

INTERNATIONAL COMMISSION FOR THE
CONSERVATION OF ATLANTIC TUNAS



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CONSERVATION DES THONIDES DE L'ATLANTIQUE

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CONSERVACIÓN DEL ATÚN ATLÁNTICO

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**REPORT OF THE
INDEPENDENT REVIEW**

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

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LIST OF ABBREVIATIONS AND ACRONYMS

AFMA	Australian Fisheries Management Authority
ALB	Albacore (<i>Thunnus alalunga</i>)
Amended NAFO Convention	Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, as amended by Amendment to the Convention, 28 Sept. 2007
Antigua Convention	Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica
Art.	Article
BCD	Bluefin Tuna Catch Document
BET	Bigeye tuna (<i>Thunnus obesus</i>)
BFT	Bluefin tuna (<i>Thunnus thynnus thynnus</i>)
BFTRC	Bluefin Tuna Re-export Certificate
BIL	Billfish (<i>Istiophoridae</i>)
B _{MSY}	Biological reference point; the long-term average biomass value expected if fishing at F _{MSY}
BSD	ICCAT Bluefin Tuna Statistical Document
BUM	Atlantic blue marlin (<i>Makaira nigricans</i>)
CC	Compliance Committee
CCAMLR	Commission on the Conservation of Antarctic Marine Living Resources
CCAMLR Convention	Convention on the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CCSBT Convention	Convention on the Conservation of Southern Bluefin Tuna
CCTA	Commission of Technical Cooperation in Africa
CDP	ICCAT Bluefin Tuna Catch Documentation Program
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COC	Conservation and Management Measures Compliance Committee (ICCAT)
Code of Conduct	FAO Code of Conduct for Responsible Fisheries
COFI	Committee on Fisheries (FAO)
CPCs	Contracting Parties and Cooperating Contracting Parties, Entities or Fishing Entities
CPUE	Catch-per-unit effort
DWFN	Distant Water Fishing Nations
EC	European Community
EEZ	Exclusive Economic Zone
ETTP	European Tuna Tagging Program
EU	European Union
F	Fishing mortality
FADs	Fish Aggregating Devices
FAO Compliance Agreement	Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
FAO	Food & Agriculture Organization of the United Nations
FAO IPOA-IUU	FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
FL	Fork length
F _{replacement}	Fishing mortality (F) which maintains the size of the stock at its current size
GDP	Gross Domestic Product
GFCM	General Fisheries Commission for the Mediterranean
IATTC	Inter-American Tropical Tuna Commission
ICCAT Convention	International Convention for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
IOTC	Indian Ocean Tuna Commission
IPOA-Capacity	FAO International Plan of Action for the Management of Fishing Capacity
IPOA-IUU	FAO International Plan of Action to Prevent, Deter and Eliminate Illegal Unreported and Unregulated Fishing
IPOA-Seabirds	FAO International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries

IPOA-Sharks	FAO International plan of Action for the Conservation and Management of Sharks
IUU	Illegal, unreported and unregulated
Kg	Kilogram
LSFVs	Large-scale fishing vessels
LSTVs	Large-scale tuna vessels
MCS	Monitoring, control and surveillance
MSY	Maximum sustainable yield
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	North East Atlantic Fisheries Commission
New NEAFC Convention	Convention for the Future Multilateral Cooperation in North-East Atlantic Fisheries, as amended in 2004 and 2006
NGOs	Non-governmental Organizations
Para.	Paragraph
PWG	Permanent Working Group for the Improvements of ICCAT Statistics and Conservation Measures (ICCAT)
Rec.	Recommendation
Ref.	Reference
Res.	Resolution
RFMOs	Regional Fisheries Management Organizations or arrangements
RFOs	Regional Fisheries Organizations
RSN	Regional Fisheries Body Secretariats Network (RSN)
SAI	Atlantic sailfish (<i>Istiophorus albicans</i>)
SCRS	Standing Committee on Research and Statistics (ICCAT)
SDPs	Statistical Document Programs
SEAFO	South East Atlantic Fisheries Organization
SEAFO Convention	Convention for the Conservation and Management of Fishery Resources in the South East Atlantic Ocean
SHK	Sharks
SIOFA	Southern Indian Ocean Fisheries Agreement
SKJ	Skipjack tuna (<i>Katsuwonus pelamis</i>)
SSB _{MSY}	Biological reference point; the long-term spawning stock biomass value expected if fishing at F_{MSY} .
STACFAD	Standing Committee on Finance and Administration (STACFAD)
SWO	Swordfish (<i>Xiphias gladius</i>)
t	Tonnes
TAC	Total allowable catch
TOR	Terms of Reference
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	United Nations Fish Stock Agreement (Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks)
VMS	Vessel monitoring system
VPA	Virtual population analysis
WCPFC	Western and Central Pacific Fisheries Commission
WCPFC Convention	Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
WHM	Atlantic white marlin (<i>Tetrapturus albidus</i>)
WTO	World Trade Organization
WWF	World Wide Fund for Nature
YFT	Yellowfin tuna (<i>Thunnus albacares</i>)
Z	Total mortality



EXECUTIVE SUMMARY

In response to concerns raised by the international community about the sustainable management of high seas fisheries, including where regional fisheries management organisations and arrangements (RFMOs) exist, the International Commission for the Conservation of Atlantic Tunas (ICCAT), at its 2007 annual meeting agreed to conduct an independent review of its own performance against its objectives.

ICCAT appointed an independent panel consisting of Glenn Hurry, Chief Executive Officer of the Australian Fisheries Management Authority (AFMA) and the current Chairman of the WCPFC, Moritaka Hayashi, Professor (now *emeritus*) of International Law, Waseda University in Japan, and Jean-Jacques Maguire, a well known and respected international fisheries scientist from Canada.

The terms of reference (TOR) of the Review Panel (**Attachment 1**) were consistent with those developed at a Joint Meeting of Tuna RFMOs, Kobe Japan January 2007. The TOR were sufficient to allow the Review Panel to undertake a broad review of ICCAT's performance against its objectives and to recommend approaches that if adopted would strengthen the mandate of ICCAT and improve its performance.

The report reviews the Basic Texts, the status of the stocks and the scientific process, the development and application of conservation and management measures and in the final part compiles the recommendations of the Panel into a compendium for easy reference.

ICCAT's objective is embedded in the preamble of its Convention finalised in 1966. The preamble states: "*The Governments ...considering their mutual interest in the populations of tuna and tuna like fishes found in the Atlantic ocean, and desiring to cooperate in maintaining the populations of these fishes at levels which will permit the maximum sustainable catch for food and other purposes*". ICCAT's objective is therefore to maintain populations of tunas and tuna like fishes at levels that will permit maximum sustainable yield (MSY).

GENERAL OBSERVATIONS AND ASSESSMENT OF ICCAT

The Panel made the following general observations:

- ICCAT has developed reasonably sound conservation and fisheries management practices, which, if fully implemented and complied with by Contracting Parties, Cooperating non-Contracting Parties, Entities and Fishing Entities (CPCs), would have been expected to be effective in managing the fisheries under ICCAT's purview.
- The ICCAT Convention should be reviewed, modernised, or otherwise supplemented, to reflect current approaches to fisheries management.
- The ICCAT standing committee and panel structure is sound and the committees provide timely advice to ICCAT. However, the Panel expressed strong reservations on the performance of the Compliance Committee (CC).
- The Standing Committee on Research and Statistics (SCRS) provides sound advice to the Commission members operating under significant difficulties largely caused by CPCs failing to provide timely and accurate data.
- The performance of the Secretariat is sound and well regarded as both efficient and effective by CPCs.
- The fundamental problems and challenges that ICCAT faces in managing sustainably the fisheries under its purview are not unique; other tuna RFMOs also face them, but the size of the ICCAT membership adds more difficulties.

The Panel made the following general assessment of ICCAT performance:

- Fundamentally ICCAT's performance to date does not meet its objectives for several of the species under its purview.
- ICCAT's failure to meet its objectives is due in large part to the lack of compliance by many of its CPCs.
- CPCs have consistently failed to provide timely and accurate data and to implement monitoring, control and surveillance (MCS) arrangements on nationals and national companies.
- The judgement of the international community will be based largely on how ICCAT manages fisheries on bluefin tuna (BFT). ICCAT CPCs' performance in managing fisheries on bluefin tuna particularly in the eastern Atlantic and Mediterranean Sea is widely regarded as an international disgrace and the international community which has entrusted the management of this iconic species to ICCAT deserve better performance from ICCAT than it has received to date.
- There are concerns about transparency within ICCAT both in decision making and in resource allocation.
- Most of the problems and challenges ICCAT faces would be simple to fix if CPCs developed the political will to fully implement and adhere to the letter and spirit of the rules and recommendations of ICCAT.

HAS ICCAT MET ITS OBJECTIVE?

A simple reading of the state of the stocks under ICCAT's purview would suggest that ICCAT has failed in its mandate as a number of these key fish stocks are well below MSY. However, the Panel is of the view that rather than ICCAT failing in its mandate it is ICCAT that has been failed by its members (CPCs). Most of the evidence available to the Panel is that ICCAT has with a few exceptions, adopted in its basic texts and recommendations generally sound approaches to fisheries management. However this has been undermined by systemic failures by CPCs to implement such rules and recommendations

ICCAT, as a tuna RMFO, has a sound base, it has done many things well and continues to do so, but it has failed against its objective because its CPCs have failed in their responsibilities to ICCAT and to the international community for the proper management of fisheries on fish stocks under the purview of ICCAT.

The positive message in this report, however, is that because the fundamentals of ICCAT are generally sound, the problems of ICCAT would be readily fixed or considerably improved if CPCs changed their attitude towards implementation of and adherence to the rules and recommendations of ICCAT and the adoption of robust MCS processes.

SUMMARY OF PART I

In Part I of this report, the Panel has evaluated the Basic Texts against the Review Criteria given in the TOR, which reflect essentially the global principles and standards established by the UN Convention on the Law of the Sea (UNCLOS), the UN Fish Stocks Agreement (UNFSA) and other modern instruments relating to the conservation of fish stocks and management of their fisheries. Since the ICCAT Convention predates these modern instruments, the Panel has reviewed also the conservation and management measures of ICCAT since they were adopted within the broad framework of the Basic Texts.

Pursuant to the Review Criteria, the Panel has identified 16 issues on which the Basic Texts and conservation and management measures are to be analyzed and evaluated.

Out of these 16 issues, the Panel found:

- adequate provisions in both the Basic Texts and conservation and management measures regarding only one issue: data collection and sharing;
- some but not adequate provisions both in the Basic Texts and conservation and management measures regarding three issues: MCS measures and enforcement, decision-making, and special requirements of developing States;
- no provision in the Basic Texts and some but not adequate conservation and management measures regarding nine issues: ecosystem approach, precautionary approach, fishing allocations and opportunities, flag State duties, port State duties, cooperative mechanism to detect and deter non-

compliance, market-related measures, cooperating non-members and fishing entities, and relationship to non-cooperating non-members;

- no provision in either the Basic Texts or in conservation and management measures regarding two issues, compatibility of measures for areas under national jurisdiction and those for the high seas, and dispute settlement procedures; and
- some provision in the Basic Texts but no management measures, though in practice adequate action has been taken, regarding one issue: cooperation with other RFMOs.

The Panel recommends that ICCAT consider filling such gaps and inadequacies by, as appropriate, amending the Basic Texts or updating and adopting further conservation and management measures in the light of modern global instruments and current best practice in RFMOs.

SUMMARY OF PART II

Part II of this report reviews the structure and operation of the SCRS and the support it receives from the ICCAT Secretariat, discusses the objective of ICCAT, and summarises the stock and exploitation statuses along with the Panel's evaluation of whether the ICCAT objectives are being met for the main species under the purview of ICCAT as well as for associated and dependent species.

- The Panel found that the lack of data and the lack of accuracy of data that was reported introduced large uncertainties in three stock assessments undertaken by the SCRS.
- The Panel notes that CPCs have an obligation to collect and make available relevant information to assess the status of the resources and the effect of exploitation on them, but few comply within the agreed time limits.
- CPCs should adopt a precautionary approach to the management of fisheries on fish stocks where data are poor or lacking.
- The Panel found that the objectives of ICCAT appeared to be met for 4 of the 14 stocks examined (29%): bigeye tuna, swordfish in the North Atlantic, swordfish in the South Atlantic, and yellowfin tuna.
- The Panel found that the objectives of ICCAT appeared not to be met for 7 of the 14 stocks examined (50%): albacore in the North Atlantic, albacore in the South Atlantic, bluefin tuna in the West Atlantic, bluefin tuna in the East Atlantic and Mediterranean, blue marlin, white marlin and swordfish in the Mediterranean.
- The Panel was unable to assess if the objectives of ICCAT were met for 3 of the 14 stocks examined (21%): albacore in the Mediterranean, sailfish and skipjack tuna.

SUMMARY OF PART III

Part III of this report considers whether, in relation to conservation of species and management of fisheries, MCS and institutional practice the CPCs have actually implemented the resolutions and recommendations that have been adopted in ICCAT

- The Panel found the management of fisheries on bluefin tuna in the eastern Atlantic and Mediterranean and the regulation of bluefin farming to be unacceptable and not consistent with the objectives of ICCAT. This finding coupled with the published statements from the European Community (EC) has prompted the Panel to recommend to ICCAT the suspension of fishing on bluefin tuna in the eastern Atlantic and Mediterranean until the CPCs fully comply with ICCAT recommendations on bluefin.
- The management of fisheries on swordfish, bigeye tuna and yellowfin tuna are largely consistent with the management objectives of ICCAT.
- The Panel is concerned that the current catches for albacore tuna in the North Atlantic generate fishing mortality higher than F_{MSY} . The Panel considers that Total Allowable Catches (TACs) should be adjusted such that fishing mortality is at or below F_{MSY} .
- The Panel is concerned at the lack of data on billfishes and is concerned that ICCAT may still not be able to undertake reliable billfish stock assessments in 2010.

- The Panel strongly recommends that ICCAT, for all fisheries under its purview, immediately discontinue the practice of allowing the carry forward of uncaught allocations in all fisheries.
- The Panel recommends that for all fisheries in ICCAT, fishing capacity is immediately adjusted to reflect fishing opportunities or quota allocations.
- The Panel believes that ICCAT should develop binding allocation criteria that are applied in a fair and transparent manner.
- The Panel recommends that ICCAT CPCs take the issue of recreational and sport fishing seriously and be more inclusive towards the recreational and sport fishing sector in future deliberations of ICCAT regarding fisheries management.
- ICCAT CPCs should immediately apply fully the rules and, measures adopted by ICCAT and through domestic arrangements, including flag and port State controls, observer programs and vessel monitoring systems (VMS), provide effective control over their nationals.
- ICCAT should investigate and develop a strict penalty regime that either has the capacity to suspend member countries that systematically break ICCAT regulations or can apply significant financial penalties for breaches. These measures need to be severe in the sense that CPCs should clearly understand that they will suffer significant economic consequences if their actions are in breach of ICCAT rules.

CONCLUSION

ICCAT has existed since 1969 and the tuna and tuna like fishes in the Atlantic Ocean and Mediterranean Sea are under its purview. Civil society has in recent years taken a stronger interest in the performance of RFMOs in managing the world's fisheries on high seas fish stocks and in particular the iconic tuna species. This attention by non-governmental organizations (NGOs) and other stakeholders is unlikely to fade in the near future and RFMOs must find a way to be more inclusive and open in their culture. RFMOs must be prepared to take decisions that are in the genuine interests of long-term sustainability and should make every endeavour to ensure that responsible practices are adopted and that they are not undermined by members and non-members.

This has been the first independent review of ICCAT and ICCAT should be congratulated for having the courage and openness to allow the review to be undertaken by independent reviewers. While the findings of the independent Panel are mixed, the recommendations have been structured to move ICCAT forward. Properly functioning RFMOs are the best chance to have sustainable fisheries on high seas and migratory fish stocks. The intent of our recommendations is to help ICCAT be at the leading edge of RFMO performance.

INTRODUCTION

In response to growing concerns within the international community over the status of fish stocks under the purview of Regional Fisheries Management Organisations (RFMOs), the regional tuna bodies have agreed to undertake periodic reviews of their organisations performance against their objectives. These reviews were initially proposed within the Food and Agriculture Organisation of the United Nations (FAO) by Australia and Canada at the FAO Committee on Fisheries (COFI) in 2005 and were further developed at the Japanese Government-hosted Kobe Meeting of Tuna RFMOs in 2007.

Initially some RFMOs perceived the concept of independent reviews as an attack on their independence, on the performance of their Commission and of their supporting Secretariats. But, in fact these RFMOs are created in accordance with international law which is reflected principally in the 1982 United National Convention on the Law of the Sea (UNCLOS).

To date, for example, the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) is being reviewed internally by its members with the final report to be externally reviewed; the Indian Ocean Tuna Commission (IOTC) is also being reviewed by a committee of contracting party members and the North East Atlantic Fisheries Commission (NEAFC) has been externally reviewed. The Inter-American Tropical Tuna Commission (IATTC) has yet to agree to a review and the Western and Central Pacific Fisheries Commission (WCPFC) is a new commission and will not be reviewed until a later point in time.

The International Commission for the Conservation of Atlantic Tunas (ICCAT), in what should be seen as a sign of maturity, agreed to appoint an independent panel consisting of Glenn Hurry, Chief Executive Officer of the Australian Fisheries Management Authority (AFMA) and the current Chairman of the WCPFC, Moritaka Hayashi, Professor (now *emeritus*) of International Law, Waseda University in Japan, and Jean-Jacques Maguire, a well known and respected international fisheries scientist from Canada. Glenn Hurry served as coordinator of the panel. The Panel was ably supported by Mr. Driss Meski, the ICCAT Executive Secretary, and his staff from the ICCAT Secretariat in Madrid, who provided valuable materials and insights into the structure, history and decision-making processes within ICCAT.

1. A Brief History of ICCAT

The background to the concerns which led to the holding of the Symposium of the Commission for Technical Cooperation in Africa (CTCA) on Tuna in Dakar, 12-17 December 1960 is well explained in other literature (for example, Fonteneau¹), and stemmed largely from the introduction of commercial longliners and purse seiners which created the possibility of year round tuna fisheries with catches of tuna of all sizes. The use of these gears significantly increased the catches of tuna and tuna-like species in Atlantic waters off the African continent, and it was recognized at that time that the increase in bluefin tuna catches could pose a serious threat to the traditional Mediterranean trap fishery. The Symposium recommended that the Commission for Technical Cooperation in Africa/Scientific Council for Africa take the initiative, either directly or through its member governments, to request the relevant Specialized Agency of the United Nations to convene a conference of plenipotentiaries of all countries interested in the development of the tuna fishery on the high seas and the long term protection of the resources which comprise this, with a view to creating an appropriate organization modeled on the IATTC. The need for creating such an organization was endorsed at the World Scientific Meeting on the Biology of Tunas held in 1962 in La Jolla, California, USA, under the auspices of the FAO.

At its fourteenth (14th) meeting in 1963, the FAO Council noted the concern with the rapid growth of tuna fishing in the Atlantic in the absence of coordinated action to study the resources and the effect of fishing upon them and the Director-General concluded that there was a general desire for action to be taken for the conservation and rational exploitation of the tuna resources of the Atlantic and that appropriate action ought to be taken. This resulted in the creation of the Working Party on Rational Utilization of Tuna Resources in the Atlantic Ocean, which held its first session at FAO, Rome, 25-30 October 1963.

At the 13th Session of the FAO Conference, the report of the aforementioned Working Party for Rational Utilization of Tuna Resources in the Atlantic Ocean was endorsed, and it was considered that a commission for

¹ Fonteneau, A. 2008. *Bilan scientifique et historique de l'ICCAT - Rio de Janeiro 1966-Dubrovnik 2006*.

the conservation of tuna and tuna-like fishes in the Atlantic Ocean was desirable. The Director-General was authorized to call a conference of plenipotentiaries for the purpose of establishing such a commission and to invite all FAO Member Nations and Associate Members, and all nations, non-Members of FAO that were Members of the United Nations or a Specialized Agency of the United Nations to send duly authorized representatives.

1.1 Establishment of ICCAT

The Conference of Plenipotentiaries on the Conservation of Atlantic Tunas met, on the invitation of the Government of Brazil, in Rio de Janeiro from 2 to 14 May 1966. On the basis of its deliberations, as recorded, the Conference prepared and opened for signature the International Convention for the Conservation of Atlantic Tunas (ICCAT Convention), which entered into force in 1969.

In the interim period, a Group of Experts on Tuna Stock Assessment met in Miami in August 1968 and concluded that ICCAT should consider substantive action for the regulation and management of some of the Atlantic stocks of tuna. However, at the first meeting of the Commission held in December 1969, no management measures were adopted due to uncertain data and insufficient information.

The Secretariat was established in Madrid, Spain, in 1971, and was charged *inter alia* with the task of developing a system for the collection and analyses of data and the administration of the research programs required for the Standing Committee on Research and Statistics (SCRS) to assess the stocks of tuna and tuna-like species and provide advice to the Commission on the basis of which management decisions could be taken.

1.2 Mandate and structure of ICCAT

In accordance with the Convention, ICCAT has competence over all tuna and tuna-like species in the Convention area. This accounts for over 30 species, including small tunas and billfish.

The objective of the Convention is to cooperate in maintaining the populations of tuna and tuna-like fishes found in the Convention Area at levels which will permit the maximum sustainable catch for food and other purposes.

There are currently (May 2008) 46 Contracting Parties to the Convention including the European Community. Cooperating status has been granted to three non-Contracting Parties, Entities or Fishing Entities.

The area to which the Convention applies, referred to as the “Convention area”, is all waters of the Atlantic Ocean, including the adjacent Seas. No coordinates are specified in the Convention, but for statistical purposes, the area is set between 70°W and 20°W in the South Atlantic.

The structure of the Commission currently includes four Panels which put forward measures in relation to the management of fisheries on stocks under the purview of ICCAT. General measures relating to monitoring, surveillance and control are usually proposed by the Conservation and Management Measures Compliance Committee (CC) or the Permanent Working Group for the Improvement of Statistics and Conservation Measures (PWG)

ICCAT conservation and management measures are adopted in accordance with Articles VIII and IX of the Convention which stipulate that the Commission may, on the basis of scientific evidence, make recommendations designed to maintain the populations of tuna and tuna-like fishes that may be taken in the Convention area at levels which will permit the maximum sustainable catch, and that the Contracting Parties undertake to collaborate with each other with a view to the adoption of suitable effective measures to ensure the application of the provisions of the Convention.

1.3 Species under the purview of ICCAT

ICCAT has under its purview some 30 stocks of tuna, sharks and billfishes. However, specific recommendations have been developed for the following:

- 1) Bluefin tuna in the eastern Atlantic and Mediterranean
- 2) Bluefin tuna in the western Atlantic
- 3) Bigeye tuna

- 4) Swordfish in the North Atlantic
- 5) Swordfish in the South Atlantic
- 6) Yellowfin tuna
- 7) Blue Marlin
- 8) White marlin
- 9) Albacore in the North Atlantic
- 10) Albacore in the South Atlantic
- 11) Skipjack tuna
- 12) Shortfin mako
- 13) Blue shark

Along with the management of the fisheries on the above species there are 16 other species are managed as either target or by-product species. ICCAT members also manage the interaction of by-catch species including sharks, sea birds and turtles.

1.4 ICCAT fisheries and Contracting Parties

The ICCAT area includes the western Atlantic, the eastern Atlantic and the Mediterranean Sea. This is a large and culturally diverse area in which the development of the states and the capacity to contribute to the business of the Commission and compete within the industrial fisheries vary considerably. The distant water fishing nations (DWFNs) participate significantly in the broader Atlantic fishery, while the Mediterranean and European Community (EC) states have more influence on the status of Mediterranean stocks although the DWFNs are also active in these waters. This diversity is a reality in all tuna RFMOs; however, it does present three main challenges.

The first challenge is to build capacity and understanding in all countries so they can enter the debates on science and fisheries management on an equal footing. The second is the fair allocation of resources amongst members to balance the perceived historical rights of the DWFNs and developed countries to harvest the fish stocks with the aspirations of developing and small island developing countries to either be able to rent out their fishing opportunities for a fair return or to harvest them themselves.

The third challenge is the sheer task of managing the business of the Commission across a geographically dispersed group of 46 Contracting Parties each year in a way that all the necessary papers, reports and meetings and decision-making process are addressed.

In ICCAT which is a multi-species tuna Commission, the annual agenda of meetings and workshops by necessity becomes quite demanding on the members. This level of annual interaction draws heavily on the resources of the developed countries by way of cost supplementation and the provision of technically skilled resources for meetings. The schedule draws equally heavily on the limited resources of developing and small island countries who often don't have the financial and human resources to contribute properly and to commit to all meetings. The schedule also puts pressure on the resources of the Commission Secretariat to ensure that the whole process runs smoothly.

2. Current Issues Facing Tuna RFMOs

ICCAT, which is one of the oldest and largest of the world's five (5) major tuna RFMOs, was constituted in 1969. The other tuna RFMOs are: IATTC (1950), IOTC (1996), CCSBT (1994) and WCPFC (2004).

While all Commissions are unique in a geographic and membership sense, what was evident at the Kobe Meeting of Tuna RFMOs in 2007 was that all of the tuna Commissions struggled with a consistent group of problems and issues that differ in importance and magnitude in the individual Commissions. The Review Panel is of the view that the current concerns include:

- 1) The lack of definition of the concept of "real interest" and hence the difficulty in dealing with membership issues.
- 2) Poorly elaborated rules concerning "beneficial ownership" of vessels lead to an inability to understand the actual ownership arrangements of vessels; this is important in combating IUU activity and understanding the ownership of fleets by large international companies.

- 3) The lack of acceptance and application of agreed decisions, recommendations and resolutions adopted in Commissions by member states remains a genuine concern to the global community.
- 4) Members claim their rights and benefits more willingly than they accept their responsibilities and obligations.
- 5) Developed states use foreign investment rules to place excess or additional capacity owned by their nationals or companies under the flag of developing Contracting Parties. In many cases these developing countries have inadequate monitoring, control and surveillance (MCS) arrangements in place.
- 6) Countries that remain non-members of Commissions continue to fish and are not compliant with the rules and measures adopted by them.
- 7) Failure by members to comply with the requirements for the timely reporting of accurate catch and effort data.
- 8) The appropriate allocation of resources between members is a major issue but is an issue that ICCAT has had some success with. This allocation of resources in Commissions is closely linked to the aspirations of developing coastal states and small island developing states.
- 9) Overcapacity is an ongoing problem in all Commissions with both purse-seine and longline capacity in excess to the harvesting requirements in all Commissions.
- 10) The costs of supporting the increasing number of RFMOs and associated meetings are an ongoing challenge for both developed and developing countries.
- 11) The final global challenge for RFMOs is the lack of an internationally sanctioned penalty regime to prosecute in a meaningful way those members and non-members who do not cooperate with the RFMO or are found to be in breach of agreed MCS arrangements.

While this report will discuss and make recommendations on these and other issues in relation to ICCAT they are, as noted above not unique to ICCAT. In some areas ICCAT is leading the international approaches on these issues; on others there is room for improvement. What is important is that there is considerable scope for all tuna RFMOs to standardize approaches to issues and learn from each other as they develop. Although individual RFMOs have unique characteristics they share many similarities and fisheries management worldwide would benefit greatly from the rapid adoption and implementation of measures and arrangements that have been found to be effective.

3. Methodology of the Review Panel

Following appointment, the Review Panel was provided with Terms of Reference (TOR) developed by ICCAT members and based on the indicative TOR for the review of Tuna RFMOs drafted as a major outcome of the Kobe meeting of Tuna RFMOs in 2007. The Terms of Reference (**Attachment 1**) provide guidance to the Panel to investigate all relevant aspects of ICCAT's performance but importantly to suggest improvements to the current regime that will help to move ICCAT forward into the future.

The work of the Panel proved difficult to coordinate as the members were on different continents and had significant workloads. This prevented the opportunity to visit and interview the individual members of ICCAT and to meet with other stakeholders. To gain an insight into the concerns and suggestions member countries might have regarding ICCAT's current performance and potential improvements the Panel developed and circulated a letter seeking comment to contracting and non-contracting parties, the NGO community and other regular stakeholder groups with an interest in ICCAT affairs (**Attachment 2**).

There were only eight (8) responses to the letter. These responses were analysed by the Review Panel and reflect a broad range of comment and ideas that have in part been included in the body of the report and the recommendations for the improvement of ICCAT. The Panel wishes to thank those who took the time and effort to respond.

The Panel met in Tokyo, in a conference facility provided by the Japan Fisheries Agency for two days in May 2008 to determine the methodology for the study, the structure of the report and to review the comments that had been provided in response to the letter circulated to stakeholders. Much of the business of the Review Panel was conducted via the internet in order to save costs to ICCAT.

The Panel considered the wide range of media comment that ICCAT attracts during the fishing year and particularly noted the volume that is attributed to the management or mismanagement of fisheries on bluefin tuna. While bluefin tuna account for only some 7% of the overall catch tuna under the purview of ICCAT this species attracts probably 85% of all media coverage and criticism that ICCAT receives. This no doubt reflects the iconic nature of the species and the concerns that some members, stakeholders and the general public have of the status of bluefin tuna in the ICCAT area and the perceived failure to manage tuna fisheries, particularly in the Mediterranean Sea.

The Panel noted the importance of interaction with ICCAT members and as such arranged for Jean-Jacques Maguire to be present at the 2008 Bluefin Tuna Stock Assessment Session in Madrid in late June 2008 and for Glenn Hurry to attend the 5th Meeting of the Integrated Monitoring Measures Working Group meeting held in Madrid in July 2008. Both of these meetings provided a valuable opportunity for the Panel members to interact with contracting parties and to check and review the Panels understanding of issues.

As well as drawing on the text of the report from the Kobe meeting of tuna RFMOs, the Review Panel also drew on the report by Lodge, *et al.* entitled “*Recommended Best Practices for Regional Fisheries Management Organizations*”². This report, prepared as an output from a group within the ministerially-led High Seas Task Force on IUU fishing, provides current and valuable insights into how RFMO effectiveness can be improved.

4. Report Structure

The Review Panel decided that while the report would be detailed and address the TOR, including all of the major issues confronting ICCAT, the report did not need to be a dissertation and criticism of past practise and performance. The Panel accepted that the best value it could add to the future role of ICCAT was to be considered, constructive and importantly to provide balanced suggestions/recommendation on how ICCAT might best improve its practices to address the challenges of the future.

The report is broken into five parts:

Introduction

Part I: Evaluation and Analysis of ICCAT’s Basic Texts.

Part II: Assessment of the Achievement of ICCAT’s Objectives Relating to Fish Stocks (Conservation and Management - Status of Living Marine Resources).

Part III: Assessment of the Achievements of ICCAT’s Objectives Relating to Fisheries Management and the Administration of ICCAT.

Part IV: Conclusions and Recommendations.

Attachments to the report are listed and described in the index of the report.

The timeframe agreed for the production of the report was to have a draft report prepared and forwarded to the Secretariat by early August 2008. The final report and recommendations is to be completed and presented to the Secretariat for distribution by mid-September 2008. The Coordinator of the Review Panel, Glenn Hurry, is expected to present the findings and recommendations of the Panel at the 16th Special Meeting of the Commission in November 2008 at Marrakech, Morocco.

² Lodge, M.W., *et al.*, *Recommended Best Practices for Regional Fisheries Management Organizations: Report of an Independent Panel to Develop a Model for Improved Governance by Regional Fisheries Management Organizations* (London: Chatham House, 2007).

PART I

EVALUATION AND ANALYSIS OF THE ICCAT CONVENTION BASIC TEXTS

The first task assigned to the Review Panel is the “evaluation and analysis of the ICCAT Convention Basic Texts.” The Panel was invited to consider as a basis for its evaluation the criteria entitled “Criteria for Reviewing the Performance of Regional Fisheries Management Organizations (RFMOs)” (hereinafter “the Review Criteria”). The Review Criteria, presented to the Commission during the 20th Regular Meeting held in Antalya, Turkey, in November 2007, consist of five major areas, each of which lists several “general criteria”. Each of the general criteria in turn lists a number of “detailed criteria”.

In evaluating the Basic Texts, which consist of the Convention, the Rules of Procedure and the Financial Regulations, the Panel considers that a number of general or detailed “criteria” in the Review Criteria are not relevant since they relate to such matters as the status of fish stocks, quality of scientific advice, and the efficiency of management and policy measures, which will be addressed in Parts II and III of this report. For the purpose of Part I therefore, the Panel has identified the following 16 subjects or issues under which the Basic Texts are to be analyzed and evaluated against the Review Criteria:

- 1) Data collection and sharing
- 2) Ecosystem approach/ecosystem-based management
- 3) Precautionary approach
- 4) Compatibility of measures for areas under national jurisdiction and those for the high seas
- 5) Fishing allocations and opportunities
- 6) Flag State duties
- 7) Port State measures
- 8) Monitoring, control and surveillance (MCS) measures and enforcement
- 9) Cooperative mechanism to detect and deter non-compliance
- 10) Market-related measures
- 11) Decision-making
- 12) Dispute settlement procedures
- 13) Cooperating non-Contracting Parties, Entities and Fishing Entities
- 14) Relationship to non-cooperating non-Contracting Parties
- 15) Special requirements of developing States
- 16) Cooperation with other regional fisheries management organizations.

The order in which the subjects or issues appear in this list generally follows the order in which they appear in the Review Criteria. It should be noted that some of these items also concern matters that may be relevant to other items. In such cases, cross references are made to the relevant sections.

The Basic Texts contain by their very nature only basic and general provisions. In addition, the ICCAT Convention is an old instrument adopted in 1966, well before the significant modern developments in global fisheries governance represented particularly by the adoption and entry into force of the UN Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement (UNFSA). It would be important therefore that any evaluation of the Basic Texts include not only the assessment of the texts of these instruments, but also the *ability of the texts to assimilate* subsequent developments in global standards. The following sections thus attempt to review not merely the Basic Texts but also the actual practice of the Commission as expressed particularly in various types of measures it has adopted. It should be noted, however, that the discussion of ICCAT practice in the present Part is limited to *the adoption of formal measures* such as recommendations and resolutions. The actual performance of the Commission and members in relation to such measures, as well as the Basic Texts, will be reviewed in detail and evaluated against ICCAT objectives in Part III.

In evaluating the Basic Texts and formal measures adopted by ICCAT, the above-mentioned Criteria for Reviewing the Performance of RFMOs expressly mention some of the relevant provisions of the major global instruments, i.e., UNCLOS and UNFSA, and in some cases the FAO Code of Conduct for Responsible Fisheries, as the criteria against which the Organization’s performance should be reviewed. The Panel considers that for

some subjects or issues, provisions of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement) are also relevant. The Panel therefore uses the relevant provisions of these instruments as bases of discussion, without taking any position on the legal question of applicability of the treaties to their non-Parties. (It is clear that the Code of Conduct is a non-binding instrument.)

PART I – Section 1. Data Collection and Sharing

1. Global Instruments

With respect to both areas under national jurisdiction and the high seas, UNCLOS Articles 61 (5) and 119 (2) provide for the obligation of States to collect and share data, with practically the identical language, as follows: *“Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned...”*

UNFSA Article 14 (1) provides for the basic obligation of States to ensure that their vessels provide necessary information in order to fulfill their obligations under the Agreement. To that end, States must, in accordance with Annex I to the Agreement:

- (a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling and highly migratory fish stocks;
- (b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfill the requirements of RFMOs; and
- (c) take appropriate measures to verify the accuracy of such data.

In cooperating through RFMOs, according to Article 10, States are required to *“agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks”* (para. (e)), and to *“compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate”* (para. (f)).

Furthermore, under Article 14 (2), States are obliged to cooperate, either directly or through RFMOs:

- (a) to agree on the specification of data and the format in which they are to be provided to such RFMOs, and
- (b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling and highly migratory stocks.

Annex I to UNFSA sets out in detail the standard requirements for the collection and sharing of data, which include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort, from fisheries for straddling and highly migratory fish stocks on the high seas as well as in areas under national jurisdiction.

The Code of Conduct contains, in Article 7.4, a set of guidelines regarding data gathering and management advice. Particularly, Article 7.4.6 provides that States should compile scientific data relating to fish stocks covered by RFMOs in an internationally agreed format and provide them in a timely manner to the organization.

