



REPORT OF THE PERFORMANCE REVIEW PANEL

June, 2010

EXECUTIVE SUMMARY

In response to calls from the international community for a review of the performance of Regional Fisheries Management Organisations (RFMOs), the South East Atlantic Fisheries Organisation (SEAFO) agreed in 2009 to initiate a process of Performance Review. A Review Panel was formed, consisting of a fisheries management expert nominated by the Food and Agriculture Organization of the United Nations (FAO), a fisheries scientist nominated by the International Council for the Exploration of the Sea (ICES), and two SEAFO Contracting Parties, Namibia and Norway. The SEAFO Secretariat supported and facilitated the review. The Panel met in Walvis Bay, Namibia in February 2010 and concluded its report to the Commission in May 2010.

The Panel's review was based on criteria similar to that used for performance reviews by other bodies, the key issues of which are shown below together with a summary of the Panel's recommendations for each criterion.

The Panel was mindful that SEAFO is a relatively young organisation, having been operational since 2004, and has six Contracting Parties including the European Union. In addition, fishing effort in the Convention Area for species falling under the SEAFO mandate was relatively low and, as a consequence, knowledge about the status of the fish was in clear need of strengthening.

Many of the Panel's recommendations were therefore directed at SEAFO's role as steward for the fishery resources, and encouraged a strategic plan for scientific work and a continuation of the precautionary approach in its conservation and management measures. Although the Commission had adopted some useful measures in relation to compliance and enforcement, additional requirements and review in light of recent developments were recommended. Decision-making, dispute settlement and the efforts of SEAFO to foster international cooperation were all found to be satisfactory and the continuation or intensification of some actions were encouraged. The Secretariat's financial and administrative practices were generally carried out smoothly, but the timely payment by Contracting Parties of their contributions was recommended, as described below.

Conservation and management

Addressing the *status of living marine resources*, the Panel recommended that the Scientific Committee should adopt a strategy to develop a status report of the fishery resources in the Convention Area and encouraged cooperation with other organisations for evaluating the status of transboundary stocks. Priorities for the *ecosystem approach* should be defined, but should not overshadow other major tasks. Regarding *data and information*, the Panel recommended that the transparency of the scientific data should be improved, and the Scientific Committee should give a high priority to the completion of identification keys for fish. Emphasis should be placed on extending the database for existing fisheries.

The Panel made a number of recommendations on the *quality and provision of scientific advice*. It underscored the importance of transparency and the need for a clear set of scientific criteria, as well as priorities, for advice by the Scientific Committee. The Commission was encouraged to provide explicit guidance the interpretation and implementation of the precautionary approach. Recommendations were made to improve the structure and readership of, and redesign the Scientific Committee report. Further, the roles and functions of the Scientific Committee and Scientific Sub-Committee (SSC) need to be clarified, and Contracting Parties were encouraged to support the scientific coordinators.

The Panel suggested that the Secretariat might compile data and produce working papers for the Scientific Committee and SSC.

Regarding the *adoption of conservation and management measures*, the Panel placed emphasis on the importance of and mechanisms for collecting data and information and the use of the precautionary approach, particularly given the high level of uncertainty regarding stock dynamics in the Convention Area. The Panel recommended that the measures be supported by an effective implementation regime and a robust enforcement mechanism.

For improved *capacity management*, the Commission was encouraged to establish rules that assure that the list of authorised vessels better reflects the actual capacity deployed in the Convention Area

Compliance and enforcement

The Panel recommended that SEAFO investigates whether its Contracting Parties comply with their obligations as *flag States* and *port States*, examine the implications of the 2009 FAO Agreement on Port State Measures and as appropriate amend relevant SEAFO measures.

For monitoring control and surveillance, SEAFO was encouraged to consider whether to implement an observer programme, to merge the current MCS measures into one single measure and to develop more detailed provisions on procedures and requirements for *follow-up actions to alleged infringements*. SEAFO was also encouraged to recognize IUU vessel lists of all relevant RFMOs.

Decision making and dispute settlement

The Panel found *decision-making* procedures and *dispute settlement* provisions to be satisfactory, but recommended a review of the Scientific Committee Rules of Procedure in respect of the establishment of subsidiary bodies and decision-making for the generation and update of data, assessments and analyses, as well as adoption of procedures for the establishment and operation of the *ad hoc* expert panel on dispute settlement.

International cooperation

With respect to *cooperating non-Contracting Parties*, the Panel recommended that the Commission should as a priority continue its efforts to encourage the Republic of Korea to complete the ratification process to become a Contracting Party, and in addition efforts should be made to encourage other relevant States to accede to the Convention. For *non-cooperating non-Contracting Parties*, SEAFO should continue to monitor activities by their vessels and take action as appropriate.

The Panel found current *cooperation liaison with other international and regional organisations* to be satisfactory, but recommended updating linkages on the SEAFO to reflect important areas of cooperation with other organisations.

To address the *special requirements of developing States*, the Panel encouraged further contributions to be made to the Special Requirements Fund.

Financial and administrative issues

The Panel encouraged Contracting Parties to strengthen their efforts to pay their SEAFO contributions on time.

