

**First International Meeting on the Establishment of the
South Pacific Regional Fisheries Management Organisation**

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Paper submitted by: the Co-Sponsors (Australia, Chile, New Zealand)

GOVERNANCE PRINCIPLES AND THEIR APPLICATION

Purpose

1 In the context of a regional fisheries management organisation (RFMO), governance relates to the rules and practices governing the negotiation and the implementation of its objectives and principles through the exercise of authority, management and control within the organisation. It encompasses the structures and processes for making decisions, as well as the relationship between the organisation and its members.

2 Sound governance is critical for ensuring that an organisation runs efficiently, maintains its integrity, delivers on its objectives, and is accountable to its members. The establishment of a new RFMO in the South Pacific provides an opportunity to learn from the experiences of other RFMOs and regional instruments dealing with the conservation of living marine resources and create a regime underpinned by effective governance.

3 This paper provides some background as to why effective governance is important and recalls its objective and applicable general principles and outlines six important specific governance principles derived from the OECD's "Principle Elements of Good Governance" and suggests ways in which these principles could be applied in the context of the South Pacific RFMO. This paper could be drawn on when establishing the South Pacific RFMO.¹

4 The legal framework establishing the South Pacific RFMO (for the purposes of this paper the instrument is referred to as an 'Agreement') should establish an organisation that promotes the cooperation of coastal States and States with a real fishing interest in the region. The Agreement should aim to achieve the effective conservation and management of living marine resources in the South Pacific region. It should be consistent with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS)² and the principles of the United Nations Fish Stocks Agreement (UNFSA) and reflect best international practice. In developing the Agreement, the experience

¹ In this document, the use of the terminology 'regional fisheries management organisation' is without prejudice to the actual nature or name of the organisation or arrangement that may ultimately be agreed upon by the participants in the multilateral meeting in Wellington, New Zealand on 14-17 February 2006, or in subsequent meetings.

² In particular Part VII, Section II

gained and lessons learned in other RFMOs and relevant international agreements should be drawn on.

5 The Agreement should apply to the high seas areas outside national jurisdiction in the South Pacific Region and aim to achieve the effective conservation and management of living marine resources therein, not regulated by other RFMOs.

6 The Agreement should recognise the rights and obligations of all its Parties and set out specific responsibilities for those that are flag states, coastal states, market states, and port states which should be fulfilled in good faith. It should also establish mechanisms to enable the Commission, or individual Parties, to prevent any activity that would undermine the objective of the Agreement.

7 A process could also be considered whereby states commit themselves to apply interim measures prior to the Agreement's coming into force. .

Governance Principles and their application

8 There are a number of generic governance principles that one would expect to be reflected in the governance arrangements of any organisation. These principles are outlined below and are derived from the OECD Principle Elements of Good Governance³.

- i. **Accountability:** the organisation should be able and willing to show the extent to which its performance, including actions and decisions, is consistent with clearly-defined and agreed-upon objectives.
- ii. **Transparency:** actions, decisions and decision-making processes of the organisation should be open to an appropriate level of scrutiny by its members, civil society and, where appropriate, outside institutions⁴.
- iii. **Efficiency and effectiveness:** the organisation should strive to produce quality outputs, including services delivered to members, at the best cost, and ensure that outputs meet the original intentions of decision makers. It is also important that the organisation establishes a decision making structure that allows it to effectively meet its objectives.
- iv. **Responsiveness:** the organisation should have the capacity and flexibility to respond rapidly to external changes.
- v. **Forward vision:** the organisation should be able to anticipate future problems and issues based on current data and trends and make decisions that take into account future costs and anticipated changes (e.g. economic, environmental, etc.).

³ The full text of the *Elements of good governance can be obtained from the following website:* http://www.oecd.org/document/32/0,2340,en_2649_33735_1814560_1_1_1_1,00.html

⁴ Refer to Article 12 of UNFSA

- vi. **Rule of Law:** the organisation should enforce laws and regulations in a transparent and consistent manner.

9 Governance principles should be integrated into the rules and practices that govern the structure and operation of the South Pacific RFMO on all levels, within the context of the legal framework of the agreement, its objective and generally applicable principles. The following sections suggest ways in which those principles might be applied in practice in the context of the South Pacific RFMO.

Scope

10 In order to fill the gap in the international legal framework, the RFMO should apply to the high seas areas beyond national jurisdiction of the South Pacific and cover species not covered by other RFMOs currently in force, with a view to ensuring the long-term effective conservation and management of living marine resources in the region. These species are primarily discrete high seas and stocks which straddle the high seas and the EEZs of coastal states. Consideration could also be given to including any highly migratory species not covered by other RFMOs if applicable.

11 The area of application should be defined in such a way that it enables the effective conservation and management of all relevant living marine resources.⁵

Fisheries Management

12 Effective fisheries management is crucial to the long-term conservation and management of living marine resources in the South Pacific and will provide a greater incentive for members to implement and enforce, and fishers to comply with, conservation and management measures.

Specific Regimes

13 While it may be appropriate to address some fisheries management issues in a generic manner, it may be worthwhile considering establishing more specific fisheries management regimes for particular species that take into account their unique characteristics. Specific management regimes could be established for discrete high seas and straddling stock species.