2. ICCAT Basic Texts

Under Article IV of the ICCAT Convention, the Commission is responsible for the study of the populations of tuna and tuna-like fishes and other species. In carrying out these responsibilities, the Commission must, in so far as feasible, utilize the technical and scientific services of, and information from, official agencies of the Parties. The Commission’s study includes collecting and analyzing statistical information relating to the current conditions and trends of the tuna fishery resources of the Convention area, and studying and appraising information concerning measures and methods to ensure maintenance of the tuna and tuna-like fish populations at levels which will permit the maximum sustainable catch and which will ensure their effective exploitation in a manner consistent with this catch.

For their part, according to Article IX, the Contracting Parties must furnish, on the request of the Commission, any available statistical, biological and other scientific information the Commission may need; and when their official agencies are unable to obtain and furnish such information, must allow the Commission to obtain it, through the Parties, on a voluntary basis direct from companies and individual fishermen.

The 1966 Conference on the Conservation of Atlantic Tunas adopted the *Resolution on the Collection of Statistics on the Atlantic Tuna Fisheries* [Ref. 66-01], in which the Conference:

- (a) agreed that it is essential that all countries fishing in Atlantic tuna resources should collect adequate statistics on catch and fishing effort and the necessary biological data, and make available for publication the statistical and related economic data with a view to enabling the Commission to fulfill its function adequately, and
- (b) urged all countries to take steps to create offices within their fisheries administrations having appropriate financial and legislative support to undertake the collection and the processing of the data to be used by the Commission.

The ICCAT Rules of Procedure has given the Standing Committee on Research and Statistics the mandate to develop and recommend to the Commission such policies and procedures in the collection, compilation, analysis and dissemination of fishery statistics as may be necessary to ensure that the Commission has available at all times complete, current and equivalent statistics on fishery activities in the Convention area (Rule 13).

3. ICCAT Measures

In 1995, the Commission established the Format for the Annual Reports. The *Revised Guidelines for the Preparation of Annual Reports* [Ref. 04-17] set out the latest guidelines for submission to ICCAT of information on the tuna-related activities of the Contracting Parties and Cooperating non-Contracting Parties, Entities, or Fishing Entities (CPCs). The Annual Reports should be divided into two parts, Part 1 relating to information on fisheries, research and statistics, and Part 2 relating to information on management implementation and other related activities.

The *Recommendation Concerning the Recording of Catch by Fishing Vessels in the ICCAT Convention Area* [Rec. 03-13] has introduced a mandatory data recording system for all fishing vessels authorized to fish species under the purview of ICCAT in the Convention area, and made it obligatory for all commercial fishing vessels of CPCs over 24 m. length overall to keep a bound or electronic logbook recording the information required in the *ICCAT Manual*.

The *Resolution on Improvements in Data Collection and Quality Assurance* [Res. 03-21], considering that many Parties with important tuna fisheries do not have the data collection programs in place that are required or recommended by ICCAT, calls upon Parties with sufficient capacity for meeting fundamental data collection, quality assurance and reporting obligations to make voluntary contributions in proportion to their catch, to a special fund, to be used for training in data collection and for some other purposes.

4. Panel's Comments on Data Collection and Sharing

The fundamental obligation of ICCAT Contracting Parties regarding collection and sharing of data is clearly stated in the Convention and the resolution of the 1966 Conference. The Commission has established the format for the annual submission of reports by members. It has further set up a special fund for assisting Contracting Parties in training in data collection. ICCAT thus has in place adequate rules and procedures for data collection and sharing in its Basic Texts and management measures. Serious problems exist, however, in the actual performance of members in this regard, as discussed in Part III.

PART I – Section 2. Ecosystem Approach/Ecosystem-based Management

1. Global Instruments

UNCLOS provides, in Article 119 (1) (b), that in determining the allowable catch and establishing other conservation measures in the high seas, States shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened. Article 61 imposes similar obligation upon the coastal States with respect to areas under their jurisdiction. More generally, Article 94 (5) obliges States to take measures necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

UNFSA Article 5 (d) lists as one of the general principles in the conservation and management of straddling fish stocks and highly migratory fish stocks the obligation of coastal States and high seas fishing States to assess the impacts of fishing, other human activities and environmental factors “*on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks*”. Article 6 (3) (d) further obliges States, in implementing the precautionary approach, to take into account the impact of fishing activities on non-target and associated or dependent species. Under Article 6 (5), where the status of target stock or non-target or associated or dependent species are of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures.

The Code of Conduct stresses the great importance of ecosystems to fisheries. Articles 6.1 and 6.2 provide that States and fishers should conserve aquatic ecosystems, and that management measures should not only ensure the conservation of target species but also of species belonging to the same ecosystem or associated with or dependent upon the target species. Article 6.4 refers to the need to take into account traditional knowledge of resources and their habitat, as well as relevant environmental, economic and social factors in conservation and management decisions. States are also expected to assign priority to research and data collection in order to improve scientific and technical knowledge of fisheries including their interaction with the ecosystems. Other provisions include the need to develop selective and environmentally safe fishing gear in order to maintain biodiversity, to conserve aquatic ecosystems, etc., as well as the need to minimize waste, catch of non-target species, and impacts on associated or dependent species, and the need to protect all critical fisheries habitats in marine and fresh water ecosystems (Art. 6.6 and 6.8). Article 7.2 specifically calls upon States and RFMOs to adopt measures providing, *inter alia*, that pollution, discards, catch of non-target species, and impacts on associated or dependent species, etc. are minimized.

2. ICCAT Basic Texts

The ICCAT Convention, in Article IV (1), mandates the Commission to study the populations of tuna and tuna-like species and “*such other species of fishes exploited in tuna fishing in the Convention area as are not under investigation by another international fishery organization*”. Such study must include “*research on the abundance, biometry and ecology of the fishes,...and the effects of natural and human factors upon their abundance*”.

3. ICCAT Measures

ICCAT has adopted several resolutions and recommendations on certain specific problems relating to the protection of ecosystems, including the following:

- *Resolution on Incidental Mortality of Seabirds* [Res. 02-14] recognizes the need to evaluate the incidental mortality of seabirds during longline fishing operations for tuna and tuna-like species, urges strongly all CPCs to “*to implement, if appropriate*” the FAO International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds), and encourages them to collect and voluntarily provide SCRS with all available information on interactions with seabirds.
- *Resolution on Sea Turtles* [Res. 03-11], recognizing the need to improve the collection of scientific data regarding all sources of mortality for sea turtle populations, encourages CPCs to collect and provide SCRS with all available information on interactions with sea turtles in ICCAT fisheries, and encourages the release of marine turtles that are incidentally taken alive, and share all available information such as

technical measures to reduce the incidental catch and to ensure the safe handling of all turtles that are released.

- *Recommendation Concerning the Conservation of Sharks Caught in Association with Fisheries Managed by ICCAT* [Rec. 04-10, amended by Rec. 05-05], recognizing that many sharks are part of pelagic ecosystems in the Convention area, requires CPCs to annually report data for catches of sharks, and to take necessary measures to require that their fishermen fully utilize their entire catches of sharks. CPCs are also required to encourage the release, to the extent possible, of live sharks that are caught incidentally and are not used for food and/or subsistence.
- In *Resolution on Pelagic Sargassum* [Res. 05-11], recognizing that pelagic Sargassum supports a diverse assemblage of marine organisms and that the fishes associated with pelagic Sargassum include tuna and tuna-like species at different life stages, CPCs undertake to provide to SCRS information and data on activities that impact pelagic Sargassum in the Convention area of the high seas. The Resolution also calls upon SCRS to examine data and information on the status of pelagic Sargassum and its ecological importance to tuna and tuna-like species.

4. Panel’s Comments on Ecosystem Approach/Ecosystem-based Management

The ICCAT Convention, being a pre-UNCLOS instrument, has very little to say about the ecosystem. Even after the entry into force of UNCLOS and the adoption of the UNFSA, ICCAT has been slow in moving toward an ecosystem approach, though in recent years a Subcommittee on Ecosystem was set up within the SCRS and SCRS advice has often been framed in a multispecies/ecosystem context. The Commission has not taken any measure of a general nature, and its ecosystem-related measures so far are limited to non-binding resolutions on certain specific aspects relating to the protection of turtles, seabirds and Sargassum, and a binding measure on sharks.

In this sense, ICCAT is far behind not only the pioneering Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR Convention), but also of the clear modern trends that are enshrined in recent RFMO conventions.

The CCAMLR Convention includes among “the principles of conservation” the following two principles:

- maintenance of the ecological relationships between harvested, dependent and related populations of Antarctic marine living resources and the restoration of depleted populations to the levels which ensure their stable recruitment; and
- prevention of changes or minimization of the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental change, with the aim of making possible the sustained conservation of Antarctic marine living resources (Art. II (3)).

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention), following closely the provisions of UNFSA, obliges the Commission members to assess the impacts of fishing, other human activities and environmental factors on target stocks, non-target species, and species belonging to the same ecosystems or dependent or associated species. Members are also required to adopt measures to minimize waste, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species and impacts on associated or dependent species, and promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques (Art. 5).

Similar provisions are also contained in the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention) (Art. VII). In a somewhat simpler form, the Convention for the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (SEAFO Convention) provides that the Parties shall:

- (1) take into account the impact of fishing operations on ecologically related species such as seabirds, cetaceans, seals and marine turtles,

- (2) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem as, or associated with or dependent upon, the harvested fishery resources;
- (3) ensure that fishery practices and management measures take due account of the need to minimize harmful impacts on living marine resources as a whole, and
- (4) protect biodiversity in the marine environment (Art. 3).

The Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, as amended by Amendment to the Convention, 28 September 2007 (Amended NAFO Convention) similarly obliges the Parties to adopt measures to minimize harmful impact on living resources and marine ecosystems, and take due account of the need to minimize pollution and waste originating from fishing vessels as well as minimize discards, catch by lost or abandoned gear, catch of species not subject to a directed fishery and impacts on associated or dependent species (Art. III).

The Convention for the Future Multilateral Cooperation in North-East Atlantic Fisheries, as amended in 2004 and 2006 (New NEAFC Convention) obliges the Commission to take due account of the impact of fisheries on other species and marine ecosystems, and in doing so adopt, where necessary, conservation and management measures that address the need to minimize harmful impacts on living marine resources and marine ecosystems, as well as to take due account of the need to conserve marine biodiversity (Art. 4).

In light of these developments in recent years, the Panel recommends that the Commission consider the need to adopt the ecosystem approach or ecosystem-based management in a more formal and systematic manner. It should also examine the question of whether there is a need to amend the Convention in this regard.

PART I – Section 3. Precautionary Approach

1. Global Instruments

UNCLOS, which was drafted before the emergence of the concept of precautionary approach in environmental law, has no provision regarding this approach. The precautionary approach, however, is firmly incorporated in UNFSA as one of the general principles for the conservation and management of straddling fish stocks and highly migratory fish stocks (Arts. 5 (c), 6 and Annex II). Article 6 and Annex II contain detailed provisions on the application of the principle, including the following:

- States shall be more cautious when information is uncertain, unreliable or inadequate; the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation measures;
- States shall improve decision-making for conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;
- States shall determine stock-specific target and limit reference points and the action to be taken if they are exceeded;
- For new or exploratory fisheries, States shall adopt cautious measures until there are sufficient data to allow the identification of measures for the long-term sustainability and gradual development of fisheries;

The Code of Conduct, in Article 7.5, calls upon States to apply the precautionary approach widely to conservation, management and exploitation of not only certain specific species but of all aquatic resources, in order to protect them and preserve the aquatic environment. The same article also contains provisions similar to those in UNFSA quoted above.

2. ICCAT Basic Texts

The ICCAT Convention has no provision regarding the precautionary approach.

3. ICCAT Measures

ICCAT has not adopted the precautionary approach as such, though various measures it has adopted are in fact based on some of the ideas contained in the above-quoted provisions of UNFSA.

4. Panel's Comments on Precautionary Approach

All RFMO conventions adopted or amended recently make the application of the precautionary approach obligatory to Contracting Parties (e.g., WCPFC Convention, Arts. 5 (c), 6, Annex II; SEAFO Convention, Arts. 6 (g) and 7; Antigua Convention, Art. IV; Amended NAFO Convention, Art. III (c); New NEAFC Convention, Art. 4 (2) (b); and Southern Indian Ocean Fisheries Agreement (SIOFA), Art. 4 (c)). Most of these conventions incorporate the contents of Article 6 and Annex II of the UNFSA into their own regime by making direct reference to those provisions.

The precautionary approach is clearly established in the Rio Declaration of 1992 and has since been incorporated in numerous environmental documents, both domestic and international. In the light of these latest developments among RFMOs as well as the wide-spread adoption of the concept in practice, the Panel recommends that ICCAT formally and systematically adopt the precautionary approach.

PART I – Section 4. Compatibility of Measures for Areas under National Jurisdiction and those for the High Seas

1. Global Instruments

UNCLOS Article 64 (1) provides that the coastal State and other States whose nationals fish in the region for highly migratory species shall cooperate with a view to ensuring conservation and promoting the objective of optimum utilization of such species “throughout the region, both within and beyond the exclusive economic zone.”

UNFSA Article 7 repeats the above provision (para. 1) and further provides that conservation and management measures established for the high seas and those adopted for areas under national jurisdiction *shall be compatible* in order to ensure conservation and management of such stocks in their entirety, and to that end coastal States and high seas fishing States have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks (para. 2). It then enumerates several factors to be taken into account by States in determining compatible measures.

2. ICCAT Basic Texts

Article I of the ICCAT Convention defines the “Convention area” as “*all waters of the Atlantic Ocean, including the adjacent Seas.*” The Convention area therefore includes not only the high seas but also the areas under national jurisdiction of the coastal States, including the territorial sea and the exclusive economic zone (EEZ). The Convention further provides in article II, however, that nothing in the Convention shall be considered as affecting “*the rights, claims or views of any Contracting Party in regard to ... the extent of jurisdiction over fisheries under international law.*”

3. ICCAT Measures

ICCAT has not taken any measure aimed at ensuring the compatibility between conservation and management measures adopted by a coastal State with respect to the areas under its jurisdiction and those adopted by ICCAT.

4. Panel's Comments on Compatibility of Measures for Areas under National Jurisdiction and those for the High Seas

The ICCAT Convention expressly reserves the rights, claims or views of its Parties with regard to the “extent of jurisdiction over fisheries” under international law. This may imply that it is up to the coastal State to interpret, for example, to what extent the ICCAT measures apply within its own Exclusive Economic Zone (EEZ). Thus, the possibility may exist depending on the position of a coastal State that this provision of the ICCAT Convention comes in conflict with the duties under UNFSA to ensure the compatibility of conservation and management measures throughout the migratory range of the tuna species.

Most of the recent RFMO conventions contain provisions based on UNFSA Article 7. The WCPFC Convention, e.g., follows closely the language of UNFSA, and additionally provides that the coastal State shall ensure that the measures adopted and applied by it to the highly migratory fish stocks within areas under its jurisdiction do not undermine the effectiveness of measures adopted by the WCPFC in respect of the same stocks (Art. 8). The SEAFO Convention also recognizes the need to ensure compatibility of measures for the high seas and areas under national jurisdiction, and the duty to cooperate for that purpose (Art. 19 (1)). The Antigua Convention simply provides that the measures for the two areas shall be compatible (Art. V(2)). The New NEAFC Convention departs somewhat from these examples, and provides that the Commission shall *seek to ensure consistency* between its recommendations regarding straddling stocks and the measures taken by the relevant coastal State Party for the stocks concerned with respect to fisheries within the area under its jurisdiction, and that the coastal State Party and the Commission shall accordingly promote the coordination of such recommendations and measures (Art. 5 (2)). Similar provision has also been adopted by the Amended NAFO Convention (Art. VI (11)).

The Panel recommends that, in order to implement the compatibility requirement of UNFSA, Article II of the ICCAT Convention be amended or supplemented by additional provisions, or other appropriate measures be taken, along the lines as reflected in these modern instruments.

PART I – Section 5. Fishing Allocations and Opportunities

1. Global Instruments

No provision is made in UNCLOS regarding fishing allocations or opportunities. UNFSA, in Article 10, requires States, in cooperating within RFMOs, to agree on participatory rights such as allocation of allowable catch or levels of fishing effort, and on means by which the fishing interests of new member of the RFMO will be accommodated. Article 11 then enumerates the factors to be taken into account by States in determining the nature and extent of participatory rights for new members of an RFMO. These factors include, *inter alia*, (a) the status of the stocks and the existing level of fishing effort in the fishery; (b) the respective interests, fishing patterns and fishing practice of new and existing members; (c) the respective contributions of new and existing members to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks; (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks; (e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and (f) the interest of developing States from the region in whose areas of national jurisdiction the stocks also occur.

2. ICCAT Basic Texts

The ICCAT Convention contains no specific provision on fishing allocations or opportunities. Only in general terms, Article VIII provides that the Commission “*may...make recommendations designed to maintain the populations of tuna and tuna-like species in the Convention area at levels which will permit the maximum sustainable catch.*”

3. ICCAT Measures

The *ICCAT Criteria for the Allocation of Fishing Possibilities* [Ref. 01-25] set out the basic criteria for the allocation of fishing opportunities for CPCs which have the ability to apply conservation and management measures of ICCAT, to collect and to provide accurate data for the relevant resources, and taking into account their respective capacities, to conduct scientific research on those resources. These allocation criteria, which generally cover, albeit *in a non-binding form*, all the items mentioned in UNFSA Article 11, consist of those relating to: (1) past and present fishing activity of qualifying participants, (2) the status of stocks to be allocated and the fisheries, (3) the status of the qualifying participants, and (4) compliance, data submission and scientific research by qualifying participants. Among these criteria, those relating to the status of the qualifying participants comprise the following: (a) the interests of artisanal, subsistence and small scale coastal fishers; (b) the needs of the coastal fishing communities which are dependent mainly on fishing for the stocks; (c) the needs of the coastal States of the region whose economies are overwhelmingly dependent on the exploitation of living marine resources; (d) the socio-economic contribution of the fisheries for stocks regulated by ICCAT to the developing States from the region; (e) the respective dependence on the stocks of the coastal States, and of the other States that fish ICCAT regulated species; (f) the economic and/or social importance of the fishery for qualifying participants; (g) the contribution of the fisheries for the ICCAT regulated stocks to the national food security or needs, domestic consumption, income resulting from exports, and employment of qualifying participants; and (h) the right of qualifying participants to engage in fishing on the high seas for the stocks to be allocated.

The same ICCAT Criteria also contain several conditions for applying allocation criteria, according to which the criteria *should be* applied, by the relevant Panels on a stock-by-stock basis, “*in a fair and equitable manner with the goal of ensuring opportunities for all qualifying participants*”. The criteria should also be applied in a manner that encourages efforts to prevent and eliminate over-fishing and excess fishing capacity and ensures that levels of fishing effort are commensurate with the ICCAT objective of achieving and maintaining MSY.

4. Panel’s Comments on Fishing Allocations and Opportunities

There is growing dissatisfaction by some CPCs with the current ICCAT quota allocation system. They complain that allocation decisions are unfair or inequitable. On the other hand, some other CPCs including developing countries insist that the current system should be more strictly applied.

Part of the problem appears to come from the contents of the current *ICCAT Criteria for the Allocation of Fishing Possibilities*, which are not only non-binding but also quite ambiguous in formulation, thus causing a number of difficulties and complaints in actual application. It was also pointed out that the Commission merely “*may... make recommendations*” on the maximum sustainable catch level under Article VIII of the Convention, and that the Commission’s power in this regard should be strengthened.

Some recently-adopted RFMO instruments contain detailed provisions on the allocation of fishing opportunities. The WCPFC Convention, e.g., provides for the development of criteria for allocation of TAC or the total level of fishing effort by requiring the Commission to take into account a range of factors which expand the items mentioned in Article 11 of UNFSA (Art. 10 (3)). The SIOFA also has a similar provision (Art. 6 (2)). The WCPFC Convention further envisages the use of conciliators or a review panel to facilitate the settlement of disagreements over Commission’s consensus decisions (Art. 20).

The SEAFO Convention has also provisions on the criteria for allocation of fishing opportunities similar to those of the WCPFC Convention. Additionally, the Commission may set aside fishing opportunities for non-parties to the Convention, if necessary (Art. 20). The Convention also provides for the procedure for reviewing its decisions in case objections are raised by a member, including the use of *ad hoc* expert panels for making recommendation on interim measures (Art. 23).

The Panel considers it essential that the Commission gives serious consideration to this problem with a view to developing a new, preferably binding, formula for fishing allocation. This could be done, without amending the Convention, by adopting a new Recommendation revising or replacing the current criteria in Ref. 01-25.

PART I – Section 6. Flag State Duties

1. Global Instruments

Article 94 of UNCLOS lays down the duty of the flag State to “*effectively exercise its jurisdiction and control in administrative, technical and social matter*” over ships flying its flag. In particular, the flag State must maintain a register of its ships, and assume jurisdiction over each of such ships and its master, officers and crew.

Under UNFSA Article 18, the flag State is obliged to take measures to ensure that its vessels comply with regional conservation and management measures, and that they do not engage in any activity which undermines the effectiveness of such measures. The flag State is also required to authorize the use of its vessels for fishing on the high seas “*only where it is able to exercise effectively its responsibilities*” under UNCLOS and UNFSA. Measures to be taken by States must include: (a) control of vessels by means of fishing licenses, authorizations or permits; (b) establishment of regulations regarding licenses and prohibition of unauthorized fishing within areas under the national jurisdiction of other States; (c) establishment of a national record of fishing vessels authorized to fish on the high seas; (d) requirements for marking of fishing vessels and fishing gear; (e) requirements for recording and timely reporting of vessel position, catch, fishing effort and other data; (f) requirements for verifying the catch; (g) monitoring, control and surveillance (MCS) of vessels and their operations by, e.g., inspection schemes, observer programs and vessel monitoring system (VMS); (h) regulation of transshipment on the high seas; and (i) regulation of fishing activities to ensure compliance with regional or global measures.

UNFSA Article 19 requires that flag States ensure compliance by its vessels with regional conservation and management measures, including immediate and full investigation of any alleged violation and judicial proceedings with sanctions, which shall be adequate in severity to be effective in securing compliance and to discourage violations and shall deprive offenders of the benefits accruing from their illegal activities. All States are further required by Article 20 to cooperate, directly or through RFMOs, to ensure compliance and enforcement of regional measures.

The FAO Compliance Agreement contains similar provisions. Under Article III, the flag State must take measures to ensure that its fishing vessels do not engage in any activity that undermines the effectiveness of international conservation and management measures. The flag State shall not allow its fishing vessels to be used for fishing on the high seas unless it has been duly authorized by its authorities, and the flag State shall not authorize any vessel to be used for high sea fishing unless the State is satisfied that it is able, taking into account the links that exists between it and the fishing vessel concerned, to exercise effectively its responsibilities under the Agreement. The flag State is also required to ensure that its vessels are marked in accordance with generally accepted standards, and to provide it with necessary information on its operations. The flag State is further obliged to take enforcement measures in respect of its vessels that violate the Agreement provisions, including imposing sanctions of sufficient gravity.

2. ICCAT Basic Texts

No provision is found in ICCAT Basic texts regarding flag State duties.

3. ICCAT Measures

The *Recommendation Concerning the Duties of CPCs in Relation to their Vessels Fishing in the ICCAT Convention Area* [Rec. 03-12] obliges flag CPCs to:

- (a) adopt measures so that their vessels comply with and do not undermine ICCAT conservation and management measures;
- (b) authorize their vessels to fish in the Convention area by means of fishing authorizations, licenses or permits;
- (c) ensure they do not authorize their vessels to fish in the Convention area unless they are able to effectively exercise their responsibilities in respect of such vessels;

- (d) ensure that their vessels do not conduct unauthorized fishing within areas under the national jurisdiction of other States;
- (e) require their vessels fishing on the high seas to carry the license, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person;
- (f) investigate and follow-up on an alleged violation by a vessel and report the results of such investigation, as well as the actions taken where the violation has been confirmed (para. 1).

Each flag CPC must also maintain an up-to-date record of fishing vessels authorized to fish species under the purview of ICCAT, and ensure that such vessels and their gears are marked in accordance with generally accepted standards (paras. 2 and 3).

The *Recommendation Concerning the Recording of Catch by Fishing Vessels in the ICCAT Convention Area* [Rec. 03-13] requires each flag CPC to ensure that all of its fishing vessels authorized to fish ICCAT species are subject to a data recording system.

On record of vessels, the *Recommendation Concerning the Establishment of an ICCAT Record of Vessels Over 24 Meters Authorized to Operate in the Convention Area* [Rec. 02-22] contains detailed rules, including the provision that large scale fishing vessels (LSFVs) not entered into the record are deemed not to be authorized to fish for, retain on board, tranship or land tuna and tuna-like species.

(Questions relating to observers, VMS, boarding and inspection will be dealt with in Section 8 on MCS Measures and Enforcement.)

4. Panel's Comments on Flag State Duties

Although there is no provision in the ICCAT Basic Texts on the duties of flag States, several ICCAT measures cover most of the points contained in UNCLOS, UNFSA and the FAO Compliance Agreement. It should be pointed out, however, that no measures have been adopted by ICCAT regarding the imposition of sanctions of adequate severity for violations, which is required by UNFSA and the FAO Compliance Agreement.

Most of the recently-adopted regional conventions, including the WCPFC Convention (Art. 25 (7)), the Amended NAFO Convention (Art. XI (3)), the New NEAFC Convention (Art. 15 (1)), and the Antigua Convention (Art. XVIII (8)) contain provisions on the need to apply sanctions of sufficient gravity as to be effective in securing compliance.

In view of the well-recognized fact that some fishing vessels, particularly those engaged in illegal, unregulated and unreported (IUU) fishing, often repeat their offences taking advantage of lack of severe sanctions, in the Panel's view, the Commission should adopt provisions on the need to apply sanctions sufficient to secure compliance in accordance with the provisions of UNFSA and the FAO Compliance Agreement.

PART I – Section 7. Port State Measures

1. Global Instruments

No provision is made in UNCLOS regarding port State control of fishing vessels. UNFSA provides, in Article 23, that a port State has “*the right and the duty*” to take measures to promote the effectiveness of regional and global conservation and management measures. A port State may, among others, inspect documents, fishing gear and catch on board fishing vessels when they are voluntarily in its ports or at its offshore terminals. States may adopt regulations empowering national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of regional or global conservation and management measures on the high seas.

The FAO Compliance Agreement contains somewhat weaker provision on the subject, providing in Article V (2) that when a fishing vessel is voluntarily in its port, where it has reasonable grounds for believing that the vessel

has been used for an activity that undermines the effectiveness of international conservation and management measures, the port State must promptly notify the flag State accordingly.

2. ICCAT Basic Texts

No provision is made in the ICCAT Basic texts regarding port State measures.

3. ICCAT Measures

The *Recommendation for a Revised ICCAT Port Inspection Scheme* [Rec. 97-10], recognizing that many Contracting Parties have port inspection schemes in place, provides that inspection shall be carried out by the appropriate authorities of the Parties, who may examine the fish, fishing gear, fish samples and all relevant documents. The inspector must draw up a report and send it to the flag State of the vessel concerned and to the ICCAT Secretariat.

The *Recommendation Concerning the Ban on Landings and Transshipments of Vessels from Non-Contracting Parties Identified as Having Committed a Serious Infringement* [Rec. 98-11] obliges the port State Parties to inspect vessels of *non-Contracting Parties* and not to allow to land or tranship any fish until the inspection has taken place. Landings and transshipments of all fish from such vessels shall be prohibited in all Contracting Party ports unless the vessel proves that the fish onboard were caught outside the Convention Area or in compliance with the relevant ICCAT conservation measures and requirements under the ICCAT Convention.

With regard to transshipment operation in ports by large-scale tuna vessels (LSTVs) of CPCs, a detailed set of requirements, as well as port State verification measures, have been established by the *Recommendation Establishing a Programme for Transshipment* [Rec. 06-11], Annex 3.

4. Panel's Comments on Port State Measures

The relevant UNFSA and FAO Compliance Agreement provisions have been partially implemented by the above-mentioned Recommendations. Mandatory inspection and possible prohibition of landing and transshipment in ports, however, is limited only to non-Contracting Party vessels. The detailed rules on transshipment in ports with procedural requirements and port State verification are in place, but they apply only to LSTVs of CPCs, and no sanctions are provided for.

The UNFSA provisions on port State measures are fully reflected in the WCPFC Convention (Art. 27) and the SEAFO Convention (Art. 15). The Amended NAFO Convention simply provides for the duty of port States to implement the measures concerning inspection in port adopted by the Commission (Art. XII).

The Panel considers that ICCAT should take further action in order to expand and strengthen port State measures in conformity with UNFSA, taking into account the recent work of FAO to draft a new international agreement on port State control.

PART I – Section 8. MCS Measures and Enforcement

1. Global Instruments

UNCLOS Article 73 confirms the right of the coastal State to enforce its laws, including boarding, inspection, arresting and instituting judicial proceedings as may be necessary to ensure compliance with the laws and regulations regarding fisheries in its EEZ. With respect to the high seas, Article 117 provides that all States have the duty to take, or to cooperate with other States in taking, measures for their respective nationals for the conservation and management of resources.

UNFSA Article 20(1) requires all States to cooperate to ensure compliance with and enforcement of international conservation measures for straddling and highly migratory fish stocks. Article 18 contains details of MCS measures to be taken by the flag State for its vessels on the high seas, including the following:

- control of such vessels by means of appropriate fishing licenses, authorizations or permits;
- requirements for marking of vessels and fishing gear for identification in accordance with internationally recognizable systems;
- requirements for recording and timely reporting of vessel position, catch, fishing effort and other relevant data;
- requirements for verifying the catch through such means as observer programs, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;
- development of VMS;
- regulation of transshipment on the high seas.

UNFSA Article 19 sets out details on enforcement measures which the flag State must take irrespective of where violations occur, including:

- investigate immediately and fully any alleged violation and report promptly to the alleging State on the progress and outcome of the investigation;
- require vessels flying its flag to give information to the investigating authority regarding vessel position, catches, gear, fishing operations, and related activities;
- if satisfied that sufficient evidence is available on the violation, refer the case to its authorities for instituting proceedings, and detain the vessel where appropriate;
- ensure that, where the commission of a serious violation has been established, the vessel does not engage in fishing operations until all outstanding sanctions have been complied with.

UNFSA Articles 20 and 21 provide for the duty and procedure for cooperation with other States parties in enforcing regionally agreed conservation and management measures against possible violation. In particular, Article 21 contains the detailed procedures for a member of regional fisheries organisations (RFOs) to board and inspect a vessel of another State party, whether or not such State is also a member of the RFOs concerned, for ensuring compliance with regional measures for straddling and highly migratory stocks. Article 22 sets out the specific procedural steps to be followed during such boarding and inspection.

As far as the FAO Compliance Agreement is concerned, most of the basic provisions regarding flag State duties of the FAO Agreement quoted above under Section 6 on Flag State Duties are also relevant for MCS measures.

2. ICCAT Basic Texts

The Contracting Parties to the ICCAT Convention have agreed, in Article IX, to take all action necessary to ensure the enforcement of the Convention, and undertaken to collaborate with each other with a view to the adoption of suitable effective measures to ensure the application of its provisions, including in particular to set up “*a system of international enforcement*” to be applied to the Convention Area except the areas under coastal States’ national jurisdiction.

3. ICCAT Measures

Several Recommendations quoted above under Section 6 on Flag State Duties cover most of the items mentioned in the above-mentioned UNFSA provisions. Additionally, ICCAT has adopted several Recommendations and Resolutions relating to MCS, notably the following:

The *General Outline of Integrated Monitoring Measures Adopted by ICCAT* [Res. 02-31] contains, in a non-mandatory form, a number of principles for effective monitoring measures, and the basic components thereof, consisting of flag State duties, obligations of CPCs, compliance and enforcement, and a program to promote compliance by vessels of non-CPCs. The flag State duties enumerated are generally those mentioned under Article 18 of UNFSA. The obligations of CPCs *should* include compliance with all ICCAT conservation and management measures, as well as the regular provision to ICCAT of compliance reports and information concerning fishing activities in order to facilitate the compilation of reliable fishing statistics and the effective implementation of ICCAT’s compliance program. Regarding compliance and enforcement, the Parties *should*,

through the Commission, establish an observation and inspection program to ensure compliance, which may comprise several items enumerated, including high seas inspection, procedures for an effective investigation of an alleged violation of ICCT measures, port inspections, observer programs, etc.

On inspection and boarding, under the *Recommendation on Transshipments and Vessel Sightings* [Rec. 97-11], a Party may board and inspect a fishing vessel targeting ICCAT species on the high seas where there are reasonable grounds for suspecting that the vessel is stateless, and where evidence so warrants, it may take appropriate action under international law.

For transshipments at sea, the *Recommendation Establishing a Regional Programme for Transshipment* [Rec. 06-11] has established a regional observer program, whereby each CPC is required to ensure that all *carrier vessels* transshipping at sea have on board an ICCAT observer, in accordance with the ICCAT regional observers program, in Annex 2 of the Recommendation. Vessels are prohibited from commencing or continuing transshipping in the ICCAT area without such observer on board. The observers are appointed by the Secretariat and placed on carrier vessels authorized to receive transshipments from LSTVs of CPCs.

Regarding observers, the *Recommendation on a Multi-Year Conservation and Management Program for Bigeye Tuna* [Rec. 04-01] further provides for the requirement of on-board observers on at least 5 per cent of longline vessels over 24 meters fishing for bigeye in order to obtain data on the composition of the catches relative to the fishing areas and seasons. In the *Recommendation to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean* [Rec. 06-05], ICCAT has also adopted a special observer program for bluefin tuna vessels, requiring each CPC to ensure at least 20 per cent coverage of such vessels (para. 50).

On the use of VMS, the *Recommendation Concerning Minimum Standards for the Establishment of a VMS in the ICCAT Convention Area* [Rec. 03-14] has established a compulsory system of VMS for all CPCs for their commercial fishing vessels exceeding 20 meters between perpendiculars or 24 meters length overall.

4. Panel's Comments on MCS Measures and Enforcement

Although ICCAT has adopted broadly framed integrated monitoring measures, they are not binding on CPCs. The measures regarding international observers programs so far are very limited in that they are only for carriers engaged in transshipments. National observers are required also only on a small portion of bluefin and bigeye vessels. It should be noted, however, that in its 2007 meeting, the Working Group on Integrated Monitoring Measures adopted "Draft Outline of ICCAT Observer Program for Compliance Purposes" and the Commission is expected to discuss the matter.

Several RFMOs have implemented observer programs. CCAMLR, e.g., has established a Scheme of International Scientific Observation, requiring full coverage of all fishing vessels except those fishing only for krill. The observer's functions include reporting of any irregularities while on board the vessel. NAFO has also adopted an observer program requiring all vessels to carry at least one observer, whose duties include monitoring the vessel's compliance with conservation and management measures, and reporting on infringements to an inspection vessel. The Inter-American Tropical Tuna Commission requires 100 per cent coverage by observers on large-scale purse seine vessels, with 70% of them to be employed by IATTC and the remainder to be supplied by its parties.

The WCPFC Convention envisages the development of "a regional observer program" to collect verified catch data, other scientific data and additional information related to the fishery from the Convention area and to monitor the implementation of the conservation and management measures adopted by the Commission, and lays down a set of guidelines and conditions to be followed (Art. 28).

On the question of boarding and inspection, no system exists in ICCAT for high seas inspection and boarding of non-flag vessels, other than stateless vessels. Although Rec. 02-31 gives a broad framework for possible establishment of an ICCAT scheme of inspection and observation, it has no binding effect. It is to be noted, however, that at its 2007 meeting, the Working Group on Integrated Monitoring Measures prepared "General Elements for ICCAT Boarding and Inspection Scheme" for recommendation to the Commission.

In this respect, NAFO has established a joint at-sea inspection and surveillance scheme, which provides for reciprocal boarding and inspection, with designated inspectors operating from designated platforms carrying out

inspections. The inspectors have the authority to examine all relevant areas, catch, gear and other equipment, as well as documents needed to verify compliance. NEAFC has also adopted a similar scheme.

The WCPFC Convention envisages the Commission to establish boarding and inspection procedures for fishing vessels on the high seas, and if no such procedures are established within two years after the entry into force of the Convention, the Parties are expected to apply the system laid down in Articles 21 and 22 of UNFSA (Art. 26). The Commission has in fact agreed recently to establish such a program.

The Panel recommends that the Commission review immediately the adequacy and effectiveness of its MCS and enforcement measures with a view to adopting measures for further strengthening them, including regional on-board observer program and boarding and inspection scheme.