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ACRONYMS AND ABBREVIATIONS

ALDFG	Abandoned, Lost or otherwise Discarded Fishing Gear
BCC	Benguela Current Commission
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CDS	Catch Documentation Scheme
COFI	Committee on Fisheries of the Food and Agriculture Organization
Convention	Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean
1982 Convention	United Nations Convention on the Law of the Sea
CPUE	Catch per Unit Effort
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
FFA	Pacific Islands Forum Fisheries Agency
FP	Focal Point
ICCAT	International Commission for the Conservation of Atlantic Tuna
ICES	International Council for the Exploration of the Sea
IPOA	International Plan of Action
IUU	Illegal, Unreported and Unregulated Fishing
MCS	Monitoring, Control and Surveillance
MSY	Maximum Sustainable Yield
NAFO	North-west Atlantic Fisheries Organization
NAMMCO	North Atlantic Marine Mammal Commission
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North-East Atlantic Fisheries Commission
RFMO	Regional Fisheries Management Organisation
SADC	Southern African Development Community
SEAFO	South-east Atlantic Fisheries Organisation
SSC	Sub-Committee of the Scientific Committee
TAC	Total Allowable Catch
UNFSA	United Nations Fish Stocks Agreement
VME	Vulnerable Marine Ecosystem
VMS	Vessel Monitoring System

1. INTRODUCTION

1.1 International background

The discovery of high value fish stocks above the continental slope of coastal States in the South East Atlantic, notably deep sea crab in Namibia and Angola and orange roughy and alfonso in Namibia and South Africa and pelagic sharks in most of the area, provided the impetus for the establishment of a new regional fisheries management organisation (RFMO) for the conservation and management of those stocks. The process to establish the South East Atlantic Fisheries Organisation (SEAFO) began in 1997, when negotiations were initiated to develop a draft Convention with the objective of ensuring the long-term conservation and sustainable use of marine resources in the high seas of the southeast Atlantic.

The process initially involved the four coastal States in the region: Angola, Namibia, South Africa and the United Kingdom (on behalf of St. Helena and its dependencies, Tristan da Cunha and Ascension Island). In December 1997 it was opened to those with distant water fishing interests in the region, according to the Food and Agriculture Organization (FAO) catch data: the European Union, Japan, Norway, Russia and the United States. Iceland, Poland, Republic of Korea and Ukraine also participated in the negotiations, reflecting the desire of the participants for openness and the inclusion of all States with an interest in the fisheries concerned. The negotiating process lasted four years and spanned seven negotiating sessions.

The text of the Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (the Convention) was adopted in November 2000, although the signing ceremony was delayed until April, 2001 to allow more time for internal consultations, particularly in Angola, and for the relevant documents to be translated into Portuguese. The Convention entered into force in April, 2003 and the Commission had its inaugural meeting in March 2004. It became fully functional from March 2005 with the establishment of the permanent Secretariat in Walvis Bay, Namibia. The Scientific Committee was established in 2004, the Compliance Committee in 2007 and the Standing Committee on Administration and Finance in 2009. There are currently six Contracting Parties to SEAFO: Angola, the European Union, Japan, Namibia, Norway and South Africa. In addition, States that have signed but not acceded to the Convention are Iceland, the Republic of Korea, the United Kingdom of Great Britain and Northern Ireland in respect of St. Helena and its dependencies and the United States of America.

The Convention is the first RFMO modelled on 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 the Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA). It was the first such instrument concluded after the adoption of the UNFSA and, although they both address high seas stocks, the SEAFO Convention extends its application to include discrete high seas species in the Convention Area.

1.2 SEAFO Performance Review

1.2.1 The Panel

It was agreed by the Commission that the Performance Review Panel should consist four international experts, with two external experts and two Contracting Parties representing the Parties. Namibia and Norway were nominated to represent SEAFO on the panel. Panel Contracting Parties were:

1. Ms J. Swan, a fisheries management expert nominated by FAO, who also served as the Chair of the Review Panel;
2. Mr. Hans Lassen, a fisheries scientist nominated by the International Council for the Exploration of the Sea (ICES);
3. Dr. Moses Maurihungirire, Namibia/SEAFO; and
4. Mr. Terje Lobach, Norway/SEAFO.

The Secretariat was not part of the Review Panel, but supported and facilitated its activities including by providing the required information and assisting in the drafting of the report.

1.2.2 Criteria for the Performance Review

The Criteria agreed upon by the Commission to form the basis for the Performance Review are in Annex 1. They are similar to those adopted by other RFMOs and relate to conservation and management, compliance and enforcement, decision-making and dispute settlement, international cooperation and financial and administrative issues.

1.2.3 The modus operandi of the Performance Review Panel

The review focused on the effectiveness of the Commission to fulfil its mandate in accordance with the criteria set out above. The purpose was to assess whether SEAFO, in its current legal and operational structure, fulfils its objectives and on that basis to identify shortcomings and make recommendations to address the issues.

The Review Panel met during the week of the 15th February to 19th February 2010 at the SEAFO offices in Walvis Bay. All subsequent tasks were conducted by correspondence.

1.2.4 The structure of the report

The report consists of five sections. The first three sections provide introductory and background information relating to SEAFO and describe the relationship between the SEAFO Convention and other international fisheries instruments and initiatives. Section 4 addresses the Performance Review Criteria by providing:

- a concise explanation of relevant authority, institutional arrangements and practice;
- panel analysis; and
- panel recommendations.

A compendium of the Panel's recommendations is in section 5, below.

