

12 July 2017

To: Members and CNCPs

Dear Members and CNCPs,

Re: Draft Terms of Reference for the SPRFMO Performance Review

Please find attached “Draft Terms of Reference” elaborated by the European Union for the upcoming review of the conservation and management measures adopted by the Commission. For your convenience, the document is also circulated in MS Word format.

Background

Under agenda item 9 at its last meeting, the Commission considered the first regular review of the effectiveness of the conservation and management measure in accordance with Article 30 of the Convention, and agreed that it is timely to undertake an independent, transparent and inclusive “health check”. The European Union offered to work intersessionally on Draft Terms of Reference for the Review. The Commission agreed to discuss this matter at the next Commission Meeting and encouraged an intersessional collaboration on the Terms of Reference for the Review. A budget of 15 000 NZD was adopted for the review.

Comments

You are invited to provide comments within the next 30 days, i.e. by Friday 11 August 2017 directly to the following email addresses:

luismolledo@ec.europa.eu, seppo.nurmi@ec.europa.eu and secretariat@sprfmo.int.

A wide participation is encouraged.

Virtual Discussion Group

Also, it is the intention of the EU to establish a virtual e-group for discussions by email. In this regard, interested Members and CNCPs are invited to provide their contact email at their earliest convenience to the above email addresses to establish a distribution list of e-group participants.

Your cooperation in this matter is greatly appreciated.

Sincerely yours,

Johanne Fischer
Executive Secretary

DRAFT DECISION XX-2018

ON THE FIRST SPRFMO PERFORMANCE REVIEW

Proposal submitted by the European Union

The Commission of the South Pacific Regional Fisheries Management Organisation (SPRFMO);

RECALLING Article 30 (1) of the Convention, which provides that the Commission shall review the effectiveness of the conservation and management measures adopted by the Commission in meeting the objectives of this Convention and the consistency of such measures with the principles and approaches of Article 3 of the Convention;

BEARING IN MIND Article 30 (2) of the Convention that such reviews shall include contributions from the subsidiary bodies as appropriate and the participation of persons of recognized competence who are independent of the Commission;

RECOGNISING that Article 30 (3) of the Convention establishes that the result of any such reviews shall be made publicly available;

TAKING INTO ACCOUNT Article 8(p) of the Convention, which provides the Commission with the authority to take any decisions that may be necessary for achieving the objectives of the Convention;

GIVING EFFECT to Article 8 of the Convention,

has decided to adopt the following Decision:

1. A performance review of SPRFMO shall be conducted during the 2018/19 intersessional period.
2. A Review Panel shall be appointed by the Commission. Panel members shall be independent and participate in their personal capacity. Their expertise should cover the relevant areas of science, fisheries and marine ecosystems management science and legal matters, including compliance and enforcement issues and the fight against IUU fishing.
3. The final report and its conclusions, including recommendations, of the Review Panel shall be submitted prior to the 2019 annual meeting of the Commission for its consideration at that meeting.
4. The review shall be carried out on the basis of the attached list of criteria. The Review Panel may consider adding criteria, if needed.

Composition

5. The Review Panel shall be composed of four international independent experts as follows:
 - (i) two experts from among SPRFMO Members with experience in the SPRFMO context and a thorough understanding of the SPRFMO Convention;
 - (ii) two external experts, among whom there is experience in relevant areas of science, fisheries and marine ecosystems management and legal matters, including compliance and enforcement issues and the fight against IUU fishing.
6. The Review Panel membership should aim to reflect the SPRFMO Membership in terms of regions, fishing and non-fishing nations and developing and developed countries.

Selection of the Review Panel Members

7. SPRFMO Members may provide in writing two names, one for each category, to the Chairperson of the Commission, through the Secretariat, by 31 March 2018.
8. The Chairperson of the Commission, through the Secretariat, shall provide to Members, by 15 April 2018, two lists containing the names proposed by the Members for the appointment of the four experts.
9. SPRFMO Members shall immediately acknowledge receipt of the communication. Members may respond in writing to the Chairperson of the Commission, through the Secretariat, within 30 days indicating their vote for two persons from each list. In case of a tie between two candidates, a vote will be re-run for those two candidates.
10. The Chairperson of the Commission, immediately after the end of the 30-day period shall, through the Secretariat, inform Members of the names of the persons for whom the highest votes have been cast.
11. Once these persons have been identified, the Secretariat shall write to each person selected by the Members for appointment to the Review Panel, indicating SPRFMO's desire to appoint him or her and seeking their positive response.

