

Original: English

CORRESPONDENCE REGARDING THE ESTABLISHMENT OF A NEW RFMO IN THE WECAFC AREA
[ICCAT Entrada #9258 dated 18 July 2017]

WESTERN CENTRAL ATLANTIC FISHERIES COMMISSION

Martinique, 14 July 2017

Subject: Request to WECAFC Members for questions to be answered in the RFMO establishment process

Dear Colleague,

The 16th session of WECAFC, held in Guadeloupe in June 2016, was a highly successful session. The session was attended by 28 of the 34 members of the Commission. Observers from four Regional Fishery Bodies (RFBs) and four intergovernmental organizations also participated.

The Commission adopted five regional fisheries management recommendations respectively on: 1) the regional plan for the management and conservation of Queen conch, 2) spiny lobster management and conservation, 3) the sub-regional fisheries management plan for flying fish, 4) the management of deep sea fisheries in the high seas, and 5) the management of shrimp and groundfish resources. The Commission also adopted two resolutions on: 1) sea cucumber fisheries management and aquaculture, and 2) Marine Protected Areas as fisheries management tool in the Caribbean.

The Commission agreed to launch a process to establish a Regional Fisheries Management Organization (RFMO) in the WECAFC area of competence, being the Western Central Atlantic (area 31) and the Northern part of the South West Atlantic (area 41) and to collaborate in fisheries management and conservation in the Areas Beyond National Jurisdiction (ABNJ) of straddling stocks, deep sea fish stocks and highly migratory species that are not under the mandate of ICCAT (paragraph 58 of the report).

The Commission did not take a decision as yet about whether the future RFMO should be established under article XIV of the FAO Constitution or as independent Inter-Governmental Organization (IGO).

At the 16th session the Commission also noted that there is a need “to clarify issues in relation to competency area, stocks coverage, budgetary implications for Members, institutional structure, membership, decision making processes, national sovereignty aspects, its objectives and any other relevant matters that the Members may wish to consider” (paragraph 55 of the report).

It was agreed that a 1st preparatory meeting of the Members would be held in 2017. In view of this meeting the Members and observers were requested to submit technical, legal and stakeholder questions and areas of concern to be addressed at the preparatory meeting to the Secretariat. Members and observers were requested to endeavor to have participation by relevant experts in the 1st preparatory meeting (paragraph 61 of the report).

The adopted report of WECAFC 16 is made available at: <http://www.fao.org/3/a-i6031t.pdf>

Following the session, the WECAFC secretariat prepared a proposal for an EU DG MARE financed project with the title: “Support to the establishment of a regional fisheries management organization for the Western Central Atlantic (WECAFC)”, which got approved in December 2016 for an amount of 100 000 Euro.

Moreover, the Secretariat prepared a proposal for preparation of “A discussion paper concerning a future RFMO to “clarify issues in relation to its objectives, competency area, stocks coverage, budgetary implications for Members, institutional structure, membership, decision making processes, national sovereignty aspects and its objectives”. The draft contents of the discussion paper were presented to the 15th meeting of the Caribbean Regional Fisheries Mechanism (CRFM) Fisheries Forum in Jamaica in March 2017. The draft contents of the discussion paper can be found attached in Annex A to this letter.

FAO, in collaboration with the WECAFC Executive Committee, is in the process of selecting an independent legal expert, who will assist in the drafting of the discussion paper and clarify, as much as possible, questions from the WECAFC membership, in this discussion paper. The latter is to be prepared as working document for the 1st Preparatory Meeting for the RFMO, which is now scheduled for the 1st semester of 2018.

In the meantime, rest assured that the joint working groups with CRFM and OSPESCA, and the Interim Coordination Mechanism for Sustainable Fisheries continue to be supported by the WECAFC Secretariat and Executive Committee.

In view of the above, **the Executive Committee of WECAFC would like to request each member to send specific questions related to the matters mentioned in Paragraph 55 of the report or on the RFMO establishment process before Friday 18 August 2017 to the WECAFC Secretariat at: wecafc-secretariat@fao.org.**

Your questions will be addressed in the discussion paper under the respective chapters.