2. SEAFO BACKGROUND

2.1 Introduction to SEAFO

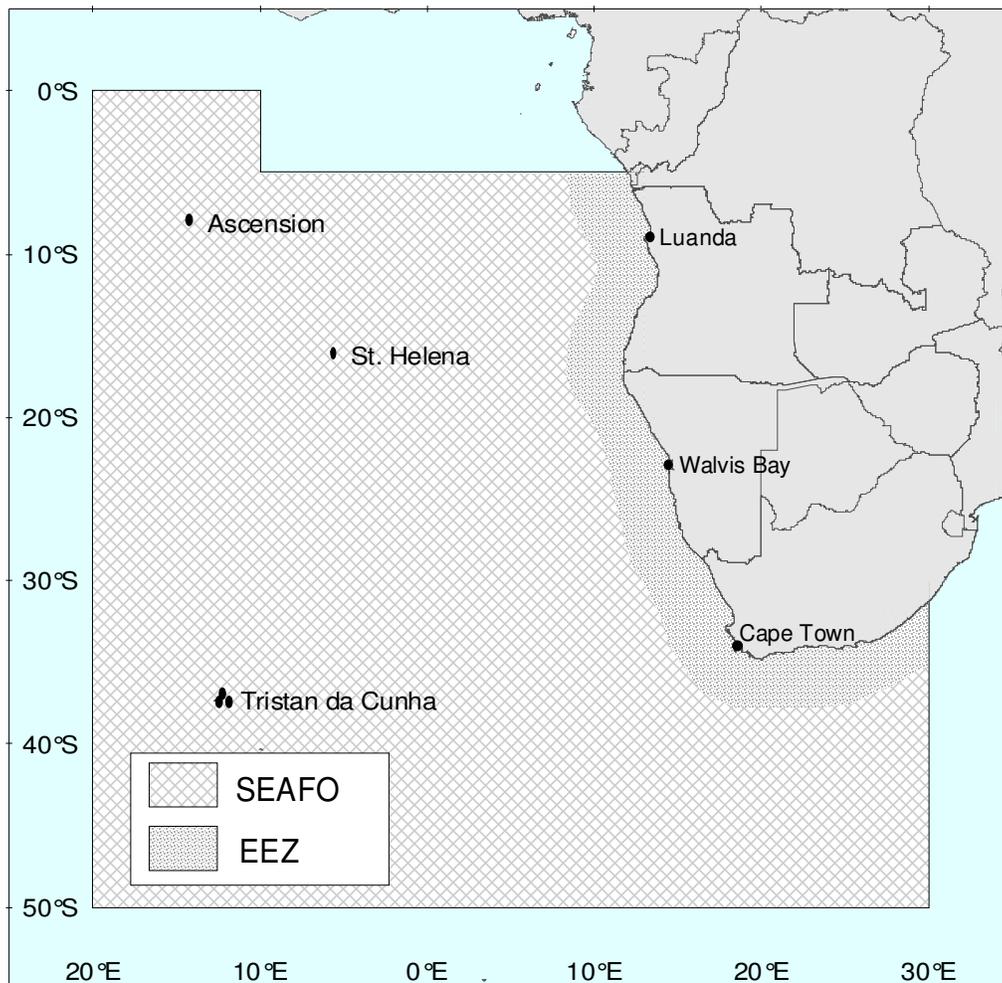
2.1.1 Area of Competence and fisheries

The SEAFO Area of Competence (Convention Area) lies in the Southeast Atlantic Ocean beyond national exclusive economic zones (EEZs) of the coastal states of Angola, Namibia, South Africa and United Kingdom (in respect of St. Helena and its dependencies of Accession Islands and Tristan da Cunha). Specifically, it is demarcated by the line beginning at the outer limit of the Angolan EEZ at a point 6° South, then west to the meridian 10° West, then north to the equator, then west to the meridian 20° West, then south to a parallel 50° South, then east to the meridian 30° East, then north to the east coast of South Africa

(Figure 1). This area generally corresponds with FAO Statistical Area 47 in the South East Atlantic.

Oceanographically, the northern boundary of the SEAFO Convention Area is bounded by the South Atlantic Equatorial Current that flows westward along the equatorial area. On the western boundary, the area is characterised by an open end of the South Atlantic gyre. The eastern boundary consists the Benguela and Angolan Currents along the African continent. The Benguela Current flows in a north to north-westerly direction (~15-35°S) and is a major east boundary upwelling system that is very productive in inshore areas and characterised by cool surface temperatures. The warm Angolan Current flows in a southerly direction along the Angolan coast and meets the Benguela Current roughly around 17-15°S commonly referred to as the Angola/Benguela front. The frontal area is characterised by offshore flow into the SEAFO area that transport primary production. The warm Agulhas Current flows south of the African continent in a westerly direction where it meets up with the Benguela Current.

Figure 1
SEAFO Convention Area



Warm eddies are formed in this area and transported northwesterly into the SEAFO area. The southern boundary of the Convention Area is dominated by the Southern Ocean Current and is also influenced by the Antarctic Convergence Zone

The prominent topographic features inside the Convention Area include the Walvis Ridge, which extends from around 18°S off the Namibian coast into a southwesterly direction towards the mid-Atlantic ridge; the Agulhas Ridge, which extends from around 35°S south of Cape Town in a southwesterly direction and the mid-Atlantic Ridge, at around 15°W that runs through the entire SEAFO region from north to south. There are also numerous seamounts, rises, banks and plateaus in the Convention Area; notably among these are Mount Vema and Meteor Rise.

Article 6(12) of the Convention requires the Commission to take account of measures established by other organisations which affect living marine resources in the Convention Area, and seek to ensure consistency with such measures. Therefore, the Commission does not address species that are managed by the International Commission for the Conservation of Atlantic Tuna (ICCAT) or the International Whaling Commission. The extent of fisheries resources in the Convention Area is not well known because of the limitations of reliable data.

Available data indicate that the following species are caught in varying degrees of tonnage mainly by distant water fishing nations and to lesser extent by Namibia: alfonsino (targeted by bottom trawls), orange roughy (targeted by bottom trawls), tuna and tuna like species (targeted by bottom and pelagic trawls and also bycatch in longlines), deep sea red crab (harvested by pots), deep water shrimps (bycatch in bottom trawls), swordfish, wreckfish, Patagonian toothfish, Argentines, boarfish, grunts (African striped & bigeye), octopus and lobster.

In 2009, the Commission adopted total allowable catches (TACs) of 200 tonnes for Patagonian Toothfish, 50 tonnes for Orange Roughy, 200 tonnes for Alfonsino and 400 tonnes for deep sea red crab.