PART I – Section 9. Cooperative Mechanisms to Detect and Deter Non-Compliance

1. Global Instruments

While there is no specific provision in UNCLOS on cooperative mechanisms to detect non-compliance, UNSFA stipulates in Article 20 that States shall cooperate, either directly or through RFMOs, to ensure compliance with and enforcement of regional conservation and management measures (para. 1). The Article then allows a flag State conducting an investigation of an alleged violation of such measures to request the assistance of any other State, and obliges all States to endeavor to meet reasonable requests made by a flag State (para. 2). Such investigation may be undertaken through the relevant RFMOs (para. 3). Article 20 also requires States to assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of regional or global conservation and management measures (para. 4). With regard to a vessel on the high seas, where there are reasonable grounds for believing that they were engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter, and cooperate in taking appropriate enforcement action, and may authorize the coastal State to board and inspect the vessel on the high seas (para. 6). Furthermore, Article 20 permits States Parties to UNFSA which are members of an RFMO “to take action in accordance with international law,... to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that [RFMO] from fishing on the high seas in the ... region until such time as appropriate action is taken by the flag State.”

The Code of Conduct provides that members of RFMOs should implement internationally agreed measures adopted by them and consistent with international law to deter the activities of vessels flying the flag of non-members which engage in activities which undermine the effectiveness of the RFMO’s conservation and management measures (Art. 7.7.5).

2. ICCAT Basic Texts

Article IX (3) of the ICCAT Convention provides that the Contracting Parties undertake to collaborate with each other with a view to the adoption of suitable effective measures to ensure the application of the Convention’s provisions and in particular to set up “a system of international enforcement” to be applied in the Convention area.

3. ICCAT Measures

With respect to cooperative mechanisms to monitor and detect non-compliance, ICCAT has established the Conservation and Management Measures Compliance Committee, whose mandate is contained in the *Mandate and Terms of Reference Adopted by the Commission for the ICCAT Conservation and Management Measures Compliance Committee* [Ref. 95-15]. The main objectives of the Compliance Committee (CC) are: to provide a structured forum for discussion of all problems related to effective implementation of, and compliance with, ICCAT conservation and management measures, and to identify and discuss related problems and make recommendations to the Commission on how to address these problems. In order to meet these objectives, the

CC shall: review the status of implementation of, and compliance with, ICCAT measures; review domestic measures for the implementation of the ICCAT recommendations; review the implementation of the ICCAT Port Inspections Scheme and progress made with inspections under the scheme; review other enforcement activities conducted by the Contracting Parties; recommend suitable measures to ensure proper application of the Convention's provisions; and to make recommendations to the Commission to resolve identified problems in order to enhance compliance with ICCAT recommendations.

With regard to cooperative mechanisms to deter non-compliance, ICCAT has adopted a series of Recommendations, notably the following:

The Recommendation on Transshipments and Vessel Sightings [Rec. 97-11] provides that any sightings of *stateless* vessels fishing for ICCAT species shall be reported immediately to the authorities of the flag State of the sighting vessels or aircraft. The Contracting Party receiving such report shall immediately notify the ICCAT Secretariat, which shall in turn notify all other Parties. Furthermore, any observation by a Party vessel or aircraft of *another Party's* vessel that may be fishing contrary to ICCAT measures shall be reported immediately to the authorities of the flag State making the observation. That Party shall then immediately notify the authorities of the flag State of the fishing vessel, and both Parties shall provide the pertinent information to the ICCAT Secretariat for review by the CC. With regard to *non-Party vessels* that may be fishing contrary to ICCAT measures, any observation of such vessels by a Party vessel or aircraft shall be reported immediately to the authorities of the flag State making the observation, which shall then notify the appropriate authorities of the flag State of the fishing vessel. The former State shall also notify the ICCAT Secretariat, which in turn shall notify the other Parties.

The Recommendation Concerning the Establishment of an ICCAT Record of Vessels over 24 Meters Authorized to Operate in the Convention Area [Rec. 02-22] requires each CPC to notify the Executive Secretary of any factual information showing that there are reasonable grounds for suspecting a LSFV not on the ICCAT record is engaged in fishing for and/or transshipment of tuna in the Convention area. The Executive Secretary shall request the CPC flag State to take measures to prevent the vessel from fishing for such species in the Convention area, or if the flag of such vessel cannot be determined or is of a non-Party without cooperating status, shall compile such information for future consideration by the Commission.

The Recommendation for a Revised ICCAT Port Inspection Scheme [Rec. 97-10] provides that in case an inspector at ports finds an apparent violation by a foreign fishing vessel, he/she shall draw up a report and send copies thereof to the flag State of the vessel and the ICCAT Secretariat within 10 days. Contracting Parties must consider and act on such reports of violations of foreign inspectors on a similar basis as the reports of national inspectors in accordance with their national legislation.

The Recommendation Amending the Recommendation to Establish a List of Vessels Presumed to Have Carried Out IUU Fishing Activities in the ICCAT Convention Area [Rec. 06-12] sets out the rules and procedures for establishing the IUU vessel list. The list is prepared on the basis of the information supplied annually by CPCs on vessels flying the flag of non-Parties presumed to be carrying out IUU fishing activities in the Convention area. Once the final list is adopted, the Commission shall request the non-Parties whose vessels appear on the list to take all necessary measures to eliminate IUU activities. At the same time, CPCs must also take all necessary measures against listed vessels, including prohibition of giving any assistance in fishing processing operations or transshipment; prohibition of their entry into ports, landing, transshipping, re-supplying, or any other commercial transactions; and refusal of chartering or granting flag to such vessels.

In addition, as discussed below under Section 10 on market-related measures, ICCAT has taken measures on statistical document and catch documentation programs, and imposed sanctions against non-complying States.

4. Panel's Comments on Cooperative Mechanisms to Detect and Deter Non-Compliance

ICCAT has adopted a number of measures to detect and deter non-compliance. However, as discussed in Section 1 and more generally in Part III, the problem of lack of or non-compliance remains serious. Many CPCs have been unable due to lack of capacity or unwilling due to lack of political will to fully implement existing measures. The inability to deal effectively with non-compliance by Contracting Parties is indeed a key weakness of ICCAT.

As one of the difficulties related to non-compliance, it was pointed out that ICCAT's rules, especially harvesting rules, can sometimes be complicated or subject to interpretation, which could make it difficult to assess if an infraction has occurred or to agree that rectifying action is needed. Also, there are so many requirements on CPCs that it is difficult for some of them to understand and comply with their obligations and for the Compliance Committee to assess non-compliance. Furthermore, no predetermined consequences exist for lack of compliance, which often permits the continuation of violations.

Various suggestions have been made to improve the situation: First, the way ICCAT adopts measures in the future should be streamlined so that new and existing obligations are fully understood. Secondly, the compliance table and proposals should be submitted far enough in advance of the CC's annual meeting to allow prior review and consideration. Thirdly, the CC should expand its function so as to analyze any information submitted by either national authorities or any other entity or person. Fourthly, the CC meetings should be conducted by reviewing each case of non-compliance, and the burden of proof for compliance should be placed on the implicated Contracting Parties. And fifthly, new mechanisms should be devised to ensure the identification of those Parties that cumulate a given number of proved infractions.

With regard to the mechanisms to deter non-compliance, particularly IUU fishing, it has been generally observed that ICCAT has made respectable progress in enhancing cooperation with its management programs by non-Members. There have been noticeable changes in the fishing activities of some countries and a substantial increase in ICCAT's membership over the last 10 to 15 years, including a high percentage of developing countries.

In the Panel's view, non-compliance with ICCAT measures is one of the most serious problems that await urgent attention of the Commission. The effectiveness and credibility of ICCAT depend largely on how much the Commission can succeed in improving the situation in the immediate future. The Commission must squarely deal with the problem and strengthen its measures and mechanisms.

PART I – Section 10. Market-Related Measures

1. Global Instruments

No provision exists in UNCLOS regarding market-related measures to be adopted by RFMOs. Nor does UNFSA contain any specific provision, except the general rule in Article 33 (2) that “*States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.*”

The Code of Conduct provides that States should ensure that measures affecting international trade in fish and fishery products are transparent, based, when applicable, on scientific evidence, and are in accordance with internationally agreed rules (Art. 11.2.3), and that fish trade measures should not be discriminatory and should be in accordance with internationally agreed trade rules (Art. 11.2.4).

The International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) encourages States to cooperate, including through RFMOs, to adopt multilaterally agreed trade-related measures that may be necessary to prevent, deter and eliminate IUU fishing (para. 68). Such measures include the identification of the IUU vessels by RFMOs through agreed procedures (para. 66), and the adoption of multilateral catch document and certification requirements, and import and export controls or prohibitions (para. 69). These measures should be applied in accordance with the principles, rights and obligations established in the World Trade Organization (WTO), and implemented in a fair, transparent and non-discriminatory manner (para. 65). Trade-related measures should also be used only in exceptional circumstances, where other measures have proven unsuccessful, and only after prior consultation with interested States (para. 66).

2. ICCAT Basic Texts

No provision is made on market-related measures in the Basic Texts.

3. ICCAT Measures

The *Recommendation Concerning ICCAT Bluefin Tuna Statistical Document Program* [Rec. 92-01] established the bluefin tuna statistical document (BSD) program, requiring that all tuna, when imported into a Contracting Party's territory, be accompanied by a BSD. Subsequent recommendations and resolutions expanded the program to cover swordfish, bigeye and other species as well. In 2007, however, the new *Recommendation on an ICCAT Bluefin Catch Documentation Program* [Rec. 07-10] replaced the BSD program with the bluefin catch documentation (BCD) program, effective from June 2008. Under the program, CPCs shall require a completed BCD for each bluefin tuna that is landed at its ports, delivered to its farms, and harvested from its farms. Each consignment of bluefin tuna domestically traded, imported into or exported or re-exported from its territories must be accompanied in principle by a validated BCD and, as applicable, an ICCAT transfer declaration or a validated Bluefin Tuna Re-export Certificate (BFTRC). BCD forms are provided by CPCs only to vessels and traps authorized to harvest bluefin tuna in the Convention area, and the BCD must be validated by an authorized government official, or other authorized individual or institution. The BFTRC must also be validated by an authorized government official. Each CPC shall communicate a copy of all validated BCDs or BFTRCs, as a rule within five working days, to the authority of the country where the bluefin tuna will be domestically traded, or transferred into a cage or imported, as well as to the ICCAT Secretariat.

As part of its measures to combat IUU fishing, ICCAT has since 1996 adopted several Recommendations requiring CPCs to prohibit the import of bluefin tuna, bigeye tuna and swordfish, as well as their products in any form from those countries whose vessels were identified as fishing such species in a manner which diminishes the effectiveness of ICCAT measures. Most of such sanctions were lifted subsequently, when the Commission found that fishing practices of the countries concerned were brought into conformity with ICCAT measures. These Recommendations were adopted pursuant to the Resolutions concerning Action Plans to ensure the effectiveness of ICCAT conservation programs and the *Resolution Concerning the Unreported and Unregulated Catches of Tuna by Large-Scale Longline Vessels in the Conservation Area* [Ref. 98-18], which was subsequently replaced by the *Resolution Concerning Trade Measures* [Ref. 03-15]. The latter resolution was in turn repealed and replaced recently by the *Recommendation Concerning Trade Measures* [Rec. 06-13]. The Recommendation in particular sets out detailed, step-by-step procedures for deciding the imposition of trade-restrictive measures, so that they are taken as a last resort, and implemented in accordance with international law, including WTO rules, in a fair, transparent and non-discriminatory manner.

The countries against which such trade sanctions were imposed for the import of either bluefin tuna, bigeye tuna or swordfish, or some or all of them, were Belize, Honduras, Panama, Equatorial Guinea, St. Vincent and the Grenadines, Cambodia, Sierra Leone and Georgia.

4. Panel's Comments on Market-Related Measures

ICCAT has done well in adopting market-or trade-related measures against IUU activities and the product originating in such activities. These measures are, as the Code of Conduct and the IPOA-IUU stress, adopted carefully through multilaterally-agreed procedures, and applied in a fair, transparent and non-discriminatory manner, and consistent with WTO rules.

The newly introduced BCD program, if implemented fully, is expected to be a much more effective tool than the BSD program for excluding IUU products from the major markets and thus for deterring IUU fishing.

PART I – Section 11. Decision-Making

1. Global Instruments

On decision-making procedures of RFMOs, while no provision is found in UNCLOS, the UNFSA provides in Article 10 (j) that, in fulfilling their obligation to cooperate through RFMOs, States shall “agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner.” Article 28 further provides that States shall agree on efficient and expeditious decision-making procedures within RFMOs and shall strengthen existing decision-making procedures as necessary. Moreover, Article 12 stipulates that States shall provide for transparency in the decision-making process of RFMOs, and that representatives from international organizations and those from NGOs concerned with

straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in their meetings as observers or otherwise. Such procedures shall not be unduly restrictive in this respect, and such international organizations and NGOs shall have timely access to the records and reports of the RFMOs, subject to the relevant procedural rules.

2. ICCAT Basic Texts

2.1 Voting procedure

The ICCAT Convention provides in Article III (3) that decisions of the Commission shall be taken by a majority of the Contracting Parties except otherwise provided. Such exception is made with respect to the decision for making “*recommendations designed to maintain the populations of tuna and tuna-like fishes that may be taken in the Convention area at levels which will permit the maximum sustainable catch,*” under Article VIII. Such recommendations are to be made, *inter alia*, at the initiative of the Commission if an appropriate Panel on relevant species has not been established, or with the approval of at least two-thirds of all the Parties if such a Panel has been established.

Article VIII, paragraphs 2 and 3, contains a complicated set of rules for the “opting out” or objection procedure and the entry into force of recommendations. Each of such recommendation becomes effective for all Contracting Parties six months after the date of the notification from the Commission, except where an objection to such recommendation is presented by any Party within six months of such notification.

In such a case, the recommendation shall not become effective for additional 60 days, within which, or within 45 days of the date of the notification of an objection made by another Party within such additional 60 days, whichever date shall be the latter. The recommendation shall become effective at the end of the extended period or periods for objection, except for those Parties that have presented an objection. However, *if a recommendation has met with an objection presented by only one or less than one-fourth of the Parties*, the Commission shall immediately notify the Party or Parties having presented such objection that it is to be considered as having no effect. Such Party or Parties will then be given an additional period of 60 days to reaffirm their objection.

On the expiry of this period, the recommendation shall become effective, except with respect to any Party having presented an objection and reaffirmed it within the delay provided for. On the other hand, *if a recommendation has met with objection from more than one-fourth but less than the majority of the Parties*, the recommendation shall become effective for the Parties that have not presented an objection thereto; *if objections have been presented by a majority of the Parties*, the recommendation shall not become effective. Finally, any Party objecting to a recommendation may at any time withdraw that objection, and the recommendation shall become effective for such Party immediately, if it is already in effect, or at such time as it may become effective.

2.2 Transparency in decision-making

The ICCAT Convention provides in Article XI that the Commission may invite any appropriate international organization and any non-member Government which is a member of the UN or of any Specialized Agency to send observers to meetings of the Commission and its subsidiary bodies. No provision is made for the participation of NGOs in meetings, except that there should be cooperation between the Commission and other international fisheries commissions and scientific organizations which might contribute to the work of the Commission.

3. ICCAT Measures

In 1998, the Commission adopted the *Guidelines and Criteria for Granting Observer Status at ICCAT Meetings*, which were amended in 2005 by the Guidelines with the same title [Ref. 05-12]. The Guidelines instruct the Executive Secretary to invite to ICCAT meetings as observers not only all relevant international organizations and non-member Governments, but all NGOs “*which support the objectives of ICCAT and with a demonstrated interest in the species under the purview of ICCAT*”. The Executive Secretary prepares a list of NGO applications which meet the qualifications, and they will be considered accepted unless one-third of the Parties object in writing at least 30 days prior to the meeting. Accredited NGOs may attend all meetings, except extraordinary meetings held in executive sessions or meetings of Heads of Delegations; make oral statements during the meeting upon invitation of the presiding officer; distribute documents through the Secretariat; and

engage in other activities as approved by the presiding officer. Observers are required to pay a fee for their participation, and entitled to receive the same documentation generally available to Contracting Parties, except those documents deemed confidential by the Parties.

4. Panel's Comments on Decision-Making

With regard to the voting procedure, in practice ICCAT has taken most decisions by consensus. According to the Secretariat, however, in the course of ICCAT's 40 years of existence, six Parties have presented and confirmed objections to three recommendations. It has also been pointed out that consensus procedure may lead to blocking of effective decision-making. It is also felt that achieving consensus is becoming more difficult due to increasing membership. The decision-making procedure thus may not always be able to ensure the adoption of conservation and management measures "in a timely and effective manner," as required by the UNFSA.

Some recent RFMO instruments have introduced a new mechanism in order to improve the decision-making procedure through recourse to a conciliator or a review panel of experts. Under the WCPFC Convention, for example, when the chairman of the Commission determines that there would be an objection to a decision by consensus which is required by the Convention, the Commission may appoint a conciliator for the purpose of reconciling the differences in order to achieve consensus on the matter (Art. 20 (4)). Furthermore, any member that has voted against a decision may, within 30 days of its adoption by the Commission, seek a review of the decision by an *ad hoc* review panel consisting of three experts on the grounds that it is inconsistent with the Convention provisions, or the decision unjustifiably discriminates in form or in fact against the member concerned. One of the panel members is to be chosen by the applicant for review, another by the Commission chairman and the third by agreement of the two parties. If the panel recommends to the Commission that the decision be modified, amended or revoked, the Commission shall, at its next meeting, modify or amend it in order to conform with the findings and recommendations of the panel or it may decide to revoke the decision, provided that, if a majority of the members so request, a special meeting of the Commission shall be convened within 60 days of the communication of the panel's recommendations (Art. 20 (6)-(9)).

The SEAFO Convention provides for the convening of the Commission at the request of any Contracting Party to review a conservation measure adopted by the Commission in a case where a Party notifies the Commission within 60 days of its notification that it is unable to accept the measure. Pending the conclusions of such a review meeting, any Party may request an *ad hoc* expert panel to make recommendation on any interim measures. Such interim measures shall in principle become binding on all Parties if all Parties (other than those who have indicated that they are unable to accept the measure) agree that the long-term sustainability of the stocks covered by the Convention will be undermined in the absence of such measures (Art. 23).

NAFO has also introduced in the Amended NAFO Convention an elaborate procedure of making objections to a measure adopted by the Commission, including the use of an *ad hoc* panel, to be followed if necessary by compulsory binding procedures for dispute settlement pursuant to Part XV of UNCLOS (Arts. XIV and XV).

A common feature for all these recent provisions on objection procedure is the requirement for those who make objections to explain the reasons for objections, which are to be scrutinized by an expert panel and the other members.

The Panel is of the view that the Commission should review its decision-making procedure with a view to creating mechanisms for minimizing the objections and reviewing the objections through an expert body, taking into account the recent trends in other RFMOs.

With regard to the question of transparency, concern was expressed that there has been a tendency for ICCAT to use more closed meetings with limited participation, and that this could lead to decisions that are not well understood or well considered, and could also decrease accountability. It was also pointed out that the current participation fee for NGOs to attend every ICCAT meeting is perceived as a way to effectively discourage observer participation, and should be replaced by one single payment a year. These and other points will be further discussed in Part III.

PART I – Section 12. Dispute Settlement Procedures

1. Global Instruments

No provision exists in UNCLOS on the settlement of disputes concerning interpretation and application of treaties other than UNCLOS itself. All States, however, have an obligation under the Charter of the United Nations and general international law to settle their disputes by peaceful means, including negotiation, mediation, arbitration and judicial settlement.

UNFSA Article 27 repeats the above-mentioned general obligation of peaceful settlement of disputes. For a dispute concerning a matter of a technical nature, Article 29 recommends the use of an *ad hoc* expert panel, which should confer with the States concerned for resolving disputes expeditiously without recourse to binding procedures. Article 30 then incorporates the compulsory system of dispute settlement entailing binding third-party decisions contained in Part XV of UNCLOS, to be applied *mutatis mutandis* to disputes between States Parties to UNFSA concerning the interpretation and application of a regional or global agreement relating to straddling stocks or highly migratory stocks to which they are parties, including any disputes concerning the conservation and management of such stocks, whether or not they are also Parties to UNCLOS.

2. ICCAT Basic Texts

No provision is included in the ICCAT Basic Texts regarding the settlement of disputes.

3. ICCAT Measures

ICCAT has taken no measure regarding the dispute settlement procedure.

4. Panel's Comments on Dispute Settlement Procedures

It was pointed out that there has never been any disagreement with legal repercussions within the framework of ICCAT. There is no guarantee however that dispute will not arise between CPCs in the future. The recent practice of RFMOs shows the growing trend to incorporate the dispute settlement system of UNFSA or to adopt other mechanisms.

The WCPFC Convention has thus adopted the simple yet far-reaching method of incorporating the entire dispute settlement system of UNFSA by providing that the provisions of Part VIII (on dispute settlement) of UNFSA apply *mutatis mutandis* to any dispute between members of the Commission, whether or not they are also Parties to UNFSA (Art. 31). The Amended NAFO Convention contains an elaborate system, including the general obligation to settle disputes by peaceful means, the use of an *ad hoc* expert panel, recourse to the compulsory proceedings entailing binding decisions pursuant to Part XV, section 2, of UNCLOS or Part VIII of UNFSA (Art. XV). Under this system, if the report of a panel on disputes concerning objections to a measure adopted by the Commission is not accepted, any disputing party may refer the matter to the binding third-party procedure for final settlement. The same article further confirms that nothing in the NAFO Convention prevents the application of the compulsory procedure entailing binding decisions under Part XV of UNCLOS, or Part VIII of UNFSA, for the States Parties to the respective instruments concerned (Art. XV (12)).

The Antigua Convention provides for the use of an *ad hoc* expert panel for disputes of a technical nature (Art. XXV). The New NEAFC Convention instructs the Commission to make recommendations on the procedures for settling disputes arising under the Convention (Art. 18 *bis*).

The Panel recommends that the Commission consider establishing dispute settlement procedures, including the possible use of an expert panel and compulsory proceedings entailing binding decisions, either by amending the Convention or otherwise.

PART I – Section 13. Cooperating Non-Contracting Parties and Fishing Entities

1. Global Instruments

UNCLOS Article 118 provides for the basic duty of States to cooperate with each other in the conservation and management of living resources in the high seas, and obliges States whose nationals exploit identical resources, or different resources in the same area, to enter into negotiations with a view to taking the necessary conservation measures.

UNFSA Article 8 (3) provides that where an RFMO has the competence to establish conservation and management measures for particular straddling or highly migratory fish stocks, States fishing for such stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or by agreeing to apply the conservation and management measures of such organization. Article 8 (4) further provides that only those States which are members of such an RFMO or which agree to apply such measures shall have access to the resources to which those measures apply. According to Article 17 (1), a non-member of an RFMO which does not agree to apply the RFMO's measures shall not authorize its vessels to engage in fishing operations covered by such measures.

Article 17 (3) further provides that States members of RFMOs shall request the “fishing entities” which have fishing vessels in the relevant area to cooperate fully with such RFMOs in implementing their conservation and management measures, with a view to having such measures applied *de facto* to fishing activities in the relevant area, and that such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with the measure in respect of the stocks.

2. ICCAT Basic Texts

No provision is made in the ICCAT Basic Texts regarding Cooperating non-Contracting Parties, Entities or Fishing Entities.

3. ICCAT Measures

The Recommendation on Criteria for Attaining the Status of Cooperating Non-Contracting Party, Entity or Fishing Entity in ICCAT [Rec. 03-20] sets out the procedures for granting the status of a Cooperating non-Contracting Party, Entity or Fishing Entity. Each year the Executive Secretary contacts all non-Parties, Entities or Fishing Entities known to be fishing in the Convention area and urge them to become a Party or to attain the status of a Cooperating non-Contracting Party, Entity or Fishing Entity. Non-Contracting Parties, etc. requesting such status must provide such information as data on its historical fisheries, details on current fishing presence in the Convention area, information on its research programs, and confirm its commitment to respect the Commission's measures. The requests will be reviewed by the PWG, which shall make recommendation to the Commission. In granting the status of Cooperating non-Contracting Party, Entity or Fishing Entity to the applicant, caution must be used “so as not to introduce into the Convention area the excessive fishing capacity of other regions or IUU fishing activities.”

A Cooperating non-Contracting Party, Entity or Fishing Entity is qualified to receive quota allocations in accordance with the *ICCAT Criteria for the Allocation of Fishing Possibilities* [Rec. 01-25].

4. Panel's Comments on Cooperating Non-Members and Fishing Entities

ICCAT has made respectable progress in enhancing cooperation with its management programs by non-members, which has helped them to improve their compliance.

As a fishing entity, Chinese Taipei has been participating in the work of ICCAT for more than ten years. There is, however, no mechanism in the Basic Texts for allowing full participation by a fishing entity, which accordingly has no right to participate in the decision-making.

Recent RFMO conventions contain provisions regarding cooperative non-members of the Commission or non-Parties to the Convention, *and fishing entities*, including the benefits to enjoy participation in the fishery commensurate with their commitment to comply with, and their record of compliance with, the RFMO's measures. (e.g., WCPFC Convention, Art. 32; SEAFO Convention, Art. 22). The WCPFC Convention has established a unique mechanism for allowing a fishing entity which agrees to be bound by the Convention regime to participate in the work of the Commission, including decision-making (Art. 9 (2) and Annex I). In accordance with these provisions, Chinese Taipei has signed the Agreement for the Participation of Fishing Entities and become a member of the Commission since its establishment. The Antigua Convention also provides that any fishing entity which has agreed to abide by the terms of the Convention is entitled to become a member of the Commission, and its provisions regarding compliance and enforcement and flag State duties apply *mutatis mutandis* to fishing entities that are members of the Commission (Arts. I (7), XIX and XXI)

Although CCSBT has no provisions regarding fishing entities, in 2001 the Commission adopted a resolution to establish an Extended Commission and an Extended Scientific Committee, which would enable a fishing entity expressing a firm commitment to respect and comply with the CCSBT Convention and the Commission's measures to become a member thereof. The Fishing Entity of Chinese Taipei has thus become such a member since 2002.

The Panel considers that the Commission should take note of these developments in other RFMOs and consider further cooperative measures with Chinese Taipei in view of its significant level of fishing activities in the Convention area.

PART I – Section 14. Relationship to Non-Cooperating Non-Members

1. Global Instruments

No provision is made in UNCLOS on the relationship between RFMOs and non-cooperating non-members.

UNSFPA Article 17 (4) provides that RFMO member States shall exchange information relating to the activities of fishing vessels of non-members that are engaged in fishing operations for the relevant stocks, and take measures consistent with the Agreement and international law to deter activities of such vessels which undermine the effectiveness of regional conservation and management measures.

2. ICCAT Basic Texts

No provision is made in the ICCAT Basic Texts in this regard.

3. ICCAT Measures

The *Resolution on Compliance with the ICCAT Conservation and Management Measures (including Amendment)* [Res 94-09] calls upon the Contracting Parties to collect any information on the sighting of vessels of Contracting and non-Contracting Parties and transmit such information promptly to the Executive Secretary. Such information should cover large pelagic tuna longline fishing vessels greater than 24 meters in length operating in the Mediterranean during the prohibited period and vessels that appear to be fishing tuna and tuna-like species contrary to the relevant ICCAT Recommendations. When such a vessel of a non-Party is sighted and reported, the Executive Secretary shall immediately transmit the information to the relevant non-Party, requesting it promptly to take appropriate action to ensure that the effectiveness of the ICCAT measures are not undermined, and inform the Commission of the results of such action.

The *Recommendation on Transshipments and Vessel Sightings* [Rec. 97-11] requires any observation by a Contracting Party vessel or aircraft of non-Party vessels that may be fishing contrary to ICCAT measures to be reported immediately to the appropriate authorities of the flag-State making the observation. That Party shall then notify immediately the appropriate authorities of the flag State of the vessels and the ICCAT Secretariat. The latter shall in turn notify the other Parties.

The *Recommendation Concerning the Establishment of an ICCAT Record of Vessels Over 24 Meters Authorized to Operate in the Convention Area* [Rec. 02-22], which establishes the record of LSFVs authorized to fish tuna and tuna-like species in the Convention area, requires each CPC to notify the Executive Secretary of any factual information showing that there are reasonable grounds for suspecting LSFVs not on the record are engaged in fishing for and/or transshipment of tuna and tuna-like species in the Convention area. If the flag of such vessel is of a non-Contracting Party without Cooperating Status, the Executive Secretary shall compile such information for consideration by the Commission.

The *Recommendation Amending the Recommendation to Establish a List of Vessels Presumed to Have Carried Out IUU Fishing Activities in the ICCAT Convention Area* [Rec. 06-12] sets out the procedure for the Commission to adopt the IUU Vessel List of non-Contracting Party vessels on the basis of the information provided by CPCs on non-Party vessels presumed to be carrying out IUU activities in the Convention area. Once the IUU List is adopted by the Commission, CPCs must take all necessary measures, under their applicable legislation:

- (a) so that the fishing vessels, support vessels, cargo vessels etc. flying their flag do not assist in any way, engage in fishing processing operations or participate in any transshipment or joint fishing operations with vessels on the List;
- (b) so that listed vessels are not authorized to land, transship, re-fuel, re-supply, or engage in other commercial transactions;
- (c) to prohibit the entry into their ports of listed vessels;
- (d) to prohibit the chartering of a listed vessel;
- (e) to refuse to grant their flag to listed vessels, except if the vessel has changed owner and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel, or the flag CPC determines that granting the vessel its flag will not result in IUU fishing;
- (f) to prohibit imports, or landing and/or transshipment, of tuna and tuna-like species from listed vessels;
- (g) to encourage the importers, transporters and other sectors concerned, to refrain from transaction and transshipment of tuna and tuna-like species caught by listed vessels;
- (h) to collect and exchange with other CPCs any appropriate information with the aim of searching for, controlling and preventing false import/export certificates regarding tuna and tuna-like species from listed vessels.

In addition to these measures, ICCAT has imposed trade sanctions on several non-Parties whose fishing vessels were identified as being engaged in IUU fishing activities, as discussed above under Section 10 on market-related measures.

4. Panel's Comments on Relationship to Non-Cooperating Non-Members

ICCAT has adopted strong measures, particularly Rec. 06-12, requiring CPCs to take a number of strict actions to deter IUU activities of the vessels of non-cooperating non-members.

The ICCAT measures against non-Parties have generally been regarded as effective as evidenced by the facts that the number of IUU fishing vessels flying their flag have considerably been reduced over the last several years, and that a number of non-Parties which had previously been non-cooperating have become Parties to the Convention.

PART I – Section 15. Special Requirements of Developing States

1. Global Instruments

UNCLOS Article 119 (1) provides that in determining the TAC and establishing other conservation measures for the living resources in the high seas, States shall, *inter alia*, take measures which are designed to maintain or

restore populations of harvested species at levels which can produce the MSY, as qualified by relevant environmental and economic factors, *including the special requirements of developing States*, etc.

UNFSA recognizes, in its preamble, “*the need for special assistance... in order that developing States can participate effectively in the conservation, management and sustainable use of fish stocks.*” It then devotes a full part, Part VII consisting of Articles 24 to 26, to the requirements of developing States.

Article 24 requires States to “*give full recognition to the special requirements of developing States*” in relation to conservation and management of straddling and highly migratory fish stocks and development of fisheries for such stocks, and to provide assistance to developing States to that end. In cooperating in the establishment of conservation and management measures, States must take into account the special requirements of developing States, in particular (a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, and (c) the need to ensure that such measures do not result in transferring a disproportionate burden of conservation action onto developing States.

With regard to the areas in which States are to cooperate, Article 25 specifies: (a) the enhancement of the ability of developing States to conserve and manage straddling and highly migratory fish stocks, and the development of their own fisheries for such stocks; (b) the assistance to developing States to enable them to participate in high seas fisheries for such stocks; and (c) facilitating the participation of developing States in RFMOs. With regard especially to capacity building, UNFSA provides that assistance shall be provided in order to build capacity in the field of conservation and management of resources, and should be focused on enhancing capacity to implement data collection and verification, observer programs, data analysis and research projects supporting stock assessments (Annex I, Art. 1 (2)).

Furthermore, Article 26 calls upon States to cooperate to establish special funds to assist developing States in the implementation of the Agreement, including assisting them to meet the costs involved in proceedings for the settlement of disputes to which they may be parties.

The FAO Compliance Agreement briefly provides, in Article VII, that the Parties shall cooperate to provide assistance to Parties that are developing countries in order to assist them in fulfilling their obligations under the Agreement.

The Code of Conduct also stresses the need to “*give full recognition to the special circumstances and requirements of*” developing countries, and calls upon States and relevant international organizations to work for the adoption of measures to address the needs of developing countries (Art. 5.2)

2. ICCAT Basic Texts

With the entry into force of the Madrid Protocol in 2005, the ICCAT Convention and the Financial Regulations have been amended. As amended, the ICCAT Convention, in Article X (2), provides that in adopting the scheme for its annual budget, the Commission should consider *inter alia* each Contracting Party’s fixed basic fees for Commission and Panel membership, the total round weight of catch and net weight of canned products of Atlantic tuna and tuna-like fishes and *the degree of economic development of the Parties*.

Amended Regulation 4 of the Financial Regulations contains the Basic Principles of the New Calculation Scheme, pursuant to which Commission members are required to make annual contributions, consisting of two elements: (a) contribution of a fixed amount for the membership of the Commission and of each Panel, respectively; and (b) contribution to be determined by a formula which considers *the economic capabilities* of the Contracting Parties and their tuna harvest and canning production. This formula divides members into four groups, and those members with the smallest economies and lowest per capita GDP are required to pay the smallest amount of contributions.

3. ICCAT Measures

The *Resolution on Improvements in Data Collection and Quality Assurance* [Res. 03-21] has established a special fund for training in data collection and for supporting scientific participation in SCRS’ data preparatory

and stock assessment sessions by scientists from Contracting Parties with insufficient capacity to meet data collection, quality assurance, and reporting obligations. Parties with sufficient capacity are called upon to make voluntary contributions to this fund in proportion to their catch level. In 2005, it was agreed that the data fund should be extended to include technical assistance to improve data collection and compliance with ICCAT measures by developing countries, as well as capacity building and technological training.

With regard to quota allocations among CPCs, the *ICCAT Criteria for the Allocation of Fishing Possibilities* [Ref. 01-25] has established a number of criteria which include: the interests of artisanal, subsistence and small-scale fishers; and the socio-economic contribution of the fisheries for stocks under the purview of ICCAT to the developing States, especially small island developing States and developing territories, from the region.

4. Panel's Comments on Special Requirements of Developing States

ICCAT has, with the entry into force of the Madrid Protocol, taken measures to significantly reduce the financial cost of some developing States of the Commission membership.

ICCAT has also provided technical assistance to its developing member States through a number of assistance funds including the UNFSA Part VII Assistance Fund, in particular, for the establishment of a system of statistical data, the participation of developing coastal States in scientific meetings, the collection of historical data, scientific observation programs and the collection of biological information, as well as the delivery of training programs.

Despite these efforts, it has been repeatedly pointed out that the effective implementation of ICCAT measures depends much on adequate human and financial resources of particularly developing States.

The Panel considers that efforts in assistance to developing States should be further strengthened, with the expanded participation of donors.

PART I – Section 16. Cooperation with Other RFMOs

1. Global Instruments

No provision is found in either UNCLOS or UNFSA on cooperation among RFMOs.

2. ICCAT Basic Texts

The ICCAT Convention, in Article XI (2), provides that the Contracting Parties agree that there should be cooperation between the Commission and other international fisheries commissions and scientific organizations which might contribute to the work of the Commission.

3. ICCAT Measures

ICCAT has been cooperating with other RFMOs in particular through the meetings at FAO of Regional Fishery Bodies. In March 2007, the fifth meeting of Regional Fishery Bodies met as the First Meeting of Regional Fishery Body Secretariats Network (RSN), with 27 bodies attending. The meeting discussed such issues as role of regional fishery bodies, IUU fishing, overcapacity, catch document harmonization, and approaches to incorporate ecosystem considerations into fisheries management. The RSN is scheduled to meet every two years.

ICCAT also participated in the Joint Meeting of Tuna RFMOs in Kobe in January 2007, together with the four other tuna RFMOs. The next meeting is scheduled for 2009.

ICCAT has also established, together with four other tuna RFMOs, a joint website (www.tuna-org.org), which gives access to the various positive lists of vessels and the IUU lists, as well as information of interest on the

activities of the regional organizations. The creation and management of this web page has been assumed by the ICCAT Secretariat.