Works of the Review Panel

12. The Review Panel will appoint a Chairperson. The Review Panel will meet in Wellington unless a more cost-effective location is identified at a date convenient to all panel members but no later than 30 September 2017. Economy class travel, accommodation and subsistence costs will be available to Review Panel members, if requested, to support their participation. Costs will be borne by the SPRFMO budget either directly or through voluntary contributions.
13. The review will include a desktop study with questionnaires and interviews, carried out in support of this work, addressed to all SPRFMO Members, Cooperating non-Contracting Parties (CNCs) and observers.
14. The SPRFMO Secretariat shall provide logistical support and information to the Review Panel but shall not form part of this Panel.
15. The Review Panel shall take decisions by consensus. In the event consensus cannot be reached, individual members of the Panel may include their views in the Panel's report.

Timeline

16. The final report and its conclusions, including recommendations, of the Review Panel shall be communicated by the Panel Chair to SPRFMO Members and CNCs and to the Chairpersons of the Scientific Committee (SC), the Compliance and Technical Committee (CTC) and the Financial and Administrative Committee (FAC) at the latest 50 days in advance of the 2019 annual meeting.
17. The SC, CTC and FAC shall report to the Commission the results of their discussions on this issue, including their plans for addressing any of the recommendations made by the performance review and tracking progress in that regard. The SC will report its discussions to the 2020 annual meeting.
18. The final report and the conclusions shall be placed on the SPRFMO website.
19. Following the performance review, subsequent reviews may be conducted at least every five years in accordance with Article 30 (1) of the SPRFMO Convention.

Annex

Area	General criteria	Detailed criteria
1. <i>Conservation and management</i>	Status of fishery resources	• Status of fishery resources under the purview of SPRFMO.
		• Trends in the status of those resources.
		• Status of species that belong to the same ecosystems as, or are associated with or dependent upon, targeted fishery resources.
		• Trends in the status of those species.
	Ecosystem approach	• Extent to which SPRFMO decisions take account of and incorporate an ecosystem approach to fisheries management in accordance with Article 3 (2) of the Convention.
	Data collection	• Extent to which SPRFMO has agreed formats specifications and timeframes for data submissions.
		• Extent to which SPRFMO Members and CNCPs, individually or through SPRFMO, collect and share complete and accurate data concerning fishery resources and other relevant data in a timely manner.
		• Extent to which fishing and research data and fishing vessel and research vessel data are gathered by SPRFMO and shared among Members and CNCPs.
		• Extent to which SPRFMO is addressing any gaps in the collection and sharing of data as required.
	Quality and provision of scientific advice	• Extent to which SPRFMO has established an observer programme in accordance with Article 28 (1) of the Convention.
		• • Extent to which SPRFMO receives and acts on the basis of the best scientific advice relevant to the fishery resources under its purview, as well as to the effects of harvesting, research, conservation and associated activities, on the marine ecosystem.
	Adoption of conservation and management measures	• Extent to which SPRFMO has adopted conservation and management measures (CMMs) for fishery resources that ensure the long-term conservation and sustainable use of those resources and are based on the best scientific evidence available.
		• Extent to which SPRFMO has applied a precautionary approach including as set forth in Article 3 (3) of the Convention and the Code of Conduct for Responsible Fisheries, including the application of precautionary reference points called for in Article 20 (2) of the Convention.
		• Extent to which SPRFMO has moved toward the adoption of CMMs for previously unregulated fisheries, including new and exploratory fisheries.
		• Extent to which SPRFMO has taken due account of the need to conserve marine biological diversity and minimise harmful impacts of harvesting, research, conservation and associated activities on fishery resources and its marine ecosystems.
		• Extent to which SPRFMO has adopted measures to minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target fishery