2.1.2 Objective and Responsibilities

The general objective of the Convention is to ensure the long-term conservation and sustainable use of the fishery resources in the Convention Area through the effective

implementation of the Convention. In order to achieve this, the Convention sets out a number of general principles in Article 3 which incorporate modern principles of responsible fisheries management including those in the UNFSA. They include, *inter alia*, requirements to:

- adopt measures, based on the best scientific evidence available, to ensure the long term conservation and sustainable use of fishery resources;
- apply the precautionary approach;
- take account of the impact of fishing operations on ecologically related species such as seabirds, cetaceans, seals and marine turtles;
- adopt measures for species belonging to the same ecosystem as, or associated with or dependent upon, the harvested fishery resources;
- ensure that fishery practices and management measures take due account of the need to minimize harmful impacts on living marine resources as a whole; and
- protect biodiversity in the marine environment.

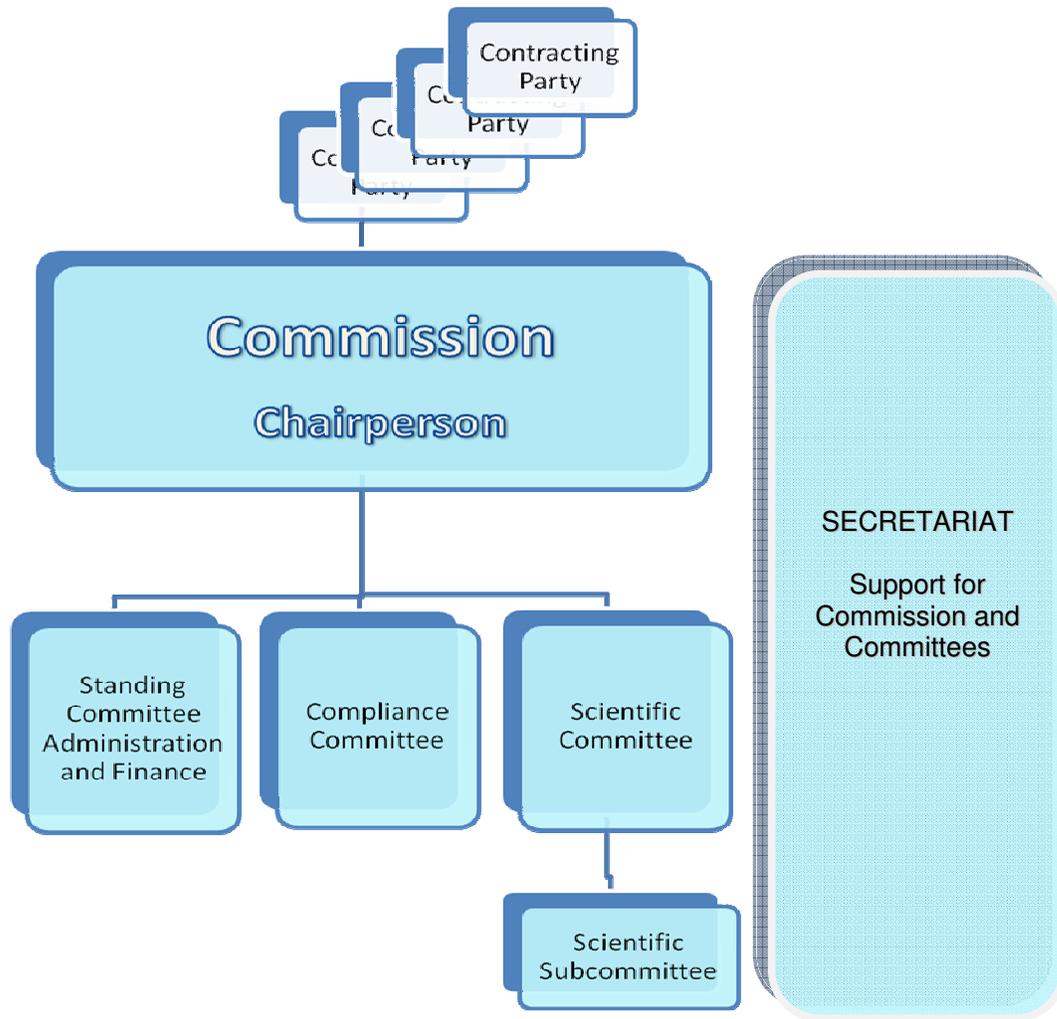
2.1.3 Structure of the Organisation

The structure of the Organisation is shown in Figure 2. It is described below and comprises the:

- Contracting Parties;
- Commission;
- Compliance Committee;
- Scientific Committee;
- Standing Committee on Administration and Finance; and
- Secretariat.

SEAFO has legal personality and enjoys in the territory of each Contracting Party such legal capacity as may be necessary to perform its functions and achieve the objective of the Convention. The privileges and immunities of the Organisation and its staff are determined by the Headquarters Agreement. The Secretariat is currently based in Walvis Bay, Namibia.

Figure 2
Structure of the Organisation



2.1.3.1 Commission

The Commission is the main decision-making body of SEAFO and has a wide range of functions identified by article 10 of the Convention. It is responsible, among other things, for identifying conservation and management needs, formulating and adopting conservation and management measures, determining TACs and/or levels of fishing effort, promoting proper scientific research and establishing appropriate mechanisms for effective monitoring, control, surveillance (MCS) and enforcement.

2.1.3.2 Compliance Committee

The Compliance Committee was established in 2007 pursuant to article 9 of the Convention, to provide the Commission with information, advice and recommendations on the implementation of and compliance with conservation and management measures. In performing its functions the Committee is to conduct activities as the Commission directs and to coordinate compliance activities undertaken by or on behalf of SEAFO, coordinate with the Scientific Committee on matters of common concern and perform such other tasks as the Commission directs.

2.1.3.3 Scientific Committee

The Scientific Committee was established in 2005 pursuant to article 10 of the Convention, to provide the Commission with scientific advice and recommendations for the formulation of conservation and management measures for fishery resources, and to encourage and promote cooperation in scientific research in order to improve knowledge of the living marine resources of the Convention Area.

