

**DECISION-MAKING IN REGIONAL FISHERY BODIES  
OR ARRANGEMENTS: THE EVOLVING ROLE OF RFBS  
AND INTERNATIONAL AGREEMENT ON DECISION-MAKING  
PROCESSES**



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by

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## PREPARATION OF THIS CIRCULAR

This Circular was prepared within the framework of the Regular Programme as part of on-going activities of the FAO International Institutions and Liaison Service (FIPL) aimed at providing information on activities of regional fishery bodies.

Swan, J.\*

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### ABSTRACT

This Circular describes the evolving role of Regional Fishery Bodies or Arrangements (RFBs), from the advisory bodies established during the first half of the twentieth century to the current trend of establishing management bodies. It also describes the recognition in recent international instruments of the authority of RFBs as management bodies, a response to the need for strengthened fisheries governance by RFBs. References to the role of RFBs and decision-making are reviewed in the 1982 United Nations Convention on the Law of the Sea, the 1993 FAO Compliance Agreement, the 1995 United Nations Fish Stocks Agreement, the 1995 FAO Code of Conduct for Responsible Fisheries and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

Key areas relating to decision-making in RFBs described in the international instruments include the precautionary approach, agreement on decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner, transparency in the decision-making process, decision-making procedures for dispute prevention, and strengthening decision-making to implement relevant policies. Information compiled on selected RFBs is summarized to illustrate some activities and procedures that fall within the areas addressed in the international instruments. The information – given in detail for each selected RFB in Appendix 2 and in a summary chart in Appendix 3 – includes a profile of relevant RFB functions and requirements as follows: area of competence, membership, organization, observers, decision-making by principal body, objection procedures and dispute settlement.

This Circular is descriptive only and presents information on selected RFBs in summary form. There is no assessment or analysis of the decisions taken, as the objective of this review is to promote a better understanding of the evolution of the role of RFBs and relevant international agreement on the elements involved in decision-making processes.

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\* With preliminary work by David Evans.

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## LIST OF ACRONYMS

CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
COFI	FAO Committee on Fisheries
FAO	Food and Agriculture Organization of the United Nations
FIGIS	Fisheries Global Information System
FIRMS	Fisheries Resources Monitoring System
GFCM	General Fisheries Commission for the Mediterranean
IATTC	Inter-American Tropical Tuna Commission
IBSFC	International Baltic Sea Fishery Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IOTC	Indian Ocean Tuna Commission
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
IWC	International Whaling Commission
MCS	Monitoring, Control and Surveillance
NAFO	Northwest Atlantic Fisheries Organization
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North-East Atlantic Fisheries Commission
REIO	Regional Economic Integration Organization
RFB	Regional Fishery Bodies or Arrangements (where specified, this also applies to regional fishery management organizations or arrangements)
RFMO	Regional Fishery Management Organizations or Arrangements
SEAFO	South East Atlantic Fisheries Organization
SOFIA	State of World Fisheries and Aquaculture Report
TAC	Total Allowable Catch
UNCED	United Nations Conference on Environment and Development
VMS	Vessel Monitoring System
WSSD	World Summit on Sustainable Development



## EXECUTIVE SUMMARY

A clear shift in the role of RFBs has occurred over the past half-century, a trend which has intensified since the adoption of key international fisheries instruments after the United Nations Conference on Environment and Development (UNCED). In the first half of the twentieth century, the mandates of many RFBs identified their roles as research arm and advisor rather than decision-maker and enforcer.

The first watershed event – initiation of the process leading to the 1982 United Nations Convention on the Law of the Sea (“1982 UN Convention”) – prompted a focus on the emerging role of RFBs. A suite of new activities was envisaged, and this prompted RFBs to review and amend their conventions and opened the door to the establishment of new organizations with more modern mandates.

The second watershed event – adoption of the post-UNCED international fisheries instruments, brought the role of RFBs into sharper focus. In particular, the 1995 United Nations Fish Stocks Agreement (“Fish Stocks Agreement”) aims for a coherent conservation and management process. Its dependence on RFBs to achieve that process is clear: they are expected to become the management authorities for the establishment of conservation and management measures for the high seas and for their enforcement, through member States, on the high seas. In many respects, however, its application extends beyond the high seas and to States that are not party.

Fundamental to the new role it creates for RFBs in general, the Fish Stocks Agreement sets out an extensive list of RFB functions that underline the management role of RFBs. These functions take on particular significance in view of provisions relating to fishing by non-members and new entrants. Among the functions is a requirement for States, in fulfilling their obligation to cooperate through RFBs, to “agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner”. This is accompanied by other provisions relating to decision-making that address the precautionary approach, transparency and dispute prevention. Reinforced by other post-UNCED international fisheries instruments, these areas indicate broad international agreement on decision-making in RFBs. They form the framework in this document for the review of decision-making in selected RFBs.

The recognition by the international community of the need for strengthened fisheries governance led to a review and reform of the mandates of some RFBs. At the same time, some RFBs have identified a number of constraints, such as a lack of willingness by member States to delegate sufficient decision-making powers to the regional bodies. This review, notes that decision-making is only one of many interrelated elements of governance by RFBs and that developing performance indicators for self-evaluation is within the domain of the RFBs, takes an objective approach in presenting information. While it is recognized that there are three main elements to decision-making – political will, legal obligations and institutional mechanisms - there is no attempt to analyse or evaluate the constraints or effectiveness of the decision-making process in any RFB or the reason for the adoption by an RFB of any particular process or decisions.

There is a wide range of decision-making objectives, functions and processes among the RFBs, and examples of these are described. Their relevance to the areas in the international instruments is introduced, and the increased level of activity of decision-making activity in some RFBs is noted.

A review of key decision-making rules and processes in RFBs is presented, within the framework of the provisions in the international agreements described above. In relation to the Fish Stocks Agreement’s call for improved decision-making in implementing the precautionary approach, this review notes that many RFBs are endorsing or implementing precautionary approach, including the establishment of reference points. Some RFBs see scope to improve data collection and management in certain areas, and many endorse the sharing of information and data. Approaches that have been taken towards improvement of decision-making on issues concerning the precautionary approach are described in the text.

The functions of RFBs described in Article 10 of the Fish Stocks Agreement include the obligation for States to “agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner.” In this context, the following areas are considered, with illustrations drawn from the selected RFBs: subsidiary bodies, principal bodies, entry into force of conservation and management measures in an appropriate time period, and an objection procedure that is consistent with the criteria of timeliness and effectiveness.

Membership issues, including allocation criteria for new members, can also affect decision-making, and they are addressed as a backdrop to the above four areas. Reference is made to requirements of real interests, accommodating the interests of new members and the nature and extent of participatory rights. Membership requirements of the RFBs in this review are considered, with most RFBs in the review providing for open membership, subject to various requirements. Adoption of criteria that determines the nature or extent of participatory rights for new members facilitates the adoption of conservation and management measures and may encourage objectivity.

Decision-making in the subsidiary bodies is normally not provided in the Convention or Agreement establishing the RFB, but may be found in the rules of procedure. On the whole, subsidiary bodies make recommendations that are not binding and their decisions or reports are reached by consensus. The institutional structure of each RFB, including its subsidiary bodies, is different, and can be very complex with many levels, as illustrated in the text. The value of adopting clear decision-making procedures to ensure that the recommendations or advice will be timely and effective is emphasised.

Decision-making procedures for conservation and management measures by the principal bodies (Commissions) are included in the constitutive instrument for an RFB, and vary from a requirement for a unanimous decision, to a specified majority or simple majority, and a stated quorum. Some RFBs allow votes to be taken by secret ballot, roll call or, between sessions as needed, by written communication.

The time period between decision on and entry into force of conservation and management measures is normally set out in the constitutive instrument of the RFB. If an objection procedure is not used the earliest time for entry into force in the RFBs in this review ranges from 60 days to six months. The objection procedures differ in each RFB, but if there are objections, the longest period before entry-into-force is between around 100 days and eight months or longer. Various elements of the objection procedures are discussed.

To enhance transparency in the decision-making process, RFBs have *inter alia* adopted procedures for observers. The rules are summarized, including reference to qualifications of observers, application procedures and attendance at meetings.

Although most RFBs focus on the related area of dispute settlement, many of the RFBs in this review do not include dispute settlement in their constitutive instrument. Procedures for those that do are described, and procedures for dispute prevention, called for in the Fish Stocks Agreement, are discussed. One recently established RFB has taken some innovative steps in this regard.

The IPOA-IUU calls for strengthened decision-making in RFBs for effective implementation of relevant policies, and the implications of this are addressed in the context of the call by the World Summit on Sustainable Development to put the IPOA-IUU into effect by 2004.

The evolving role of RFBs to management bodies has placed demands on decision-making in RFBs, as evidenced by post-UNCED international instruments. While RFBs have not, on the whole, actively reviewed this area of governance, the current decade, a period of consolidation in which the post-UNCED instruments are being implemented, could provide a platform for further elaboration of decision-making procedures in RFBs in respect of the areas discussed in this document.

## 1. BACKGROUND – THE EVOLVING ROLE OF REGIONAL FISHERY BODIES OR ARRANGEMENTS (RFBs) AND RELEVANT INTERNATIONAL INSTRUMENTS

### 1.1 The evolving role of RFBs

A clear shift in the role of RFBs has occurred over the past half-century, a trend which has intensified since the adoption of key international fisheries instruments after the United Nations Conference on Environment and Development (UNCED). In the first half of the 20<sup>th</sup> century, RFBs approached the process of fisheries management in a gradual and evolutionary manner.<sup>1</sup> Mandates and functions of RFBs rested comfortably on the centuries-old concept of freedom of the seas, and the resource seemed abundant. The focus for decision-making in most RFBs was how best to serve as a forum for fisheries management rather than as a fisheries management body.

At a time when a narrow band of up to twelve miles defined coastal States' authority, the major functions of RFBs were cooperative research<sup>2</sup> and database development and analysis. As databases were developed, rudimentary management systems such as mesh size limits<sup>3</sup> and closed seasons were adopted.<sup>4</sup> The mid-century realization that some fish stocks were being fished to the maximum limit and possibly beyond prompted more intense management measures such as catch quotas<sup>5</sup> and joint inspection schemes.<sup>6</sup> But these measures only extended as far as the mandate of the relevant RFBs allowed, and the number of RFBs in existence was still growing: their combined areas of competence did not cover all oceans, as they do today.

Despite the intensification of management efforts, international conflicts – some assuming the proportion of “fish wars” – surpassed the ability of RFBs to prevent conflicts or catastrophic overfishing. A major reason for this is that the mandates of many RFBs identified their roles as research arm and advisor rather than decision-maker and enforcer.

### 1.2 The role of RFBs under the 1982 United Nations Convention on the Law of the Sea (1982 UN Convention)

The first watershed event – initiation of the process leading to the 1982 UN Convention – prompted a focus on the emerging role of RFBs. A suite of new activities was envisaged by the Convention, giving RFBs a greater role than their founders may have generally intended.<sup>7</sup> The RFBs would maintain their essential functions as: fora for international cooperation; vehicles for research, analysis, and data repository and exchange; and advisors on fisheries management, in accordance with their mandates. The new activities would include:

- protecting stocks associated with harvested stocks from depletion;

<sup>1</sup> See Applebaum B. and Donohue A., “The Role of Regional Fisheries Management Organizations”, *Developments in International Fisheries Law*, Hey, E., ed., Kluwer Law International, the Netherlands, 1999.

<sup>2</sup> The International Council for the Exploration of the Sea was established in 1902 with a mandate to promote and encourage research and investigation on the seas, particularly those related to the living resources, to draw up programmes required for this purpose and to publish or otherwise disseminate the result of research and investigation. The first initiative on international cooperative research in marine fisheries in the Northwest Atlantic was the establishment of the North American Council on Fishery Investigations in 1921, by Canada, Newfoundland and the USA. France joined in 1922. It was discontinued in 1938.

<sup>3</sup> Such as the 1937 International Convention for the Regulation of the Meshes of Fishing Nets and Size of Fish for the Northwest Atlantic fisheries.

<sup>4</sup> Such as the 1950 International Convention for Northwest Atlantic Fisheries (ICNAF), which had the objectives of investigation, protection and conservation of fish. For many years, it recommended open and closed seasons, closed areas, size limits, gear prohibitions and overall catch limits. ICNAF is the precursor to NAFO. For a history of ICNAF, see Anderson, E.D., “The ICNAF History from 1945 to 1997”, [www.nafo.ca](http://www.nafo.ca).

<sup>5</sup> In 1964 ICNAF established separate catch quotas, noting the necessity of some direct control of the amount of fishing, and in 1969 it adopted a Protocol allowing allocations.

<sup>6</sup> In 1970 ICNAF, recognizing the difficulty of enforcing its decisions, adopted a Joint Inspection Scheme.

<sup>7</sup> See Applebaum B. and Donohue A., note 1, *supra*, where articles of the 1982 UN Convention relating to the role of RFBs are analysed.

- conserving stocks outside 200 miles;
- giving advice to coastal States on the conservation of stocks inside the 200 mile zone;
- pursuit of compulsory dispute settlement options;
- providing coastal States with all relevant information regarding fishing activities in high seas areas adjacent to their exclusive economic zone;
- transmission to coastal States of appropriate minimum standards;
- providing a conduit through which coastal States can fulfill their obligation to give due notice of their relevant conservation and management laws and regulations and make information available on the outer limits of their exclusive economic zones;
- considering stricter regulations for marine mammals than those required for other species.

Identification of these activities in the 1982 UN Convention prompted RFBs to review and amend their conventions and opened the door to the establishment of new organizations with more modern mandates. Of over 30 marine RFBs currently in existence, almost half have been established since the Convention was adopted.<sup>8</sup> However, an impediment to exercising the new mandates in the most effective manner has been attributed to the fact that the Convention does not confer management authority on RFBs. One reason for this is that the Convention ushered in an era of newly declared sovereign rights over extended areas of ocean space, which became a paramount consideration for many coastal States. In addition, the general state of the world fishery resources did not appear to be particularly worrisome.

In the years to come, the absence of broad international agreement on the management authority of RFBs received increasing attention, fueled by a growing awareness of the scarcity of fishery resources. The need for strengthened fisheries governance through RFBs steadily emerged as a pressing issue. It was acknowledged that to be effective, RFBs would need a clear mandate to manage the fishery resources in full respect of international law.

### **1.3 The role of RFBs under the Post-UNCED international fisheries instruments**

#### **1.3.1 The Post-UNCED international fisheries instruments**

The second watershed event filled this gap to some extent – adoption of the 1995 United Nations Fish Stocks Agreement (“Fish Stocks Agreement”).<sup>9</sup> It brought the role of RFBs into sharper focus and is enhanced by other post-UNCED international fisheries instruments, especially the 1993 FAO Compliance Agreement, (“Compliance Agreement”)<sup>10</sup> the 1995 FAO Code of Conduct for Responsible Fisheries (“Code of Conduct”) and its subsequent International Plans of Action (IPOAs).<sup>11</sup>

<sup>8</sup> These are: Comité régional des pêches du Golfe de Guinée (COREP) 1984; North Atlantic Salmon Conservation Organization (NASCO) 1982; South East Atlantic Fisheries Organization (SEAFO) 2001; Commission sous-régionale des pêches (SRCP/CSRP) 1985; Indian Ocean Tuna Commission (IOTC) 1993; Regional Commission for Fisheries (RECOFI) 1999; Western Indian Ocean Tuna Organization (WIOTO) 1991; North Pacific Anadromous Fish Commission (NPAFC); 1993; Pacific Salmon Commission (PSC) 1985; Commission for the Conservation of Southern Bluefin Tuna (CCSBT) 1994; Latin American Organization for the Development of Fisheries (OLDEPESCA) 1984; North Atlantic Marine Mammal Commission (NAMMCO) 1992; North Pacific Marine Science Organization (PICES) 1992. The Convention establishing a Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Western Central Pacific Fisheries Organization), in 2000, had not yet entered into force at the time of writing.

<sup>9</sup> The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks entered into force on 11 December 2001.

<sup>10</sup> Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. Part of the Code of Conduct, the 1993 FAO Compliance Agreement entered into force on 24 April 2003.

<sup>11</sup> The IPOAs are: Incidental catch of seabirds in longline fisheries (1999); Conservation and management of sharks (1999); Management of fishing capacity (1999); and Prevention, deterrence and elimination of illegal unreported and unregulated (IUU) fishing (2001). In particular, the role of RFBs identified in the IPOA to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA – IUU) is extensively defined.

A summary of the key provisions relevant to RFBs in each of the three principal instruments and the IPOA to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) appears in Appendix 1.

The Compliance Agreement entered into force in April 2003, the date of receipt of the twenty-fifth Instrument of Acceptance.<sup>12</sup> It has some provisions similar to those of the Fish Stocks Agreement concerning high seas fishing. However, unlike the Fish Stocks Agreement, the Compliance Agreement assigns the primary role of international coordination to FAO rather than RFBs. The Compliance Agreement does, however, suggest potential roles of RFBs in relation to the scope of its application, international cooperation, exchange of information and cooperation with developing countries.<sup>13</sup> However, there are no provisions directly relating to decision-making in RFBs.

The development of the voluntary Code of Conduct occurred over the same general time period as that of the Fish Stocks Agreement, and closely tracks the latter's provisions. The Code extends to all fisheries and to fisheries-related matters beyond those covered by the Fish Stocks Agreement. RFBs are among the agencies tasked to implement the Code.<sup>14</sup> All IPOAs concluded pursuant to the Code refer to the role of RFBs in respect of the relevant activity: in particular, the IPOA-IUU has a number of provisions to this effect.

The Fish Stocks Agreement entered into force on 11 December 2001 with ratification by the thirtieth State, and is the most comprehensive of the international instruments in defining the role of RFBs, including references to decision-making. It was signed by 59 States and entities, and the number of States that have deposited ratifications is growing.<sup>15</sup> There have been successive General Assembly Resolutions calling for the implementation of the Fish Stocks Agreement,<sup>16</sup> and the vital role of RFBs in implementing the Fish Stocks Agreement was recognized by all States Parties at the 2002 Informal Meeting of the States Parties to the Fish Stocks Agreement.<sup>17</sup>

However, a May, 2003 report on the status and implementation of the Fish Stocks Agreement, prepared in response to a request by the General Assembly,<sup>18</sup> provides an overview of the main trends in implementation and identifies one constraint as the fact that no RFB was composed exclusively of Parties to the Agreement at the time of writing.<sup>19</sup> It was therefore not possible to say that any RFB is bound by the Agreement. In addition, several important fishing States are not parties.

The report, which features findings from a survey of States and other stakeholders, also states that "Notwithstanding the constraints, practice since the adoption of the Agreement demonstrates that even before entry into force, provisions of the Agreement have been widely used as a benchmark for State practice." Positive trends identified in the report are the wide application of the Fish Stocks Agreement, even by non-parties, and a high priority given to almost all of the general principles for conservation and management in Article 5.

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<sup>12</sup> As at July 2003, twenty-seven States had accepted the Compliance Agreement.

<sup>13</sup> For further analysis, see Applebaum B. and Donohue A., note 1, *supra*, also see provisions in Appendix 1.

<sup>14</sup> Articles 1.2 and 4.1, Code of Conduct for Responsible Fisheries. Also see Appendix 1.

<sup>15</sup> As at July 2003, thirty-four States had ratified the Fish Stocks Agreement. Importantly, of these, only ten have accepted the 1993 FAO Compliance Agreement.

<sup>16</sup> Most recently General Assembly Resolution 57/143. See also the 2002 Report of the Informal Consultative Process, paragraph 41, document 57/80.

<sup>17</sup> [http://www.un.org/Depts/los/convention\\_agreements/FishStocksMeetings/UNFSTA\\_ICSP2002\\_DraftRep.pdf](http://www.un.org/Depts/los/convention_agreements/FishStocksMeetings/UNFSTA_ICSP2002_DraftRep.pdf)

<sup>18</sup> See [http://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_fish\\_stocks.htm](http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm). General Report of the Secretary General, distribution 30 May 2003, advance, unedited text. The status and implementation of the Agreement for the Implementation of the Provisions of the United Nations Convention for the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement) and its impact on related or proposed instruments throughout the UN system, with special reference to implementation of Part VII of the Fish Stocks Agreement, dealing with the requirements of developing States.

<sup>19</sup> At the time of writing this document, the EC is expected to ratify the Fish Stocks Agreement. When this happens, and with current membership, SEAFO will become the first RFB in which all members are parties to the Fish Stocks Agreement.

Although the Fish Stocks Agreement applies primarily to the highly migratory and straddling fish stocks on the high seas,<sup>20</sup> its broad acceptance and application is evidenced by the reinforcement of other international instruments, implementation at the regional level, and to some extent by State practice within areas of national jurisdiction.

The 2001 IPOA-IUU is a voluntary instrument. However, it is prominently visible and the subject of ongoing high-level attention. The 2002 World Summit on Sustainable Development (WSSD) called for States to urgently develop and implement national and, where appropriate, regional plans of action, to put into effect the IPOA-IUU by 2004. Subsequently, two supportive General Assembly Resolutions were adopted in 2003: one urged States to take all necessary steps to implement the IPOA-IUU, including through relevant RFBs,<sup>21</sup> and another urged States to develop and implement national and, where appropriate regional plans of action, to put the IPOA-IUU into effect by 2004.<sup>22</sup>

In addition, the Twenty-fifth Session of the Committee on Fisheries (COFI) considered the IPOA-IUU in February 2003. References to the IPOA-IUU in the report of that Session<sup>23</sup> include the following, indicating activity at both national and regional levels.

- Many Members from developing countries indicated that a lack of capacity constrained implementation and they appealed to FAO to continue to provide technical assistance to facilitate implementation, especially for the development of national plans of action to implement the IPOA-IUU.<sup>24</sup>
- Many Members proposed a range of initiatives to more effectively address IUU fishing including strengthening the functions of RFBs.<sup>25</sup>

The IPOA has been the subject of much attention by regional fishery bodies,<sup>26</sup> and contains an extensive part on the role of RFBs, including direct reference to decision-making. Because the Fish Stocks Agreement and the IPOA-IUU contain the most rigorous provisions relating to responsibilities of, and decision-making processes in RFBs, they are considered separately below, mindful of their reinforcement by other international and regional instruments.

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<sup>20</sup> Provisions on the precautionary approach and compatibility of conservation and management measures may apply within areas of national jurisdiction: Fish Stocks Agreement, Article 3. Also note the Convention of one RFB implements the Fish Stocks Agreement for all stocks on the high seas, and is not limited to straddling and highly migratory fish stocks: see the description of the South-East Atlantic Fisheries Organization, in Appendix 2.

<sup>21</sup> A/Res/57/141. Oceans and Law of the Sea.

<sup>22</sup> A/Res/57/142. Large-scale pelagic drift-net fishing, unauthorized fishing in zones of national jurisdiction and on the high seas/illegal, unreported and unregulated fishing, fisheries by-catch and discards, and other developments.

<sup>23</sup> Report of the Twenty-fifth Session of the Committee on fisheries, Rome, 24-28 February 2003. CL124/7.

<sup>24</sup> Paragraph 18.

<sup>25</sup> Paragraph 22.

<sup>26</sup> A report prepared by FAO for the Twenty-fifth session of COFI in 2003 (COFI/2003/3Rev.1) titled "Progress in the Implementation of the Code of Conduct for Responsible Fisheries and related International Plans of Action" states that more than half of RFBs have addressed IPOA-IUU. In particular, RFBs dealing with specific species such as tunas (IATTC and ICCAT) and salmon (NASCO and NPAFC) showed more positive approach to implementation of IPOA-IUU. IATTC created a Permanent Working Group on Fishing by Non-Parties to address IUU fishing. IATTC also agreed to establish a regional register of vessels authorized to fish in its competent area and measures to discourage landings and trade of fish caught by IUU fishing. ICCAT indicated that many of its measures were stricter than those of IPOA-IUU. ICCAT also held a special meeting on ways to combat IUU fishing in May 2002. The Council of NASCO adopted a Protocol for States not Party to the Convention for the Conservation of Salmon in the North Atlantic Ocean, calling for each Party to the Protocol to prohibit fishing for salmon beyond areas of fisheries jurisdiction. The organization also promoted exchange of information and coordinated surveillance activities. The Committee on Enforcement of NPAFC coordinated enforcement activities by its Contracting Parties for eliminating IUU fishing in its competent area. APFIC and CECAF distributed all IPOAs to member States.

### 1.3.2 The 1995 UN Fish Stocks Agreement

The Fish Stocks Agreement aims for a coherent conservation and management process. This is indicated by areas it addresses, including measures and principles for fisheries conservation and management, establishment and functions of regional fisheries organizations, and boarding and inspection. Its dependence on RFBs to achieve that process is brought out in the following features of the text:<sup>27</sup>

- the Fish Stocks Agreement provides a framework in the form of detailed rules to be followed in establishing multinationally agreed conservation and management measures for straddling and highly migratory fish stocks;
- through the operation of the Fish Stocks Agreement, RFBs are expected to become the management authorities for the establishment of these measures for the high seas and for their enforcement, through member States, on the high seas.

One feature of the Fish Stocks Agreement is its application to “regional fishery management organizations or arrangements” (RFMOs). It does not purport to apply to RFBs that do not have a management mandate, but in practice, those with advisory mandates apply its requirements as appropriate.<sup>28</sup> Therefore, although reference to “RFMOs” is technically correct in the context of the Fish Stocks Agreement, it does in part have a broader application to all RFBs as appropriate.<sup>29</sup>

Fundamental to the new role it creates for RFBs in general, the Fish Stocks Agreement sets out an extensive list of RFB functions in Article 10,<sup>30</sup> primary among which is that States, in fulfilling their obligation to cooperate through RFBs, must agree on and comply with conservation and management measures to ensure the long-term sustainability of the stocks. States are also charged with agreeing on participatory rights such as allocation of allowable catch or levels of fishing effort. These, and other requirements of Article 10, underline the emerging management role of RFBs and consequently the increasing importance to be attached to effective decision-making. The Fish Stocks Agreement also provides for the following:

<sup>27</sup> For an analysis of the text, leading to this conclusion, see Applebaum B. and Donohue A., note 1, *supra.*, and see also Appendix 1 for details of the provisions.