Before submitting your questions, please note that important background information is provided also in the following documents:

1. Findings of the independent cost-benefit assessment of the options for strategic re-orientation of WECAFC, by Kjartan Hoydal. FAO Fisheries and Aquaculture Circular. No. 1117. Bridgetown, Barbados.

Available at: <http://www.fao.org/3/a-i6377e.pdf> (English) and Reference document WECAFC/XVI/2016/Ref.14 <http://www.fao.org/fi/static-media/MeetingDocuments/WECAFC16/Ref14s.pdf> (Spanish)

2. Assessment of the recent achievements and collaboration of CRFM, OSPESCA and WECAFC, including options for a regional institutional collaborative structure within an RFMO framework, by Helga Josupeit. WECAFC working document WECAFC/XVI/2016/13

Available at: <http://www.fao.org/fi/static-media/MeetingDocuments/WECAFC16/13e.pdf> (English) and <http://www.fao.org/fi/static-media/MeetingDocuments/WECAFC16/13s.pdf> (Spanish).

I look forward to your kind response to this request, which will support the RFMO establishment process and eventually contribute to the sustainable management and conservation of the fisheries resources in our beautiful region.

Yours sincerely,



Lionel Reynal. Chairperson of
WECAFC Senior Scientist
IFREMER

cc.

WECAFC Executive Committee

FAO Legal Office

FAO representations in the WECAFC member countries

WECAFC partner agencies

WECAFC Secretariat

The draft contents of the discussion paper

List of acronyms and abbreviations Executive

summary

Table of contents

1. Introduction – describing the decisions of WECAFC 16 that led to the request for a discussion paper
2. Background – short overview of the re-orientation process so far
3. Objectives – what will need to change in terms of objectives if WECAFC is transformed into an RFMO
4. Competency/regulatory area – different options (e.g. high seas only versus current coverage area)
5. Stocks coverage – different options
6. National sovereignty aspects – options for hand over certain responsibilities to the RFMO – high seas stocks only, or straddling, transboundary shared (regional) fishery resources- and the implications
7. Membership – options to include or exclude Distant Water Fishing Nations
8. Institutional structure – options as presented in paper of Helga Josupeit
9. A FAO article XIV RFMO versus IGO RFMO -pros and cons of both options
10. Decision making processes – describing processes used by WECAFC internally + current Interim Coordination Mechanism for Sustainable Fisheries (with OSPESCA and CRFM) and two other options, such as used by NEAFC and GFCM
11. Budgetary implications for Members – options for scale of contributions
12. Conclusions and Recommendations

References

Annexes

RESPONSE FROM THE ICCAT CHAIRMAN

[ICCAT Circular 5280 dated 26 July 2017]

26 July 2017

Mr. Lionel Reynal
Chairperson of WECAFC
Western Central Atlantic Fishery Commission
2nd Floor, United Nations House
Marine Gardens, Hastings, Christ Church
BB11000, Barbados

Dear Mr. Reynal,

My attention has been drawn to your letter dated 14 July to WECAFC members regarding questions associated with the possible establishment of a new Regional Fisheries Management Organization (RFMO) in the WECAFC area of competence, specifically covering an area of the Western Central Atlantic (area 31) and the northern part of the South West Atlantic (area 41) and the invitation to raise additional questions, or to clarify issues, in relation to the area of competency, stocks coverage, budgetary implications, institutional structure, membership, decision making processes, national sovereignty aspects, its objectives and any other relevant matters.

It is not clear to me whether the above-mentioned letter is a general notification of the intention of WECAFC members or if it serves as informal advice to the International Commission for the Conservation of Atlantic Tunas (ICCAT), and its members, of the agreement by WECAFC at its 16th Session to launch a process to establish a new RFMO in the WECAFC area of competence, as described in paragraph 1 above? As a result, this is a preliminary response to your letter in my capacity as Chair of ICCAT. Given the potential ramifications of this development for ICCAT and its members, I will bring these matters to the attention of ICCAT members for discussion intersessionally and at our next Annual meeting to be held from 14-22 November 2017. I will also share any views expressed in a follow-up communication with you.

