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## Performance reviews of regional fisheries management organizations and arrangements

**Submitted by**  
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## Table of contents

Preamble	2
Introduction	2
Recommendations	4
Regular reviews and oversight	4
Wider participation by all stakeholders	5
Global standards, criteria and guidelines	5
Flag state duties	5
Transparent and consistent decision-making	6
Performance reviews of regional fisheries management organizations and arrangements – some examples	6
(i) the scope of performance reviews of regional fisheries management organizations and arrangements and the importance and role of such reviews for the implementation of the Agreement	6
(ii) the process and structure of performance reviews of regional fisheries management organizations and arrangements, including in relation to independent evaluation, participation, transparency, accountability and periodicity	8
(iii) implementation of the recommendations of, and other follow-up to, performance reviews of regional fisheries management organizations and arrangements	9
(iv) lessons learned and best practices from past performance reviews of regional fisheries management organizations and arrangements	11
(v) actions needed to further strengthen the effectiveness of the performance review process, including through capacity-building	12
UNGA Bottom Fisheries	12

## Preamble

This brief submission responds to General Assembly resolution 73/125, which requested the Secretary-General convene a *14th round of informal consultations of States Parties to the UN Fish Stocks Agreement (UNFSA) on Performance reviews of regional fisheries management organizations and arrangements*, for two days in May 2019, and which requested the Secretary-General to invite observers to submit their views. This report takes some examples from performance reviews to illustrate the views of the submitting organizations, and makes recommendations.

The 2016, UNFSA Resumed Review Conference made a set of recommendations.<sup>1</sup> These must be at the heart of this review. They raise important benchmarks: Are the performance reviews regular? Do they include independent evaluation? Do they seek information from all stakeholders? Are there follow-up actions, including implementation? Do they include transparency, publicity and accountability? Are actions to implement recommendations publicly available? And how to coordinate and guide RFMOs to better implementation and performance?

After many RFMOs having gone through at least one performance review, and sometimes two, **it is our view that key provisions of the UNFSA continue to be far from effectively implemented** by most, if not all, RFMOs, and progress continues to be urgently needed. In this submission, we suggest measures aimed at increasing oversight over the review process and the implementation of performance review recommendations.

## Introduction

In 2015, States at the United Nations agreed to the 2030 Agenda for Sustainable Development, including a stand-alone Sustainable Development Goal for the Ocean<sup>2</sup> (SDG 14). Sustainable fisheries are key to achieving several of the targets under SDG 14, as well as a number of targets under other SDGs, and states members of RFMOs have a particular role to play here. The opportunity provided by the UNFSA Resumed Review Conference to provide feedback on the performance reviews of RFMOs is therefore timely. Much remains to be done in order to improve fisheries management to achieve sustainability and healthy ocean.

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<sup>1</sup> These were:

Regular performance reviews of RFMO/As that include some element of independent evaluation, seeking relevant information from all stakeholders;  
Develop best practice guidelines for conducting performance reviews and implementing their results, and;  
Establish mechanisms to follow-up actions in response to performance reviews, including the implementation of the recommendations, when necessary, in a timely manner, including aspects such as transparency, publicity and accountability, and ensure that information about actions taken to implement the recommendations from performance reviews are made publicly available.

<sup>2</sup> <https://sustainabledevelopment.un.org/sdg14>

In addition, under the auspices of the United Nations General Assembly (UNGA), States are currently negotiating a new global legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) to conserve and sustainably use biodiversity of areas beyond national jurisdiction. This focus on marine biodiversity needs to be taken onboard by all RFMOs, to ensure fisheries management within a holistic integrated and ecosystem-based approach to how we conserve, restore and sustainably use the ocean and its resources into the future.

RFMOs are sectoral regional bodies, subject to international law, including UNCLOS and the UNFSA, with obligations stemming from their constitutions and directions and commitments from numerous UNGA resolutions, as well as from the wider international governance and treaty framework. The review of their performance should be based on common criteria reflecting global standards.<sup>3</sup>

The UNFSA, an UNCLOS implementing agreement, lacks the institutional architecture that provides a global body which might hold RFMOs into account for their lack of performance, so review of performance reviews, as well as of the implementation of their recommendations, is done through the adjourned and resumed Review Conference.