<sup>28</sup> For example, the Secretariat of the Pacific Community and the International Council for the Exploration of the Seas. They each take into account the principles in Article V when giving advice, such as the precautionary approach.

<sup>29</sup> For purposes of consistency and general application, this document will refer to RFBs while acknowledging that the Fish Stocks Agreement refers specifically to regional fishery management organizations or arrangements.

<sup>30</sup> Article 10, Functions of subregional and regional fisheries management organizations and arrangements:

“In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

- (a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;
- (b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;
- (c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;
- (d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;
- (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
- (f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;
- (j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- (k) promote the peaceful settlement of disputes in accordance with Part VIII;
- (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and
- (m) give due publicity to the conservation and management measures established by the organization or arrangement.”

- new members;<sup>31</sup>
- transparency;<sup>32</sup>
- strengthening of existing regional fisheries organizations;<sup>33</sup>
- requiring collection of scientific data and cooperation in scientific research;<sup>34</sup>
- dealing with non-member States whose vessels undermine the effectiveness of high seas conservation and management measures or the effective implementation of the UN Fish Stocks Agreement.<sup>35</sup>

With respect to the last point above, there is a comprehensive provision on non-member States, which are not discharged from the obligation to cooperate in the conservation of the fish stocks.<sup>36</sup> It indicates that RFBs' conservation and management measures may be applied, *de facto*, to non-member flag States whose vessels are fishing in the area. It allows deterrent action, consistent with international law, by members against non-members that undermine the agreed conservation and management measures. Although this is consistent with the general provisions on duties and responsibilities of States for high seas fishing in the 1982 UN Convention,<sup>37</sup> its scope is considerably broader. Because non-members do not participate in the decision-making process, they have no opportunity to opt-out of the agreed measures but may suffer consequences should they undermine those measures. Inclusion of such a provision in the Fish Stocks Agreement is clearly indicative of the growing importance the international community attaches to management decisions of RFBs.

The Fish Stocks Agreement describes member States' rights to enforce the RFBs' conservation and management measures on the high seas against vessels of States party to the Agreement, whether or not they are members. For example:

- States must, through RFBs, establish procedures for boarding and inspection of the fishing vessel of any State party present in the high seas area, whether or not it is actually fishing.<sup>38</sup>
- RFBs may specify other serious violations, in addition to those set out in the Agreement, which, if committed, activate enforcement measures.<sup>39</sup>
- RFBs may establish an alternative mechanism that effectively discharges the obligation to ensure compliance.<sup>40</sup>

The comprehensive functions and responsibilities of RFBs described in Article 10 of the Fish Stocks Agreement include specific reference to the decision-making functions and procedures. In addition, other Articles of the Agreement directly address decision-making by RFBs, or by implication States cooperating through RFBs. This is done in the contexts of the precautionary approach, functions of RFBs, transparency requirements and dispute prevention as noted below.

In implementing the precautionary approach, States must “improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty.”<sup>41</sup>

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<sup>31</sup> Article 11.

<sup>32</sup> Article 12.

<sup>33</sup> Article 13.

<sup>34</sup> Article 14.

<sup>35</sup> Article 17(4) and 33(2).

<sup>36</sup> Article 17.

<sup>37</sup> Articles 116-119.

<sup>38</sup> Article 21(2).

<sup>39</sup> Article 21(11)(i). Reference is made to Article 8 enforcement measures.

<sup>40</sup> Article 21(15), with the effect that, if an alternative mechanism is established, any member States may agree as between themselves to limit the enforcement mechanism established under Article 21(1).

<sup>41</sup> Article 6(3)(a).



The functions of RFMOs include the requirement for States, in fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, to “agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner.”<sup>42</sup>

States must provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.<sup>43</sup>

States must cooperate in order to prevent disputes and to this end must agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and strengthen existing decision-making procedures as necessary.<sup>44</sup>

These four important areas indicate broad international agreement on issues and approaches relating to decision-making in RFBs. They form the framework for the review in section 3, below, of decision-making in selected RFBs.

### 1.3.3 The IPOA-IUU

The IPOA-IUU amplifies obligations in the other post-UNCED fisheries instruments, and contains several paragraphs directly relating to action that should be taken through regional fishery management organizations.<sup>45</sup> It also refers to the role of RFBs in the context of other areas of concern, such as port State measures. References to RFBs in the IPOA-IUU appear in detail in Appendix 1.

A focal paragraph in the IPOA-IUU for decision-making states that objectives of institutional and policy strengthening in RFBs in relation to IUU fishing should include enabling the RFBs to:<sup>46</sup>

- determine policy objectives regarding IUU fishing, both for internal purposes and coordination with other regional fisheries management organizations;
- strengthen institutional mechanisms as appropriate, including mandate, functions, finance, decision making, reporting or information requirements and enforcement schemes, for the optimum implementation of policies in relation to IUU fishing;
- regularize coordination with institutional mechanisms of other regional fisheries management organizations as far as possible in relation to IUU fishing, in particular information, enforcement and trade aspects; and
- ensure timely and effective implementation of policies and measures internally, and in cooperation with other regional fisheries management organizations and relevant regional and international organizations.

The IPOA-IUU also reiterates that non-member States are not discharged from their obligations to cooperate, in accordance with their international obligations, with relevant regional fisheries management organizations.<sup>47</sup> Several RFBs have adopted measures on cooperation with non-members.<sup>48</sup>

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<sup>42</sup> Article 10(j).

<sup>43</sup> Article 12(1).

<sup>44</sup> Article 28.

<sup>45</sup> The “RFMO” reference follows that of the Fish Stocks Agreement, rather than “RFB”, which would include bodies with advisory capacity. However, in some matters covered by the IPOA-IUU, such as policy, the bodies with an advisory mandate might also be guided. For consistency with the text and general application the term RFB is used in this document.

<sup>46</sup> Paragraph 82.

<sup>47</sup> Paragraph 79.

<sup>48</sup> For example, CCAMLR, CCSBT, GFCM, IATTC, ICCAT, IOTC, NAFO, NASCO, NPAFC. See Swan, J., “The Role of National Fisheries Administrations and Regional Fishery Bodies in Adopting and Implementing Measures to Combat IUU Fishing”, prepared for the Expert Consultation on Illegal, Unreported and Unregulated Fishing organized by the Government of Australia in Cooperation with FAO, Sydney, Australia, 15-19 May 2000.

Most of the other actions relating to RFBs described in the IPOA-IUU would benefit from effective decision-making procedures, and include measures to develop innovative ways to prevent, deter and eliminate IUU fishing,<sup>49</sup> encouraging non-parties to join or participate in the organization<sup>50</sup> and agreeing on procedures to adopt measures where a State fails to ensure that its vessels or nationals do not engage in IUU fishing.<sup>51</sup>

## 2. GOVERNANCE AND DECISION-MAKING IN RFBs

### 2.1 Strengthening fisheries governance by RFBs

The strengthened conservation and management role of RFBs, foreshadowed by the post-UNCED instruments and accompanying public demands for accountability and transparency, brought with it the need for an effective decision-making process and authority. This was recognized by the FAO Committee on Fisheries (COFI) at its 1995 Session. Taking into account the limited advisory powers of FAO RFBs established under Article VI of the FAO Constitution, the meeting concluded that if effective regional fisheries conservation and management bodies are to be established within the constitutional framework of FAO, then agreements under Article XIV could provide for a more appropriate structure with the necessary decision-making powers and flexibility. This contributed to the basis for a subsequent review and reform of FAO RFBs.<sup>52</sup>

The 1996 FAO State of the World Fisheries and Aquaculture Report (SOFIA) noted that many of the resources classified as overexploited in 1992 had been showing decreasing yields for the last 20 years and were producing 6 million tonnes less than they did in 1985 and about the same as they produced in the mid-1960s, when the fishing effort was far less. This came in the aftermath of the identification by SOFIA in 1994 that around 70 percent of the world's fishery resources were overexploited or in states of recovery or collapse. Considering the provisions in the post-UNCED instruments and their effect on fisheries management, SOFIA reported in 1996 that the international community expected RFBs to play a central role in ensuring that the provisions of the international instruments were implemented.<sup>53</sup>

An FAO High Level Panel of External Experts in Fisheries concluded in a 1998 Report that:<sup>54</sup>

RFBs (are) essential in reinforcing regional cooperation and that recent events concerning the conservation and management of fisheries require that these bodies be strengthened to cope with new and additional responsibilities, including the provisions of the UN Fish Stocks Agreement, and the Code.

The last 30 years were essential to collect information and gain experience on the functioning of RFBs and that the next ten years would be to implement and enforce decisions so that world fisheries resources could be exploited and utilized in a responsible manner.

It has been observed that RFBs are in general taking innovative and cooperative action to implement the post-UNCED international instruments, many in an effort to rebuild depleted stocks or prevent further decline.<sup>55</sup> Their stature in fisheries governance is growing steadily, as reflected, *inter alia*, in

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<sup>49</sup> Paragraph 80.

<sup>50</sup> Paragraph 83.

<sup>51</sup> Paragraph 84.

<sup>52</sup> See Swan, J. Regional fishery bodies and governance: issues, actions and future directions. *FAO Fisheries Circular* No. 959, Rome, FAO. 2000. 46p.

<sup>53</sup> In 2002, SOFIA reiterated that RFBs are needed to facilitate and reinforce regional cooperation and will face the challenge of implementing parts of the post-UNCED instruments over the next decade..

<sup>54</sup> Report of the High-Level Panel of External Experts in Fisheries. 26-27 January 1998. Rome, Italy. COFI 99/Inf.11.

<sup>55</sup> See Swan, J. "Summary Information on the Role of International Fishery Organizations or Arrangements and other Bodies Concerned with the Conservation and Management of Living Aquatic Resources", *FAO Fisheries Circular* No. 985, FIPL/C985, Rome, 2003 for information indicating implementation of the post-UNCED fishery instruments by each RFB.

the expanding obligations on States to cooperate through RFBs, the number of new RFBs established in recent years and the institutional and constitutional reforms achieved by many RFBs to meet current and future needs. In addition, RFBs have made important contributions to governance in the following areas, *inter alia*:

- promoting the development of national research and management capacity;
- improving and strengthening data collection, handling and dissemination;
- addressing new issues such as IUU fishing, fleet capacity, the effect of the payment of subsidies and by-catch and discards;
- adopting management measures and resolutions relating to such issues as effort reduction, gear type, minimum sizes, mesh sizes, etc;
- adopting rules and procedures for boarding, inspection and enforcement;
- taking measures to enable implementation of recent international legal instruments.

However, while many RFBs have responded positively to their new roles and responsibilities, the strengthened governance role of RFBs does not always translate into more effective fisheries management. RFBs face a number of constraints, one of which has been identified, for some RFBs, as a lack of willingness by member States to delegate sufficient decision-making powers and responsibility to the regional bodies.<sup>56</sup> In fact, failure by one RFB to take a decision has led to dispute settlement in the International Tribunal for the Law of the Sea.<sup>57</sup>

This review recognizes, but does not analyse the correlation between strengthened governance and effective fisheries management for a number of reasons. First, decision-making is only one of many interrelated elements of governance by RFBs.<sup>58</sup> There are at least three main elements involved in taking decisions:

- *Political will*, both to set an agenda and work together to arrive at decisions. Related issues are agreement on actual voting or other procedures for formalizing decisions, and implementation of the decisions. Without the will to agree, the details of the decision-making procedures may make little difference. With the will to agree, arguably the actual process is of less importance. Political will, which can be reflected in the objection process, is also vital for effective implementation of decisions. This is ever present and recognized, but not analysed in this document.
- *Legal obligations*, such as those under the Fish Stocks Agreement, and the ability to test these through dispute settlement. This is built upon political will through agreement to be bound, and become fixed obligations, which are reviewed in this document.
- *Institutional mechanisms*, including the flow of clear and standardized information, to facilitate the work of decision makers. This is the most complex, and includes detailed issues covered in this document, such as how to take decisions on the application of the ecosystem approach.

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<sup>56</sup> See Report of the High-Level Panel of External Experts in Fisheries held in Rome, Italy, 26-27 January 1998, Committee on Fisheries document COFI/99/Inf.11, para. 28.

<sup>57</sup> *Southern Bluefin Tuna Cases*, New Zealand v. Japan, Australia v. Japan, 1999. Australia, Japan and New Zealand are all members of Commission for the Conservation of Southern Bluefin Tuna, which decides a total allowable catch (TAC) and distribution among the member States. Japan proposed an increase in the TAC starting in 1995, but no agreement was reached and the TAC remained unchanged until 1998. At that time Japan undertook what it describes as experimental fishing. In their requests to ITLOS, Australia and Japan claim this is essentially for Japanese commercial purposes, increasing the risk to the Southern Bluefin Tuna stock. ITLOS prescribed five provisional measures in 1999, including keeping catches to levels last agreed and refraining from conducting an experimental fishing programme.

<sup>58</sup> Others include institutional arrangements, mandate and functions, membership, members' data provision, budget and finance, capacity, enforcement mechanisms, non-parties undermining measures, cooperative management, partnership/stakeholder participation, collaboration with other RFBs, political will to implement decisions, acceptance of international instruments, dispute settlement mechanisms.

Second, RFBs have considered the concept of developing performance indicators for self-evaluation (which could conceivably include evaluation of the decision-making authority and process), but while supporting in principle the need to develop performance indicators and related guidelines, they have not taken such action due to constraints such as cost, time and other priorities.<sup>59</sup> Third, RFBs generally have not appeared to be concerned about reviewing the decision-making part of their mandate.<sup>60</sup> Some RFBs have expressed concern, however, that their existing decision-making structure is hampering activities with respect to certain aspects of governance, including conservation of resources, IUU fishing, and monitoring, control and surveillance.<sup>61</sup>

Information on decision-making in RFBs will therefore be presented objectively against the backdrop of the strengthened governance role of RFBs, taking into account applicable law and practice.

## 2.2 Decision-making objectives, features and processes in RFBs

RFBs are expanding their roles, strategies, programmes and planning to meet current challenges. As noted above, this has been done in some cases within their existing framework, in others their establishing instrument has been subject to review and reform,<sup>62</sup> and elsewhere new RFBs have been established. Their collective areas of competence cover all the oceans, but their mandates vary considerably. While some still fulfil advisory functions, the more recent trend is to establish bodies with regulatory functions, empowered to take binding decisions on conservation and management measures.<sup>63</sup>

Decision-making processes for both advisory and regulatory bodies cover many types of decisions. These would include matters such as membership, finance and administration, work programmes and priorities, establishment of working groups, committees or other subsidiary bodies, research priorities, liaison with other bodies, implementation of international instruments, attendance by observers at meetings, and, if mandated, dispute settlement. The institutional complexity of some RFBs – for example, those with five different kinds of working bodies - suggests the breadth of their work and probable activity in decision-making. For example, two RFBs in the current review have five or more different kinds of working bodies, such as a commission, a council, a scientific committee, standing committees, and working groups.<sup>64</sup> However, those RFBs with fewer subsidiary bodies may have an equally active agenda for decision-making.

A key objective of decision-making in those RFBs with advisory functions is to provide the best advice possible in the most timely and effective manner. For those RFBs with regulatory functions, a process to determine management measures could include the following objectives:

- timely, efficient and responsive to current and future needs;
- take into account internationally agreed criteria;
- binding decisions to the greatest extent possible, even with the application of opt-out provisions; and
- contain an effective dispute settlement mechanism.

<sup>59</sup> See Report of the Second Meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements. Rome, 20-21 February 2001. *FAO Fisheries Report*. No. 645. Rome, FAO. 2001. 26p. “While supporting in principle the need to develop performance indicators and related guidelines, participants emphasized that, in view of the diverse nature (in terms of mandate, species coverage, economic situation of members, governance systems, etc.) of RFBs, it was difficult to establish indicators which were generally applicable to all of RFBs. It was also pointed out that the costs of some evaluation methods such as external audits or formal quality control systems could prove onerous.”

<sup>60</sup> See Swan, J. “Regional Fishery Bodies and Governance: Issues, Actions and Future Directions” FAO Fisheries Circular No. 959, FIPL/C959, Rome, 2000.

<sup>61</sup> *Ibid.*

<sup>62</sup> For example, Inter-American Tropical Tuna Commission, General Fisheries Commission for the Mediterranean.

<sup>63</sup> For example, WCPFC (2000), SEAFO (2001), CCSBT (1994), IOTC (1993).

<sup>64</sup> NAFO and ICCAT. See Appendix 3, under “organization”. Details for the organization of each RFB are in Appendix 2.

While the rules and processes in each RFB vary, there are some common features among them. Rules for decision-making by the principal body of the RFB, usually a Commission, are normally found in the Convention or Agreement setting up the body. Rules for some subsidiary bodies, when they exist, are often in Rules of Procedure.

Most RFBs in this review allow for objections to conservation and management measures, with the result that the objecting party is not bound by the decision. Requirements and processes vary, as described in section 3.2.5, below. One RFB that does not allow objections requires unanimous agreement among all members for its decisions, thereby preventing the occurrence of objections in that RFB.<sup>65</sup>

Most of the RFBs in this review have adopted rules for attendance by observers, described in detail in section 3.3, below.

The Fish Stocks Agreement calls for dispute prevention through efficient and expeditious decision-making procedures. Dispute prevention is partly catered for by an objection procedure, but in general failure to reach decisions could become the basis for a dispute. The Fish Stocks Agreement addresses disputes in Part VIII, based on the obligation to settle disputes by peaceful means. The seven RFBs in this review that do not have dispute settlement procedures<sup>66</sup> were all established prior to 1983; however, two RFBs in this review established during that period do have dispute settlement.<sup>67</sup> A further description of dispute settlement provisions is in section 3.4, below.

Finally, another feature of the decision-making process that some RFBs in this review share is a surge in decision-making activity. The websites of some RFBs indicate the number of regulations or conservation measures adopted each year, and one RFB shows an increase of about 300 percent from 1990<sup>68</sup> while another shows an increase of around 500 percent in a similar period.<sup>69</sup> Two other RFBs in this review show a definite upward trend in the number of resolutions adopted.<sup>70</sup> Other RFBs present their information in the form of allocations or total allowable catches (TAC), rather than resolutions, and for one such RFB the reasons for lower TACs for some species in 2003 include application of the precautionary approach and a long term strategy. While this trend in some RFBs does not indicate the effectiveness or subject-matter of the decisions or the efficiency of the decision-making procedures, it clearly shows increased activity for certain RFBs.

In future, decisions taken to implement the Fish Stocks Agreement and the IPOAs may encourage the trend to continue or even increase. On the other hand, there is a possibility that RFBs may take decisions that do not meet the standards of the Fish Stocks Agreement: as noted above, membership of RFBs is not totally comprised of parties to the Fish Stocks Agreement. The question would then arise as to how far a party to the Agreement might fail to meet its obligations by being party to such RFB decisions.

### **2.3 Basis for this review of decision-making in selected RFBs**

The main features of decision-making, described above, will be reviewed in the context of the provisions on decision-making applicable to RFBs primarily in the Fish Stocks Agreement, and drawing on examples from selected RFBs.

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<sup>65</sup> IATTC.

<sup>66</sup> IWC, IBSFC, NAFO, NEAFC (the issue is under review), IATTC, ICCAT and NASCO.

<sup>67</sup> CCAMLR and GFCM.

<sup>68</sup> CCAMLR's conservation measures grew from around 20 to 60.

<sup>69</sup> ICCAT shows less than five regulations in the early 1990s, with about 30 regulations.

<sup>70</sup> IATTC shows eleven IATTC and AIDCP Resolutions for the June 2003 session, compared with five the previous year, seven for 2001 and one for 2000. IOTC shows nine for its seventh session in 2002, an increase of two from the previous year, but its fifth session in 2000 adopted only two resolutions.

There is no attempt to analyse or evaluate the effectiveness of the decision-making process in any RFB (including the use or design of an objection procedure) or the reason for the adoption by an RFB of any particular process or decisions. As indicated in section 2.1 above, this would best be achieved by development of an objective set of performance indicators and guidelines, a concept discussed at the Second Meeting of FAO and Non-FAO RFBs held in February 2001. Among other things, participants emphasized that, in view of the diverse nature (in terms of mandate, species coverage, economic situation of members, governance systems, etc.) of RFBs, it would be difficult to establish indicators which were generally applicable to all of RFBs.<sup>71</sup>

Eleven RFBs, identified below, have been selected for this review as representative of decision-making processes and authorities in RFBs. All of them have mandates involving regulatory activity; the area of competence for most of them extends to areas under national jurisdiction; and they are arranged in categories that reflect a spectrum of geographical and species mandates. Their combined membership and mandates evidence the growing stature of RFBs as they move towards centre stage in fisheries governance.

<b>Global:</b>	International Whaling Commission (IWC)
<b>Trans-Ocean</b>	Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)
<b>Regional:</b>	General Fisheries Commission for the Mediterranean (GFCM) International Baltic Sea Fisheries Commission (IBSFC) Northwest Atlantic Fisheries Organization (NAFO) North East Atlantic Fisheries Commission (NEAFC) South East Atlantic Fisheries Organization (SEAFO)
<b>Species:</b>	Indian Ocean Tuna Commission (IOTC) Inter-American Tropical Tuna Commission (IATTC) International Convention for the Conservation of Atlantic Tunas (ICCAT) North Atlantic Salmon Conservation Organization (NASCO)

Detailed information relating to each of the above RFBs selected for this review appears in Appendix 2. It was taken from publicly available sources, and is presented according to the following framework.

1. OBJECTIVE AND FUNCTIONS
2. REGULATORY MEASURES
3. ORGANIZATION
  - 3.1. Membership
  - 3.2. The Commission, subsidiary bodies
  - 3.3. Administration and Finance
  - 3.4. Observers
4. DECISION-MAKING COMPETENCIES
  - 4.1. Decisions of the Commission
  - 4.2. Objection Procedure
  - 4.3. Other decision mechanisms
5. DISPUTE SETTLEMENT

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<sup>71</sup> It was also pointed out that the costs of some evaluation methods such as external audits or formal quality control systems could prove onerous. FAO. Report of the Second Meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements. Rome, 20-21 February 2001. *FAO Fisheries Report*. No. 645. Rome, FAO. 2001. 26p.

A table titled “Summary Information Relating to Decision-making in some RFBs” appears in Appendix 3. It summarizes key points in Appendix 2 for easy reference, and sets out the following information on the RFBs in this review:

- date of establishment
- mandate
- area of competence
- membership
- organization
- observers
- decision-making by principal body
- objection procedure
- dispute settlement

### 3. REVIEW OF KEY DECISION-MAKING RULES AND PROCESSES IN SELECTED RFBs

As noted above, the Fish Stocks Agreement singles out four areas relating to decision-making in RFBs. These are: the precautionary approach, functions, transparency and prevention of disputes. They are considered below.

#### 3.1 Precautionary approach

*In implementing the precautionary approach, States must “improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty”*

In addressing the implementation of the precautionary approach, the Fish Stocks Agreement does not specifically refer to RFBs. It obligates States to improve decision-making by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty.<sup>72</sup> In practice, States are implementing the precautionary approach both at national levels and through RFBs. In a 2002 survey of the Secretariats of RFBs, most indicated that steps had been taken to implement the precautionary approach.<sup>73</sup> A subsequent survey in 2003 reported that the precautionary approach is widely endorsed, and in most cases precautionary reference points have been established in accordance with Annex II of the Fish Stocks Agreement.<sup>74</sup>

The 2003 survey reported that all RFB respondents have standard requirements for the collection of scientific, technical and statistical data, including as set out in Annex 1 of the Fish Stocks Agreement, and most are satisfied that reliable stock assessments are made on the basis of data available. At the same time, the report notes, RFB respondents see scope to improve data collection and management, for example in the following areas:

- expansion in the use of vessel monitoring systems (VMS) as a tool for data collection as well as for monitoring, control and surveillance (MCS) activities;
- improvements in the completeness of data made available, with two related issues being the reluctance of some States to share data and the confidentiality of non-aggregated data;
- participation by a representative sample of qualified scientists from all RFB member States.

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<sup>72</sup> Article 6(3)(a).

<sup>73</sup> See Swan, note 62 *supra*. Of 29 RFB Secretariats surveyed, 21 indicated steps taken to implement the precautionary approach, including bodies with an advisory mandate such as the International Council for the Exploration of the Seas.

<sup>74</sup> See note 19, *supra*.

The RFBs in the current review have taken a number of approaches towards improvement of decision-making on issues concerning the precautionary approach. They include establishment of special working groups or committees,<sup>75</sup> tasking existing committees<sup>76</sup> and receiving scientific advice from another RFB that builds in the precautionary approach.<sup>77</sup> One RFB that already applies the precautionary approach is developing a more formal procedure of using scientific advice that incorporates the precautionary approach.<sup>78</sup> Another RFB combines a number of approaches, including an agreement on the adoption of a precautionary approach, and a decision structure and plan of action relating to the precautionary approach in specified contexts.<sup>79</sup> Finally, in one more recently established RFB, the implementation of a precautionary approach to fisheries management is reflected in the acceptance of the principle of incorporating uncertainty in stock assessments.<sup>80</sup>

It is evident that the action taken by RFBs to improve decision-making in implementing the precautionary approach indicates broad activity and a variety of approaches.