4. Panel's Comments on Cooperation with Other RFMOs

ICCAT has been making commendable efforts in cooperating with other RFMOs, particularly those dealing with tuna. Although it is not specified in the global law of the sea instruments, such efforts are certainly conducive to the enhancement of mutual cooperation among States, which is one of the key objectives enshrined in the preambles to UNCLOS and UNFSA. These efforts should therefore be continued and expanded.

PART II

ASSESSMENT OF THE ACHIEVEMENT OF ICCAT'S OBJECTIVES RELATING TO FISH STOCKS (CONSERVATION AND MANAGEMENT – STATUS OF LIVING MARINE RESOURCES)

Part II of this report reviews the structure and operation of the Standing Committee on Research and Statistics and the support it receives from the ICCAT Secretariat, it discusses the objective of ICCAT, and it summarises the stock and exploitation statuses along with the Panel's evaluation of whether the ICCAT objectives are being met for the main species under the purview of ICCAT as well as for associated and dependent species.

PART II – Section 1. The Standing Committee on Research and Statistics

1. Structure and operation

The mandate of the SCRS is described on the ICCAT web page³: *“The SCRS, on which each member of the Commission may be represented, is responsible for developing and recommending to the Commission all policy and procedures for the collection, compilation, analysis and dissemination of fishery statistics. It is the SCRS' task to ensure that the Commission has available at all times the most complete and current statistics concerning fishing activities in the Convention area as well as biological information on the stocks that are fished. The SCRS also coordinates various national research activities, develops plans for special international cooperative research programs, carries out stock assessments, and advises the Commission on the need for specific conservation and management measures”.*

The SCRS currently has two Sub-Committees (Statistics, Ecosystems), ten species groups (bigeye, yellowfin, skipjack, albacore, bluefin tuna, billfishes, swordfish, sharks, small tunas, southern bluefin tuna), a Working Group on Stock Assessment Methods, an *Ad Hoc* Working Group on Coordination of Tagging Information, an Enhanced Billfish Research Program and a Bluefin Year Progra (BYP).

The work of the SCRS is done by scientists from CPCs or observers. Prior to the formal recognition of the observer status in 1999, scientists from NGOs or industry consultants participated in SCRS activities as members of national delegations. The option to do so continues to exist and some still do participate as members of their national delegations rather than as observers.

For stock assessment work leading to advice to the Commission, the compilation and analyses of data takes place in working groups (e.g. the bluefin tuna working group met from June 23 to July 4, 2008) while the advisory Executive Summary reports are prepared during the meetings of Species Groups that are held during the week (e.g. September 22 to 27, 2008) immediately prior to the SCRS Plenary (September 29 to October 3, 2008).

The SCRS Plenary has simultaneous interpretation in English, French and Spanish and its main task is to approve the advisory Executive Summary reports prepared during the meetings of the Species Groups. The SCRS Plenary is held 4 to 6 weeks prior to the Commission meeting (November 17 to 24, 2008). As the main objective of the SCRS Plenary is to adopt the advisory and summary reports, there is scope, in theory, to change those reports. In practice, however, the time is severely limited and only errors of facts or interpretations are corrected. Otherwise, the main role of the SCRS Plenary is to inform participants from all CPCs and observers, many of whom may not have been able to participate in all the meetings of the SCRS subsidiary bodies, in preparation for the Commission meeting.

The work of the SCRS is led by a chair, who attempts to attend all the scientific meetings of the SCRS subsidiary bodies and relevant meetings of the Commission and its subsidiary bodies. The SCRS sub-committees are led by conveners, the Species Groups are led by rapporteurs and there are coordinators for Tropical Tunas

³ <http://www.iccat.int/SCRS.htm> accessed on June 27, 2008.

(bigeye, yellowfin, skipjack), bluefin tuna (east Atlantic, west Atlantic), and swordfish (east Atlantic, west Atlantic, Mediterranean).

The ICCAT related duties of the SCRS chair amount to approximately three quarters (75%) of a person-year while the time required of other SCRS officials is less. As a large proportion of the work of the SCRS is done by a relatively small core of scientists who are involved in several species, the time commitments of several core members is substantial. Salaries and expenses for SCRS duties and activities are borne by participants or by their employers.

All steps in the SCRS process are seen as useful and necessary. Although views vary on the proportion of time that should be spent on each different step (working/assessment groups, species groups, SCRS plenary), there is no consensus that could lead to recommend changes from the current allocation.

Panel's comments on SCRS Structure and Operation

The SCRS has regularly reviewed its mode of operation and changed it as seen appropriate. The Panel considers that the current arrangement has evolved to meet the needs and resources of ICCAT. To adequately fulfill the responsibilities of the position, it is necessary for the chairperson of the SCRS to attend and participate in most, if not all, the meetings of the SCRS as well as several meetings of the Commission. As indicated above, this represents a substantial time commitment and very few countries can make available one of their experienced senior scientists for such a considerable period of time for four years, two mandates, the normal duration of the mandate of the SCRS Chair. This means that the Chair of SCRS will generally come from those countries with a relatively large scientific component dealing with ICCAT species, or, exceptionally, from countries with smaller scientific contingents that may have special arrangements.

If ICCAT wants to give more equal opportunities to scientists of all Parties to become Chair of the SCRS, it should consider a special fund to pay the salaries and expenses related to ICCAT activities of the SCRS Chair.

2. Support for the SCRS

Since its creation, the SCRS has worked very closely with the ICCAT Secretariat and greatly benefited from its support. Following SCRS requests, the capabilities of the Secretariat in data collection and data management were increased and at various times, experts have been hired for variable period of times to do specific analyses or coordinate special multinational programs of fixed duration. Historically, except for the meeting of the Commission itself and activities associated with it, the largest part of the Secretariat's activities was devoted to supporting the work of the SCRS.

With the creation of fisheries management databases (e.g. ICCAT Record of Vessels (several), ICCAT Record of BFT Farming Facilities, ICCAT Record of BFT Traps, ICCAT Record of BFT Ports, IUU Vessel List, Regional Observer Programme (transshipment), etc.) to support the work of the Commission through the Compliance Committee, the Secretariat has had less resources to support the SCRS. As a result, the amount of time in support of traditional SCRS work, both in proportion and in absolute has decreased.

From its creation, ICCAT had a balance between fisheries management and fisheries science. Traditionally, the Executive Secretary had a fisheries management background and the Assistant Executive Secretary a science one. As the largest majority of Commissioners have fisheries management backgrounds, there is a concern amongst the scientists that the work of the Secretariat, which, except for the Commission meetings themselves, has traditionally been mostly in support of science is now becoming increasingly directed at fisheries management issues, as described above, which implies a corresponding decrease in the resources available for the scientific work.

Panel's comments on Support for the SCRS

The Panel recognises that the initiatives undertaken by ICCAT to improve fisheries management are useful, necessary and it fully supports them. However, the Panel is concerned that these may have been implemented as individual, yet complementary, initiatives instead of as part of an overall plan and without the necessary additional support. As a result, the Panel is concerned that the SCRS may not receive, from the Secretariat, the support necessary to fulfill its mandate. The Panel notes that a process to recruit a population dynamics expert is almost finalised. While a population dynamics expert will certainly be useful to the operations of the SCRS, there is no lack of qualified experts in national laboratories and those are already heavily involved in the work of

the SCRS. The greatest shortcomings are in data collection, in data management and in the coordination of field programs designed to answer specific questions, not in analytical capabilities.

The Panel recommends that the various ICCAT lists be consolidated to increase efficiency and usefulness and that additional resources be secured, as necessary, to support both the fisheries management and the scientific needs of ICCAT.

PART II – Section 2. ICCAT’s Objective

The objective of ICCAT is to maintain the populations of tuna and tuna like species “*at levels which will permit the maximum sustainable catch for food and other purposes*” as stated in the Preamble to the ICCAT Convention. Reference to the maximum sustainable catch is also made in Article IV-2(b) relating to scientific investigations and management measures general, in Article VII (f) related to the collection and analysis of data, and in Article VIII (a) which states: “*The Commission may, on the basis of scientific evidence, make recommendations designed to maintain the populations of tuna and tuna-like fishes that may be taken in the Convention area at levels which will permit the maximum sustainable catch. ...*”

The ICCAT objective is consistent with UNCLOS Article 61(3) on conservation of the living resources which states: “*measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, ...*”. UNFSA Article 5(b) essentially repeats UNCLOS Art. 61(3).

Even before UNCLOS, MSY and related benchmarks were not unanimously seen as desirable. As early as in 1969, Gulland (1969)⁴ was of the opinion that “*...it is very doubtful if the attainment of the maximum sustained yield from any one stock of fish should be the objective of management except in exceptional circumstances*”. But it is Larkin (1977)⁵, in his keynote address to the 1976 Annual Meeting of the American Fisheries Society, who identified some of the main problems with the concept:

- Fishing near MSY means that spawning populations will be mostly made up of first time spawners which will create instability in recruitment.
- Fish populations are generally made up of distinct subpopulations adapted to their local environment. Fishing is likely to remove the most productive subpopulations first which means that MSY would be expected to decrease over time.
- It is likely to be very difficult to implement measures that would achieve MSY in multi-species fisheries, particularly given predator-prey relationships that may change in space and time.
- Maximum economic yield generally occurs with fishing effort (or fishing mortality) that is less than those corresponding to MSY.

In large measure because of those and other concerns, UNFSA Annex II, which provides guidelines for the application of precautionary reference points, in paragraph 7 states that “*The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.*”

Limit reference points can have various interpretations, e.g. the International Council for the Exploration of the Sea (ICES) has adopted a comprehensive system to provide advice based on the precautionary approach, and in that system, limit reference points are to be avoided with a high probability because at biomasses below the limit reference point, there is a high probability that the stock could collapse⁶. Clearly, it is not the intent of UNFSA Annex II that MSY reference points be avoided with a high probability. Instead, it implies that fishing mortality targets should be less than F_{MSY} and that biomass targets should be somewhat higher than B_{MSY} with the distance between the target and the limit depending on the uncertainties in the assessment and implementation as well as how precautionary management wants to be.

⁴ Gulland, J.A. 1969. Manual of methods for fish stock assessment. Part 1. Fish Population Analysis. FAO Manuals in Fisheries Science 4. 154p.

⁵ Larkin, P.A. 1977. An Epitaph for the Concept of Maximum Sustainable Yield. Trans. Am. Fish. Soc. 106(1): 1-11.

⁶ <http://www.ices.dk/products/icesadvice/2007/ICES%20ADVICE%202007%20Book%201.pdf>, page 3.

Panel's Comments on ICCAT's Objective

The Panel recommends that target reference points be agreed for all species under ICCAT's purview to ensure that the Commission's objective has a high probability of being met, consistent with UNFSA and the precautionary approach.

PART II – Section 3. Target species (main species assessed)

This section provides summaries of the stock status, largely based on the 2007 SCRS report, and the Panel comments on whether ICCAT objectives are being met. The summaries are by alphabetical order of the ICCAT acronym for the species.

ALBACORE (ALB)

Albacore (*Thunnus alalunga*) is a temperate tuna widely distributed throughout the Atlantic Ocean and Mediterranean Sea (**Figure ALB 1**). Three stocks are assumed: northern Atlantic, southern Atlantic stocks (separated at 5°N) and Mediterranean, but there is likely intermingling of Indian Ocean and South Atlantic immature albacore.

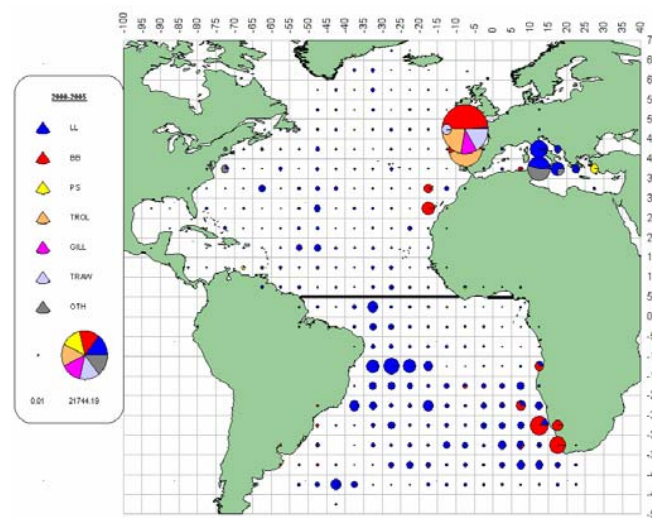


Figure ALB 1.

The northern stock is exploited by surface fisheries targeting mainly immature and sub-adult fish (50 cm to 90 cm FL) and longline fisheries targeting immature and adult albacore (60-130 cm FL) in the Bay of Biscay and in the vicinity of the Canary and Azores Islands in summer and fall. The historical time series of catch starts in 1930 for the troll fishery. Total reported landings peaked at nearly 65,000 t in 1964 (**Figure ALB 2**) but have since declined irregularly to between 30,000 t and 40,000 t for the last 10 years or so.

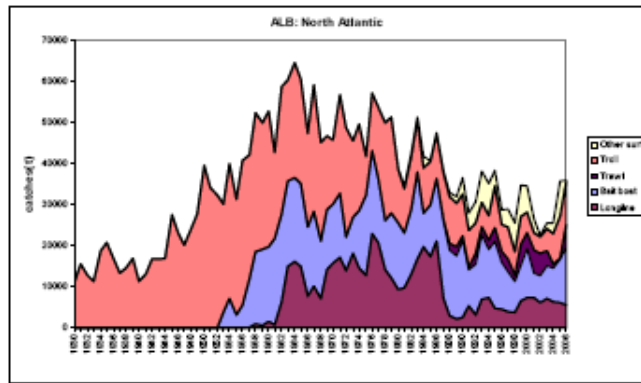


Figure ALB 2.

Based on the 2007 assessment which considers catch, size and effort since the 1930s, the spawning stock biomass (SSB) has declined and is currently about one quarter of the peak estimated for the late 1940s. Estimates of recruitment to the fishery, although variable, have generally been higher in the 1960s and earlier periods with a declining trend thereafter. The most recent recruitment is estimated to be large but it is uncertain. The stock appears to have rebuilt to near B_{MSY} (Figure ALB 3, current SSB is approximately 80% of that at MSY, compared to 50% in 2000). Recent fishing mortality rates have generally been above F_{MSY} (current F is approximately 50% larger than F_{MSY}). Yearly estimates of MSY varied depending on the relative combination of fisheries taking juvenile and mature albacore.

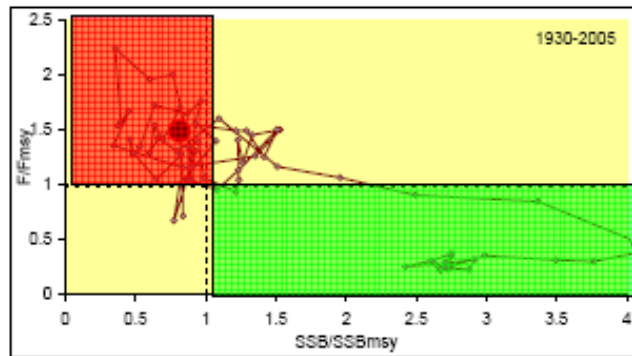


Figure ALB 3.

The South Atlantic albacore fishery has been dominated by the surface baitboat fleets from South Africa and Namibia, and the longline fleets from Brazil and Chinese Taipei. The surface fleets direct for albacore and mainly catch juvenile and sub-adult fish (70-90 cm FL). Total reported albacore landings for have fluctuated between 25,000 t and 40,000 t for the last 20 years without clear trend.

In the South Atlantic, based on the 2007 assessment which considers catch, size and effort since the 1950s, the Southern albacore spawning stock has declined to about 25% of the unfished SSB. It is likely (Figure ALB 4) that the stock is currently below B_{MSY} while the 2005 fishing mortality rate was about 60% of F_{MSY} . MSY was estimated to be around 33,300 t.

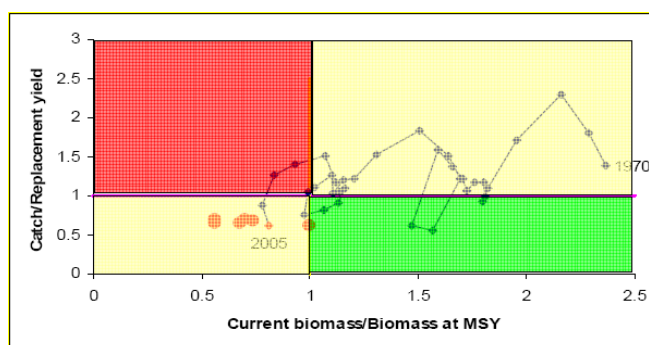


Figure ALB 4.

There are insufficient data to assess albacore in the Mediterranean.

In 2007, a TAC reduction was advised for the North Atlantic stock and no change for the South Atlantic stock.

Panel's Comments on Albacore

SSB is estimated to be smaller than the SSB at MSY for both the northern and the southern stock. Fishing mortality is estimated to be above F_{MSY} in the northern stock but less than F_{MSY} in the southern stock. Considering that SSB is below MSY in both assessed stocks and that there is no assessment for the Mediterranean stock, the Panel concludes that the objectives of the Commission are not being met for albacore tuna.

The Panel recommends that catches for the northern stock be decreased such that fishing mortality is consistent with F_{MSY} . The Panel also recommends that more information be collected for Mediterranean albacore and that an assessment be conducted at the earliest possible date.

BIGEYE TUNA (BET)

Bigeye tuna (*Thunnus obesus*) are distributed throughout the Atlantic Ocean between 50°N and 45°S, but not in the Mediterranean Sea (**Figure BET 1**). This species swims at deeper depths than other tuna species and exhibits extensive vertical movements (deeper during daytime than at night). Spawning takes place in tropical waters when the environment is favourable. From nursery areas in tropical waters, juvenile fish tend to diffuse into temperate waters as they grow larger. Catch information from surface gears indicate that the Gulf of Guinea is a major nursery ground. Young fish form schools, mostly mixed with other tunas such as yellowfin and skipjack, which are often associated with drifting objects, whale sharks and sea mounts. This association appears to weaken as bigeye grow larger. Available evidence suggests an Atlantic-wide single stock.

Bigeye tuna is exploited mostly by longline, baitboat and purse seine used by many countries throughout its range of distribution (**Figure BET 1**). The size of fish caught varies among fisheries: medium to large for the longline fishery (45-50 kg), small to large for the directed baitboat fishery (20-30 kg), and small for other baitboat and for purse seine fisheries (3-4 kg).

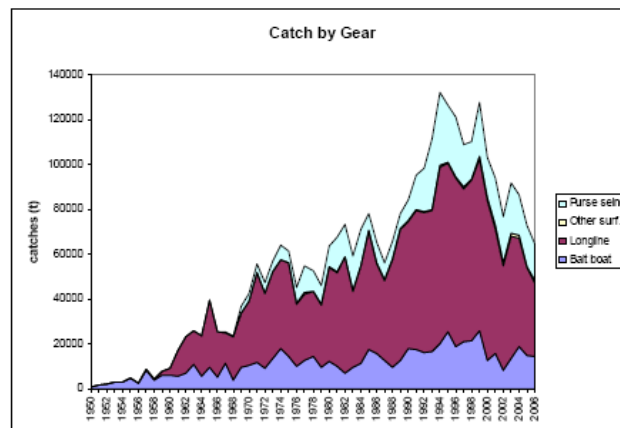


Figure BET 1.

The total annual catch increased relatively steadily to more than 132,000 t in 1994 before decreasing for all major gears to 76,000 t in 2006 (**Figure BET 2**). Decreased catches are due to reductions in fleet size for purse seine and longline and lower CPUE for longline and baitboat.

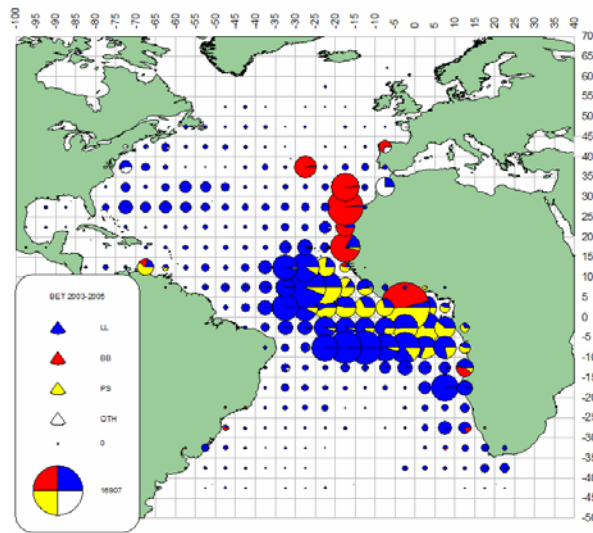


Figure BET 2.

The 2007 stock assessment examined production models, VPA, and a statistical integrated model. Information is still lacking on size data from certain fleets, including IUU fleets which makes it necessary to assume catch-at-size for an important part of the overall catch. The results from non-equilibrium production models are considered to best characterize the status of the resource. Current MSY is estimated to be approximately 90,000 t, reflecting the existing mix of fisheries that capture small or large bigeye. MSY estimates can change considerably with changes in the relative fishing effort exerted by surface and longline fisheries. The biomass at the beginning of 2006 was estimated to be nearly 92% of B_{MSY} and the 2005 fishing mortality rate was estimated to be about 13% below F_{MSY} (**Figure BET 3**).

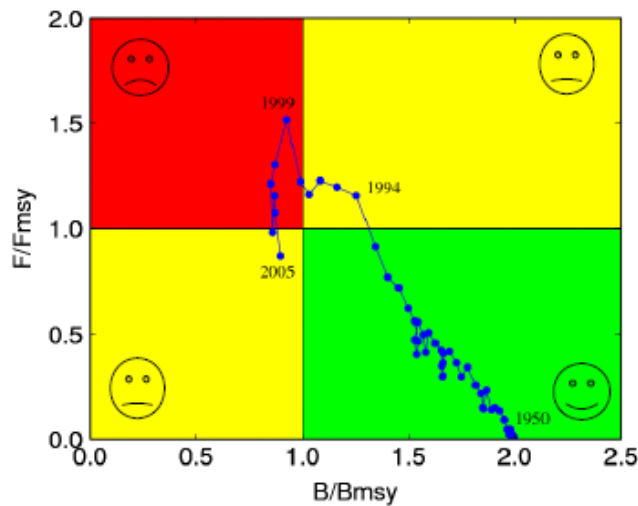


Figure BET 3.

Panel's Comments on Bigeye Tuna

The Panel considers that the objectives of the Commission are being met for bigeye tuna.

BLUEFIN TUNA (BFT)

An updated assessment of bluefin tuna (*Thunnus thynnus thynnus*) is in the process of being completed by the SCRS at the time of writing. The information below, as for the other stocks summarised herein, is from the 2007 SCRS report. Although the assessment results are likely to change in details, it is unlikely that the main messages will be very different from those of recent assessments.

ICCAT has two management units for bluefin tuna, the West Atlantic and the East Atlantic plus Mediterranean. Recent stock assessments have been conducted under a two stock hypothesis, but the 2008 assessment also considered a preliminary single stock hypothesis assessment for exploratory purposes.

Spawning occurs in the Gulf of Mexico and in the Mediterranean. There are considerable biological differences between the two with bluefin in the Mediterranean maturing at 4-5 years of age, whereas those in the Gulf of Mexico are believed to mature at 8 years of age or older at a considerably larger size. Evidence indicates that movement across the current assumed east/west boundary in the Atlantic does occur, that it can be extensive and complex, but remains unquantified.

Figures BFT 1 and **BFT 2** illustrate some of the differences in the fisheries over time: (1) catches now come from considerably smaller number of squares than in the 1960s, including the disappearance of fisheries off Brazil and off Norway; (2) catches in the West are now much smaller than in the 1960s; (3) fisheries have expanded in the middle of the Atlantic north to Iceland; and (4) purse seine catches have been eliminated in the West but have increased considerably in the Mediterranean, particularly in the eastern Mediterranean where there were few catches in the 1960s.

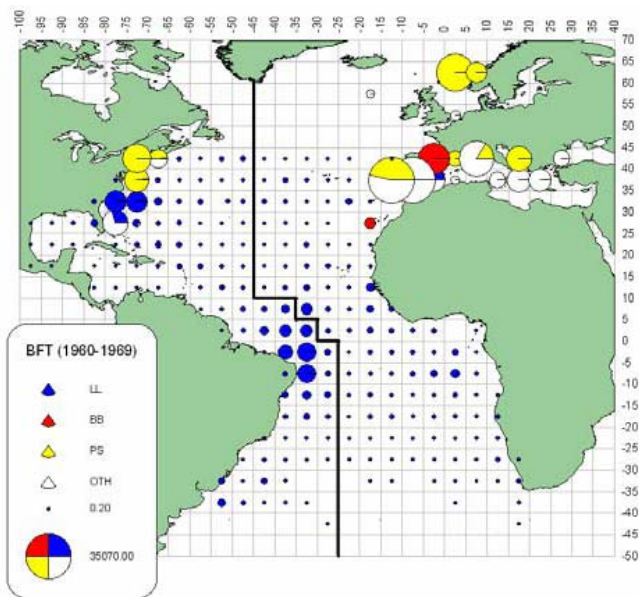


Figure BFT 1.

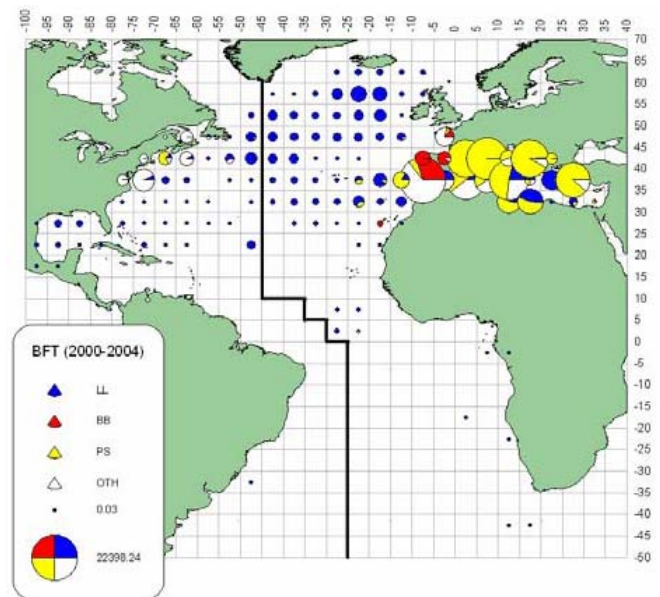


Figure BFT 2.

Since the imposition of TACs in 1981, the total catch for the West Atlantic including discards has stabilized between about 2,100 t and 3,300 t (**Figure BFT 3**). The SCRS was particularly concerned that the TAC has been seriously under caught in recent years. In the East Atlantic (**Figure BFT 3**), reported catches increased from the early 1980s to the late 1990s and have been generally declining since. In the Mediterranean (**Figure BFT 3**), reported catches were generally less than 10,000 t from 1950 to 1980, increased steeply to 40,000 t in the mid 1990s, decreased abruptly from 1996 to 1999 and have generally remained above 20,000 t since. The introduction of farming activities into the Mediterranean in 1997 and good market conditions resulted in rapid increases in fishing effort in the Mediterranean fisheries for bluefin tuna. Reported catches in recent years are believed to be considerably smaller than actual catches.

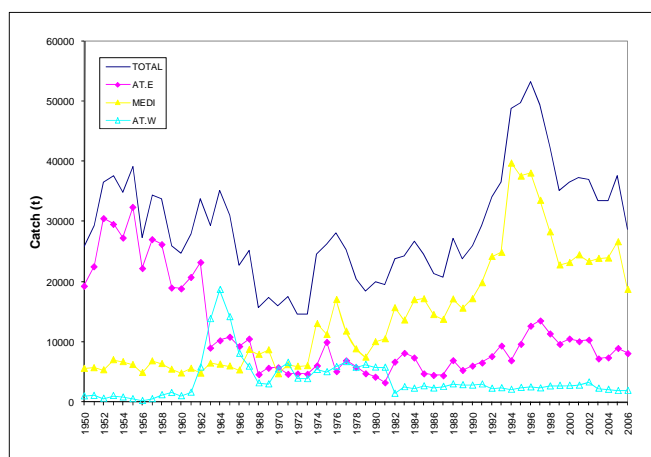


Figure BFT 3.

For the West Atlantic, the 2006 assessment suggests that SSB declined rapidly in the early 1970s followed by a more gradual decline with the 2004 SSB being about 19% of the 1975 SSB (**Figure BFT 4**). While it is clear that current biomasses are considerably smaller than those of the early 1970s (and presumably even smaller than those for earlier years), year classes since the mid 1970s have not been large enough to rebuild the stock. If small year classes since the mid-1970s are due to low spawning stock, then rebuilding the SSB should lead to progressively larger year classes and it would be possible to rebuild the stock. If the reasons for small year classes are due to causes other than low spawning stock, e.g. changed environmental conditions, loss of spawning habitats, or losses of spawning components, then, it may not be possible to rebuild the stock to the high biomasses estimated for the 1970s and earlier unless catches are reduced to near zero.

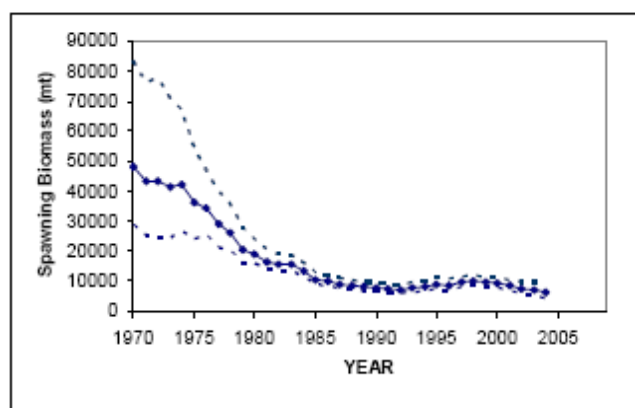


Figure BFT 4.

The outlook for bluefin tuna in the West Atlantic in the 2007 SCRS advice was more pessimistic than that presented in the previous assessment because of downward revisions of the 1994 and 1997 year classes. The SCRS noted that recommendation 06-06 was expected to result in a rebuilding of the stock, but that it may be insufficient to rebuild to B_{MSY} which is itself uncertain, depending on assumptions about recruitment and exchange rates between the West Atlantic and the East Atlantic plus Mediterranean.

For the eastern Atlantic and Mediterranean, the 2006 assessment suggested that the biomass declined by approximately half from the early 1970s to the mid-1980s, subsequently increased until the early 1990s and has been decreasing since to the lowest observed in the time series (**Figure BFT 5**). Fishing mortality, particularly on older and larger bluefin, is estimated to have increased sharply and be about 3 times F_{MSY} . This increase in fishing mortality estimated for large bluefin is consistent with a shift in targeting towards larger individuals destined for fattening/farming. The SCRS believes that the TAC regulation have been largely ineffective in controlling overall catch with actual catches believed to be 18,000 t to 20,000 t higher than reported. It also believes that the 15 year recovery plan for East Atlantic and Mediterranean bluefin [Rec. 06-05] is a step in the right direction, but that it is unlikely to rebuild to B_{MSY} in 15 years with 50% probability.

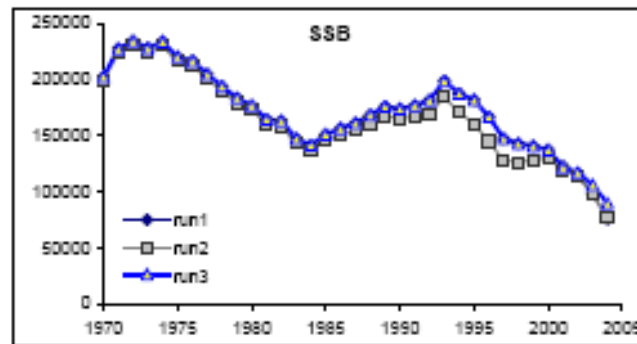


Figure BFT 5.

Panel's Comments on Bluefin Tuna

The Panel was surprised to see how little information and data are available even for an iconic species like bluefin tuna. Except for the larval index in the Gulf of Mexico, there are no fishery independent index of stock size, information on the size composition of the catch is missing for large portions of the catch, particularly in the East Atlantic and Mediterranean, and the age composition of the catch is derived from size compositions of unknown reliability using fixed growth equations which are in fact likely to change in time and space. Although estimates of stock status and of exploitation rates may be poorly estimated because of the problems above and under-reporting, mis-reporting and non-reporting in the Mediterranean, there is little doubt that bluefin tuna in the ICCAT area is far from B_{MSY} and there are indications that collapse could be a real possibility in the foreseeable future, particularly in the East Atlantic and Mediterranean.

The Panel therefore concludes that the Commission objectives are not being met, and by far.

While management measures for the West Atlantic have been adopted and implemented in the early 1980s (however, sustained rebuilding has yet to be observed), very little appears to have been implemented in the East Atlantic and Mediterranean: large catches of juveniles are believed to continue to occur in some areas, catches of larger, more successful spawners have increased substantially, new purse seiners continue to be added to the fleets and fishing has expanded in areas that previously acted as refugia. The early closure for several EC members in 2008 is an indication that monitoring, control and surveillance may have improved, but considerably more needs to be done.

The Panel recommends that the extent and consequences of mixing be fully evaluated at the earliest possible time, including, if necessary, through further field studies.

BLUE MARLIN (BUM) AND WHITE MARLIN (WHM)

Blue marlin (*Makaira nigricans*) and white marlin (*Tetrapturus albidus*)

In the western central Atlantic white marlin spawns from April to June in the area between 61-70°W and 20-23°N and off northeast Brazil. Considerable new information on the habitat preference of marlins has been obtained in the Atlantic and other oceans. Roundscale spearfish (*Tetrapturus georgei*) and white marlin may have been misidentified in the past in the areas where these two species overlap. The significance of this misidentification is still to be evaluated, but more effort is being made to train observers to separate the two species in the catches.

Large catches of billfish continue to be reported as unclassified billfish (**Figure BUM-WHM 1**) and reporting gaps remain for some important fleets. Total removals for 1990-2004 were estimated in the 2006 assessment by splitting the reported billfish unclassified catch into blue and white marlin and by estimating catches for some fleets which had not reported. Catches of blue marlin and white marlin continued to decline through 2004.

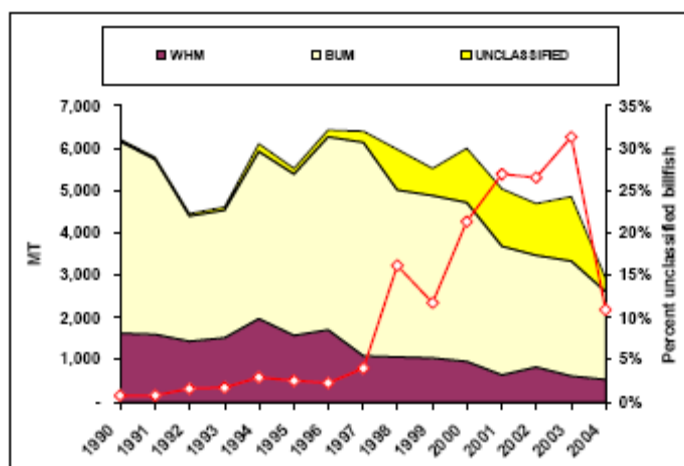


Figure BUM-WHM 1.

Based on the 2006 assessment, the decline in abundance of blue marlin may have slowed or halted, and white marlin may have increased slightly. Recent biomass for blue marlin likely remains well below the B_{MSY} estimated in 2000, F has recently declined and is possibly smaller than $F_{replacement}$ (which would allow the stock to increase) but larger than F_{MSY} estimated in the 2000 assessment. Recent biomass for white marlin most likely remains well below the B_{MSY} estimated in the 2002 assessment, F is probably smaller than $F_{replacement}$ and probably also larger than the F_{MSY} estimated in the 2002 assessment.

The SCRS considers that the Commission's current management plan has the potential of recovering the stocks of blue marlin and white marlin to B_{MSY} but recent increases in catches of blue marlin by artisanal fisheries on both sides of the Atlantic could negate the effectiveness of ICCAT's management plan. Blue marlin may recover faster than estimated in the 2000 assessment if catches remain similar to those estimated for 2004.

Panel's Comments on Blue Marlin and White Marlin

Sensible management decisions appear to have been made and implemented based on careful and judicious interpretation of the limited information that was available. By-catches in longline and purse seine fisheries appear to have been important sources of mortality and the regulation to release live marlins in a manner to maximize their survival may have worked. Although marlins appear to be rebuilding, at the current time they are estimated to be below B_{MSY} and the Panel considers that the objectives of the Commission are not being met.

