparency and the openness of the CCSBT,[23] as well as its relationship with cooperating non-members, which receive allocations of the TAC if they cooperate with the Commission and abide by its rules on fishing for SBT. Unauthorized fishing by non-cooperating non-members had been eliminated by the TIS and the authorized vessel list. The CCSBT also recognized and attended to the needs of developing member States (principally, Indonesia). While the CCSBT had an active MoU with the WCPFC, and the CCSBT was active in the Kobe process of cooperating with other tRFMOs, the panel noted that "There are significant opportunities for the CCSBT to work more closely with and to harmonise measures with other RFMOs and this should be a priority area for the CCSBT." Finally, the panel also found that the secretariat was working efficiently, and the Commission was adequately funded.

The independent expert's report (CCSBT, 2008b) acknowledged that the CCSBT was facing "very significant challenges and meeting only limited success." The report noted particularly the overfishing and under-reporting of SBT catches by members, and the failure to agree on a TAC for a number of years, as "call[ing] into question the political will of its member States to make the decisions necessary to ensure sustainable fishing." It also noted the lack of measures to deter IUU fishing, protect ERS, establish integrated measures for MCS, and control fishing capacity. In general, the independent expert's report follows the panel's treatment and conclusions, but considers the lack of action on fishing capacity and ERS to be more grievous than the panel does. It also urges the CCSBT to adopt rules on boardings and inspections, institute a satellite-based VMS, and create rules that would allow NGOs easier access to CCSBT meetings.

7.3 Implementation of recommendations

At its fifteenth annual meeting in October 2008, the CCSBT Extended Commission acknowledged the reports, noted in particular the focus on the lack of attention to ERS, and set up a strategy and fisheries management working group to address the reports' recommendations (CCSBT, 2008c). The draft strategic plan, presented a year later, summarized the reports' conclusions, and set the following high-priority tasks: the development of a strategy to rebuild SBT stocks, the creation of a reliable and objective scientific procedure to set yearly TACs, and improve the efficiency of the Commission's functioning (CCSBT, 2009). Owing to a request to make changes to the strategic plan, there was no consensus to adopt the [strategic] plan at the Seventeenth Annual Meeting in 2010, but elements over which members were in complete agreement were implemented (CCSBT, 2010). These elements included the establishment of an active vessel list, the inclusion of the precautionary principle into the CCSBT's rules of procedure, and further consideration of the implementation of the ecosystem approach, information about ERS, and ways of making the CCSBT more efficient. The same meeting

[22] Southern Bluefin Tuna case (Australia and New Zealand v Japan) (Jurisdiction and Admissibility), 39 ILM 1359 (2000).
[23] While noting that the rules on the attendance of NGOs should be better publicized.

also reported: “The limit below which stock size should not be allowed to fall was agreed to be generally the current level of the spawning stock biomass.”

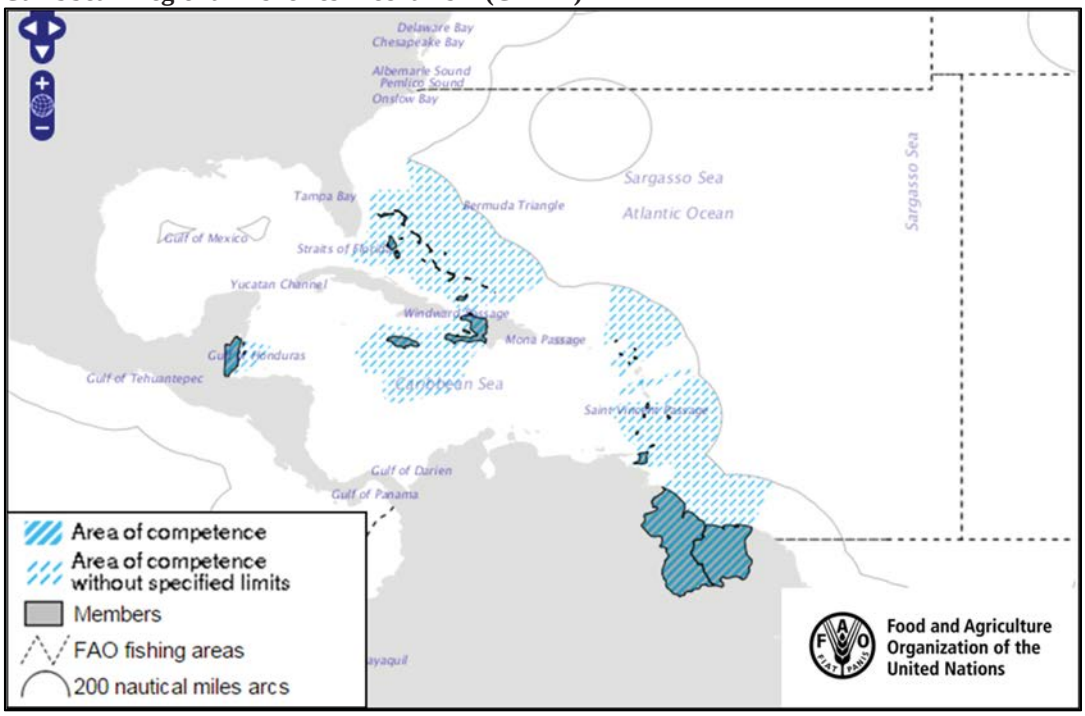
The revised strategic plan was adopted at a CCSBT Special Meeting in August 2011 (CCSBT, 2011a), and consequently not discussed much at the Eighteenth Annual Meeting in October 2011 (CCSBT, 2011b). The revised strategic plan added the high-priority objectives of having an integrated, targeted and cost-effective monitoring system, of compliance by all members with all CCSBT rules, and of encouraging the cooperation of port States and market States with CCSBT’s objectives. Also as part of the implementation of the strategic plan, a resolution on the reporting of all sources of SBT mortality was adopted in 2012 (CCSBT, 2012). Modifying the CCSBT convention to allow for participation by regional economic organizations (i.e. the European Union) was considered, as well as the scheduling of another PR for 2014 (CCSBT, 2012, 2013).

8. CARIBBEAN REGIONAL FISHERIES MECHANISM (CRFM)

8.1 Basic information

The Caribbean Regional Fisheries Mechanism (CRFM) was established in 2003, as the offshoot of an eight-year cooperative fisheries resource management project between the Caribbean Community and Common Market (CARICOM) and Canada, established in 1991. The CRFM is open only to CARICOM members and associate members; currently, out of 20 members/associate members of CARICOM, 17 are members of the CRFM. The 17 members are: Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Turks and Caicos Islands. The Dominican Republic is not a member or an associate member, but CRFM member States cooperate with the Dominican Republic through an MoU. The CRFM is an advisory body, without the power to make binding decisions or to enforce its recommendations. "It is to be noted that [CRFM's] area of competence does not cover a continuous maritime space. It is instead composed of scattered large and small maritime areas which are separated from one another because of the maritime zones claimed by states lying in between." (CRFM, 2013a).

Map 3
Caribbean Regional Fisheries Mechanism (CRFM)



8.2 Findings of the performance review

The PR noted that the CRFM had little interaction with CARICOM, or the Fisheries Management and Development Strategy of the Organization of Eastern Caribbean States' (OECS). Moreover, it partially overlaps in its membership and area of jurisdiction with WECAFC, Central American Fisheries and Aquaculture Organization (OSPESCA), Latin American Organization for Fisheries Development (OLDEPESCA) and ICCAT. Coupled with the lack of a unified area of jurisdiction, this makes any integrated policy regarding shared or migratory stocks difficult or impossible.

The CRFM relies on member States for raw data to undergird its scientific advice: "It is clear that the secretariat largely depends on the member countries contributions in terms of data and information in order to be able to provide for a regional analysis." Yet such information is hard to come by: "The fisheries data and information provided by the members to the CRFM secretariat are often incomplete,

show gaps or are provided in a format that is not appropriate. It is further noted that generally the data provided are poor and do not meet the needs of the scientific meetings …". Training by the CRFM for members' fisheries officers, and the introduction of a fisheries information system (now rather outdated) have produced only limited results.

Financially and administratively, the CRFM secretariat is understaffed and sorely stretched, and most research projects are funded on an ad hoc basis. Because of this, reports and working groups are occasional and focus on single species of high commercial value (lobster, queen conch, pelagic species). "Stocks like those of sharks, rays, billfish, grouper, parrot fish, sea urchins, etc. are not covered in the annual scientific assessments. Reasons given for this absence in the assessments are economic and manpower constraints."

The precautionary principle is mentioned in the CRFM agreement, and also guides all of the CRFM's scientific activities. The CRFM agreement does not explicitly mention the EAF, but it has nevertheless been embraced and promoted by the CRFM.

The CRFM has made some recommendations regarding MCS measures to deter IUU fishing, but "it appears that … the [member] countries have neither made much progress on this subject as a grouping or individually." Nor do member States seem to put much emphasis on the risks inherent in fleet modernization. Capacity-building initiatives, that is, workshops and training for national fishery officers, have been unanimously praised as very successful. The review panel was also impressed with the CRFM's decision-making procedures, transparency and the secretariat's capacity to make the most of limited funding and personnel.

The review panel's main recommendations, accordingly, were for member States to provide better data and more support to national fisheries officers. Members should also ratify relevant fisheries / law-of-the-sea conventions as far as possible and applicable. Both CRFM and member States should integrate "socio-economic, environmental and climate change concerns… into management advice" and focus on small-scale fisheries management. CRFM scientific reports "should contain clear and specific technical advice and recommendations from each working group to the fisheries forum, in order to enable the forum to discuss and agree on research priorities …" Closer cooperation with OSPESCA and WECAFC is also encouraged. "Overall, the Panel rates the performance of CRFM as satisfactory to good."

8.3 Implementation of recommendations

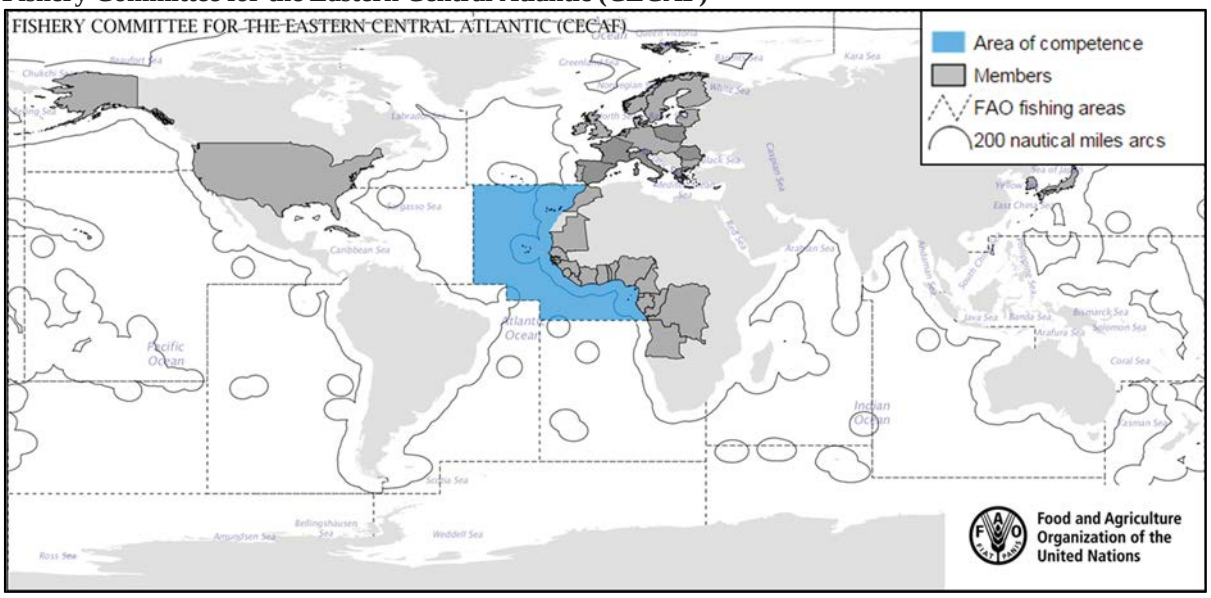
At the eleventh Caribbean Fisheries Forum in May 2013, the forum took note of the freshly-completed PR, and began working on a strategic action plan for 2013–2021 (CRFM, 2013b). No further information is forthcoming on the implementation of the PR.

9. FISHERY COMMITTEE FOR THE EASTERN CENTRAL ATLANTIC (CECAF)

9.1 Basic information

The Fishery Committee for the Eastern Central Atlantic (CECAF) was founded in 1967, as a subsidiary advisory body of FAO under Article VI (2) of the FAO Constitution. CECAF has no power to issue binding resolutions. "CECAF replaced the Regional Fisheries Commission for Western Africa, where the (sic) mandate included both continental and maritime fisheries and had been inactive for several years." (FAO, 2012). CECAF's area of competence stretches from Cape Spartel (in Morocco, close to the Straits of Gibraltar) to the mouth of the Congo River, and into the middle of the Atlantic Ocean. The area of competence includes territorial waters, EEZs and the high seas. The current member States are: Angola, Benin, Cameroon, Cabo Verde, the Democratic Republic of the Congo, the Congo, Côte d'Ivoire, Cuba, Equatorial Guinea, the European Union, France, Gabon, the Gambia, Ghana, Greece, Guinea, Guinea-Bissau, Italy, Japan, Liberia, Mauritania, Morocco, the Netherlands, Nigeria, Norway, Poland, the Republic of Korea, Romania, Sao Tome and Principe, Senegal, Sierra Leone, Spain, Togo, and the United States of America.

Map 4
Fishery Committee for the Eastern Central Atlantic (CECAF)



9.2 Findings of the performance review

According to the PR, CECAF is severely underfunded and undermanaged. CECAF has 34 member States, but only 13–24 member States actually attended the last five biannual Committee Meetings. "In 4 out of 5 occasions the CECAF meeting was held without observing its rule IV.6, which establishes that a majority of the members (18) shall constitute a quorum." Six members, that is 18 percent of the complete membership, did not attend any meetings at all in the last decade. Because of the lack of a quorum at many meetings, the legality of the organization's decisions is questionable. CECAF's headquarters and infrastructure are provided by the FAO Regional Office for Africa, in Accra, Ghana. However, currently, CECAF has no Secretary and, therefore, is practically inactive.[24]

The Review shows that CECAF has always been financed by FAO and by international development projects, and members have never had to contribute to its functioning. Attempts to make members take ownership of, and responsibility for, CECAF have not been successful so far. The review recognizes

[24] This information does not appear in the PR for CECAF, but is current in May 2014; for up-to-date information, see www.fao.org/fishery/rfb/cecaf/en

that “the present socio-economic situation of many, if not most, of CECAF members would not allow them to participate in the financing of the Committee in any significant manner.”

Another reason for CECAF’s stunted functioning is the large number of competing RFBs operating over partially the same area of competence. These are the Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic (ATLAFCO; the French acronym is COMHAFAT), the Sub-regional Fisheries Commission (SRFC; the French acronym is CSRP), the Fishery Committee for the West Central Gulf of Guinea (FCWC; the French acronym is CPCO), and the Regional Fisheries Committee for the Gulf of Guinea (COREP). The aims of these five RFBs are very similar, their membership is overlapping, and cooperation between them is limited. The existence of these competing organizations “is also an aggravating factor to [CECAF’s] already difficult financial situation.” The smaller organizations are more focused geographically and politically, thus requiring smaller donations and offering better returns for international aid.

As many other RFBs, the CECAF basic documents are also out of date, compared with the principles and policies contained in UNFSA and the FAO instruments mentioned in Chapter 4. Although the CECAF ToR were updated in 1992 and 2003, they do not contain the EAF or the precautionary principle, nor “the need to use the best scientific information available as the basis for its management recommendations.” There is no mention of transparency or openness, of the special needs and requirements of developing countries, or of any sort of dispute resolution mechanism.[25]

“Although the CECAF area of competence does include a broad region in the high seas (in fact, its largest part), almost all CECAF activities have been restricted to the areas under national jurisdiction of the member States.” About 90 fish stocks (of varying species) are monitored, but about two-thirds of these stocks are shared across maritime borders, and most small boats fish without regard to national boundaries. Regarding data on the status of fish stocks under CECAF’s area of competence, the PR notes that data collection is difficult, as “several CECAF members, however, do not have a system in place to routinely collect statistical data on the fisheries and species caught, particularly in the case of the subsistence and artisanal sectors.” While CECAF does a great deal of fisheries research, and serves as a forum for exchanging knowledge about fish stocks, the limited amount and quality of data available makes this function difficult as well. The Scientific Committee and the different working groups meet rarely, there is no common format in order to compare the status of fish stocks over time, and there is no way to assess the extent to which CECAF’s management advice is adopted. CECAF also pays little attention to questions of fishing capacity among its members, and has yet to adopt the ecosystem approach to fishery management. The precautionary principle “seems to have been integrated into the work of CECAF in a very loose manner,” but there has been very little work on MCS of fishing ships, and on capacity building among member States’ fisheries officers and fisherfolk.

Given all these problems, there is little hope that the suggestions of the review will bring about positive change. The reviewing expert suggested that CECAF restrict its competence to the EEZs of member States, “justified by the radically different nature of the present legal regime applied to the high seas and to the EEZ.” This would be in line with the replacement of the Indian Ocean Fisheries Commission (IOFC) by the SWIOFC for coastal States, and the South Indian Ocean Fisheries Agreement (SIOFA) for high seas fisheries.[26]

Greater ownership by member States would be crucial for beneficial change. The PR recommends that an updated ToR should contain provisions to keep inactive members out of the Commission: “After missing a certain number of sessions, for instance, the suspension of the membership status of a specific member could be automatically required to the FAO Director- General and should take effect in a given deadline unless the absentee expresses its desire and commitment to participate actively in the work of the Committee, from that time on.”

[25] Although the necessity of having a dispute resolution mechanism is questionable, given that CECAF has a purely advisory role.
[26] Also SWIOFC (2012).

More financial autonomy would also be positive, but a self-supporting CECAF seems close to impossible: “Although … it would be very positive for CECAF to have a more autonomous budget based on the contribution of member countries, … this would be, at least presently, a utopia, since many members most likely would not be able to honour their contribution.”

Regarding the other competing RFBs in the Eastern Central Atlantic, the review recommended that CECAF should take on the role of a cooperative and coordinating forum for the other RFBs. CECAF would be ideal in this role for the following reasons: “because CECAF has a broader geographic coverage, it is much better positioned to promote the systematic collection and gathering of data, in a standardized manner, as well as to conduct the stock assessments needed to guide management, since several of them are present in the areas of competence of different sub-regional organizations …”.

CECAF could also spot gaps and overlaps between RFBs, and act as a consultative forum and informational clearinghouse.

9.3. Implementation of recommendations

Given that CECAF currently has no Secretary, and there are no reports available from the biannual sessions since 2009,[27] it is unlikely that much activity has taken place in order to implement the findings of the PR. Given the lack of sources, it is impossible to know whether any activity has happened.

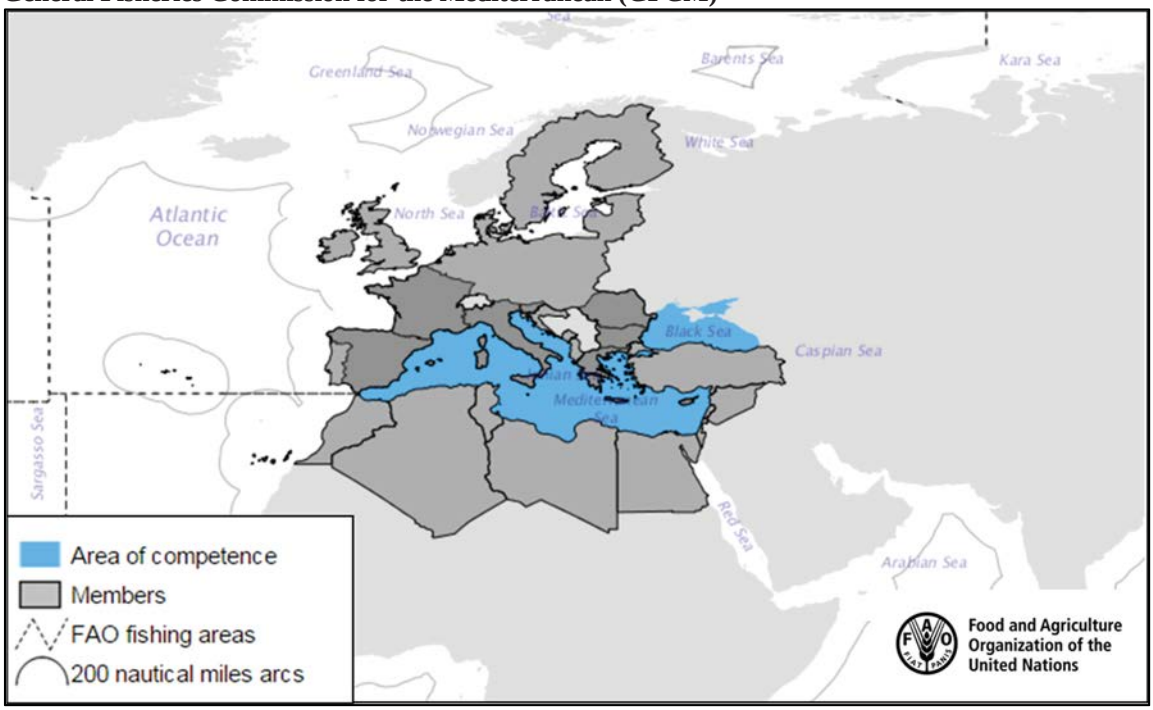
[27] For all available English-language and bilingual reports on CECAF activities: www.fao.org/fi/website/MultiQueryAction.do?loadMenu=/fishery/rfb/search&xsl=webapps/figis/shared/xsl/multiquery.xsl&query=http://www.fao.org/fi/oldsite/eims_search/advanced_s_result.asp?xml=Y%26xml_no_subject=y%26SERIES=34,375%26statutory=7%26FORM_C=AND%26SortOrder=3%26language=EN

10. GENERAL FISHERIES COMMISSION FOR THE MEDITERRANEAN (GFCM)

10.1 Basic information

The General Fisheries Commission for the Mediterranean (GFCM) was founded to review the state of fisheries, and propose conservationist and optimal fishing measures, in the Mediterranean Sea, the Black Sea, and connecting waters. It was founded in 1949, and its members today include all the States bordering the Mediterranean Sea except Bosnia and Herzegovina (that is, Albania, Algeria, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, the Syrian Arab Republic, Tunisia and Turkey), plus Japan and the European Union. Regarding the States bordering the Black Sea, Romania, Bulgaria and Turkey are members of the GFCM. The GFCM Agreement was created under Article XIV of the FAO Constitution, which means that it has the power to create binding measures for its members.

Map 5
General Fisheries Commission for the Mediterranean (GFCM)



10.2 Findings of the performance review

The PR, finished in 2011, focused especially on a legal and policy analysis of the GFCM agreement, on conservation and management measures, and on enforcement. Regarding the GFCM agreement, it found that although the original (1949) text had been revised in 1963, 1976 and 1997, it is still "a very basic legal tool that does not reflect fisheries management principles or governance-related provisions found in post-UNCED international fisheries instruments or the constitutive instruments of many other RFMOs." (FAO GFCM, 2011). There is no mention of long-term sustainability, the EAF, the value of biodiversity or the precautionary principle. "Basic governance provisions such as obligations of Members (including flag State duties and port State measures), observers, information, and special requirements of developing States do not appear", even if the GFCM does in practice adhere by these values and principles. The decision-making processes are cumbersome and inefficient, allowing 120 days for a member to object to a decision, and another 60 days for other members to respond to objections. Members are not required to implement measures if one-third of the members have objected to the measure in question. The report further notes that dispute resolution mechanisms are insufficient, there is no mention of cooperation with non-members, and there are no provisions relating to

transparency. The rules of procedure also contain inconsistencies, vis-à-vis both the actual practice of the GFCM and global best practices, regarding voting procedures, resolutions and recommendations, and the participation of NGOs.

Regarding conservation and management measures, the GFCM collects data on 19 species, with varying regularity and in varying parts of the Mediterranean. "A total of 135 assessments have been reviewed during 2005 – 2009. Anchovy, sardine, hake and mullets are the most frequently assessed species." Assessments are also conducted on sea breams, cephalopods, red shrimp, Norwegian lobster, soles, mackerels, sardinellas, tunas and swordfish. However, assessments are most regularly done in a number of geographical subareas in the Northwest Mediterranean, and not at all in the Eastern and Southeastern Mediterranean. "It is generally not known if these assessment units actually correspond to meaningful biological units, [and] results from stock assessments that are not based on meaningful biological units may be misleading."

