

**REPORT OF THE SOUTH PACIFIC REGIONAL  
FISHERIES MANAGEMENT ORGANISATION  
PERFORMANCE REVIEW PANEL**

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The opinions expressed are those of the authors  
and do not reflect the opinions of their employers  
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## EXECUTIVE SUMMARY

1. The South Pacific Regional Fisheries Management Organisation (SPRFMO) held its inaugural meeting in January 2013. In the intervening six years SPRFMO has steadily grown in membership and as an organisation. Its major success has been the progressive recovery of the Jack mackerel stock in the eastern Pacific Ocean, based on the precautionary approach. The Contracting Parties of SPRFMO, through its interim measures, were amongst the first to adopt multilateral measures consistent with the provisions of United Nations resolution 61/105 relating to an assessment framework for bottom fishing in the Convention Area. SPRFMO's Scientific Committee has undertaken reliable stock assessments, especially of Jack mackerel, and has consistently provided good quality scientific advice, even in the absence of adequate data. SPRFMO has adopted a suite of conservation and management measures concerning monitoring, control and surveillance (MCS), drawing on the best practice of other Regional Fisheries Management Organisations (RFMOs). Over the six years since its establishment, SPRFMO has put in place a credible range of conservation and management measures to conserve and manage the fisheries within its Convention Area.
2. SPRFMO has a strong legal and institutional structure. Much of the success of SPRFMO as an organisation is due to the Commission heeding the advice of the Scientific Committee. The recovery of the Jack mackerel stock required hard decisions to be taken by Members. This was facilitated by a decision-making process which enables decisions to be taken by consensus and, if that fails, to take decisions by vote. Of note is SPRFMO's objection procedure which has been used twice to date and allows Members to object to a decision of the Commission and have a fair and impartial hearing of their concerns. This is a point of difference between SPRFMO and other RFMOs.
3. SPRFMO has a robust suite of MSC measures and is working diligently to implement its monitoring, control and surveillance (MCS) measures. While some improvements could be made to the existing MCS measures, the Commission should focus on fully implementing the MCS measures it has adopted. The one exception to this is the need for a SPRFMO-specific high seas boarding and inspection scheme. Most pressing, however, in order to fully implement the SPRFMO Observer Programme and make use of the MCS data that is collected, a dedicated Secretariat staff member in the professional category to undertake the compliance function is needed.
4. SPRFMO now has 15 Members and four Cooperating Non-Contracting Parties (CNCs), but it is still a relatively small organisation. It has a hard working, efficient and effective Secretariat and a budget which is on the bounds of being too tight for the organisation. If more is to be expected of the Secretariat, additional financial resources need to be provided to ensure that the Secretariat has the necessary resources to properly undertake these tasks.
5. SPRFMO faces certain challenges in the future. In particular it needs to move away from its initial concentration on the necessary recovery of the Jack mackerel stock to other stocks within its purview, particularly Jumbo flying squid and updating the bottom fishing measure. The organisation also needs to make more effective use of the data that it collects. These and the application of the precautionary approach are priority areas for the immediate future. In the

longer term SPRFMO could look towards adopting a more comprehensive ecosystem approach to fisheries management.

6. More fundamentally, the Commission and its Members need to decide what organisation SPRFMO should be in the future. In the view of the Panel, SPRFMO needs to be an organisation which is effective, efficient, and provides a constructive benefit to its Members and CNCs. Without further demonstration of the benefits of the organisation to its Members, and more broadly, there is the danger that SPRFMO will stagnate. The Panel considers it important for SPRFMO to face the challenges over the next few years and to maintain and enhance its relevance to fisheries management in the Pacific Ocean.
7. It follows that the Panel sees the First Performance Review as an opportunity for SPRFMO Members, the Commission and its subsidiary bodies to reflect not only on the performance of SPRFMO since its establishment, but on how the organisation might address its future challenges. The Panel sees its role as not only to provide an assessment of the current functioning of the organisation, but to provide guidance to the organisation on how its conservation and management measures could be even more effective in meeting the objectives of the SPRFMO Convention and be in even closer alignment with the principles and approaches set out in Article 3 of the Convention.
8. To this end, the Panel has identified a number of findings and recommendations for the Commission and its subsidiary bodies to consider. These are set out in the table below and cover the assessment criteria set out in the Panel's terms of reference. In short, SPRFMO has a strong legal foundation and to date the implementation of the Convention has been fundamentally sound. Aside from a few priority areas identified above, the Panel's recommendations are directed towards incremental improvements, rather than a major change in the direction or approach of SPRFMO.
9. The Panel is mindful that in accordance with Decision 06-2018, the subsidiary bodies are to consider the Panel report during their meetings and report to the Commission, which in the case of the Scientific Committee will be at the 2020 Commission meeting. Given the number of recommendations and the budgetary implications of some of the recommendations, the Panel expects that it will take some time for the Commission and its subsidiary bodies to consider and progressively implement the recommendations as appropriate. The Panel also notes that many of its recommendations are longer term in nature, and therefore the Panel anticipates that the Commission will take those forward, as appropriate, in a measured and systematic manner.

## TABLE OF KEY FINDINGS AND RECOMMENDATIONS

### CONSERVATION AND MANAGEMENT

#### *Status of Fishery Resources*

The Panel:

- a) **Commends** the efforts made by the Commission and Scientific Committee to develop and continually improve stock assessments for Jack mackerel, the constraint applied by the Commission and fishing nations engaged in the Jack mackerel fishery and the precautionary approach taken by the Commission which has resulted in a rebuilding of the stock;
- b) **Recommends** that the Commission maintain a precautionary approach to setting catch limits for the Jack mackerel stock;
- c) **Acknowledges** the significant work that has been undertaken by participants in the Scientific Committee's Deepwater Working Group to develop an assessment framework for deepwater stocks and to develop preliminary assessments for Orange roughy, and the progress that has been made in the Squid Working Group over the last year to develop stock assessment methods for Jumbo flying squid;
- d) **Recommends** that the Commission, Scientific Committee and Members of the Commission accelerate efforts to advance robust stock assessments of Orange roughy and Jumbo flying squid and give priority to collecting the necessary data for stock assessment purposes; and
- e) **Notes** that there is little information on the status of non-target and bycatch species or the impact of SPRFMO fisheries on associated or dependent species and **Urges**, as a first step, that the Commission increase data collection in order to improve understanding of the impacts of fishing on associated and dependent species.

#### *Ecosystem Management*

The Panel:

- a) **Notes** that although SPRFMO has generally taken into account an ecosystem approach to fisheries management in the individual management of Jack mackerel and bottom fishing, additional actions could be taken by the Commission and Scientific Committee to better integrate ecosystem elements into the assessment of target species. This could include, for example, consideration of deepwater chondrichthyans, seabird mitigation measures for all fisheries, habitat mapping, and examination of climate change impacts;
- b) **Recommends** that the Commission apply a highly precautionary approach to fishery management decisions in the absence of sufficient information to permit the application of an ecosystem approach to management;
- c) **Recommends** that the Scientific Committee develop a workplan to progress fisheries management decisions, which takes into account a more holistic ecosystem-based approach. Elements of that workplan could include:

- i. A review of available tools and processes to lead to an integrated ecosystem fisheries management approach;
  - ii. Identification of environmental data that will assist in both applying an ecosystem approach and to assessing the effect of climate change impacts and the subsequent consideration of management decisions;
  - iii. A review of the Jack mackerel fishery to determine the impact of the fishery on non-target species and habitat, to identify gaps in habitat, biological and bycatch data, and a programme for collection of that data;
  - iv. Consideration of the use of cost and resource effective ecosystem-based models; and
  - v. Exploration of cooperation mechanisms with other bodies that may assist or benefit SPRFMO in the development of a relevant ecosystem-based fisheries management approach that is both cost and resource effective for SPRFMO.
- d) **Notes** the concerns raised by some Members and CNCPs about known and expected impacts of changing El Niño and La Nina events and potential impacts arising from anthropogenic climate change on the SPRFMO Convention Area, including the impact that such changes may have on major existing and potential target fisheries; and
- e) **Recommends** as an initial step that the Scientific Committee identify the research and data collection required for it to develop advice to inform the Commission on what action may be required to take into account the observed or expected impacts associated with a rapidly changing climate.

#### *Data Collection*

The Panel:

- a) **Commends** the Commission and Scientific Committee practice of ongoing regular review and amendment of the CMM on Standards for the Collection, Reporting, Verification and Exchange of Data, and **Notes** in particular the need to ensure that data collection is directly linked to delivery of conservation and management consistent with the objective of the Convention;
- b) **Recommends** the Commission and Scientific Committee regularly review data collection requirements to ensure they align with the needs of new or revised CMMs, while recognising the challenges to SPRFMO database management through the addition of new data collection, access and storage requirements and **Notes** the need for investment in building the capacity of the SPRFMO database to meet these challenges;
- c) **Recommends** that the Commission strengthen the timelines for the submission and independent verification of catch and effort data for the Jumbo flying squid fishery and **Urges** such measures to be adopted together with a general management measure for that fishery;
- d) **Recommends** that the Commission implement more effective and comprehensive bycatch data collection and reporting, particularly but not limited to dependent and associated species in each fishery and identified species of concern, the collection of sufficient biological data to support the development of reliable stock assessments for

- all fisheries, and the extension of data collection programmes to include environmental data and other data to assist in estimating potential impacts on non-target species;
- d) **Recommends** that the Scientific Committee review and provide advice on any additional data requirements necessary to support the implementation of an effective VME protocol;
  - f) **Recommends** that the Commission review, as a matter of priority, dataset sharing processes and procedures, both for data exchange within SPRFMO and externally, and provide specific guidance to the Secretariat with a view to removing impediments to the exchange and sharing of data; and
  - g) **Recommends** that the Commission work towards a standardisation of scientific data collection processes and procedures for observers across the different fisheries, and consider mechanisms to harmonise coordination of data collection with other regional and/or sub-regional observer programmes.

*Quality and Provision of Scientific Advice*

The Panel:

- a) **Commends** the Commission for its consistent and respectful approach to the advice provided by the Scientific Committee, and its willingness to act on that advice, particularly in the case of the Jack mackerel fishery; and
- b) **Recommends** that the Commission take urgent action to implement management measures for the Jumbo flying squid fishery, and for precautionary measures to be put in place until sufficient information is available to undertake a reliable stock assessment.

The Panel:

- a) **Commends** the Commission for adopting a significant number of substantive CMMs for fisheries under its purview and the efforts it has made to apply best-practice of other RFMOs to the development of CMMs;
- b) **Recognises** the progress in collating and analysing information about Jumbo flying squid and developing stock assessments but **Considers** that the absence of a precautionary management measure for the Jumbo flying squid is problematic;
- c) **Acknowledges** the efforts being undertaken to systematically build information sufficient to undertake assessments for all deepwater stocks;
- d) **Recommends** that the Commission take urgent action to update the management measures for bottom fisheries, adopt a precautionary approach to the conservation of all deepwater stocks, and implement a SPRFMO-wide approach to the management and protection of VMEs as a matter of priority;
- e) **Commends** the work undertaken thus far to minimise bycatch of seabirds and **Recommends** that the Commission extend the CMM relating to seabird bycatch to all fisheries in the SPRFMO Convention Area;
- f) **Commends** the adoption of CMM 13-2018 as a framework for the development of proposals for new and exploratory fisheries in line with the precautionary approach;
- g) **Recommends** that the Commission and its subsidiary bodies strictly apply the procedural and substantive requirements of CMM 13-2018 for all new and exploratory fishery proposals;
- h) **Recommends** that the Commission review current efforts to give effect to Article 3(1)(a)(ii) to ensure impacts on non-target and associated or dependent species are taken into account, and Article 3(1)(a)(vii) which requires marine ecosystems to be protected, in particular those ecosystems which have long recovery times following disturbance;
- i) **Recommends** that the Commission develop conservation and management measures for species of concern, with particular priority to be given to measures to prevent adverse impacts of fishing activities on chondrichthyans;
- j) **Recognises** the difficulty of reaching allocation decisions, including in the Jack mackerel fishery, **Considers** that the Article 21 allocation criteria provide a solid foundation for decision-making, and **Encourages** the continued consideration of these criteria in making future allocation decisions for both Jack mackerel and other stocks; and
- k) **Recommends** that the Commission develop a timeline for the implementation of measures to give full effect to Article 3(1)(a)(x) on measures to prevent pollution and waste originating from fishing vessels, discards, catch by lost gear or abandoned gear and impacts on other species and marine ecosystems.

## *Capacity Management*

The Panel:

- a) **Notes** that there does not appear to be excess fishing capacity in the Jack mackerel and bottom fisheries under existing catch controls, and although recent information indicates the Jumbo flying squid is not of conservation concern, there is insufficient information to determine whether the current level of fishing capacity in this fishery is appropriate;
- b) **Recommends** that the Commission maintain and enhance monitoring of fishing capacity systematically in all fisheries, especially where there is a risk that catch limits may be exceeded in future; and
- c) **Recommends** that the Commission consider the implementation of fishing effort limits in the Jumbo flying squid fishery based on existing fishing capacity as a precautionary interim measure pending further scientific and management advice from the Scientific Committee.

## COMPLIANCE AND ENFORCEMENT

### *Flag State Duties*

The Panel:

- a) **Commends** the Convention's recognition that compliance issues are integral to the effective functioning of the Commission;
- b) **Recognises** the steady improvement in implementation compliance demonstrated through the Final Compliance Reports;
- c) **Notes** that although the vast majority of the Members and CNCs claim a clear understanding of their flag state duties, they also indicate that there is room for improvement in implementation;
- d) **Encourages** Members and CNCs to identify those measures where there is a lack of understanding of the implementation obligations;
- e) **Recommends** the translation of those measures identified in d) above into the languages necessary to improve Members and CNCs' understanding of their obligations;
- f) **Recommends** the Commission convene an intersessional working group (electronic) to identify the audit points/implementation obligations for all existing measures, and that all new measures adopted by the Commission identify the audit points/implementation obligations;
- g) **Notes** that lack of capacity has been identified by more than half the Members and CNCs as one of the reasons that all flag state obligations have not been fulfilled; and
- h) **Recommends** that the Commission, in conjunction with the Secretariat, consolidate, and make publicly available, a list of capacity building needs and requests identified by Members and CNCs in order to track progress, prioritise the needs and requests, and facilitate the ability of others to meet them.



### *Port State Measures*

The Panel:

- a) **Commends** the Commission for adopting a Port Inspection regime in 2014 and then further refining the measure in 2017;
- b) **Notes** that some Members and CNCPs indicate insufficient information about Members and CNCPs' implementation of the measure to fully evaluate its effectiveness;
- c) **Recommends** that the report from the Secretariat, required by paragraph 35 of the Port Inspection measure, be enhanced to clearly specify whether any vessels have been denied entry under the measure, and if so, the basis for the denial;
- d) **Encourages** the Secretariat to clarify reporting requirements for Members and CNCPs if it is not receiving sufficient information to meet the recommendation above;
- e) **Notes** that the Port Inspection measure is due to be reviewed in 2019;
- f) **Recommends** that the Commission revise the Port Inspection measure to specify that all potential IUU vessels should be inspected and consider other revisions to improve reporting by Members and CNCPs of their implementation of the measure; and
- g) **Notes** that improved reporting may indicate the need for further revisions to the Port Inspection measure in future.

### *Monitoring, Control and Surveillance*

The Panel:

- a) **Commends** the Commission for its rigor in adopting an impressive suite of MCS measures in its first six years of operation;
- b) **Encourages** the Commission to focus on implementation of these MCS measures, rather than the adoption of new tools at this time;
- c) **Recognises** the challenge in adopting a SPRFMO-specific high seas boarding and inspection regime, but also **Recognises** the difficulty in operationalising the current measure;
- d) **Recommends** that the Commission continues to work towards the adoption of its own high seas boarding and inspection regime tailored to the Convention, its Members and CNCPs, and its fisheries;
- e) **Commends** the Secretariat for the work that it has done thus far to implement the MCS measures, but **Notes** that there is no one on the Secretariat's staff who has specific expertise in compliance issues;
- f) **Recommends** that the Commission prioritise hiring a professional staff member with compliance expertise to lead the Secretariat's efforts to implement the MCS measures already adopted and to analyse the data captured through these measures;
- g) **Encourages** the Commission to continue to develop the SPRFMO Observer Programme and review and revise the measure to include all necessary aspects of the Observer Programme;
- h) **Recommends** that in its review of the Transshipment measure in 2019, the Commission address the issue related to the area of application of the measure and consider requiring all transshipments to be observed;

- i) **Encourages** the Commission to clarify the IUU Vessel List measure on the issues related to revocation of permits and modification of the IUU Vessel List at the annual meeting in the near term, but does not consider this an immediate priority; and
- j) **Recommends** review of the CMS measure and consideration of the changes identified by the Panel.

*Follow-up on Infringements*

The Panel:

- a) **Notes** that Members and CNCPs seem satisfied with each other's follow up on infringements;
- b) **Recognises** that it is difficult to tell, from the Final Compliance Reports, whether or not there have been investigations and enforcement action taken, when appropriate, in response to alleged violations;
- c) **Recommends** that the Commission require information on investigations and enforcement actions in response to alleged violations, and if already provided, that the Final Compliance Monitoring better document that information; and
- d) **Recommends** that the Commission consider revisions to the responses to non-compliance section of the CMS measure.

*Cooperative Mechanisms to Detect and Deter Non-compliance*

The Panel:

- a) **Recognises** the achievement of the Commission in establishing a robust MCS programme quickly in the early years of the Commission;
- b) **Notes** that implementation of these measures can be challenging for a Secretariat with limited personnel and resources;
- c) **Recommends** a modest investment of resources to facilitate increased engagement of the SPRFMO Secretariat with colleagues from other RFMO Secretariats, which will provide a benefit to the Commission beyond the expenditure of resources in expertise gained, shared lessons learned, use of best practices and avoid spending time and money developing tools, templates, processes and procedures that already exist;
- d) **Recommends** additional engagement by the Commission with other international regional organisations that could serve as force multipliers on MCS issues (e.g., the Forum Fisheries Agency's Regional Surveillance Centre); and
- e) **Notes** the significant need for increased analysis of data collected pursuant to existing and developing MCS measures.

### *Market-related Measures*

The Panel:

- a) **Notes** that the Commission has not adopted any market-related measures;
- b) **Recognises** that other MCS measures were more urgently needed and remain in the early stages of implementation;
- c) **Further Recognises** that the development of effective, non-discriminatory, market-related measures will likely involve expenditure of significant resources, particularly limited Secretariat resources;
- d) **Recommends** that the Commission not undertake the development of a Catch Documentation Scheme or other market-related measure at this time; and
- e) **Encourages** Members and CNCPs to consider what targeted market-related measures might be most needed in the future, and to work strategically to develop them at the appropriate time.

## DECISION-MAKING AND DISPUTE SETTLEMENT

### *Decision-making*

The Panel:

- a) **Acknowledges** the effectiveness of the consensus first/vote later approach used in the SPRFMO Convention;
- b) **Recommends** that the Chair of the Commission continues to provide clear guidance on when attempts to achieve consensus have been exhausted;
- c) **Recommends** the continued use of informal discussions in attempts to achieve consensus; and
- d) **Notes** the decision and observations on decision-making of the Article 17 review panel in 2018, and **Urges** their consideration by the Members.

### *Dispute Resolution*

The Panel:

- a) **Notes** that there are effectively two mechanisms for the resolution of disputes within the Commission:
  - The Article 17 review panel process
  - The Article 34 arbitration process;
- b) **Notes** that the Article 34 arbitration process has never been used since the SPRFMO Convention entered into force;
- c) **Notes** the Article 17 review panel process has been used twice since the SPRFMO Convention entered into force in 2013;
- d) **Acknowledges** that the Article 17 review panel process is a point of difference between SPRFMO and most other RFMOs;

- e) **Acknowledges** the effectiveness of the Article 17 review panel process in resolving disagreement between Members and in progressing the long term resolution of disputes;
- f) **Notes** that the support of the Article 17 review panel process by the Secretariat is both expensive and time-consuming, including for Commission Chairs, and that the SPRFMO Contingency Fund was used in 2018 to support the Article 17 review panel process at that time;
- g) **Recommends** that Members consider making a special budgetary allocation at the first meeting following a use of the Article 17 review panel process to reimburse the SPRFMO budget in order to cover the costs associated with support to the most recent Article 17 review panel proceedings;
- h) **Recommends** the Commission take steps to ensure the effective implementation of the findings of an Article 17 review panel at the first meeting following the decision of the panel;
- i) **Commends** the use of the Permanent Court of Arbitration as the venue and provider of secretarial services for the Article 17 review panel process, in terms of efficiency and timeliness;
- j) **Notes** that frequent use of the Article 17 review panel process is likely to generate very significant costs, and potentially undermine the system of decision-making provided for in the SPRFMO Convention; and
- k) **Notes** the Commission in the wake of the 2013 use of the Article 17 review panel process indicated the process was intended as an unusual occurrence, and **Urges** Members to continue to view the Article 17 review panel process in that light.

## INTERNATIONAL COOPERATION

### *Transparency*

#### The Panel:

- a) **Acknowledges** the open and transparent processes adopted by the Commission and its subsidiary bodies;
- b) **Recommends** that the Commission give consideration to developing a process for inviting observers to meetings where their participation would facilitate the meeting; and
- c) **Recommends** that the Executive Secretary notify observers of the establishment of a review panel under Article 17 of the Convention and of the findings and recommendations of the review panel.
- d) **Acknowledges** that SPRFMO decisions, scientific advice, and other relevant materials are made publicly available in a timely fashion; and that the SPRFMO website contains up to date information which is accessible and user friendly;
- e) **Commends** the Secretariat for working to develop a new SPRFMO website; and
- f) **Recommends** that the Secretariat develop a communications strategy in order to enhance communications with Members, CNCPs and observers, to cost-effectively increase the visibility and profile of SPRFMO in the wider international fisheries

community, and to ensure that there is a targeted approach to communications which bring direct benefits to the organisation.

*Relationship with Cooperating Non-Contracting Parties (CNCP)*

The Panel:

- a) **Recommends** that further information is provided to CNCPs by the Commission on the benefits of becoming party to the SPRFMO Convention; and
- b) **Recommends** that the Commission further encourages CNCPs to cooperate with the Commission in implementing its conservation and management measures, including data submission requirements, and that the Commission apply a consistent approach to the granting of CNCP status.

*Relationship with Non-Members or Non-CNCPs Undermining the Objectives of the Convention*

The Panel:

- a) **Recommends** that the Commission continue to encourage non-Members and non-CNCPs found to be fishing within the Convention Area to cooperate with the Commission, including through requesting CNCP status;
- b) **Urges** the Secretariat to include in the SPRFMO Annual Administrative Report information on the outreach to non-Members and non-CNCPs that has been undertaken in the previous year; and
- c) **Recommends** that Members and the Secretariat take a more proactive approach towards identifying those vessels of non-Members and non-CNCPs that are undertaking fishing operations in the SPRFMO Convention Area.

*Cooperation with International Organisations*

The Panel:

- a) **Acknowledges** that cooperation with other international organisations can be advantageous for SPRFMO and that increasing the cooperation with neighbouring and overlapping RFMOs can bring direct benefits to the organisation;
- b) **Recommends** that the Commission develop a cooperation strategy which targets cooperation towards organisations and activities which would provide a direct benefit to SPRFMO; and
- c) **Recommends** that in addition to the development of any necessary formal linkages through MOUs, the Secretariat engage informally with colleagues in other RFMOs to learn and share experiences of operational activities, not only in the MCS area as recommended above.

### *Special Requirements of Developing States*

The Panel:

- a) **Notes** that the Commission has appropriate mechanisms to assist developing States to participate in the Commission, in particular the Developing States budget category which can be used to assist developing States to attend meetings of the Commission and its subsidiary bodies, but **Acknowledges** that the Commission could do more to address some of the capacity needs of Members and CNCPs; and
- b) **Recommends** that the Commission and Secretariat encourage the use of the Developing States budget category for more than funding the attendance of participants from developing countries at SPRFMO meetings and that the Commission work to remove any impediments to accessing the Special Requirements Fund for technical assistance and capacity building.

## FINANCIAL AND ADMINISTRATIVE ISSUES

### *Availability of Resources for Activities*

The Panel:

- a) **Acknowledges** that Members and CNCPs pay their contributions on time and that this is of great assistance in ensuring the smooth operation of the organisation's finances;
- b) **Considers** that the Secretariat is at the limits of what is achievable with the current financial and personnel resources. If the Commission adopts conservation and management measures which require the Secretariat to perform additional tasks, it should accompany this with the necessary budgetary resources to fund the increase in responsibilities;
- c) **Encourages** the Secretariat to prepare an estimate of the additional financial cost which is likely to arise from proposed conservation and management measures;
- d) **Recommends** that if the SPRFMO Observer Programme is to be properly implemented as part of the suite of MCS measures, the Commission should prioritise hiring a professional staff member with compliance expertise, as recommended above;
- e) **Recommends** that the Commission include in the budget a provision for increasing progressively over a five year period the level of the contingency fund, and to reimburse any expenditures from the Fund for any Article 17 review process, until it reaches a level of 3 months of the operating budget as provided in the SPRFMO Financial Regulations; and
- f) **Acknowledges** that the 2020 review of the budget formula needs to take into account the durability of the formula so that the necessary work of the organisation drives the level of budget, rather than the level of individual contributions.

The Panel:

- a) **Acknowledges** the importance of the Secretariat providing support to the Chair of the Commission and subsidiary bodies not only at meetings but also during the intersessional period;
- b) **Recommends** that the Commission, on advice of the Executive Secretary, give consideration to reviewing the structure of the Secretariat to ensure the most cost effective use of staff resources, and to investing additional resources in building the capacity of the Secretariat to analyse scientific and MCS data; and
- c) **Recommends** that the Commission set aside a half day for the Finance and Administration Committee in advance of the annual Commission meeting, and following the annual meeting of the Compliance and Technical Committee.

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## ABBREVIATIONS AND ACRONYMS

ACAP	Agreement on the Conservation of Albatrosses and Petrels
CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources
CMM	Conservation and Management Measure
CNCP	Cooperating Non-Contracting Party
CTC	Compliance and Technical Committee
FAC	Finance and Administration Committee
FAO	U.N. Food and Agriculture Organisation
IATTC	Inter-American Tropical Tuna Commission
IGO	Intergovernmental Organisation
MCS	Monitoring, Control and Surveillance
NGO	Non-governmental Organisation
RFMO	Regional Fisheries Management Organisation
SC	Scientific Committee
SPRFMO	South Pacific Regional Fisheries Management Organisation
VME	Vulnerable Marine Ecosystem
WCPFC	Western and Central Pacific Fisheries Commission

# **1. INTRODUCTION**

## **1.1 International Background**

1. In 2006, Australia, Chile and New Zealand initiated a process of consultations to enable states to cooperate in addressing the gap that existed in international conservation and management of non-highly migratory fisheries and protection of biodiversity in the marine environment in high seas areas of the South Pacific Ocean. The process resulted in a series of international meetings which led to the establishment of a regional fisheries management organisation (RFMO) with the ongoing responsibility for “the long-term conservation and sustainable use of fishery resources in the South Pacific Ocean and in so doing safeguarding the marine ecosystems in which the resources occur”.<sup>1</sup>
2. On 14 November 2009, the 8th International Meeting adopted the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, together with a Resolution regarding the holding of a Preparatory Conference to assist the efficient commencement of the work of the Commission of the South Pacific Regional Fisheries Management Organisation (SPRFMO) established by the Convention.
3. The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean entered into force on 24 August 2012. It held its inaugural meeting in Auckland, New Zealand in January 2013. The SPRFMO Secretariat was formally established in 2013 in Wellington, New Zealand.

## **1.2 SPRFMO Performance Review Panel**

### **1.2.1 The Panel**

4. Article 30 of the SPRFMO Convention provides for a regular review of the effectiveness of the conservation and management measures (CMMs) adopted by the Commission in meeting the objective of the Convention and the consistency of such measures with the principles and approaches in Article 3 of the Convention. Such reviews may include examination of the effectiveness of the provisions of the Convention itself and are to be undertaken at least every five years.
5. At its 6th meeting in January 2018 the SPRFMO Commission decided to undertake a performance review of SPRFMO during the 2018 intersessional period. Decision 06-2018 on the First SPRFMO Performance Review (attached at Annex 1) provides for the Commission to appoint a Panel comprised of four international independent experts, two of whom are nationals of SPRFMO Members familiar with SPRFMO, and two of whom are external experts with experience in relevant areas of science, fisheries and marine ecosystems management and legal matters, including compliance and enforcement.
6. The selection of the Panel was undertaken in accordance with the Commission decision and finalised on 5 June 2018. The Panel is composed of the following:

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<sup>1</sup> Convention, preamble.

Two experts who are nationals of SPRFMO Members:

Prof. Stuart Kaye

Dr. Penelope Ridings

Two external experts

Ms. Alexa Cole;

Ms. Lyn Goldsworthy.

7. Dr. Ridings was appointed Chairperson by consensus of the Panel. The Secretariat was not part of the Panel but supported and facilitated its activities, including by providing access to information and facilities that the Panel required to undertake its work. Annex 2 contains short biographies for the Panel members.

### **1.2.2 Criteria for the SPRFMO Performance Review**

8. The Commission agreed to specific criteria for the Panel to address, attached at Annex 1. They follow those adopted by other RFMOs for their performance reviews and relate to conservation and management, compliance and enforcement, decision-making and dispute settlement, international cooperation and financial and administrative issues.

### **1.2.3 Approach of the Panel**

9. The review focused on the effectiveness of SPRFMO to achieve its mandate in accordance with the criteria set out in the terms of reference. The aim was to assess whether SPRFMO in its current legal and operational structure meets its objectives, and on the basis of this evaluation to identify any gaps or weaknesses and to present possible actions to address the issues.
10. The Panel developed a questionnaire based on the above criteria which was addressed to all SPRFMO Members, Cooperating non-Contracting Parties (CNCs) and observers. The Panel received 17 responses to the questionnaire from 13 Members, three CNCs and one observer. The questionnaire and a summary of the responses to the questionnaire is attached at Annex 3. In addition to the responses, the Panel also took into account available background information and information compiled by the Secretariat. It also held with interviews with the Chairs of the Commission and subsidiary bodies, staff of the Secretariat, and independent experts. On behalf of the Panel, the Secretariat followed up with Members to ensure that all those that wished to talk to the Panel had an opportunity to do so.
11. The Panel met in Wellington from 30 July – 3 August, 2018. All subsequent work including drafting of the Report was undertaken electronically.

### **1.2.4 Structure of the Panel Report**

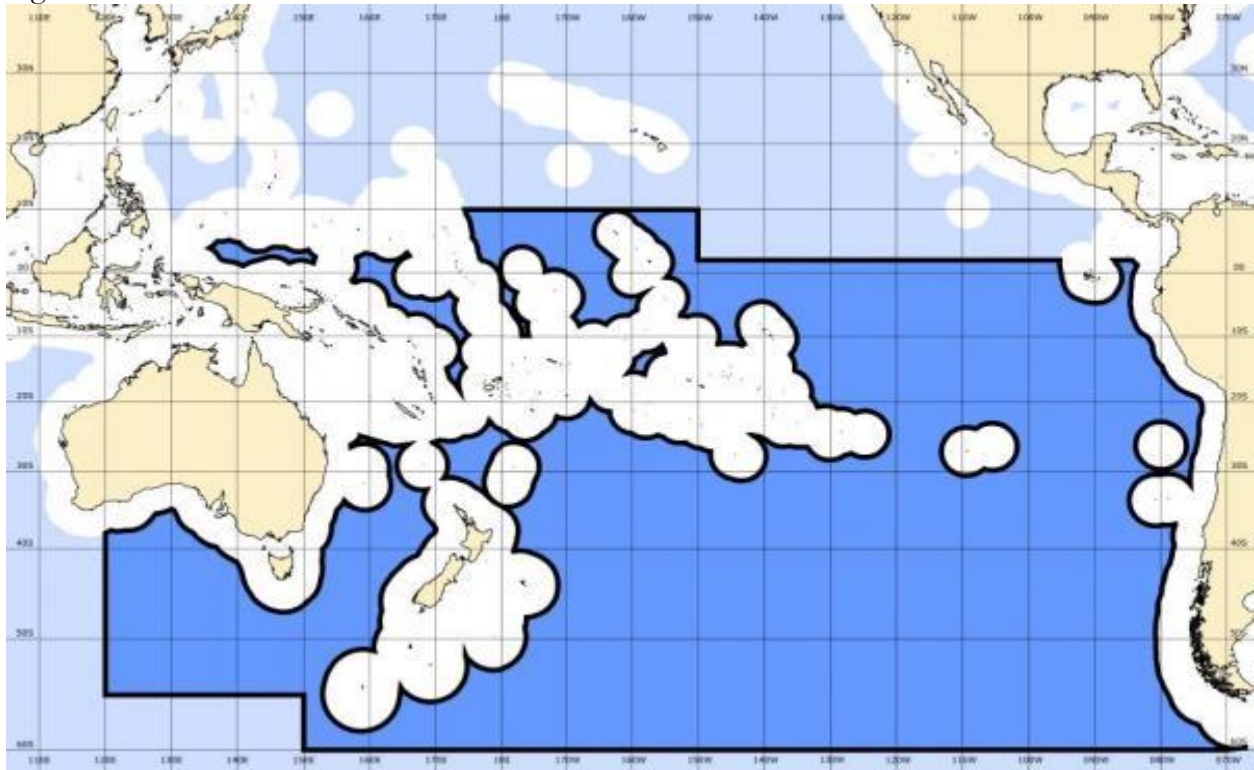
12. The report consists of seven sections. The first two provide introductory and background information relating to SPRFMO. The following five sections address each of the areas of the Performance Review criteria and include the Panel's consideration of factual information, its assessment and recommendations. The Executive Summary contains a table summarising the main findings and recommendations.

## 2. INTRODUCTION TO SPRFMO

### 2.1 Area of Competence and Fisheries

13. The SPRFMO area of competence (Convention Area) generally consists of the high seas areas of the Pacific Ocean between 10° North and 20° South and 135° East and 150° West. Article 5 of the Convention sets out the precise coordinates of the organisation's area of competence. The Secretariat has prepared an indicative map of the SPRFMO area for illustrative purposes only (Figure 1 below).

Figure 1



**Disclaimer:** The SPRFMO Secretariat has made the above map available for information purposes only. It is a pictorial illustration of the area of application of the Convention that is properly described in legal terms in Article 5. The map is not part of the Convention text and has no legal status. It is not intended to reflect exactly the maritime spaces of adjoining coastal states and cannot be considered to constitute recognition of the claims or positions of any of the participants in the negotiations leading to the adoption of the Convention concerning the legal status and extent of waters and zones claimed by such participants.

14. The objective of the Convention is to ensure the long-term conservation and sustainable use of fishery resources within SPRFMO's area of competence. Article 1(f) of the Convention defines fishery resources as excluding highly migratory species, anadromous and catadromous species, and marine mammals. It follows that SPRFMO does not manage fishery resources managed by

the Western and Central Pacific Fisheries Commission (WCPFC), the Inter-American Tropical Tuna Commission (IATTC) or the International Whaling Commission.

15. The main high seas species caught within the SPRFMO Convention Area are Jack mackerel, Jumbo flying squid in the southeast Pacific, and deep-sea species such as Orange roughy and Alfonsino which are found on seamounts in the southwest Pacific. Other species found in the SPRFMO Convention Area include various species of mackerel (Scomber mackerel, Chub mackerel) and squid.

## **2.2 Objectives and Responsibilities of the Organisation**

16. Article 2 of the SPRFMO Convention sets out its objective: “through the application of the precautionary approach and an ecosystem approach to fisheries management, to ensure the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur”.
17. The precautionary approach and an ecosystem approach are accorded particular weight in the Convention. According to Article 3 of the Convention, the Contracting Parties, Commission and subsidiary bodies are to take into account international best practice in the application of the precautionary approach and to apply the ecosystem approach widely to conservation and management through an integrated approach which safeguards the marine ecosystems.
18. In addition, Article 3 of the Convention requires the organisation to apply a number of principles relating to responsible fisheries management. These include:
  - a transparent, accountable and inclusive approach based on best international practice;
  - fishing commensurate with sustainable use and taking into account the impact on non-target and associated and dependent species;
  - the prevention or elimination of over-fishing and excess fishing capacity;
  - full and accurate data reporting;
  - decisions based on best scientific evidence available;
  - promotion of cooperation and coordination between Contracting Parties;
  - protection of marine ecosystems;
  - recognition of the interests of developing States, in particular the least developed, small island developing States, territories and possessions;
  - ensuring compliance and enforcement of conservation and management measures; and
  - minimisation of pollution, waste from fishing vessels, discards and catch by lost or abandoned gear.

## **2.3 Structure of the Organisation**

### **2.3.1 Commission**

19. SPRFMO is open to States, regional economic integration organisations and entities that participated in the International Consultations on the Establishment of SPRFMO, that have jurisdiction over waters adjacent to the Convention Area or that have an interest in fishery resources. The Convention also provides that a fishing entity whose vessels fish or intend to fish for resources may deposit an instrument expressing its firm commitment to abide by the Convention and CMMs adopted under it, in which case references to Members of the Commission include the fishing entity.
20. The Commission currently has fifteen Members: Australia, Republic of Chile, People's Republic of China, Cook Islands, Republic of Cuba, Republic of Ecuador, European Union, Kingdom of Denmark in respect of Faroe Islands, Republic of Korea, New Zealand, Republic of Peru, Russian Federation, Chinese Taipei, United States of America and the Republic of Vanuatu. Four States currently hold the status of CNCP: the Republic of Colombia, Curaçao, Republic of Liberia and Republic of Panama.
21. The Commission is the main decision-making body of SPRFMO and has a wide range of functions and may take decisions necessary to achieve the objectives of the Convention. Among its functions set out in Article 8 of the Convention are to adopt CMMs, determine the nature and extent of participation in fishing for fishery resources including particular fish stocks, promote the conduct of scientific research, develop and establish effective monitoring, control, surveillance (MCS), compliance and enforcement, and supervise the organisational, administrative, financial and other internal affairs of the Organisation.

### **2.3.2 Scientific Committee**

22. The Scientific Committee (SC) was established by Article 10 of the Convention. Its functions include to: (a) plan, conduct and review scientific assessments of the status of fishery resources; (b) provide advice and recommendations to the Commission and its subsidiary bodies based on such assessments; (c) provide advice and recommendations to the Commission and its subsidiary bodies on the impact of fishing on the marine ecosystems in the Convention Area; (d) encourage and promote cooperation in scientific research; and (e) provide such other scientific advice to the Commission and its subsidiary bodies as it considers appropriate. Participants in the Scientific Committee are experts from Members and CNCPs, as well as observers and other invited experts.
23. The Scientific Committee meets some months in advance of the annual Commission meeting. Its work in its first year was based on the research programme developed by the Science Working Group, established by the Preparatory Conference of SPRFMO. The Commission approves annually a work plan to guide the work of the Scientific Committee.
24. The Scientific Committee has established three fishery-defined Working Groups: the Jack Mackerel Working Group and the Deepwater Working Group created at SC1, and the Squid Working Group, created at SC4. It may also establish task groups for limited periods of time, such as the Fishery Dependent Acoustic Data Task Group, established at SC2 for three years.



At its 6<sup>th</sup> Meeting in 2018, the Scientific Committee recommended creating a Habitat Definition, Description, and Monitoring Working Group with the main objective of providing environmental indicators to complement fisheries management decisions. These groups meet during the annual Scientific Committee meeting and occasionally in intersessional SC Workshops.