The UNFSA parties have a commitment to undertake RFMO performance reviews, develop best practice guidelines for conducting performance reviews, to ensure consistency and harmonization, establish mechanisms to follow-up actions in response to performance reviews, including the timely implementation of the recommendations, including aspects such as transparency, publicity and accountability, and ensure that information about actions taken to implement the recommendations from performance reviews are made publicly available.<sup>4</sup>

Based on FAO's monitoring of assessed stocks, the fraction of fish stocks that are within biologically sustainable levels has exhibited a decreasing trend from 90.0 percent in 1974 to 66.9 percent in 2015, while the percentage of stocks fished at biologically unsustainable levels

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<sup>3</sup> See FAO, Performance Reviews by Regional Fishery Bodies: Introduction, Summaries, Synthesis and best Practices. 2012. At

<http://www.fao.org/3/i2637e/i2637e00.pdf>

FAO, The Implementation of Performance Review reports by Regional Fishery Bodies 2004-2014., 2004–2014. (2014)

Advance and unedited report of the resumed 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 (English only). 2016. At

[http://www.un.org/Depts/los/reference\\_files/Advance\\_and\\_unedited\\_report\\_of\\_the\\_resumed\\_Review\\_Conference\\_on\\_the\\_Agreement.pdf](http://www.un.org/Depts/los/reference_files/Advance_and_unedited_report_of_the_resumed_Review_Conference_on_the_Agreement.pdf).

<sup>4</sup> Advance and unedited report of the resumed 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. 2016. At

[http://www.un.org/Depts/los/reference\\_files/Advance\\_and\\_unedited\\_report\\_of\\_the\\_resumed\\_Review\\_Conference\\_on\\_the\\_Agreement.pdf](http://www.un.org/Depts/los/reference_files/Advance_and_unedited_report_of_the_resumed_Review_Conference_on_the_Agreement.pdf).

Annex, Outcome of the resumed Review Conference Para B.2.

increased from 10 percent in 1974 to 33.1 percent in 2015.<sup>5</sup> This underlines the need to fundamentally reform RFMO performance, to manage fish stocks sustainably, implement the ecosystem approach and manage fisheries under their competence for the effects of climate change and ocean acidification.

RFMOs purport to have legitimacy from the international community, and as such, not only should the performance reviews rigorously review their practice and performance to ensure these measure up to international criteria, and evaluate the extent to which states take these obligations and commitments into the RFMOs, but there must be an international level review of those performance reviews and their implementation.

WWF and TRAFFIC's Follow the Leader report<sup>6</sup> identified some overarching recommendations aimed at addressing some of the common impediments to improved performance by RFMOs. These recommendations are directed towards strengthening the will and capacity of RFMOs and their member States, promoting the adoption of precautionary and ecosystem approaches to management, facilitating continuous improvement and accountability, and maximizing opportunities for collaboration and transparency. One element is to require all states involved in the whole supply chain to become parties to the UNFSA agreement. Many of the report's recommendations have still to be implemented.

## Recommendations

Our recommendations to the resumed UNFSA Review Conference are summarized below.

### Regular reviews and oversight

There should be a regular review of RFMO performance reviews and implementation of their recommendations, every two to three years, at the UN level. RFMO performance is a key measure of the implementation of the UNFSA and the need for the Review Conference to be repeatedly resumed has underlined the necessity for ongoing review of RFMOs.

Recommendations of previous reviews should be taken into account and their implementation be assessed. It is very important that instances where the recommendations of performance reviews have not been implemented are identified, including causes for such lack of implementation, and follow up actions be considered.

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<sup>5</sup> FAO, The State of the World Fisheries and Agriculture. 2018. <http://www.fao.org/documents/card/en/c/19540EN>. Page 39.

<sup>6</sup> Willock A, Lack M (2006) Follow the Leader: Learning from experience and best practice in regional fisheries management organizations. WWF International. At: <http://wwf.panda.org/?69480/Follow-the-leader-Learning-from-experience-and-best->

## Wider participation by all stakeholders

States that are members of RFMOs are accountable to the wider international community. Likewise, RFMO performance is not simply an exercise for the RFMO membership or the fisheries sector, but for all states and stakeholders with a real interest in biodiversity in areas beyond national jurisdiction.