2.1.3.4 Standing Committee on Administration and Finance

The Standing Committee on Administration and Finance was established in 2009 to provide the Commission with information, advice and recommendations on issues pertaining to the administration and finances of the Organisation. Matters regarding finance and budget are addressed in article 12 of the Convention.

2.1.3.5 Secretariat

Appointment by the Commission of an Executive Secretary and the necessary staff is required under article 11 of the Convention. The Namibian Ministry of Fisheries and Marine Resources performed the functions of the Secretariat in 2004/2005. In April, 2005 a permanent Secretariat was established and the Executive Secretary, with a four year term, and one full time office manager were appointed. Staff Contracting Parties are international civil servants whose terms and conditions of work are governed by Rules determined by the Commission.

3. RELATIONSHIP BETWEEN THE SEAFO CONVENTION AND OTHER INTERNATIONAL FISHERIES INSTRUMENTS AND INITIATIVES

3.1 Introduction

Several international instruments concerning the management of world fishery resources have been developed over the last twenty years. These include the legally binding UNFSA and the 1993 FAO Compliance Agreement. A key voluntary fisheries instrument is the 1995 FAO Code of Conduct for Responsible Fisheries (the Code of Conduct) including the international plans of action (IPOAs) elaborated under it: the 2001 FAO IPOA to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), and the 1999 IPOAs for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds), the Conservation and Management of Sharks (IPOA-Sharks) and the Management of Capacity (IPOA-Capacity).

Other applicable instruments relating to port State measures are the voluntary 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing (the Model Scheme) and the global, legally binding FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing (FAO Agreement on Port State Measures) adopted by the FAO Conference in November 2009. The latter will enter into force when 25 ratifications have been received by the Depositary, FAO.

In addition to the development of international fisheries instruments, both the UN and FAO address fisheries issues on a broader basis. The UN General Assembly has, for some years, annually called upon States, individually or through RFMOs, to address specific topics in order to achieve sustainable fisheries. FAO is continuously working on issues related to fishing, including by producing analyses and publications as well as convening workshops, seminars and consultations. In addition the FAO Committee on Fisheries (COFI) addresses a wide range of fisheries issues during its biennial meetings, many of them relevant to RFMOs.

Furthermore several declarations, including at Ministerial level, have called for specific actions to address the conservation, management and sustainable use of fisheries through declarations and other means, including the 2005 Rome Ministerial Declaration on IUU fishing and the 2008 Statement of Commitment on IUU Fishing by the Ministers of the Southern African Development Community (SADC).

The instruments, activities and outcomes described above are indicative of evolving demands and expectations concerning the role and the performance of RFMOs, including SEAFO. They are described in greater detail below, where it is shown that the voluntary fisheries instruments serve as guidelines or toolboxes for the conservation and management of fisheries, including some specific options for States and RFMOs such as SEAFO.

3.2 The SEAFO Convention and the UNFSA

The SEAFO Convention was developed during the years 1997-2001, and drew largely on the UNFSA text. The objective of the UNFSA is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the United Nation Convention on the Law of the Sea (the 1982 Convention). It establishes a set of rights and obligations for States to conserve and manage straddling fish stocks and highly migratory fish stocks, associated and dependent species as well as to protect biodiversity in the marine environment contains the concept of precautionary approach and compatibility requirements.

The UNFSA sets out mechanisms for international cooperation concerning these stocks, and identifies RFMOs as the mechanism through which States can fulfil their obligations to manage and conserve the stocks. States having a real interest in the fisheries concerned are encouraged by the UNFSA to become Contracting Parties of such RFMOs. The Agreement provides for reinforcement of flag State duties concerning control over fishing vessels, and also contains enhanced compliance control mechanisms, including strengthened enforcement by flag States and port States. All SEAFO parties except Angola are parties to the UNFSA.

A Review Conference on the UNFSA was held in 2006. Its purpose was to assess the effectiveness of the UNFSA in securing the conservation and management of straddling fish stocks and highly migratory fish stocks by reviewing and assessing the adequacy of its provisions and, if necessary, proposing means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in conservation and management of those stocks. The outcomes included review and assessments as well as proposed means of strengthening the implementation of the UNFSA. RFMOs were recognized as the primary mechanism for international cooperation in conserving and managing such fish stocks. The Review Conference encouraged States to recognize that the general principles of the UNFSA should also apply to discrete fish stocks in the high seas.

SEAFO *de facto* applies these principles to high seas fish stocks because its Convention is patterned after the UNFSA. The Review Conference further agreed to continue the informal consultations of States Parties and keep the UNFSA under review through the resumption of the Review Conference at a date not later than 2011. The Conference will resume in May, 2010 and among other things will focus on the performance of RFMOs, including the performance reviews that have been conducted.

3.3 Other instruments and initiatives relevant to implementation of the SEAFO Convention

As noted above in sections 3.1 and 3.2, numerous international instruments and initiatives are relevant for the implementation of the SEAFO Convention.

3.3.1 The FAO Compliance Agreement

The FAO Compliance Agreement, which forms an integral part of the Code of Conduct, was finalised prior to the UNFSA, and some of the provisions are overlapping. It applies to “international conservation and management measures” adopted and applied in accordance with the 1982 Convention. It is thus not limited to species covered by the UNFSA. The focus of the Compliance Agreement is the authorisation of fishing on the high seas and the development of the concept of flag State responsibility and of mechanisms to ensure the free flow of information on high seas fishing operations. Of the SEAFO Contracting Parties, the European Union, Japan and Norway are parties to the FAO Compliance Agreement.

3.3.2 The FAO Code of Conduct

The Code of Conduct, which was adopted in 1995, provides a framework for national and international efforts to ensure sustainable exploration of aquatic living resources in harmony with the environment. In relation to RFMOs such as SEAFO, articles 7 and 8 in particular give adequate and important guidance. Article 7 includes provisions on management objectives, framework and procedures, data gathering and management advice, application of the precautionary approach and the establishment of management measures as well as their implementation. Article 8 deals with fishing operations and contains provisions on the duties of the flag State and the port State. The overall objective is to promote a framework for sustainable development, foster protection of the aquatic environment and the maintenance of biodiversity while making a contribution to the safety of fishing operations. It

should be noted that FAO has supplemented many of these principles by developing specific technical guidelines.