### **2.3.3 Compliance and Technical Committee**

25. The Compliance and Technical Committee (CTC) was established by Article 11 of the Convention. Its functions include to: (a) monitor and review the implementation of and compliance with the SPRFMO CMMs; (b) provide information, technical advice and recommendations relating to the implementation of and compliance with the SPRFMO Convention and its CMMs; and (c) review the implementation of cooperative measures for MCS and enforcement adopted by the Commission. CTC meetings are held immediately prior to the annual Commission meeting.

### **2.3.4 Eastern and Western Sub-Regional Management Committees**

26. Article 12 of the Convention establishes the Eastern and Western Sub-regional Management Committees to provide recommendations on CMMs and on participation in fishing for fishery resources in the parts of the Convention area that lie east and west respectively of the latitude 120<sup>0</sup> West. The Eastern Sub-regional Management Committee met for the first time in 2014 to address conservation and management and participation in the fishery for Chilean Jack mackerel. It has not met since that time and the Western Sub-regional Management Committee has never met.

### **2.3.5 Finance and Administration Committee**

27. The Finance and Administration Committee (FAC) was established by Article 13 of the Convention. Its functions are to advise the Commission on financial and administrative matters, including the budget, the time and place of meetings of the Commission, on publications of the Commission, and on matters relating to the Executive Secretary and the staff of the Secretariat. It met for the first time in 2014 and currently meets each year during the annual Commission meeting.

### **2.3.6 Secretariat**

28. The Secretariat for SPRFMO is headquartered in Wellington, New Zealand. A Headquarters Agreement between SPRFMO and New Zealand concluded on 15 April 2014 grants standard privileges and immunities to the organisation and international staff. The Secretariat is headed by an Executive Secretary who is responsible for the management and supervision of the Secretariat and the provision of advice to the Commission. The terms and conditions of the staff of the Secretariat are governed by rules adopted by the Commission.

### 3. CONSERVATION AND MANAGEMENT

#### 3.1 Status of fishery resources

##### 3.1.1 Status and trends of fishery resources under the purview of SPRFMO

###### 3.1.1.1 Jack mackerel

29. Jack mackerel catches within the southeast Pacific Ocean grew rapidly over the 1980s and 1990s to peak at close to five million tonnes in 1995.<sup>2</sup> During the 1990s and early 2000s fishing mortalities were well above sustainable fishing levels and this led to a steep decline in the Jack mackerel stock. In 2011, assessment results estimated the biomass to be 10% to 19% of the total biomass which would have existed if there had been no fishing.<sup>3</sup> Countries involved in the fishery followed the recommendations of the Science Working Group which had been established during the negotiations of SPRFMO and adopted Interim Measures for Pelagic Fisheries. These provided for the limitation of effort and catch reductions of Jack mackerel.<sup>4</sup>
30. On the establishment of SPRFMO in 2013, the Science Working Group had assessed the Jack mackerel stock at being between 8% and 17% of estimated unfished levels.<sup>5</sup> In response, the Commission adopted an explicit rebuilding strategy and catches in 2013 were constrained across the whole southeast Pacific Ocean to a maximum of 440,000 tonnes.<sup>6</sup> This would allow the spawning stock biomass (SSB) to rebuild to at least 80% of the population size estimated to be at the point of maximum growth rate ( $B_{MSY}$ ).<sup>7</sup> Catches remained constrained over the following years which allowed a recovery of the stock from an estimated SSB in 2011 of 1.5 million tonnes to 4.8 million tonnes in 2018.<sup>8</sup>
31. An assessment of the Jack mackerel stock completed in May 2018, indicated that conditions for Jack mackerel stock continued to improve, and the stock showed recovery across its entire distribution range in the southeast Pacific since the time-series low in 2010.<sup>9</sup> SC concluded that projections indicated that the biomass was expected to increase over the next 5 years at least.<sup>10</sup>
32. However, SC also noted “there remains a number of key uncertainties associated with both the assessment and projections both in estimation and expectations of future environmental

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<sup>2</sup> SPRFMO SC6-JM01, Annex 1\_rev2.

<sup>3</sup> Report of the 10<sup>th</sup> Science Working Group, 2011.

<sup>4</sup> 2011 and 2012 Interim Measures for Pelagic Fisheries found at [www.sprfmo.int](http://www.sprfmo.int)

<sup>5</sup> Report, First Meeting of the Commission of SPRFMO, 2013, para 10.

<sup>6</sup> CMM 1-01.

<sup>7</sup> Spawning stock biomass (SSB) is an estimate of the total weight of the fish in a stock that is old enough to spawn and provides an indication of the status of the stock and the reproductive capacity of the stock. MSY means fishing at a level that takes the maximum catch (or yield) that can be safely removed from a fish stock, on a continuous basis, whilst maintaining its long-term productive capacity, and is achieved by keeping the SSB above safe biological limits.  $B_{MSY}$  is the biomass that enables a fish stock to deliver the maximum sustainable yield. In theory,  $B_{MSY}$  is the population size at the point of maximum growth rate. The surplus biomass that is produced by the population at  $B_{MSY}$  is the maximum sustainable yield that can be harvested without reducing the population (from <http://www.seafish.org>).

<sup>8</sup> SPRFMO SC6 Report, Annex 7, Jack mackerel Technical Annex, p. 110.

<sup>9</sup> SPRFMO SC6 Report, para 40.

<sup>10</sup> SPRFMO SC6 Report, para 34.

conditions”.<sup>11</sup> These may affect future recruitment levels, and thus estimates of biomass. SC addressed these uncertainties by exploring different assumptions in model runs and a range of scenarios used in the projections with differing values of recruitment regimes and stock recruitment steepness parameters. The Panel endorses the efforts made by SC to address these uncertainties through the application of multiple stock models and scenarios.

33. In terms of trends, the Jack mackerel stock continues to improve under the cautious approach adopted by the Commission. Near term spawning biomass is expected to increase from the 2018 estimate of 4.8 million tonnes to 5.6 million tonnes in 2019 (with approximate 90% confidence bounds of 4.5 – 7.0 million tonnes).<sup>12</sup> SC6 recommended to the Commission a status quo fishing effort which gives 2019 catches throughout the range of the Jack mackerel stock(s) at or below 591,000 tonnes while also recommending additional precaution and further investigation to develop an approach which is robust to assessment uncertainties.<sup>13</sup>

### 3.1.1.2 Deepwater Stocks

34. Bottom fishing is currently conducted in the SPRFMO Convention Area on seamounts and ridges by Australia and New Zealand. The main Australian and New Zealand fisheries use bottom trawls for Orange roughy, midwater trawls for alfonsinos, and bottom longlines for bluenose, wreckfishes, and toothfish. Orange roughy accounts for the largest proportion of deepwater stock catches.
35. Orange roughy is currently fished mainly from three locations to the east of New Zealand (North, Central, and South Louisville Ridge) and three locations in the Tasman Sea (West Norfolk Ridge, Lord Howe Rise and North West Challenger Plateau). A further location in the Tasman Sea, South Tasman Rise, has not been fished since 2007. Catches of Orange roughy peaked in the area in the mid-1990s at around 15,000 tonnes. In more recent years they have averaged approximately 1200 tonnes per annum.<sup>14</sup>
36. In 2007, the participants in the negotiations to establish SPRFMO adopted voluntary Interim Measures relating to bottom fishing consistent with the provisions of United Nations resolution 61/105 relating to an assessment framework for bottom fishing in the Convention Area.<sup>15</sup> According to these Interim Measures, the participants agreed not to extend bottom fishing into new areas, and to limit catch or effort to that existing in an agreed reference period of 2002-2006. The core of these measures were adopted by the Commission in 2014 as CMM 2.03. It was to be reviewed in 2016 taking into account the latest advice of the Scientific Committee, including with respect to appropriate catch levels for principal target species and/or appropriate reference periods, but has been rolled over annually since that time. The current measure, CMM 03-2018, includes the establishment of a bottom fishing footprint; the limitation of catch to 2002-2006 levels; the requirement to undertake an assessment of the impact of flagged vessels’ bottom fishing, which is to take into account the 2011 SPRFMO Bottom Fishery Impact

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<sup>11</sup> SPRFMO SC6 Report, para 32.

<sup>12</sup> SPRFMO SC6 Report, para 41.

<sup>13</sup> SPRFMO SC6 Report, p. 13.

<sup>14</sup> COMM6-INFO03, Table 5.1.

<sup>15</sup> See [www.sprfmo.int](http://www.sprfmo.int)

Assessment Standard and areas identified where vulnerable marine ecosystems (VMEs) are known or suspected to occur in the area to be fished; rules for action to be taken in certain circumstances where VMEs are encountered; and additional requirements relating to observer coverage. The measure has effectively closed most of the SPRFMO Convention Area to bottom fishing for most SPRFMO Members. Since 2015, Australia, New Zealand, Chile, and the EU have been collaborating on a revised conservation and management measure (CMM) for bottom fishing based on a spatial management approach. CMM 03-2018 specifically provides that it is to be reviewed again at the regular meeting of the Commission in 2019 “with the aim of adopting a new bottom fishing CMM”.

37. There are more than 30 demersal species commonly caught in the SPRFMO bottom fisheries for which stock assessments and catch limits may be required, as well as advice on the impact of fishing on associated and dependent species with which the fishery interacts. The 2017 SC meeting discussed a tiered approach to undertaking assessments with three levels depending on risk from fishing: full benchmark assessments for the main five to ten species; data limited assessment; and no assessment necessary. A draft assessment framework for bottom fisheries was adopted based on estimable parameters and available information to provide direction for future assessment work and speed SC’s processes in developing advice for the Commission.<sup>16</sup> The SC meeting in 2018 discussed preliminary work to characterise species into the assessment framework and noted that this was still a work in progress.<sup>17</sup>
38. In 2017, SC also considered the various preliminary stock assessment models that have been developed for Orange roughy stocks. Although SC was of the view that none of the methods was ideal for the assessment of SPRFMO Orange roughy stocks, SC considered them to be collectively indicative of stock status and potential yields.<sup>18</sup>
39. Based on these preliminary assessments, SC considered that the stocks on the Louisville Ridge (Louisville North, Central and South) have a lower potential of having low stock status, and the stocks in the Tasman Sea (Lord Howe Rise, Northwest Challenger Plateau, and West Norfolk Ridge) are estimated to have a higher potential of being depleted.<sup>19</sup> It nevertheless highlighted the urgent need to collect information to support robust assessments of Orange roughy in the SPRFMO Area for sound management advice.<sup>20</sup> It also provided advice on catch limits for the Louisville Ridge and Tasman Sea,<sup>21</sup> which it reaffirmed at its meeting in 2018, noting that the approach to the setting of these catch limits was precautionary.<sup>22</sup> However, as noted above, CMM 03-2018 does not provide for the setting of catch limits. Rather, the catches of the participants in bottom fisheries are constrained so they each do not exceed their annual average levels over 2002 to 2006.

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<sup>16</sup> SPRFMO SC5 Report, para 83.

<sup>17</sup> SPRFMO SC6 Report, p. 21.

<sup>18</sup> SPRFMO SC5 Report, para 98. SC6, at para 46, also noted New Zealand’s 2014 assessment of the biological Orange roughy stock that includes the Westpac Bank and considered it was appropriate to support management advice.

<sup>19</sup> SPRFMO SC5 Report, para 100.

<sup>20</sup> SPRFMO SC6 Report, para 98.

<sup>21</sup> SPRFMO SC5 Report, para 100.

<sup>22</sup> SPRFMO SC6 Report, para 44.

40. The Panel recognises the considerable work that has been undertaken by participants in the Deepwater Working Group to develop an assessment framework for deepwater stocks which includes data poor assessments, to collate the preliminary assessments for Orange roughy, and to design acoustic surveys and sampling for Orange roughy stock assessments. The Panel encourages SPRFMO to implement the assessment framework for deepwater stocks, with priority to be given to the preparation of robust stock assessments for Orange roughy, at least in the two main sub-areas of the Louisville Ridge and the Tasman Sea.

### 3.1.1.3 Jumbo flying squid

41. The southeast Pacific Ocean currently supports the largest squid fishery in the world, with a catch of more than 1 million tonnes in 2014.<sup>23</sup> Currently seven SPRFMO Members fish this stock in the SPRFMO Area, and in the case of Chile and Peru, fishing within their own EEZs. Jumbo flying squid are mostly caught at night using the jigging method and large lights to attract the fish.
42. Jumbo flying squid are a highly productive species, fast growing and with a short life span of approximately one to two years. Most die after spawning, although natural mortality is poorly understood.<sup>24</sup> Stock structure is not known for the Southeast Pacific and the squid within any country's jurisdiction at any time are probably only part of a larger more widely distributed stock or stock sub-unit.<sup>25</sup> There may be indications of two genetic units in the Pacific Ocean, although SC in 2018 has suggested further genetic analysis be undertaken.<sup>26</sup>
43. The Panel considers that the SC Squid Working Group has made considerable progress over the last year in developing stock assessment methods for Jumbo flying squid. In 2018, SC6 considered three methods for undertaking stock assessments of Jumbo flying squid and recommended that each of the models be further developed and tested.<sup>27</sup> SC considered the preliminary results of one of the models which show that Jumbo flying squid can probably sustain exploitation rates of 50% while maintaining spawning biomass well above  $B_{MSY}$ .<sup>28</sup> It also indicated that catch and effort data, and biological data relating to size frequency, weight and maturity at a suitable intra-annual time scale was needed for all the models.<sup>29</sup> The Panel notes the additional work that will be required to improve necessary data collection, further develop stock assessment models and better understand stock structure and population dynamics of Jumbo flying squid.

### 3.1.3 Status of associated or dependent species that belong to the same ecosystem

44. The fishery for Jack mackerel is generally a mono-specific fishery. In the offshore fishery, the catch consists of 90 – 98% Jack mackerel, with minor by-catches of Chub mackerel (*Scomber japonicus*) and Pacific bream (*Brama australis*).<sup>30</sup> In some fisheries, catches of Chub mackerel have

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<sup>23</sup> SC5-SQ02.

<sup>24</sup> SPRFMO Species Profile, 4 May 2007; SC6 Report, para 168.

<sup>25</sup> SPRFMO SC6 Report, para 158.

<sup>26</sup> SC6 Report, paras 175 and 183.

<sup>27</sup> SC6 Report, para 168.

<sup>28</sup> SC6 Report, para 168.

<sup>29</sup> SC6 Report, para 173.

<sup>30</sup> SC4 Report, Annex 7, p. 2.

increased over the last few years.<sup>31</sup> Non-target fish species have received limited attention in the Jack mackerel fisheries thus far and there is little information on the status of these by-catch stocks. Jumbo flying squid jigging operations are also mono-specific and non-target fish catches are assumed to be near zero.

45. In contrast, as noted above, a range of deepwater fish stocks are taken in the bottom fisheries. Non-target fish stocks in bottom fisheries will be subject to the tiered assessment framework adopted by SC5 in 2017. There is, however, little information on the status of these stocks.
46. In addition to bycatch fish stocks, bottom fisheries tend to have a benthic invertebrate bycatch. SC in 2018 considered the impact of bottom trawl and line fisheries on benthic bycatch. It noted the variability in benthic invertebrate bycatch of different fishing methods and fished areas, with the estimated impact of bottom line fishing being about three times smaller than that of bottom trawl fishing in the western SPRFMO Area. It agreed that further work should be done to assess catchability in both trawl and bottom line fisheries and to enable more sophisticated use of bycatch data in habitat suitability models.<sup>32</sup> The Panel notes the importance of comprehensive collection of data on benthic bycatch in all bottom fisheries and expects that additional work will be required to integrate information about benthic bycatch into the bottom fishing encounter protocols for VMEs.
47. The potential for Deepwater shark (chondrichthyan) species to interact with bottom fisheries in the SPRFMO Area has been recognised by SC, which has also noted that such species are particularly vulnerable to impact.<sup>33</sup> The Panel notes the progress made to develop an ecological risk assessment for the effects of demersal trawl, midwater trawl and demersal longline gears on Deepwater chondrichthyans (sharks, rays and chimaeras) in the SPRFMO Area.<sup>34</sup> Additional data is required to progress this work and the Panel supports the recommendation of SC that biological data collection for deepwater chondrichthyans be strengthened for SPRFMO demersal fisheries.<sup>35</sup>
48. Information on the pelagic Jack mackerel fishery shows interaction with Porbeagle sharks, at an increasing rate in recent years.<sup>36</sup> A Southern Hemisphere status assessment of Porbeagle shark was presented to SC5, and indicates that the impact of fishing is low across the entire Southern Hemisphere range of the Porbeagle shark population.<sup>37</sup> The key recommendation from the project, which the Panel endorses, is to improve the collection and analysis of biological and catch rate data relating to this shark species.
49. There is currently no accurate indication of the status of albatross and petrel species caught in association with SPRFMO fisheries. Analysis of fishing activity information and observer information shows interactions with seabirds (petrel and shearwaters), great white sharks, sea

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<sup>31</sup> Chile, Annual Report, SC6-05.

<sup>32</sup> SC6 Report, paras 93 and 96.

<sup>33</sup> SC5 Report, para 70.

<sup>34</sup> SC6 Report, paras 56-61.

<sup>35</sup> SC6 Report, para 63.

<sup>36</sup> SC6-Doc09.

<sup>37</sup> SC5-INF01-rev1, p. 5.

snakes and turtles in the deepwater fishery.<sup>38</sup> SC5 noted that seabird interactions may occur across bottom, Jack mackerel and squid jig fisheries, and that observer programmes that specifically task observers to document seabird interactions and to report such data would progress an understanding of the current impact of those fisheries on seabirds.<sup>39</sup>

50. The squid fishery operating on the western side of the south Pacific has not reported capturing any marine mammals, seabirds, reptiles nor any other species of concern. However, SC6 agreed that there may be some risk to seabird species from jig fishing and encouraged Members and CNCPs to collect additional data to help quantify this risk.<sup>40</sup> The Panel notes the importance of data collection in order to improve understanding of the impacts of fishing on associated and dependent species.

### *Panel's Findings and Recommendations*

51. The Panel:

- a) **Commends** the efforts made by the Commission and Scientific Committee to develop and continually improve stock assessments for Jack mackerel, the constraint applied by the Commission and fishing nations engaged in the Jack mackerel fishery and the precautionary approach taken by the Commission which has resulted in a rebuilding of the stock;
- b) **Recommends** that the Commission maintain a precautionary approach to setting catch limits for the Jack mackerel stock;
- c) **Acknowledges** the significant work that has been undertaken by participants in the Scientific Committee's Deepwater Working Group to develop an assessment framework for deepwater stocks and to develop preliminary assessments for Orange roughy, and the progress that has been made in the Squid Working Group over the last year to develop stock assessment methods for Jumbo flying squid;
- d) **Recommends** that the Commission, Scientific Committee and Members of the Commission accelerate efforts to advance robust stock assessments of Orange roughy and Jumbo flying squid and give priority to collecting the necessary data for stock assessment purposes; and
- e) **Notes** that there is little information on the status of non-target and bycatch species or the impact of SPRFMO fisheries on associated or dependent species and **Urges**, as a first step, that the Commission increase data collection in order to improve understanding of the impacts of fishing on associated and dependent species.

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<sup>38</sup> SC6-Doc-09.

<sup>39</sup> SC5 Report, para 150.

<sup>40</sup> SC6 Report, para 200.

### 3.2 Ecosystem approach

52. The application of the ecosystem and precautionary approaches to fisheries management is embedded throughout the SPRFMO Convention, including in Articles 2 (Objective), 3 (Conservation and Management Principles and Approaches), 8 (Functions of the Commission), 10 (Scientific Committee), 20 (Conservation and Management Measures), 22 (New and Exploratory Fisheries), 23 (Data Collection, Compilation and Exchange) and 24 (Obligations of Members of the Commission). Article 2 of the Convention states:

The objective of this Convention is, through the application of the precautionary approach and an ecosystem approach to fisheries management, to ensure the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur.

53. Article 3(2)(a) requires the wide application of the precautionary approach to conservation and management of fishery resources in order to protect those resources and to preserve the marine ecosystems in which they occur.

54. Article 3(2)(b) specifically references the ecosystem approach and requires:

An ecosystem approach shall be applied widely to the conservation and management of fishery resources through an integrated approach under which decisions in relation to the management of fishery resources are considered in the context of the functioning of the wider marine ecosystems in which they occur to ensure the long-term conservation and sustainable use of those resources and in so doing, safeguard those marine ecosystems.

55. The identification of the ecosystem approach in the SPRFMO Convention has evolved from the FAO Code of Conduct for Responsible Fisheries and the guiding concepts, principles and requirements associated with the implementation of the ecosystem approach to fisheries management identified by FAO in 2003.<sup>41</sup> These include the avoidance of overfishing, reversibility of changes to the marine ecosystem and capacity to rebuild stocks, minimisation of fisheries impact, consideration of species interactions, maintenance of ecosystem integrity, application of the precautionary approach, jurisdictional compatibility and collaboration, and improvement of human well-being and equity. When there is insufficient scientific information to apply the ecosystem approach, and particularly to project or predict threats of serious or irreversible damage, a precautionary approach is advised.

56. This means that SPRFMO is required to ensure the ongoing functioning of the wider marine ecosystem when setting management decisions for target species. The SPRFMO Convention does not include a detailed definition of the ecosystem approach or specific directions on how to apply it. Nevertheless, the guidance in the Convention is sufficient for SPRFMO to determine how it wishes to operationalise this requirement.

57. SPRFMO has adopted Convention Area-wide measures which include ecosystem-based elements for bottom fisheries (CMM 03-2018), prohibiting the use of large-scale pelagic driftnets and Deepwater gillnets (CMM 08-2013), minimising bycatch of seabirds (CMM 09-

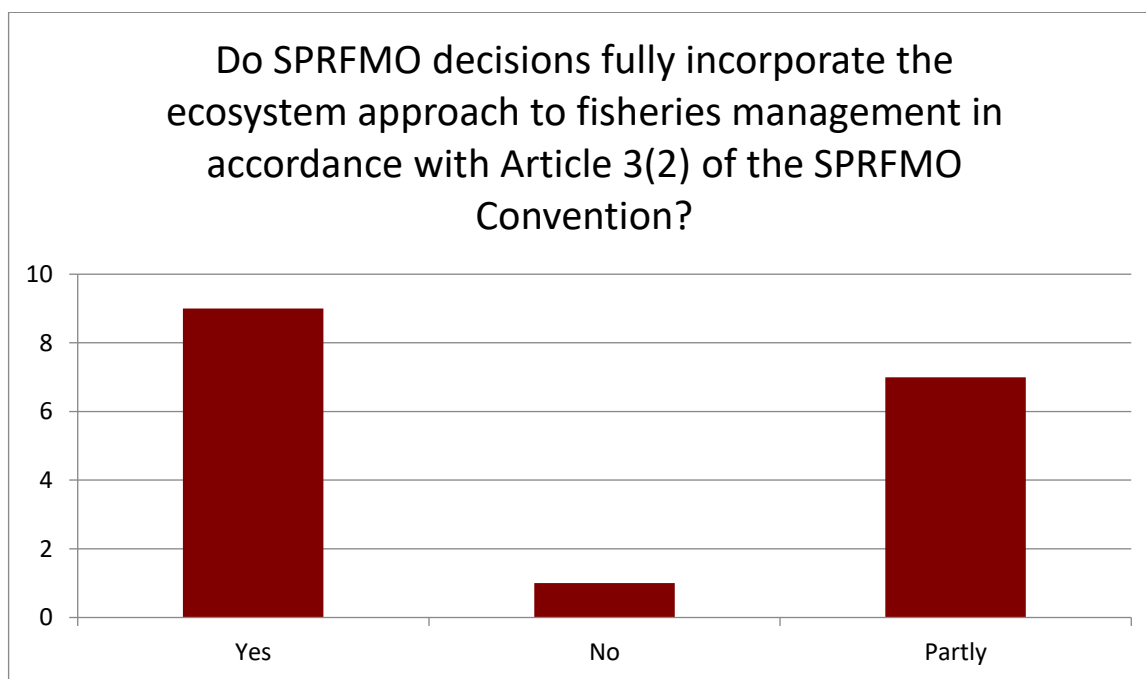
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<sup>41</sup> FAO, Ecosystem Approach to Fisheries: <http://www.fao.org/3/y4470e0d.htm>



2017), management of new and exploratory fisheries (CMM 13-2016) and an exploratory potting fishery (CMM 14b-2018). They have also adopted a highly precautionary measure for the management of the Jack mackerel (*Trachurus murphyi*) fishery (CMM 01-2018), and the SPRFMO Observer Programme (CMM 16-2018), the primary function of which is the collection of scientific information “that can be used for effective assessment and management of SPRFMO fisheries resources, including both target species and bycatch, and interaction of fishing activities with the environment and species occurring in the SPRFMO area, to improve the certainty of future scientific advice while taking into account ecosystem considerations”.<sup>42</sup>

- 58. SC has had a dedicated agenda item on the ecosystem approach to fisheries management since 2014, and has discussed the impact of fishing activities on Ecologically or Biologically Significant Marine Areas (EBSAs) and on VMEs,<sup>43</sup> the establishment of a VME database,<sup>44</sup> interactions with bycatch, including protected species,<sup>45</sup> and mitigation of seabird impacts including appropriate observer coverage.<sup>46</sup>
- 59. At its 2018 Meeting, the Commission accepted the SC recommendation to establish a Habitat Definition, Description and Monitoring Working Group.<sup>47</sup> Its primary objective is described as “providing environmental indicators associated to the habitat of main commercial resources exploited in the SPRFMO area to complement decision making of fisheries management”,<sup>48</sup> with an initial priority on the Chilean Jack mackerel *Trachurus murphyi* fishery.



<sup>42</sup> CMM 16-2018, SPRFMO Observer Programme, preambular paragraph 6.

<sup>43</sup> SPRFMO SC2 2014, para 8.1; SPRFMO SC3 2015, para 8.1.

<sup>44</sup> SPRFMO SC2 2014, para 8.2.

<sup>45</sup> SPRFMO SC2 2014, paras 8.3 and 4; SPRFMO SC3 2015, para 8.3, SPRFMO SC4 2016, para 8.

<sup>46</sup> SPRFMO SC2 2014, paras 8.5 and 8.6; SPRFMO SC3 2015, paras 8.4, 8.5; SPRFMO SC5, paras 137-154.

<sup>47</sup> SPRFMO COMM-6, paras 3a and 3b, and Annex 3.

<sup>48</sup> SPRFMO SC6 2018, Annex 10.

60. The Panel assessed the extent to which SPRFMO decisions incorporate an ecosystem approach to fisheries management. As noted in the table above, most respondents felt that decision-making by the Commission was generally quite precautionary and consistent with the advice from SC, and that SPRFMO thereby incorporated ecosystem considerations, at least in part, where information was available. Seabird mitigation measures, VME protection measures in the bottom fisheries, and stock rebuilding efforts in place for the Jack mackerel fishery were referenced by respondents. However, several acknowledged that SPRFMO fisheries are still assessed on a single-species basis and that insufficient data currently existed to include dependent and associated species trends in management measures. Suggestions were also raised on the need for cumulative impact assessment and consideration of climate change impacts.
61. A number of those respondents who indicated that SPRFMO only partly incorporated an ecosystem approach expressed concern about the lack of management decisions for the Jumbo flying squid fishery. They highlighted the fact that this was the largest fishery in the Convention Area, yet no fisheries management decisions had been taken and there were serious gaps in the provision and collection of fisheries, biological and environmental data on this fishery.
62. Most respondents agreed that there were gaps that could be addressed to improve implementation of the ecosystem approach. Aside from the need for improved monitoring and observation of the squid fishery, it was suggested that there be a greater focus on non-target species, bycatch, trophic effects and the cumulative impacts of SPRFMO fisheries. The need to collect data on quantitative seabird and other megafauna interactions and biological data to improve understanding of impacts from fishing on dependent and associated species as well as on the ecosystem was also mentioned. It was acknowledged by respondents that this would require substantive data collection and analysis, with cost implications. It was also noted that full implementation and a wider coverage of the Observer Programme should significantly contribute to closing these information gaps.
63. The Panel notes that existing CMMs, notably on bottom fishing and seabird mitigation, take into consideration impacts on the marine ecosystem where information is available. However, sufficient data for all bycatch species and the impacts from fishing on those species has not yet been obtained. This makes a full ecosystem approach to managing the fisheries difficult to apply.
64. The ecosystem approach has been most closely implemented in CMM 03-2018 on the bottom fisheries, where benthic impact assessment is required. While this is currently a data-poor fishery, the Panel understands significant work is progressing to improve the measure, including an improved scientific understanding of VME habitats and impacts on the benthic environment from bottom fishing and the inclusion of cumulative impact assessment.
65. Catch limits for target species are currently set based on single-species models where these are available, such as in the Jack mackerel fishery. Although independent CMMs apply to minimise seabird bycatch and the impact of certain destructive fishing gear, there is little consideration of the wider ecosystem. The Panel acknowledges that while a single species model is used for the development of Jack mackerel catch limits, and other ecosystem considerations considered only in part, the context for management decisions has been very precautionary. In contrast, there

are few indications that ecosystem or precautionary approaches have been incorporated into management decisions for the Jumbo flying squid fishery.

66. The Panel considers that in light of the specific mention in the SPRFMO Convention of the need to apply an ecosystem approach which seeks to integrate fishery management decisions with the wider context of the marine ecosystems in which the fishery occurs, the Commission and Scientific Committee should investigate and take account of the wider ecosystem in which the SPRFMO fisheries function.
67. The Panel notes concerns expressed by some respondents that strengthening El Niño Southern Oscillation events within the SPRFMO Convention Area may have consequent effects on impacted fisheries. The Panel notes the work undertaken by the Intergovernmental Panel on Climate Change (IPCC), which indicates that globally oceans are warming, losing oxygen and acidifying,<sup>49</sup> and the preparation of a Special IPCC Report on Oceans and Cryosphere, which intends to include a chapter reviewing the possible impact of a changing ocean on marine ecosystems and dependent communities.<sup>50</sup> Discussions are also occurring within FAO relating to the possible impacts of a changing climate on the health of oceans, including fisheries.<sup>51</sup> These point to a need for SPRFMO to be in the forefront of the consideration of climate change on the fisheries within its purview.

### *Panel's Findings and Recommendations*

68. The Panel:
  - a) **Notes** that although SPRFMO has generally taken into account an ecosystem approach to fisheries management in the individual management of Jack mackerel and bottom fishing, additional actions could be taken by the Commission and Scientific Committee to better integrate ecosystem elements into the assessment of target species. This could include, for example, consideration of deepwater chondrichthyans, seabird mitigation measures for all fisheries, habitat mapping, and examination of climate change impacts;
  - b) **Recommends** that the Commission apply a highly precautionary approach to fishery management decisions in the absence of sufficient information to permit the application of an ecosystem approach to management;
  - c) **Recommends** that the Scientific Committee develop a workplan to progress fisheries management decisions, which takes into account a more holistic ecosystem-based approach. Elements of that workplan could include:
    - i. A review of available tools and processes to lead to an integrated ecosystem fisheries management approach;
    - ii. Identification of environmental data that will assist in both applying an ecosystem approach and to assessing the effect of climate change impacts and the subsequent consideration of management decisions;

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<sup>49</sup> [http://www.un.org/depts/los/consultative\\_process/icp18\\_presentations/barrett.pdf](http://www.un.org/depts/los/consultative_process/icp18_presentations/barrett.pdf)

<sup>50</sup> <https://www.ipcc.ch/report/srocc/>

<sup>51</sup> <http://www.fao.org/climate-change/en/>

- iii. A review of the Jack mackerel fishery to determine the impact of the fishery on non-target species and habitat, to identify gaps in habitat, biological and bycatch data, and a programme for collection of that data;
  - iv. Consideration of the use of cost and resource effective ecosystem-based models; and
  - v. Exploration of cooperation mechanisms with other bodies that may assist or benefit SPRFMO in the development of a relevant ecosystem-based fisheries management approach that is both cost and resource effective for SPRFMO.
- d) **Notes** the concerns raised by some Members and CNCPs about known and expected impacts of changing El Niño and La Nina events and potential impacts arising from anthropogenic climate change on the SPRFMO Convention Area, including the impact that such changes may have on major existing and potential target fisheries; and
- e) **Recommends** as an initial step that the Scientific Committee identify the research and data collection required for it to develop advice to inform the Commission on what action may be required to take into account the observed or expected impacts associated with a rapidly changing climate.

### 3.3 Data collection and sharing

69. Article 3 of the Convention provides that in giving effect to the objective of the Convention and in carrying out decision-making, the Contracting Parties, Commission and subsidiary bodies are required to collect, verify, report and share full and accurate data on fishing, including information relating to the impacts on the marine ecosystems in which fishery resources occur, and to do this in a timely and appropriate manner.<sup>52</sup> According to Article 23: “To enhance the information base for the conservation and management of fishery resources, non-target and associated or dependent species and the protection of the marine ecosystems in which those resources occur; and to contribute to the elimination or reduction of IUU fishing and its negative impact on those resources”, the Commission is to develop standards, rules and procedures, for the collection, verification and timely reporting of relevant data by Commission Members, to compile and manage data to ensure that the provision of best available scientific advice is enabled, to ensure the security of that data, to exchange data among Members and with other relevant organisations including where this may assist in efforts to minimise Illegal, Unreported and Unregulated (IUU) fishing, and to make specified data public.
70. The obligations of Commission Members are set out in Article 24 and include the collection, verification and reporting of scientific, technical and statistical data on fishery resources and marine ecosystems in conformity with the standards, rules and procedures established by the Commission. Article 28 also requires the Commission, inter alia, to establish an observer programme “to collect verified catch and effort data, other scientific data and additional information related to the fishing activity in the Convention Area, and its impacts on the marine environment”.
71. During the international negotiations of the SPRFMO Convention, a Data and Information Working Group was formed to identify the types of data to be collected, prepare standards for

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<sup>52</sup> Art 3(1)(a)(iv).

the collection, verification exchange and reporting of data, and standards for data security, and terms and conditions for making data available. It first met in 2006 and developed standards for the collection, reporting, verification and exchange of data, as well as other standards, such as for the collection of transshipment, landings and observer data.<sup>53</sup> This Working Group was disbanded in 2013 on the establishment of the Commission.

### 3.3.1 Agreed data submission formats, specifications and timeframes

72. At its first meeting in 2013, the Commission adopted a Conservation and Management Measure on Standards for the Collection, Reporting, Verification and Exchange of Data, CMM 02-2018. It has amended this CMM annually based on advice received from SC. In addition, the Commission has adopted data collection requirements for new and exploratory fisheries (CMM 13-2016), and for specific fisheries.<sup>54</sup>
73. CMM 02-2018 includes annexes providing specific instructions on data collection requirements for various fishing methods, observers at sea, landings, transshipments and annual catches, as well as specifications for exchange of data, and a list of ‘other species of concern’ for which data are to be collected. The CMM is regularly reviewed and updated in light of data requirements.
74. The Panel considered the extent to which SPRFMO has agreed formats, specifications and timeframes for data submission. Responses indicate broad agreement that existing data collection formats, specifications and timeframes meet expected requirements. Fourteen and fifteen responses respectively rated existing data collection formats, and specifications as either “excellent” or “good”, and thirteen agreed that timeframes meet expected requirements. The following comment perhaps best summarises the general sentiment expressed:

The agreed formats and specifications are as good as they could be. The timeframes for filling and reporting on those forms are also very good in most cases, although in the jumbo flying squid fishery these timeframes are a bit longer than desirable.
75. The Panel considers that existing formats and specifications for fisheries data are within accepted global practice, and the process of regular review and amendment of the data standards appears to be working well. The Panel, however, views it as important to ensure that data collected is relevant to the scientifically defensible “information” needed to progress the objectives of the Convention. The Panel notes that information collection and requirements change with the adoption of each new or revised CMM. New fisheries, such as the exploratory potting fishery, the newly adopted observer programme, and the need for an improved VME identification protocol may require a review of data and information considerations and a subsequent update of formats, specifications and timelines.

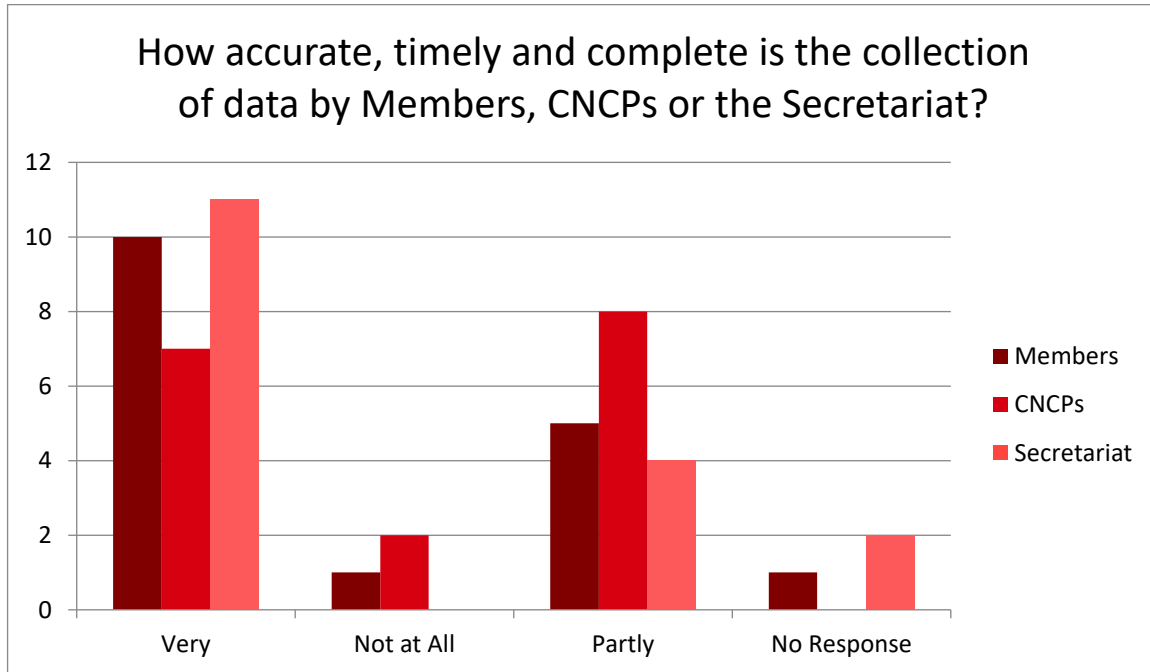
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<sup>53</sup> <http://www.sprfmo.int/meetings/meeting-archive/international-consultations-and-preparatory-conference/new-meetingpage-Data-and-Information-Working-Group/d-iwg-meetings/>

<sup>54</sup> CMM 01-2018 for the Jack mackerel fishery, CMM 03-2018 for Bottom Fishing, and CMM 14b-2018 for the Exploratory Potting Fishery).

### 3.3.2 Collection and sharing of data

76. The Panel assessed the collection and sharing of data by SPRFMO, Members and CNCPs. Responses to the questionnaire indicate strong agreement that the SPRFMO Secretariat fulfils its responsibilities with respect to accurate, complete and timely circulation of data once received. The response on whether Members and CNCPs met their data submission obligations was mixed (see table below). In particular, a majority of respondents felt that CNCPs were only partially or not fulfilling these requirements.