A review should include comments from member States, observers and the scientific community, as well as the wider community of States, on the effectiveness of the RFMO and the deficiencies and gaps to be addressed.

## Global standards, criteria and guidelines

RFMO performance reviews need to be based on global standards, criteria and guidelines that reflect global obligations in international law flowing from the provisions in relevant agreements and the commitments made in relevant bodies.

There is today no globally agreed standard or guideline against which any and all regional fisheries management organizations can be reviewed, as was called for in the 2016 Review Conference. This setting of standards and guidelines needs to be at the UN level. These standards need to be rigorous enough to address current practices as well as capable of adapting to changes in fishing practices, technology and environmental conditions.

Performance reviews should take into account the structure, processes, procedures, and expertise of subsidiary bodies - Scientific and Compliance Committees for example - as well as whether their advice has been implemented and if not, why not.

Where relevant, performance reviews should provide a comparison of practices between different RFMOs. This exercise can show similar challenges in different areas and potential best practices to be adopted to harmonize approaches on conservation measures, compliance, scientific assessments and ultimately improve the performance

## Flag state duties

As far as compliance and enforcement is concerned, performance reviews should look into how the flag state duties are adequately reflected in current measures and how and to what extent they are implemented. A review of the compliance process and whether it allows for wide participation, full disclosure, adequate information and transparency is essential. For instance, in the last ICCAT Performance review, the Panel was not able to assess whether Flag States' responsibilities were executed correctly, as it didn't have enough information at its disposal.<sup>7</sup>

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<sup>7</sup> ICCAT performance review, page 50. At [https://www.iccat.int/documents/other/0-2nd\\_performance\\_review\\_tri.pdf](https://www.iccat.int/documents/other/0-2nd_performance_review_tri.pdf).

## Transparent and consistent decision-making

With respect to governance, a performance review should investigate the extent to which a given RFMO has transparent and consistent decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner, and that implement scientific advice from the Scientific Committee.

RFMOs should be set up as stand-alone conventions under the Fish Stocks Agreement to ensure that the RFMO is a matter between states and a matter of state accountability within the context of UNCLOS, facilitating the development of and adherence to transparency and globally agreed standards etc.

## Performance reviews of regional fisheries management organizations and arrangements – some examples

In this section, we give some examples from select RFMO reviews to illustrate our views on the topics suggested in the letter inviting NGOs to submit our views.

### (i) the scope of performance reviews of regional fisheries management organizations and arrangements and the importance and role of such reviews for the implementation of the Agreement

Performance reviews are crucial to improve the performance of RFMOs in implementing the UN Fish Stocks Agreement requirements, international fisheries policies, as well as RFMO Conventions' objectives. Review outcomes include providing advice on options for improving practice based on internationally recognized best practices. Issues needed to be covered include the following categories: Conservation and Management Measures; Compliance and enforcement; Decision making and dispute settlement; International cooperation; Financial and administrative issues; and Compliance with international instruments<sup>8</sup>.

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<sup>8</sup> Issues which need to be covered include: **Conservation and Management Measures (CMM):** Status of fisheries resources, including non-target and associated species; Ecosystem-based management; Data collection; Quality and provisions of scientific advice; Adoption of CMM; Capacity management  
**Compliance and enforcement:** Flag state duties; Port state measures; MCS; Follow-up on infringements; Cooperative mechanisms to detect and deter non-compliance; Market-related measures  
**Decision making and dispute settlement:** Decision making; Dispute resolution  
**International cooperation:** Transparency (participation of observers such as NGOs); Relationship with cooperating non-contracting parties; Relationship with non members; Cooperation with International organizations; Special requirements of developing states  
**Financial and administrative issues:** Availability of resources for activities; Efficiency and Cost-effectiveness  
**Compliance with international instruments** including UNCLOS, the United Nations Fish Stocks Agreement, the FAO Code of Conduct, the International Plan of Action on Illegal, Unreported and Unregulated Fisheries (IPOA-IUU), the FAO Compliance Agreement and the 2009 FAO Agreement on

The evolution in the status of stocks is a key indicator at the core of RFMO performance. It is important to have a clear understanding on how far conservation and management measures for both target stocks and non-target species are ensuring the long-term sustainability of such stocks and species, where improvement is needed or what are the governance gaps impacting on the state of the stocks.

