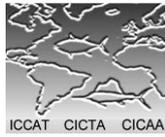


INTERNATIONAL COMMISSION FOR THE  
CONSERVATION OF ATLANTIC TUNAS



COMMISSION INTERNATIONALE POUR LA  
CONSERVATION DES THONIDES DE L'ATLANTIQUE

COMISIÓN INTERNACIONAL PARA LA  
CONSERVACIÓN DEL ATÚN ATLÁNTICO

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**PLE-103/2016**

**REPORT OF THE SECOND  
INDEPENDENT PERFORMANCE REVIEW**

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

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October 2016

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

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## EXECUTIVE SUMMARY

In accordance with international best practice, regional fisheries management organisations (RFMOs) periodically undertake reviews of their performance in executing their mandates. ICCAT undertook a first performance review in 2008 and, at the 2015 Annual Meeting in Malta, it decided to conduct a second performance review in 2016.

ICCAT appointed in 2016 an independent three-person Performance Review Panel consisting of John Spencer (Fisheries Manager and former Head of Delegation for the European Union in tuna and non-tuna RFMOs) as fisheries management expert, Jean-Jacques Maguire (an independent scientist with considerable experience in providing scientific advice and member of the 2008 Panel as scientific expert) and Erik J. Molenaar (NILOS, Utrecht University & JCLOS, UiT The Arctic University of Norway) as legal expert. John Spencer was appointed as Panel Coordinator.

The terms of reference (TOR) of the Review Panel (Attachment 1) were consistent both with those developed at a Joint Meeting of Tuna RFMOs, in Kobe, Japan, in January 2007 and with the TOR of the 2008 Performance Review Panel. The 2016 TOR permitted the Performance Review Panel to undertake an extensive review of ICCAT's performance against its objectives in the period 2008 to 2016; a particularly active period for ICCAT. The Panel's recommendations, if adopted, would contribute to further strengthening ICCAT, which is an already well performing tuna RFMO.

The Panel Report notably reviews ICCAT's Basic Texts as well as the most recent version of the draft Amended ICCAT Convention; the status of the stocks and the scientific process; the development and implementation of conservation and management measures; compliance with those measures; and flag State and port State duties. In the final part, the recommendations of the Panel are summarised for easy reference. The Report also reviews whether, and to what extent, the recommendations of the 2008 Panel were addressed by ICCAT.

The general assessment of the 2016 Panel on ICCAT's performance is as follows. On the positive side:

- That ICCAT made significant progress in strengthening its performance since the 2008 Performance Review; its CPCs and Secretariat should be commended for their efforts;
- That, in the main, ICCAT has in place appropriate measures to conserve stocks in line with ICCAT's objective of maintaining stocks at  $B_{MSY}$ ;
- In particular, in regard to the 2008 Panel's main criticism on eastern bluefin tuna, ICCAT has redressed the situation, both in terms of the status of the stock and the conduct of the fishery. Whilst there should be no complacency, the sustained efforts of CPCs and the Secretariat are particularly noteworthy;
- Considerable progress has also been made by ICCAT with regard to the re-building plans, with the exception of marlins;
- That ICCAT scores reasonably well compared with other RFMOs on associated species including sharks, seabirds and turtles;
- That ICCAT has in place quota allocation schemes for most of the key stocks, which reinforce the effectiveness of the implementation of the conservation and management measures, and an openness to adjusting those schemes on a regular basis;
- That ICCAT now addresses the management of shark fisheries, although the measures adopted to date have not been that ambitious;
- That ICCAT has in place effective mitigation measures to reduce incidental mortality of sea turtles and seabirds in ICCAT fisheries;
- That ICCAT has introduced an annual review of CPCs' compliance record, although the focus of this review should be on compliance with substantive fisheries regulation and not on the submission of data issue;
- That ICCAT has made further significant progress with strengthening its range of monitoring, control and surveillance (MCS) measures;
- That ICCAT has further expanded the ability of non-governmental organisations (NGOs) to participate in ICCAT meetings as well as their access to documents; and
- That ICCAT scores well in terms of agreed forms and protocols for data collection.

On the negative side:

- That ICCAT - its Panels and Committees - have a tendency to defer decision-making on measures in the interests of achieving consensus, rather than opting for a voting process, thereby unnecessarily delaying the adoption of necessary conservation and measures;
- That ICCAT has not addressed in an effective manner the management of the tropical tuna (bigeye) and marlin fisheries;
- That there appears to be a reluctance in ICCAT to consistently apply the precautionary approach, especially when considerable uncertainties underlie the assessments for certain stocks;
- That ICCAT does not possess sufficient mechanisms for effective at-sea monitoring of fishing operations for most stocks, with the exception of eastern bluefin tuna, and that a modern high seas boarding and inspection (HSBI) Scheme needs to be adopted;
- That the most recent draft of the Amended ICCAT Convention does not take into account, in certain respects, recent developments in international fisheries law and best practices among RFMOs;
- That major progress in data availability is necessary; and
- That a better balance of scientists with knowledge of the fishery and modelling expertise be sent to the assessment meetings of the SCRS and that ICCAT develops specific mechanisms to ensure that more scientists with knowledge of the fisheries participate in stock assessment meetings and are directly involved in assessment teams.

## LIST OF ABBREVIATIONS AND ACRONYMS

|  |  |
|--|--|
| 1975 Scheme  | ICCAT Scheme of Joint International Inspection   |
| ACAP   | Agreement on the Conservation of Albatrosses and Petrels   |
| Amended ICCAT Convention                           | Compiled Proposals for Amendment of the International Convention for the Conservation of Atlantic Tunas as of 29 March 2016  |
| Amended NAFO Convention                            | 2007 Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (GC Doc. 07/4, Annex 17)   |
| 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, Washington D.C., 14 November 2003. |
| BCD  | bluefin tuna catch document  |
| CARICOM  | Caribbean Community  |
| CCSBT  | Commission for the Conservation of Southern Bluefin Tuna   |
| COC  | Conservation and Management Measures Compliance Committee (ICCAT)  |
| CoP  | Conference of the Parties  |
| CDP  | catch documentation program  |
| CITES  | Convention on International Trade in Endangered Species of Wild Fauna and Flora  |
| Code of Conduct                                    | Code of Conduct for Responsible Fisheries  |
| Compliance Agreement                               | Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas  |
| CPCs   | Contracting Parties and Cooperating non-Contracting Parties, Entities, and Fishing Entities (ICCAT)  |
| EAF  | ecosystem approach to fisheries (management)   |
| eBCD   | electronic bluefin tuna catch document   |
| EBFT   | Eastern Atlantic and Mediterranean Bluefin Tuna  |
| FAO  | Food & Agriculture Organization of the United Nations  |
| FMC  | Fisheries Monitoring Center  |
| GFCM   | General Fisheries Commission for the Mediterranean   |
| HSBI   | high seas boarding and inspection  |
| IATTC  | Inter-American Tropical Tuna Commission  |
| ICCAT Allocation Criteria                          | <i>ICCAT Criteria for the Allocation of Fishing Possibilities</i> [Ref. 01-25]   |
| ICCAT Convention                                   | International Convention for the Conservation of Atlantic Tunas  |
| ICCAT Observer Guidelines and Criteria             | <i>Guidelines and Criteria for Granting Observer Status at ICCAT Meetings</i> [Ref. 05-12]   |
| ICCAT Rules and Procedures on Data Confidentiality | <i>Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by ICCAT</i>   |
| ICES   | International Council for the Exploration in the Sea   |
| IMM  | Working Group on Integrated Monitoring Measures (ICCAT)  |
| IO   | international/intergovernmental organization   |
| IOTC   | Indian Ocean Tuna Commission   |
| IPOA-IUU   | FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing   |
| IUU fishing  | illegal, unreported and unregulated (IUU) fishing  |
| LSPLVs   | large scale pelagic longline vessels   |
| MCS  | monitoring, control and surveillance   |
| MCSF   | Monitoring, Control, and Surveillance Fund (ICCAT)   |
| MPF  | Meeting Participation Fund   |
| MSE  | Management Strategy Evaluation   |
| NAFO   | Northwest Atlantic Fisheries Organization  |

|                            |  |
|----------------------------|--|
| NCP                        | Non-Contracting Party  |
| NEAFC                      | North-East Atlantic Fisheries Commission   |
| NGO                        | non-governmental organization  |
| NPFC                       | North Pacific Fisheries Commission   |
| PSM Agreement              | Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing   |
| PWG                        | Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures  |
| ROP                        | Regional Observer Program (ICCAT)  |
| RSN                        | Regional Fishery Body Secretariats Network   |
| SCRS                       | Standing Committee on Research and Statistics  |
| SDP                        | statistical document program   |
| SEAFO                      | South East Atlantic Fisheries Organisation   |
| SPRFMO                     | South Pacific Regional Fisheries Management Organization   |
| TOR                        | terms of reference   |
| TWG                        | eBCD Technical Working Group   |
| UN                         | United Nations   |
| UNFSA                      | 1995 United Nations Fish Stocks Agreement (Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks) |
| UNGA                       | United Nations General Assembly  |
| VMS                        | vessel monitoring systems  |
| WCPFC                      | Western and Central Pacific Fisheries Commission   |
| WG on Convention Amendment | Working Group on Convention Amendment (ICCAT)  |
| WGFI                       | Working Group on the Future of ICCAT   |

## LIST OF CITED RECOMMENDATIONS

- Rec 96-14 *Recommendation by ICCAT for the Management of Atlantic Swordfish*
- Rec 97-01 *Recommendation by ICCAT to Improve Compliance with Minimum Size Regulations*
- Rec 97-10 *Recommendation by ICCAT for a Revised ICCAT Port Inspection Scheme*
- Rec 97-11 *Recommendation on Transhipments and Vessel Sightings*  
*Recommendation by ICCAT concerning the Limitation of Fishing Capacity on Northern Albacore*
- Rec 98-11 *Recommendation by ICCAT Concerning the Ban on Landings and Transhipments of Vessels from non-Contracting Parties Identified as Having Committed a Serious Infringement*
- Rec 00-14 *Recommendation by ICCAT regarding Compliance with Management Measures which Define Quotas and/or Catch Limits*
- Rec 01-21 *Recommendation by ICCAT concerning the ICCAT Bigeye Tuna Statistical Document Program*
- Rec 01-22 *Recommendation by ICCAT establishing a Swordfish Statistical Document Program*
- Rec 02-22 *Recommendation by ICCAT Concerning the Establishment of an ICCAT Record of Vessels Over 24 Meters Authorized to Operate in the Convention Area*
- Rec 03-12 *Recommendation by ICCAT concerning the Duties of Contracting Parties and Cooperating non-Contracting Parties, Entities or Fishing Entities in relation to their Vessels in the ICCAT Convention Area*
- Rec 03-13 *Recommendation by ICCAT concerning the Recording of Catch by Fishing Vessels in the ICCAT Convention Area*
- Rec 03-14 *Recommendation Concerning Minimum Standards for the Establishment of a VMS in the ICCAT Convention Area*
- Rec 03-16 *Recommendation by ICCAT to Adopt Additional Measures against Illegal, Unreported and Unregulated (IUU) Fishing*
- Rec 03-19 *Recommendation by ICCAT concerning the Amendment of the Forms of the ICCAT Bluefin/Bigeye/Swordfish Statistical Documents*
- Rec 03-20 *Recommendation by ICCAT on Criteria for Attaining the Status of Cooperating Non-Contracting Party, Entity or Fishing Entity in ICCAT*
- Rec 04-01 *Recommendation on a Multi-Year Conservation and Management Program for Bigeye Tuna*
- Rec 04-10 *Recommendation by ICCAT concerning the conservation of sharks caught in association with fisheries managed by ICCAT*
- Rec 06-05 *Recommendation to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean*
- Rec 06-07 *Recommendation by ICCAT on Bluefin Tuna Farming*
- Rec 06-11 *Recommendation by ICCAT Establishing a Programme for Transhipment by Large-scale Longline Fishing Vessels*
- Rec 06-12 *Recommendation Amending the Recommendation to Establish a List of Vessels Presumed to Have Carried Out IUU Fishing Activities in the ICCAT Convention Area*
- Rec 06-13 *Recommendation by ICCAT Concerning Trade Measures*
- Rec 06-14 *Recommendation by ICCAT to Promote Compliance by Nationals of Contracting Parties, Cooperating Non-Contracting Parties, Entities or Fishing Entities with ICCAT Conservation and Management Measures*
- Rec 16-06 *Recommendation by ICCAT on an Electronic Statistical Document Pilot Program*
- Rec 07-08 *Recommendation by ICCAT Concerning Data Exchange Format and Protocol in Relation to the Vessel Monitoring System (VMS) for the Bluefin Tuna Fishery in the ICCAT Convention Area*
- Rec 07-09 *Recommendation by ICCAT on the Conservation of Thresher Sharks Caught in Association with Fisheries in the ICCAT Convention Area*

- Rec 10-06 *Recommendation by ICCAT on Atlantic Shortfin Mako Sharks Caught in Association with ICCAT Fisheries*
- Rec 10-07 *Recommendation by ICCAT on the Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the ICCAT Convention Area*
- Rec 10-08 *Recommendation by ICCAT on Hammerhead Sharks (family Sphyrnidae) Caught in Association with Fisheries Managed by ICCAT*
- Rec 10-09 *Recommendation by ICCAT on the By-catch of Sea Turtles in ICCAT Fisheries*
- Rec 10-11 *Recommendation by ICCAT on an Electronic Bluefin Tuna Catch Document Programme (eBCD)*
- Rec 11-08 *Recommendation by ICCAT on the Conservation of Silky Sharks Caught in Association with ICCAT Fisheries*
- Rec 11-09 *Supplemental Recommendation by ICCAT on Reducing Incidental By-Catch of Seabirds in ICCAT Longline Fisheries*
- Rec 11-10 *Recommendation by ICCAT on Information Collection and Harmonization of Data on By-catch and Discards in ICCAT Fisheries*
- Rec 11-11 *Recommendation by ICCAT to Clarify the Application of Compliance Recommendations and for Developing the Compliance Annex*
- Rec 11-15 *Recommendation by ICCAT on Penalties Applicable in Case of non-Fulfilment of Reporting Obligations*
- Rec 11-18 *Recommendation by ICCAT Further Amending Recommendation 09-10 Establishing a List of Vessels Presumed to Have Carried out Illegal, Unreported, and Unregulated Fishing Activities in the ICCAT Convention Area*
- Rec 11-20 *Recommendation by ICCAT Amending Recommendation 09-11 on an ICCAT Bluefin Tuna Catch Documentation Program*
- Rec 11-23 *Recommendation by ICCAT to Amend the Terms of Reference of the Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures (PWG)*
- Rec 11-24 *Recommendation by ICCAT to Amend the Mandate and Terms of Reference Adopted by the Commission for the ICCAT Conservation and Management Measures Compliance Committee (COC)*
- Rec 11-26 *Recommendation by ICCAT on the Establishment of a Meeting Participation Fund for Developing ICCAT Contracting Parties*
- Rec 12-05 *Recommendation by ICCAT on Compliance with Existing Measures on Shark Conservation and Management*
- Rec 12-06 *Recommendation by ICCAT on a Programme for Transshipment*
- Rec 12-07 *Recommendation by ICCAT for an ICCAT Scheme for Minimum Standards for Inspection in Port*
- Rec 12-09 *Recommendation by ICCAT on a Process towards the Establishment of a Catch Certification Scheme for Tuna and Tuna-Like Species*
- Rec 12-10 *Recommendation by ICCAT to Establish a Working Group to Develop Amendments to the ICCAT Convention*
- Rec 13-02 *Recommendation by ICCAT for the Conservation of North Atlantic Swordfish*
- Rec 13-04 *Recommendation by ICCAT for Management Measures for Mediterranean Swordfish in the Framework of ICCAT*
- Rec 13-05 *Supplemental Recommendation by ICCAT Concerning the North Atlantic Albacore Rebuilding Program*
- Rec 13-06 *Recommendation by ICCAT on the Southern Albacore Catch Limits for the period 2014-2016*
- Rec 13-10 *Recommendation by ICCAT on Biological Sampling of Prohibited Shark Species by Scientific Observers*
- Rec 13-11 *Recommendation by ICCAT Amending Recommendation 10-09 on the By-Catch of Sea Turtles in ICCAT Fisheries*

- Rec 13-13 *Recommendation by ICCAT concerning the Establishment of an ICCAT Record of Vessels 20 meters in Length Overall or Greater Authorized to Operate in the Convention area*
- Rec 13-14 *Recommendation by ICCAT on Vessel Chartering*
- Rec 14-01 *Recommendation by ICCAT on a Multi-Annual Conservation and Management Program for Tropical Tunas*
- Rec 14-04 *Recommendation by ICCAT Amending the Recommendation 13-07 by ICCAT to Establish a Multi-Annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean*
- Rec 14-05 *Recommendation by ICCAT Amending the Supplemental Recommendation by ICCAT Concerning the Western Atlantic Bluefin Tuna Rebuilding Program*
- Rec 14-06 *Recommendation by ICCAT on Shortfin Mako Caught in Association with ICCAT Fisheries*
- Rec 14-08 *Recommendation by ICCAT to Support Effective Implementation of Recommendation 12-07 by ICCAT for an ICCAT Scheme for Minimum Standards for Inspection in Port*
- Rec 14-09 *Recommendation by ICCAT Amending Recommendation 03-14 by ICCAT Concerning Minimum Standards for the Establishment of a Vessel Monitoring System in the ICCAT Convention Area*
- Rec 14-13 *Recommendation by ICCAT Amending the Recommendation by ICCAT for Enhancing the Dialogue Between Fisheries Scientists and Managers*
- Rec 14-14 *Recommendation by ICCAT amending Recommendation 11-26 on the Establishment of a Meeting Participation Fund for Developing ICCAT Contracting Parties*
- Rec 15-01 *Recommendation by ICCAT on a Multi-annual Conservation and Management Programme for Tropical Tunas*
- Rec 15-03 *Recommendation by ICCAT for the Conservation of South Atlantic Swordfish*
- Rec 15-04 *Recommendation by ICCAT to Establish Harvest Control Rules for the North Atlantic Albacore Stock*
- Rec 15-05 *Recommendation by ICCAT to Further Strengthen the Plan to Rebuild Blue Marlin and White Marlin Stocks*
- Rec 15-06 *Recommendation by ICCAT on Porbeagle Caught in Association with ICCAT Fisheries*
- Rec 15-07 *Recommendation by ICCAT on the Development of Harvest Control Rules and of Management Strategy Evaluation*
- Rec 15-08 *Recommendation by ICCAT Amending Deadlines of Two ICCAT Recommendations*
- Rec 15-10 *Recommendation by ICCAT to Clarify and Amend Aspects of ICCAT's Bluefin Tuna Catch Documentation Program to Facilitate the Application of the eBCD System*

## LIST OF CITED RESOLUTIONS

- Res 94-06 *Resolution by ICCAT on Coordination with Non-Contracting Parties*
- Res 94-09 *Resolution by ICCAT on Compliance with the ICCAT Conservation and Management Measures (including Addendum)*
- Res 00-20 *Resolution by ICCAT for Integrated Monitoring Measures*
- Res 05-08 *Resolution by ICCAT on Circle Hooks*
- Res 05-10 *Resolution by ICCAT to Strengthen ICCAT*
- Res 06-18 *Resolution by ICCAT to Strengthen ICCAT*
- Res 12-11 *Resolution by ICCAT Regarding the Presentation of Objections in the Context of Promoting Effective Conservation and Management Measures Adopted by ICCAT*
- Res 14-11 *Resolution Establishing Guidelines for the Cross-Listing of Vessels Contained on IUU Vessel Lists of Other Tuna RFMOs on the ICCAT IUU Vessel List in Accordance with Recommendation 11-18*
- Res 15-09 *Resolution by ICCAT Establishing Guidelines for the Implementation of the Recommendation 11-15 by ICCAT on Penalties Applicable in the Case of Non-Fulfilment of Reporting Obligations*
- Res 15-11 *Resolution by ICCAT Concerning the Application of an Ecosystem Approach to Fisheries Management*
- Res 15-12 *Resolution by ICCAT Concerning the Use of a Precautionary Approach in Implementing ICCAT Conservation and Management Measures*
- Res 15-13 *Resolution by ICCAT on Criteria for the Allocation of Fishing Possibilities*



## **1. Introduction**

### **1.1 Establishment of the Panel**

It has now become international best practice that regional fisheries management organisations (RFMOs) periodically undertake reviews of their performance in executing their mandates effectively and efficiently. ICCAT established a first performance review in 2008 and decided at the 2015 Annual Meeting in Malta to conduct a second performance review in 2016.

ICCAT appointed in 2016 an independent three-person Performance Review Panel consisting of John Spencer (Fisheries Manager and former Head of Delegation for the European Union in tuna and non-tuna RFMOs) as fisheries management expert, Jean-Jacques Maguire (an independent scientist with considerable experience in providing scientific advice and member of the 2008 Panel as scientific expert) and Erik J. Molenaar (NILOS, Utrecht University & JCLOS, UiT The Arctic University of Norway) as legal expert. John Spencer was appointed as Panel Coordinator.

The Panel met on two occasions - in April and September 2016 - in Madrid to consider and discuss the range of issues covered by this review. The Panel would wish to express its appreciation to the Secretariat for their sustained efforts to assist the Panel.

### **1.2 Strengthening of ICCAT**

The process to strengthen ICCAT was initiated in 2005 by Res 05-10. The 2008 ICCAT Performance Review was one of the outcomes of this still on-going process to strengthen ICCAT. Pursuant to Rec 06-18, ICCAT established the Working Group on the Future of ICCAT (WGFI). This working group had its first meeting in 2009 and was, among other things, charged with follow-up of the 2008 Panel's recommendations.<sup>1</sup> The WGFI met three times; in 2009, 2011 and 2012. Its work on reviewing the existing ICCAT Convention<sup>2</sup> and, notably, its compatibility with developments in international law since the Convention was opened for signature in 1966, was continued by the Working Group on Convention Amendment (WG on Convention Amendment); established in 2012 by Rec 12-10.

### **1.3 Draft Amended ICCAT Convention**

To date, the WG on Convention Amendment has convened four times; in 2013, 2014, 2015 and 2016. As it had not been able to conclude its work at its last meeting, the Panel understands that the WG is working intersessionally to resolve the outstanding issues in advance of the 2016 Annual ICCAT Meeting.<sup>3</sup>

The most recent version of the Amended ICCAT Convention<sup>4</sup> used for this Second ICCAT Performance Review still contains bracketed text, and no agreement has been reached on two substantive issues: dispute settlement procedures and the Convention's depositary, the latter of which is linked to the issue of participation fishing entities.<sup>5</sup>

ICCAT, in revising its Convention, decided, rather than to replace the existing ICCAT Convention by a *de facto* entirely new Convention, as was for instance done by NAFO, to opt for building on the existing ICCAT Convention and amending its provisions necessary.<sup>6</sup> The latter approach was also pursued by NEAFC. ICCAT's decision to pursue this approach means that the draft Amended ICCAT Convention retains two anomalies, namely, the bi-annual regular ICCAT meetings (Article III(4)) and the ICCAT Council (Article V), even though the latter has been essentially dormant since its 4<sup>th</sup> Meeting in 1976.<sup>7</sup>

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<sup>1</sup> Report of the 20<sup>th</sup> Regular ICCAT Meeting (2008), at p. 40 and Rec 12-10.

<sup>2</sup> International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 14 May 1966. In force 21 March 1969, 673 *United Nations Treaty Series* 63 (1969), as amended by Protocols adopted in 1984 and 1992, which both entered into force. A consolidated version is included in the *ICCAT Basic Texts* (5<sup>th</sup> Revision: 2007) available at the ICCAT website>.

<sup>3</sup> Report of the 4<sup>th</sup> Meeting of the WG on Convention Amendment (Madrid, Spain, 7-8 March 2016), at p. 4.

<sup>4</sup> *Ibid.*, at Appendix 3, which is entitled 'Compiled Proposals for Amendment of the International Convention for the Conservation of Atlantic Tunas as of 29 March 2016 (*Prepared by the Chair of the Working Group on Convention Amendment*)'.

<sup>5</sup> *Ibid.*, at p. 1.

<sup>6</sup> Report of the 2009 Meeting of WGFI, at p. 2.

<sup>7</sup> Towards the end of the 2015 Meeting of the WG on Convention Amendment, Uruguay submitted a proposal to reactivate the Council. This proposal will be discussed at the 2016 Annual ICCAT Meeting.

In addition to the absence of agreement on the above-mentioned two substantive issues, the WG on Convention Amendment has also not yet been able to sufficiently consider the issue of rules and procedures for the adoption and entry into force of the amendments to the ICCAT Convention.<sup>8</sup> For instance, whether the amendments should be adopted by a Conference of Plenipotentiaries of the Contracting Parties in the form of a Protocol, as was done in 1984 (Paris Protocol) and 1992 (Madrid Protocol), or by ICCAT (the Commission) itself. Both NAFO and NEAFC adopted amendments to their constitutive instruments themselves.

The WG on Convention Amendment has also not been able to sufficiently discuss the desirability of the provisional application of the amendments from the time of their adoption. Both NAFO and NEAFC also agreed on (*de facto*) provisional application of some amendments to their constitutive instruments.<sup>9</sup>

Additional observations and recommendations of the Panel on the draft Amended ICCAT Convention are incorporated in relevant sections of the Panel Report.

#### *Panel Recommendations*

##### ***The Panel recommends that ICCAT***

- ***Urges its CPCs to make all necessary efforts to bring the work of the WG on Convention Amendment to a successful conclusion. This also includes agreement:***
  - ***on rules and procedures to ensure the smooth and timely adoption and entry into force of the amendments to the ICCAT Convention, either by adopting the amendments by the Commission or by a Conference of Plenipotentiaries of the Contracting Parties; and***
  - ***on a (de facto) provisional application of some or all amendments to the ICCAT Convention from the time of their adoption.***
- ***Urge its Members, following the conclusion of the work of the WG on Convention Amendment, to make all necessary efforts to ensure that the amendments to the ICCAT Convention enter into force as soon as soon as possible.***

#### ***1.4 ICCAT as an Organization***

**Table 1.1** below lists the current 51 Contracting Parties to the ICCAT Convention. Pursuant to Article III(2) of the ICCAT Convention, all Contracting Parties are Members of ICCAT. Moreover, at its 24<sup>th</sup> Regular Meeting (2015), ICCAT granted - in accordance with Rec 03-20 - the Status of Cooperating Non-Contracting Party, Entity or Fishing Entity (Cooperating Status) for 2016 to: Bolivia, Chinese Taipei, Guyana, and Suriname.<sup>10</sup> In total, there are therefore 55 Contracting Parties and Cooperating non-Contracting Parties, Entities and Fishing Entities (CPCs).

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<sup>8</sup> See, however, Appendix 5 to the Report of the 4<sup>th</sup> Meeting of the WG on Convention Amendment (2016), which contains 'ICCAT Amendment Process Points' identified by the Chair of the WG.

<sup>9</sup> Cf. the Resolution of the General Council of NAFO adopted on 26 September 2008 on the Interpretation and Implementation of the Convention on the Future Multilateral Cooperation in the Northwest Atlantic Fisheries, and the (London) Declaration on the Interpretation and Implementation of the Convention on the Future Multilateral Cooperation in North-East Atlantic Fisheries, adopted in November 2005 (which related to amendments that were formally adopted in August 2006).

<sup>10</sup> Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p. 7.

**Table 1.1.** Contracting Parties to the ICCAT Convention as of 5 September 2016.<sup>11</sup>

|   |                                     |  |
|---|-------------------------------------|--|
| Albania   | Guatemala                           | Panama   |
| Algeria   | Guinea                              | Philippines  |
| Angola  | Guinea-Bissau                       | Russian Federation   |
| Barbados  | Honduras                            | St. Vincent & the Grenadines   |
| Belize  | Iceland                             | Sao Tome and Principe  |
| Brazil  | Japan                               | Senegal  |
| Canada  | Korea (South)                       | Sierra Leone   |
| Cabo Verde                                      | Liberia                             | South Africa   |
| China   | Libya                               | Syria  |
| Côte d'Ivoire                                   | Mauritania                          | Trinidad and Tobago  |
| Egypt   | Mexico                              | Tunisia  |
| El Salvador                                     | Morocco                             | Turkey   |
| Equatorial Guinea                               | Namibia                             | United Kingdom (in respect of its overseas territories <sup>12</sup> ) |
| European Union (EU)                             | Netherlands (in respect of Curaçao) | United States  |
| France (in respect of its overseas territories) | Nicaragua                           | Uruguay  |
| Gabon   | Nigeria                             | Vanuatu  |
| Ghana   | Norway                              | Venezuela  |

ICCAT documents also use the abbreviations or acronyms 'Non-CPCs' and 'NCPs' (Non-Contracting Parties). Non-CPCs are States and entities that are not Contracting Parties to the ICCAT Convention and have also not obtained Cooperating Status with ICCAT. While NCPs are not party to the ICCAT Convention, they may still have Cooperating Status with ICCAT.

The Commission is assisted by a number of Committees, Panels and other bodies. The following Committees are currently in existence:

- the Standing Committee on Finance and Administration (STACFAD);
- the Standing Committee on Research and Statistics (SCRS); and
- the Conservation and Management Measures Compliance Committee (COC).

Four Panels put forward measures in relation to the management of fisheries on stocks under the purview of ICCAT, namely:

- Panel 1: Tropical tunas (yellowfin, bigeye and skipjack);
- Panel 2 : Northern temperate tunas (albacore and Atlantic bluefin);
- Panel 3 : Southern temperate tunas (albacore and southern bluefin); and
- Panel 4: Other species (swordfish, billfishes, small tunas).

Furthermore, ICCAT has established the Permanent Working Group for the Improvement of Statistics and Conservation Measures (PWG), the Standing Working Group on Dialogue between Fisheries Scientists and Managers (SWGSM) and various temporary subsidiary bodies. Finally, the SCRS has established many subsidiary bodies as well, namely the Sub-Committee on Statistics, the Sub-Committee on Ecosystems, various Species Groups and other Working Groups.

### **1.5 ICCAT's Geographical Mandate**

Article I of the ICCAT Convention stipulates that the 'Convention area' comprises "all waters of the Atlantic Ocean, including the adjacent Seas". Both the Caribbean Sea and the Mediterranean Sea are among CPCs generally accepted to be "adjacent Seas". At the time of writing, the South Atlantic part of the Convention area was, for statistical purposes, set between 70°W and 20°W. The ICCAT Convention does not mention any maritime zones and therefore applies both within and beyond areas under national jurisdiction.

<sup>11</sup> Information at <http://www.fao.org/legal/treaties/treaties-outside-fao-framework/en/>

<sup>12</sup> In 2015 the United Kingdom clarified that it represents the following four different Overseas Territories: Bermuda, the British Virgin Islands, Turks and Caicos Islands and the Territory of St. Helena, Ascension and Tristan da Cunha (Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p. 59).

## 1.6 ICCAT's Species and Fisheries Management Mandate

The Preamble and Article IV(1) of the Amended ICCAT Convention contain three modifications, which expand ICCAT's species-competence, although in practice these modifications simply put in a *de jure* context what was previously a *de facto* competence for ICCAT in recent years. Whereas the first two of these modifications concern target species - and are together referred to as 'ICCAT species' - the third concerns non-target species.

The first expansion relates to Article IV(1), which no longer contains the phrase "(the Scombriformes, with the exception of the families Trichiuridae and Gempylidae and the genus *Scomber*)" and thereby expands the group of 'tuna and tuna-like species'.

Secondly, the Preamble and Article IV of the Amended ICCAT Convention include the phrase "and elasmobranchs that are oceanic, pelagic, and highly migratory" and thereby acknowledge ICCAT's competence over these sharks as target species.

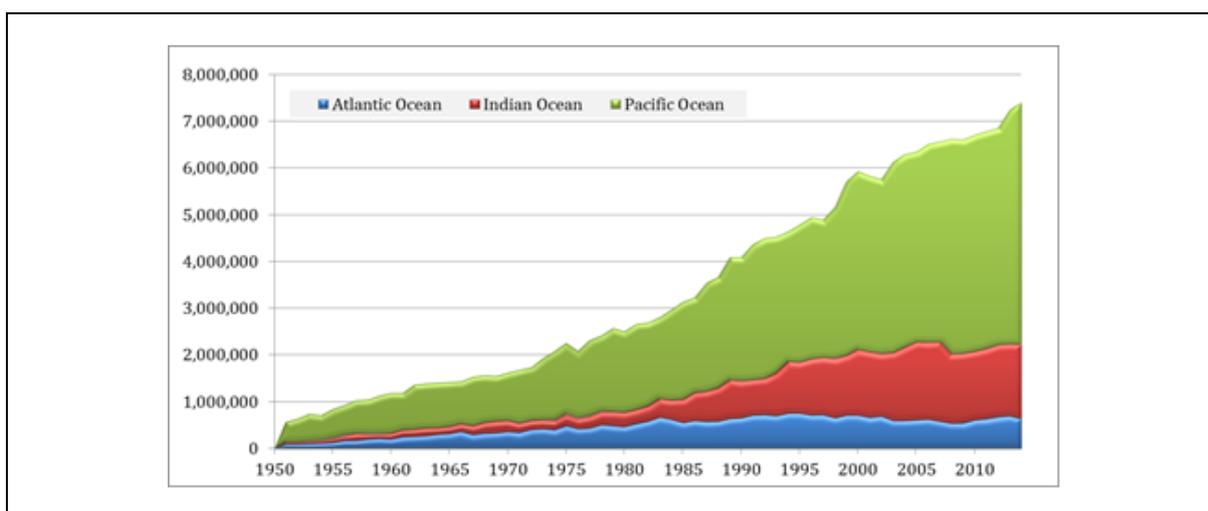
Thirdly, the inclusion of the phrase "species belonging to the same ecosystem or dependent or associated with the ICCAT species" as well as other changes to Article IV(1), establish ICCAT's ecosystem approach to fisheries (EAF) management (e.g. in terms of by-catch or predator-prey relationships). The latter is also explicitly confirmed by paragraphs (a) and (c) of new Article IIIbis, Article VIII(1)(a)(ii) and Res 15-12.

Finally, the WG on Convention Amendment agreed that a list of specific species understood to fall under the terms "tuna and tuna-like species" and "elasmobranchs that are oceanic, pelagic, and highly migratory" should be incorporated in an instrument separate from the Convention. A 'Draft Recommendation by ICCAT on Species Considered to be Tuna and Tuna-Like Species or Oceanic, Pelagic, and Highly Migratory Elasmobranchs' was for this purpose developed by the Chair of the WG on Convention Amendment, and subsequently accepted by the SCRS.<sup>13</sup>

The Panel comments on specific provisions of the Amended ICCAT Convention elsewhere in this Report, particularly in Section 3.1 on 'Port State Measures', Section 5.1 on 'Decision-making' and Section 5.2 on 'Dispute Settlement'.

## 1.7 ICCAT within the Tuna World

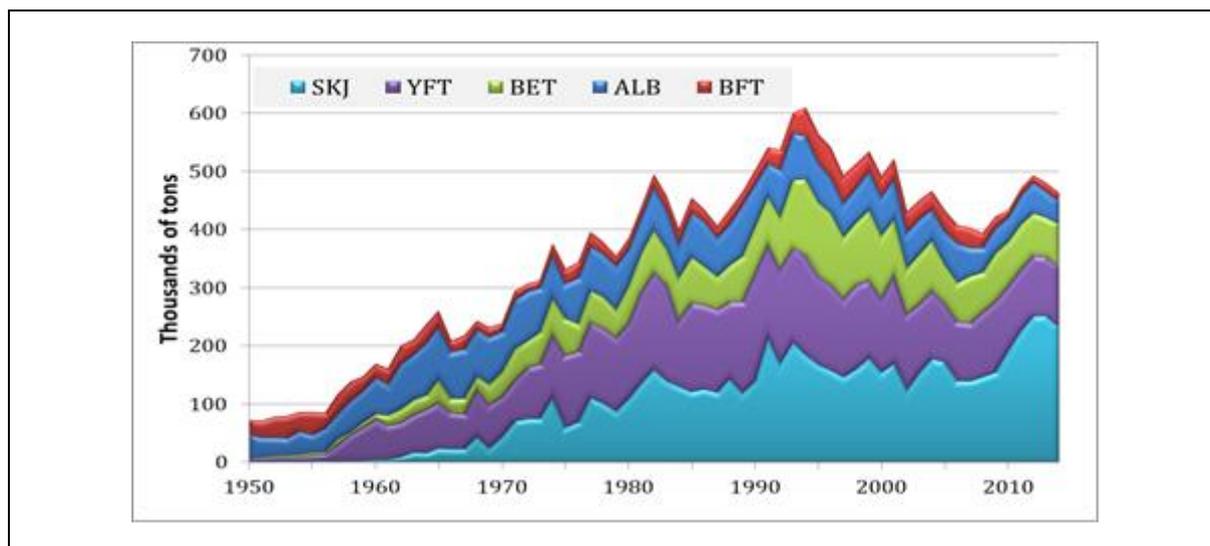
**Table 1.2** below shows the catches of tunas, bonitos and billfishes in the world's three main fishing areas. The rapid expansion of catches in the Pacific is a notable trend. **Table 1.3** shows the catches of the five main species in the ICCAT Convention area.