77. Evidence for this is found in the Compliance Reports annexed to the annual Commission reports, which indicate that some Members and CNCPs have been unable to meet timelines agreed for submission of required data.<sup>55</sup> While some submissions have been slightly delayed, others have been more significantly delayed and some submissions have also been incomplete. Although the frequency of failures to meet timelines and completeness of data is declining, the Panel considers that SPRFMO should encourage, and facilitate where possible, the submission of complete, accurate and timely data, especially by CNCPs.
78. The Panel also recognises the growth in data information collection requirements with the adoption of each new or revised CMM. The database and its modules were built during the period 2010-12 and based upon the Data Standards applicable at that time. The Secretariat has proposed some enhancements to the capabilities of the database to make it more fit for purpose.<sup>56</sup> The Panel considers that new developments such as the exploratory potting fishery and the Observer Programme could benefit from better data and information considerations. Effective management of the Jumbo flying squid fishery is also likely to require much more

<sup>55</sup> See COMM6 – Report, Annex 5, Final Compliance Report; COMM5 – Report, Annex 5, Final Compliance Report.

<sup>56</sup> FAC5 Doc 05 Suppl.4 - Database software development and update.

accurate and timely data collection and storage. The large number of vessels involved in the fishery is likely to pose particular challenges for appropriate data storage.

### 3.3.4 Fishing and research data

79. Research and associated activities to support the scientific work of SPRFMO are primarily funded and conducted by Members and SPRFMO is dependent on those Members to report on these activities to SPRFMO. Research priorities are set out in the SC work plan<sup>57</sup> and this provides a level of coordination for research to support SPRFMO's objectives. The Panel notes that while a dedicated science programme funded and owned by SPRFMO would facilitate a more integrated and consistent approach, this was likely to be unrealistic. However, SPRFMO should consider opportunities to engage in collaborative research or data sharing with adjacent RFMOs and other organisations.
80. Fishing research activities in the SPRFMO Convention Area are undertaken on an *ad hoc* basis and there is no mechanism for notifying non-fishing research and for approval of fishing research. A proposal was submitted to SC6 for a CMM on fishing research to address these issues and to provide a more systematic approach to research activities.<sup>58</sup> SC agreed to recommend to the Commission that it adopt a CMM to provide for research activities in the Convention Area taking into account that research should be enabled within sustainable limits and that different types of research should be recognised.<sup>59</sup> The Panel notes that SPRFMO does not have a standardised database for Members to submit catch, effort and associated biological data from research cruises, or other scientific research activities. Sharing of research data is therefore undertaken on an *ad hoc* basis and through SC's Working Groups. The Panel's general comments on data also apply to research data.

### 3.3.5 Data for stock assessments and data collection gaps

81. SPRFMO and its Members hold a range of data and information used for stock assessment purposes. In particular, a data-rich model has been built for the Jack mackerel fishery, based on both fishery-dependent and fishery-independent data and from multiple participants<sup>60</sup>
82. In the case of many deepwater stocks caught in SPRFMO fisheries, the data quality and quantity varies through time and by species.<sup>61</sup> Particularly for stocks such as Orange roughy, catch and effort data are unlikely to be adequate for reliable stock assessments and biological information (age, length, sex data) will be necessary to inform assessments on stock status of these key deepwater stocks.
83. The SPRFMO Secretariat holds various squid fishing data, particularly recent data, on vessels, fishing date, start and end position, crew numbers, and number of jigging machines, lighting power, hours fished and catch weights. However, it does not hold comprehensive data on measures of effort such as vessel days, fishing hours or number of vessels, or on comprehensive

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<sup>57</sup> See COMM6-Report, Annex 3 for the 2018 Work Plan for Scientific Committee.

<sup>58</sup> SC6-Doc 32.

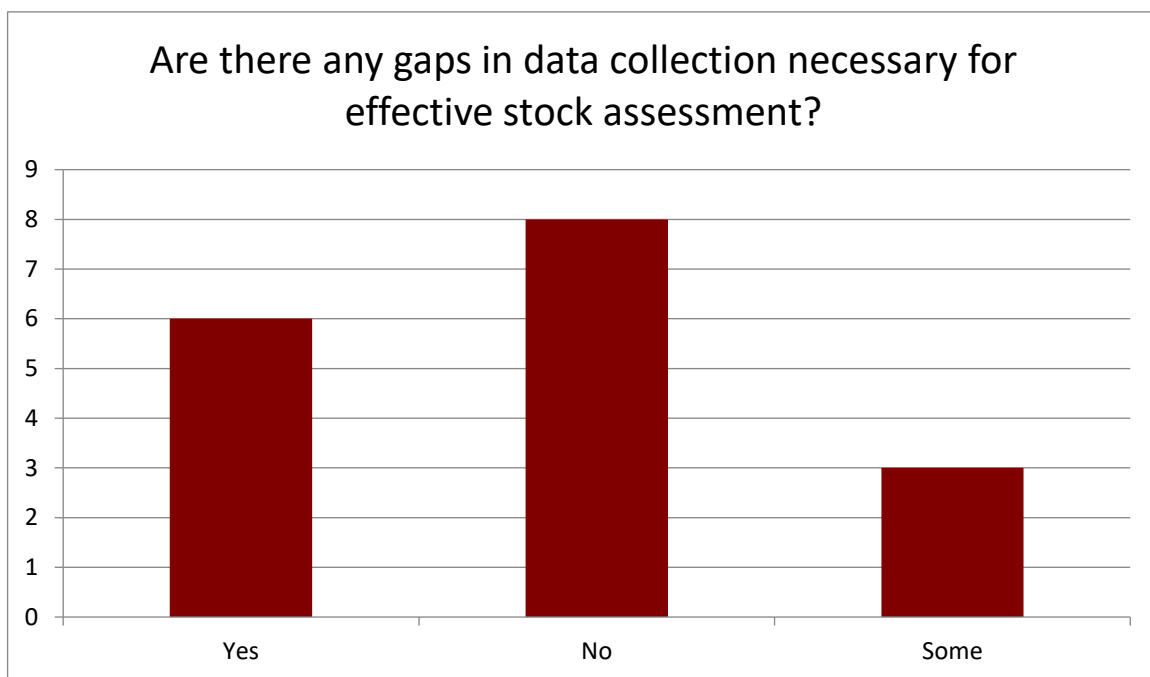
<sup>59</sup> SC6 – Report, para 255.

<sup>60</sup> See SSCW6-Report of Jack mackerel stock assessment workshop.

<sup>61</sup> SC5-Doc08\_rev1 – Report of the SPRFMO Deep Water Working Group Workshop.

or complete historical catch data.<sup>62</sup> Currently there is insufficient data on the Jumbo flying squid fishery to develop a reliable stock assessment. Biological sampling throughout the season for Jumbo flying squid is limited and thus provides little information on stock structure and status. SC6 noted that all the stock assessment models considered in the Squid Working Group needed fishery (catch and effort) and biological data size (frequency, weight and maturity) at a suitable intra-annual time scale.<sup>63</sup>

84. The Panel examined the extent to which SPRFMO collects accurate and complete data to facilitate effective stock assessments and ensure the provision of best scientific advice. More than two thirds of respondents agreed that there are at least some gaps in the data collection necessary for effective stock assessment, particularly in the bottom and Jumbo flying squid fisheries (see table below). A similar result was recorded in connection with gaps in data collection necessary for ensuring best scientific advice is available.



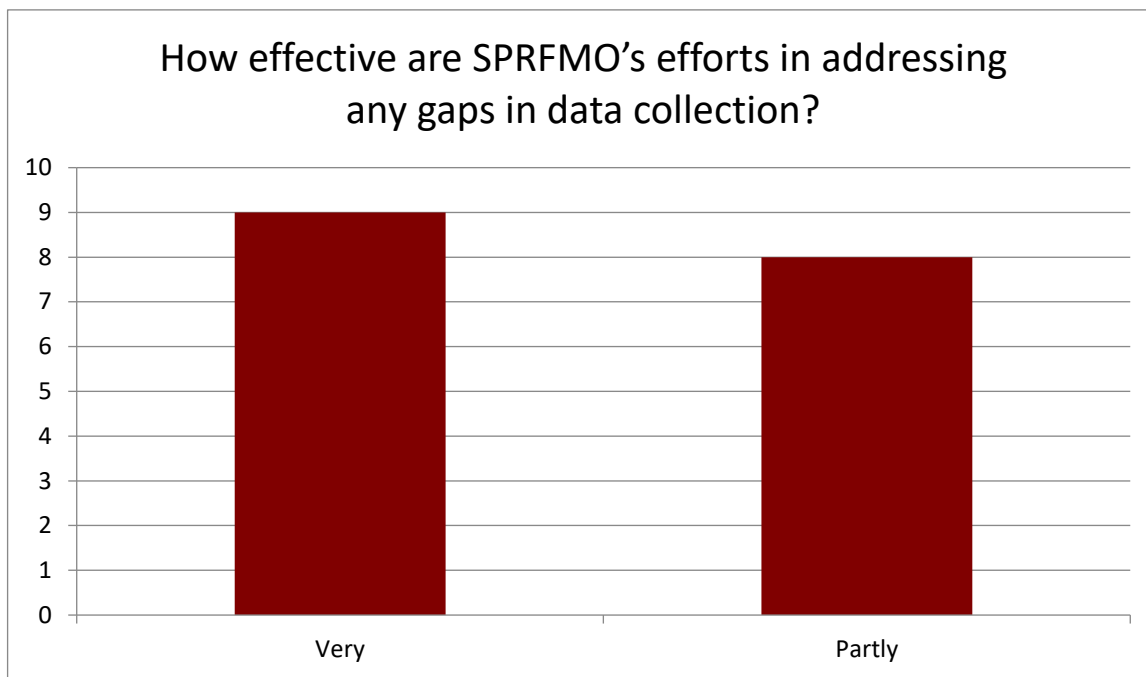
85. The respondents made a number of suggestions for collecting additional data for stock assessment purposes including basic data from the squid fishery to permit the development of a robust stock assessment, additional data on bycatch species from all fisheries to contribute to a more comprehensive understanding of impacts of fishing on the ecosystem, increased scientific sampling on board vessels, acoustic surveys and the possible use of low-information assessments using existing data for the Orange roughy fishery. Other key information gaps identified included biological data (e.g., age, length, sex) of targeted stocks, information on non-target stocks and protected species, as well as habitat and ecosystem data. It was also noted that “[m]odels can never adequately replace the need for baseline data”.

<sup>62</sup> SC6-SQ01.

<sup>63</sup> SC6-Report, para 173.



86. In terms of the extent to which SPRFMO is addressing these gaps in the collection and sharing of data as required, respondents to the questionnaire generally felt that SPRFMO was effective or partly effective in this area (see table below).



87. Nevertheless, several respondents provided additional comments, including concerns that SPRFMO's mandate to collect specific data was not always clear, about how to ensure effective collection of data or information which is to be provided voluntarily, and a recognition that gaps sometimes relate more to constraints and limitations around knowledge of and access to appropriate sampling, data and information systems.
88. The Panel agrees with respondents that there are gaps in the collection of data for stock assessment purposes and for the provision of the best scientific advice available. This is most notable in the Jumbo flying squid fishery. The Panel notes recent efforts to improve stock assessment inputs for this fishery through individual data releases provided by some but not all relevant fishing nations,<sup>64</sup> and the consideration of three proposed stock assessment models at SC6-2018.<sup>65</sup> Because of the absence of observer coverage, adequate biological information has not been collected for stock assessment purposes.
89. With respect to Jack mackerel, the Panel notes some lack of clarity around the number of stocks involved in the Jack mackerel fishery<sup>66</sup> which could impede appropriate stock assessment and management advice. The Panel suggests that fisheries independent data for the Jack mackerel fishery could be generated through scientific sampling on-board,<sup>67</sup> and that tagging studies could provide further insights around the number of stocks involved, although acknowledges that

<sup>64</sup> SC6-SQ02, 03, 04.

<sup>65</sup> SC6-SQ05, 06, 07.

<sup>66</sup> SC5-Report, paras 29-35.

<sup>67</sup> See for example the self-sampling programme outlined in SC6-JM03.

these can be expensive. The Panel notes the intention to undertake tagging studies between 2019-2020.<sup>68</sup>

90. In addition to the information to inform effective fish stock assessments, there is currently inadequate information to assess key impacts of fishing on protected species and benthic habitats, and on wider ecosystem functioning. The Panel agrees with a respondent who suggested that there is value for the effective management of the Jack mackerel fishery from the collection of habitat and ecosystem information, including short, medium and long-term environmental variables and interactions with birds, mammals and protected species.
91. The Panel notes that the current Scientific Committee work plan includes work to address identified information gaps, particularly, but not only, in the Jumbo flying squid fishery.<sup>69</sup> The Panel commends efforts made by SC to address data gaps, but notes that progress is dependent on Members agreeing to collect and report fishery-dependent data and to resourcing the collection of fishery-independent data.
92. The Panel also observes that the timely implementation and strengthening of the SPRFMO Observer Programme will address many of the identified data gaps.
93. In addition to addressing identified gaps in the provision of information for the purposes of stock assessment and ecosystem-based fishery management advice, the Panel is concerned that full use is not being made of the various datasets provided by Members and held by the Secretariat. CMM 02-2018 places responsibility on the Secretariat for the maintenance of confidentiality of the data provided by Members. There is no specific guidance given to the Secretariat on the sharing of datasets. Understandably, the Secretariat seeks specific permission from all owners of the data prior to sharing. However, this process inhibits the sharing of data not only with SC, but also with external researchers and other organisations. This has resulted, for example, in duplication of effort for the Jack mackerel fishery, where those engaged in the fishery are required to provide data for stock assessment purposes, as agreed by the Jack mackerel Working Group, as well data required through the Data Standard CMM.
94. The Panel considers that sharing of data – both inwardly to SC and outwardly to stakeholder organisations - is crucial not only to ensure that management advice is based on the best scientific evidence available, but also for the credibility of SPRFMO. The collection and storage of data is of little use if it is not shared for the purpose of furthering the objectives of the Convention.
95. In order for data to be shared it also must be easily stored and accessible. The current database constraints identified by the Secretariat have already been noted above. The Panel considers there will be a need to adjust processes for handling and storing data to take into account new information collection requirements with the adoption of new or revised CMMs.

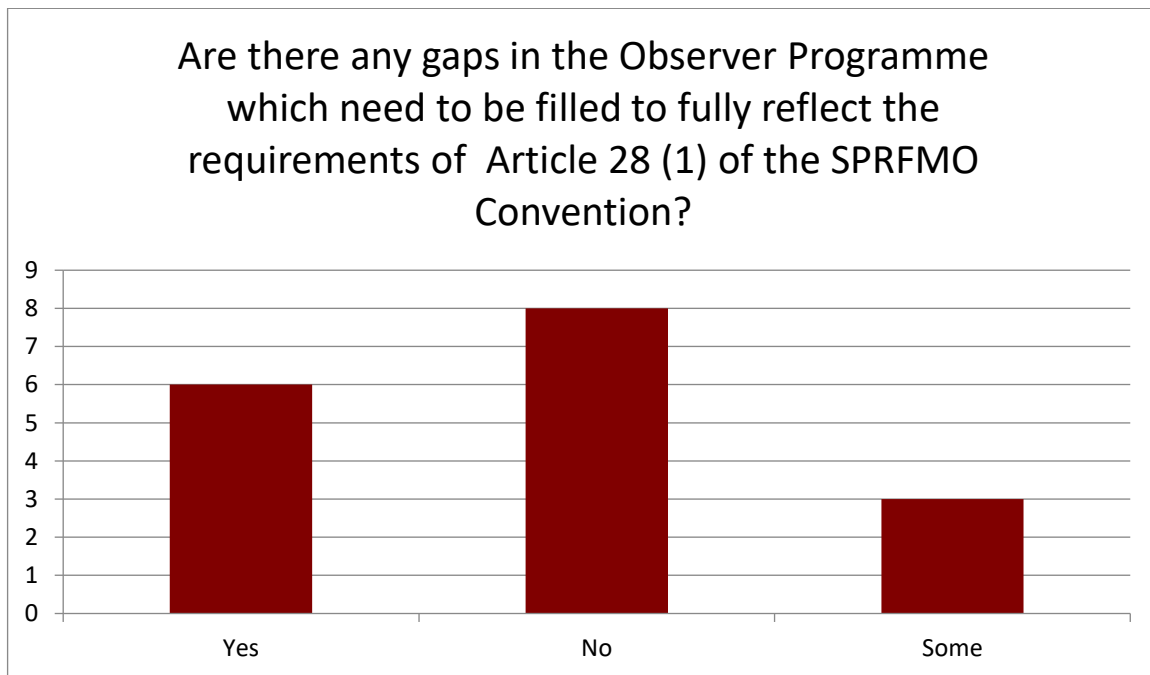
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<sup>68</sup> See SC5-Report, para 32.

<sup>69</sup> COMM6-Report, Annex 3.

### 3.3.6 Observer Programme

96. The Commission approved CMM 16-2018 (SPRFMO Observer Programme) at its 2018 meeting. This CMM, which will enter into force in April 2019, establishes the primary aim of onboard observers as the collection of scientific data rather than enforcement, although it notes that the information collected may be used to support the delivery of other functions of the Commission, including the Compliance and Technical Committee as appropriate.<sup>70</sup> The CMM ties levels of observer coverage to the CMMs for each fishery. This means there is no specified minimum level of observer coverage for fisheries for which there is no existing measure, such as Jumbo flying squid. For fisheries where 100 percent observer coverage is not in effect, the CMM requires that coverage is representative of the fishery. This suggests that some observers should be present throughout the season as well as across the area fished. It is unclear how this would be achieved.
97. Until CMM 16-2018 comes into force, 10% scientific observer coverage of trips is required for trawlers and purse seiners engaged in the Jack mackerel fishery, 100% coverage for bottom fishing conducted by trawl and 10% for bottom fishing undertaken using other gear types. There are currently no observer requirements set for the squid fishery. There is also no standardisation of data collection processes and procedures for observers across different fisheries.



98. Respondents were mixed in their consideration of gaps in the Observer Programme, as noted in the table above. Some expressed concern about the lack of standardisation of observer coverage or data collection across the fisheries; others noted that it was difficult to assess what type of information was missing because CMM 16-2018 lacks the criteria for certifying national

<sup>70</sup> CMM 16-2018, SPRFMO Observer Programme, preambular paragraphs.

programmes. The need for observer coverage to be directly linked to data and verification needs was also stressed.

99. The Panel observes that the absence of mandated observer coverage on some fisheries may impede the capacity of SPRFMO to verify data collected and reported.

### *Panel's Findings and Recommendations*

100. The Panel:

- a) **Commends** the Commission and Scientific Committee practice of ongoing regular review and amendment of the CMM on Standards for the Collection, Reporting, Verification and Exchange of Data, and **Notes** in particular the need to ensure that data collection is directly linked to delivery of conservation and management consistent with the objective of the Convention;
- b) **Recommends** the Commission and Scientific Committee regularly review data collection requirements to ensure they align with the needs of new or revised CMMs, while recognising the challenges to SPRFMO database management through the addition of new data collection, access and storage requirements and **Notes** the need for investment in building the capacity of the SPRFMO database to meet these challenges;
- c) **Recommends** that the Commission strengthen the timelines for the submission and independent verification of catch and effort data for the Jumbo flying squid fishery and **Urges** such measures to be adopted together with a general management measure for that fishery;
- d) **Recommends** that the Commission implement more effective and comprehensive bycatch data collection and reporting, particularly but not limited to dependent and associated species in each fishery and identified species of concern, the collection of sufficient biological data to support the development of reliable stock assessments for all fisheries, and the extension of data collection programmes to include environmental data and other data to assist in estimating potential impacts on non-target species;
- d) **Recommends** that the Scientific Committee review and provide advice on any additional data requirements necessary to support the implementation of an effective VME protocol;
- f) **Recommends** that the Commission review, as a matter of priority, dataset sharing processes and procedures, both for data exchange within SPRFMO and externally, and provide specific guidance to the Secretariat with a view to removing impediments to the exchange and sharing of data; and
- g) **Recommends** that the Commission work towards a standardisation of scientific data collection processes and procedures for observers across the different fisheries, and consider mechanisms to harmonise coordination of data collection with other regional and/or sub-regional observer programmes.

### 3.4 Quality and provision of scientific advice

101. Article 3 of the Convention requires those carrying out decision making under the Convention to apply the principle that “decisions shall be based on the best scientific and technical information available and the advice of all relevant subsidiary bodies”. Article 10 sets out the functions of the Scientific Committee, which generally include the provision of scientific advice.
102. According to Article 10(4), the Commission may also engage the services of external experts to provide information that may assist the development of scientific advice by SC, including on the impact of fishing on the marine ecosystems in the Convention Area. There is also provision for periodic independent peer review of SC’s reports, advice and recommendations.<sup>71</sup>
103. There has been no independent peer review of SC’s advice to date, however the Commission has established a Scientific Support budget category, which is used, among other things, to fund the participation of experts at SC workshops and meetings.<sup>72</sup> Monies in this budget category accrue and it is capped at NZ \$50,000.<sup>73</sup>
104. The Panel examined the extent to which SPRFMO receives and acts on the basis of the best scientific advice relevant to fishery resources as well as to effects on the marine ecosystem. All participant responses indicated high or partial satisfaction with the effectiveness of SPRFMO’s efforts to receive and act on the basis of best scientific advice relevant to fishery resources and the marine ecosystem, although there was a more positive response with respect to scientific advice relating to fishery resources. Respondents particularly noted that SPRFMO receives and acts on the basis of the best scientific advice with respect to the Jack mackerel fishery. The following comment is representative:

We think this has been a real strength of the Commission – a willingness to act on SC advice (as referenced in the Chair’s opening speeches in 2017 and 2018). We think this is an area where other RFMOs have been challenged but SPRFMO to date has a good record.

105. Those respondents indicating that SPRFMO had been partly effective in receiving and acting on best scientific advice available did so on the basis of the absence of advice and management measures on the Jumbo flying squid fishery, and the limited attention paid to associated species or the marine ecosystem. As a couple of respondents noted:

The effectiveness of the SPRFMO efforts are highly dependent on the preparedness and willingness of its Members and CNCPs to cooperate with the Secretariat in the provision of adequate data and information and to jointly work within the Commission to improve the information and data that goes into the scientific advice and to act in a timely and effective manner on such advice. There is clearly some room for improvement in all of them, particularly with respect to the Jumbo flying squid fishery.

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<sup>71</sup> Article 10(5).

<sup>72</sup> See SC6-Doc10.

<sup>73</sup> Reg 2.4, Financial Regulations of the Commission.

Now that the Jack mackerel fishery is “under control”, seeking and action on better information for squid, bottom fisheries, and various effects of fishing on other ecosystem components should become more of a priority.

106. The Panel considers that the Commission has consistently adopted and acted on the advice received from SC. A notable example of this approach has been the decisive action taken by the Commission to constrain the Jack mackerel fishery following advice from SC. The Panel notes the progress that is being made toward improving scientific knowledge to assist with the management of Deepwater fisheries and the need for sufficient data on the Jumbo flying squid fishery so that SC is in a position to provide scientific advice on the management of the fishery.
107. The Panel suggests that SPRFMO now prioritise actions to improve information for squid, bottom fisheries, and the impacts of fishing on other ecosystem components so that SC is in a better position to provide the best scientific advice on which the Commission can base management decisions.

### *Panel's Findings and Recommendations*

108. The Panel:
  - a) **Commends** the Commission for its consistent and respectful approach to the advice provided by the Scientific Committee, and its willingness to act on that advice, particularly in the case of the Jack mackerel fishery; and
  - b) **Recommends** that the Commission take urgent action to implement management measures for the Jumbo flying squid fishery, and for precautionary measures to be put in place until sufficient information is available to undertake a reliable stock assessment.

### **3.5 Adoption of conservation and management measures**

109. The development and implementation of CMMs is detailed in Article 20 of the Convention. The CMMs adopted by the Commission are to include measures which:
  - (a) ensure the long-term sustainability of fishery resources and promote the objective of their responsible utilisation;
  - (b) prevent or eliminate over fishing and excess fishing capacity to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
  - (c) maintain or restore populations of non-target and associated or dependent species to above levels at which their reproduction may become seriously threatened; and
  - (d) protect the habitats and marine ecosystems in which fishery resources and non-target and associated or dependent species occur from the impacts of fishing, including measures to prevent significant adverse impacts on vulnerable marine ecosystems and precautionary measures where it cannot adequately be determined whether vulnerable marine ecosystems are present or whether fishing would cause significant adverse impacts on vulnerable marine ecosystems.
110. At the time of this review, SPRFMO has 15 CMMs in force,<sup>74</sup> including CMMs for the management of the Jack mackerel fishery, bottom fisheries, one exploratory potting fishery, a

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<sup>74</sup> These and CMM 16-2018 can be found at <https://www.sprfmo.int/measures>

framework measure to assist the development of new and exploratory fisheries proposals; data collection and reporting standards, prohibition of deepwater gillnets, and seabird bycatch mitigation, as well a number of measures addressing compliance and enforcement, including an authorised vessels list, vessel monitoring system, inspections, regulation of transshipment and vessels without nationality. CMM 16-2018 on the SPRFMO Observer Programme enters into force on 27 April 2019.

### **3.5.1 Measures based on best scientific advice**

111. SPRFMO has adopted a range of measures designed to ensure the long-term conservation and sustainable use of resources, based on scientific advice provided by SC.
112. The CMM for the Jack mackerel fishery (CMM 01-2018) aims to allow the rebuilding of the stock. The mechanisms for the administration, participation and control of the fishery contained in the CMM are strengthened by requirements established in other measures covering data collection and reporting (CMM 02-2018), vessel monitoring (CMM 06-2018), seabird bycatch minimisation (CMM 09-2017), and regulation of transshipment (CMM 12-2018). The CMM currently does not include any agreed target or limit reference points or ecosystem-based considerations. SC's Multi-Annual Work Plan, approved at COMM-6 2018, includes proposed work to evaluate alternative stock structure hypotheses and assessment models, review existing data, improve knowledge on growth estimations, recruitment under climatic drivers and Jack mackerel connectivity.
113. There is currently no stock assessment or specific management measure for the Jumbo flying squid fishery. SC has included squid assessment and connectivity on its work plan and is currently reviewing a number of potential models for assessing squid stocks. Management of squid activities is currently limited to vessels being listed on the Record of Authorised Vessels and data collection and reporting obligations.
114. The SC work plan includes a number of items relating to improving scientific knowledge of the deepwater fishery, including Orange roughy assessments for Louisville Ridge and Tasman Sea stocks and other stock assessments. It also includes work on ecological risk assessment, spatial modelling of VME habitat, and revision of the Bottom Fishery Impact Assessment Standard.
115. The SC Habitat Monitoring Working Group has prioritised work to improve the scientific understanding of the Jack mackerel habitat, which will feed into considerations of a more integrated ecosystem approach to managing this fishery, and possible responses to climatic drivers.
116. With respect to CMM 09-2017 on minimisation of bycatch of seabirds, SC6-2018 encouraged Members to collect and analyse data on seabird bycatch consistent with Agreement on the Conservation of Albatrosses and Petrels (ACAP) guidance and to report their analyses to ACAP. It also provided advice to the Commission on observer coverage levels needed to improve estimates of seabird bycatch.<sup>75</sup>

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<sup>75</sup> SPRFMO-SC6-Report, paras 191 and 196.

117. In addition to work identified above, SC's current work plan includes work to improve scientific knowledge on ecological risk assessment for deepwater sharks and teleost stocks,<sup>76</sup> use of modelling to assess VME and habitat, benthic and VME indicator taxa, and cumulative impacts from bottom fisheries.<sup>77</sup>
118. As discussed further below, there is as yet no CMM giving effect to Art 3(1)(a)(x), which focuses on "pollution and waste originating from fishing vessels, discards, catch by lost or abandoned gear and impacts on other species and marine ecosystems shall be minimised".
119. In considering whether SPRFMO has adopted an effective range of CMMs based on best scientific evidence available, respondents largely concurred that SPRFMO had adopted an array of valuable CMMs during its first five years. The following comments are indicative of the general sentiment expressed:

We think there has been a considered effort to be best-practice and learn lessons from other RFMOs. This is aided by the mix of Members – some are in many RFMOs (like Australia, the EU, China) and others are only a part of SPRFMO so far (Chile) so there is a good mix of good institutional knowledge and practice in RFMOs coupled with fresh perspective.

It will be a "No" or at best a "Partly" in the case of the Jumbo flying squid fishery for which there are no specific fisheries management measures, and so far, the measures adopted to improve the information and data reporting have been rather weak.

120. Of those who responded that SPRFMO had only partly adopted a full range of appropriate CMMs, all cited the absence of specific fisheries management measures for the Jumbo flying squid fishery as being of concern.
121. Respondents also made a number of suggestions to amend existing CMMs and for new CMMs, including a dedicated squid CMM, updating the bottom fishing CMM, a review of compatibility of measures with other arrangements for stocks that straddle the SPRFMO Convention Area, greater facilitation of scientific research, coverage of chondrichthyans,<sup>78</sup> coverage of pollution, waste and discards, and coverage of associated or dependent species.
122. The Panel commends the pace at which the Commission has approached the adoption of appropriate conservation and management measures for fisheries under its purview and the efforts it has made to apply best-practice of other RFMOs to the development of CMMs.
123. The Panel considers that although there has been progress to collate and analyse information about the Jumbo flying squid stock and to complete stock assessments to assist in the development of a CMM, the absence of a management measure for the Jumbo flying squid fishery is problematic, especially in light of the fact that it is the largest fishery in the SPRFMO Convention Area.
124. The Panel commends the work undertaken thus far to minimise bycatch of seabirds. It encourages ongoing collection and analysis of data to ensure estimates of seabird bycatch are

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<sup>76</sup> I.e. ray-finned fishes apart from the primitive bichirs, sturgeons, paddlefishes, freshwater garfishes, and bowfins.

<sup>77</sup> SPRFMO COMM-6 Report, Annex 3.

<sup>78</sup> I.e., sharks, rays, skates and chimeras.



accurate, and continued liaison with ACAP to ensure that measures taken reflect what is required to minimise bycatch. The Panel notes that measures are yet to be extended to all fisheries.

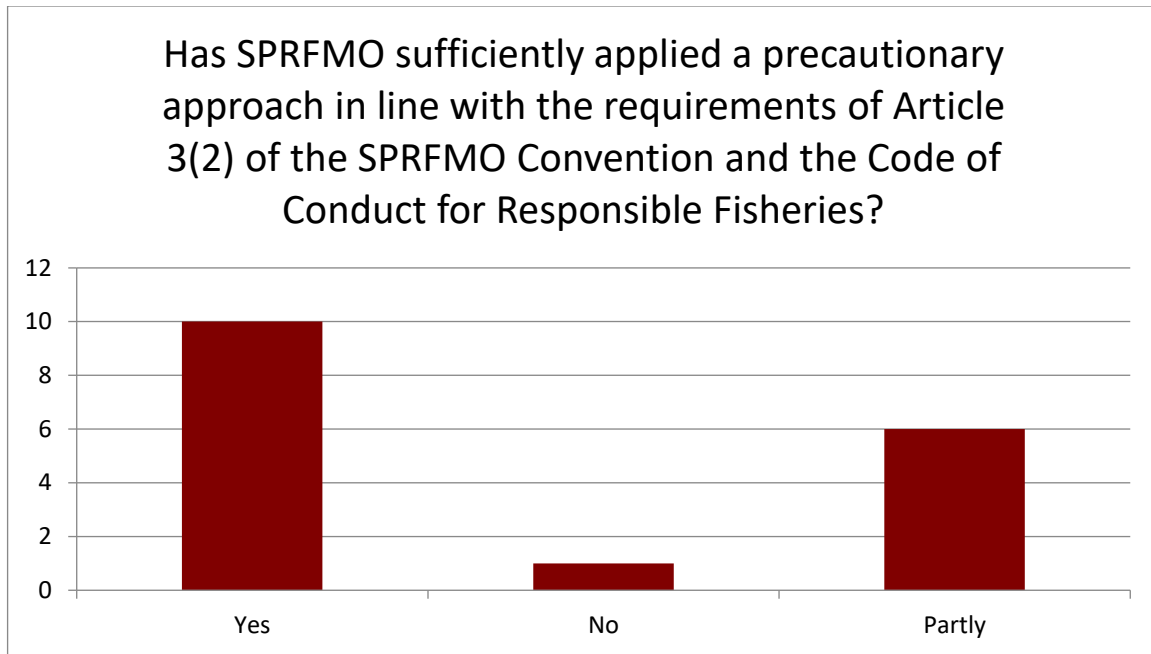
125. The Panel notes there is further work to be undertaken for SPRFMO to give full effect to Article 3(1)(a)(ii) to ensure impacts on non-target and associated or dependent species are taken into account, and Article 3(1)(a)(vii) which requires marine ecosystems to be protected, in particular those ecosystems which have long recovery times following disturbance.
126. The Panel appreciates current efforts to update the CMM on Bottom Fishing (CMM 03-2018). While commending the inclusion of prior impact assessment and 100% observer coverage in the CMM, and the precautionary approach taken to setting limits on catch while assessments can be undertaken, the Panel notes that these limits are not yet based on full scientific assessment. In addition, there is no SPRFMO-agreed approach to the management and protection of VMEs. Neither has the 2011 Bottom Fishery Impact Assessment Standard been reviewed to take into account the latest scientific information available.

### **3.5.2 Application of the precautionary approach**

127. The Panel reviewed the extent to which SPRFMO has applied a precautionary approach as set forth in Article 3(2) of the Convention and the Code of Conduct for Responsible Fisheries, including the application of precautionary reference points as called for in Article 20 (2) of the Convention.
128. Article 3(2)(a)(i) requires SPRFMO to be more cautious when information is uncertain, unreliable, or inadequate; and (ii) to not use the absence of adequate scientific information as a reason for postponing or failing to adopt CMMs.
129. A precautionary approach has been incorporated, at least partially, into the management decisions relating to the Jack mackerel and Deepwater fisheries, but not as yet to the Jumbo flying squid fishery. Work has also been undertaken toward application of a precautionary approach to the management of non-target species, vulnerable species, including VMEs and deepwater sharks, and in considering the impacts of fishing on ecosystems, including cumulative impacts.
130. The approach taken by SPRFMO to the Jack mackerel fishery is particularly encouraging. The stock is rebuilding because of the willingness by all Members to reduce catch and apply the requisite caution.
131. In the absence of comprehensive information, catches for the bottom fishery have been limited to average catches between 2002-2006 and geographically constrained to the spatial footprint of fishing over the same period.
132. In light of this, respondents considered that the precautionary approach had generally been applied, at least to the Jack mackerel and Deepwater fisheries (see table below). The same results were recorded in answer to the question of whether SPRFMO had sufficiently applied precautionary reference points as called for in Article 20(2) of the Convention. However, several tempered their support with concerns, particularly about the squid fishery:

Partly and uneven across fisheries... the precautionary approach has been incorporated fully or almost fully in the management decisions of the Deepwater and the Jack mackerel fisheries but no such approach is being applied in the case of the jumbo flying squid fishery.

The Jack mackerel measure has been particularly effective. The bottom fishing measure needs to be updated to take into consideration new information. A squid management measure also needs to be developed, once additional scientific information is obtained.



133. The Panel agrees that the application of the precautionary approach has been uneven across fisheries. The Commission’s application of the precautionary approach to the Jack mackerel fishery is allowing the stock to rebuild.
134. In the Panel’s view, the approach taken to the bottom fishery has been restrained in the absence of comprehensive information. However, it urges work on a revised bottom fishing measure to continue and take account of new information, or the absence of information, in the determination of stock levels and trends, the incorporation of an assessment of impacts on non-target species, the implementation of an effective VME protocol, and the setting of data-based limit and target reference points as called for by the Convention.
135. The Panel notes that a precautionary approach has not been applied to the squid fishery, which is currently very lightly regulated, but also notes the significant progress made by SC6 to understand the stock and develop appropriate models to assess the stock.<sup>79</sup>
136. The Panel notes the work undertaken by SC in 2018 to provide guidance on the exploratory potting fishery (CMM 14b-2018) and hopes that any additional work required to ensure its

<sup>79</sup> SPRFMO SC6 Report, paras 145-17.

alignment with CMM 13-2018 and the full application of the precautionary approach is undertaken in 2019.

137. With respect to the application of reference points, as called for under Article 20(2) of the Convention, SPRFMO has included reference points in its initial precautionary rebuilding plan for the Jack mackerel fishery. However, these do not appear to have been fully accepted. It has not adopted any reference points, precautionary or otherwise, for other target species, bycatch fish, seabirds, marine mammals, other species of concern, vulnerable species, or benthic habitats in bottom fisheries. The Commission has asked SC to develop a tiered assessment framework, including associated reference points, for fish species but not for other ecosystem components.

138. Most respondents agreed that reference points had been adopted at least for the Jack mackerel fishery, but added qualifying comments:

We understand that the Jack mackerel rebuilding strategy is based on a limit reference point though this is not necessarily easy to find.

We think this is the right time to consider reference points for the demersal fishery and would like this work to progress.

139. The Panel notes that reference points were included in the precautionary rebuilding plan for the Jack mackerel fishery but that there appears to be some confusion around whether they were fully accepted. It recognises that work is being undertaken to consider reference points in other target fisheries, and further notes that associated reference points were currently not being considered for other ecosystem components.

### **3.5.3 Allocation criteria**

140. The SPRFMO Convention provides for allocation criteria in Article 21 to be applied by the SPRFMO Commission when taking decisions regarding participation in fishing for any fishery resource. These criteria are to be considered in conjunction with the status of the fishery resource and the existing level of fishing effort for that resource.

141. SPRFMO has applied at least some of the Article 21(1) criteria in making decisions relating to participation in fishing and allocation of total allowable catch to the Jack mackerel fishery. This is the only fishery with a catch limit/allocation at present.

142. The application of these criteria was considered by the Article 17 review panel which convened in June 2018 at the request of Ecuador. It found that the criteria in Article 21 of the SPRFMO Convention needed to be read consistently with the United Nations Convention on the Law of the Sea and the 1995 United Nations Fish Stocks Agreement.<sup>80</sup>

143. The Article 17 review panel found that there was wide discretion available to the Commission in applying the allocation criteria in Article 21, and the onus of proof to demonstrate a failure to correctly apply Article 21 was upon any challenging party.<sup>81</sup> It found that applying only a single criterion exclusively would amount to a failure to exercise the discretion correctly, but it

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<sup>80</sup> Article 17 review panel, PCA Case 2018-13, para 93.

<sup>81</sup> Article 17 review panel, PCA Case 2018-13, paras 92-93.

was not the case in the action brought by Ecuador.<sup>82</sup> The Article 17 review panel decision means there is a high hurdle to be cleared for any party to challenge effectively the validity of a catch allocation based on the exercise of discretion by the Commission under Article 21. This may mitigate against future use of the Article 17 procedure in the future.

144. In considering the application of the Article 21 criteria to the Jack mackerel fishing, most respondents agreed that the criteria had been applied properly. As one respondent said “[r]ather than focusing on individual criteria under Article 21(1), the negotiations have been more holistic in nature, recognising that many of the criteria are not readily subject to quantification and are, as a result, difficult to include in an explicit manner”. However, some recognised the difficulty of allocation decisions. Specific comments on the Jack mackerel fishery included:

We accept that we may need to approach allocation differently in future (in the conduct of the negotiations or the way in which the outcome/deliberations are recorded, or both). We think that is difficult ... but we are confident that the goodwill and cooperation we have seen in SPRFMO makes it possible to negotiate a fair outcome if the 5 year % shares are reopened.