While recognising the difficulties of collecting reliable data on marlins, particularly when caught as relatively rare by-catches in fisheries aimed principally at other species, the Panel notes that the duty to conserve all species under the purview of ICCAT implies an obligation to collect and make available relevant information to assess the status of the resources and the effect of exploitation on them.

SAILFISH (SAI)

Sailfish (*Istiophorus platypterus*) has a pan-tropical distribution. There are two management units, eastern Atlantic and western Atlantic. The last ICCAT sailfish assessment was conducted in 2001.

Sailfish are targeted by coastal artisanal and recreational fleets but they are also caught as by-catch by longliners and purse seiners (**Figure SAI 1**). Catches of sailfish were reported together with spearfish by many longline fleets and, in the statistics, it is not possible to separate the catches of these two species nor to distinguish sailfish catches from catches reported as unclassified billfish.

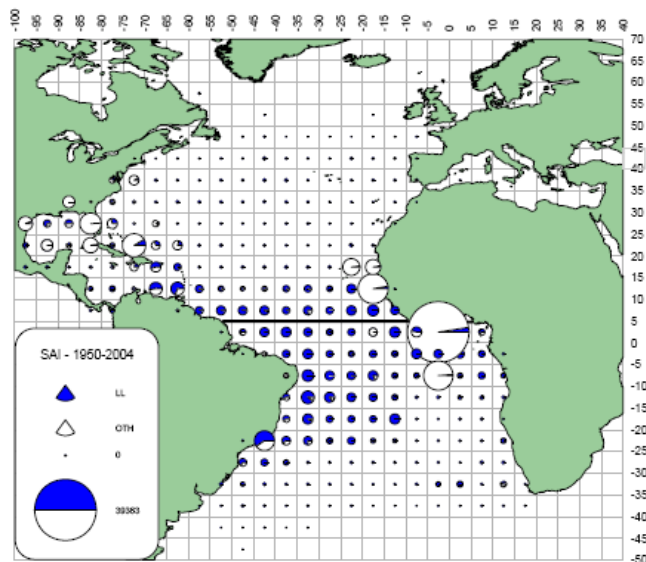


Figure SAI 1.

The 2001 assessments of these two stocks were not considered reliable but there were indications of early decreases in biomass. It is not known if either of the sailfish stocks is fished above F_{MSY} or if the biomass is less than B_{MSY} . There is no basis to provide indications as to the future evolution of catches or of the stocks.

Panel's Comments on Sailfish

The status of the stocks is unknown with respect to exploitation or biomass. It would be prudent to stabilize or reduce fishing mortality, but the paucity of information makes it difficult to quantify any reduction that may be required. The Panel has no basis to judge if the objectives of the Commission are being met.

While recognising the difficulties of collecting reliable data on sailfish, particularly when caught as relatively rare by-catches in fisheries aimed principally at other species, the Panel notes that the duty to conserve all species under the purview of ICCAT implies an obligation to collect and make available relevant information to assess the status of the resources and the effect of exploitation on them.

SKIPJACK TUNA (SKJ)

Skipjack tuna (*Katsuwonus pelamis*) is a gregarious species found in the tropical and subtropical waters (**Figure SKJ 1**) of the three oceans and it is the predominant species under fish aggregating devices (FADs) where it is caught in association with juvenile yellowfin tuna, bigeye tuna and with other species of epipelagic fauna. It spawns from its first year of life opportunistically throughout the year and in vast sectors of the oceans. Skipjack tuna is considered resilient to exploitation.

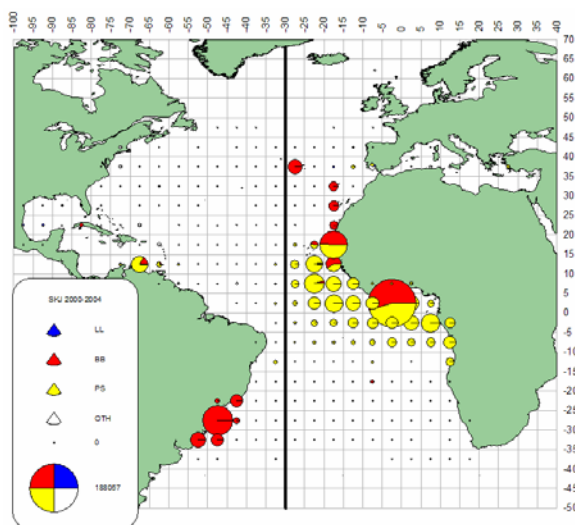


Figure SKJ 1.

Total catches increased steadily from less than 10,000 t in the early 1960s to more than 200,000 t in 1991 (**Figure SKJ 2**). Catches have since declined to about 150,000 t in 2006. Numerous changes in the skipjack fishery since the early 1990s (such as the use of FADs and the expansion of the fishing area towards the west) have caused an increase in skipjack catchability and in the proportion of the skipjack stock that is exploited.

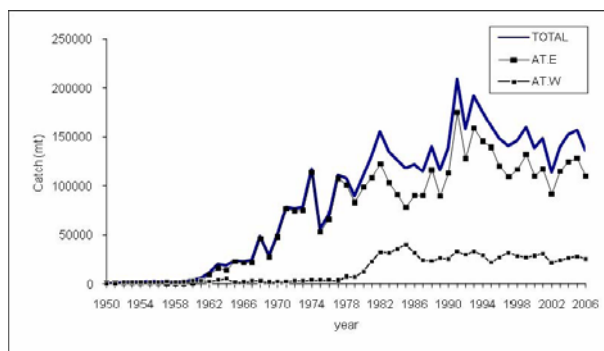


Figure SKJ 2.

The coefficient of total mortality (Z) increased by a factor of 3 between the early 1980s and the end of the 1990s according to a tag-recovery model on fish measuring 40-60 cm FL. Estimates of Z based on the annual average size of the catches suggests a smaller increase and even a decrease after 1995.

Atlantic skipjack have not been assessed since 1999 although there are some signs of local overexploitation.

No standardized assessment of the Atlantic skipjack stocks can be carried out, but the development of several fishery indicators are believed to reflect the changes in the state of the stock over time.

Although the fisheries operating in the east are extending towards the west beyond 30°W longitude, the hypothesis of two distinct stock units continues to be used. However, given the biological characteristics of the species and the geographic distances between the various fishing areas, using smaller stock units could be investigated.

Panel's Comments on Skipjack Tuna

The Panel has no basis to assess whether the Commission's objectives are met for skipjack tuna. The Panel is concerned that there appears to be little knowledge and information on skipjack tuna. The Panel considers that skipjack tuna fisheries should be managed in such a way as not to cause conservation concerns for other species, particularly including other species of tunas.

SWORDFISH (SWO)

Atlantic swordfish

Swordfish (*Xiphias gladius*) are distributed widely in the Atlantic Ocean and Mediterranean Sea (**Figure SWO 1**). There are three management units: Mediterranean group, North Atlantic, and South Atlantic separated at 5°N. Mixing is expected to occur and be highest at the boundary in the tropical zone. The last Atlantic swordfish assessment was conducted in 2006.

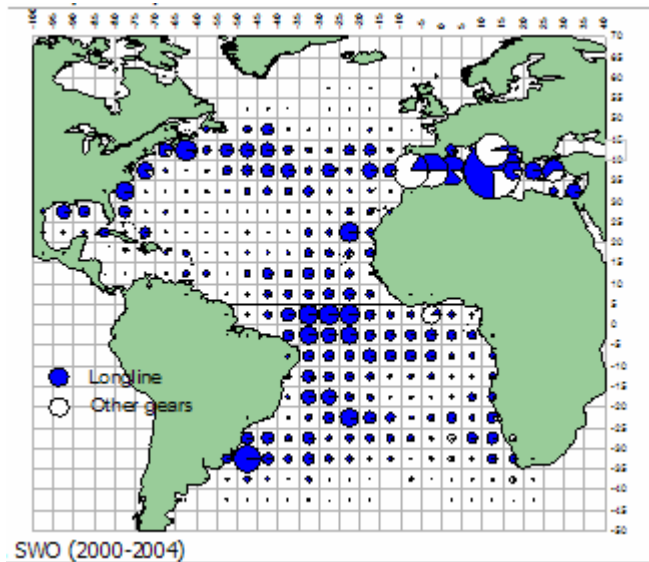


Figure SWO 1.

Swordfish spawn in the warm tropical and subtropical waters throughout the year, although seasonality has been reported in some areas. They are found in the colder temperate waters during summer and fall. Because of the broad geographical distribution of the Atlantic swordfish in coastal and off-shore areas, mostly ranging from 50°N to 45°S, the species is available to a large number of fishing countries. The ages exploited in the North Atlantic fisheries include primarily ages two and three in recent years. The largest proportion of the Atlantic catches is made using surface drifting longline. However, many additional gears are used, including traditional gillnets off the coast of western Africa.

In the North Atlantic estimated catch averaged about 11,600 t over the last 10 years (**Figure SWO 2**). In the South Atlantic, catches were generally less than 5,000 t (with an average value of 2,300 t) prior to 1980. After 1980, landings increased continuously up to a peak of 21,780 t in 1995, similar to the peak of North Atlantic harvest, due in part to progressive shifts of fishing effort to the South Atlantic. Expansion of fishing activities by southern coastal countries also contributed to this increase in catches. The reduction in catch following the peak in 1995 resulted from regulations and is due in part to a shift to other oceans and target species.

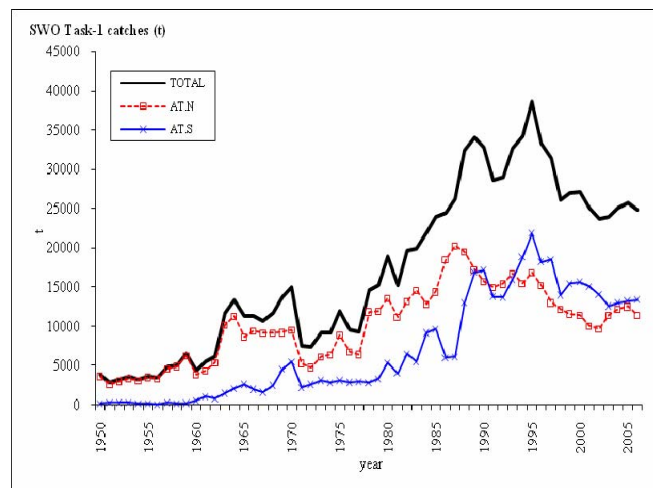


Figure SWO 2.

The 2006 assessment indicated that North Atlantic swordfish biomass had improved possibly due to strong recruitment in the late 1990s, combined with reductions in reported catch since then, especially compared to the peak catch values of 1987. The estimate MSY is about 14,100 t. The biomass at the beginning of 2006 (**Figure**

SWO 3) was estimated to be about 99% of SSB_{MSY} and the 2005 fishing mortality rate was estimated to be about 14% below F_{MSY} .

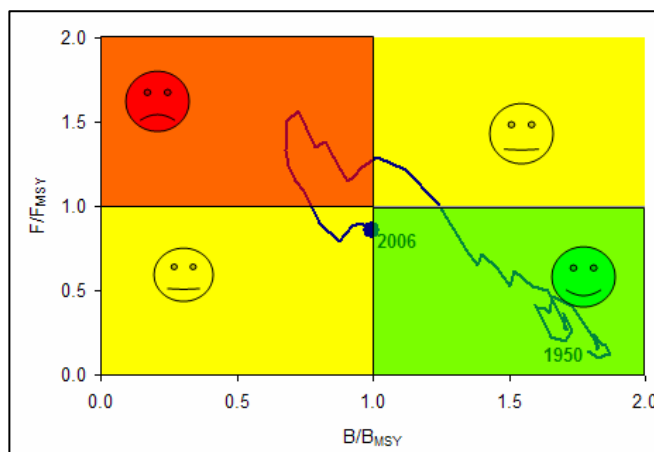


Figure SWO 3.

The 2006 assessment for South Atlantic swordfish uses a composite CPUE pattern that has been constructed from directed and by-catch fisheries which indicates that F is likely below F_{MSY} , and that current SSB is likely above SSB_{MSY} .

The 2006 assessment suggested that the Recommendation 2006-02 on catch limits, if fully realized, would lead the northern stock to likely decline to below B_{MSY} . For the southern stock, the 2006 assessment results suggest that biomass (**Figure SWO 4**) is above B_{MSY} and F less than F_{MSY} , but it was unclear whether substantially higher catches than currently envisioned by the Commission could be sustained in the long term.

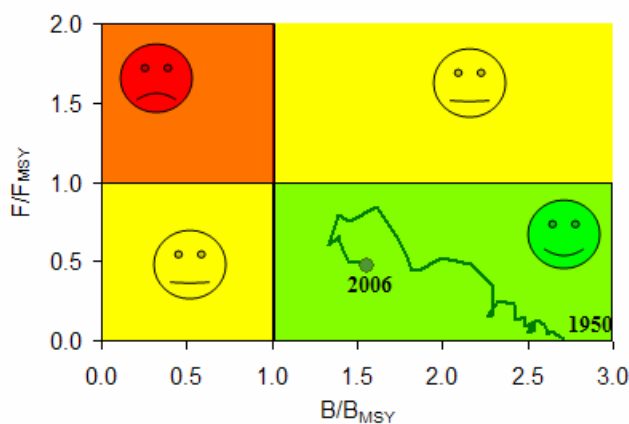


Figure SWO 4.

In 2007, the SCRS recommended that the existing TAC (14,000 t), which is close to the estimated MSY (14,100 t), should allow the northern Atlantic swordfish to continue to grow towards B_{MSY} . For the South Atlantic, the SCRS recommended that annual catch should not exceed the provisionally estimated MSY (about 17,000 t).

Panel's comments on Atlantic Swordfish

The Panel concludes that the Commission's objectives are being met for both the North Atlantic and the South Atlantic swordfish. The Panel notes that recommending a TAC of 14,000 t for North Atlantic swordfish, when MSY is estimated to be 14,100 t leaves very little margin for uncertainties in the assessment and error of implementation.

Mediterranean swordfish

Mediterranean swordfish is considered to be separate from the Atlantic stocks. Mixing is believed to be low and generally limited to the region around the Straits of Gibraltar. The most recent assessment was conducted in 2007, making use of catch and effort information through 2005.

Reported catches have fluctuated without trend between 12,000-16,000 t over the last 10 years (**Figure SWO 5**). Catches are of the same magnitude as those in the north Atlantic, although the area is much smaller. This could be due to higher productivity or lower predation in the Mediterranean. The sharp increase between 1983 and 1988 may be partially attributed to improvement in the national systems for collecting catch statistics. The main fishing gears are surface longline and gillnets, but harpoon, trap and recreational fisheries also report swordfish catches. Following ICCAT recommendations for a general ban of driftnets in the Mediterranean, the gillnet fleet has been decreasing, although the total number of vessels cannot be determined from ICCAT statistics.

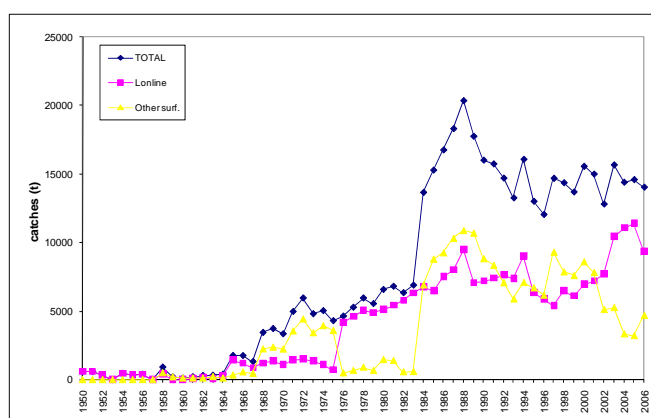


Figure SWO 5.

Perception of the status of the stock and of exploitation varies according to the method of assessment used. Production modelling using a long time series of data suggests that the biomass is slightly below B_{MSY} and that F is some 25% above F_{MSY} , while VPA using a shorter time series of data suggest that biomass is less than half B_{MSY} . Based on the VPA results, there is a non-negligible risk that current F could cause rapid declines in the stock.

Panel's Comments on Mediterranean Swordfish

The Panel concludes that swordfish in the Mediterranean is below SSB_{MSY} and that the Commission's objectives are not being met. The Panel considers that swordfish fisheries in the Mediterranean are in need of further coordinated management in order to achieve the Commission's objective. The apparent success of past management initiatives in the North Atlantic should provide sufficient incentives for the Commission and CPCs to act decisively in the management of Mediterranean swordfish fisheries.

YELLOWFIN TUNA (YFT)

Yellowfin tuna (*Thunnus albacares*) is distributed mainly in the tropical and subtropical oceanic waters of the Atlantic (**Figure YFT 1**), Pacific and Indian oceans. Juveniles form mixed schools with skipjack and juvenile bigeye, mostly in surface waters, while larger fish form schools in surface and sub-surface waters. Spawning occurs in the equatorial zone of the Gulf of Guinea, in the Gulf of Mexico, in the southeastern Caribbean Sea, and off Cape Verde, but the relative importance of these spawning grounds is unknown. Although such separate spawning areas might imply separate stocks or substantial heterogeneity in the distribution of yellowfin tuna, a single stock for the entire Atlantic is assumed as a working hypothesis, based in part on a 40-year time series of longline catch data that indicates yellowfin are distributed continuously throughout the entire tropical Atlantic Ocean.

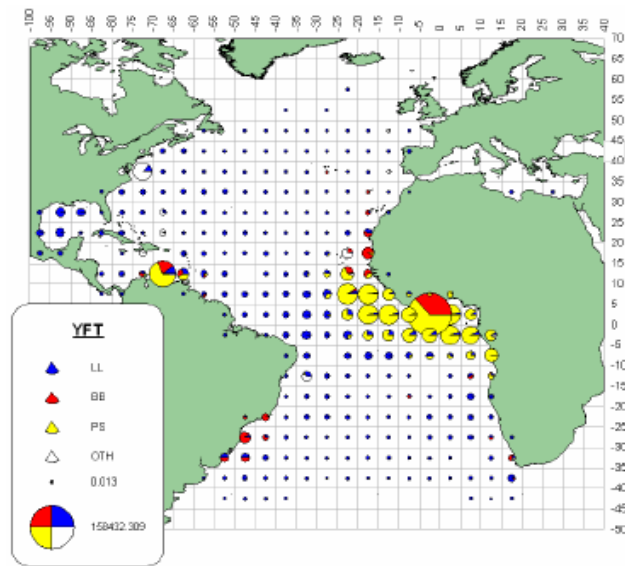


Figure YFT 1.

The most recent full assessment was conducted in 2003 applying various age-structured and production models to the available catch data through 2001. These analyses implied that although the 2001 catches were slightly higher than MSY, effective effort may have been either slightly below or above (up to 46%) that necessary to achieve MSY, depending on the assumptions. Catches have been in decline since the last assessment, they are lower than MSY and some surface fishing effort has transferred to other oceans. Therefore, some improvement in stock status would be expected in the 2008 assessment.

Catches have declined by more than half from close to 200,000 t in 1990 to 97,800 t in 2006 (**Figure YFT 2**), partly due to a reduction in eastern Atlantic purse seine effort, but other factors have caused the reduction of baitboat and purse seine catches in the western Atlantic, as well as the more recent declines of longline catches in both the western and eastern Atlantic. It may be difficult to assess whether catch declines are due to stock declines, to reduced effort or other factors.

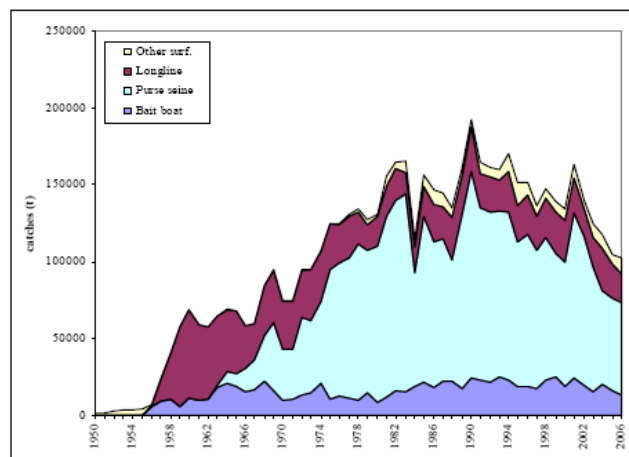


Figure YFT 2.

Recommendation 04-01 implemented a new, smaller closure for the surface fishing in the area 0°-5°N, 10°W-20°W during November in the Gulf of Guinea intended to reduce catches of small bigeye. This regulation has the potential impact on yellowfin catches but data are insufficient to evaluate it. In 1993, the Commission recommended that there be no increase in effective fishing effort exerted on Atlantic yellowfin tuna, over that observed in 1992. As measured by fishing mortality estimates from the 2003 assessment, effective effort in 2001 appeared to be approaching or exceeding that of 1992. Catches have been declining since 2001, as has the nominal effort of the purse seiners, but the trend in effective effort is not clear. A new stock assessment is being conducted in 2008.

Panel's Comments on Yellowfin Tuna

Yellowfin tuna appear to have been harvested in the vicinity of MSY in the late 1990s and the early 2000s, but catches and effort have declined since. It is not known if the productivity of the resource has decreased, implying that MSY would now be lower, or if the fish have become less available. The Panel considers that it would be prudent to assume that the productivity has in fact declined until it can be demonstrated that this is not the case. The Panel concludes that yellowfin tuna have been fished at or below MSY and that the objective of the Commission are being met.

Given the steady decline in catches of this important stock, the Panel is surprised that stock assessments are not conducted more frequently.

PART II – Section 4. Associated, Dependent and By-catch Species

The SCRS has attempted assessments for Atlantic blue shark and shortfin mako sharks in 2004. Data for an assessment planned for 2008 were compiled in 2007. In spite of previous recommendations to improve data reporting for sharks, there has been no measurable progress in the quantity and quality of the overall shark catch statistics. The available information is considered incomplete and inadequate for stock assessment purposes. However, a group of international shark experts will meet in Madrid in September 2008 to try to determine alternative methods of stock assessment for sharks and this approach is to be encouraged.

Panel's Comments on Associated, Dependent and By-catch Species

The Panel has no formal basis to judge whether the objectives of the Commission are met with respect to the status of sharks and other associated and dependent by-catch species. However, based on the general knowledge about the biology of large sharks, the Panel is of the opinion that it is unlikely that the objectives of the Commission are being met.

The Panel notes with great concern, that three years after it became mandatory [Rec. 04-10] for CPCs to report Task I and Task II data for sharks, in accordance with ICCAT data reporting procedures, including available historical data, most parties are still not complying with the recommendation.

The Panel recommends that CPCs comply with Rec. 04-10 immediately.

PART II – Section 5. Seabirds, Turtles

ICCAT is in the process, through the SCRS Sub-Committee on Ecosystems, of evaluating the mortality caused on seabirds and turtles in the tuna fisheries under ICCAT's purview.

Panel's comments on Seabirds, Turtles

The Panel has no basis to form an opinion on the status of seabirds and turtles. The Panel urges CPCs to make data and scientific expertise available to the SCRS so that progress can be achieved in short order on this highly sensitive issue.

PART II – Section 6. Quality and provision of scientific advice

It was not in the Panel's mandate to undertake an independent evaluation of the stock assessments completed by the SCRS or to offer a detailed review of the advice provided by the SCRS. As noted above, the SCRS has periodically reviewed its mode of operation and continues to do so and the Panel considers that if the current arrangement were not satisfactory, the mechanisms exist to make adjustments.

The analyses used by the SCRS to formulate its advice are prepared by CPCs scientists from government agencies, universities, NGOs and consultants and they are peer reviewed through a rigorous three stage process. The structure of the process, the diversity of participants/analysts and the large number of people involved does not guarantee that errors will not be made, but it provides a reasonable assurance that if errors are made, they will be discovered, admitted and corrected.

The SCRS can now count on a larger number of scientists trained and able in quantitative methods, but the absolute number and the proportion of scientists with in-depth knowledge of the fisheries and of the biology of tuna has decreased. The Panel considers that although it is important that all details of the quantitative models used to assess stocks be correctly formulated and appropriately statistically estimated, it is equally important to maintain an overall understanding of the developments in the fisheries and in the population dynamics of the various tuna species.

The Panel recommends that CPCs ensure that scientists participating in SCRS activities have a good balance between quantitative skills and knowledge of the fisheries and of tuna biology.

The Panel notes that not all countries are contributing to the SCRS in proportion to their involvement in the fisheries. For example, at the 2008 bluefin tuna session, there were no scientists from several countries with important tuna fisheries in the Mediterranean (Algeria, Croatia, Italy, Greece, Malta, the Republic of Korea, Libya), and only one scientist from France who has by far the largest reported catch in the Mediterranean. The duty to cooperate brings with it the duty to collect data, share it and to participate in its analysis.

The Panel recommends that CPCs send trained and knowledgeable scientists to the SCRS meetings for all fisheries in which they have substantial involvement.

The greatest impediments to the completion of more reliable stock assessments are the lack of data and incomplete knowledge. The lack of reliable data on catch for important components of the fisheries forces scientists to make assumptions and guesses on the amounts caught and this has the potential to increase substantially the uncertainties in the assessments. Further, the absence of data on the size composition of the catch, whether reported, guessed or indirectly estimated, means that scientists have to assume that the size composition reported from some other segment of the fishery applies to those without size information. Sometimes that assumption is reasonable, sometimes it is not, and in the absence of information on the unsampled catch, it is difficult to evaluate the appropriateness of the substitution, which, generally, also results in increased uncertainties.

The Panel recommends that CPCs collect accurate Task I and Task II data from all their fisheries according to ICCAT protocols and report them in a timely fashion to the ICCAT Secretariat. The Panel further recommends that consideration be given to modify the ICCAT observer program to collect such data.

Rec. 07-08 on the collection of VMS information for the bluefin tuna fishery, paragraph 7 states: “CPCs shall take the necessary measures to assure that all messages shall be treated in a confidential manner, and be limited for the inspection at sea operations referred to in paragraph 6. The ICCAT Secretariat shall ensure the confidential treatment of the messages received. Data three years old or more shall be available to the SCRS for scientific purposes, given due consideration of data confidentiality”. Given the concerns expressed elsewhere in this report about the stock(s) of bluefin tuna, about the lack of submission of data on time to the Secretariat and the suspected large scale misreporting of bluefin tuna particularly in the Mediterranean, the Panel cannot comprehend the basis for limiting access to the VMS data to SCRS scientists. Scientists, in ICCAT and in other fora have a long tradition of dealing with confidential data.

The Panel recommends that the provision of Rec. 07-08 be removed at the next Commission meeting and that SCRS scientists be immediately given access to current VMS data.

One of the most striking examples of lack of knowledge is the mixing issue for bluefin tuna. This has been recognized as an important issue since at least the late 1970s-early 1980s, but little progress had been made until recently. The Panel recognizes that recent progress have been possible because of technological developments in intelligent tags, but believes that if a dedicated and concerted effort had been made earlier it could have resolved this issue much earlier than is now expected.

The Panel recommends that ICCAT identifies 3-4 priority knowledge gaps that need to be resolved and that scientific programs be developed to resolve those issues in a timely manner.

As indicated above, the stock assessments completed by the SCRS use almost exclusively catch per unit of effort from the commercial fisheries as indices of stock sizes. Several tuna fisheries are amongst the most technologically advanced in the world and their fish detection and fishing gear are constantly improved. It is therefore very difficult to differentiate changes in CPUE that are due to changes in stock sizes from those due to other factors.

The Panel recommends that for stocks where fishing mortality is estimated to be close to F_{MSY} or biomass is expected to be less than or close to B_{MSY} , comprehensive conventional tagging programs be developed and carried out to estimate fishing mortality and biomass more reliably.

PART III

ASSESSMENT OF THE ACHIEVEMENTS OF ICCAT'S OBJECTIVES RELATING TO FISHERIES MANAGEMENT AND THE ADMINISTRATION OF ICCAT

PART III – Section 1. Conservation and Management Measures

1. ICCAT objective

ICCAT's objective is embedded in the preamble of its convention finalised in 1966. The preamble states: *“The Governments...considering their mutual interest in the populations of tuna and tuna like fishes found in the Atlantic ocean, and desiring to cooperate in maintaining the populations of these fishes at levels which will permit the maximum sustainable catch for food and other purposes”*.

ICCAT is constituted under international law and the recommendations taken by ICCAT are, unless objections are raised, binding on CPCs. The ICCAT Convention predates the UNCLOS and the UNFSA. Although, most of the ICCAT CPCs are parties to the UNCLOS, less than half are also parties to the UNFSA, and thus bound by their provisions.

The provisions of the UNCLOS relating to fisheries are moreover regarded generally as reflecting customary international law, thus binding on all States including non-parties. Articles 64 and 116-119 of the UNCLOS are particularly relevant in guiding the work and decisions making with respect to fisheries management in ICCAT whose CPCs have responsibilities and obligations under international law to cooperate, in order to adopt and apply measures necessary for the conservation of highly migratory fish stocks. This is an obligation that the CPCs are held accountable for by civil society.

Part III of this report considers whether the CPCs have actually implemented these resolutions and recommendations that have been adopted in ICCAT and whether the individual CPCs and their nationals have actually complied with the rules and procedures adopted for the effective management of fisheries under the purview of ICCAT.

2. Conservation and management measures by species

ICCAT has some thirty (30) species under its purview. However, there are thirteen main species for which conservation and management measures have been adopted: western and eastern bluefin tuna, northern and southern albacore, northern and southern swordfish, bigeye, yellowfin tuna, blue marlin and white marlin, and sharks.

A brief status of the species has been provided in Part II of this report. In this part an assessment of the success and application of the conservation measures are discussed. For each species the Review Panel has provided a recommendation on the approach ICCAT should consider for the future assessment and management of the fishery.

YELLOWFIN TUNA (YFT)

The only current recommendation that applies to yellowfin tuna is 93-04. This recommendation states that *“there be no increase in the level of effective fishing effort exerted on Atlantic yellowfin tuna over the level observed in 1992”*. The 2006/07 ICCAT biennial report indicates that there has been some decline in the purse seine fleets and in the Japanese longline fleets. However, the report goes on to comment that effective fishing effort in 2001 appeared to be approaching or exceeding 1992 levels.

The report also includes information on the catches of small fish: “yearly catches of small (less than 3.2kg) yellowfin tuna in number have ranged around 60-75% of purse seine catches and about 40-80% of bait boat catches since 2000 occurring primarily in equatorial fisheries.” (2006-07 ICCAT Biennial Report, page 64*).

The 2008 SCRS Stock assessment report states that the status of yellowfin has improved since the last assessment and that effort has generally declined. The report goes on to recommend that the Commission continue to find ways to deal with small fish catches if the Commission wishes to increase long term sustainable yield. The SCRS Report (page 64) notes the importance of the Recommendation 04-01 bigeye closure in the Gulf of Guinea for yellowfin juveniles.

The Panel notes the preliminary 2008 stock assessment prepared for ICCAT. The Panel also notes that the SCRS considers yellowfin tuna at each annual assessment meeting and reflects on any significant changes in the fishery. As such the Panel is prepared to accept that a suitable management framework is in place to manage the yellowfin tuna fishery.

The Panel accepts that the preliminary 2008 stock assessment advice indicates an improvement in the stock and as such the management of fisheries on yellowfin tuna meets the ICCAT Convention objectives.

The Panel recommends that ICCAT develop and adopt more effective measures to deal with the catch of small yellowfin tuna including closer regulation and reduction in the use of FADs.

BIGEYE TUNA (BET)

Recommendations 04-01 and 06-01 deal with the current management approaches for this species. Evidence in the 2006-07 ICCAT Biennial Report indicates that the catch should not exceed 85,000 t and that there are concerns with the ongoing catches of small bigeye. “Recommendation 04-01 also implemented a new, smaller closure for the surface fishery in the area 0°-5°N and 10°-20°W during November in the Gulf of Guinea. Based on that information the percentage of small bigeye is about 70% in number of fish and there is a general increasing trend.” (page 73)

The current catch is well below the peak catches of 132,000 tonnes taken in 1994. It is estimated to be around 65,000 tonnes in 2007. This reduction may reflect a decline in longlining activity in the fishery and this may continue with increased oil prices yet to be factored into catch patterns and statistics.

Timeliness and accuracy of data

With regard to bigeye tuna data, the 2006-07 ICCAT Biennial Report states that there have been improvements in data reporting from countries as part of the data improvement projects. However the SCRS also noted: “The Committee reiterates the concerns that unreported catches from the Atlantic might be poorly estimated and maybe continuing but available statistical data collection mechanisms are insufficient to fully investigate this possibility. Coordination amongst tuna RFMOs should be encouraged with an eye to, among other objectives, examining the possibility of fish laundering for bigeye and other species.” (page 72)

Do the recommendations and resolutions for bigeye meet the objectives of the Commission?

Bigeye suffered from overfishing in the mid-1990s including from substantial levels of IUU fishing, and fish laundering was proven on bigeye catch in 2005. The recommendations and resolutions adopted by ICCAT on bigeye tuna along with the reduction in longlining activity and the reductions in IUU activity have combined to stabilise and rebuild the stock.

Recommendation 04-01 establishes capacity restrictions and allocation of bigeye between the ICCAT parties. Recommendation 06-01 deals with the laundering of fish by Chinese Taipei and while this may be effective it raises questions on the reliability of data and catch information being provided to the ICCAT Secretariat.

* Note: The pages cited refer to the **English** version of the 2007 SCRS Report. In *Report for Biennial Period 2006-07 (Part II), Vol. 2-SCRS*.

The amount of small fish taken in conjunction with fish aggregating devices (FADs) in purse seine fisheries is a concern as is the potential for increased longline activity. Part of the reasons for success in rebuilding this stock has been a reported reduction in fishing activity.

The Panel considers that the current ICCAT arrangements for the management of fisheries on bigeye tuna are consistent with the objectives of the Commission. However the Panel recommends:

- *that more effective measures be developed and adopted to deal with the catch of small bigeye tuna including closer regulation of FAD use;*
- *that efforts continue to be made to improve the timeliness and accuracy of Task I and Task II data;*
- *that ICCAT continue to rigorously follow the scientific advice in the setting of overall total allowable catches for the fishery to have a high probability that the stock stays above B_{MSY} and if longlining activity increases in a response to demand, that this be immediately factored into management decisions.*

SKIPJACK TUNA (SKJ)

The 2006-07 ICCAT Biennial Report indicates that it has proven difficult to apply any form of assessment to determine the status of this stock due to changes in the pattern of fishing and the movement of the fish over time. It is evident that the use of FADs has had a major impact on this fishery. While some efforts have been made to restrict the use of FADs, no doubt they are still heavily used in the fishery, lead to increased CPUE reporting and distort data and information on catch.

The preliminary stock assessment report for 2008 reconfirms the above observations and indicates that while there has been around 10% increase in catch, that the western and eastern stocks “*show little evidence of over exploitation*” (eastern) “*and it is unlikely that the current catch is larger than replacement yield*” (western). The preliminary report offers little by way of management advice noting “*Although the Committee makes no recommendations for this other than catches should not be allowed to exceed MSY, the Commission should be aware that increasing harvests and fishing effort for skipjack could lead to unintended consequences for other species that are harvested in combination with skipjack in certain fisheries*”

Timeliness and accuracy of data

There appears to be a reasonable time series of data available for this fishery. What appears to make assessment difficult is that the nature of the fishery has changed overtime. The SCRS has noted the need to improve catch information from Cote-d’Ivoire.

Do the recommendations and resolutions for skipjack meet the objectives of the Commission?

There are no current recommendations for this fishery.

Given the information available, it is not possible for the Panel to form an assessment of the appropriateness or otherwise of the management practices that ICCAT has adopted for fisheries on this important stock. The Panel notes the advice in the preliminary report from the 2008 SCRS stock assessment Committee that the fisheries are not being overexploited and that this is consistent with the Convention objectives. However, with skipjack prices around \$2000 per tonne further pressure will be applied to these stocks and ICCAT will have no measure in place to manage the additional catches. This does not appear to be a sound approach for the management of this fishery.

ALBACORE (ALB)

There are three recognised stocks of albacore in the ICCAT Convention area. The northern and southern Atlantic stocks are subject to regular stock assessment; however the Mediterranean stock has not been assessed due to a lack of proper data for this fishery.

Timeliness and accuracy of data

There are no specific comments made in the 2006/07 ICCAT biennial report about data issues in this fishery and it is assumed that the general comments made elsewhere in this report relating to the need for overall improvement in quality and timeliness of data apply.