**Table 1.2.** Catches of Tunas, Bonitos and Billfishes.<sup>14</sup>

<sup>13</sup> Cf. Report of the 2015 Meeting of the WG on Convention Amendment, at p. 1 and Appendix 4; and Report of the 2015 SCRS Meeting, at p. 254.

<sup>14</sup> FAO – SCRS Chair Presentation to the 2015 Annual ICCAT Meeting.



**Table 1.3.** Reported Catches of Key ICCAT Species.<sup>15</sup>

### 1.8 ICCAT Basic Texts

A consolidated version of the ICCAT Convention is included in the 5<sup>th</sup> Revision (2007) of the ICCAT publication *ICCAT Basic Texts*, together with the various other basic ICCAT instruments, such as the ICCAT Rules of Procedure and the ICCAT Financial Regulations. Since 2007, however, there have been several amendments to these latter instruments.<sup>16</sup> It is foreseen that an updated version of the *ICCAT Basic Texts* will be published once the Amended ICCAT Convention has been adopted.

#### *Panel Recommendation*

***The Panel recommends that ICCAT make consolidated versions of individual basic ICCAT instruments available on the ICCAT website.***

### 1.9 The Approach of the Panel

The Panel, taking into account that this review constituted the second review of ICCAT, avoided repeating historical facts or background mentioned in the 2008 Panel Report.

The terms of reference (TOR) for this Panel are largely the same as those for the 2008 Panel. In each of the sections, the Panel examines what action has been taken by ICCAT in the period 2008-2016, *inter alia*, in regard to the 2008 Panel recommendations.

The Panel has evaluated each of the performance criteria against the background of

- firstly, the recommendations of the 2008 Panel,
- secondly, the action taken by ICCAT in the period 2008-2016, including follow-up to those recommendations which ICCAT judged appropriate.
- and thirdly, the evolution in the status of stocks and other international developments, which the Panel judged relevant.

In certain circumstances, the Panel has grouped a number of performance criteria together in view of their close inter-relationship in the review. The Panel's recommendations are highlighted in bold and italics text at the end of each (sub)section and are listed in Annex 3 to the report for ease of reference.

<sup>15</sup> Ibid.

<sup>16</sup> Amendments to Regulation 4 of the ICCAT Financial Regulations were adopted in 2009 (laid down in the Report of the 21<sup>st</sup> Regular ICCAT Meeting (2009), at Annex 7.1). Amendments to the ICCAT Rules of Procedure were adopted in 2011 (new paras 3 and 4 to Rule 13; laid down in the Report of the 22<sup>nd</sup> Regular ICCAT Meeting (2011), at Annex 7.3) and 2012 (paras 13-15 of Rule 9; laid down in the Report of the 18<sup>th</sup> Special ICCAT Meeting (2012), at Annex 7.1).

The Panel has analysed the latest version of the draft Amended ICCAT Convention in order that ICCAT Members would have the Panel's views on this draft Convention, rather than on the current Convention which was reviewed already in 2008.

Where relevant, the Panel compares ICCAT's practices with those of other tuna and non-tuna RFMOs. This report considers a range of issues in relation to ICCAT and the issues in themselves are not unique to ICCAT, as similar challenges are faced by the other tuna RFMOs, and indeed non-tuna RFMOs. There remains considerable scope for tuna RFMOs to harmonise their approaches on conservation measures, compliance and scientific assessments.

To garner the views of stakeholders, the Panel circulated a letter among all Heads of Delegations of ICCAT's CPCs, Observers, and its scientific community, seeking their comments on the effectiveness of ICCAT. There were eight responses to the letter. These responses were examined by the Panel and reflect a broad range of views that have in part been reflected in the report and recommendations. The Panel expresses its appreciation to those who contributed.

The Performance Review Report will be presented by John Spencer, Panel Coordinator, to the 2016 Annual ICCAT Meeting in Vilamoura, Portugal in November.

### **1.10 Structure of the Report**

The Report largely follows the structure outlined in the TOR for the Second ICCAT Performance Review (Annex 1). The Chapters are entitled

1. 'Introduction';
2. 'Conservation and Management';
3. 'Monitoring, Control and Surveillance (MCS)
4. 'Compliance and Enforcement'
5. 'Governance'
6. 'Science'
7. 'Comparison with other RFMOs'; and
8. 'Financial and Administrative Issues'

The Chapters are preceded by a 'LIST OF ABBREVIATIONS AND ACRONYMS', a 'LIST OF CITED RECOMMENDATIONS' and a 'LIST OF CITED RESOLUTIONS'.

Finally, the Chapters are followed by the following three Annexes: '**Annex 1** TOR OF THE SECOND REVIEW PANEL', '**Annex 2**: Performance Criteria' and '**Annex 3**: CONSOLIDATED LIST OF PANEL RECOMMENDATIONS'.

## **2. Conservation and Management**

### **2.1 Status of Living Marine Resources**

#### *2.1.1 Status of Major Fish Stocks*

##### 2008 Panel Recommendations

The 2008 Panel concluded that the objectives of the Commission were met for five stocks: bigeye, sailfish, swordfish north and swordfish south, and yellowfin. The objectives of the Commission were not met for eight stocks: albacore north, albacore south, albacore Mediterranean, for bluefin east and bluefin west (both not met by far), for blue marlin, for white marlin and for swordfish in the Mediterranean. There was no basis to judge if the objectives were met for skipjack.

Current Status

The major stocks under the purview of ICCAT are (in the order in which they appear in the SCRS reports): yellowfin tuna, bigeye tuna, skipjack tuna (east and west), albacore tuna (north, south, and Mediterranean), bluefin tuna (east + Mediterranean and west) and swordfish (north, south, and Mediterranean). The status of those stocks in relation to maximum sustainable yield or other relevant biological standard is estimated by the SCRS using the ratio of the most recent estimates of biomass (B) to the biomass reference point to assess if the stock is overfished (ratio less than 1) and the most recent estimate of fishing mortality (F) to assess if overfishing is occurring (ratio greater than 1).

Based on the 2015 report of the SCRS, **Table 2.1** lists the ICCAT major stocks i) where biomass is less than the reference point AND fishing mortality is higher than the reference point, ii) where both biomass and F are less than the reference points, iii) where both biomass and fishing mortality are higher than the reference points, and iv) stocks within safe biological limits, i.e. biomass higher than the reference point and fishing mortality less than the reference point.

**Table 2.1.** Classification of the status of major ICCAT stocks in the 2015 SCRS report.

| <b>B&lt;1 and F&gt;1</b>                  | <b>B&lt;1 and F&lt;1</b>  | <b>B&gt;1 and F&gt;1</b> | <b>B&gt;1 and F&lt;1</b>   |
|---|---|--------------------------|--|
| Bigeye<br>Albacore south<br>Swordfish Med | Yellowfin<br>Albacore north<br>Bluefin east+Med high R<br>Bluefin west high R |                          | Skipjack east<br>Skipjack west<br>Bluefin east+Med low R<br>Bluefin east+Med med R<br>Bluefin west low R<br>Swordfish north<br>Swordfish south |

The status of albacore in the Mediterranean is not estimated with confidence but the ratio of  $F/F_{MSY}$  is considered to be less than 1.

Panel Assessment and Recommendations

The Panel notes that most stocks under rebuilding programs (western bluefin tuna, eastern bluefin tuna, northern albacore, northern swordfish) are improving or are within safe biological limits. However, several other stocks remain overfished (bigeye tuna, albacore south, swordfish in the Mediterranean), suggesting that the precautionary approach should be applied more consistently to prevent overfishing from occurring and to reduce fishing mortality in a way that ensures a high probability of rebuilding where needed.

Based on the 2015 report of the SCRS, the Panel concludes that ICCAT is achieving its objective for more stocks with improvements in skipjack and bluefin under two of the recruitment hypotheses. In addition, fishing mortality has been decreased below  $F_{MSY}$  for yellowfin, albacore north and the two bluefin management units under the high recruitment hypothesis. Keeping fishing mortality less than  $F_{MSY}$  is expected to result in biomass increasing to or above  $B_{MSY}$ , consistent with ICCAT's objective. The situation for bigeye has deteriorated.

*2.1.2 Trends in Status of Stocks*

**Table 2.2** classifies the status of the major ICCAT stocks at the time of the 2008 Performance Review, based on the 2008 SCRS Report.

**Table 2.2.** Classification of the status of major ICCAT stocks in the 2008 SCRS report.

| <b>B&lt;1 and F&gt;1</b>   | <b>B&lt;1 and F&lt;1</b>          | <b>B&gt;1 and F&gt;1</b> | <b>B&gt;1 and F&lt;1</b>                          |
|--|-----------------------------------|--------------------------|---|
| Yellowfin<br>Bigeye<br>Albacore north<br>Bluefin east+Med low R<br>Bluefin east+Med high R<br>Bluefin west low R<br>Bluefin west high R<br>Swordfish Med | Albacore south<br>Swordfish north |                          | Skipjack east<br>Skipjack west<br>Swordfish south |

Panel Assessment

**The Panel concludes that the status of major ICCAT stocks has improved compared with their status at the time of the 2008 performance review: there are fewer stocks with biomass smaller than the target AND fishing mortality higher than the target (3 in 2015 compared with 8 in 2008), and there are more stocks within safe biological limits (7 in 2015 compared with 3 in 2008).**

2.1.3 Status of Non-Target Species

2008 Panel Recommendations

The 2008 Panel noted that it had “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”. The 2008 Review had no basis to form an opinion on seabirds and turtles, but urged CPC’s to make data and scientific expertise available to the SCRS.

Current Status

The stocks that belong to the same ecosystems or are associated with or dependent upon the major target stocks assessed by the SCRS are: blue marlin, white marlin sailfish west, sailfish east, blue shark north, blue shark south, shortfin mako north, shortfin mako south, porbeagle northwest, porbeagle southwest.

As was done for major stocks above, **Table 2.3** lists non-target stocks according to their status in the 2015 report of the SCRS. Blue shark south could not be classified because the confidence intervals are too wide with the biomass ratio ranging from 0.78 to 2.03 and the F ratio from 0.01 to 1.19s.

**Table 2.3.** Classification of the status of non-target ICCAT stocks in the 2015 SCRS report.

| <b>B&lt;1 and F&gt;1</b>                      | <b>B&lt;1 and F&lt;1</b>                                   | <b>B&gt;1 and F&gt;1</b> | <b>B&gt;1 and F&lt;1</b>                                       |
|---|--|--------------------------|--|
| Blue marlin<br>Sailfish west<br>Sailfish east | White marlin<br>Porbeagle northwest<br>Porbeagle southwest |                          | Blue shark north<br>Shortfin mako north<br>Shortfin mako south |

Panel Assessment and Recommendations

**The Panel notes that the information for non-target stocks appears to have improved compared with the information available to the 2008 Panel, but not significantly so. Three stocks are within safe biological limits (blue shark north, shortfin mako north and shortfin mako south) and fishing mortality is lower than  $F_{MSY}$  for three other stocks (white marlin, porbeagle northwest and porbeagle southwest).**

#### 2.1.4 Trends in the Status of Non-Target Species

##### Panel Assessment and Recommendations

There are limited data to estimate the trend in the species that belong to the same ecosystems or are associated with or dependent upon the major target stocks assessed by the SCRS because these stocks are assessed infrequently and the assessments are highly uncertain. There was no stock size information in the 2008 report of the SCRS for the sailfishes, shortfin mako and porbeagle. The status of blue and white marlin in 2015 is broadly similar to what they were in 2008, except they are better quantified. For the blue shark north, the biomass is similar and consistently above  $B_{MSY}$ ; while fishing mortality estimates are higher, they remain lower than  $F_{MSY}$ . For blue shark south, the biomass estimates are lower, with various assessment configurations suggesting a range from 0.78 to 2.03 of  $B_{MSY}$ . For shortfin mako north, the biomass estimates are now consistently above  $B_{MSY}$  and estimates of fishing mortality are consistently less than  $F_{MSY}$ . Therefore, where data are available the **Panel concludes** that the situation has generally improved. For both blue shark north and blue shark south, while fishing mortality may have increased and biomass may have decreased, most estimates suggest that these resources are above  $B_{MSY}$  and exploited at less than  $F_{MSY}$ .

***The Panel considers that ICCAT scores reasonably well compared with other RFMOs on associated species including sharks, marine mammals, seabirds and turtle. The Panel recommends that the precautionary approach be consistently applied for associated species considering that the assessments for these species are highly uncertainty and that their status is often poorly known.***

#### 2.2 Data Collection and Sharing

##### Performance Criteria

- Extent to which ICCAT has agreed formats, specifications and timeframes for data submission, taking into account UNFSA Annex I.
- Extent to which ICCAT members and cooperating non-members, individually or through ICCAT, collect and share complete and accurate fisheries data concerning target stocks and non-target species and other relevant data in a timely manner (Task I/II data).
- Extent to which fishing data and fishing vessel data are gathered by ICCAT and shared among members and other RFMOs.
- Extent to which ICCAT is addressing any gaps in the collection and sharing of data as required.
- Extent to which capacity building initiatives are put in place to improve data collection in developing economies.

##### 2008 Panel Recommendations

The 2008 Review noted the problems with data collection and stated: "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 issues at the time were misreporting, late and incomplete submission of data and lack of penalties for repeat offenders.

##### Action by ICCAT

The ICCAT data requirements for statistical data for the work of the SCRS are described at <http://iccat.int/en/submitSTAT.htm>. These are standard requirements for stock assessment and scientific work in fisheries. Further details on the requirements for 2016 are in ICCAT Circular #1104 / 2016 that can be found at [http://iccat.int/Documents/Stats/statistical-data\\_ENG.PDF](http://iccat.int/Documents/Stats/statistical-data_ENG.PDF) ICCAT has agreed formats, specifications and timeframes for data submission.

The report of the Subcommittee on Statistics (Appendix 8 in the 2015 SCRS report) notes improvements in terms of data submission using the ICCAT electronic forms. The first four tables in the Secretariat Report on Statistics and Coordination of Research in 2015 (document PLE105 on <http://www.iccat.int/com2015/index.htm#PLE>) summarize reporting performance (information submitted before the deadline, after the deadline, or rejected by the filter) by CPC's during the 2015 reporting period (table 1 is for vessel characteristics, table 2 for nominal catches, table 3 for catch and

effort and table 4 for size information. The Standard SCRS Catalogue on statistics (Appendix 1 of the Secretariat report) shows the information by species and year (1996-2014) for fleets accounting for about 97.5% of the catches. The Panel did not undertake an in-depth analysis of the Standard SCRS Catalogue on statistics, but notes that a considerable amount of information is presented in those tables in a very succinct way.

ICCAT has several funds to improve data collection and capacity building (Atlantic Wide Research Programme for Bluefin tuna, Atlantic Ocean Tuna Tagging Programme, Enhanced Program for Billfish Research, Small Tunas Year Program, Shark Research and Data Collection Programme. The SCRS has elaborated a protocol for the use of these funds which allows to identify priorities and to establish a yearly plan to use them. Every year, the Secretariat submits a summary of the use of these funds to the SCRS.

The national reports of Chinese Taipei in the 2015 SCRS report states that the observer coverage on the Chinese Taipei vessels fishing in the Atlantic for albacore was 8.3% and 13.7% for bigeye. The EU national report states that purse seiners operating in the tropical tuna fisheries continue to have 100% observer coverage and e-monitoring systems. The report does not seem to contain an evaluation of the national or international observer programs to collect biological information.

#### Panel Assessment and Recommendations

CPCs have to submit to ICCAT a considerable amount of information under various formats (click on List of 2016 Reporting Requirements for the Commission at <http://iccat.int/en/SubmitCOMP.htm> for an indication of the requirement). The forms are not self-explanatory and there are several different deadlines.

While there are no hard data, the Panel was informed that CPCs may be reporting data only from those vessels authorized to fish a given ICCAT species but incidental catches of vessels from the same CPCs not authorized to fish those species may not be reported. ***The Panel believes that this is unlikely to be a major problem, but recommends that the possible non-reporting of incidental catches by vessels not on their authorised list should be investigated by the compliance committee.***

Related to this, prior to the mid-2000s, ICCAT kept 600t of the TAC for eastern bluefin tuna not allocated to allow countries without allocation to report their incidental catches against that unallocated portion of the TAC. With the removal of this non-allocated quota, there are no reports of bluefin tuna catches in the central – southern Atlantic, possibly because if CPCs in the area reported bluefin catches, they would have to go to the Compliance Committee. ***The Panel recommends that a mechanism be found to allow minor occasional harvesters without allocations to report their catches without being subject to sanctions.***

***The Panel concludes that ICCAT scores well in terms of agreed forms and protocols for data collection but, while progress has been made, more needs to be done particularly for by-catch species and discards.***

***The Panel considers that major progress in data availability is necessary and recommends that substantial improvements in data quality and data completeness can only be achieved by simplifying and automating the process of collecting data in a systematic and integrated way. This may not be possible for artisanal fleets, but should be possible for most of the fleets in developed CPCs.***

The Panel notes the existence of several different training programs in data collection is an indication that the current system is too complex and that an overhaul is required.

### **2.3 Adoption of Conservation and Management Measures**

#### Performance Criterion

- Extent to which ICCAT has adopted conservation and management measures for both target stocks and non-target species that ensure the long-term sustainability of such stocks and species and are based on the best scientific evidence available.

### *2.3.1 Introduction on Conservation and Management Measures by Species*

ICCAT has some 30 species under its purview. However, there are 13 main species or species group for which conservation and management measures have been adopted: western and eastern bluefin tuna, northern and southern albacore, northern, southern and Mediterranean swordfish, bigeye, yellowfin, skipjack, blue marlin and white marlin, and a range of shark species.

In this section, an assessment of ICCAT's management of the fisheries on stocks is made in the light of the recommendations of the 2008 Panel and the current status of the stocks. Management policies and measures of other Tuna RFMOs are outlined on similar stocks in their regions. The Panel makes recommendations on a stock-by-stock basis as to the approach ICCAT should consider for the future management of these fisheries.

### *2.3.2 Eastern Bluefin*

#### 2008 Panel Recommendations

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

*It recommended 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 Panel recommended that in respect of bluefin tuna farming all fishing for eastern and Mediterranean bluefin 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.*

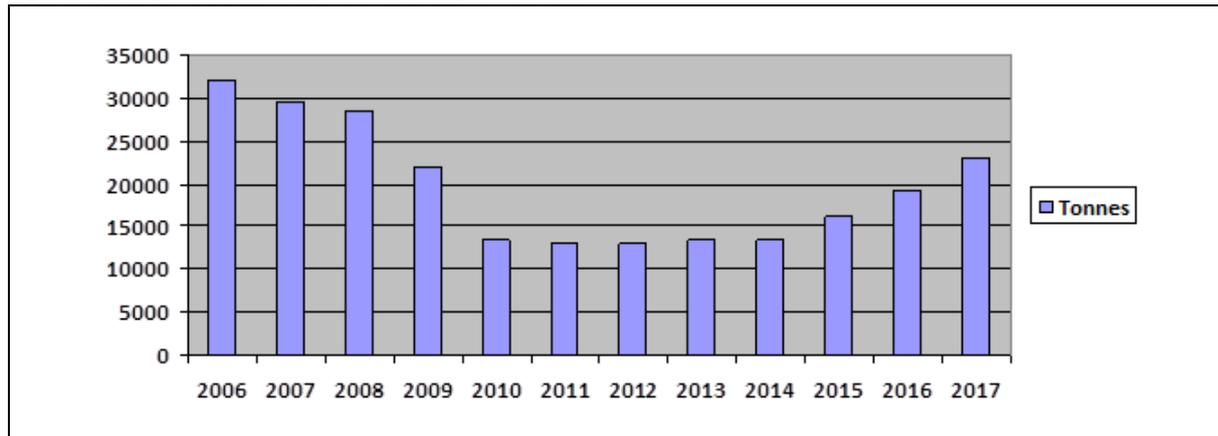
#### Action by ICCAT

The 2008 Panel's recommendations were very severe. However, the recommendations have to be seen against the background of the acknowledged major compliance problems in implementing effectively Rec 06-05. The non-respect by CPCs of their obligations on catch limits, data requirements and overall control of the bluefin tuna fisheries in the Mediterranean, was dramatically undermining the Recommendation itself.

The years immediately after the adoption of Rec 06-05 were devoted to developing responses to the clear challenge that non-compliance represented for ICCAT. The TAC levels were reduced in the initial years, and importantly, Rec 09-06 established a framework for setting future TACs for 2011 and beyond consistent with re-building the stock to  $B_{MSY}$  by 2022, with at least a 60% probability.

ICCAT undertook a series of initiatives addressing the fishing, farming and trade in bluefin tuna. Measures included reducing the TACs (**Table 2.4**); introducing capacity limitation measures; control and monitoring procedures, and the recent introduction of the eBCD. These measures have resulted in re-dressing positively both the stock situation and the conduct of the eastern bluefin tuna fishery.

**Table 2.4.** Evolution of TAC between 2006-2017.



Rec. 14-04 fixes three yearly steps 16,142 t for 2015, 19,296 t for 2016 and 23,155 t for 2017. Such gradual increases are reviewed annually by ICCAT on the advice of the SCRS.

#### Current Status of Stock

The latest assessment in 2014 indicated that the spawning stock biomass (SSB) peaked over 300,000 t in the late 1950s and in the early 1970s, then declined to about 150,000 t by 2005-2006. In recent years, the SSB showed clear signs of a significant increase up to 585,000 t in 2013. This corresponds to the maximum estimated SSB since 1950.

Having considered the stock indicators, the SCRS advice is that catches not exceeding the TACs in Rec 14-04, will not undermine the success of the re-building plan and are consistent with the goal of achieving  $F_{MSY}$  and  $B_{MSY}$  through 2022, with at least a 60% probability. The SCRS indicated that the  $F_{MSY}$  estimate under the low recruitment scenario would amount to 23,256 t and that a gradual increase of the catch to that estimate of MSY would allow the population to increase, even in the most conservative scenario.

According to the latest SCRS advice, and even if uncertainties remain, the goal of the multi-annual recovery plan may already have been, or will be soon, attained.

#### Approach by Other Tuna RFMOs

It is doubtful that any other tuna RFMO has been faced to date with the complexity of the management of the eastern bluefin fishery. CCSBT has had significant compliance challenges on bluefin too.

The WCPFC currently has a major conservation concern as the biomass of Pacific bluefin tuna is near historical lows and the high exploitation rates are well above all biological reference points. Substantial reductions in fishing mortality and juvenile catch are required. WCPFC has now introduced a Rebuilding Plan to bring the SSB to 42,500 t within 10 years with a 60% probability (CCM 2015-04) but failed to agree on a reduction of juvenile catches at its recent meeting.

#### Panel Assessment and Recommendations

The Panel considers that the measures on eastern bluefin tuna adopted by ICCAT and implemented by the CPCs over the last 10 years, have required the highest commitment and motivation from all ICCAT CPCs and the Secretariat. A complex machine has been developed at the level of CPCs and the ICCAT Secretariat for the monitoring, control and surveillance of the fishery and market.

The Panel notes that this fishery is one of the most heavily monitored fisheries throughout world fisheries, notably with a joint international inspection scheme in operation; a regional observer programme; the catch document and the range of controls laid down in Rec 14-04. The eastern bluefin is the only stock in ICCAT subject to a catch document and it will be electronically operated from 2016.

Major efforts were made by ICCAT and its CPCs to bring this fishery under control and that has been achieved. The stock appears to be in a significantly improved status on the basis of SCRS evaluations.

The ICCAT experience on bluefin tuna in the last 10 years is an example that, with the correct synergy between CPCs and with the ICCAT secretariat, such challenges can be addressed and overcome. As such, it is an example to other RFMOs faced with major conservation challenges.

***The Panel confirms that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$ .***

***The Panel recommends that Panel 2 takes advantage of this favourable context to resolve outstanding quota allocation issues among CPCs.***

### 2.3.3 Western Bluefin

#### 2008 Panel Recommendations

*The Panel concluded that the measures adopted by ICCAT have led to slow rebuilding of this stock. Recommendation 06-06 reinforced 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.*

*The Panel recommended 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 Panel noted that it was agreed in 2006 to continue the 20-year rebuilding program commenced in 1999 (Rec 06-06). Provided that Rec 06-06 is 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 from year to year in a fishery on such a depleted stock, is of concern to the Panel.*

#### Action by ICCAT

In 1998, the Commission initiated a 20-year rebuilding plan designed to achieve  $SSB_{MSY}$ , with at least 50% probability. Since the rebuilding plan was adopted in 1998, the SSB has increased by 70%. The SCRS confirmed that Recs 08-04, 10-03 and 12-02 on western bluefin tuna, which were adopted in the interim period, were expected to result in a re-building of the stock towards the Convention objective.

In 2014, ICCAT adopted Rec 14-05 setting the TAC at 2,000 t for 2015 and 2016, and incorporating as usual a quota allocation scheme for the six CPCs. Each CPC may now only transfer up to 10% of under harvest to the following year.

#### Current Status of Stock

The estimated trends in the 2014 assessment are consistent with previous analyses. In recent years, there appears to have been a gradual increase in SSB from about 32% of the 1970 biomass in 2003, to an estimated 55% in 2013. The SCRS cautioned however that the conclusions of its assessment do not capture the full degree of uncertainty in the assessments and projections, but advised that Rec 14-05 is expected to result in a rebuilding of the stock towards the Convention objective.

#### Panel Assessment

***The Panel confirms that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$ .***

### 2.3.4 Bigeye

#### 2008 Panel Recommendations

*The Panel concluded that 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.*

*The Panel considered that the ICCAT arrangements for the management of fisheries on bigeye tuna were consistent with the objectives of the Commission. However, the Panel recommended:*

- *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.*

#### Action by ICCAT

Rec 15.01 is the most recent measure adopted by ICCAT on the tropical tunas. It foresees a range of measures addressing the tropical tuna fisheries. On bigeye, it reduced the TAC from 85,000t to 65,000t for 2016 and subsequent years. As in previous recommendations, there is a quota allocation scheme incorporated in the measure. That allocation scheme also foresees flexibility for Developing States to increase their catches. It is permitted to transfer up to 15% of the quota to the following year if a CPC does not reach its allocation, and to over fish by up to 15% in any one year if a CPC exceeds its allocation.

The recommendation limits capacity in the fishery for the main CPC quota holders operating longliners and purse seiners in terms of number of authorised vessels for lengths over 20 meters. There are provisions on the limitation on the number of active FADs per vessel and detailed reporting requirements for each CPC in relation to the deployment, use and loss of FADs by its vessels, and the activity of support vessels. In keeping with previous recommendations, there is also an area and time closure for fishing for bigeye, yellowfin and skipjack in association with FADs in the period 1 January to 28 February. An observer must be placed on board each vessel during this period.

#### Current Status of Stock

The stock is over-fished and over-fishing is occurring.

The stock is exploited by three major gears (longline, bait boat and purse seine fisheries) and by many CPCs throughout its migratory range. ICCAT has detailed data on the fishery for this stock. The mean weight, however, is quite different for the different fishing gears, around 62 kg for longliners, 7 kg for bait boats, and 4 kg for purse seiners. A new assessment of big eye is programmed for 2018.

ICCAT adopted a reduced TAC of 65,000 t for bigeye from 2016 onwards. SCRS estimates that there is a 49% probability of re-building the big eye stock by 2028 with a constant catch of 65,000 t. To attain higher probabilities of rebuilding would require a longer time frame and/or larger reduction of current catches.

The SCRS cautions that any increase in catches by those CPCs not covered by the recommendation and/or an increase in the relative mortality of small fish notably through FADs, will add to the uncertainty of these projections.

#### Approach by Other Tuna RFMOs

The WCPFC through CMM 2015-01 has adopted a comprehensive approach to the management of the tropical tuna fisheries in the Western Central Pacific. It sets initial management objectives for bigeye, yellowfin and skipjack stocks; a threemonth ban on FAD fishing with the possibility of a fourth month or the CPC agreeing to limit the number of deployed FADs; a requirement to land all fish caught to discourage

the capture of small fish, and observers are present on board purse seine vessels in the tropical area throughout the fisheries. A catch limit for big eye is imposed on the long line fleets operated by the six main fishing CPCs. There is a requirement prohibiting an increase in current capacity in either the purse seine or bigeye longline fisheries, except for Small Island Developing States and Indonesia.

The IOTC manages the tropical tuna fisheries, including bigeye, through limiting fishing capacity in binding Res 05/01. In 2015, it also adopted a discard ban on tropical tunas during fishing operations, similar to the WCPFC.

#### Panel Assessment and Recommendations

The Panel notes that the stock is still over-fished and over-fishing is occurring.

The reduction in TAC to 65,000 t is a positive step. However, it is not clear how the nearly 25% reduction in catch will be achieved, as the authorised number of vessels (over 20 meters) targeting the tropical tunas appears to be maintained nearly the same as in Rec 14.01.

There are some innovations in the FAD management in recent years, which should be commended. Firstly, the FAD reporting obligations will improve ICCAT's catch and scientific data and permit it to monitor such activities more closely. Secondly, the requirements on non-entangling and bio-degradable FADs also constitute progress, as it should reduce by-catch of turtles notably.

The Panel notes however that the FADs management at this stage seems more about collection of catch and effort data, rather than limiting, per se, the number of FADs. The rationale for the figure of 500 FADs per vessel active at any one time, when there are over 50 purse seiners (> 20 meters) authorised to fish, is not clear. The Commission is due to review these provisions in 2016.

The Panel notes the diversity of fishing techniques - purse seine, longline and bait boats - and the continued economic and social need for those fleets to co-exist in the tropical tuna fishery. Each component of the fishery should contribute to some degree to bringing the fishery in line with the ICCAT objective.

- ***The Panel considers that the management of fisheries on this stock by ICCAT is not consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$  as the probability of rebuilding in more than 10 years is less than 50%.***
- ***The Panel recommends that bigeye, which is fished in association with juvenile yellow fin and skipjack on FADs, should form part of the long term management strategy.***
- ***The Panel recommends that, in view of the current poor status of the stock, the sustainable management of the tropical tunas should be a key immediate management priority for ICCAT. The same commitment devoted to eastern bluefin by ICCAT, should now be addressed to the tropical tuna stocks.***
- ***The Panel notes that the lowered TAC has only a 49% probability of rebuilding the stock by 2028 and recommends that the TAC be decreased further to increase the probability of rebuilding in a shorter period.***
- ***The Panel, noting that ICCAT has established a working group on FADs, recommends that ICCAT prioritise this work and, in parallel, pursue the initiative across all tuna RFMOs to pool the information, knowledge and approaches on how to introduce effective management of FADs into the tropical tuna fisheries on a worldwide scale.***
- ***The Panel notes that, according to the SCRS, the area and time closure has not worked and therefore its impact on reducing juvenile catches of big eye and yellowfin, is negligible. The Panel recommends that this policy needs to be re-examined and this can, in part, be done through initiatives on limiting the number and use of FADs.***

#### 2.3.5 Yellowfin

##### 2008 Panel Recommendations

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

*The Panel recommended s 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.*

#### Action by ICCAT

The management of the yellowfin fisheries is conducted by ICCAT under Rec 15-01 on tropical tunas, which sets the TAC at 110,000t. The provisions of Rec 15-01 already referred to under the section dealing with bigeye equally apply to yellowfin.

#### Current Status of Stock

The Atlantic yellowfin stock was estimated to be overfished in 2010. The continuation of catch in the order of 110,000 t was expected to lead to a biomass somewhat above  $B_{MSY}$  by 2016, with a 60% probability.

These projections have not been up-dated. The overall catches in 2012-2014 were lower than 110,000 t. These lower catches could result in a higher probability of achieving the management objective within the same time frame.

However, SCRS has warned that increased harvests on FADs could have negative consequences for yellowfin and bigeye tuna, as well as other by-catch species. If ICCAT wished to increase long term sustainable yield, the SCRS continues to recommend that effective measures be found to reduce FAD-related and other fishing mortality of small yellowfin.

Furthermore, the SCRS has concluded that the moratorium – time and area closure- has not been effective in reducing the mortality of juvenile bigeye tuna. Any reduction in juvenile yellowfin tuna mortality was minimal, largely because fishing effort was redistributed into areas adjacent to the moratorium area.

#### Panel Assessment and Recommendations

The yellowfin stock is overfished, but it is considered that over fishing is not occurring. Reported catches have decreased in recent years. The TAC of 110,000t established since 2012, would appear to correspond to fishing consistent with the objective of ICCAT.

The Panel notes that the management of fisheries on this yellowfin stock has to be seen in the context of the tropical; tuna stocks, and therefore, the associated bigeye and skipjack stocks.

- ***The Panel considers that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$  because fishing mortality is less than  $F_{MSY}$ .***
- ***The Panel recommends that yellowfin, which is fished in association with juvenile bigeye and skipjack on FADs, should form part of the long term management strategy.***
- ***The Panel recommends that a quota allocation scheme be adopted by ICCAT to manage the fishery, as is already the case for bigeye.***

#### 2.3.6 Skipjack

##### 2008 Panel Recommendations

The Panel noted the advice that the fisheries was not being over-exploited and that this was consistent with the Convention objectives. However, with high skipjack prices, 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.

The Panel considered that given the information available and the fact that there was no recommendations for this fishery at the time, that it was not possible for the Panel to form an assessment of the appropriateness of the approach that ICCAT has adopted for fisheries on this important stock.

### Action by ICCAT

The management of fisheries on skipjack is in part covered by the Rec 15.01 on the tropical tuna management. However, there is no TAC or catch limitation in place and consequently no allocated quotas either.

### Current Status of Stock

Stock assessments for East and West Atlantic skipjack were conducted in 2014 using catch data available to 2013. Despite recent progress, SCRS has expressed its concern that uncertainties surrounding the under-reporting of skipjack catches may have on the perception of the state of the stocks.

Skipjack is the predominant species aggregated to FADs, where it is caught in association with juvenile yellowfin and bigeye.

Following the historic record catch of 262,579 t in 2012, the total catches of skipjack throughout the Atlantic Ocean remain high at 232,551t in 2014. This represents a very sharp rise compared to the average catches of 161,200 t over the five years prior to 2010. It is possible, however, that the catches of a segment of the Ghanaian purse seine fleet, transhipped at sea on carriers, have escaped the fishery statistics collection process before 2011.

The skipjack stock is extremely resilient to high fishing pressures as has been seen in different Oceans. In both East and West Atlantic, it is considered that the stock is probably not over-fished, nor is there over-fishing occurring.

### Panel Assessment and Recommendations

- **The Panel considers that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$ .**
- **The Panel recommends that skipjack, which is fished in association with juvenile yellowfin and bigeye on FADs, should form part of the long term management strategy.**
- **The Panel recommends that vessels which fish bigeye, yellowfin and skipjack tunas in the Convention area should be covered by Rec 15-01. For reasons that are not clear to the Panel, skipjack fisheries in the West Atlantic seem to be outside the remit of Rec 15-01.**

#### 2.3.7 North Atlantic Swordfish

### 2008 Panel Recommendations

*The Panel concluded 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.*

### Action by ICCAT

ICCAT, through Rec 13-02, has a measure in place for three years (2014 to 2016) with a TAC of 13,700 t. The objective of this measure is to maintain the stock at  $B_{MSY}$  with a greater than 50% probability.

There is a quota allocation scheme incorporated in the measure, which improves its effectiveness, as well as a commitment to consider development and management plans of coastal developing CPCs.

### Current Status of Stock

According to the 2013 assessment, the stock is not over fished and over fishing is not occurring. Fishing mortality has been below  $F_{MSY}$  since 2000. The estimate of stock status in 2011 is relatively similar to the estimated status in the 2009 assessment.

The current TAC of 13,700t has an 83% probability of maintaining the North Atlantic swordfish stock in a rebuilt condition by 2021. Results from the 2013 assessment indicated that there is a greater than 90% probability that the northern swordfish stock has rebuilt to or above  $B_{MSY}$ . Therefore the Commission's re-building plan goal has been achieved.

#### Approach by Other Tuna RFMOs

As already mentioned, the IOTC manages fisheries on swordfish stock on the basis of capacity limitation measures rather than TACs and quotas. The WCPFC adopted CMM 2009-03, whereby it limits both the number of vessels by CPCs and the catches to those in a reference year in the period 2000-2005/6.

#### Panel Assessment and Recommendations

The Panel considers that ICCAT has managed fisheries on this stock in a responsible and pro-active manner, introducing a re-building plan and ensuring its effectiveness over the years.