As you are of course aware, the area of competence of WECAFC falls within the ICCAT Convention area, defined in Article 1 of the *International Convention for the Conservation of Atlantic Tunas*, as “all waters of the Atlantic Ocean, including the adjacent Seas”. Given this overlap, the decision by your members to establish a new RFMO will have several implications including, budgetary, areas of competence, the demarcation of the objectives, coverage of species and the mandate of ICCAT as defined Article 1 of the ICCAT Convention referred to above.

In this regard, I respectfully draw your attention to the objective of ICCAT which is embedded in the preamble of its constitutive instrument which states: “The Governments... considering their mutual interest in the populations of tuna and tuna-like fishes found in the Atlantic Ocean, and desiring to cooperate in maintaining the population of these fishes at levels which will permit the maximum sustainable catch for food and other purposes”. Over five decades, this general objective has been supplemented and defined by a comprehensive suite of specific ICCAT decisions and binding recommendations related to tuna and tuna-like species, associated or dependent species, as well as endangered, threatened or protected species. A comprehensive list of ICCAT recommendations and resolutions, both active and historical, can be found in the Compendium of Management Recommendations and Resolutions, adopted by ICCAT for the conservation of Atlantic tunas and tuna-like species on the [ICCAT website](#). Furthermore, kindly note that the list of ICCAT species may be expanded through a Convention amendment process which is currently underway.

It is not clear from the content and context of your letter if you have undertaken an evaluation of any perceived gaps in current ICCAT conservation and management measures for tuna and tuna-like species in the Atlantic Ocean which necessitates the establishment of a new RFMO in the same area and over the same species which are currently being competently managed by ICCAT. The WECAFC declaration seems to suggest that the proposed RFMO will have competence over those species not covered by ICCAT.

However, any candidate species that may be identified will belong to the same ecosystem with consequent implications for conservation and management of those ecosystems and their components. For your information ICCAT implements the ecosystem approach in the development and the implementation of its conservation and management measures pursuant to ICCAT Resolution 16-23.

I note with some concern that the mandate of the Recreational Fisheries Working Group of WECAFC includes the drafting of a "Billfish management and conservation plan for the Wider Caribbean Region". For your information, ICCAT also regulates billfishes, specifically, blue marlin (*Makaira nigricans*), white marlin (*Tetrapturus albidus*), sailfish (*Istiophorus albicans*), spearfish (*Tetrapturus pfluegeri* and *T. belone*) and recommendations on the same are in effect. I also note with serious concern that the WECAFC decision to establish a Marine Protected Area in the Caribbean region, over an area which overlaps with ICCAT's area of competence indicated above. Practically, any associated protective measures to ensure the integrity of such an MPA, will have significant implications for ICCAT and its members.

I respectfully draw to your attention to the obligations upon States Parties of the *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* (UN Fish Stocks Agreement) with respect to the establishment and operation of a new RFMO. Article 9 of the UN Fish Stocks Agreement which is of direct relevance, specifically provides as follows:

1. In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, *inter alia*, on:
 - (a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;
 - (b) the area of application, taking into account Article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;
 - (c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and
 - (d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

I also draw your attention particularly to Article 9(1)(c) above, which requires States seeking to establish a new RFMO to agree on the relationship with the role, objectives and operations of any relevant existing RFMOs. ICCAT is, without doubt, an existing RFMO for the purposes of Article 9 in the establishment of the proposed RFMO in the WECAFC area of competence.

In addition, there is an obligation pursuant to Article 7 of the UN Fish Stocks Agreement to ensure compatibility of conservation and management measures within and between the high seas and areas under the jurisdiction of a coastal State. Compatibility requires a RFMO, and States, *inter alia*, to take into account and implement previously agreed conservation measures already established by an existing RFMO or organization, applied and enforced in respect of the same stocks in accordance with the United Nations Convention on the Law of the Sea, 1982. On this point, Article 7.2 of the UN Fish Stocks Agreement is pertinent:

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

- (a) take into account the conservation and management measures adopted and applied in accordance with Article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;
- (b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;
- (c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;
- (d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;
- (e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and
- (f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

On compatibility, the International Tribunal for the Law of the Sea (ITLOS) in the *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission* (Case No. 21) has considered that: the obligation to cooperate in the management of straddling fish stocks and highly migratory species should promote the objective of optimum utilization of such species within exclusive economic zones and that, “[t]he measures taken pursuant to such obligation should be consistent and compatible with those taken by the appropriate regional organization” (paragraph 207 (iii)).