The call by the Fish Stocks Agreement to share information has been answered by some RFBs working with each other, and more generally in the biennial meetings of RFBs. At the second such meeting in 2001, the meeting expressed support for the development of a Fisheries Global Information System (FIGIS) and recognized the essential need to improve data collection, analysis and dissemination of information on status and trends of fisheries and fishery resources. This was reaffirmed at the third meeting, in considering the status of partnerships between RFBs and FAO to develop the Fisheries Resources Monitoring System (FIRMS).

While the instruments do not mention the ecosystem approach in connection with decision-making, it has been recognized that the ecosystem approach requires clarification of the conceptual and operational implications of the approach, and some RFBs are engaged in this task: one is engaged in the development of an appropriate decision-making model.<sup>81</sup> It has a full programme of research into, and monitoring of, ecosystem functionality (including possible direct/indirect effects of fishing). It includes conservation measures for bycatch and to regulate the effects of fishing. A decision-making system is being developed to take account of possible ecosystem implications in the implementation of fisheries management measures.

### 3.2 Function of RFBs – agreement on decision-making procedures

*The functions of RFBs include the requirement for States, in fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, to “agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner”.*

<sup>75</sup> For example, the ICCAT *ad hoc* Working Group on Precautionary Approach.

<sup>76</sup> For example, the GFCM tasked its Scientific Advisory Committee to define reference points.

<sup>77</sup> For example, NEAFC, where the precautionary approach is built into the scientific advice received from the International Council for the Exploration of the Sea.

<sup>78</sup> IATTC.

<sup>79</sup> NASCO’s Council has also adopted agreements, guidelines, resolutions and protocols, including the following.

- Agreement on Adoption of a Precautionary Approach;
- decision structure to Aid the Council and Commissions of NASCO and the Relevant Authorities in implementing the Precautionary Approach to Management of North Atlantic Fisheries;
- NASCO Plan of Action for the Application of the Precautionary Approach to the Protection and Restoration of Atlantic Salmon Habitat.

As the next step, NASCO will be considering:

- application of the precautionary approach to introductions and transfers, aquaculture and transgenics; and
- how social and economic factors can be taken into account without undermining the effectiveness of the precautionary approach.

<sup>80</sup> IOTC. Operational models will be used to assess the consequences of management.

<sup>81</sup> For example, GFCM is considering the underlying conceptual and operational implications of the approach through its Working Group on the Ecosystem of the Scientific Advisory Committee Sub-Committee on Environment. CCAMLR is developing models for decision-making on the ecosystem approach.



The functions of RFBs described in Article 10 of the Fish Stocks Agreement include the obligation for States to “agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner”.<sup>82</sup>

In this context, “decision-making procedures” are not confined to a voting formula. It can involve consideration of the elements of the decision-making process, including:

- subsidiary bodies: clear, timely procedures for making recommendations/giving advice;
- principal bodies: clear and timely procedures;
- entry into force in an appropriate time period;
- an objection procedure that is consistent with the criteria of timeliness and effectiveness.

Each of these elements will be considered below with reference to the practice in RFBs in this review. However, it should be borne in mind that political will and related considerations also play an indirect part in the decision-making process. In that context, membership issues, including allocations to new members, can also affect decision-making, as noted below in section 3.2.1, below. Discussion of membership issues provides a general background to subsequent consideration of the four elements noted above.

It should be noted that the adoption of conservation and management measures is just one step in the management process. Implementation and enforcement are equally important, and some form of decision-making is required to ensure that they are also effective and timely. However, because they form separate activities, and are approached as such under Article 10 of the Fish Stocks Agreement, they will not be considered separately in this review.

### **3.2.1 Membership requirements and allocation criteria for new members**

The May, 2003 report on the status and implementation of the Fish Stocks Agreement notes that a key challenge for RFBs is to bring as many States as possible within its framework, recognizing the legitimate aspirations of new entrants to engage in fishing on the high seas without increasing the total fishing for stocks.<sup>83</sup> It is often the case that the stocks are fully exploited and fully allocated among existing RFB members, so such cooperation can translate into the adoption of new allocation criteria by RFBs. Such criteria represent a departure from the general practice of basing allocations on historical catch records, and can lead to timely and effective adoption of conservation and management measures, including allocations.

The Fish Stocks Agreement addresses the issue of new members and participatory rights in three key areas. First, a provision that States having a “real interest” in a fishery may become members of the relevant RFB is in Article 8. Second, accommodating the interests of new members is included in the core functions of RFBs described in Article 10, and third, criteria to be taken into account in determining the nature and extent of participatory rights for new members appear in Article 11. However, “real interest” is not defined, so this would be left to the individual RFB to decide.<sup>84</sup>

In this context, the issues that impact on decision-making are:

- whether an RFB is open to new members and if so the relevant membership requirements;
- the approach by RFBs to allocation criteria for new members.

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<sup>82</sup> Article 10(j).

<sup>83</sup> The report notes that the matter is complicated by the need to recognize the requirements of developing States that may not previously have had the capacity to fish for high seas stocks, and the need to avoid adding to existing overcapacity in the fishing industry.

<sup>84</sup> One newly-established RFB – SEAFO - has catered for this by including in its Convention one criterion for membership as States and regional economic integration organizations (REIOs) whose vessels fish in the Convention Area, or fished during four years preceding adoption of the Convention.

Membership and allocation criteria may not be, strictly speaking, the “decision-making procedures” that are referred to in the Fish Stocks Agreement because they do not determine a process for making decisions. Criteria for membership and the decision-making procedures on new members are set out in the constitutive instrument of the RFB, while adoption of criteria would be subject to agreed decision-making procedures. However, one objective of the Fish Stocks Agreement is the adoption of the conservation and management measures by as many relevant States and fishing entities as possible, through a RFB. One part of the decision-making procedure is therefore to ensure that as many relevant States and fishing entities as possible are part of the process; this would facilitate adoption of conservation and management measures in an effective manner. And for this to occur, the RFB’s criteria for new members and the decision-making process in relation to admission of new members can be a fundamental concern.

Adoption of criteria to determine the nature or extent of participatory rights for new members would facilitate the adoption of conservation and management measures because they could offer guidelines for the decision, thus potentially making the procedure more timely and effective.

All the RFBs in this review have open membership, including for REIOs, but many attach qualifications, described in detail below. Participation in the fisheries is the requirement most frequently adopted for membership. Two RFBs require new members to have some interest in the living resources in the Area of Competence (“Area”); two require participation in the fisheries (with one requiring approval by the RFB); an additional two require some form of FAO membership and either participation in the fisheries or coastal States; one refers to coastal States and participation in the fisheries four years preceding the adoption of the Convention; one refers simply to United Nations membership, another to approval by  $\frac{3}{4}$  of the members, and an RFB with a region and species mandate requires that members be a State that exercises jurisdiction in the region or a State of origin for the species. Details of these membership requirements are noted below.

- States interested in research or harvesting activities in relation to the living marine resources of the Area;<sup>85</sup>
- States interested in preservation and exploitation of the living resources in the Area;<sup>86</sup>
- participants in the fisheries of the Area, approved by the General Council;<sup>87</sup>
- any government whose nationals participate in the fisheries covered by the Convention;<sup>88</sup>
- Members or Associate Members of FAO; other States members of UN, any of its Specialized Agencies or the International Atomic Energy Agency that are (i) coastal States or Associate Members situated wholly or partly within the region; (ii) States or Associate Members whose vessels engage in fishing in the region for stocks covered by the Agreement that accept the Agreement and are approved by a two-thirds majority of its membership;<sup>89</sup>
- Members and Associate Members of FAO that are (i) coastal States or Associate Members situated wholly or partly within the Area; (ii) States responsible for international relations of territories situated wholly or partly within the Area; (iii) States or Associate Members whose vessels engage in fishing in the area of stocks covered by the Agreement. New members may be admitted by a two-thirds majority vote provided they are Members of the United Nations or any of its Specialized Agencies or the International Atomic Energy Agency provided that they are coastal States situated wholly or partly within the Area or States whose vessels engage in fishing in the Area for stocks covered by the Agreement;<sup>90</sup>

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<sup>85</sup> CCAMLR.

<sup>86</sup> IBSFC.

<sup>87</sup> NAFO.

<sup>88</sup> IATTC.

<sup>89</sup> GFCM.

<sup>90</sup> IOTC.

- coastal States, other States and REIOs whose vessels fish or fished in the Area during the four years preceding the adoption of the Convention;<sup>91</sup>
- any member of the United Nations or of any Specialized Agency;<sup>92</sup>
- approval by  $\frac{3}{4}$  of the members;<sup>93</sup>
- any State that exercises fisheries jurisdiction in the North Atlantic or is a State of origin for salmon stocks, provided the Council approves.<sup>94</sup>

For REIOs, it is standard for RFBs to require that States have transferred competence to the REIO in respect of matters within the purview of the RFB. In such a case the REIO normally votes on behalf of all its members. Circumstances are foreseen, in some cases, where a REIO is to exercise its membership rights on an alternative basis with its member States that are members of the RFB within areas of their respective competence, and this is provided for in the constitutive instrument.<sup>95</sup>

Many RFBs have a proactive policy of inviting non-members that fish in the Area to become members or participate in meetings of the RFB,<sup>96</sup> and the membership of some RFBs has increased in recent years.<sup>97</sup>

Different approaches have been taken towards adopting new allocation criteria for the new members as follows:<sup>98</sup>

- NAFO is open to new members with the proviso that stocks are fully allocated and new allocations will only be available for previously unallocated stocks when these recover sufficiently to allow allocations. The allocation criteria for such stocks are under discussion, with the criteria in Article 11 of the Fish Stocks Agreement on the nature and extent of participatory rights for new members regarded as non-exhaustive.

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<sup>91</sup> SEAFO.

<sup>92</sup> ICCAT.

<sup>93</sup> NEAFC.

<sup>94</sup> NASCO.

<sup>95</sup> See, for example, the Agreement establishing the GFCM, Article II.

<sup>96</sup> For example, **CCAMLR** adopted a Policy to Enhance Cooperation between CCAMLR and non-Contracting Parties in 1999 as part of its Catch Documentation Scheme. **GFCM** Resolution 97/2 on Activities of non-Contracting Parties adopted at its 22nd Session in 1997 called upon non-Contracting Parties whose vessels engage in fishing activities in the region to become members of GFCM or otherwise cooperate in the implementation of the recommendations of the Council. **ICCAT** adopted a Resolution on Coordination with non-Contracting Parties at its Ninth Special Meeting in Madrid, December 1994, which *inter alia* requires ICCAT to contact all non-Contracting Parties known to be fishing in the Convention Area to urge them to attain status as a Cooperating Party, and permits them to be observers at meetings. This was followed by ICCAT's Resolution at its Fifteenth Regular Meeting (Madrid, November 1997) on Becoming a Cooperating Party, Entity or Fishing Entity. *Inter alia* it requires ICCAT to contact all non-Contracting Parties, etc. known to be fishing in the Convention Area to urge them to attain status as a Cooperating Party, Entity or Fishing Entity. The Commission's Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures is responsible for reviewing requests from non-Contracting Parties and recommending such status. **IOTC** adopted a Resolution at its Third Session on Cooperation with non-Contracting Parties to urge them to become contracting Parties. A recommendation was wadopted concerning registration and exchange of information on vessels, including flag of convenience vessels, fishing for tropical tunas in IOTC areas of competence.<sup>96</sup> **NAFO's** 1997 Scheme to Promote Compliance by Non-Contracting Party Vessels with the Contracting Parties in the NAFO Regulatory Area (STAFAC) gives a mandate to review annually the information compiled, actions taken under the agreed Scheme and the operation of the Scheme, and where necessary, recommend to the General Council new measures to enhance the observance of NAFO Conservation and Enforcement Measures by Non-Contracting Parties and new procedures to enhance the implementation of the Scheme by Contracting Parties. **NASCO** adopted a Resolution at its Ninth Annual Meeting in 1992 on Fishing for Salmon on the High Seas, that all non-Contracting Parties fishing for salmon on the high seas of the North Atlantic be invited to sign and comply with the Protocol to the Convention on States not Party to the Convention (adopted at the Ninth Session) and that Contracting Parties transmit information about sightings to the Secretariat and secure compliance with the Conventions by their nationals and vessels. **SEAFO's** Convention encourages inviting new members to join in Article 22.1.

<sup>97</sup> For example, 12 States have joined ICCAT since 1995.

<sup>98</sup> See the 2003 May Report, note 19 *supra*.

- ICCAT is open to new members and in 2001 agreed new allocation criteria for all its stocks. These take into account Article 11 and other elements relevant to the ICCAT situation, including historical catch records, but without prioritising the various criteria.
- IATTC limits fishing in the Convention Area to vessels on its purse seine register rather than by allocations, so new members would have to access these vessels by purchase or transfer.
- NEAFC does not have allocation criteria and is planning discussions on new members.
- IOTC and CCAMLR do not have allocation criteria.

Despite best efforts to agree on allocation criteria, a decision on conservation and management measures, including allocations for new entrants, may be taken, at least in part, for political reasons. Considerations such as return on investment and historical tradition tend to support this. Adoption by RFBs of relevant criteria, however, minimise this risk and may result in more effective decision-making procedures.

### **3.2.2 Subsidiary bodies: clear and timely procedures for making recommendations/giving advice**

The decision-making in the subsidiary bodies is normally not provided in the Convention or Agreement establishing the RFB, but may be found in the rules of procedure. On the whole, subsidiary bodies make recommendations that are not binding, and their decisions or reports are reached by consensus. In some RFBs, if there is no consensus in the scientific body, the report to the commission must contain all views.<sup>99</sup>

The institutional structure of each RFB, including its subsidiary bodies, is different. Depending on factors such as mandate, membership and funding, some RFBs have established an extensive web of subsidiary bodies, while others which haven't might operate with a focus on fewer separate issues. A detailed description of the institutional structure of each RFB is provided in Appendix 2, and an indication of the types of its subsidiary bodies appears in Appendix 3 under "Organization".

The constitutive instrument of the RFB usually specifies the subsidiary body or bodies, or designates authority to set up subsidiary bodies. In most cases such authority resides with the principal decision-making body. Rules of Procedure may then apply to the subsidiary bodies. All RFBs in this review have a Commission as the main decision-making body (except NASCO which has three geographical Commissions and a Council). Each RFB has a secretariat, and most have special bodies to address Finance and Administration, but they take different forms. For example, four of the RFBs have set up Standing Committees on Finance and Administration,<sup>100</sup> three have established Committees for that purpose,<sup>101</sup> two have Councils that attend to such matters,<sup>102</sup> one has budget and contributions sub-committees,<sup>103</sup> and others take different approaches.

Otherwise, subsidiary institutional structures, and their form and mandates, vary. This is seen below, in the listing of some component bodies of RFBs in this review. They have various forms, including Councils, Committees, Standing Committees, Sub-Committees, Panels, Working Parties, Working Groups, Permanent Working Group, ad hoc Working Groups and Species Groups, and the organization and hierarchy is determined by each RFB. Although this represents an aggregation of many of the subsidiary bodies for the RFBs, and not any particular decision path, it illustrates the

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<sup>99</sup> For example, NAFO requires all views, and GFCM has requested its Scientific Advisory Committee to provide a contradictory view on scientific issues if consensus is not reached on stated issues, such as stock assessment methodologies.

<sup>100</sup> IWC, IBSFC, NAFO, ICCAT.

<sup>101</sup> IWC, NEAFC, NASCO.

<sup>102</sup> NAFO, ICCAT. Note NAFO has set up a Standing Committee on Finance and Administration (STACFAD) to advise the Council.

<sup>103</sup> IWC.

breadth of issues considered by RFBs and inspires an appreciation for the value of adopting clear decision-making procedures to ensure that the recommendations or advice will be timely and effective.

### **Councils**

Scientific Council<sup>104</sup>  
 General Council<sup>105</sup>  
 Council - administration<sup>106</sup>  
 Council of Parties to the Convention<sup>107</sup>

### **Committees**

Scientific<sup>108</sup>  
 Technical<sup>109</sup>  
 Finance and Administration<sup>110</sup>  
 Aquaculture<sup>111</sup>  
 Permanent Committee on Control and Enforcement<sup>112</sup>  
 Compliance Committee<sup>113</sup>

### **Standing Committees**

Finance and Administration<sup>114</sup>  
 Observation and Inspection<sup>115</sup>  
 Regulatory Measures Committee<sup>116</sup>  
 International Control<sup>117</sup>  
 Non-contracting Party Fishing Activities<sup>118</sup>  
 Fisheries Science, Publications, Fisheries Environment and Research Coordination<sup>119</sup>  
 Research and Statistics<sup>120</sup>

### **Sub-Committees**

Stock Assessment, Economic and Social Sciences, Marine Environment and Ecosystems, Statistics and Information<sup>121</sup>  
 Statistics, Environment, Bycatch<sup>122</sup>  
 Aboriginal Subsistence Whaling, Infractions, Budget, Contributions<sup>123</sup>

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<sup>104</sup> NAFO.

<sup>105</sup> NAFO.

<sup>106</sup> Within ICCAT Commission to take decisions on matters relating to staff duties and instructing the Executive Secretary between meetings.

<sup>107</sup> NASCO Council, with three geographic Commissions being the other principal bodies.

<sup>108</sup> IWC, GFCM, CCAMLR, SEAFO, IOTC.

<sup>109</sup> IWC.

<sup>110</sup> IWC, NEAFC, NASCO.

<sup>111</sup> GFCM.

<sup>112</sup> NEAFC.

<sup>113</sup> SEAFO.

<sup>114</sup> IWC, IBSFC, NAFO, ICCAT.

<sup>115</sup> CCAMLR.

<sup>116</sup> IBSFC.

<sup>117</sup> NAFO.

<sup>118</sup> NAFO.

<sup>119</sup> NAFO.

<sup>120</sup> ICCAT.

<sup>121</sup> GFCM. Note that the three GFCM Aquaculture Networks act as sub-committees of the Committee on Aquaculture, and have established *ad hoc* working groups, e.g. on Bio-indicators for sustainable aquaculture, or aquaculture planning.

<sup>122</sup> ICCAT.

<sup>123</sup> IWC.

## **Panels**

Tropical Tuna, Northern Temperate Tunas, Southern Temperate Tunas and Swordfish, Billfishes and Small Tunas<sup>124</sup>

## **Working Parties**

Data Collection and Statistics, Tropical Tunas, Neritic Tunas and Billfishes, Tagging, Methods, and Temperate Tunas (future)<sup>125</sup>

## **Working Groups**

Fish Stock Assessment, Ecosystem Modelling and Management, Incidental Mortality Associated with Longline Fishing<sup>126</sup>

Blue Whiting, the Future of NEAFC<sup>127</sup>

Fishing by Non-Parties<sup>128</sup>

## **Permanent Working Group**

Compliance<sup>129</sup>

## **Ad hoc Working Groups**

Small Pelagic Species, Demersal Species, Economic and Social Indicators, Marine Ecology and Environment, Anthropogenic Effects and Fishing Technology<sup>130</sup>

Management Units, Operational Units and Sustainable Tuna Farming<sup>131</sup>

Large Pelagic Species<sup>132</sup>

Experts on Computerisation<sup>133</sup>

Precautionary Approach<sup>134</sup>

## **Species Groups**

Individual stocks<sup>135</sup>

It should be noted that not all recommendations on matters relating to conservation and management measures come from subsidiary bodies; additional advice is often solicited from other RFBs, research institutions or others. Decision-making procedures should take this into account as well.

It is generally acknowledged that decision-making in the Commissions can be subject to political motivation. There is also scope for this in the subsidiary bodies, but in general the latter tend to be more technical and therefore objective. Decision-making procedures at that level have the opportunity to promote the objectivity. From the point of view of establishing subsidiary bodies and/or seeking

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<sup>124</sup> ICCAT. The Panels review research results and draft management measures for ICCAT Commission's consideration.

<sup>125</sup> IOTC.

<sup>126</sup> CCAMLR.

<sup>127</sup> NEAFC.

<sup>128</sup> IATTC.

<sup>129</sup> IATTC.

<sup>130</sup> Attached to Sub-Committees of GFCM.

<sup>131</sup> Attached to the Scientific Advisory Committee of GFCM. Note the Working Group on Management Units has been suspended and the Working Group on Sustainable Tuna Farming is ongoing together with ICCAT.

<sup>132</sup> GFCM together with ICCAT.

<sup>133</sup> NEAFC.

<sup>134</sup> ICCAT.

<sup>135</sup> ICCAT.

their advice, some of the considerations in promoting clear procedures and timely recommendations or advice can include, as appropriate:

- the establishment of subsidiary bodies as provided in the constitutive instrument;
- the mandate and capacity of an RFB to establish or maintain a subsidiary body;
- whether the procedure to establish a subsidiary body is flexible and responsive to the need for recommendations/advice;
- the procedure for initiating a request to subsidiary body – e.g. a member State,<sup>136</sup> the principal body (e.g. Commission), or a senior subsidiary body (e.g. Scientific Council);
- collection/provision of data and information;<sup>137</sup> and
- agreement on a timetable.

In addition to the above, the decision-making procedures in the subsidiary body contribute to the effectiveness of the recommendations or advice. As noted above, decisions are usually taken by consensus or regulated by Rules of Procedure.

### 3.2.3 Principal bodies: clear and timely procedures

Decision-making procedures for conservation and management measures by the principal bodies (Commissions) are included in the constitutive instrument for an RFB. Details of requirements for each RFB in this review are included in Appendix 2, and summarized in Appendix 3 under “Decision-making by Principal Body”. They vary from a requirement for a unanimous decision,<sup>138</sup> to a specified majority or simple majority, and a stated quorum. Two RFBs in this review take decisions by consensus where possible,<sup>139</sup> and two take decisions by consensus on matters of substance.<sup>140</sup> For majority or qualified majority votes, some RFBs relate the vote needed to those present and casting affirmative or negative votes, others refer to members “present and voting”. Many require a 2/3 or 3/4 majority when deciding on conservation and management measures.<sup>141</sup> Some RFBs require unanimous decisions.<sup>142</sup> Some RFBs allow votes to be taken by secret ballot, roll call or, between sessions as needed, by written communication.

The timeliness of Commissions’ decisions on conservation and management measures can depend to some extent on the timeliness of the procedures in any subsidiary body that is mandated with making recommendations or giving advice. Matters are usually decided at meetings of the Commission, but the flexibility of some RFBs in allowing intersessional votes as necessary or in cases of emergency allows a timely response.

The normal rule is one vote per contracting party, depending on the structure of the RFB. For example, one RFB with national sections provides for one vote to each national section.<sup>143</sup> As noted above, REIOs will normally exercise one vote unless it does not have competence in the matter being discussed.

### 3.2.4 Entry into force in an appropriate time period

The time period between decision on and entry into force of conservation and management measures is normally set out in the constitutive instrument of the RFB. In determining the time period, two

<sup>136</sup> For example, NAFO permits a coastal State to refer a question to the Scientific Advisory Committee.

<sup>137</sup> A number of RFB Secretariats in response to a survey identified failure by some members to provide timely and accurate data as a major constraint to effective governance. See Swan, note 59, *supra*.

<sup>138</sup> IATTC and NASCO Commissions.

<sup>139</sup> IWC and IBSFC.

<sup>140</sup> CCAMLR and SEAFO.

<sup>141</sup> IWC, GFCM, NEAFC, IOTC require 2/3; IWC and the NASCO Council require 3/4.

<sup>142</sup> IATTC, and each of NASCO’s Commissions must take decisions by the unanimous vote of those present and casting an affirmative or negative vote.

<sup>143</sup> IATTC.

factors are normally taken into consideration. One is adequate time for an objection period, described in section 3.2.5 below, and the other is to allow member States adequate time to implement the measures at national level.

Most RFBs in this review have an objection procedure. If no objection is made, the earliest time any conservation and management measure can enter into force is sixty days, usually after notification by the Secretariat. This applies in three RFBs. One RFB requires a period of six months before measures enter into force. Mindful that the objection period, discussed below, could extend the date of entry into force, the waiting periods required by the RFBs in this review between notification and entry into force are:

- 60 days<sup>144</sup>
- 80 days<sup>145</sup>
- 90 days<sup>146</sup>
- 120 days<sup>147</sup>
- 180 days<sup>148</sup>
- six months<sup>149</sup>

An objection procedure is seen as unnecessary by the RFB that requires unanimous voting, so resolutions may authorise the Director to set a date for entry into force of the measures.<sup>150</sup> For example, resolutions may state that a fishery be closed two weeks after notification by the Director if he determines that the catch has reached a certain level. It is accompanied by an obligation for each Party to send the Director information on the legal and administrative provisions for implementing the closure, at the latest 10 days after its entry into force.

### 3.2.5 An objection procedure consistent with the criteria of timeliness and effectiveness

The objection procedure, which results in a member not being bound by a conservation and management measure and may trigger other consequences, varies from one RFB to another. Some RFBs refer instead to “non-acceptance” procedures.<sup>151</sup> The procedures are found in the constitutive instrument for the RFB.

The procedures are described in detail for each RFB in Appendix 2, and are summarized under the heading “Objection” in Appendix 3. In general, objection procedures can significantly delay the entry into force of conservation and management measures, and for some RFBs, if a certain critical mass of members object, for example 1/3, then the other members are not obligated to give effect to the measures.<sup>152</sup>

Extended periods of objection are provided by many RFBs. This is triggered by the first objection, and consists of one or two additional periods of time beyond the original objection period during which further objections may be made, sometimes in a manner of leap-frogging<sup>153</sup> or meetings may be called.<sup>154</sup>

<sup>144</sup> NAFO, SEAFO and NASCO. NASCO has the option of a later date as determined by the Commission.

<sup>145</sup> NEAFC: 50 days for objections, then at any time determined by the Commission not less than 30 days later.

<sup>146</sup> IWC and IBSFC.