Data collection in general is difficult: "The structure of Mediterranean fisheries with small fleets, a large number of species in individual catches and dispersed landing points makes it difficult and expensive to obtain data for traditional stock assessment purposes." The GFCM has issued a number of conservation guidelines as well, but these are rarely applicable to more than one member State.

Modernization of fleets and the accompanying risk of massive fishing capacity growth was identified as an upcoming issue for the GFCM – but little action has been taken so far. Aquaculture was also identified as rising in importance in the Mediterranean region, and being an activity where the GFCM could play an important role. The PR especially praised the Information System for the Promotion of Aquaculture in the Mediterranean (SIPAM), but also highlighted the work done by the GFCM's committee on aquaculture and some ad hoc working groups.

While the GFCM recommends many flag State measures and port State measures for the enforcement of limits on fishing, "many Members are unable or unwilling to provide, in a timely manner, relevant information to the secretariat as required under binding Recommendations including those that relate to flag State duties [and port State duties]." The same is true for other MCS measures, such as fleet registers and IUU vessel lists. Cooperation with non-member States is basically non-existent, and cooperation with other RFMOs is limited to the automatic adoption of ICCAT resolutions.

The PR concluded that financing for the GFCM was adequate, even if the secretariat was understaffed regarding certain experts. In 2011, the GFCM was still physically located in FAO headquarters in Rome, even though "It was agreed … in 2005 that the Government of Italy would host the headquarters at Palazzo Blumensthil (sic) in Rome."

The main recommendations of the PR were: to review (or replace) the GFCM agreement and rules of procedure; to identify "meaningful biological units" (instead of geographical subareas) as the basis of its stock assessments; and to increase efforts in capacity development, so as to make participation in compliance and enforcement measures more widespread. The GFCM should formulate a general aquaculture policy and continue to update SIPAM. There should be more efforts to cooperate with non-member States and RFMOs. The GFCM should transfer its headquarters from FAO "to strengthen functional autonomy [and] build esprit de corps;" and it should generally consider whether all meetings should be held in Rome, or in other member States as well.

10.3 Implementation of recommendations

The PR was presented during the thirty-fifth session of the GFCM, in May 2011, by which time the move to Palazzo Blumenstihl was complete (FAO GFCM, 2012a). Many delegations agreed with the findings of the PR, and a task force was established to address the modernization of the GFCM agreement. The task force (including Dr Judith Swan, who also chaired the PR panel),[28] met in 2012,

[28] Task Force to Improve and Modernize the Legal and Institutional Framework of the GFCM (FAO GFCM, 2013).

2013 and 2014 (FAO GFCM, 2012b, 2013, 2014a), and during this time outlined a new draft agreement, which was accepted at an extraordinary session of the GFCM, held in Athens, Greece on 7–9 April 2014, and concluded on 17 May 2014, in Rome (FAO GFCM, 2014b).

Other aspects of the PR have led to innovative change. During the 2012 sessions: "The Executive Secretary recalled that the secretariat was requested at the last Session of the Commission, as a result of the GFCM Performance Review, to intensify cooperation with relevant international organizations. He indicated that during the inter-session seven Memoranda of Understanding (MoU) were consequently drafted with the following organizations: UNEP-MAP, ICES, Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Areas, Black Sea Commission, MedPAN, RAC-MED and EUROFISH. It was highlighted that these MoU would be instrumental to improve synergies and avoid duplications." (FAO GFCM, 2012b).

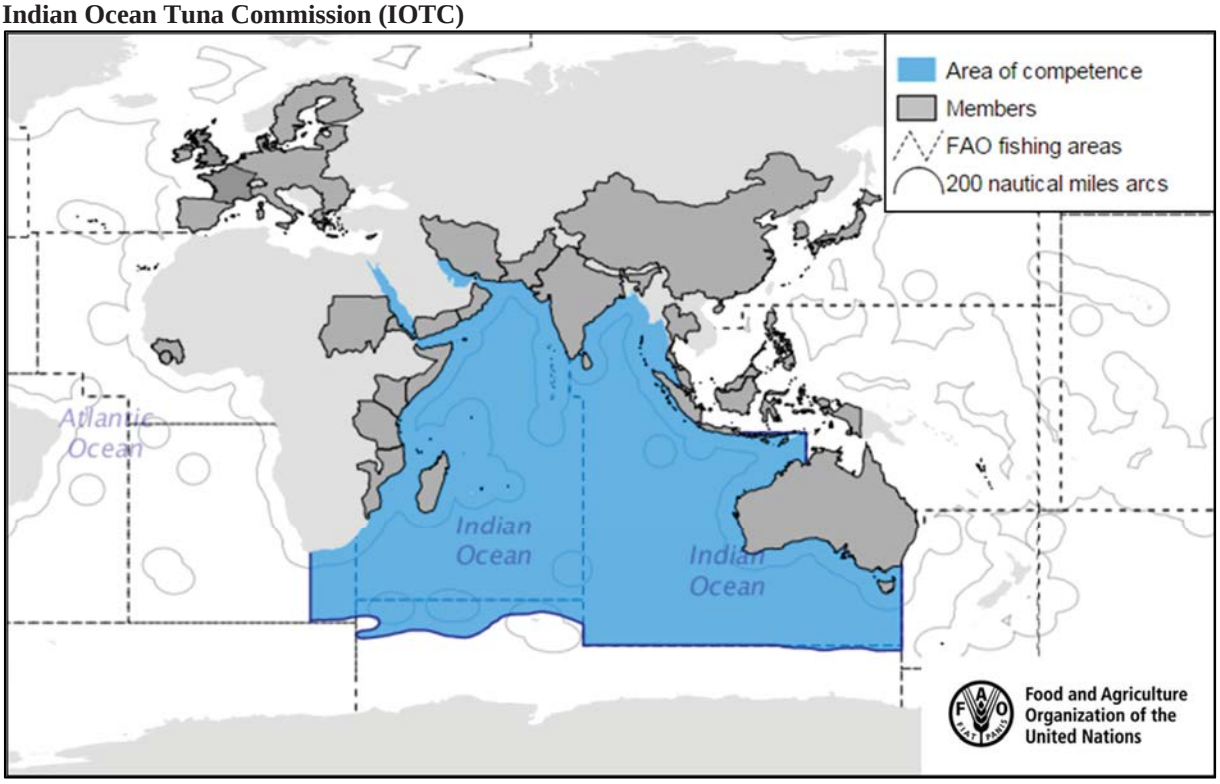
The PR was also referenced with regard to extra-budgetary funding of the First GFCM Framework Programme, for 2013–18 (FAO GFCM, 2012b). One can conclude that the findings of the PR have been taken very seriously by the GFCM, and serious and long-term efforts are being made to implement them.

11. INDIAN OCEAN TUNA COMMISSION (IOTC)

11.1 Basic information

The Indian Ocean Tuna Commission (IOTC) was formed in 1999, following adequate ratification of the relevant agreement, drawn up by FAO under Article XIV of the FAO Constitution in 1993. The IOTC's area of competence is the Indian Ocean (defined as FAO Statistical Areas 51 and 57), and it has authority over all tuna and tuna-like species within its area of competence.[29] The current membership of the IOTC is comprised of Australia, Belize, China, the Comoros, Eritrea, the European Union, France (regarding its overseas territories), Guinea, India, Indonesia, Iran (Islamic Republic of), Japan, Kenya, the Republic of Korea, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Oman, Pakistan, the Philippines, Seychelles, Sierra Leone, Sri Lanka, the Sudan, Thailand, the United Kingdom of Great Britain and Northern Ireland (regarding its overseas territories), the United Republic of Tanzania and Yemen. Senegal, South Africa and Uruguay are non-contracting cooperating parties.

Map 6
Indian Ocean Tuna Commission (IOTC)



11.2 Findings of the performance review

The IOTC is particular among the tRFMOs for being the only one that is an FAO body. This has a significant impact on its day-to-day functioning (as it has to operate according to the administrative and financial procedures of FAO), and its membership (as only Members of the UN, its Specialized Agencies, or the International Atomic Energy Agency may join). Moreover, it is the only tRFMO where more than 50 percent of the catch is taken by artisanal fishers (IOTC, 2009a).

Having been negotiated and signed in 1993, the IOTC agreement predates most of today's key international fisheries instruments, including the UNFSA, the FAO Compliance Agreement and the four FAO IPOAs. The agreement does not make reference to the EAF, or to the precautionary principle, only to the optimum utilization of fish stocks. The PR was critical of a large number of further features of the IOTC agreement. The special relationship to FAO means that the IOTC budget is not entirely under the control of the members and/or the secretariat. Moreover, important fishing entities that are

[29] For a comprehensive list, see www.iotc.org/English/info/mission.php

not members of the UN, such as Taiwan Province of China, cannot join the IOTC and thus cannot cooperate in managing the Indian Ocean tuna stocks. The PR also found concern in the lack of provisions relating to transparency, cooperation with other RFMOs, non-members' obligations, a compulsory dispute-settlement mechanism, and on the special requirements of developing States.

The conservation and management obligations of the IOTC were hard to evaluate owing to a persistent lack of data. Nevertheless, skipjack, albacore and most swordfish stocks seem to be moderately fished, while bigeye tuna and swordfish in the Southwest Indian Ocean are fully fished, perhaps even overfished. Yellowfin tuna and marlin stocks appear to be declining and probably overfished, and there are not enough data to make estimates about the status of other species within the IOTC mandate. The IOTC had detailed data reporting requirements in place for catch and fishing effort, as well as bycatch of sharks, seabirds and sea turtles, but none for other non-target species (including marlins and neritic tuna). The reasons for inadequate data are: the extended time frames and deadlines for data reporting; the high level of artisanal fishing; the lack of cooperation with Taiwan Province of China, a major tuna fishing entity in the area; and the lack of funds and management capacity in certain member States.

The PR was also critical of the methods of scientific advice provided by the IOTC. While "the advice provided is of high quality", participation in scientific work by many members is low, and the statistical methods used are not well suited to the inconsistent data available to the IOTC. "IOTC relies on research and analysis undertaken by individual national scientists. This approach relies on the good will and the availability of the scientists and it does not ensure that the work requested by the Scientific Committee is undertaken or meets the standards expected."

Conservation measures adopted by the IOTC were done exclusively on the basis of fishing effort, through the implementation of an authorized vessel list and active vessel list. The PR advocated for other types of measures, such as a TAC and/or a total allowable effort amount. Fishing capacity was regulated in terms of the number of vessels and corresponding gross tonnage, and within that framework developing countries were allowed to present fleet development plans. The IOTC has no stock rebuilding plans, although none of the stocks has been classified as overfished or depleted to date.

The IOTC has set forth flag State duties, port State duties and a VMS system, but the PR described the port State measures and the VMS as "rather vague" and not thoroughly implemented. There also seems to be a poor record of members transmitting information on IUU fishing, and following up on infringements. The PR advised that a more thorough MCS system (with regional observers, a boarding and inspection programme, and a CDS) would be welcome. At the time of the PR, there only existed a statistical document scheme for internationally traded frozen bigeye tuna, which left many loopholes for misrepresenting catches.

The PR described the IOTC's majority-vote-oriented decision-making as "rather modern" (only the budget needs to adopted by consensus), but rejected the objection procedure, which required no justifications and had no further consequences. It urged the adoption of a compulsory dispute-resolution system, in accordance with the UNFSA. The report generally approved of the IOTC's transparency, and only had recommendations to make about the availability of some scientific data and the active vessel list. There are several cooperating non-members, but the PR found relations with non-cooperating non-members (particularly Taiwan Province of China, but also Yemen and Maldives – a non-member at the time) to be sorely lacking. Owing to budgetary limitations, cooperation with other RFBs was also scarce.

While the IOTC does not have a specific fund to assist developing States, it takes developing States' needs into account regarding fishing fleet development plans and budget contribution ratios, and developed member States do provide assistance through specific regional funds. The PR's analysis of financial and administrative issues focused on the division of financial responsibilities between FAO and the IOTC, and the concomitant lack of transparency, efficiency and control by member States.

11.3 Implementation of recommendations

The IOTC received the PR in April 2009, and (unlike other RFMOs) decided to assign the responsibility for working out the implementation of recommendations not to a single-purpose committee or working group, but to the members, the Scientific Committee, the Compliance Committee, and the Standing Committee on Administration and Finance (IOTC, 2009b). In 2010, the IOTC adopted a number of conservation and management measures that were based on the PR's recommendations. It established a meeting participation fund for developing States, it renewed the record of vessels fishing for tuna and swordfish, it strengthened the Compliance Committee, and it adopted port State measures, as well as the possibility of instituting market-related measures (IOTC, 2010).

The next annual meeting, in March 2011, found that, out of the PR's 81 recommendations, 17 had been completed, 8 had been partially completed, 28 were ongoing, 10 were in progress, and only 18 were pending (IOTC, 2011). By the following year, the recommendations had been assigned priorities as well (IOTC, 2012). By 2013, out of the high-priority recommendations, the pending ones centred on suggested revisions of the IOTC agreement: the implementation of market-related compliance measures; the inclusion of port State measures and a sanctions regime; a revision of the procedure of objections; the institution of a dispute resolution mechanism; and a new fee system (IOTC, 2013). During the same meeting, the Commission deemed that "most recommendations of the 2009 Performance Review were implemented." In 2014, the ToR for a second PR, starting in the same year, were agreed to (IOTC, 2104). The remaining major implementations, which entailed the amendment or the renegotiation of the IOTC agreement, were deferred by the Commission until after the second PR, and until a decision was reached by members on whether to keep the IOTC within the FAO framework or not.

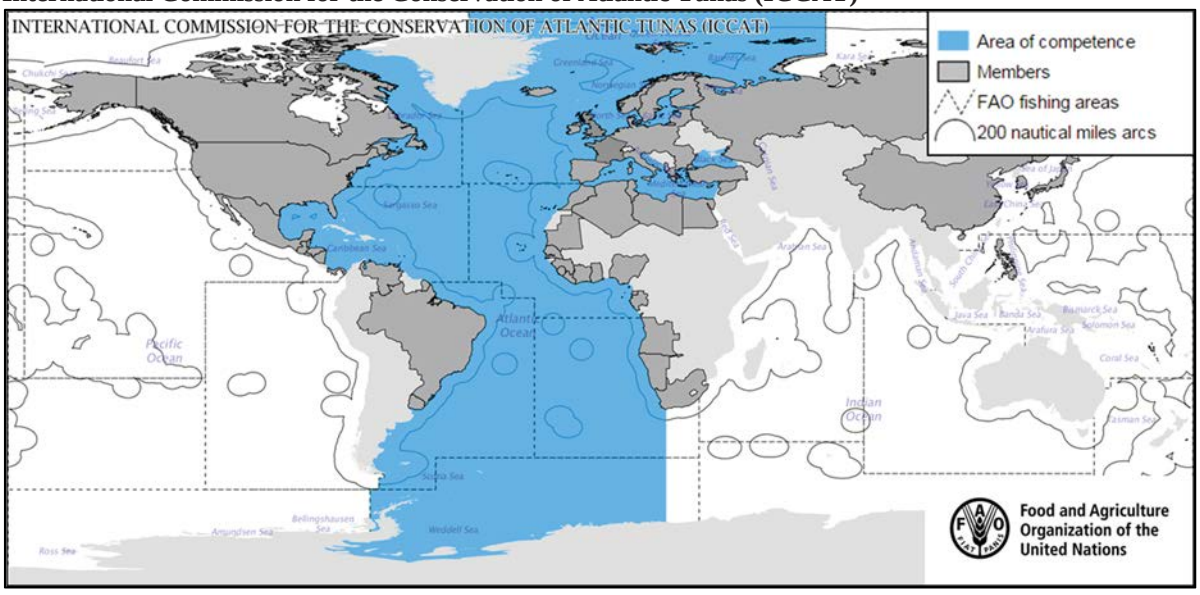
12. INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNAS (ICCAT)

12.1 Basic information

The International Commission for the Conservation of Atlantic Tunas (ICCAT) is one of the oldest RFMOs reviewed herein; it was established in 1966. Its area of competence is "all waters of the Atlantic Ocean, including adjacent seas" – no exact demarcations from the Antarctic and Arctic Oceans exist. ICCAT has competence for more than 30 species of highly migratory fish;[30] but recommendations have only been developed for 13 stocks of tunas, swordfish, marlins and sharks (ICCAT, 2009a).

At the time of writing, ICCAT has 46 members, making it the largest RFB in existence: Albania, Algeria, Angola, Barbados, Belize, Brazil, Canada, Cabo Verde, China, Côte d'Ivoire, Egypt, Equatorial Guinea, the European Union, France (Saint Pierre and Miquelon), Gabon, Ghana, Guatemala, Guinea, Honduras, Iceland, Japan, Libya, Mauritania, Mexico, Morocco, Namibia, Nicaragua, Nigeria, Norway, Panama, the Philippines, the Republic of Korea, the Russian Federation, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, Sierra Leone, South Africa, the Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey, the United Kingdom of Great Britain and Northern Ireland (Overseas Territories), the United States of America, Uruguay, Vanuatu, and Venezuela (Bolivarian Republic of). Cooperating non-contracting parties are: Colombia, Curaçao, El Salvador, Suriname, and Taiwan Province of China.

Map 7
International Commission for the Conservation of Atlantic Tunas (ICCAT)



12.2. Findings of the performance review

The review panel had a negative view of ICCAT's achievements to date, but found that member States' lack of political will was the primary cause of ICCAT's failures. It was not a lack of direction or effort on the part of the secretariat: "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."

The ICCAT convention predates all current fisheries and law of the sea instruments, including UNCLOS, and thus is significantly out of date compared with best practices. It contains adequate rules

[30] For a complete list, see Guggisberg and Lugten (forthcoming).

on the collection and sharing of fishing data, but very little on the ecosystem approach, and nothing at all on the precautionary principle. The PR also suggests a greater emphasis on flag State measures and port State measures, which have been the subjects of some ICCAT recommendations, but have no specific mention in the convention itself. It noted that ICCAT has recommended a number of MCS measures (on-board observers, disallowing transshipments at sea, etc.), but none of these measures is compulsory for members, and boarding and inspection only applies to stateless vessels. The PR was also critical of the consensus-based decision-making procedures in ICCAT, noting that they may discourage useful decisions and are cumbersome given the large membership of ICCAT. It recommended more voting-based procedures, as well as greater transparency and the ending of the practice of requiring a participation fee from NGOs for every meeting that they attended. It was also cautious about the lack of dispute resolution mechanisms in ICCAT's basic documents.

Regarding the management of target species, the report alluded to the fact that ICCAT's proclaimed goal of maintaining tunas and tuna-like species "at levels which will permit the maximum sustainable catch for food and other purposes"[31] is unclear, and arguably undesirable as well, and ICCAT should instead adopt "target reference points … for all species under ICCAT's purview to ensure that the Commission's objective has a high probability of being met."

Albacore tuna under ICCAT's purview is presumed to exist in three separate stocks: a North Atlantic stock, a South Atlantic stock (with possible links to the Indian Ocean albacore stock), and a Mediterranean stock. The North Atlantic stock is overfished, but "current spawning stock biomass (SSB) is approximately 80% of that at MSY [maximum sustainable yield], compared to 50% in 2000." The South Atlantic stock is estimated to be "currently below MSY while the 2005 fishing mortality rate was about 60% of F_{MSY} [fishing mortality at the level of MSY] … there are (sic) insufficient data to assess albacore in the Mediterranean." The PR thus concluded that ICCAT's management goals were not being met for albacore, and advised a reduction in catches for the North Atlantic stock.

Bigeye tuna are fished mostly in tropical waters, in the East Central Atlantic. While bigeye has been overfished in the past, "the biomass at the beginning of 2006 was estimated to be nearly 92% of B_{MSY} [long-term average biomass expected, if fishing at FMSY] and the 2005 fishing mortality rate was estimated to be about 13% below F_{MSY}". Therefore, the PR concluded that ICCAT's objectives were being met for bigeye tuna.

Bluefin tuna exist in the Atlantic in one or two stocks: a West Atlantic, and an East Atlantic – Mediterranean stock is presumed to exist, but the two stocks may be joint in fact. Assessments were made in 2006 for the East Atlantic and 2007 for the West Atlantic, but the panel was nevertheless "surprised to see how little information and data are available even for an iconic species like bluefin tuna." At the same time, the panel found that "there is little doubt that bluefin tuna in the ICCAT area is far from B_{MSY} and there are indications that collapse could be a real possibility in the foreseeable future, particularly in the East Atlantic and Mediterranean." The panel therefore concluded "that the Commission objectives are not being met, and by far."

Blue marlin and white marlin have been overfished in the past, with total catches declining sharply since 2003, and a corresponding increase in total biomass. Nevertheless, total biomass for both species is "well below" B_{MSY}, although the lack of reliable data (due especially to bycatch) makes estimates difficult. Sailfish are of increasing concern, but no assessments have been made to date. Similarly, skipjack tuna have not been assessed since 1999, making evaluations on current stock close to impossible, "although there are some signs of local overexploitation." Yellowfin tuna catches decreased by more than 50 percent between 1990 and 2006, but owing to the lack of species assessments, "It may be difficult to assess whether catch declines are due to stock declines, to reduced effort or other factors."

[31] ICCAT Convention, Preamble.

Swordfish in the North and South Atlantic were overfished in the 1990s, but have since returned to levels close to or above B_{MSY}. Mediterranean swordfish, considered to be a separate stock, is thought to be severely overfished. There are no data on sharks, turtles, seabirds and other bycatch species.

With regard to the serious problems of non-compliance that ICCAT faces, the PR notes the number of compliance enforcement measures that ICCAT has proposed (authorized vessel list, IUU vessel list, port state measures, etc.). The report nevertheless has few specific recommendations on how to improve compliance with compliance measures, beyond urging member States to implement and comply with conservation measures. It does suggest the immediate abandonment of the carry-over of 50 percent of the uncaught allowable catch from one year to the next, a practice that encourages under-reporting and overcapacity. The PR also urges capacity reduction measures, which have also been recognized as necessary by ICCAT previously (particularly in the Mediterranean Sea). However, the PR could give no tried-and-tested method for capacity reduction, only suggesting the reduction of "both fishing and farming capacity to match the TAC of the fishery… [which] may be facilitated through the implementation of some form of tradable right or by payment of adjustment funding by members." The PR was similarly concerned about the misreporting and late reporting of catch data, without any specific recommendations to ameliorate the situation.

Market-related measures, introduced a short time before the PR, offered one possibility for efficient enforcement. ICCAT developed a bluefin catch documentation (BCD) programme in 2008, which requires that "Each consignment of bluefin tuna domestically traded, imported into or exported or re-exported from [a member State's] 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 (BFTRC)." ICCAT has also called for import prohibitions of bluefin tuna, bigeye tuna and swordfish from countries that violate ICCAT conservation and management measures. The PR found these market-related measures to be promising.

The review also suggests that ICCAT establish principles for the harmonization of fishing policies between the high seas and member States' EEZs; and a "new, preferably binding formula for fishing allocations" instead of the smorgasbord of general principles currently used by RFMOs. These are issues that have not caused ICCAT problems to date, but that have led to complications in the WCPFC and CCSBT, respectively.[32]

Regarding cooperation with external entities, the PR commended ICCAT for creating possibilities for cooperating non-members to participate and to receive portions of the TAC, but nevertheless found that other tRFMOs, particularly the WCPFC and CCSBT had done much more to give the cooperating entity of Taiwan Province of China full or close to full participatory rights. Similarly, ICCAT's connections with other RFBs, and the funds it provides to developing nations for capacity building and the training of fisheries officers, were applauded, but more funding and more communication was nevertheless encouraged. However, the PR commended ICCAT for its comprehensive efforts to deal with non-cooperating non-members.

The PR also suggested that ICCAT improve its transparency regarding quota allocations and decision-making, and suggested that some members may feel that the "big four" (Japan, Canada, the United States of America, European Union) have undue influence in both questions. Finally, the report commended the ICCAT secretariat for its efficiency and good financial management practices.

12.3 Implementation of recommendations

The PR was presented at the sixteenth special meeting of ICCAT in November 2008, and summarized as presenting the following five key issues: "the Convention needs to be modernized, ICCAT would improve with a change of attitude, a penalty regime is required, the bridge science/management should be reinforced and timely and accurate data are essential for the good functioning of ICCAT." (ICCAT,

[32] See Sections 7.2 and 23.2.