- ***The Panel confirms that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$ .***
- ***The Panel recommends that an ICCAT vessel list be introduced for North Atlantic swordfish in line with other key ICCAT fisheries.***

#### 2.3.8 South Atlantic Swordfish

##### 2008 Panel Recommendations

*The Panel concluded that the objective of the Convention was being met for South Atlantic swordfish.*

##### Action by ICCAT

ICCAT has adopted Rec 15-03 which fixes a three-year management period 2014-2016 and an annual TAC of 15,000t. A quota allocation scheme for CPCs is incorporated, as well as provisions on the minimum size. The measure foresees provisions on underage and overage, with the maximum underage of 30%, but this limit may be increased in 2015 up to 50% of 2013 quota.

##### Current Status of Stock

According to the 2013 assessment, the stock is considered not to be over-fished and no over-fishing is occurring.

The SCRS considers that until more research has been conducted on the southern Atlantic swordfish stock, the high uncertainty in stock status will remain. The SCRS did not have sufficient confidence in the assessment results to change the previous recommendation to limit catches to no more than 15,000t.

##### Panel Assessment and Recommendations

- ***The Panel confirms that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$ .***
- ***The Panel recommends that an ICCAT vessel list be introduced for South Atlantic swordfish in line with other key ICCAT fisheries.***
- ***The Panel notes the high underage permitted to be transferred from year to year of 30%, and indeed 50% from 2013. The Panel finds this inconsistent with sound management given the high uncertainty in the assessment, and the more modest underage/overage allowed for other ICCAT stocks (10 or 15%).***

### 2.3.9 Mediterranean Swordfish

#### 2008 Panel Recommendations

The Panel expressed concern on the management of the fisheries on Mediterranean swordfish and recommended:

- the implementation of Rec 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;
- drift netting and gill netting cease immediately in the Mediterranean; and
- action be taken by Mediterranean CPCs to immediately improve the quality and timeliness of data for this species provided to ICCAT.

#### Action by ICCAT

In 2003, ICCAT adopted a general ban on driftnets in the Mediterranean (Rec 03-04). Rec 04-12 forbids the use of various types of nets and longlines for sport and recreational fishing for tuna and tuna-like species in the Mediterranean.

ICCAT has taken a number of measures since 2008 to redress the status of this stock. A Mediterranean-wide one-month fishery closure for all gears targeting swordfish was adopted in 2008 (Rec 08-03), and this closure was extended to two months in 2009. Additional management measures (Recs 11-03 and 13-04) were adopted with the objective of bringing the stock back to levels consistent with the Convention objective.

Those measures include an additional one-month closure accompanied by minimum landing size regulations; a fishing license control system, and specifications on the technical characteristics of the longline gear.

Under Rec 13-04, subsequently up-dated by Rec 15-08, CPCs are required to submit extensive fisheries and scientific data on their fishing vessels activity in the previous year. There is, however, no TAC or catch limits for CPCs.

#### Current Status of Stock

According to the 2013 assessment, the Mediterranean swordfish stock is over-fished and over-fishing is occurring.

The assessment indicates that biomass appear to have been relatively stable over the past 20 years.

Reported catches have decreased significantly from the 2000s' level following the introduction of the above mentioned ICCAT measures. Catches in 2012 and 2013 were the lowest reported catches in the last three decades. Reported catches of juvenile swordfish has also decreased and gear changes may also have contributed to that decrease.

#### Panel Assessment and Recommendations

The Panel notes that the SCRS recommends to maintain the current management measures of Mediterranean swordfish, as adopted in Rec 13-04, until additional data permits a conclusion as to whether or not they are sufficient to allow the stock to re-build in line with the Convention objective of maintaining stocks at  $B_{MSY}$ .

- **The Panel expresses concern at the continuing unsatisfactory status of this stock. The stock is overfished and overfishing is occurring. It is unclear whether the current management is in line with the objective of the Convention of maintaining stocks at  $B_{MSY}$ .**
- **The Panel recommends that catch limits and/or capacity limits are introduced for this fishery.**
- **The Panel encourages ICCAT to intensify its efforts to improve the scientific and fisheries database for this stock and endorses the SCRS recommendation that the fishery be closely monitored and that every component of the Mediterranean swordfish mortality be adequately reported to ICCAT by the CPCs.**

### 2.3.10 Northern Albacore

#### 2008 Panel Recommendations

The Panel was concerned that the TAC levels set for northern albacore appear to be above those recommended by the SCRS and may not lead to the recovery to MSY. If this was the case, the Panel recommended that albacore catches in northern Atlantic fisheries be reduced to be consistent with  $F_{MSY}$  and harvest strategies be developed to ensure that fisheries reach and remain at  $B_{MSY}$ .

The Panel advised that ICCAT 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 recommended 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  $B_{MSY}$ .

#### Action by ICCAT

Since 2001, declared catches have remained below the TAC in all but two years. This may have accelerated re-building over the last decade.

ICCAT adopted Rec 13-05, which fixes an annual TAC of 28,000 t for the period 2014-2016. This catch would meet the Convention management objective by 2020 with a 53% probability. Rec 98-08 limiting fishing capacity in this fishery to the average of 1993-1995 remains in force.

In Rec 15-04, ICCAT has elaborated harvest control rules for the northern albacore stock. Reference points are due to be estimated in 2016.

The management objective for northern albacore stock is

- to maintain the stock in the green zone of the Kobe plot, with at least a 60% probability, while maximizing long-term yield from the fishery,
- where the spawning stock biomass has been assessed by the SCRS as below the level capable of producing MSY ( $SSB_{MSY}$ ), to rebuild SSB to or above  $SSB_{MSY}$ , with at least a 60% probability, and within as short time as possible, by 2020 at the latest, while maximizing average catch and minimizing inter-annual fluctuations in TAC levels.

#### Current Status of Stock

The stock is considered to be marginally over-fished, but no over fishing is occurring.

The TAC will dictate largely the pace of the re-building. Projections at the current TAC of 28,000 t indicate that the stock would rebuild by 2019 with a 53% probability, which would meet the objective of the albacore recovery plan (Rec 13-05).

#### Approach by Other Tuna RFMOs

IOTC manages the albacore fisheries on the basis of capacity limits contained in binding Res 15-11. In addition, through Res 13-09, IOTC fixed as a management objective that no later than 2020, firstly, the fishing mortality rate does not exceed the fishing mortality rate allowing the stock to deliver MSY, and secondly, that the spawning biomass is maintained at or above its MSY level.

#### Panel Assessment and Recommendations

- **The Panel confirms that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$ .**
- **The Panel commends ICCAT for the approach that it has adopted on this stock through the fixing of the management objective and the commitment to deciding on the harvest control rules.**

### 2.3.11 Southern Albacore

#### 2008 Panel Recommendations

*The Panel was concerned that the TAC levels set for southern albacore appeared to be above those recommended by the SCRS and may not lead to the recovery to MSY. If this was the case, the Panel recommended that albacore catches in southern Atlantic fisheries be reduced to be consistent with  $F_{MSY}$  and harvest strategies be developed to ensure that fisheries reach and remain at  $B_{MSY}$ .*

#### Action by ICCAT

ICCAT adopted Rec 13-06, which establishes an annual TAC of 24,000 t for the period 2014-2016. The annual reported catches remained below 24,000 t since 2004, except for three years.

ICCAT recognises the need to re-build the southern albacore stock to MSY levels in line with the management objective. It considers that catches of 24,000 t are likely to permit the re-building of the stock by 2020.

#### Current Status of Stock

The SCRS Report considered that the southern albacore stock is likely to be over-fished and overfishing is occurring, although the catches have generally remained lower than the TAC in recent years.

The assessments indicate that the South Atlantic albacore stock most probably is around the spawning biomass and the fishing mortality that can sustain the maximum sustainable yield. However, there is considerable uncertainty about the current stock status, as well as on the effect of alternative catch limits on the rebuilding probabilities of the southern stock.

#### Panel Recommendation

***The Panel confirms that the management of fisheries on this stock by ICCAT is not quite consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$ .***

### 2.3.12 Mediterranean Albacore

#### 2008 Panel Recommendations

*The Panel advised that ICCAT review the status of the Mediterranean albacore fishery and assure itself that the stock is not subject to overfishing or has not been overfished.*

#### Action by ICCAT

There are no ICCAT regulations managing the fisheries on the Mediterranean albacore stock.

#### Current Status of Stock

Recent fishing mortality appear to have been reduced from those of the early 2000s, which were likely in excess of  $F_{MSY}$ .

The available information on Mediterranean albacore stock status indicates a relatively stable pattern for albacore biomass over the recent past. Unfortunately, very little quantitative information is available to permit the SCRS to conduct a quantitative evaluation of the biomass status relative to the Convention objective.

#### Panel Assessment and Recommendations

- ***The Panel notes that there are still no reliable estimates of whether the stock is over fished or if overfishing is occurring.***

- ***The Panel reiterates the 2008 Panel recommendation that ICCAT assures itself that the stock is not overfished and over fishing is not occurring.***

### 2.3.13 Blue and White Marlins

#### 2008 Panel Recommendations

*The Panel noted that ICCAT should as a minimum, continue the management measures already in place because marlins have not yet recovered. CPCs had disregarded in developing Rec06-09 the rest of the advice from the SCRS that recommended further reductions in mortality to increase the likelihood of rebuilding success; the, regulation of artisanal fisheries; the necessary, improvements in compliance with current regulations, and a broader application of time/area catch restrictions.*

*The Panel considered that Recommendation 06-09 could be enhanced with the immediate provision of improved data to the SCRS.*

#### Action by ICCAT

ICCAT adopted Rec 12-04 which established a TAC of 2,000 t for 2013, 2014, and 2015 for blue marlin and a TAC for white marlin of 400 t, for 2013, 2014, and 2015. It placed additional catch and commercial restrictions in recreational fisheries for blue marlin and white marlin, and requested methods for estimating live and dead discards of blue marlin and white marlin/spearfish.

This recommendation's objective in reducing the blue marlin TAC to 2,000 t was to allow the rebuilding of the blue marlin stock from the overfished condition. The SCRS expressed its concern about the effectiveness of this measure in light of severe under-reporting in some fisheries. The SCRS considered that unless such non-compliance issues were properly addressed, then the adoption of additional measures might be rendered ineffective.

The SCRS expressed concern with the significant increase in the contribution from non-industrial fisheries to the total blue marlin harvest and that these fisheries are not fully accounted for in the current ICCAT database. The SCRS expressed its serious concern over this limitation on data for future assessments. Such data limitation precludes any analysis of the current regulations. In addition, there is the issue of the non-identification of spearfishes in the white marlin catches, which adds further uncertainty to the stock assessment results.

ICCAT adopted Rec 15-05 where the main substantive change that the Panel can detect was that CPCs with non-industrial fisheries shall provide information on their data collection programmes in their Annual Reports.

#### Current Status of Stock

The 2011 assessment indicated that the blue marlin stock remains over-fished and over fishing is occurring. The white marlin stock is recognised to be over-fished, but with the major uncertainty on actual catch levels and the mixing of white marlin and spearfish, it is difficult to assess if over fishing is occurring.

The SCRS recognised the high uncertainty with regard to data and the productivity of the stock. Although uncertain, the results of the 2011 stock assessment indicated that if the catch levels of blue marlin (3,358t in 2010) were not substantially reduced, the stock would continue to decline further.

There is not enough information on the proportion of fish being released alive for all fleets, to evaluate the effectiveness of the ICCAT recommendation relating to the live release of marlins.

The SCRS judges that the current management plan has the potential of recovering the blue marlin stock to the  $B_{MSY}$  level, if properly conducted. However, the SCRS is concerned with the significant increase in the contribution from non-industrial fisheries to the total blue marlin harvest and that these fisheries are not fully accounted for in the current ICCAT database. It expressed its serious concern for future assessments over this weakness in data, which precludes analysis of the current measures.

Currently, four ICCAT CPCs already mandate or encourage the use of circle hooks on their pelagic longline fleets. The SCRS considers the use of non-offset circle hooks can reduce billfish mortality in most fisheries and recommends the Commission consider this approach. In addition, the Commission should consider actions to reduce fishing mortality of blue marlin from non-industrial fisheries.

#### Approach by Other Tuna RFMOs

The IOTC in Res 15/05 encourages CPCs to reduce catches on striped, black and blue marlin to the average catches between 2009 and 2014.

The WCPFC adopted CMM 2006-04 on striped marlins, which limits the number of vessels targeting this species to the average number in the period 2000-2004.

#### Panel Assessment and Recommendations

The Panel notes that the blue marlin stock is overfished and that overfishing is occurring, while the white marlin stock is also overfished but that it is “not likely” that overfishing is occurring. However, the Panel also notes that this assessment is conditioned by a footnote, which states that overfishing could be occurring if catches are under-reported.

In view of the acknowledged under-reporting of marlin catches, which the SCRS itself has underlined, the Panel’s judgement is that overfishing may very well also be occurring on white marlin.

The Panel notes that the SCRS estimates that the current management plan, if properly implemented, has the potential of recovering the blue marlin stock from the overfished condition to the  $B_{MSY}$  level. However, the SCRS warns that the Convention objective will not be attained in the current context of suspected severe under-reporting of catch in those fisheries. The situation seems to have worsened compared to the 2008 Panel Report. This lack of compliance must be addressed in a systematic way by ICCAT.

The Panel considers both marlin fisheries to be outside ICCAT control in view of the weaknesses in data, coupled with the fact that non-industrial fisheries, notably, the sports and recreational fisheries, are not subject to ICCAT limits implemented through recommendations.

- ***The Panel confirms that the management of fisheries on these stocks by ICCAT is not consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$ .***
- ***The Panel considers that ICCAT must reinforce its compliance actions, as Rec 15-05 will not deliver results as long as the severe under-reporting continues.***
- ***The Panel supports the SCRS advice that ICCAT actively encourage, or make obligatory, the use of non-offset circle hooks on long line fisheries to reduce the mortality of released marlin.***

#### 2.3.14 Sharks

##### Performance Criterion

- Extent to which ICCAT has moved toward the adoption of conservation and management measures for previously unregulated fisheries.

##### 2008 Panel Recommendations

*The 2008 Panel considered that if all CPCs actually implemented the ICCAT 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 have not been applied and adhered to by the CPCs.*

*The Panel recommended that ICCAT CPCs immediately implement and comply with the ICCAT recommendations and resolutions to provide accurate and reliable data to the SCRS.*

*The Panel encouraged 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.*

#### Action by ICCAT

ICCAT has adopted over the last six years a number of recommendations addressing individual shark populations: thresher (Rec 09-07), shortfin mako (Rec 10-06 and 14-06), oceanic whitetip (Rec 10-07), hammerhead (Rec 10-08), silky (Rec 11-08) and porbeagle (Rec 15-06). Most of these recommendations prohibit the retention on board, transshipping, landing or selling the above mentioned sharks. ICCAT also adopted Rec 13-10 on biological sampling of prohibited shark species by scientific observers, which is designed to improve knowledge of shark biology.

ICCAT also adopted Rec 12-05, which in line with previous recommendations, made mandatory the submission of shark data. The COC attempted to carry out a targeted review, in 2014 and 2015, of the implementation by CPCs of the ICCAT measures on sharks. Though global statistics on shark catches included in the data base have improved, they are still insufficient to permit the SCRS to provide quantitative advice on stock status for most stocks and particularly sufficient precision to guide fishery management toward optimal harvest levels.

Shark finning continues to be a contentious issue within ICCAT, notwithstanding Rec 04-10. It would seem that a majority of CPCs now favour the requirement that the fins are naturally attached on landing. They contend that this would lead to a qualitative improvement in information on both species and quantities landed; the monitoring and control burden would be reduced; and the prohibition of the shark finning would exclude the practice of high-grading.

#### Current Status of Stocks

The SCRS has prioritized the assessment of the major sharks most susceptible to being caught as by-catch by oceanic fleets targeting tuna and tuna-like species. Shark species with an extensive geographical distribution within the oceanic-epipelagic ecosystem, include the blue shark and shortfin mako shark, and others with less or even limited prevalence, such as porbeagle, hammerhead sharks, thresher sharks, and white sharks.

Two inter-sessional meetings were conducted in 2015 with the main goal of assessing the status of North and South Atlantic blue sharks. An Ecological Risk Assessment had been conducted in 2012 on 16 shark species. The key shark species identified by SCRS in that ERA as being the most vulnerable stocks were the bigeye thresher, longfin and shortfin makos, porbeagle and night sharks.

The assessment on these stocks is as follows:

- North Atlantic blue shark is not likely to be overfished, or overfishing taking place;
- South Atlantic blue shark - it is undetermined whether it is overfished or overfishing is taking place;
- North Atlantic shortfin mako is not overfished, and no overfishing is taking place;
- South Atlantic shortfin mako is not overfished, and no overfishing is taking place;
- North West Atlantic porbeagle is overfished, but no overfishing is taking place;
- South West East Atlantic porbeagle is overfished, but no overfishing is taking place;
- North East Atlantic porbeagle is overfished, but no overfishing is taking place.

#### Approach by Other RFMOs

Two important international developments occurred in 2012 to protect endangered shark stocks. Firstly, ten elasmobranch species were protected under Annex II of the Barcelona Convention (under the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean). These species include shortfin mako, porbeagle, smooth hammerhead, scalloped hammerhead, great hammerhead and tope. Secondly, GFCM adopted Recommendation GFCM/36/2012/3, under which shark species listed under Annex II of the Barcelona Convention cannot be retained on board, transhipped, landed, transferred, stored, sold, displayed, or offered for sale. Furthermore, in 2014, porbeagle was added to Appendix II of CITES, which regulates global trade.

The NEAFC has adopted a range of measures in recent years prohibiting directed fishing for porbeagle, basking shark, spurdog and a range of deep sea sharks (17 species, including dogfish, gulper and catshark).

The WCPFC adopted a measure in 2014 (CMM 2014-05), which adds the requirement for CPCs to develop a management plan that includes specific authorisations to fish shark, such as a licence and TAC, or other measure to limit the catch of shark to acceptable levels. The plans must also demonstrate how the fisheries will be reduced for highly depleted stocks, such as silky and oceanic whitetip.

The IOTC would not appear as advanced as other tuna RFMOs in its management of fisheries catching shark. It has adopted the binding Resolution 13/06, which in addition to guidelines given to its Scientific Committee on what the Committee must take into account in giving its advice, bans the retention of oceanic whitetip sharks as a pilot measure.

#### Panel Assessment and Recommendations

The Panel acknowledges the positive steps taken by ICCAT on sharks since 2008 in terms of the recommendations adopted. It welcomes the more pro-active approach notwithstanding the fact that the management of shark fishing is not covered by the current Convention.

The Panel notes that even following the adoption of Rec 12-05 which makes mandatory the submission of shark data, there has been only a modest improvement in data provision. The continued failure of CPCs to provide accurate data undermines the ability of the SCRS to provide sound advice.

- ***The Panel is not in a position to confirm that the management of fisheries on shark stocks by ICCAT is consistent with the objective of the Convention of maintaining stocks at  $B_{MSY}$ . There remain major uncertainties underlying all the shark assessments.***
- ***The Panel recommends that ICCAT introduces catch limits as a priority for the main shark populations, in line with the SCRS advice. To ensure effective application of this measure, a quota allocation scheme should be developed.***
- ***The Panel recommends that the Compliance Committee should prioritise the issue of data reporting on sharks, as well as poor reporting on the blue and white marlin stocks. In this exercise, it should identify those CPCs and geographic areas where the data problems are concentrated and develop approaches to resolve these long standing difficulties.***
- ***The Panel supports the view that shark fins should be naturally attached on landings for the reasons mentioned above. The shark finning practice applied to stocks already depleted or severely reduced, is but another factor negatively impacting on the shark stocks.***

#### 2.3.15 Precautionary Approach

##### Performance Criterion

- Extent to which ICCAT 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.

##### 2008 Panel Recommendations

*The Panel noted that 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 Panel recommends that ICCAT formally and systematically adopt the precautionary approach.*

### Action by ICCAT

ICCAT adopted Res 15-12 concerning the use of a precautionary approach in implementing ICCAT conservation and management measures. This is a non-binding measure.

The relevant provisions of this resolution foresee, notably, ICCAT, when applying the precautionary approach, to

- a) use the best available scientific advice;
- b) exercise caution when scientific information is uncertain, unreliable or inadequate;
- c) determine, on the basis of the best scientific information available, stock specific reference points, in particular limit reference points, and the action to be taken if exceeded; and
- d) not use the absence of adequate scientific information as a reason to postpone or not to take conservation and management action in relation to the species under its mandate.

In the report of the meeting in Madrid in March 2016 of the WG on Convention Amendment, the Panel notes that the current draft Convention contains in Art III (bis) the following provision;

The Commission and its Members, in conducting work under the Convention, shall act to:

- a) apply the precautionary approach and the ecosystem approach to fisheries management in accordance with relevant internationally agreed standards and, as appropriate, recommended practices and procedures;

### Panel Assessment and Recommendations

- ***The Panel considers that on the basis of the stock by stock analysis contained in section 2, ICCAT has not applied in a consistent manner the precautionary approach. ICCAT has based its management on the best available scientific advice, when assessments were considered reliable, but has generally not applied the precautionary approach where scientific information is uncertain, unreliable or inadequate.***
- ***The Panel recommends that the content of Res 15-12 be transformed into an ICCAT recommendation and that the new Convention contains an explicit commitment to apply the precautionary approach.***

#### 2.3.16 Rebuilding Plans

### Performance Criterion

- Extent to which ICCAT has adopted and is implementing effective rebuilding plans for depleted or over fished stocks.

### Action by ICCAT

ICCAT currently has in place a number of re-building plans covering eastern bluefin (Rec 14-04), western bluefin (Rec 14-05), northern albacore (Rec 13-05), tropical tunas multi-annual programme (Rec 15-01), and blue and white marlins (Rec 15-05).

### Panel Assessment and Recommendations

The Panel has already commented on the effectiveness or otherwise of the existing re-building plans in the individual stock-by-stock analysis in the above section.

For decades, ICCAT has been to the forefront of Tuna RFMOs in its management of fisheries on individual stocks. The key stocks have been subject to a range of management measures, with varying degrees of success. ICCAT has innovated in many important respects in its management. The Panel commends ICCAT for the effectiveness, in general, of its re-building plans, with the exception of blue and white marlins.

An evaluation would conclude that ICCAT's overall management is sound, but that it could do better in relation to certain stocks. This evaluation has to be framed against the increasingly high standards, which are now demanded by the international community from tuna RFMOs entrusted with ensuring the sustainability of the tuna stocks.

The Panel considers that there is a lack of consistency in the formulation by ICCAT of the different re-building plans for the stocks. This situation may be due in part to inconsistencies or variations in how the SCRS presents in advice for the different stocks concerned.

This is apparent in the low and varied level of probability fixed across the different re-building plans, and the variable time periods fixed to attain those objectives; namely:

- Yellowfin: 60% probability of attaining objective by 2016;
- Western bluefin: 50% or greater probability by 2018,
- Northern albacore: 53% probability of attaining objective by 2020;
- Eastern bluefin: 60% probability of attaining objective by 2022
- Bigeye: 48% of attaining objective by 2028;
- Northern swordfish: 60% probability of attaining objective of maintaining  $B_{MSY}$ .

The Panel questions whether such low levels of probability are consistent with the precautionary approach and effective management.

The introduction of long term management strategies for the stocks would have major benefits for the organisation in terms of fulfilling its mandate on long term sustainable exploitation of the stocks. The advantages would include, *inter alia*,

- the introduction of management stability, since the actions required to address changes in the status of the stock, would be laid down in the strategy
- the effective application of the precautionary approach
- the avoidance of the annual negotiation exercise within ICCAT with an improved predictability and transparency, as the management rules are agreed already in the strategy,

The objective to introduce such management strategies is reflected in many of the contributions received by the Panel, both from CPCs and NGOs.

All tuna RFMOs are addressing the need to introduce such management strategies, but their progress tends to be piecemeal at the moment. CCSBT has progressed significantly and IOTC has taken first steps on skipjack. The WCPFC has also agreed on the pursuit of this objective with a precise work plan for each species.

The North East Atlantic Coastal States have been applying the long term management approach to its pelagic stocks (mackerel, herring and blue whiting) since the 1990s, so it is not a new concept and it has worked. For those cases, the probability of achieving the management objective is far more ambitious compared to ICCAT re-building plans to date.

- ***The Panel considers the adoption of Rec 15-07 on harvest control rules and management strategy evaluation, and Rec 15-04 on establishing harvest control rules for northern albacore, to be an important first step in agreeing long term strategies.***
- ***The Panel considers that ICCAT, with its vast experience in tuna fisheries management, is ideally placed to be the pioneer in the rapid introduction of long term management strategies to ensure the sustainability of individual stocks and consistency of management approach across the range of stocks.***
- ***The Panel recommends that ICCAT move away from the current re-active management to re-redress the status of stocks through re-building plans, to a more pro-active policy of developing comprehensive long term management strategies for the main stocks. Such management strategies would encompass management objectives, harvest control rules, the stock assessment method, fishery indicators and the monitoring programme.***
- ***The Panel recommends that ICCAT should prioritise the development of a long term management strategy for the tropical tuna stocks.***

- ***The Panel recommends that ICCAT agree a work plan across all the stocks for the SCRS and Commission, as has been agreed by WCPFC. Apart from the obvious advantage of ensuring consistency of approach across the stocks, it would also engage all the CPCs simultaneously in this key process.***

### 2.3.17 Marine Biological Diversity

#### Performance Criterion

- Extent to which ICCAT 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.

The Panel concentrated its evaluation on ICCAT's mitigation measures to reduce sea turtle mortality and seabird mortality.

#### **Seaturtles**

##### 2008 Panel Recommendations

*The Panel recommended that ICCAT develop a stronger approach generally to by-catch and develop and adopt appropriate mitigation measures including reporting on the effectiveness of the Resolutions 3-11 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.*

##### Action by ICCAT

In response, ICCAT initially adopted Rec 10-09 on the by-catch of turtles, which introduced a number of obligations for purse seine and pelagic long line vessels, as well as fishermen on long line vessels.

In 2013, through Rec 13-11, ICCAT significantly strengthened the previous Recommendation by introducing specific requirements addressing safe handling practices; the use of line cutters, and the use of de-hooking devices.

In relation to technical measures, and following international scientific studies on circle hooks which showed a statistically significant decrease in sea turtle by-catch when such hooks are used in pelagic long lining, ICCAT adopted Res 05-08. This Resolution urged CPCs to continue trials and research. However, ICCAT has not addressed this issue through a Recommendation as advised by SCRS.

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. The impact of ICCAT fisheries on the status of turtles is poorly known.

##### Approach by Other Tuna RFMOs

All tuna RFMOs have in place measures to address turtle by-catch in tuna fisheries. Whilst there may be differences in the actual language used in the binding measures, the essential objectives are similar.

IOTC has adopted Res 12/04, which is binding and distinguishes between the mitigation measures to be implemented by gillnet, longline and purse seine vessels.

##### Panel Assessment and Recommendations

- ***The Panel considers that ICCAT, by Rec 13-11, has put in place strict measures, which if effectively applied by CPC vessels, will lead to a reduction in turtle by-catch.***
- ***The Panel endorses the SCRS advice that the Commission consider the adoption of measures such as, the mandatory use of non-offset circle hooks.***
- ***The Panel considers that this issue affects all tuna RFMOs, and knowledge and experience should continue to be pooled between the RFMOs.***

- ***The Panel noted that there are no reliable estimates of the mortality caused by longlines on these species and recommends that a time-limited program be designed to estimate seabird and turtle mortality in ICCAT longline fisheries. This programme should be of at least one year duration and involve increased observer coverage deemed sufficient to estimate turtle and seabird mortality by all major fleets. Such increased observer coverage would also provide information on the impact of ICCAT fisheries on other components of the ecosystem.***

## **Seabirds**

### 2008 Panel Recommendations

*The Panel considered that Rec 07-07 was a significant improvement on ICCAT's previous approach. The Panel recommended 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.*

### Action by ICCAT

In adopting Rec 11-09, ICCAT reinforced considerably its approach to reducing seabird mortality in longline fishing operations. This Recommendation specifies, inter alia, precise mitigation practices in relation to night setting, bird scaring lines, line weighing. There are also requirements on reporting by CPCs on their National Plans. Crucially, it also foresees adjustments to the measure in view of new scientific advice.

ICCAT's tropical and temperate tuna fisheries in the Atlantic - one of the world's most productive oceans - involve regular interactions with seabirds. The reduction in seabird mortality is a common challenge to fishers in the region.

The main birds of concern in this fishery are albatross and petrels, which are under severe threat of depletion for a number of reasons, including mortality during long line fishing.

### Approach by Other Tuna RFMOs

CCAMLR was the initiator of international measures to introduce mitigation measures, which would reduce seabird mortality. Most RFMOs have in time either replicated CCAMLR measures or adjusted those measures to take account of specificities in their own fisheries. Added impetus was given by the FAO International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds). Some ICCAT CPCs have adopted their own National Plans of Action on Seabirds.

All tuna RFMOs have in place measures to address seabird mortality turtle by-catch in tuna fisheries. Whilst there may be differences in the actual language used in the binding measures, the essential objectives are similar.

IOTC adopted Resolution 12/06 which is binding and is similar in its provision to ICCAT Recommendations with a range of mitigation measures, including supplemental guidelines for the design and deployment of tori lines.

WCPFC adopted a conservation and management measure (CMM 2012-07) which lays down different requirements depending on three geographic areas in the Pacific Ocean - South of 30 degrees S, North of 23 degrees N, and the areas in between. It offers a choice of mitigation measures to suit the different types of fishing vessels involved.

### Panel Assessment and Recommendations

- ***The Panel commends ICCAT on the measures it has introduced to date and recommends that it pursues its stated goal of further reducing bird mortality through the refinement of existing mitigation measures.***
- ***The Panel considers that this issue affects all tuna RFMOs, and knowledge and experience should continue to be pooled between the RFMOs.***

- ***The Panel reiterates its recommendation on a time-limited programme to estimate seabird and turtle mortality in ICCAT longline fisheries.***

#### *2.3.18 Pollution, Waste and Discarded Gears*

##### *Performance Criterion*

- Extent to which ICCAT 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.

##### *2008 Panel Recommendations*

*No recommendations were made by that Panel on these issues.*

##### *Action by ICCAT*

The ICCAT approach in relation to the adoption of measures to protect non-fish species (turtles, birds) in the ecosystem is covered by the previous section.

ICCAT has adopted Rec 11-10 on information collection and harmonization of data on by-catch and discards in ICCAT fisheries.

Within the framework of Rec 15-01 on the management of tropical tuna fisheries, and as mentioned above in section 2.3.4, ICCAT has introduced a number of significant innovations in relation to fishing gear and the management of FADs, which fall under this criterion.

Rec 15-01 foresees that in order to minimize the ecological impact of FADs, in particular the entanglement of sharks, turtles and other non-targeted species, and the release of synthetic persistent marine debris, CPCs shall

- replace by 2016 existing FADs with non-entangling FADs in line with the guidelines under Annex 6 of this Recommendation;
- undertake research to gradually replace existing FADs with fully biodegradable and non-entangling FADs, with a view to phase out non-biodegradable FADs by 2018, if possible; and
- report on an annual basis on the steps undertaken to comply with these provisions in their FADs Management Plans.

There are also provisions in this same recommendation in relation to CPCs' obligations to monitor FAD losses and manage the recovery of FADs and beacons and their potential loss.

##### *Panel Assessment and Recommendations*

***The Panel notes the measures adopted by ICCAT to date and recommends that ICCAT expands the range of its measures addressing these policy matters. In this regard, the Panel would refer to CCAMLR CM 26-01 on general environmental protection during fishing.***

#### *2.3.19 Previously Unregulated Fisheries*

##### *Performance Criterion*

- Extent to which ICCAT has moved toward the adoption of conservation and management measures for previously unregulated fisheries.

##### *2008 Panel Recommendations*

*The Panel recommended a more active involvement of the sport and recreational fisheries within ICCAT.*

### Action by ICCAT

ICCAT has continued to manage the established fisheries on tuna and tuna-like stocks in the period since 2008. The main innovation in ICCAT's management relates to the adoption of recommendations in regard to fishing on shark species, which were previously unregulated.

ICCAT has adopted no measures to directly address the recreational and sport fisheries, in particular, in relation to billfishes and other species which are targeted by this sector. A Working Group on Sport and Recreational Fisheries was established by ICCAT through Rec 06-17. This WG has two key objectives:

- Examine the biological and economic impact of recreational and sport fishing activities on ICCAT-managed stocks and notably assess the level of harvest.
- Based on available information, identify approaches for managing the recreational and sport fishing activities in ICCAT fisheries.

### Panel Assessment and Recommendations

The Panel welcomes the expansion by ICCAT of new measures to manage fisheries on the shark species.

The Panel notes that the WG on Sport and Recreational Fisheries has two key objectives, but little progress appears to have been made. The impact of these fishing activities is not negligible, particularly on the billfishes.

***Considering the important role played by the sport and recreational fisheries in a number of key fisheries, notably billfishes, the Panel recommends that***

- ***the working group is re-activated to complete its mandate***
- ***mechanisms are developed by ICCAT to engage this sector in the deliberations of ICCAT on management and control measures for these fisheries.***

## **2.4 Capacity Management**

### Performance Criteria

- Extent to which ICCAT has identified fishing capacity levels commensurate with long-term sustainability and optimum utilization of relevant fisheries.
- Extent to which ICCAT has taken actions to prevent or eliminate excess fishing capacity and effort.

### 2008 Panel Recommendations

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

### Action by ICCAT

ICCAT has sought to limit capacity in some fisheries historically. Recs 93-04, 98-03, 98-08 and 04-01 are examples. ICCAT has also taken measures to ensure that registered vessels must be on an approved ICCAT vessel list in order to fish tuna and tuna like species in the ICCAT area. In that regard, ICCAT has worked to significantly reduce the known incidence of IUU fishing on such species.

In Rec 98-08, ICCAT already limited capacity in the northern albacore fishery. Capacity has become less of an issue in this fishery in recent years due to the restructuring of certain key fleets.

In 2006, ICCAT established through Res 06-19 a capacity working group, but there seems to have been little output from this working group.

ICCAT responded to the 2008 Panel's concerns of over-capacity in the eastern bluefin fishery by adopting capacity management measures, the most recent being in Rec 14-04. In practice, all CPCs must establish an annual fishing management plan for discussion and approval by the Commission. Each CPC must adjust its fishing capacity to ensure that it is commensurate with its allocated quota. In practice, this means that CPCs have to limit the number, and the corresponding gross registered tonnage of their fishing vessels to the number and tonnage of their vessels that fished for bluefin tuna during the period 1 January 2007 to 1 July 2008, with minor adjustments, in particular, for bait boats and the artisanal fleet.

ICCAT further restricted the eastern bluefin capacity in Rec 14-04 by ensuring that, for the years 2015, 2016 and 2017 when the TAC is increasing, the number of purse seiners is limited to the number authorised in 2013 and 2014. An exception is for developing CPCs, which are allowed to increase their fishing capacity in order to fully fish their quota.

In Rec 15-01, ICCAT foresees capacity limits to manage the big eye fisheries. There is provision that where a CPC's annual catches is less than 2,100t, that CPC may increase capacity.

For all three species, it is important to note that the main measure on the management of the fisheries are the TAC and quotas for individual CPCs foreseen in these recommendations.

#### Approach by Other Tuna RFMOs

Among the other RFMOs, the IOTC which has preferred to manage its fisheries based on capacity, rather than TAC and quota measures. In Res 15/11, it establishes the reference years that must be used by CPCs in determining their capacity. The reference year for tropical tunas is 2006, and for swordfish and albacore it is 2007. CPCs are obliged to verify the effective presence and fishing activities of their vessels in the Convention Area during the reference period by checking VMS reports, catch reports, port calls and other means. In the IOTC, there is both a list of authorised vessels and a smaller list of active vessels in any one year.

#### Panel Assessment and Recommendations

- ***The Panel considers that ICCAT under its mandate has judiciously applied the limitation of capacity approach to the fisheries. ICCAT has introduced capacity limitations to three key fisheries, namely, eastern bluefin tuna, bigeye and northern albacore.***
- ***The Panel understands that ICCAT has demonstrated a preference for managing fisheries on the basis of TAC and quotas, but that for certain stocks it has incorporated capacity measures to complement the catch restrictions. The Panel considers this approach to have been effective.***

### **2.5 Compatibility of Management Measures**

#### Performance Criterion

- Extent to which measures have been adopted as reflected in UNFSA Article 7.

#### 2008 Panel Recommendations

*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.*

#### Action by ICCAT

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).

### Approach by Other RFMOs

For the IOTC, the area of competence of the Commission (hereinafter referred to as the “Area”) is the Indian Ocean (defined for the purpose of this Agreement as being FAO statistical areas 51 and 57 as shown on the map set out in Annex A to this Agreement) and adjacent seas, north of the Antarctic Convergence, insofar as it is necessary to cover such seas for the purpose of conserving and managing stocks that migrate into or out of the Indian Ocean. The IOTC at its 4th Session in 1999 agreed to modify the western boundary of the IOTC area of competence from 30 degrees E to 20 degrees E, thus eliminating the gap between the areas covered by IOTC and ICCAT.