It is particularly important to assess the implementation of key provisions of the UNFSA. The general failure to adopt limit and target reference points and harvest control rules, with some exceptions, is a fundamental failure to implement the precautionary approach. In contrast to the requirements contained in Annex II of the UNFSA, RFMOs continue to widely consider  $F_{MSY}$  as a management target, rather than a limit. The unchecked proliferation of drifting Fish Aggregating Devices over the last twenty years constitutes a general failure to manage fishing capacity as required by the UNFSA, the FAO Code of Conduct, the FAO International Plan of Action for the Management of Fishing Capacity and several UNGA Resolutions.

The adoption and effective implementation of measures for integrated Monitor, Control and Surveillance systems such as VMS, observers, catch documentation and trade tracking schemes, restrictions on transshipment, boarding and inspection schemes, should be assessed.

Where relevant, performance reviews should provide a comparison of practices between different RFMOs. This exercise can show similar challenges in different areas and potential best practices to be adopted to harmonize approaches on conservation measures, compliance, scientific assessments and ultimately improve the performance.

A review should include comments from heads of delegations, observers and the scientific community on their comments on the effectiveness of the RFMO and the deficiencies and gaps to be addressed.

With respect to governance, a performance review should investigate the extent to which a given RFMO has transparent and consistent decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner, and that implement scientific advice from the Scientific Committee.

(ii) the process and structure of performance reviews of regional fisheries management organizations and arrangements, including in relation to independent evaluation, participation, transparency, accountability and periodicity

It is important that there are truly independent assessors. It can be a challenge to find assessors who are both familiar with the RFMO and are entirely independent, but independence is a crucial requirement. Also important is an appropriate mix of expertise, such as a legal expert, a fisheries manager and other relevant technical expertise.

At the 2015 Annual meeting in Malta, the ICCAT Commission decided to conduct a second performance review which was presented at the Commission meeting in November 2016.<sup>9</sup> The Panel was composed of three experts: a fisheries manager, independent scientist, and legal expert. A coordinator of the Panel was appointed, a fisheries manager. The ICCAT performance review grouped findings recommendations into three primary categories, which include governance, management, and science.

In IATTC, the ToRs of the evaluation were discussed and approved in a plenary of the IATTC. The contracting of the consultancy firm in charge of doing the evaluation was carried out with EU funds as the IATTC does not have its own funds to make these periodic evaluations. This means that the evaluation process has not been institutionalized, and depends on contributions of interested parties. One of the primary opportunities for improvement was modernizing the business operations of the Secretariat and strengthening the interfaces between the Secretariat, IATTC, and AIDCP.

In IOTC, the performance review has been relatively focused and revolved around discussions about the FAO framework. The panel reviews and the technical committee both have been tasked to facilitate the process. In addition, parallel discussions have ensued member states to modernize the agreement, this is in process and still in its early stages, however, there are some essential discussions, and some members have brought in experience and expertise from other tuna RFMOs as well. There have been discussions around integrating and engaging on social science elements with tuna fisheries in the Indian Ocean.

At the 21st Session of the IOTC Commission (2017), the Commission noted the papers presented and the progress on the implementation of the recommendations arising from the report of the 2nd Performance Review Panel. The TCPR had 24 Recommendations, and 63 actions related to its several subsidiary bodies (the Commission, the Secretariat, the compliance committee; the Scientific Committee, Standing Committee on Administration, the Technical Committee on Allocation Criteria (TCAC) and the TCPR.

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<sup>9</sup> ICCAT had earlier decided at its Annual meeting in 2007 to carry out the first performance review, which was concluded in 2008. At [https://www.iccat.int/Documents/Other/PERFORM\\_%20REV\\_TRI\\_LINGUAL.pdf](https://www.iccat.int/Documents/Other/PERFORM_%20REV_TRI_LINGUAL.pdf).