2009b). A working group on the future of ICCAT was established and started working on implementation in September 2009. Its principal recommendations were to amend the ICCAT convention to include the precautionary principle, ecosystem considerations (including bycatch), a new and fairer scheme of member contributions to ICCAT, a more flexible decision-making process, the opening of ICCAT to interested non-member fishing entities, and capacity-building and assistance programmes to developing States (ICCAT, 2010). The working group discussed the same issues at their next meeting in 2011 (ICCAT, 2011a), and reported to the twenty-second regular meeting of ICCAT that "there were three issues on which decisions were required in plenary": whether the working group on the future of ICCAT should continue; whether ICCAT panels should be restructured; and whether cooperating non-members, fishing entities and international organizations should be afforded more active roles in ICCAT (ICCAT, 2012a).

The third meeting of the working group on the future of ICCAT considered "that the ecosystem approach includes socio-economic parameters and its implementation is closely linked to capacity-building in developing countries. … There was [also] a broad view that there would be merit in clarifying the species to be covered by the Convention, in particular sharks." (ICCAT, 2012b). The working group "agreed that any expansion of the scope of species managed by ICCAT," as well as the inclusion of Taiwan Province of China in the decision-making process, "would require amendment of the Convention." (ICCAT, 2012b). Accordingly, during its next meeting in 2012, ICCAT decided to establish a working group to develop amendments to the ICCAT convention (ICCAT, 2013a). The new working group's proposed timeline calls for finalized amendments to be proposed to the Commission, after two meetings, in 2015 (ICCAT, 2013a). The working group on convention amendment met and discussed the issues presented for the first time in July 2013 (ICCAT, 2013b).

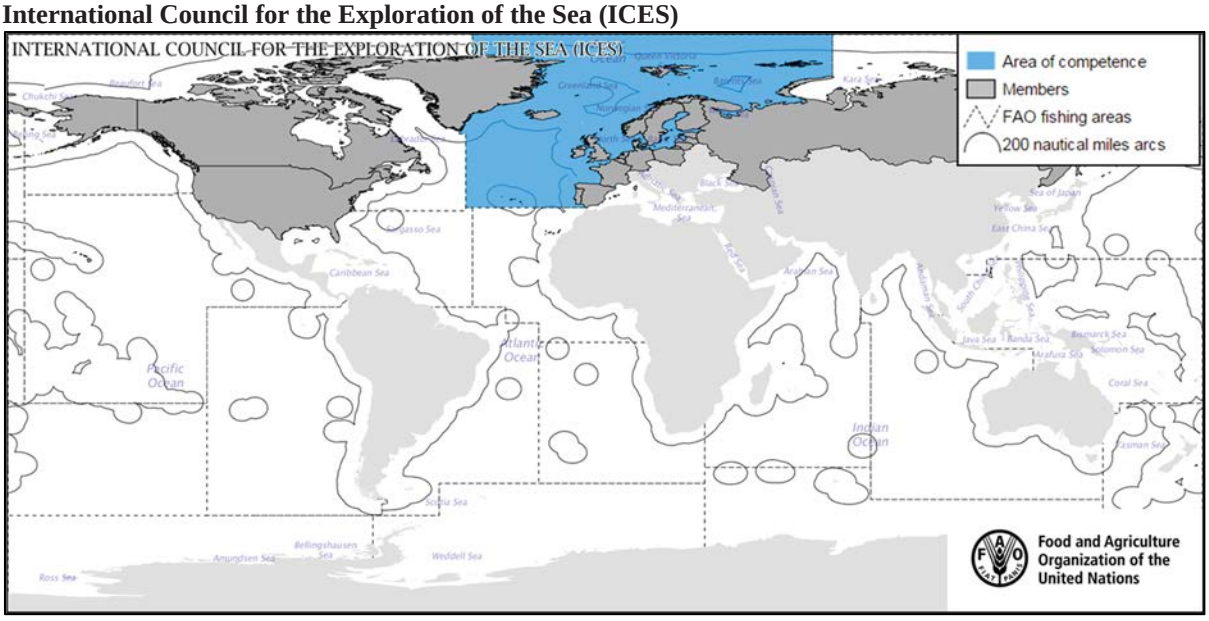
ICCAT also adopted a new recommendation in 2010, on the bycatch of sea turtles, which references the ICCAT PR. The recommendation calls for the compilation of data on sea turtle catches, and mitigation measures to be implemented for caught or entangled sea turtles (ICCAT, 2011b).

13. INTERNATIONAL COUNCIL FOR THE EXPLORATION OF THE SEA (ICES)

13.1 Basic information

The International Council for the Exploration of the Sea (ICES) is an IGO for the coordination and performance of scientific research on oceanography, the marine environment and ecosystems, and marine living resources in the North Atlantic Ocean (including the North Sea and the Baltic Sea). Its scientific advisory work on marine capture fisheries gives it inclusion in the Regional Fishery Body Secretariats Network (RSN), and FAO provides an RFB fact sheet on the Council. ICES works as a project and coordination hub, uniting a network of about 4 000 scientists, from 300 institutions, in 150 expert groups.[33] ICES was founded in 1902, and became an IGO in 1964. The current members of ICES are Belgium, Canada, Denmark (also including Faroe Islands and Greenland), Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, the Russian Federation, Spain, Sweden, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Australia, Chile, Greece, Peru, and South Africa have affiliate status with ICES, without being full member States. The principal partners of ICES, which request and receive scientific advice, are the European Union Commission, NASCO, NEAFC, the Convention for the Protection of the Marine Environment of the North-East Atlantic Ocean (OSPAR Commission) and the Helsinki Commission (HELCOM).

Map 8
International Council for the Exploration of the Sea (ICES)



13.2 Findings of the performance review

Owing to the different concerns that ICES and other RFBs face, particularly their different relationships to stakeholders, the ICES PR has a very different structure compared with the others described in this circular. The ICES PR seeks to answer eight questions in its ToR.

For the first question, whether ICES uses the right information and data, and proper models, the panel found that although data were mostly provided by clients and members, the compilation and recording of the data were not transparent. This makes it hard to see, where and when data are poor or uncertain (ICES, 2012a). The PR suggested the introduction of a formal data call system.

The second question asked whether the management, quality control, efficiency, responsiveness and transparency of the advising process were appropriate. The panel's answer was that ICES had in place

[33] See www.ices.dk/explore-us/who-we-are/Pages/Who-we-are.aspx and www.ices.dk/explore-us/who-we-are/Pages/Expert-Groups.aspx

an extensive quality assurance process, including benchmark workshops and a technical review process. However, this has given researchers very heavy workloads, and made it difficult to recruit reviewers.

The third question was whether ICES advice was considered relevant and credible among clients, stakeholders and the public. The PR's reply was that "All respondent groups agree that ICES advice is relevant, and most agree that it is credible." However, communications between scientists and the recipients are usually viewed as bad, and the PR recommended that "ICES continually evaluate the format of the ICES advice from the perspective of the recipient, and recommends that ICES consider establishing a public-relations strategy focusing on ways to 'translate' ICES advice into language for the general public."

The fourth question asked whether ICES advice was appropriate in addressing policy and societal needs, and whether it was consistent with the ecosystem approach to marine management. The PR found that "ICES is well prepared to advise on all aspects of the ecosystem approach concerning the health of the ecosystems and how to monitor good environmental status", but that it could not give worthwhile policy and social advice without analysing social and economic data, which it does not currently do.

The fifth question focused on whether ICES was proactive enough in preparing a scientific basis for future policy decisions. The PR found that ICES was proactive regarding information on the biological impact of human activities (but should be careful about making decisions to research in a close dialogue with possible future recipients of the advice, lest it work on advice without customers). On the other hand: "With respect to advice on non-biological issues, less seems to be happening."

The sixth question asked whether advisory commitments were commensurate with available human resources and expertise. The PR's response was that human resources were stretched, and for participating scientists, the workload was too high. The situation might be improved with a better business model, and with scientific incentives, such as publication opportunities for participating scientists.

The seventh question enquired whether the ICES advisory procedure was consistent with the ICES constitution and other international legal instruments. The review panel found no indication that it would not be. The eighth question asked whether the ICES advisory project was cost-efficient. Lacking precise accounting information about costs, the PR was unable to answer this final question.

13.3 Implementation of recommendations

The PR was presented during the October 2012 ICES council meeting. Discussion focused on the necessity to introduce new scientists to work with ICES; the possible introduction of socio-economic advice and the application of ecosystem-based management into multispecies advice; and concern whether the current advisory scheme adequately conveys scientific advice (ICES, 2012b). The Council asked the Advisory Committee to follow up with comments and recommendations.

In July 2013, a follow-up meeting reviewed all action taken pursuant to the PR (ICES, 2013). Following the PR's answer to the first question on appropriate data and models, ICES has implemented ecoregion-specific databases and regional seas programmes. A formal data call system and feedback system was proposed as follow-up action. "It should be noted that integrated advice, generally, means integrating fisheries and environment concerns as well as social and economic considerations." (ICES, 2013).

The follow-up to the second question, on the quality of advice preparation processes, resulted in examples of, and discussion about, a more active secretariat, the conducting of reviews through students, and better communication between advice drafting groups and the Advisory Committee.

The third question, on the relevance and credibility of ICES advice, has spawned the upgrading of communications and outreach initiatives in the secretariat, and the issuing of "popular advice". The modalities of giving "embedded advice" (i.e. process-centric advice that takes policy goals into account

as well as scientific data) still have to be worked out; it will require more communication with the recipients of ICES advice.

On the appropriateness of ICES advice for addressing socio-economic concerns, the topic of the fourth question, the review document noted that it would be a positive development, but ICES is constrained by the MoUs under which it can give advice. Socio-economic advice has to be considered further in future ICES strategic plans. The same view was taken on the topic of the fifth question, on whether ICES is proactive enough in developing policy advice for future needs.

The sixth question, on whether ICES' human resources and expertise is commensurate with current commitments, resulted in ICES taking steps to reduce the workload, which, ICES agrees, is not commensurate with resources. Steps taken include "slim[ing] down the process by moving audit review to expert groups rather than as separate process, reduc[ing] the frequency of advice and implement[ing] a simplified process to evaluate if an updated assessment should be attempted …" (ICES, 2013). The secretariat could also take steps to lighten the workload of expert groups, and encourage experts to publish their results in scientific journals.

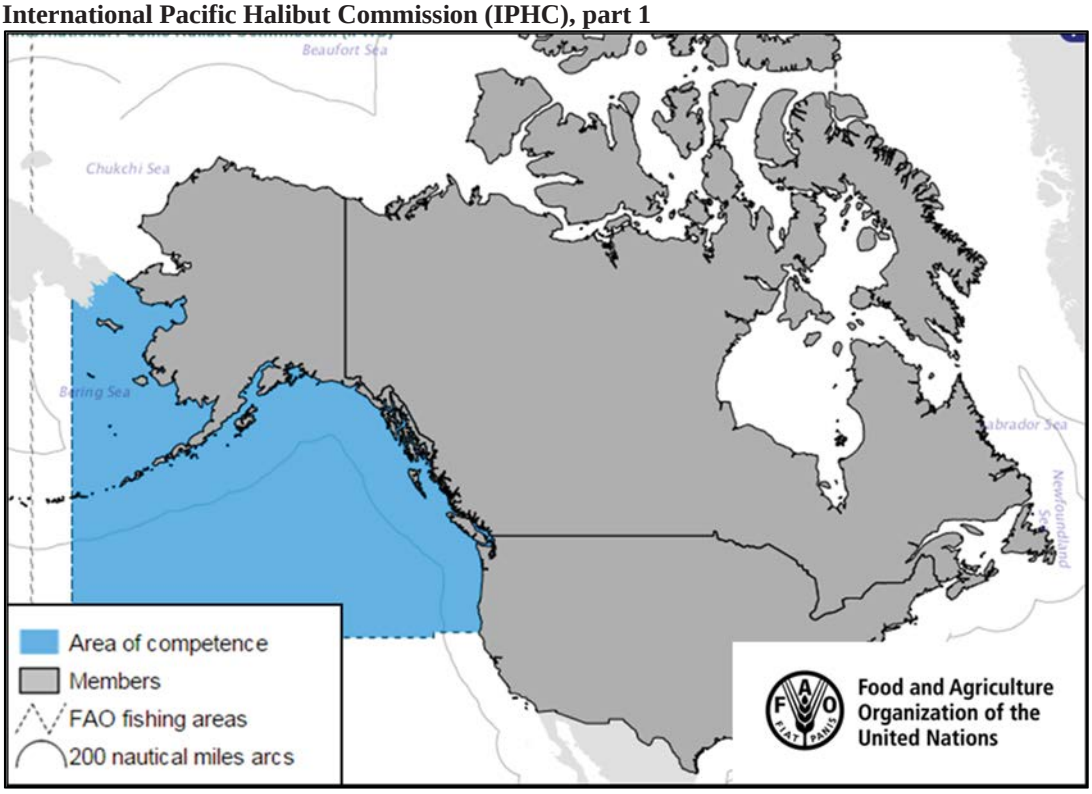
The seventh question, on the consistency of ICES advice with international, regional and internal obligations, does not seem to have raised any issues. The eighth question, on the cost-effectiveness of ICES advice, could not be answered by the PR. The follow-up document noted that the secretariat should develop a better system for the overview of resources used.

14. INTERNATIONAL PACIFIC HALIBUT COMMISSION (IPHC)

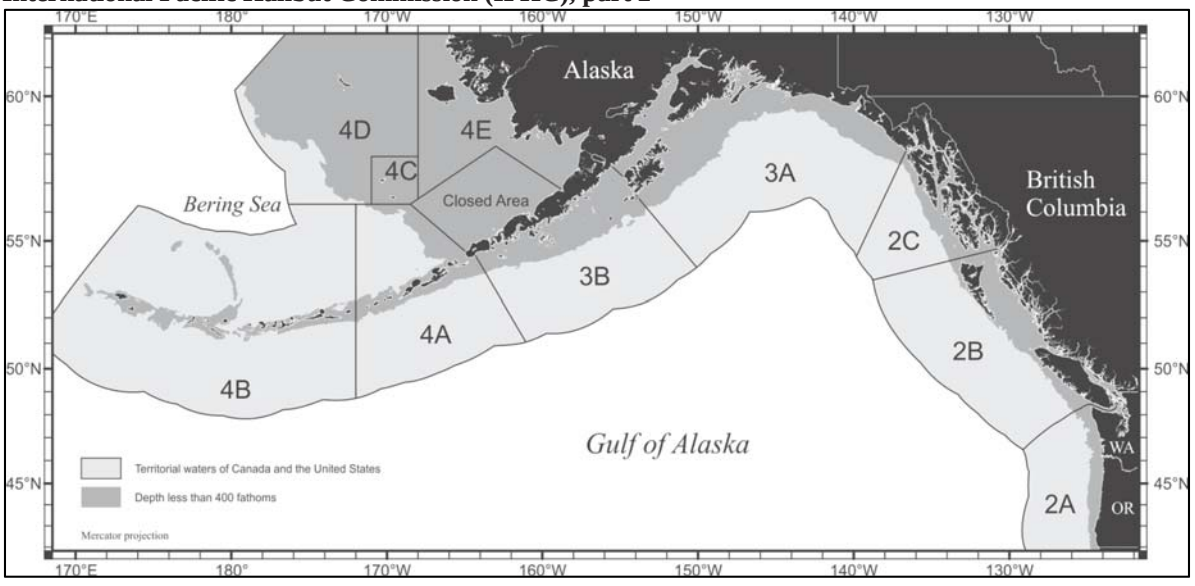
14.1 Basic information

The International Pacific Halibut Commission (IPHC) is the oldest RFMO, going back to a 1923 United States – Canadian bilateral convention, which founded the International Fisheries Commission, as it was first known. Since its inception, the IPHC has governed the Pacific halibut (*Hippoglossus stenolepis*) fishery off the west coasts of Canada and the United States of America, including the Bering Sea and the Alaskan coast. The IPHC's area of competence consists of the territorial waters and EEZs of its two member States. This makes Map 9 somewhat imprecise, while Map 10 is incomplete.

Map 9
International Pacific Halibut Commission (IPHC), part 1



Map 10
International Pacific Halibut Commission (IPHC), part 2



14.2 Findings of the performance review

The ToR for the IPHC review are narrower than most, and the focus is on commission governance, stakeholder involvement and decision-making (IPHC, 2012). The PR does not address the state of the IPHC convention as compared with current legal instruments on international fisheries, nor does it give information on the status of the halibut stocks that are managed by the IPHC. The PR praises the IPHC's "standing contributions to state-of-the-art model building and its strong commitment to science-based management", but does not elaborate on the IPHC's methods or fisheries management principles.

Further key strengths of the IPHC, as viewed by the PR, are its research programme, its experienced and dedicated staff and commissioners, its effective budgeting process and its transparency. Relations with native American tribes and first nations were improving, but still not as respectful and effective as they should be.

Engagement with stakeholders is also viewed as strong, consisting of the harvester-focused conference board and the processor-focused processor advisory group. Nevertheless, much of the report consists of suggestions to improve it. "Most critically, there is no standing roster or set mechanism to establish participation in the Conference Board; involvement can and does vary greatly from meeting to meeting (for example, far fewer Canadian harvesters tend to attend annual meetings held in Alaska)." Participation at the conference board is completely open access, without any balance between commercial, tribal / first nation and recreational fishers. Bycatch users and NGOs are missing completely, "… and at least one person suggested that conservation-minded fishermen are reluctant to voice their views." With this structural background, the conference board's "one man, one vote" rule can only lead to skewed results. The Commission also seemed to mostly ignore the conference board's opinions.

Stakeholders also seem to be losing confidence in the IPHC's scientific assessments, owing to sudden changes in estimated stocks and TACs. The statistical models used, and process of derivations from them, are not clear, and bycatch receives little attention in analyses and reports. The PR suggests more peer review in the scientific process, and giving more weight to empirical observations over statistical models. The Commission's frequent closed sessions have also engendered mistrust. Other complaints include the lack of a strategic vision, and little to no substantive engagement with stakeholders from the IPHC.

The PR's recommendations were to: update the IPHC rules of procedure to clarify the roles and responsibilities of different IPHC bodies; develop a long-term strategic plan for the IPHC; improve transparency by making Commission meetings open and public by default; and work out a unified stakeholder participation mechanism to replace the conference board and the processor advisory group. Research should be conducted more strategically, according to clear and public five-year research plans, and stock assessment models should be peer reviewed by scientists. Seats on the Commission should not go even temporarily unfilled, and the secretariat should only advise on technical and scientific matters, without straying into policy determination. Finally, communication both within the IPHC and between the IPHC and its stakeholders should be improved, partly via online communication tools, partly by reconfiguring the IPHC's yearly meeting schedule.

14.3 Implementation of recommendations

The IPHC received the PR in May 2012, and (following the PR's recommendations) solicited public comments until the end of June 2012. It started implementing the recommendations in September 2013 (IPHC, 2014). The IPHC decided to reject two recommendations: "a recommendation to expand the number of Commissioners (Recommendation #6) and a recommendation to elevate the importance of Tribes and First Nations in the Commission process (Recommendation #10)." (IPHC, 2014). The IPHC justified these decisions by noting that it was satisfied with the current number of Commissioners, and felt that improvements in transparency would fulfil the same functions. Regarding native Americans, it claimed that "Both the U.S. and Canada have well-developed processes for addressing their unique

relationships and responsibilities to Tribes and First Nations, and the Commission respects that those processes occur independently within the two countries." (IPHC, 2014). The IPHC also decided to retain the present stakeholder participation structure, with a separate conference board, processor advisory group, and research advisory board (IPHC, 2014).

Regarding the remaining ten recommendations that the IPHC decided to implement, "the Commission decided to treat all meetings as open unless specifically closed" (IPHC, 2014) and to review its rules of procedure. It will continue work on a five-year research plan, and create a management strategy advisory board and a scientific review board to strengthen strategic planning and reliable scientific research, respectively (IPHC, 2014).

"The Commission also notes that there are gaps in the 2012 performance review, notably the comparison of the Commission's operations to best practices from leading international fisheries and oceans management agencies." (IPHC, 2014). This has led to the IPHC creating a study of best practices itself, which was presented at the 2013 IPHC interim meeting. The presentation of the results added the implementation of a regular performance review cycle, and the addition of the principle of ecosystem-based management, to the recommendations to be implemented (IPHC, 2013).

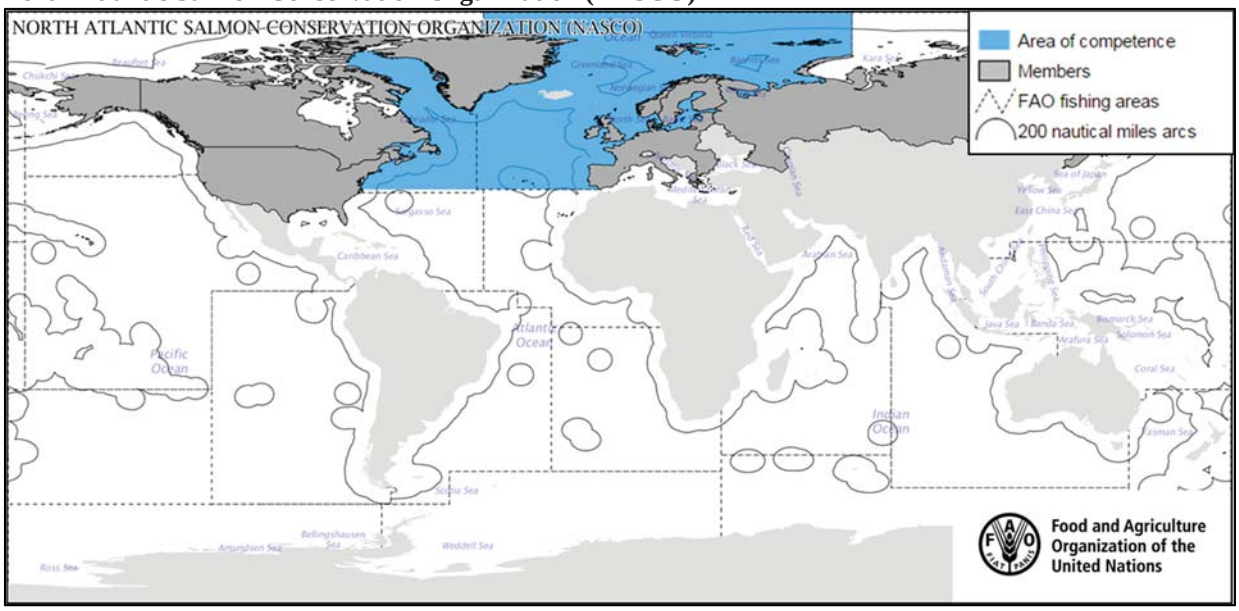
15. NORTH ATLANTIC SALMON CONSERVATION ORGANIZATION (NASCO)

15.1 Basic information

Article 66, paragraph 3 (b) of UNCLOS states that anadromous fish stocks (i.e. fish that spawn in rivers but spend their adult lives in the oceans) are the primary responsibility of the coastal State in whose rivers they spawn. They may also only be fished within the EEZs of said coastal States, with certain exceptions: "Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing …".

The North Atlantic Salmon Conservation Organization (NASCO) was established in 1984, to manage stocks of Atlantic salmon (*Salmo salar*) that migrate beyond the jurisdictions of their coastal States of origin, to the North of 36°N in the Atlantic Ocean. NASCO limits salmon fishing to the territorial seas of coastal States, i.e. within 12 miles of the shoreline/baseline. The current members of NASCO are Canada, Denmark (in respect of Faroe Islands and Greenland), the European Union, Norway, the Russian Federation, and the United States of America. Iceland withdrew from NASCO in 2010, for financial reasons, but has stated its wish to re-accede when it has the means to do so.

Map 11
North Atlantic Salmon Conservation Organization (NASCO)



15.2 The "Next Steps" process

NASCO was the first RFB to institute an external review process, entitled Next Steps, in 2004, for NASCO's twentieth anniversary. Next Steps involved both member States' representatives and stakeholders (mostly NGOs) working out a review over the course of four meetings in 2004–05 (NASCO, 2005). The principal challenges that Next Steps found were related to: the fairness and efficiency of managing distant-water salmon fisheries and fisheries beyond the NASCO regulatory area; the social and economic aspects of salmon fishing; funding for the research of salmon at sea; the protection and restoration of riverine salmon habitats; the prevention of parasitic and genetic transfers from farmed salmon to wild salmon; and working out a strategy for endangered salmon.