Thus, as with ICCAT, the IOTC measures apply both on the High Seas and in EEZs.

For WCPFC, the situation is less clear. Whilst the Convention has provisions on the objective of ensuring compatibility, most of the key conservation measures have provisions allowing the Small Island Developing States to adopt their own measures.

The principle of compatibility has more relevance in cases where RFMOs have management responsibility for demersal stocks that straddle both international waters and EEZs of Coastal States. Prime examples are the NAFO cod, shrimp and Greenland halibut stocks. Similarly, NEAFC has straddling stocks under its responsibility.

### Panel Assessment and Recommendations

- ***The Panel considers that ICCAT does not need to take any action on the compatibility issue. The Convention is quite clear that the “Convention Area” includes all waters of the Atlantic and adjacent seas. The Panel thus considers that conservation and other measures adopted by ICCAT apply without distinction to both the exclusive economic zones of CPCs and the high seas.***
- ***The Panel considers that it is a major strength of ICCAT, compared to other tuna RFMOs, that the ICCAT mandate is framed in that manner. It ensures that a uniform and consistent implementation of the ICCAT measures is applied throughout the Atlantic and adjacent seas, and crucially, that the management of fisheries on the stocks is consistent throughout their migratory range.***

## **2.6 Fishing Allocations and Opportunities**

### Performance Criterion

- Extent to which ICCAT 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.

### 2008 Panel Recommendations

*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.*

### Action by ICCAT

ICCAT has agreed quota allocation schemes in its management approach since the 1990s. Current examples of these are Recs 13-05 and 13-06 on northern and southern albacore; Recs 13-03 and 15-03 on northern and southern swordfish, Recs 14-04 and 14-05 on eastern and western Bluefin tuna, and finally Rec 15-01 on the tropical tunas. The practice has been that the quota shares of individual CPCs have been adjusted over time.

In certain of the recommendations relating to quota allocation schemes, there are flexibility provisions, which allow for new entrants or which recognise small scale fisheries, without allocating a precise quota.

ICCAT adopted Res 15-13, which lays down the criteria to be used in determining the allocation of fishing possibilities of CPCs. This resolution reflects the document 01-25, which summarised the work of the ICCAT working group on allocation criteria.

#### Approach by Other Tuna RFMOs

The IOTC has managed its fisheries mainly through capacity measures, as already outlined. However, it established a Technical Committee on Allocation (TCAC) which has met on three occasions. This Committee has examined a number of alternative schemes for determining quota allocations, but there is no conclusion to its work.

The WCPFC has set capacity limits for certain categories of vessels, be they, purse seine or long line. It has not adopted quota allocation schemes, per se, for its individual fisheries.

#### Panel Assessment and Recommendations

The Panel commends ICCAT for having been in the forefront of RFMOs in agreeing allocation schemes for the key tuna and tuna like stocks under its mandate. Currently, there are allocation schemes in place for eastern and western bluefin, northern and southern swordfish, northern and southern albacore, and bigeye.

The Panel considers that allocation schemes constitute a positive factor in ensuring the effective implementation of the conservation measures and notes the adoption of Res 15-13 in 2015 on criteria for the allocation of fishing possibilities.

The Panel considers that binding allocation criteria are unrealistic with 50 CPCs and each fishery having its own special context. The Panel does not recommend agreeing relative weighting for each of the allocation criteria in Res 15-13, because this would be extremely time consuming; there is a low probability of agreement, and it could distract ICCAT from other pressing matters, such as the development of long term management strategies.

The established practice of ICCAT in agreeing quota allocation schemes provides stability in fishing opportunities. Quota allocation schemes have been an integral part of ICCAT management measures for decades and they have functioned well.

However, the Panel considers that no system can or should remain static. Improvements are possible, particularly in terms of openness and flexibility, so that particularly developing Coastal States, can expect fair consideration and the real possibility of reasonable future fishing opportunities.

The Panel recognizes that the process needs to ensure a balanced approach to avoid unfair disruption of existing harvesters' fishing opportunities and undesirable moves to adopt management measures that are not science-based.

- ***The Panel considers that there are legitimate expectations among Developing CPCs that quota allocation schemes need to be reviewed periodically and adjusted to take account of a range of changing circumstances, notably, changes in stock distribution, fishing patterns and fisheries development goals of Developing States.***
- ***The Panel considers it appropriate that quota allocation schemes should have a fixed duration, up to seven years, after which they should be reviewed and adjusted, if necessary.***
- ***In determining quota allocation schemes in the future, the Panel proposes that ICCAT could envisage establishing a reserve within new allocation schemes (for instance, a certain percentage of the TAC), to respond to requests from either new CPCs or Developing CPCs, which wish to develop their own fisheries in a responsible manner.***

## **2.7 Reporting Requirements**

### Performance Criterion

- Analysis of ICCAT reporting requirements to improve efficiency, avoid redundancy and reduce unnecessary burden to CPCs.

### Action by ICCAT

ICCAT had adopted measures to simplify and to improve the reporting requirements (e.g. Annual report format, in particular the summary table), but while there is considerable redundancy in the reporting requirements, they do not complement one another. It is generally not possible to cross validate one with the other.

As indicated above in Section 2.2, the Panel believes that major progress in data submission, data quality and data completeness can only be achieved by simplifying and automating the process of collecting data. This may not be possible for artisanal fleets, but should be possible for the greatest majority of the fleets in developed countries.

Further considerations are developed in Section 4.5.

## **3. Monitoring, Control and Surveillance (MCS)**

### **3.1 Port State Measures**

#### Performance Criteria

- Extent to which ICCAT 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 ICCAT has adopted Port State Measures pursuant to the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.
- Extent to which these measures are effectively implemented.

#### Global Instruments

The rights and obligations of States in their capacity as port States relating to marine capture fisheries are to a large extent laid down in global instruments as well as the customary international law relating to, *inter alia*, territorial sovereignty and scenarios of *force majeure* or distress. The global instruments include UNFSA (Article 23), the Code of Conduct (Article 8.3), its IPOA-IUU (paragraphs 52-64), the Compliance Agreement (Article V(2)), and the 2009 PSM Agreement. The PSM Agreement is the most recent, most detailed, and also most comprehensive of the global instruments. At the time of writing, 13 of the 55 ICCAT CPCs were Contracting Parties to the PSM Agreement.<sup>17</sup>

#### 2008 Panel Recommendations

*The 2008 Panel recommended that ICCAT:*

- *Takes 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.*
- *Makes more efforts on capacity building.*

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<sup>17</sup> As of 30 August 2016, these were: Barbados, EU, France (in respect of its overseas territories), Gabon, Guinea, Iceland, Norway, Korea (South), St. Vincent & the Grenadines, South Africa, United States, Uruguay and Vanuatu (information available at <http://www.fao.org/legal/treaties/treaties-under-article-xiv/en/> (accessed 8 September 2016).

### Action by ICCAT

ICCAT already acknowledged the importance of port State measures before the 2008 Panel completed its work. Among other things, Res 06-18 explicitly instructed IMM to consider port State measures as a potential mechanism for strengthening ICCAT's monitoring, control and surveillance (MCS) regime.

The Amended ICCAT Convention does not devote specific attention to port State measures or MCS. In fact, it does not even explicitly provide ICCAT with competence related to MCS, IUU fishing, compliance, enforcement or implementation. This is a notable contrast with the constitutive instruments of several recently established RFMOs (e.g. SPRFMO and (NPPFC)) as well as the Amended NAFO Convention, all of which list the abovementioned issues among their RFMO's functions. Article IX of the Amended ICCAT Convention essentially retains the original text, which contains obligations for the Members/Contracting Parties on the enforcement and application of the Convention. The only substantive amendment to Article IX has been to move the wording on a "system of international enforcement" from paragraph (3) to a new paragraph (4).

The principal action by ICCAT on port State measures since 2008 is the adoption of Rec 12-07. Subsequently, ICCAT adopted the 'Port Entry Prior Notification Form' and the 'ICCAT Port Inspection Report Form' in 2013;<sup>18</sup> but without formally linking these to Rec 12-07.

The reference to the PSM Agreement in the Preamble to Rec 12-07 indicates that the Scheme is at least to some extent intended as ICCAT's anticipatory implementation of the PSM Agreement. The new Scheme replaces the previous Scheme laid down in Rec 97-10, and complements or builds on Recs 98-11 and 11-18. ICCAT's actions on in-port transshipment are discussed in the section 'Integrated MCS measures' below.

In addition to the prohibition on landing included in Rec 98-11, prohibitions on landing are also included in:

- Rec 03-16 on tunas or tuna-like species caught by IUU fishing activities;
- Rec 11-18 in relation to vessels on the ICCAT IUU Vessel List, which are also prohibited to land, tranship, re-fuel, re-supply, or engage in other commercial transactions; except in case of *force majeure*;
- Rec 11-20, in relation to consignments of bluefin tuna that are not accompanied by a validated bluefin tuna catch document (BCD) or other documentation, where required;
- Rec 13-04, in relation to vessels not listed on the ICCAT Record of Vessels Authorized to Catch Mediterranean Swordfish;
- Rec 13-13, in relation to large scale fishing vessels that are not listed on the ICCAT Record of Vessels; and
- Rec 15-01 in relation to fishing vessels not listed on the ICCAT Record of Authorized Tropical Tuna Vessels.

Rec 12-07 requires its review to be completed no later than the 2014 Annual ICCAT Meeting. While the discussions on Rec 12-07 during the 2014 meetings of COC, IMM and PWG cannot be regarded as a full review, they nevertheless resulted in the Rec 14-08, which takes several concrete steps on capacity building for developing CPCs, including the establishment of the monitoring, control, and surveillance fund (MCSF).

ICCAT is one of the three tuna-RFMOs that have adopted port State measures so far.<sup>19</sup> CCSBT and IOTC have also adopted port State measures, but so far IATTC and WCPFC have not. A comparison between the port State measures adopted by CCSBT, ICCAT and IOTC gives two main conclusions. First, the CCSBT's port State measures laid down in its 2015 *Resolution for a CCSBT Scheme for Minimum Standards for Inspection in Port* are virtually identical to ICCAT Rec 12-07. Second, the IOTC's port State measures as laid down in *IOTC Resolution 10/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*<sup>20</sup> are very different from those of CCSBT and ICCAT. Whereas the IOTC's port State measures closely follow the structure and substance of the PSM Agreement, those of CCSBT and ICCAT do not. As noted above, however, several other ICCAT Recs also contain port State measures and the two Port Forms adopted in 2013 could be seen as *de facto* Annexes to Rec 12-07.

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<sup>18</sup> Report of the 23<sup>rd</sup> Regular ICCAT Meeting (2013), at Annexes 7.1 and 7.2.

<sup>19</sup> For a comprehensive overview see J. Swan, *Implementation of Port State Measures* (FAO: 2016), in particular Chapter 6 and Annex V.

<sup>20</sup> To be replaced by IOTC Resolution 16/11 with the same title.

Whereas an in-depth comparative analysis of Rec 12-07 and the PSM Agreement cannot be undertaken in this Performance Review, it is evident that the latter is more demanding for its Contracting Parties than the former for the CPCs of ICCAT. For instance, the Agreement's definitions have not been incorporated in Rec 12-07 or the Amended ICCAT Convention (e.g. 'fishing', 'fishing related activities', 'port' and 'vessel'), and container vessels are regarded not to be covered at all by Rec 12-07.<sup>21</sup> The failure to include such definitions in Rec 12-07 is part of a larger problem of a lack of consistent definitions in ICCAT Recommendations. One observer proposed to the 2016 Panel that ICCAT should address this.

Moreover, the exception relating to chartering laid down in paragraphs 3 and 5 of Rec 12-07 is broader than the corresponding exception in Article 3(3) of the PSM Agreement. Much more important, however, is that in case of apparent infringements of ICCAT conservation and measures that fall "within the legal jurisdiction of the port CPC", paragraph 23 of Rec 12-07 merely acknowledges that "the port CPC may take action", whereas Article 18(1)(b) of the PSM Agreement requires a port State in such circumstances to deny the vessel to use its port for various purposes, such as landing catch or refuelling. A final example is the failure of Rec 12-07 to devote attention to the role of flag States, even though Article 20 of the PSM Agreement is dedicated to this. This omission was noted by the Chair during the 2014 COC Meeting, who also suggested that Rec 12-07 be amended to address this.

The 2014 and 2015 ICCAT Secretariat Reports on 'compliance with ICCAT conservation and management measures currently in force', provide an overview of the lists of designated ports and port inspection reports submitted by CPCs to the Secretariat pursuant to Rec 12-07. While this Panel was unable to verify the submitted information with actual port visits, the low number of port inspection reports suggests that the abovementioned minimum of 5 % has not been reached.

Rec 14-08 seeks to enhance capacity building on port State measures and this responds to the 2008 Panel's recommendations. The MCSF established by Rec 14-08 is financed by the working capital fund as well as by voluntary contributions from CPCs.<sup>22</sup> An initial allocation to the MCSF will be made once the specific capacity building needs of developing CPCs have been clarified. At the time of writing, the Secretariat is still trying to collect information from developing CPCs.<sup>23</sup>

At its 2015 Annual Meeting, ICCAT recognized that "training was not the only impediment to the full implementation of the ICCAT measure on port inspection."<sup>24</sup> While other impediments were not mentioned, the fact that ICCAT does not comprehensively or systematically assess compliance with the substantive requirements of Rec 12-07, and that non-compliance does not trigger consequences, can be presumed to be prominent among them. Finally, it should be recalled that Rec 12-07 does not require CPCs to impose key port State measures in certain scenarios, but merely recognises their right to do so.

ICCAT is certainly not the only RFMO that experiences problems with effective implementation of port State measures. The IOTC has similar problems and its Secretariat has provided training to address this and is currently developing a template for national legislation. IOTC has recently developed an e-PSM (electronic port State measures) system to enhance implementation of its port State measures, which will be used during a three-year trial period from 2016.<sup>25</sup>

### Panel Recommendations

#### **The Panel recommends that ICCAT**

- **Encourages its CPCs to become Contracting Parties to the PSM Agreement.**
- **Amends Rec 12-07 to ensure more consistency with the PSM Agreement, in particular by including definitions and requiring CPCs to impose key port State measures such as denial or use of port in certain scenarios.**
- **Closely follows IOTC's efforts to enhance effective implementation of its port State measures through, inter alia, its e-PSM system, and, where appropriate, adopt similar efforts within ICCAT.**

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<sup>21</sup> Cf. Report of the 19<sup>th</sup> Special ICCAT Meeting (2014), at p. 174. This general exemption is inconsistent with the phrase "transporting of fish that have not been previously landed at a port" in Art. 1(d) of the PSM Agreement.

<sup>22</sup> Doc. No. IMM-004/i2016, at p. 1 notes that a contribution was made by Norway.

<sup>23</sup> See, *inter alia*, ICCAT Circular No. 2583/2016, of 6 May 2016 and Doc. No. IMM-004/i2016.

<sup>24</sup> Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p. 8.

<sup>25</sup> IOTC Resolution 16/11, *supra* note 20, at Art. 3.3.

- *Makes more efforts to assess substantive compliance with its port State measures and to specify consequences for non-compliance.*

### **3.2 Integrated MCS Measures**

#### *3.2.1 Introduction*

##### Performance Criteria

- Extent to which ICCAT 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.

##### Global Instruments

As IUU fishing is a persistent problem, international fisheries law emphasizes the need to use a wide range of MCS measures and to fully integrate them where possible. MCS measures are listed among the general principles for the management and conservation of straddling and highly migratory fish stocks as well as among the functions of RFMOs in Articles 5 and 10 of the UNFSA respectively. Article 18(3)(g) of the UNFSA provides specific examples of MCS measures that flag States are required to use for their vessels, namely national and (sub-)regional inspection schemes and observer programs, and vessel monitoring systems (VMS). Article 21(2) of the UNFSA requires States to establish high seas boarding and inspection procedures within RFMOs that are consistent with Articles 21 and 22 of the UNFSA. Once established, these procedures apply instead of the procedures set out in Articles 21 and 22 of the UNFSA.

The MCS measures just mentioned are merely examples and other measures may be regarded as MCS measures as well, for instance those mentioned in the performance criteria above. More guidance on MCS measures is provided by, *inter alia*, Articles 7.1.7, 7.7.3 and 8.1.4 of the Code of Conduct, the IPOA-IUU and the Technical Guidelines for Responsible Fisheries.<sup>26</sup> The need to integrate MCS measures is emphasized repeatedly in the IPOA-IUU, including by means of its ‘comprehensive and integrated approach’ laid down in paragraph 9.3. This objective is also pursued by the International Monitoring, Control and Surveillance Network.<sup>27</sup> Finally, it should be mentioned that FAO’s work on Voluntary Guidelines for Catch Documentation Schemes could not be finalized at the 32<sup>nd</sup> Session of its Committee on Fisheries (COFI) in July 2016.<sup>28</sup>

##### 2008 Panel Recommendations

*The 2008 Panel recommended ICCAT:*

- *to 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 schemes.*
- *to develop catch documentation programs for all high value fisheries.*

##### Action by ICCAT

Already before the completion of the 2008 ICCAT Performance Review, ICCAT had begun to strengthen its MCS measures, principally through IMM - as instructed by Res 06-18 - and the PWG pursuant to Rec 11-23. As regards the ICCAT Convention and the envisaged amendments thereto, reference is made to the discussion in the previous section. The creation of a new paragraph (4) of Article IX on a “system of international enforcement” seems intended to reflect its importance to CPCs and their commitment to strengthen ICCAT’s measures in this regard.

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<sup>26</sup> E.g. Technical Guidelines for Responsible Fisheries No.1, Suppl.1 ‘Fishing Operations. Vessel monitoring systems’.

<sup>27</sup> Information available at <http://www.imcsnet.org>.

<sup>28</sup> Cf. Doc. COFI/2016/3.1, at para. 9.

### 3.2.2 High Seas Boarding and Inspection

The high seas boarding and inspection (HSBI) scheme laid down in the *ICCAT Scheme of Joint International Inspection* agreed in 1975 (1975 Scheme) applies in principle to all ICCAT fisheries in the ICCAT Convention area, but only between Contracting Parties that have agreed to participate in it. It is submitted that the 1975 Scheme is not consistent with the procedures set out in Articles 21 and 22 of the UNFSA. The 1975 Scheme is dormant at the moment.

As regards eastern bluefin tuna, however, the 1975 Scheme is set aside by the HSBI scheme included in Rec 14-04. This scheme is mandatory for all CPCs engaged in eastern bluefin tuna fishing activities and will apply until ICCAT has replaced the 1975 Scheme with a modern HSBI scheme. Despite the efforts of some CPCs for a number of years, however, no such scheme has yet been adopted nor apparently discussed in any detail, in the view of certain CPCs.<sup>29</sup> It should finally be noted that not all RFMOs have high seas boarding and inspection procedures. It is WCPFC - the largest tuna RFMO in catch terms - and ICCAT for eastern bluefin tuna, which have HSBI schemes.

### 3.2.3 On-board Observers

ICCAT uses various types of on-board observers and a large number of its Recs contain relevant provisions on them.<sup>30</sup> A distinction must be made between scientific and compliance observers. The former is examined in section 2.2 on 'Data collection and sharing'. ICCAT uses two types of compliance observers, namely national observers and non-national observers operating under the ICCAT Regional Observer Program (ROP). National observers are required in the following cases:

- Rec 04-10 on sharks, which lists the use of observers among the measures for ensuring compliance;
- Recs 10-07 and 11-08 on oceanic whitetip and silky sharks, which require the recording of discards and releases by observer programs;
- Rec 13-14 on vessel chartering, which requires 10% coverage;
- Rec 14-04 on eastern bluefin tuna, which requires 20% or 100% coverage for specified vessels or operations;
- Rec 15-01 on tropical tunas, which requires 100% coverage during the area-time closure; and
- Rec 15-05 on marlins, which requires 5% coverage.

ROP observers are currently required under Recs 12-06 and 14-04. Rec 12-06 requires all (100%) carrier vessels engaged in at-sea transshipment to have ROP observers. In 2016, PWG and IMM are scheduled to evaluate the effectiveness of this ROP and make recommendations where necessary and appropriate.<sup>31</sup> The ICCAT ROP on transshipment seems to be functioning largely satisfactory,<sup>32</sup> even though CPCs had some concerns and problems, for instance on late notification of issues of potential non-compliance (PNCs), communication issues due to language differences, and unprofessional behaviour of some observers.<sup>33</sup> Rec 14-04 requires 100% ROP observer-coverage for eastern bluefin tuna fisheries by purse seiners, transfer and caging operations, and harvesting from farms. ROP observer-coverage for tropical tuna fisheries (ROP TROP) was envisaged in earlier instalments of Rec 15-01, but currently no longer is.<sup>34</sup>

A recent survey of the practices of tuna RFMOs on on-board observers indicates that ICCAT's practices are somewhat similar in terms of stringency compared to other RFMOs.<sup>35</sup>

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<sup>29</sup> Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p. 133. See also pp. 8 and 151-164, the latter of which contain the text of the most recent proposal, entitled 'Draft Resolution by ICCAT for a Model Joint International Inspection Scheme'.

<sup>30</sup> See Doc. No. IMM-003 / i 2015 'ICCAT Recommendations relating to Observer Programmes and Duties of Observers' prepared by the ICCAT Secretariat for the 2015 Meeting of IMM.

<sup>31</sup> Cf. Recommendation 15-01, at para. 41.

<sup>32</sup> Cf. Docs. No. PWG-402/2015 and No. PWG-402\_Appendix 1 / 2015, at p. 17.

<sup>33</sup> Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p.72.

<sup>34</sup> See the Preamble to Rec 14-01.

<sup>35</sup> See H. Koehler, "A Survey of National and/or Regional or Sub-regional Observer Programs for Purse Seine Vessels and a Set of Best Practice Standards" (*ISSF Technical Report 2016-01*), even though recent changes in ICCAT's measures have not been processed.

### 3.2.4 VMS

Rec 14-09 requires flag States to implement VMS for fishing vessels above a specified minimum length and ensure that their position can be continuously monitored by the flag State's Fisheries Monitoring Center (FMC). When operating in the maritime zones of a coastal State, position messages must be transmitted automatically and in real time to the coastal State's FMC at least every four hours.

As regards eastern bluefin tuna, Recs 07-08 and 14-04 require position messages to be forwarded by the flag State's FMC to the ICCAT Secretariat. CPCs with active inspection vessels can request to receive the forwarded position messages. As these messages are not sent automatically and in real time to the ICCAT Secretariat, it is not as 'centralized' as the WCPFC's VMS.

Among the tuna RFMOs,<sup>36</sup> only CCSBT does not have its own VMS. The VMS of the WCPFC appears to be the most advanced, among others due to its centralized nature and wide coverage in terms of geography and vessels. ICCAT also does not seem to have something similar to the WCPFC's 'List of Approved Mobile Transceiver Units (MTU)/Automatic Location Communicators (ALC)'.<sup>37</sup>

### 3.2.5 Catch Documentation and Trade Tracking Schemes

At present, ICCAT uses both statistical document programs (SDPs) and catch documentation programs (CDPs). SDPs are more limited than CDPs as they only focus on international trade and not on the origin of the catch, thereby excluding, for instance, 'domestic trade', transshipments to carrier vessels, transfers to tuna farms and other critical moments that occur between catch and trade. So far, SDPs are used for bigeye tuna (Rec 01-21) and swordfish (Rec 01-22) and a CDP is used for bluefin tuna (Rec 11-20).

As regards SDPs, Recs 01-21 and 01-22 require CPCs to ensure that imports of bigeye tuna and swordfish is conditional on submission of statistical documents or re-export certificates that have been validated by the relevant government. Rec 06-16 encouraged CPCs to develop pilot projects to replace paper-based statistical documents and re-export certificates with electronic systems. The experience generated by these pilot projects was eventually used to convert the paper-based CDP for bluefin tuna into an electronic system (see below) but did not lead to electronic SDPs. A proposal for a CDP on tuna and tuna-like species submitted at the 2010 IMM Meeting did not attract the necessary support.<sup>38</sup>

The bluefin tuna CDP laid down in Rec 11-20 prohibits any landing, transfer, delivery, harvest, domestic trade, import, export or re-export of bluefin tuna without a completed and validated BCD, bluefin tuna re-export certificate or ICCAT transfer declaration. Detailed requirements on validation, verification and notification are prescribed, in which the ICCAT Secretariat and its database perform a crucial role. These requirements apply in addition to other ICCAT measures on farming and vessel records contained in Rec 14-04.

ICCAT's efforts to replace paper-based CDPs with electronic systems can be traced back to a proposal for an electronic catch document pilot program submitted at the 2010 IMM Meeting.<sup>39</sup> Instead of this non-species specific proposal, however, ICCAT eventually adopted the Rec 10-11] - which is limited to bluefin tuna - and established the eBCD Technical Working Group (TWG). The TWG's work was finalized upon the adoption of Rec 15-10, which makes the use of electronic BCDs (eBCDs) mandatory, except for some cases where paper-based BCDs can still be used.

### 3.2.6 Transshipment

ICCAT regulates transshipment primarily through Recs 12-06, 14-04, 06-07 and 97-11. Rec 12-06 requires large scale pelagic longline vessels (over 24 m) to tranship in port unless they comply with the procedures for at-sea transshipment laid down in Sections 3-5 and Annexes 1 and 2. In-port transshipment must take place in accordance with the procedures set out in Annex 3. Rec 14-04 applies only to eastern bluefin tuna fishing activities and prohibits all at-sea transshipment, while allowing in-port transshipment only in

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<sup>36</sup> For a recent overview of RFMO practices on VMS, see H. Koehler, "A Survey of RFMO Vessel Monitoring Systems and Set of Best Practices" (*ISSF Technical Report 2016-02*).

<sup>37</sup> Available at [www.wcpfc.int/vessel-monitoring-system](http://www.wcpfc.int/vessel-monitoring-system).

<sup>38</sup> Report of the 17<sup>th</sup> Special ICCAT Meeting (2010), at pp. 71-72.

<sup>39</sup> *Ibid.*

designated ports of CPCs. Transfer and caging operations are also regulated. Rec 06-07 relates to bluefin tuna farming and contains several measures on transshipment. Rec 97-11 is aimed at ensuring that at-sea transshipment only occurs between vessels flying the flag of CPCs. Finally, the active ICCAT Recs containing prohibitions on landing discussed in the section 3.1 on 'Port State Measures' also contain prohibitions on at-sea and/or in-port transshipment (Recs 98-11, 03-16, 11-18, 11-20, 13-04, 13-13 and 15-01).

One Observer informed the Panel that the 20m minimum length of large scale fishing vessels in Rec 13-13 and the 24m minimum length of large-scale pelagic longline vessels in Rec 12-06 may have inadvertently created a loophole, allowing vessels between 20-24m to tranship at sea, without being subject to ICCAT's measures on on-board observers or reporting.

### *3.2.7 Other MCS Measures*

Mention should be made of the requirement to use video or stereoscopic cameras for transfer and caging operations for eastern bluefin tuna pursuant to Rec 14-04. The need to regulate such operations has become apparent in only two of the tuna RFMOs, namely CCSBT and ICCAT. ICCAT's action compares favourably to that of CCSBT in this regard.<sup>40</sup>

### *3.2.8 Panel Recommendations*

#### ***The Panel recommends that ICCAT***

- ***Gives priority to adopting a modern HSBI scheme - through a Recommendation and not a Resolution - that extends to all key ICCAT fisheries as such, but can be applied in practice to selected fisheries according to the COC's compliance priorities.***
- ***Evaluates the need and appropriateness of further expanding coverage by national and non-national on-board observers for fishing and fishing activities.***
- ***Considers expanding VMS coverage, adopting uniform standards, specifications and procedures, and gradually transforming its VMS system into a fully centralized VMS.***
- ***Works towards replacing all SDPs with electronic CDPs that are harmonized among tuna RFMOs where appropriate - in particular for bigeye tuna - while taking account of the envisaged FAO Voluntary Guidelines on Catch Documentation Schemes.***
- ***Considers, in the interest of transparency, incorporating all measures relating to distinct MCS measures - in particular transshipment and on-board observers - in one single ICCAT Recommendation, so that CPCs have only one reference document to consult.***
- ***Assesses whether, in relation to transshipment, the differences in minimum vessel-lengths in Recs 12-06 and 13-13 have created a potential loophole.***

## **4. Compliance and Enforcement**

### **4.1 Flag State Duties**

#### *Performance Criterion*

The extent to which ICCAT 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.

#### *2008 Panel Recommendations*

*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.*

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<sup>40</sup> See Report of the Second CCSBT Performance Review (2009-2013), at pp. 31 and 53, and the Report of the 22<sup>nd</sup> CCSBT Meeting (2015), at paras 28-34.

### Action by ICCAT

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.

Rec 03-12 concerning the duties of CPCs 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.

CPCs are obligated to maintain an up-to-date record of fishing vessels authorised to fish species under the purview of ICCAT, and ensure that such vessels and their gears are marked in accordance with generally accepted standards.

Rec 03-13 on the recording of catch by Fishing Vessels in the ICCAT Convention Area requires each flag CPC to ensure that all of its fishing vessels authorized to fish ICCAT species are subject to a data recording system. In Rec 13-13 establishing an ICCAT Record of vessels over 20 metres authorized to operate in the Convention Area 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.

### Approach by Other Tuna RFMOs

All tuna RFMOs have adopted similar measures, either through their Convention text or through recommendations or resolutions.

### Panel Assessment and Recommendations

- ***The Panel considers that the Flag State duties recognized in international fisheries law are adequately reflected in current ICCAT recommendations.***
- ***The Panel has no view as to whether such responsibilities are being executed correctly, as it does not have information at its disposal in ICCAT to form a judgement.***

## **4.2 Cooperative Mechanisms to Detect and Deter Non-Compliance**

### Performance Criteria

- Extent to which ICCAT 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.

### 2008 Panel Recommendations

*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.*

#### Action by ICCAT

With respect to cooperative mechanisms to monitor and detect non-compliance, ICCAT firstly revised the terms of reference for the COC, previously laid down in Rec 95-15, by the adoption of Rec 11-24 which amended the mandate in certain key areas.

The COC is broadly responsible for reviewing all aspects of compliance with the conservation and management measures. It gathers and reviews the range of data submitted to ICCAT by the CPCs each year, be it, catch data, scientific data, trade data, and annual reports by CPCs etc.

The Committee assesses annually the status of each CPCs implementation of and compliance with ICCAT measures. It reviews the domestic measures taken by CPCs to implement ICCAT measures and the inspection and surveillance activities carried out by CPCs. It has the power to make recommendations to the Commission to address issues of non-compliance or lack of cooperation with ICCAT measures.

Secondly, ICCAT adopted Rec 11-11 to clarify the application of compliance recommendations and for developing the compliance annex. This recommendation foresees that by 15 September each year, CPCs must submit to ICCAT in standardised forms an ICCAT Compliance Reporting Table for each of its applicable fisheries and a form for each stock or species showing how adjusted quotas or catch limits were calculated. The Compliance Committee is then charged with examining for each CPC the information submitted.

Thirdly, it adopted Rec 11-15 on penalties applicable for non-fulfilment of reporting obligations. In accordance with this recommendation, CPCs which do not report Task I data for one or more species for a given year may not retain catches of that species in the following year.

Fourthly, it adopted Res 15-09 establishing guidelines for the implementation of the above mentioned Rec 11-15 in order to clarify the practical implementation of certain of the provisions contained in the latter recommendation.

In addition to these actions, ICCAT has a series of recommendations in place, certain of which have been amended since the 2008 Panel Report, to deter non-compliance:

- 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.
- Rec 11-18 sets out the rules and procedures for establishing the IUU vessel list. 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.
- Rec 12-07 foresees that should the inspection in port provide evidence that the inspected vessel has engaged in IUU activities as referred to in Rec 11-18, the port CPC shall promptly report the case to the flag State, and the relevant coastal CPC, as applicable, and notify as soon as possible the ICCAT Secretariat, along with its supporting evidence, for the purpose of inclusion of the vessel in the draft IUU list.
- Rec 13-13 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.
- ICCAT has taken measures on statistical document and catch documentation programmes, which foresees imposing sanctions on non-complying States.

### *Vessel Lists*

ICCAT adopted Rec 13-13 establishing the ICCAT Record of Vessels 20 metres in overall length or greater authorised to operate in the Convention Area. In addition to the requirements of that recommendation, there are ICCAT vessel lists required for specific fisheries, such as, for eastern blue fin tuna fishery (Recs 12-06, 14-04 and 15-10); for tropical tuna fishery (Rec 15-01) for Northern Albacore (Rec 98-08), and Rec 13-04 for carrier vessels.

### *Approach by Other Tuna RFMOs*

All tuna RFMOs have vessel listings in place although the exact provisions may differ. IOTC has in place a list of vessels authorised to fish but also a list of vessels active in the fisheries.

All tuna RFMOs have Compliance Committees in place and also measures similar to ICCAT on procedures for establishing a list of IUU vessels.

### *Panel Assessment and Recommendations*

The 2008 Panel conclusions on compliance were understandably too influenced by the then serious non-compliance surrounding eastern Bluefin at the time. That bluefin situation has now been redressed, following major efforts by all CPCs concerned through the COC, and the ICCAT secretariat.

The Panel notes that ICCAT has adopted since 2008 stricter measures through recommendations to address the non-compliance challenge, although it considers Res 15-09 should have been adopted as a binding recommendation.

The Panel considers that the COC is now examining in a much more thorough manner the issue of compliance with ICCAT measures, through undertaking the annual review of each CPC in 2014 and 2015. However, in the evaluation made for each CPC, it is difficult for the COC to assess if there are serious compliance problems or if there are administrative issues relating to the nature of the data gathering mechanisms in certain CPCs.

The Panel notes that the COC has little means of verifying the accuracy of the catch and scientific data submitted by CPCs, but in that respect, ICCAT is no different to other tuna RFMOs.

The Panel has examined the nature of the CPC assessment exercise conducted by the COC and notes the proliferation of reporting obligations contained in the over 100 ICCAT recommendations and resolutions in place. Such reporting places a heavy burden for CPCs, especially Developing CPCs, which may not have the capacity to deal with the range, volume and complexity of the reporting.

The Panel considers that the ICCAT Panels must bear some responsibility for this administrative burden, and that the authors of such recommendations are making the recommendations too complex.

The Panel is aware that the COC at its 2016 inter-sessional meeting started to address some of these serious challenges it faces. Therefore, the Panel stresses that these observations should not be considered as a criticism of the COC, but more an acknowledgment of the difficult context within which it is attempting to execute its mandate.

- ***The Panel recommends that the COC should identify key compliance priorities across the range of different fisheries, and programme its work accordingly. Identification of non-respect of reporting requirements or incomplete reporting by CPCs should be entrusted to the ICCAT secretariat and its report submitted to COC in advance of the Annual Meeting.***
- ***The Panel recommends that independent information from the fisheries, through inspections at sea and in port, and through effective observer programmes, are made available to the COC, in order for the COC to conduct an effective compliance assessment.***
- ***The Panel recommends that ICCAT lists be established for the northern and southern swordfish fisheries. As mentioned previously, CPCs are obliged in accordance with Rec 03-12 to maintain an up-to-date record of fishing vessels authorised to fish species under the purview of ICCAT, so the establishment of an ICCAT list is no additional burden for the CPCs involved.***

### 4.3 Follow-Up on Infringements

#### Performance Criterion

- Extent to which ICCAT, its members and cooperating non-members follow up on infringements to management measures.
- Extent to which ICCAT and its members effectively implement Recommendations 11-15, 06-13, 96-14, 97-01, 00-14, and 11-11.

#### Action by ICCAT

ICCAT has a range of measures designed to identify infringements to conservation and management measures. It has reinforced these measures through the adoption of Recs 11-11 and 11-15, allied to Res 15-09.

In its annual process the COC is now examining each CPC to assess how its actions conform to ICCAT measures. In that respect, the COC is following-up on the issue of “infringements” that the 2008 review identifies. The COC, through its Chair, addresses a letter of compliance where warranted to those CPCs in breach of ICCAT measures.

#### Approach by Other Tuna RFMOs

All tuna RFMOs have a Compliance Committee, which reviews compliance by individual CPCs, based on the information available to that Committee. The procedure by which they undertake such a review varies considerably from one tuna RFMO to another.

#### Panel Assessment and Recommendations

In the Panel’s view, there is a follow-up by ICCAT and its CPCs when “infringements” are detected to ICCAT measures. In that process, the particular provisions of Recs 96-14, 97-01, 00-14, 06-13, 11-11 and 11-15, are applied.

The Panel notes however that nearly half of all CPCs were addressed letters by ICCAT on compliance matters in both 2014 and 2015.