We would like to see the Commission maintain % shares over a period of time to avoid the need to have an allocation discussion at every meeting – that gives us space in the agenda to deal with increasingly complex matters on MCS and in other fisheries, and also provides Members and their industries with a greater sense of certainty.

145. The Panel recognises the extended and challenging negotiations between Members to accommodate the interests of Members with widely differing histories and aspirations in the Jack mackerel fishery. It notes a proposal for a mechanism to potentially make available some quota for allocation to new SPRFMO Members and Members with low Jack mackerel catch allocations and would encourage further efforts in this regard.<sup>83</sup> Nonetheless the Article 21 allocation criteria provides a solid foundation for decision-making and the Panel encourages the continued consideration of the Article 21 criteria in making allocation decisions in the future for both Jack mackerel and other species.

#### **3.5.4 Unregulated fisheries, including new and exploratory fisheries**

146. SPRFMO has adopted a comprehensive measure for new and exploratory fisheries (CMM 13-2016).<sup>84</sup> As noted in the first paragraph of CMM 13-2016:

This CMM is intended to ensure that sufficient information is available to evaluate the long term potential of new and exploratory fisheries, to assist the formulation of management advice, to evaluate the possible impacts on target stocks and non-target and associated and dependent species, to ensure new and exploratory fishery resources are developed on a precautionary and gradual basis and to promote the sustainable management of new and exploratory fisheries.

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<sup>82</sup> Article 17 review panel, PCA Case 2018-13, para. 96.

<sup>83</sup> COMM6-Prop04 rev1.

<sup>84</sup> <https://www.sprfmo.int/measures/>

147. The CMM provides a framework for the preparation of new and exploratory fisheries proposals. Detailed Fisheries Operation Plans are to be submitted to the Scientific Committee, which considers the Plans and provides advice and recommendations to the Commission on such matters as appropriate precautionary catch limits, cumulative impacts and impacts on the marine ecosystem, and the sufficiency of the information available to inform the level of precaution required. Following consideration by CTC, the Commission may approve fishing in accordance with the Fisheries Operation Plan and adopt a CMM in respect of the exploratory fishery including a precautionary catch limit and any other management measures the Commission considers appropriate.
148. To date, SPRFMO has approved two exploratory fisheries. The first was a proposal for exploratory bottom longlining for toothfish by New Zealand vessels outside the bottom longlining footprint.<sup>85</sup> This included a catch limit of 30 tonnes for each of 2016 and 2017, monitored on a shot-by-shot basis, rules consistent with the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) protocol for research longline fishing on small, isolated features were applied, and monitoring and collection of information relating to marine mammals, seabirds, turtles and other species of concern. The second was a Cook Island Exploratory Potting Fishery for lobsters and crabs.<sup>86</sup> This provided for three research fishing trips over not more than 90 days per annum with a total allowable catch of 1000 tonnes. The CMM provided for the presentation at the next SC meeting of a full and comprehensive exploratory fishing proposal conforming with CMM 13-2016 and the Fisheries Operation Plan. The 2019 (7<sup>th</sup>) regular session of the Commission is to take into account SC advice and determine whether the exploratory fishing programme may continue.
149. At SC6, the Cook Islands presented its Fisheries Operation Plan for the exploratory potting fishery.<sup>87</sup> Although noting that no exploratory fishing had taken place under the CMM, SC identified three options for addressing precautionary catch limits, but noted the proposal did not adequately address criteria relating to catch limits.<sup>88</sup> In addition, New Zealand proposed extending its toothfish exploratory fishery,<sup>89</sup> and the EU proposed a new toothfish exploratory fishery.<sup>90</sup> These will be considered at COMM7 in January 2019.
150. In considering the effectiveness of SPRFMO's measures on unregulated fisheries, including new and exploratory fisheries, most respondents supported efforts by SPRFMO to address new and exploratory fisheries (see table below). Several respondents referred to CMM 13-2016 and praised the requirement for detailed planning of exploratory fisheries and the need for review by both SC and CTC prior to advice being provided to the Commission. It was also noted that CMM 13-2016 can be refined and improved as further exploratory fisheries are proposed.

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<sup>85</sup> CMM 4.14.

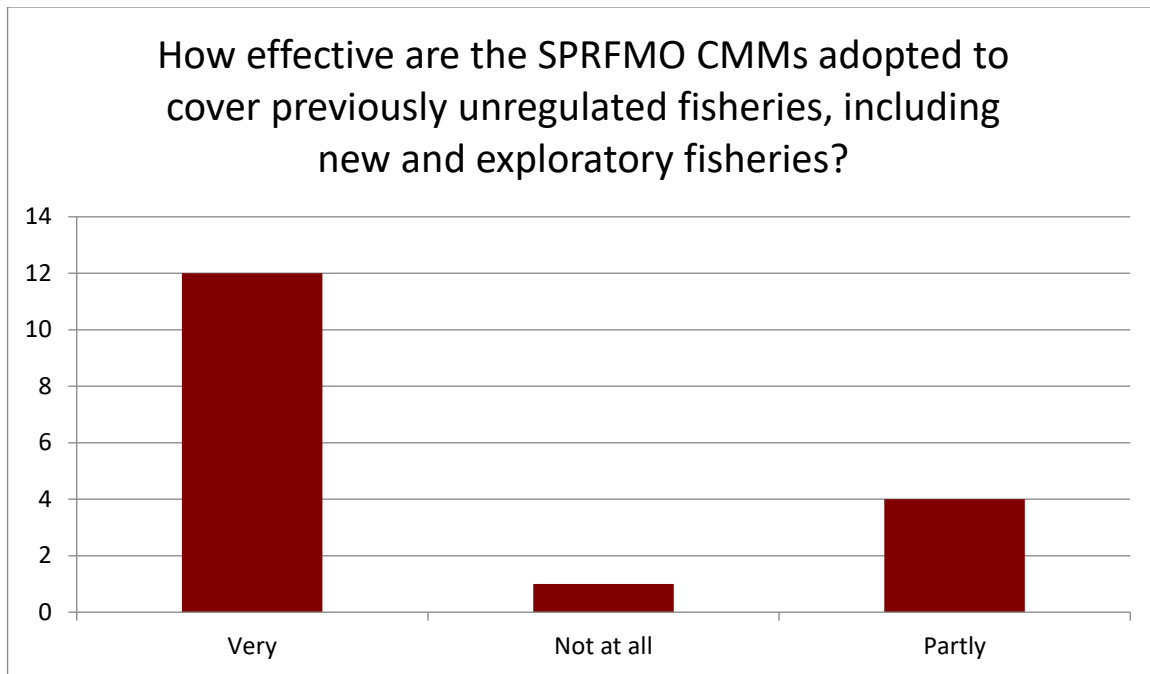
<sup>86</sup> CMM 14b-2018.

<sup>87</sup> SC6-DW01.

<sup>88</sup> SC6 – Report, para 241.

<sup>89</sup> SC6-DW03.

<sup>90</sup> SC6-DW02.

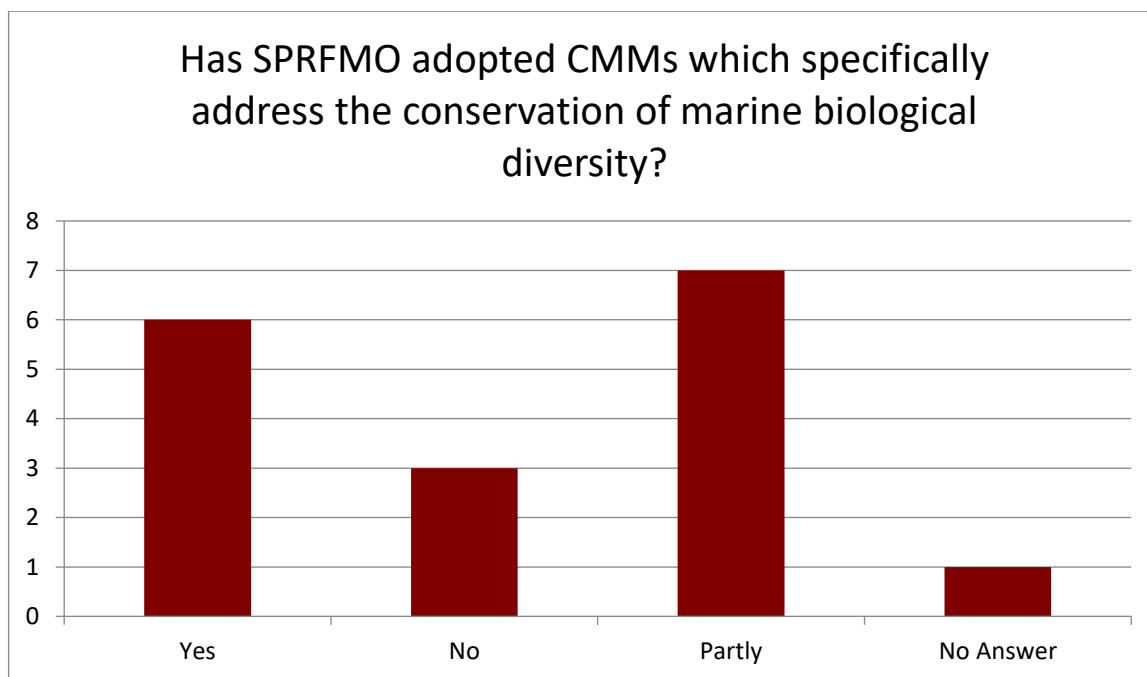


151. Nonetheless, some respondents expressed concern at the approach taken in establishing CMM 14b-2018 for the exploratory potting fishery, noting that this “will be a test case for how effective this measure is” and hoping that the potting fishery will align with CMM 13-2016 as it proceeds.
152. The Panel considers that the first exploratory fishery related to toothfish was quite precautionary. In contrast, the proposal for an exploratory potting fishery for lobsters and crabs was not fully in line with CMM 13-2016. There was no Fisheries Operation Plan prepared for review by SC and CTC prior to consideration by the Commission on appropriate management arrangements, and there was some doubt whether the 1000 tonne catch limit is sufficiently precautionary. The Panel commends the adoption of CMM 13-2018 and believes that it provides an excellent framework for the development of proposals for new and exploratory fisheries in line with the precautionary approach. It urges all proposals be reviewed through this process and for its procedural and substantive requirements to be strictly applied by the Commission and its subsidiary bodies.

### **3.5.5 Marine biological diversity and minimising adverse impacts**

153. The need to preserve marine biodiversity, avoid adverse impacts on the marine environment, maintain the integrity of marine ecosystems, and minimise the risk of long-term or irreversible effects of fishing activities are specifically referenced in the Preamble to the SPRFMO Convention. SPRFMO has prohibited the use of large scale pelagic nets and deepwater gill nets (CMM 08-2013) and adopted a CMM on minimising impact on seabirds (CMM 09-2017). It has also gone part way to addressing vulnerable marine ecosystems through the interim bottom fishing CMM (CMM 03-2017).

154. However, SPRFMO does not have a specific CMM to address marine biological diversity on a spatial scale. Information was presented to SC1 on areas in the Western and South Pacific region that met the criteria developed by the Convention on Biological Diversity (CBD) for Ecologically or Biologically Significant Marine Areas.<sup>91</sup> SC participants recognised the need for greater coordination between these parallel processes to identify and protect EBSAs and VMEs in the SPRFMO Area, in particular the requirement for greater coordination between spatial management planning processes that might result under the CBD and SPRFMO in response to identification of EBSAs and VMEs.<sup>92</sup> The impact of fishing activities on EBSAs and on VMEs was discussed further by SC in 2014 and 2015, which noted its awareness of EBSAs within the Convention Area and that any conservation needs for EBSAs would be addressed through CMMs.<sup>93</sup>
155. There is currently no SPRFMO-wide comprehensive measure to protect VMEs in the Convention Area.<sup>94</sup> Neither are measures specifically addressed to non-target species other than seabirds, including species of concern listed in Annex 14 of CMM 02-2018.
156. SC's Multi-Annual Work Plan, adopted in 2018, includes an annual review of benthic and VME indicator taxa from 2019, the collection and review of VME catch and other benthic sampling data from 2020, the development of a design approach for a review of benthic bycatch in 2019, consideration of VME and habitat suitability modelling in 2020, and the review and revision of the Bottom Fishery Impact Assessment Standard, including impacts on non-fish species in 2019.



<sup>91</sup> SC1 INF-01 Areas meeting ESBA criteria for Ecologically or Biologically Significant Marine Areas.

<sup>92</sup> SPRFMO SC1 Report, p. 10-11.

<sup>93</sup> SPRFMO SC2 2014, paragraphs 8.1; SPRFMO SC3 2015, paragraph 8.1, p. 17.

<sup>94</sup> While the Bottom Fishing CMM effectively closes most of the SPRFMO Convention Area to bottom fishing, it is not a SPRFMO-wide comprehensive measure to protect VMEs.

157. Respondents to the questionnaire gave a highly mixed response to the question of whether SPRFMO has adopted measures which specifically address the conservation of marine biological diversity (see table above). Respondents largely agreed that some efforts had been made to protect biological diversity and to minimise adverse impacts on seabirds and VMEs from fishing activities. However, most agreed that further work was required to specifically address biodiversity concerns.
158. The Panel concurs with this view and urges further work be undertaken to ensure the protection of biological diversity and the minimisation of adverse impacts from fishing.

### **3.5.6 Minimising pollution, waste, and discards**

159. Article 3(1)(a)(x) states that in giving effect to the Convention the Commission shall minimise “pollution and waste originating from fishing vessels, discards, catch by lost gear or abandoned gear and impacts on other species and marine ecosystems”.
160. SPRFMO currently has no specific CMM to address marine pollution such as pollutants prohibited under the MARPOL Annex V, waste or marine noise. There is also no clear policy on discards and catch of non-target fishery resources.
161. Data is collected under various CMMs related to associated or dependent non-main species, excessive fishing, and negative effects on ecosystems; however, they are not directed to achieving the necessary effectiveness in reducing these impacts.
162. Only three respondents felt that SPRFMO had adopted measures to address this issue, while the majority of respondents noted that thus far SPRFMO has only partly dealt with this issue.
163. While it is clear no specific measure has been adopted, or even discussed, on this topic, some respondents noted that some of the measures that have been adopted may aid in achieving this goal. For example, one respondent noted that CMM 08-2013 has helped minimise catch by ghost fishing.
164. Other respondents highlighted CMM 02-2018, which addresses the catch of non-target fishery resources and impacts on associated or dependent species and CMM 09-2017 on minimising bycatch on seabirds.
165. The Panel notes that these, and other measures, will play a role in partially meeting Article 3(1)(a)(x), but do not fully give effect to the intent of this provision.

### ***Panel’s Findings and Recommendations***

166. The Panel:
- a) **Commends** the Commission for adopting a significant number of substantive CMMs for fisheries under its purview and the efforts it has made to apply best-practice of other RFMOs to the development of CMMs;
  - b) **Recognises** the progress in collating and analysing information about Jumbo flying squid and developing stock assessments but **Considers** that the absence of a precautionary management measure for the Jumbo flying squid is problematic;



- c) **Acknowledges** the efforts being undertaken to systematically build information sufficient to undertake assessments for all deepwater stocks;
- d) **Recommends** that the Commission take urgent action to update the management measures for bottom fisheries, adopt a precautionary approach to the conservation of all deepwater stocks, and implement a SPRFMO-wide approach to the management and protection of VMEs as a matter of priority;
- e) **Commends** the work undertaken thus far to minimise bycatch of seabirds and **Recommends** that the Commission extend the CMM relating to seabird bycatch to all fisheries in the SPRFMO Convention Area;
- f) **Commends** the adoption of CMM 13-2018 as a framework for the development of proposals for new and exploratory fisheries in line with the precautionary approach;
- g) **Recommends** that the Commission and its subsidiary bodies strictly apply the procedural and substantive requirements of CMM 13-2018 for all new and exploratory fishery proposals;
- h) **Recommends** that the Commission review current efforts to give effect to Article 3(1)(a)(ii) to ensure impacts on non-target and associated or dependent species are taken into account, and Article 3(1)(a)(vii) which requires marine ecosystems to be protected, in particular those ecosystems which have long recovery times following disturbance;
- i) **Recommends** that the Commission develop conservation and management measures for species of concern, with particular priority to be given to measures to prevent adverse impacts of fishing activities on chondrichthyans;
- j) **Recognises** the difficulty of reaching allocation decisions, including in the Jack mackerel fishery, **Considers** that the Article 21 allocation criteria provide a solid foundation for decision-making, and **Encourages** the continued consideration of these criteria in making future allocation decisions for both Jack mackerel and other stocks; and
- k) **Recommends** that the Commission develop a timeline for the implementation of measures to give full effect to Article 3(1)(a)(x) on measures to prevent pollution and waste originating from fishing vessels, discards, catch by lost gear or abandoned gear and impacts on other species and marine ecosystems.

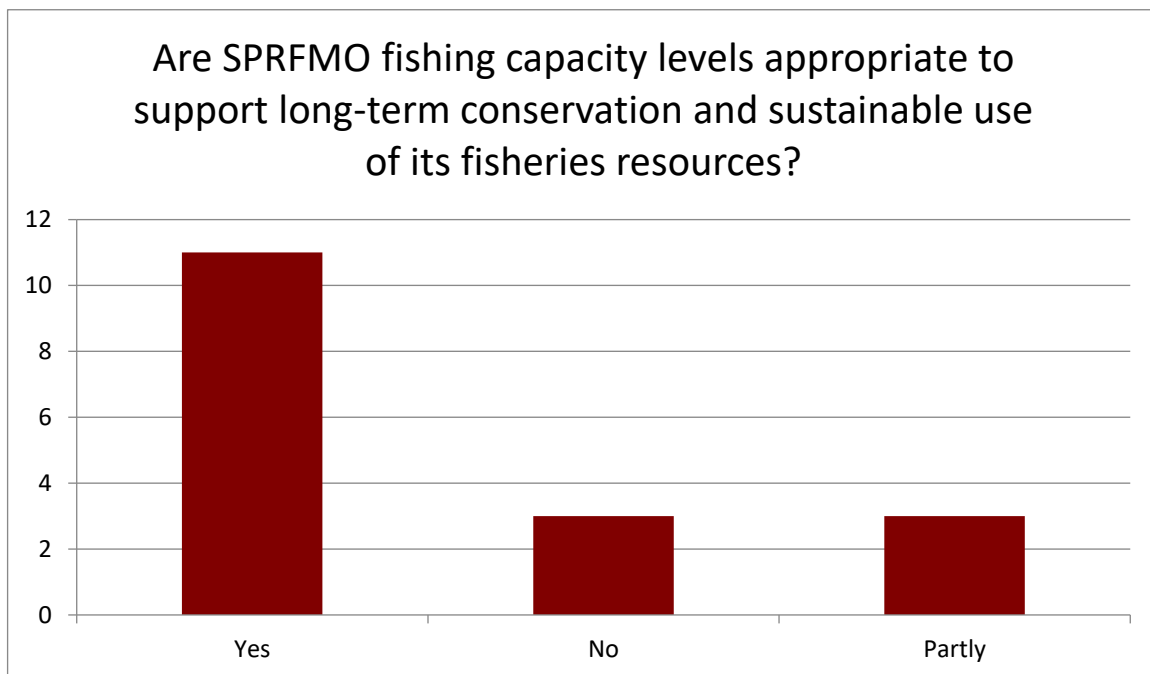
### 3.6 Capacity management

167. Article 3 of the Convention establishes as one of the principles to be applied in giving effect to the Convention that “overfishing and excess fishing capacity shall be prevented or eliminated”.<sup>95</sup> Article 20 provides for the Commission to develop CMMs including to prevent or eliminate over fishing and excess fishing capacity. Specific measures include the determination of “the nature and extent of fishing for any fishery resource including the establishment of a total allowable catch or total allowable fishing effort”.

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<sup>95</sup> Article 3(1)(a)(iii).

168. A limitation on fishing effort in the Jack mackerel fishery was the first management action taken on an interim basis by the participants in the SPRFMO negotiations.<sup>96</sup> The current CMM on Jack mackerel continues explicitly to limit fishing effort to 2007 to 2009 levels but also puts in place limits on catch.<sup>97</sup>
169. The 2007 Interim Measures also provided for the limitation of fishing effort or catch in bottom fisheries in the SPRFMO Area to existing levels in terms of the number of fishing vessels and other parameters that reflect the level of catch, fishing effort, and fishing capacity. The current CMM limits the bottom fishing catch of those participants in the fishery.<sup>98</sup>
170. There are a limited number of vessels participating in the Jack mackerel and bottom fisheries. In 2017, there were nine vessels actively fishing for Jack mackerel and three Australian flagged vessels and 11 New Zealand vessels fishing in the SPRFMO Convention Area for deepwater species.<sup>99</sup> In addition, there is in-season catch monitoring for Jack mackerel that identifies the vessels operating in the Convention Area in the previous month.<sup>100</sup> In contrast to these two fisheries, there were 302 vessels fishing in the Southeast Pacific squid fishery in 2017, an increase from 274 vessels actively fishing in 2015 and 2016.<sup>101</sup>



<sup>96</sup> 2007 Interim Measures, according to which participants agree to limit the total level of gross tonnage (GT) of vessels flying their flag fishing for pelagic stocks in 2008 and 2009 to the levels of total GT recorded in 2007 in the SPRFMO Area.

<sup>97</sup> CMM 01-2018, para 4.

<sup>98</sup> CMM 03-2018, para 8(c).

<sup>99</sup> COMM6-INF04 - 2017 List of Authorised Vessels.

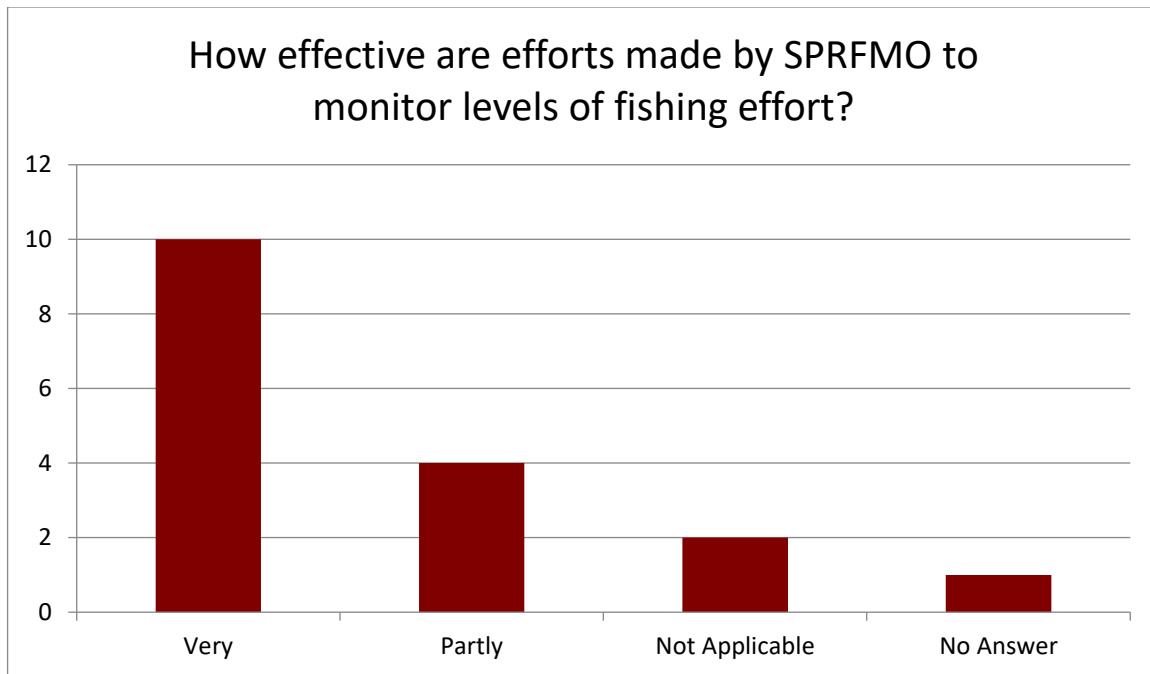
<sup>100</sup> CMM 01-2018, para 16.

<sup>101</sup> COMM5-INF04 - 2016 List of Authorised Vessels; COMM-04-INF-05 – 2015 List of Authorised Vessels.

171. The Panel examined the extent to which SPRFMO has identified fishing capacity levels commensurate with the long-term conservation and sustainable use of fishery resources, taken actions to prevent or eliminate excess fishing capacity and effort and monitor the levels of fishing effort. The responses to the Panel's questionnaire demonstrated a reasonably consistent view that SPRFMO fishing capacity levels are appropriate to support long-term conservation and sustainable use (see table above).
172. Respondents generally considered that there were no current capacity issues for the Jack mackerel or bottom fisheries. It was noted that catch limits as output controls were an effective tool for supporting long-term conservation, catch limits had been applied for the Jack mackerel fishery and catches were also constrained in the bottom fishery. However, several respondents expressed the view that there was no constraint on the Jumbo flying squid fishery and insufficient information to determine if this was an issue. One respondent also noted that the lack of management controls in this fishery was unlikely to be consistent with supporting long term conservation and sustainable use.
173. The Panel considers that the issue of fishing capacity and effort limits is closely related to catch limits and agrees that catch limits or output controls can be a more effective tool for long-term conservation and management than input controls. Where catch limits are in place, as in the Jack mackerel and bottom fisheries, there is less of an imperative to manage fishing capacity and in both these fisheries there appears to be no current capacity issues.
174. However, in the Jumbo flying squid fishery there are no catch limits, nor sufficient information to determine whether the current level of fishing effort is appropriate. The Panel has noted the recent increase in fishing effort in this fishery as well as the considerable work being undertaken in the SC's Squid Working Group to better understand this fishery. The Panel considers that the Commission should look to stabilise fishing capacity in this fishery on an interim basis while further data collection and research is undertaken to determine the stock status and management advice for Jumbo flying squid. This would assist in addressing the concerns of some respondents that SPRFMO had not taken sufficient action to prevent or eliminate excess fishing capacity and effort in that fishery.
175. Monitoring of fishing effort is achieved through SPRFMO's comprehensive data collection processes for fishing activities.<sup>102</sup> Fishing effort is registered at fine temporal and spatial scales for all fisheries activities in the SPRFMO area. VMS, observer requirements and monthly catch reporting also apply to the Jack mackerel and bottom fisheries.
176. In general, respondents considered that SPRFMO had made effective efforts to monitor levels of fishing effort (see table below). There was, however, some concern over the insufficiency of data being provided in the squid fisheries. One respondent also noted the need for regular data submission or other means of monitoring in order to ensure that sustainable catch levels are not exceeded in future. Those respondents recording "not applicable" did so on the basis that SPRFMO essentially managed on the basis of catch limits, rather than effort limits.

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<sup>102</sup> CMM 02-2018.



177. The Panel acknowledges the importance of monitoring, including of fishing effort. While there does not appear to be an issue at present with the level of fishing effort in the Jack mackerel and bottom fisheries, and insufficient information to determine whether this is an issue in the Jumbo flying squid fishery, the Panel considers that capacity should continue to be monitored in the future in case effort increases and leads to overfishing or TAC overshoot, especially in olympic fisheries or where TACs are small, as may be the case in future for deepwater stocks.

***Panel’s Findings and Recommendations***

178. The Panel:

- a) **Notes** that there does not appear to be excess fishing capacity in the Jack mackerel and bottom fisheries under existing catch controls, and although recent information indicates the Jumbo flying squid is not of conservation concern, there is insufficient information to determine whether the current level of fishing capacity in this fishery is appropriate;
- b) **Recommends** that the Commission maintain and enhance monitoring of fishing capacity systematically in all fisheries, especially where there is a risk that catch limits may be exceeded in future; and
- c) **Recommends** that the Commission consider the implementation of fishing effort limits in the Jumbo flying squid fishery based on existing fishing capacity as a precautionary interim measure pending further scientific and management advice from the Scientific Committee.

## 4. COMPLIANCE AND ENFORCEMENT

179. Article 3 establishes, as one of the core principles in giving effect to the Convention, that “effective compliance with conservation and management measures shall be ensured and sanctions for any violations shall be adequate in severity to discourage violations wherever they occur and in particular shall deprive offenders of the benefits accruing from their illegal activities”.<sup>103</sup>
180. Article 8 further identifies the development of “effective monitoring, control, surveillance, compliance and enforcement procedures,” and “processes ... to assess flag State performance with respect to the implementation of their obligations under this Convention” as among the functions of the Commission.<sup>104</sup>
181. The inclusion of compliance and enforcement issues in the core principles and functions of the Commission highlights that these are not issues solely on the shoulders of flag states (see Articles 24 and 25 discussed further below), but that compliance and enforcement are the responsibility of the Commission as a whole.
182. Responses to the questionnaire show a diversity of perspectives on how the Commission is doing in relation to compliance and enforcement matters, running the gamut from top marks to much room for improvement. In addition, responses from some Members and CNCPs show that they are focused solely on how well they have implemented their obligations rather than looking at the bigger picture of the Commission as a whole.

### 4.1 Flag State Duties

183. Article 24 outlines the obligations of Members of the Commission to 1) implement the Convention and any CMMs; 2) cooperate in furthering the objective of the Convention; 3) take necessary measures to prevent, deter and eliminate IUU fishing; and 4) collect, verify and report scientific, technical, and statistical data.<sup>105</sup> Article 24(2) also requires that Members report on their implementation of the CMMs and compliance and enforcement procedures. Members are also required to take measures and cooperate to ensure compliance by their nationals and fishing vessels owned, operated or controlled by its nationals, and to investigate any violations.<sup>106</sup> Under Article 24(4), Members must make evidence related to alleged violations available to prosecuting authorities of other Members. And finally, Members must fulfil the obligations of the Convention in good faith and exercise their rights under the Convention without an abuse of right.<sup>107</sup>
184. Article 25 further articulates the specific Flag State Duties under the Convention. Paragraph 1 requires that Members must ensure that their vessels: 1) comply with the Convention and CMMs; 2) do not conduct unauthorised fishing in waters under national jurisdiction adjacent to

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<sup>103</sup> Art. 3(a)(ix).

<sup>104</sup> Art. 8(g) and (h).

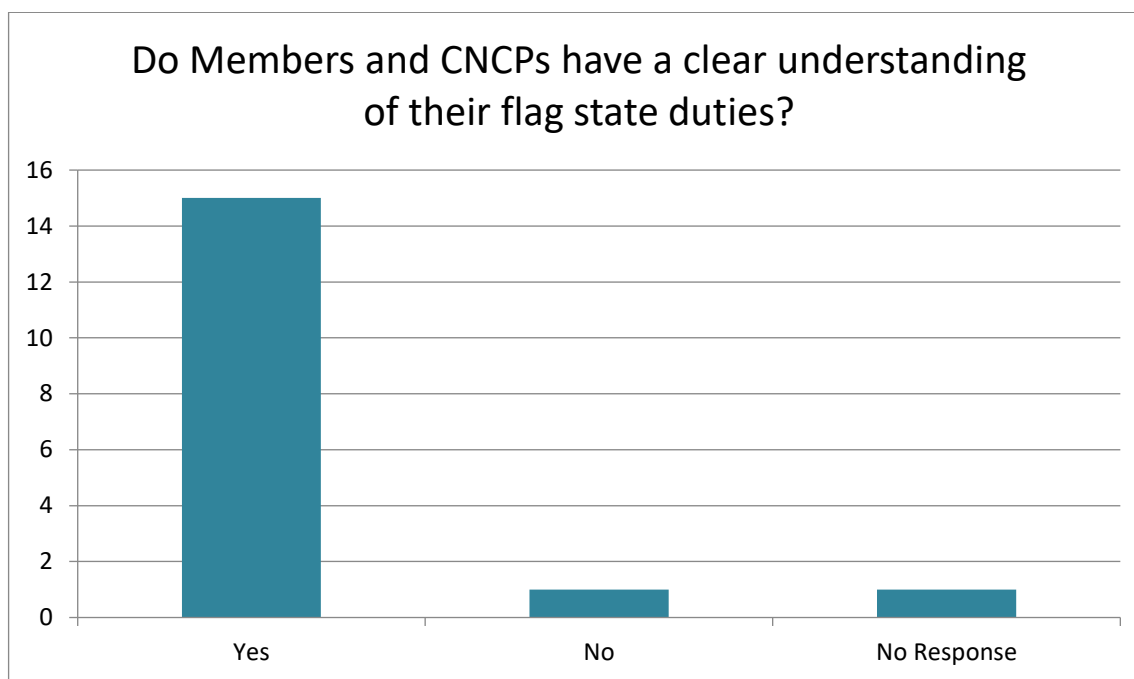
<sup>105</sup> See Art. 24(1).

<sup>106</sup> See Art. 24(3).

<sup>107</sup> See Art. 24(5).

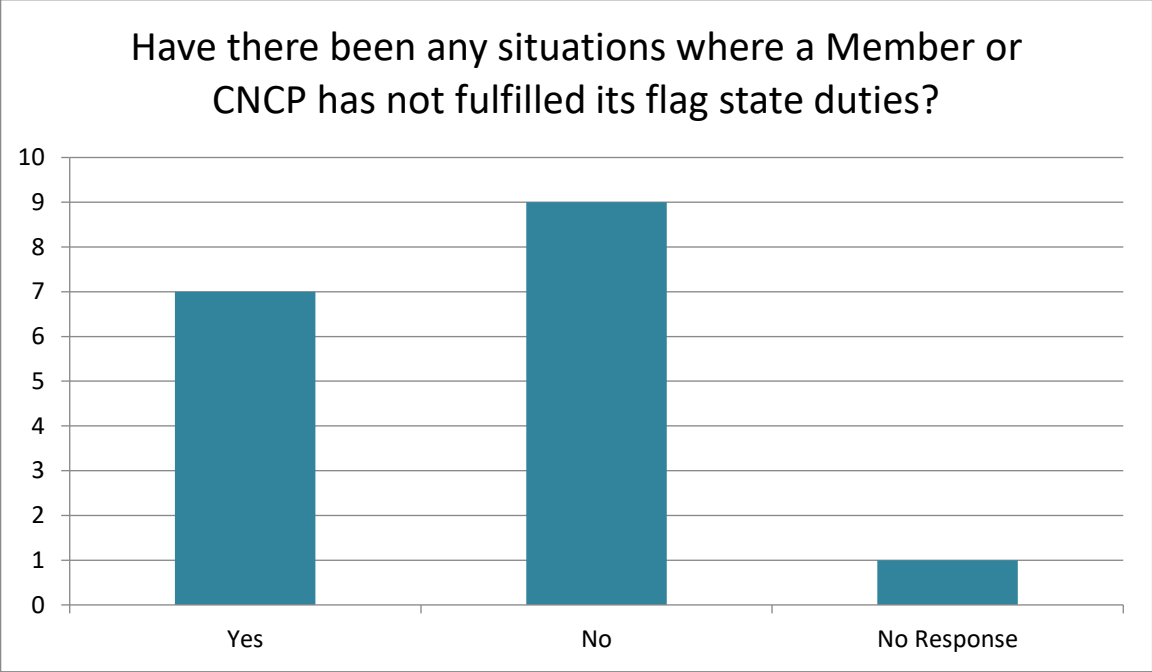
the Convention Area; 3) carry the required Vessel Monitoring System (VMS) equipment and operate it in accordance with the adopted standards and procedures; and 4) land or transship fishery resources caught in the Convention Area. It also specifies flag State requirements relating to authorisations to fish, vessel registries, investigations, penalties and sanctions, and limitations on flag vessels' operations in the Convention Area.

185. In the questionnaire, the Panel first sought to determine how well Members and CNCPs understood their flag State duties and then identify any room for improvement as well as the underlying causes for any instances where Members and CNCPs were unable to fulfil their responsibilities.



186. As indicated by the table above, respondents almost uniformly believe that they have a clear understanding of their flag State duties. A review of the narrative responses, however, reveals that the reality is not quite so clearcut. Nearly all respondents feel that Article 25 sets out the flag state obligations clearly, but only a few respondents noted that compliance with Article 25 also requires compliance with and an understanding of obligations set out in CMMs.
187. Respondents generally focused on the lack of compliance issues with Article 25 as evidence that the flag state duties are well understood. However, one Member noted that even as recently as the annual meeting in 2018, there was evidence that Members and CNCPs were interpreting their obligations in CMMs differently. This Member stressed the importance of consistent interpretations of CMMs and said it would like the Commission to devote additional time to improving consistency in interpretations.
188. Other respondents, despite indicating that the obligations were well understood, commented that the failure of some Members and CNCPs to comply with their obligations was evidence that there was a lack of understanding of their obligations.

189. The Panel is of the view that the failure to meet an obligation is not always evidence of a lack of understanding of that obligation. Clearly, however, regardless of whether Members and CNCPs understand all of their obligations, over half of the respondents think that there is room for improvement in implementation of those obligations.



190. A review of recent Final Compliance Reports does not indicate a troubling lack of compliance, and in fact, they demonstrate a positive trend in terms of improvement in the levels of compliance. It is expected that in the early years of the Commission it would take some time before all Members and CNCPs are able to fully implement their obligations and that there would be steady improvement in implementation. The Final Compliance Reports back this up.

191. In response to the question “If a Member or CNCP has not fulfilled its flag state duties, what do you think the reason for this is?”, lack of knowledge, capacity, and political will were all identified as factors.

192. From discussions with the Secretariat, and review of the responses to the questionnaire, it is clear that language barriers may be contributing to a lack of knowledge or an incomplete understanding of Members and CNCPs’ implementation obligations. Under the Commission’s Rules of Procedure (ROP), “English shall be the official and working language of the Commission”, but the ROPs also state that the Secretariat “shall produce official Chinese, French, Russian and Spanish translations of the texts of the Convention, Rules of Procedure, Financial Regulations and any other documents as the Commission may decide”.<sup>108</sup>

193. The Secretariat has noted that due to budgetary constraints limited translations have been completed. Translating all CMMs into Chinese, French, Russian and Spanish may not be

<sup>108</sup> ROP, Rule 10.

necessary and will be expensive; however, there may be some measures where there have been implementation challenges that would benefit from translation.

194. One Member noted that it would be helpful if Members and CNCPs could clearly identify those areas where there is a lack of knowledge/understanding of their obligations in order to help the Commission better address those areas.
195. Similarly, identifying clear audit points or implementation requirements for each conservation and management measure could improve Members and CNCPs' understanding and ability to implement their obligations fully.
196. A recent independent review of the Compliance Monitoring Scheme of WCPFC recommended the development of audit points for CMMs to aid in the assessment of Members and CNCPs' compliance.<sup>109</sup> The development of audit points could be helpful in the implementation process in addition to the compliance process. In addition, SPRFMO is at an earlier stage of development than WCPFC, with many fewer measures. Making the effort to clearly articulate the obligations/audit points of existing measures and building that into the development of new measures could feasibly be undertaken in a year by an intersessional working group of Members.
197. Over half the responses to the questionnaire indicated lack of capacity as at least one of the reasons why Members and CNCPs have not fulfilled all their flag state obligations. Despite this, there does not seem to be any mechanism whereby capacity building needs or requests are captured in one place.
198. The Final Compliance Report from 2017 (covering activities from 1 November 2015 – 31 October 2016), included the following language: "The CTC identified possible issues of capacity and agreed that the CTC should consider ways to include provision of technical assistance or capacity building in preparation of implementation reports and appropriate follow-up actions including compliance action plans. The CTC recommends that the Commission ask the Chairperson of the Commission and the CTC Chairperson to engage bilaterally and intersessionally with the corresponding Members and CNCPs in order to identify possible shortcomings, ascertain possible solutions and courses of action. The Secretariat will facilitate this process".
199. The meeting report from 2018 does not indicate whether or not this occurred, but the Panel thinks that there would be benefits to the Commission of consolidating all of the capacity building needs and requests in one place where they can be tracked. This will help ensure that such needs and requests are not lost and will assist those who might be in a position to meet those needs in connecting with those in need. Furthermore, such consolidation would help the Commission evaluate and prioritise these needs and requests.
200. Lack of political will was also identified as a potential cause for failure to fulfil flag state duties. This is often the hardest to address and sometimes can be difficult to identify. By addressing lack of knowledge and lack of capacity, it becomes easier to identify when a failure to implement an obligation stems from a lack of political will. Isolating those circumstances can also have a

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<sup>109</sup> See <https://www.wcpfc.int/node/31636>.



positive effect on influencing political will, as few Members and CNCs will want to be characterised as lacking the political will to comply with their obligations under the Convention.