Next Steps formulated 20 recommendations. The most important ones were for members to work out an implementation plan, and for reporting to take place in special sessions that are open to NGOs. The NASCO council should review its agreements and try to arrange for a ministerial conference, seek ways

to increase NGO involvement, investigate new or emerging threats to salmon, and develop links with educational programmes. NASCO should work out a public relations strategy and redesign its website. The West Greenland and North-East Atlantic Commissions should consider whether plans and ICES advice should be sought annually or biannually. Links should be sought with other international organizations with similar interests.

Most of these recommendations were implemented immediately by the NASCO council, including the creation of a public relations group (NASCO, undated). For the rest, NASCO created a task force to examine implementation possibilities. The remaining recommendations were on members' implementation plans and their presentation at an open NASCO special session, and on NGO involvement (NASCO, undated a). The task force returned its report in April 2006 (NASCO, 2006a), and the council reviewed the implementation of all recommendations at the same time (NASCO, 2006b).

NASCO saw fit to re-inspect the Next Steps process in 2010, both creating a Next Steps review group and drafting the ToR of an external performance review (NASCO, undated b). The NASCO council agreed to the ToR, and appointed the review panel members, at its twenty-eighth annual meeting in June 2011 (NASCO, 2011).

15.3 Findings of the 2012 performance review

The 2012 PR starts with a summary of all the relevant international fisheries instruments (see Chapter 4 and Appendix 4) as well as some soft-law instruments, and considers their relevance for NASCO (NASCO, undated c). UNFSA does not directly apply to NASCO, as salmon is neither a straddling stock nor highly migratory: it is an anadromous species governed by UNCLOS Article 66. Some basic principles of UNFSA are relevant for all RFMOs, these should be implemented. The FAO Port State Measures agreement was not in force at the time of the PR, but the review mentioned that upon its entry into force, its compatibility with European Union regulations and a previous NASCO resolution on port State measures would have to be assessed. The NASCO convention is consistent with the Code and UNGA resolutions on fisheries. NASCO may want to review whether its policies are completely consistent with the FAO guidelines on the EAF and bycatch management.

Regardless of this first glance at compatibility, the PR then finds plenty of issues where the convention is in need of modernization. Many of these are technical or symbolic. For example, the convention lacks an article on definitions and enumerated objectives, and its preamble is very short and has a narrow focus. A number of general principles, such as the protection of biodiversity, the right to collect data and to cooperate with other organizations, are missing. "The decision-making authority of the Council is … legally ambiguous and limited." There is no binding dispute-resolution mechanism. Finally, the PR suggests that the convention should update, expand and regularize the rights and functions of NASCO committees and other subsidiary bodies. The PR praised NASCO's implementation of the precautionary principle and the ecosystem approach to fisheries management, as well as the system of data collection and the provision of scientific advice.

Maintaining the status of salmon stocks depends both on NASCO and coastal States, as salmon stocks can be threatened both by overfishing at sea, and by development or other intervention to their riverine spawning grounds. In practice, yearly assessments are made by ICES, and NASCO maintains an Atlantic salmon river database to monitor the status of about 2 000 Atlantic salmon rivers (out of about 2 500). Currently, 54 percent of these rivers are not threatened with the loss of Atlantic salmon, 16 percent are threatened, 10 percent have been lost, 1.5 percent have been restored, and the status of 18.5 percent is unknown. Currently, most salmon fishing is done in rivers and estuaries, and NASCO cooperates with coastal States to monitor catch levels and salmon conservation measures. Fishing of wild Atlantic salmon is very low in the NASCO regulatory area – about 1 500 tonnes/year – yet the mortality of salmon at sea remains high. The suspected causes are climate change, significant bycatch of salmon in herring and mackerel fisheries, and the contracting predator fields of salmon. Because of the small extent of commercial salmon fishing at sea, NASCO does not engage in capacity management. Genetic transfers and the spread of parasites (particularly salmon flukes, *Gyrodactylus salaris*, and sea

lice, *Lepeophtheirus salmonis*) from farmed salmon remain a significant problem, where little progress is being made by coastal farming States.

Monitoring and enforcement is also mostly in the hands of coastal States, which have implemented a wide range of control measures: "… including carcass-tagging and logbook schemes, licensing and reporting systems, radio tags and other tracking devices, fish counters, catch surveys, catch registries and databases, surveillance and monitoring operations, observer databases, inspections, education and awareness raising programmes and anonymous reporting. Efforts have also been taken to detect and follow-up on infringements and to impose adequate penalties for violations, including enforcement campaigns, on-the-spot fines, forfeitures of fishing gear and the imposition of jail terms for more serious offenders."

Nevertheless, IUU fishing still occurs, and in 2010, the total IUU catch was estimated to be about 24 percent of the legal catch. NASCO has taken steps to curtail illegal salmon fishing beyond its regulatory area, through diplomatic action, MCS and port State measures.

Decisions in NASCO are taken by a three-quarters majority, except for a few key consensus decisions (e.g. amending the convention). The PR recommended changing the decision-making process and implementing a binding form of dispute resolution, also in conjunction with the advised restructuring of the convention. Transparency and cooperation with stakeholders is continuously good, highlighted by the NGO-driven Next Steps process (see also Section 15.2). The PR is ambivalent about steps to improve public relations, supporting the development of a comprehensive public relations strategy, but without the investment of too many material or human resources. NASCO has a mechanism for cooperating non-members, and also cooperates with ICES, NEAFC, OSPAR Commission, NPAFC, and the North Atlantic Marine Mammal Commission (NAMMCO). Given that NASCO does not have any developing State members, the allocation of funds for supporting their participation is not an issue. NASCO is funded through member contributions. The PR found that NASCO is efficiently run, and members' contributions are almost always on time.

15.4 Implementation of the recommendations of the 2012 performance review

NASCO received and considered the findings of the PR at its twenty-ninth annual meeting in June 2012, while also reviewing the report of the working group on the Next Steps programme, particularly the continued scrutiny of members' implementation plans (NASCO, 2012). The council decided that a plan of action should be worked out at an intersessional meeting, to be discussed at the next annual meeting (NASCO, 2012). In 2013, NASCO agreed that priorities had not changed much in eight years: "It was agreed that the vision, challenges and goals identified in the Strategic Approach for NASCO's 'Next Steps' remain the priority areas for NASCO." (NASCO, 2013). Regarding the suggested revision of the NASCO convention, the council noted that: "While it had been recognised that NASCO's Convention reflects the situation and circumstances at the time of its drafting, in practice the language had not constrained the Parties from incorporating modern fisheries management principles and addressing a broad range of impacts to the salmon and its habitat." (NASCO, 2013). NASCO thus decided to focus its resources on areas that would have a direct benefit for Atlantic salmon, and not to redraft its convention.

The plan of action found that the overwhelming majority of the PR's recommendations, as well as the Next Steps panel's recommendations, were being implemented by NASCO (NASCO, 2013). The ones that were still under consideration were, first, possible steps to address IUU fishing: here, the panel advised that members' coast guards could increase surveillance of the North Atlantic, particularly in winter, and that NASCO could improve reporting, carcass tagging and logbook schemes. Regarding bycatch of salmon, NASCO could liaise more with NEAFC and NAFO to collect information – although research by ICES suggests that salmon fishing in the regulatory area has very little effect on the ecosystem. NASCO does not seem to have planned significant short-term action regarding public relations, future meeting schedules and aquaculture. During the 2014 annual meeting, the council seemed satisfied with actions taken to date, and only instructed the secretariat to provide further updates in 2015 (NASCO, 2014).

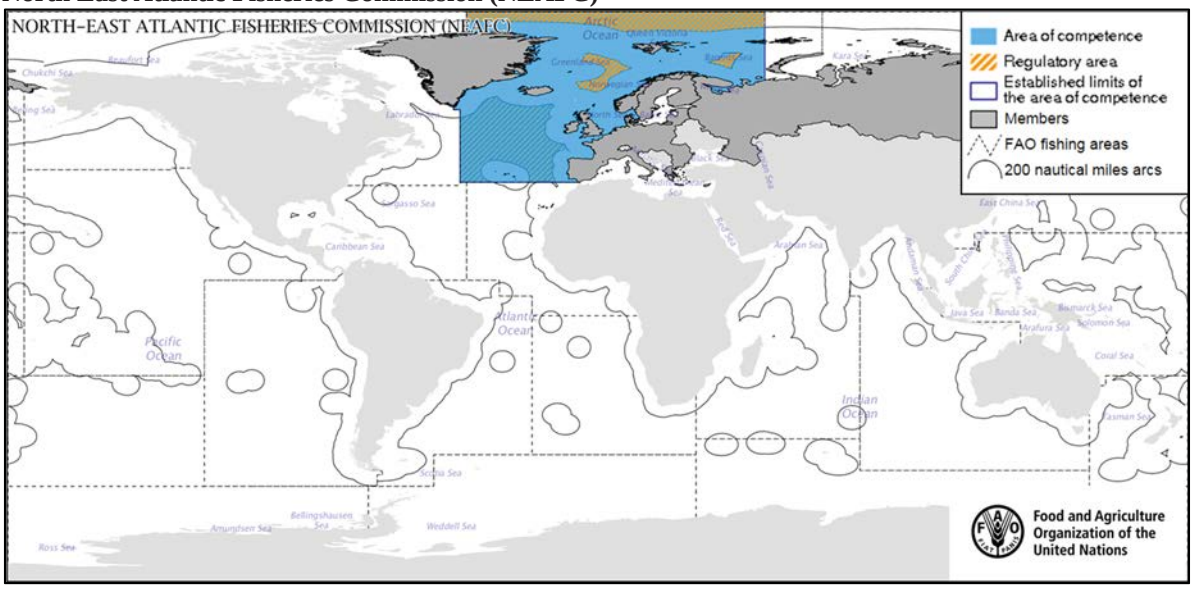
16. NORTH EAST ATLANTIC FISHERIES COMMISSION (NEAFC)

16.1 Basic information

The North East Atlantic Fisheries Commission (NEAFC) was founded in 1963, as the successor to the Permanent Commission of 1953, itself formed under the 1946 Convention for the Regulation of Meshes of Fishing Nets and Fish Sizes. It was reformed in 1982, following the extension of EEZs to 200 miles in the Northeast Atlantic, and the replacement of member States of the European Economic Community with the European Economic Community (NEAFC, 2006a).

NEAFC has authority over the high seas, and, as visible in Map 12, most of the Northeast Atlantic is part of NEAFC members' EEZs. The NEAFC regulatory area therefore consists of part of the Barents Sea, a part of the North Sea above Faroe Islands, and the mid-Atlantic Ocean to the west of Europe, north of the Azores and south of Greenland and Iceland. In addition, NEAFC can make legally binding measures for EEZs if the relevant coastal State agrees to the measures. The current members of NEAFC are the Denmark (regarding Faroe Islands and Greenland), the European Union, Iceland, Norway and the Russian Federation. New Zealand, Canada and Saint Kitts and Nevis are cooperating non-contracting parties.

Map 12
North East Atlantic Fisheries Commission (NEAFC)



16.2 Findings of the performance review

NEAFC was one of the first RFMOs to conduct a performance review, in 2006. Its convention was updated in 2005, which brought it in line with the basic international fisheries law instruments described in Chapter 4. The post-2005 convention cursorily mentions the precautionary principle and the EAF. Owing to the limited geographical and management scope of NEAFC, there are no provisions on the requirements of developing States, or the interests of artisanal and recreational fishers. Less reasonable is the lack of trade-related and post-harvest measures, or the consideration of sustainable economic, environmental and social benefits. Some other subjects such as relationships with non-members and enforcement measures are not mentioned in the convention, only in NEAFC "schemes" on the said topics.

The principal fisheries in the NEAFC regulatory area are for Norwegian spring spawning herring, oceanic pelagic redfish, mackerel and blue whiting. Demersal fisheries in the Barents Sea, however, are outside the jurisdiction of NEAFC and are managed instead by the Joint Norwegian–Russian Fisheries Commission.

Most of the stocks that NEAFC has jurisdiction over are shared between the NEAFC regulatory (high seas) area and the EEZ of one or several States: "NEAFC currently 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 not coastal State agreement, each coastal State determines its own management plan including TAC. In these situations, NEAFC has limited to no scope for management within its Regulatory Area."

The pelagic redfish fishery is in the Irminger Sea, between east Greenland and Iceland, and the stock is shared between NAFO, NEAFC and the Greenlandic and Icelandic EEZs. There are insufficient data to determine current biomass (although the stock was stable in the mid-1990s), and indeed the number of stocks. Following a NAFO–NEAFC agreement, NEAFC sets the catch levels and the conservation measures. However, "because scientific views about stock boundaries have changed recently and disagreements over the different components of the stock and their exploitation have hampered agreement on management, no management objective has been agreed upon and no harvest control rules are in effect." Disagreements have been ongoing since at least 1994, but in 2006, the Russian Federation and Iceland decided to reject the NEAFC procedure and set their own TACs.

The blue whiting, herring and mackerel fisheries are managed by coastal States, with NEAFC only granting allocations if there is agreement between the coastal States. The coastal States in question are: the European Union, Faroe Islands and Norway for the mackerel fishery; the European Union, Faroe Islands, Iceland and Norway for the blue whiting fishery; and all members except Greenland for the herring fishery. There was no agreement between members for the herring and blue whiting fisheries between 2003 and 2006. The PR noted that this arrangement, and particularly the lack of ongoing information transmission on conservation and management measures between NEAFC and coastal States, does not allow for the efficient coordination of conservation measures. The stock sizes of the blue whiting and herring fisheries have increased significantly, and both are considered to have full reproductive capacity. However, the mackerel fishery has been declining since 1992 and has reached historical lows. Herring is significant in ecosystem interactions in the seas around Norway "as transformer of the plankton production [sic] to higher trophic levels (cod, seabirds, and marine mammals)."

There is also a Rockall haddock fishery, and significant fishing for deepwater species, without any management plans. The available information on the Rockall haddock fishery shows that stock biomass reached a historic low in 2002, but may have increased since. There is no information on deep-sea species; indeed, it is uncertain how many ecosystems the deep-sea Northeast Atlantic comprises. The PR notes that there is little bycatch for most fishing in the NEAFC regulatory area, and that ghost fishing (i.e. fish mortality resulting from entanglement in lost or abandoned fishing gear) is an issue being addressed by NEAFC.

Many of the data (e.g. catch effort) and most of the scientific advice for NEAFC are given by ICES; data reporting in general is inconsistent, although mostly timely. The PR suggests that ties with ICES should be strengthened and that multiyear research agreements should be concluded. The MCS measures include detailed flag State duties, an automated VMS system, and port state measures that were being drafted and negotiated at the time of the PR (in 2006). The PR approved of all these measures, but remarked on the lack of an inspection scheme. The report also noted the prevalence of IUU fishing in NEAFC waters, and lauded the IUU vessel lists (positive list and negative list) being developed by NEAFC at the same time.

Decision-making in NEAFC is by majority or qualified majority, with an objection procedure: if more than one-third of members object to a measure, it is not binding on any of the member States. This procedure sets NEAFC apart from most RFMOs, where general practice is decision-making by consensus. At the same time, de facto decisions about resource management are often made by member States unilaterally, outside of NEAFC. This happens partly because of the widespread use of the objection procedure, and partly because of coastal States' prior agreement on stock management for stocks straddling several EEZs as well as the NEAFC regulatory area. Consequently, NEAFC is in

practice poised halfway between advisory RFBs and RFMOs. The PR warned members not to abuse the objection system, but praised the procedure for amending the convention and the post-2005 “fast-track” dispute-resolution system.

The PR further considered the mechanisms of approving cooperating non-member status and dealing with non-cooperating non-members to be adequate, but advised that improvements in transparency (both regarding coastal members’ allocation talks, and the relationship with NGO observers) would be welcome. Finally, the panel observed that NEAFC cooperates with a number of other international organizations, including FAO, ICES and SEAFO, and that ties are particularly close with NAFO and the OSPAR Commission.

16.3 Implementation of recommendations

The NEAFC PR was presented at the twenty-fifth annual meeting of NEAFC in November 2006, where the commission decided it would establish a working group on the future of NEAFC to plot the implementation of the report (NEAFC, 2006b). The working group’s recommendations were presented at an extraordinary meeting of NEAFC in June 2007. Some of the recommendations, such as the addition of all public NEAFC documents and links to coastal States’ fisheries management regulations to the NEAFC website, were accepted immediately. So was the negotiation of an MoU with the OSPAR Commission. Other measures, such as the development of links with ICCAT and other RFMOs, or the inclusion of fishing industry representatives in the scientific review process, were postponed for further deliberation (NEAFC, 2007). The MoU with the OSPAR Commission was adopted the following year, at another extraordinary meeting (NEAFC, 2008). A comprehensive NEAFC fisheries status report, also suggested by the working group with inspiration from the PR, was also released that year (Hoydal, 2008). Since the 2006 NEAFC PR, NEAFC’s measures to combat IUU fishing have resulted in not a single flag-of-convenience IUU vessel being reported in the NEAFC Regulatory Area since 2006.

The 2006 PR was not mentioned again until 2011, when NEAFC started planning its next PR, originally scheduled for 2013 (NEAFC, 2011). At the thirty-first annual meeting in November 2012, it was agreed that the experts for the second PR would be nominated by FAO, UNDOALOS and ICES (NEAFC, 2012). In late 2013, the second review panel “noted that the panel had not drawn any final conclusions yet, and would present its report to the Annual Meeting in 2014.” (NEAFC, 2013).

17. NORTH PACIFIC ANADROMOUS FISH COMMISSION (NPAFC)

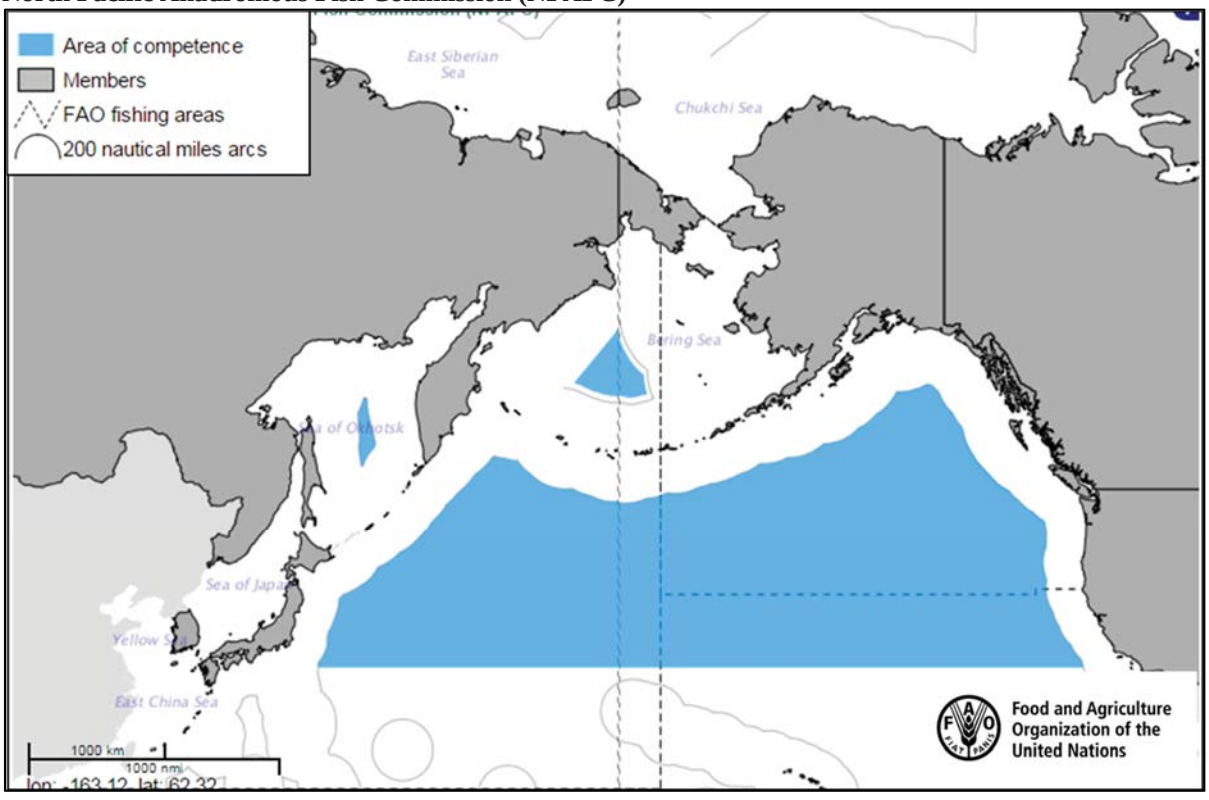
17.1 Basic information

In accordance with UNCLOS Article 66, paragraph 3 (b): “Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing ”.

The North Pacific Anadromous Fish Commission (NPAFC) is the organization founded by the States of origin of Pacific salmon species to regulate fishing for anadromous species beyond their EEZs. Specifically, the NPAFC does so “through the prohibition of all directed fishing for anadromous stocks in the Convention area. Incidental catch is to be minimized to the maximum extent possible and retention of incidental catch is prohibited …” (NPAFC, 2010a).

The NPAFC was established in 1993, as a successor to the International North Pacific Fishery Commission, itself founded in 1953 to regulate salmon fishing on the high seas. The member States of the NPAFC are Canada, Japan, the Republic of Korea, the Russian Federation and the United States of America. The fish species covered by the NPAFC are chum salmon, coho salmon, pink salmon, sockeye salmon, Chinook salmon, cherry salmon, and steelhead trout. The NPAFC commission area consists of the high seas areas of the North Pacific Ocean, to the north of 33°N.

Map 13
North Pacific Anadromous Fish Commission (NPAFC)



17.2 Findings of the performance review

Given that the NPAFC mandate bans fishing for Pacific salmon beyond the States of origin’s EEZ, the Commission’s activities focus on the enforcement of the high seas fishing moratorium. It does not determine catch limits, and its scientific activities revolve around salmon catch statistics, the impacts of climate change and the determination of the State of origin for the commingled salmon stocks in the

Pacific Ocean. The status of stocks, and conservation activities, are therefore not parts of the PR. Nor is the status of the convention *vis-à-vis* current best practices in international fisheries instruments. Nor is the incidental capture of salmonids a significant topic of discussion.

"Article IX(4) [of the NPAFC Convention] recognizes [sic] that identifying the stock origins of anadromous species caught at sea illegally is central to determining the injured Party, and which Party is therefore entitled to reparations." Research about ERS is part of the mandate, but the NPAFC could not agree on a definition of ERS. Catch information on ERS (as determined by national authorities) is included by some States but not by others. The NPAFC also serves as a forum for the exchange of scientific information on Pacific salmon, and the PR considers that "scientific exchanges are a very strong aspect of [NPAFC's] activities, supporting excellent science."

The NPAFC has ties with a large number of other RFMOs and IGOs,[34] but cooperation is strongest with the North Pacific Marine Science Organization (PICES), an intergovernmental marine scientific research organization. PICES and the NPAFC have overlapping jurisdictional areas and research focuses, which has resulted in strong scientific cooperation. There is also some duplication in activities with the North Pacific Coast Guard Forum.

The analysis of international trade data showed that States without native salmon populations were exporting salmon products before 1992, which are presumed to have originated in the high seas. Enforcement and the prevention of trafficking were therefore priorities for the NPAFC. Individual enforcement by members includes trade measures by Japan against contravening States, and criminal prosecutions by the United States of America against individuals. To date, collective measures have been limited to the coordination of air and sea surveillance patrol times and routes, and acting as a "clearing house for information." The PR was concerned by the lack of participation and activity regarding enforcement by the Republic of Korea.

A certificate of origin programme was also proposed by Canada and the United States of America, but it did not garner enough support. Enforcement of the ban on fishing also proceeds against non-members, partly through action by members with flag State approval, partly through members requesting the flag States to take action, and partly via the bilateral "shiprider" agreement between China and the United States of America. The PR also noted the lack of attention to port State measures, IUU vessel lists and rules about vessel chartering. Thailand, Malaysia and Indonesia have been invited to participate in NPAFC activities (owing to their trade in salmon products), but as only States of origin have a vote in the NPAFC, their interest in participation has been insufficient. Repeated initiatives to engage China in the NPAFC process have also been to no avail, owing to a disagreement as to whether or not China is a State of origin. While there is "a high level of satisfaction among the Parties with enforcement activities", there is some duplication among NPAFC committees on enforcement work, and the committee on enforcement seems to be conducting its work beyond its original ToR.