**Table 4.1.** COC Action in 2014 and 2015.

|                         | 2014           | 2015           |
|-------------------------|----------------|----------------|
| COC - No Action         | 26 CPCs        | 25 CPCs        |
| COC - Letter of Concern | 24 CPCs (1)(3) | 25 CPCs (2)(3) |

1. Including 3 CPCs whose identification was lifted but were still sent letters of concern

2. Including 1 CPC whose identification was lifted

3. The same 20 CPCs had concern expressed for 2014 and a compliance letter sent for 2015

The result is therefore that numerous CPCs received compliance letters in 2014 and 2015, mainly because they had not fulfilled all their reporting requirements, and not because they have infringed recommendations in the actual conduct of their fisheries.

The Panel is concerned that the COC’s work is too orientated to recording the non-submission or incomplete submission of data. This aspect is of course very important, but it is a task that should be entrusted to the ICCAT secretariat, as it is more an administrative task.

- **The Panel considers the key task of the COC should be to make a qualitative assessment as to the degree to which the measures in the individual fisheries contained in the ICCAT recommendations, are being respected by the vessels of the Parties.**

- **In the view of the Panel, the COC will be unable to exercise such a function until it obtains information from independent sources, such as, a joint inspection scheme and effective regional observer programmes. It suffices to contrast the information available to the COC on the eastern bluefin tuna fisheries, as a result of observer reports and inspection reports, with the paucity of information on other fisheries.**

#### **4.4 Market-Related Measures**

##### Performance Criteria

- Extent to which ICCAT 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.

##### 2008 Panel Recommendations

*The Panel considered that ICCAT's performance in adopting market-or trade-related measures against IUU activities and the product originating in such activities, was sound. Actions against non-Contracting Parties had borne results and reduced IUU fishing activity. 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.*

##### Action by ICCAT

Trade sanctions were in place in 2006 against Bolivia and Equatorial Guinea – one a non-Contracting Party and the other a Contracting Party. In effect, Rec 06-13 foresees possible actions against both CPCs and non CPCs. The last active measures in force against Bolivia was lifted by Rec 11-19.

ICCAT has had in place for some time statistical documents for bluefin tuna, big eye and swordfish and an electronic bluefin tuna catch document was due to become operational in 2016. The Chapter on monitoring, control and surveillance deals in detail with catch certification, especially eBCD (Recs 10-11 and 15-10).

##### Approach by Other Tuna RFMOs

The IOTC has adopted a binding Resolution 10/10 on trade measures with a view to ensuring respect of IOTC measures by CPCs and Non Contracting Parties. Measures may therefore be introduced against CPCs. The process to be followed for the imposition of trade measures is laid down in this Resolution. The IOTC has also a bigeye tuna statistical document (Res 01/06) similar to ICCAT.

##### Panel Assessment and Recommendations

There are no current trade sanctions in place.

- ***The Panel concurs with the 2008 Panel's observation, that the imposition or the threat of imposition of market or trade measures is probably the single most persuasive measure that will ensure compliance with ICCAT measures.***
- ***The Panel, noting Rec 12-09, commends ICCAT for its initiatives in this area and recommends that catch documents, preferably electronic, be introduced for big eye and swordfish species.***

#### **4.5 Reporting Requirements**

##### Performance Criterion

- Analysis of ICCAT reporting requirements to improve efficiency, avoid redundancy and reduce unnecessary burden to CPCs.

### Action by ICCAT

The number of recommendations and resolutions now in place number over 100. Most of these include reporting requirements for vessels, Flag States, Port States and CPCs. The reporting requirements also have a fixed deadline in which to report to ICCAT secretariat.

The level of detail in the recommendations continues to increase, as does the complexity of the reporting requirements. There has been little evident analysis of the increased workload that new reporting requirements imply for CPCs and the ICCAT secretariat.

The Panel notes that, in adopting recommendations in November at its Annual Meeting, CPCs are expected to have new reporting requirements effectively in place by 1 January of the following year. This is the case, even if legally the measures only come into force 6 months after notification of the adoption of the measures by the ICCAT Secretary.

### Panel Assessment and Recommendations

Since 2013, the Secretariat has submitted proposals to the Commission to improve and to simplify reporting requirements. The Commission has adopted measures accordingly. The Panel concludes that while some efforts have been made to reduce unnecessary burden to CPCs, more can be done.

The Panel notes that, with the inevitable time constraints at Annual Meetings, RFMOs have a tendency to “copy and paste” data reporting provisions when developing new recommendations. This should be avoided and the emphasis should be on evaluating which type of data is required and at what frequency. The costs of data collection should not be under-estimated in such evaluations.

- ***The Panel recommends that ICCAT, though its Panels 1 to 4, should undertake an overall review of the current reporting requirements, on a stock by stock basis, both in relation to Task I and Task II data contained in the myriad of recommendations, in order to establish whether the reporting obligations in question could be reduced or simplified.***
- ***The Panel recommends that before the adoption of each new recommendation, there should be an assessment as to the likely impact on the Secretariat's workload that its implementation implies.***
- ***The Panel recommends that ICCAT consider introducing a provision in new recommendations, whereby the introduction of new reporting requirements would only become effective after a 9 to 12 month period has elapsed. This would assist Developing States to adapt to new requirements. This is particularly relevant where the volume and/or nature of the reporting have changed significantly. The difficulties Developing States encounter in introducing new administrative/reporting requirements at short notice, is well documented in the compliance context. The option for Developed CPCs to apply immediately the new reporting requirements may of course be maintained, if those CPCs consider it opportune.***

## **5. Governance**

### **5.1 Decision-Making**

#### Performance Criteria

- Extent to which ICCAT has transparent and consistent decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner.
- Extent to which these procedures are effectively implemented in ICCAT.

#### Global Instruments

The first performance criterion largely follows the wording of Article 10(j) of the UNFSA but adds the terms “transparent” and “consistent”. Transparency is here understood to refer either to clarity of the decision-making rules and procedures, or to participation by all stakeholders in meetings where decision-making occurs and access to the necessary information in that regard. Section 5.3 on ‘Transparency’ deals with participation by non-governmental organizations (NGOs) and section 5.4 on ‘Confidentiality’ with access to information.

Consistency in decision-making ensures not only equal and thereby fair treatment but also predictability. The need for timeliness and effectiveness is also reflected - even though with different terminology - in Article 28 of the UNFSA. This provision requires agreement on “efficient and expeditious” decision-making procedures within RFMOs in order to prevent disputes.

More specific guidance and recommendations on decision-making within RFMOs have been provided by, *inter alia*, the 2006 UNFSA Review Conference, which among other things recommended States individually and collectively through RFMOs to “Ensure that post opt-out behaviour is constrained by rules to prevent opting-out parties from undermining conservation, clear processes for dispute resolution, and a description of alternative measures that will be implemented in the interim”.<sup>41</sup>

Detailed recommendations on decision-making within RFMOs based on an analysis of their practices are also included in the 2007 publication *Recommended Best Practices for Regional Fisheries Management Organizations*.<sup>42</sup>

### 2008 Panel Recommendations

*The 2008 Panel recommended ICCAT*

- *to 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.*
- *to prepare a discussion paper on transparency, fairness and equity within ICCAT.*

### Action by ICCAT

Articles III(3) and VIII(1)(b) of the ICCAT Convention require a simple majority or - for recommendations on conservation and management measures - a two-thirds majority of the Contracting Parties. In practice, however, ICCAT uses consensus decision-making. Recommendations enter into force six months after notification by the Commission except in case the opt-out procedure laid down in Article VIII(3) is used.

Rule 9 on Voting of the ICCAT Rules of Procedure, *inter alia*, stipulates the quorum, provides for intersessional voting, and stipulates that voting rights are suspended in case of arrears of contributions. Rule 5 on Observers stipulates that observers are not entitled to participate in decision-making. Neither Rule 5 nor any other Rules in the ICCAT Rules of Procedure mention States and entities with Cooperating Status, and even Res 03-20 is silent on decision-making. The lack of entitlement of such States and entities to participate in decision-making is nevertheless clarified in Res 94-06, whose paragraph 3 stipulates that they “may attend the meetings of ICCAT as observers”. Finally, Rule 8 on Agenda of the ICCAT Rules and Procedures contains various provisions that contribute to transparency in decision-making.

To date, ICCAT has not prepared a discussion paper on transparency, fairness and equity within ICCAT, as recommended by the 2008 Panel. Progress has nevertheless been made towards clear, timely and effective decision-making.

The efforts of the WGFI have led to changes to intersessional voting<sup>43</sup> as well as Res 12-11, whose Preamble expresses concern about the increase of ICCAT’s opt-out procedure, and contains a new - but non-legally binding - procedure that is to some extent modelled on the procedures of several recently established RFMOs or RFMOs that have amended their constitutive instruments (e.g. SPRFMO, NPFC and NAFO). Paragraph 2 encourages a Contracting Party that opts-out to provide the reasons for its objection, based on, *inter alia*, the following grounds:

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<sup>41</sup> Doc. A/CONF.210/2006/15, at p. 37. This recommendation was retained by the 2016 Resumed Review Conference (cf. Advance and unedited Report of the 2016 Resumed UNFSA Review Conference, para. B.5(b), at p. 46).

<sup>42</sup> M.W. Lodge, D. Anderson, T. Løbach, G. Munro, K. Sainsbury and A. Willock, *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* (Chatham House: 2007), at pp. 123-125.

<sup>43</sup> By means of amendments to paras 13-15 of Rule 9 of the ICCAT Rules of Procedure (Report of the 18<sup>th</sup> Special ICCAT Meeting (2012), at Annex 7.1).

- The recommendation is inconsistent, with UNCLOS, the UN Fish Stocks Agreement, the ICCAT Convention or another ICCAT recommendation still in effect;
- The recommendation unjustifiably discriminates in fact or law against the objecting Contracting Party;
- The recommendation is inconsistent with a domestic measure that pursues compatible conservation and management objectives and that is at least as effective as the recommendation.

The words “*inter alia*” were not included in the original proposal and have the effect of making the list of grounds non-exhaustive, thereby significantly weakening its constraint on the opt-out procedure. As resolutions are non-legally binding, that constraint was of course already modest. Contracting Parties that opt-out should “to the extent applicable” specify “the alternative management and conservation measures consistent with the objectives of the Convention it proposes to adopt and implement”.

The WG on Convention Amendment continued ICCAT’s efforts to improve decision-making. Pursuant to a new Article III bis of the Amended ICCAT Convention, the “Commission and its Members, in conducting work under the Convention” are required to act in accordance with key principles of modern international fisheries law. One of these is formulated in paragraph (d) as “[to] ensure fairness and transparency in decision making processes, including with respect to the allocation of fishing possibilities, and other activities”.

Article III(3) of the Amended ICCAT Convention codifies ICCAT’s practice of consensus decision-making as a general rule. Moreover, it specifies that if consensus cannot be achieved and the Convention does not provide otherwise, “decisions shall be made by a two-thirds majority of the [Contracting Parties][Members of the Commission] present and casting affirmative or negative votes”. The brackets will be lifted once agreement has been reached on a new depositary, which is expected to allow Chinese Taipei to become a Member of ICCAT and participate in its decision-making.

The clarity on the general and default rules on decision-making in Article III(3) of the Amended ICCAT Convention also enhances clarity on the decision-making procedures contained in Article VIII(1)(b). This provision now distinguishes four scenarios for the adoption of recommendations at the initiative of the Commission or one or more Panels. Subparagraph (ii) clarifies that Recommendations can still be adopted by a two-thirds majority of the Commission in case the appropriate Panel did not approve the proposal.

Paragraph 2 of Article VIII of the Amended ICCAT Convention replaces the six-month period of entry into force by four months, unless agreed otherwise. Paragraph 3 contains a new opt-out procedure that is somewhat similar to Res 12-11 and requires Members that opt-out to provide their reasons based on one or more of the four grounds included in subparagraph (c). Unlike the list in Res 12-11, however, this list is exhaustive. Moreover, whereas the first two grounds are largely similar to those in Res 12-11, the other two grounds read:

- (iii) The [Contracting Party][Member of the Commission] cannot practicably comply with the measure because it has adopted a different approach to conservation and sustainable management or because it does not have the technical capabilities to implement the recommendation.
- (iv) Security constraints as a result of which the objecting [Contracting Party][Member of the Commission] is not in a position to implement or comply with the measure.

This approach is much less restrictive than the approaches pursued by the RFMOs referred to above, which only allow opting-out based on the first two grounds.

Paragraph 3(d) of Article VIII requires Members that opt-out to provide “to the extent practicable, a description of any alternative conservation and management and conservation measures, which shall be at least equally effective as the measure to which it is objecting”. The phrase “to the extent practicable” significantly weakens this requirement and is not used by the abovementioned RFMOs, thereby making ICCAT’s opt-out procedure even less restrictive compared to these RFMOs.

Another notable difference with the abovementioned RFMOs is that the new ICCAT opt-out procedure does not involve a role of *ad hoc* review or expert panels. However, the use of such panels may be possible pursuant to the general dispute settlement procedure that is intended to be included in the Amended ICCAT Convention. No agreement on that existed yet at the time of writing (see section 5.2). Paragraph (2)

of the new Article VIII bis of the Amended ICCAT Convention provides for the establishment of an *ad hoc* expert panel, but only if all parties to the dispute so agree. The *ad hoc* review or expert panels of the abovementioned RFMOs are either established automatically, at the request of one Member or by a simple majority of the Members.

While the existing ICCAT Convention contains no restrictions on opting out, the Panel considers that the opt-out procedures in Res 12-11 and the Amended ICCAT Convention fall considerably short of current best practices among RFMOs.

In response to concerns about the lack of transparency in decision-making caused by the late submission of new draft Recommendations - in particular those with considerable length that are submitted towards the end of Commission meetings - ICCAT adopted *Deadlines and Guidelines for the Submission of Draft Proposals*<sup>44</sup> in 2011. These essentially amend and elaborate on Rule 8 on Agenda of the ICCAT Rules of Procedure. As regards deadlines, a distinction is made between proposals “for which the SCRS advice is not required or for which SCRS advice was given in previous years” - which should be submitted one month before the meeting - and proposals that require “the most recent available scientific advice” - which must be submitted “no later than five days before the end of the Meeting”. One CPC proposed that the 2011 *Deadlines and Guidelines for the Submission of Draft Proposals* be amended to ensure that CPCs excluded from informal consultations have more time to consider draft proposals.

The Panel notes that ICCAT’s opt-out procedure has been invoked 12 times since 2008. As three of these were not in accordance with the opt-out procedure, they had no effect. All of the remaining nine were followed by reaffirmations and thereby became effective. Of these nine, all but two related to the allocation of fishing opportunities. As the 2008 Panel only found six reaffirmed objections since ICCAT’s first Meeting in 1969, this is a significant increase in the use of ICCAT’s opt-out procedure since 2008. The Preamble to Res 12-11 expresses concern about the increase of the opt-out procedure.<sup>45</sup> The increase is much less significant, however, if account is taken of the fact that seven of the nine objections were lodged by two Members and all related to the same issue, namely their dissatisfaction with their eastern bluefin tuna allocation.

As regards decision-making more generally, one CPC expressed concern that, in order to avoid objections, TAC proposals in line with scientific advice tend to be withdrawn when consensus does not seem likely, even though they might have been adopted pursuant to voting by a two-thirds majority. The Panel did not have clear indications that reaching consensus has become more difficult since 2008, however.

As regards transparency in decision-making, two CPCs criticized ICCAT’s practices on the allocation of fishing opportunities, which they perceived as lacking transparency, and failing to ensure participation by all CPCs with a legitimate interest in an allocation. The latter criticism was regarded by these CPCs as the root cause for the use of the opt-out procedure. One CPC encouraged examination of the work of the Friends of the Chair to ensure it supports transparent decision-making.

In relation to the conservation and management of stocks, the Panel examined the deliberations and decision-making of the Commission, Panels 1 to 4, and Committees over recent years to assess how efficiently they have considered, adopted or deferred recommendations and/or resolutions.

The desire to manage on a consensus basis is laudable, but approaches may have to change bearing in mind there are 55 CPCs now in ICCAT. In the view of the Panel, the pursuit of the consensus objective has often led to either the postponement of decisions, the change in proposals from a legally binding recommendation to a non-legally binding resolution, or continued deferral of decision-making on the adoption of measures.

The Panel would stress that for a voting process within ICCAT to work efficiently, CPCs must in good faith submit proposals in sufficient time in advance of the Annual Meeting to allow for presentation, examination and discussion within ICCAT. CPCs also have a responsibility not to over-complicate their proposals with complex provisions, particularly on reporting.

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<sup>44</sup> Report of the 22<sup>nd</sup> Regular ICCAT Meeting (2011), at Annex 7.1.

<sup>45</sup> Two of the four opt-outs since the adoption of Res 12-11 provide the reason for doing so, as intended by Res 12-11.

## Panel Recommendations

### **The Panel recommends that ICCAT**

- **Chairs of the Commission, Panels, COC and PWG should be prepared, once there has been sufficient discussion, to put draft Recommendations to a vote.**
- **Revises the opt-out procedures included in Res 12-11 and the most recent text of the Amended ICCAT Convention to bring them more in line with modern opt-out procedures used by RFMOs that have been recently established or that have recently amended their constitutive instruments.**
- **Ensures that the amendments to the ICCAT Convention relating to decision-making and opt-out procedures are provisionally applied from the moment of their formal adoption.**
- **Reviews its working practices in order to enhance transparency in decision-making, in particular on the allocation of fishing opportunities and the work of the Friends of the Chair.**
- **Reviews its Rules of Procedure, among other things to integrate its 2011 Deadlines and Guidelines for the Submission of Draft Proposals, Rec 03-20 and Res 94-06.**

### **5.2 Dispute Settlement**

#### Performance Criterion

- Extent to which ICCAT has established adequate mechanisms for resolving disputes.

#### Global Instruments

The dispute settlement mechanisms included in Part XV of the UNCLOS and Part VIII of the UNFSA are regarded as a crucial component of their overall ‘package-deal’ character. Article 29 of the UNFSA implicitly encourages States to use *ad hoc* expert panels for disputes with a technical nature. Paragraph (2) of Article 30 of the UNFSA makes the dispute settlement mechanism included in Part XV of the UNCLOS *mutatis mutandis* applicable to disputes between States Parties to the UNFSA “concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the [UNCLOS]”. This therefore also applies to disputes relating to the ICCAT Convention and ICCAT Recommendations, provided the conditions in Article 30(2) of the UNFSA are met. Article 31(1) of the UNFSA requires that, pending settlement of a dispute, parties “make every effort to enter into provisional arrangements of a practical nature”.

Detailed recommendations on dispute settlement procedures within RFMOs based on an analysis of their practices are included in the 2007 publication *Recommended Best Practices for Regional Fisheries Management Organizations*.<sup>46</sup>

Finally, reference should be made to Article 28 of the UNFSA, which emphasizes the crucial role of “efficient and expeditious decision-making procedures” within RFMOs for the prevention of disputes. These procedures, including opt-out procedures and *ad hoc* review and expert panels, are covered by the section 5.1.

#### 2008 Panel Recommendations

*The Panel recommended 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.*

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<sup>46</sup> Ibid., at pp. 125-126.

### Action by ICCAT

Dispute settlement procedures were regarded as a priority issue by the WGFI as early as its first meeting in 2009 and were listed among the items warranting amendments to the ICCAT Convention upon the establishment of the WG on Convention Amendment in 2012. The latter WG was unable to finish its work at its March 2016 Meeting, however, due to a lack of agreement on two substantive issues: dispute settlement procedures and the Convention's depositary. The disagreement on dispute settlement procedures is of a fundamental nature, as CPCs could not agree on whether the procedures would be non-compulsory or compulsory; i.e. whether procedures could only be instituted jointly by all parties to a dispute or, instead, by a single party or a number of Contracting Parties or Members.

The dispute settlement procedures are intended to be included in a new Article VIII bis and - possibly - a new Annex on Dispute Resolution. While these are not yet agreed, it should be noted that they do not devote attention to provisional arrangements of a practical nature pending the establishment of a dispute. Moreover, paragraph (5) of Article VIII bis reads: "Nothing in this Article shall prejudice the ability of parties to any dispute to pursue dispute settlement under other treaties or international agreements to which they are parties, in accordance with the requirements of that treaty or international agreement." This provision clarifies that recourse to Part XV of the UNCLOS and Part VIII of the UNFSA is unaffected, which would preclude a court or tribunal instituted thereunder from finding it has no jurisdiction based on Article 281 of the UNCLOS; as happened in the *Southern Bluefin Tuna* case.<sup>47</sup>

The practices of RFMOs on dispute settlement procedures are by no means uniform. For instance, the dispute settlement procedures of CCSBT, IATTC and IOTC do not establish compulsory procedures entailing binding decisions before international courts or tribunals. Whereas the 2004 Amendment to the NEAFC Convention<sup>48</sup> *does* establish such compulsory procedures, one of NEAFC's Members has raised an objection to that amendment. Unless that Member withdraws its objection, the dispute settlement procedures will not become operative.<sup>49</sup> While the Amended NAFO Convention also contains compulsory dispute settlement procedures, there are no indications that these are a significant factor for the failure of these amendments to enter into force so far.

### Panel Recommendations

***The Panel recommends that ICCAT urges its CPCs to reach agreement on the inclusion of compulsory dispute settlement procedures entailing binding decisions in the Amended ICCAT Convention, which also devote attention to provisional arrangements of a practical nature pending the establishment of a dispute.***

### **5.3 Transparency**

#### Performance Criteria

- Extent to which ICCAT 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 ICCAT decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.

#### Global Instruments

Article 12(1) of the UNFSA requires States to "provide for transparency in the decision-making process and other activities of" RFMOs. An essentially similar encouragement for States and RFMOs is included in Article 7.1.9 of the Code of Conduct. Whereas section 5.1 has dealt with transparency in the meaning of clarity of the decision-making rules and procedures as well as participation by all stakeholders other than NGOs, this section will focus on participation by NGOs in ICCAT meetings. Article 12(2) stipulates in this regard:

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<sup>47</sup> As happened in the *Southern Bluefin Tuna Case* (Australia and New Zealand v. Japan), Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea, Award on Jurisdiction and Admissibility of 4 August 2000.

<sup>48</sup> Report of the 23<sup>rd</sup> Annual NEAFC Meeting (2004), at Annex K.

<sup>49</sup> Report of the 34<sup>th</sup> Annual NEAFC Meeting (2015), at p. 2.

Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

The last sentence of this provision is of direct relevance to the second performance criterion listed above. As this provision also acknowledges that access to information can be “subject to the procedural rules on access”, this issue is covered by section 5.4 on ‘Confidentiality’.

### 2008 Panel Recommendations

*The 2008 Panel recommended ICCAT to review its policy on NGOs attendance at ICCAT meetings.*

### Action by ICCAT

Article XI(3) of the ICCAT Convention provides that ICCAT may invite any appropriate international organization (IO) and non-Members of ICCAT which are Members of the United Nations (UN) or of any of its Specialized Agencies “to send observers to meetings of the Commission and its subsidiary bodies.” Rule 5 on Observers of the ICCAT Rules of Procedure adds to this that “Observers may, with the authorization of the Chairman, address the meeting to which they are invited and otherwise participate in its work, but without the right to vote.” A footnote refers to the *Guidelines and Criteria for Granting Observer Status at ICCAT Meetings* [Ref. 05-12] (ICCAT Observer Guidelines and Criteria), which were adopted in 1998 and amended in 2005. All but the first of its nine paragraphs relate to NGOs.

The ICCAT Observer Guidelines and Criteria cover, *inter alia*, the requirements for rejecting applications by NGOs (one-third of the Contracting Parties), the right of admitted NGOs to attend all meetings “except extraordinary meetings held in executive sessions or meetings of Heads of Delegations”, their obligation to pay a fee for their participation, and their access to all documentation except those “deemed confidential by the Parties”. A decision to close a meeting to observers is presumably governed by Rule 10 on ‘Public and Private Meetings’, which stipulates: “Meetings of the Commission shall be public unless the Commission otherwise decides.” Such decisions are therefore adopted by a simple majority.

To date, ICCAT has not conducted a general review of its policy on NGOs attendance at ICCAT meetings, as recommended by the 2008 Panel. Also, no relevant changes have been made to the ICCAT Rules of Procedure, the ICCAT Observer Guidelines and Criteria or the 500 US\$ NGO participation fee – allowing the NGO to send two representatives – for single ICCAT meetings.<sup>50</sup>

Even though this is not reflected in the ICCAT Observer Guidelines and Criteria, once an NGO has had its application for Observer status approved, it does not need to apply again. While the ICCAT Secretariat has rejected some applications on account of a failure to meet basic requirements, no applications have ever been rejected by the Contracting Parties.

The principle of transparency has been included in the new Article III bis(d) of the Amended ICCAT Convention. Accordingly, the “Commission and its Members, in conducting work under the Convention” are required to ensure transparency in decision-making processes but also more generally in “other activities”, thereby using the terminology of Article 12(1) of the UNFSA.

While ICCAT’s rules and procedures on participation by NGOs are largely similar to those of other RFMOs, there are certainly also differences. For instance, WCPFC has incorporated the text of Article 12 of the UNFSA *verbatim* in its constitutive instrument, and Rule 36 of its Rules of Procedure devotes attention to participation by NGOs as well. The WCPFC Secretariat is currently reviewing observer participation in WCPFC meetings, including the appropriateness of limiting the size of observer delegations, and charging

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<sup>50</sup> As reflected, *inter alia*, in ICCAT Circular No. 4127/2013, of 10 July 2013, which also clarifies that an additional 350 US\$ fee has to be paid for each additional person in the observer delegation.

an annual fee.<sup>51</sup> Article XVI of the Antigua Convention expands somewhat on Article 12 of the UNFSA, for instance in relation to confidentiality requirements. Its Annex 2 entitled ‘Principles and Criteria for the Participation of Observers at Meetings of the Commission’ is quite similar to the ICCAT Observer Guidelines and Criteria. An interesting difference is included in paragraph 7, which requires objecting Members to provide their reasons in writing. IOTC has adopted the same requirement in Rule XIV(5) of its Rules of Procedure. Most, if not all, of the tuna RFMOs have adopted practices that allow NGOs to participate every year after their initial application has been approved.

Two NGOs informed the Panel to have been discouraged by the closed group sessions and the frequency of such sessions at annual meetings, as well as the exclusion of NGOs from some working groups (e.g. the TWG). One of these was also disappointed by its inability to make interventions at all, or only when substantive discussions between Members had already come to an end. The Panel did not receive complaints on the continued use of the NGO participation fee for single ICCAT meetings.

### Panel Recommendations

#### **The Panel recommends that ICCAT**

- ***Considers codifying its practices on participation by NGOs - which are consistent with international minimum standards and comparable to those of other tuna RFMOs - by amending the ICCAT Observer Guidelines and Criteria or the ICCAT Rules of Procedure.***
- ***Considers requiring Contracting Parties that object to an application by an NGO for Observer Status with ICCAT to provide their reasons in writing.***
- ***Considers that closing formal ICCAT meetings to observers requires an explicit and reasoned decision supported by a simple majority of Contracting Parties.***

#### **5.4 Confidentiality**

##### Performance Criterion

- Extent to which ICCAT has set security and confidentiality standards and rules for sharing sensitive scientific and operational/compliance data.

##### Global Instruments

Article 10(f) of the UNFSA and Articles 1(1) and 7(1) of its Annex I acknowledge that competence of RFMOs to adopt rules and standards to ensure confidentiality of certain types of data. The words “where appropriate” in Article 10(f) nevertheless indicate that account must be taken of the need for transparency and access to information, as discussed in the previous section. A similar balancing of interests is reflected in Article 12(2) of the UNFSA, which acknowledges the right of RFMOs to adopt procedural rules on access to their records and reports.

##### Action by ICCAT

In 2010, ICCAT adopted the *Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by ICCAT* (ICCAT Rules and Procedures on Data Confidentiality).<sup>52</sup> So far, ICCAT has not adopted separate rules and procedures for the access and dissemination of non-public domain data for the purpose of compliance and enforcement activities on the high seas. As regards eastern bluefin tuna, Rec 14-04 entitles CPCs with active inspection vessels to receive VMS position messages.

While the ICCAT Rules and Procedures on Data Confidentiality refer to ICCAT’s Information Security Policy (ISP), ICCAT had not adopted an ISP at the time of writing. Its inclusion in the ICCAT Rules and Procedures on Data Confidentiality can probably be explained by the fact that their text was borrowed largely from the WCPFC’s ‘Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission’ “modified slightly to adapt it to ICCAT conditions”.<sup>53</sup> When WCPFC refined

<sup>51</sup> Report of the 12<sup>th</sup> Annual WCPFC Meeting (2015), at para. 61.

<sup>52</sup> Report of the 17<sup>th</sup> Special ICCAT Meeting (2010), at Annex 6.

<sup>53</sup> Cf. L.T. Kell, V. Restrepo and P. Kebe, “Suggested Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by ICCAT”, SCRS/2009/122, *Collect. Vol. Sci. Pap. ICCAT*, 65(6): 2363-2375 (2010), at p. 2364.

and adopted these Rules and Procedures in 2007, it also adopted an ISP.<sup>54</sup> The CCSBT's 'Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the CCSBT' were also modelled on those of WCPFC. Instead of an ISP, however, they contain the CCSBT Data Confidentiality Security Policy (DCSP) laid down in Attachment 1.

The ICCAT Rules and Procedures on Data Confidentiality start out with section 1 'Basic principles relating to the dissemination of data by the ICCAT', which nevertheless also contains principles relating to access. Section 2 'Risk classification and definition of confidentiality' focuses on the determination as to whether data is public domain or non-public domain, based on Table 1. Appendix 1 contains a list of types of data that are considered to be public domain data and Appendix 2 a list of examples of types of data considered to be non-public domain data. Unless the Commission decides otherwise, all types of data not listed on Appendix 1 are non-public domain data (para. 14). Section 4 'Dissemination of non-public domain data' covers both dissemination and access. Paragraph 25 stipulates that access by CPCs to non-public domain data shall be administered by the Executive Secretary on the basis of the 'Framework for Access to Non-Public Domain Data' contained in Appendix 3, which *inter alia* requires CPCs to submit a Data Request Form and sign a Confidentiality Agreement. A CPC that originally provided non-public domain data can authorize their release to others, provided they submit a Data Request Form and sign a Confidentiality Agreement. Paragraph 29 and Appendix 4 relate to the exchange of certain types of data with other RFMOs pursuant to agreements between ICCAT and such RFMOs, which shall be based on reciprocity.

The ICCAT website contains a wealth of information and seems in general updated, even though its user-friendliness could be improved. For those not familiar with RFMOs and ICCAT in particular, however, finding the right information is likely to initially take some time. The ICCAT Secretariat is currently considering ways to re-structure the website.

Access to ICCAT's statistical databases is provided on ICCAT's website, subject to the ICCAT Rules and Procedures on Data Confidentiality. Up to 2014, meeting documents were only available on a password-protected part of the ICCAT website and accredited observers were not given access thereto. Following a complaint by various NGOs that this was inconsistent with paragraph 8 of the ICCAT Observer Guidelines and Criteria,<sup>55</sup> accredited observers were given access to the password-protected part of the ICCAT website in advance of the 2014 Annual ICCAT Meeting.<sup>56</sup> Since then, however, ICCAT has in practice been even more transparent because the documents of the Annual ICCAT Meeting and many other ICCAT meetings are publicly available. Nevertheless, for some other meetings - including scientific meetings - only the meeting agenda and logistics information are publicly available while access to documents is password-protected. Commission Circulars are only available to CPCs by means of a password-protected part of the ICCAT Website, which is very common practice among RFMOs.

One NGO suggested to the Panel that ICCAT should make all meeting documents publicly available in advance of meetings.

#### Panel Recommendations

***The Panel commends ICCAT for the significant improvements in transparency and confidentiality since 2008 and recommends that ICCAT***

- ***Considers further improvements, for instance by making more of its data and documents publicly available and - as regards documents - explaining the reasons for classifying certain documents as confidential.***
- ***Conducts a review of its Rules and Procedures on Data Confidentiality as envisaged in its paragraph 33, taking into account the need for harmonization among tuna RFMOs consistent with Rec KIII-1. As part of this review, it should adopt an ICCAT's Information Security Policy (ISP), where appropriate.***

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<sup>54</sup> The Rules and Procedures and the ISP are both available at <http://www.wcpfc.int/guidelines-procedures-and-regulations>.

<sup>55</sup> ICCAT Circular No. 1338/2014, of 14 March 2014.

<sup>56</sup> ICCAT Circular No. 3813/2014, of 23 June 2014.

## **5.5 Relationship to Cooperating Non-Members**

### Performance Criterion

- Extent to which ICCAT facilitates cooperation between members and non-members, including through the adoption and implementation of procedures for granting cooperating status.

### Global Instruments

Various UNCLOS provisions require States to cooperate on transboundary fish stocks and discrete high seas fish stocks. Articles 64 and 118 of the UNCLOS are especially relevant for highly migratory fish stocks. Article 8(3) of the UNFSA requires States fishing for highly migratory fish stocks on the high seas and the relevant coastal States to cooperate with the relevant RFMO by becoming members or by agreeing to apply the RFMO's conservation and management measures. States "having a real interest in the fisheries concerned may become members" and "the terms of participation in such organization [...] shall not preclude such States from membership".

Article 8(4) specifies that only members and non-members that agree to apply the RFMO's conservation and management measures "shall have access to the fishery resources to which those measures apply". Article 17(2) requires others not to authorize their vessels to engage in fishing operations covered by the RFMO's conservation and management measures. Paragraph 3 relates to fishing entities and seeks their cooperation with relevant RFMOs.

### 2008 Panel Recommendations

*The 2008 Panel focused in particular on ICCAT's engagement with Chinese Taipei and recommended ICCAT to take note of the 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.*

### Action by ICCAT

Article XIV(1) of the ICCAT Convention entitles all States that are Members of the UN or of any of its Specialized Agencies to accede to the Convention and thereby become Members of ICCAT. However, neither the ICCAT Convention nor the ICCAT Rules of Procedure make reference to ICCAT's mechanism for engaging with cooperating non-members.

The procedure for obtaining Cooperating Status with ICCAT is laid down in Rec 03-20. It requires the Executive Secretary of ICCAT to contact each year all "non-Contracting Parties, Entities, or Fishing Entities known to be fishing in the Convention area for species under ICCAT competence to urge them to become a" Member of ICCAT or obtain Cooperating Status. States and entities that already have Cooperating Status with ICCAT are not contacted by the Executive Secretary, as they do not have to apply for renewal (see below).

Unlike its title suggests, Rec 03-20 is largely devoted to the procedure for obtaining Cooperating Status with ICCAT and only contains one - implicit - criterion in this regard, namely current engagement in fishing for ICCAT species. It is in this context worth pointing out that Article XIV(1) of the ICCAT Convention does not specify criteria or grounds for accession.

Applications for Cooperating Status must be made "no later than ninety (90) days in advance of an ICCAT annual meeting" and must be accompanied by certain information as well as "a commitment to respect the Commission's conservation and management measures". Paragraph 5 charges the PWG (but since 2012 the COC (see below)) with reviewing all applications and recommending the Commission whether or not Cooperating Status should be granted. In its review, the PWG shall also consider information regarding the applicant from other RFMOs. Paragraph 6 clarifies that Cooperating Status is granted for a period of one year and "shall be annually reviewed and renewed unless revoked by the Commission due to non-compliance with ICCAT conservation and management measures." States and entities with Cooperating Status are not required to apply for renewal,<sup>57</sup> but are presumed to want renewal unless they inform

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<sup>57</sup> Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p. 421.

ICCAT otherwise. A requirement to apply for renewal - as for instance used by the WCPFC<sup>58</sup> - nevertheless has some advantages, for instance due to the clarity it provides on the requirements that applicants have to comply with (e.g. submission of data and other information).

Rec 03-20 contains only obligations for applicants for Cooperating Status and makes no mention of the rights they obtain once Cooperating Status is granted, for instance relating to participation in ICCAT meetings, access to documents and other information, and also allocations of fishing opportunities. It is nevertheless clear that such rights exist in practice. As regards allocations of fishing opportunities, for instance, this is reflected in paragraph 1 of Res 15-13. As regards participation in ICCAT meetings and access to documents, this is clarified by their entitlement to “attend the meetings of ICCAT as observers” pursuant to paragraph 3 of Res 94-06.

The ICCAT Observer Guidelines and Criteria require the Executive Secretary to invite to ICCAT meetings “Non-Contracting countries with coastlines bordering the Convention Area as defined in Article I of the Convention, or those non-contracting parties, entities or fishing entities identified as harvesting tunas or tuna-like species in the Convention Area.” The first group of States is not included in the group of States and entities that the Executive Secretary is required to urge to become Members of ICCAT or obtain Cooperating Status pursuant to Rec 03-20.

Since 2008, ICCAT has taken three main steps in relation to their engagement with cooperating non-members. First, ICCAT agreed in 2008 that States and entities with Cooperating Status could at future meetings “be granted the floor in turn, and would not necessarily have to wait until all Contracting Parties had intervened”.<sup>59</sup>

Second, in 2011 ICCAT agreed that States and entities with Cooperating Status “could present proposals on matters concerning fisheries conservation and management in the meetings of the Commission and its subsidiary bodies”.<sup>60</sup> This was probably above all intended to strengthen the participation of Chinese Taipei. These new entitlements as well as their access to Commission Circulars, means it is no longer correct to say that States and entities with Cooperating Status “attend the meetings of ICCAT as observers”, as is still indicated in paragraph 3 of Res 94-06.