<sup>147</sup> GFCM and IOTC.

<sup>148</sup> CCAMLR.

<sup>149</sup> ICCAT.

<sup>150</sup> IATTC.

<sup>151</sup> e.g., CCAMLR and SEAFO.

<sup>152</sup> e.g., GFCM, IBSFC, IOTC.

<sup>153</sup> For example, IWC, NAFO, ICCAT.

<sup>154</sup> e.g. in SEAFO, if there is non-acceptance the Commission must meet at the request of any member and review the measure. At the time of the meeting and for 30 days thereafter, any member may notify non-acceptance and not be bound.



An example of the “leap-frogging” objection procedure<sup>155</sup> is where a member objects in the six-month period, the recommendation does not become effective for an additional 60 days. Then, another member may object during the 60 days and another member may object within the expiration of 45 days of the first objection or the expiration of 60 days, whichever is later. NAFO provides another example, where objections may be made with 60 days and measures will not become binding on non-objecting parties until 40 days after the objection. Other members may object during the 40 day period or within 30 days from notification of the objection, whichever is later.

Because of the contingencies involved in many of the procedures, it is difficult to state with accuracy the longest possible time an objection procedure could take. However, it would appear to range from around 100-150 days<sup>156</sup> to 180 - 200 days<sup>157</sup> to 8 months or longer.<sup>158</sup>

Some RFBs also provide for termination of conservation and management measures by members. This type of provision usually permits members to opt out of a binding measure from a certain time, such as one year from the date of entry into force. There is normally a waiting period of around one year for the opt-out to take effect.<sup>159</sup>

### 3.3 Transparency

*States must provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.*

Transparency and accountability are two major themes in the post-UNCED international instruments, including the Fish Stocks Agreement. The RFBs in this review have addressed the issue in a variety of ways, some of the most visible and publicly accessible being the maintenance of websites and regular publications. In terms of the decision-making process, this translates into procedures for observers. International or regional organizations, non-member States, non-government organizations (NGOs) – as well as international non-government organizations (INGOs) – are increasingly taking part in the meetings, and as appropriate the work, of the RFBs. They do not take decisions, but can be part of the process. They contribute as observers at commission and other meetings. Some of the organizations, NGOs and INGOs support active research, communication or other relevant programmes and it can benefit both the RFBs and the organizations to facilitate coordination and cooperation.

With the apparent aim of enhancing transparency in the decision-making process, all RFBs in this review have adopted rules for observers at their meetings. They are described in detail for each RFB in Appendix 2, and summarized under “observers” in Appendix 3. The rules of many RFBs require that the applicant organization have specified qualifications, for example they should have special competence in the field of activities of the RFB, or legitimate interests.

The rules normally require that application for attendance be made well in advance of the meeting. This can range from 15<sup>160</sup> to 120<sup>161</sup> days prior to the meeting. Other RFBs require advance notification of around 60 days.<sup>162</sup> Information to be submitted by the applicant is specified in the rules. There is then usually a time within which member States are notified, so they may approve or object to the application. In many cases the observers are required to pay a fee, which can be related to costs of documentation and administration.

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<sup>155</sup> ICCAT has this procedure.

<sup>156</sup> SEAFO, depending on meeting referenced in previous footnote; IBSFC, NAFO, NEAFC.

<sup>157</sup> IWC, GFCM, IOTC.

<sup>158</sup> ICCAT.

<sup>159</sup> e.g., IBSFC, NAFO.

<sup>160</sup> NASCO.

<sup>161</sup> IATTC.

<sup>162</sup> IWC, IBSFC.

The rules provide a framework for observers rights and privileges at meetings. This includes making statements – usually for a limited time at the invitation of the Chair – distributing documents (often with prior approval) and receiving meeting documents. Some RFBs provide that observers may be excluded if the seating capacity in the room is insufficient, or that the number of observers from each organization is to be limited. Rules may specify that observers are excluded from *in camera* sessions, or may declare that they may or may not attend meetings of specified subsidiary bodies. They may also specify whether and when members of the press are invited to observe, and when press conferences may be held.

### 3.4 Dispute prevention

*States must cooperate in order to prevent disputes and to this end must agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and strengthen existing decision-making procedures as necessary.*

Dispute prevention is an area that is, in general, acknowledged to be neglected. Most RFBs focus on the related area of dispute settlement, which applies after a dispute has arisen. But, as noted above in section 2.2, many of the RFBs in this review do not include dispute settlement in their constitutive instrument. Those that do generally refer to action in the first instance such as conciliation, consultation, arbitration, consideration by a committee or the commission, or establishment of an *ad hoc* panel for technical disputes. If first attempts to resolve the disputes fail, some RFBs provide for referral to the International Court of Justice. Details on dispute settlement for each RFB are included in Appendix 2, and are summarized in Appendix 3 under “Dispute Settlement”.

To emphasise the different elements in the process, the Fish Stocks Agreement provides in separate Articles for the obligation to settle disputes by peaceful means,<sup>163</sup> the prevention of disputes,<sup>164</sup> disputes of a technical nature,<sup>165</sup> and procedures for the settlement of disputes.<sup>166</sup>

Indicators for efficient and expeditious dispute prevention have not been developed, possibly due in part to political implications and other day-to-day priorities of RFBs. Disputes could arise over any issues dealt with by RFBs, including development of conservation and management measures. The Code of Conduct elaborates on the concept of dispute prevention and resolution:

*States should cooperate in order to prevent disputes. All disputes relating to fishing activities and practices should be resolved in a timely, peaceful and cooperative manner, in accordance with applicable international agreements or as may otherwise be agreed between the parties. Pending settlement of a dispute, the States concerned should make every effort to enter into provisional agreements of a practical nature which should be without prejudice to the final outcome of any dispute settlement procedure.<sup>167</sup>*

The actions required by the Fish Stocks Agreement to prevent disputes are more specific: the agreement of efficient and expeditious decision-making procedures within RFBs and the strengthening of existing procedures as necessary. However, the Agreement does not prescribe or indicate any specific method of decision-making for this purpose, nor does it refer to the type of disputes that might be prevented by efficient decision-making. The latter could cover a range of disputes, for example on technical matters (foreseen by reference to disputes of a technical nature in Article 29), constitutional

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<sup>163</sup> Article 27.

<sup>164</sup> Article 28.

<sup>165</sup> Article 29.

<sup>166</sup> Article 30.

<sup>167</sup> Article 6.15, Code of Conduct for Responsible Fisheries. Note that the Compliance Agreement’s focus is on dispute settlement, Article IX.

or institutional matters, the process to develop conservation and management measures and final decisions on such measures.

In the broadest context, the decision-making procedures to prevent disputes would cover all matters, substantive or procedural, technical or political. The range of procedures in the RFBs, discussed in section 3.2.3 above, include unanimity, qualified majority, simple majority and consensus, with varying requirements for a quorum and, for counting majority votes (e.g. those present and voting, those casting affirmative or negative votes, etc.). Because the scope of decision-making is so multifaceted, measuring the efficiency and expeditiousness of procedures in general terms is not practical and, as noted above, indicators could be useful but have not been developed by the RFBs.

Consideration of dispute prevention through appropriate decision-making processes in the context of decisions on the adoption of conservation and management measures may be a starting point. Article 7.3 of the Fish Stocks Agreement calls for compatible measures to be established in areas of high seas and under areas of national jurisdiction. Where agreement is not achieved in a reasonable period of time, Article 7.4 specifically provides for resort to dispute settlement procedures and Article 7.5 refers to provisional arrangements pending agreement on compatible measures. Article 7 does not specifically refer to RFBs, and not all RFBs have competence over areas of high seas and in areas under members' national jurisdiction. However this does not preclude such disputes arising in RFBs, and the value of this reference is the practical application it gives to the call for dispute prevention.

Another approach to dispute prevention in the context of decisions on conservation and management measures is the use of the objection process, discussed in section 3.2.5, above. While it prevents disputes, it can also lead to a serious dilution of the conservation and management measures where members are unwilling to commit to implementation, and to a weakening of the authority of the RFB.

One of the more recently established RFBs has departed to some extent from the more traditional decision-making of majority-voting and an objection procedure. Decisions are made by consensus and a member may subsequently declare it does not accept a measure, and it will not be binding on that member. However, in notifying non-acceptance, the member must provide a written explanation of its reasons for making the notification and, where appropriate, its proposals for alternative measures which it is going to implement. The explanation is to specify whether the basis for non acceptance is:

- (i) the Contracting Party considers that the measure is inconsistent with the provisions of the Convention;
- (ii) the Contracting Party cannot practicably comply with the measure;
- (iii) the measure unjustifiably discriminates in form or in fact against the Contracting Party; or
- (iv) other special circumstances apply.

The Executive Secretary circulates this explanation to all other members, and at the request of any member must call a meeting to review the measure. At the time of the meeting and for an additional thirty days afterwards, any member can notify the Commission it is no longer able to accept the measure and will not be bound. There is also provision for provisional measures to be recommended by an *ad hoc* panel established under the Convention.

This process has not yet been used because the Commission had not begun operations at the time of writing. It does illustrate a process for dispute prevention that is consultative yet at the same time requires the reasons for non-acceptance to be objectively sound and consistent with the Convention. In addition, it moves from the traditional notion of "objection" to one of non-acceptance.<sup>168</sup> While they can be seen as two paths to the same end result – that the measures are not binding on the member – one of the paths sets a higher standard for the member to take, and justify its decision.

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<sup>168</sup> Also used in the CCAMLR Convention.

This type of decision-making procedure might offer a basis for dispute prevention procedures in other arenas.

### 3.5 IPOA-IUU

As noted above in section 1.3.3, the IPOA-IUU has identified key objectives of institutional and policy strengthening in RFBs in relation to IUU fishing. These include enabling the RFBs to, *inter alia*, determine policy objectives, strengthen institutional mechanisms as appropriate including decision-making, regularize coordination with other RFBs, and ensure timely and effective implementation of policies and measures.

It is representative of the increasing call for RFBs to take decisions on global matters that complement decisions on conservation and management measures. These would include policy matters that have a global reach and areas that are related to fisheries management, such as trade and information exchange.

Because of the gathering worldwide momentum associated with putting the IPOA-IUU into effect by 2004, described above, and through national plans of action, it can be expected that policy development and implementation, and coordination with other bodies and institutions – already the subject of much activity in RFBs – will continue to develop. Decision-making in this regard will play a role in contributing to the outcome of addressing IUU fishing.

The call by the IPOA-IUU for RFBs to strengthen decision-making as appropriate reinforces similar references in the other post-UNCED fisheries instruments.

## 4. CONCLUSION

Decision-making permeates activities throughout all RFBs, as it does in most other institutions. The difference is that the future of a global resource is at stake and vital decisions to manage fishing activity are not completely binding. Nor, despite the untiring work of secretariats and commitment of many member countries, are they always timely or effective.

Despite the proliferation in the number of RFBs after the adoption of the 1982 UN Convention, the 1994 and 1996 SOFIA reports, discussed above, underlined the despondent state of the world's fisheries resources and the expectation of the role that RFBs might play to remedy the situation. By 1999, the situation continued to be characterized by overfishing, over-capacity and overcapitalization of the sector, and the high rate of discards in some areas. In the context of such challenges, possible action by RFBs was described, based on the following trends:<sup>169</sup>

- emergence of environmental values in fishery resource use;
- globalization in almost all aspects of fisheries (in particular trade);
- changes in consumption patterns and perceptions;
- transparency, accountability, partnership and good governance.

In the face of these challenges and trends, the international community has increasingly recognized not only the potential of RFBs to serve as the vehicles of cooperation in fisheries management, but also the need for this to happen, preferably at an accelerated pace. Although the role of RFBs had been evolving, especially since the adoption of the 1982 UN Convention, a major catalyst in defining their new roles and responsibilities was the group of post-UNCED fisheries instruments. In particular, the Fish Stocks Agreement consolidates the role of RFBs as management bodies, and supports this role by identifying the need for adoption of sturdy decision-making procedures. It incorporates the recognition by the international community of the prominent role that such procedures play in the

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<sup>169</sup> Report of the First Meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements, Appendix E.

enhancing the effectiveness of each organization, and consequently the effectiveness of the management of the fisheries resource. It also takes into account the trend towards strengthened fisheries governance by RFBs.

The value of clear and effective decision-making procedures is augmented in view of the current issues facing RFBs, such as membership (including non-members obligations), new entrants and requirements for compatible measures between the high seas and areas under national jurisdiction. Actions taken to improve transparency in the operations of RFBs, including the participation of observers at meetings, have also resulted in increased attention to the decision-making procedures of RFBs. All these issues have distinct political elements, and implementation of clear and effective decision-making procedures could assist in promoting an objective approach based on agreed principles of conservation and management.

Some key areas that may affect the timeliness and effectiveness of conservation and management measures, such as voting requirements and an objection process, are entrenched in the constitutive instruments of the RFB and difficult to amend. However, the objection procedures – while they may weaken or delay implementation of the measures – may also avoid a situation where there is failure to agree. It is clear that there is a considerable difference among RFBs in the time periods between adoption of conservation and management measures and entry into force (with or without objections), but no assessment is made of the consequences, if any, of the span.

Decision-making procedures appear to be still evolving with respect to dispute prevention. Some rules adopted in a recently established RFB may serve as a precedent for future initiatives. Otherwise, agreement on dispute settlement procedures, provided for in all post-UNCED international fisheries instruments, is not formally incorporated in the constitutive instruments of many RFBs in this review.

As noted above, on the whole RFBs have not been motivated to review their decision-making procedures: among other things, voting and objection procedures are in the constitutive instrument and would require an amendment to effect any change, and performance indicators would likely have to be developed. However, many are actively involved in using those procedures to implement other concepts in the post-UNCED instruments, and have developed some decision-making procedures to address current issues such as transparency. The current decade, a period of consolidation in which the post-UNCED instruments are being implemented, could provide a platform for further elaboration of decision-making procedures in RFBs in respect of the areas discussed in this document.

**SUMMARY OF PROVISIONS ON REGIONAL FISHERY BODIES  
IN POST-UNCED INTERNATIONAL FISHERY INSTRUMENTS**

**1993 FAO Compliance Agreement  
1995 UN Fish Stocks Agreement  
1995 FAO Code of Conduct for Responsible Fisheries  
2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and  
Unregulated Fishing (IPOA-IUU)**

**1993 FAO Compliance Agreement**

The 1993 FAO Compliance Agreement seeks to encourage countries to take effective action, consistent with international law, and to deter the reflagging of vessels by their nationals as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas. With respect to the role of RFBs, the preamble calls upon States which do not participate in global, regional or subregional fishery organizations or arrangements to do so, with a view to achieving compliance with international conservation and management measures. Further articles provide:

- that the parties shall, when and as appropriate, enter into cooperative agreements or arrangements of mutual assistance, on a global, regional, subregional or bilateral basis, in order to promote the objectives of the Agreement,<sup>170</sup>
- for the parties to RFBs to exchange information,<sup>171</sup>
- that the parties to cooperate on a global, regional, subregional or bilateral level, to provide assistance to developing State parties, in order to assist them to fulfill obligations under the Agreement.<sup>172</sup>

**1995 UN Fish Stocks Agreement**

The Fish Stocks Agreement complements and strengthens a number of provisions of the 1982 UN Convention. The Agreement seeks to ensure a harmonious development of coherent conservation and management measures for exclusive economic zones (EEZs) and the high seas, and thereby alleviate some of the existing tensions and conflicts. It is recognized that the effective implementation of this instrument depends on political will and a high degree of cooperation between coastal States and high seas fishing nations and fishing entities on a range of technical issues.<sup>173</sup> Part III, relating to mechanisms for international cooperation, sets out the central role of appropriate RFBs as mechanism through which States Parties to the Agreement should act to meet their obligations and exercise their rights under the Agreement.

In particular, Article 8 of Part III is pivotal, and relates to cooperation for conservation and management. It provides, *inter alia*, that where a competent RFB exists, States should either become members of the body, or they should agree to apply the conservation and management measures established by such organizations. This is reinforced by other Articles, including those providing the following:

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<sup>170</sup> Article V(3).

<sup>171</sup> Article VI, (4), (6) and (11).

<sup>172</sup> Article VII.

<sup>173</sup> In 2003 advance text of a report to the United Nations General Assembly on an overview of the main trends in implementation of the UN Fish Stocks Agreement since its adoption in 1995 and entry into force in 2001, it is noted that at present no existing or planned regional fisheries management organization (RFMO) is composed entirely of States Parties to the Agreement, which some believe to be a key constraint on its implementation. However, since 1995 existing RFBs have adopted a wide range of measures reflecting provisions in the Agreement and much of the Agreement has been directly incorporated in some instruments to establish post-1995 RFBs.

- only those States which are members of a RFB, or which agree to apply the relevant RFBs conservation and management measures, shall have access to the fishery resources to which these measures apply;<sup>174</sup>
- the establishment and functions of RFBs;<sup>175</sup>
- the nature and extent of participatory rights for new members;<sup>176</sup>
- transparency required in the activities of RFBs;<sup>177</sup>
- the strengthening of existing organizations and arrangements;<sup>178</sup>
- monitoring, control and surveillance (MCS) by flag States providing for international, regional and subregional cooperation in enforcement.<sup>179</sup>

### **1995 FAO Code of Conduct for Responsible Fisheries**

The Code of Conduct is a voluntary, broad and comprehensive instrument that sets out principles and standards for the conservation and management of all fisheries and aquaculture including processing and trade in fish and fishery products, research and the integration of fisheries and aquaculture into coastal area management. The Code makes numerous references to the role of RFBs in establishing a responsible international fisheries regime. Some relevant provisions are:

- the Code is global in scope, and directed towards stakeholders that include RFBs;<sup>180</sup>
- RFBs are charged with collaborating in the implementation of the objectives and principles in the Code;<sup>181</sup>
- RFBs should apply a precautionary approach to the conservation, management and exploitation of living aquatic resources;<sup>182</sup>
- the role of RFBs in attaining fisheries management objectives, providing a management framework and procedures, data gathering and management advice, application of the precautionary approach, describing management measures and implementation of the Code itself.<sup>183</sup>

As appropriate, the International Plans of Action adopted under the Code of Conduct also designate a role for RFBs.

### **2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)**

The IPOA-IUU is a voluntary instrument. Its implementation through National Plans of Action (NPOAs) is seen as a priority because of the 2004 timeline agreed by the World Summit on Sustainable Development for their development. The IPOA-IUU contains reference to regional fisheries management organizations<sup>184</sup> in the context of many of its sections, including the objective and principles of the IPOA-IUU,<sup>185</sup> National Plans of Action,<sup>186</sup> cooperation between States,<sup>187</sup> port State measures,<sup>188</sup> internationally agreed market-related measures<sup>189</sup> and reporting.<sup>190</sup>

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<sup>174</sup> Article 8(4).

<sup>175</sup> Articles 9 and 10.

<sup>176</sup> Article 11.

<sup>177</sup> Article 12.

<sup>178</sup> Article 13.

<sup>179</sup> Articles 18-23.

<sup>180</sup> Article 1.2.

<sup>181</sup> Article 4.1.

<sup>182</sup> Article 6.5.

<sup>183</sup> Article 7.

<sup>184</sup> As noted in the main document, to be consistent, this appendix will refer to RFBs.

<sup>185</sup> Paragraphs 8 and 9.

<sup>186</sup> Paragraph 25.

<sup>187</sup> Paragraphs 28 and 51.2.

<sup>188</sup> Paragraphs 58.5, 62, 63 and 64.

<sup>189</sup> Paragraphs 68 and 73.

The IPOA-IUU also contains an entire section on RFBs, which reinforces the other post-UNCED instruments and describes action to be taken by States through RFBs. It repeats the obligation of non-member states to cooperate with the RFMO and not to undermine its measures – therefore giving broad effect to the decisions of the RFMO. Most of the actions described in the IPOA-IUU would benefit from effective decision-making procedures, and include specified measures to strengthen and develop innovative ways to prevent, deter and eliminate IUU fishing,<sup>191</sup> objectives of institutional and policy strengthening,<sup>192</sup> encouraging non-parties to join or participate in the organization<sup>193</sup> and procedures to adopt measures where a state fails to ensure that its vessels or nationals do not engage in IUU fishing.<sup>194</sup>

To emphasize the extent of the obligations of RFBs under the IPOA-IUU, and the consequent significance of effective decision-making, the paragraphs in the RFMO section of the IPOA-IUU are set out below.

## **REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS**

78. States should ensure compliance with and enforcement of policies and measures having a bearing on IUU fishing which are adopted by any relevant regional fisheries management organization and by which they are bound. States should cooperate in the establishment of such organizations in regions where none currently exist.

79. As the cooperation of all relevant States is important for the success of measures taken by relevant regional fisheries management organizations to prevent, deter and eliminate IUU fishing, States which are not members of a relevant regional fisheries management organization are not discharged from their obligation to cooperate, in accordance with their international obligations, with that regional fisheries management organization. To that end, States should give effect to their duty to cooperate by agreeing to apply the conservation and management measures established by that regional fisheries management organization, or by adopting measures consistent with those conservation and management measures, and should ensure that vessels entitled to fly their flag do not undermine such measures.

80. States, acting through relevant regional fisheries management organizations, should take action to strengthen and develop innovative ways, in conformity with international law, to prevent, deter and eliminate IUU fishing. Consideration should be given to including the following measures:

80.1 institutional strengthening, as appropriate, of relevant regional fisheries management organizations with a view to enhancing their capacity to prevent, deter and eliminate IUU fishing;

80.2 development of compliance measures in conformity with international law;

80.3 development and implementation of comprehensive arrangements for mandatory reporting;

80.4 establishment of and cooperation in the exchange of information on vessels engaged in or supporting IUU fishing;

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<sup>190</sup> Paragraph 87.

<sup>191</sup> Paragraph 80.

<sup>192</sup> Paragraph 82.

<sup>193</sup> Paragraph 83.

<sup>194</sup> Paragraph 84.



80.5 development and maintenance of records of vessels fishing in the area of competence of a relevant regional fisheries management organization, including both those authorized to fish and those engaged in or supporting IUU fishing;

80.6 development of methods of compiling and using trade information to monitor IUU fishing;

80.7 development of MCS, including promoting for implementation by its members in their respective jurisdictions, unless otherwise provided for in an international agreement, real time catch and vessel monitoring systems, other new technologies, monitoring of landings, port control, and inspections and regulation of transshipment, as appropriate;

80.8 development within a regional fisheries management organization, where appropriate, of boarding and inspection regimes consistent with international law, recognizing the rights and obligations of masters and inspection officers;

80.9 development of observer programmes;

80.10 where appropriate, market-related measures in accordance with the IPOA;

80.11 definition of circumstances in which vessels will be presumed to have engaged in or to have supported IUU fishing;

80.12 development of education and public awareness programmes;

80.13 development of action plans; and

80.14 where agreed by their members, examination of chartering arrangements, if there is concern that these may result in IUU fishing.

81. States, acting through relevant regional fisheries management organizations, should compile and make available on a timely basis, and at least on an annual basis, to other regional fisheries management organizations and to FAO, information relevant to the prevention, deterrence and elimination of IUU fishing, including:

81.1 estimates of the extent, magnitude and character of IUU activities in the area of competence of the regional fisheries management organization;

81.2 details of measures taken to deter, prevent and eliminate IUU fishing;

81.3 records of vessels authorized to fish, as appropriate; and

81.4 records of vessels engaged in IUU fishing.

82. Objectives of institutional and policy strengthening in relevant regional fisheries management organizations in relation to IUU fishing should include enabling regional fisheries management organizations to:

82.1 determine policy objectives regarding IUU fishing, both for internal purposes and co-ordination with other regional fisheries management organizations;

82.2 strengthen institutional mechanisms as appropriate, including mandate, functions, finance, decision making, reporting or information requirements and enforcement schemes, for the optimum implementation of policies in relation to IUU fishing;

82.3 regularize coordination with institutional mechanisms of other regional fisheries management organizations as far as possible in relation to IUU fishing, in particular information, enforcement and trade aspects; and

82.4 ensure timely and effective implementation of policies and measures internally, and in cooperation with other regional fisheries management organizations and relevant regional and international organizations.

83. States, acting through relevant regional fisheries management organizations, should encourage non-contracting parties with a real interest in the fishery concerned to join those organizations and to participate fully in their work. Where this is not possible, the regional fisheries management organizations should encourage and facilitate the participation and cooperation of non-contracting parties, in accordance with applicable international agreements and international law, in the conservation and management of the relevant fisheries resources and in the implementation of measures adopted by the relevant organizations. Regional fisheries management organizations should address the issue of access to the resource in order to foster cooperation and enhance sustainability in the fishery, in accordance with international law. States, acting through relevant regional fisheries management organizations, should also assist, as necessary, non-contracting parties in the implementation of paragraphs 78 and 79 of the IPOA.

84. When a State fails to ensure that fishing vessels entitled to fly its flag, or, to the greatest extent possible, its nationals, do not engage in IUU fishing activities that affect the fish stocks covered by a relevant regional fisheries management organization, the member States, acting through the organization, should draw the problem to the attention of that State. If the problem is not rectified, members of the organization may agree to adopt appropriate measures, through agreed procedures, in accordance with international law.