The relevant provisions of the SEAFO Convention as well as relevant conservation measures adopted by the Commission seem to be in conformity with the principles set out in the Code of Conduct.

3.3.2.1 IPOA-Capacity

While environmental factors have adversely affected some fish stocks, excessive levels of fishing capacity are believed to be the primary cause of fisheries declines. Moreover, fishing overcapacity is also known to have contributed to the problem of IUU fishing, particularly in cases where excess capacity has been exported through re-flagging to States which do not exercise effective control over their fishing vessels and/or do not comply with their flag State obligations.

Excess fishing capacity is addressed in many ways, including by input regulations such as fishing seasons/days, closed areas, permitted gears and vessel-related restrictions as well as output regulations such as rights-based measures. Coordinated efforts are, however, essential. FAO adopted the IPOA-Capacity in 1999, with the objective for States and RFMOs to achieve an efficient, equitable and transparent management of fishing capacity. The IPOA-Capacity specifies several actions to be taken for assessing and monitoring capacity, preparing and implementing national plans, international considerations and immediate actions for major international fisheries requiring urgent measures.

SEAFO has not adopted measures drawing on the IPOA-Capacity.

3.3.2.2 IPOA-Seabirds

There are concerns about incidental catch of seabirds in the longline fisheries. According to the IPOA-Seabirds, States should, either individually or through appropriate RFMOs, conduct assessments of these fisheries to determine if a problem exists with respect to the incidental catch of seabirds. If a problem is identified, initiatives should include the adoption of mitigation measures, plans for research and development, awareness campaigns and data collection programmes. The IPOA-Seabirds also contains an annex describing some optional technical and operational measures for reducing the incidental catch of seabirds in longline fisheries.

SEAFO has adopted measures with the aim of reducing incidental by-catch of seabirds in the Convention Area, cf. Conservation Measure 15/09.

3.3.2.3 IPOA-Sharks

Concerns have also been expressed in various fora about the rise in shark catches as sharks often have a long stock recovery time, if over-fished, and low recruitment relationship. In addition the knowledge about shark populations and fishing practices are causing problems due to lack of data. In order to address these concerns FAO adopted in 1999 the IPOA-Sharks calling on States to take a number of actions to ensure the conservation and management of sharks and their long-term sustainable use, including developing national plans which should contain shark stocks assessments based on consistent data collection. Such data should be made available to, among others, relevant RFMOs. It is recognised that sharing such information is particularly important in relation to straddling, highly migratory and discrete high seas shark stocks.

The SEAFO Convention area overlaps with the ICCAT Convention Area. ICCAT is responsible for managing species appearing in Annex 1 to the 1982 Convention, which include oceanic sharks, while SEAFO has the regional responsibility for all other shark species. The Commission has adopted Conservation Measure 04/06 on the Conservation of Sharks Caught in Association with Fisheries Managed by SEAFO.

3.3.2.4 IPOA-IUU

Combating IUU fishing has been one of the main issues on the international fisheries agenda for the last decade. IUU fishing is identified as a major threat to fisheries conservation and marine biodiversity. A number of initiatives have been taken by global organisations, many regional bodies and States to counteract such activities. In this context in particular the IPOA-IUU is important. It is a voluntary instrument - a comprehensive toolbox that contains several suggested measures for combating IUU fishing, including those to be used by flag States, coastal States, port States and RFMOs. The IPOA-IUU calls on States, through RFMOs, to take various actions, such as developing boarding and inspection schemes, implementing vessel monitoring systems (VMS) and observer programmes, identifying vessels that are engaged in IUU fishing, regulating transshipment operations as well as adopting port inspection schemes, certification and/or trade documentation schemes and other market-related measures.

The SEAFO Convention contains several provisions relevant to the fight against IUU fishing, in particular article 9 establishing the Compliance Committee, article 14 on flag State duties, article 15 on port State duties and measures taken by a port State, article 16 on observation, inspection, compliance and enforcement and article 22 on non-parties to the Convention. In addition SEAFO has adopted several conservation measures in order to combat IUU fishing, such as:

- Conservation Measure 07/06 relating to interim measures to amend the interim arrangements of the SEAFO Convention;
- Conservation Measure 08/06 on the establishment of a list of vessels presumed to have carried out IUU fishing activities;
- Conservation Measure 09/07 on amendment and consolidation of Conservation Measure 02/05 relating to interim port State measures; and
- Conservation Measure 13/09 on an interim prohibition of transshipments at sea in the SEAFO Convention Area and to regulate transshipments in ports.

3.3.3 FAO Model Scheme on Port State Measures to Combat IUU Fishing (Model Scheme)

As a follow-up to the IPOA-IUU, FAO adopted in 2005 the Model Scheme on Port State Measures to Combat IUU Fishing, describing basic and minimum standards for subsequent action to be taken in particular within RFMOs. The FAO Model Scheme is a voluntary instrument, and these principles and guidelines do not prevent RFMOs and/or States from adopting additional and eventually stricter measures. The FAO Model Scheme contains information to be required by a port State prior to allowing access to a foreign fishing vessel, designation of ports where landing might take place, port inspection procedures, result indicators of port inspections, elements of training programmes for port State inspectors and an outline of an information system on port State inspections.

SEAFO used the FAO Model Scheme as a template for developing Conservation Measure 09/07 on port State measures.