Third, the WG on Convention Amendment has in principle agreed that Chinese Taipei will become a Member of ICCAT and will thereby be entitled to participate in decision-making. This is reflected in the Amended ICCAT Convention by the substitution of the words “Contracting Parties” by “Members of the Commission”. The right of all States that are Members of the UN or of any of its Specialized Agencies to accede to the Convention and thereby become Members of ICCAT is retained without change in Article XIV(1). This entitlement includes ICCAT among the most ‘open’ RFMOs in existence today, which is confirmed by the large number of Members at present (51), around 30 of which joined since 1994. As noted earlier, however, membership does not automatically lead to fishing opportunities. Expectations on fishing opportunities are nevertheless an important factor for States when deciding whether or not to become a Member or apply for Cooperating Status. Another important factor is ICCAT’s actions against non-cooperating non-members, discussed in the next section.

ICCAT also pursues other forms of cooperation with non-CPCs, for instance by allowing them to include their carrier vessels on the ICCAT Record of Carrier Vessels and the ICCAT Record of E-BFT-Other Vessels,<sup>61</sup> and access to the eBCD system when trading bluefin tuna with ICCAT CPCs.<sup>62</sup>

While Rec 03-20 charges the PWG with reviewing applications for Cooperating Status, ICCAT transferred this task to the COC in 2011 pursuant to Rec 11-24.

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<sup>58</sup> WCPFC Conservation and Management Measure (CMM) 2009-11, e.g. para. (3)(b).

<sup>59</sup> Report of the 16<sup>th</sup> Special ICCAT Meeting (2008), at p. 45.

<sup>60</sup> Report of the 22<sup>nd</sup> Regular ICCAT Meeting (2011), at p. 3.

<sup>61</sup> See, e.g., Report of the 19<sup>th</sup> Special ICCAT Meeting (2014), at pp. 73 and 125, and Recs 12-06 (at para. 10) and 15-10 (at para. (5)(i)).

<sup>62</sup> Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p. 182.

Since 2008, the following seven States and entities obtained Cooperating Status (with years indicating the year of granting or renewal): Bolivia (2013-2015), Chinese Taipei (2008-2015), Colombia (2009-2012), El Salvador (2012-2014), Guyana (2008-2011 and 2014-2015), the Netherlands (in respect of the Netherlands Antilles: 2008-2009; in respect of Curaçao: 2010-2013), and Suriname (2011-2015).

During this period, two of these had their Cooperating Status revoked, namely Colombia (2013) and Guyana (2012). Two others eventually acceded to the ICCAT Convention, namely El Salvador (2014) and the Netherlands (in respect of Curaçao) (2014). The five other States that acceded to the ICCAT Convention since 2008 - Albania (2008), Guinea-Bissau (2016), Liberia (2014), Mauritania (2008) and Sierra Leone (2008) - did so without first applying for Cooperating Status.

Since 2008, the following non-CPCs attended Annual ICCAT Meetings as observers: Argentina (2009 and 2011-2013), Bolivia (2012-2013), Cameroon (2012), Colombia (2009), Congo Republic (2008), Cuba (2010), Dominican Republic (2010), El Salvador (2011-2012), Guinea-Bissau (2014), Indonesia (2012), Liberia (2012), Mauritania (2008), Monaco (2009-2010), Mozambique (2014), Suriname (2011) and Vietnam (2012). Some of these subsequently obtained Cooperating Status or acceded to the ICCAT Convention.

For the 2016 Annual ICCAT Meeting the ICCAT Secretariat invited the following non-CPCs: Argentina, Australia, Bahamas, Benin, Cambodia, Cameroon, Colombia, Congo (Brazzaville), Congo (Democratic Republic), Costa Rica, Cuba, Denmark (in respect of the Faroe Islands and Greenland), Dominican Republic, Ecuador, Fiji, Gambia, Georgia, Grenada, Guinea-Bissau, Haiti, Indonesia, Israel, Jamaica, Kenya, Lebanon, Maldives, Mauritius, Monaco, Montenegro, Mozambique, New Zealand, Palau, Peru, Seychelles, Singapore, Sri Lanka, St. Lucia, Thailand, Togo, Ukraine and Vietnam.<sup>63</sup>

This lengthy list further underlines ICCAT's open and inclusive character. The ICCAT Secretariat puts the list together pursuant to the ICCAT Observer Guidelines and Criteria and Rule 5 of the ICCAT Rules of Procedure, based on lists in previous years and recent events, in particular at the previous Commission meeting. The list is not explicitly or implicitly adopted by the Commission and also does not specify the basis for the invitation (e.g. coastal State, engagement in harvesting, transshipment, landing or trade). The Reports of Annual CCAMLR Meetings, for instance, include a list of NCPs to be invited to next year's meeting that specifies the basis for the invitation.<sup>64</sup> The text of the invitation letters sent to non-CPCs by the ICCAT Secretariat is identical, except for those non-CPCs that will (also) receive a letter of concern. Those non-CPCs are urged to become a Member or obtain Cooperating Status.

#### Panel Recommendations

##### **The Panel recommends that ICCAT**

- **Reviews Rec 03-20 in order, inter alia, to clarify the rights of States and Entities with Cooperating Status; integrate elements of Res 94-06; replace the PWG with the COC; and include a requirement to apply for renewal of Cooperating Status.**
- **Considers formalising the procedure for inviting non-CPCs.**

##### **5.6 Relationship to Non-Cooperating Non-Members**

#### Performance Criterion

- Extent of fishing activity by vessels of non-members that do not have cooperating status, as well as measures to deter such activities.

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<sup>63</sup> Not included in this list are Dominica, St. Kitts and Nevis and the United Kingdom (in respect of Gibraltar), even though these were among the non-CPCs that have engaged in significant harvesting of ICCAT species in recent years (see section 5.6 on 'Relationship to non-cooperating non-members').

<sup>64</sup> See, e.g., Report of the 34<sup>th</sup> Annual CCAMLR Meeting (2015), at para 13.4. Para. 13.5 observes that the Executive Secretary of CCAMLR will circulate a draft list "to Members for comment prior to meeting invitations being issued".

### Global Instruments

The UNCLOS does not devote attention to an RFMO's relationship with non-cooperating non-members. Article 17(1) of the UNFSA stipulates that non-members of RFMOs are not discharged from their obligation to cooperate in the conservation and management of straddling and highly migratory fish stocks. Paragraph 4 requires members of RFMOs to "exchange information with respect to the activities of fishing vessels flying the flags" of non-cooperating non-members "engaged in fishing operations for the relevant stocks" and to "take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of" the RFMOs' conservation and management measures. Article 7.7.5 of the Code of Conduct and paragraph 22 of the IPOA-IUU contain similar encouragements.

Whereas the previous section discussed ICCAT's practice on encouraging non-members to become members or obtain Cooperating Status, this section discusses ICCAT's practice to deter fishing activities by vessels flying the flag of non-cooperating non-members. It only examines those practices that are not covered by other sections, e.g. section 3.1 on 'Port State measures', section 3.2.6 on 'Transshipment', section 4.2 on 'Cooperative mechanisms to detect and deter non-compliance' and section 4.4 on 'Market-related measures'.

### 2008 Panel Recommendations

*The 2008 Panel praised ICCAT's measures against non-cooperating non-members and made no recommendations.*

### Action by ICCAT

The ICCAT Convention does not contain a relevant provision on non-parties or non-cooperating non-members, and no such provision has been included in the Amended ICCAT Convention either. ICCAT has nevertheless adopted many pertinent Resolutions and Recommendations.

Res 94-09 *inter alia* calls upon ICCAT Contracting Parties to collect information on the sighting of large pelagic tuna longline fishing vessels greater than 24m in length operating in the Mediterranean during the period from June 1 to July 31 flying the flag of NCPs, and transmit this information to the Executive Secretary. The Executive Secretary shall transmit this information to the relevant NCP and request appropriate action to be taken promptly.

Rec 97-11 requires any observation by a Contracting Party vessel or aircraft of non-CPC vessels that may be fishing contrary to ICCAT conservation measures (anywhere in the Convention area) to "be reported immediately to the appropriate authorities of the flag-State making the observation". This State must then notify the flag State of the non-CPC vessel and the ICCAT Secretariat. The latter shall notify the other Contracting Parties.

Rec 13-13 requires CPCs to notify the Executive Secretary of any factual information showing that there are reasonable grounds for suspecting large scale fishing vessels 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 a non-CPC, the Executive Secretary shall compile such information for consideration by the Commission. Rec 13-13's information gathering mechanism on fishing or transshipment by vessels of non-CPCs not listed on the ICCAT record established by it, is also made applicable to other ICCAT Recommendations establishing vessel records. This is achieved by means of a provision stating "Conditions and procedures referred to in [Rec 13-13] shall apply *mutatis mutandis* to" the relevant ICCAT record. Such a provision has been included in Recs 13-4 (Mediterranean swordfish), 14-04 (eastern bluefin tuna) and 15-01 (tropical tunas).

The extent of non-cooperating non-members' fishing activity narrowly defined - thus excluding fishing related activities such as transshipment and provisioning - was during recent years limited to (significant) artisanal catches of billfish (in particular blue marlin) and yellowfin tuna by several Caribbean States (Dominica, Grenada, St. Kitts & Nevis and St. Lucia) and recreational fishing for EBFT by Gibraltar (which

is not represented in ICCAT by the United Kingdom<sup>65</sup>).<sup>66</sup> CARICOM (Caribbean Community) and St. Lucia had submitted catch information in 2014, but not in 2015. In early 2015, ICCAT requested the four Caribbean States mentioned above to become a Member or obtain Cooperating Status but received no reply (or catch data). A similar request was sent out in early 2016.

#### Panel Recommendations

##### **The Panel recommends that ICCAT**

- **Continues to monitor fishing activities by non-cooperating non-members through cooperation between the ICCAT Secretariat and CPCs, and between CPCs.**
- **Considers taking appropriate sanctions against non-cooperating non-members that continue to ignore ICCAT's requests for information and cooperation. This is particularly relevant in relation to overfished stocks, such as marlins.**

#### **5.7 Cooperation with Other RFMOs and Relevant International Organisations**

##### Performance Criterion

- Extent to which ICCAT cooperates with other RFMOs, including through the network of Regional Fishery Body Secretariats, as well as with other relevant international organizations.

##### Global Instruments

Neither the UNCLOS nor the UNFSA refer to cooperation among RFMOs and between RFMOs and other intergovernmental organizations. The 2006 UNFSA Review Conference proposed strengthening and enhancing “cooperation among existing and developing regional organizations, including increased communication and further coordination of measures”, referring in this context to the cooperation among tuna RFMOs in the framework of the so-called ‘Kobe process’.<sup>67</sup> The 2016 Resumed UNFSA Review Conference also recommended strengthened cooperation among RFMOs through:

the establishment of joint working groups or other mechanisms to facilitate the development of harmonized or consistent measures across RFMO/As, particularly with regard to data collection and sharing, mitigating and managing the by-catch of non-target and associated and dependent species, implementing an ecosystem approach and promoting effective and consistent implementation of monitoring, control and surveillance tools, and sharing of positive and negative lists of vessels.<sup>68</sup>

The increasing support among States for an ecosystem approach to ocean management<sup>69</sup> - in which an ecosystem approach to fisheries (EAF) management is ‘nested’ - has led to progressively wider acknowledgement of the need for cooperation between RFMOs and other relevant global and regional intergovernmental organizations and bodies, for instance those dealing with other maritime activities (e.g. shipping, offshore hydrocarbon activities and deep seabed mining), marine science or particular marine species or habitats. The 2016 Resumed UNFSA Review Conference therefore recommended strengthened cooperation and coordination between RFMOs and Regional Seas Conventions and Action Plans.<sup>70</sup>

##### 2008 Panel Recommendations

*The Panel recommended ICCAT to continue and expand its efforts in cooperation with other RFMOs.*

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<sup>65</sup> See supra note 12.

<sup>66</sup> Report of the 19<sup>th</sup> Special ICCAT Meeting (2014), at pp. 9 and 451; and Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at pp. 7, 72, 385 and 413. Argentina voluntarily submitted catch data in 2013. The Government of Gibraltar established a TAC for eastern bluefin tuna of 13 t for 2016, 13 t for 2015 and 10 t for 2014.

<sup>67</sup> Doc. A/CONF.210/2006/15, at para. 32(b), p. 36.

<sup>68</sup> Advance and unedited Report of the 2016 Resumed UNFSA Review Conference, para. B.3(a), at p. 45.

<sup>69</sup> See, e.g. the 2015 UNGA ‘Oceans’ Resolution, No. at para. 209.

<sup>70</sup> Advance and unedited Report of the 2016 Resumed UNFSA Review Conference, para. B.3(b), at p. 45.

### Action by ICCAT

By means of Article XI(2) of the ICCAT Convention, the Contracting Parties agreed:

that there should be co-operation between the Commission and other international fisheries commissions and scientific organizations which might contribute to the work of the Commission. The Commission may enter into agreements with such commissions and organizations.

The Amended ICCAT Convention does not contain substantive changes to Article XI(2). At the 2013 Meeting of the WG on Convention Amendment, some CPCs nevertheless felt that Article XI(2) “may have to be detailed further for the purpose of regulating sharks”.<sup>71</sup> Whereas Article XI(2) only refers to cooperation between ICCAT and “international fisheries commissions and scientific organizations”, ICCAT also agreed to formalize cooperation with other types of intergovernmental bodies, for instance with the Conference of the Parties (CoP) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) - by means of Guidelines for Cooperation adopted by ICCAT in 2011<sup>72</sup> - and with the Secretariat of the Agreement on the Conservation of Albatrosses and Petrels (ACAP) - by means of Guidelines for Cooperation adopted in 2015<sup>73</sup>. The choice for ‘Guidelines for Cooperation’ rather than a Memorandum of Understanding (MOU) - which ICCAT has adopted with CCSBT and IOTC (see below) - may be motivated by the narrow wording of Article XI(2).

A good indicator for the intergovernmental bodies that cooperate with ICCAT are those that are represented at Annual ICCAT Meetings. Between 2008-2015, the following intergovernmental bodies were represented at least three times: ACAP, CARICOM, CITES, the Conférence Ministérielle sur la Coopération Halieutique entre les États Africains Riverains de l’Océan Atlantique (COMHAFAT), the Commission Sous-Régionale des Pêches (CSR), FAO and the GFCM. Annual ICCAT Meetings do not have a standing agenda-item on cooperation with RFMOs and other relevant intergovernmental organizations, but relevant information is included in the Annual Administrative Reports prepared by the ICCAT Secretariat. The ICCAT Secretariat seems to consistently represent - in principle - ICCAT at the sessions of COFI, the CoPs of CITES and the annual meetings of GFCM, but not key meetings of other RFMOs and intergovernmental bodies.<sup>74</sup> For some of the latter meetings, the ICCAT Executive Secretary may ask an ICCAT Member to represent ICCAT.

As regards cooperation with RFMOs in general, the ICCAT Executive Secretary participates in the Regional Fishery Body Secretariats Network (RSN) and its bi-annual Meetings together with other RFMOs and Regional Fishery Bodies.

As regards cooperation with tuna RFMOs, ICCAT continues its active participation in the Kobe process, for instance by

- implementing Rec KIII-10 on cross-listing of vessels included on the IUU Vessel Lists of tuna RFMOs, through paragraph 11 of ICCAT Rec 11-18 in conjunction with ICCAT Res 14-11;
- leading the Joint Management Strategy Evaluation (MSE) Technical Working Group and hosting an MSE workshop at the ICCAT Secretariat in early November 2016;
- the efforts of the ICCAT Secretariat to ensure daily synchronization of ICCAT vessels lists with the tuna RFMOs’ consolidated list of authorized vessels (CLAV);
- the ICCAT Secretariat’s proposal to convene a joint-tuna RFMOs meeting on fish aggregating devices sometime in early 2017; and
- participating in the Joint Technical Bycatch Working Group (JTBWG).

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<sup>71</sup> Report of the 2013 Meeting of the WG on Convention Amendment, at p. 2.

<sup>72</sup> Report of the 22<sup>nd</sup> Regular ICCAT Meeting (2011), at p. 9 and Annex 7.2. The CITES Standing Committee endorsed the Guidelines in July 2012.

<sup>73</sup> Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p. 9. The Guidelines for Cooperation are contained in doc. PLE-109D/2015, of 15 November 2015 (15:07), at Appendix 2.

<sup>74</sup> Based on the 2008-2009 Administrative Reports (included in the Annual ICCAT Reports) and the 2013-2015 Administrative Reports (Doc. Nos. STF-201).

As regards the conservation and management of bluefin tuna, ICCAT and CCSBT have an informal understanding that ICCAT limits itself to Atlantic bluefin tuna (*Thunnus thynnus*) and leaves southern bluefin tuna (*Thunnus maccoyii*) to CCSBT.<sup>75</sup> However, ICCAT still considers southern bluefin tuna to be an ICCAT species<sup>76</sup> and all ICCAT measures are otherwise applicable to ICCAT CPCs that fish for southern bluefin tuna within the ICCAT Convention area. Chinese Taipei, Japan and South Africa report their catches of southern bluefin tuna to ICCAT, which then forwards these to CCSBT. Formalized cooperation between ICCAT and CCSBT is limited to transshipment at sea by large-scale fishing vessels, which is governed by an MOU between the Secretariats of ICCAT and CCSBT.<sup>77</sup>

Formalized cooperation between ICCAT and IOTC is limited to procedures and responsibilities relating to observers deployed on carrier vessels operating in both the Atlantic and Indian Oceans on the same voyage, which is governed by an MOU between the Secretariats of ICCAT and IOTC.<sup>78</sup>

While cooperation with non-tuna RFMOs whose regulatory areas overlap with the ICCAT Convention area is of importance to ICCAT,<sup>79</sup> formalized cooperation has so far not been established with any of these. ICCAT seems to cooperate most closely with NEAFC, in order to ensure compatibility between their conservation and management measures on sharks.<sup>80</sup> Both RFMOs agreed to involve the International Council for the Exploration in the Sea (ICES) in their cooperation as well.

Although the competence of GFCM extends to all living marine resources in the Mediterranean Sea and the Black Sea,<sup>81</sup> as regards tuna and tuna-like species it defers to ICCAT by endorsing its Recommendations relevant to the Mediterranean.<sup>82</sup> GFCM also takes account of other ICCAT actions, for instance by including vessels listed on ICCAT's IUU Vessel List also on GFCM's IUU Vessel List. At present four GFCM Members (not counting EU Member States) are not ICCAT Members: Israel, Lebanon, Monaco and Montenegro. At the 2015 Annual ICCAT Meeting, the GFCM Executive Secretary informed ICCAT that the Members of GFCM would like to formalize cooperation between GFCM and ICCAT, for instance by means of an MOU.<sup>83</sup>

As regards cooperation with other intergovernmental organizations, reference should first of all be made to Article XI(1) of the ICCAT Convention, by which the Contracting Parties agree that there should be a working relationship between ICCAT and FAO and that an agreement should be negotiated for this purpose. Following the completion of negotiations, ICCAT approved the Agreement between FAO and ICCAT<sup>84</sup> in 1973. The purpose of the Agreement is to "ensure cooperation between FAO and ICCAT" (Art. 1), for instance by reciprocal representation (Art. 2), exchange of information and documents (Art. 3), technical cooperation (Art. 5) and joint action (Art. 6). The Agreement's objective and the ways in which it is to be obtained seem particularly relevant in light of the efforts of the WG on Convention Amendment to resolve the issue on the depositary of the Amended ICCAT Convention.

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<sup>75</sup> This is, inter alia, reflected in the Compendium of ICCAT Management Recommendations and Resolutions (2016), whose Table of Contents contains the heading 'BFT - BLUEFIN TUNA (*Thunnus thynnus*). See also Resolution by ICCAT on Interpretation and Application of the ICCAT Bluefin Tuna Statistical Document Program [ Res 94-4] - no longer active - which clarifies that Recommendation Concerning the ICCAT Bluefin tuna Statistical Document Program [ Rec 92-1] "shall apply to all bluefin tuna (*Thunnus thynnus*)."

<sup>76</sup> See the draft Rec mentioned in note 13 supra and accompanying text.

<sup>77</sup> 'Memorandum of Understanding between the CCSBT and ICCAT Secretariats for Transshipment at sea by Large-Scale Fishing Vessels', in force 1 July 2015. According to Doc. No. PWG-402/2015, at p. 1, this is a "revised MOU".

<sup>78</sup> 'Memorandum of Understanding between the ICCAT and IOTC Secretariats for Monitoring Transshipment at Sea by Large-Scale Tuna Longline Fishing Vessels: Responsibilities, Coordination and Continuity of Observers when Vessels move Between Areas Managed by Each Party'; in force 23 April 2009.

<sup>79</sup> Cf. Report of the 2013 Meeting of the WG on Convention Amendment, at p. 2, which refers to GFCM, NAFO, NEAFC and the South East Atlantic Fisheries Organisation (SEAFO).

<sup>80</sup> Ibid., at Appendix 8 contains 'A joint note by the NEAFC and ICCAT Secretariats'. NEAFC's regulation of sharks primarily consists of prohibitions of directed fishing on several shark species.

<sup>81</sup> Arts 2(2) and 3(1) of the 2014 GFCM Agreement.

<sup>82</sup> See the Compendium of Decisions of the GFCM, section 1.4.

<sup>83</sup> Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p. 63.

<sup>84</sup> Agreement between the Food and Agriculture Organization of the United Nations and the International Commission for the Conservation of Atlantic Tunas, *ICCAT Basic Texts* (5<sup>th</sup> Revision: 2007), at p. 31.

Reference has already been made above to the formalised cooperation with the Secretariat of ACAP and the CoP of CITES by means of Guidelines for Cooperation. The Guidelines for Cooperation between ICCAT and CITES envisage cooperation to be carried out through their Secretariats, for instance by means of training courses and data collection on sharks.<sup>85</sup> ICCAT Res 93-08 on cooperation with CITES also remains in force.

Proposals for formalised cooperation with the (Secretariats of the) OSPAR Commission<sup>86</sup> and the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC) were unable to secure the necessary support among ICCAT Members.<sup>87</sup> IAC has nevertheless informally agreed to share its data with ICCAT. Discussions on cooperation between the Secretariats of ICCAT and the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS)<sup>88</sup> bore no fruit in the end.

Finally, reference should be made to the increased cooperation between ICES and ICCAT - above all through the SCRC and its Sub-Committee on Ecosystems and its Sharks Group.<sup>89</sup>

### Panel Recommendations

#### **The Panel recommends that ICCAT**

- ***Continues and enhances its cooperation and coordination with other tuna RFMOs in the context of the Kobe process and otherwise, in particular on the harmonization of their conservation and management measures.***
- ***Continue and enhances its cooperation and coordination with other intergovernmental bodies, in particular in relation to the conservation and management of sharks.***
- ***Considers becoming a member of the IMCS Network.***
- ***Considers making more information on its cooperation with other RFMOs and intergovernmental bodies available on a dedicated part of the ICCAT website.***

### **5.8 Participation and Capacity Building**

#### Performance Criteria

- Extent to which ICCAT members and cooperating non-members participate actively and meaningfully in the work of the Commission and its subsidiary bodies.
- Extent to which capacity building initiatives and institutional arrangements are in place to facilitate the effective participation of developing economies in the work of the Commission and its subsidiary bodies, including in positions of leadership.

Both criteria concern participation in the work of ICCAT, with the second criterion focusing on the facilitation of effective participation of developing economies by means of capacity building initiatives and institutional arrangements. Capacity building initiatives and institutional arrangements that are *not* directly aimed at facilitating effective participation in the work of ICCAT are dealt with in section 5.9 on 'Special requirements of developing States'. Participation in the provision of scientific advice and SCRS activities is dealt with in section 6.2 on 'Participation and capacity building'.

#### Global Instruments

Part VII of the UNFSA, entitled 'Requirements of Developing States', consists of Articles 24-26. Article 25, entitled 'Forms of cooperation with developing States', requires States to "cooperate, either directly or through subregional, regional or global organizations" to "facilitate the participation of developing States in" RFMOs (para. 1(c)). Article 26 requires States to "cooperate to establish special funds to assist developing States in the implementation of this Agreement". The principal initiative at the global level in this regard is the 'Part VII Assistance Fund' established by the United Nations General Assembly (UNGA) in

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<sup>85</sup> Cf. Docs No. PLE-109D/2015, at p. 1, and No. STF-201/2015, at p. 8.

<sup>86</sup> Established by the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic.

<sup>87</sup> Cf. Reports of the 18<sup>th</sup> Special ICCAT Meeting (2012), at p. 7; the 23<sup>rd</sup> Regular ICCAT Meeting (2013), at p. 9; the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p. 9; and Docs No. PLE-109D/2015, at p. 2, and No. PLE-109/2013, at p. 1.

<sup>88</sup> Doc. No. PLE-109/2012, at pp. 1-2.

<sup>89</sup> Doc No. PLE-109D/2015, at p. 1.

2003.<sup>90</sup> The Terms of Reference of the Part VII Assistance Fund<sup>91</sup> specify the ‘Purposes of assistance’ in paragraph 14. The first of these is facilitating the participation of representatives from developing States parties to the UNFSA in the meetings and activities of RFMOs. About half of the expenditure of the Fund has been used for this purpose so far.<sup>92</sup>

### 2008 Panel Recommendations

*The Panel considered that ICCAT’s efforts in assistance to developing States should be further strengthened, with the expanded participation of donors.*

### Action by ICCAT

The Amended ICCAT Convention contains a new Article III bis, whose paragraph (e) is exclusively devoted to developing States. As it does not relate explicitly to their participation in the work of ICCAT, however, it is discussed in the next section.

ICCAT’s Meeting Participation Fund (MPF) was established pursuant to Rec 11-26 (subsequently replaced by Rec 14-14) “for the purposes of supporting representatives from those ICCAT Contracting Parties which are developing States to attend and/or contribute to the work of the Commission and other subsidiary bodies”. Both scientific and non-scientific meetings are covered. Potential applicants are encouraged to first explore alternative funding opportunities; which would include the UNFSA’s Part VII Assistance Fund. ‘Rules of Procedure for the Administration of the Special Meeting Participation Fund’ were adopted in 2014.<sup>93</sup> The MPF is financed by the Working Capital Fund<sup>94</sup> as well as by voluntary contributions by several CPCs.<sup>95</sup>

In addition to the MPF, developing CPCs have been able to obtain funding for participation in ICCAT meetings through funds established by CPCs.<sup>96</sup> Some of these were established before 2011 and are still operational at present. While some funds relate exclusively to data and research,<sup>97</sup> others relate more broadly to capacity building.<sup>98</sup> Special mention should be made of the Fund for the ICCAT Chairman’s Regional Workshops, which finances regional meetings among CPCs and the Chairman that are *inter alia* aimed at strengthening these CPCs’ participation in upcoming Annual ICCAT Meetings.<sup>99</sup>

ICCAT does not have dedicated capacity building initiatives or institutional arrangements to facilitate effective participation of developing CPCs in positions of leadership within ICCAT bodies. Article III(5) of the ICCAT Convention and Rules 6, 12 and 13 of the ICCAT Rules of Procedure hardly offer any guidance on the election of Chairs for the main ICCAT bodies. The Amended ICCAT Convention does not bring any changes in this regard. A clear indication of the need among CPCs for guidance on the election of Chairs for the main ICCAT bodies nevertheless came to the fore at the 2013 Annual ICCAT Meeting, when “[i]n order to foster the spirit of inclusiveness, it was agreed, at the election of the next Chair, [that] priority should be given to candidates from African Contracting Parties”.<sup>100</sup>

**Table 5.1** below contains an overview of the Chairs of the main ICCAT bodies between 2008-2016. There are two different election procedures for these Chairs. As regards the Panels, the Panel members elect one among them, who is then entitled to appoint a person to Chair the session.<sup>101</sup> All other Chairs are elected as individuals.

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<sup>90</sup> UNGA Res 58/14, of 24 November 2003, at para. 10.

<sup>91</sup> As adopted by the Second Informal Consultations of States Parties to UNFSA (2003) and revised at the Seventh Round (2008).

<sup>92</sup> Cf. ‘Note by the [FAO] on reinforcing the use of the Part VII Assistance Fund’ submitted to the 2016 Resumed UNFSA Review Conference.

<sup>93</sup> Included in the Report of the 19<sup>th</sup> Special ICCAT Meeting (2014), at Annex 8, Appendix 2.

<sup>94</sup> €60,000.00 in 2012; €150,000.00 in 2013; €100,000.00 in 2014; and €250,000.00 in 2015.

<sup>95</sup> The EU (from its Fund for Capacity Building), Morocco and Norway.

<sup>96</sup> The information in this paragraph has been obtained from Docs No. PLE-108/2013, PLE-108/2014, PLE-108/2015, STF-202/2014 and STF-202/2015).

<sup>97</sup> E.g. the Special Data Funds established by China and the United States, and the ICCAT/Japan Project for the Improvement of Data and Management of Tuna Fisheries (JDMIP) as well its predecessor.

<sup>98</sup> E.g. the Funds for Capacity Building established by the EU and the United States, the ICCAT/Japan Capacity Building Assistance Project (JCAP) and the Brazil Fund to Support the Special Needs of Developing States.

<sup>99</sup> The ICCAT Chairman Fund has since 2005 been financed by the United States, Brazil and the EU.

<sup>100</sup> Report of the 23<sup>rd</sup> Regular ICCAT Meeting (2013), at p. 10. See also the Report of the 2012 Meeting of the WGFI, at p. 4 which notes: “Some delegations suggested establishing a geographical distribution of the mandate so as to ensure equitable and fair rotation.”

<sup>101</sup> See, e.g., the Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at p. 5: “The Commission thanked Mr. Shep for his leadership in the Panel and Cote d’Ivoire was re-elected Chair of Panel 1.”

**Table 5.1** shows that, while the number of ICCAT Contracting Parties grew from 44 to 51 during this period, the Chairs of the main ICCAT bodies were from a relatively small number of Contracting Parties (14). While the Commission Chairs were from both developed and developing Contracting Parties, Panel Chairs came - towards the end of the period 2008-2016 - more from developing Contracting Parties. Panel 2 - which deals with ICCAT's most valuable species (Atlantic bluefin tuna) - was nevertheless chaired by a developed Contracting Party throughout the entire period. Similarly, the Chairs of STACFAD, SCRS, COC and PWG were almost exclusively from developed Contracting Parties throughout the entire period. Finally, one developed Contracting Party chaired COC during the entire period and SCRS for half that period.

**Table 5.1.** Chairs of Main ICCAT Bodies between 2008-2016.<sup>102</sup>

|                      |   |
|----------------------|---|
| Commission Chairman  | Brazil (2008-2011); Japan (2012-2013); EU (2014-2015); Ghana (2016)                   |
| First Vice-Chairman  | Morocco (2010-2011); Mexico (2012-2013); Panama (2014-2015); EU (2016)                |
| Second Vice-Chairman | Senegal (2010-2011); Ghana (2011-2013); Russian Federation (2014-2015); Panama (2016) |
| Panel 1 Chair        | Côte d'Ivoire (2008-2016)   |
| Panel 2 Chair        | EC/EU (2008-2013); Japan (2014-2016)  |
| Panel 3 Chair        | Mexico (2008-2011); South Africa (2012-2016)  |
| Panel 4 Chair        | Japan (2008-2011); Brazil (2012-2016)   |
| STACFAD Chair        | Canada (2008-2016)  |
| SCRS Chair           | United States (2008-2009); EU (2010-2014); United States (2015-2016)                  |
| COC Chair            | United States (2008-2016)   |
| PWG Chair            | Canada (2008-2010); United States (2011); Morocco (2012-2015); EU (2016)              |

#### *Panel Recommendations*

##### **The Panel recommends that ICCAT**

- ***Adopts institutional arrangements to ensure that Chairs of the main ICCAT bodies come from a wider number of Contracting Parties, while taking due account of the necessary qualifications for such important positions.***
- ***Considers pursuing capacity building initiatives to strengthen participation in ICCAT meetings in a broader sense - including for key ICCAT positions - for instance by human resource development (e.g. by training courses on participation in, and chairing of, intergovernmental negotiations and bodies).***

#### **5.9 Special Requirements of Developing States**

##### *Performance Criteria*

- Extent to which ICCAT 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 ICCAT members, individually or through ICCAT, provide relevant assistance to developing States, as reflected in UNFSA Article 26.

This section does not deal with participation in ICCAT meetings - which is covered by the previous section - and also not with participation in the provision of scientific advice and SCRS activities - which is covered by the section 6.2 on 'Participation and capacity building'.

<sup>102</sup> Chairs are usually elected at Annual ICCAT Meetings, which are normally held in November. The years included in this table are those following the Annual ICCAT Meeting at which a chair was elected. The table does not include the Standing Working Group on Dialogue between Fisheries Scientists and Managers (SWGSM) - which was established in 2013 and met for the first time in 2014 - because (a) the ICCAT Rules of Procedure do not refer to this body, and (b) *Recommendation by ICCAT Amending the Recommendation by ICCAT for Enhancing the Dialogue Between Fisheries Scientists and Managers* [ Rec 14-13] explicitly requires ICCAT to assess the need to continue the SWGSM (para. 6).

### Global Instruments

The need to recognize the special requirements of developing States in relevant marine capture fisheries is, *inter alia*, recognized in Articles 61(3) and 119(1)(a) of the UNCLOS, Article 24 of the UNFSA, Article VII of the Compliance Agreement, Article 5.2 of the Code of Conduct, and Article 21 of the PSM Agreement. Paragraph 2 of Article 24 of the UNFSA highlights three requirements in this regard:

- a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;
- 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, particularly small island developing States; and
- c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

Further guidance relating to Article 24(2)(b) is provided by the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, which were endorsed by COFI in 2014.

Paragraphs 1(a) and 1(b) of Article 25, entitled 'Forms of cooperation with developing States', require States to "cooperate, either directly or through subregional, regional or global organizations" to enhance the ability of developing States to conserve and manage straddling and highly migratory fish stocks, to develop their own fisheries for such stocks, and to assist them in participating in high seas fisheries for such stocks. Article 26 requires States to "cooperate to establish special funds to assist developing States in the implementation of this Agreement". The principal initiative at the global level in this regard is the 'Part VII Assistance Fund', discussed in the previous section. The 2016 Resumed UNFSA Review Conference recommended contributions to the Part VII Assistance Fund to allow for the diversified use of the Fund in accordance with its Terms of Reference, for instance human resource development and flag State responsibility.<sup>103</sup>

Article 21(1) of the PSM Agreement requires Parties to provide assistance to developing States in order to, *inter alia*, (a) enhance their ability to develop a legal basis and capacity for the implementation of effective port State measures; (b) facilitate their participation in relevant international organizations; and (c) facilitate technical assistance. Paragraph 2 is aimed at ensuring that a disproportionate implementation burden is not transferred to developing port States Parties. Paragraph 4 requires Parties to establish appropriate funding mechanisms to assist developing States in the implementation of the PSM Agreement and lists four foci in that regard. The *ad hoc* working group to be established sometime in 2016 pursuant to paragraph 6 is required to periodically report and make recommendations on funding mechanisms.<sup>104</sup> FAO intends to provide assistance on the implementation of the PSM Agreement in the context of a five-year capacity development program within the framework of its Global Partnership for Responsible Fisheries (FishCode).

### 2008 Panel Recommendations

*The Panel considered that ICCAT's efforts in assistance to developing States should be further strengthened, with the expanded participation of donors.*

### Action by ICCAT

The entry into force in 2005 of the 1992 Madrid Protocol to the ICCAT Convention ensured that the calculations of the annual contributions by Contracting Parties would also take account of their degree of economic development (as reflected in Article X(2) of the ICCAT Convention and Regulation 4(1) of the ICCAT Financial Regulations, which contains the 'Basic Principles of the New Calculation Scheme'). In

<sup>103</sup> Cf. Advance and unedited Report of the 2016 Resumed UNFSA Review Conference, para. D.4(c), at p. 54.

<sup>104</sup> Terms of Reference for the *ad hoc* working group as well as for funding mechanisms have already been developed (cf. Doc. No. COFI/2016/5 Rev.1, at para. 2).

2009, ICCAT amended Regulation 4 of the ICCAT Financial Regulations, in order to ensure a decrease in the annual contributions of developing States in response to the increase in the number of ICCAT Members since the entry into force of the 1992 Madrid Protocol.<sup>105</sup>

The Amended ICCAT Convention contains a new Article III bis, which requires the “Commission and its Members, in conducting work under the Convention” to act in accordance with key principles of modern international fisheries law. Relevant here are paragraphs (d) and (e), which read:

- d) ensure fairness and transparency in decision making processes, including with respect to the allocation of fishing possibilities, and other activities; and
- e) give full recognition to the special requirements of developing Members of the Commission, including the need for their capacity building, in accordance with international law, to implement their obligations under this Convention and to develop their fisheries.