201. In responding to the question “Are there ways that Members and CNCs could better fulfil their flag state duties?”, respondents provided a wide array of suggestions, including the expected recommendations to improve understanding of their obligations, build capacity to implement obligations and address the lack of political will. In addition, respondents suggested that greater international cooperation, strong remedial action in response to non-compliance, and improved quality and timeliness of data submissions could all help Members and CNCs better fulfil their flag state duties.

### *Panel’s Findings and Recommendations*

202. The Panel:

- a) **Commends** the Convention’s recognition that compliance issues are integral to the effective functioning of the Commission;
- b) **Recognises** the steady improvement in implementation compliance demonstrated through the Final Compliance Reports;
- c) **Notes** that although the vast majority of the Members and CNCs claim a clear understanding of their flag state duties, they also indicate that there is room for improvement in implementation;
- d) **Encourages** Members and CNCs to identify those measures where there is a lack of understanding of the implementation obligations;
- e) **Recommends** the translation of those measures identified in d) above into the languages necessary to improve Members and CNCs’ understanding of their obligations;
- f) **Recommends** the Commission convene an intersessional working group (electronic) to identify the audit points/implementation obligations for all existing measures, and that all new measures adopted by the Commission identify the audit points/implementation obligations;
- g) **Notes** that lack of capacity has been identified by more than half the Members and CNCs as one of the reasons that all flag state obligations have not been fulfilled; and
- h) **Recommends** that the Commission, in conjunction with the Secretariat, consolidate, and make publicly available, a list of capacity building needs and requests identified by Members and CNCs in order to track progress, prioritise the needs and requests, and facilitate the ability of others to meet them.

## **4.2 Port State Measures**

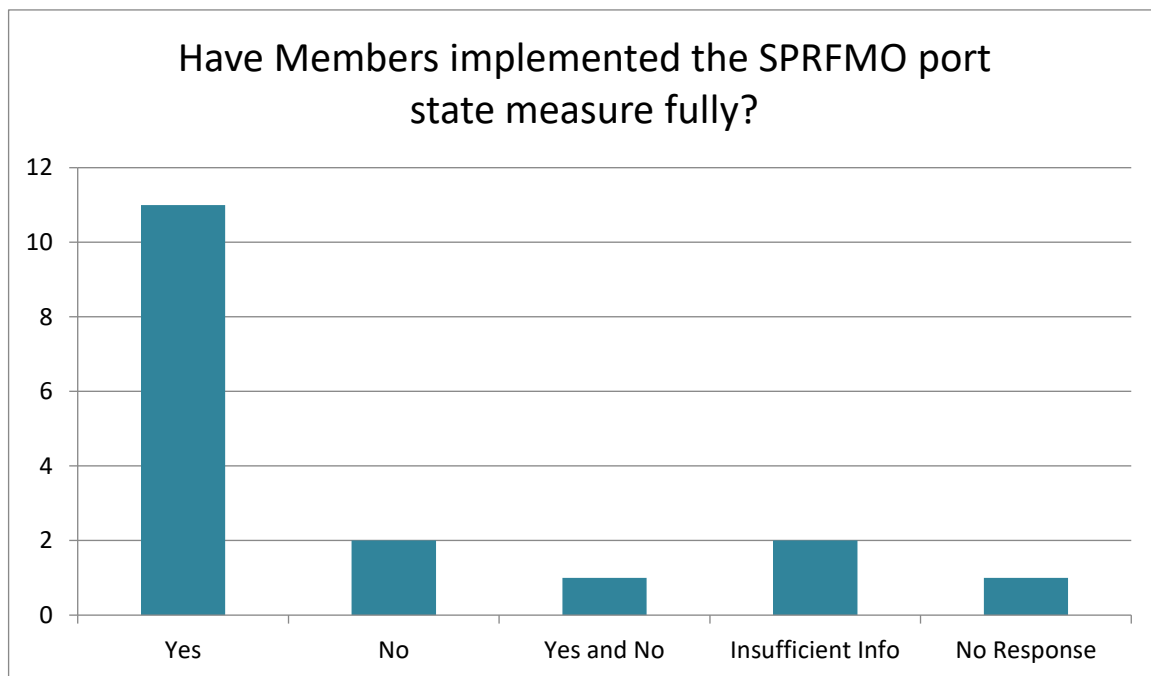
203. Article 26 of the Convention specifies that port State Contracting Parties have the right and duty to “promote the effectiveness of subregional, regional and global conservation and management measures”.<sup>110</sup> It further states that each Member shall: 1) give effect to CMMs in relation to entry and use of ports by fishing vessels that have fished in the Convention Area

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<sup>110</sup> Art. 26(1).

with respect to landing and transshipment of fishery resources, inspection of documents, catch and gear and use of port services, and 2) provide assistance to flag States in ensuring compliance by their vessels when they are voluntarily in the port of a port State.<sup>111</sup>

204. If a port State considers that a fishing vessel using its port has violated the Convention or a conservation and management measure, it shall notify the flag State concerned, the Commission, and other relevant States and appropriate international organisations.<sup>112</sup>
205. In 2014, the Commission adopted a Port Inspection conservation and management measure, which was superseded by a revised measure in 2017, CMM 07-2017. The scope of this measure is to provide “an effective scheme of port inspections in respect of foreign fishing vessels carrying SPRFMO-managed species caught in the SPRFMO Convention Area and/or fish products originating from such species that have not been previously landed or transhipped at port, or at sea following the applicable SPRFMO procedures”.<sup>113</sup>
206. The Final Compliance Reports for the past three years show improvement in Members and CNCPs’ compliance with the obligations of the Port Inspection measure. Where there is non-compliance, it appears to stem either from late submission of reports or the inability to determine whether the obligation has been implemented.

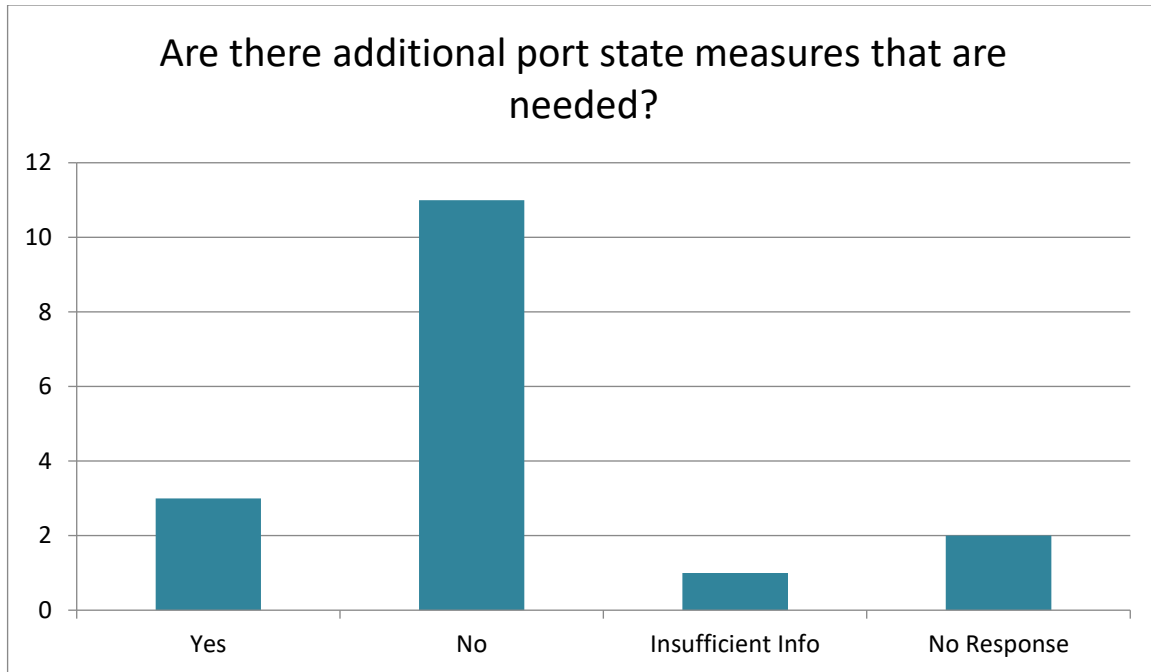


<sup>111</sup> Art. 26(2).

<sup>112</sup> Art. 26(3).

<sup>113</sup> CMM 07-2017, para 1.

207. The responses to the questionnaire, however, show some confusion and indicate a lack of sufficient information to affirmatively state whether Members and CNCPs are fully implementing this obligation. Thirty-five percent of those responding could not affirmatively state that the measure was being fully implemented (see table above).
208. In their comments, respondents noted that they had no reason to think that the measure was not being fully implemented but simply did not have sufficient information to know. In addition, some responses note that the measure will not apply to all Members and CNCPs as some of them do not have foreign vessels offloading fisheries resources caught in the Convention Area in their ports.
209. Respondents appear to have confidence in the effectiveness in the Port Inspection CMM. However, there were still comments that indicated that there were areas for improvement.
210. One Member noted that the level of inspections remained low and that the effectiveness of the measure could be improved with increased inspections. Two Members or CNCPs noted that greater consistency with the FAO Port State Measures Agreement (PSMA) would improve the effectiveness of the Port Inspection measure. In particular, one Member suggested clarifying the obligations of port States to allow/deny port entry and port services in respect of vessels that may have engaged in IUU fishing. For potential IUU vessels, the PSMA obligation is to deny port entry, but entry can be allowed for the purposes of an inspection, provided port services are denied. The SPRFMO Port Inspection measure allows a port State to choose whether to allow/deny port access to a potential IUU vessel and if access is allowed, the State must follow specified inspection procedures. However, the inspection procedures do not differentiate between potential IUU and non-IUU vessels (e.g., paragraph 15 says Members should inspect at least 5% of vessels, but it should differentiate so that all potential IUU vessels have to be inspected), representing a potentially significant departure from the PSMA.
211. The Panel agrees that this is an area for improvement in the Port Inspection measure. Clarifying that all potential IUU vessels be inspected would improve the effectiveness of the measure to prevent any Members or CNCPs' ports from being used to land or transship fishery resources caught in the Convention Area.



212. The majority do not see the need for additional port state measures at this stage, although at least a handful think some improvements are needed.
213. Two responses indicated improvements along the lines of those discussed above. One Member recommended expanding the Port Inspection measure to apply not just to foreign vessels, but also to domestic flagged vessels.
214. The Panel notes that the Port Inspection measure is due to be reviewed in 2019, which will provide another opportunity in the near future, hopefully with improved reporting, to evaluate the current effectiveness of the measure.

***Panel’s Findings and Recommendations***

215. The Panel:
- a) **Commends** the Commission for adopting a Port Inspection regime in 2014 and then further refining the measure in 2017;
  - b) **Notes** that some Members and CNCs indicate insufficient information about Members and CNCs’ implementation of the measure to fully evaluate its effectiveness;
  - c) **Recommends** that the report from the Secretariat, required by paragraph 35 of the Port Inspection measure, be enhanced to clearly specify whether any vessels have been denied entry under the measure, and if so, the basis for the denial;
  - d) **Encourages** the Secretariat to clarify reporting requirements for Members and CNCs if it is not receiving sufficient information to meet the recommendation above;
  - e) **Notes** that the Port Inspection measure is due to be reviewed in 2019;

- f) **Recommends** that the Commission revise the Port Inspection measure to specify that all potential IUU vessels should be inspected and consider other revisions to improve reporting by Members and CNCPs of their implementation of the measure; and
- g) **Notes** that improved reporting may indicate the need for further revisions to the Port Inspection measure in future.

### 4.3 Monitoring, Control and Surveillance

216. Article 27 of the Convention states that the Commission shall establish “appropriate cooperative procedures for effective monitoring, control and surveillance of fishing and to ensure compliance with this Convention and the conservation and management measures adopted by the Commission”.<sup>114</sup> It specifically identifies: an authorised vessel list; an inspection program, both at sea and in port; regulation of transshipment; reporting on violations detected, progress and outcomes of investigations, and enforcement actions taken; and addressing IUU fishing activities.<sup>115</sup> It also discusses market-related measures, which are addressed in Section 4.6 below.
217. The Commission has made great strides in hitting each of these marks in these early days of the Commission. It adopted an IUU Vessel List in its first annual session in 2013, and has amended the measure twice since then.<sup>116</sup> In 2014, it adopted an authorised vessel list (currently CMM 05-2016), a Vessel Monitoring System (currently CMM 06-2018), and a measure for Port Inspections (currently CMM 07-2017). All of these MCS measures have been amended at least once since initial adoption. In 2015, the Commission adopted a Compliance Monitoring Scheme (currently CMM 10-2018), a Boarding and Inspection measure (CMM 11-2015), and a Transshipment measure (currently CMM 12-2018). In 2016, the Commission adopted a measure for Vessels without Nationality (CMM 15-2016). And in 2018, SPRFMO established an Observer Programme (CMM 16-2018).
218. In six short years, the Commission has established an impressive array of MCS tools, and has sought to refine and fine-tune them along the way. This demonstrates a commitment to the mandates of Article 27 of the Convention.
219. Adopting MCS measures, however, is not enough, in and of itself. In order for the MCS measures to be effective, they have to be well-tailored to enable monitoring of and ensure compliance with the CMMs that are adopted. In other words, can you use the MCS tools you have to detect violations of the measures that have been adopted?
220. Members and CNCPs overwhelmingly felt that SPRFMO’s MCS measures were well-tailored to their needs. Respondents indicated that the Commission’s suite of MCS measures was what was needed to detect violations and ensure compliance with its CMMs.
221. The Panel generally concurs with this assessment and finds that the tools that have been established or that are currently in development are the right tools to deter violations and ensure

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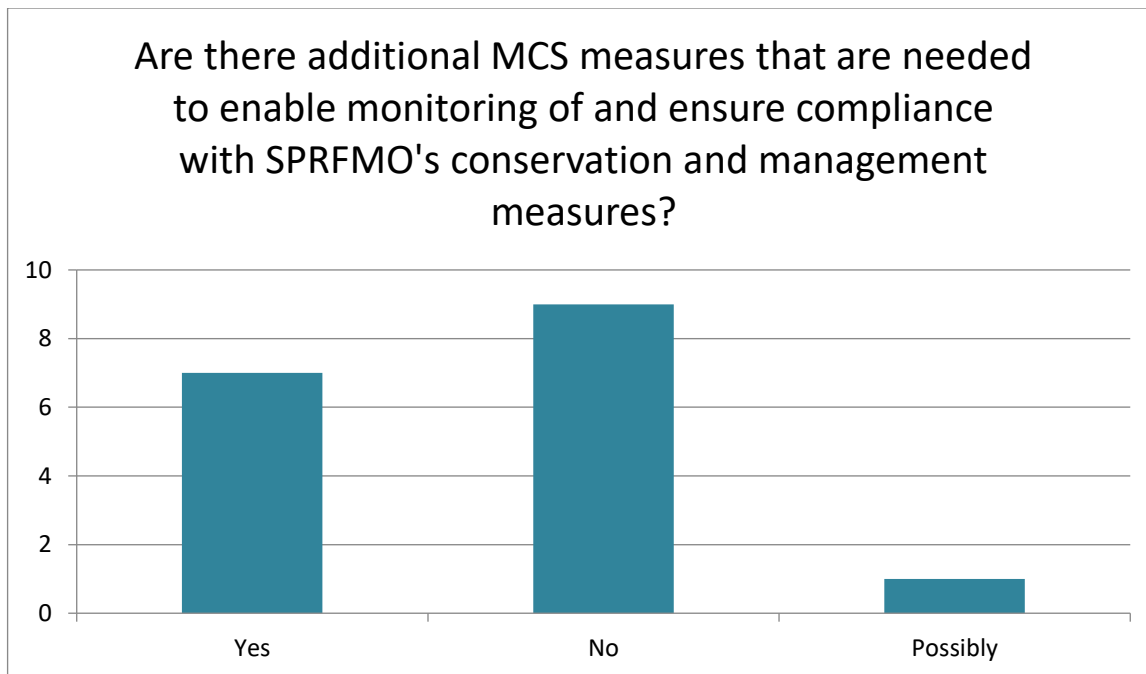
<sup>114</sup> Art. 27(1).

<sup>115</sup> Art. 27(1).

<sup>116</sup> See CMM 04-2017.

compliance. The one exception to this is the Commission’s boarding and inspection scheme. Currently this measure merely cites Articles 21 and 22 of the 1995 Agreement (UN Fish Stocks Agreement). We see many benefits from the Commission adopting its own high seas boarding and inspection scheme that is tailored to the Convention, its Members and CNCPs, and its fisheries.

222. We do recognise, however, that the Commission has attempted to adopt its own high seas boarding and inspection regime, without success thus far. We applaud the foresight in the drafting of the Convention to make the application of Articles 21 and 22 of the 1995 Agreement automatic after a period of three years.<sup>117</sup> Nonetheless, the Panel recommends that Members and CNCPs continue to work toward the goal of a SPRFMO-specific high seas boarding and inspection regime.



223. Although a number of respondents said there were additional MCS measures needed, most comments referred to the need to fully implement the MCS measures that already exist. Some respondents also noted the need for a SPRFMO-specific high seas boarding and inspection regime.

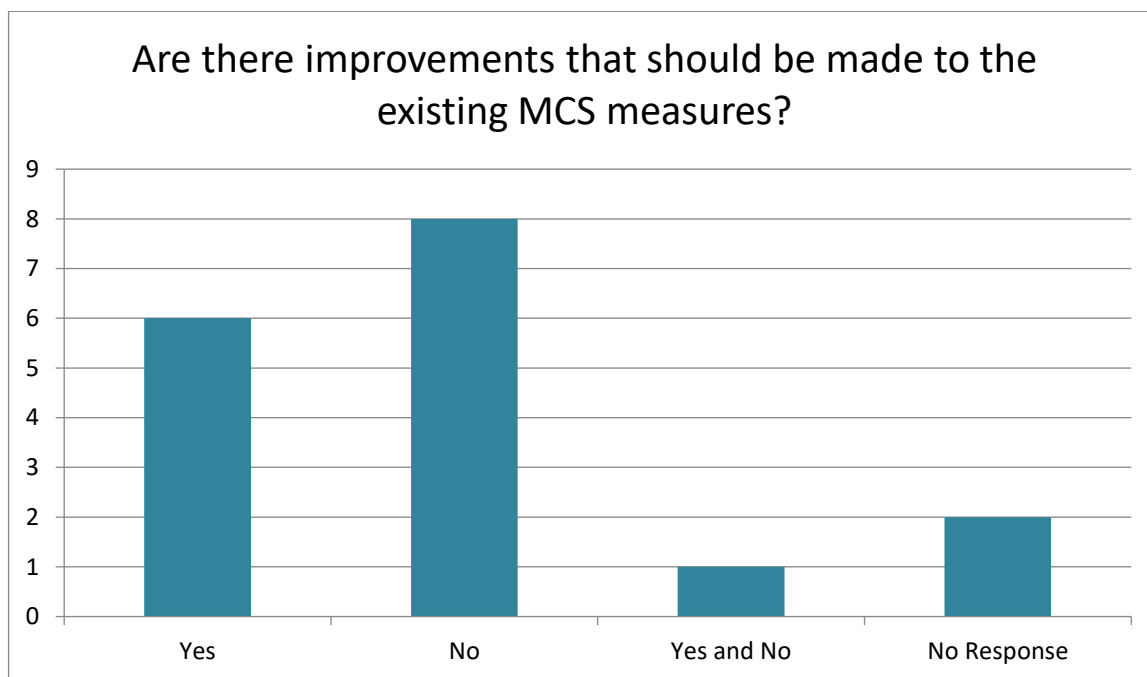
224. One Member identified a number of gaps in the current MCS measures, including: measures for the control of nationals, vessel marking and identification, Non-contracting Party vessel sightings (which can inform outreach efforts and assist in combatting IUU fishing), and lost/abandoned/discarded gear. Another Member noted that the possibility of developing a Catch Documentation Scheme in the future.

225. The Panel notes that there are two other related issues that have been generating significant interest and discussion in the international realm – observer safety and concerns about forced

<sup>117</sup> See Art. 27(3).

labour in the fishing industry. As discussed below, it may be possible to incorporate provisions related to observer safety into the SPRFMO Observer Programme measure during its 2019 review. Regardless of whether these two issues are ripe for discussion at the Commission immediately, they are likely to come up in the near future as they continue to receive significant international attention. The Panel wants to highlight these as issues of potential future interest and attention.

- 226. From the perspective of the Panel, the current suite of MCS measures (with the addition of a SPRFMO-specific high seas boarding and inspection regime) is sufficient to meet the needs of the Commission at this time. This is not to say that we do not see the value of the additional MCS measures identified above, but rather it is a recognition of the significant efforts towards implementation of existing or developing MCS measures that are needed.
- 227. Based on our conversations with the Secretariat’s Executive Secretary and staff, we are concerned that the Secretariat had reached its capacity to implement the MCS measures with the Commission Vessel Monitoring System, and the implementation of the Observer Programme would put it beyond its capacity to deliver, in the absence of additional resources.
- 228. The Secretariat has done admirable work to implement the existing MCS measures, but we cannot help but be concerned by the dearth of specific compliance expertise among the Secretariat’s staff. It is important to give the Secretariat every opportunity to excel at meeting its tasks by providing it with the necessary expertise and resources.
- 229. Furthermore, even if implemented, the Secretariat does not have sufficient resources to analyse the data captured through the MCS measures. Without analysis, these data have little meaningful import.



230. There was a mixed response from respondents on whether there were improvements needed to existing MCS measures. A number of respondents saw the most critical issue the need to fully implement existing measures.
231. As noted above, the Panel also believes that implementation of existing MCS measures should be a priority. However, through the process of implementation, we often discover useful changes that can be made to existing measures to improve their functioning.
232. Members and CNCP flagged some improvements that were needed to a number of existing MCS measures, including the VMS, transshipment, Observer Programme, IUU Vessel List and CMS measures.
233. Implementation of the VMS measure seems to be progressing fairly smoothly, however, there were some needed improvements recommended by Members and CNCPs. The suggested improvements include the need to increase the polling rate, clarification of arrangements for accessing VMS data from the Secretariat without flag State consent (including the spatial/temporal aspects), and the need to ensure that Members and CNCP have arrangements in place to prevent tampering with units by their vessels. In addition, one Member would like to see coastal States given restricted access to VMS data that allows them to receive near real-time information about vessels on the high seas within 100nm of their EEZs, for MCS purposes, similar to that of WCPFC.
234. In the Panel's view, the VMS measure seems to be a strong and coherent measure. We do, however, see that there are some small improvements that could be made. First, in paragraph 17, the requirement is solely that Members ensure that their vessels "install and use" the required VMS units. The term "use" is ambiguous and does not imply the level of use that we imagine should be expected. Changing paragraph 17 to read "install, activate and continuously operate" would eliminate the ambiguity and make clear the level of use that Members are expected to require of their vessels. We also agree with the comment above that additional clarity could be provided to the process for requesting and obtaining VMS data from vessels flagged to other Members and the addition of access to a 100 nautical mile buffer could provide benefits. We note, however, that the VMS measure is due to be reviewed in 2020, and do not see the recommended improvements discussed as sufficiently urgent to warrant moving that review up a year earlier to 2019.
235. Several Members or CNCPs recommended improvements to the SPRFMO Observer Programme. The Panel notes that this measure was just adopted in 2018 and is not scheduled to enter into force until 90 days after the conclusion of the 2019 Annual Meeting, therefore, it may be premature to evaluate it in any great depth. It was noted that there are a number of aspects that need to be finalised before the measure enters into force, including: arrangements for selecting the accreditation provider; the process for obtaining, maintaining, and revoking accreditation; reviewing the rights and duties established for observers and crew on board fishing vessels; and levels of observer coverage need to be established. We also note that at least some aspects of the measures will be reviewed at the 2019 Annual Meeting.
236. We urge the Commission to give the Observer Programme measure significant attention in 2019. Obviously, establishing observer coverage levels is an essential element that must be

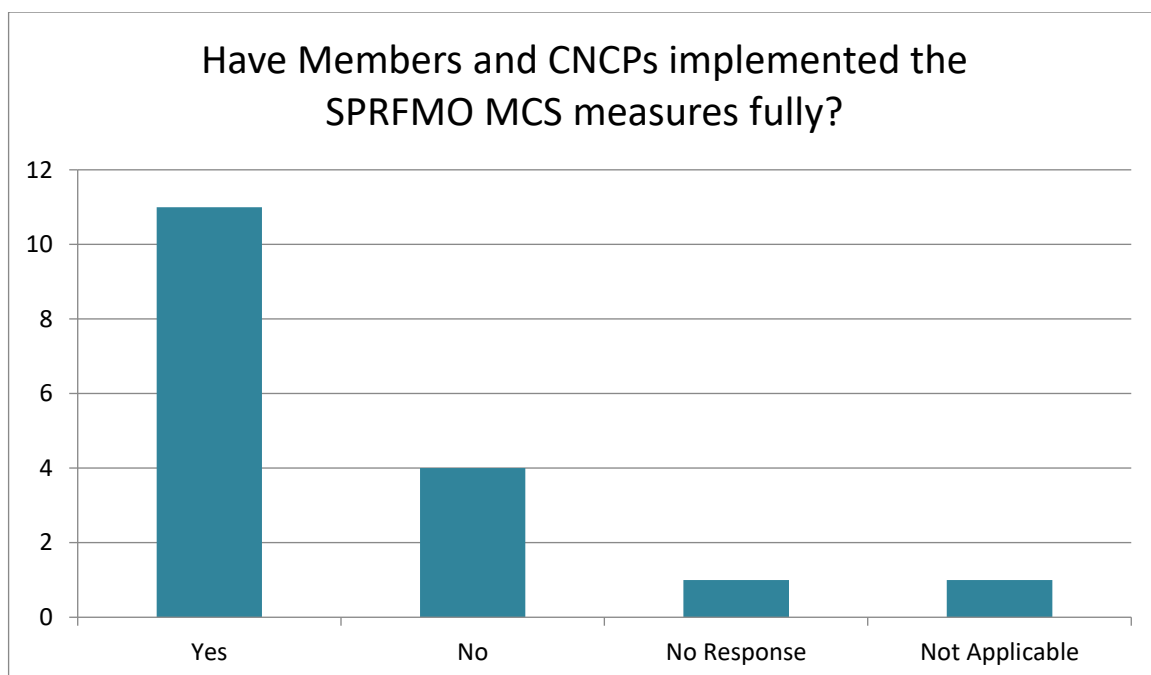


addressed. It is also critical to clearly establish the process for obtaining, maintaining and revoking accreditation *before* there are any issues or questions related to accreditation. The Panel also notes that we are not clear on how paragraphs 2, 5 and 6 interact with each other. In particular, paragraph 6 seems to imply that observers may be selected individually, which if correct, would seem to have potential to undermine the intent of paragraphs 2 and 5 of ensuring that observers be independent and impartial. We suggest that the Commission may want to revisit these paragraphs during its review in 2019 and either revise paragraph 6 or clarify its relationship with paragraphs 2 and 5. Finally, the Panel also notes that several other RFMOs have been working to address the issue of observer safety and encourages the Commission to consider adding elements relating to observer safety into the observer measure during its review in 2019.

237. The Transshipment measure also generated some comments from respondents in particular related to the area of application which has been subject to differing interpretations. Some respondents read the measure as only requiring that transshipment of SPRFMO-managed species must be between vessels on the Record of Authorised Vessels when it occurs in the Convention Area, while others read it as applying wherever the transshipment occurs. The measure is due to be reviewed at the Annual Meeting in 2019, and this difference of interpretation should be addressed at that time.
238. In addition, the Panel notes that the Transshipment measure does not require that transshipments be observed, which can pose a large gap in effective monitoring of transshipment activities. We recommend that the Commission consider closing this gap when it reviews the measures in 2019.
239. At the Annual Session in 2018, there were differences of opinion between Members and CNCPs on the requirements of the IUU Vessel List measure. Specifically, the disagreement revolved around the issue of whether a Member was required to revoke an IUU-listed vessel's authorisations to fish anywhere in the world or only in the SPRFMO Convention Area. This difference of opinion made reaching consensus on the IUU Vessel List difficult and should be resolved. In addition, a Member noted the need to clarify that the modification procedures apply not only intersessionally, but also at the annual session.
240. The Panel sees these clarifications to the IUU Vessel List as needed, but does not see them as an immediate priority compared to other work described above and below.
241. The Commission's Compliance and Monitoring Scheme (CMS) measure is a good measure and contains many important elements. There are a number of improvements that could be made to make the process more effective, which we discuss below, but there are also some modifications that could be made to the measure itself. First, as the CMS develops and becomes more robust in implementation and relies less on self-reports and more on Commission data, assessments may become more contentious. For this reason, it would be useful to include a provision in the measure that makes clear that a Member or CNCP may not block its own compliance assessment. Second, the measure is silent on how issues related to violations by a Member or CNCP's vessel will be assessed. A CMS should focus on the action of the Member or CNCP and not on the vessel, so an alleged (or proven) violation by a Member or CNCP's

vessel should not, in and of itself, cause a Member or CNCP to be non-compliant. However, if a Member or CNCP fails to act in response to an alleged (or proven) violation by its vessel, it should be held to account for that failure. Third, the current process for responses to non-compliance, as outlined in Annex I, could use some review and revision. In particular, the utility of the “Compliance Review” and “Compliance Action Plan” are worth reconsidering. The Panel recognises that these come from CMS measures from other RFMOs, but nonetheless is not aware of these providing much benefit at any RFMO.

- 242. The Panel notes that this measure was just reviewed in 2018, and recognises that there are other priority items which the Commission should consider. Despite that, we see review and revision of this measure sooner rather than later to have one major benefit – it will be easier to reach agreement on needed changes *before* the CMS process potentially becomes more contentious as more CMMs are adopted and the Secretariat is able to do more data analysis to feed into the CMS.
- 243. Respondents generally found that SPRFMO’s MCS measures are effective and integrated, with just a few exceptions. As noted above, the one consistent message is the need to fully implement the MCS measures that have been adopted for them to be effective.
- 244. The Panel has already stressed above that we see implementation of existing or developing MCS measures as one of the top priorities in this area. In order to effectively implement the MCS measures, the Secretariat needs additional resources and expertise. In particular, the Secretariat needs a professional staff member with compliance expertise to help lead the Secretariat’s implementation of the MCS measures.
- 245. In addition, full implementation requires that the data collected be able to be analysed. Currently, the Secretariat has limited ability to do this work due to other obligations and limited resources.



246. The Panel notes that at this time, the CMS assessments are based entirely, or almost entirely, on self-assessments provided by Members and CNCPs and that data collected through the Commission's MCS measures are not currently used to verify the information provided. In order for the CMS to be more robust and meaningful, assessments have to be based on verifiable information beyond self-reporting from Members and CNCPs.
247. Several respondents noted a lack of capacity to fully implement the SPRFMO MCS measures fully, but none provided any specific examples of areas that were proving difficult to implement. As has been discussed in Section 4.1 above, the Commission does not maintain a consolidated list of capacity needs and requests. The Panel notes that this information could be helpful in improving the Commission's ability to prioritise and address those needs.
248. Many of the MCS measures are recently adopted, and some have already been amended more than once since adoption. This could be contributing to some of the challenges to implementation.
249. A review of the Final Compliance Reports indicates a moderate level of non-compliance in relation to the MCS measures, although they also show a positive trend towards compliance. The Reports tend to show implementation struggles by vessels flagged to Members or CNCPs more so than difficulties in putting the obligations into place.
250. Generally, it seems that Members and CNCPs are on track to implement the MCS measures, but some could benefit from some capacity assistance, which we understand is already occurring in some areas.
251. The Panel thinks this is an area that may be more meaningfully reviewed in a few years' time.

### *Panel's Findings and Recommendations*

252. The Panel:
- a) **Commends** the Commission for its rigor in adopting an impressive suite of MCS measures in its first six years of operation;
  - b) **Encourages** the Commission to focus on implementation of these MCS measures, rather than the adoption of new tools at this time;
  - c) **Recognises** the challenge in adopting a SPRFMO-specific high seas boarding and inspection regime, but also **Recognises** the difficulty in operationalising the current measure;
  - d) **Recommends** that the Commission continues to work towards the adoption of its own high seas boarding and inspection regime tailored to the Convention, its Members and CNCPs, and its fisheries;
  - e) **Commends** the Secretariat for the work that it has done thus far to implement the MCS measures, but **Notes** that there is no one on the Secretariat's staff who has specific expertise in compliance issues;

- f) **Recommends** that the Commission prioritise hiring a professional staff member with compliance expertise to lead the Secretariat's efforts to implement the MCS measures already adopted and to analyse the data captured through these measures;
- g) **Encourages** the Commission to continue to develop the SPRFMO Observer Programme and review and revise the measure to include all necessary aspects of the Observer Programme;
- h) **Recommends** that in its review of the Transshipment measure in 2019, the Commission address the issue related to the area of application of the measure and consider requiring all transshipments to be observed;
- i) **Encourages** the Commission to clarify the IUU Vessel List measure on the issues related to revocation of permits and modification of the IUU Vessel List at the annual meeting in the near term, but does not consider this an immediate priority; and
- j) **Recommends** review of the CMS measure and consideration of the changes identified by the Panel.

#### 4.4 Follow-up on infringements

- 253. Some of the issues related to follow-up on infringements has been discussed above in discussions on the IUU Vessel List and the Compliance and Monitoring Scheme. Nonetheless, this Section is focused specifically on how Members and CNCPs are exercising their flag State responsibilities.
- 254. Respondents overwhelming agreed that CNCPs follow up on alleged infringements of CMMs, although the comments show that the “yes” responses are not quite as unequivocal as they may seem. The comments show that most Members and CNCPs think they all generally do a good job or try to the “best of the abilities of the affected Members and CNCPs”.
- 255. It is not realistic to expect that the Commission will operate without any alleged violations by at least a small number of vessels flagged to Members and CNCPs, so it is important to note again that the important consideration is about what was the response by flag States to the alleged violations.
- 256. A review of the Final Compliance Reports reflects very little information about investigations into alleged violations and even fewer reports of actual sanctions put in place. This does not mean that SPRFMO has not effectively addressed some instances of IUU fishing. There have been several incidents where there have been effective flag or coastal State investigations and significant sanctions have been imposed. Most of these issues have been covered during the IUU Vessel List discussions. The Compliance Monitoring Scheme reports, however, also identify some alleged violations and it is difficult to tell from the reports whether the flag States are taking action to address these instances of alleged non-compliance. The reports tend to focus on the challenges of implementation and corrective action (e.g., adding vessels to the list of authorised vessels) instead of any actions take with respect the vessels' infringements.
- 257. Admittedly, it is not always clear from the reports whether or not an infringement occurred or whether the obligation had not yet been fully implemented at the time of the alleged violation. As a result, it is difficult to gauge whether or not there were investigations into alleged violations

that should have occurred that did not happen. It is also possible that this information is discussed during the Compliance assessment process, but is not captured within the Final Compliance Report.

258. In response to the question “If Members and CNCPs do not follow up on alleged infringements, please explain what is the reason or reasons” two main reasons were given – lack of capacity and lack of political will.
259. These responses are not surprising given earlier comments regarding implementation. At this stage, it is difficult to discern from the Final Compliance Reports where lack of implementation or lack of follow up on infringements is the result of a lack of capacity versus a lack of political will. Once again, the Panel notes the benefit of collating all capacity building needs and requests in one place, which could help to distinguish between those two scenarios. The Panel also notes that implementation can sometimes take time and some instances of a lack of implementation represents neither a lack of capacity or political will, but rather a process of implementation that is in progress. As discussed above, the Commission is new and many of the MCS measures are either newly adopted or newly revised and so implementation is likely ongoing in a number of cases.
260. In response to the question “Is there something that could be done to improve efforts to follow up on alleged infringements?” respondents focus on three areas.
261. Some respondents highlighted the importance of better communication between Members and CNCPs on these issues as key to improving these efforts, as well as clarification of obligations in measures. No specific measures were identified, broad reference to all measures was made.
262. Other respondents once again highlighted a lack of capacity and noted that a comprehensive capacity building programme would improve this issue.
263. Finally, other respondents felt that the way to improve follow up on infringements was to strengthen the responses to non-compliance aspect of the Compliance and Monitoring Scheme.

### ***Panel’s Findings and Recommendations***

264. The Panel:
  - a) **Notes** that Members and CNCPs seem satisfied with each other’s follow up on infringements;
  - b) **Recognises** that it is difficult to tell, from the Final Compliance Reports, whether or not there have been investigations and enforcement action taken, when appropriate, in response to alleged violations;
  - c) **Recommends** that the Commission require information on investigations and enforcement actions in response to alleged violations, and if already provided, that the Final Compliance Monitoring better document that information; and
  - d) **Recommends** that the Commission consider revisions to the responses to non-compliance section of the CMS measure.