Do the recommendations and resolutions for albacore meet the objectives of the Commission?

The 2007 meeting of the Commission adopted (Rec: 07-02 and Rec. 07-03) in respect of Atlantic albacore. Recommendation 07-02 on North Atlantic albacore indicates the SCRS advice is that the stock will not recover from its overfished condition unless the catch is reduced below 30,000 t. The decision taken in Rec. 07-02 was to set the TAC at 30,200 t. This is above the level suggested by SCRS and as such may not meet the ICCAT objectives as the stock will still remain overfished and with overfishing continuing. The Commission also allows carryover of under-catch and as discussed in this report, this should not be allowed in international fisheries management.

Recommendation 07-03 deals with the management of fisheries on southern Atlantic Albacore and recommends a TAC for 5 years at 29,900 t. The SCRS advice was that “*although the assessment showed that the southern stock is overfished, model projections indicated that catches at about the 2006 level (24,460 t) will recover the stock.*” 2006-07 ICCAT Biennial Report (page 91)

The Panel considers that ICCAT should review the status of the Mediterranean albacore fishery and assure itself that the stock is not subject to overfishing or has not been overfished. The Panel is concerned that the 2007 TAC levels set for northern and southern albacore appear to be above those recommended by the SCRS and may not lead to the recovery to MSY. If this is the case, the Panel recommends that:

- *albacore catches in both Atlantic fisheries be reduced to be consistent with F_{MSY} and*
- *harvest strategies be developed to ensure that fisheries reach and remain at B_{MSY} .*

BLUEFIN TUNA (BFT)

Atlantic bluefin tuna are assessed in the ICCAT area of competence as two stocks (eastern Atlantic/Mediterranean and western Atlantic) with ongoing concern remaining as to the level of mixing between the two stocks. Bluefin tuna along with Pacific bluefin and southern bluefin tunas are some of the world’s most highly valued fish, utilised largely in the sashimi trade.

In what appears to be a wilful disregard for ICCAT process, only three (3) CPCs provided timely data on their 2007 bluefin catch and effort in time to be used by the SCRS for its assessment session in June-July 2008. This led the Chair of the SCRS to write to the Chairman of the Commission indicating his concern at the attitude of CPCs and also highlighting the problems that this causes for the Commission in preparing for the 2008 meeting.

The Commission in response to advice from the SCRS in 2006 agreed to continue the 20-year rebuilding program commenced in 1999 (Supplemental Recommendation 06-06). This recommendation is underpinned by a TAC of 2,100 t for the West Atlantic and is expected to contribute to the spawning stock biomass (SSB) rebuilding at 1.5% annually. Providing Supplemental Recommendation 06-06 is followed and applied and the over-catch in the eastern fishery does not have a detrimental impact on the SSB in the West, the recommendations should provide sound guidance to the parties on the future management arrangements for the fishery.

However, the continuance of the under catch provisions allowing up to 50% of the quota to be carried forward in a fishery on such a depleted stock is of concern to the Panel. Given the potential for misreporting in this fishery any under catch should not be carried forward and should contribute to the rebuilding of the fishery and potentially offset IUU catch and misreporting.

Eastern and Mediterranean BFT

The stock of bluefin in the East Atlantic and Mediterranean was also assessed in 2006 and in 2008 with the same data provision problems mentioned above occurring. The report of the SCRS to the Commission in 2006 has been the subject of much debate amongst the Parties and has led to significant international media coverage and concern.

The following statement by Commissioner Borg of the EC (Reference: IP/08/961, Date: 17/06/2008) describes eloquently many of the issues facing ICCAT in the management of the bluefin tuna fishery in the Mediterranean.

Statement from Commissioner Borg: "Closing the bluefin tuna fishery in order to secure its future"

"Last week I took the decision to close the fishery for bluefin tuna in the Mediterranean and the eastern Atlantic as of 16 June for all purse seiners flying the flags of Cyprus, France, Greece, Italy and Malta. In the case of Spain, the purse seine fishery will be closed as of 23 June.

Overcapacity in the purse seine fleet has not been addressed and the level of fishing activity is similar to that seen last year, when the Community considerably overfished its quota. The European Commission has in its possession all the data needed to establish that the EU purse seine fleet has now exhausted its quota. Our decision is based on the most detailed analysis of the fishery, using multiple sources of information which have been cross-checked against one another on a daily basis.

This year again, the fishery has been marred by countless failures to properly implement the rules which have been agreed at international level to manage the bluefin tuna stock sustainably. For example, we know of eight French purse seine vessels which have spent up to 21 days fishing since the start of the season, but have so far declared no catches. At this moment in time, half the French fleet has caught nothing according to official figures, while the other half declare that they have caught over 90% of their individual quotas, although all the vessels show similar activity rates. We are also aware of 8 Italian purse seine vessels which, according to official figures, have overshot their quota by between 100 and 240%. In addition, we have now definitely identified at least 8 spotter planes (out of possibly more than 20) which have worked, and continue to work, in coordination with EU vessels to help them identify bluefin tuna shoals, even though the use of spotter planes is completely illegal.

Despite these facts, certain Member States have nevertheless asked for the closure of the fishery to be suspended. The Commission is convinced that the many failures of implementation and control which we have been noted since the start of the campaign have made it exceedingly difficult for the Member States to monitor their own fleets' bluefin tuna catches accurately. These failures of implementation include, but are not limited to: unreliable catch declarations, failure to respect reporting deadlines, delays in submission of fishing plans, and failure to communicate satellite data on the movements of the vessels concerned. The Commission therefore cannot seriously be expected to consider their very poorly based request to suspend its well-founded decision.

This decision to close the fishery only for the purse seine fleet is not only necessary to protect the stock and to respect the Community's international obligations. It is also vital to ensure fairness with the small-scale artisanal fleet that has not yet fished its quota. The high season for the artisanal fleet normally starts around this time. The small-scale fleets will now benefit from the continued high demand and high prices for bluefin tuna.

The bluefin tuna stock has suffered greatly from many years of overfishing, in particular by the European industrial fleet. Any repeat of the overfishing seen last year could easily lead to the collapse of the stock, and thus to the definitive closure of the fishery for the foreseeable future, with disastrous consequences to all the fleets and fishermen that depend on it. It is therefore both my duty and the Commission's responsibility to ensure that the stock is protected and that the measures agreed upon to recover the stock are fully respected and implemented, so that fishers will be able to fish for tuna again next year.

This is what I am working for – to ensure a sustainable future for European fisheries. I will continue to do whatever is necessary to ensure that our fishing industry really does have a future. "

This statement is in many ways self-explanatory and highlights the difficulty the EC has experienced in dealing with the Mediterranean bluefin issues. Despite the effort of the EC following over-catching by their fleet in 2007 and the adoption of additional compliance measures in the fishery in 2008, over-catching has still occurred. While the EC has admitted that its Member States have had problems managing the catch other ICCAT CPCs involved in fishing and farming activities in the Mediterranean have been less forthcoming and concern must remain as to their ability to manage their component of this fishery.

The management by ICCAT CPCs of this bluefin tuna fishery in the Mediterranean is widely seen as an international disgrace. The SCRS in 2006 made one of its toughest recommendations to the Commission: *“The only scenarios which have potential to address the declines and initiate recovery are those which (in combination) close the Mediterranean to fishing during spawning season and decrease mortality on small fish through fully enforced increases in minimum size. Realized catches in the next few years implied by fully implementing these actions are expected to be in the order of 15,000 t.”* (2006 SCRS Report, page 108)

In response to this assessment ICCAT adopted Recommendation 06-05 which outlines a 15-year plan to rebuild the eastern and Mediterranean bluefin tuna stocks. In spite of the strong advice from the SCRS the members adopted a TAC of 29,500 t in 2007 reducing to 25,500 t in 2010. In 2007 ICCAT adopted Resolution 07-05 as a supplement to 06-05 and this resolution requests parties to provide detailed reports on the implementation of Rec. 06-05 no later than 30 October 2008 for discussion at the 2008 meeting of ICCAT.

At the time of writing, the best estimate of 2007 catches in the East Atlantic and Mediterranean was between 39,000 t and 54,000 t substantially higher than the agreed TAC of 29,500 t and far in excess of the SCRS recommendation of 15,000 t. It is difficult to describe this as responsible fisheries management and it reflects negatively not only on ICCAT but on all tuna RFMOs.

Timeliness and accuracy of data

The provision of data for fisheries in the West Atlantic is regarded as reasonably good. However, concern remains with timeliness of both catch and effort to the Commission. According to the SCRS, *“At this meeting (2007), the annual catch data was received for 2002-2004. Data for 2005 was only available from Canada and the US although Japan did provide a very preliminary estimate for 2005 (302t) for use in projections.”* (2006-07 ICCAT Biennial Report, page 104)

For fisheries in the east Atlantic and Mediterranean the ICCAT 2006-07 Biennial Report (page 112), is self-explanatory: *“Information available reinforces our belief that catches of bluefin tuna from the eastern Atlantic and Mediterranean have been seriously under-reported in recent years. The group thinks that this under-reporting is likely to originate from both Contracting and non-Contracting Parties.... This apparent lack of compliance with the TAC and under-reporting of the catch will undermine conservation of the stock.”*

The 2006-07 Biennial Report, on page 113 further comments: *“Furthermore, to the detriment of the assessment, unenforced TACs were allowing under-reporting of overall catches, and incomplete compliance with size limit regulations may have affected information on catches of small bluefin. With these factors combined with a lack of reliable historical information from many fleets, the stock can not be monitored with confidence and therefore severe overfishing can go undetected. A collapse in the near future is a possibility given the 2006 stock assessment estimations of the SCRS of the fishing capacity of all fleets combined and current fishing mortality rates unless adequate management measures are implemented and enforced.”*

This is an ICCAT assessment on the current status of compliance, data provision and the stock. The comment above requires little elaboration and when combined with the recent happenings at the 2008 bluefin tuna assessment session it is difficult to describe this situation in any positive light. It is a fundamental failing of ICCAT processes, of CPCs commitment to compliance, good governance and adherence to international law.

Do the recommendations and resolutions for bluefin meet the objectives of the Commission?

With regard to the West Atlantic stock, the strong positions taken by the US, Canada, Japan and in recent times Mexico, and adopted by ICCAT have led to slow rebuilding of this stock. Recommendation 06-06 reinforces the early recovery plan and it would be enhanced with the withdrawal of the provision that allows for the carry forward of under-catch and the addition of a provision for timely and accurate data by all parties. But recovery may be related to the rate of mixing between the East and West stocks.

ICCAT Recommendations and Resolutions do not meet the objectives of the Commission for eastern and Mediterranean bluefin. Recommendation 06-05 is not an appropriate response to the scientific advice that was provided to the Commission. Since the adoption of this recommendation, during the 2008 fishing season CPCs in the Mediterranean Sea have again fished in disregard of this recommendation. CPCs of ICCAT have failed to abide by their legal obligations under international law, have failed to conserve bluefin tuna and have failed in the eyes of the international community. Management of bluefin tuna in the Mediterranean must improve substantially and this must occur quickly to counter the views that ICCAT is not making sufficient efforts to manage these fisheries and that the countries involved are not acting in a responsible manner.

In making the following recommendations on bluefin tuna the Panel is concerned about their potential impact on all CPCs, including those who have taken responsible measures and actions to date. However, noting the information in the press release from Commissioner Borg, and with the fishing activity largely unregulated, the stock possibly at the point of collapse and CPCs either unable or unwilling to force their industries to comply, few options for recommendations were available which, if adopted, may assist ICCAT with management of fisheries on bluefin tuna.

The Panel recommends that all fishing for East Atlantic and Mediterranean bluefin tuna be immediately suspended until the CPCs involved in those fisheries, their nationals and companies operating in their waters, agree to fully abide by the rules and recommendations of ICCAT and international fisheries law. The Panel considers that this decision is the only way to stop the continuation of what is seen by observers and by other CPCs as a travesty in fisheries management.

The Panel further recommends that the suspension only be lifted when ICCAT CPCs adopt measures consistent with ICCAT decisions and individual CPCs can demonstrate that they can control and report on their catch. Alternatively that ICCAT implements a full Secretariat based auditing and inspection regime for bluefin tuna fishing in the eastern Atlantic and Mediterranean.

In addition the Panel recommends that the extent and consequences of mixing of the East and West Atlantic stocks be fully evaluated as a matter of priority, including, if necessary through further field studies and research program to better understand migratory and spawning patterns. The basis for management should be made consistent with the results of those investigations as soon as the results area available. This recommendation is not to be used in any way as an excuse for inaction on the first recommendation; it is supplementary research.

The Panel further recommends that ICCAT consider an immediate closure of all known bluefin tuna spawning grounds at least during known spawning periods.

The international community which has entrusted the conservation and management of bluefin tuna to ICCAT CPCs demands strong and decisive action and clearly deserves better performance on bluefin tuna from ICCAT than it has received to date.

BILLFISHES (BIL)

The 2006-07 ICCAT Biennial Report (page 122) indicates that there are significant gaps in the data provided for these species and notes that "...reporting gaps remain for some important fleets. ...in recent years large catches of billfish continue to be reported as billfish unclassified".....and "Confirmation of these recent apparent changes in trends will require at least an additional four or five years data, especially since the reliability of recent information has diminished and may continue to do so." (page 123). The information available on sailfish does not allow an assessment of the state of the stock to be undertaken. This is a sad indictment of the care taken in the provision of data from fisheries on these important commercial and recreational fish stocks.

Do the recommendations and resolutions for billfishes meet the objectives of the Commission?

The advice from the SCRS to ICCAT members on the status of marlin species on page 124 of the 2006-07 Biennial Report states: "...The Commission should as a minimum, continue the management measures already in place because marlin have not yet recovered." This is largely the only issues Recommendation 06-09 has addressed along with recommended improvements in data collection and research.

What ICCAT CPCs have disregarded in developing Recommendation 06-09 is the rest of the advice from the SCRS that recommended further reductions in mortality to increase the likelihood of rebuilding success, regulation over artisanal fisheries, improvements in compliance with current regulations and a broader application of time/area catch restrictions.

Recommendation 06-09 is an extension of the “two phase” recovery plans first considered by ICCAT in Recommendation 00-13, then again in Recommendations 02-13 and 04-09. One reading of the structure of 06-09 is that it will just further delay the taking of any meaningful decisions to rebuild these important stocks. These stocks are still below MSY on the known data and SCRS admits concerns as to the data gaps in the fishery.

Recommendation 06-09 places requirements on the United States for 10% observer coverage at billfish tournaments and restrictions on billfish tournament landing to 250 fish. These sport-fishing restrictions which incidentally are willingly complied with are interesting when considered against a backdrop where getting accurate data from the commercial fleet appears impossible.

The Panel is concerned at the status of the blue and white marlin stocks. The Panel considers that Recommendation 06-09 could be enhanced with the immediate provision of improved data to the SCRS. The Panel is concerned that there may be insufficient data for the next stock assessment (in 2010) to confidently assess stock size and status. Recommendation 06-09 should be reviewed to ensure that effective assessment and decisions can be taken and implemented in relation to these stocks no later than 2010.

SWORDFISH (SWO)

The Atlantic swordfish stocks have rebuilt following periods of peak catches in the late 1980s. These fisheries remain under a 10-year ICCAT rebuilding program from 2000 to 2009. Catches are to be restricted to 14,000 t and restrictions are in place on the take and landing of juvenile fish.

The rebuilding of the northern swordfish stocks is seen by most observers to be a success story for ICCAT. The ICCAT rebuilding plan coupled with the US domestic decision to implement a significant closed area to the US commercial swordfish fishery have no doubt both contributed to this success.

Timeliness and accuracy of data

The SCRS has expressed a concern that the current minimum size limit regulations for northern and southern swordfish result in the discarding of small fish and could in the future limit the provision of accurate data in both the northern and southern Atlantic fisheries. The Committee believes that this could effect future stock assessments.

The SCRS has expressed concerns about the quality, completeness and timeliness of data presented on the catches of Mediterranean swordfish. Further there is a distinct lack of data from countries known to be fishing for swordfish and also from those countries fishing with gill nets. There is a ban on drift netting in ICCAT and in international waters that should be immediately respected and implemented.

Do the recommendations and resolutions for swordfish meet the objectives of the Commission?

The recommendations and actions taken by ICCAT have helped to rebuild the Atlantic stocks of swordfish to levels consistent with MSY and as such the approaches taken are in line with the objectives of the Commission. Recommendation 06-02 outlines the rebuilding program for the fishery and the allocation of the catch amongst the parties in the fishery.

Recommendation 07-01 on Mediterranean swordfish recommends a fishery closure for one month from 15 October until 15 November and improvements in data reporting. Whether this recommendation is successful only time will tell, however questions remain as to whether ICCAT needs to implement further action to reduce catches, improve data and reduce the catches of small or juvenile swordfish in this fishery.

The Panel considers that ICCAT has effectively managed the fisheries on Atlantic stocks of swordfish within the objective of the Commission in recent years. While concern is noted that these stocks were overfished

corrective action was taken and a good result achieved. The Panel however is concerned at the management of the fisheries on Mediterranean swordfish and recommends:

- *that the implementation of 07-01 be closely monitored and if necessary decisions to reduce the catch consistent with scientific advice be taken at the Commission's 2008 meeting;*
- *that drift netting and gill netting cease immediately in the Mediterranean; and*
- *that action is taken by Mediterranean CPCs to immediately improve the quality and timeliness of data for this species provided to ICCAT.*

3. Conclusions on Conservation and Management Measures

When ICCAT was created in 1966, tuna fisheries in the Atlantic were largely in good shape, with the possible exception of bluefin tuna in the West Atlantic where the effects of excessive fishing pressure may have already been noticeable. At that time there was confidence that fish stocks were robust and could withstand relatively high fishing pressure. The realisation that fish stocks, including stocks under the purview of ICCAT, were considerably more fragile to exploitation was only fully realised in the late 1980s and early 1990s leading to the adoption of the FAO Code of Conduct for Responsible Fisheries and the UNFSA.

ICCAT has not adjusted its management approaches nor reduced fishing pressure, particularly on sensitive resources such as bluefin tuna, in a timely manner. This does not reflect well on ICCAT CPCs and it also affects negatively other international fishery management organisations, as people's perceptions are influenced by the media reporting and assumptions often drawn that if practices are poor in one organisation then they will be poor in others.

As discussed in Part I there is sufficient international fisheries law, including customary international law, to effectively manage the world's fisheries. ICCAT, in addition has some 110 current resolutions and recommendations that deal with the conservation of marine species and management of fisheries. Many of these resolutions and recommendations are well thought out and, in effect, ICCAT has developed a useful toolbox of measures to deal effectively with the management of fisheries exploiting the species under the purview of ICCAT. There remain however, problems getting CPCs to implement measures that have been adopted.

Consistent with the approach to modernise the ICCAT Convention, ICCAT should adopt modern conservation, stock assessment and fisheries management practices. These practices are outlined in detail in Chapter 3 of the report "*Recommended Best Practices for Regional Fisheries Management Organisations*". In relation to overarching objectives of RFMOs the report suggests:

*"The best current practice is for the RFMO to have explicit, overarching objectives that address the full range of outcomes and management approaches in hard and soft law agreements relating to sustainable fishing. The objectives explicitly include optimum and sustainable long-term utilization, the recovery of overfished stocks, the control of fishing capacity and fishing effort commensurate with the long-term yield, adequate data collection and sharing, use of the best available science and the application of the precautionary approach and the ecosystem approach in decision-making."*⁷

These are useful principles for ICCAT to consider in reviewing and modernizing the ICCAT Convention. In addition the report provides further guidance of use to ICCAT in restating the principles in relation to the precautionary approach and conservation and management measures in the UNFSA.

The report notes:

"The principles provided by UNFSA in relation to the precautionary approach and conservation and management measures stipulate the requirement to:

- *adopt measures to ensure long-term sustainability;*
- *ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield;*
- *apply the precautionary approach;*

⁷ Lodge, *et al.*, p. 21.

- *assess the impacts of fishing on target stocks and species belonging to the same ecosystem;*
- *adopt conservation and management measures for species belonging to the same ecosystem;*
- *protect marine biodiversity;*
- *ensure that levels of fishing capacity and fishing effort do not exceed those commensurate with the sustainable use of fishery resources;*
- *collect and share in a timely manner complete and accurate data concerning fishing activities;*
- *promote and conduct scientific research in support of conservation and management; and*
- *implement and enforce conservation and management measures through effective monitoring, control and surveillance.”⁸*

As mentioned in Part I of this report, UNFSA also includes more detailed guidance on the implementation of the precautionary approach and conservation and management measures. This is summarized by the above-mentioned report as follows:

- Management shall be more cautious when information is uncertain, unreliable or inadequate.
- Precautionary target and limit reference points shall be established for stocks.
- Fishery management strategies shall ensure that the risk of exceeding a limit is very low. A minimum standard for a limit reference point is the fishing mortality giving maximum sustainable yield, and the biomass giving maximum sustainable yield is an appropriate target for recovering overfished stocks.
- When reference points are approached, they will not be exceeded; and if they are exceeded, there will be action without delay to restore the stocks.
- New or exploratory fisheries shall use cautious conservation and management measures until there are sufficient data to allow the identification of measures for the long-term sustainability and gradual development of the fisheries.
- If natural phenomena have a significant adverse impact on the stocks, conservation and management measures shall be adopted to ensure that fishing activity does not exacerbate that impact.
- It will be ensured that fisheries do not have a harmful impact on living marine resources as a whole.⁹

The Review Panel recommends that the above principles and best practices be reviewed and as appropriate incorporated in the ICCAT Convention or binding measures to provide adequate guidance to the CPCs on modern fisheries management approaches.

4. Conservation and Management Measures for By-catch Species

SEABIRDS

As tropical and temperate fisheries in one of the world’s most productive oceans regular interactions with seabirds is a common challenge to fishers in the region. The main birds of concern in this fishery are albatross and petrels.

Do the recommendations and resolutions for seabirds by-catch meet the objectives of the Commission?

ICCAT has two current resolutions in respect of the incidental mortality of seabirds. Resolution 02-14 deals initially with the incidental catch of seabirds by strongly urging members to implement the provisions of the FAO International Plan of Action for Reducing Incidental Catches of Seabirds in Longline Fisheries (IPOA-Seabirds). The resolution also encourages research and reporting. Recommendation 07-07 reflects the entry into force of the Agreement on the Conservation of Albatross and Petrels. This recommendation is binding for the use of weighted tori lines south of 20 degrees south, seeks a reduction in the by-catch of seabirds in all fisheries and notes that this provisional measure will be refined on the basis of further scientific advice.

⁸ *Ibid.*, pp. 19-20.

⁹ *Ibid.*, p. 20.

Recommendation 07-07 is a significant improvement on ICCAT's previous approach to this important issue. However, the Panel recommends that ICCAT develop a stronger approach generally to by-catch and develop and adopt appropriate mitigation measures including reporting on the effectiveness of these measures throughout the fisheries.

TURTLES

Turtles are encountered in tropical fisheries throughout the world. There are six main turtle species native to the ICCAT area and encountered in fisheries. Turtles can be taken in longline, trawl, gillnet and purse seine fisheries. Significant work has been undertaken throughout the world to find mechanisms such as excluder devices and dyed baits to limit turtle by-catches.

Do the recommendations and resolutions for turtle by-catch meet the objectives of the Commission?

There are two current non-binding resolutions on turtles 03-11 and 05-08 relating to the use of circle hooks in ICCAT. These resolutions encourage CPCs to collect data and share information on turtles and on turtle by-catch and to share information on mitigation measures. Given the potential for turtle by-catch in these fisheries there would be an expectation that members may have developed stronger resolutions to deal with this by-catch issue.

However, the Panel recommends that ICCAT develop a stronger approach generally to by-catch and develop and adopt appropriate mitigation measures including reporting on the effectiveness of these measures throughout the fisheries.

SHARKS (SHK)

Some 350 species of pelagic and coastal sharks are taken in the ICCAT area as by-catch and as species in targeted fisheries. There are a number of resolutions and recommendations on sharks; they are 95-02, 01-11, 03-10, 04-10, 05-05, 06-10 and 07-06. Resolution 01-11 acknowledges that at least two species, shortfin mako and Atlantic blue sharks should be assessed. This Resolution also imposes a number of requirements on CPCs to provide catch and effort data on blue, shortfin mako and porbeagle sharks, encourage the release of live sharks, utilise the whole carcass where finning occurs and voluntarily agree not to increase effort on porbeagle, blue and short-fin mako sharks until sustainable levels of harvests can be determined. Resolution 03-10 reaffirms the need for CPCs to provide reliable data to the Commission. Following the assessment in 2004, Recommendation 04-10 was adopted and it effectively banned shark finning and encouraged the ongoing collection of data. Recommendations 05-05 and 06-10 again confirmed the requirement for improved data collection.

The first assessment of blue and short-fin mako sharks was conducted in 2004. In June 2007 a data preparatory meeting of the shark group was held in Uruguay. The 2006-07 ICCAT Biennial Report (page 165) is derisive in its comments in relation to the quality of data provided to the Commission for the assessment of these stocks. The comment on page 166 sums up eloquently the concerns of the SCRS: “ *Of particular concern is the very low level of compliance with the obligations of the CPCs to provide Task I and Task II data for sharks caught by their vessels, greatly hampering, when not completely impeding, the assessment of the status of exploited sharks*”.

The ICCAT resolutions that deal with the by-catch of sharks note the importance of the IPOA-Sharks and the need for CPCs to introduce national plans of action. The banning of shark finning in the ICCAT area was creative at the time it was adopted but the lack of reporting of data on shark catch and the lack of effective monitoring in most fisheries raises questions on the actual implementation of these measures.

Timeliness and accuracy of data

The provision of data in relation to shark fisheries and shark by catch remains poor. The comments above from the SCRS adequately describe the problems with any assessment of the status of these species. The data requirements of the recommendations have not been adhered to by many of the CPCs.

Do the recommendations and resolutions for sharks meet the objectives of the Commission?

If the action by all CPCs was consistent in actually implementing the resolutions and recommendations in relation to sharks this would go some way to dealing effectively with the management of shark fisheries and shark by-catch. However, the endemic levels of non-reporting and non-compliance with the recommendations and resolutions would indicate that these have not been effective and in large have not been applied and adhered to by the parties to ICCAT.

The Panel is concerned that with the present situation in relation to data and compliance, the conclusion could be drawn that some parties to ICCAT hold in contempt the resolutions and recommendations in relation to the management of sharks and shark by-catch and the provision of related data.

The Panel recommends that ICCAT CPCs immediately take the management of shark fisheries and shark by-catch seriously and implement and comply with the ICCAT recommendations and resolutions to provide accurate and reliable data to the SCRS.

The Panel encourages the work of ICCAT to utilise expert groups to develop alternative catch estimate and assessment approaches for the major shark species under the purview of ICCAT.

5. BFT Farming in the Mediterranean Sea

Tuna farming in the Mediterranean commenced in 1996 and has grown rapidly to the point today where there are seventy (70) registered tuna farms in eleven (11) CPCs with the capacity to grow-out 57,500 t of tuna. Tuna farming in the Mediterranean involves the capture and fattening or grow-out of bluefin tuna for market. The fish are purse-seined and then towed and transferred into grow-out cages for fattening in designated locations. The data and statistics on tuna farming are far from accurate and in most CPCs the controls and reporting are limited. ICCAT adopted Recommendation 06-07 in 2006 to replace Recommendation 05-04 in an effort to bring greater control over this part of the bluefin tuna industry.

The actual quota for bluefin tuna in the eastern and Mediterranean fishery is set at 29,500 t for 2008, almost twice the SCRS recommended level of 15,000 t. This however becomes somewhat irrelevant when evidence shows that some 617 purse-seiners are registered to fish bluefin tuna in the Mediterranean and the farms have capacity to grow-out or fatten some 57,500 t of fish annually.

The bluefin tuna catch in the East Atlantic and Mediterranean fishery in 2007 and 2008 has been difficult to estimate due to previously mentioned issues with catch and data provision to the SCRS. For 2007 because of misreporting and data gaps the best estimate seems to be around 60,000 t. At the time of writing it was not possible to estimate the catch for 2008. In an EC press release on 13 June 2008 the Commission noted: “*Last year, overfishing was largely driven by the industrial purse seine sector of the fleet, which takes more than 70% of the catch. Despite the means made available to the member States by the European Fisheries Fund, and although the quota has been reduced under the ICCAT recovery plan, the capacity of registered EU purse-seine sector is larger in 2008 (134 vessels) than in 2007 (92)*”.

If Recommendation 06-07 is implemented and enforced in full by the CPCs of ICCAT it would potentially be an effective measure to control tuna farming. However, it has not been enforced and again this highlights the earlier point that the fundamental decisions of ICCAT are sound, however the CPCs do not comply and there are inadequate powers within ICCAT for enforcement. The lack of political will to regulate this fishery properly causes significant distress for the international community.

Recommendation 07-10, again if fully implemented, would assist in validating and verifying the catch and trade in bluefin tuna particularly from the Mediterranean Sea. However, there must be leakage from these Catch Documentation Programs for the illegal catch and trade in bluefin to continue.

The provision of data to the SCRS for the stock assessment of eastern and Mediterranean bluefin has been poor. As noted above at the Bluefin Tuna Stock Assessment Session in June 2008 only three (3) CPCs had provided catch and effort data to the Commission. This serious disregard to the requirements by CPCs to provide regular and accurate data to ICCAT is undermining the ability of ICCAT to be an effective fisheries management body.

Consistent with the recommendations for bluefin tuna above, the Panel recommends that in respect of bluefin tuna farming all fishing for eastern and Mediterranean bluefin be suspended immediately until all CPCs involved in farming activities develop and implement controls necessary to effectively control, monitor and report the catch, transfer and grow-out of bluefin tuna in the farming operations in the Mediterranean.

The new measures to be taken should include:

- *The adoption of the recommendations on farming outlined in 06-07.*
- *The development of consistent auditable systems to monitor the number and weight of fish transferred into the grow-out cages.*
- *The use of independent auditors to randomly check farming operations with CPC representatives.*
- *The adoption in full of Recommendation 07-10 of the ICCAT Bluefin Tuna Catch Documentation Program, with full monitoring and reporting by Contracting Parties to mitigate the leakage of any illegal fish.*
- *The development of a strict penalty regime to be applied to member nationals or companies found in violation of the farming provisions.*

The Panel considers that bluefin tuna fisheries are sufficiently profitable to bear the costs associated with these increased management measures.

PART III – Section 2. General Practices that Influence the Success of Conservation and Management Measures in ICCAT

1. Carryover of Under-caught Allocation

This practice that allows ICCAT CPCs to carry forward up to 50% of uncaught annual catch quota in some ICCAT fisheries is not considered to be good practice in fisheries management. (Recommendations 04-01, 04-02, 06-02, 03-06 apply.) Some flexibility in allowing small over-catches (3%) to allow CPCs to properly balance their catch figures is logical. However this should be agreed only on the understanding that any over-catch is deducted from the following year's quota.

This is particularly so where there is no certainty surrounding the monitoring, control and surveillance of the fishery or in the accurate and timely reporting of catch statistics. ICCAT is clearly not confident that the data provided by CPCs is correct and as such this provides CPCs with a way of inflating their catch by under-declaring what they actually catch. Not allowing carryover acts as a safeguard on the stock, as what is not caught is in effect put in the bank and acts as a buffer against IUU activity.

Allowing carry forward of uncaught quota can also mask problems with the stock as the reasons that the TAC/quota remain uncaught can be related as much to overfishing and subsequent unavailability as to economic reasons.

The Panel strongly recommends that ICCAT immediately discontinue this practice of allowing the carry forward of uncaught allocations in all fisheries.

2. Capacity and Overcapacity

Efforts over time have been made by ICCAT to reduce capacity in some fisheries. Recommendations 93-04, 98-03, 98-08 and 04-01 are examples. ICCAT has also taken measures to have vessels registered on an approved vessel list in order to fish in the ICCAT area and has worked to significantly reduce the known incidence of IUU fishing. All of these initiatives are positive steps; however, there is still significant overcapacity particularly in the eastern Atlantic and Mediterranean fisheries.

According to the recent Worldwide Fund for Nature (WWF) publication *The Race for the Last Bluefin*¹⁰, there are some 617 purse-seiners operating in the Mediterranean Sea. This capacity is far in excess of what is needed to harvest the available bluefin resource. As noted above, the EC has made the point that its fleet had increased from 92 purse-seiners in 2007 to 134 in 2008 at a time when ICCAT had reduced the TAC for the fishery.

ICCAT CPCs have acknowledged that capacity remains a genuine and significant problem in the Mediterranean and that it leads to IUU fishing and to overcatching of bluefin tuna. This excess catching capacity is married in part to the excess farming capacity where there is far more farming capacity than is required to grow out the available fish. When this situation occurs, IUU fishing activity will occur.

As noted earlier the EC has accepted it has a problem in this fishery in the statement by Commissioner Borg in June 2008. However, the EC is not the only Mediterranean CPC managing bluefin tuna and the CPCs with major purse-seining capacity need to reduce and closely regulate the catch of their fleets.

ICCAT must deliver a recommendation that is binding on all CPCs fishing and farming in the Mediterranean to reduce both fishing and farming capacity to match the TAC of the fishery. This may be facilitated through the implementation of some form of tradable right or by payment of adjustment funding by members. ICCAT must ensure that any vessels that are reduced through adjustment programs in this fishery are not relocated to other oceans to cause problems elsewhere.

ICCAT might wish to investigate the controls that CPCs of ICCAT place on the activities of their nationals in terms of investment under foreign flag arrangements and whether this leads to de facto increases in capacity.

The second area of interest to the Panel is the problems encountered by ICCAT in monitoring fishing capacity and the fact that to do this at present it must rely on the activities of CPCs. Information would indicate that this is not an effective process and the development of greater monitoring and compliance capability within ICCAT may assist.

The Panel recommends that for all fisheries in ICCAT, fishing capacity is immediately adjusted to reflect fishing opportunities or quota allocations.

3. Data collection, quality and timeliness

In order for international organisations to effectively manage fisheries under their jurisdiction they must have access to accurate and timely catch and effort data. A consistent theme in a large number of the ICCAT reports and in reports from the SCRS to ICCAT is that data provision is unreliable, inaccurate and not provided within the required time frame. Data deficiencies in ICCAT are summarised in document SCRS/2003/021. “*Overview of data deficiencies at ICCAT*”. Work is underway to build capacity and understanding in developing countries on the requirements to provide timely and accurate data. There are, however, no excuses for developed countries to not provide reliable data to the Commission in a timely fashion so that it can be used to produce accurate stocks assessments and evaluate the effects of fisheries management measures. Yet, many developed countries do not submit data in a timely manner.

The Panel is therefore concerned to read in the 2006-07 Biennial Report comments such as: “*Data for 2005 was only available from Canada and the US although Japan did provide a very preliminary estimate for 2005*” (page 104) and “*The 2006 assessment used ICCAT Task 1 catch data from 1970 to 2004, which likely represents significant underestimates of total catch in recent years*” (page 112).

In 2008, as noted above, in absolute frustration, the Chair of the SCRS wrote to the Chair of ICCAT highlighting the issue with bluefin tuna data. In response to Recommendation 06-05 the SCRS in 2008 was to update the status of the stock. As mentioned previously at the time the SCRS meeting was held in June 2008 only three (3) CPCs had provided data. Given the concerns expressed over the state of bluefin tuna the lack of data is totally incomprehensible. Other examples of systematic misreporting are clearly evident in the documentation of ICCAT.

Given the numerous references and recommendations and resolutions in the ICCAT Compendium relating to improvements in data collection, the Panel finds it difficult to formulate a recommendation that might make a difference.

¹⁰ http://assets.panda.org/downloads/med_tuna_overcapacity.pdf

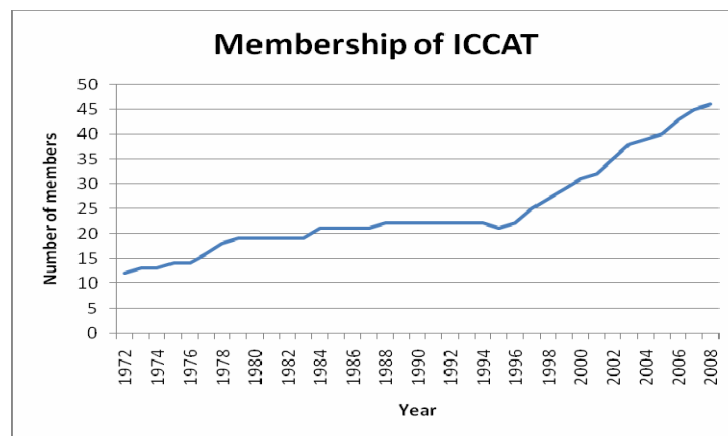
The Panel strongly believes that:

- *this misreporting must stop immediately;*
- *CPCs must collect and report Task I and Task II data in a timely manner within the agreed time limits;*
- *effort should be continued to build capacity in developing CPCs and improve reporting by developed CPCs and*
- *CPCs who continually fail to comply should be subject to an appropriate penalties regime. Such a regime should be severe and be enforceable.*

4. Transparency

International bodies are only successful if all members feel that they participate on an equal footing and are comfortable that the process utilised to make decisions and the criteria determined to guide the decision making are fair and equitable on the parties. The other aspect of decision making that is important is that the right decisions are adopted in a timely manner.