14 For discrete high seas species, a specific fisheries management regime could be developed for these species that takes into account their unique biology and habitat. The regime should be sufficiently flexible to respond to the discovery of new fish stocks. Although the UNFSA applies to straddling and highly migratory fish stocks, its principles could usefully be applied, as a minimum, to the management of discrete high seas stocks.

⁵ Possible boundaries of the RFMO are suggested in the Information Paper (SP/01/Inf3)

15 For straddling stock species, consideration should be given to establishing decision making processes (such as separate chambers) that allow for the adoption of effective conservation and management measures, while preserving the rights of coastal and fishing states under international law. This could involve the designation of various regions and sub-regions based on the distribution of populations of marine living resources with various decision making processes taking into account the relevant coastal States and high seas fishing States as appropriate.

16 It will be important for conservation and management measures for the areas outside of national jurisdiction and those adopted for areas under national jurisdiction to be compatible in order to ensure the effective conservation and management of straddling fish stocks in their entirety. Conservation and management measures adopted and applied in accordance with article 61 of UNCLOS in respect of the same stocks by coastal States within areas of national jurisdiction should be taken into account and it should be ensured that measures established in respect of such stocks for the high seas areas beyond national jurisdiction do not undermine the effectiveness of such measures.

17 For effective fisheries management, consideration could be given to establishment of management sub-areas in respect of which specific conservation and management measures could be adopted.

Participatory Rights

18 Determining participatory fishing rights, such as national allocation of total allowable catches (TACs) will be an integral component of any fisheries management regime. Allocation can provide certainty and security, for Members and their fishing industries, helping to ensure sustainability and improve economic returns from fishing. Scope exists for creative and innovative thinking on the issue of allocation, consistent with of UNCLOS⁶ and UNFSA.

19 When developing allocation principles, the following matters could be considered, noting that the principles agreed for straddling stocks may differ from the principles agreed for discrete high seas stocks:

- (a) Status of fish stocks;
- (b) Scientific advice;
- (c) Contribution to conservation and management of the stocks, collection and provision of data, and scientific research;
- (d) Catch histories, where they arise from demonstrably responsible fishing consistent with the *Code of Conduct for Responsible Fisheries* (FAO, Rome, 1995);
- (e) Compliance history;
- (f) The rights and interests of coastal states⁷ and the interests of coastal communities; and

⁶ In particular art. 116 and Part VII, Section 2

⁷ In accordance with Article 116 of UNCLOS

- (g) The interests of developing countries in whose areas of jurisdiction the stocks also occur.

Structure of the Organisation or Agreement

20 The organisation should be structured in such a way that it reflects the principles of accountability, transparency, and effectiveness. The organisation could have a Commission which would act as its decision making body. Pending formal establishment of a Commission, its role could be carried out by regular Meetings of the Parties.⁸

21 Based on the assumption that a Commission would be required to make effective conservation and management decisions, there could be a range of subsidiary bodies that are established as they are required. To make effective decisions, advice would be required on science; fisheries management; compliance and enforcement; and finance and administration. Functions and responsibilities of subsidiary bodies established should be clearly set out so that the body can be held accountable for carrying out its appointed functions effectively. Coordination between subsidiary bodies will be important. Subsidiary bodies should be developed only as required, and with efficiency and cost-effectiveness in mind.

22 The Scientific Committee should be made up of scientific experts and would provide advice on scientific issues. To provide scientific input into the development of the RFMO and any interim measures agreed, an interim scientific committee, or working group, should operate throughout the negotiation process.

23 A subsidiary body may be required to review and assess implementation with conservation and management measures and information on illegal, unregulated and unreported (IUU) activities. It could also provide technical advice and recommendations on promote effective implementation and compliance with measures and to address IUU fishing.

24 A subsidiary body may be required to provide advice to the Commission on financial and administrative matters, including reviewing the budget and the financial performance of the secretariat.

25 There may be benefit in considering a subsidiary body made up of fisheries management experts that could consider technical advice from the scientific and compliance experts and provide advice to the Commission or the participants in the agreement on conservation and management measures related to fisheries management issues such as catch limits and other controls on fishing operations.

⁸ Should the participants decide that the living marine resources of the South Pacific Ocean can be effectively managed through an agreement that does not require the formal establishment of a Commission *per se*, the structural proposals in this section would need to be adjusted accordingly.

26 Secretariat services should be provided in a cost-effective manner. A permanent secretariat could be established, or alternatively, secretariat services could be provided by a member or all members on a rotational basis. Any Secretariat established should be of the minimum size required to ensure it to carry out its role effectively and efficiently.

Membership and Participation

27 To ensure that the RFMO operates effectively in achieving its objective, including the promotion of responsible fisheries practices, it is important that its membership includes all coastal states and states and entities fishing species covered by the RFMO in its area of application. It is also important that mechanisms are established to accommodate the interests of new entrants, taking into account the requirement of a real interest and the requirements of developing states⁹. If membership is not sufficiently broad, there is a risk that conservation and management measures could be undermined and the incentives for all who fish in the South Pacific Ocean to comply with the measures could be reduced.