3.3.4 The 2009 FAO Agreement on Port State Measures

The FAO Agreement on Port State Measures is based on the FAO Model Scheme and takes on board some additional tools already used by some RFMOs, such as actions based on

IUU vessel lists, cooperation between port States and flag States as well as applying port State measures to transhipped fish and fish products. The application of such measures will now be extended from a regional to a global level, including the indirect establishment of a global IUU vessel list as actions are linked to such a list established by any RFMO.

The FAO agreement establishes a step by step process for the port State to allow or deny entry and the use of its ports, which is more comprehensive and goes further than the SEAFO rules. Furthermore the agreement does not apply to container vessels that are not carrying fish, or if carrying fish, only fish that have been previously landed.

Based on the notification as well as other information it may require to determine whether the vessel has engaged in IUU fishing, the port State shall decide whether to authorise or to deny entry into its port. A port State shall, however, deny access if it has sufficient proof that a vessel has engaged in IUU fishing, and in particular if the vessel is on an IUU vessel list established by an RFMO.

A vessel that has entered a port shall not be permitted to use that port if the vessel does not have an authorisation required by the flag State or a coastal State, or if there is clear evidence that the fish on board was taken in contravention of coastal State measures. Furthermore, use shall be denied if the flag State, on request, fails to confirm that the fish onboard was taken in accordance with requirements of an RFMO or the port State has reasonable grounds to believe that IUU fishing had taken place, unless the vessel can establish otherwise.

SEAFO Contracting Parties that have signed the FAO Agreement on Port State Measures are Angola, the European Union and Norway. In addition, Iceland and the United States, signatories to the SEAFO Convention, have also signed the FAO Agreement.

3.3.5 Global calls and initiatives

There are two global fora where fisheries and fisheries related issues are discussed on a regular basis and guidance given to States and RFMOs, namely the UN General Assembly and FAO. In addition, fisheries management has been on the agenda of the 1992 United Nations Conference on Environment and Development and the 2002 World Summit on Sustainable Development.

3.3.5.1 UN General Assembly

Since 2003 the UN General Assembly has adopted annually a specific resolution on fisheries, the Sustainable Fisheries Resolution, addressing numerous issues including the implementation of the UNFSA, IUU fishing, MCS and enforcement, fishing overcapacity, large-scale pelagic drift-net fishing, fisheries by-catch and discards, sub-regional and regional cooperation, responsible fisheries in the marine ecosystem and capacity-building.

3.3.5.2 FAO - COFI

COFI was established by the FAO Conference in 1965, and is a global inter-governmental forum where major international fisheries and aquaculture problems and issues are examined and recommendations addressed to governments, regional fishery bodies, NGOs, fishworkers, FAO and international community, periodically on a world-wide basis. COFI is also used as a forum in or through which global binding and non-binding fisheries instruments have been discussed and recommended.

COFI's main functions are to review FAO's relevant work programmes, including their implementation, and to conduct general reviews of fishery and aquaculture problems of an international character and to address such problems by recommended actions. FAO requests its Contracting Parties and RFMOs to contribute to these reviews by returning questionnaires, which are widely distributed prior to COFI sessions. The questionnaires mainly focus on implementation of the Code of Conduct and the four IPOAs, and SEAFO regularly responds to these questionnaires.

SEAFO has responded to many of the calls from the UN General Assembly and COFI. In addition to those described above, the measures on vulnerable marine ecosystems (VMEs), regulation of bottom fishing activities as well as the measure on reduction of sea turtle mortality, elaborated in sections 4.1.2 and 4.1.5 below, should be mentioned, cf. Conservation Measure 06/06 on management of vulnerable deep water habitats and ecosystem in the SEAFO Convention Area, Conservation Measure 12/08 on bottom fishing activities in the SEAFO Convention Area and Conservation Measure 14/09 to reduce sea turtle mortality in SEAFO fishing operations.

4. PERFORMANCE REVIEW: ANALYSIS AND RECOMMENDATIONS

4.1 Conservation and Management

The conservation and management measures that have been adopted by the Commission are described in section 4.1.5, and those that are species-related have addressed TACs for Patagonian toothfish, orange roughy, alfonsino and deep-sea red crab and by-catch rules for sharks, turtles and sea birds. More generally, measures have been adopted in relation to bottom fishing and the management of vulnerable deep water habitats and ecosystems, as well as MCS measures. Conservation and management decisions have been underpinned by advice from the Scientific Committee since its establishment.

4.1.1 Status of living marine resources

The objective of SEAFO as defined in article 2 of the Convention is “...to ensure the long-term conservation and sustainable use of the fishery resources in the Convention Area...”, and “fishery resources” are defined in article 1 as “...fish, mollusc, crustaceans and other sedentary species” excluding sedentary species subject to the fishery jurisdiction of coastal States and highly migratory species, each as defined under the 1982 Convention. Therefore, a primary task for the Scientific Committee is to provide a status report for the fishery resources in the Convention Area that are subject to fishing activity under the Convention.

Currently, the commercially most important species are Patagonian toothfish and deep-sea red crabs, neither of which is confined to the Convention Area. The issue of stock structure was briefly addressed by the Scientific Committee in 2005. The Patagonian toothfish in FAO Area 47.D1 is assumed to be part of the same stock that is exploited by the fishery for the same species in FAO Area 48.6. An assessment of toothfish would need to consider at least those in both of these areas combined. The assessment work would need to be made jointly with the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

Red crab occurs largely inside Namibian waters and includes a component in Angolan waters. Assessment of the status of these crabs should be attempted jointly.

The Scientific Committee did not fully address its task of providing a status report for relevant species in the Convention Area because priority was given to meeting the timeline set by the March, 2007 UN General Assembly Resolution 61/105 on Sustainable Fisheries. It called upon RFMOs to implement measures, not later than 31 December 2008, to identify

VMEs and determine whether bottom fishing activities would cause significant adverse impacts to such ecosystems and the long-term sustainability of deep sea fish stocks.

Panel Analysis

The Scientific Committee has made significant progress during its first five years. It has established itself and worked actively on relevant issues, including VMEs, by-catch rules and data collection and has provided information required by the Commission including management advice for species subject to a TAC.