**INFORMATION ON SELECTED REGIONAL FISHERY BODIES**

**INTERNATIONAL WHALING COMMISSION  
(IWC)**

<b>Established</b>	1946 International Convention for the Regulation of Whaling, entered into force 1948
<b>Mandate</b>	Regulatory measures effective 90 days after notification subject to objection procedure
<b>Area of Competence</b>	Global: Factory ships, land stations and whale catchers under the jurisdiction of the contracting Governments and all waters in which whaling is prosecuted by such factory ships, land stations and whale catchers
<b>Species</b>	Whale stocks
<b>Membership Criteria</b>	Open to all States that ratify or adhere to the Convention
<b>Members</b>	Antigua and Barbuda, Argentina, Australia, Austria, Belize, Benin, Brazil, Chile, Peoples' Republic of China, Costa Rica, Denmark, Dominica, Finland, France, Gabon, Germany, Grenada, Republic of Guinea, Iceland, India, Ireland, Italy, Japan, Kenya, Republic of Korea, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Oman, Republic of Palau, Panama, Peru, Portugal, Russian Federation, St. Kitts and Nevis, St. Lucia, St. Vincent and The Grenadines, San Marino, Senegal, Solomon Islands, South Africa, Spain, Sweden, Switzerland, UK, and USA.
<b>Organization</b>	Commission, subsidiary committees, working groups
<b>Observers</b>	Subject to procedures
<b>Dispute Settlement</b>	No

### 1. OBJECTIVE AND FUNCTIONS

The purpose of the Convention is to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry. The main duty of the Commission is to keep under review and revise as necessary the measures laid down in the Schedule to the Convention which govern the conduct of commercial and aboriginal subsistence whaling throughout the world.<sup>195</sup> The regulatory measures adopted by the Commission are subject to an objection procedure.

### 2. REGULATORY MEASURES

Regulatory measures are implemented through amendments to the Schedule to the Convention. The Commission may amend the Schedule by adopting regulations with respect to the conservation and utilization of whale resources, fixing (a) protected and unprotected species; (b) open and closed seasons; (c) open and closed waters, including the designation of sanctuary areas; (d) size limits for each species; (e) time, methods, and intensity of whaling (including the maximum catch of whales to be taken in any one season); (f) types and specifications of gear and apparatus and appliances which may be used; (g) methods of measurement; and (h) catch returns and other statistical and biological records.

The Convention requires that amendments of the Schedule shall, *inter alia*, be such as are necessary to carry out the objectives and purposes of the Convention and to provide for the conservation, development, and optimum utilization of the whale resources, and be based on scientific findings.

<sup>195</sup> These measures, among other things: provide for the complete protection of certain species; designate specified areas as whale sanctuaries; set limits on the numbers and size of whales which may be taken; prescribe open and closed seasons and areas of whaling; and prohibit the capture of suckling calves and female whales accompanied by calves.

In addition, after several years of intense work the Scientific Committee developed a revised management procedure for determining safe catch limits. It was accepted and endorsed by the Commission in 1994, but has yet to be implemented. This balances the somewhat conflicting requirements to ensure that the risk to individual stocks is not seriously increased, while allowing the highest continuing yield. The Commission is currently examining ways to complete a Revised Management Scheme that incorporates scientific aspects of management with those designed to ensure that regulations are obeyed.

### **3. ORGANIZATION**

#### **3.1 Membership**

The membership of the Commission is open to all States which wish to ratify or adhere to the Convention.

#### **3.2 The Commission and subsidiary bodies**

The Commission, the principal organ, has three main committees - Scientific, Technical, and Finance and Administration.

The Scientific Committee is open to all members and meets in the two weeks immediately before the main Commission meeting and it may also hold special meetings during the year to consider particular subjects. It reports on all aspects of scientific research, and its findings and recommendations on management measures including catch limits. The information and advice it provides on the status of the whale stocks form the basis on which the Commission develops the regulations for the control of whaling. These are contained in the Schedule and require a three-quarters majority of the Commissioners voting.

The Technical Committee (open to all members) reports on technical matters such as management principles and criteria to assist the Commission in making management decisions, and technical and practical options to implement conservation measures.

There are also Commission sub-committees which deal with aboriginal subsistence whaling and infractions (breaking of regulations), and *ad hoc* Working Groups to deal with a wide range of issues. These include the Working Group on Whale Killing Methods and Associated Welfare Issues and the Working Group on the Revised Management Scheme. Commissioners may opt for their countries to be represented in any or all of these activities and most choose to do so.

#### **3.3 Administration and Finance**

The Finance and Administration Committee (open to all members) reports directly to the Commission.

An Advisory Committee, consisting of Chairman and Vice-Chairman of the Commission, Chairman of the Finance and Administration Committee, Secretary and two Commissioners assists and advises the Secretariat on administrative matters upon request by the Secretariat or decision of the Commission.

A Budget Sub-Committee (5 members) prepares financial plans for recommendation through the Finance and Administration Committee to the Commission; and a Contributions Sub-Committee assesses the form and nature of Contracting Government financial contributions to the Commission.

#### **3.4 Observers**

Accredited observers may be present at all meetings of the Commission and committees with the exception of Commissioners-only meetings and the meetings of the Finance and Administration Committee. There are special rules for accredited observers to attend meetings of the Scientific

Committee, involving application 60 days before the meeting and approval by the Chair. International organizations must have offices in more than three countries to be accredited. Once an international organization is accredited, it remains so under the Commission determines otherwise. Only one observer is allowed per organization.

#### **4. DECISION-MAKING COMPETENCIES**

##### **4.1 Decisions of the Commission**

Decisions of the Commission are made by consensus as far as possible. When voting takes place, a simple majority of those casting an affirmative or negative vote is decisive, except that amendments to the Schedule (containing Regulations on the conduct and monitoring of whaling operations and requirements for the submission of information to the Commission) require a three-quarters majority of the Commissioners voting.

Amendments to the Schedule become effective with respect to the Contracting Governments ninety days following notification of the amendment by the Commission to each of the Contracting Governments, subject to the objection procedure.

The regulations adopted by the Commission are implemented through the national legislation of the member states, who appoint inspectors to oversee their whaling operations and may also receive international observers appointed by the IWC.

##### **4.2 Objection Procedure**

Any government can object to any decision which it considers to seriously affect its national interest, provided it is done within 90 days of notification of the decision, and the following rules and procedures will apply:

- if a Government objects to an amendment prior to the expiration of this ninety-day period, the amendment shall not become effective with respect to any of the Governments for an additional ninety days;
- thereupon, any other Contracting Government may present objection to the amendment at any time prior to the expiration of the additional ninety-day period, or before the expiration of thirty days from the date of receipt of the last objection received during such additional ninety-day period, whichever date is the later; and
- thereafter, the amendment becomes effective with respect to all Contracting Governments which have not presented objection but does not become effective with respect to any Government which has objected until the objection is withdrawn.

##### **4.3 Other decision mechanisms**

**Rules of Procedure:** These govern the conduct of the Commission and its meetings, the structure and management of committees and sub-committees, the financial regulations, the rules of debate and the conduct of the Technical and Scientific Committees.

#### **5. DISPUTE SETTLEMENT**

The Convention does not provide a procedure for dispute settlement.

**COMMISSION FOR THE CONSERVATION OF ANTARCTIC LIVING MARINE  
RESOURCES**

**(CCAMLR)**

<b>Established</b>	1980 Convention on the Conservation of Antarctic Marine Living Resources, entered into force 1982
<b>Mandate</b>	Regulatory, binding measures 180 days after notification subject to reservation procedure
<b>Area of Competence</b>	Southern oceans as defined by the Convention
<b>Species</b>	All living marine resources, except whales and seals
<b>Membership Criteria</b>	Open for accession by any State interested in research or harvesting activities in relation to the marine living resources to which the Convention applies
<b>Members</b>	Argentina, Australia, Belgium, Brazil, Chile, European Community, France, Germany, India, Italy, Japan, Korea (Republic of), Namibia, New Zealand, Norway, Poland, Russian Federation, South Africa, Spain, Sweden, Ukraine, UK, USA and Uruguay. States which have acceded to the Convention but are not Members of the Commission are: Bulgaria, Canada, Finland, Greece, Netherlands, Peru and Vanuatu.
<b>Organization</b>	Commission, scientific committees, standing committees, working groups
<b>Observers</b>	Subject to procedures
<b>Dispute Settlement</b>	Provided in Convention

## 1. OBJECTIVE AND FUNCTIONS

The objective of the Convention is the conservation of Antarctic marine living resources, including rational use, with the following conservation principles to apply to any harvesting and associated activities in the area to which the Convention applies.

**Population levels** - Prevention of decrease in the size of any harvested population to levels below those, which ensure its stable recruitment. For this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment.

**Ecosystem** - Maintenance of the ecological relationships between harvested, dependent and related populations of Antarctic marine living resources and the restoration of depleted populations.

**Risk** - Prevention of changes or minimisation of the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources.

The main functions of the Commission are to: (i) ensure that all harvesting and research activities are conducted in accordance with the objectives of the Convention; (ii) formulate, adopt and revise conservation measures; (iii) compile, analyse and disseminate information on the status of resources; and (iv) facilitate research activities.

The Commission has regulatory powers and its regulatory measures are subject to a reservation procedure.

## 2. REGULATORY MEASURES

The Commission must formulate, adopt and revise conservation measures on the basis of the best scientific evidence available, including the following measures:<sup>196</sup>

- the designation of:
  - the quantity of any species which may be harvested in the Convention area;
  - regions and sub-regions based on the distribution of populations of Antarctic marine living resources;
  - the quantity which may be harvested from the populations of regions and sub-regions;
  - protected species;
  - size, age and as appropriate sex of species which may be harvested;
  - open and closed seasons for harvesting;
  - of the opening and closing of areas, regions or sub-regions for scientific study or conservation, including special areas for protection and scientific study;
- regulation of the effort employed and methods of harvesting, including fishing gear, with a view to avoiding undue concentration of harvesting in any region or sub-region;
- taking such other conservation measures as the Commission considers necessary for the fulfilment of the objective of the Convention, including measures concerning the effects of harvesting and associated activities on components of the marine ecosystem other than the harvested populations.

## 3. ORGANIZATION

### 3.1 Membership

The Convention is open for accession by any State interested in research or harvesting activities in relation to the marine living resources to which the Convention applies.

In addition, the Convention is also open for accession by regional economic integration organizations constituted by sovereign States which include among their members one or more States Members of the Commission and to which the States members of the organization have transferred, in whole or in part, competence with regard to the matters covered by this Convention. The accession of such regional economic integration organizations is the subject of consultations among Members of the Commission.

The membership of the Commission consists of (a) Contracting Parties which participated in the meeting at which the Convention was adopted, (b) each State Party acceded to the Convention becomes a member of the Commission during the period when the acceding Party is engaged in research or harvesting activities in relation to the marine living resources to which the Convention applies, and (c) each regional economic integration organization which has acceded to the Convention is entitled to become a member of the Commission during such time as its States members are so entitled. Membership in the Commission requires acceptance of conservation measures in force.

### 3.2 The Commission and subsidiary bodies

The Commission, the principal organ, has a Scientific Committee and a Standing Committee on Observation and Inspection. The Scientific Committee reports directly to the Commission, and may seek the advice of other scientists and experts. It may establish other subsidiary bodies with the approval of the Commission, and such bodies are Working Groups on: Fish Stock Assessment; Ecosystem Modelling and Management; and Incidental Mortality Associated with Longline fishing.

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<sup>196</sup> Article IX (1)(f) and (2) of the Convention.

The Commission also has a Standing Committee on Observation and Inspection whose primary functions are to report on inspections of fishing vessels and to ensure compliance with conservation measures in force. It reports directly to the Commission.

### **3.3 Administration and Finance**

The administration of the Commission is managed by a Secretariat whose Executive Secretary prepares and submits an annual budget for the work of the Secretariat, the Commission and the Scientific Committee.

The Standing Committee on Administration and Finance advises the Commission on administrative and financial matters submitted to it by the Commission and, on an annual basis, examines the audited financial statement of the Commission for the previous year; examines the operation of the budget for the current year and examines the draft budget for the ensuing year. The Standing Committee may draw any matter of an administrative or financial character to the attention of the Commission.

### **3.4 Observers**

Observers may be present at public and private sessions of the Commission and at sessions of the Scientific Committee and its subsidiary bodies, unless a member objects. They must be invited from among categories listed in the relevant Rules of Procedure, including States, organizations, intergovernmental and nongovernmental organizations. The respective chairs may invite observers to address the Commission or Scientific Committee, unless a member objects. Observers may submit documents relevant to matters under consideration in the Commission or Committee for distribution. The documents will be available only in the language(s) and quantities submitted, and will only be considered documents of the Commission or Committee if so agreed by the members.

## **4. DECISION-MAKING COMPETENCIES**

### **4.1 Decisions of the Commission**

Decisions of the Commission on matters of substance are made by consensus. The question of whether a matter is one of substance is treated as a matter of substance. Decisions on matters other than these are taken by a simple majority of the Members of the Commission present and voting.

Where the Commission is considering any item requiring a decision, it must be made clear whether a regional economic integration organization (REIO) will participate in the taking of the decision, and if so whether any of its member States will also participate. The number of Contracting Parties so participating is not to exceed the number of member State of the REIO which are members of the Commission. In taking decisions a REIO only has one vote.

At a meeting of the Commission, votes are to be taken by a show of hands. However, a roll call or secret ballot vote may be taken at the request of a Member. If there are conflicting requests as between a roll call or secret ballot, the latter is to be used.

When necessary, taking of decisions and votes on any proposal made during the period between meetings may be carried out by post or by other means of textual communication, in accordance with procedures in the Rules of Procedure of the Commission.

### **4.2 Objection Procedure**

Decisions on conservation measures are binding upon all Members 180 days after notification by the Commission, unless the objection procedure is used.



A Member of the Commission may place a reservation on a conservation measure, in whole or in part, 90 days following notification by the Commission. When the Member notifies the Commission of its reservation, it is not bound to the extent of the reservation.

When a reservation has been notified, any Member may request that the Commission meet to review the conservation measure. At the time of, or within 30 days following the meeting, any Member can declare that it is no longer able to accept the measure. That Member is then not bound by the measure.

### **4.3 Other decision mechanisms**

#### **4.3.1 Rules of Procedure**

There are separate Rules of Procedure for the Commission and the Scientific Committee governing the conduct of business, meetings, Chair, observers and other such matters. Rules of Procedure allow the Commission and Scientific Committee respectively to determine the composition and terms of reference of any subsidiary body established by it, and insofar as they are applicable the appropriate Rules of Procedure will apply to such bodies unless the Commission decides otherwise.

#### **4.3.2 Rules and Regulations**

Financial Regulations and Staff Regulations provide the framework for financial and staff administration. Financial regulations adopted by the Commission govern the conduct of financial activities of the Commission and Scientific Committee.

Rules for access to and use of CCAMLR data and for access to catch documentation scheme data reflect decisions on the handling of data and information.

#### **4.3.3 Terms of Reference, Texts**

Decisions to establish a Standing Committee and system/scheme are contained in the following documentation:

- Establishment of the Standing Committee on Administration and Finance;
- Terms of Reference and Organization of Work of the Standing Committee on Implementation and Compliance;
- Text of the CCAMLR System of Inspection;
- Text of the CCAMLR Scheme of International Scientific Observation.

## **5. DISPUTE SETTLEMENT**

In the event of a dispute, Contracting Parties must consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

If the dispute is not resolved, it must, with the parties' consent, be referred to the International Court of Justice (ICJ), or to arbitration. However, failure to reach agreement on reference to the ICJ or arbitration does not absolve parties from the responsibility of continuing to seek a resolution by peaceful means as noted above.

If the Parties refer the dispute to arbitration, the arbitral tribunal must be constituted as provided in an Annex to the CCAMLR Convention.

**GENERAL FISHERIES COMMISSION FOR THE MEDITERRANEAN**  
(GFCM)

<b>Established</b>	1949 Agreement under Article XIV of the FAO Constitution, entered into force 1952
<b>Mandate</b>	Regulatory, binding measures 120 days after notification subject to objection procedure
<b>Area of Competence</b>	Mediterranean and Black Seas, and interconnecting waters
<b>Species</b>	All living marine resources
<b>Membership Criteria</b>	Open to member nations and associate members of FAO. Other States that are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency may be admitted as members by a two-thirds majority of the Commission's membership.
<b>Members</b>	Albania, Algeria, Bulgaria, Croatia, Cyprus, the European Community, Egypt, France, Greece, Israel, Italy, Japan, Lebanon, Libya, Malta, Monaco, Morocco, Romania, Serbia and Montenegro, Slovenia, Spain, Syria, Tunisia and Turkey.
<b>Organization</b>	Commission, Committees, Sub-Committees, Working Groups, Networks
<b>Observers</b>	No specific rules, except as provided by FAO Constitution and Rules of Procedure
<b>Dispute Settlement</b>	Provided in Agreement

## 1. OBJECTIVE AND FUNCTIONS

The objectives and functions of GFCM are to:

- promote the development, conservation and management of living marine resources, as well as the sustainable development of aquaculture in the region;
- formulate and recommend conservation measures; and
- encourage training cooperative projects.

“Conservation measures” are defined by the Agreement establishing GFCM as including: regulating the amount of total catch and fishing effort and their allocation; establishing open and closed fishing seasons and areas and regulating fishing methods.<sup>197</sup>

## 2. REGULATORY MEASURES

The Commission is empowered to formulate and recommend appropriate management measures including the regulation of fishing methods and fishing gears, the prescription of the minimum size for individuals of specified species, the establishment of open and closed seasons, and the regulation of the amount of total catch and fishing effort and their allocation among members.

## 3. ORGANIZATION

### 3.1 Membership

Membership of GFCM is open to Member Nations and Associate Members of FAO. Other States that are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency may be admitted as members by a two-thirds majority of the Commission's membership. Amendments to the Agreement were adopted in 1997 to allow, *inter alia*, for membership by a regional economic integration organization.

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<sup>197</sup> Article II (b)(i).

### 3.2 The Commission and subsidiary bodies

The Commission, the principal organ, may establish temporary, special or standing committees to study and report on matters pertaining to the purposes of the Commission and working parties to study and recommend on specific technical problems.

The Commission has established two main committees: the Committee on Aquaculture and the Scientific Advisory Committee.

The Committee on Aquaculture has established three networks or systems:

- SELAM, on the socio-economic and legal aspects of aquaculture;
- TECAM, a technology and aquaculture network; and
- SIPAM, information systems for the promotion of aquaculture.

The Scientific Advisory Committee has four Sub-Committees, with *ad hoc* Working Groups at the time of writing as indicated:

1. Stock Assessment (SCSA);
  - Small Pelagic Species
  - Large Pelagic Species (with ICCAT)
  - Demersal Species
2. Economic and Social Sciences (SCESS);
  - Economic and social indicators
3. Marine Environment and Ecosystems (SCMEE);
  - Marine ecology and environment
  - Anthropogenic effects and fishing technology
4. Statistics and Information (SCSA).

Three working groups have been established under the Scientific Advisory Committee. These are: the Working Group on Operational Units, the GFCM/ICCAT Working Group on Sustainable Tuna Farming and the EIFAC/GFCM Working Group on the Management of Sturgeon.

### 3.3 Administration and Finance

The following matters relating to administration and finance require acceptance by a two-thirds majority of the members of the Commission:

- enforcement of the budget (in 1997, the Commission agreed to establish an autonomous budget financed by members' contributions, according to a scale agreed in 2000)
- adoption and amendment of its Rules of Procedure (provided that they are not inconsistent with the Agreement or with the Constitution of the FAO).
- adoption and amendment of its Financial Regulations (provided that they are consistent with the principles embodied in the Financial Regulations of FAO).

### 3.4 Observers

There is no specific rule for the attendance of observers at meetings of the Commission, except insofar as provided by the FAO Constitution and Rules of Procedure.

## 4. DECISION-MAKING COMPETENCIES

### 4.1 Decisions of the Commission

Each Member has one vote, except in the case of the European Community as a REIO, in which case FAO rules are followed. Decisions of the Commission are taken by a simple majority of the votes cast, except that a two-thirds majority of the members present and voting is required in the case of recommendations on measures for conservation and management and for the implementation of the recommendations. A majority of the total membership of the Commission constitutes a quorum.

### 4.2 Objection Procedure

Any Member of the Commission may within one hundred and twenty days from the date of notification of a recommendation for a conservation and management measure object to it and in that event shall not be under obligation to give effect to that recommendation.

In the event of an objection being made within the one hundred and twenty days period any other Member may similarly object at any time within a further period of sixty days. A Member may also at any time withdraw its objection and give effect to a recommendation.

If objections to a recommendation are made by more than one-third of the Members of the Commission, the other Members are relieved of any obligation to give effect to that recommendation; nevertheless any or all of them may agree among themselves to give effect to it.

### 4.3 Other decision mechanisms

**Rules of Procedure:** The Commission may, by a two-thirds majority of its membership, adopt and amend its own Rules of Procedure, which are to be consistent with the General Rules of FAO.

## 5. DISPUTE SETTLEMENT

Any dispute regarding the interpretation or application of the Agreement, if not settled by the Commission, must be referred to a committee composed of one member appointed by each of the parties to the dispute, and in addition an independent chairman chosen by the members of the committee.

The recommendations of such a committee, while not binding in character, must become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose.

If as the result of this procedure the dispute is not settled, it must be referred to the International Court of Justice, or, in the case of a REIO that is a Member of the Commission, it must be submitted to arbitration unless the parties to the dispute agree to another method of settlement.

**INTERNATIONAL BALTIC SEA FISHERIES COMMISSION**  
**(IBSFC)**

<b>Established</b>	1973 Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and Belt, entered into force 1974
<b>Mandate</b>	Regulatory, binding measures 90 days after notification subject to objection procedure
<b>Area of Competence</b>	Baltic Sea and the Belts, excluding designated internal waters
<b>Species</b>	All fish species and other living marine resources in the Convention Area
<b>Membership Criteria</b>	Open for accession to any State interested in preservation and rational exploitation of living resources in the Baltic Sea and the Belts, provided that the State is invited by the Contracting Parties. Open to intergovernmental economic integration organizations.
<b>Members</b>	Estonia, the European Community, Latvia, Lithuania, Poland and the Russian Federation
<b>Organization</b>	Commission, Committees
<b>Observers</b>	Subject to procedures
<b>Dispute Settlement</b>	No

## 1. OBJECTIVE AND FUNCTIONS

The main objective of the Convention is to preserve and increase the living resources of the Baltic Sea and the Belts and to obtain the optimum yield, in particular, to expand and coordinate studies towards these ends and to put into effect organizational and technical projects on conservation and growth of the living resources on a just and equitable basis as well as take other steps towards rational and effective exploitation of the living resources.

## 2. REGULATORY MEASURES

The Commission recommends conservation measures to the Contracting States, including:

- measures for the regulation of fishing gear, appliances and catching methods;
- measures regulating the size limits of fish that may be retained on board vessels or landed, exposed or offered for sale;
- measures establishing closed seasons or closed areas;
- measures improving and increasing the living marine resources, official reproduction and transplantation of fish and other organisms;
- measures establishing total allowable catch or fishing effort according to species, stocks, areas and fishing periods including total allowable catches for areas under the fisheries jurisdiction of Contracting States;
- any other measures related to the conservation and rational exploitation of the living marine resources.

The total allowable catches for herring, sprat, cod and salmon as well as their allocations among member States are set annually by the Commission. The decisions of the Commission are subject to an objection procedure.

### **3. ORGANIZATION**

#### **3.1 Membership**

This Convention is open for accession to any State interested in preservation and rational exploitation of living resources in the Baltic Sea and the Belts, or to any intergovernmental economic integration organization to which the competence in the matters regulated by this Convention has been transferred by its Member States, provided that this State or organization is invited by the Contracting States. It is also open to intergovernmental economic integration organizations.

#### **3.2 The Commission and subsidiary bodies**

The Commission has the following functions:

- to coordinate the management of the living resources in the Convention area by collecting, aggregating, analysing and disseminating statistical data;
- to promote coordination, as appropriate, of scientific research and, when desirable, of joint programmes of such research in the Convention area;
- to prepare and submit recommendations on conservation and management measures based as far as practicable on results of the scientific research;
- examine information submitted by the Contracting States in accordance with the Convention.

There are two Standing Committees:

- *Regulatory Measures Committee*, which takes into account the scientific advice provided by the ICES Advisory Committee on Fishery Management (ACFM) and prepares proposals for regulatory measures for recommendation to and adoption by the Commission. It is also mandated to work out proposals dealing with the coordination of scientific research in the Convention Area and the dissemination of its results.
- *Finance and Administration Committee*, which advises the Commission on matters relating to the Secretariat, and the budget, publications and time and place of meetings of the Commission.

The Commission may also establish *ad hoc* working groups to deal with specific problems arising in its work and determine their composition and terms of reference.

#### **3.3 Administration and Finance**

The Commission is managed by a Secretariat with advice through the Commission of the Finance and Administration Committee.

#### **3.4 Observers**

The Rules of Procedure allow for representation at meetings (without the right to vote) by:

- Intergovernmental organizations (IGOs) that have regular contacts with IBSFC as regards fisheries matters or whose work is of interest to IBSFC or vice-versa,

- Non-governmental organizations (NGOs) that support the general objectives of IBSFC and with a demonstrated interest in the species under the purview of IBSFC. They may participate as an observer in plenary meetings of the Sessions and in the meetings of the Standing Committee on Regulatory Measures.

NGOs desiring to participate as observe must notify the Secretariat at least 65 days in advance and provide specific information required in the Rules of Procedure. The Secretary must notify the Contracting Parties within a prescribed time, and NGOs will be granted observer status unless one or more Contracting Parties objects within 10 days. If there is an objection, the matter is put to a vote by written procedure.

NGOs admitted to a meeting may not vote, and may make oral statements at the Chair's invitation, distribute documents and engage in other activities as approved by the Chair. NGOs are not permitted to record meeting proceedings, and other rules govern their conduct at meetings.

#### **4. DECISION-MAKING COMPETENCIES**

##### **4.1 Decisions of the Commission**

In most recent years, IBSFC recommendations have been adopted unanimously. In the absence of consensus, decisions and recommendations of the Commission may be taken by a two-thirds majority of votes of the Contracting States present and voting at the meeting. However, any recommendation relating to areas under the fisheries jurisdiction of one or more Contracting States will enter into force for these States only if they have voted affirmatively.