The PR noted that voting procedures (consensus voting on matters deemed important by any of the members; majority voting on all other matters) were working well. The rules on observers have somewhat restrictive conditions and deadlines, but interest in attending NPAFC's seems small in any case. The PR considered that the increasing number of tasks given to the executive director and the secretariat, without increasing their resources, was straining their capacities. "A review of auditor's reports indicates that the finances of the Commission have been well-managed" but the NPAFC would do well to find additional sources of funding, apart from members' contributions. "Overall, the NPAFC has been a success in meeting its original objectives."

17.3 Implementation of recommendations

Upon receiving the PR in September 2010, the NPAFC decided to divide consideration (and implementation) of the recommendations between relevant committees. The enforcement committee

[34] The full list consists of APFIC, FAO, IATTC, UNESCO, ICCAT, ICES, IPHC, NASCO, NAFO and PSC.

supported four recommendations: the review of the enforcement committee's ToR to reflect its activities; better coordination between the enforcement committee and the NPAFC enforcement evaluation and coordination meetings; the encouragement of members to ratify the FAO Port State Measures Agreement; and working out new forms of cooperation with the then-emerging North Pacific Fisheries Commission (NPFC) (NPAFC, 2010b). The committee on scientific research and statistics set up a sub-committee to examine the PR (NPAFC, 2010b).

In 2011, the enforcement committee decided that five recommendations should be prioritized: the ones listed above, plus "preparing a study on the further contribution of NPAFC to the implementation of the IPAO–IUU." (NPAFC, 2010a, 2011). The committee on scientific research and statistics prioritized ten recommendations, which it grouped into five topics. These topics were: the updating of its ToR; the review of statistics reporting forms for better clarity; the comparison of ocean sampling methods and method conversions; the evaluation of working-group-generated databases as an alternative method of database production; and the consideration of whether the incidental take of salmon in the convention area is significant or not (NPAFC, 2011). The fiscal and administrative committee prioritized another ten recommendations. These recommendations included: changes in the terminology of the rules of procedure; language interpretation at meetings; changes to the publication policy of the NPAFC; increasing the administrative support of the secretariat (especially IT); and the establishment of a strategic working group on the future of the NPAFC (NPAFC, 2011).

In 2012, all of the above committees submitted reports on the level of implementation of their lists of action. The fiscal and administrative committee implemented all its prioritized recommendations, while the other two committees were in the process of implementation (NPAFC, 2012). In 2013, the executive director reported that "most of the recommendations (sic) included in the List of Actions on the Prioritized Recommendations from the NPAFC Performance Review Report are completed. Other actions are in progress under the supervision of the corresponding committees" (NPAFC, 2013). Members each reported on domestic developments regarding the ratification of the Port State Measures Agreement (NPAFC, 2013). The complete list of actions on prioritized recommendations and their implementation status, updated to February 2014, is available on the NPAFC website.[35]

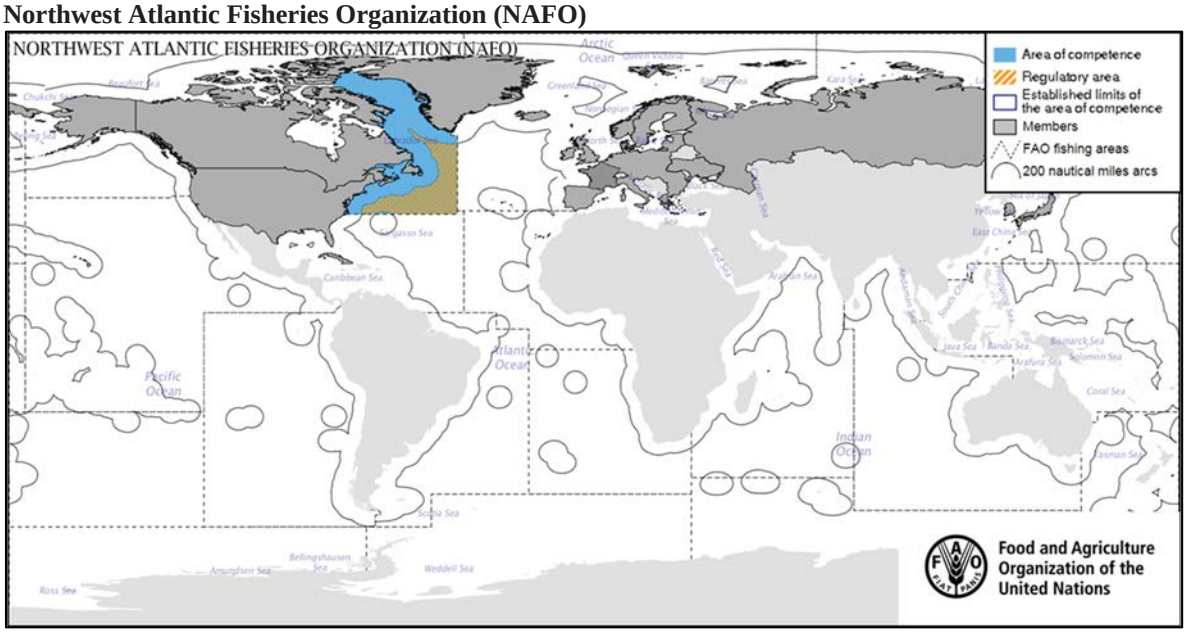
[35] List of Actions on Prioritized Recommendations from the NPAFC Performance Review Report www.npafc.org/new/about/Performance%20Review%20Report/LoA,%20Prioritized%20(January%202015).pdf

18. NORTHWEST ATLANTIC FISHERIES ORGANIZATION (NAFO)

18.1 Basic information

The Northwest Atlantic Fisheries Organization (NAFO) was established in 1979, as a successor to the International Commission for the Northwest Atlantic Fisheries, itself founded in 1949. NAFO has jurisdiction over all species, except salmon, tunas, marlins, cetaceans and sedentary species, beyond coastal States' EEZs, within the Northwest Atlantic area. In practice, this means the management of 11 species: cod, redfish, American plaice, witch flounder, yellowtail flounder, Greenland halibut, white hake, skate, capelin, squid, and shrimp. NAFO's current member States are Canada, Cuba, Denmark (in respect of Faroe Islands and Greenland), the European Union, France (in respect of Saint Pierre and Miquelon), Iceland, Japan, the Republic of Korea, Norway, the Russian Federation, Ukraine, and the United States of America.

Map 14
Northwest Atlantic Fisheries Organization (NAFO)



18.2 Findings of the performance review

The NAFO convention was updated in 2007. Consequently, it includes the EAF, the precautionary principle, the maintenance of biodiversity and long-term sustainable use (NAFO, 2011b). The provisions on the collection of scientific data, fishing quota allocation principles, flag State duties and MCS measures are also up-to-date. The compatibility of conservation and management measures between NAFO and different coastal States is slightly less stringent than what UNFSA requires. Port State measures have not been required by NAFO so far, and the PR also encouraged the implementation of market-related measures.

Decision-making in NAFO is usually based on consensus; if no consensus can be reached, measures need to pass by a two-thirds majority. States that vote against a measure have 60 days to object if they have a reasoned claim that the measure is discriminatory against them or violates the NAFO convention. The dispute is then taken in front of an ad hoc panel, and if no agreement is to be found there, then to one of UNCLOS' compulsory dispute-resolution methods.

The NAFO convention recognizes the need to deal with non-cooperating non-members, and encourages members to cooperate and take measures to curtail fishing by non-members. NAFO also cooperates with FAO, UNDOALOS, NAMMCO, SEAFO, NEAFC, ICES, NPAFC, and a number of other organizations working in marine science and statistics. However, the convention contains no provisions on assisting developing States.

The PR recounts that conservation and management measures were highly unsuccessful in the decade between 1985 and 1995, with members repeatedly being unable to agree on TACs, and setting unilateral TACs for their ships that were routinely higher than the scientifically advised catches. Non-compliance with existing measures was also rampant, and although MCS of vessels worked well, sanctions for violations were scarce. The PR links the shift towards more cooperative management to the change from decisions made by simple-majority voting (which resulted in many members raising objections) to consensus-based decision-making.

The status of stocks under NAFO's management is close to catastrophic: "8 out of the 19 stocks (almost half) managed by NAFO are presently subject to fishing moratoria, due to past overexploitation, while another three are subject to a recovery plan, after being depleted." Cod stocks are being rebuilt, with only artisanal fishing permitted, or having recently reopened. The cod TAC for 2011 was 10 000 tonnes. Witch flounder, northern shrimp and capelin stocks are also under fishing moratoria. American plaice was also under a moratorium, "with no signs of any stock recovery." Greenland halibut had also declined, with a rebuilding plan in effect since 2003. The TAC for Greenland halibut for 2011 was 17 000 tonnes. The status of American redfish was deemed to be above B_{MSY}; the TAC for 2011 was 36 000 tonnes. The status of thorny skate stocks is unclear; the TAC was set at 12 000 tonnes. Yellowtail flounder stocks are estimated to be well above B_{MSY}; the TAC for 2011 was set at 17 000 tonnes. White hake stocks seem to have declined. The TAC for 2011 was 6 000 tonnes, but "recent annual mean catches are in the order of 850 tonnes." Northern shortfin squid had a TAC set at 34 000 tonnes, "but no directed fishing for squid has taken place in the two subareas since the 1970s." The PR then contains detailed catch histories, and biomass and abundance trends, for each managed stock, per species and area, for both stocks that are fished and those that are under moratoria. The dominant mode of management is the setting of TACs: there is an active vessel list, but no direct or indirect measures to decrease excess fishing capacity.

A number of seamounts and other vulnerable areas are closed to fishing (see map in NAFO, 2011b). NAFO has passed resolutions to minimize sea turtle and shark mortality (including the prohibition of shark finning), but does not have any measures to mitigate seabird mortality, gathers little information on bycatch, and none on other ERS. Nor does NAFO monitor, or require reporting of, lost or discarded fishing gear. There are some scientific programmes under way to assess ecosystem interactions and develop an ecosystem-based conservation approach. The PR considers that "the absence of a NAFO policy (including reporting and monitoring arrangements) to address incidental bycatch [and species otherwise] affected by fishing operations, constitutes a serious shortcoming in the Organization's attempts to address the requirements of Article 5 of UNFSA."

NAFO collects data from the entire convention area (corresponding to FAO Statistical Area 21), not just the regulatory area. Data include catch and effort data from members, biological data from observers on fishing vessels, and VMS data. Logbooks may be submitted by certain members to designated experts, and the scientific council creates catch estimates for every meeting. The PR was impressed by the comprehensiveness of NAFO's statistical data holdings. The panel "also noted that NAFO … expends considerable effort into ensuring that information is made publicly available in a timely manner", although the information "could be better linked and more 'user friendly'." The quality of scientific advice was found to be high, and "extremely comprehensive." NAFO implements the precautionary principle by establishing biomass and fishing mortality reference points for stocks, an approach that is "quite sophisticated and … goes beyond what many other RFMOs have developed …"

As can already be seen, NAFO has in force a comprehensive array of compliance and enforcement measures. MCS measures include a VMS that transmits vessels' positions every hour as well as various catch data, an observer programme, and a joint inspection and surveillance programme. "It is apparent that … in the past decade, the mechanisms in place to ensure compliance by flag States, as well as the performance of flag States, have improved significantly in NAFO." Trade-related measures have not been implemented by NAFO, for fear of contravening WTO regulations, but the port State measures of member States in particular have contributed to the complete lack of IUU fishing in NAFO regulatory waters.

Transparency was also praised by the PR. NAFO's public website is comprehensive, and NAFO also publishes a lot of information about itself and fisheries science in the North Atlantic. NAFO also has a public relations policy in place, and allows attendance by NGOs, IGOs and non-members at meetings.

NAFO is funded by member contributions, with a total budget of slightly less than CAD 2 million[36]. Member contributions are currently adequate and timely, but between 2005 and 2009, late and missing contributions led the organization to declare a state of emergency funding. An accumulated surplus account has been established, to shield NAFO from the effects of late contributions. "The Secretariat seems to function well and the organization of meetings, the production of necessary documentation and attached communication are good." NAFO staff rules are based on Canadian public sector rules (including remuneration) and rules pertaining to UN employees. The PR nevertheless recommends amending the rules on termination of employees also in line with Canadian rules. The workload of the secretariat is close to critical, and new staff should be engaged as soon as possible.

18.3 Implementation of recommendations

The NAFO PR was presented to the NAFO Annual Meeting in September 2011, where the general council established a working group on the future of NAFO to develop plans of action for the implementation of the PR's recommendations (NAFO, 2012a). The working group divided the recommendation up by subject-matter and committee responsible for the topic (NAFO, 2012b).

By the following year, many steps had been taken regarding implementation. The most-discussed topics included the application of port State measures, the estimation of total shark weight in relation to shark fins, product labelling and traceability, possible cost recovery measures, and NAFO's communications strategy and media policy (NAFO, 2013). Measures taken include: the establishment of a joint working group on the ecosystem approach framework to fisheries; a resolution to protect vulnerable marine areas against intrusions other than fishing; a proposal on lost and abandoned fishing gear; a proposal on product labelling by species and division of capture; and the provision of VMS data to NAFO constituent bodies (NAFO, 2013). At the same meeting, "it was noted that most [recommendations] are about to be or have already been implemented." (NAFO, 2013). A table on the implementation status of recommendations, compiled in 2013, found a total of 225 proposed or passed measures by NAFO, that were made to fulfil, or had the effect of fulfilling the PR's recommendations. Out of these 225 measures, 6 had been partially completed, 24 had been fully completed, 37 had been proposed without implementation, and 154 were ongoing.[37]

[36] October 16 2015 CAD 2 million was equivalent to USD 1.55 million

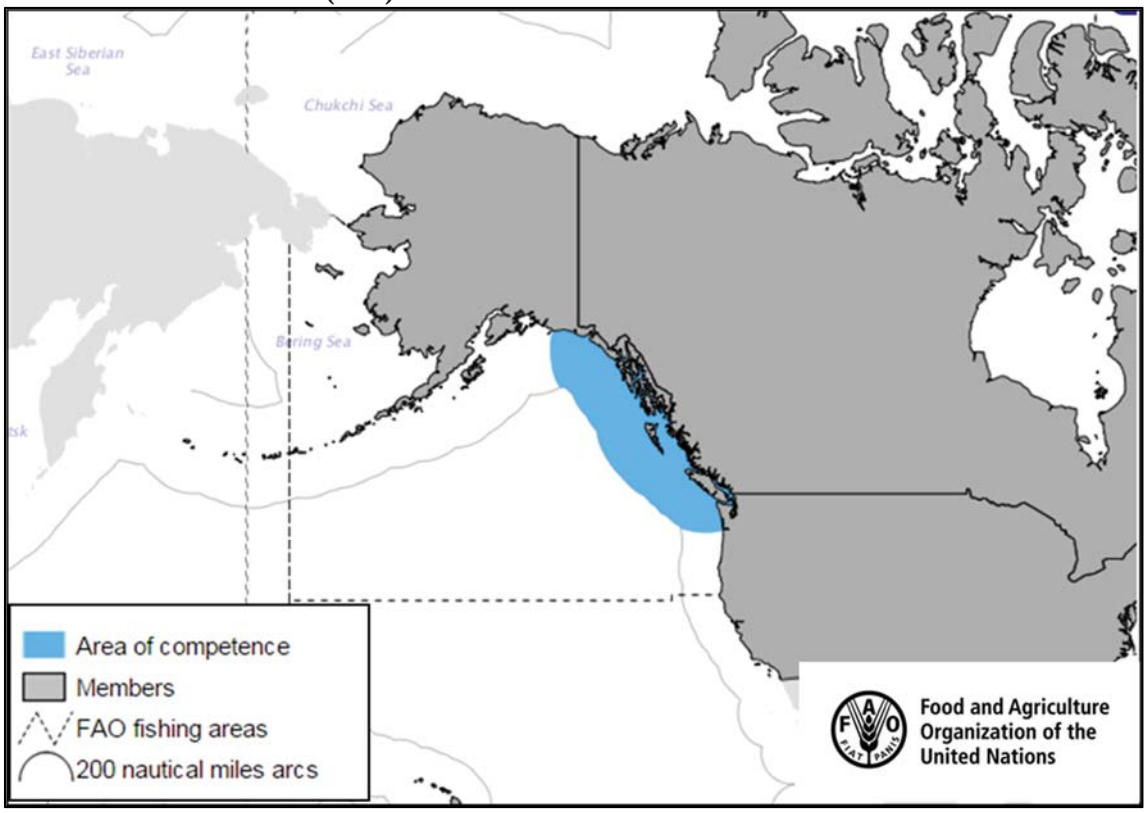
[37] Implementation status of recommendations from the NAFO performance assessment available at www.nafo.int/about/frames/activities-pa.html

19. PACIFIC SALMON COMMISSION (PSC)

19.1 Basic information

The complementary RFB to the NPAFC, the Pacific Salmon Commission (PSC) gives advice to its member States, Canada and the United States of America, on managing salmon stocks that originate in the waters of one member but are subject to being fished by, or otherwise affected by, the other member State. This includes the Fraser River, the Yukon River and transboundary rivers in Alaska and the Yukon. The PSC has competence over all salmon stocks, and takes steelhead trout into account when formulating its recommendations. The PSC was established in 1985, to be renegotiated every eight years. However, renegotiation was unsuccessful in 1992, and did not happen until 1999. A second renegotiation in 2008 was successful, and is scheduled to be valid until 2018.

Map 15
Pacific Salmon Commission (PSC)



19.2 Findings of the performance review

The PR for the PSC is perhaps the narrowest in scope, limited basically to the "financial performance of the secretariat in supporting the work of the Commission; Commission procedures; and information exchange between the Commission and the Secretariat." (PSC, 2012). A "scientific evaluation of the effectiveness of the management of Pacific salmon populations and stocks; [and] an evaluation of the quality or correctness of the decisions made by the Commission" are expressly outside the scope of the PR. Indeed, the preamble to the ToR for the PR features the phrase: "pleased with the fishery management, research, enhancement, and conservation efforts of the Commission since its inception …". Thus, the PSC has no doubts about its own success, and the extent to which it finds that "an outside perspective would be beneficial" is in fact quite small.

Therefore, the PR concentrates on identifying possibilities for achieving financial savings. The PSC has an annual budget of about CAD 3.5 million, and 74 percent of that is spent on salaries and benefits, and an additional 10 percent on genetic analysis of salmon samples. Because salaries are tied to the standards and collective agreements of the Canadian public service, they are difficult to change.

However, achieving savings on deferred capital spending only (as the PSC has been doing in the last few years) is ultimately self-defeating. Instead, the PSC should consider decreasing the size of the staff (which would also reduce other costs, such as office space), moving its offices to a less expensive location than Vancouver, or sharing offices with another organization, such as the NPAFC or NPFC. The PSC meets three times a year, an October preparatory meeting, a January post-season meeting, and a February annual meeting. The PR also suggested rolling several meetings into one and having tighter agendas, as well as preparing for meetings with online communication tools.

While the focal point, the PSC's financial management was not the only topic of the review. The PR also had some suggestions to improve transparency: posting invitations to public PSC meetings (in order to improve access for stakeholders); reaching out to other RFBs and stakeholders (including conservation groups); and writing reports and maintaining a website that is more accessible to the general public. The report also warned about the lack of mid-term and long-term strategic planning.

19.3 Implementation of recommendations

Upon receiving the PR in April 2012, the PSC posted it on its website for public comments, and the PSC performance review implementation group "undertook face to face consultations with all panels and technical committees with an interest in meeting between October 2012 and January 2013." (PSC, 2013a). The implementation group found little support for the consolidation of meetings, but much more for shortening the January/February meetings and decreasing the number of participants (PSC, 2013a). Regarding cost management, the group reported that "Panels and Technical Committees are already actively managing their schedules and [numbers]s of participants to reduce costs as appropriate and will continue to do so." (PSC, 2013a).

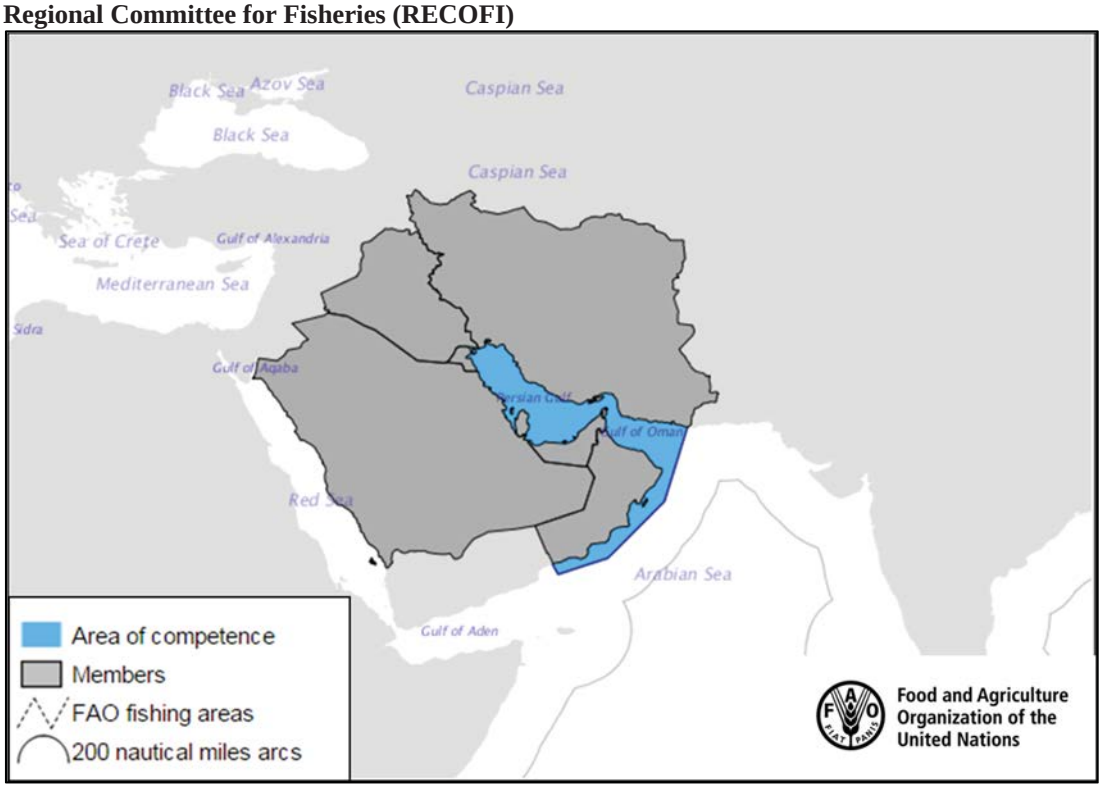
The PSC agreed to create an orientation package for panel members and commissioners before meetings, to develop a multiyear operational plan and to enhance public outreach and website management. Rules and procedures should also be reviewed by a working group by October 2013 (PSC, 2013a). However, at the October 2013 meeting (or since), no discussion took place about further implementation, or the revision of rules and procedures (2013b, 2014a, 2014b).

20. REGIONAL COMMITTEE FOR FISHERIES (RECOFI)

20.1 Basic information

The Regional Committee for Fisheries (RECOFI) was established in 2001 to replace the Committee for the Development and Management of the Gulfs, a subcommittee of the then Indian Ocean Fisheries Commission (a since-abolished RFB). It has eight members, which are all of the States bordering the Gulf and the Gulf of Oman: Bahrain, Iraq, Iran (Islamic Republic of), Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. RECOFI was established under Article XIV of the FAO Constitution, meaning that it has the power to issue legally binding measures.

Map 16
Regional Committee for Fisheries (RECOFI)



20.2 Findings of the performance review

The PR gives an indication that fishing is somewhat marginal in the Gulf area.[38] There are some successes, such as a recent focus on aquaculture (RECOFI, 2011), or the quality of training and technical advice. The general approach to RECOFI nevertheless seems one of overall neglect. Scientific advice is non-existent: "to date, the Commission has not issued recommendations [i.e. scientific advice on fisheries] to member countries." This is partly because of the lack of data collection and cooperation between member States. In fact, RECOFI does not even have a scientific, technical and economic committee in place.