At its 2015 Annual Meeting, ICCAT decided to make assistance to developing coastal States a permanent item on agendas of Annual Meetings.

ICCAT has not adopted an explicit strategy or policy in furtherance of an increase in the allocation of fishing opportunities for developing (coastal) States. However, the allocation of fishing opportunities - governed by Res 15-13 - contains a number of criteria that are relevant to developing CPCs, including criteria 8 and 10. Moreover, some Recommendations exempt developing coastal CPCs from allocation schemes (provided their catch remains below a certain limit), or entitle them to submit development or fishery/management plans which will be considered for upcoming reviews of allocation schemes (e.g. Recs 13-02 on north Atlantic swordfish, and 15-01 on tropical tunas).

In addition to the MPF and the funds established by ICCAT Members discussed in the previous section, ICCAT established the MCSF pursuant to Rec 14-08 in order to enhance capacity building on port State measures. As noted in the section 3.1 on ‘Port State measures’, however, the MCSF has not yet been funded by the ICCAT Working Capital Fund as the capacity building needs of developing CPCs have not yet been clarified. In view of the PSM Agreement’s entry into force, the forthcoming establishment of its *ad hoc* working group pursuant to Article 21(6) of the PSM Agreement and FAO’s intention to have a five-year capacity development program, the operation of Rec 14-08 should be closely coordinated with existing and future capacity building initiatives undertaken by other intergovernmental bodies.

Given the various capacity building initiatives undertaken by ICCAT in recent years, the recommendation for a “coordinated strategy for capacity building and assistance programs” made by the WGFI in 2009 seems to be of continued relevance today.<sup>106</sup> Account could in that regard be taken of IOTC’s experiences with promoting the implementation of its conservation and management measures pursuant to IOTC Resolution 12/10. These include Compliance Support Missions for individual IOTC Members, regional workshops (relating to IOTC and its conservation and management measures in general as well as its port State measures in particular) as well as assistance and training for individual IOTC Members.

#### Panel Recommendations

##### **The Panel recommends that ICCAT**

- **Develops an overarching strategy for capacity building and assistance programs, which integrates the various existing capacity building initiatives.**
- **as regards capacity building for port State measures**
  - **Urges developing CPCs to make the necessary efforts to assist the ICCAT Secretariat in identifying their capacity building needs;**
  - **Closely coordinates the operation of Rec 14-08 with existing and future capacity building initiatives undertaken by other intergovernmental bodies.**

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<sup>105</sup> The amended Regulation 4 is included in Annex 7.1 to the Report of the 21<sup>st</sup> Regular ICCAT Meeting (2009).

<sup>106</sup> Report of the 2009 Meeting of the WGFI, at p. 3.

## 6. Science

### 6.1 Quality and Provision of Scientific Advice

#### 6.1.1 Best Scientific Advice

##### Performance Criterion

- Extent to which the SCRS 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.

##### 2008 Panel Recommendations

*The 2008 Review (Part II – Section 6. Quality and Provision of Scientific Advice, starting on page 53) was very positive regarding the process of the SCRS and the advice it provided. The recommendations were i) that CPC's ensured that there was a good balance between quantitative skills and knowledge of the fisheries in the participants they sent to the SCRS meetings, ii) that all countries with significant fisheries should contribute scientific data and expertise to the work of the SCRS, iii) that accurate Task I and Task II data be collected and sent in a timely fashion to the Secretariat, iv) that ICCAT scientist be given access to VMS data in a timely fashion, v) that 3-4 high priority knowledge gaps be identified and researched, and vi) that fishery independent data on stock size and fishing mortality be collected.*

##### Action by ICCAT

The SCRS had done a self-evaluation of its strengths, weaknesses, opportunities and threats (SWOT) in its strategic plan ([http://www.iccat.int/Documents/SCRS/STRATEGIC-PLAN\\_EN.pdf](http://www.iccat.int/Documents/SCRS/STRATEGIC-PLAN_EN.pdf)). An unbalance was noted among CPCs in the production of information and in the contribution to the scientific activity which might affect the robustness of the SCRS advice. The effects of fishing on the marine environment are generally not included in the single species approach used in ICCAT e.g. the impact of FAD-fishing on growth overfishing for bigeye and yellowfin is evaluated but the impact of FADs on incidental catches of non-target species is not.

ICCAT adopted Res 11-14 to Standardize the Presentation of Scientific Information in the SCRS Annual Report and in Working Group Detailed Reports, Res 11-17 on Best Available Science and Res 13-15 to Complete the Standardization of the Presentation of Scientific Information in the SCRS Annual Report.

##### Panel Assessment and Recommendations

Best available science is discussed under section 6.4. This section discusses progress on the recommendations of the 2008 review and related issues.

Progress has been made on the recommendations of the 2008 Panel with regards to the submission and accuracy of data, timely access to VMS data and a strategic plan has been adopted, but little progress appears to have been made on the other recommendations. If anything, the balance between quantitative skills and knowledge of the fisheries in the participants CPCs sent to the SCRS meetings may have worsened, there remain CPCs with significant fisheries that contribute little expertise to the work of the SCRS, and with very few exception, fishery independent data on stock size and fishing mortality is not collected. The ICCAT Atlantic wide research programme for Bluefin Tuna (GBYP <http://www.iccat.int/GBYP/en/>) has conducted aerial surveys of bluefin spawning aggregations in the Mediterranean but these data have not been used in the assessment and the GBYP Steering Committee recommended that the surveys be suspended until a greater proportion of the known spawning areas can be surveyed and better standardisation between the various sub-surveys can be achieved.

***The Panel notes that aerial survey estimates in the spawning areas could be very useful in the East Atlantic and Mediterranean bluefin tuna and recommends that efforts be made to derive a usable index and that data continue to be collected.***

The Panel considers that the absence of scientists with in-depth knowledge of the fisheries may imply that obvious errors in the models are not detected. This is not efficient.

***The Panel re-iterates the recommendation of the 2008 Panel that a better balance of scientists with knowledge of the fishery and modelling expertise be sent to the assessment meetings of the SCRS.***

The SCRS has been slow to incorporating new independent scientific research, e.g. new spawning areas for bluefin tuna in the western Atlantic and the similarity of growth and maturity schedules for the two management units for bluefin tuna. The Panel understands that maintaining consistency from one assessment to the next helps the credibility of the assessments, but there comes a point when the evidence is such that the new scientific information must be adopted. The Panel considers that adopting new scientific findings should be based on the merits of the science, not on the potential effects on the assessment results or credibility.

The Panel received a comment that the SCRS should provide stronger guidance to managers. Given uncertainties in the quality and quantity of data, but also to models with different reliability and of range of results the SCRS often can only advise managers on a range of MSY, reference points or on other measures to be taken rather than on specific values. The Panel recognises that it is the SCRS' responsibility to provide the best advice possible given the uncertainties. The Panel considers that the SCRS has reached a reasonable balance in this regard in presenting confidence intervals and in some cases several possible states of nature (high, low, medium recruitment for bluefin tuna) within which the Commission can choose duly applying a precautionary approach. It is not for the scientists to be precautionary, it is for management.

The Panel is aware that SCRS scientists would like to have access to data on a finer scale (catch/effort as well as biological) and be able to do age-based stock assessments for all stocks. The Panel believes that there could be considerable cost implications in collecting more detailed data. The Panel is not convinced that this would lead to an improved basis for management.

***The Panel recommends that Management Strategy Evaluation should be used on a few stocks to estimate the costs and benefits of collecting more detailed information.***

#### *6.1.2 Presentation Scientific Advice*

##### *Performance Criterion*

- Extent to which the scientific advice is presented consistently with Resolutions 11-14 and 13-15.

##### *2008 Panel Recommendations*

*The 2008 Panel did not address this issue.*

##### *Action by ICCAT*

ICCAT has adopted Res 11-14 and 13-15. The SCRS has modified the format of its report to include the elements covered in the resolutions.

##### *Panel Assessment and Recommendations*

The Panel finds that the SCRS advice is presented consistently and that this has improved compared with the 2008 review. This can be easily seen in the 2015 report of the SCRS where there are Kobe plots and tables of probability of rebuilding under various catch scenarios for the greatest majority of stocks. However, because each advice is drafted and discussed first in a species group before being finalised by the SCRS, there is still room for improvement. The Panel considers that consistency across species would be improved if the SCRS agreed a list of "standard" statements on stock status and management recommendations from which species groups could draw (and contribute) the one(s) best suiting their stock(s).

***The Panel recommends that the Commission adopts specific management objectives and reference points for all the stocks. This would guide the SCRS in its work and increase the consistency of the SCRS advice.***

Discussions held in 2014 and 2015 in the ‘science-managers dialogue WG’ (TOR in Rec 13-18, as amended by Rec 14-03), at its 2015 meeting ICCAT adopted two important recommendations (Rec 15-04 on Harvest Control Rules for N-ALB and Rec 15-07 on the development of Harvest Control Rules and on Management Strategy Evaluation). Harvest control rules based on management strategy evaluation should help improving the consistency of the scientific advice.

***The Panel recommends that the development of harvest control rules through management strategy evaluation should be strongly supported.***

Paragraph 3 of Res 13-15, asks the SCRS to “score the quality of the fisheries data and related to the knowledge of the species (e.g. biological parameters, fishery distribution patterns historical data, selectivity) used as inputs to stock assessments. Qualitative scores on input data and assumptions may be detailed and should summarize the state of knowledge of the different inputs and report on” a large number of input data and parameters. The Panel is concerned that if this were fully implemented, it may put too much emphasis on the uncertainty in input data and parameters. This could lead to misuses of the SCRS advice: the advice with few uncertainties would be implemented while that with considerable uncertainty would not. Yet, in both cases, it should be considered the best scientific advice.

***The Panel recommends that in a precautionary approach, the advice with more uncertainty should, in fact, be implemented more readily.***

The base case assessment for western Atlantic bluefin tuna starts in 1970. The Panel received comments that SSB for western Atlantic bluefin tuna was high in the 1960s. The Panel believes that those comments are based on text in the SCRS report starting in 2008 to the effects. Estimates of recruitment were very high in the early 1970s and additional analyses involving longer catch and index series suggested that recruitment was also high during the 1960s. This was interpreted by those who made the comments as implying that spawning biomass was also high in the 1960s. Figure 35 of the 2008 assessment report shows that this was not the case. In fact, the high recruitment in the 1960s were produced by low spawning stock biomass. It is the strong recruitment that caused the high SSB in the early 1970s, not the other way around.

### *6.1.3 Adequacy SRCS and Secretariat*

#### *Performance Criterion*

- Extent to which the structure, processes, procedures, and expertise of the SCRS and of the ICCAT Secretariat meet the needs and resources of ICCAT as well as the highly demanding data and technical requirements of the most recent modelling platforms.

#### *2008 Panel Recommendations*

The 2008 Panel did not make recommendations on the structure of the SCRS.

#### *Action by ICCAT*

Currently, most of the scientific work in ICCAT is done by CPC scientists in the various subsidiary bodies of the SCRS. IATTC and WCPFC each have a science provider to ensure continuity, quality control and standardization. The science provider for the IATTC resides in its secretariat but for the WCPFC the Secretariat of the Pacific Community (SPC) is the science provider. If ICCAT choose to have an external science provider, the SCRS could continue to exist but its role would be to review the science and to draft advice on the basis of those scientific products. As noted above, the SCRS has been slow to incorporate new scientific findings in its stock assessment. In addition, there are concerns that national scientists are not allowed to speak freely about issues in their country’s fisheries.

### Panel Assessment and Recommendations

The Panel concludes that ICCAT presents a hybrid model where most of the scientific work is done by scientists from CPCs, but in some cases the Secretariat plays a pivotal role. Resources in the Secretariat are insufficient to do all the scientific work and it is not clear how they are allocated to what species.

***The Panel recommends that clear guidelines / processes on how the scientific resources of the Secretariat should be allocated to species should be agreed.***

The Panel has no specific preferred model for a science provider, but there is no reason to believe that having in-house expertise to do the stock assessments would increase transparency.

***The Panel recommends that ICCAT evaluates the benefits of outsourcing its stock assessments to an external science provider while retaining the SCRS as a body to formulate the advice based on the stock assessments.***

If clear benefits are identified, ICCAT could enter into a contractual agreement with an arms-length science provider specifying exactly what would be done on a stock by stock basis and how much it would cost. The Panel is not convinced that there would be clear benefits but considers that it is worth reflecting on the possibility.

## **6.2 Participation and Capacity Building**

### *6.2.1 Active Participation*

#### Performance Criterion

- Extent to which ICCAT members and cooperating non-members participate actively in the provision of the scientific advice.

#### 2008 Panel Recommendations

*The 2008 Panel recommended that CPCs send a better balance of scientists between modellers and scientists with knowledge of the fisheries and that all CPCs with significant fisheries should contribute scientific data and expertise to the work of the SCRS.*

#### Action by ICCAT

ICCAT resolutions on standardizing of the presentation of SCRS information and on best available science discussed above in 6.1.1 include elements of participation.

### Panel Assessment and Recommendations

The Panel finds that the preparation of scientific advice is relatively inclusive, but participation in the activities of the SCRS remains low with approximately half of the CPCs attending the SCRS plenary meetings in 2014 and 2015. The Panel has not done an analysis of participation over time, but there are concerns that participation in scientific meetings had decreased. The Panel re-iterates the recommendations 29 and 30 of the 2008 Panel 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 and that CPCs send trained and knowledgeable scientists to the SCRS meetings for all fisheries in which they have substantial involvement.

### *6.2.2 Capacity Building Initiatives*

#### Performance Criterion

- Extent to which capacity building initiatives are put in place to facilitate the effective participation of developing economies in SCRS activities.

Participation and capacity building is also discussed above under section 5.8.

### 2008 Panel Recommendations

*The 2008 Panel did not make recommendations on capacity building specific to the SCRS.*

### Action by ICCAT

ICCAT has created a Meeting Participation Fund ( Rec [11-26] amended in [14-14] and Scientific Capacity Building fund (Rec [13-19]). Addendum 2 to Appendix 7 to the 2011 SCRS report notes “One consequence of the decreasing participation of CPC scientists at SCRS meetings is that the Secretariat has increased its participation during the meetings of the SCRS, which went from supporting the work carried out by the SCRS scientists to, in some cases, carrying out a major part of the assessment work. This situation does not correspond with the philosophy of the work of the SCRS or with the structure and means which the Secretariat has available”. Rec 13-19 is to be evaluated at the latest in 2017.

### Panel Assessment and Recommendations

The Panel notes that training in stock assessments generally requires hands-on training. This has led to the creation of the fund for participation in scientific meetings. Attendance at the meeting, is not sufficient, there needs to be pro-active engagements of the trainees in the assessment. The Panel recognizes that this is not easy in the heat of a stock assessment meeting.

***The Panel recommends that specific mentoring projects to include trainees in stock assessment teams be implemented.***

However, the Panel re-iterates that there is an imbalance between modelling scientists and scientists with knowledge of the fisheries.

***The Panel recommends that ICCAT develops specific mechanisms to ensure that more scientists with knowledge of the fisheries participate in stock assessment meetings and are directly involved in assessment teams.***

***The Panel also recommends that formal training in stock assessment be provided, possibly in cooperation with other organizations.<sup>107</sup>***

## **6.3 Long-Term Planning and Research**

### **6.3.1 SCRS Long-Term Strategy**

#### Performance Criterion

- Extent to which ICCAT adopts and regularly reviews a long-term strategy for the SCRS to implement.

### Action by ICCAT

The SCRS has undertaken a rigorous long-term planning effort in adopting its strategic plan ([http://www.iccat.int/Documents/SCRS/STRATEGIC-PLAN\\_EN.pdf](http://www.iccat.int/Documents/SCRS/STRATEGIC-PLAN_EN.pdf)). The SCRS recommended (page 97 of the 2015 SCRS report) “establishing a scientific research quota to facilitate required research to improve the science, assessments, and management advice, and therefore recommends the development of a formal process for implementing such scientific research quotas. Any research quota should be accommodated within the TAC. Research plans/projects funded/facilitated by such quotas should be vetted by the SCRS”. ICCAT has not yet approved such a fund.

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<sup>107</sup> The International Council for the Exploration of the Sea (ICES) has regular training sessions every year on a number of topics (<http://ices.dk/news-and-events/Training/Pages/default.aspx>).

### Panel Recommendation

**The Panel recommends that a process to formally incorporate scientific priorities with funding implications into the budget be implemented to fund the activities in the strategic plan. This could be achieved by a scientific research quota.**

#### 6.3.2 Alignment Research

##### Performance Criterion

- Extent to which the research coordinated or undertaken directly by ICCAT is aligned with the needs of the Commission to fulfil its mandate.

##### 2008 Panel Recommendations

*The 2008 Panel did not have recommendations on this issue.*

##### Action by ICCAT

The SCRS submits a draft annual workplan to the Commission. The workplan is discussed, amended if necessary and adopted at the Annual Meeting of the Commission. The Commission also makes specific requests to the SCRS to be addressed in the subsequent year. As noted above, it is not clear that funds are specifically identified to implement the agreed plan.

ICCAT has several research programs (<http://www.iccat.int/en/ResProgs.htm>) to meet the needs of the Commission: the Atlantic Wide Research Programme for Bluefin tuna (GBYP), the Atlantic Ocean Tropical Tuna Tagging Programme (AOTTP), the Enhanced Program for Billfish Research (EPBR), the Small Tunas Year Program (SMTYP), and the Shark Research and Data Collection Programme (SRDCP).

##### Panel Assessment and Recommendations

The GBYP was evaluated externally by MRAG America in 2016 (the report is expected to be put on the ICCAT web site once it has been translated). The review was very positive. Information and data collected by the GBYP will be included in the next assessment of bluefin tuna (2017) and in the management strategy evaluation currently under way. These data and information include: electronic tag data to evaluate mixing between the Eastern and Western management units, conventional tag data for estimating growth parameters, historical trends in landings and recent longline data sets, trade data for estimate past under-reporting of catches, genetic data to estimate mixing and to identify subpopulations, micro-elements data to estimate historical mixing and ageing information to create age-length keys. The SCRS considers that the four GBYP aerial surveys are too few for detecting a trend.

### **6.4 Best Available Science**

#### 6.4.1 Implementation Res 11-17

##### Performance Criterion

- Extent to which the Resolution on Best Available Science [Res 11-17] is effectively implemented.

##### 2008 Panel Recommendations

*The 2008 Panel did not have recommendations on this.*

##### Action by ICCAT

Res 11-17 on Best Available Science should be considered along with Res 11-14 and 13-15 on the presentation of SCRS information. The SCRS has the ability to pay for external reviewers to participate in assessment meetings and it has developed TOR for such reviews.

### Panel Assessment and Recommendations

The Panel found it difficult to assess the extent to which Res 11-17 on Best Available Science was effectively implemented: words such as *Take all measures which would be appropriate*, or *Preserve and promote the independence and excellence of the SCRS and its working groups* are not easy to assess. One of the specific measures was that the SCRS should adopt a code of conduct to avoid conflict of interest. In the 2015 report, the SCRS chair indicated that work on this was progressing but the code was not ready yet. Quality control procedures do not seem to be uniform from one species group to the other and external peer review does not seem to have progressed much since the adoption of the resolution.

The concept of best available science is generally seen to include: relevance, inclusiveness, objectivity, transparency, timeliness, verification, validation, and peer review. Best available science implies evaluating the uncertainty and associated risk of the scientific information. Good peer review implies balance in expertise, knowledge, and bias; lack of conflicts of interest; independence from the work being reviewed; and transparency.

The Panel finds that the SCRS scores well in including uncertainty (e.g. for bluefin tuna where more than one recruitment scenarios are presented in rebuilding options and stock status determination) but scores less well on peer review: expertise and knowledge are mostly related to modelling and knowledge of the fisheries is increasingly lacking, the SCRS, at least in some species groups, includes a reasonable balance in terms of bias, but the SCRS basically reviews its own work, there is no independent review. SCRS reports are readily available, but detailed model results are more difficult to find. There is no indication that well-defined rules for efficient decision-making to arrive at scientific advice to be endorsed, released and published have been adopted. Most reports make attempts at reflecting different opinions and points of view with some being more successful (e.g. the blue shark 2015 assessment report) than others.

The Panel believes that the greatest improvements in best available science would be achieved by the adoption of a single, integrated, well-designed comprehensive data reporting system as recommended under section 2.2. above. This would save time in CPCs, in the Secretariat and during scientific meetings.

***The Panel recommends that model runs that are the basis of the SCRS advice should be available on the ICCAT website and easy to find. This should include the most recent model runs, but as assessments are updated, older runs should also be available.***

The SCRS has a software catalogue but this has not been properly maintained although currently there are efforts to update it.

***The Panel recommends that ICCAT cooperates with other stock assessments organizations to develop an integrated stock assessment framework where all current models could be run and new models could be integrated, while being transparent on what data and parameters have been used under what assumptions.***

The site <https://www.stockassessment.org> provides an example of how this could be done.

The Panel considers that inviting one expert to participate in assessment meetings is not sufficient to ensure peer review. One possibility would be to have universities review the assessments. The School for Marine Science and Technology of the University of Massachusetts, Dartmouth (<http://www.umassd.edu/smast/> (Steve Cadrin)) and the School of Marine Science at the University of Maine (<http://www.umaine.edu/marine/index.php> (Yong Chen)) each year review the stock assessments of one of the working groups of the International Council for the Exploration of the Sea.

***The Panel recommends that ICCAT considers adopting a similar system with scientists from external organisations, universities or otherwise are contracted to review SCRS assessments.***

The Panel does not believe that adopting well-defined rules for decision-making to arrive at scientific advice to be endorsed is the best way to improve the efficiency of the process. Considerable time could be spent on defining and agreeing the rules but it is not obvious that implementation would follow. The Panel believes that efficient chairing of meetings would be more helpful than adopting rules. Training of meeting chairs is recommended under section 6.4.2 below.

#### 6.4.2 Total Quality Management Process

##### Performance Criterion

- Extent to which the SCRS and its working groups apply a total quality management process.

##### 2008 Panel Recommendations

*Total quality management did not exist at the time of the 2008 Panel.*

##### Action by ICCAT

The 2015 SCRS report (p. 254) states: “Also, in anticipation of the possibility that as part of this review the SCRS will be asked if it has implemented a “total quality management process” to ensure “best available science”, the SCRS will develop a draft set of modifications of its strategic research plan for consideration at the SCRS annual meeting of 2016”.

##### Panel Assessment and Recommendations

Point 6 of Res. 11-17 states: “The next independent performance review of ICCAT should include an assessment of the functioning of the SCRS and its working groups through a total quality management process, including an evaluation of the potential role of external reviews”, which translated into the performance criterion above which is considerably smaller in scope. This performance review assessed the functioning of the SCRS and its working group qualitatively.

The Panel notes that Tasks I and II data are controlled for quality. The Panel notes that a system based on stock assessments by Working Groups with variable participation is vulnerable to variability because of changes in the scientists that participate in any specific meeting.

The experience of the Panel is limited to meetings of the SCRS itself, and one of its species group. The SCRS meetings are well run and the presence of interpreters implies that the agreed time schedule is followed relatively closely. This is not the case for at least one of the species group. If this observation is more widely applicable, the SCRS subsidiary bodies would benefit if they were more actively chaired.

***The Panel recommends that ICCAT provides training in efficient chairing meetings to current chairs and to new ones when they assume their duties.***

## 7. Comparison with other RFMOs

### 7.1 Best Practices

#### Performance Criteria

- To the extent possible, evaluate the extent to which ICCAT’s performance is comparable to other tuna RFMOs in relation to the adoption and implementation of conservation and management measures for target and non-target species, status of the resources under its purview, scientific processes and procedures, and adoption and implementation of MCS measures and compliance review procedures.
- Identification of areas/best practices that would allow ICCAT to enhance its performance.

Where relevant, comparisons to other tuna RFMOs and identification of best practices have been incorporated in individual sections throughout this report. The Panel considers that ICCAT compares very favourably with other tuna RFMOs in terms of the application of best practices to ensure its effectiveness on management, conservation measures, science, MCS, structure and Secretariat.

## **7.2 Kobe**

### Performance Criterion

- Extent to which ICCAT implemented the Kobe III recommendations and comparison to the degree of implementation in other tuna RFMOs.

Where relevant, this has been addressed in individual sections throughout this report. The Kobe Steering Committee, which met in Rome in June 2014, prepared an overview on responses by the tuna RFMOs to a questionnaire on the implementation of Kobe recommendations. The Panel considers that this overview indicates that ICCAT comes out very favourably compared to the other tuna RFMOs.

## **8. Financial and Administrative Issues**

### **8.1 Availability of Resources for RFMO Activities**

#### Performance Criterion

- Extent to which the need for financial, human, and other resources are effectively forecasted and resources are made available to achieve the aims of ICCAT and to implement ICCAT decisions.

#### Action by ICCAT

ICCAT has in place a transparent process in relation to its budget and financing of activities. Each year, a draft budget and proposed scale of CPCs contributions for a two year period is prepared by the Secretariat. This details the allocation of resources to the staffing of the Secretariat and the execution of its range of responsibilities, including in relation to Trust Funds.

The draft budget is examined in detail and modified as appropriate by the Standing Committee of Finance and Administration (STACFAD), which recommends after deliberations the draft Budget to the Commission.

Each year, the financial accounts of ICCAT are audited by an independent audit firm, which attests to the accuracy of the ICCAT's financial situation. The audit report is circulated to all CPCs, which may raise issues relating to any aspect of the financial accounts at the STACFAD meetings, or indeed, at Commission meetings. This process is very similar to that other RFMOs and it has stood the test of time.

In the final analysis, it is the CPCs which decide on the budget and how that budget is attributed to the different ICCAT programmes and activities. It is also the CPCs which monitor how that budget is executed by the Secretariat through STACFAD. It is the CPCs which determine the workload of the Secretariat. It is the CPCs which select the Executive Secretary. So, the key decisions reside with the CPCs. The execution of the budget is the responsibility of the Secretariat and that Secretariat is answerable to the CPCs within the STACFAD, and ultimately, the Commission.

#### Panel Assessment and Recommendations

The Panel notes that in line with other RFMOs, the ICCAT accounts are audited annually by a private audit company, currently Grant Thornton. In addition, ICCAT has the prudent policy of rotating the choice of the audit company at suitable intervals.

The financial management of ICCAT of its annual budget looks sounds. To a certain degree, these financial accounts give a misleading picture as the costs of the ICCAT Annual Meeting and major scientific programmes, are usually financed outside the budget by a very limited number of CPCs. Continued reliance by ICCAT on extra budgetary funds is not a sound financial management strategy.

The size of the working capital fund is an issue frequently debated within ICCAT. STACFAD in 1971 decided in a rather arbitrary manner to maintain the working capital fund at 15% of the total annual budget. This was at a time when the number of CPCs and the range of activities of ICCAT were much less compared to 2016.

The Fund has steadily been reduced in recent years in terms of percentage of the Budget:

- 128% in 2012
- 118% in 2013
- 86% in 2014
- 56% in 2015

The Panel notes an increasing tendency for CPCs to decide to finance projects or programmes through the working capital fund. In many ways, this is the easy option. The Panel considers that if the project to be financed is a one-off project for one or two years, then it is understandable that it is financed from the working capital fund. However, if the programme or project is going to become a more permanent part of ICCAT activities, then the Panel recommends that the financing should be integrated into the annual budget.

There have been improvements in the financial support to the ICCAT activities in general and to the SCRS activities in particular (GBYP, AOTTP and other research programmes, eBCD, etc.), but further efforts should be made in a medium and long term.

The Panel notes that non-payment or partial payment of annual contributions is a diminishing problem for ICCAT, when compared to previous decades, and commends the Secretariat for its work on this issue.

- ***The Panel recommends that a working capital fund equivalent to 70% of the Annual Budget is prudent. This fund needs to be kept at that level in the interest of sound financial management. It should also be borne in mind that there are no guarantees that the costs of Annual Meetings and scientific programmes etc, will continue to be financed by extra budgetary funds.***
- ***The Panel, taking account of the clear progress made by ICCAT in reducing outstanding debts on annual contributions by CPCs, recommends that ICCAT consider erasing CPCs debts for annual contributions outstanding for more than two years i.e. debts before 2015. This measure would alleviate the debt burden for certain Developing States. However, in parallel, ICCAT should amend its financial procedures and introduce an automatic sanction whereby, if the previous two years' contributions have not been paid in full by the following Annual Meeting, then the right to vote and be a quota holder is withdrawn for that CPC, until those debts are acquitted in full.***
- ***The Panel also recommends that ICCAT consider cost recovery to finance key parts of their activities and thereby reduce the CPCs budgetary contributions and/or expand ICCAT's activities (e.g. the High Seas Inspection Scheme). This cost recovery approach is based on the principle that the vessels of CPCs, which benefit from access to profitable fisheries, should share the financial burden for the science and monitoring programmes, which are crucial for the sustainability of those resources. An annual fee could be envisaged which would be paid per vessel of a certain size to ICCAT, via if necessary, the Flag CPC.***

## **8.2 Efficiency and Effectiveness**

### Performance Criterion

- Extent to which ICCAT is efficiently and effectively managing its human and financial resources, including those of the Secretariat, to support Commission objectives and ensure continuity of operations, including through establishment of clear and transparent office policies, structures, roles and responsibilities, and lines of authority; effective internal and external communication; and other aspects of office planning and operations.

### Panel Assessment and Recommendations

The Panel did not have the expertise to analyse in depth the functioning of the Secretariat. However, it is noteworthy that only one CPC and a few scientists have made criticism in their comments to the Panel on the functioning of ICCAT. The Panel considers that this reflects a general satisfaction with how the ICCAT secretariat, directed by the Executive Secretary, functions in its relationship with CPCs and other interested bodies.

The Panel notes that, notwithstanding the increasing number of tasks placed upon the organisation, the level of staffing has remained in recent years around 28 persons, with 14 at the professional grade. This total also includes translators. In addition, ICCAT has 7 contract personnel to cover GBYP and AOTTP research programmes. The Panel considers that ICCAT has a reasonable staffing level for the wide range of activities that the ICCAT secretariat must cover.

The annual budget since 2011 has been around the 3 million euro. In addition, to this amount, ICCAT is entrusted with the administration and financial management of an increasing range of Trust Funds and projects in that period.

There continues each year to be a heavy schedule of inter-sessional meetings. In 2015, 18 inter-sessional meetings were organised and held by ICCAT, as well as two regional workshops. ICCAT staff attended a further 10 international meetings. The large number of publications is also noteworthy, both on the Commission's work, but also from the SCRS.

The Panel considers that the organisational structure of ICCAT is laid down clearly. The roles and responsibilities of staff are established for each of the four departments in the Secretariat, thereby ensuring that the organisation functions efficiently and effectively, under the direction of the Executive Secretary. The staff are subject to an annual assessment process.

The Panel recalls the 2008 Panel's view that CPCs should be mindful of additional costs or staffing considerations when deciding on new programmes or projects at the Annual Meeting. The Panel recommends that when deciding on additional new activities, the Commission evaluates the implications for the Secretariat in terms of workload. The Panel considers that the Chair of ICCAT should exercise a close scrutiny on this issue at the Annual Meeting.

- ***The Panel recommends, in line with good management practice, that ICCAT reviews every five years, through an independent human resources consultancy company, the staffing profile and workload of the Secretariat and, if necessary, adjust it to accurately reflect current and programmed workloads. In that review, the company should also review the staff assessment process***
- ***The Panel recommends that STACFAD be responsible for the terms of reference and the follow-up to the report of the consultancy.***

**TOR OF THE SECOND REVIEW PANEL**

The TOR of the Second Review Panel are as follows:

The aim of the second assessment should be to:

1. Evaluate how ICCAT has responded to the outcome of the First ICCAT Performance Review of 2008, taking into consideration the discussions/recommendations of the Working Group on the Future of ICCAT, of the Working Group on Convention Amendment and subsequent decisions and practices by the Commission and its subsidiary bodies.
2. Taking into account the evaluation under item 1 above, assess the functioning of the Commission and of its subsidiary bodies, in particular the Compliance Committee and the SCRS.
3. Compare, to the extent possible, the performance of ICCAT with the performance of other tuna RFMOs, i.e. by taking into account the Performance Reviews by other tuna RFMOs and by highlighting best practices adopted by other RFMOs that could help further strengthen ICCAT.
4. Identify areas where improvement is needed to strengthen the organisation further including an analysis of reporting requirements with a view to streamline and make recommendations to the Commission on how performance could be improved, taking into consideration the development in fisheries and ocean management that has taken place during the period covered by the review.<sup>108</sup>

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<sup>108</sup> Report of the May 2015 Meeting of the Ad Hoc Working Group for Preparing the Next Performance Review (Report of the 24<sup>th</sup> Regular ICCAT Meeting (2015), at Annex 4.7), at Section 2.1, Appendix 2.