##### **4.2 Objection Procedure**

There is an objection period of 90 days from the date of the notification of a recommendation. If a Contracting State objects during this period, it is not bound by the recommendation. A Contracting State may withdraw its objection at any time and be bound by the recommendation.

If an objection is made, other Contracting States may also object within a further sixty days. If an objection is made by three or more Contracting States, all Contracting States are not bound by the recommendation.

After the entry into force of a recommendation, any Contracting State may notify the Commission of the termination of its acceptance of the recommendation. The recommendation ceases to be binding on that Contracting State one year from the date of notification. When this occurs, any other Contracting State can then notify the Commission of the termination of its acceptance of the recommendation. The recommendation then ceases to be binding on that Contracting State 30 days after the date of notification.

##### **4.3 Other decision mechanisms**

The Commission has adopted Rules of Procedure, Financial Regulations and Fishery Rules.

#### **5. DISPUTE SETTLEMENT**

There is no formal mechanism within the Convention or the Rules of Procedure for the settlement of disputes.

**NORTHWEST ATLANTIC FISHERIES ORGANIZATION  
(NAFO)**

<b>Established</b>	1978 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, entered into force 1979
<b>Mandate</b>	Regulatory measures binding 60 days after notification subject to objection procedure
<b>Area of Competence</b>	Northwest Atlantic Ocean as defined by Convention
<b>Species</b>	All fishery resources of the Convention Area except salmon, tunas and marlins, cetacean stocks managed by the International Whaling Commission and sedentary species of the Continental Shelf
<b>Membership Criteria</b>	Open membership
<b>Members</b>	Bulgaria, Canada, Cuba, Denmark (in respect of Faroe Islands and Greenland), Estonia, European Union, France (in respect of St. Pierre and Miquelon), Iceland, Japan, Korea (Rep. of), Latvia, Lithuania, Norway, Poland, Russian Federation, Ukraine, USA
<b>Organization</b>	Fisheries Commission, General Council, Scientific Council, Standing Committees, Working Groups
<b>Observers</b>	Subject to procedures
<b>Dispute Settlement</b>	No

## 1. OBJECTIVE AND FUNCTIONS

The main objective of the Convention as set out in its Preamble is to promote the conservation and optimum utilization of the fishery resources of the Northwest Atlantic area within a framework appropriate to the regime of extended coastal States jurisdiction over fisheries, and accordingly to encourage international cooperation and consultation with respect to these resources.

The functions of management and conservation of the fishery resources of the Regulatory Area are discharged by the Fisheries Commission.

## 2. REGULATORY MEASURES

Specific types of regulatory measures are not prescribed in the Convention, but the general mandate for the Fisheries Commission, described above, indicates the broad scope of regulatory, control and enforcement mandate.

## 3. ORGANIZATION

### 3.1 Membership

Any State may accede to the NAFO Convention and become a member of the General Council and the Scientific Council.

Membership of the Fisheries Commission is decided by the General Council and is restricted to each Contracting Party which participates in the fisheries of the Regulatory Area, or to any Contracting Party which has provided evidence satisfactory to the General Council that it expects to participate in the fisheries of the Regulatory Area during the year of that annual meeting or during the following calendar year.



Any Contracting Parties not a member of the fisheries Commission may attend meetings as an observer.

### **3.2 The Fisheries Commission, General Council, Scientific Council and subsidiary bodies**

#### **3.2.1 The Fisheries Commission and Standing Committee**

The Fisheries Commission is responsible for the management and conservation of the fishery resources of the Regulatory Area. The Commission adopts proposals for joint action by the Contracting Parties designed to achieve optimum utilization of the fishery resources of the Regulatory Area. In considering such proposals, the Commission takes into account any relevant information or advice provided to it by the Scientific Council. The Commission seeks to ensure consistency between:

- any proposal that applies to a stock or group of stocks occurring both within the Regulatory Area and within an area under the fisheries jurisdiction of a Coastal State, or any proposal that would have an effect through species interrelationships on a stock or group of stocks occurring in whole or in part within an area under the fisheries jurisdiction of a Coastal State; and
- any measures or decision taken by the coastal State for the management and conservation of that stock or group of stocks with respect to fishing activities conducted within the area under its fisheries jurisdiction.

Proposals adopted by the Commission for the allocation of catches in the Regulatory Area take into account the interests of Commission members whose vessels have traditionally fished within that Area, and, in the allocation of catches from the Grand Bank and Flemish Cap, Commission members give special consideration to the Contracting Party whose coastal communities are primarily dependent on fishing for stocks related to these fishing banks and which has undertaken extensive efforts to ensure the conservation of such stocks through international action, in particular, by providing surveillance and inspection of international fisheries on these banks under an international scheme of joint enforcement,

The Commission also adopts proposals for international measures of control and enforcement within the Regulatory Area for the purpose of ensuring within the Area the application of this Convention and the measures in force thereunder.

Proposals adopted by the Commission are transmitted by the Executive Secretary to all Contracting Parties and each proposal adopted by the Commission becomes a measure binding on all Contracting Parties, unless a Commission member objects.

The Fisheries Commission has established a Standing Committee on International Control (STACTIC), whose mandate is:

- review the results of national and international measures of control;
- develop inspection methodologies;
- consider the practical problems of international measures of control;
- review reports of inspections and violations;
- promote exchanges and cooperative efforts of inspectors in international inspection; and
- make appropriate recommendations to the Fisheries Commission.

### **3.2.2 The General Council and Standing Committees**

The General Council is responsible to supervise and coordinate the organizational, administrative, financial and other internal affairs of the Organization, including the relations among its constituent bodies and external relations of the Organization. It also reviews the membership of the Fisheries Commission and any other authority conferred upon it by the NAFO Convention. Each Contracting Party is a member and appoints to the Council up to three representatives. Two Standing Committees report to the General Council as follows.

The Standing Committee on Finance and Administration (STACFAD), which advises the General Council on:

- matters relating to the Secretariat
- the budget of the Organization
- the time and place of meetings of the Organization; and
- publications of the Organization.

The Standing Committee on Non-Contracting Party Fishing Activities (STACFAC). The duties of STACFAC are:

- to obtain and compile all available information on the fishing activities of non-Contracting Parties in the Regulatory Area, including details of the type, flag and name of vessels and reported or estimated catches by species and area;
- to obtain and compile all available information on landings, and transshipments of fish caught in the Regulatory Area by non-Contracting Parties, including details on the name and flag of the vessels; the quantities by species landed, transshipped; and the countries and ports through which the product was shipped;
- examine and assess all options to NAFO Contracting Parties including measures to control imports of fish caught by non-Contracting Party vessels in the Regulatory Area and to prevent the reflagging of fishing vessels to fish under the flags of non-Contracting Parties; and
- recommend to the General Council measures to resolve the problem.

### **3.2.3 The Scientific Council and Standing Committees**

The Scientific Council provides a forum for consultation and cooperation among the Contracting Parties with respect to the study, appraisal and exchange of scientific information and views relating to the fisheries of the Convention Area, including environmental and ecological factors affecting these fisheries, and encourages and promotes cooperation among the Contracting Parties in scientific research designed to fill gaps in knowledge pertaining to these matters.

The Scientific Council compiles and maintains statistics and records and publishes or disseminates reports, information and materials pertaining to the fisheries of the Convention Area, including environmental and ecological factors affecting these fisheries. It also carries out the following specific functions:

### **Advice to Coastal States**

Upon request by a coastal State, the Scientific Council considers and reports on any question pertaining to the scientific basis for the management and conservation of fishery resources in waters under the fisheries jurisdiction of that Coastal State within the Convention Area.

### **Advice to Fisheries Commission**

The Scientific Council considers and reports on any question referred to it by the Fisheries Commission pertaining to the scientific basis for the management and conservation of fishery resources within the Regulatory Area and takes into account the terms of reference specified by the Fisheries Commission in respect of that question.

### **Scientific Information**

The Contracting Parties furnish to the Scientific Council any available statistical and scientific information requested by the Council.

Four standing Committees report to the Scientific Council: STACFIS - fisheries science, STACPUB - publications, STACFEN - fisheries environment and STACREC - research coordination.

### **3.3 Administration and Finance**

The principal bodies responsible for administration and finance are the General Council, as advised by the Standing Committee on Finance and Administration (STACFAD).

### **3.4 Observers**

Participation by observers in the Fisheries Commission and General Council is governed by similar Rules of Procedure for each of those bodies.

The Executive Secretary is authorized to invite intergovernmental organizations that have regular contacts with NAFO as regard fisheries matters or whose work is of interest to NAFO or vice-versa and non-Contracting Parties identified as harvesting fishery resources in the Regulatory Area.

NGOs that support the general objectives of NAFO and with a demonstrated interest in the NAFO species should be eligible to participate in all plenary meetings of the Fisheries Commission or General Council. Their participation is subject to a request at least 100 days in advance of the meeting, and provision of specified information in the application.

The Executive Secretary, after review, notifies the Contracting Parties 90 days before the meeting, and if one or more Contracting Parties object within 30 days, the matter is put to a vote by written procedure. Applications are considered as accepted 30 days prior to the meeting.

NGOs may attend meetings, make oral statements, distribute documents and engage in other activities approved by the chair, but not vote. A fee is required, and there are other provisions regarding meeting room capacity, access to meeting documentation and compliance with rules.

Any Contracting Party that is not a Fisheries Commission member may attend meetings of the Fisheries Commission as an observer; proxy voting is allowed. There is no provision for the attendance of intergovernmental and non-governmental organizations.

## **4. DECISION-MAKING COMPETENCIES**

### **4.1 Decisions of the General Council, Commission and Scientific Council**

Decisions of the General Council and the Fisheries Commission are taken by a majority of the votes of all Commission members present and casting affirmative or negative votes. A vote cannot be taken unless there is a quorum of two-thirds of the Contracting Parties/ Commissioners, as appropriate.

Scientific advice to be provided by the Scientific Council pursuant to the Convention is determined by consensus. Where consensus cannot be achieved, the Council must set out in its report all views advanced on the matter under consideration.

### **4.2 Objection Procedure**

A Commission member may object to a proposal within 60 days of the date of transmittal in the notification of the proposal, and the proposal will not become a binding measure until 40 days after the date of transmittal in the notification of objection to the Contracting Parties.

Any other Commission member may object prior to the expiration of the 40 day period, or within 30 days after the date of transmittal in the notification to the Contracting Parties of any objection presented within the additional 40 day period, whichever is later.

The proposal is then binding at the end of the objection period, except for those which have objected. But the proposal does not become a binding measure if objections have been presented and maintained by a majority of Commission members, unless members otherwise agree.

One year after the measure has entered into force, any Commission member is free to notify its intention not to be bound and the measure will cease to be binding on that member at the end of one year after notification.

### **4.3 Other decision mechanisms**

Rules of Procedure have been adopted for the General Council, the Fisheries Commission and the Scientific Council.

## **5. DISPUTE SETTLEMENT**

There are no formal mechanisms for dispute settlement in the Convention.

**NORTH EAST ATLANTIC FISHERIES COMMISSION**  
(NEAFC)

<b>Established</b>	1980, the North East Atlantic Fisheries Commission Convention , entered into force 1982
<b>Mandate</b>	Regulatory measures binding on a date determined by the Commission, not less than 30 days after the expiration of the 50 day objection period.
<b>Area of Competence</b>	North east Atlantic as defined by Convention, excluding Baltic Sea and the Belts and the Mediterranean Sea as defined
<b>Species</b>	All fishery resources of the Convention Area except sea mammals, sedentary species, and so far as they are dealt with by other international agreements, highly migratory species and anadromous stocks.
<b>Membership Criteria</b>	Open membership except to member States of the European Economic Community, provided that an application for accession is approved by three-fourths of all Contracting Parties.
<b>Members</b>	Denmark (in respect of Faroe Islands and Greenland), European Community, Iceland, Norway, Poland, Russian Federation
<b>Organization</b>	Commission, Committees, Working Groups
<b>Observers</b>	Subject to procedures
<b>Dispute Settlement</b>	No

## 1. OBJECTIVE AND FUNCTIONS

The preamble to the Convention states the Contracting Parties desire to promote the conservation and optimum utilisation of the fishery resources of the Convention area within a framework appropriate to the regime of extended coastal State jurisdiction over fisheries, and to encourage international cooperation and consultation with respect to these resources.

The Commission may adopt recommendations (subject to different decision rules governing national and high seas areas) concerning measures of control and the collection of statistical information relating to fisheries conducted beyond the national jurisdiction of member countries, and within the national jurisdiction of a contracting party when the contracting party in question specifically requests and approves the recommendation.

## 2. REGULATORY MEASURES

The Commission may consider the following measures in the exercise of its functions:

- the regulation of fishing gear and appliances, including the size of mesh of fishing nets;
- the regulation of the size limits of fish that may be retained on board vessels, or landed or exposed or offered for sale;
- the establishment of closed seasons and closed areas;
- the improvement and increase of fishery resources, which may include artificial propagation, the transplantation of organisms and the transplantation of young,
- the establishment of total allowable catches and their allocation to Contracting Parties;
- the regulation of the amount of fishing effort and its allocation to Contracting Parties.

The Commission may also make recommendations (by qualified majority – i.e. two-thirds of all contracting parties present and casting affirmative or negative votes) concerning measures of control relating to fisheries conducted beyond areas under the fisheries jurisdiction of Contracting Parties, or within such jurisdiction if the relevant Contracting Party so requests and there the recommendation receives its affirmative vote.

### **3. ORGANIZATION**

#### **3.1 Membership**

Any State may accede to the Convention, except a member State of the European Economic Community, provided that an application for accession of that State is approved by three-fourths of the Contracting Parties.

The Convention provides that the Contracting Parties may invite the attention of any State not a Party to this Convention to any matter relating to the fishing activities in the Regulatory Area of the nationals or vessels of that State which appear to affect adversely the attainment of the objectives of this Convention.

#### **3.2 The Commission and subsidiary bodies**

The main objectives of the Commission are to provide a forum for Consultation and exchange of information on the state of fisheries resources in the Northeast Atlantic and on related management policies to ensure the conservation and optimum utilization of such resources, and to recommend conservation measures in waters outside national jurisdiction. The Commission is empowered to recommend measures applicable to the high seas concerning (i) the conduct of fisheries (ii) the control of fisheries and (iii) the collection of statistical information. In recent years, NEAFC has agreed on measures such as setting total allowable catches for certain species and establishing minimum fish sizes and mesh sizes. The recommendations formulated by NEAFC are subject to the objection procedure.

NEAFC is advised by the ICES Advisory Committee on Fishery Management.

The Commission has established a Permanent Committee on Control and Enforcement (PECCOE), with the following functions:

- providing the Commission with information, technical advice and proposals relating to the implementation of, and compliance with, recommendations and measures established under the Convention;
- monitoring and reviewing the implementation of the Scheme of Control and Enforcement in respect of fishing vessels fishing in areas beyond the limits of national fisheries' jurisdiction in the Convention Area;
- monitoring and reviewing the operation of the Scheme to Promote Compliance by non-Contracting Party Vessels with Recommendations established by NEAFC.

There are also a Finance and Administration Committee and Working Groups on Blue Whiting, the Future of NEAFC and an *ad hoc* working group of Experts on Computerisation.

#### **3.3 Administration and Finance**

The Finance and Administration Committee advises on overall administration of the work of the Commission and secretariat, including the establishment of Staff Rules, Standing Financial Instructions and an Audit Committee.

### **3.4 Observers**

The Secretary is authorised to invite intergovernmental organizations that have regular contacts with NAFO as regard fisheries matters or whose work is of interest to NAFO or vice-versa and non-Contracting Parties identified as harvesting fishery resources in the Regulatory Area.

NGOs that support the general objectives of NAFO and with a demonstrated interest in the NAFO species should be eligible to participate in all plenary meetings of the Fisheries Commission or General Council. Their participation is subject to a request at least 100 days in advance of the meeting, and provision of specified information in the application.

The Executive Secretary, after review, notifies the Contracting Parties 90 days before the meeting, and if one or more Contracting Parties object within 30 days, the matter is put to a vote by written procedure. Applications are considered as accepted 30 days prior to the meeting.

NGOs may attend meetings, make oral statements, distribute documents and engage in other activities approved by the chair, but not vote. A fee is required, and there are other provisions regarding meeting room capacity, access to meeting documentation and compliance with rules.

## **4. DECISION-MAKING COMPETENCIES**

### **4.1 Decisions of the Commission**

Each member has one vote in the Commission. Decisions are made by a simple majority, or, if a qualified majority is specifically required, by a two-thirds majority of the votes of all Contracting Parties present and casting affirmative or negative votes. No vote can be taken unless there is a quorum of at least two-thirds of the Contracting Parties. If there is an even split of votes on any matter that is subject to a simple majority decision, the proposal is rejected.

A vote may in an emergency be taken by post or other means of written communication, and the Rules of Procedure provide the procedures for this.

### **4.2 Objection Procedure**

A recommendation becomes binding on a date determined by the Commission, not less than 30 days after the expiration of the objection period(s). Any Contracting Party may object to a recommendation within 50 days of the date of notification of a recommendation. In the event of an objection, any other Contracting Party may also object within 40 days of receiving notification of the objection. If any further objection is made within this 40 day period, other Contracting Parties are allowed a further 40 days to object to the recommendation after receiving notification of the objection.

A recommendation is not binding on a Contracting Party that has objected to it. If three or more Contracting Parties object to a recommendation it does not become binding on any Contracting Party.

### **4.3 Other decision mechanisms**

Rules of Procedure have been adopted for the Commission and the Finance and Administration Committee.

## **5. DISPUTE SETTLEMENT**

There are no mechanisms for resolving differences between Contracting Parties. The Working Group on the Future of NEAFC is considering the issue of dispute settlement.

**SOUTH EAST ATLANTIC FISHERIES ORGANIZATION**  
(SEAF0)

<b>Established</b>	2001, Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, entered into force on 13 April 2003
<b>Mandate</b>	Regulatory measures binding 60 days after notification subject to procedure of non-acceptance
<b>Area of Competence</b>	All waters beyond national jurisdiction in an area of the South-East Atlantic described in the Convention
<b>Species</b>	All fishery resources in the Convention Area
<b>Membership Criteria</b>	Coastal States and all other States and regional economic integration organizations whose vessels fish in the Convention Area for fishery resources covered by the Convention
<b>Members</b>	Republic of Angola, Iceland, Republic of Namibia, Norway, Republic of Korea, Republic of South Africa, the United Kingdom (on behalf of St. Helena and its dependencies, Tristan Da Cunha and Ascension Island), the United States of America and the European Community
<b>Organization</b>	Commission, Scientific Committee, Compliance Committee
<b>Observers</b>	Commission to adopt rules of procedure
<b>Dispute Settlement</b>	Yes

## 1. OBJECTIVE AND FUNCTIONS

The objective of the Convention is to ensure the long-term conservation and sustainable use of the fishery resources in the Convention Area through the effective implementation of the Convention.

In support of this objective, the Convention establishes general principles by requiring the Contracting Parties, in giving effect to the objective of the Convention, where appropriate through the Organization, to:

- adopt measures, based on the best scientific evidence available, to ensure the long term conservation and sustainable use of the fishery resources to which the Convention applies;
- apply the precautionary approach in accordance with the Convention;
- apply the provisions of the Convention relating to fishery resources, taking due account of the impact of fishing operations on ecologically related species such as seabirds, cetaceans, seals and marine turtles;
- adopt, where necessary, conservation and management measures for species belonging to the same ecosystem as, or associated with or dependent upon, the harvested fishery resources;
- ensure that fishery practices and management measures take due account of the need to minimize harmful impacts on living marine resources as a whole; and
- protect biodiversity in the marine environment.

## 2. REGULATORY MEASURES

The measures to be adopted by the Commission may include the following:

- the quantity of any species which may be caught;
- the areas and periods in which fishing may occur;
- the size and sex of any species which may be taken;
- the fishing gear and technology which may be used;
- the level of fishing effort, including vessel numbers, types and sizes, which may be used;
- the designation of regions and sub-regions;



- other measures regulating fisheries with the objective of protecting any species; and
- other measures the Commission considers necessary to meet the objective of the Convention.

Related to these are the contracting party obligations (including to ensure that its nationals fishing in the Convention Area and its industries comply with the Convention, to cooperate to achieve compatible measures in respect of stocks occurring in the Convention Area and areas under national jurisdiction and to request non-Parties to cooperate fully with the Organization), flag State duties and Port State duties and measures taken by a Port State.

Guidelines for determining participatory rights in fishing opportunities are also provided.

### **3. ORGANIZATION**

#### **3.1 Membership**

The Convention is open for accession by Coastal States, and by all other States and regional economic integration organizations whose vessels fish or have fished in the Convention Area for fishery resources covered by the Convention in the four years preceding the adoption of the Convention.

#### **3.2 The Commission, subsidiary bodies**

##### **3.2.1 The Commission**

The functions of the Commission are to:

- identify conservation and management needs;
- formulate and adopt conservation and management measures;
- determine total allowable catches and/or levels of fishing effort, taking into account total fishing mortality, including of non-target species;
- determine the nature and extent of participation in fishing;
- keep under review the status of stocks and gather, analyse and disseminate relevant information on stocks;
- encourage, promote and, where appropriate by agreement, coordinate scientific research on fishery resources within the Convention Area and in adjacent waters under national jurisdiction;
- manage stocks on the basis of the precautionary approach to be developed in accordance the Convention;
- establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- adopt measures concerning control and enforcement within the Convention Area;
- develop measures for the conduct of fishing for scientific research purposes;
- develop rules for the collection, submission, verification of, access to and use of data;
- compile and disseminate accurate and complete statistical data to ensure that the best scientific advice is available, while maintaining confidentiality, where appropriate;
- direct the Compliance and Scientific Committees, other subsidiary bodies, and the Secretariat;
- approve the budget of the Organization; and
- carry out such other activities as may be necessary to fulfill its functions.

The Commission is required to apply the precautionary approach widely to conservation and management and exploitation of fishery resources in order to protect those resources and preserve the marine environment. The Convention requires it to be more cautious when information is uncertain, unreliable or inadequate, and not to use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures.

Decisions of the Commission on matters of substance are to be taken by consensus of the Contracting parties, and the question of whether a matter is one of substance will be treated as a matter of substance. Decisions on other matters are to be taken by a simple majority of Contracting Parties present and voting. In the taking of decisions, a regional economic integration organization will have only one vote.

### **3.2.2 The Compliance Committee**

The Convention provides that the functions of the Compliance Committee are to provide the Commission with information, advice and recommendations on the implementation of, and compliance with, conservation and management measures. However the Commission has authority to decide otherwise.

In performing its functions, the Compliance Committee is to conduct activities as the Commission may direct and must:

- coordinate compliance activities undertaken by or on behalf of the Organization;
- coordinate with the Scientific Committee on matters of common concern; and
- perform such other tasks as directed by the Commission.

The Compliance Committee shall adopt, and amend as necessary, rules of procedure for the conduct of its meetings and the exercise of its functions. The rules and any amendments thereto must be approved by the Commission, and the rules are to include procedures for the presentation of minority reports.

The Compliance Committee may establish, with the approval of the Commission, such subsidiary bodies as are necessary for the performance of its functions.

### **3.2.3 The Scientific Committee**

The functions of the Scientific Committee are to provide the Commission with scientific advice and recommendations for the formulation of conservation and management measures for fishery resources covered by this Convention, and to encourage and promote cooperation in scientific research in order to improve knowledge of the living marine resources of the Convention Area.

In performing its functions, the Scientific Committee is to conduct such activities as the Commission may direct and must:

- consult, cooperate and encourage the collection, study and exchange of information relevant to the living marine resources of the Convention Area;
- establish criteria and methods to be used in determining conservation and management measures;
- assess the status and trends of relevant populations of living marine resources;
- analyse data on the direct and indirect effects of fishing and other human activities on populations of fishery resources;
- assess the potential effects of proposed changes in the methods or levels of fishing and of proposed conservation and management measures; and
- transmit reports and recommendations to the Commission as directed, or on its own initiative, regarding conservation and management measures and research.

In carrying out its functions, the Scientific Committee must seek to take into consideration the work of other fisheries management organizations, as well as other technical and scientific bodies.

The Scientific Committee is to adopt, and amend as necessary, rules of procedure for the conduct of its meetings and the exercise of its functions, which must be approved by the Commission. The rules must include procedures for the presentation of minority reports.

The Scientific Committee may establish, with the approval of the Commission, such subsidiary bodies as are necessary for the performance of its functions, and may seek expert advice as required on an *ad hoc* basis.

### **3.2.4 System of observation, inspection, compliance and enforcement**

The Contracting Parties, through the Commission, must establish a system of observation, inspection, compliance and enforcement (“the System”) to strengthen the effective exercise of flag State responsibility by Contracting Parties for fishing vessels and fishing research vessels flying their flags in the Convention Area. The major purpose of the System is to ensure that Contracting Parties effectively discharge their obligations under this Convention and, where applicable, under the Fish Stocks Agreement, in order to ensure compliance with the conservation and management measures agreed by the Commission.

To guide the Commission in its decision-making in establishing the System, the Convention sets out principles and requires the System to comprise certain elements, including measures, programmes and procedures as follows. They will all be subject to the Commission’s decision-making process.