The South Pacific RFMO (SPRFMO) performance review<sup>10</sup> was concluded in December 2018. It was established by the January 2018 Commission meeting, where it was decided that observers could nominate panel members, as well as submit recommendations. The review focused on the effectiveness of SPRFMO to achieve its mandate in accordance with the criteria set out in the terms of reference, and the aim was to assess whether SPRFMO in its current legal and operational structure meets its objectives, and on the basis of this evaluation to identify any gaps or weaknesses and to present possible actions to address the issues. The Panel developed a questionnaire based on the criteria which was addressed to all SPRFMO Members, Cooperating non-Contracting Parties (CNCs) and observers.

The Panel also took into account available background information and information compiled by the Secretariat, and held interviews with the Chairs of the Commission and subsidiary bodies, staff of the Secretariat, and independent experts. The panel met for one week, and otherwise met electronically. The recommendations were considered by the Commission in its 7th meeting<sup>11</sup> in January 2019, which provided responses<sup>12</sup>, some of which were responsive to the report. Implementation has still to be determined, but one possible shortcoming is that the recommendations were reviewed by member States in the Commission meeting in deciding follow-up measures, allowing the possibility that recommendations which are not favored by some member States are not progressed.

### (iii) implementation of the recommendations of, and other follow-up to, performance reviews of regional fisheries management organizations and arrangements

One crucial issue is follow-up and implementation of performance review recommendations. This best be done by a regular meeting of the States Parties to review implementation of RFMO performance reports, and could also be assisted by the independent panelists meeting again following their review, and issuing a report on progress towards meeting their recommendations.

Each performance review<sup>13</sup> should evaluate how the RFMO has responded to the outcome of the earlier assessment, if any. Since it is accepted<sup>14</sup> that the performance review must contain

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<sup>10</sup><https://www.sprfmo.int/new-meetingpage-News/archive-news/final-report-of-the-sprfmo-performance-review/>

<sup>11</sup><https://www.sprfmo.int/assets/0-2019-Annual-Meeting/COMM-7/Report/COMM7-report-08Mar.pdf>

<sup>12</sup><https://www.sprfmo.int/assets/0-2019-Annual-Meeting/COMM-7/Report/ANNEX-8-COMM7-Table-of-Performance-Review-responses.pdf>

<sup>13</sup> For a comparative review of performance reviews of RFMOs to 2014 that have a binding mandate, see "FAO, THE IMPLEMENTATION OF PERFORMANCE REVIEW REPORTS BY REGIONAL FISHERY BODIES, 2004–2014. At <http://www.fao.org/3/a-i4869e.pdf>.

<sup>14</sup> Report of the resumed 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 A/CONF.210/2016/5. 1 August 2016. At [https://www.un.org/Depts/los/convention\\_agreements/review\\_conf\\_fish\\_stocks.htm](https://www.un.org/Depts/los/convention_agreements/review_conf_fish_stocks.htm). Recommendation II.d: (d) Undertake performance reviews that include some element of independent evaluation not later than 2012 for those RFMO/As where such reviews have not yet been undertaken; undertake such reviews on a regular basis, for example every 5 years; and ensure that information about actions taken to implement the recommendations from performance reviews is made publicly available;

elements of independence, it follows that the assessment of implementation of the review should likewise contain elements of independence.

Regional tuna RFMOs agreed to undergo periodic performance reviews against their objectives under the KOBE process. But this process of alignment is no longer operative, leaving a gap.

The IATTC was the last tuna RFMO to execute its performance evaluation. The director of the IATTC Commission was instructed to prepare an action plan to tackle the report. This plan was presented and approved in a plenary session of the Commission. The action plan focused on follow up to the plan and the institutionalization of these processes in IATTC. Future performance reviews should likewise include action plans to address the report recommendations, and these must be included in the operational plan of the RFMO, and be allocated a corresponding budget. An issue of concern is the adequate follow up to the action plan prepared by the director of the IATTC for tackling the observations made by the evaluators. It is necessary to institutionalize these processes so that they are part of the day to day work of the Commission.

The response of SPRFMO to its performance report, in listing the responses by relevant bodies<sup>15</sup> (in that case, the Compliance and Technical Committee, the Finance and Administration Committee and the Commission) is also an example worth following. But it must be emphasized that the independence of the report needs to be maintained, by including independence in the follow-up reviews.