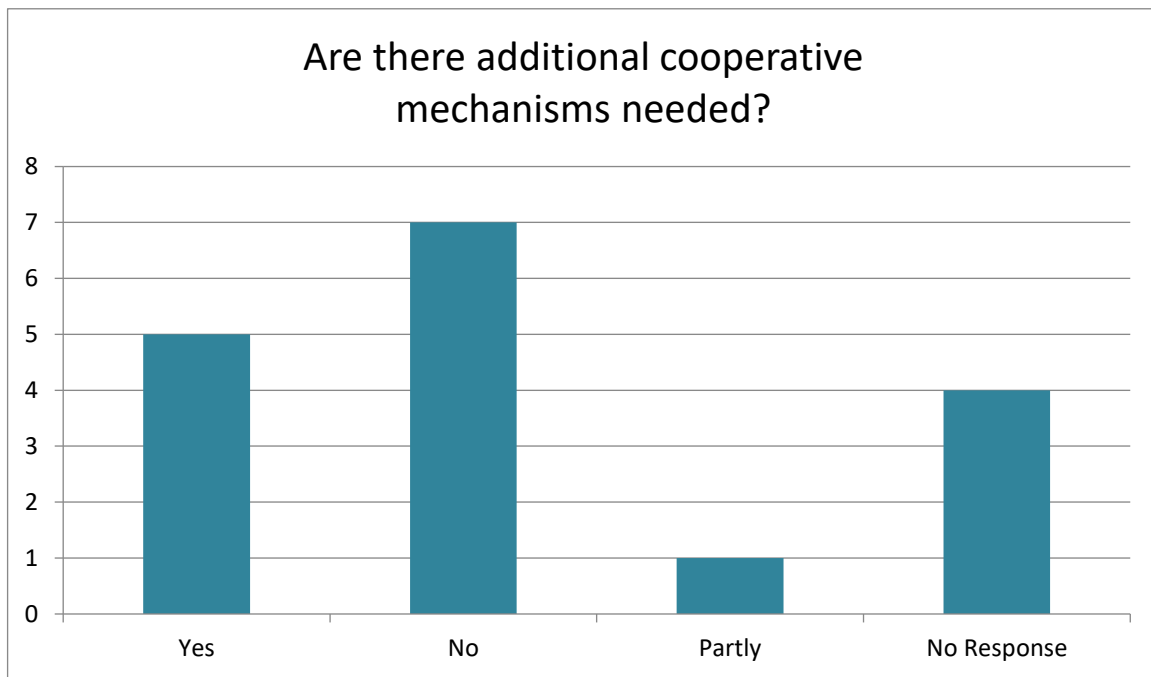
#### 4.5 Cooperative mechanisms to detect and deter non-compliance

265. Article 31 states that the Commission shall seek to make arrangements for consultation, cooperation and collaboration with other organisations, particularly “it shall seek to cooperate with other relevant organisations with the aim of reducing and eventually eliminating IUU fishing”.<sup>118</sup> Section 6.4 below speaks more generally regarding cooperation with other international organisations.
266. In terms of formal agreements with other organisations, neither of the MOUs currently in place have enforcement and compliance as the heart of the MOU, but the agreement with CCAMLR certainly includes mechanisms for collaboration and cooperation on MCS issues. As noted in Section 6.4 below, it is not always necessary for cooperation to be under the rubric of a formal MOU.
267. Respondents generally agree that SPRFMO has established cooperative mechanisms to monitor compliance, detect and deter non-compliance and remedy compliance issues. The Commission has established or is in the process of establishing the primary tools of an effective MCS regime, including an IUU Vessel List, a VMS, the SPRFMO Observer Programme, an authorised vessel list, a port inspection measure, and a CMS.
268. The Commission has done a good job of quickly creating the necessary framework for the Commission’s MCS program. However, the implementation of these measures falls in large part on the Secretariat, who must struggle to implement these measures with limited personnel and resources.
269. The Panel notes that the Secretariat could benefit from additional engagement with colleagues at other RFMO Secretariats. Obviously, in-person engagement is often most productive, but cooperative benefits can be achieved through electronic means. In particular, the ability to share lessons learned, best practices, templates, processes and procedures could be enormously beneficial to the Commission.
270. The benefits that could accrue from increased engagement with colleagues from other RFMOs would far exceed any expenditure of resources to facilitate that engagement. Reaping the benefits of the experience from other organisations in developing and establishing MCS tools such as a Vessel Monitoring System, Observer Programme, Information Management System and authorised vessel list can help prevent costly missteps and avoid the need to reinvent the wheel.
271. As discussed in greater detail below, a number of the Secretariat’s staff have accumulated a variety of collateral duties. Their performance of these collateral duties has been impressive and all have shown themselves willing to shoulder increasing workloads and duties. However, ensuring that they are not isolated in the performance of these duties is essential.

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<sup>118</sup> Art. 31(3).

272. It was evident from the responses to questions in this Section that some respondents were not certain as to what was meant by “cooperative mechanisms” with some focusing on the existence of MCS measures and others on MOUs with other organisations.
273. Furthermore, the mixed responses to both questions (ii) and (iii) displays some ambiguity in assessing whether these MCS measures are effective or being used effectively, although the majority of respondents responded in the affirmative. Many of these tools are in the early stages of implementation, and it may be too soon to gauge their effectiveness.
274. The Commission continues to tweak and refine its MCS measures as its goes through its early stages of implementation. Section 4.3 above discussed the individual measures in greater detail and suggests their strengths and weaknesses.
275. In the Panel’s view, there is a significant need for greater analysis of the information collected through the existing and developing MCS measures. Collecting data without analysing or utilising those data is a major gap in the ability of the MCS measures to be effective. Data analysis, however, takes time and resources, which are at a scarcity in the Secretariat at this stage. In order for the Commission’s MCS tools to be effective, there will need to be some investment in additional resources for the Secretariat to undertake data analysis work on a greater scale than it is currently able to do.



276. Here again, the responses (set out in the table above) are spread out with no consensus from the respondents on whether additional cooperative mechanisms are needed. The comments received were supportive of additional engagement with other international organisations on MCS issues.

277. From the perspective of the Panel, it would be better to invest in data analysis of the information collected under the existing or development MCS measures rather than developing additional MCS tools.

### *Panel's Findings and Recommendations*

278. The Panel:

- a) **Recognises** the achievement of the Commission in establishing a robust MCS programme quickly in the early years of the Commission;
- b) **Notes** that implementation of these measures can be challenging for a Secretariat with limited personnel and resources;
- c) **Recommends** a modest investment of resources to facilitate increased engagement of the SPRFMO Secretariat with colleagues from other RFMO Secretariats, which will provide a benefit to the Commission beyond the expenditure of resources in expertise gained, shared lessons learned, use of best practices and avoid spending time and money developing tools, templates, processes and procedures that already exist;
- d) **Recommends** additional engagement by the Commission with other international regional organisations that could serve as force multipliers on MCS issues (e.g., the Forum Fisheries Agency's Regional Surveillance Centre); and
- e) **Notes** the significant need for increased analysis of data collected pursuant to existing and developing MCS measures.

#### **4.6 Market-related measures**

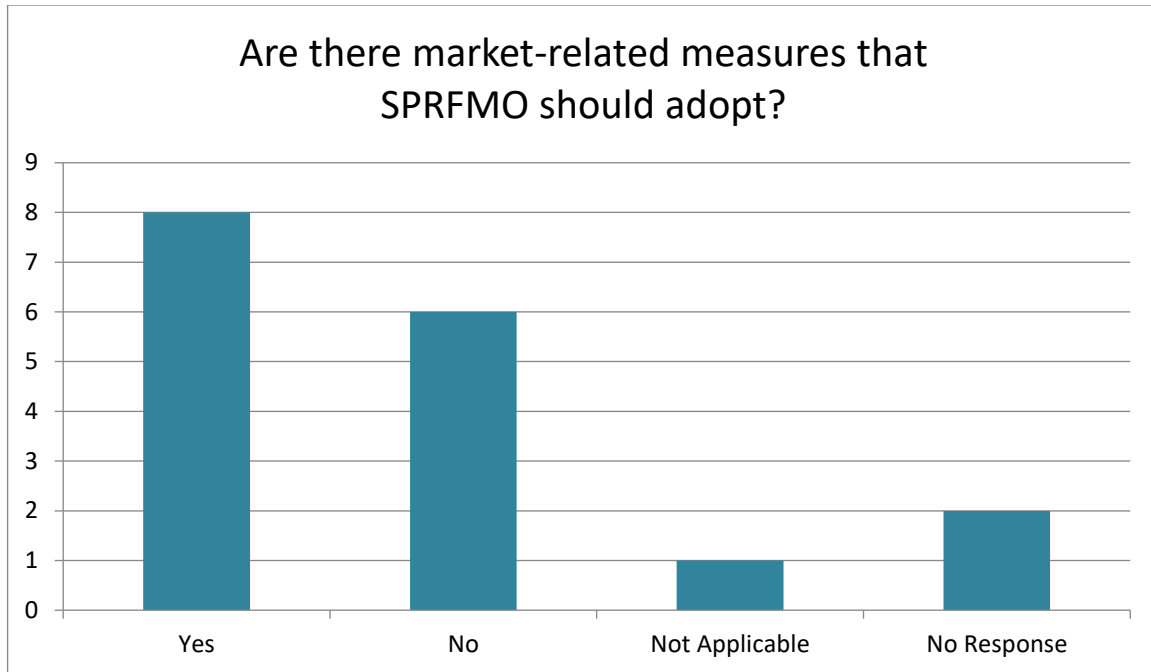
279. In addition to the measures discussed above in Section 4.3, Article 27 also states that in order to ensure compliance with the Commission's CMMs and for effective monitoring, control and surveillance of fishing, the Commission shall adopt "non-discriminatory market-related measures, consistent with international law, to monitor transshipment, landings, and trade to prevent, deter and eliminate IUU fishing, including, where appropriate, catch documentation schemes".<sup>119</sup>

280. To date, the Commission has not adopted any market-related measures, nor have there been any proposals for market-based measures.

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<sup>119</sup> Art. 27(1)(d).





281. Respondents seem split on whether or not there are market-related measures that should be adopted at this stage. No Members or CNCPs seem to see market-related measures as an urgent need, but several discussed the idea of exploring a Catch Documentation Scheme for the Commission. Some see it as a discussion that should begin now, while others think a Catch Documentation Scheme is something to consider in the future.
282. In addition to a Catch Documentation Scheme, other market-related measures that were noted by respondents as ones that could be considered include import controls relating to vessels that are IUU listed, and measures addressing the situation of flag States not acting properly to regulate their vessels.
283. In response to the question, “Please explain why SPRFMO has not adopted market-related measures”, most respondents highlighted that they were either not necessary yet or that they did not rise to the same level of priority as other MCS measures yet. As noted above, no Members or CNCPs indicated that they saw the lack of any market-related measures as a failure of the Commission.
284. The Panel is cognisant that other MCS measures have more urgency for the Commission and represent a significant expenditure of Secretariat resources to implement.

### ***Panel’s Findings and Recommendations***

285. The Panel:
- a) **Notes** that the Commission has not adopted any market-related measures;
  - b) **Recognises** that other MCS measures were more urgently needed and remain in the early stages of implementation;

- c) **Further Recognises** that the development of effective, non-discriminatory, market-related measures will likely involve expenditure of significant resources, particularly limited Secretariat resources;
- d) **Recommends** that the Commission not undertake the development of a Catch Documentation Scheme or other market-related measure at this time; and
- e) **Encourages** Members and CNCPs to consider what targeted market-related measures might be most needed in the future, and to work strategically to develop them at the appropriate time.

## 5. DECISION-MAKING AND DISPUTE SETTLEMENT

### 5.1 Decision-making

286. Decision-making under the SPRFMO Convention is pursuant to Article 16. It provides:

1. As a general rule, decisions by the Commission shall be taken by consensus. For the purpose of this Article, “consensus” means the absence of any formal objection made at the time the decision was taken.
2. Except where this Convention expressly provides that a decision shall be taken by consensus, if the Chairperson considers that all efforts to reach a decision by consensus have been exhausted:
  - (a) decisions of the Commission on questions of procedure shall be taken by a majority of the members of the Commission casting affirmative or negative votes; and
  - (b) decisions on questions of substance shall be taken by a three-fourths majority of the members of the Commission casting affirmative or negative votes.
3. When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance.

287. This requires the Members to seek consensus and if unattainable move to a vote model and is not uncommon in international relations. A purely consensus model effectively gives each participant a veto on decision-making, and can therefore make it difficult for an organisation to move forward. Similarly, a purely majority voting model can mean an individual State’s wishes can be overridden. The model used in the SPRFMO Convention attempts to balance these two limitations by combining the methods of decision-making.

288. It is apparent that the questionnaire responses disclose a reasonable level of satisfaction among Members with its decision-making model. Almost 77% of responses indicate a level of satisfaction that is at the highest or second highest level. The remaining responses did not respond to this question. Accordingly, the survey does not disclose any significant dissatisfaction with the decision-making process and practices of SPRFMO.

289. A number of Members also commented on their satisfaction with the consensus/vote model:

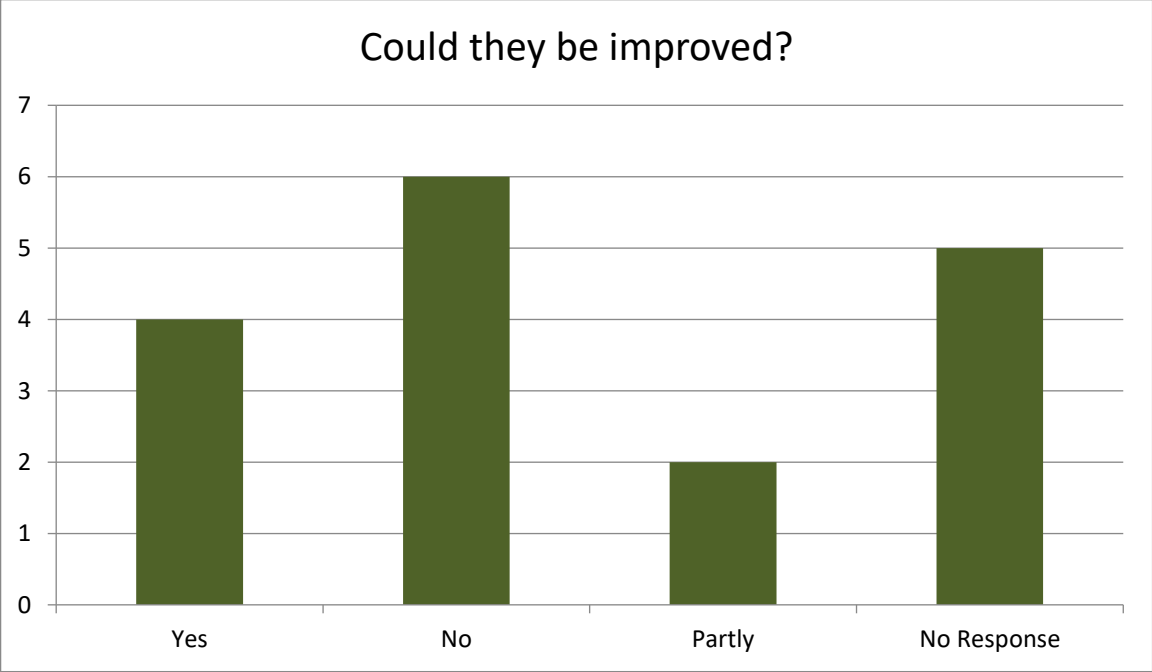
In our view, the most important achievement of the Convention is to establish the possibility to vote once all efforts at consensus are exhausted.

SPRFMO’s decision-making processes are excellent – and the voting and objections procedures were recognised in the 2016 UNFSA States Parties consultations. It is critical that we be able to vote in SPRFMO ... We think that the ability to vote is a useful lever to encourage efforts towards consensus, but we also think it’s important that SPRFMO is ‘not afraid to vote.’

290. One concern raised was not so much with the process, but seeking clarification as to what will be involved to identify when consensus cannot be reached:

It is our criterion that a limit must be established to the consideration “that efforts have been exhausted” in order to arrive at a decision by consensus, otherwise the debates go on too long.

- 291. The Panel considers this is a reasonable inquiry. It may be useful for the Chair to identify a time period in the course of a particular discussion when it may be deemed that consensus has not been achieved, and there is some evidence that this has occurred from time to time. In interviews it was evident that past and present Chairs have use of informal processes to encourage discussion to try to reach consensus, while also attempting to indicate periods of time in which efforts to reach consensus will be deemed to be unsuccessful. This seems to have been reasonably effective.
- 292. The SPRFMO Convention also has a requirement of transparency in Article 18. The attitudes of Members as to whether this requirement of transparency was being met was explored in the questionnaire.
- 293. Almost all the responses were either in agreement that SPRFMO’s decision-making was transparent, or were partly of the view. There were no negative responses, and the only null response was indicated to be from a CNCP that was yet to attend a meeting. This is suggestive that the requirement of transparency in Article 18 is being met. This was also borne out in interviews, where there was a degree of comfort expressed as to transparency of decision-making.
- 294. The questionnaire also asked whether decision-making could be improved. There was a significant range of responses with respect to this question.



- 295. It is clear there was no consensus on whether decision-making could be improved. Direct feedback from the Members provides limited assistance of where improvement could be made.

The Arbitration Panel for the Ecuador dispute made a number of recommendations relating to the decision-making processes of the Commission. It would be beneficial if these

recommendations could be evaluated formally by the Commission and incorporated where appropriate.

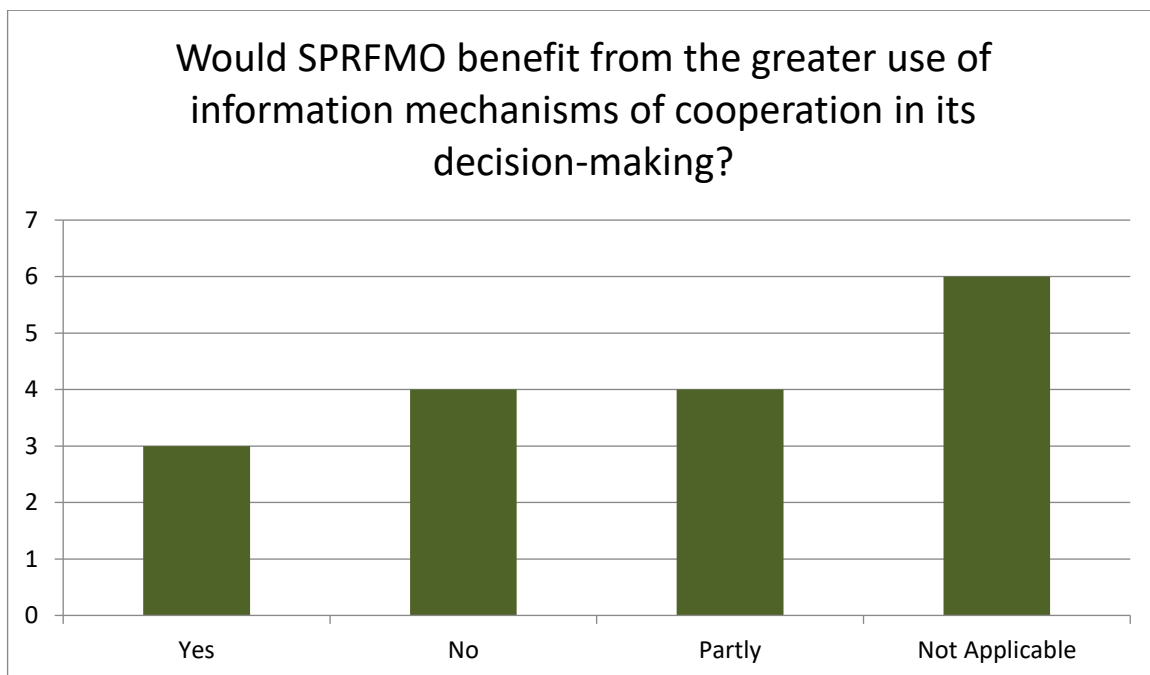
296. Drawing from this comment, the Article 17 review panel did consider whether the current approach to decision-making worked in the interests of developing States. They stated:

Some Participants referred in their written and oral submissions to the “holistic” nature of the Commission’s decision-making process on allocation. In this respect, the Panel invites Members to consider whether the interests of developing States in the region might not be better taken into account in a more deliberative and specific discussion as part of that decision-making process.<sup>120</sup>

297. The Panel is of the view that it is entirely appropriate for the Members to give consideration to the invitation of the Article 17 review panel, particularly in the light of Article 19 of the SPRFMO Convention which recognises the special requirements of developing States.

298. The Panel notes in Section 3.4 that in the context of Jack mackerel, the CMMs adopted had made use of the recommendations of the Scientific Committee, and that stock allocations had remained within the envelope of that indicated by the Scientific Committee. The Panel considers that the progressive recovery of the Jack mackerel stock is SPRFMO’s greatest success to date, and the appropriate consideration of the recommendations of the Scientific Committee appears to be a factor in that success. Accordingly, the Panel commends the Commission for the use of the recommendations of the Scientific Committee in the formulation of CMMs.

299. The Panel also thought it appropriate to explore the use of informal mechanisms in decision-making.



<sup>120</sup> Article 17 review panel, PCA Case 2018-13, para 124.

300. There was no consensus in relation to whether greater use of informal mechanisms would be appropriate. In the course of interviews, it was apparent that some use of informal mechanisms had been made by Chairs, past and present. Given the general level of satisfaction with the existing processes for decision-making, the lack of consensus can be taken to indicate that there is no consensus for any increase in the scope of informal mechanisms.
301. A number of written responses indicated what else might be possible. One response from a Member stated:
- Among the possible informal mechanisms, prior conciliations can be carried out with the members with the highest incidence and experience in specific subjects that are submitted for approval in order to make the analysis more concrete and efficient.
302. While another Member stated:
- A good number of CMM require from us more discussion and accuracy that could be resolved intersessional and in an informal process. The simple discussion and sharing the different ideas and point of views would improve the discussions during the meetings and could take us to adopt measures easily and with a better understanding for every delegation. This kind of procedure was implemented in the past, but with not enough representation.
303. Planned action by the new Executive Secretary coincidentally may assist in addressing this concern. He indicated his intention to increase the level of analysis accompanying material provided by the Secretariat to support the Commission's meetings, and for this to be ready well in advance of meetings as far as was possible. The Panel is supportive of measures that do not entail significant cost which would assist delegations, particularly from non-English speaking Members and Small Island Developing States, to more fully engage in the Commission's meetings.

### *Panel's Findings and Recommendations*

304. The Panel:
- a) **Acknowledges** the effectiveness of the consensus first/vote later approach used in the SPRFMO Convention;
  - b) **Recommends** that the Chair of the Commission continues to provide clear guidance on when attempts to achieve consensus have been exhausted;
  - c) **Recommends** the continued use of informal discussions in attempts to achieve consensus; and
  - d) **Notes** the decision and observations on decision-making of the Article 17 review panel in 2018, and **Urges** their consideration by the Members.

## 5.2 Dispute settlement

305. The SPRFMO Convention has a dispute resolution procedure which is provided for in Article 34:
1. Contracting Parties shall cooperate in order to prevent disputes and shall use their best endeavours to resolve any disputes by amicable means which may include, where a dispute is of a technical nature, referring the dispute to an *ad hoc* expert panel.
  2. In any case where a dispute is not resolved through the means set out in paragraph 1, the provisions relating to the settlement of disputes set out in Part VIII of the 1995 Agreement shall apply, *mutatis mutandis*, to any dispute between the Contracting Parties.
  3. Paragraph 2 shall not affect the status Contracting Party in relation to the 1995 Agreement or the 1982 Convention.
306. These provisions are broadly consistent with those found in the constituent documents of other RFMOs which were adopted in the years since the decision of the Annex VIII Arbitral Tribunal in the *South Bluefin Tuna Cases*.<sup>121</sup> They have not been used to date.
307. SPRFMO also has a review procedure in respect of decisions taken by the Commission, which provides a limited form of dispute resolution. A review can only be requested where a decision that discriminates in form or fact against a member of the Commission, or where a decision is inconsistent with the SPRFMO Convention, or other international law as reflected in the Law of the Sea Convention or the United Nations Fish Stocks Agreement. The procedure concerned is found in Articles 17(2) and 17(3) of the SPRFMO Convention:
2. (a) Any member of the Commission may present to the Executive Secretary an objection to a decision within 60 days of the date of notification “the objection period”. In that event the decision shall not become binding on that member of the Commission to the extent of the objection, except in accordance with paragraph 3 and Annex II.  
(b) A member of the Commission that presents an objection shall at the same time: (i) specify in detail the grounds for its objection; (ii) adopt alternative measures that are equivalent in effect to the decision to which it has objected and have the same date of application; and (iii) advise the Executive Secretary of the terms of such alternative measures.  
(c) The only admissible grounds for an objection are that the decision unjustifiably discriminates in form or in fact against the member of the Commission, or is inconsistent with the provisions of this Convention or other relevant international law as reflected in the 1982 Convention or the 1995 Agreement.
  3. Any member of the Commission that has objected to a decision may at any time withdraw that objection. The decision shall then become binding on that member in accordance with paragraph 1(b) or on the date of the withdrawal of the objection whichever is the later.
308. The review procedure above has been invoked on two occasions: once by the Russian Federation in 2013; and once by the Republic of Ecuador in 2018. In both cases, the review

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<sup>121</sup> (2000) XXIII RIAA 1; For example see Article 31, Western and Central Pacific Fisheries Convention; Article 20, Southern Indian Ocean Fisheries Agreement.

panels sat at the facilities of the Permanent Court of Arbitration in The Hague, in the Netherlands. In the first instance, Russia successfully sought review of a decision of the Commission that excluded it from receiving any allocation of Jack mackerel. In the second instance, Ecuador was unable to overturn a decision with respect to an allocation it received. In each case, the time periods required in the SPRFMO Convention were met and the Permanent Court of Arbitration ensured the proceedings were supported appropriately.

309. The questionnaire provided in the lead up to this review specifically addressed dispute resolution, and sought responses in respect of satisfaction with the processes. All of the textual responses to the questionnaire addressed the Article 17 reviews.
310. The elements of the questionnaire directed at dispute resolution asked questions as to the effectiveness of dispute resolution and whether the process was considered expeditious. A clear consensus on the effectiveness of SPRFMO's dispute resolution process did emerge. All the responses were either confirmatory of this proposition or partly confirmatory of it. No responses were negative.
311. Where commentary was offered by Members, it was of the view that the review process under Article 17 had been effective. One Contracting Party stated:
- ...we can consider that both Review Panel procedures that took place in the past were effectively resolved. In our view, the Convention and rules of procedures established from every Panel were correctly followed.
312. Another Contracting Party stated:
- The SPRFMO dispute resolution process has been very effective in resolving disputes and achieving a prompt resolution to issues of concern to Members. It allows for a robust and transparent review of a commission decision and provides an aggrieved Member with redress without initiating more formal dispute resolution procedures. It also enables prompt resolution of disputes, which among other things, reduces costs for both the aggrieved Member and the Commission.
313. The next question was directed at whether the procedures were expeditious. This was relatively clear in the responses. No response was negative, while all responses were either partly or completely of the view that the dispute resolution process was expeditious. The answer which indicated "partly" expressed concern about implementation of the findings of the second review panel.
314. The next question was directed at concerns over the cost. Only one Member expressed concern in this category, which from comments made was directed at the Article 17 process only. Otherwise all responses were essentially happy with process. Comments made in relation to this question expressed support for the use of the procedure, and no comments were made with respect to costs being excessive.
315. From the interviews conducted, it was universally expressed that the review panel process had been expeditious and had served a purpose in dealing with disputes within the Commission. Interviewees felt the process was well run, and the support from the Permanent Court of



Arbitration was excellent. Consideration of other venues had been made by the Chairs, but in both cases the ability of the Court to support the panel in a timely fashion was determinative of the location. Feedback from the Secretariat indicated that there was a surge in work in the lead up to each review panel, and this additional workload was substantial and subject to urgent time constraints. There was also significant cost involved to the Secretariat, with the funds to support the activity being drawn from reserve funds from outside of the Annual Budget. These funds are now essentially exhausted, and may take many years to replenish. With this in mind, it may be appropriate for the Members to consider a special budget allocation to reimburse the SPRFMO budget in the budget cycle immediately following an Article 17 review panel in order to cover the costs associated with support to the most recent proceedings.

316. The Panel notes that in addition to the additional workload and resource cost to the Secretariat, there was a significant burden borne by the Chair of the Commission in both instances. Both Chairs invested substantial time and energy in drafting legal pleadings, working with the Secretariat, and representing the Commission at the Permanent Court of Arbitration. The Commission has been fortunate that in both instances it had Chairs that were able to invest the time and provide the expertise needed to represent the Commission's interest, but the Panel notes that this may not always be the case.
317. The Panel formed the view that the Members, CNCPs and observers were, in general, favourably disposed to the review panel procedure. Most felt it provided an excellent response to the challenges of a vote after failing to achieve consensus, and had been useful in encouraging the engagement of Members in respect of what otherwise might be difficult disputes. The Panel notes that the review panel process had been largely effective in assisting Members in moving towards the resolution of what otherwise might be a difficult dispute, and was a useful innovation present within the SPRFMO Convention.
318. The Panel was of the view that it was unusual for a process involving external review to be used within an RFMO twice in a period of five years. The efficacy of the process, and certainly costs involved, might be compromised if there was recourse to the process on a regular basis. There is every reason to believe this would not be the case, given the statement in the Report of the 2<sup>nd</sup> Commission Meeting, the first following the initial review panel:

Delegations agreed that the fact that a vote had been necessary on this occasion was not to be seen as a precedent for the future. The circumstances of this particular occasion were unusual and it was anticipated that similar decisions in the future would be able to be achieved by consensus.<sup>122</sup>

319. The Panel also noted that the formal dispute resolution process under Article 34 had never been used, so no evaluation of that process was possible.

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<sup>122</sup> *Report of the Second Meeting of the Commission of the South Pacific Regional Fisheries Management Organisation*, Manta, Ecuador 27– 31 January 2014, para. 10.

### *Panel's Findings and Recommendations*

320. The Panel:

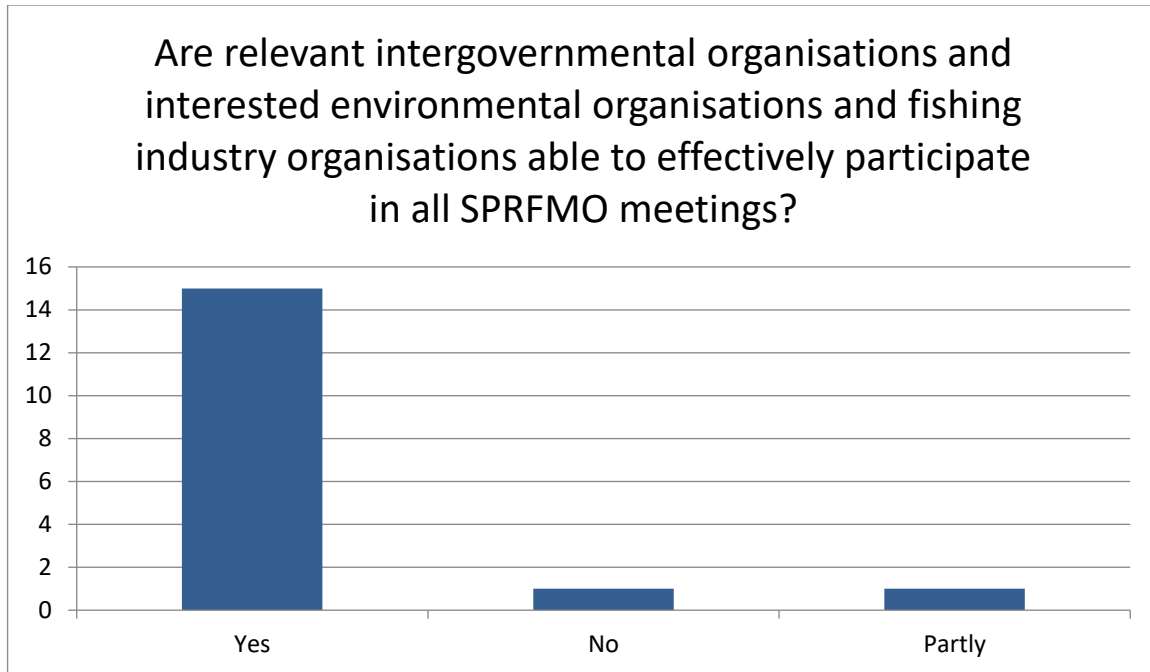
- a) **Notes** that there are effectively two mechanisms for the resolution of disputes within the Commission:
  - The Article 17 review panel process
  - The Article 34 arbitration process;
- b) **Notes** that the Article 34 arbitration process has never been used since the SPRFMO Convention entered into force;
- c) **Notes** the Article 17 review panel process has been used twice since the SPRFMO Convention entered into force in 2013;
- d) **Acknowledges** that the Article 17 review panel process is a point of difference between SPRFMO and most other RFMOs;
- e) **Acknowledges** the effectiveness of the Article 17 review panel process in resolving disagreement between Members and in progressing the long term resolution of disputes;
- f) **Notes** that the support of the Article 17 review panel process by the Secretariat is both expensive and time-consuming, including for Commission Chairs, and that the SPRFMO Contingency Fund was used in 2018 to support the Article 17 review panel process at that time;
- g) **Recommends** that Members consider making a special budgetary allocation at the first meeting following a use of the Article 17 review panel process to reimburse the SPRFMO budget in order to cover the costs associated with support to the most recent Article 17 review panel proceedings;
- h) **Recommends** the Commission take steps to ensure the effective implementation of the findings of an Article 17 review panel at the first meeting following the decision of the panel;
- i) **Commends** the use of the Permanent Court of Arbitration as the venue and provider of secretarial services for the Article 17 review panel process, in terms of efficiency and timeliness;
- j) **Notes** that frequent use of the Article 17 review panel process is likely to generate very significant costs, and potentially undermine the system of decision-making provided for in the SPRFMO Convention; and
- k) **Notes** the Commission in the wake of the 2013 use of the Article 17 review panel process indicated the process was intended as an unusual occurrence, and **Urges** Members to continue to view the Article 17 review panel process in that light.

## 6. INTERNATIONAL COOPERATION

### 6.1 Transparency

#### 6.1.1 Extent to which SPRFMO is operating in a transparent manner

321. Article 18 of the Convention requires the Commission to promote transparency in decision making processes and other activities carried out under the Convention. It provides for meetings to be open to all registered participants and observers subject to rules of procedure which shall not be overly restrictive regarding participation. It also provides for the publication of all reports and CMMs, the dissemination of non-commercially sensitive information, and the facilitation as appropriate of consultations with non-governmental organisations and representatives of the fishing industry. The Convention's transparency provisions are consistent with Article 12 of the UN Fish Stocks Agreement and paragraph 7.1.9 of the FAO Code of Conduct on Responsible Fisheries which strongly encourages transparency in fisheries management and decision-making.
322. The Commission Rules of Procedure provide for the participation of observers of non-Members which participated in the International Consultations on the Establishment of SPRFMO, have jurisdiction over waters adjacent to the Convention Area, or which have an interest in the work of the Commission and are invited by the Commission; the FAO, specialised agencies, RFMOs, and other intergovernmental organisations (IGOs) invited by the Commission; and non-governmental organisations (NGOs) invited by the Commission in accordance with the rules of procedure. Rule 9 also provides for NGOs to provide 50 days' advance notice of interest, and participation is accepted unless a simple majority of Members objects. Observer status remains in effect for future meetings unless the Commission decides otherwise.
323. The approach towards observers at meetings of the Commission and subsidiary bodies follows the promotion of transparency in the Convention. Observers are able to present information papers to meetings, participate in deliberations, and are to be given timely access to all documents subject to any rules relating to the confidentiality of certain data and other commercially sensitive information that the Commission may decide. In practice observers are able to participate in all meetings, including subsidiary bodies, except Heads of Delegation meetings.
324. The number of observers participating in meetings of the Commission has varied from year to year and not all observers attend each year. Eight IGOs and 13 NGOs covering a range of fishing and environmental interests have obtained observer status.
325. The Panel considers that SPRFMO has an open and transparent approach to the participation of observers, especially NGO observers. This conclusion is supported by the questionnaire responses set out below. Respondents commented that there is a clear process for the participation of observers and that "SPRFMO runs extremely open meeting processes", and that some observers "do in fact participate very actively and effectively".



326. There is, nevertheless, potential for increased participation by a wider group of observers, both IGO and NGO observers. For example, there is no provision in the rules of procedure, as is the case with some RFMOs, for the Commission to invite the participation of an IGO or NGO to facilitate the work of the meeting. Such an approach might be adopted where matters are to be considered by the Commission or its subsidiary bodies and in which an IGO or NGO has particular expertise.
327. While SPRFMO has open and transparent processes, it should continue to be vigilant in ensuring that observers are provided with relevant information to enable them to participate or observe deliberations if they wished. For example, one of the questionnaire responses noted that occasionally observers are unintentionally left off of communications concerning webinars or informal meetings. It was also noted by two respondents that environmental NGOs were not advised of the Ecuador objection to the 2017 Commission decision on Chilean Jack mackerel. The objection procedure in Article 17 of the Convention requires that Members be notified of an objection. The Panel notes that it would be useful in future for observers to also be advised of recourse to the objection procedure.

### ***Panel's Findings and Recommendations***

328. The Panel:

- a) **Acknowledges** the open and transparent processes adopted by the Commission and its subsidiary bodies;
- b) **Recommends** that the Commission give consideration to developing a process for inviting observers to meetings where their participation would facilitate the meeting; and

- c) **Recommends** that the Executive Secretary notify observers of the establishment of a review panel under Article 17 of the Convention and of the findings and recommendations of the review panel.

### **6.1.2 Extent to which materials are made publicly available in a timely fashion**

329. Transparency is enhanced when decisions, meeting reports and scientific analysis of an RFMO is openly available. The Commission's website is comprehensive and includes basic documents, all documents relating to past and upcoming meetings, CMMs, the SC work plan, catch information and information on cooperation with other organisations. Meeting documents are posted on the website prior to meetings and all meeting reports are posted at the conclusion of the meetings.
330. SPRFMO has a secure part of the website for Members only. This is used for confidential documents, such as the draft Compliance Monitoring Report. The secure part of the website also contains other non-public domain information such as catch and effort data. The SPRFMO data rules provide for access to the SPRFMO database to be accorded to authorised users.
331. The Secretariat is planning to upgrade its website. This is due in part to the website host no longer supporting the website software. The upgrade is likely to bring improvements to the design of the website. The content of the website is updated by the Secretariat on a regular basis.
332. The Panel considers that SPRFMO publishes its reports, conservation measures, scientific advice on which decisions are based, and relevant information relating to authorised vessels in a timely manner. This assessment is confirmed by the questionnaire responses, all of which responded that SPRFMO reports, conservation measures and scientific advice and other relevant non-commercial sensitive information are made publicly available in a timely manner.
333. In response to the question on the effectiveness of the SPRFMO website in making relevant information publicly available and easily accessible, a small number of respondents (three) considered that the website was partly effective. A couple of Members commented that the website was difficult if you were a member of the public or entering the SPRFMO website for the first time as it was not always easy for those less familiar with the website to find information. Another commented on the need to update it regularly, and another on the need to remove outdated content.
334. An upgraded website is expected to address some of the issues raised in questionnaire responses relating to the website's user friendliness and the need to remove outdated content. The Panel commends the Secretariat for work in upgrading the SPRFMO website.
335. The SPRFMO website is the main source of information on the activities of the organisation not only for Members, CNCs, environmental stakeholders and the fishing industry, but also for the wider community. Article 29 of the Convention requires the Commission to prepare an annual report detailing the decisions of the Commission and actions taken in response to recommendations of the United Nations General Assembly or FAO. This report is concise and to the point and meets the requirements of Article 29. However, it is not a vehicle for the dissemination of information on SPRFMO and its achievements. Neither is the Annual

Administrative Report prepared by the Secretariat, which duplicates some of what is in the Annual Report. The Panel sees merit in SPRFMO having a website which provides up-to-date information on SPRFMO and its achievements. While preparing and maintaining information on the website requires Secretariat time and resources, this is offset by the savings achieved by being able to refer inquirers to the website, particularly for Frequently Asked Questions.

336. Including information on the website not only meets a transparency objective, it can also give the organisation greater visibility. The Panel considers that there is benefit in SPRFMO having greater visibility and profile in the wider international fisheries community. Publicising more broadly the achievements of the organisation can assist in demonstrating the relevance of SPRFMO to Members and CNCPs thereby assisting in garnering domestic support for the organisation and its activities. This applies in particular to the achievements of the organisation, such as the recovery of the Jack mackerel stock, which are not widely known or appreciated. Increasing the profile for the organisation may also assist in catalysing additional financial and scientific resources from outside the organisation. A good website is important to maintain a profile, but visibility can also be gained by having a social media presence. SPRFMO has a Facebook page which includes general news content for a wider audience.
337. Although there is benefit to be achieved through increased profile and visibility, the benefits must be balanced against the burden on the Secretariat in maintaining the website and a social media presence. There is a danger that attempts to increase profile and visibility, if not properly focussed and targeted, will be a waste of resources. For this reason, the Panel considers that the Secretariat should develop a communications strategy which identifies the target audience and the groups to be influenced, the purpose, messages and expected outcome of the communications. The expenditure of staff resources on communications should be weighed against the direct benefit to the organisation, such as in terms of the additional resources which could be brought into the organisation from sources other than Member contributions.