Funding by members is minimal (USD5 000 per member per year), with FAO paying for about 73 percent of the costs. Meetings of the Committee are held bi-yearly in practice, instead of yearly as

[38] "Even if in the RECOFI region fisheries may appear to be of low importance in economic terms, marine fisheries production was nonetheless around 700 000 tonnes in 2007. This is a substantial volume of fish that contributes significantly to food security. Furthermore, capture fisheries employ more than 100 000 fishers and generate around 400 000 jobs in secondary activities such as processing. Overall, fisheries in the region assure the livelihoods of probably more than one million people." (RECOFI, 2011). The direct livelihood of 100 000 people and the indirect livelihood of one million seems rather small for a combined estimated population of 164 million people, even without including the total catch originating from the Red Sea and the Caspian Sea.

the founding agreement would have it. The RECOFI headquarters are in the FAO regional office in Cairo, outside the territory of the member States, and it is mainly staffed by, and taken care of, by FAO. Cooperation with other marine organizations in the area (IOTC, Regional Organization for the Protection of the Marine Environment [ROPME], UNEP, Gulf Cooperation Council [GCC] Fisheries Committee) is still in the planning phase.

Accordingly, the main recommendation is that member States need to take "more ownership" and "increase involvement" in RECOFI. Members should finance RECOFI, either in equal shares or in varying contributions based on the wealth of the member State, the share of fishing and aquaculture in the national economy, and other relevant indices. Headquarters should be housed in one of the member States, the staff should include more nationals of members, and reflect more of the member States' administrative culture. Once member States control and sufficiently contribute to RECOFI, the substantive tasks of gathering and analysing statistical and biological information about fish stocks, providing quantitative advice for optimal fisheries exploitation, and disseminating information should follow.

20.3 Implementation of recommendations

In May 2011, at the sixth session of RECOFI, FAO called member States' attention to the findings of the PR, and "reminded the Commission that the recommendations adopted at this session would be crucial for RECOFI's future work and, in particular, for the sustainability of resources in the region." (FAO, 2011). Members decided to keep fixed and equal contributions, but raise the amounts threefold, to USD15 000 each per year, from 2013 onward (FAO, 2011). However, for the 2011–12 budget and list of activities, out of 22 projects and a proposed budget of USD540 000, 9 projects and a budget of USD150 000 were approved (FAO, 2011). Member States also acknowledged the need for "proper communication channels … to ensure that relevant national authorities were aware of RECOFI's work and could contribute or act upon information if required." (FAO, 2011).

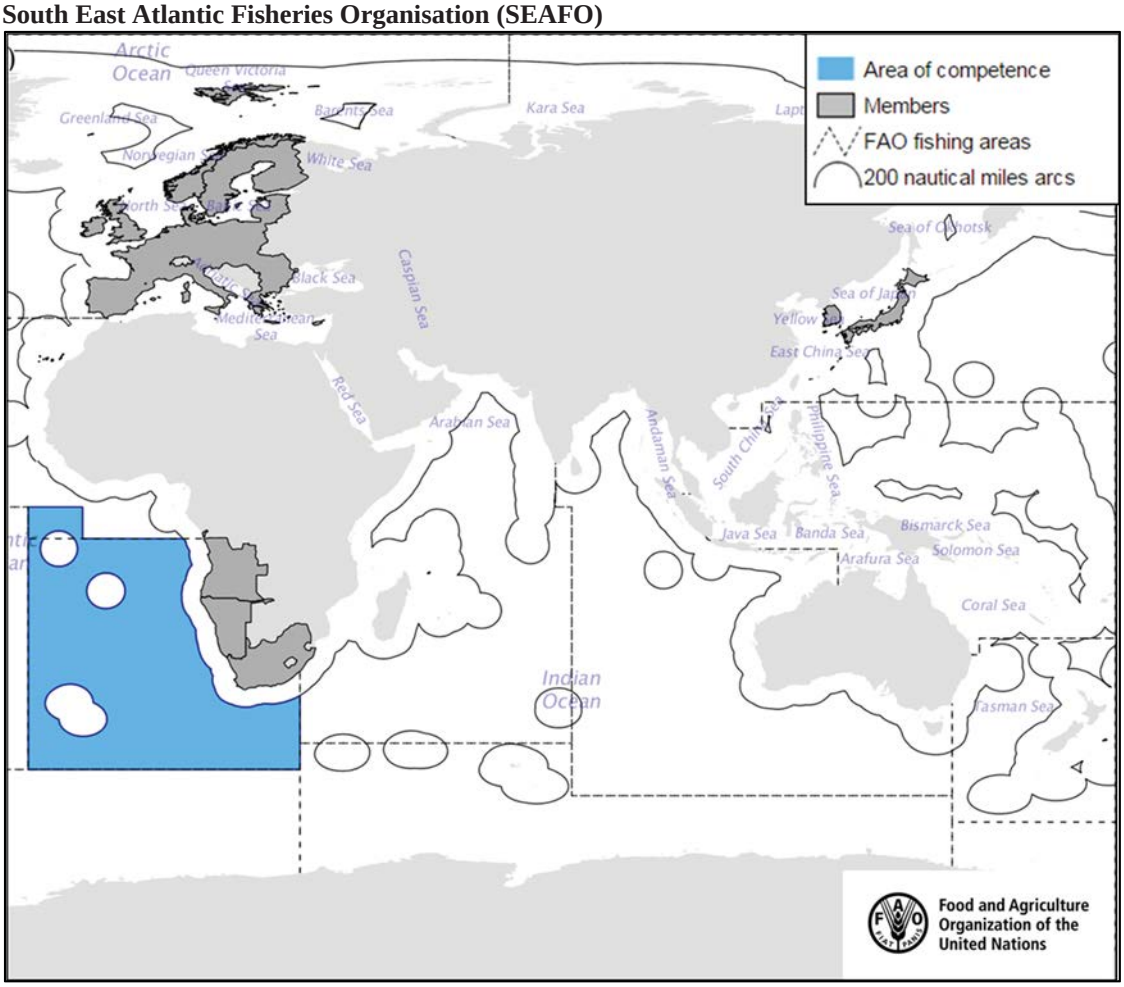
At the seventh session of RECOFI in 2013, basically nothing changed: member States repeated their decision to increase annual contributions to USD15 000 per year per member. They also "reiterated the importance and value of fish stocks in the RECOFI region, and the importance of regional fisheries management for ensuring the sustainability of those fish stocks", and also recognized that "the current FAO support of the RECOFI Secretariat at the current level would not be possible to maintain." (FAO, 2013a). Nevertheless, there was no mention of (further) increasing contributions or establishing a secretariat in a member State, and the entire discussion on the "Current Status and Action Needed for the Future of RECOFI" required five paragraphs and less than a page to summarize (FAO, 2013a).

21. SOUTH EAST ATLANTIC FISHERIES ORGANISATION (SEAFO)

21.1 Basic information

"The discovery of high value fish stocks … notably deep sea crab in Namibia and Angola and orange roughy and alfonsino in Namibia and South Africa and pelagic sharks in most of the area … provided the impetus for the establishment of a new RFMO [in the South East Atlantic]." (SEAFO, 2010b). Negotiations started in 1997, the convention of the South East Atlantic Fisheries Organisation (SEAFO) was signed in 2001, it "entered into force in April, 2003 and the Commission had its inaugural meeting in March 2004." SEAFO is thus one of the youngest RFMOs in existence. SEAFO has seven members: Angola, the European Union, Japan, the Republic of Korea, Namibia, Norway and South Africa. SEAFO is independent of FAO, and has the power to adopt binding measures.

Map 17
South East Atlantic Fisheries Organisation (SEAFO)



21.2 Findings of the performance review

The SEAFO convention was drafted after the entry into force of UNFSA, and the panel found that it was up-to-date and "incorporate[s] modern principles of responsible fisheries management." The convention requires the application of the precautionary principle, and the EAF. SEAFO has implemented these principles in conservation measures to protect vulnerable deep-water habitats, regulate bottom-fishing activities and reduce the mortality of sea turtles.

Regarding the conservation and management of fish stocks, the PR's assessment is more negative. On the one hand, SEAFO requires a scientific observer on board for all fishing vessels, "which results in the collection of information on all species that are brought on board. The Secretariat has made

significant progress in the compilation of these data and the production of appropriate overviews." At the same time, "there is a general lack of data on fishing effort and biological information (length, sex ratio, and maturity);" and "the Scientific Committee has not provided information on the status of stocks for the fishery resources, nor has it presented a clear strategy for assessing the resources." Given that "the scientific basis for advice on fisheries exploitation is weak [and SEAFO reports] are not very informative in identifying the bases for recommendations on a TAC", there is a limit to the value of the recommendations that SEAFO gives. TAC levels have been determined for a number of species,[39] but it is unclear what these levels are based on. SEAFO seems to treat the precautionary principle as sufficient grounding for the determination of TAC levels, without any data on fish stocks. Similarly, some vulnerable marine areas (particularly seamounts) have been closed to fishing based on their suspected, but unconfirmed biological importance.

Regarding compliance and enforcement measures, the SEAFO convention establishes a strong set of enforcement duties for both flag States and port States, but data on inspections, landings and enforcement in general were lacking. At the time of the report, overcapacity for fishing was not an issue – although 35 vessels were registered for fishing, only 4 of them actually fished in the convention area.

The panel also took note of MCS measures by SEAFO (primarily IUU vessel lists, in cooperation with NAFO and NEAFC), and found them adequate, although it did recommend supplementing the negative list with port State measures and observers on fishing vessels. Given that all SEAFO members, except Angola, are also CCAMLR members, the panel did not find it necessary for SEAFO to introduce a separate CDS. The PR also approved of the provisions for decision-making, dispute resolution and transparency.

In 2009, SEAFO determined not to have a procedure for including non-member States' ship on authorized vessel lists, or allocating them portions of the TAC. Instead, following a dispute over ships from Japan and the Republic of Korea fishing in the SEAFO convention area, it urged these countries to become members of SEAFO. Japan joined SEAFO in January 2010, and the Republic of Korea did so in 2011 (after the PR was published).[40] The PR found that levels of cooperation with other RFMOs were "satisfactory given the current human and financial resources of the SEAFO Secretariat, existing fishing activities in the Convention Area and the standard forms of cooperation among RFMOs." SEAFO has a working relationship with NAFO, NEAFC, ICCAT and CCAMLR, in addition to FAO and the UN system, and ACAP. In order to aid developing member States to fulfil their obligations, SEAFO established a special requirements fund in 2009, through a grant from Norway of NOK100 000 (about USD17 000).

Regarding financial and administrative issues, the PR noted the one difficulty that plagues all RFBs, that of late member contributions, but otherwise found everything in order. All in all, the PR found a range of problems in the work of the scientific committee, but not many recommendations in other domains. For the scientific committee, it advocated "develop[ing] a strategy for the development of a status report … includ[ing] information on the stock structure, total abundance, distribution of the biomass between zones and the fishing pressure by zone", as well as more transparency and clearer language, and the use of identification keys for fish.

21.3 Implementation of recommendations

The SEAFO annual meeting in October 2010 took note of the PR, and carefully examined each recommendation. Many minor recommendations were accepted immediately, but the Commission also found many of them to be imprecise, unnecessary or already under way (SEAFO, 2010a). Regarding the numerous suggested changes to the scientific committee's data, clarity and procedure, the

[39] "In 2009, the Commission adopted total allowable catches (TACs) of 200 tonnes for Patagonian Toothfish, 50 tonnes for Orange Roughy, 200 tonnes for Alfonsino and 400 tonnes for deep sea red crab." (SEAFO, 2010b). For current information, see www.seafo.org/Tac.html

[40] For the dates of member States' accession, see www.seafo.org/CommContractingParties.html

Commission mostly took the opinion that it was not in a position to analyse or criticize ways of conducting fisheries science.

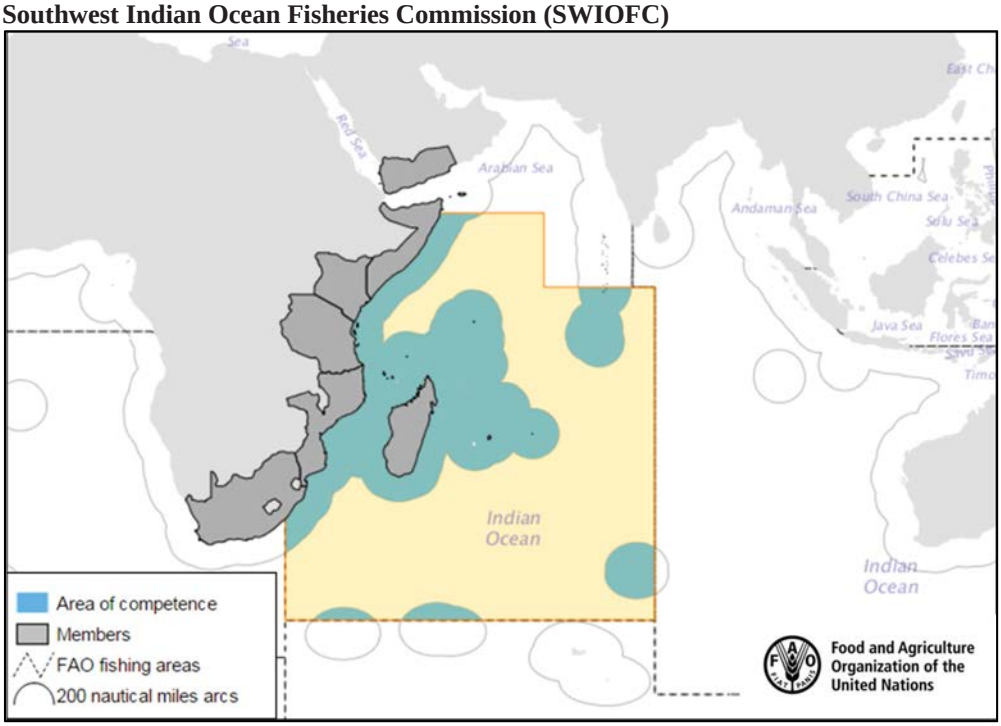
Observers and port State measures were to be discussed at the following annual meeting, with Norway and the European Union preparing working documents on the topics. At the 2011 annual meeting, the said documents were presented (SEAFO, 2011); the only other mention of the PR was by the European Union delegation in the compliance committee, lamenting the fact that the SEAFO IUU vessel list had not been integrated with other RFMOs' IUU vessel lists (SEAFO, 2011). In 2012, similarly, the only mention of the PR was by the European Union delegate, regarding "IUU fishing and sharing information on the control of the active fleets in the SEAFO convention area." (SEAFO, 2012). At the same time, SEAFO had agreed to a comprehensive system of observation, inspection, compliance and enforcement, including, quite prominently, port state measures (SEAFO, 2012). Inspection at sea was agreed to in 2013 (SEAFO, 2013), but no mention was made of the PR at the annual meeting.

22. SOUTHWEST INDIAN OCEAN FISHERIES COMMISSION (SWIOFC)

22.1 Basic information

The Southwest Indian Ocean Fisheries Commission (SWIOFC) was founded in 2004, following the abolishment of the Indian Ocean Fishery Commission (IOFC) in 1999. Coastal States were divided as to the future of fisheries management in the Indian Ocean, and decided in 2004 to create two organizations in lieu of the IOFC. One would be an independent IGO for regulating fisheries on the high seas, with a management mandate, principally for distant-water fishing nations in the area – this became the South Indian Ocean Fisheries Agreement (SIOFA). The other became SWIOFC, a subsidiary organ of FAO, created under Article VI(1) of the FAO, as an advisory body for developing coastal nations. SWIOFC's area of competence is thus limited to its members' EEZs. SWIOFC has 12 members: the Comoros, France, Kenya, Madagascar, Maldives, Mauritius, Mozambique, Seychelles, Somalia, South Africa, the United Republic of Tanzania, and Yemen.

Map 18
Southwest Indian Ocean Fisheries Commission (SWIOFC)



22.2 Findings of the performance review

Many issues regarding the performance of SWIOFC seem to stem from the fact that it is administered by FAO with little local financing. The PR traces the "apparent reluctance of SWIOFC members to take upon themselves the primary financial responsibility for their participation in the work of the Commission" to "a number of reasons, which includes the historical role FAO has had in the region, the harsh socio-economic situation of many SWIOFC members, among others (sic)." (SWIOFC, 2102). SWIOFC does not have its own secretariat, but is managed administratively by and from the FAO Subregional Office for Southern and Eastern Africa in Harare, Zimbabwe.

The PR praised the large number of international agencies, programmes and organizations with which SWIOFC collaborates, and noted in particular the close relationship with the South West Indian Ocean Fisheries Project, a multiyear research project funded by the World Bank.[41] Regarding its management actions, "SWIOFC has not done much in terms of data collection, analysis and sharing by itself. Most of the work done by SWIOFC has been related to the provision of advice and coordination on

[41] See www.swiofp.net/

institutional and organizational systems, needs and processes … by member States, at country level." Nor has SWIOFC made assessments of, or given advice about, individual fish stocks, or given species-specific advice. This has been in accordance with the official SWIOFC strategy, given the region's requirements and SWIOFC's available means.[42] At the same time, the state of fisheries in the region deteriorated between 2005 and 2009.[43]

Regarding MCS measures, SWIOFC operates the same way as it does for scientific information: more as a forum and clearinghouse, than as an originator of actions. Given the limited amount of advice that SWIOFC actually issues, any mention of the EAF and/or the precautionary principle does not appear to amount to much.

In general, SWIOFC members rated the work of the Commission as relevant and important, and have high levels of participation. The PR thus has few explicit recommendations to make. The PR does not see increased funding by members as a realistic option, but encourages SWIOFC to look for international donors outside of FAO. Regarding members' preference for a secretariat[44] that is located within one of the members' territory, the PR praised the desire for more ownership, but cautioned against destabilizing the secretariat through the risk of less-certain funding.

22.3 Implementation of recommendations

The PR was considered by member States at the sixth session of SWIOFC in October 2012, but no decisions were ultimately reached (FAO, 2013b). The members decided that they would not like to create an organization that is completely independent of FAO. They debated the merits of being an Article VI organization versus an Article XIV organization, but ultimately decided to postpone any decisions until they had "further information on the options and costs involved." (FAO, 2013b). Mozambique reaffirmed an offer to host the SWIOFC secretariat at the sixth session (originally made in 2011) (FAO, 2013b), but as of May 2014, secretariat functions are still being provided by FAO from Harare, Zimbabwe.[45] The only other issue considered by SWIOFC apropos of the PR was to set up "a financial structure that would allow for easier contributions, such as a multidonor trust fund to be located in a local account." (FAO, 2013b).

[42] "The main problems faced by the countries in data collection are expectedly related to the lack of funds." (SWIOFC, 2012).
[43] "In the SWIOFC region, the number of stocks under exploited or moderately exploited decreased from 45% to 31% (-14%), while the fully exploited stocks increased from 29% to 36% (+7%). The number of stocks overexploited, depleted or recovering, in turn, increased from 25% to 34% (+9%)." (SWIOFC, 2012).
[44] "At the present time, the secretariat is literally a 'one-man band', a fact that enhances the merit of all the achievements of the Commission since its foundation. In addition, … the Secretary has numerous other regular tasks related to the FAO Sub-regional Office for Southern and East Africa …" (SWIOFC, 2012).
[45] See www.fao.org/fishery/rfb/swiofc/en#Org-Contacts

23. WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION (WCPFC)

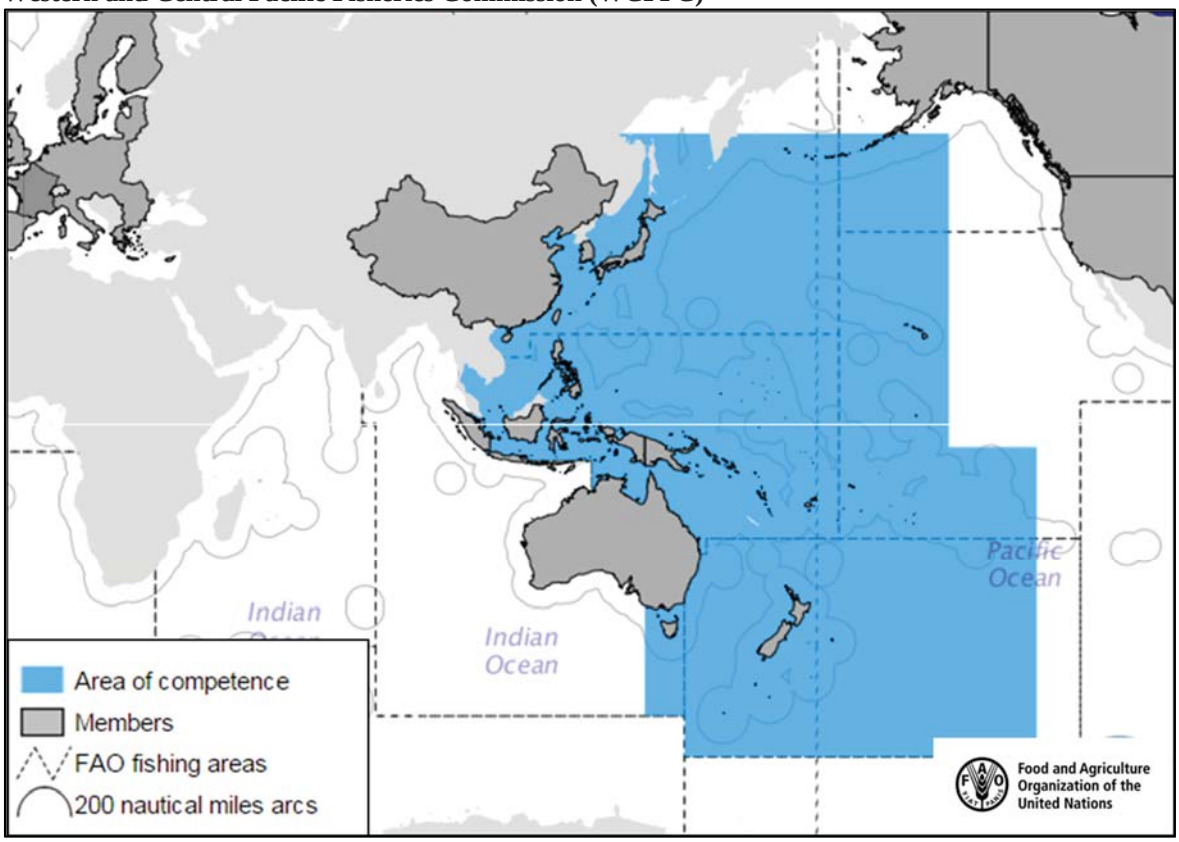
23.1 Basic information

The Western and Central Pacific Fisheries Commission (WCPFC) was founded in 2000 to regulate the fishing of tunas and other highly migratory fish species in the Western and Central Pacific Ocean. Before the conclusion of the WCPFC convention, there was no organization or instrument that regulated fishing in the high seas areas of the Western and Central Pacific Ocean, although the Pacific Islands Forum Fisheries Agency (FFA) has instituted cooperation regarding tuna fishing within the EEZs of Pacific island nations.

The WCPFC has 25 member States (Australia, Canada, China, the Cook Islands, the European Union, Fiji, France, Japan, Kiribati, the Marshall Islands, Micronesia (Federated States of), Nauru, New Zealand, Niue, Palau, Papua New Guinea, the Philippines, the Republic of Korea, Samoa, Solomon Islands, Tonga, Taiwan Province of China, Taipei, Tuvalu, the United States of America, and Vanuatu), and 8 participating non-independent territories (American Samoa, Northern Mariana Islands, French Polynesia, Guam, New Caledonia, Tokelau, and Wallis and Futuna Islands). There are 11 participating non-member States: Belize, Democratic People's Republic of Korea, Ecuador, El Salvador, Indonesia, Mexico, Senegal, Saint Kitts and Nevis, Panama, Thailand and Viet Nam.

The WCPFC area of competence includes all the waters of the Western and Central Pacific Ocean, north of 55°/60° of southern latitude, with a small overlap with the area of competence of the Inter-American Tropical Tuna Commission (IATTC).[46]

Map 19
Western and Central Pacific Fisheries Commission (WCPFC)



[46] Map 19 incorrectly shows a northern boundary to the WCPFC area of competence; cf. WCPFC (2012, p. 45).