One of the added complications for ICCAT is the increase in membership, from 8 in 1969 to 46 in 2008 with the 46 including the EC as one entity.



Source: ICCAT.

In discussion with CPCs and in submissions received, concerns were raised in relation to both transparency and to the fairness and equity of decisions taken by ICCAT.

Transparency was raised in the context of the so-called “big four” members (USA, Canada, European Community and Japan). Some other Parties were of the opinion that this group had undue influence on the decision-making processes in ICCAT including the selection of chairs and officials and the allocation of quota to new CPCs. An alternative view put by CPCs of the “big four” is that they actively try to move the business of ICCAT forward at a pace that reflects the needs of ICCAT and the fisheries.

It is not the role of the Panel to pass judgement on who is right or wrong in this issue but there are strong perceptions in relation to transparency and as such it may be in ICCAT’s interest to ensure that all members are included to the greatest extent possible in the business of the Commission. Perception of exclusion can further limit the ability of ICCAT to be effective and lead to ongoing lack of trust and disputes between members based around misunderstanding of issues and intentions.

The issue of equity is somewhat more difficult to define but from discussions with Parties it stems from the perception that the benefits and fishing opportunities have been ascribed on a historical basis to the detriment of those who are developing coastal States. There was comment from some CPCs interviewed for this report regarding the bluefin tuna allocation meeting held in Japan in early 2007. Some expressed a view that they felt

they had been misled by suggestions of initial allocations they might receive and in the end felt that they had been disadvantaged in this allocation process.

The issue of equity was also raised in the domination in the past of key positions within ICCAT by developed member CPCs. As noted in Part II an alternative view may be that it is only CPCs with large delegations that can afford the travel and time commitments for chairs within the ICCAT process. If this is the case then separate funding arrangements to encourage participation from chairs from developing countries may be required.

Again it is not the role of the Panel to decide on who is right or wrong in this debate but to alert all CPCs that people have concerns in this area or fairness and equity. In strengthening ICCAT it is an issue that will require mature discussion and understanding and if dealt with appropriately, will improve internal ICCAT relationships considerably.

Participants also see the use of closed meetings, closed discussions and heads of delegation meetings as being exclusive and not conducive to good decision making. There is a view strongly held by NGOs that the information from ICCAT should be freely available to them and that the practice of charging these groups \$500 USD to attend each meeting has no merit and should cease. The alternate view is that meeting costs are high and that this is a minor inconvenience to be allowed access to the meeting.

Given the broader role these groups have in representing special interest groups of importance in the ICCAT decision making process, the Panel questions the practice of charging NGOs for each meeting. The NGOs are also concerned that in most RFMOs they struggle to have their views heard and discussed and are often frustrated that they are not taken seriously in the decision making process.

The Review Panel recommends:

- ***ICCAT prepare a discussion paper on transparency, fairness and equity within ICCAT. The perceptions are potentially damaging to ICCAT and working through the issues in a mature and informed way will strengthen ICCAT for the future.***
- ***ICCAT review its policy on NGOs attendance at ICCAT meetings.***

5. Decision making

As noted above, UNCLOS sets the framework for decision making within RFMOs by establishing the fundamental requirement for States to cooperate in the conservation and management of living resources. Lodge *et al.* explains that “*It (decision making) has two aspects, positively to seek to reach agreement with others concerned and negatively to refrain from taking unilateral actions whether or not agreement has been reached.*”¹¹

Lodge *et al.* also state that RFMOs should have in place both a *process* for adopting decisions that are timely and effective and secondly a *criteria*, as stressed in UNFSA Article 10, for adopting decisions so that the fishery and its ecosystem remain sustainable.¹² Although the ICCAT Convention predates UNCLOS and UNFSA the basic objective of maintaining the fish stocks at maximum sustainable yield is consistent with the above Article.

The other critical aspect of decision making, particularly in RFMOs, is that the decision-making process itself is viewed by all concerned as being inclusive, is considered fair and the mechanism for reaching a decisions has been fair and transparent for all participants.

The fundamental processes for decision making within ICCAT are sound providing the processes are followed and the advice from the scientific and other committees is generally followed. However, social and economic issues have tended to prevent taking hard decisions at an early point in time and subsequently the Commission has found itself having to make tougher decisions to implement catch restrictions and recovery plans. This would indicate that while the process is sound the actual decisions are weak. It is only in more recent times that the Commission has made reasonably tough and binding decisions on issues including bluefin tuna, IUU fishing, provision of data, and farming.

¹¹ Lodge, *et al.*, p. 71.

¹² *Ibid.*, p. 70.

As noted previously there are elements of these concepts currently embedded in discussion and decision making in ICCAT. However it would strengthen the mandate of the organisation if they were formally embedded in the Convention text.

Scientific advice

Modern fisheries management generally accepts the recommendations from well regarded and professional scientific advisory bodies. While modelling and stock assessment is not a perfect science, the fisheries that are managed by ICCAT are reasonably well understood and the SCRS is a well regarded and professional scientific body.

Members are encouraged to question and seek clarification on all scientific advice that is provided to the Commission. However, if the scientific advice is robust and defensible through the process of questioning and clarification and if no other logical alternative arguments are rigorously proven, the scientific advice should be accepted and followed. In ICCAT where this has occurred there is evidence of stock rebuilding.

Inherent in this is that the scientific committee will in all cases work to provide the CPCs with well researched, high quality and credible scientific advice. Where there are concerns within the SCRS on the provision of advice, the Commission should be informed of the reasons for the SCRS concerns and the Commission should be precautionary in the decisions that it takes. This is currently not the case with a number of species under the purview of ICCAT.

It is important that all CPCs participate fully in all stages of the SCRS process. Apparently, some participate only in the SCRS plenary and use it to delay necessary decisions by casting doubts on the scientific advice. Lack of participation and lack of data can be serious impediments to the work of SCRS and of the Commission. ICCAT's practice has generally been to delay decisions until the scientific data is irrefutable. This is not consistent with a precautionary approach, where decisions should be more precautionary when information is less certain.

With regard to timeliness of decision making, one of the main criticisms is that this RFMO has not had a good record of taking hard decisions in a timely manner. The interests of individual members including the social and economic needs of industry groups often dominate the decisions and delay actual decision making. A good example of this is seen in the management of fisheries on eastern Atlantic and Mediterranean bluefin tuna.

The Review Panel recommends that:

- ***The SCRS endeavour to provide simple, succinct and user-friendly advice to fisheries managers and Commissioners on the status of ICCAT stocks and the expected effects of potential management measures;***
- ***ICCAT members review their current management recommendations to ensure that they align with the current scientific assessment of the status of the stocks;***
- ***ICCAT consider seriously the structure and basis of its decision making framework particularly in relation to fisheries management. A decision making framework should be adopted that guides the outcome of decisions and forces discipline consistent with the objectives of ICCAT on CPCs.***

6. Allocation practices

As mentioned in Part I the ICCAT Convention predates the UNCLOS and the UNFSA and as such the Convention does not deal with allocation to existing or new CPCs or with the rights of developing coastal States. Over the years that ICCAT has been in force membership has increased significantly mainly from the developing coastal States in the ICCAT area. This is due in no small part to ICCAT having policies to encourage the participation of States that fish in the area to co-operate with the work of the Commission and also action that the Commission has taken to impose trade measures on non-cooperating non-members.

In 2001 ICCAT adopted the "ICCAT Criteria for the Allocation of Fishing Possibilities" (01-25). These criteria apply to all stocks in the Convention area and outline in a non-binding sense a method for allocations shares in the fisheries between parties. As noted in Part I of this report, 01-25 is broadly consistent with some of the

UNSFAs principles and if applied fairly and consistently and in a way that genuinely reflects the needs of developing States it would represent a real advance in allocation of fishing opportunities within ICCAT.

Of the thirteen (13) major species under the purview of ICCAT, formal allocation arrangements are in place for six (6): bigeye, northern swordfish, southern swordfish, northern albacore and bluefin tuna in the western Atlantic and bluefin tuna in the eastern Atlantic and Mediterranean. This has been a good effort from ICCAT to get formal allocation arrangements agreed and in place for this range of species.

In Part I-Section 5(4) of this report, the Panel discusses the appropriateness of the current allocation criteria and recommends that a binding recommendation be developed to replace 01-25. As with many decisions in ICCAT the decisions themselves are sound; it is the application to and adherence of the measures (in this case the actual allocations) that is continually called into question.

In discussions with ICCAT CPCs some were concerned with the actual process used to make allocations. Criticisms were made of the so-called “big four” players (Japan, EC, USA and Canada) arbitrarily making allocations to members that do not necessarily follow the criteria laid down in 01-25. Whether these allocations reflect the actual criteria is difficult to determine; however if the perceptions are as strong as those raised with the Review Panel, ICCAT would do well to review the allocations and ensure that in future the allocations rules are employed in a fair and transparent manner.

Recommendation 03-20 should be read with 01-25 in relation to allocation and incorporation of new members into ICCAT. Importantly the process works to accommodate the needs of new members. The report by Lodge *et al.* deals with this issue of new members and the relationship to the quantum of the allowance made to new members has on their incentive to join and comply with RFMO measures and in doing so cease IUU activity.¹³

The report suggests an alternative approach to allocation to new CPCs first raised in the FAO in 2002, to allow new members to “buy” their way into the Commission by purchasing existing quota from existing members.¹⁴

Consistent with recommendations in Part I the Panel recommends that:

- ***ICCAT should develop binding allocation criteria;***
- ***Once the criteria are developed and agreed the current allocations should be reviewed and either confirmed or amended;***
- ***ICCAT should consider allowing the purchase and transferability of quota from existing to new Contracting Parties as a method to encourage compliance and the entry of new members;***
- ***Any future allocations to new members should be fairly negotiated and the agreed criteria strictly applied. In reviewing current allocations, paragraphs 2, 16, 17, 18 and 22 of 01-25 should be applied and those Parties found not to be in compliance should have their allocations reduced until they do comply with these provisions.***

7. Quota management arrangements

The management of quota allocated under 01-25 mentioned above is the responsibility of the CPCs. CPCs are responsible for the allocation, monitoring and reporting to ICCAT of the quota catch for the fishing season. However, particularly in relation to eastern and Mediterranean bluefin and probably other high value quota species, serious overcatching and, misreporting occurs. Again the ICCAT recommendation and process is sound but the members fail to comply with the decisions of ICCAT.

As noted previously, the obligations to report data to the Commission is enshrined in the Basic Texts and numerous resolutions and recommendations of ICCAT. Recommendation 03-13 is specific concerning these requirements. This reporting is fundamental to providing information that leads to decisions on quota and catch limits and ultimately sound management practice. Most of the species-based recommendations ask for improvements in the reporting of catch. It is interesting to note that this occurs year after year. The Review Panel is seriously concerned at the inability of ICCAT CPCs to ensure that their industry stays within allocated quotas. Non compliance is a key failing of ICCAT.

¹³ *Ibid.*, p. 17.

¹⁴ *Ibid.*

The Panel recommends that:

- *Contracting Parties immediately take seriously their obligations with respect to compliance with quota allocations and fishing opportunities and effectively manage their quota allocations and report honestly and accurately and in a timely manner their catch to ICCAT;*
- *The key obligation should be reinforced by the development of an appropriate penalty regime of significant consequence to provide a real incentive for Contracting Parties to cooperate.*

8. Quota trading

ICCAT Criteria for the Allocation of Fishing Possibilities (01-25) is specific in paragraph 27: “No qualifying participant shall trade or sell its quota allocation or part thereof.” This is a reasonable recommendation for ICCAT where catch reporting is unreliable for most species and the ability to trade quota would only further confuse the data reliability.

There is one apparent deviation from this rule and it applies to Atlantic bluefin (para. 9 of Recommendation 06-06) which allows members to trade up to 15% of their annual allocation to another party. Whether this is a sound practice in the BFT fishery is questionable. However; it raises the broader issue of allowing quota trading.

As noted above there is discussion in the report by Lodge, *et al.* about quota purchasing for new Contracting Parties. Whether this logic can be extended to existing CPCs is of interest as it would allow in times like these of high oil prices and operating costs for existing CPCs to sell their quotas to more efficient fleets or to developing coastal States with better access to the resource and exit the fishery. This type of approach allows market forces to drive the profitability of the fishery noting however that these practices would need developing, would need to be fair and transparent and importantly be able to be controlled and audited.

The Review Panel suggests that ICCAT consider the implications of a quota trading market in ICCAT.

9. Allocation to recreational and charter fisheries

Recreational and game fishing is a serious component of all the world’s major tuna fisheries with a premium placed by the fishers on the billfish, the migratory and neritic tuna species and the mackerels. In many developed CPCs the economic value that flows from the recreational and sport fishing activity on these species can outweigh the economic value achieved from the commercial use of the fish stocks. Recreational and sport or game fishing is also an emerging tourism activity in the waters of many developing countries. The recreational and sport fishing lobby groups are emerging as a key component of fisheries management considerations and they have a genuine right to be heard and to participate in the management decisions for these fisheries.

ICCAT is aware of the importance of the recreational and sport fishing lobby; however, allocation, monitoring and participation are the responsibility of the CPCs. The United States and Canada have made efforts to monitor or control the recreational and sportfishing, catches in these fisheries. The U.S. fishery for marlin is principally a tag and release fishery, with the results of the tagging contributing to the science of these important stocks. The catches of tuna and other species are generally taken and utilised by the catchers and whether there is a good understanding of the actual level of these catches is not clear to the Panel. Resolution 99-07 is a non-binding resolution that encourages CPCs from 2000 to provide regular reporting to the Commission on recreational fishing catch. Again reporting against this resolution tends to be irregular. Recommendation 04-12 applies measures to the sport fishing activities in the Mediterranean Sea but again reporting of statistics against this recommendation is irregular.

Resolution 06-17 is a non-binding resolution but it establishes a Working Group on Sport and Recreational Fishing. The first meeting of this Group was scheduled for late 2007. However, information from the Secretariat indicates that this meeting will now not occur until some time in 2009.

The only other reference to recreational catch is found in the blue marlin and white marlin recovery plan in Recommendation 06-09, which in paragraph 5 (c) requires the United States to provide observer coverage to 10% in tournaments and for the annual catch of blue and white marlin in the U.S. tournaments to be limited to 250 fish. While this is an interesting recommendation in a fishery that is data poor and poorly monitored by the

commercial sectors in many countries the U.S. sport fishing industry sees little difficulty in complying because as mentioned above most of the actually catch is tagged and then released.

The Review Panel noted the importance of the recreational and sport fishing sectors and the interest shown by the sector in providing submission to the review (two of the eight submissions received were from the sport fishing fraternity.) The Panel noted with concern that the Working Group on Sport and Recreational Fishing scheduled to meet in 2007 or early 2008 will now not meet until 2009.

The Panel recommends that ICCAT CPCs take this issue seriously and be more inclusive towards the recreational and sportfishing sector in future deliberations of ICCAT regarding fisheries management. While RFMOs were established principally to manage commercial fisheries, the “real interest” of recreational and charter industries predates the commercial sectors in some of these fisheries. In addition the recreational and charter industries have developed to the point where they are effective lobby groups in their own right and good public policy would suggest that they be incorporated into the ICCAT process.

PART III – Section 3. Monitoring, Control and Surveillance (MCS)

The ability of RFMOs to establish rules and to develop and implement sound conservation and management measures for the sustainability for the fisheries and the fish stocks are fundamental roles of RFMOs. An effective Monitoring Control and Surveillance (MCS) framework allows the CPCs of the Commission to ensure that the rules and conservation and management measures adopted by the Commission are actually implemented by all parties to the Commission.

In Part I of this report the Review Panel has dealt in part with the basic texts and resolutions and recommendations of the Commission in terms of whether the texts and recommendations are adequate for the conduct of the business of the Commission in relation to MCS activities. This section does not duplicate the work in Part I and considers if the recommendations and resolutions taken by ICCAT have been applied by CPCs in a way that has contributed to the conservation and management of the fisheries in the ICCAT area.

There is a range of MCS activities adopted by RFMOs and they place obligations on RFMOs through flag, port and market State requirements and are generally enforced through domestic compliance arrangements. The general role of RFMOs is to coordinate VMS activities and monitoring, the establishment of licensing registers of approved vessels and to follow through on reported breaches to ensure that corrective action has been taken.

ICCAT has adopted a well considered and appropriate set of recommendations for MCS. These recommendations include among other things vessel inspection, transshipment and vessel sighting, IUU fishing, vessel records, and port State measures. These measures if adopted into domestic law and applied by the members would be suitable as MCS arrangements in ICCAT.

Many of the issues that ICCAT now has to address including overfishing, data quality and timeliness and capacity management, and compliance problems would largely disappear with the proper enforcement of ICCAT recommendations and resolutions by CPCs.

1. MCS measures and enforcement obligations

As noted in Part I, UNFSA Article 20 requires all States to cooperate to ensure compliance with and enforcement of international conservation measures for straddling and highly migratory fish stocks. Article 9 of the ICCAT Convention predates the UNFSA and binds parties to take all action necessary to enforce the Convention. ICCAT Resolution 02-31 provided CPCs with the principles necessary for effective monitoring of activities by members and importantly asks that they establish observation and inspection programs to ensure compliance with conservation and management measures

ICCAT recognised this problem in 1993 and Resolution 94-09 was adopted to improve compliance. Resolution 99-11 further enforces the need for CPCs to comply and Recommendation 03-12 as a recommendation binding on the parties requires that CPCs adopt measures so that their vessels comply with and do not undermine ICCAT conservation and management measures. Then in 2006, in the face of ongoing concern about CPCs still failing to comply with measures, ICCAT adopted Recommendation 06-14. This recommendation in the preamble noted that “*CONCERNED that some States do not comply with their obligations regarding jurisdiction and control*

according to international law in respect of fishing vessels....AWARE that the lack of effective control facilitates fishing by these vessels in the Convention area in a manner that undermines the effectiveness of ICCAT conservation and management measures". In this preamble ICCAT has acknowledged that it still had a serious problem with MCS and flag State control over vessels and nationals.

This recommendation is binding on CPCs from July 2008 and it will be interesting to see if any improvement in behaviour flows from the adoption of this recommendation. Early indications from the bluefin tuna fishing in 2008 in the eastern Atlantic and the Mediterranean Sea, give some encouragement that improvement to behaviour is possible, at least for some CPCs.

How has ICCAT performed?

One of the major concerns that the Panel has noted throughout this report is that ICCAT has developed adequate tools to effectively monitor, enforce and manage the fisheries. Where ICCAT is constantly let down is by the lack of effective enforcement of CPCs of the resolutions, recommendations and the basic texts of ICCAT. It has been noted earlier in this report that in the Mediterranean Sea fisheries this lack of application of and adherence to the rules, recommendations and resolutions of ICCAT by some CPCs has reached chronic proportions and there is little option for ICCAT other than to suspend fishing activity in these fisheries until the CPCs decide to comply.

If ICCAT CPCs remain unwilling to provide basic and accurate data on their catching activity in the fisheries, apply appropriate flag State and domestic compliance measures, care enough to be responsible international citizens in the sense that they abide by international legal conventions then this fishery in the long term has little hope of sustainability.

What could ICCAT members do to improve MCS?

One of the most fundamental changes that must occur within ICCAT is a major change of attitude towards responsible fisheries management and compliance amongst a large number of its CPCs. It never was and never will be appropriate for CPCs to blatantly disregard conservation and management measures adopted by ICCAT. CPCs must cooperate in the conservation and management of migratory fish stocks.

Therefore the Review Panel recommends that:

- ***ICCAT CPCs should immediately apply fully the rules and, measures adopted by ICCAT and through domestic arrangements including flag and port State controls, observer programs and VMS, provide effective control over their nationals;***
- ***CPCs must agree to provide accurate and timely data and information on MCS activities and arrangements to ICCAT;***
- ***CPCs should also consider immediately developing a fair and tough penalty regime that will be applied to defaulting CPCs.***

The Panel notes the actions that ICCAT has taken over time to apply non- discriminatory trade measures to countries that do not cooperate with the Commission. The Panel suggests that ICCAT investigates applying similar penalty arrangements to Contracting Parties that continually break ICCAT rules and regulations.

In concert it is also recommended that ICCAT investigate and develop a universal penalty regime that either has the capacity to suspend Contracting Parties that systematically break ICCAT regulations or can apply significant financial penalties for breaches. These measures need to be severe in the sense that member should clearly understand that they will suffer significant economic consequences if their actions are in breach of ICCAT rules.

2. Regulation of transshipment

ICCAT Recommendations 97-11, 98-11 and 06-11 relate to the control and monitoring of transshipping activities in the ICCAT area. These recommendations are complimentary. Recommendation 06-11 is a sound approach to the management of transshipment activities and recognises the reality of fleet fishing patterns including at sea

transshipment while retaining an obligation on the flag States and the vessel master to report regularly to ICCAT. The recommendation includes a provision to review the effectiveness of the measure in 2008.

Under ICCAT rules, all transshipment is to occur in port unless the special provisions of Section 2 of 06-11 are applied. Recommendation 06-11 includes a number of controls over at sea transshipment that could well be adopted by other RFMOs. These include prior notification, near real time reporting to ICCAT, recording of vessels, and from the 31 March 2007 full ICCAT observer coverage on all vessels transshipping at sea by accredited ICCAT observers.

In respect to farming activity Recommendation 06-07 requires detailed information from CPCs on vessels and on catching, towing and transfer activities of the farming fleet.

These are well developed and if properly applied they would be effective measures to control transshipment activities. Information and reporting into ICCAT on compliance with at sea transshipping activities indicates that four members are participating in the scheme and that it is performing well.

How has ICCAT performed?

ICCAT has adopted a pragmatic approach to the difficult issue of transshipment. The most effective measure is “in port transshipment” only, as this allows for port State monitoring of the transshipment activity. If the provisions of Recommendation 06-11 are applied fully there is no reason why at sea transshipment can not be properly enforced and this appears to be the case for the four members involved in at sea transshipment under its provisions.

The major problems for ICCAT are in monitoring of fish caught and transferred to tow and grow out cages for farming. While Recommendation 06-07 is a good recommendation, as mentioned elsewhere in this report, indications are that members are not abiding by its provisions and overcatching and misreporting continue to occur.

What additional measures could ICCAT adopt?

The requirement that Recommendation 06-11 be reviewed in 2008 is a sensible approach to regulating a difficult situation. The main problem area for ICCAT as noted above is in the regulation of transshipment of fish to tow boats for the farming operations in the Mediterranean.

In respect to the farming activities recommendations have been made in the section above on farming activities in ICCAT apply equally here. No other recommendations will assist; it is only a change of political will on behalf of the CPCs that will lead to change.

3. Port State measures

The FAO should finalise the development of a legal instrument on port State measures, discussed above (Part I), at its COFI meeting in 2009. These will be a useful guide to all RFMO and their members on port State arrangements. Port State requirements are also elaborated in the FAO IPOA-IUU. ICCAT Recommendation 97-10 specifically deals with port State requirements and covers many of the measures included in the recent work of FAO on port State measures.

ICCAT workshopped port State measures in 2008 and a recommendation for improved provisions will go to the annual meeting in 2008 for discussion and approval.

How have ICCAT members performed?

Measures adopted by RFMOs on port State measures are incorporated as appropriate by members when they are developing their domestic procedures. CPCs should monitor fishing vessels that use their ports, inspect unloads and transshipments and report violations to flag States and to ICCAT if and when offences against ICCAT conservation and management measures are detected.

Annual reporting to ICCAT on port State measures indicates that port State measures are inconsistent and inspections are random. While there is no necessity for more than random inspection, capacity building in

relation to port State measures as adopted by CCAMLR may provide a useful way of improving inspection and reporting.

What other action could ICCAT take to strengthen port State controls?

The main improvement that ICCAT could make is to modernise its practices and adopt as appropriate the port State measures developed by the FAO.

The other major advance would be to make sure that all CPCs have in place domestic port State arrangements and controls that allow them to comply fully with the provisions of Recommendation 97-10. As noted above capacity building based on the CCAMLR model may be relevant for ICCAT to adopt. The application of port State measures should be reported in the annual report by CPCs to ICCAT.

4. Flag State measures compliance and enforcement

As noted in Part I there is no specific recommendation in ICCAT that refer to flag State controls. However, while this may be true many of the recommendations and resolutions of ICCAT and indeed the application of the Convention itself can only be successful if flag States take full responsibility for the management of the fishery, the control of its nationals and companies and for the enforcement and compliance of all ICCAT conservation and management measures.

Flag State controls include specifically vessel chartering (Recommendation 02-21), the maintenance of vessel lists (Recommendation 02-22), vessel flagging (Resolution 05-07) and regulation of IUU fishing activity (Recommendation 06-12). CPCs should ensure that its nationals or companies do not re-flag or develop fishing opportunities in a third country where that country does not have the established capacity to effectively manage monitor and control the vessels under its flag.

How have ICCAT members performed?

The ICCAT Secretariat now has a list of vessels registered by flag States to fish in ICCAT waters. It is only through the implementation of well developed domestic conservation and management measures by flag States or CPCs that the effective functioning and management of ICCAT species will either be successful or fail. To date the performance has been inconsistent with some CPCs having very effective controls and others very few. This is reflected in the performance of the individual fisheries.

What further action could ICCAT take to strengthen flag State controls?

Any recommendations on flag State controls are reflected in the broader recommendations in point 3 above.

5. Application of trade and market related measures

ICCAT has well developed trade and market measures. These measures have recently been updated in ICCAT Recommendation 06-13 which replaces 03-15 and is a comprehensive measure relating to the trade in tuna. The recommendation provides a mandate to the Compliance Committee (CC) or the Permanent Working Group (PWG) to improve ICCAT statistics to identify and call to account annually those members who have failed to discharge their obligations under the ICCAT Convention in relation to the conservation and management measures.

This is a strong measure and again if fully implemented it will improve ICCAT's MCS performance and accountability. Importantly this recommendation provides scope for the Commission through the CC to request information and explanations and on the basis of this information ICCAT can take informed decisions in relation to the application of trade measures.

How has ICCAT performed?

Non-discriminatory trade related measures have been taken against a number of non-cooperating non-member countries of ICCAT. Recommendations 02-17, 02-20, 03-18, 04-13 remain current against certain non-parties to ICCAT. These measures have proven effective against non-cooperating non-members. The recommendation

against Chinese Taipei also, proved effective against the laundering of bigeye tuna. It would be in ICCAT's interest to seriously apply Recommendation 06-13 against CPCs and non-members alike when breaches occur as it will lead to long term improvement in compliance in ICCAT

What further action could ICCAT take?

ICCAT's performance in this area is sound. Actions against non-Contracting Parties have borne results and reduced IUU fishing activity. Further application of these measures against those CPCs whose nationals are involved in the IUU trade of bluefin tuna for farming in the Mediterranean may well assist in bringing some rigor and control to that fishery.

6. Registration and control of fishing vessels

The registration, control and listing of fishing vessels in ICCAT are covered in a number of ICCAT recommendations. Recommendation 02-22 replaced 00-17 and is a comprehensive and practical recommendation that has been used as a framework for a similar recommendation adopted in the WCPFC. Recommendation 03-12 is a complimentary compliance measure to 02-22 and binds members to register, monitor and control vessels that flag and register for fishing in the ICCAT area.

Resolution 05-07 is a resolution that requests CPCs to check the prior compliance history, previous registry documents and Certificates of Deletion for any vessels that they intend to flag and register to fish in the ICCAT's area. Recommendation 02-21 sets the parameters for the chartering of vessels to allow for developing coastal States to build fishing capacity. Again this is a practical resolution providing it is not abused and that genuine development occurs in the coastal State.

Recommendation 03-14 mandated the implementation of a VMS to be installed and operational on all vessels over 24 metres in length from 19 June 2004. This recommendation has been implemented and places the responsibility for monitoring and control to the CPCs. This recommendation can also extend to vessels less than 24 metres if CPCs feel that it is appropriate.

ICCAT also has in place Recommendation 06-12 which is on a list of vessels presumed to have engaged in IUU fishing activity. This recommendation is well constructed and includes a definition of IUU and a process that allows for listing and deletion.

How has ICCAT performed?

ICCAT is well served by the recommendations that deal with these issues. While it was difficult for the Panel to determine if there were any real issues with vessel registration, the only issues brought to the attention of the Panel were the control on both catching and transshipping capacity in the eastern Atlantic and Mediterranean fisheries. However, this is part of a broader problem mentioned above.

What additional measures could ICCAT adopt?

The Panel suggests that ICCAT consider the IOTC approach of having two vessel lists. The first as described in Recommendation 02-22 and the other a list of vessels actually fishing. This second list acts a real time list of vessels active in the fishery and is smaller and as such easier for CPCs to monitor.

7. Capacity management and reduction

The management of capacity has proved to be a difficult issue in all RFMOs. The challenges between developed and traditional high seas fishing countries, the aspirational rights of small island and coastal developing States and the emergence of large national and multi-national companies keen to establish a competitive advantage are the main drivers that contribute to this problem.

To prevent IUU fishing occurring fishing capacity should largely reflect the fishing opportunity. Overcapacity results in operators fishing outside the rules of the RFMO in order to earn enough income to support the operation of the vessel. The other problem with overcapacity is that the excess vessels tend to be re-flagged to developing countries or moved into other fisheries causing excess capacity in other RFMOs and oceans.

While there are no specific recommendations in ICCAT that deal with capacity, the issue of fishing capacity is dealt with in detail in a number of the species based recommendations. In TAC managed fisheries such as swordfish and bigeye, the TAC itself is the main management tool and the domestic and flag State allocation should in effect control and regulate capacity to opportunity. For bluefin, Annex 1 of Recommendation 06-05 limits capacity to the number of vessels participating in directed fishery for bluefin tuna in 2006. Recommendation 06-06 is useful in that it restricts the movement of fishing capacity between the western and eastern Atlantic fisheries. As noted previously, in 2008 the EC commented that its purse seine fleet in the Mediterranean had increased from 92 vessels in 2007 to 134 vessels in 2008 when a reduction in allowable catch was occurring.

For yellowfin tuna the capacity to fish is restricted in Recommendation 93-04 and for albacore in Recommendation 98-08. At its meeting in 2008, ICCAT will consider the report of a Working Group on Capacity that met earlier the same year in Madrid. This was the second meeting of the working group with the first in North Carolina USA in 2007. The report links overcapacity to over harvesting in some ICCAT fisheries and should result in ICCAT seriously considering adopting a sensible recommendation on capacity limitations at the 2008 meeting.

The development of allocation criteria has helped developing countries gain access to fisheries and has given them the ability to charter in vessels from existing CPCs which helps with development.

How has ICCAT performed?

If Mediterranean bluefin is removed from the judgement then ICCAT has performed quite well in this area and has also managed as noted elsewhere to reduce the incidence of IUU longline fishing in the Convention area as well. ICCAT however needs to remain sensitive to the requirements of developing coastal States and in particular the ongoing artisanal fisheries that are often the main source of income and protein for coastal communities. The other group with a long term interest and with significant historical fishing activity is the recreational and charter fisheries, as discussed above.

What additional measures could ICCAT adopt?

ICCAT should seriously consider the report of the Working Group on Capacity and adopt at its 2008 meeting a recommendation to reduce capacity in all ICCAT fisheries where over-capacity is a problem.

8. IUU fishing

IUU fishing has been an ongoing problem in all of the world's fishery commissions. The problem is the domain of large domestic and international fishing companies and an opportunistic activity undertaken by small companies and individuals. The activity occurs on the high seas and increasingly in the waters of countries that lack the infrastructure and surveillance capacity to deal effectively with IUU activity.

IUU is often perceived as just illegal activity, but the other two elements, unreported and unregulated fishing, are equally important. In ICCAT the incidence of IUU vessels has seriously reduced due to pressure from ICCAT members. However, it is unreported and unregulated activity by CPCs and non-cooperating non-parties that should now be the focus of ICCAT compliance activity.

ICCAT Resolutions 99-11, 01-18, 02-25, 02-26, and Recommendations 03-16, and 06-12 all deal with IUU fishing activities. The first three while acknowledging the issue of IUU fishing are non-binding on the parties. However, Recommendation 03-16 that deals with catching and landing by vessels into ports and cages of IUU product is encouraging. Recommendation 06-12 then provides the rules for listing vessels as IUU vessels in the ICCAT area. There are 17 vessels currently on the ICCAT list of IUU vessels.

How has ICCAT performed?

Poor application of the rules of RFMOs and an ineffective MCS framework facilitates the growth in IUU activity. Both of these elements are enabled by the ICCAT CPCs' failure to ensure compliance with conservation and management measures.

While ICCAT has been successful in dealing with illegal activity it has some way to go before it can claim full success in dealing with unregulated and unreported activities. However some recent initiatives by the EC and other parties give some encouragement for the future.

What further initiatives could ICCAT adopt against IUU activity?

The implementation by CPCs of full and effective MCS tools including observer and compliance arrangements coupled with strong flag and port State controls will deal effectively with IUU fishing activities. There are currently gaps in the application of these processes, although capacity building initiatives with developing countries that are now in place will no doubt prove beneficial in the longer term.

The reporting to ICCAT of suspicious vessels and the trade restrictions applied to non-parties have all proven to be effective in dealing with IUU activity.

9. Statistical document program (SDP)

ICCAT has developed and implemented statistical documentation programs for bluefin, bigeye and swordfish. Recommendations 92-01, 93-02, 93-03, 94-04, 94-05, 96-10, 97-04 and 98-12, all apply to bluefin tuna while 03-19 applies to all three species. Recommendation 00-22 commits the Commission to develop statistical document programs for swordfish and bigeye tuna and for other species managed by ICCAT.

Recommendations 01-21 and 01-22 establish very detailed statistical document programs for bigeye tuna and swordfish. These resolutions have provided a blueprint to other RFMOs when developing SDPs.

At the 2007 meeting, ICCAT adopted Recommendation 07-10 on an ICCAT Bluefin Tuna Catch Documentation Program (CDP). This is a comprehensive recommendation that if properly implemented would assist in controlling the catch and trade of bluefin tuna. Questions have been raised by commentators in other fora concerning the capacity of RFMO Secretariat staff to properly analyse and report on SDP and CDS arrangements so that improvements occur. Uncertainty surrounds all catch documentations schemes and their application. Large trading businesses dominate much of the world's tuna trade and many markets are hungry for fish.

How have the SDPs performed in ICCAT?

These schemes at best help in tracking catch on the world markets. They potentially will work effectively in single point markets such as southern bluefin tuna. They also assist the application of domestic legislation such as the US Lacey Act and can help countries recover shipments from supporting member countries with effective port controls. Chain of custody arrangements and certification may in the long term be better measures. While perhaps not considered strong measures by some they are useful tools and more discriminating markets now insist on proper trade documents to accompany their products from catch to the plate.

What could ICCAT do to improve SDPs and CDP applications?

The move from SDPs to broad-based CDP for bluefin is a useful step in the right direction. These CDP must be able to track product that is used for domestic consumption as well as traded product. ICCAT should develop CDP for all high value fisheries.

ICCAT should consider how the information from the new CDS is to be analysed and managed within the Secretariat.

10. Compliance Committee

The Compliance Committee was established by ICCAT Resolution 95-15. The terms of reference charge the Committee to review the implementation of ICCAT conservation and management measures and domestic measures taken in this regard. The terms of reference further require the Committee to review the port inspection programs and other programs and activities domestically that are focused on identifying problems with non-compliance.

The Compliance Committee reports annually to the Commission on its activities. A reading of the latest annual reports indicates that while the main focus of the work of the Compliance Committee seems to be on the compliance tables a broad range of compliance issues are discussed. However, it does not appear that any real decisions are taken that improve compliance in any meaningful way.

How has the ICCAT Compliance Committee performed?