The ICCAT Convention, for instance, requires, a two-thirds majority of the Contracting Parties for Recommendations on conservation and management measures to be adopted. However, ICCAT adopts Recommendations by consensus as a general rule. In practice this requirement for consensus often leads to postponement of decisions that in some case would be urgent to take. On the other hand, SPRFMO<sup>16</sup> provides for ¾ majority voting in Article 16, as well as an opt-out mechanism in Article 17, that has been used twice to date.<sup>17</sup>

The IOTC, on the other hand, is an RFMO under the framework of the FAO, which makes the processes cumbersome, and contributes to the IOTC lacking in transparency and working with conventional methods: some of the reasons being that innovative mechanisms or dispute resolution is not evident and approachable. The IOTC 2nd Performance review recommends that *“the IOTC would be more appropriate as an independent entity.”*

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<sup>15</sup><https://www.sprfmo.int/assets/0-2019-Annual-Meeting/COMM-7/Report/ANNEX-8-COMM7-Table-of-Performance-Review-responses.pdf>

<sup>16</sup> SPRFMO Convention. At <https://www.sprfmo.int/assets/Basic-Documents/Convention-web-12-Feb-2018.pdf>.

<sup>17</sup> See SPRFMO Performance Review, para. 308.

#### (iv) lessons learned and best practices from past performance reviews of regional fisheries management organizations and arrangements

To date, most of the performance reviews of the straddling stock RFMOs have addressed some of the inadequacies in the management of deep-sea fisheries though most (e.g. NEAFC) have not gone far enough. Even the RFMO performance reviews themselves have not in most cases comprehensively evaluated RFMO performance (i.e. the management of deep-sea fisheries) against the UNGA resolutions, the UNFSA and other relevant instruments. This underlines the need for UNGA oversight and strong measures to implement settled international policy and the best available science.

The emphasis by SPRFMO on transparency, from including observers in the nomination process for panelists to inviting comments from observers as well as member States, forms a good standard. The report and its discussion by the Commission does raise questions as to how an RFMO should treat an independent report. If a report makes recommendations that a member does not find palatable, it may be too easy for the member to raise an objection, thus defeating the purpose of the report. On the positive side, having different bodies - the compliance committee, the finance committee, as well as the Commission - respond<sup>18</sup> to the report is helpful. But it is not necessarily sufficient. It may be helpful, for instance, to have the independent panelists meet and review performance every two years.

The ICCAT performance review in 2016, reported progress on several areas. ICCAT made significant progress in strengthening its performance since the 2008 Performance Review; With regard to the 2008 Panel's main criticism on eastern bluefin tuna, ICCAT has redressed the situation, at least in terms of the status of the stock. Concerns still remain regarding the IUU fishing and illegal trade that is still happening within the EU.

ICCAT scores reasonably well compared with other RFMOs on associated species including sharks, seabirds and turtles and it now addresses the management of shark fisheries after the amendment of the Convention. Compliance monitoring has been improved through an annual review of CPCs compliance records. Accessibility to documents ahead and during meetings has been improved.

On a different note, the last performance review also reported a set of negative results: ICCAT Panels and Committees have a tendency to defer decision-making on measures in the interests of achieving consensus, rather than opting for a voting process, thereby unnecessarily delaying the adoption of necessary conservation and measures. Management of the tropical tunas has not been addressed in an effective manner and no management plan is yet in place for highly overfished stocks including the bigeye tuna.

With the exception of eastern bluefin tuna, ICCAT has not put in place sufficient measures to ensure that fishing activities are properly monitored. Including the lack of any mechanism to

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<sup>18</sup><https://www.sprfmo.int/assets/0-2019-Annual-Meeting/COMM-7/Report/ANNEX-8-COMM7-Table-of-Performance-Review-responses.pdf>

monitor catches near real time and act to avoid overfishing of tropical tunas. Major progress in data availability is necessary, especially regarding stock assessments.

The latest evaluation found strong areas of the IATTC, for example, strong science outcomes, a successful observer program for large purse seiners, highly dedicated scientific staff, and success of the AIDCP. Also, the findings included very weak areas. For instance, in governance, it was concluded that the consensus model of governance has limitations that impact the Commission's decision-making ability and that the Chairmanship of the Commission does not have adequate continuity and stability. In terms of management the assessors concluded that the Secretariat of the Commission did not have a strategic plan or multi-year work plan to guide annual activities. In the science part, the fleet overcapacity, inadequate conservation measures for sharks, turtles and seabirds, and limited observer data from longline, small purse seine, and artisanal fishing vessels were observed.