23.2 Findings of the performance review

The WCPFC convention is almost completely up-to-date to the most recent standards in international fisheries management. The PR found that the convention was consistent with the UNCLOS and the UNFSA, and it allowed the WCPFC to bring in port State measures that are consistent with the FAO Port State Measures Agreement (WCPFC, 2012a).

The PR considered it significant that the convention assigned responsibility for conservation and management, as well as the application of the precautionary principle and the ecosystem approach, to the members, not the Commission. This means that the WCPFC has little scope for action, and that these matters are technically outside of the purview of the PR as well. The PR finds this particularly worrisome regarding the Commission's role in addressing non-members, or the lack thereof. "For future clarity and understanding of obligations under the Convention, it would be useful for members to address this lacuna and state their understanding of the role and responsibilities of the Commission."

A similar legal question is whether WCPFC measures are applicable in member States' territorial waters and archipelagic waters (quite extensive for a number of Pacific archipelagic States) as well, or only in the EEZs and the high seas. Members are divided over this question. The PR, having recourse to the text of UNCLOS and to WCPFC practice to date, suggests that archipelagic States have full sovereignty over archipelagic waters, and consequently the convention, which proclaims its consistency with both of these treaties, only applies to EEZs and the high seas.

The PR further found issues with the hazy application of criteria in the allocation of yearly catches, and the attribution of catches to States in the case of chartered vessels. It also made minor suggestions for revising the legal bases for data collection and sharing, the adoption of conservation measures, and the rules of procedure. The PR commended the WCPFC for the dispute resolution system (never invoked, to date), and its extensive cooperation with other international organizations. The WCPFC cooperates with the FFA, the Secretariat of the Pacific Community (SPC), the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC), the Secretariat of the Pacific Regional Environment Programme (SPREP), ACAP, IATTC, CCAMLR, CCSBT, IOTC and NPAFC, as well as FAO and Te Vaka Moana. The WCPFC's data-collection and data-sharing policies were also approved by the PR, with the identification of a number of important data gaps. Similarly, the quality of scientific advice provided by the WCPFC scientific committee was also appreciated, and a few outstanding issues regarding the cooperation between the WCPFC and the ISC were pointed out.

"Fisheries in the WCPFC Statistical Area largely target four tuna species: albacore, bigeye, skipjack and yellowfin." Black marlin, blue marlin, striped marlin and swordfish are the billfish species that are targeted, and "the compilation of Pacific bluefin tuna catch estimates have only commenced recently … Catches of other species are not explicitly monitored by the WCPFC, and discards (other than tuna) are not considered." Total catches between 2008 and 2010 were 2.4–2.5 million tonnes, 80 percent of which was skipjack tuna. As with many other RFBs, the assessment of stocks is uncertain owing to the quality, quantity and timeliness of fishing data transmitted by member States. The best available estimates are summarized as follows.

Two stocks of albacore tuna exist in the Pacific Ocean, to the north and to the south of the equator. While the northern one is more heavily fished, neither stock is overfished or in decline. Bigeye tuna form one broadly distributed stock in the Pacific Ocean, occurring from 40°N to 40°S. Estimates made in 2010 and 2011 both concluded that bigeye was being overfished in the Pacific, and fishing mortality should be reduced by 32 percent, compared with the 2006–09 levels, for the stock to return to F_{MSY}. Skipjack tuna live abundantly in tropical waters. In recent assessments, "the principal conclusions are that skipjack is currently moderately exploited relative to its biological potential. Overfishing of skipjack is not apparent in the WCPO, nor is the stock in an overfished state." Yellowfin tuna also live throughout tropical and subtropical waters. Although previous assessments seem to have underestimated fishing mortality, nevertheless, "yellowfin appears able to sustain MSY, with the stock not being subject to overfishing or being in an overfished state." At the same time, in the western

equatorial area, where fishing is the heaviest, stocks do seem to be declining, and juvenile fishing may also be a problem.

While the lack of data makes a credible assessment of swordfish stocks difficult, "the condition of Southwestern Pacific [swordfish] is a reason for a moderate concern due to model uncertainty, increasing catches, and declining catch per unit effort (CPUE)." There is not enough data to assess striped marlin, but the status of both the North Pacific and the Southwest Pacific stocks seem worrisome. Pacific bluefin tuna spawn between Okinawa and the Philippines, and migrate more than 10 000 km to the Eastern Pacific Ocean, eventually migrating back to breed. "Pacific bluefin are often considered to be overfished throughout their range." For this reason, "the [Scientific Committee] has repeatedly advised a reduction of Pacific bluefin fishing mortality to 2002/ 2004 levels or below."

Based on these stock assessments, the WCPFC has introduced various conservation measures to limit fishing. South Pacific albacore is managed through limiting the number of vessels authorized to fish at any one time (capacity management measures). Yellowfin and bigeye tuna conservation measures mainly include limits on the use of fish aggregating devices (FADs), primarily to decrease the catch of juveniles. Swordfish fishing is limited to the south of 20°S to the number of vessels and amount of fish caught between 2000 and 2005. Southwestern Pacific striped marlin are similarly protected through limits on the number of fishing vessels to the south of 15°S, which the review panel considers highly ineffective, as striped marlin are almost exclusively taken as bycatch. North Pacific striped marlin was found to be depleted in 2010, and a TAC was introduced, which is 80 percent of the total catch in 2003. Given the lack of data for Pacific bluefin tuna, no set limits for fishing were made by the Commission, except for a general call to adopt measures to reduce juvenile fishing. No limits exist for skipjack tuna or north Pacific swordfish.

While most RFBs invoke the precautionary principle in their basic instruments, and occasionally in management decisions as well, the PR also commended the WCPFC for being one of the first to formalize the principle. It does this by developing species-specific decision-making formulas for different stocks and species, referencing their estimated spawning biomass, reproduction rate, and F_{MSY}. The WCPFC also takes steps to implement the ecosystem approach, but the lack of data on seabirds, turtles, and sharks is too profound to make any sort of general statement on non-target species. Moreover, "the question of general biodiversity protection does not appear to have been addressed as yet and the WCPF (sic) is encouraged to consider ways (e.g. using spatial protection) how this might be achieved."

The WCPFC has a good track record with compliance and enforcement measures. While port State measures and a CDS are missing from the WCPFC's portfolio of enforcement measures, there are very few issues with flag State measures, the electronic VMS,[47] or the high seas boarding and inspection programme. A regional observer programme and an IUU vessel list were also under implementation. The reporting of fishing data by members is unsatisfactory: late and often missing. Following up on infringements was rare and tentative – mostly left to members themselves – but a member compliance monitoring scheme was being developed. The panel noted the absence of market-related measures. The WCPFC does not seem to have any issues with cooperating non-members and non-cooperating non-members, or with the special requirements of developing member States.

Regarding the administration of the WCPFC itself, the panel commended the WCPFC on its transparency and openness, noting the difficulties of hosting more than 20 observers at sessions. The PR found the secretariat to be cost-efficient and well-managed. Although the WCPFC's budget had increased steadily throughout the years (from USD1 million in 2005 to USD6 million in 2011), so had its membership and workload. A few members were in arrears regarding their contributions to the WCPFC, but a generally greater concern was the lateness of contributions from most members.

[47] However, there are some opinions that the VMS is too costly and partly redundant.

23.3 Implementation of recommendations

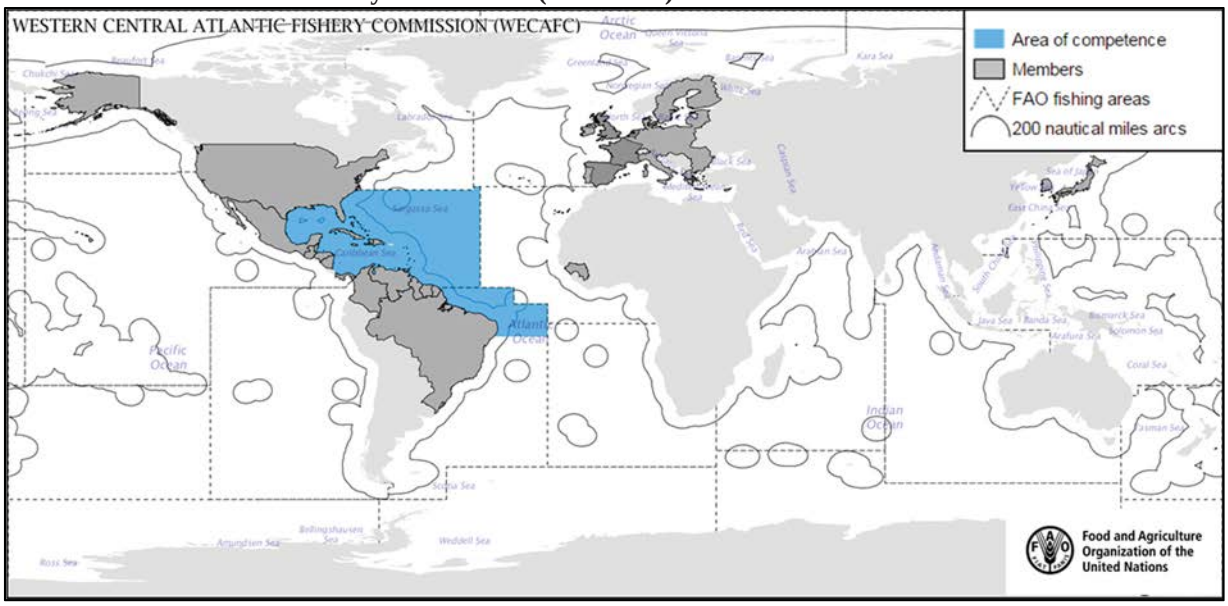
The WCPFC received the PR at its eighth regular session in March 2012, and allowed members time until June 2012 to provide comments and remarks. The executive director was tasked with categorizing and ranking the recommendations (WCPFC, 2012b). At the next regular session in December 2012, members challenged the executive director's categorization/prioritization, and instead asked him to report the recommendations according to the principal WCPFC committees' areas of competence (WCPFC, 2012c). The executive director presented the revised list of recommendations (WCPFC, 2013a), and found that a large number of them had already been fulfilled. From those left, his opinion was that "the top three priority items remaining to be addressed were transparency, … ensuring that [conservation measures] were legally sound … and transshipment …" (WCPFC, 2013b). The remaining recommendations were to be further considered at the tenth regular session of the WCPFC, in December 2014 (WCPFC, 2013b).

24. WESTERN CENTRAL ATLANTIC FISHERY COMMISSION (WECAFC)

24.1 Basic information

The Western Central Atlantic Fishery Commission (WECAFC) was founded in 1973 by FAO under Article VI of its Constitution as a fishery advisory body without a management mandate. WECAFC has competence over all marine living resources in its jurisdictional area (corresponding to the Western Equatorial Atlantic Ocean), without prejudice to the mandates of tRFMOs or organizations managing marine mammals. The current members of WECAFC are: Antigua and Barbuda, the Bahamas, Barbados, Belize, Brazil, Colombia, Cuba, Dominica, the Dominican Republic, the European Union, France, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, Jamaica, Japan, the Republic of Korea, Mexico, the Netherlands, Nicaragua, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Spain, Suriname, Trinidad and Tobago, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and Venezuela (Bolivarian Republic of). Canada and Costa Rica sometimes participate as observers.

Map 20
Western Central Atlantic Fishery Commission (WECAFC)



24.2 Findings of the performance review

WECAFC completed a short performance review in 2013–14, focusing on an analysis of its strengths and weaknesses. As WECAFC does not manage stocks, no assessment of the status of fish stocks in its jurisdictional area was included in the PR. Most of WECAFC's activities are comprised of a number of working groups on species and topics of interest, such as "spiny lobster, recreational fisheries, queen conch, development of sustainable moored FAD Fishing in the Lesser Antilles, … flying fish in the Eastern Caribbean, … management of deep-sea fisheries, and spawning aggregations." (FAO, 2014a). The spiny lobster and queen conch working group received particular praise.

"Given the size and diversity of the region and the range of fisheries issues, the Secretariat is woefully under-resourced" both financially and in terms of human resources. The secretariat consists of just one person (FAO's Barbados-based subregional fisheries officer) and his part-time secretary. Funding for WECAFC is also decreasing constantly, "caused by a general decline in availability of funds by FAO, but also by a remarkable disinterest by the Organization in its Article VI regional fishery bodies." About 40 percent of WECAFC members support turning WECAFC into an FAO Article XIV body with a management mandate, but 60 percent do not, also owing to members' financial constraints.

An analysis of strengths, weaknesses, opportunities and threats showed that the greatest strengths of WECAFC are its visionary leadership and dedicated staff, its independence, fairness and transparency. Lack of authority, coordination with research facilities and means are the greatest weaknesses. There are opportunities to attract donor funding (especially from the European Union, Japan, Norway and the United States of America), and to raise political interest among members. Threats include financial constraints among members and potential donors, and the possibility of the amount of work overwhelming the tiny secretariat.

The high-priority areas for members and stakeholders are the promotion of fisheries management best practices and up-to-date legal requirements (including the ecosystem approach and the precautionary principle). These subjects are widely recognized as being the strengths of the Commission. The least-important priority areas are post-harvest activities such as trade, capacity management, processing and marketing, and the harmonization of national legislation with international requirements. WECAFC has also been least successful in promoting food safety, trade and marketing, along with the prevention and resolution of fishing disputes, and the coordination of research.

The work of the secretariat was deemed positive overall, especially regarding information sharing, communication, and the organization of research workshops. The work of the scientific advisory group, and the different working groups, was also deemed to be positive, even more so than that of the secretariat. “The WECAFC decision making process is extremely transparent”, but not always very effective. Functioning may be improved by enabling members to vote electronically on intersessional decisions, or obligations for members to follow up on WECAFC recommendations and their implementation. At the same time, less than 40 percent of members attend WECAFC sessions regularly, and less than 25 percent attend any working groups except for the queen conch working group.

24.3 Implementation of recommendations

The WECAFC PR was presented at the fifteenth session of WECAFC, on 26–28 March 2014, in Port of Spain, Trinidad and Tobago. While there is no official report of the session at the time of writing this publication, it is known that the PR has been used in the development of WECAFC’s draft 2014–2020 strategic plan (FAO, 2014b). The draft strategic plan focuses on: the improvement of regional fisheries governance (through the implementation of the Code); increasing regional information sharing and collaboration (especially through the assessment of straddling fish stocks and other transboundary fishing issues); strengthening fisheries management and best-practice approaches (particularly through WECAFC’s working groups); and the creation of an enabling environment within the WECAFC secretariat (FAO, 2014b).

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APPENDIX 1

PERFORMANCE REVIEW PANEL MEMBERS AND AFFILIATIONS

Regional fishery body	Name of panel member	Title/expertise	Affiliation
CCAMLR	HE Jorge Berguño	Deputy Director; former ambassador	Chilean Antarctic Institute, Punte Arenas, Chile
	Dr Inigo Everson	Professor of fisheries science	Department of Environmental Sciences, East Anglia University, Norwich, United Kingdom
	Dr Enrique Marschoff	Researcher in marine biology	Argentinian Antarctic Institute, Buenos Aires, Argentina
	Dr Mike Richardson	Former Head of Polar Regions Unit, Foreign and Commonwealth Office, London, United Kingdom	United Kingdom
	Dr Neil Gilbert	Chair of the Antarctic Treaty Committee for Environmental Protection; Manager of Health, Safety and the Environment	Antarctica New Zealand, Christchurch, New Zealand
	Mr Frank Meere	Director (panel member nominated by NGO observers)	FRM Consulting Pty Ltd., Canberra, Australia
	Prof Keith Sainsbury	Professor of marine system management	Institute for Marine and Antarctic Studies, University of Tasmania, Battery Point, Australia
	Prof Ramiro Sanchez	Professor of marine policy	National Institute of Fisheries Research and Development, Universidad del Mar del Plata, Mar del Plata, Argentina
	Prof Marcelo Kohen	Professor of international law	Graduate Institute of International and Development Studies, Geneva, Switzerland
CCSBT	Mr Brian MacDonald	Executive Secretary	CCSBT
	Mr Young-Hoon Chung	Director of RFB Division; delegate of the Republic of Korea to CCSBT	Ministry for Food, Agriculture, Forestry and Fisheries, Seoul, Republic of Korea
	Mr Arthur Hore	HMS and RFMO Manager; New Zealand delegate to CCSBT	Ministry of Fisheries, Auckland, New Zealand
	Mr Hong-Yen Huang	Director of the Deep Sea Fisheries Division; delegate of Taiwan	Fisheries Agency of Taiwan, Taipei, Taiwan Province of China

Regional fishery body	Name of panel member	Title/expertise	Affiliation
		Province of China to CCSBT	
	Dr John Kalish	General Manager, Fisheries & Aquaculture; Australian delegate to CCSBT	Dept. of Fisheries, Forestry & Agriculture, Canberra, Australia
	Mr Takaaki Sakamoto	Assistant Director, International Affairs Division; Japanese delegate to CCSBT	Fisheries Agency of Japan, Tokyo, Japan
	Ms Lynda Kurnia Wardhani	Second Secretary for Economic Cooperation; Indonesian delegate to CCSBT	Embassy of the Republic of Indonesia to Australia, Canberra Australia
	Mr David A. Balton	Deputy Assistant Secretary for Oceans and Fisheries (acting as independent expert)	Department of State, Washington DC, United States of America
CECAF	(anonymous)		
CRFM	Dr Raymon van Anrooy	Fisheries Officer for the Caribbean	FAO–CAR, Barbados
	Prof Eric Franckx	Professor of International Law and Law of the Sea	Universite Libre Bruxelles, Belgium
	Ms Helga Josupeit	Senior Fisheries Expert	FAO FIPI, Rome
	Dr Blaise Kuemlangan	Chief of Development Law Branch	FAO LEGN, Rome
GFCM	Dr Judith Swan	Senior Policy and Program Officer	FAO FIPI, Rome
	Mr Philippe Ferlin	General Inspector	Ministry for Food, Agriculture and Fisheries, Paris, France
	Mr Jean-Jacques Maguire, MSc	Marine biologist/ fisheries scientist	FAO, Rome
ICCAT	Mr Glenn Hurry	Chief Executive Officer (at the time; currently Executive Director of WCPFC)	Australian Fisheries Management Authority, Canberra, Australia
	Prof Moritaka Hayashi	Professor Emeritus of International Law	Waseda University, Tokyo, Japan
	Mr Jean-Jacques Maguire, MSc	Marine biologist/ fisheries scientist	Canada (at the time)
ICES	Mr Kjartan Hoydal	NEAFC Secretary (at the time; currently director at Skrivarastova Fish and Film)	NEAFC, London
	Prof Eskild Kierkegaard	Chair of the Advisory Commission; Professor of Aquaculture	ICES; Technical University of Denmark, Copenhagen
	Mr Ben van de Wetering	Secretary General	International Commission for the Protection of the Rhine

Regional fishery body	Name of panel member	Title/expertise	Affiliation
	Dr Stephen K. Brown	Chief of the Assessment and Monitoring Division	NOAA, Washington, DC
IOTC	Mr Terje Lobach	International legal expert (formerly president of NAFO and CCAMLR)	Norway
	Dr Gerald Scott	Fisheries science expert	ICCAT, NOAA, International Seafood Sustainability Foundation
	Mr Marcus Burgener	NGO observer	World Wide Fund for Nature / The Wildlife Trade Monitoring Network
	(6 unnamed members)	Member State representatives	Australia, European Union, India, Japan, Kenya, Seychelles
IPHC	Dr Scott McCreary[1]	Principal	CONCUR, Inc., Berkeley, United States of America
	Mr Bennett Brooks, MPP	Mediation Expert	CONCUR, Inc., Berkeley, United States of America
NAFO	Prof Fabio Hazin	Professor of Fisheries and Aquaculture	Universidade Federal Rural de Pernambuco, Brazil
	Dr Milton Haughton	CRFM Secretary	CRFM, Belize
	Prof Denzil Miller	Professor of Marine Biology (at the time; currently director at the Tasmanian Dept. of Econ. Dev.)	University of Tasmania / University of Wollongong, Australia
	Mr James W. Baird	Head of the Canadian delegation to NAFO	Canada
	Mr Einar Lemche	Former President of NAFO, NASCO & NEAFC	Greenland
	Ms. Olga M. Sedykh	Deputy Head of International Law Dept.	Federal Agency for Fisheries, Russian Federation
	Mr John Spencer	European Union Head of Delegation to NEAFC	European Union
NASCO (2012)	Mr Kjartan Hoydal	Former chairman of NEAFC; currently director at Skrivarastova Fish and Film	Faroe Islands
	Mr Michael Shewchuk	Legal Officer	UNDOALOS, New York, United States of America
	Dr Judith Swan	Senior Policy and Program Officer	FAO FIPI, Rome
NEAFC (first PR, 2006)	Mr Kolbeinn Arnason	Chairman of the Working Group on the Future of NEAFC	Iceland

Regional fishery body	Name of panel member	Title/expertise	Affiliation
	Mr Martin Newman	Chairman of the NEAFC Permanent Committee of Control and Enforcement	European Union
	Mr Kjartan Hoydal	Chairman of NEAFC (at the time; currently director at Skrivarastova Fish and Film)	NEAFC, London
	Mr Michael Arbuckle	Fisheries management expert (at the time; currently fisheries expert at the World Bank)	FAO, Rome
	Mr Bruce Atkinson, MSc	Marine scientist	Regional Director of Science, Oceans and Environment, Newfoundland, Canada
	Ms Valentina Germani	Legal officer for law of the sea / ocean affairs	UNDOALOS, New York
NEAFC (second PR, 2014)	Dr Steven Murawski	Professor of Marine Science, delegate of the United States of America to ICES	University of South Florida, St. Petersburg, United States of America / ICES, Denmark
	Mr Kevern Cochrane	Senior Fishery Resources Officer	FAO, Rome
	Mr Andre Tahindro	Senior Legal Officer (retired)	UNDOALOS, New York
NPAFC	Mr Paul Steele	Canadian delegate to NPAFC, chair of the Committee on Enforcement	Canada
	Mr Yukimasa Ishida	Japanese delegate to NPAFC, chair of the Committee on Scientific Research and Statistics	Japan
	Mr Ki Baik Seong	Delegate of the Republic of Korea to NPAFC	Republic of Korea
	Dr Sergei Maksimov[2]	Russian delegate to NPAFC, chair of the Committee on Finance and Administration	the Russian Federation
	Dr Loh-Lee Low	American delegate to NPAFC	United States of America
	Prof Rosemary Rayfuse	Professor of International Law	University of New South Wales, Sydney, Australia
	Dr Ian Perry	Marine biology researcher	Pacific Biological Station, Fisheries and Oceans Canada, Nanaimo, British Columbia, Canada
PSC	49 Solutions consulting company (no further	N/A	Ottawa, Canada

Regional fishery body	Name of panel member	Title/expertise	Affiliation
	information available)[3]		
RECOFI	Mr Joseph Catanzano	Independent consultant (at the time; currently FAO consultant)	IDDRA Fisheries Management Consultancy, Montpellier, France
SEAFO	Dr Judith Swan	Senior Policy and Programme Officer	FAO FIPI, Rome
	Mr Hans Lassen, MSc	Fisheries scientist	ICES, Denmark
	Dr Moses Maurihungirire	Namibian delegate to SEAFO	Namibia
	Mr Terje Lobach	Norwegian delegate to SEAFO (at the time)	Norway
SWIOFC	Prof Fabio Hazin	Professor of Fisheries and Aquaculture	Universidade Federal Rural de Pernambuco, Brazil
WCPFC	Prof Fabio Hazin	Professor of Fisheries and Aquaculture	Universidade Federal Rural de Pernambuco, Brazil
	Dr Denzil Miller	Professor of Marine Biology, Director at the Tasmanian Dept. of Econ. Dev.	University of Tasmania / University of Wollongong, Australia
	Mr Ichiro Nomura	Previously FAO Assistant Director-General for Fisheries, retired in 2010	Japan
	Dr Judith Swan	Senior Policy and Programme Officer	FAO FIPI, Rome
	Mr John Spencer	European Union delegate to WCPFC	European Union
	Hon. Min. Rolland Kun	Nauru delegate to WCPFC	Nauru
	Mr Malcolm Sarmiento	Delegate of the Philippines to WCPFC	Philippines
WECAFC	Ms Helga Josupeit	Senior Fisheries Expert	FAO FIPI, Rome
	Dr Judith Swan	Senior Policy and Programme Officer	FAO FIPI, Rome

[1] The authors of the performance review acknowledge the guidance and help of the IPHC steering committee in writing their report. The IPHC steering committee consisted of Mr John Field (United States Department of State) and Ms Allison Webb (Fisheries and Oceans Canada).