### *Panel's Findings and Recommendations*

338. The Panel:

- a) **Acknowledges** that SPRFMO decisions, scientific advice, and other relevant materials are made publicly available in a timely fashion; and that the SPRFMO website contains up to date information which is accessible and user friendly;
- b) **Commends** the Secretariat for working to develop a new SPRFMO website; and
- c) **Recommends** that the Secretariat develop a communications strategy in order to enhance communications with Members, CNCPs and observers, to cost-effectively increase the visibility and profile of SPRFMO in the wider international fisheries community, and to ensure that there is a targeted approach to communications which bring direct benefits to the organisation.

## **6.2 Relationship with Cooperating Non-Contracting Parties**

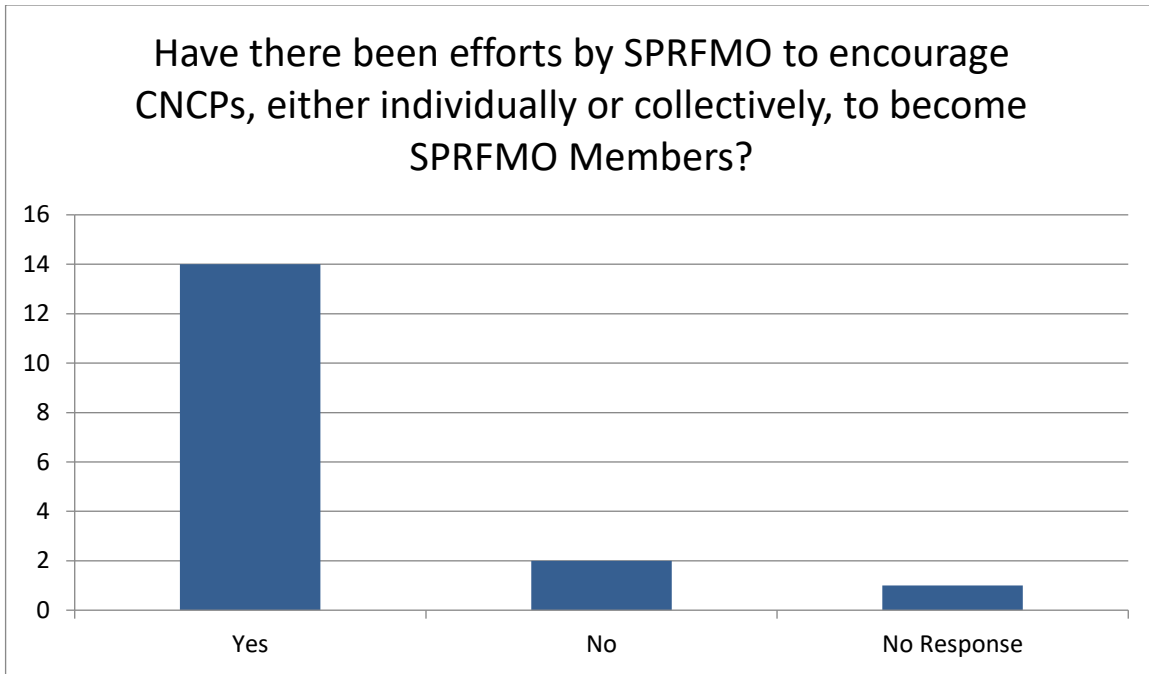
339. Article 32 of the Convention provides for the Commission to cooperate with non-Parties to the Convention, including by requesting non-Contracting Parties whose vessels fish in the Convention Area to become party to the Convention or to agree to cooperate fully in the

implementation of CMMs adopted by the Commission. Members of the Commission are obliged to exchange information on the activities of fishing vessels of non-Contracting Parties that are engaged in fishing in the Convention Area and to take measures to deter activities of such vessels which undermine the effectiveness of applicable CMMs. Cooperation with non-Contracting Parties that are relevant port States or market States is also encouraged.

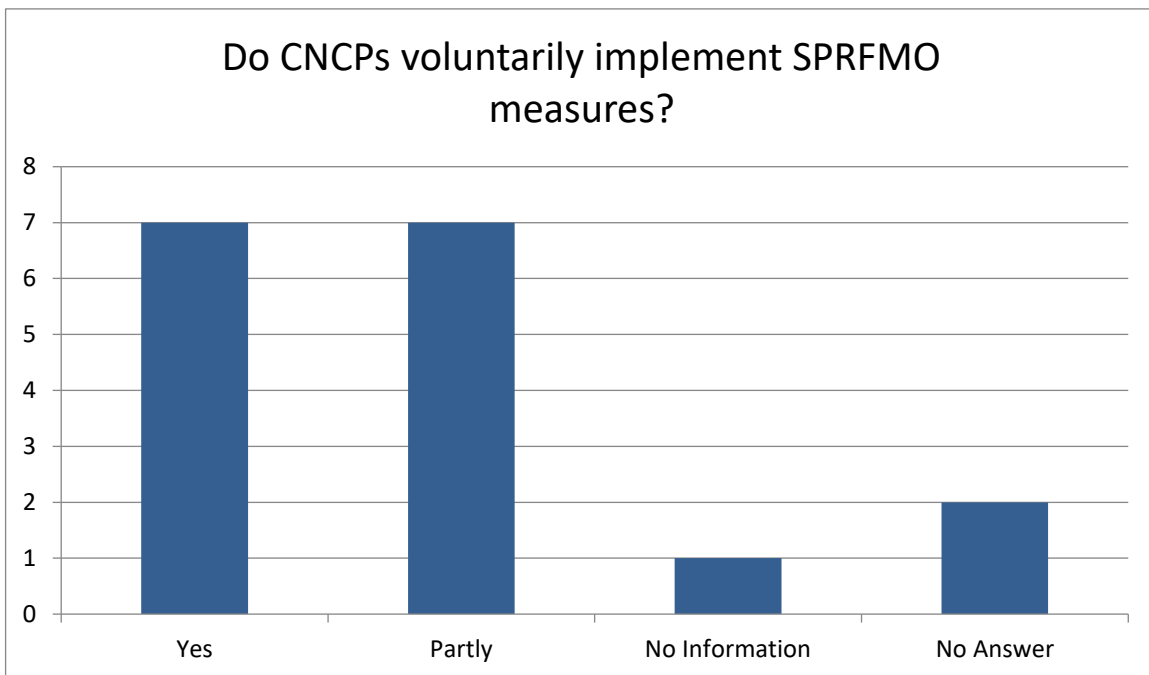
340. In order to facilitate cooperation with non-Parties, the Commission has adopted rules to recognise the status of Cooperating non-Contracting Party.<sup>123</sup> Each year, the Executive Secretary contacts all non-Contracting Parties whose vessels fish in the Convention Area and those known to have an interest in fishing in the Convention Area, to request them to become a Contracting Party or attain the status of Cooperating non-Contracting Party. Requests for Cooperating non-Contracting Party status must include relevant information to support the status, including a commitment to cooperate fully in the implementation of the CMMs adopted by the Commission and a statement of intent to make voluntary financial contributions commensurate with what would be assessed should it become a Member. CNCP status is reviewed by CTC and granted by the Commission on an annual basis. Once CNCP status is granted, the CNCP is to comply with all CMMs adopted by the Commission; provide all data Members of the Commission are required to submit; inform the Commission annually of the measures it takes to ensure compliance by its vessels with the Commission's CMMs; respond in a timely manner to alleged violations of CMMs adopted by the Commission and any IUU activities of vessels flying its flag, and accept boarding in accordance with the Commission's high seas boarding and inspection procedures. CNCP status may be renewed subject to a review of the CNCP's compliance with the Convention's objectives and requirements. CNCPs that fail to comply with any of the CMMs adopted by the Commission are deemed to have undermined the effectiveness of the CMMs adopted by the Commission and may be subject to sanctions. This may include the revocation of CNCP status.
341. The identity of States obtaining CNCP status has changed over the period SPRFMO has been established. Those countries participating in the preparatory conferences, China, Colombia, Ecuador, France (in respect of its territories), Peru, Tonga, United States of America, and Vanuatu, were initially CNCPs on establishment of the Commission. China, Ecuador, Peru, United States and Vanuatu have since become Members of the Commission. The CNCP status of France and Tonga has not been renewed. The Republic of Colombia, which is a coastal State adjacent to the Convention Area although without a fishing presence, has mostly maintained its CNCP status since the establishment of the Commission. CNCP status has additionally been granted to Curaçao, the Republic of Liberia and the Republic of Panama with flagged reefer and/or support vessels in the Convention Area. Belize became a Member of the Commission, but withdrew from the Convention in 2016.
342. As indicated in the table below, the questionnaire responses were fairly uniform in confirming that SPRFMO had made efforts to encourage CNCPs, either individually or collectively, to become Members of SPRFMO. Those States that participated in the international consultations for SPRFMO were encouraged to, and most have, become Members.

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<sup>123</sup> Decision of SPRFMO Members (Decision 02.2018), first passed in 2013 and updated in 2015, 2016 and 2018.



343. The reason why other States including CNCPs have not become Members may be due to differing national priorities. As one respondent noted: “Their [CNCNP] participation as Members may not be necessary in terms of their national objectives and activities in the fisheries”. However, another also commented that there could be more active encouragement by explaining the advantages of becoming a SPRFMO member.





344. As set out in SPRFMO Decision 02-2018, the continuation of CNCP status is conditional on compliance with CMMs. As indicated in the table above, the answer to the question of whether CNCPs comply with SPRFMO CMMs was mixed.
345. A number of Members noted that the degree of compliance by CNCPs with CMMs was variable, pointing to SPRFMO's compliance reports and the Commission's consideration of CNCP status.
346. By way of background, at the 5th Commission meeting, the Commission issued guidance to Panama regarding its future CNCP status.<sup>124</sup> This stated that Panama's CNCP status was approved in 2017, but it should not expect that its CNCP status would be approved in 2018 unless corrective action was taken as requested by the Commission in its Final Compliance Report and it demonstrated considerable improvement with regard to its CNCP obligations, including a commitment to participate in the effective operation of the Commission. During discussion at COMM6, CTC indicated that Panama had provided most of the information, but expressed concern about the lateness. The Commission expressed its expectation that in order to maintain its CNCP status in 2019, Panama would have to greatly improve its level of compliance and hold to its Compliance Action Plan.<sup>125</sup>
347. The Panel considers that that SPRFMO has a solid foundation set out in the Decision 02-2018 on the grant of CNCP status for ongoing cooperation between Members and CNCPs. However, compliance by CNCP with applicable CMMs is mixed. It has not been possible to identify clearly the reason for this. However, one respondent noted that "many measures that are not clearly known ... might have not been implemented" and suggested a training programme to recognise and articulate these. The Panel considers, and as noted in Section 4, that compliance can be encouraged by a clear articulation of requirements and cooperation to facilitate compliance with CMMs. There is also a balance to be struck between facilitating compliance and sanctioning non-compliance. As one responded commented: "We should take care not to hold CNCPs to different standards".

### *Panel's Findings and Recommendations*

348. The Panel:
- a) **Recommends** that further information is provided to CNCPs by the Commission on the benefits of becoming party to the SPRFMO Convention; and
  - b) **Recommends** that the Commission further encourages CNCPs to cooperate with the Commission in implementing its conservation and management measures, including data submission requirements, and that the Commission apply a consistent approach to the granting of CNCP status.

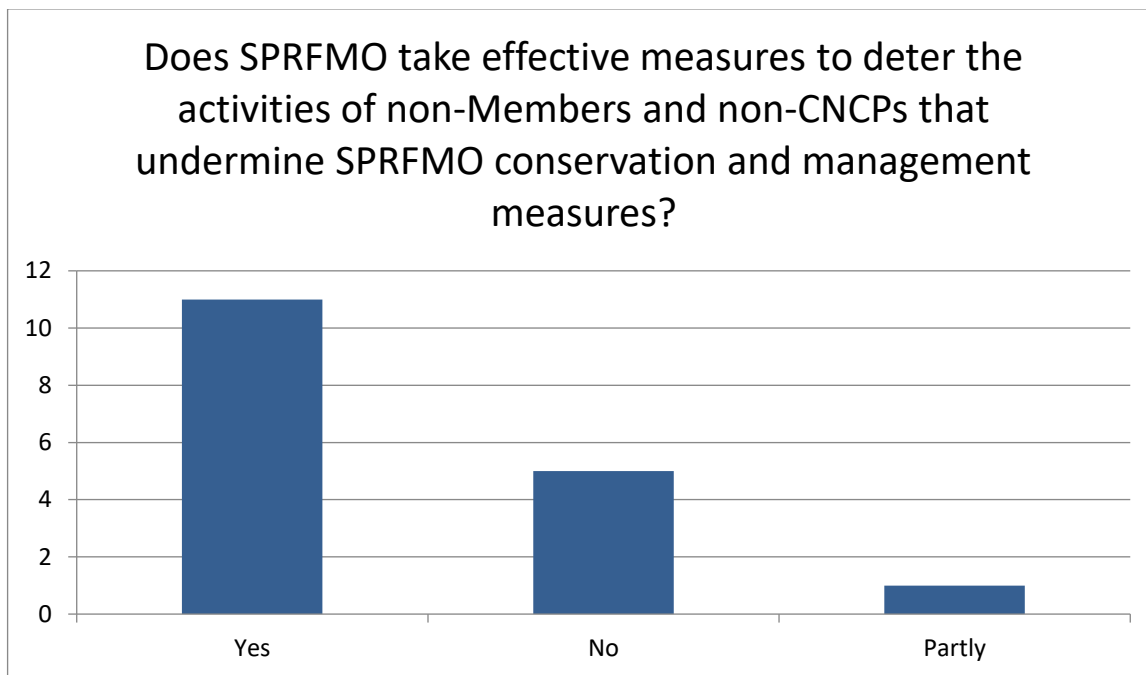
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<sup>124</sup> See COMM5 Report, Annex 7.

<sup>125</sup> COMM6-Report, p. 3.

### 6.3 Relationship with Non-Members or Non-CNCPs

349. There appears to be little information on the activities of non-Members or non-CNCPs that might be undertaking fishing operations in the SPRFMO Convention Area. A vessel from Bolivia, the Cape Flower, was found to have fished in the SPRFMO Convention Area. Bolivia was informed of the need to obtain the status of Member or CNCP in order to carry out operations in the SPRFMO Area and invited to participate of the Commission. However, one respondent to the questionnaire stated that “[i]n hindsight, being clearer that NCP [Non-Contracting Party] vessels engaged in fishing constitutes IUU fishing would have been a better response”.
350. In general, the approach to non-Members and non-CNCPs has been on an ad hoc basis if a Member or the Secretariat become aware of a non-Member fishing in the Convention Area. Reefer vessels may pose a particular risk in this regard. The responses to the Panel’s questionnaire demonstrate that some Members consider that SPRFMO could do more to address fishing by non-Members or non-CNCPs that undermines SPRFMO measures.



351. The Panel understands that there are mechanisms available to Members which provide information on the location of commercial fishing vessels and that these and other mechanisms could be used to monitor the fishing activity in the Convention Area. It is expected that there is IUU fishing taking place in the Convention Area, but there is little information on the true extent of IUU fishing in the Convention Area and for non-highly migratory species within the purview of the Convention.
352. There was a similar response rate to the question “Does SPRFMO encourage non-Members and non-CNCPs to become Members or CNCPs of SPRFMO?” One respondent noted that non-Members could be encouraged to become a party “by actively explaining the advantages of

becoming a SPRFMO member”. Another respondent considered that “there does not appear to be much outreach to [non-Contracting Parties] not engaged in SPRFMO but whose participation would be useful”. This suggests that increased outreach, including through increasing the visibility of the organisation may also increase knowledge of SPRFMO and its CMMs.

### ***Panel’s Findings and Recommendations***

353. The Panel:

- a) **Recommends** that the Commission continue to encourage non-Members and non-CNCPs found to be fishing within the Convention Area to cooperate with the Commission, including through requesting CNCP status;
- b) **Urges** the Secretariat to include in the SPRFMO Annual Administrative Report information on the outreach to non-Members and non-CNCPs that has been undertaken in the previous year; and
- c) **Recommends** that Members and the Secretariat take a more proactive approach towards identifying those vessels of non-Members and non-CNCPs that are undertaking fishing operations in the SPRFMO Convention Area.

#### **6.4 Cooperation with international organisations**

354. SPRFMO has two cooperation Memorandum of Understanding with the Secretariats of ACAP and CCAMLR. The objective of the MOU with ACAP is to facilitate cooperation between the two Secretariats with a view to supporting efforts to minimise the incidental by-catch of albatrosses and petrels within the SPRFMO Convention Area. The areas of cooperation include data collection and exchange, and the design and testing of albatross and petrel bycatch mitigation measures. The objective of the Arrangement with CCAMLR is to facilitate cooperation between SPRFMO and CCAMLR in order to advance their respective objectives, particularly with respect to stocks and species which are within the competence and/or mutual interest of both organisations. The Arrangement with CCAMLR is to operate for three years from 15 April 2016. Before the three years has expired, the organisations are to separately review the operation of the arrangement and decide whether it should be renewed. In addition to the two existing MOU, the Permanent Commission for the South Pacific has formally expressed interest in commencing negotiations with SPRFMO on a cooperation framework and Peru is leading an initiative on a Regional Network to combat IUU Fisheries from Latin American and the Caribbean.<sup>126</sup> Work on these is progressing.

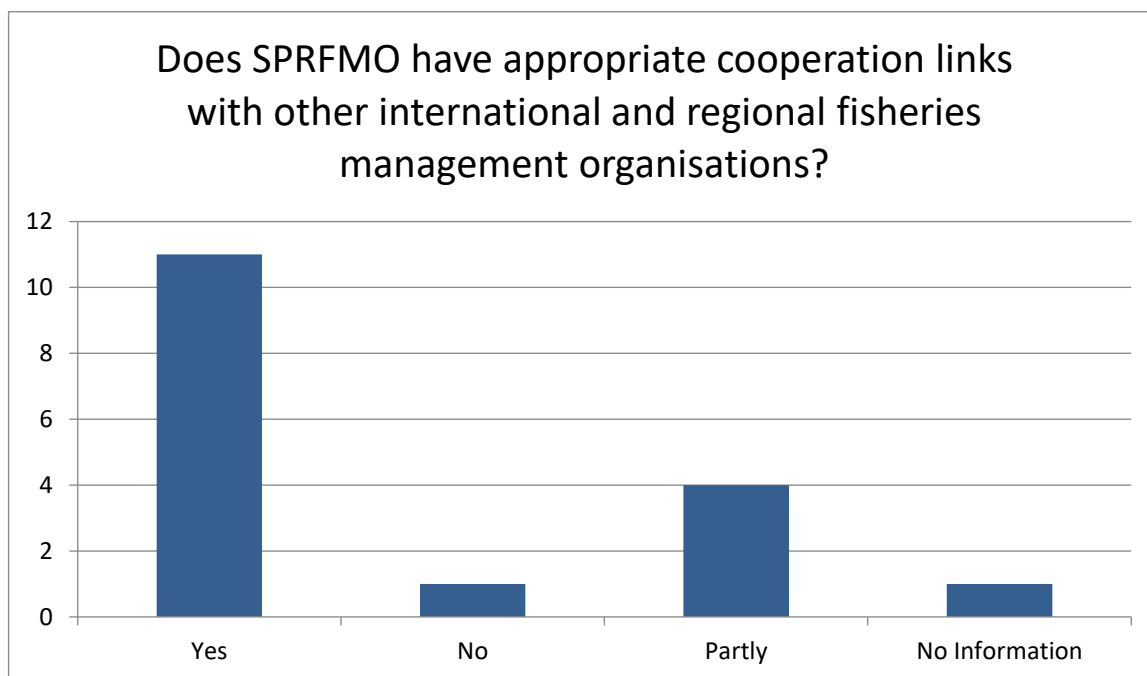
355. The MOUs have provided a vehicle for some cooperation between SPRFMO and ACAP and CCAMLR respectively. ACAP contributed expertise to the development of the SPRFMO conservation and management measure on minimising bycatch of seabirds. The SPRFMO Data Manager underwent a very useful short term placement at the CCAMLR Secretariat in 2017 with the objective of experiencing and discussing best practices and different approaches on

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<sup>126</sup> COMM6-Report, p. 7.

matters such as data management and information sharing, operation of VMS software, MCS measures, and leveraging scientific expertise in toothfish stock assessments.<sup>127</sup>

356. As indicated in the table below, in response to the question of whether SPRFMO has appropriate cooperation links with other international and regional fisheries management organisations, most responded affirmatively. However, some indicated a need to strengthen links with some RFMOs, notably CCAMLR and with other RFMOs which have competency over stocks located in the Convention area, especially IATTC and WCPFC. Similarly, some considered that it would be useful for SPRFMO to cooperate with these RFMOs specifically on the reduction and elimination of IUU fishing. Of those Members suggesting SPRFMO should cooperate more actively with other RFMOs, the general preference was for substantive cooperation which brought direct benefits. One Member expressed caution that “we are realistic in that for SPRFMO to stay cost-effective, cooperation has to be largely ‘on paper’ rather than travelling to other RFMO meetings”.



357. The Panel considers that cooperation with other international organisations could usefully be advanced in order to bring direct benefits to the organisation. Although in some cases MOU are needed in order for cooperation between the organisations to take place, the emphasis should be on substantive, rather than formulaic, cooperation between SPRFMO and other organisations. This applies in particular to neighbouring and overlapping RFMOs, such as CCAMLR, WCPFC, and IATTC. Not all cooperation needs to be under the umbrella of a MOU between the Commission and another organisation. Rather the Panel considers that members of the Secretariat should engage with colleagues in other RFMOs to learn from their experience and gain insights into how they handle operational matters.

<sup>127</sup> Annual Administrative Report, 2017.

358. Given the tight fiscal position of SPRFMO, there should be a planned and strategic approach to cooperation with other organisations. A cooperation strategy should be developed which targets cooperation, both formal and informal, towards organisations and activities, which would benefit SPRFMO.
359. The Panel considers that SPRFMO would benefit from the renewal of the MOU with CCAMLR, especially given their respective toothfish fisheries, and from knowledge sharing with CCAMLR on the operation of the VMS software, VMS data analysis, observer programme, data management and information sharing. As noted in Section 4.5 there are real benefits to be gained through SPRFMO increasing its informal cooperation with other RFMOs, particularly those with sophisticated information management systems, such as WCPFC. The Panel notes that attendance at other RFMO Commission meetings does not usually represent value for money. There is also some question over the value of attendance at multilateral processes where the role of observers is limited. A cooperation strategy would identify SPRFMO needs, set out the benefits which SPRFMO would seek to gain through cooperating with other organisations, and identify where assistance in meeting these needs can be obtained cost-effectively. It would provide a framework for the Secretariat and Commission to prioritise expenditure on cooperative initiatives.

### *Panel's Findings and Recommendations*

360. The Panel:
- a) **Acknowledges** that cooperation with other international organisations can be advantageous for SPRFMO and that increasing the cooperation with neighbouring and overlapping RFMOs can bring direct benefits to the organisation;
  - b) **Recommends** that the Commission develop a cooperation strategy which targets cooperation towards organisations and activities which would provide a direct benefit to SPRFMO; and
  - c) **Recommends** that in addition to the development of any necessary formal linkages through MOUs, the Secretariat engage informally with colleagues in other RFMOs to learn and share experiences of operational activities, not only in the MCS area as recommended above.

## **6.5 Special requirements of developing States**

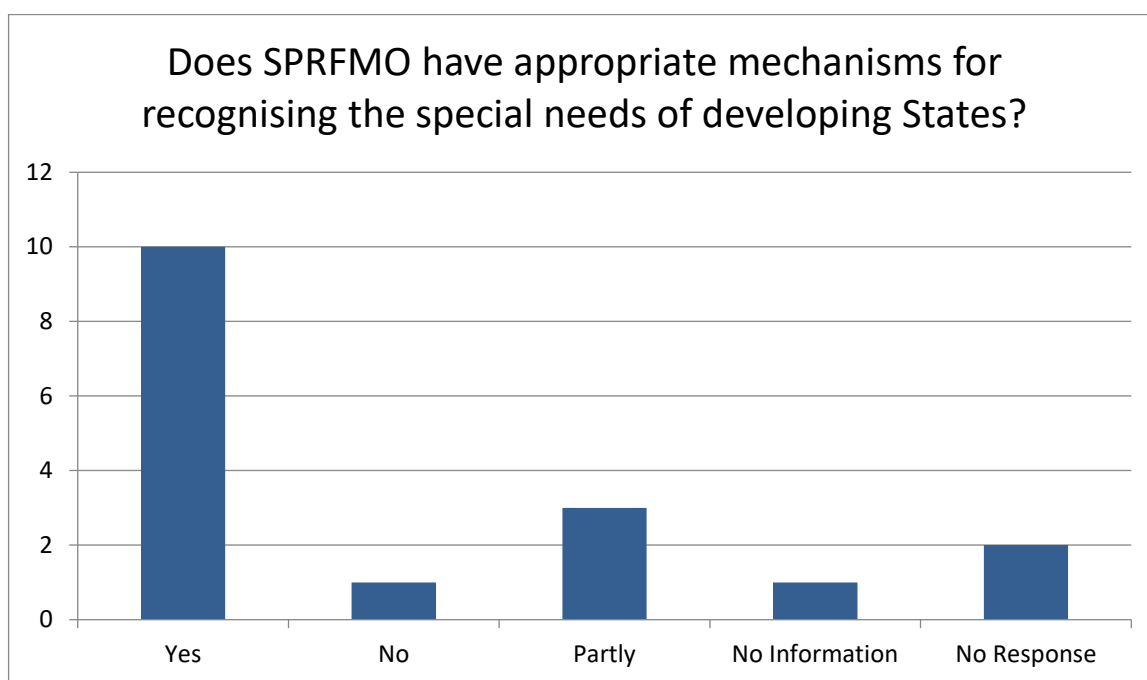
361. Article 19(1) of the SPRFMO Convention provides:

The Commission shall give full recognition to the special requirements of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, in relation to the conservation and management of fishery resources in the Convention Area and the sustainable use of such resources.

362. Consistent with Article 19(5), the Commission has established a Special Requirements Fund to facilitate the effective participation of developing States in the region, which may include assistance towards conservation and management of the fishery resources capacity building in

key areas. Regulation 5 and Annex 1 of the Financial Regulations set out the detailed guidelines for the administration of the Special Requirements Fund. These provide for applications to be made for technical assistance and capacity building based on detailed project documentation, which is then reviewed and approved by the Commission according to set criteria.

363. In addition to the Special Requirements Fund, the Commission has established a Developing States budget category with a cap of \$30,000.<sup>128</sup> This tends to be used to fund attendance at meetings of the Commission or its subsidiary bodies. In the last number of years, the Commission has approved \$20,000 annually for the Developing States budget category.
364. Most Members and CNCs consider that SPRFMO has appropriate mechanisms for recognising the requirements of developing States (see table below).



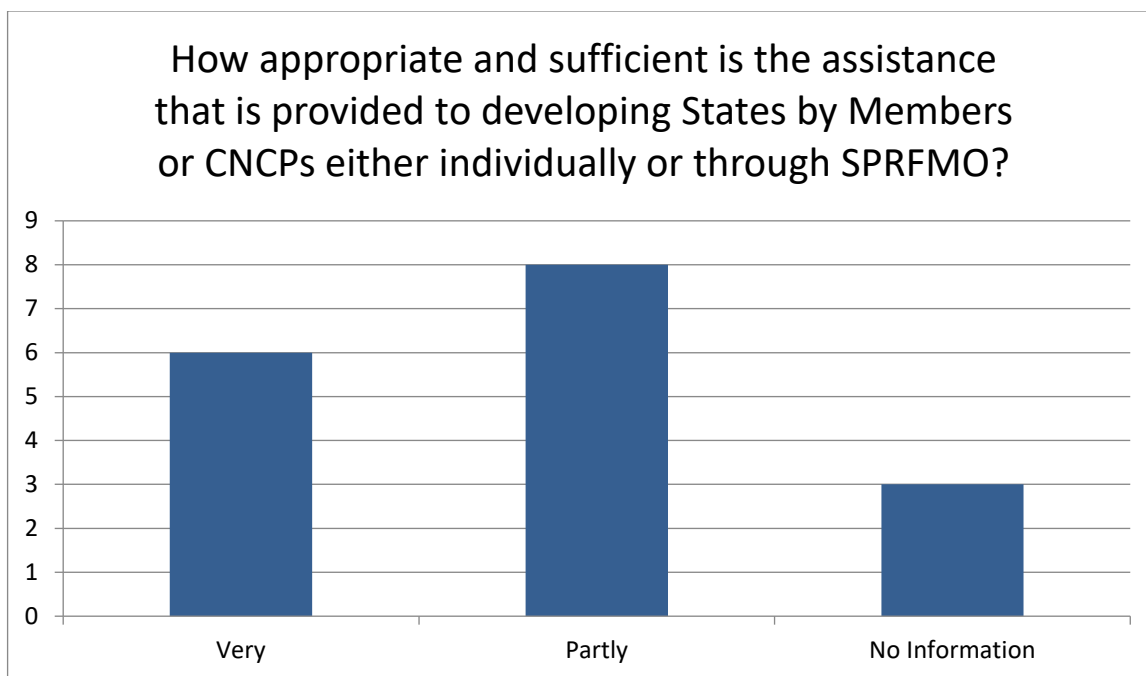
365. However, there was some concern expressed over the concentration on funding for participation at meetings. One Member stated:

Other obligations under Art 19.1.a) and b), and 19.4 regarding assistance to build capacity to improve conservation and management measures and to enable participation in fishing, including facilitating access to resources have not been actioned through the Commission.

366. Another suggested:

Whilst recognition of the special needs of developing states is explicitly provided for in the SPRFMO Convention, the organisation could perhaps be more proactive in identifying areas where capacity building assistance could be provided to developing States to support their compliance with SPRFMO measures.

<sup>128</sup> Financial Regulations, Reg 2.4.



367. These views were reinforced in answers to a second question regarding how appropriate and sufficient is the assistance that is provided to developing States by Members or CNCPs either individually or through SPRFMO (see table above). One Member stated: “It is unclear whether sufficient investments are being made by members in assisting capacity building in developing state members”. Another stated that “SPRFMO could be more structured in the way that it provides assistance to developing States and assisting in identifying areas where capacity building assistance is needed”. The review panel in the Ecuador dispute also referred to the suggestion of capacity building to provide assistance to Ecuador.<sup>129</sup>

**368.** The Panel considers that appropriate mechanisms are set out in the Convention and the Financial Regulations to address the special requirements of developing States. However, there do not appear to have been any requests for use of the Special Requirements Fund, despite it sitting at over NZ \$80,000.<sup>130</sup> The Panel suggests that the Commission explore whether there are any impediments to accessing the Fund, such as project design work and the procedures for Commission review of projects, which if removed could facilitate the Fund’s use for technical assistance and capacity building. Furthermore, disbursements from the Developing States budget category have overly concentrated on funding the attendance of participants at meetings. The Panel considers that these funds, together with the Special Requirements Fund, could be used more specifically for technical assistance and capacity building of developing States.

<sup>129</sup> Report of the Review Panel, para 125.

<sup>130</sup> FAC5-Report, p.3.

### *Panel's Findings and Recommendations*

369. The Panel:

- a) **Notes** that the Commission has appropriate mechanisms to assist developing States to participate in the Commission, in particular the Developing States budget category which can be used to assist developing States to attend meetings of the Commission and its subsidiary bodies, but **Acknowledges** that the Commission could do more to address some of the capacity needs of Members and CNCPs; and
- b) **Recommends** that the Commission and Secretariat encourage the use of the Developing States budget category for more than funding the attendance of participants from developing countries at SPRFMO meetings and that the Commission work to remove any impediments to accessing the Special Requirements Fund for technical assistance and capacity building.



## 7. FINANCIAL AND ADMINISTRATIVE ISSUES

### 7.1 Availability of resources for activities

370. The total SPRFMO budget for the 2018/19 (July-June) year is NZ \$1,103,000 of which NZ \$660,000 [60%] is spent on personnel resources.<sup>131</sup> The allocated budget has grown from NZ \$918,069 in its first year of operation (2014/15).

371. Article 15 (2) of the Convention sets out the basis for the financial contribution formula. The first set of Financial Regulations detailed the formula in Reg 4.7 as including the following elements:

- (a) A base fee of 10% divided in equal shares between all Members of the Commission, with developing countries eligible for a base fee reduction if they had not fished in the previous financial year;
- (b) A national wealth component of 30% (subdivided into 15% GNI, and 15% GNI per capita); and
- (c) A catch component of 60%; subdivided into 45% for pelagic and 15% for demersal fishery resources.

In addition, on a transitional basis for the first year until 30 June 2014, the pelagic resources were further subdivided with 5% for squid and 40% for all others.

372. The adopted budget formula created difficulties for Members due to the substantial variations it produced from year to year in the contributions of individual Members. This was largely due to the variability in catches, and the large increase in squid catches over the period since the negotiation of the Convention. As a result, the financial contributions formula was reviewed at the Commission's third meeting in 2016, and again at the 4<sup>th</sup> meeting in 2017. However, no agreement could be reached on an amendment to the budget contribution formula in the Financial Regulations until COMM5 in 2018. The amendment to the Financial Regulations contained a revised budget formula which aimed to reduce volatility in the movement of Members' contributions:

- (a) A base fee of 20%:
  - (i) 10% divided in equal shares between all Members of the Commission, with developing countries eligible for a base fee reduction if they had not fished in the calendar year two years prior to the year in which the budget is adopted; and
  - (ii) 10% divided proportionally amongst the Members engaged in fishing over a five-year period which begins six years before the calendar year in which the budget is adopted, based upon the number of years each Member has engaged in fishing;
- (b) A national wealth component of 30% (subdivided into 15% GNI, and 15% GNI per capita); and
- (c) A catch component of 50%; subdivided into 37.5% for pelagic and 12.5% for demersal fishery resources. The catch component is to be calculated on the basis of a five-year average of each Member's respective catch limits and quota allocations where available, or a five-year average of its total reported annual catch, with the five-year average to commence six years before the calendar year in which the budget is adopted. This is subject to:

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<sup>131</sup> COMM6-Budget 2018-19.

(i) a factor of 0.5 being applied to the five-year average for catches of *Dosidicus gigas*; and  
(ii) where a catch limit or quota applies to a fishery resource that straddles the Convention Area and an area under a Member's national jurisdiction, the relative catch contribution is the proportion of its total catch taken from the Convention Area over a preceding ten-year period.

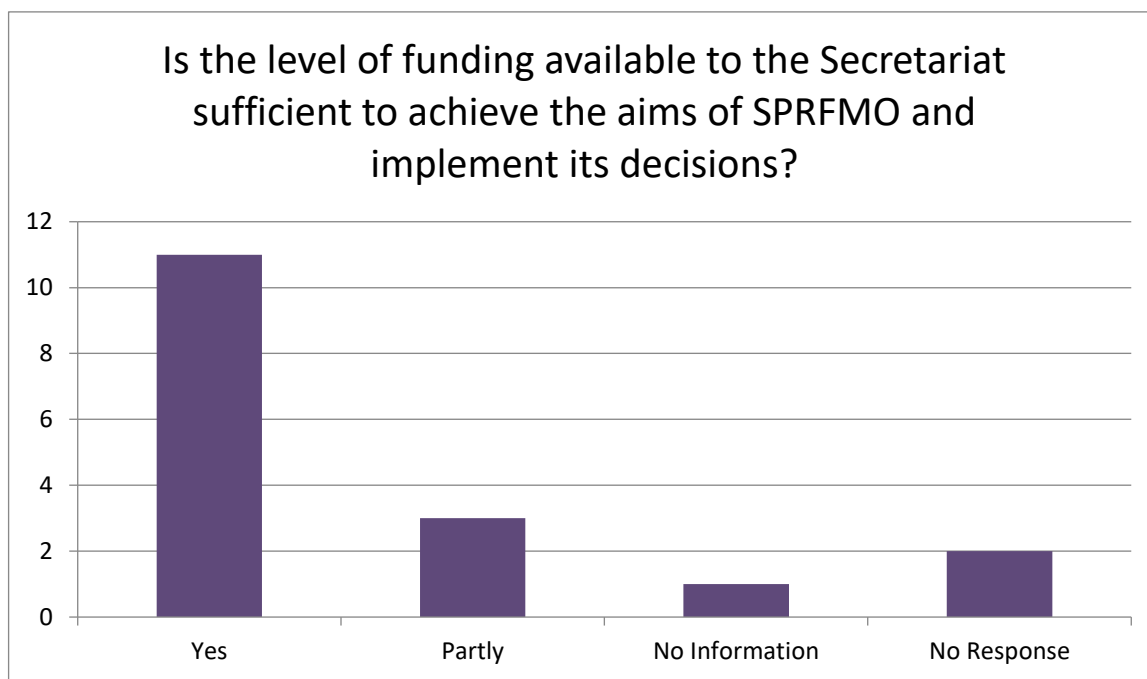
373. It was also agreed that the budget formula would be reviewed in 2020.
374. The revised budget formula has temporarily resolved the significant issues concerning contributions of Members since the establishment of SPRFMO. In the first few years of SPRFMO's operation there were budget surpluses, which were used to build up the Accumulated Surplus Account, which includes the excess of receipts over expenditures at the end of the financial year and the balance of any unexpended appropriations at the end of the 12-month budget period. These surpluses were used to smooth out the disparity caused by the strict application of the budget formula set out in the Financial Regulations. While this resulted in a more even year-to-year contribution from Members, the Accumulated Surplus Fund has been drawn down.
375. In accordance with the Financial Regulations, Reg 4, paragraph 5, the Commission is to attempt to maintain the Accumulated Surplus Account at a level sufficient to finance operations during the first three months of the financial year, estimated at NZ \$225,000.<sup>132</sup> FAC4 recommended retaining funds in the Accumulated Surplus Account to provide the Commission with a "buffer" in anticipation of a further increase in the budget in the financial year 2018-19.
376. In addition to the Accumulated Surplus Account, Annex 2 of the Financial Regulations provides for a Contingency Fund, which may be used in emergency situations, for unforeseen or unforeseeable extraordinary expenses that are necessary to meet a financial obligation; or for ensuring essential operations of the Secretariat in the absence of sufficient Member contributions over and above the amount available in the Accumulated Surplus Account. The Commission is to determine the level of the Contingency Fund but the Annex 2 provides for it to accumulate over time to reach and maintain a level equivalent to three months of the approved budget.
377. FAC4 held in January 2017 in recommended that the Commission agree to transfer NZ \$100,000 to the Contingency Fund. In 2018 the Commission transferred NZ \$25,000 to the Contingency Fund.<sup>133</sup> It was this fund that was used to fund the SPRFMO extraordinary expenditures of the objection procedure initiated by Ecuador, the SPRFMO share of which amounted to NZ \$71,000.
378. SPRFMO Members routinely pay their contributions in a timely manner. The organisation has not to date experienced significant issues with Members being in arrears, other than one Member which has since withdrawn from the organisation.
379. The questionnaire responses of Members indicated a general reluctance to increase the organisation's budget to any great degree (see table below). No respondents considered the

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<sup>132</sup> FAC-5 Report.

<sup>133</sup> COMM6 – Report, p. 3.