It is my considered view that conservation and management recommendations and decisions of ICCAT on stocks in the Atlantic Ocean must be taken into account in the identification of the geographical area and stocks over which the proposed WECAFC RFMO is to be granted competence.

In the past, ICCAT through its Compliance Committee has legitimately and in accordance with international law, drawn the attention of WECAFC members, who are not ICCAT Contracting Parties, to their obligations under international law not to undermine the effectiveness of conservation and management measures adopted by ICCAT for straddling fish stocks and highly migratory species and requested that they adopt compatible measures in accordance with international law.

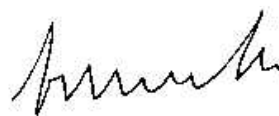
At a practical level, the establishment and operation of a new RFMO that overlaps with an existing one with competence over the same stocks will certainly have implications for members of both organizations in areas such as institutional decision-making processes, financial contributions, reporting obligations, and compliance and monitoring mechanisms. No doubt, these are matters which will receive detailed consideration before WECAFC members formally decide to establish a new RFMO in area which overlaps with ICCAT’s competence. In this regard, I draw your attention to an ITLOS ruling, in Case No. 21, which states that the obligation to cooperate in the management of highly migratory fish stocks is a “due diligence” obligation which must be undertaken in good faith:

210. The Tribunal observes that the obligation to “seek to agree...” under Article 63, paragraph 1, and the obligation to cooperate under Article 64, paragraph 1, of the Convention are “due diligence” obligations which require the States concerned to consult with one another in good faith, pursuant to Article 300 of the Convention.

The consultations should be meaningful in the sense that substantial effort should be made by all States concerned, with a view to adopting effective measures necessary to coordinate and ensure the conservation and development of shared stocks. I am aware that some Contracting Parties of ICCAT are also members of WECAFC and may have participated in the initial decision at the WECAFC 16th Session. However, I do not believe that such an institutional representation is sufficient to satisfy the due diligence test emphasised by ITLOs in Case No. 21.

I thank you and look forward to following this process to a fruitful end to ensure that the mandate of ICCAT is upheld. As a first step, I invite WECAFC to engage in formal dialogue with ICCAT so that any apparent gaps that WECAFC may have identified can be discussed in detail and options for addressing any agreed shortcomings in existing institutional arrangements be thoroughly considered.

Yours sincerely,



Martin Tsamenyi
ICCAT Chair

CORRESPONDENCE FROM WECAFC

(11 August 2017)

From: VanAnrooy, Raymon (FAOSLC) [mailto:Raymon.VanAnrooy@fao.org]

Sent: 11 August 2017 00:00

To: info <info@iccat.int>

Cc: Mathiesen, Arni (FID) <Arni.Mathiesen@fao.org>; Director-General <Director-General@fao.org>; FAO-HQ <FAO-HQ@fao.org>; Lionel.Reynal@ifremer.fr; WECAFC-Secretariat <WECAFC-Secretariat@fao.org>

Subject: RE: SUBJECT: CORRESPONDENCE FROM THE ICCAT CHAIR [ICCAT Salida #5270/17]

Dear Mr Tsamenyi,

Thank you for your letter in response to the request from the WECAFC chairperson. Your response is much appreciated.

The matters raised in your response letter we will share with the WECAFC membership and try to address in the discussion paper that is being prepared for the 1st Preparatory meeting for the establishment of a non-tuna RFMO in the WECAFC area.

As previously has been the case, we will continue to invite the ICCAT Secretariat to participate in the WECAFC reorientation process.

With warm regards
Raymon

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