- control measures, including the authorization of vessels to fish, the marking of vessels and fishing gear, the recording of fishing activities, and the near-to-real time reporting of vessel movements and activities by means such as satellite surveillance;
- an inspection programme, both at sea and in port, including procedures for boarding and inspection of vessels, on a reciprocal basis;
- an observer programme based on common standards for the conduct of observation, including, *inter alia*, arrangements for the placing of observers by a Contracting Party on vessels flying the flag of another Contracting Party with the consent of that Party; an appropriate level of coverage for different sizes and types of fishing vessels and fishery research vessels; and measures for reporting by observers of information regarding apparent violations of conservation and management measures, taking into account the need to ensure the safety of observers; and
- procedures for the follow-up on infringements detected under the System, including standards of investigation, reporting procedures, notification of proceedings and sanctions, and other enforcement actions.

Interim arrangements in the Annex to the Convention will apply upon entry into force of the Convention and remain in force until the System is established or the Commission decides otherwise. If the System is not established within two years of entry into force, the Commission is to give urgent consideration to adopting boarding and inspection procedures, at the request of any Contracting Party.

### **3.3 Administration and Finance**

The Commission is to determine the size of the Organization’s budget, giving due consideration to the principle of cost effectiveness. The draft budget is to be prepared by the Executive Secretary, and the

financial activities of the Organization are to be conducted in accordance with Financial Regulations adopted by the Commission.

### **3.4 Observers**

The Commission must adopt rules of procedure to govern the participation of representatives from non-Parties, inter-governmental organizations and non-governmental organizations concerned with the stocks found in the Convention Area as observers at meetings of the Commission. The Commission must also adopt rules to provide for transparency in the activities of the Organization. The rules are not to be unduly restrictive in this respect and must provide for timely access to records and reports of the Organization, subject to the procedural rules on access to them.

## **4. DECISION-MAKING COMPETENCIES**

### **4.1 Decisions of the Commission**

Decisions of the Commission on matters of substance shall be taken by consensus. The question of whether a matter is one of substance shall be treated as a matter of substance. Decisions on matters other than these shall be taken by a simple majority of the members present and voting.

### **4.2 Objection Procedure**

The conservation and management measure become binding upon all Contracting Parties 60 days after notification by the Secretariat of the measure's adoption by the Commission, unless otherwise specified in the measure.

If a Contracting Party notifies the Commission it is unable to accept a measure within 60 days following notification, the measure will not be binding on that Party to the extent stated. However, the conservation measure shall remain binding on all other Contracting Parties unless the Commission decides otherwise.

A Contracting Party which notifies its non-acceptance must provide a written explanation of its reasons, and as appropriate its proposals for alternative measures which it will implement. The explanation is to specify *inter alia* whether the basis for the notification is that:

- the Contracting Party considers that the measure is inconsistent with the provisions of the Convention;
- the Contracting Party cannot practicably comply with the measure;
- the measure unjustifiably discriminates in form or fact against the Contracting Party; or
- other special circumstances apply.

Once a Contracting Party notifies its non-acceptance, the Commission must meet at the request of any other Contracting Party to review the measure. At the time of the meeting and within 30 days following the meeting, any Contracting Party has the right to notify the Commission that it is no longer able to accept the measure, in which case that Contracting Party is no longer bound by the measure.

Pending the conclusions of a review meeting, any Contracting Party may request an *ad hoc* expert panel established in accordance with Article 24 to make recommendations on any interim measures following the notification of non-acceptance which may be necessary in respect of the measure to be reviewed. Subject to commencement of dispute settlement procedures, the interim measures will be binding on all Contracting Parties if all Contracting Parties (other than those who have indicated that they are unable to accept the measure, agree that the long term sustainability of the stocks covered by this Convention will be undermined in the absence of such measures.

Any Contracting Party may at any time withdraw its notification of non-acceptance and become bound by the measure immediately if it is already in effect or when it comes into effect.

#### **4.3 Other decision mechanisms**

**Rules of Procedure:** The Commission will adopt its own Rules of Procedure and approve Rules of Procedure of the Compliance and Scientific Committees and any other subsidiary bodies.

### **5. DISPUTE SETTLEMENT**

If a dispute arises between two or more Contracting Parties concerning the interpretation or implementation of the Convention, those Contracting Parties must first consult among themselves with a view to resolving the dispute, or to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

Where a dispute between two or more Contracting Parties is of a technical nature, and the Contracting Parties are unable to resolve the dispute among themselves, they may refer the dispute to an ad hoc expert panel established in accordance with procedures adopted by the Commission at its first meeting. The panel must confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

Where a dispute is not referred for settlement within a reasonable time of the consultations, or is not resolved by recourse to other means referred to by the Convention a reasonable time, at the request of any party to the dispute, it must be submitted for binding decision in accordance with the 1982 Convention or, where the dispute concerns one or more straddling stocks, in accordance with the Fish Stocks Agreement (whether or not the Parties to the dispute are also State Parties to these instruments).

**INDIAN OCEAN TUNA COMMISSION**  
**(IOTC)**

<b>Established</b>	1993 Agreement under Article XIV of FAO Constitution, entered into force 1996
<b>Mandate</b>	Regulatory measures binding 120 days from date in Secretary's notification or on other date specified by Commission
<b>Area of Competence</b>	Indian Ocean and adjacent seas, north of the Antarctic convergence, so far as necessary to cover such seas to conserve and manage stocks that migrate into or out of the Indian Ocean
<b>Species</b>	Yellowfin tuna, skipjack tuna, bigeye tuna, albacore, Southern bluefin tuna, longtail tuna, kawakawa, frigate tuna, bullet tuna, narrow-barred Spanish mackerel, Indo-Pacific king mackerel, Indo-Pacific blue marlin, black marlin, striped marlin, Indo-Pacific sailfish, and swordfish.
<b>Membership Criteria</b>	The Convention is open for acceptance by Members and Associate Members of FAO that are (i) coastal States or Associate Members situated wholly or partly within the area; (ii) States responsible for the international relations of territories situated wholly or partly within the area covered by the Agreement; (iii) States or Associate Members whose vessels engage in fishing in the area of stocks covered by the Agreement; and (iv) regional economic integration organizations of which any State has transferred competence over matters covered by the Agreement. The Commission may, by a two-third majority of its members, admit other States which are Members of the United Nations or of any of its Specialized Agencies or the International Atomic Energy Agency provided that they are coastal States situated wholly or partly within the area or States whose vessels engage in fishing in the area for stocks covered by the Agreement.
<b>Members</b>	Australia, People's Republic of China, Comoros, Eritrea, European Community, France, India, Iran, Japan, Republic of Korea, Madagascar, Malaysia, Mauritius, Oman, Pakistan, Seychelles, Sri Lanka, Sudan, Thailand, United Kingdom.
<b>Organization</b>	Commission, Scientific Committee, Sub-Commissions
<b>Observers</b>	Allowed under the Agreement
<b>Dispute Settlement</b>	Yes

## 1. OBJECTIVE AND FUNCTIONS

The objective of the Commission is to promote co-operation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by the Agreement and encouraging sustainable development of fisheries based on such stocks.

## 2. REGULATORY MEASURES

Regulatory measures guiding the Commission's work are not provided in the Agreement.

## 3. ORGANIZATION

### 3.1 Membership

The Agreement was adopted by the FAO Council under Article XIV of the FAO Constitution. As such, membership in the Commission is open to Members and Associate Members of FAO that are 1) coastal States or Associate Members situated wholly or partly within the Area, 2) States or Associate Members whose vessels engage in fishing in the Area for stocks covered by this Agreement; or 3) regional economic integration organizations of which any such State is a member and to which that State has transferred competence over matters within the purview of this Agreement.

The Commission may, by a two-third majority of its members, admit other States which are Members of the United Nations or of any of its Specialized Agencies or the International Atomic Energy Agency provided that they are coastal States situated wholly or partly within the area or States whose vessels engage in fishing in the area for stocks covered by the Agreement.

### **3.2 The Commission and subsidiary bodies**

The Commission has established a permanent Scientific Committee, which advises the Commission on all scientific matters, including the status of stocks, management options and research coordination. Working parties have been established on 1) Data collection and statistics, 2) Tropical Tunas, 3) Neritic Tunas and Billfishes, 4) Tagging, 5) Methods and 6) Temperate Tunas (future). The working Parties whose role is limited to stock assessment may produce management options but they are not expected to advise the Commission on the best one to adopt.

The Agreement also allows for the establishment of Sub-Commissions to reflect the different stocks, if require. None have been established to date.

### **3.3 Administration and Finance**

The Commission is served by a professional Secretariat, which is appointed under the terms and conditions of FAO staff. Financial management is subject to the Financial Regulations of the Commission.

### **3.4 Observers**

Any Member or Associate Member of FAO that is not a Member of the Commission may, upon its request, be invited to be represented by an observer at sessions of the Commission. It may submit memoranda and participate without vote in the discussions. States which, while not Members of the Commission nor Members or Associate Members of FAO, are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency may, upon request and subject to the concurrence of the Commission and to the provisions relating to the granting of observer status to nations adopted by the Conference of FAO, be invited to attend sessions of the Commission as observers.

The Commission may also invite intergovernmental or, on request, non-governmental organizations having special competence in the field of activity of the Commission to attend such of its meetings as the Commission may specify.

## **4. DECISION-MAKING COMPETENCIES**

### **4.1 Decisions of the Commission**

Decisions of the Commission are taken by a majority of the Contracting Parties, each Contracting Party having one vote. A majority of the Contracting Parties constitutes a quorum. Conservation and management measures that are binding on Members of the Commission must be adopted by a two-thirds majority of Members present and voting. Recommendations concerning conservation and management of the stocks for furthering the objectives of the Agreement need only be adopted by a simple majority of Members present and voting.

### **4.2 Objection Procedure**

Any Member of the Commission may object to a conservation and management measure within 120 days from the date of notification by the Commission. If an objection is lodged, any other Member may also object to the measure within 60 days after the initial 120-day objection period has passed. A

Member of the Commission that has objected to a measure is not bound by that measure. Members that have objected to a measure can withdraw their objection at any time. They then become bound by the measure. If more than one third of Members object to a measure, none of the Members are bound by that measure. Members may, however, still give effect to the measure if they wish.

#### **4.3 Other decision mechanisms**

**Rules of Procedures:** The Commission may adopt and amend, as required, its own Rules of Procedure and Financial Regulations by a two-thirds majority of its Members, which Rules shall not be inconsistent with the Agreement or with the Constitution of FAO.

### **5. DISPUTE SETTLEMENT**

Any dispute regarding the interpretation or application of the Agreement, if not settled by the Commission, shall be referred for settlement to a conciliation procedure to be adopted by the Commission. The results of such conciliation procedure, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If as the result of this procedure the dispute is not settled, it may be referred to the International Court of Justice in accordance with the Statute of the International Court of Justice, unless the parties to the dispute agree to another method of settlement.



**INTER-AMERICAN TROPICAL TUNA COMMISSION**  
(IATTC)

<b>Established</b>	1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission, entered into force 1950
<b>Mandate</b>	Regulatory measures binding
<b>Area of Competence</b>	The area of competence of the Commission is defined as the "Eastern Pacific Ocean". There is no precise definition of this area by lines of longitudes and latitudes, but in recent years the Commission's conservation and management resolutions have specified the area covered as 150 degrees west longitude, 40 degrees north and south latitudes, and the coastline of the American continents. In 1962, a Commission's Yellowfin Regulatory Area (CYRA) was created.
<b>Species</b>	All tunas and other fish taken by tuna fishing vessels
<b>Membership Criteria</b>	Membership is open to any States whose nationals participate in fisheries in the IATTC Convention Area, provided that the Contracting Parties given their unanimous consent.
<b>Members</b>	Costa Rica, Ecuador, El Salvador, France, Guatemala, Japan, Mexico, Nicaragua, Panama, Perú, the United States of America, Vanuatu and Venezuela.
<b>Organization</b>	Commission, Scientific Advisory Board, Advisory Committee, National Sections
<b>Observers</b>	Subject to procedures
<b>Dispute Settlement</b>	No formal mechanism

## 1. OBJECTIVE AND FUNCTIONS

The main objectives of the Convention are to maintain the populations of yellowfin and skipjack tuna and other kinds of fish taken by tuna fishing vessels in the eastern Pacific and to cooperate in the gathering and interpretation of factual information to facilitate maintaining the populations of these fishes at a level which permits maximum sustainable catches year after year.

The functions of the Commission include *inter alia*:

- to gather and interpret information on tuna;
- to conduct scientific investigation concerning the abundance, biology, biometry, and ecology of yellowfin and skipjack tuna in the Convention Area, and to recommend proposals for joint action for conservation.

## 2. REGULATORY MEASURES

Decisions on the types of conservation measures that the Commission may make are not specified in the Convention. However, the Commission has previously set catch quotas within the CYRA (Commission Yellowfin Regulatory Area), although these have not been implemented since 1979. Most decisions of the Commission are notified as Resolutions, which in recent years have included resolutions on:

- dolphin conservation, studies;
- fish aggregating devices;
- compliance;
- regional vessel register;
- fleet capacity;
- at-sea reporting;

- bigeye tuna, yellowfin tuna;
- bycatch;
- finance;
- fishing by non-party vessels;
- dolphin safe tuna certification procedures;
- revised Tuna Tracking and Verification System.

### **3. ORGANIZATION**

#### **3.1 Membership**

The Convention was originally established by the High Contracting Parties, which were Costa Rica and USA. Any government, whose nationals participate in the fisheries covered by the Convention, may adhere to the Convention.

#### **3.2 The Commission and subsidiary bodies**

##### **3.2.1 The Commission**

The Commission is composed of national sections, each consisting of from one to four members, appointed by Governments of the Contracting Parties. Each national section has one vote, and decisions, resolutions, recommendations and publications of the Commission are to be made only by a unanimous vote. Votes may be taken by show of hands or by roll call, as the Chair determines. Between meetings, in case of an emergency, a vote may be obtained by mail or other means of communication.

The Commission has regulatory powers and catch quotas for yellowfin tuna have been set by the Commission since 1962. Since 1976, the Commission has implemented a programme on tuna dolphin relationship and since 1992 it has developed an International Dolphin Conservation Programme aiming at progressively reducing dolphin mortality in tuna fishing. The Commission also serves as the Secretariat for the Agreement on the International Dolphin Conservation Program, whose principal objective is to reduce and strictly regulate accidental dolphin mortality which occurs in the purse seine fisheries for tuna.

The Convention requires the Commission to perform the following functions and duties:

- make investigations concerning the abundance, biology, biometry and ecology of yellowfin and skipjack tuna in the waters of the eastern Pacific Ocean fished by the nationals of the Contracting Parties, and the kinds of fishes commonly used as bait in the tuna fisheries, and of other kinds of fish taken by tuna fishing vessels; and the effects of natural factors and human activities on the abundance of the populations of fishes supporting all these fisheries;
- collect and analyse information relating to current and past conditions and trends of the populations of fishes covered by the Convention;
- study and appraise information concerning methods and procedures for maintaining and increasing the populations of fishes covered by the Convention;
- conduct such fishing and other activities on the high seas and in waters which are under the jurisdiction of the Contracting Parties as may be necessary to attend the ends of the previous activities;
- recommend on the basis of scientific investigations proposals for joint action by the Contracting Parties designed to keep the populations of fishes covered by the Convention at levels of abundance which will permit maximum sustained catch.

- collect statistics and reports concerning catches and the operations of fishing boats, and other information concerning fishing for fishes covered by the Convention, from vessels or persons engaged in the fisheries;
- publish or otherwise disseminate reports relative to the results of its findings and other reports as fall within the scope of the Convention, as well as scientific, statistical and other data relating to the fisheries maintained by the nationals of the Contracting Parties for the fishes covered by the Convention.

Each Contracting Party may establish an Advisory Committee for its National Section, to be composed of persons who must be well informed concerning tuna fishery problems of common concern. The Advisory Committee may attend non-executive sessions of the Commission and address the sessions at the discretion of the Chair.

The work of the staff in carrying out the Commission's functions and duties is divided into two programs, the Tuna-Billfish Program and the Tuna-Dolphin Program.

The principal responsibilities of the Tuna-Billfish Program are to:

- study the biology of the tunas and related species of the eastern Pacific Ocean with a view to determining the effects that fishing and natural factors have on their abundance;
- recommend appropriate conservation measures so that the stocks of fish can be maintained at levels which afford maximum sustainable catches;
- collect information on compliance with Commission resolutions.

The principal responsibilities of the Tuna-Dolphin Program are to:

- monitor the abundance of dolphins and their mortality incidental to purse-seine fishing in the eastern Pacific Ocean;
- study the causes of mortality of dolphins during fishing operations and promote the use of fishing techniques and equipment which minimize these mortalities;
- study the effects of different modes of fishing on the various fish and other animals of the pelagic ecosystem; and
- provide a secretariat for the International Dolphin Conservation Program (IDCP).<sup>198</sup>

### 3.2.2 Permanent Working Group on Compliance

Each Party of the IATTC is a member of the Permanent Working Group on Compliance, which has the following functions:

- to review and monitor compliance with conservation and management measures adopted by the IATTC;
- to recommend to the IATTC means of promoting compatibility among the national fisheries management measures of the members, including infractions and sanctions;
- to recommend to the IATTC appropriate measures for addressing matters related to compliance with fisheries management measures;

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<sup>198</sup> The Agreement on the International Dolphin Conservation Program, a legally-binding multilateral agreement which entered into force in February 1999, established this program, the successor to the 1992 Agreement on the Conservation of Dolphins (the La Jolla Agreement.) Its objectives are: to progressively reduce incidental dolphin mortalities in the tuna purse-seine fishery in the Agreement Area to levels approaching zero, through the setting of annual limits; with the goal of eliminating dolphin mortality in this fishery, to seek ecologically sound means of capturing large yellowfin tunas not in association with dolphins; and to ensure the long-term sustainability of the tuna stocks in the Agreement Area, as well as that of the marine resources related to this fishery, taking into consideration the interrelationship among species in the ecosystem, with special emphasis on, *inter alia*, avoiding, reducing and minimizing bycatch and discards of juvenile tunas and non-target species.

- analyse information by flag and, as necessary, by vessel, and other information necessary to carry out its functions; and
- to report results of its work to the IATTC, which will in turn inform the members and non-members.

The Working Group must adopt its report and recommendations by consensus through a vote of its governmental members present and voting, and any recommendations it makes must be considered by the IATTC. The quorum for a meeting is two-thirds of the government members.

Where there is urgency, the Working group may take decisions by correspondence through a vote of the government members under specified procedures.

There are no restrictions on the number of persons a government member may include in its delegation. Observers from intergovernmental and non-governmental organizations are limited to two delegates but may bring more with the approval by consensus of the government members. If a consensus is not possible the matter may be decided by a two-thirds majority of the government members.

### **3.2.3 Working Group on Fishing by Non-Parties**

One of the main responsibilities of the Working Group on Fishing by non-parties is to assess the extent and impact of IUU fishing in the area of the Agreement.

### **3.2.4 Administration and Finance**

The Commission appoints a Director of Investigations who is responsible for 1) the drafting of programs of investigations, and the preparation of budget estimates for the Commission, 2) authorizing the disbursement of the funds for the joint expenses of the Commission, 3) the accounting of the funds for the joint expenses of the Commission, 4) the appointment and immediate direction of technical and other personnel required for the functions of the Commission, 5) arrangements for the co-operation with other organizations, 6) the drafting of administrative, scientific and other reports for the Commission.

## **3.3 Observers**

Observers may attend regular and special meetings of the Commission. Invitations will be sent to:

- non-member States with coastlines bordering the Convention Area, or whose national participate in the fisheries covered by the Convention; and
- intergovernmental organizations which have regular contact with the IATTC, or whose work is of interest to the IATTC, and vice versa;

Other organizations with a legitimate interest in the work of the Commission may send observers to the meetings, subject to prior approval by the member countries. Requests for invitations are to be made at least 120 days prior to a meeting. Providing no IATTC member has objected in writing, with reasons, invitations are to be made 60 days prior to the meeting. Any objection is to be discussed at an executive session of the Commission immediately prior to the meeting.

Observers may take the floor at Commission meetings with the Chair's authorization, providing no member objects. The Chair must give prior approval for circulation of documents, and the overall number of observers must not be so large as to hinder the work of the Commission.

The Rules of Procedure of the Permanent Working Group on Compliance provide that the following may participate as observers: representatives of non-Parties, pertinent intergovernmental

organizations, non-governmental environmental organizations with recognized experience in matters pertaining to the Working Group, and owners of tuna vessels fishing in the eastern Pacific Ocean under the jurisdiction of any of the Parties. All participants in the Permanent Working Group have speaking rights, but only government members have voting rights.

#### **4. DECISION-MAKING COMPETENCIES**

##### **4.1 Decisions of the Commission**

Each national section shall have the right to one vote. The decisions, resolutions, recommendations and publications of the Commission must be approved by a unanimous vote.

##### **4.2 Objection Procedure**

All decisions and resolutions are taken by unanimous approval through votes of all members. This prevents the occurrence of disputes and objections.

##### **4.3 Other decision mechanisms**

Rules of Procedure have been adopted for the IATTC (1952, as amended) and the Permanent Working Group on Compliance (2000). Financial Regulations were adopted in 1982 and have subsequently been amended.

#### **5. DISPUTE SETTLEMENT**

There is no formal mechanism for the settlement of disputes.

**INTERNATIONAL CONVENTION FOR THE CONSERVATION OF ATLANTIC TUNAS  
(ICCAT)**

<b>Established</b>	International Convention for the Conservation of Atlantic Tunas, signed in 1966, entered into force 1969. The Convention was amended in 1984 and 1992
<b>Mandate</b>	Makes regulatory recommendations to be implemented by Contracting Parties, binding six months after notification, subject to an objection procedure.
<b>Area of Competence</b>	All waters of the Atlantic Ocean, including the adjacent seas
<b>Species</b>	Tuna and tuna-like fishes (the Scombriformes with the exception of the families <i>Trichiuridae</i> and <i>Gempylidae</i> and the genus <i>Scomber</i> ) and such other species of fishes exploited in tuna fishing in the Convention Area as are not under investigation by another international organization.
<b>Membership Criteria</b>	Any State which is a member of the United Nations or of any Specialized Agency of the United Nations, and intergovernmental economic integration organizations constituted by States that have transferred to its competence over the matters governed by the convention.
<b>Members</b>	Algeria, Angola, Barbados, Brazil, Canada, Cape Verde, China, Côte d'Ivoire, Croatia, Cyprus, Equatorial Guinea, European Community, France (St. Pierre and Miquelon), Gabon, Ghana, Guinea Conakry, Honduras, Iceland, Japan, Korea (Rep. of), Libya, Mexico, Morocco, Namibia, Panama, Russia, Sao Tomé and Príncipe, South Africa, Trinidad and Tobago, Tunisia, Turkey, United Kingdom (Overseas Territories), United States, Uruguay, Vanuatu, and Venezuela. The Commission has also created a special status known as that of Cooperating Party, Entity or Fishing Entity. Currently, Chinese Taipei and the Philippines enjoy this status.
<b>Organization</b>	Commission, Council, Panels, Committee, Standing Committees, Sub-Committees, Standing Committee Groups, Permanent Working Group, Special Working Groups
<b>Observers</b>	Subject to procedures
<b>Dispute Settlement</b>	No

## 1. OBJECTIVE AND FUNCTIONS

The main objective of the Convention is to maintain the populations of tuna and tuna-like species found in the Atlantic at levels which permit the maximum sustainable catch for food and other purposes. The Commission's functions *inter alia* include: (i) to study the populations of tuna and tuna-like fishes, (ii) to collect and analyse statistical information relating to the current conditions and trends of the tuna fishery resources of the Convention Area, and (iii) recommend studies and investigations to the Contracting Parties.

## 2. REGULATORY MEASURES

The Commission has no regulatory powers, but makes regulatory recommendations to be implemented by Contracting Parties. ICCAT has recommended a number of measures on catch quotas, minimum weight of fish and limitation of incidental catches, as well as IUU fishing. The number of Resolutions and Recommendations that the Commission adopts each year has been increasing.

## 3. ORGANIZATION

### 3.1 Membership

Membership of ICCAT is open to any State which is a member of the United Nations or of any Specialized Agency of the United Nations, and intergovernmental economic integration organizations

constituted by States that have transferred to its competence over the matters governed by the convention

### 3.2 The Commission and subsidiary bodies

The Commission is responsible for the study of the populations of tuna and tuna-like fishes and such other species of fishes exploited in tuna fishing in the Convention areas as are not under investigation by another international fishery organization. The Convention describes what the research may include and where information and technical services can be sourced. The Commission, in carrying out its responsibilities, has the responsibilities of:

- collecting and analyzing statistical information relating to the current conditions and trends of the tuna fishery resources of the Convention area;
- studying and appraising information concerning measures and methods to ensure maintenance of the populations of tuna and tuna-like fishes in the Convention area at levels which will permit the maximum sustainable catch and which will ensure the effective exploitation of these fishes in a manner consistent with this catch;
- recommending studies and investigations to the Contracting Parties;
- publishing and otherwise disseminating reports of its findings and statistical, biological and other scientific information relative to the tuna fisheries of the Convention area.

In accordance with the Convention, the Commission holds a regular meeting every other year and a special meeting in alternate years. The Commission can, on the basis of scientific evidence and of other relevant information, recommend management measures and Resolutions aimed carrying out its objective of maintaining the populations of tuna and tuna-like fishes at "levels which will permit maximum sustainable catch".

Normally, recommendations and resolutions are drafted by already-established auxiliary bodies (such as the Panels, or the Compliance Committee, described below), and are presented to the Commission, the ultimate decision maker.

A Council within the Commission is established by the ICCAT Convention charged with, *inter alia*, taking decisions on matters relating to staff duties and instructing the Executive Secretary between Commission meetings. It consists of the Chairman and the Vice-Chairman of the Commission together with the representatives of not less than four and not more than eight Contracting Parties. The Council is to perform functions assigned to it by the Convention or designated by the Commission, and must meet at least once in the interim between regular meetings of the Commission. The Rules of Procedure of the Commission apply to the Council, but may be supplemented by the Council subject to confirmation by the Commission.