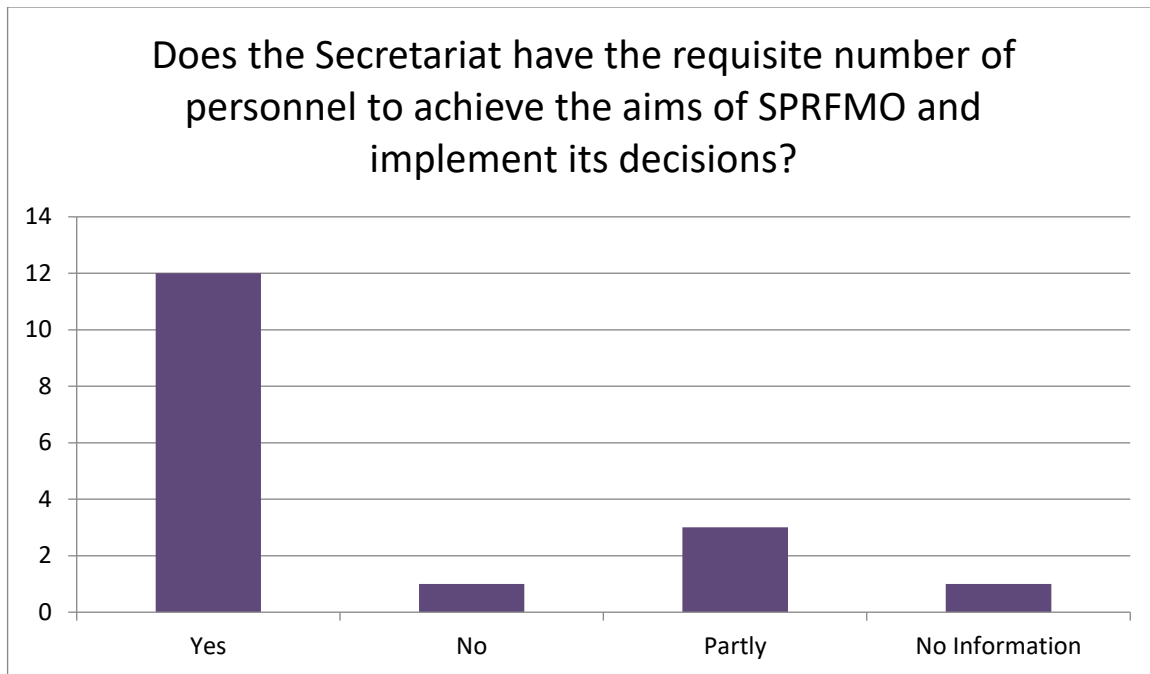
funding to be insufficient. One respondent noted that “the current level of funding seems commensurate with the size and duties of the SPRFMO” while another stated the “[b]udget is sufficient at this time, but may not be sufficient if programs and needs expand”.



380. The number of staff positions has increased from three in 2014 (Executive Secretary, Data Manager and Office Manager, all in the professional category)<sup>134</sup> to five staff members in 2018 (Executive Secretary, Data Manager, Communications Officer, in the professional category, and a Finance and Administration Officer and IT and VMS Officer in the general services category). By way of comparison there were four CMMs in 2014, compared to 15 CMMs in place in 2018. There is also a part-time (20% FTE) data technician under contract<sup>135</sup> and a secondee (60% FTE). When SPRFMO was established, certain services, such as finance and IT, were outsourced, but have since been brought in-house. The SPRFMO staff is multi-cultural and hardworking. Over the years the staff have taken on collateral duties in response to new demands made of the Secretariat. In some cases, collateral duties have been outside their skill and experience levels.
381. Consistent with the responses on the overall budget, Members commented that “current staffing level seems commensurate with the funding available and the size and duties of the SPRFMO” and on the desirability of the organisation having a small and lean Secretariat: “the Secretariat should remain small and cost-effective”. However, a few respondents recognised that “if the Commission decides to have the Secretariat take on more responsibilities, such as for the observer programme, additional resources may be needed”.

<sup>134</sup> See Staff Regulations, Reg 5.1.

<sup>135</sup> See Staff Regulations, Reg 11.



382. In the Panel’s assessment, the organisation’s financial management has been assisted due to two factors. First, the Accumulated Surplus Account accumulated unexpended funds in the first few years of the organisation’s operations which was used subsequently to smooth out the disparity in contributions caused by a strict application of a budget formula which did not take account of large increases in catches of particular species after the negotiation of the Convention. Second, Members pay their contributions on time which is of great assistance in ensuring the smooth financial operation of the Secretariat.
383. Members have been reluctant to see significant increases in their contributions and have worked to keep increases arising from the application of the budget formula to less than 15%.<sup>136</sup> At the same time the workload of the Secretariat has increased. The Panel assesses that the Secretariat is at the limit of what can reasonably be expected of the available financial and personnel resources. There is very limited capacity to do more, such as increased data collection and analysis, the implementation and operation of the VMS or the observer programme. Neither is the organisation able to fund unexpected requirements from the existing budget, such as the objection procedure brought by Ecuador.
384. The Panel nevertheless considers that the organisation has good mechanisms in place to assist with future budget management, in particular the Contingency Fund and the Accumulated Surplus Fund. However, the current amount in these Funds does not meet the level suggested in the Financial Regulations and therefore they do not provide the level of financial comfort that would be expected.

<sup>136</sup> See FAC4-Report, p. 3.

385. As noted in section 6.1, increasing the profile of the organisation and its external connections may bring additional resources to SPRFMO which may enable it to undertake activities which it might otherwise not be resourced to undertake.

### ***Panel's Findings and Recommendations***

386. The Panel:

- a) **Acknowledges** that Members and CNCPs pay their contributions on time and that this is of great assistance in ensuring the smooth operation of the organisation's finances;
- b) **Considers** that the Secretariat is at the limits of what is achievable with the current financial and personnel resources. If the Commission adopts conservation and management measures which require the Secretariat to perform additional tasks, it should accompany this with the necessary budgetary resources to fund the increase in responsibilities;
- c) **Encourages** the Secretariat to prepare an estimate of the additional financial cost which is likely to arise from proposed conservation and management measures;
- d) **Recommends** that if the SPRFMO Observer Programme is to be properly implemented as part of the suite of MCS measures, the Commission should prioritise hiring a professional staff member with compliance expertise, as recommended above;
- e) **Recommends** that the Commission include in the budget a provision for increasing progressively over a five year period the level of the contingency fund, and to reimburse any expenditures from the Fund for any Article 17 review process, until it reaches a level of 3 months of the operating budget as provided in the SPRFMO Financial Regulations; and
- f) **Acknowledges** that the 2020 review of the budget formula needs to take into account the durability of the formula so that the necessary work of the organisation drives the level of budget, rather than the level of individual contributions.

## **7.2 Efficiency and cost-effectiveness**

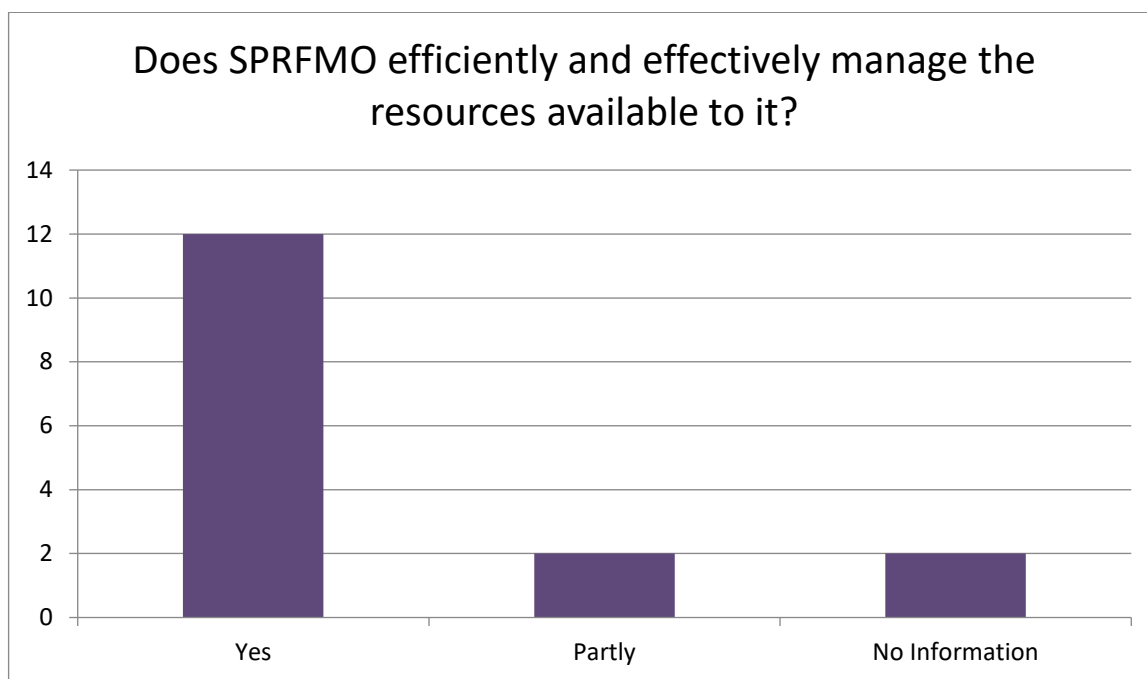
### **7.2.1 Efficient and effective management of human and financial resources**

387. SPRFMO has a July-June financial year and a budget process which forecasts the budget for the two subsequent years. Detailed budgets are approved by the Commission at its annual session. The Financial Regulations provide for expenditures to be moved between budget lines with the approval of the Commission Chair. In the past, FAC has encouraged the Secretariat to prepare budgets with sufficient detail and justification for additional expenditures. The accounts are audited annually and the organisation has consistently received a clear audit.

388. Management of human and financial resources is in the hands of the Executive Secretary. As noted in the previous section, the number of staff personnel in the Secretariat has grown incrementally since its establishment. At COMM6, the Commission approved a secondments and intern policy which sets out a procedure for the management of secondments and the advertisement of internship opportunities. The Commission also amended the Financial

Regulations to include a travel policy under which the Executive Secretary forecasts in advance the specific travel to be undertaken, with the Commission Chair to be consulted on any deviations.

389. In general Members consider that SPRFMO efficiently and effectively manages the resources available to it (see table below). One respondent referred to the need to consult with the Chair on the travel programme and another noted that “[a]s decisions are made regarding CMMs, the impact on the budget should also be considered”. For example, the VMS satellite airtime fee is an additional cost being borne by NZ/Australia even though the cost is due to those Members implementing the CMM and providing the data direct to the Secretariat.



390. The Panel agrees that the organisation makes efficient and cost-effective use of its financial and human resources. The Secretariat has hardworking staff who have adapted to the additional duties required of them as the organisation has grown. However, this has meant that the mix of positions may not be the same as if one had started with a clean slate. For example, it is usual for a fully functioning RFMO to have a Compliance Manager who is responsible for the management of all the RFMO’s MCS functions. The Data Manager and the Executive Secretary have in effect taken on some of the responsibilities of a Compliance Manager as well as a Science Manager. This is not sustainable. It is recommended that consideration be given to reviewing the structure of the Secretariat in light of the additional functions expected of it.
391. The role of the Chairs of the Commission and the subsidiary bodies must also be recognised. They are active and engaged Chairs who perform some functions which in other RFMOs may be performed by a Secretariat. The Commission has been fortunate to be so well-served by its Chairs, but the Panel cautions against relying on all future Chairs having the time, resources and inclination to be so engaged. The Panel considers that the degree of autonomy given to the

Executive Secretary over financial and personnel matters is not as great as seen in other RFMOs. This is something that the Commission may wish to reflect on in the future.

### 7.2.2 Meeting schedule and organisation

392. The Commission meets annually for a week in January, with a CTC meeting held over three days prior to the Commission meeting. FAC meets concurrently with the Commission meeting. The Scientific Committee meets a few months in advance of the Commission meeting.
393. No respondents to the questionnaire noted any issues with the organisation of the meetings of the Commission and subsidiary bodies. With respect to the schedule of meetings all respondents except one considered that the SPRFMO schedule of meetings was appropriate. The one differing Member suggested that the meeting of FAC could be held in advance of the Commission meeting, rather than concurrently with the meeting.
394. The Panel considers that although in general Members and CNCPs do not have difficulties with the schedule or organisation of the SPRFMO meetings, the Commission should consider holding a dedicated session of FAC prior to the Commission meeting and following the CTC meeting. It would also be expected that FAC deliberations would continue, as at present, in parallel with the Commission meeting to take into account Commission decisions with budgetary implications. This would allow Members to give the budget and related issues the attention they deserve and would be particularly important when there are significant issues for FAC, such as review of the budget formula.
395. During the interviews it was suggested that the Eastern (and Western) Sub-regional Management Committee meet more frequently to decide on allocations within the respective areas. The Panel does not see a strong need for the Management Committees in light of the active manner in which all Members engage in decisions on setting of TACs and their allocation.

### *Panel's Findings and Recommendations*

396. The Panel:
  - a) **Acknowledges** the importance of the Secretariat providing support to the Chair of the Commission and subsidiary bodies not only at meetings but also during the intersessional period;
  - b) **Recommends** that the Commission, on advice of the Executive Secretary, give consideration to reviewing the structure of the Secretariat to ensure the most cost effective use of staff resources, and to investing additional resources in building the capacity of the Secretariat to analyse scientific and MCS data; and
  - c) **Recommends** that the Commission set aside a half day for the Finance and Administration Committee in advance of the annual Commission meeting, and following the annual meeting of the Compliance and Technical Committee.

## CONCLUSION

397. The Panel concludes that in its first five years of operation SPRFMO has done an excellent job of leading the recovery of the Jack mackerel stock and putting in place a range of conservation and management and MCS measures based on best-practices of other RFMOs. The Panel has identified the challenges that SPRFMO faces in the future, in particular the need to now concentrate on other stocks within its purview, particularly Jumbo flying squid and updating the bottom fishing measure based upon the precautionary approach. In the future, SPRFMO could also look towards adopting a more comprehensive ecosystem approach to fisheries management. In approaching the next five years of operation, the Commission needs to think strategically about how to meet these challenges while remaining an effective and efficient organisation that provides a constructive benefit to its Members and CNCs. Without a further commitment to building the capacity and the resources of the organisation, there is the danger that SPRFMO will stagnate and fail provide meaningful benefits to the fishery resources it manages and its Members. The Panel considers it important for SPRFMO to face the challenges over the next few years and to maintain and enhance its relevance to fisheries management in the Pacific Ocean.



**6th Meeting of the Commission  
Lima, Peru, 30 January to 3 February 2018**

**COMM6-Report ANNEX 9: DECISION 06-2018  
First SPRFMO Performance Review**

(COMM6-Prop14)

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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. Such reviews may include examination of the effectiveness of the provisions of the Convention itself and shall be undertaken at least every five years;

*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 (4) of the Convention provides that the result of any such reviews shall be made publicly available following its submission to the Commission;

*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 intersessional period. 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
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 and legal matters, including compliance and enforcement issues.
3. The terms of reference for the review are listed in Annex I this Decision. The Review Panel may consider adding criteria, if needed.

## **Panel Composition**

4. The Review Panel shall be composed of four international independent experts as follows:
  - (i) two experts who are nationals of 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.
5. The Review Panel membership should aim to reflect the SPRFMO Membership in terms of regional balance, fishing and non-fishing nations and developing and developed countries.

## **Selection of the Review Panel Members**

6. SPRFMO Members may provide in writing two names, one for each category, to the Chairperson of the Commission, through the Secretariat, by 28 February 2018. SPRFMO Observers may provide in writing two names for the category of external experts. The submission will include a CV and a short presentation of each candidate.
7. The Chairperson of the Commission, through the Secretariat, shall provide to Members, by 15 March 2018, two lists containing the names proposed for the appointment of the four experts.
8. 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 or more candidates from the same list, a vote will be immediately re-run for those candidates. SPRFMO Members shall reply to the communication from the Chairperson with the list of tied candidates within 15 days indicating their vote for one person from the list/s.
9. The Chairperson of the Commission, immediately after the end of the 30-day period, or 15-day period in case of a re-run, shall, through the Secretariat, inform Members of the result of the selection process.
10. Once the persons with the highest votes 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, requesting their commitment to comply with the terms of the current Decision and seeking their positive response.

## **Review Panel function and tasks**

11. At the latest by 20 May 2018, the Review Panel will appoint a Chairperson amongst its Members by consensus. Immediately after his/her appointment the Chairperson shall start making the necessary arrangements to ensure the good organisation of the works of the Review Panel, including the distribution of tasks amongst Members of the Panel. 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 31

August 2018. 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<sup>137</sup>.

12. The review shall include a desktop study with questionnaires and interviews carried out during June/July 2018 by the Review Panel in support of this work prior to the meeting of the Review Panel, addressed to all SPRFMO Members, Cooperating non-Contracting Parties (CNCs) and observers. All SPRFMO Members, CNCs and observers are encouraged to participate in the questionnaires and interviews. The replies from the questionnaires will be made available at the secure part of the SPRFMO website when the Panel's Final Report is made available in accordance with Article 30(4). Members of the Review Panel shall respect the applicable SPRFMO rules regarding any confidential information disclosed in the documents and information made available to them and only use them exclusively for the purposes of this Decision.
13. The SPRFMO Secretariat shall provide logistical support and information to the Review Panel but shall not form part of this Panel.
14. The Review Panel will adopt the report and its conclusions and recommendations by consensus. In the event consensus cannot be reached, individual members of the Panel may include their views in the Panel's report. The Panel may consider the use in the report of the terminology proposed in Annex 2 of this Decision.

## Timeline

15. In accordance with paragraph 1, the final report and its conclusions, including recommendations and a table summarising the main findings, of the Review Panel shall be communicated by the Panel Chairperson to SPRFMO Members and CNCs and to the Chairpersons of the Scientific Committee (SC), the Compliance and Technical Committee (CTC) and the Finance and Administration Committee (FAC) no less than 50 days in advance of the dates fixed for the opening of their 2019 annual meetings for their consideration at those meetings.
16. The SC, CTC and FAC shall consider the final report during their meetings and report to the Commission the results of their discussions including plans for addressing any of the recommendations made by the performance review and tracking progress in that regard. Noting that the SC will not meet until after the 2019 annual meeting of the Commission, the SC will report on its discussions to the Commission at its 2020 annual meeting.
17. The final report and the conclusions of the Commission and each of its subsidiary bodies shall be placed on the SPRFMO website.
18. Following this performance review, subsequent reviews may be conducted at least every five years in accordance with Article 30 (1) of the SPRFMO Convention.

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<sup>137</sup> The SPRFMO Commission allocated NZD 15 000 in its 2017-18 Budget for this purpose (see Annex 2 of the Report of the 4<sup>th</sup> Meeting of the Finance and Administration Committee (2017)).

## Annex I

This annex provides a list of specific criteria that the review panel should address and if appropriate provide recommendations for their review.

Area	General criteria	Detailed criteria	
1. <i>Conservation and management</i>	Status of fishery resources	<ul style="list-style-type: none"> <li>• Status of fishery resources under the purview of SPRFMO.</li> <li>• Trends in the status of those resources.</li> <li>• Status of species that belong to the same ecosystems as, or are associated with or dependent upon, targeted fishery resources.</li> </ul>	
	Ecosystem approach	<ul style="list-style-type: none"> <li>• 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.</li> </ul>	
	Data collection		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has agreed formats specifications and timeframes for data submissions.</li> </ul>
			<ul style="list-style-type: none"> <li>• 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.</li> </ul>
			<ul style="list-style-type: none"> <li>• Extent to which fishing and research data and fishing vessel and research vessel data are gathered by SPRFMO and shared among Members and CNCPs.</li> </ul>
			<ul style="list-style-type: none"> <li>• Extent to which SPRFMO collects accurate and complete data to facilitate effective stock assessment and ensure that the provision of the best scientific advice is enabled, according with Article 23 (b).</li> </ul>
			<ul style="list-style-type: none"> <li>• Extent to which SPRFMO is addressing any gaps in the collection and sharing of data as required.</li> </ul>
Quality and provision of scientific advice		<ul style="list-style-type: none"> <li>• 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.</li> </ul>	
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has established an observer programme in accordance with Article 28 (1) of the Convention.</li> </ul>	
Adoption of conservation and management measures		<ul style="list-style-type: none"> <li>• 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.</li> </ul>	
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has applied a precautionary approach including as set forth in Article 3 (2) of the Convention and the Code of Conduct for Responsible Fisheries, including the application of precautionary reference points as called for in Article 20 (2) of the Convention.</li> </ul>	

		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has followed the criteria established under Article 21 (1) of the Convention, in the adoption of measures to the allocation of the total allowable catch or total allowable fishing effort</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has moved toward the adoption of CMMs for previously unregulated fisheries, including new and exploratory fisheries.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has taken due account of the need to conserve marine biological diversity and minimise adverse impacts of harvesting, research, conservation and associated activities on fishery resources and its marine ecosystems.</li> </ul>
		<ul style="list-style-type: none"> <li>• 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.</li> </ul>
	Capacity management	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has identified fishing capacity levels commensurate with the long-term conservation and sustainable use of fishery resources.</li> <li>• Extent to which SPRFMO has taken actions to prevent or eliminate excess fishing capacity and effort.</li> <li>• Extent to which SPRFMO monitors the levels of fishing effort, including taking into account annual notifications for participation by Members and CNCPs.</li> </ul>
2. Compliance and enforcement	Flag State duties	<ul style="list-style-type: none"> <li>• 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, <i>inter alia</i>, the 1982 Law of the Sea Convention, the 1995 Agreement and the 1993 FAO Compliance Agreement, as applicable.</li> </ul>
	Port State measures	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which these measures are effectively implemented.</li> </ul>
	Monitoring, control and surveillance	<ul style="list-style-type: none"> <li>• 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 and other relevant international provisions.</li> </ul>
<ul style="list-style-type: none"> <li>• Extent to which these MCS measures are effectively implemented.</li> </ul>		
Follow-up on infringements	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO, its Members and CNCPs follow up on infringements to CMMs.</li> </ul>	

	Cooperative mechanisms to detect and deter non-compliance	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has established adequate cooperative mechanisms to monitor compliance, detect and deter non-compliance and remedy compliance issues (e.g. compliance committees, IUU vessel lists, sharing of information about non-compliance).</li> <li>• Extent to which these mechanisms are being effectively utilised.</li> </ul>
	Market-related measures	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
3. <i>Decisionmaking and dispute settlement</i>	Decision-making	<ul style="list-style-type: none"> <li>• Efficiency of Commission meetings, meetings of its subsidiary bodies and working groups (including intersessional working groups) in addressing critical issues in a timely and effective manner.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has transparent and consistent decision-making procedures that facilitate the adoption of Decisions in a timely and effective manner.</li> </ul>
		<ul style="list-style-type: none"> <li>• Existence of an informal mechanism of cooperation between Members and CNCPs based on reciprocities.</li> </ul>
	Dispute settlement	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has established adequate mechanisms for resolving disputes.</li> </ul>
4. <i>International cooperation</i>	Transparency	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO is operating in a transparent manner, taking into account Article 18 of the Convention and the Code of Conduct for Responsible Fisheries.</li> </ul>
		<ul style="list-style-type: none"> <li>• 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.</li> </ul>
	Relationship with CNCPs	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO facilitates cooperation between Members and CNCPs including through encouraging CNCPs to become Members or to implement voluntarily SPRFMO CMMs.</li> </ul>
	Relationship with non-Members or non-CNCP undermining the objectives of the Convention	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
	Cooperation with international organisations	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO cooperates with other international organisations, including under Article 31 of the Convention.</li> </ul>
	Special requirements of developing States	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO recognises the special needs of developing States and pursues forms of cooperation with Developing States, including under Article 19 of the Convention and the Code of Conduct for Responsible Fisheries.</li> </ul>
<ul style="list-style-type: none"> <li>• Extent to which SPRFMO Members and CNCPs, individually or through the Commission, provide relevant assistance to developing States.</li> </ul>		

<i>5. Financial and administrative issues</i>	Availability of resources for activities	<ul style="list-style-type: none"> <li>• Extent to which financial and other resources are made available to achieve the aims of SPRFMO and to implement SPRFMO’s decisions.</li> </ul>
	Efficiency and cost-effectiveness	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO is efficiently and effectively managing its human and financial resources, including those of the Secretariat.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which the schedule and organisation of the meetings could be improved.</li> </ul>



## ANNEX II

The following terms and associated definitions are proposed as guidance the Commission and subsidiary bodies' discussions so as to remove ambiguity surrounding how particular paragraphs of the panel's report should be interpreted.

- Level 1: **RECOMMENDED; RECOMMENDATION** (formal); **REQUESTED** (informal): A conclusion for an action to be undertaken by the Commission, a subsidiary (advisory) body of the Commission and/or the Secretariat. Note: Subsidiary (advisory) bodies of the Commission must have their Recommendations and Requests formally provided to and accepted by the Commission. The intention is that the higher body will consider the action for endorsement under its own mandate, if the subsidiary body does not already have the required mandate. Ideally, this should be task-specific and contain a timeframe for completion.
- Level 2: **AGREED**: Any point of discussion from a meeting, which the SPRFMO Commission or relevant subsidiary bodies considers to be an agreed course of action covered by its mandate, which has not already been dealt with under Level 1 above; a general point of agreement among delegations/participants of a meeting which does not need to be elevated in the Commission's reporting structure.
- Level 3: **NOTED/NOTING; CONSIDERED; URGED; ACKNOWLEDGED**: General terms to be used for consistency. Any point of discussion from a meeting, which the reviewers consider to be important enough to record in a meeting report for future reference. Any other term may be used to highlight to the reader of a SPRFMO report, the importance of the relevant paragraph. Other terms may be used but will be considered for explanatory/informational purposes only and shall have no higher rating within the reporting terminology hierarchy than Level 3.



## ANNEX 2: BIOGRAPHIES FOR MEMBERS OF THE SPRFMO REVIEW PANEL

**Dr. Penelope Ridings** (Chair) is a New Zealand Barrister and International Law Consultant providing advice on international law, oceans and fisheries, environment, trade and investment. She is currently Legal Advisor to the Western and Central Pacific Fisheries Commission and earlier represented New Zealand at the negotiations for that Convention. Previously she was a lawyer and diplomat with the New Zealand Ministry of Foreign Affairs and Trade, including as the Ministry's chief International Legal Adviser. She has represented New Zealand in multilateral negotiations, including on Port State Measures and marine biodiversity beyond national jurisdiction, regional fisheries management meetings, including SPRFMO and CCAMLR, bilateral legal and fisheries talks, and international dispute settlement. She was Agent for New Zealand before the International Court of Justice in *Whaling in the Antarctic (Australia v Japan, New Zealand Intervening)* and before the International Tribunal for the Law of the Sea in the *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission*. She is also formerly New Zealand Ambassador to Poland, Estonia, Latvia and Lithuania, and New Zealand High Commissioner to Samoa. In 2015 she was granted the Member of the New Zealand Order of Merit (MNZM) for Services to the State.

**Alexa A. Cole** is the Deputy Chief of the Enforcement Section of NOAA General Counsel. She previously served as the Senior Enforcement Attorney for the Pacific Islands Region in Honolulu and as an Enforcement Attorney in the Headquarters office in the Section. Prior to joining NOAA, Alexa was an Associate for a firm in Washington, DC. In her current position, she supervises the international, legislative, and policy issues for the Enforcement Section. Alexa has a large international practice for NOAA, including serving on the US delegation to regional fisheries management organizations and Treaty negotiations, as well as developing and leading capacity building initiatives around the world. She was Chair of the Technical and Compliance Committee of the Western and Central Pacific Fisheries Commission from 2015 through 2018. In addition, Alexa has extensive experience prosecuting federal administrative enforcement cases involving international and domestic fisheries, protected resources, marine national monuments and national marine sanctuaries. Alexa received a B.A. in Geography and Environmental Studies from McGill University, a J.D. from Vermont Law School, and a Masters degree in International Public Policy at The Johns Hopkins University, Paul H. Nitze School of Advanced International Studies.

**Lyn Goldsworthy AM** has spent more than 35 years working across oceans and Antarctic policy issues for the non-government sector. She has attended more than 25 CCAMLR meetings and several SPRFMO and SIOFA meetings as an advisor on the Australian government delegations. She is currently a member of the Australian government Sub Antarctic Fisheries Management Advisory Committee and served on the Antarctic Science Advisory Committee for 16 years. Lyn was awarded the Order of Australia (Member) for services to conservation and environment in 1991, and the New Zealand Antarctic Conservation Trophy in 1990. She is currently undertaking a PhD at Institute of Antarctic and Marine Studies, University of Tasmania, considering CCAMLR approach as a case study for precautionary and ecosystem-based marine resource management in the current dynamic geopolitical and physical climate.

**Prof. Stuart Kaye** is Director and Professor of Law at the Australian National Centre for Ocean Resources and Security at the University of Wollongong. Prior to this appointment he was Dean and Winthrop Professor of Law at the University of Western Australia between 2010 and 2013. He also previously held a Chair in Law at the University of Melbourne and was Dean of Law at the University of Wollongong between 2002 and 2006. He holds degrees in arts and law from the University of Sydney, and a doctorate in law from Dalhousie University. He is admitted as a barrister of the Supreme Courts of New South Wales, Tasmania and Queensland. He has written over 100 articles and other publications, as well as a number of books, including *Australia's Maritime Boundaries* (2001), *The Torres Strait* (1998), and *International Fisheries Management* (2001), and co-authoring *International Law – Cases and Material with Australian Perspectives* (3rd Edn, 2014) for Cambridge University Press. He was appointed to the International Hydrographic Organization's Panel of Experts on Maritime Boundary Delimitation in 1995 and in 2000 was appointed to the List of Arbitrators under the Environmental Protocol to the Antarctic Treaty. He was chair of the Australian International Humanitarian Law Committee from 2003 to 2009, for which he was awarded the Australian Red Cross Society Distinguished Service Medal. He was elected a Fellow of the Royal Geographical Society in 2007 and the Australian Academy of Law in 2011. He holds the rank of Commander in the Royal Australian Navy Reserve, providing advice to the Australian Defence Force and Maritime Border Command with respect to international law.

### ANNEX 3: SUMMARY OF QUESTIONNAIRE RESPONSES

The Panel received seventeen responses from Members, CNCPs and Observers. The table below represents a summary of all of the responses received. In any instance where the total number of responses to any question is less than 17, the missing responses reflects when one or more respondents did not answer a specific question or deemed it not applicable. All substantive responses are captured in the table.

CONSERVATION AND MANAGEMENT				
<i>Ecosystem Management</i>				
	Yes	No	Partly	
Do SPRFMO decisions fully incorporate the ecosystem approach to fisheries management in accordance with Article 3(2) of the SPRFMO Convention?	9	1	7	
Are there gaps or changes which would improve implementation of the ecosystem approach?	10	6	1	
<i>Data Collection</i>				
	Excellent	Good	Acceptable	Inadequate
How effective are the SPRFMO data collection:				
Formats?	4	11	1	1
Specifications?	4	10	2	1
Timeframes?	3	10	4	0
	Yes/Very	No/Not at all	Partly	
How accurate, timely and complete is the collection of data by:				
Members?	10	1	5	
CNCPs?	7	2	8	
SPRFMO?	11	0	4	
Are there any gaps in data collection necessary for effective stock assessment?	7	5	5	
Are there any gaps in data collection necessary for ensuring best scientific advice is available?	7	6	4	
How effective are SPRFMO's efforts in addressing any gaps in data collection?	9	0	8	
Are there any gaps in CMM 16-2018 (Observer Programme) which need to be filled to fully reflect the requirements of Article 28(1) of the SPRFMO Convention?	6	8	3	

<i>Quality and Provision of Scientific Advice</i>			
	Very	Not at all	Partly
How effective are SPRFMO's efforts to receive and act on best scientific advice relevant to the fishery resources it covers?	13	0	4
How effective are SPRFMO's efforts to receive and act on best scientific advice relevant to the effects of harvesting, research, conservation and associated activities on the marine environment?	10	0	7
<i>Adoption of Conservation and Management Measures</i>			
	Yes	No	Partly
Has SPRFMO adopted an effective range of Conservation and Management Measures for fishery resource management that ensure the long-term conservation and sustainable use of those resources and are based on the best scientific evidence available?	12	1	4
Has SPRFMO sufficiently applied a precautionary approach in line with the requirements of Article 3(2) of the SPRFMO Convention and the Code of Conduct for Responsible Fisheries?	10	1	6
Has SPRFMO sufficiently applied precautionary reference points as called for in Article 20(2) of the Convention?	10	1	6
Has SPRFMO sufficiently incorporated the criteria established under Article 21(1) of the SPRFMO Convention, in the adoption of measures relating to the allocation of the total allowable catch or total allowable fishing effort?	12	1	4
How effective are the SPRFMO CMMs adopted to cover previously unregulated fisheries, including new and exploratory fisheries?	12	1	4
Has SPRFMO adopted CMMs which specifically address the conservation of marine biological diversity?	6	3	7
Has SPRFMO adopted CMMs which specifically aim to minimise adverse impacts of harvesting, research, conservation and associated activities on fishery resources and its marine ecosystems?	11	1	4

	Yes	No	Partly	No Info
Has SPRFMO adopted CMMs which specifically aim to minimise pollution, waste, discards, catch by lost or abandoned gear, catch of no-target fishery resources, and impacts on associated or dependent species?	3	2	9	1
<i>Capacity Management</i>				
	Yes/Very	No/Not at all	Partly	
Are SPRFMO fishing capacity levels appropriate to support long-term conservation and sustainable use of its fisheries resources?	11	3	3	
How effective have been actions taken by SPRFMO to prevent or eliminate excess fishing capacity and effort?	10	1	3	
How effective are efforts made by SPRFMO to monitor levels of fishing effort?	10	0	4	
<b>COMPLIANCE AND ENFORCEMENT</b>				
<i>Flag State Duties</i>				
	Yes	No		
Do Members and CNCPs have a clear understanding of their flag state duties?	15	1		
Have there been any situations where a Member or CNCP has not fulfilled its flag state duties?	7	9		
Are there ways that Members and CNCPs could better fulfil their flag state duties?	12	2		
<i>Port State Measures</i>				
	Yes	No	Both	Insufficient Info
Have Members implemented the SPRFMO port state measure fully	11	2	1	2
Is the port state measure adopted by SPRFMO effective?	14	1	0	1
Are there additional port state measures that are needed?	3	11	0	1
<i>Monitoring, Control and Surveillance</i>				
	Yes	No	Both/Possibly	
Are SPRFMO's MCS measures well-tailored to enable monitoring of and ensure compliance with SPRFMO's conservation and management measures?	15	2	0	

	Yes	No	Both/Possibly		
Are there additional MCS measures that are needed to enable monitoring of and ensure compliance with SPRFMO's conservation and management measures?	7	9	1		
Are there improvements that should be made to the existing MCS measures?	6	8	1		
Are the SPRFMO MCS measures effective and integrated?	12	3	0		
Have Members and CNCPs implemented the SPRFMO MCS measures fully?	11	4	0		
<i>Follow-up on Infringements</i>					
	Yes	No			
Do Members and CNCPs follow up on alleged infringements of conservation and management measures?	15	1			
<i>Cooperative Mechanisms to Detect and Deter Non-compliance</i>					
	Yes	No	Partly		
Has SPRFMO established cooperative mechanisms to monitor compliance, detect and deter non-compliance and remedy compliance issues?	14	1	0		
If there are cooperative mechanisms, are they effective in monitoring compliance, detecting and deterring non-compliance and remedying compliance issues?	12	0	1		
Are the cooperative mechanisms being used effectively?	13	0	1		
Are there additional cooperative mechanisms needed?	5	7	1		
<i>Market-related Measures</i>					
	Yes	No			
Are there market-related measures that SPRFMO should adopt?	8	6			
<b>DECISION-MAKING AND DISPUTE SETTLEMENT</b>					
<i>Decision-making</i>					
	Good	=>	=>	=>	Poor
How do you assess SPRFMO decision-making process and practices?	8	5	0	0	0
	Yes	No		Partly	
Are the processes and practices inclusive and transparent?	12	0		3	
Could they be improved?	4	6		2	

	Yes	No	Partly
Would SPRFMO benefit from the greater use of information mechanisms of cooperation in its decision-making?	3	4	4
<i>Dispute Resolution</i>			
	Yes	No	Partly
Has the dispute resolution process used by SPRFMO been effective in resolving disputes?	13	0	2
Has the SPRFMO dispute resolution process been expeditious?	14	0	1
Do you have any concerns with the SPRFMO dispute resolution process, such as procedures or costs?	1	12	2
<b>INTERNATIONAL COOPERATION</b>			
<i>Transparency</i>			
	Yes	No	Partly
Are relevant intergovernmental organisations and interested environmental organisations and fishing industry organisations able to effectively participate in all SPRFMO meetings?	15	1	1
Does SPRFMO facilitate consultations with non-governmental organisations, representatives of the fishing industry, and other interested bodies on SPRFMO conservation and management measures?	14	1	1
Are all SPRFMO reports, conservation measures and scientific advice and other relevant non-commercial sensitive information made publicly available in a timely manner?	17	0	0
How effective is the SPRFMO website making relevant information publicly available and easily accessible?	14	0	3
<i>Relationship with Cooperating Non-Contracting Parties (CNCP)</i>			
	Yes	No	
Have there been efforts by SPRFMO to encourage CNCPs, either individually or collectively, to become SPRFMO Members?	14	2	
	Yes	Partly	No Info
Do CNCPs voluntarily implement SPRFMO measures?	7	7	1

<i>Relationship with Non-Members or Non-CNCPs Undermining the Objectives of the Convention</i>				
	Yes	No	Partly	No Info
Does SPRFMO take effective measures to deter the activities of non-Members and non-CNCPs that undermine SPRFMO conservation and management measures?	11	5	1	0
Does SPRFMO encourage non-Members and non-CNCPs to become Members or CNCPs of SPRFMO?	12	1	1	1
<i>Cooperation with International Organisations</i>				
	Yes/Very	No/Not at all	Partly	No Info
Does SPRFMO have appropriate cooperation links with other international and regional fisheries management organisations?	11	1	4	1
How effective is the cooperation with other regional fisheries management organisations which have competency over stocks located in the Convention Area?	9	2	4	1
Does SPRFMO cooperate with relevant fisheries organisations specifically on the reduction and elimination of IUU fishing?	9	1	3	1
<i>Special Requirements of Developing States</i>				
	Yes/Very	No/Not at All	Partly	No Info
Does SPRFMO have appropriate mechanisms for recognising the special needs of developing States?	10	1	3	1
How appropriate and sufficient is the assistance that is provided to developing States by Members or CNCPs either individually or through SPRFMO?	6	0	8	3
<b>FINANCIAL AND ADMINISTRATIVE ISSUES</b>				
<i>Availability of Resources for Activities</i>				
	Yes	No	Partly	No Info
Is the level of funding available to the Secretariat sufficient to achieve the aims of SPRFMO and implement its decisions?	11	0	3	1
Does the Secretariat have the requisite number of personnel to achieve the aims of SPRFMO and implement its decisions?	12	1	3	1
Does the SPRFMO budget process lead to the necessary financial resources being available to the SPRFMO Secretariat?	12	0	2	2



<i>Efficiency and Cost-effectiveness</i>				
	Yes	No	Partly	No Info
Does SPRFMO efficiently and effectively manage the resources available to it?	12	0	2	2
Does SPRFMO have the right organisational structure and working groups to efficiently undertake its work?	15	2	0	0
Is the SPRFMO schedule of meetings appropriate?	16	1	0	0
Is the organisation of SPRFMO meetings effective in achieving SPRFMO's objectives?	16	0	0	1