PERFORMANCE CRITERIA<sup>109</sup>

|   | <i>Area</i>                        | <i>General criteria</i>               | <i>Detailed criteria</i>  | <i>Changes compared to 2007 criteria</i> |
|---|------------------------------------|---------------------------------------|---|--|
| 1 | <i>First performance review</i>    | Follow-up to first performance review | <ul style="list-style-type: none"> <li>• Review of actions taken by ICCAT in response to the conclusions and recommendations of the first performance review and consideration of their effectiveness.</li> </ul>   | New item.                                |
| 2 | <i>Conservation and management</i> | Status of living marine resources     | <ul style="list-style-type: none"> <li>• Status of major fish stocks under the purview of ICCAT in relation to maximum sustainable yield or other relevant biological standards.</li> <li>• Trends in the status of those stocks.</li> <li>• 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”).</li> <li>• Trends in the status of those species.</li> </ul>  |  |
|   |                                    | Data collection and sharing           | <ul style="list-style-type: none"> <li>• Extent to which ICCAT has agreed formats, specifications and timeframes for data submission, taking into account UNFSA Annex I.</li> <li>• Extent to which ICCAT members and cooperating non-members, individually or through ICCAT, collect and share complete and accurate fisheries data concerning target stocks and non-target species and other relevant data in a timely manner (Task I/II data).</li> <li>• Extent to which fishing data and fishing vessel data are gathered by ICCAT and shared among members and other RFMOs.</li> <li>• Extent to which ICCAT is addressing any gaps in the collection and sharing of data as required.</li> <li>• Extent to which capacity building initiatives are put in place to improve data collection in developing economies.</li> </ul> | Added reference to Task I/II data.       |

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<sup>109</sup> Ibid., Addendum 1 to Appendix 2.

|   | <i>Area</i>                                       | <i>General criteria</i>                          | <i>Detailed criteria</i>   | <i>Changes compared to 2007 criteria</i>                                      |
|---|---|--|--|---|
|   |   | Adoption of conservation and management measures | <ul style="list-style-type: none"> <li>• Extent to which ICCAT has adopted conservation and management measures for both target stocks and non-target species that ensure the long-term sustainability of such stocks and species and are based on the best scientific evidence available.</li> <li>• Extent to which ICCAT 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.</li> <li>• Extent to which ICCAT has adopted and is implementing effective rebuilding plans for depleted or overfished stocks.</li> <li>• Extent to which ICCAT has moved toward the adoption of conservation and management measures for previously unregulated fisheries.</li> <li>• Extent to which ICCAT 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.</li> <li>• Extent to which ICCAT 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.</li> </ul> | Suggest deletion of new and exploratory fisheries as not applicable in ICCAT. |
|   |   | Capacity management                              | <ul style="list-style-type: none"> <li>• Extent to which ICCAT has identified fishing capacity levels commensurate with long-term sustainability and optimum utilization of relevant fisheries.</li> <li>• Extent to which ICCAT has taken actions to prevent or eliminate excess fishing capacity and effort.</li> </ul>  |   |
|   |   | Compatibility of management measures             | <ul style="list-style-type: none"> <li>• Extent to which measures have been adopted as reflected in UNFSA Article 7.</li> </ul>  |   |
|   |   | Fishing allocations and opportunities            | <ul style="list-style-type: none"> <li>• Extent to which ICCAT 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.</li> </ul>   |   |
|   |   | Reporting Requirements                           | Analysis of ICCAT reporting requirements to improve efficiency, avoid redundancy and reduce unnecessary burden to CPCs.  | New item.   |
| 3 | <i>Monitoring, control and surveillance (MCS)</i> | Port State measures                              | <ul style="list-style-type: none"> <li>• Extent to which ICCAT 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.</li> </ul>  | New area (MCS) – previously under "compliance and enforcement".               |

|   | <i>Area</i>                       | <i>General criteria</i>                                   | <i>Detailed criteria</i>   | <i>Changes compared to 2007 criteria</i>  |
|---|-----------------------------------|---|--|---|
|   |                                   |   | <ul style="list-style-type: none"> <li>• Extent to which ICCAT has adopted Port State Measures pursuant to the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.</li> <li>• Extent to which these measures are effectively implemented.</li> </ul>   |   |
|   |                                   | Integrated MCS measures                                   | <ul style="list-style-type: none"> <li>• Extent to which ICCAT 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).</li> <li>• Extent to which these measures are effectively implemented.</li> </ul>   | New title (former one: <i>Monitoring, control and surveillance (MCS)</i> ).   |
| 4 | <i>Compliance and enforcement</i> | Flag State duties   | <ul style="list-style-type: none"> <li>• Extent to which ICCAT 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.</li> </ul> |   |
|   |                                   | Cooperative mechanisms to detect and deter non-compliance | <ul style="list-style-type: none"> <li>• Extent to which ICCAT 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).</li> <li>• Extent to which these mechanisms are being effectively utilized.</li> </ul>                       |   |
|   |                                   | Follow-up on infringements                                | <ul style="list-style-type: none"> <li>• Extent to which ICCAT, its members and cooperating non-members follow up on infringements to management measures.</li> <li>• Extent to which ICCAT and its members effectively implement Recommendations 11-15, 06-13, 96-14, 97-01, 00-14, and 11-11.</li> </ul>   | New item.   |
|   |                                   | Market-related measures                                   | <ul style="list-style-type: none"> <li>• Extent to which ICCAT has adopted measures relating to the exercise of the rights and duties of its members as market States.</li> <li>• Extent to which these market-related measures are effectively implemented.</li> </ul>  |   |
|   |                                   | Reporting Requirements                                    | Analysis of ICCAT reporting requirements to improve efficiency, avoid redundancy and reduce unnecessary burden to CPCs   | New item.   |
| 5 | <i>Governance</i>                 | Decision-making   | <ul style="list-style-type: none"> <li>• Extent to which ICCAT has transparent and consistent decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner.</li> <li>• Extent to which these procedures are effectively implemented in ICCAT.</li> </ul>   | Decision-making/dispute settlement and international cooperation merged together and renamed "Governance."<br>New item. |
|   |                                   | Dispute settlement  | <ul style="list-style-type: none"> <li>• Extent to which ICCAT has established adequate mechanisms for resolving disputes.</li> </ul>  |   |

|   | <i>Area</i>    | <i>General criteria</i>   | <i>Detailed criteria</i>  | <i>Changes compared to 2007 criteria</i>   |
|---|----------------|---|---|--|
|   |                | Transparency  | <ul style="list-style-type: none"> <li>• Extent to which ICCAT is operating in a transparent manner, as reflected in UNFSA Article 12 and the Code of Conduct for Responsible Fisheries Article 7.1.9.</li> <li>• Extent to which ICCAT decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.</li> </ul>   |  |
|   |                | Confidentiality   | <ul style="list-style-type: none"> <li>• Extent to which ICCAT has set security and confidentiality standards and rules for sharing sensitive scientific and operational/compliance data.</li> </ul>  | New item (from IOTC 2 <sup>nd</sup> Perf. Review).   |
|   |                | Relationship to cooperating non-members                               | <ul style="list-style-type: none"> <li>• Extent to which ICCAT facilitates cooperation between members and nonmembers, including through the adoption and implementation of procedures for granting cooperating status.</li> </ul>  |  |
|   |                | Relationship to non-cooperating non-members                           | <ul style="list-style-type: none"> <li>• Extent of fishing activity by vessels of non-members that do not have cooperating status, as well as measures to deter such activities.</li> </ul>   |  |
|   |                | Cooperation with other RFMOs and relevant international organizations | <ul style="list-style-type: none"> <li>• Extent to which ICCAT cooperates with other RFMOs, including through the network of Regional Fishery Body Secretariats, as well as with other relevant international organizations.</li> </ul>   |  |
|   |                | Participation and capacity building                                   | <ul style="list-style-type: none"> <li>• Extent to which ICCAT members and cooperating non-members participate actively and meaningfully in the work of the Commission and its subsidiary bodies.</li> <li>• Extent to which capacity building initiatives and institutional arrangements are in place to facilitate the effective participation of developing economies in the work of the Commission and its subsidiary bodies, including in positions of leadership.</li> </ul>  | New items to parallel similar element under 6. <i>Science</i> .  |
|   |                | Special requirements of developing States                             | <ul style="list-style-type: none"> <li>• Extent to which ICCAT 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.</li> <li>• Extent to which ICCAT members, individually or through ICCAT, provide relevant assistance to developing States, as reflected in UNFSA Article 26.</li> </ul> |  |
| 6 | <i>Science</i> | Quality and provision of scientific advice                            | <ul style="list-style-type: none"> <li>• Extent to which the SCRS 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.</li> <li>• Extent to which the scientific advice is presented consistently with Resolutions 11-14 and 13-15.</li> </ul>  | <p>Copied from previous "conservation and management" with a specific reference to SCRS.</p> <p>New items.</p> |

|   | <i>Area</i>                                | <i>General criteria</i>                       | <i>Detailed criteria</i>  | <i>Changes compared to 2007 criteria</i> |
|---|--|---|---|--|
|   |  |   | <ul style="list-style-type: none"> <li>• Extent to which the structure, processes, procedures, and expertise of the SCRS and of the ICCAT Secretariat meet the needs and resources of ICCAT as well as the highly demanding data and technical requirements of the most recent modelling platforms.</li> </ul>  |  |
|   |  | Participation and capacity building           | <ul style="list-style-type: none"> <li>• Extent to which ICCAT members and cooperating non-members participate actively in the provision of the scientific advice.</li> <li>• Extent to which capacity building initiatives are put in place to facilitate the effective participation of developing economies in SCRS activities.</li> </ul>   |  |
|   |  | Long-term planning and research               | <ul style="list-style-type: none"> <li>• Extent to which ICCAT adopts and regularly reviews a long-term strategy for the SCRS to implement.</li> <li>• Extent to which the research coordinated or undertaken directly by ICCAT is aligned with the needs of the Commission to fulfil its mandate.</li> </ul>   | New items.                               |
|   |  | Best available science                        | <ul style="list-style-type: none"> <li>• Extent to which the <i>Resolution on Best Available Science</i> [ is effectively implemented.</li> <li>• Extent to which the SCRS and its working groups apply a total quality management process.</li> </ul>  | New items (from Res. 11-17).             |
| 7 | <i>Comparison with other RFMOs</i>         | Best practices                                | <ul style="list-style-type: none"> <li>• To the extent possible, evaluate the extent to which ICCAT's performance is comparable to other tuna RFMOs in relation to the adoption and implementation of conservation and management measures for target and non-target species, status of the resources under its purview, scientific processes and procedures, and adoption and implementation of MCS measures and compliance review procedures.</li> <li>• Identification of areas/best practices that would allow ICCAT to enhance its performance.</li> </ul> | New item.                                |
|   |  | Kobe  | <ul style="list-style-type: none"> <li>• Extent to which ICCAT implemented the Kobe III recommendations and comparison to the degree of implementation in other tuna RFMOs.</li> </ul>  | New item.                                |
| 8 | <i>Financial and administrative issues</i> | Availability of resources for RFMO activities | <ul style="list-style-type: none"> <li>• Extent to which the need for financial, human, and other resources are effectively forecasted and resources are made available to achieve the aims of ICCAT and to implement ICCAT decisions.</li> </ul>   |  |
|   |  | Efficiency and effectiveness                  | <ul style="list-style-type: none"> <li>• Extent to which ICCAT is efficiently and effectively managing its human and financial resources, including those of the Secretariat, to support Commission objectives and ensure continuity of operations, including through establishment of clear and transparent office policies, structures, roles and responsibilities, and lines of authority; effective internal and external communication; and other aspects of office planning and operations.</li> </ul>  |  |

## CONSOLIDATED LIST OF PANEL RECOMMENDATIONS

|   |   |
|---|---|
| <b>1. Introduction</b>                                  |   |
| Draft Amended ICCAT Convention                          | <p><i>The Panel recommends that ICCAT</i></p> <ol style="list-style-type: none"> <li>1. <i>Urges its CPCs to make all necessary efforts to bring the work of the WG on Convention Amendment to a successful conclusion. This also includes agreement:</i> <ol style="list-style-type: none"> <li>a) <i>on rules and procedures to ensure the smooth and timely adoption and entry into force of the amendments to the ICCAT Convention, either by adopting the amendments by the Commission or by a Conference of Plenipotentiaries of the Contracting Parties; and</i></li> <li>b) <i>on a (de facto) provisional application of some or all amendments to the ICCAT Convention from the time of their adoption.</i></li> </ol> </li> <li>2. <i>Urge its Members, following the conclusion of the work of the WG on Convention Amendment, to make all necessary efforts to ensure that the amendments to the ICCAT Convention enter into force as soon as soon as possible.</i></li> </ol> |
| ICCAT Basic Texts                                       | <ol style="list-style-type: none"> <li>3. <i>The Panel recommends that ICCAT make consolidated versions of individual basic ICCAT instruments available on the ICCAT website.</i></li> </ol>  |
| <b>2. Conservation and Management</b>                   |   |
| Trends in the Status of Non-Target Species              | <ol style="list-style-type: none"> <li>4. <i>The Panel recommends that the precautionary approach be consistently applied for associated species considering that the assessments for these species are highly uncertainty and that their status is often poorly known.</i></li> </ol>  |
| Data Collection and Sharing                             | <ol style="list-style-type: none"> <li>5. <i>The Panel recommends that the possible non-reporting of incidental catches by vessels not on CPCs authorised list should be investigated by the compliance committee.</i></li> <li>6. <i>The Panel recommends that a mechanism be found to allow minor occasional harvesters without allocations to report their catches without being subject to sanctions.</i></li> <li>7. <i>The Panel considers that major progress in data availability is necessary and recommends that substantial improvements in data quality and data completeness can only be achieved by simplifying and automating the process of collecting data in a systematic and integrated way. This may not be possible for artisanal fleets, but should be possible for most of the fleets in developed CPCs.</i></li> </ol>  |
| <b>Adoption of Conservation and Management Measures</b> |   |
| Eastern Bluefin   | <ol style="list-style-type: none"> <li>8. <i>The Panel confirms that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math>.</i></li> <li>9. <i>The Panel recommends that Panel 2 takes advantage of this favourable context to resolve outstanding quota allocation issues among CPCs.</i></li> </ol>   |
| Western Bluefin   | <ol style="list-style-type: none"> <li>10. <i>The Panel confirms that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math>.</i></li> </ol>   |
| Bigeye  | <ol style="list-style-type: none"> <li>11. <i>The Panel considers that the management of fisheries on this stock by ICCAT is not consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math> as the probability of rebuilding in more than 10 years is less than 50%.</i></li> <li>12. <i>The Panel recommends that bigeye, which is fished in association with juvenile yellow fin and skipjack on FADs, should form part of the long term management strategy for the tropical tuna stocks.</i></li> </ol>  |

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|                          | <p>13. <i>The Panel recommends that, in view of the current poor status of the stock, the sustainable management of the tropical tunas should be a key immediate management priority for ICCAT. The same commitment devoted to eastern bluefin by ICCAT, should now be addressed to the tropical tuna stocks.</i></p> <p>14. <i>The Panel notes that the lowered TAC has only a 49% probability of rebuilding the stock by 2028 and recommends that the TAC be decreased further to increase the probability of rebuilding in a shorter period.</i></p> <p>15. <i>The Panel, noting that ICCAT has established a working group on FADs, recommends that ICCAT prioritise this work and, in parallel, pursue the initiative across all tuna RFMOs to pool the information, knowledge and approaches on how to introduce effective management of FADs into the tropical tuna fisheries on a worldwide scale.</i></p> <p>16. <i>The Panel notes that, according to the SCRS, the area and time closure has not worked and therefore its impact on reducing juvenile catches of big eye and yellowfin, is negligible. The Panel recommends that this policy needs to be re-examined and this can, in part, be done through initiatives on limiting the number and use of FADs.</i></p> |
| Yellowfin                | <p>17. <i>The Panel considers that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math> because fishing mortality is less than <math>F_{MSY}</math>.</i></p> <p>18. <i>The Panel recommends that yellowfin, which is fished in association with juvenile bigeye and skipjack on FADs, should form part of the long term management strategy.</i></p> <p>19. <i>The Panel recommends that a quota allocation scheme be adopted by ICCAT to manage the fishery, as is already the case for bigeye.</i></p>  |
| Skipjack                 | <p>20. <i>The Panel considers that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math>.</i></p> <p>21. <i>The Panel recommends that skipjack, which is fished in association with juvenile yellowfin and bigeye on FADs, should form part of the long term management strategy.</i></p> <p>22. <i>The Panel recommends that vessels which fish bigeye, yellowfin and skipjack tunas in the Convention area should be covered by Rec 15-01. For reasons that are not clear to the Panel, skipjack fisheries in the West Atlantic seem to be outside the remit of Rec 15-01.</i></p>   |
| North Atlantic Swordfish | <p>23. <i>The Panel confirms that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math>.</i></p> <p>24. <i>The Panel recommends that ICCAT vessel list be introduced for North Atlantic swordfish in line with other key ICCAT fisheries.</i></p>  |
| South Atlantic Swordfish | <p>25. <i>The Panel confirms that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math>.</i></p> <p>26. <i>The Panel recommends that an ICCAT vessel list be introduced for South Atlantic swordfish in line with other key ICCAT fisheries.</i></p> <p>27. <i>The Panel notes the high underage permitted to be transferred from year to year of 30%, and indeed 50% from 2013. The Panel finds this inconsistent with sound management given the high uncertainty in the assessment, and the more modest underage/overage allowed for other ICCAT stocks (10 or 15%).</i></p>  |
| Mediterranean Swordfish  | <p>28. <i>The Panel expresses concern at the continuing unsatisfactory status of this stock. The stock is overfished and overfishing is occurring. It is unclear whether the current management is in line with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math>.</i></p> <p>29. <i>The Panel recommends that catch limits and/or capacity limits are introduced for this fishery.</i></p>  |

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|------------------------|---|
|                        | 30. <i>The Panel encourages ICCAT to intensify its efforts to improve the scientific and fisheries database for this stock and endorses the SCRS recommendation that the fishery be closely monitored and that every component of the Mediterranean swordfish mortality be adequately reported to ICCAT by the CPCs.</i>  |
| Northern Albacore      | 31. <i>The Panel confirms that the management of fisheries on this stock by ICCAT is consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math>.</i><br>32. <i>The Panel commends ICCAT for the approach that it has adopted on this stock through the fixing of the management objective and the commitment to deciding on the harvest control rules.</i>   |
| Southern Albacore      | 33. <i>The Panel confirms that the management of fisheries on this stock by ICCAT is not quite consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math>.</i>   |
| Mediterranean Albacore | 34. <i>The Panel notes that there are still no reliable estimates of whether the stock is over fished or if overfishing is occurring.</i><br>35. <i>The Panel reiterates the 2008 Panel recommendation that ICCAT assures itself that the stock is not overfished and over fishing is not occurring.</i>  |
| Blue and White Marlins | 36. <i>The Panel confirms that the management of fisheries on these stocks by ICCAT is not consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math>.</i><br>37. <i>The Panel considers that ICCAT should reinforce its compliance actions, as Rec 15-05 will not deliver results as long as the severe under-reporting continues.</i><br>38. <i>The Panel supports the SCRS advice that ICCAT actively encourage, or make obligatory, the use of non-offset circle hooks on long line fisheries to reduce the mortality of released marlin.</i>  |
| Sharks                 | 39. <i>The Panel is not in a position to confirm that the management of fisheries on shark stocks by ICCAT is consistent with the objective of the Convention of maintaining stocks at <math>B_{MSY}</math>. There remain major uncertainties underlying all the shark assessments.</i><br>40. <i>The Panel recommends that ICCAT introduces catch limits as a priority for the main shark populations, in line with the SCRS advice. To ensure effective application of this measure, a quota allocation scheme should be developed.</i><br>41. <i>The Panel recommends that the Compliance Committee should prioritise the issue of data reporting on sharks, as well as poor reporting on the blue and white marlin stocks.</i><br>42. <i>The Panel supports the view that shark fins should be naturally attached on landings. The shark finning practice applied to stocks already depleted or severely reduced, is but another factor negatively impacting on the shark stocks.</i> |
| Precautionary Approach | 43. <i>The Panel considers that on the basis of the stock by stock analysis contained in section 2, ICCAT has not applied in a consistent manner the precautionary approach. ICCAT has based its management on the best available scientific advice, when assessments were considered reliable, but has generally not applied the precautionary approach where scientific information is uncertain, unreliable or inadequate.</i><br>44. <i>The Panel recommends that the content of Res 15-12 be transformed into an ICCAT recommendation and that the new Convention contains an explicit commitment to apply the precautionary approach.</i>   |
| Rebuilding Plans       | 45. <i>The Panel considers the adoption of Rec 15-07 on harvest control rules and management strategy evaluation, and Rec 15-04 on establishing harvest control rules for northern albacore, to be an important first step in agreeing long term strategies.</i><br>46. <i>The Panel considers that ICCAT, with its vast experience in tuna fisheries management, is ideally placed to be the pioneer in the rapid introduction of long term management strategies to ensure the sustainability of individual stocks and consistency of management approach across the range of stocks.</i>   |

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|                                      | <p>47. <i>The Panel recommends that ICCAT move away from the current re-active management to re-redress the status of stocks through re-building plans, to a more pro-active policy of developing comprehensive long term management strategies for the main stocks. Such management strategies would encompass management objectives, harvest control rules, the stock assessment method, fishery indicators and the monitoring programme.</i></p> <p>48. <i>The Panel recommends that ICCAT should prioritise the development of a long term management strategy for the tropical tuna stocks.</i></p> <p>49. <i>The Panel recommends that ICCAT agree a work plan across all the stocks for the SCRS and Commission, as has been agreed by WCPFC. Apart from the obvious advantage of ensuring consistency of approach across the stocks, it would also engage all the CPCs simultaneously in this key process.</i></p>   |
| Seaturtles                           | <p>50. <i>The Panel considers that ICCAT, by Rec 13-11, has put in place strict measures, which if effectively applied by CPC vessels, will lead to a reduction in turtle by-catch.</i></p> <p>51. <i>The Panel endorses the SCRS advice that the Commission consider the adoption of measures such as, the mandatory use of non-offset circle hooks.</i></p> <p>52. <i>The Panel considers that this issue affects all tuna RFMOs, and knowledge and experience should continue to be pooled between the RFMOs.</i></p> <p>53. <i>The Panel noted that there are no reliable estimates of the mortality caused by longlines on these species and recommends that a time-limited program be designed to estimate seabird and turtle mortality in ICCAT longline fisheries. This programme should be of at least one year duration and involve increased observer coverage deemed sufficient to estimate turtle and seabird mortality by all major fleets. Such increased observer coverage would also provide information on the impact of ICCAT fisheries on other components of the ecosystem.</i></p> |
| Seabirds                             | <p>54. <i>The Panel commends ICCAT on the measures it has introduced to date and recommends that it pursues its stated goal of further reducing bird mortality through the refinement of existing mitigation measures.</i></p> <p>55. <i>The Panel considers that this issue affects all tuna RFMOs, and knowledge and experience should continue to be pooled between the RFMOs.</i></p> <p>56. <i>The Panel reiterates its recommendation on a time-limited programme to estimate seabird and turtle mortality in ICCAT longline fisheries.</i></p>  |
| Pollution, Waste and Discarded Gears | <p>57. <i>The Panel notes the measures adopted by ICCAT to date and recommends that ICCAT expands the range of its measures addressing these policy matters. In this regard, the Panel would refer to CCAMLR CM 26-01 on general environmental protection during fishing.</i></p>  |
| Previously Unregulated Fisheries     | <p>58. <i>Considering the important role played by the sport and recreational fisheries in a number of key fisheries, notably billfishes, the Panel recommends that</i></p> <ul style="list-style-type: none"> <li>a) <i>the working group is re-activated to complete its mandate; and</i></li> <li>b) <i>mechanisms are developed by ICCAT to engage this sector in the deliberations of ICCAT on management and control measures for these fisheries.</i></li> </ul>  |
| Capacity Management                  | <p>59. <i>The Panel considers that ICCAT under its mandate has judiciously applied the limitation of capacity approach to the fisheries. ICCAT has introduced capacity limitations to three key fisheries, namely, eastern bluefin tuna, bigeye and northern albacore.</i></p>   |

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|  | 60. <i>The Panel understands that ICCAT has demonstrated a preference for managing fisheries on the basis of TAC and quotas, but that for certain stocks it has incorporated capacity measures to complement the catch restrictions. The Panel considers this approach to have been effective.</i>   |
| Compatibility of Management Measures                 | 61. <i>The Panel considers that ICCAT does not need to take any action on the compatibility issue. The Convention is quite clear that the “Convention Area” includes all waters of the Atlantic and adjacent seas. The Panel thus considers that conservation and other measures adopted by ICCAT apply without distinction to both the exclusive economic zones of CPCs and the high seas.</i><br>62. <i>The Panel considers that it is a major strength of ICCAT, compared to other tuna RFMOs, that the ICCAT mandate is framed in that manner. It ensures that a uniform and consistent implementation of the ICCAT measures is applied throughout the Atlantic and adjacent seas, and crucially, that the management of fisheries on the stocks is consistent throughout their migratory range.</i>   |
| Fishing Allocations and Opportunities                | 63. <i>The Panel considers that there are legitimate expectations among Developing CPCs that quota allocation schemes need to be reviewed periodically and adjusted to take account of a range of changing circumstances, notably, changes in stock distribution, fishing patterns and fisheries development goals of Developing States.</i><br>64. <i>The Panel considers it appropriate that quota allocation schemes should have a fixed duration, up to seven years, after which they should be reviewed and adjusted, if necessary.</i><br>65. <i>In determining quota allocation schemes in the future, the Panel proposes that ICCAT could envisage establishing a reserve within new allocation schemes (for instance, a certain percentage of the TAC), to respond to requests from either new CPCs or Developing CPCs, which wish to develop their own fisheries in a responsible manner.</i>  |
| <b>3. Monitoring, Control and Surveillance (MCS)</b> |  |
| Port State Measures                                  | <i>The Panel recommends that ICCAT</i><br>66. <i>Encourages its CPCs to become Contracting Parties to the PSM Agreement.</i><br>67. <i>Amends Rec 12-07 to ensure more consistency with the PSM Agreement, in particular by including definitions and requiring CPCs to impose key port State measures such as denial or use of port in certain scenarios.</i><br>68. <i>Closely follows IOTC’s efforts to enhance effective implementation of its port State measures through, inter alia, its e-PSM system, and, where appropriate, adopt similar efforts within ICCAT.</i><br>69. <i>Makes more efforts to assess substantive compliance with its port State measures and to specify consequences for non-compliance.</i>   |
| Integrated MCS Measures                              | <i>The Panel recommends that ICCAT</i><br>70. <i>Gives priority to adopting a modern HSBI scheme - through a Recommendation and not a Resolution - that extends to all key ICCAT fisheries as such, but can be applied in practice to selected fisheries according to the COC’s compliance priorities.</i><br>71. <i>Evaluates the need and appropriateness of further expanding coverage by national and non-national on-board observers for fishing and fishing activities.</i><br>72. <i>Considers expanding VMS coverage, adopting uniform standards, specifications and procedures, and gradually transforming its VMS system into a fully centralized VMS.</i><br>73. <i>Works towards replacing all SDPs with electronic CDPs that are harmonized among tuna RFMOs where appropriate - in particular for bigeye tuna - while taking account of the envisaged FAO Voluntary Guidelines on Catch Documentation Schemes.</i><br>74. <i>Considers, in the interest of transparency, incorporating all measures relating to distinct MCS measures - in particular transshipment and on-board observers - in one single ICCAT Recommendation, so that CPCs have only one reference document to consult.</i> |

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|   | 75. <i>Assesses whether, in relation to transshipment, the differences in minimum vessel-lengths in Recs 12-06 and 13-13 have created a potential loophole.</i>   |
| <b>4. Compliance and Enforcement</b>                      |   |
| Flag State Duties   | 76. <i>The Panel considers that the Flag State duties recognized in international fisheries law are adequately reflected in current ICCAT recommendations.</i><br>77. <i>The Panel has no view as to whether such responsibilities are being executed correctly, as it does not have information at its disposal in ICCAT to form a judgement.</i>  |
| Cooperative Mechanisms to Detect and Deter Non-Compliance | 78. <i>The Panel recommends that the COC should identify key compliance priorities across the range of different fisheries, and programme its work accordingly. Identification of non-respect of reporting requirements or incomplete reporting by CPCs should be entrusted to the ICCAT secretariat and its report submitted to COC in advance of the Annual Meeting.</i><br>79. <i>The Panel recommends that independent information from the fisheries, through inspections at sea and in port, and through effective observer programmes, are made available to the COC, in order for the COC to conduct an effective compliance assessment.</i><br>80. <i>The Panel recommends that ICCAT lists be established for the northern and southern swordfish fisheries. As mentioned previously, CPCs are obliged in accordance with Rec 03-12 to maintain an up-to-date record of fishing vessels authorised to fish species under the purview of ICCAT, so the establishment of an ICCAT list is no additional burden for the CPCs involved.</i>   |
| Follow-Up on Infringements                                | 81. <i>The Panel considers the key task of the COC should be to make a qualitative assessment as to the degree to which the measures in the individual fisheries contained in the ICCAT recommendations, are being respected by the vessels of the Parties.</i><br>82. <i>In the view of the Panel, the COC will be unable to exercise such a function until it obtains information from independent sources, such as, a joint inspection scheme and effective regional observer programmes. It suffices to contrast the information available to the COC on the eastern bluefin tuna fisheries, as a result of observer reports and inspection reports, with the paucity of information on other fisheries.</i>  |
| Market-Related Measures                                   | 83. <i>The Panel concurs with the 2008 Panel's observation, that the imposition or the threat of imposition of market or trade measures is probably the single most persuasive measure that will ensure compliance with ICCAT measures.</i><br>84. <i>The Panel, noting Rec 12-09, commends ICCAT for its initiatives in this area and recommends that catch documents, preferably electronic, be introduced for big eye and swordfish species.</i>   |
| Reporting Requirements                                    | 85. <i>The Panel recommends that ICCAT, through its Panels 1 to 4, should undertake an overall review of the current reporting requirements, on a stock by stock basis, both in relation to Task I and Task II data contained in the myriad of recommendations, in order to establish whether the reporting obligations in question could be reduced or simplified.</i><br>86. <i>The Panel recommends that before the adoption of each new recommendation, there should be an assessment as to the likely impact on the Secretariat's workload that its implementation implies.</i><br>87. <i>The Panel recommends that ICCAT consider introducing a provision in new recommendations, whereby the introduction of new reporting requirements would only become effective after a 9 to 12 month period has elapsed. This would assist Developing States to adapt to new requirements. This is particularly relevant where the volume and/or nature of the reporting have changed significantly. The difficulties Developing States encounter in introducing new administrative/reporting requirements at short notice, is well documented in the compliance context. The option for Developed CPCs to apply immediately the new reporting requirements may of course be maintained, if those CPCs consider it opportune.</i> |

| <b>5. Governance</b>                        |   |
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| Decision-Making                             | <p><b>The Panel recommends that ICCAT</b></p> <p>88. <i>Chairs of the Commission, Panels, COC and PWG should be prepared, once there has been sufficient discussion, to put draft Recommendations to a vote.</i></p> <p>89. <i>Revises the opt-out procedures included in Res 12-11 and the most recent text of the Amended ICCAT Convention to bring them more in line with modern opt-out procedures used by RFMOs that have been recently established or that have recently amended their constitutive instruments.</i></p> <p>90. <i>Ensures that the amendments to the ICCAT Convention relating to decision-making and opt-out procedures are provisionally applied from the moment of their formal adoption.</i></p> <p>91. <i>Reviews its working practices in order to enhance transparency in decision-making, in particular on the allocation of fishing opportunities and the work of the Friends of the Chair.</i></p> <p>92. <i>Reviews its Rules of Procedure, among other things to integrate its 2011 Deadlines and Guidelines for the Submission of Draft Proposals, Rec 03-20 and Res 94-06.</i></p> |
| Dispute Settlement                          | <p>93. <i>The Panel recommends that ICCAT urges its CPCs to reach agreement on the inclusion of compulsory dispute settlement procedures entailing binding decisions in the Amended ICCAT Convention, which also devote attention to provisional arrangements of a practical nature pending the establishment of a dispute.</i></p>   |
| Transparency                                | <p><b>The Panel recommends that ICCAT</b></p> <p>94. <i>Considers codifying its practices on participation by NGOs - which are consistent with international minimum standards and comparable to those of other tuna RFMOs - by amending the ICCAT Observer Guidelines and Criteria or the ICCAT Rules of Procedure.</i></p> <p>95. <i>Considers requiring Contracting Parties that object to an application by an NGO for Observer Status with ICCAT to provide their reasons in writing.</i></p> <p>96. <i>Considers that closing formal ICCAT meetings to observers requires an explicit and reasoned decision supported by a simple majority of Contracting Parties.</i></p>  |
| Confidentiality                             | <p><b>The Panel commends ICCAT for the significant improvements in transparency and confidentiality since 2008 and recommends that ICCAT</b></p> <p>97. <i>Considers further improvements, for instance by making more of its data and documents publicly available and - as regards documents - explaining the reasons for classifying certain documents as confidential.</i></p> <p>98. <i>Conducts a review of its Rules and Procedures on Data Confidentiality as envisaged in its paragraph 33, taking into account the need for harmonization among tuna RFMOs consistent with Rec KIII-1. As part of this review, it should adopt an ICCAT's Information Security Policy (ISP), where appropriate.</i></p>   |
| Relationship to Cooperating Non-Members     | <p><b>The Panel recommends that ICCAT</b></p> <p>99. <i>Reviews Rec 03-20 in order, inter alia, to clarify the rights of States and Entities with Cooperating Status; integrate elements of Res 94-06; replace the PWG with the COC; and include a requirement to apply for renewal of Cooperating Status.</i></p> <p>100. <i>Considers formalising the procedure for inviting non-CPCs.</i></p>  |
| Relationship to Non-Cooperating Non-Members | <p><b>The Panel recommends that ICCAT</b></p> <p>101. <i>Continues to monitor fishing activities by non-cooperating non-members through cooperation between the ICCAT Secretariat and CPCs, and between CPCs.</i></p>   |

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|   | 102. <i>Considers taking appropriate sanctions against non-cooperating non-members that continue to ignore ICCAT's requests for information and cooperation. This is particularly relevant in relation to overfished stocks, such as marlins.</i>  |
| Cooperation with Other RFMOs and Relevant International Organisations | <i>The Panel recommends that ICCAT</i><br>103. <i>Continues and enhances its cooperation and coordination with other tuna RFMOs in the context of the Kobe process and otherwise, in particular on the harmonization of their conservation and management measures.</i><br>104. <i>Continue and enhances its cooperation and coordination with other intergovernmental bodies, in particular in relation to the conservation and management of sharks.</i><br>105. <i>Considers becoming a member of the IMCS Network.</i><br>106. <i>Considers making more information on its cooperation with other RFMOs and intergovernmental bodies available on a dedicated part of the ICCAT website.</i> |
| Participation and Capacity Building                                   | <i>The Panel recommends that ICCAT</i><br>107. <i>Adopts institutional arrangements to ensure that Chairs of the main ICCAT bodies come from a wider number of Contracting Parties, while taking due account of the necessary qualifications for such important positions.</i><br>108. <i>Considers pursuing capacity building initiatives to strengthen participation in ICCAT meetings in a broader sense - including for key ICCAT positions - for instance by human resource development (e.g. by training courses on participation in, and chairing of, intergovernmental negotiations and bodies).</i>   |
| Special Requirements of Developing States                             | <i>The Panel recommends that ICCAT</i><br>109. <i>Develops an overarching strategy for capacity building and assistance programs, which integrates the various existing capacity building initiatives.</i><br>110. <i>as regards capacity building for port State measures</i><br>a) <i>Urges developing CPCs to make the necessary efforts to assist the ICCAT Secretariat in identifying their capacity building needs;</i><br>b) <i>Closely coordinates the operation of Rec 14-08 with existing and future capacity building initiatives undertaken by other intergovernmental bodies.</i>   |
| <b>6. Science</b>   |  |
| Best Scientific Advice  | 111. <i>The Panel notes that aerial survey estimates in the spawning areas could be very useful in the East Atlantic and Mediterranean bluefin tuna and recommends that efforts be made to derive a usable index and that data continue to be collected.</i><br>112. <i>The Panel re-iterates the recommendation of the 2008 Panel that a better balance of scientists with knowledge of the fishery and modelling expertise be sent to the assessment meetings of the SCRS.</i><br>113. <i>The Panel recommends that Management Strategy Evaluation should be used on a few stocks to estimate the costs and benefits of collecting more detailed information.</i>                              |
| Presentation Scientific Advice  | 114. <i>The Panel recommends that the Commission adopts specific management objectives and reference points for all the stocks. This would guide the SCRS in its work and increase the consistency of the SCRS advice.</i><br>115. <i>The Panel recommends that the development of harvest control rules through Management Strategy Evaluation should be strongly supported.</i><br>116. <i>The Panel recommends that in a precautionary approach, the advice with more uncertainty should, in fact, be implemented more readily.</i>   |

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| Adequacy SRCS and Secretariat    | <p>117. <i>The Panel recommends that clear guidelines / processes on how the scientific resources of the Secretariat should be allocated to species should be agreed.</i></p> <p>118. <i>The Panel recommends that ICCAT evaluates the benefits of outsourcing its stock assessments to an external science provider while retaining the SCRS as a body to formulated the advice based on the stock assessments.</i></p>   |
| Capacity Building Initiatives    | <p>119. <i>The Panel recommends that specific mentoring projects to include trainees in stock assessment teams be implemented.</i></p> <p>120. <i>The Panel recommends that ICCAT develops specific mechanisms to ensure that more scientists with knowledge of the fisheries participate in stock assessment meetings and are directly involved in assessment teams.</i></p> <p>121. <i>The Panel also recommends that formal training in stock assessment be provided, possibly in cooperation with other organizations.<sup>110</sup></i></p>   |
| SCRS Long-Term Strategy          | <p>122. <i>The Panel recommends that a process to formally incorporate scientific priorities with funding implications into the budget be implemented to fund the activities in the strategic plan. This could be achieved by a scientific research quota.</i></p>   |
| Implementation Res 11-17         | <p>123. <i>The Panel recommends that model runs that are the basis of the SCRS advice should be available on the ICCAT website and easy to find. This should include the most recent model runs, but as assessments are updated, older runs should also be available.</i></p> <p>124. <i>The Panel recommends that ICCAT cooperates with other stock assessments organizations to develop an integrated stock assessment framework where all current models could be run and new models could be integrated, while being transparent on what data and parameters have been used under what assumptions.</i></p> <p>125. <i>The Panel recommends that ICCAT considers adopting a system with scientists from external organisations, universities or otherwise are contracted to review SCRS assessments.</i></p> |
| Total Quality Management Process | <p>126. <i>The Panel recommends that ICCAT provides training in efficient chairing meetings to current chairs and to new ones when they assume their duties.</i></p>   |

## **8. Financial and Administrative Issues**

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|  | <p>127. <i>The Panel recommends that a working capital fund equivalent to 70% of the Annual Budget is prudent. This fund needs to be kept at that level in the interest of sound financial management. It should also be borne in mind that there are no guarantees that the costs of Annual Meetings and scientific programmes etc, will continue to be financed by extra budgetary funds.</i></p> <p>128. <i>The Panel, taking account of the clear progress made by ICCAT in reducing outstanding debts on annual contributions by CPCs, recommends that ICCAT consider erasing CPCs debts for annual contributions outstanding for more than two years i.e. debts before 2015. This measure would alleviate the debt burden for certain Developing States. However, in parallel, ICCAT should amend its financial procedures and introduce an automatic sanction whereby, if the previous two years' contributions have not been paid in full by the following Annual Meeting, then the right to vote and be a quota holder is withdrawn for that CPC, until those debts are acquitted in full.</i></p> <p>129. <i>The Panel also recommends that ICCAT consider cost recovery to finance key parts of their activities and thereby reduce the CPCs budgetary contributions and/or expand ICCAT's activities (e.g. the High Seas Inspection Scheme). This cost recovery approach is based on the principle that the vessels of CPCs, which benefit from access to profitable fisheries, should share the financial burden for the science and monitoring programmes, which are crucial for the sustainability of those resources. An annual fee could be envisaged which would be paid per vessel of a certain size to ICCAT, via if necessary, the Flag CPC.</i></p> |
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<sup>110</sup> The International Council for the Exploration of the Sea (ICES) has regular training sessions every year on a number of topics (<http://ices.dk/news-and-events/Training/Pages/default.aspx>).

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|  | <p>130. <i>The Panel recommends, in line with good management practice, that ICCAT reviews every five years, through an independent human resources consultancy company, the staffing profile and workload of the Secretariat and, if necessary, adjust it to accurately reflect current and programmed workloads. In that review, the company should also review the staff assessment process</i></p> <p>131. <i>The Panel recommends that STACFAD be responsible for the terms of reference and the follow-up to the report of the consultancy.</i></p> |
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