		resources, and impacts on associated or dependent species through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.
	Capacity management	• Extent to which SPRFMO has identified fishing capacity levels commensurate with the long-term conservation and sustainable use of fishery resources.
		• Extent to which SPRFMO has taken actions to prevent or eliminate excess fishing capacity and effort.
		• Extent to which SPRFMO monitors the levels of fishing effort, including taking into account annual notifications for participation by Members and CNCPs.
<i>2. Compliance and enforcement</i>	Flag State duties	• Extent to which SPRFMO Members and CNCPs are fulfilling their duties as flag States under Article 25 of the Convention, pursuant to CMMs adopted by SPRFMO and under other international instruments, including, inter alia, the 1982 Law of the Sea Convention, the 1995 Agreement and the 1993 FAO Compliance Agreement, as applicable.
	Port State measures	• Extent to which SPRFMO has adopted measures relating to the exercise of the rights and duties of its Members and CNCPs as port States, including under Article 26 of the Convention, the Code of Conduct for Responsible Fisheries and the FAO Port States Measures Agreement.
		• Extent to which these measures are effectively implemented.
	Monitoring, control and surveillance	• Extent to which SPRFMO has adopted integrated Monitoring, Control and Surveillance measures (e.g. record of vessels, VMS, inspections in port and at sea, regulation of transshipment, market-related measures, compliance, fight against IUU fishing, etc) including under Article 27 of the Convention as well as other international relevant Conventions and Agreements.
		• Extent to which these CMS measures are effectively implemented.
	Follow-up on infringements	• Extent to which SPRFMO, its Members and CNCPs follow up on infringements to CMMs.
	Cooperative mechanisms to detect and deter non-compliance	• Extent to which SPRFMO has established adequate cooperative mechanisms to both monitor compliance and detect and deter non-compliance (e.g. compliance committees, IUU vessel lists, sharing of information about non-compliance).
		• Extent to which these mechanisms are being effectively utilised.
	Market-related measures	• Extent to which SPRFMO has adopted measures relating to the exercise of the rights and duties of its Members and CNCPs as Market States for fishery resources.
<i>3. Decision-making and dispute settlement</i>	Decision-making	• Efficiency of Commission meetings and working groups in addressing critical issues in a timely and effective manner.
		• Extent to which SPRFMO has transparent and consistent decision-making procedures that

		facilitate the adoption of CMMs in a timely and effective manner.
		• Existence of an informal mechanism of cooperation between Members and CNCPs based on reciprocities.
	Dispute settlement	• Extent to which SPRFMO has established adequate mechanisms for resolving disputes.
4. <i>International cooperation</i>	Transparency	• Extent to which SPRFMO is operating in a transparent manner, taking into account the Code of Conduct for Responsible Fisheries.
		• Extent to which SPRFMO decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.
	Relationship with CNCPs	• • Extent to which SPRFMO facilitates cooperation between Members and CNCPs including through encouraging CNCPs to become Members or to implement voluntarily SPRFMO CMMs.
	Relationship with non-Members or non-CNCP undermining the objectives of the Convention	• • Extent to which SPRFMO provides for action in accordance with international law against non-Members or non-CNCPs undermining the objective of the Convention, as well as measures to deter such activities, as well as encouraging them to become Members and CNCPs or to implement voluntarily SPRFMO CMMs.
	Cooperation with international organisations	• • Extent to which SPRFMO cooperates with other international organisations, including under Article 31 of the Convention.
	Special requirements of developing States	• Extent to which SPRFMO recognises the special needs of developing States and pursues forms of cooperation with Developing States, including under the Code of Conduct for Responsible Fisheries and Article 19 of the Convention.
		• Extent to which SPRFMO Members and CNCPs, individually or through the Commission, provide relevant assistance to developing States.
5. <i>Financial and administrative issues</i>	Availability of resources for activities	• • Extent to which financial and other resources are made available to achieve the aims of SPRFMO and to implement SPRFMO's decisions.
	Efficiency and cost-effectiveness	• Extent to which SPRFMO is efficiently and effectively managing its human and financial resources, including those of the Secretariat.
		• Extent to which the schedule and organisation of the meetings could be improved.