The Commission has established Panels that review research results and draft management measures for the Commission's consideration. Currently, there are panels on: Tropical Tunas (yellowfin, skipjack and bigeye); Northern Temperate Tunas (albacore and bluefin); Southern Temperate Tunas (albacore and southern bluefin); and Swordfish, Billfishes and Small Tunas.

The Standing Committee on Finance and Administration (STACFAD): Advises on Secretariat, budget, meetings and publications matters.

The Permanent Working Group on ICCAT Statistics and Conservation Measures (PWG): reviews compliance by non-contracting parties.

The Compliance Committee reviews compliance by contracting parties.

The Standing Committee on Research and Statistics (SCRS), the scientific branch, prepares scientific advice to the Commission. It coordinates and executes all matters related to monitoring and assessment. The following groups provide input to the SCRS:

- Species Groups - Assess individual stocks and provide advice to the Panels
- Subcommittee on Statistics - Quality control and policy for fishery statistics
- Subcommittee on the Environment - Studies the effects of the environment
- Subcommittee on Bycatch - Reviews data collection for by-catches (e.g. sharks)
- Miscellaneous SCRS Groups:
  - Cooperative Billfish Tagging Program - Coordinates tagging of billfishes
  - Bluefin Year Program - Coordinates research on Atlantic bluefin
  - Bigeye Year Program - Coordinates research on bigeye tuna
  - Methods Working Group - Evaluates assessment methods
  - Ad Hoc Working Group on the Precautionary Approach: Examines the implications of the Precautionary Approach for ICCAT stocks
  - Ad Hoc Working Group on SCRS Organization: Advises on ways to improve the efficiency of the SCRS

Two Special Working Groups have been formed: The Working Group on Allocation Criteria develops criteria for the allocation of allowable catches among contracting parties; and the Working Group to Develop Integrated Monitoring Measures develops integrated monitoring measures to improve the collection of statistics and compliance with management

### **3.3 Administration and Finance**

The Executive Secretary, subject to rules and procedures determined by the Commission, has authority with respect to the selection and administration of the staff of the Commission, and also has the following principal functions:

- coordinating the programmes of investigation by the Contracting Parties;
- preparing budget estimates for review by the Commission;
- authorizing the disbursement of funds in accordance with the Commission's budget;
- accounting for the funds of the Commission;
- arranging for co-operation with other organizations;
- preparing the collection and analysis of data necessary to accomplish the purposes of the Convention; and
- preparing for approval by the Commission scientific, administrative and other reports of the Commission and its subsidiary bodies.

As noted above, the Standing Committee on Finance and Administration advises the Commission on matters relating to the Secretariat, budget, meetings and publications. The Commission has adopted financial regulations.

The Convention defines the procedures to calculate the country contributions to finance the Commission's budget. There is a proposed new calculation scheme that requires amendment of the Convention and a Protocol to this effect was signed in Madrid in May, 1992. This Protocol will enter into effect when all the Contracting Parties in Group A ratify or accept it and when two-thirds of the remainder of the Contracting Parties ratify or accept it.

The financial period of the Commission is the two calendar years following the date of its regular meeting (regular meetings take place every other year). Budget estimates are submitted to the Contracting Parties not less than 60 days prior to the opening of the regular meeting. Funding of the budget is by annual financial contributions made by the members of the Commission, and are payable



in Euros or United States Dollars. The total budget approved by the Commission is available on the ICCAT website.<sup>199</sup>

### 3.4 Observers

Observers are addressed in Article XI of the ICCAT Convention, which records the Contracting Parties' agreement that there should be a working relationship between the Commission and FAO, and cooperation between the Commission and other international fisheries commissions and scientific organizations which might contribute to the work of the Commission. Agreements between ICCAT and FAO would provide for this. The Commission has discretion to invite any appropriate international organization and any Government which is a Member of the UN or of any Specialized Agency and not a member of the Commission to send observers to meetings of the Commission and its subsidiary bodies.

In addition, guidelines and criteria for granting observer status at ICCAT meetings were adopted by the Commission in 1998. These require the Executive Secretary to invite the following to ICCAT Meetings in accordance with the Convention:

- FAO;
- intergovernmental economic integration organizations;
- intergovernmental organizations;
- non-contracting countries with coastlines bordering the Convention Area or non-contracting parties; entities or fishing entities identified as harvesting tunas or tuna-like species in the Convention Area.

All NGOs which support ICCAT objectives and have a demonstrated interest in the relevant species are eligible to participate in all meetings of the Organization and its subsidiary bodies, except extraordinary meetings held in executive sessions or meetings of Heads of Delegations.

Any NGO desiring to participate as an observer must notify the Secretariat at least 50 days in advance, with specified information. The Executive Secretary must notify the Contracting Parties at least 45 days before the meeting, with all information. Applications will be considered accepted unless one-third of Contracting Parties object in writing at least 30 days prior to the meeting.

NGO observers may attend meetings, but not vote, make oral statements by invitation of the presiding officer, distribute documents through the Secretariat and engage in other activities approved by the presiding officer.

The Executive Secretary will determine whether a limited number of observers per NGO may be present due to conference room capacity, and transmit such determination in the conditions of participation.

Observers must pay a fee and will receive the same documentation generally available to Contracting Parties except those deemed confidential by the Parties.

Observers must comply with applicable rules and procedures or be subject to withdrawal of accreditation.

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<sup>199</sup> [www.iccat.es](http://www.iccat.es)

## **4. DECISION-MAKING COMPETENCIES**

### **4.1 Decisions of the Commission**

According to ICCAT Rules of Procedure, decisions of the Commission are to be taken by a majority of the members.<sup>200</sup> Two-thirds of the Contracting Parties constitutes a quorum. Votes may be taken by show of hands, roll call or secret ballots and in cases of necessity between meetings by mail or other means of communication. Voting rights may be suspended if the member is in arrears in an amount that equals or exceeds the contributions due for the previous two years.

The Rules of Procedure applicable to the conduct of the business of the Commission are also applicable to Committees and panels, and may be supplemented by additional rules or by-laws as appropriate.

### **4.2 Objection Procedure**

Recommendations of the Commission are effective for all Contracting Parties six months after the date of the notification from the Commission transmitting the recommendation to the Contracting Parties, unless there is an objection.

If any Contracting Party in the case of a recommendation made by the Commission on its initiative, or any Contracting Party member of a Panel in the case of a recommendation made on the proposal of a Panel, objects to a recommendation within the six months, the recommendation does not become effective for an additional sixty days.

Any other Contracting Party may present an objection prior to the expiration of the additional sixty days period, or within forty-five days of the date of the notification of an objection made by another Contracting Party within the sixty days, whichever is later.

The recommendation becomes effective at the end of the extended period or periods for objection, except for those Contracting Parties that have presented an objection.

However, if a recommendation has met with an objection presented by only one or less than one-fourth of the Contracting Parties, the objection has no effect. In this case, the Contracting Party or Parties concerned have an additional period of sixty days to reaffirm their objection. On the expiry of this period the recommendation shall become effective, except with respect to any Contracting Party having presented an objection and reaffirmed it within the delay provided for.

If a recommendation has met with objection from more than one-fourth but less than the majority of the Contracting Parties the recommendation becomes effective for the Contracting Parties that have not objected.

If objections have been presented by a majority of the Contracting Parties the recommendation does not become effective.

Any Contracting Party objecting to a recommendation may at any time withdraw that objection.

## **5. DISPUTE SETTLEMENT**

There are no dispute settlement procedures in the ICCAT Convention.

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<sup>200</sup> Except as provided in Article VIII (1)(b)(i) and X(2)(c) of the Convention.

**NORTH ATLANTIC SALMON CONSERVATION ORGANIZATION**  
(NASCO)

<b>Established</b>	Convention for the Conservation of Salmon in the North Atlantic Ocean, signed in 1982, entered into force on 1 October 1983.
<b>Mandate</b>	Regulatory measures binding within 60 days subject to objection procedure.
<b>Area of Competence</b>	The Convention applies to the salmon stocks that migrate beyond areas of fisheries jurisdiction of coastal States of the Atlantic Ocean north of 36°N latitude throughout their migratory range. This area is subdivided into three regions serviced by three different commissions: (1) The North American Commission covers all maritime waters within areas of fisheries jurisdiction of coastal States off the east coast of North America; (2) the West Greenland Commission covers all maritime waters within the area of fisheries jurisdiction off the coast of West Greenland west of a line drawn along 44°W longitude south to 59°N latitude, thence due east to 42°W longitude and thence due south; and (3) the North East Atlantic Commission covers all maritime waters east of the line mentioned above.
<b>Species</b>	Salmon
<b>Membership Criteria</b>	Any State may accede that exercises fisheries jurisdiction in the North Atlantic Ocean or is a State of origin for salmon stocks provided it is approved by the Council.
<b>Members</b>	Canada, Denmark (in respect of the Faroe Islands and Greenland), the European Union, Iceland, Norway, the Russian Federation, and the USA
<b>Organization</b>	Council, three Commissions, Finance and Administration Committee
<b>Observers</b>	Subject to procedures
<b>Dispute Settlement</b>	No

## 1. OBJECTIVE AND FUNCTIONS

The objective of NASCO is to contribute to the conservation, restoration, enhancement and rational management of salmon stocks in the North Atlantic Ocean. The broader aspects of NASCO's work include habitat protection and restoration and the impacts of aquaculture.

The functions of the Council include providing a forum for study, analysis and exchange of information concerning the salmon stocks subject to the Convention, consultation and cooperation in relation to the salmon stocks in the North Atlantic beyond Commission Areas, facilitating coordination of the Commissions' activities and establishing working arrangements with ICES and other organizations, and make recommendations to the Parties, ICES and others regarding scientific research to be undertaken.

The functions of the North American Commission vary slightly from those of the West Greenland Commission and North-East Atlantic Commission, but each is empowered to provide for a for consultation and cooperation on salmon stocks; to propose regulatory measures for fishing in the fishery zones of members for salmon originating in the rivers of other Parties; and to make recommendations to the Council on scientific research. The North American Commission has a more detailed mandate which requires each member to take measures to minimise by-catch of salmon originating in the rivers of the other member. It also requires that fishing patterns in salmon fisheries should not be altered in a manner that results in initiation of fishing or increases in catches of salmon originating in the rivers of another Party without the consent of that Party.

## **2. REGULATORY MEASURES**

Regulatory measures have been agreed by the regional Commissions of NASCO in most years since the Organization's establishment. The Council has also adopted agreements, guidelines, resolutions and protocols, including the following.

- Resolution to Minimize Impacts from Salmon Aquaculture on the Wild Salmon Stocks;
- Agreement on Adoption of a Precautionary Approach;
- Resolution on Fishing for Salmon on the High Seas;
- Resolution Concerning Scientific Research Fishing;
- Minimum Standard for Catch Statistics;
- Guidelines for Action on Transgenic Salmon;
- Decision structure to Aid the Council and Commissions of NASCO and the Relevant Authorities in implementing the Precautionary Approach to Management of North Atlantic Fisheries;
- NASCO Plan of Action for the Application of the Precautionary Approach to the Protection and Restoration of Atlantic Salmon Habitat;
- Guidelines on Containment of Farm Salmon; and
- Agreements in relation to introductions and transfers, and other issues.

## **3. ORGANIZATION**

### **3.1 Membership**

Membership is open to any State may accede that exercises fisheries jurisdiction in the North Atlantic Ocean or is a State of origin for salmon stocks provided it is approved by the Council.

### **3.2 The Commission and subsidiary bodies**

The Council is made up of representatives of all the Parties to the Convention. The members of the three Commissions are:

- North American Commission – Canada, the United States of America.
- West Greenland Commission – Canada, Denmark (in respect of the Faroe Islands and Greenland), the European Union, the United States of America
- North-East Atlantic Commission – Denmark (in respect of the Faroe Islands and Greenland) the European Union, Iceland, Norway, the Russian Federation.

The Council has established an International Cooperative Salmon Research Programme, overseen by the International Atlantic Salmon Research Board, a new cooperative effort for addressing marine mortality issues. ICES provides scientific advice to NASCO.

### **3.3 Administration and Finance**

The Council is advised by a Finance and Administration Committee.

### **3.4 Observers**

Representatives of inter-government organizations may attend meetings of the Council and the regional Commissions of NASCO and may be invited by the President, or the Chairman of a Commission, to make a statement if they so wish.

For non-government observers, the Secretary in consultation with the President decides whether the objective of the organization applying are compatible with those of NASCO. The application must be

made not less than 15 days before the meeting of the Council, and no more than two representatives of the NGO are allowed to attend the meeting. NGO representatives are not permitted to make any statements at the meetings, except at the Opening Session and Special Sessions at the discretion of the President. In addition, a joint five-minute statement may be made by NGOs at the Opening Session of each Commission meeting.

The NGO must demonstrate that it has a legitimate interest in the proceedings, and any NGO that has been accredited as an observer loses its accreditation after three years if it has not communicated with the Secretariat or the Contracting Party concerned, but it may reapply. It is only accredited in respect to plenary sessions of the Council and Commissions, and not to meetings of Working Groups or Committees. Observer status may be suspended if the NGO does not comply with conditions imposed by the Council or the Secretary.

Accredited NGOs are not permitted to issue press releases during NASCO's Annual Meeting after the Opening Session of the Council until the Council has agreed its own Press Release. There are also rules regarding attendance at meetings by media representatives, including requirements to register on arrival, restrict attendance to the Opening Session of the Council and to two representatives of a particular publication or a company.

#### **4. DECISION-MAKING COMPETENCIES**

##### **4.1 Decisions of the Council and Commissions**

Council decisions are taken by three-quarters majority except with regard to membership of the West Greenland and North-East Atlantic Commissions, scope and form of statistics to be provided and amendments to the Convention, all of which require unanimous decisions.

Decisions of each Commission are taken by the unanimous vote of those present and casting an affirmative or negative vote. No vote can be taken unless two thirds of those entitled to vote on the matter concerned are present.

##### **4.2 Objection Procedure**

A regulatory measure proposed by a Commission becomes binding on its members 60 days after the date specified in the Secretary's notification or, if a later date is determined by the Commission, on such date. However, any member in whose areas of fisheries jurisdiction a regulatory measure would apply may, within 60 days of the date specified in the Secretary's notification, lodge an objection to it. In this case the regulatory measure is not binding on any member. A member which has lodged an objection may at any time withdraw it. Thirty days after all objections are withdrawn the regulatory measure becomes binding.

After the expiration of one year from the date on which a regulatory measure becomes binding, any member in whose area of fisheries jurisdiction the regulatory measure applies may denounce it by written notice to the Secretary. The Secretary shall immediately inform the other members of such denunciation. The regulatory measure shall cease to be binding on all members 60 days after the date of receipt by the Secretary of the notice of denunciation or, if a later date is indicated by the member, on such date.

In addition to these normal procedures Article 13 of the Convention allows for emergency regulatory measures to be established having effect prior to the expiration of the 60-day period.

#### **5. DISPUTE SETTLEMENT**

There are no formal dispute settlement procedures.

SUMMARY INFORMATION RELATING TO DECISION-MAKING BY RFBS IN THIS REVIEW

RFB	Area of Competence	Membership	Organization	Observers	Decision-making by principal body	Objection	Dispute Settlement	
IWC 1946 47 members	Global, including factory ships, land stations and whale catchers under members' jurisdiction and areas where whaling is prosecuted by such ships, etc.	Open to all States	Commission, committees, sub-committees	Accredited observers may be present at all Commission and Committee meetings except meetings of Commissioners-only and Finance and Administration Committee. Application 60 days prior to meeting of Scientific Committee.	<b>GLOBAL</b>			No
					Consensus where possible. Amendments to Schedule by ¾ majority of voting Commissioners. Other decisions, simple majority of affirmative/negative votes.	Measures binding in 90 days subject to objection, which may be taken where national interest seriously affected. May be made within 90 days. Then additional objections within further 90 days or 30 days from last objection during this time, whichever is later.		
CCAMLR 1980 24 members	Southern Oceans	Open to States interested in research or harvesting activities re living marine resources of Area, REIO	Commission, scientific committees, standing committees, working groups.	Subject to Rules, members may object. May submit documents under conditions.	<b>TRANS-OCEAN</b>			Consultation, then referral to ICJ or arbitration to tribunal constituted according to CCAMLR rules.
					Consensus on matters of substance. Others by simple majority of present and voting. Show of hands, or by request roll call or secret ballot. Between meetings, post or other communications.	Measures binding in 180 days subject to objection. May be made within 90 days. Then any Member may request meeting to review measure. At or within 30 days following meeting any Member can declare non-acceptance and is not bound.		

RFB	Area of Competence	Membership	Organization	Observers	Decision-making by principal body	Objection	Dispute Settlement
<b>REGIONAL</b>							
<b>GFCM</b> 1949 24 members	Mediterranean and Black Seas, inter-connecting waters	Open to Members, etc. of FAO and REIO	Commission, committees, sub-committees, working groups	Rules provided by FAO Constitution and Rules of Procedure.	Simple majority, but 2/3 of members must be present and voting on conservation and management measures. Otherwise a majority of members constitutes quorum.	May be made within 120 days. Then additional objections in further period of 60 days.  If more than 1/3 members object, other members not obligated to give effect.	Commission, then referred to committee of three as specified, then referral to ICJ or arbitration.
<b>IBSFC</b> 1978 6 members	Baltic Sea and the Belts	Open to States interested in preservation and exploitation of living resources in Area, REIO	Commission, committees	Subject to Rules, application by qualified IGOs, NGOs, 65 days prior to meeting containing required information. Members may object, then written vote taken. Statements, document distribution at Chair's invitation.	If no consensus, decisions by 2/3 majority of members present and voting. Entry into force of any recommendations on areas under national jurisdiction of members depends on affirmative vote of member.	May be made within 90 days. Then, additional objections in a further period of 60 days.  If 3 or more members object, no member is bound.  Notice of termination of acceptance by member one year after entry into force. Measure non-binding on member after further year. Then any other member can terminate acceptance, effective 30 days after notification.	No

<b>RFB</b>	<b>Area of Competence</b>	<b>Membership</b>	<b>Organization</b>	<b>Observers</b>	<b>Decision-making by principal body</b>	<b>Objection</b>	<b>Dispute Settlement</b>
<b>NAFO</b> 1978 18 members	"Regulatory Area": that part of the Convention Area in Northwest Atlantic Ocean lying beyond the areas under the fisheries jurisdiction of Coastal States	Open to participants in fisheries of Regulatory Area, decided by General Council, REIO	Fisheries Commission, General Council, Scientific Council, standing committees, working groups	Executive Secretary may invite qualified IGOs or NGOs.  Application 100 days prior to meeting, with specified information.  Members may object, then written vote taken. Statements, document distribution at Chair's invitation. Fee is required.	Majority of votes of members present casting affirmative or negative votes, voting requires quorum of 2/3 of the members.  Scientific Council determines scientific advice by consensus; if no consensus, all views are reported.	Measure becomes binding at the end of the objection period, except for those objecting.  May be made within 60 days. Measure will not become binding until 40 days after objection. Other members may object during the 40 days, or within 30 days from notification of objection, whichever is later.  Proposal non-binding if at end of extended objection period a majority of Commission members object, unless otherwise agreed.  Notice of termination of acceptance by member one year after entry into force. Measure non-binding on member after further year.	No
<b>NEAFC</b> 1980 6 members	Northeast Atlantic as defined by Convention	Open, provided 3/4 of members approve, except to a member of EEC (EC is a member)	Commission, committees, working groups		Simple majority, or where qualified majority required a 2/3 majority of members present and casting affirmative or negative votes. Quorum of 2/3 members required for voting.  Emergency vote by post or other means of written communication in accordance with Rules of Procedure.	Binding on date determined by Commission, not less than 30 days after expiration of objection period.  May be made within 50 days. Then other member may object within 40 days of notice of objection. Then additional 40 day period for further objections.  Recommendation not binding on objecting member. If 3 or more members object, it is not binding on any member.	No.  The Working Group on the Future of NEAFC is considering this issue.



RFB	Area of Competence	Membership	Organization	Observers	Decision-making by principal body	Objection	Dispute Settlement
SEAF0 2001 9 members	All waters beyond national jurisdiction in Convention Area.	Open to coastal States and other States and REIOs whose vessels fish or fished during four years preceding adoption of Convention.	Commission, Scientific Committee, Compliance Committee	Rules of Procedure to be adopted for observer and transparency in the activities of the Organization.  They are not to be unduly restrictive and must provide for timely access to records and reports, subject to procedural rules.	Consensus on matters of substance. Others by simple majority of present and voting.	Binding on all members 60 days after notification, unless otherwise specified.  Non-acceptance may be made within 60 days, with written explanation of its reasons and as appropriate proposals for alternative measures it will implement. If non-acceptance, Commission must meet at request of any member to review measure. At time of meeting and 30 days after, any member may notify non-acceptance and not be bound.  Procedures for interim measures following non-acceptance notifications.	Consultation between parties.  Where technical dispute, reference to <i>ad hoc</i> expert panel. Where dispute not resolved in reasonable time, must be submitted for binding dispute at request of any party.
<b>SPECIES</b>							
IOTC 1993 20 members	Indian Ocean and adjacent seas	Members and associate members of FAO within Area or whose vessels fish for stocks covered by Agreement, REIOs. Commission may admit other States by 2/3 majority of members	Commission, Scientific Committee, Sub-Commissions	Agreed criteria for observer States.  IGOs and NGOs having special competence in the field of activities of the Commission may be invited to attend such meetings as the Commission may specify.	Majority of members present and voting, a majority of the members constitutes a quorum.  Except binding management measures require a 2/3 majority of members present and voting.  Recommendations concerning conservation and management of the stocks require a simple majority of members present and voting.	May be made within 120 days.  Then other members may object within 60 days after the 120 day period has passed.  Members objecting to measure not bound.  If more than 1/3 members object, none is bound, but may still give effect to the measure if they wish.	If not settled by Commission, referred to a conciliation procedure to be adopted by the Commission.  It may be referred to the ICJ unless parties agree otherwise.

RFB	Area of Competence	Membership	Organization	Observers	Decision-making by principal body	Objection	Dispute Settlement
IATTC 1949 13 members	Eastern Pacific Ocean	Any government whose nationals participate in the fisheries covered by the Convention may be a member	Commission Scientific Advisory Board, Advisory Committee, National Sections	<p>Invitations sent to: non-member States bordering Area or whose nationals participate in fisheries; IGOs who have regular contact with or whose work is of interest to IATTC; other organizations with a legitimate interest, subject to requests made 120 days before meetings and prior approval of members.</p> <p>Observers may speak at meetings providing no objection, prior approval for circulation of documents.</p>	All decisions and resolutions are taken by unanimous approval through votes of all members.	Unanimous vote requirement prevents the occurrence of objections.	None, as unanimous vote requirement prevents the occurrence of disputes.

RFB	Area of Competence	Membership	Organization	Observers	Decision-making by principal body	Objection	Dispute Settlement
<p>ICCAT 1966 36 members</p>	<p>All waters of Atlantic Ocean, including the adjacent seas</p>	<p>Any member of the UN or Specialized Agency, REIOs</p>	<p>Commission, Council, panels, committee, standing committees, sub-committees, standing committee groups, permanent working group, special working groups</p>		<p>Majority of the members, with a quorum of two thirds of the members. Votes may be taken by show of hands, roll call, secret ballots.</p> <p>In cases of necessity, votes may be taken between meetings by mail.</p> <p>Voting rights may be suspended if the member is in arrears in an amount that equals or exceeds the contributions due for previous two years.</p>	<p>Recommendations effective six months after notification, unless objection.</p> <p>If a member objects within six months the recommendation does not become effective for an additional 60 days.</p> <p>Then, another member may object during the 60 days and another member may object within 45 days of the first objection or the expiration of the 60 days, whichever is later.</p> <p>The recommendation becomes effective at the end of the extended period(s) of objection except for the objecting members.</p> <p>Except if only one or less than 1/4 or the members object, the objection has no effect. Then the member(s) have an additional 60 days to reaffirm their objection. At the end of that time the recommendation is effective except for the member(s) objecting and reaffirming.</p> <p>If a majority of members object, the recommendation does not become effective.</p>	<p>No.</p>

RFB	Area of Competence	Membership	Organization	Observers	Decision-making by principal body	Objection	Dispute Settlement
<p>NASCO 1982 7 members</p>	<p>Salmon stocks that migrate beyond fisheries jurisdiction of coastal States of a specified area of the North Atlantic Ocean</p>	<p>Any State that exercises fisheries jurisdiction in the North Atlantic or is a State of origin for salmon stocks provided Council approves, REJO</p>	<p>Council, geographic commissions committees working groups</p>	<p>IGOs may attend meetings and be invited to make a statement. For NGOs, objective of NGO must be compatible with NASCO's. Must apply at least 15 days prior to meeting, no more than two representatives may attend meeting of Council and Commission. Statements according to rules. Accreditation does not apply to meetings of working groups or committees.</p>	<p>Council decisions taken by 3/4 majority except unanimous decisions required for some decisions including scope and form of statistics to be provided and amendments to the Convention. Decisions of each Commission are taken by unanimous vote of those present and casting an affirmative or negative vote. The quorum is 2/3 of those entitled to vote.</p>	<p>Measure is binding 60 days after date in notification or at a later date determined by Commission. Objection may be made within 60 days of date specified in notification by a member in whose jurisdiction a measure would apply. The regulation is then not binding on any member. If an objection is withdrawn, the measure becomes binding 30 days later. Notice of termination of acceptance of measure may be made one year after it became binding. It will cease to be binding 60 days later, or at such later time as member may specify. But emergency regulatory measures may be established with effect prior to the expiration of the 60 day period.</p>	<p>No</p>