(v) actions needed to further strengthen the effectiveness of the performance review process, including through capacity-building

Please see Recommendations section, on page 4.

## UNGA Bottom Fisheries

The upcoming UNGA 2020 review of the implementation of the UNGA bottom fishing resolutions is a critical cumulative performance review of bottom fishing RFMOs, and being the third such review, underlines the utility of UN-level reviews of RFMO performance. Countries concerned with the ocean and biodiversity are encouraged to attend and actively engage in the 2020 workshop to challenge countries for continuing to engage in high seas bottom trawl fisheries without RFMOs having effectively implementing the UNGA resolutions, starting with UNGA resolution 61/105. Countries bottom trawling include Cook Islands, Faroes, Japan, Korea, New Zealand, Norway, Russia, Spain, Portugal, and Taiwan (Chinese Taipei).

The UN General Assembly has periodically conducted reviews of the bottom fishing RFMOs with respect to their implementation of UNGA resolutions, commencing with resolution 59/25 adopted in in 2004, calling for specific international actions to manage such fisheries on the high seas. The next UNGA review will take place in 2020. UNGA Resolutions 61/105, 64/72, and 66/68 are the products of extensive negotiation and review by the UNGA over the past 13 years. They express the will and commitment of the international community of nations to ensure effective management of deep-sea fisheries in the context of the ecosystem approach and precautionary approach. Moreover, they have important implications for the conservation of biodiversity and the protection and preservation of the marine environment in areas beyond national jurisdiction. As such, the specific actions called for in the resolutions regarding managing deep-sea fisheries to prevent significant adverse impacts on Vulnerable Marine

Ecosystems (VMEs) and the sustainable exploitation of fish stocks reflect important obligations in Articles 5 and 6 of the 1995 UNFSA and in Part XII of UNCLOS.

While important progress has been made to implement the provisions of the UNGA resolutions, there are numerous shortcomings. These shortcomings are not trivial. The UNGA placed increasing emphasis in its reviews in 2009, and again in 2011, on the need to conduct prior impact assessments or else ensure that such fisheries are not authorized to occur. The international community expended considerable effort in negotiating internationally agreed standards and criteria for conducting such assessments as reflected in the FAO Guidelines.

However, there remain numerous instances where RFMOs have allowed areas to remain open to bottom fishing where VMEs are known or are likely to occur, without having assessed the bottom fisheries in these areas to determine whether significant adverse impacts would occur. In some cases, within the areas where bottom fishing is permitted, VMEs identified by scientific bodies have not been closed, or have only partially been closed, to avoid restricting fishing in the area rather than preventing significant adverse impacts on VMEs. This is the fundamental opposite of what the UNGA resolutions have called for and committed high seas bottom fishing States to do.

Most recently, the South Pacific RFMO (SPRFMO) agreed CMM 03-2019<sup>19</sup>, which allows up to 250 kg of stony corals to be brought up in a net before the move-on rule is implemented (250 kg would signify 10 or even 20 times as much being destroyed on the seafloor, since much coral is not caught or falls out of the net), and instead of clearly assessing encounters for closure or measures to prevent significant adverse impacts, relied on a predictive model. While reviews were added to the CMM by member States, that this measure was passed the same year an independent review was reported shows that independent reviews do not themselves ensure that RFMOs implement recommendations faithfully, and that there needs to be a procedure to ensure implementation of recommendations.

Although the UNGA reviews themselves have not entered into the level of detail on RFMO performance that many of the RFMO performance reviews have done, the UNGA has prescribed clear actions and elaborated detailed criteria, both directly and through an ancillary negotiating processes which resulted in the adoption of the International Guidelines for the Management Deep Sea Fisheries in the High Seas adopted by FAO's Committee on Fisheries in 2008 and subsequently endorsed by the UNGA in 2009, against which RFMOs performance is measured.

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<sup>19</sup><https://www.sprfmo.int/assets/Fisheries/Conservation-and-Management-Measures/2019-CMMs/CMM-03-2019-5Mar2019.pdf>