[2] Later replaced by Dr Vladimir Belayev, Vice-President of the NPAFC (from August 2010).

[3] 49 Solutions was aided by a PSC steering committee, composed of Gerry Kristianson (Sport Fishing Advisory Board, Canada); Brian Riddell (Canadian Commissioner, PSC); Rob Allen (Jamestown S'Klallam Tribe); and John Field (United States Department of State).

APPENDIX 2

TIMELINES FOR THE COMPLETION OF PERFORMANCE REVIEWS

The table is in chronological order, by final report dates

Regional fishery body	Date of performance review ToR	First meeting of panel	Final report date	Time elapsed between decision to review and final report	Time elapsed between first meeting of reviewers and final report
NASCO ("Next Steps" 2005)	7 June 2004	5–8 October 2004	4 May 2005	11 months	7 months
NEAFC	14–18 November 2005	26–28 April 2006	6 November 2006	1 year	6 months
CCSBT	October 2007 (14th Annual Meeting of CCSBT)	N/A	3–4 July, 2008 (for the panel review); September 2008 (for the independent expert review)	9 months / 11 months	N/A
CCAMLR	22 October – 7 November 2007 (26th Annual Meeting of CCAMLR)	23–27 June 2008	1 September 2008	10 months	3 months
ICCAT	December 2007	March 2008	8 September 2008	9 months	6 months
IOTC	13–18 May 2007	25–29 February 2008	January 2009	1 year and 7 months	11 months
SEAFO	2009	15–19 February 2010	May 2010	N/A	10 months
RECOFI	12–14 May 2009	N/A	Not stated in report; sometime after 10–11 May 2010	1 year +	N/A
NPAFC	17–25 November 2008 (16th Annual Meeting; but postponed until 2010)	2–6 November 2009	10 September 2010	1 year and 10 months	10 months
GFCM	23 March 2009 (33rd session of GFCM)	10 February 2010	9–10 May 2011 (35th Session of GFCM)	2 years and 2 months	1 year and 3 months
NAFO	September 2010	28 February – 4 March 2011	5 August 2011	11 months	5 months

Regional fishery body	Date of performance review ToR	First meeting of panel	Final report date	Time elapsed between decision to review and final report	Time elapsed between first meeting of reviewers and final report
WCPFC	8–12 December 2008 (but postponed in December 2010)	July 2011	31 January – 4 February 2012	3 years and 2 months	7 months
CECAF	29 November – 3 December 2010 (FAO Council)	15–17 February 2011	14–16 March 2012 (20th Session of CECAF)	1 year and 4 months	11 months
PSC	N/A	mid-October 2011	31 March 2012	N/A	5 months
NASCO (2012)	7 April 2011	30 January 2012	1 April 2012	1 year	2 months
IPHC	2011 (not specified)	30 November – 1 December 2011	30 April 2012	N/A	5 months
ICES	October 2010	17–18 November 2011	31 August 2012	1 year and 10 months	9 months
SWIOFC	29 November – 3 December 2010	15–17 February 2012	Unknown (before 11 October 2012)	1 year and 11 months	9 months
CRFM	March 2011 (Third Ministerial Council)	30 August – 4 September 2012	29 January 2013	1 year and 10 months	5 months
WECAFC	N/A	October 2013	January 2014	N/A	3 months

APPENDIX 3

APPROXIMATE COSTS OF PERFORMANCE REVIEWS

Regional fishery body	Fiscal years	Amount in currency of account	Amount in USD	Number of experts in panel	Time spent by panel on the review (months)	Approximate cost per external expert per month
NEAFC	2005–06	GPB50 000	USD86 000	6 (4 internal, 2 external)	6	USD7 170
CCAMLR	2007–08	AUD100 000	USD94 000	9 (1 internal, 8 external)	3	USD3 920
CCSBT	2008	AUD6 900	USD6 500	7 + 1 (7 internal, 1 external)	3	USD2 170
ICCAT	2009	EUR106 265	USD145 500	3 (all external)	6	USD8 080
GFCM	2009–2011	USD65 000		3 (all external)	15	USD1 445
SEAFO	2010	NAD210 000	USD19 700	4 (2 internal, 2 external	10	USD985
WCPFC	2010	USD100 000		7 (5 external, 2 internal)	7	USD2 855
NAFO	2011	USD75 000		7 (4 internal, 3 external)	5	USD5 000

Caveat: The table is for rough comparisons only. Conversions from currencies of account into USD, wherever applicable, were based on the mean rate of exchange in force in July 2014. Total costs, as accounted by the relevant RFMOs, may or may not include travel, printing and additional research costs and expenses in addition to the panel members' honoraria. The approximate costs of external experts per month assume that internal panel members were remunerated (and their expenses paid) by their delegating States, which may not always have been the case. The approximate costs of external experts per month assumes that experts constantly worked, for equal amounts of time, during the entire preparation time of the reports, and that they received equal honoraria.

APPENDIX 4

"KOBE" CRITERIA FOR REVIEWING THE PERFORMANCE OF RFMOS

	Area	General criteria	Detailed criteria
1.	Conservation and management	Status of living marine resources	• Status of marine living resources under the purview of the RFMO. • Trends in the status of those resources. • Status of species that belong to the same ecosystems as, or are associated with or dependent upon, targeted marine living resources. • Trends in the status of those species.
		Ecosystem approach	• Extent to which the RFMO decisions take account of and incorporate an ecosystem approach to fisheries management.
		Data collection and sharing	• Extent to which the RFMO has agreed formats, specifications and time frames for data submissions, taking into account Annex 1 of the 1995 UN Fish Stocks Agreement. • Extent to which the RFMO Contracting Parties, individually or through the RFMO, collect and share complete and accurate data concerning marine living resources and other relevant data in a timely manner, including analysis of trends in fishing activities over time. • Extent to which fishing and research data and fishing vessel and research vessel data are gathered by the RFMO and shared among Contracting Parties. • Extent to which the RFMO is addressing any gaps in the collection and sharing of data as required.
		Quality and provision of scientific advice	• Extent to which the RFMO produces the best scientific advice relevant to the marine living resources under its purview, as well as to the effects of harvesting, research, conservation and associated activities, on the marine ecosystem.
		Adoption of conservation and management measures	• Extent to which the RFMO has adopted measures based on the best scientific advice available to ensure the long-term conservation and sustainable use of marine living resources in the Convention Area. • Extent to which the RFMO has applied a precautionary approach as set forth in Article 6 of the 1995 UN Fish

	Area	General criteria	Detailed criteria
			Stocks Agreement, including the application of precautionary reference points. • Extent to which consistent/compatible management measures have been adopted as set out in Article 7 of the 1995 UN Fish Stocks Agreement. • Extent to which the RFMO successfully allocates fishing opportunities consistent with the RFMO's Convention and Article 11 of the 1995 UN Fish Stocks Agreement. • Extent to which the RFMO has moved toward the adoption of conservation and management measures for previously unregulated fisheries, including new and exploratory fisheries. • Extent to which the RFMO has taken due account of the need to conserve marine biological diversity and minimize harmful impacts of fishing activities and research on living marine resources and marine ecosystems. • Extent to which the RFMO has adopted 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 through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques. • Extent to which the RFMO has adopted and is implementing effective rebuilding plans for depleted or overfished stocks including guidance for stocks under moratoria.
		Capacity management	• Extent to which the RFMO has identified fishing capacity levels commensurate with the conservation objectives of the RFMO's Convention. • Extent to which the RFMO has taken actions to prevent or eliminate excess fishing capacity and effort. • Extent to which the RFMO monitors the levels of fishing effort, including taking into account annual notifications of participation by Contracting Parties.
2.	Compliance and enforcement	Flag State duties	• Extent to which the RFMO Contracting Parties are fulfilling their duties as flag States under the RFMO's Convention, pursuant to measures adopted by the RFMO, and under other international instruments, including, inter alia, the 1982 Law of the Sea Convention, 1995 UN Fish

	Area	General criteria	Detailed criteria
			Stocks Agreement and the 1993 FAO Compliance Agreement, as applicable.
		Port State measures	• Extent to which the RFMO has adopted measures relating to the exercise of the rights and duties of its Contracting Parties as port States, as reflected in Article 23 of the 1995 UN Fish Stocks Agreement, as well as the minimum standards set out in the 2009 FAO Agreement on Port State Measures to Combat IUU Fishing. • Extent to which these measures are effectively implemented.
		Monitoring, control and surveillance (MCS)	• Extent to which the RFMO has adopted integrated MCS measures (e.g. required use of boarding and inspection schemes, VMS, observers, catch documentation and/or trade tracking schemes, and restrictions on transhipment). • Extent to which these measures are effectively implemented.
		Follow-up on infringements	• Extent to which the RFMO and its Contracting Parties follow up on infringements to conservation and management measures.
		Cooperative mechanisms to detect and deter noncompliance	• Extent to which the RFMO has established adequate cooperative mechanisms to both monitor compliance and detect and deter non-compliance (e.g. compliance committees, vessel lists, sharing of information about non-compliance). • Extent to which these mechanisms are being effectively utilized.
		Market-related measures	• Extent to which the RFMO has adopted measures relating to the exercise of the rights and duties of the RFMO Contracting Parties as market States for marine living resources under the purview of the RFMO. • Extent to which these measures are being effectively utilized.
3.	Decision-making and dispute settlement	Decision-making	• Efficiency of the RFMO meetings in addressing critical issues in a timely and effective manner. • Extent to which the RFMO has transparent, consistent and adequate decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner.
		Dispute settlement	• Extent to which the RFMO has established adequate mechanisms for resolving disputes.

	Area	General criteria	Detailed criteria
4.	International Cooperation	Transparency	• Extent to which the RFMO is operating in a transparent manner, taking into account Article 12 of the 1995 UN Fish Stocks Agreement. • Extent to which the RFMO's decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.
		Relationship with non-contracting parties	• Extent to which non-Contracting Parties have undertaken fishing activities in the RFMO's Regulatory Area. • Extent to which the RFMO facilitates cooperation with non-Contracting Parties, including encouraging non-Contracting Parties to become Contracting Parties or to implement the RFMO's conservation and management measures voluntarily. • Extent to which the RFMO provides for action in accordance with international law against non-Contracting Parties undermining the objective of the Convention, as well as measures to deter such activities.
		Cooperation with other international organizations	• Extent to which the RFMO cooperates with other RFMOs and other international organizations.
		Special requirements of developing States	• Extent to which the RFMO recognizes the special needs of developing States and cooperates with developing States, taking into account Part VII of the 1995 UN Fish Stocks Agreement. • Extent to which the RFMO's Contracting Parties, individually or through the Commission, provide relevant assistance to developing States as reflected in Article 26 of UN Fish Stocks Agreement.
5.	Financial and administrative issues	Availability of resources for activities	• Extent to which financial and other resources are made available to achieve the aims of the RFMO and to implement the RFMO‘s decisions.
		Efficiency and cost-effectiveness	• Extent to which the RFMO is efficiently and effectively managing its human and financial resources, including those of the secretariat. • Extent to which the schedule and organization of the meetings could be improved.

APPENDIX 5

DESCRIPTION OF INTERNATIONAL FISHERIES LAW INSTRUMENTS

The text below is an excerpt (unedited) from the RECOFI Performance Review Report (RECOFI, 2011, pp. 46–51), by Joseph Catanzano.

Primary instruments

UNCLOS

The United Nations Convention on the Law of the Sea (UNCLOS) of 10 December 1982, entered into force on 16 November 1994. To date a total of 155 States and the European Community have ratified or acceded to UNCLOS.[48]

UNCLOS creates a legal framework for the governance of the world's oceans based on a sectorial approach to their management which covers, *inter alia*: fishing, navigation, mining, oil and gas. For the purpose of fisheries management UNCLOS divides the oceans in two basic areas: the areas under jurisdiction of Coastal States and the High Seas. It defines various internationally recognized maritime zones including Internal Waters, Territorial Sea and Exclusive Economic Zone (EEZ). Coastal States have sovereignty over their territorial sea subject to the right of innocent passage and have authority to prescribe legislation with regard to "conservation of the living resources of the sea."[49]

On fisheries the most significant contribution was the establishment of a legal regime for the EEZ within which Coastal States have "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources whether living or non- living."[50] At the same time Coastal States are under the obligation of determining the Total Allowable Catch (TAC) and granting foreign vessels access to the surplus in the TAC, based in the principle of optimum utilization of the living resources in the EEZ.[51]

As fisheries occur within and outside national borders, UNCLOS defines a specific regime for shared fishing stocks: trans-boundary (shared with neighboring countries) as well as straddling and highly migratory (shared with distant water fishing States operating in the high seas adjacent to the EEZs).[52] The Convention requires States to "either directly or through appropriate sub regional or regional organizations agree upon measures necessary for the conservation of these stocks in the adjacent area."[53] The duty of cooperation is also enshrined in Arts 117 and 118 requiring States to cooperate with other States in the conservation and management of living resources in the high seas, either by direct cooperation or through the Regional Fisheries Bodies (RFBs).

UNFSA

In the early 1990 it was recognized that the legal framework of UNCLOS was not sufficient to prevent depletion of the world's fish stocks. After three years of intense negotiations the United Nations Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA) was adopted in 1995 and entered into force on 11 December 2001. To date a total of 70 States and the European Community have ratified or acceded to UNFSA.[54] The UNFSA broad

[48] www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm
[49] Art. 21/1 (d).
[50] Art. 56/1 (a).
[51] Art. 61 and 62.
[52] Art. 63 and 64.
[53] Art. 63/2.
[54] www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm

objective is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.[55]

The general management principles established under Article 5 apply both within and beyond areas under national jurisdiction and require States to ensure the long-term sustainability of these fish stocks and their effective utilization. These principles require Coastal States and States fishing in the high seas to *inter alia*: minimize pollution; protect biodiversity in the marine environment; take measures to prevent or eliminate overfishing and excess fishing capacity; collect and share data relating to vessels position, fishing effort and catches of target and non-target species; and implement conservation and management measures through effective Monitoring, Control and Surveillance (MCS). The application of the precautionary approach is established under Article 6, and Article 7 emphasizes the need to ensure compatibility between conservation measures established for the high seas and those adopted in areas under national jurisdiction.

Furthermore, in defining the mechanisms for international cooperation, the UNFSA strengthens the role played by RFBs in the conservation and management of straddling and highly migratory fish stocks. They are set out as the preferred means through which States should cooperate to achieve and enforce conservation objectives both in the high seas and in areas under national jurisdiction, defining under Article 9 legally binding arrangements upon which States are expected to agree in order to achieve sustainable management of fisheries. The functions of an effective RFB are established under Article 10.

Where no RFB exists for an existing or emerging fishery, States must cooperate to establish one, where an RFB exists States that wish to fish for that resource must join the RFB or, at the very least, conduct themselves in accordance with its rules. Transparency in the activities developed within the RFBs is required under Article 12.

Another important development for international law is the increased emphasis on the responsibilities of Flag States for their fishing vessels which include, *inter alia*, the following obligations:[56] to take measures to ensure that vessels flying its flag comply with conservation measures; to establish a national record of fishing vessels authorized to fish on the high seas; to monitor, control and exercise surveillance over such vessels.

FAO Compliance Agreement

The FAO Conference at its Twenty-seventh Session (November 1993), through Resolution 15/93, approved the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas for submission to Governments for acceptance. The Agreement entered into force on 24 April 2003 and today has a total of 35 Parties including the European Community. The Agreement was developed by FAO as an urgent response to the Declaration of Cancun in 1991[57] which called upon States to: “take effective action consistent with international law, to deter reflagging of fishing vessels as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas”. As noted in its Preamble “the Agreement will form an integral part of the International Code of Conduct for Responsible Fishing”.

The Agreement elaborates upon the provisions of Art. 94 of UNCLOS on the duties of the Flag State and aims at making them applicable to fishing vessels in the high seas requiring, on the one hand, States whose vessels fish in the high seas to take steps to prevent their vessels from undermining measures to the conservation and management of the living resources of the high seas and, on the other hand, to increase transparency of high seas fishing through the collection and dissemination of data.

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[55] Art. 2.
[56] Art. 18.
[57] Declaration of Cancun, 1991: www.intfish.net/treaties/cancun.htm

Both the UNFSA and the FAO Compliance Agreement aim to tackle the problem of overfishing in the high seas. There is however a number of distinguishing features that should be noted to facilitate the overview of the national fisheries legislation provided under Section 4:

- The scope of the FAO Compliance Agreement is not restricted to straddling stocks and highly migratory fish stocks as the UNFSA, but rather applies to all species;
- The requirements to maintain records are more developed under the FAO system than under the UN system;
- The FAO Compliance Agreement allows Parties to exempt fishing vessels of less than 24 meters in length entitled to fly its flag from the application of the Agreement whereas these vessels may not normally be exempted from the operation of the UNFSA;
- The Flag State is the main target of the FAO Compliance Agreement whereas the UNFSA involves other actors and emphasizes the role of the RFBs.

Secondary instruments

Code of Conduct for Responsible Fisheries

The Code of Conduct for Responsible Fisheries (CCRF) was adopted unanimously on 31 October 1995. Consistently with the primary instruments above, it establishes non-mandatory principles and standards applicable to the conservation, management and development of all modern fisheries. This repository of principles provides a framework for national and international efforts to ensure the sustainable exploitation of aquatic living resources.

The CCRF covers all aspects of fisheries, including capture, processing and trade in fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management. Article 2 defines its broad objectives which include: to establish international standards of behavior for responsible fishing and fisheries activities; to serve as guidance for States in establishing or improving the legal and institutional framework for fisheries; to promote cooperation in research, conservation and management.

The overall purpose of the CCRF is to facilitate structural change within the fisheries sector so that stocks are exploited in a long-term, rational and sustainable manner. Although aimed particularly at governments and their national fisheries administrations, it is also recognized that RFBs have a special role to play in implementing the CCRF where fish stocks are shared.

Special requirements of developing countries are defined under Article 5 which include “the adoption of measures to address the needs of developing countries specially with regard to financial and technical assistance, technology transfer, training and scientific cooperation and in enhancing their ability to develop their own fisheries as well as to participate in High seas fisheries, including access to such fisheries.”

Fisheries management principles and objectives are defined under Article 7 and include management framework and procedures, data gathering and the precautionary approach. Article 8 defines fishing operations and distinguishes the duties of all states from those of the Flag States and Port States.

The CCRF is voluntary in nature. It is not static and has been complemented by other instruments elaborated by FAO, namely the FAO Compliance Agreement and the International Plans of Action. The provisions of the CCRF have also been further detailed by technical guidelines issued by FAO on fisheries management, fishing operations, the application of the precautionary approach, aquaculture development and inland fisheries.

As will be assessed below it remains the fundamental framework for international fisheries management and is widely referred at national and regional levels.

International Plans of Action

Since the CCRF was adopted, FAO has been progressively adopting a number of International Plans of Action (IPOAs) on various fisheries-related issues of concern. These IPOAs are voluntary instruments, adopted within the framework of the CCRF, which are designed to reflect an international consensus among FAO members on the implementation of specific measures referred to in the CCRF. The IPOA for reducing incidental catch of Seabirds in longline fisheries (IPOA Seabirds), the IPOA for the conservation and management of Sharks (IPOA Sharks) and the IPOA for the management of fishing Capacity (IPOA Capacity) were developed in 1999 when COFI members agreed on the need for some form of international agreement in order to facilitate compliance with the CCRF. These three soft law instruments were adopted by the 23rd Session of the Committee on Fisheries (COFI) in February 1999 and endorsed by the FAO Council at the session held in June 1999.

The IPOA to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA IUU) was developed in response to a call from the 23rd Session of COFI, in February 1999, and was adopted by consensus at the 24th Session of COFI on March 2001. The **IPOA IUU** is one of the most comprehensive IPOA. It aims to prevent, deter and eliminate IUU fishing requiring States to give full effect to relevant international instruments, to not act inconsistently with relevant international instruments, even when they have not ratified them, and to fully and effectively implement the CCRF.[58] To be fully effective, the IPOA should be implemented by all States, either directly, in cooperation with other States, or indirectly through relevant RFBs or through FAO and other appropriate international organizations.

Measures to prevent, deter and eliminate IUU fishing should be based on the earliest possible phased implementation of national and regional plans of action. These measures should be comprehensive, addressing factors affecting all capture fisheries, and be implemented in a transparent and non-discriminatory manner.

The **IPOA-Capacity** requires States and RFBs to apply its principles consistently with international law and within the framework of the concerned organisation's competencies. Its main objective is to achieve an efficient, equitable and transparent management of fishing capacity world-wide preferably by 2003 but no later than 2005. The above objective may be achieved through a series of actions related to four major strategies: (i) the conduct of national, regional and global assessments of capacity and improvement of the capability for monitoring fishing capacity; (ii) the preparation and implementation of national plans to effectively manage fishing capacity and of immediate actions for coastal fisheries requiring urgent measures; (iii) the strengthening of RFBs and related mechanisms for improved management of fishing capacity at regional and global levels; and (iv) immediate actions for major trans-boundary, straddling, highly migratory and high seas fisheries requiring urgent measures.

Urgent actions are defined under Part III which include assessment and monitoring of fishing capacity and preparation and implementation of National Plans of Action (NPOAs).

The **IPOA Sharks** aims at ensuring the conservation and management of sharks and their long-term sustainable use. It applies to waters in which sharks are caught by their own or foreign vessels and to States whose vessels catch sharks on the high seas. The term "shark" includes all the species of sharks, skates rays and chimaeras, and the term "shark catch" includes directed, by-catch, commercial, recreational and other forms of taking sharks. Each State is responsible for developing, implementing and monitoring its NPOA-Sharks. When developing a Shark-Plan, experience of sub-regional and regional management organisations should take into account, as appropriate. The NPOA Sharks should aim to ensure that *inter alia*: (i) shark catches from directed and non-directed fisheries are sustainable; (ii) assess threats to sharks populations; (iii) identify and provide special attention, in particular to vulnerable or threatened shark stocks; (iv) improve and develop frameworks for establishing and

[58] Art. IV (10-15).

coordinating effective consultation involving all stakeholders in research, management and educational initiative within and between States; (v) minimize unutilized incidental catches of sharks.

The **IPOA-Seabirds** applies to States in the waters of which longline fisheries are being conducted by their own or foreign vessels and to States that conduct longline fisheries on the high seas and in the EEZ of other States. The text sets out a set of activities which implementing States should develop, including an assessment of whether a problem exists with respect to the incidental catch of seabirds in its longline fisheries. The IPOA Seabirds also provides a summary description of appropriate mitigation measures which States should consider for inclusion in their respective NPOA Seabirds.

UN Resolutions and Declarations

There are several UN General Assembly Resolutions relevant to international fisheries namely with regard to large-scale pelagic driftnets, ocean affairs and law of the sea and sustainable fisheries.

The recent Resolution 62/177 from 28 February 2008 on sustainable fisheries calls upon States, directly or through RFBs, to apply widely the precautionary approach in accordance with the CCRF and to collect and report to FAO required catch and effort data, and fishery related information, in a complete accurate and timely manner, including for straddling and highly migratory fish stocks. It also calls upon States to urgently adopt measures to fully implement the IPOA on Sharks for directed and non-directed shark fisheries and requests FAO to prepare a comprehensive report of its implementation to be presented to the next COFI.

Under the same Resolution the UN General Assembly emphasizes that IUU remains one of the greatest threats to marine ecosystem and calls upon States to comply fully with all existing obligations and take all necessary steps to implement the IPOA-IUU. It further calls upon States to urgently reduce the capacity of the world's fishing fleets to levels commensurate with the sustainability of the fish stocks and to recognize the legitimate rights of developing countries to develop their fisheries for straddling and highly migratory fish stocks consistent with Art. 25 of UNFSA, Art. 5 of the CCRF and the IPOA on capacity

Several relevant ministerial declarations adopted under FAO‟s convening function of relevance to the matters covered under this report include: the Rome Declaration on IUU (2005);[59] the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem (2002);[60] and the Rome Declaration on the implementation of the CCRF (1999).[61]

[59] ftp://ftp.fao.org/fi/DOCUMENT/ministerial/2005/iuu/declaration.pdf
[60] ftp://ftp.fao.org/fi/DOCUMENT/reykjavik/y2198t00_dec.pdf
[61] http://www.fao.org/DOCREP/005/X2220E/X2220E00.HTM

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