Without attending a Compliance Committee meeting performance is hard to determine in any concrete way. What is of concern however is that ICCAT still suffers seriously from lack of compliance with even the very basic provisions of the Commission in terms of data provision and compliance with conservation and management measures. In this sense the Compliance Committee fails the test of effectiveness. A strong and enforceable penalty regime would be useful tool for the Compliance committee as at the moment it has not effective way to put pressure on non-compliant CPCs.

What could ICCAT do to improve the functioning of the Compliance Committee?

As mentioned elsewhere in this report, the concept of a Compliance Committee and the terms of reference are sound. The adherence by Contracting Parties to the rules and recommendations made by the Commission however is poor. The Compliance Committee will not fix the underlying problems of this Commission; only political will can.

This Committee would be far more effective if CPCs actually were committed to proper monitoring, control and compliance measures and had the will to deliver on their commitments to the Commission. It is difficult at times to read and then reconcile the annual reports from members with what is actually happening in some of the ICCAT fisheries. A strong and enforceable penalty regime may help to encourage proper compliance.

PART III – Section 4. Institutional practices including the role and functioning of the Secretariat

The administration of ICCAT is managed through the Secretariat, based in the Commission headquarters in Madrid, Spain. The arrangement for the Commission headquarters to be hosted in Spain was made by Commission CPCs in 1970. This agreement is reflected in the *Agreement on Seat between the Spanish State and the International Commission for the Conservation of Atlantic Tunas*.

The CPCs elect an Executive Secretary to serve the Commission and to manage the administrative staff at the office in Madrid. The role of the Executive Secretary is outlined in Article VII of the ICCAT Convention (see **Attachment 3**). The Executive Secretary is supported by an Assistant Executive Secretary, normally an internationally recognised scientist, and a staff of some 20 people recruited either locally or internationally, with preference given to candidates from member countries.

The Secretariat prepares a budget that is submitted to the Standing Committee on Finance and Administration (STACFAD) for consideration. STACFAD then reviews the report and forwards the finalised budget to the Commission for approval. The STACFAD report details the expenditure for the Secretariat over a biennial period and also details the contributions from the CPCs for that period. The annual budget of ICCAT is around \$2.4 million Euros excluding the cost of the annual meetings that is now estimated to be in the order of €500,000.

The Secretariat then manages and reports to members its performance in managing the budget for the Commission. The performance of the Secretariat in that area is very good with action taken in recent times to recover unpaid contributions and reducing the liabilities of the Commission. This appears to be a reasonably standard arrangement for all tuna RFMOs and the size of the support staff is often reflective of the size of the Commission membership and the multi-species nature of the fisheries that are to be managed by the Commission CPCs. The institutional arrangements of ICCAT and the formulae for contributions have been periodically reviewed. Suggestions have been made to the Review Panel that the basis for contributions should be revisited to take into account lesser activities of canning. Transparency in areas of budgeting and financial management within ICCAT is very good.

The financial reports of the Commission are audited annually which is good business practice. Auditors should be accorded the task of auditing ICCAT for a reasonable period so as to develop an understanding of the business of the Commission.

Strategic planning for the Commission should be a regular part of the agenda and a large part of the work of the Executive Secretary and the Chairman and in the case of ICCAT the assistant Chairs and Chairs of the Standing Committees as well. From what the Review Panel could determine this is not a formal process within ICCAT and is attended to on more of an ad hoc basis. However in fairness to ICCAT Resolution 06-18 “*Resolution by ICCAT to Strengthen ICCAT*” is a good start and its focus is correct. The resolution established a Working Group on the Future of ICCAT and tasked it to review the Convention and the conservation and management measures and provide a work plan for ICCAT. The first formal meeting of this group is scheduled for 2009 to follow the independent review of ICCAT by this Review Panel.

The work load and expectations of the Commission Secretariat should be carefully managed by members at the annual meeting. ICCAT has a medium sized permanent Secretariat staff of 23 people and this reflects a large membership base and the multi-species nature of the fishery. There is a tendency by CPCs to think the resources of the Secretariat are limitless and to continue to develop tasks and functions for them. This does not work and every time the Commission decides to undertake additional functions it should consider, as part of each decision, how the additional work affects the workload and capacity of the Secretariat to perform its tasks efficiently. If workload savings can not be identified then in agreeing to the recommendation additional resourcing should be provided to the Secretariat. This is not to suggest that Secretariats should be allowed to continue to grow but a reflection that their resourcing should match workloads and expectations of timely service by CPCs.

1. How has ICCAT performed with institutional arrangements?

The ICCAT Secretariat is very well regarded by CPCs and is very capable. It performs very well in preparing reports for annual and intercessional meetings. Its financial management arrangements are well established and there is a strong sense of accountability. The Secretariat’s scientific and expert staff are well regarded by CPCs and provide a good service. The staff members are always available for Commission CPCs to consult and obviously are conscious that they have been appointed to provide a good service to CPCs. One issue raised with the Panel was that the Commission should always ensure that there is appropriate representation at the Secretariat from members to reflect the diverse membership base of ICCAT.

Cooperation between RFMOs has always been an agreed process as has cooperation as appropriate with the FAO. ICCAT has in place cooperative arrangements with the world’s tuna RFMOs and has as part of its basic documents cooperative arrangements with FAO. ICCAT also has in place cooperative arrangements with the General Fisheries Commission for the Mediterranean (GFCM). ICCAT has been an integral part of the joint tuna RFMO consultations started in 2007 at Kobe. ICCAT has some relationship with NGOs but could move to strengthen its inclusiveness with these stakeholders. The Executive Secretary plays an important role in all of these arrangements and relationships and ICCAT is well served by the current Executive Secretary in this capacity.

2. What improvements could ICCAT make in institutional arrangements?

The WCPFC has within its budget a “Special Requirements fund” that has been instituted to ensure that developing member countries have the capacity to contribute to the work of the Commission. The WCPFC Commission also factors into its budget funding to ensure that developing States have the travel and per diems necessary to attend the annual meetings and intercessional meetings of the Commission.

In ICCAT, funding for attendance at ICCAT scientific meetings is available through extra-budgetary voluntary contributions made to special data and capacity building funds, administered by the ICCAT Secretariat in conjunction with the SCRS Chair and species group rapporteurs.

ICCAT should review at regular intervals the staffing profile of the Secretariat and if necessary adjust it to changes and to reflect workloads.

ICCAT should ensure that the Secretariat and the Commission are granted privileges and immunities in all its members.

ICCAT should ensure where practical the Secretariat staff positions are made available to people for all members of ICCAT to apply for.

PART IV

CONCLUSIONS AND RECOMMENDATIONS

Part IV provides a list of conclusions and recommendations in the order that they appear in the report. The conclusions and recommendations have generally been copied as they appear in the main text, but sometimes modifications have been necessary to provide context. The list is provided here for ease of reference and follow up.

1. In light of developments in recent years, the Panel recommends that the Commission consider the need to adopt the ecosystem approach or ecosystem-based management in a more formal and systematic manner. It should also examine the question of whether there is a need to amend the Convention in this regard.
2. The precautionary approach is clearly established in the Rio Declaration of 1992 and has since been incorporated in numerous environmental documents, both domestic and international. In the light of these latest developments among RFMOs as well as the wide-spread adoption of the concept in practice, the Panel recommends that ICCAT formally and systematically adopt the precautionary approach.
3. The Panel recommends that, in order to implement the compatibility requirement of UNFSA, Article II of the ICCAT Convention be amended or supplemented by additional provisions, or other appropriate measures be taken, along the lines as reflected in the modern instruments.
4. The Panel considers it essential that the Commission gives serious consideration to the allocation problem with a view to developing a new, preferably binding, formula for fishing allocation. This could be done, without amending the Convention, by adopting a new Recommendation revising or replacing the current criteria in Ref. 01-25.
5. In view of the well-recognized fact that some fishing vessels, particularly those engaged in IUU fishing, often repeat their offences taking advantage of lack of severe sanctions, in the Panel's view, the Commission should adopt provisions on the need to apply sanctions sufficient to secure compliance in accordance with the provisions of UNFSA and the FAO Compliance Agreement.
6. The Panel considers that ICCAT should take further action in order to expand and strengthen port State measures in conformity with UNFSA, taking into account the recent work of FAO to draft a new international agreement on port State control.
7. The Panel recommends that the Commission review immediately the adequacy and effectiveness of its MCS and enforcement measures with a view to adopting measures for further strengthening them, including regional on-board observer program and boarding and inspection scheme.
8. In the Panel's view, non-compliance with ICCAT measures is one of the most serious problems that await urgent attention of the Commission. The effectiveness and credibility of ICCAT depend largely on how much the Commission can succeed in improving the situation in the immediate future. The Commission must squarely deal with the problem and strengthen its measures and mechanisms.
9. ICCAT has done well in adopting market-or trade-related measures against IUU activities and the product originating in such activities. These measures are, as the Code of Conduct and the IPOA-IUU stress, adopted carefully through multilaterally-agreed procedures, and applied in a fair, transparent and non-discriminatory manner, and consistent with WTO rules.
10. The Panel is of the view that the Commission should review its decision-making procedure with a view to creating mechanisms for minimizing the objections and reviewing the objections through an expert body, taking into account the recent trends in other RFMOs.
11. The Panel recommends that the Commission consider establishing dispute settlement procedures, including the possible use of an expert panel and compulsory proceedings entailing binding decisions, either by amending the Convention or otherwise.

12. The Panel considers that the Commission should take note of recent developments in other RFMOs and consider further cooperative measures with Chinese Taipei in view of its significant level of fishing activities in the Convention area.
13. ICCAT has adopted strong measures, particularly Rec. 06-12, requiring CPCs to take a number of strict actions to deter IUU activities of the vessels of non-cooperating non-Contracting Parties. The ICCAT measures against non-Parties have generally been regarded as effective as evidenced by the facts that the number of IUU fishing vessels flying their flag have considerably been reduced over the last several years, and that a number of non-Parties which had previously been non-cooperating have become Parties to the Convention.
14. The Panel considers that efforts in assistance to developing States should be further strengthened, with the expanded participation of donors.
15. ICCAT has been making commendable efforts in cooperating with other RFMOs, particularly those dealing with tuna. Although it is not specified in the global law of the sea instruments, such efforts are certainly conducive to the enhancement of mutual cooperation among States, which is one of the key objectives enshrined in the preambles to UNCLOS and UNFSA. These efforts should therefore be continued and expanded.
16. If ICCAT wants to give more equal opportunities to scientists of all Parties to become chair of the SCRS, it should consider a special fund to pay the salaries and expenses related to ICCAT activities of the SCRS chair.
17. The Panel recommends that the various ICCAT lists be consolidated to increase efficiency and usefulness and that additional resources be secured, as necessary, to support both the fisheries management and the scientific needs of ICCAT.
18. The Panel recommends that target reference points be agreed for all species under ICCAT's purview to ensure that the Commission's objective has a high probability of being met, consistent with UNFSA and the precautionary approach.
19. For albacore tuna, the Panel recommends that catches for the northern stock be decreased such that fishing mortality is consistent with F_{MSY} . The Panel also recommends that more information be collected for Mediterranean albacore and that an assessment be conducted at the earliest possible date.
20. For bluefin tuna, the Panel concludes that the Commission objectives are not being met, and by far.
21. While recognising the difficulties of collecting reliable data on marlins and sailfish, particularly when caught as relatively rare by-catches in fisheries aimed principally at other species, the Panel notes that the duty to conserve all species under the purview of ICCAT implies an obligation to collect and make available relevant information to assess the status of the resources and the effect of exploitation on them.
22. On sailfish, the Panel considers that it would be prudent to stabilise or reduce fishing mortality, but the paucity of information makes it difficult to quantify any reduction that may be required.
23. The Panel is concerned that there appears to be little knowledge and information on skipjack tuna. The Panel considers that skipjack tuna fisheries should be managed in such a way as not to cause conservation concerns for other species, particularly including other species of tunas.
24. The Panel notes that recommending a TAC of 14 000t for north Atlantic swordfish, when MSY is estimated to be 14 100t leaves very little margin for uncertainties in the assessment and error of implementation.
25. The Panel considers that swordfish fisheries in the Mediterranean are in need of further coordinated management in order to achieve the Commission's objective. The apparent success of past management initiatives in the north Atlantic should provide sufficient incentives for the Commission and CPCs to act decisively in the management of Mediterranean swordfish fisheries.
26. Given the steady decline in catches of yellowfin tuna, the Panel is surprised that stock assessments are not conducted more frequently.

27. The Panel notes with great concern that, three years after it became mandatory through Rec. 04-10 for CPCs to report Task I and Task II data for sharks, in accordance with ICCAT data reporting procedures, including available historical data, most parties are still not complying with the recommendation. The Panel recommends that CPCs comply with Rec. 04-10 immediately.
28. The Panel urges CPCs to make data and scientific expertise available to the SCRS so that progress can be achieved in short order on evaluating the effect the fisheries under the purview of ICCAT have on seabirds and turtles.
29. The Panel recommends that CPCs ensure that scientists participating in SCRS activities have a good balance between quantitative skills and knowledge of the fisheries and of tuna biology.
30. The Panel recommends that CPCs send trained and knowledgeable scientists to the SCRS meetings for all fisheries in which they have substantial involvement.
31. The Panel recommends that CPCs collect accurate Task I and Task II data from all their fisheries according to ICCAT protocols and report them in a timely fashion to the ICCAT Secretariat. The Panel further recommends that consideration be given to modify the ICCAT observer program to collect such data.
32. The Panel recommends that the provision of Rec. 07-08 preventing access to VMS data less than 3 years old by SCRS scientists be removed at the next Commission meeting and that SCRS scientists be immediately given access to current VMS data.
33. The Panel recommends that ICCAT identifies three or four priority knowledge gaps that need to be resolved and that scientific programs be developed to resolve those issues in a timely manner.
34. The Panel recommends that for stocks where fishing mortality is estimated to be close to F_{MSY} or biomass is expected to be less than or close to B_{MSY} , comprehensive conventional tagging programs be developed and carried out to estimate fishing mortality and biomass more reliably.
35. The Panel recommends that ICCAT develop and adopt more effective measures to deal with the catch of small yellowfin tuna including closer regulation and reduction in the use of FADs on the West Africa coast.
36. The Panel recommends that more effective measures be developed and adopted to deal with the catch of small bigeye tuna including closer regulation of FAD use; that efforts continue to be made to improve the timeliness and accuracy of Task I and Task II data; that ICCAT continues to rigorously follow the scientific advice in the setting of overall total allowable catches for the fishery to have a high probability that the stock stays above B_{MSY} and that if longlining activity increases in a response to demand, that this be immediately factored into management decisions.
37. The Panel notes that with skipjack prices around \$2000 per tonne further pressure will be applied to these stocks and ICCAT will have no measure in place to manage the additional catches. This does not appear to be a sound approach for the management of this fishery.
38. The Panel recommends that all fishing for East Atlantic and Mediterranean bluefin tuna be immediately suspended until the CPCs involved in those fisheries, their nationals and companies operating in their waters, agree to fully abide by the rules and recommendations of ICCAT and international fisheries law. The Panel considers that this decision is the only way to stop the continuation of what is seen by observers and by other CPCs as a travesty in fisheries management.
39. The Panel further recommends that the suspension only be lifted when ICCAT CPCs adopt measures consistent with ICCAT decisions and individual CPCs can demonstrate that they can control and report on their catch. Alternatively the Panel recommends that ICCAT implements a full Secretariat based auditing and inspection regime for bluefin tuna fishing in the eastern Atlantic and Mediterranean.
40. In addition the Panel recommends that the extent and consequences of mixing of the East and West Atlantic stocks be fully evaluated as a matter of priority, including, if necessary through further field studies and research program to better understand migratory and spawning patterns. The basis for management should be made consistent with the results of those investigations as soon as the results are available. This

recommendation is not to be used in any way as an excuse for inaction on the first recommendation; it is supplementary research.

41. The Panel further recommends that ICCAT consider an immediate closure of all known bluefin tuna spawning grounds at least during known spawning periods.
42. The Panel is concerned at the status of the blue and white marlin stocks. The Panel considers that Recommendation 06-09 could be enhanced with the immediate provision of improved data to the SCRS. The Panel is concerned that there may be insufficient data for the next stock assessment (in 2010) to confidently assess stock size and status. Recommendation 06-09 should be reviewed to ensure that effective assessment and decisions can be taken and implemented in relation to these stocks no later than 2010.
43. The Panel is concerned at the management of the fisheries on Mediterranean swordfish and recommends that the implementation of 07-01 be closely monitored and if necessary decisions to reduce the catch to levels consistent with scientific advice be taken at the Commission's 2008 meeting; that drift netting and gill netting cease immediately in the Mediterranean; and that action is taken by Mediterranean CPCs to immediately improve the quality and timeliness of data for this species provided to ICCAT.
44. Recommendation 07-07 is a significant improvement on ICCAT's previous approach to the by-catch issue. However, the Panel recommends that ICCAT develop a stronger approach generally to by-catch and develop and adopt appropriate mitigation measures including reporting on the effectiveness of these measures throughout the fisheries.
45. The Panel is concerned that with the present situation in relation to data and compliance, the conclusion could be drawn that some parties to ICCAT hold in contempt the resolutions and recommendations in relation to the management of sharks and shark by-catch and the provision of related data. The Panel recommends that CPCs immediately take the management of shark fisheries and shark by-catch seriously and implement and comply with the ICCAT recommendations and resolutions to provide accurate and reliable data to the SCRS.
46. Consistent with the recommendations for bluefin tuna fisheries in the east Atlantic and Mediterranean, the Panel recommends that in respect of bluefin tuna farming all fishing for eastern and Mediterranean bluefin be suspended immediately until all CPCs involved in farming activities develop and implement controls necessary to effectively control, monitor and report the catch, transfer and grow-out of bluefin tuna in the farming operations in the Mediterranean. The new measures to be taken should include: the adoption of the recommendations on farming outlined in 06-07; the development of consistent auditable systems to monitor the number and weight of fish transferred into the grow-out cages; the use of independent auditors to randomly check farming operations with CPC representatives; full catch and market documentation; and the development of a strict penalty regime to be applied to member nationals or companies found in violation of the farming provisions.
47. The Panel strongly recommends that ICCAT immediately discontinue the practice of allowing the carry forward of uncaught allocations in all fisheries.
48. The Panel recommends that for all fisheries in ICCAT, fishing capacity is immediately adjusted to reflect fishing opportunities or quota allocations.
49. Given the numerous references and recommendations and resolutions in the ICCAT Compendium relating to improvements in data collection, the Panel finds it difficult to formulate a recommendation that might make a difference. The Panel strongly believes that: misreporting must stop immediately; CPCs must collect and report Task I and Task II data in a timely manner within the agreed time limits; effort should be continued to build capacity in developing CPCs and improve reporting by developed CPCs and CPCs who continually fail to comply should be subject to an appropriate penalties regime. Such a regime should be severe and be enforceable.
50. The Panel recommends that ICCAT prepare a discussion paper on transparency, fairness and equity within ICCAT and that ICCAT reviews its policy on NGOs attendance at ICCAT meetings.
51. The Panel recommends that the SCRS endeavour to provide simple, succinct and user-friendly advice to fisheries managers and Commissioners on the status of ICCAT stocks and the expected effects of potential

management measures; that ICCAT Contracting Parties review their current management recommendations to ensure that they align with the current scientific assessment of the status of the stocks; and that ICCAT consider seriously the structure and basis of its decision making framework particularly in relation to fisheries management. A decision making framework should be adopted that guides the outcome of decisions and forces discipline consistent with the objectives of ICCAT on CPCs.

52. The Panel recommends that, once the binding criteria for allocation are developed pursuant to previous recommendation and agreed the current allocations should be reviewed and either confirmed or amended; that ICCAT should consider allowing the purchase and transferability of quota from existing to new members as a method to encourage compliance and the entry of new members; and that any future allocations to new members should be fairly negotiated and the agreed criteria strictly applied. In reviewing current allocations paragraphs 2, 16, 17, 18 and 22 of 01-25 should be applied and those parties found not to be in compliance should have their allocations reduced until they do comply with these provisions.
53. The Panel recommends that CPCs immediately take seriously their obligations with respect to compliance with quota allocations and fishing opportunities and effectively manage their quota allocations and report honestly and accurately and in a timely manner their catch to ICCAT; that the key obligation should be reinforced by the development of an appropriate penalty regime of significant consequence to provide a real incentive for members to cooperate.
54. The Panel suggests that ICCAT consider the implications of a quota trading market in ICCAT.
55. The Panel noted the importance of the recreational and sport fishing sectors and the interest shown by the sector in providing submission to the review (two of the eight submissions received were from the sport fishing fraternity.) The Panel noted with concern that the Working Group on sport and recreational fishing scheduled to meet in 2007 or early 2008 will now not meet until 2009.
56. The Panel recommends that ICCAT CPCs take this issue seriously and be more inclusive towards the recreational and sport fishing sector in future deliberations of ICCAT regarding fisheries management. While RFMOs were established principally to manage commercial fisheries, the “real interest” of recreational and charter industries predates the commercial sectors in some of these fisheries. In addition the recreational and charter industries have developed to the point where they are effective lobby groups in their own right and good public policy would suggest that they be incorporated into the ICCAT process.
57. The Panel recommends that ICCAT CPCs should immediately apply fully the rules and measures adopted by ICCAT and through domestic arrangements including flag and port State controls, observer programs and VMS, provide effective control over their nationals; CPCs must agree to provide accurate and timely data and information on MCS activities and arrangements to ICCAT; CPCs should also consider immediately developing a fair and tough penalty regime that will be applied to defaulting CPCs.
58. The Panel notes the actions that ICCAT has taken over time to apply non- discriminatory trade measures to countries that do not cooperate with the Commission. The Panel suggests that ICCAT investigate applying similar penalty arrangements to members that continually break ICCAT rules and regulations. In concert it is also recommended that ICCAT investigate and develop a universal penalty regime that either has the capacity to suspend member countries that systematically break ICCAT regulations or can apply significant financial penalties for breaches. These measures need to be severe in the sense that member should clearly understand that they will suffer significant economic consequences if their actions are in breach of ICCAT rules.
59. On port and flag States measures, the main improvement that ICCAT could make is to modernise its practices and adopt as appropriate the port State measures developed by the FAO. The other major advance would be to make sure that all CPCs have in place domestic port State arrangements and controls that allow them to comply fully with the provisions of Recommendation 97-10. Capacity building based on the CCAMLR model may be relevant for ICCAT to adopt. The application of port State measures should be reported in the annual report by CPCs to ICCAT.
60. ICCAT’s performance in the area of trade and market related measures is sound. Actions against non-member countries have borne results and reduced IUU fishing activity. Further application of these measures against those CPCs whose nationals are involved in the IUU trade of bluefin tuna for farming in the Mediterranean may well assist in bringing some rigor and control to that fishery.

61. On registration and control of fishing vessels, the Panel suggests that ICCAT consider the IOTC approach of having two vessel lists. The first as described in Recommendation 02-22 and the other a list of vessels actually fishing. This second list acts a real time list of vessels active in the fishery and is smaller and as such easier for CPCs to monitor.
62. ICCAT should seriously consider the report of the Working Group on Capacity and adopt at its 2008 meeting a recommendation to reduce capacity in all ICCAT fisheries where over-capacity is a problem.
63. The implementation by CPCs of full and effective MCS tools including observer and compliance arrangements coupled with strong flag and port State controls will deal effectively with IUU fishing activities. There are currently gaps in the application of these processes, although capacity building initiatives with developing countries that are now in place will no doubt prove beneficial in the longer term.
64. The reporting to ICCAT of suspicious vessels and the trade restrictions applied to non-parties have all proven to be effective in dealing with IUU activity.
65. The move from SDPs to broad-based CDP for bluefin is a useful step in the right direction. These CDP must be able to track product that is used for domestic consumption as well as traded product. ICCAT should develop CDP for all high valued fisheries.
66. The concept of a Compliance Committee and the terms of reference are sound. The adherence by members to the rules and recommendations made by the Commission however is poor. The Compliance Committee will not fix the underlying problems of this Commission; only political will can. The Compliance Committee would be far more effective if CPCs actually were committed to proper monitoring, control and compliance measures and had the will to deliver on their commitments to the Commission. It is difficult at times to read and then reconcile the annual reports from members with what is actually happening in some of the ICCAT fisheries. A strong and enforceable penalty regime may help to encourage proper compliance.
67. ICCAT might consider reviewing the arrangements for assisting developing countries in the WCPFC for application in ICCAT.
68. ICCAT should review at regular intervals the staffing profile of the Secretariat and if necessary adjust it to changes and to reflect workloads.
69. ICCAT should ensure that the Secretariat and the Commission are granted privileges and immunities in all its members.
70. ICCAT should ensure where practical the Secretariat staff positions are made available to people for all members of ICCAT to apply for.

Terms of Reference of the Performance Review

Objective

The objective of the work to be carried out by the Experts shall be to submit reports presenting:

1. The evaluation and analysis of the ICCAT Convention Basic Texts.
2. The assessment on the achievement of ICCAT's objectives (measures in place to achieve ICCAT's objectives and ways to achieve them).
3. Recommendations on how to improve ICCAT performance, including any possible change to the ICCAT Convention.

Methodology

In coordination with the two other independent Experts, and using as a basis the criteria contained in Annex 3, the Expert shall determine and apply the methodology to be used.

Criteria

The criteria as presented to the Commission (during the 20th Regular Meeting, Antalya, November 2007; attached herewith) are considered as "minimum". The Experts are invited to consider them as a basis for their evaluation.

Work schedule

The work estimated is based on 50 working days.

1. Provisional report

The provisional report will contain the evaluation and the assessment. This report will be sent to the ICCAT Secretariat before 4 August 2008.

2. Revision of the provisional report by the Committee:

The Experts will meet the Committee, composed by the ICCAT officers, to present and discuss the provisional report.

3. Final report:

The final report will contain the evaluation, the assessment and the recommendations. This final report will be:

- sent to the ICCAT Secretariat before 15 September 2008.
- immediately distributed to ICCAT CPCs so that it can be considered at the 16th Special meeting of ICCAT (17-24 November 2008),
- discussed at the first meeting of the Working Group on the Future of ICCAT (at a date and place to be determined by the Commission in late 2008 or early 2009).

The Panel Review Coordinator will attend the 16th Special meeting of ICCAT.

Criteria for Reviewing the Performance of Regional Fisheries Management Organizations (RFMOs)

	<i>Area</i>	<i>General criteria</i>	<i>Detailed criteria</i>
1	<i>Conservation and management</i>	Status of living marine resources	<ul style="list-style-type: none"> • Status of major fish stocks under the purview of the RFMO in relation to maximum sustainable yield or other relevant biological standards. • Trends in the status of those stocks. • Status of species that belong to the same ecosystems as, or are associated with or dependent upon, the major target stocks (hereinafter “non-target species”). • Trends in the status of those species.
		Data collection and sharing	<ul style="list-style-type: none"> • Extent to which the RFMO has agreed formats, specifications and timeframes for data submission, taking into account UNFSA Annex I. • Extent to which RFMO members and cooperating non-members, individually or through the RFMO, collect and share complete and accurate fisheries data concerning target stocks and non-target species and other relevant data in a timely manner. • Extent to which fishing data and fishing vessel data are gathered by the RFMO and shared among members and other RFMOs. • Extent to which the RFMO is addressing any gaps in the collection and sharing of data as required.
		Quality and provision of scientific advice	<ul style="list-style-type: none"> • Extent to which the RFMO receives and/or produces the best scientific advice relevant to the fish stocks and other living marine resources under its purview, as well as to the effects of fishing on the marine environment.
		Adoption of conservation and management measures	<ul style="list-style-type: none"> • Extent to which the RFMO has adopted conservation and management measures for both target stocks and non-target species that ensures the long-term sustainability of such stocks and species and are based on the best scientific evidence available. • Extent to which the RFMO has applied the precautionary approach as set forth in UNFSA Article 6 and the Code of Conduct for Responsible Fisheries Article 7.5, including the application of precautionary reference points. • Extent to which the RFMO has adopted and is implementing effective rebuilding plans for depleted or overfished stocks. • Extent to which the RFMO has moved toward the adoption of conservation and management measures for previously unregulated fisheries, including new and exploratory fisheries. • Extent to which the RFMO has taken due account of the need to conserve marine biological diversity and minimize harmful impacts of fisheries on living marine resources and marine ecosystems. • Extent to which the RFMO has adopted measures to minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.
		Capacity management	<ul style="list-style-type: none"> • Extent to which the RFMO has identified fishing capacity levels commensurate with long-term sustainability and optimum utilization of relevant fisheries. • Extent to which the RFMO has taken actions to prevent or eliminate excess fishing capacity and effort.

		Compatibility of management measures	<ul style="list-style-type: none"> • Extent to which measures have been adopted as reflected in UNFSA Article 7.
		Fishing allocations and opportunities	<ul style="list-style-type: none"> • Extent to which the RFMO agrees on the allocation of allowable catch or levels of fishing effort, including taking into account requests for participation from new members or participants as reflected in UNFSA Article 11.
2	<i>Compliance and enforcement</i>	Flag State duties	<ul style="list-style-type: none"> • Extent to which RFMO members are fulfilling their duties as flag States under the treaty establishing the RFMO, pursuant to measures adopted by the RFMO, and under other international instruments, including, inter alia, the 1982 Law of the Sea Convention, the UNFSA and the 1993 FAO Compliance Agreement, as applicable.
		Port State measures	<ul style="list-style-type: none"> • Extent to which the RFMO has adopted measures relating to the exercise of the rights and duties of its members as port States, as reflected in UNFSA Article 23 and the Code of Conduct for Responsible Fisheries Article 8.3. • Extent to which these measures are effectively implemented.
		Monitoring, control and surveillance (MCS)	<ul style="list-style-type: none"> • Extent to which the RFMO has adopted integrated MCS measures (e.g., required use of VMS, observers, catch documentation and trade tracking schemes, restrictions on transshipment, boarding and inspection schemes). • Extent to which these measures are effectively implemented.
		Follow-up on infringements	<ul style="list-style-type: none"> • Extent to which the RFMO, its members and cooperating non-members follow up on infringements to management measures.
		Cooperative mechanisms to detect and deter non-compliance	<ul style="list-style-type: none"> • Extent to which the RFMO has established adequate cooperative mechanisms to both monitor compliance and detect and deter non-compliance (e.g., compliance committees, vessel lists, sharing of information about non-compliance). • Extent to which these mechanisms are being effectively utilized.
		Market-related measures	<ul style="list-style-type: none"> • Extent to which the RFMO has adopted measures relating to the exercise of the rights and duties of its members as market States. • Extent to which these market-related measures are effectively implemented.
3	<i>Decision-making and dispute settlement</i>	Decision-making	<ul style="list-style-type: none"> • Extent to which RFMO has transparent and consistent decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner.
		Dispute settlement	<ul style="list-style-type: none"> • Extent to which the RFMO has established adequate mechanisms for resolving disputes.
4	<i>International cooperation</i>	Transparency	<ul style="list-style-type: none"> • Extent to which the RFMO is operating in a transparent manner, as reflected in UNFSA Article 12 and the Code of Conduct for Responsible Fisheries Article 7.1.9. • Extent to which RFMO decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.
		Relationship to cooperating non members	<ul style="list-style-type: none"> • Extent to which the RFMO facilitates cooperation between members and non members, including through the adoption and implementation of procedures for granting cooperating status.
		Relationship to non-cooperating non-members	<ul style="list-style-type: none"> • Extent of fishing activity by vessels of non-members that are not cooperating with the RFMO, as well as measures to deter such activities.

		Cooperation with other RFMOs	<ul style="list-style-type: none"> • Extent to which the RFMO cooperates with other RFMOs, including through the network of Regional Fishery Body Secretariats.
		Special requirements of developing States	<ul style="list-style-type: none"> • Extent to which the RFMO recognizes the special needs of developing States and pursues forms of cooperation with developing States, including with respect to fishing allocations or opportunities, taking into account UNFSA Articles 24 and 25, and the Code of Conduct of Responsible Fisheries Article 5. • Extent to which RFMO members, individually or through the RFMO, provide relevant assistance to developing States, as reflected in UNFSA Article 26.
5	<i>Financial and administrative issues</i>	Availability of resources for RFMO activities	<ul style="list-style-type: none"> • Extent to which financial and other resources are made available to achieve the aims of the RFMO and to implement the RFMOs decisions.
		Efficiency and cost-effectiveness	<ul style="list-style-type: none"> • Extent to which the RFMO is efficiently and effectively managing its human and financial resources, including those of the Secretariat.

Documents available on www.iccat.int such as:

Basic Texts: <http://www.iccat.int/Documents/Commission/BasicTexts.pdf>

Recommendations and Resolutions: <http://www.iccat.int/RecsRegs.asp>

Compendium of Management Recommendations and Resolutions Adopted by ICCAT for the Conservation of Atlantic Tunas and Tuna-like Species”:

http://www.iccat.int/Documents/Recs/ACT_COMP_2007_ENG.pdf

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**Review Panel's Letter Seeking Comment to Contracting and non-Contracting Parties,
the NGO Community and other Regular Stakeholder Groups
with an Interest in ICCAT Affairs**

(ICCAT SALIDA # 476, dated 4 April 2008)

Subject: ICCAT PERFORMANCE REVIEW

Dear ICCAT Contracting Parties, Cooperating non-Contracting Parties, Entities or Fishing Entities (CPCs) as well as stakeholders:

Recently I have been appointed by the ICCAT members to a three-person panel to review the performance of ICCAT. By way of introduction, my name is Glenn Hurry and I am the Managing Director of the Australian Fisheries Management Authority and Chairman of the Western and Central Pacific Fisheries Commission. My fellow panel members are J.J Maguire a well known and internationally respected fisheries scientist from Canada and Professor Moritaka Hayashi who is the Professor in International Law at Waseda University in Japan. Many of you will remember Professor Hayashi with affection from his former role as Assistant Director-General of the FAO, in charge of its Fisheries Department.

The panel has been asked to submit reports presenting:

1. The evaluation and analysis of the ICCAT basic texts,
2. The assessment on the achievement of ICCAT's objectives (measures in place to achieve ICCAT's objectives and ways to achieve them), and
3. Recommendations on how to improve ICCAT performance, including possible changes to the ICCAT Convention.

These three tasks are to be performed utilising as a minimum the Kobe criteria for reviewing the performance of RFMOs that many of you will no doubt be familiar with.

With some 45 CPCs, including the European Community, it is not possible in the time allowed for the review panel to visit individual CPCs to discuss issues of performance and reform with you. However, we are aware that many CPCs and stakeholders have strong views both on ICCAT's performance and on potential reforms you would like to see considered and implemented.

In accepting the task of reviewing ICCAT's performance the panel was of the view that it wanted to conduct a thorough and transparent review and be able to present to ICCAT CPCs and stakeholders a constructive and forward looking report that would help ICCAT move forward into the future. As such we are writing to you to seek your views both on ICCAT's past performance including success and failures that you see as being important and importantly constructive suggestions that you have for improving the organisation. These suggestions could relate to issues such as modernising the Convention, improving the decision making processes, meeting procedures, improving stock management and assessment procedures, data collection and sharing, conservation and management measures, resource sharing or other issues you consider to be important.

We are genuinely interested in your views and suggestions and would encourage you to send your submission to info@iccat.int (ICCAT Review Panel) or to:

The ICCAT Review Panel
calle Corazon de Maria, 8, 6º
28002 Madrid
Spain

In order for the Review panel to complete its work, these submission will need to be lodged by the 10th of May 2008. The panel is due to lodge a draft report in August and a final report to ICCAT in September 2008. This report will then be considered and discussed at the Special Meeting of ICCAT in November 2008.

Thank you in advance and we look forward to receiving your submission.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Glenn Hurry', with a large, sweeping flourish extending to the left and another smaller flourish to the right.

Glenn Hurry
Convenor
ICCAT Review Panel

Article VII of the ICCAT Convention

The Commission shall appoint an Executive Secretary who shall serve at the pleasure of the Commission. The Executive Secretary, subject to such rules and procedures as may be determined by the Commission, shall have authority with respect to the selection and administration of the staff of the Commission. He shall also perform, *inter alia*, the following functions as the Commission may prescribe:

- (a) coordinating the programmes of investigation by the Contracting Parties;
- (b) preparing budget estimates for review by the Commission;
- (c) authorising the disbursement of funds in accordance with the Commission's budget;
- (d) accounting for the funds of the Commission;
- (e) arranging for co-operation with the organizations referred to in Article XI of this Convention;
- (f) preparing the collection and analysis of data necessary to accomplish the purposes of the Convention particularly those data relating to the current and maximum sustainable catch of tuna stocks;
- (g) preparing for approval by the Commission scientific, administrative and other reports of the Commission and its subsidiary bodies.