28 It may be appropriate to establish specific provisions for cooperating non-parties to the Commission so that non-parties can assist in the effective implementation of measures, e.g. port state or market state measures.

29 Consideration should be given to the development of provisions in relation to recognition of the special requirements of developing States consistent with UNCLOS and UNFSA.

30 To promote transparency and to broaden the advice on which decisions are based, consideration should also be given to promoting participation, in an observer capacity, of fishing industry, relevant non-governmental organisations (NGOs) and inter-governmental organisations (IGOs) in meetings.

Decision Making

31 An effective decision making process is fundamental to the successful operation of the RFMO. There are a variety of decision-making procedures that the RFMO could adopt, each with advantages and disadvantages. These could include agreement on the basis of consensus or qualified majority vote. When determining decision making processes, past practice in international negotiations, including UNCLOS, other RFMOs and international organisations could be looked at to determine the most appropriate decision making process.

32 Decision-making procedures should be considered that allow decisions to be adopted in an effective, transparent and timely manner, recognise the range of interests of the participants involved and are binding on all members. Those responsible for decision making should be clearly held accountable for their decisions.

⁹ Consistent with Articles 24 and 25 of UNFSA

33 Establishment of different decision-making procedures and participation therein could be considered for different types of decisions. It may also be appropriate to establish decision-making chambers so that preliminary decisions in respect of a particular fishery can be made by those with a real interest in the particular fishery.

Obligations of the Parties

34 To support the effective functioning of the Commission and to ensure that the objective of the RFMO is met, Parties will have a range of rights and obligations. Parties that are coastal states, flag states and port states are likely to have a range of more specific rights and obligations. These rights and obligations should be clearly set out in the Agreement. The most fundamental of these obligations is that Parties should agree to implement the Agreement and its conservation and management measures in good faith, cooperate with the Commission and its subsidiary bodies, and enforce the measures effectively. Parties will also need to take measures or cooperate to ensure that all nationals and fishing vessels subject to its jurisdiction and fishing in the RFMO area comply with the Agreement and conservation and management measures. Also crucial are obligations for parties (including those that are coastal states, flag states and port states) to report to the Commission with relevant scientific, technical and statistical data and information, and steps taken to implement the Agreement and conservation and management measures and investigate and alleged violations.

Compliance and Enforcement

35 Compliance with, and enforcement of, conservation and management measures is an important issue to address in order for the RFMO to operate in an effective manner and deliver on its objectives. It will be important that there are mechanisms established for members to ensure compliance with and enforcement of measures. Establishment of obligations for members in respect of investigating alleged violations and enforcement of conservation and management measures will also be important. Consideration should be given to mechanisms for the Commission to address non-compliance with the provisions of the Agreement or measures by Member states and to deter non-member flagged vessels from engaging in activities that undermine the effectiveness of the Agreement. Integral to compliance and enforcement is a comprehensive Monitoring, Control and Surveillance (MCS) system.

36 To promote effective MCS, cooperation and information between RFMOs with adjacent or overlapping competencies will be important. There may also be scope for harmonization of some MCS-related measures across RFMOs, such as vessel registers.

Dispute Resolution

37 Dispute resolution procedures should enable an expeditious, effective and lasting solution, while being as cost effective as possible. Dispute resolution procedures should draw on the dispute settlement clauses in related agreements as well as the provisions in the UNCLOS and UNFSA¹⁰ for compulsory settlement of disputes.

Monitoring and Evaluation of the Organisation

38 To ensure accountability and ongoing effectiveness of the RFMO, regular monitoring and evaluation is important.

39 Mechanisms could be established to monitor the performance of the Commission against institutional standards that are set out in the Agreement. Decisions of the Commission could be monitored against the objectives, principles and standards set out in the Agreement. This monitoring and evaluation could be carried out by an independent body and the results should be published to ensure that it is carried out in the most transparent manner.

40 Consideration could be given to establishing mechanisms to monitor the performance of member states in meeting their obligations under the Agreement. If a member state was failing to meet its obligations, an agreed system of sanctions could be applied.

41 Consideration could also be given to establishing a mechanism to review the effectiveness and implementation of the Agreement, based on agreed criteria, and update the Agreement if required. A review procedure five years after entry into force of the Agreement is one option.

Cooperation with other Organisations

42 To promote effectiveness of all RFMOs in the region and ensure compatibility of measures, it will be important that there is cooperation between the South Pacific RFMO and other RFMOs with overlapping and adjacent boundaries, for example on bycatch and MCS issues, and also where relevant, appropriate non-RFMO organisations.

Information Availability

43 To promote transparency, it is important that clear information principles are established that allow meeting papers, meeting reports, decisions, data (subject to confidentiality rules), annual reports and results of any performance monitoring of the organisation to be made available in a timely manner to members, civil society and outside institutions. Consideration could also be given to publicity or education initiatives about the work of the Commission or on specific issues being addressed by the RFMO.

¹⁰ Refer to Part XV of UNCLOS and Part VIII of UNFSA