The Commission has taken careful note of the Committee's recommendations and in general has followed the scientific advice when adopting conservation and management measures.

However, the Scientific Committee has not provided information on the status of stocks for the fishery resources, nor has it presented a clear strategy for assessing the resources or developed a priority list for such assessments. Such a strategy would include explicit assumptions about the likely stock structures for the resources.

Panel Recommendations

1. The Scientific Committee should develop a strategy for the development of a status report, including a general overview, of the fishery resources in the Convention Area. The report should include information on the stock structure, total abundance, distribution of the biomass between zones and the fishing pressure by zone. Red crab should be given first priority for such a status report.
2. The transboundary nature of several fishery resources is recognised and scientific cooperation for evaluating of the status of the resources with other organisations should be encouraged, e.g. in the form of joint working groups with the CCAMLR for Patagonian toothfish and with Namibia and Angola for red crab.

4.1.2 Ecosystem approach

The Commission has devoted considerable attention to meeting the call by the UN General Assembly Resolution 61/105 on Sustainable Fisheries to identify VMEs, described above in section 4.1.1. In addition, the Scientific Committee provided background information relevant

for the establishment of conservation and management measures to prevent the by-catch of sea turtle and sea birds, and has addressed the problem of ghost fishing.

Surveys have been undertaken which will provide information that makes it possible for the Commission to establish a network of areas where fishing is restricted or banned, including the 2007-2008 Spanish/Namibia scientific survey that produced valuable information on the ecosystems and living marine resources of the Ewing and Valdivia seamounts within the SEAFO Convention Area.

Panel Analysis

The Scientific Committee has devoted much time to examining the impacts of fisheries on the ecosystem. The Commission has taken due account of this information and incorporated an ecosystem approach to management in its decisions through protection of sea mounts and areas with corals and sponges. The strategy for implementing an ecosystem approach is not clear but seems so far to have been guided by calls from the UN General Assembly.

In 2009, the Scientific Committee discussed ghost fishing without demonstrating whether this is an urgent issue. Driftnets, which are identified elsewhere as a major threat, are banned in the Convention Area.

Panel Recommendations

3. The Commission should expressly define priorities for the work of the Scientific Committee based on concerns relating to both the ecosystem in general and the fishery resources in particular.
4. While ecosystem-related priorities are highly relevant they should not overshadow other major tasks. This is further discussed in section 4.1.4.

4.1.3 Data collection and sharing

The Commission has followed the recommendations of the Scientific Committee closely in adopting measures relating to data needs and data submission, and has established data requirements that are based on control and enforcement needs. These needs are considered in section 4.2.3, below.

The statistical divisions of FAO Area 47-Southeast Atlantic have been revised. Starting with the FAO fishery statistics inquiry for 2007 data, countries fishing in Area 47 are requested to return catch statistics according to revised statistical divisions which distinguish between catches taken within and outside the EEZs of the coastal States. The Commission's data collection system recognizes this distinction.

The Scientific Committee has developed sampling protocols and data requirements for future assessments which have allowed the Commission to establish rules for the collection of logbooks, observers and other data requirements. Turtle, coral and sponge identification keys have been developed.

Panel Analysis

The Secretariat and the Scientific Committee devote considerable attention to the tasks of data collection and data sharing. The Commission's agreed formats, specifications and time frames for data submissions are necessary and sufficient for the proper execution of the Commission's responsibilities. Compliance with relevant requirements has in general been good, but some problems have been identified by the Scientific Committee on the submission of some scientific data. There is a general lack of data on fishing effort and biological information (length, sex ratio, and maturity).

The Commission has implemented a scientific observer program for all vessels fishing in the Convention Area, which results in the collection of information on all species that are brought on board. The Secretariat has made significant progress in the compilation of these data and the production of appropriate overviews.

There are vessels fishing for tuna in the SEAFO Convention Area. The extent to which these vessels affect non-ICCAT stocks is unknown, but it is not expected to be significant in view of the fishing methods.

Panel Recommendations

5. The transparency of the scientific data should be improved by providing more information in the report of the Sub-Committee of the Scientific Committee (SSC) or alternatively, or in addition, by providing this information on the SEAFO website.

6. The Scientific Committee should give a high priority to the completion of identification keys for fish. This is necessary for an observer programme.
7. Emphasis should be placed on extending the database for existing fisheries. The Panel notes that the scientific observers will provide essential data for this database.

4.1.4 Quality and provision of scientific advice

The SEAFO Convention, in article 6(6), requires the Commission to take full account of the recommendations and advice from the Scientific Committee in formulating its decisions.

As noted above in section 2.1.3, the Scientific Committee was established in 2005 in accordance with article 10 in the Convention to provide the Commission with information on the status of the fishery resources and the fisheries, the fishing pressure on the ecosystem and to advise the Commission on appropriate management measures. The information presented to the Commission includes reports from five meetings held since 2005.

The Scientific Committee established a SSC in 2006 to create a forum for collating data and assessing the fish stocks in the SEAFO area, to be considered by the Scientific Committee for review and approval. It seems that SSC functions as an extension of the Scientific Committee meeting time by three days, but it has not been demonstrated that this additional time has led to improved assessments.

In addition, the Committee developed a network of scientific coordinators with functions to:

- act as the scientific focal point (FP) between SEAFO, its Contracting Parties and FPs;
- participate in the SSC and the Scientific Committee;
- ensure that all available fisheries and scientific data, including historical data, is available to SSC and the Scientific Committee through the SEAFO Secretariat using the prescribed format; and
- encourage the provision of scientific analyses relevant to SEAFO scientific bodies.

Together the SCC and scientific coordinators are likely to improve the input to the Committee.

The Scientific Committee concluded in 2009: “In view of the lack of data, stock assessments cannot be attempted now and in the foreseeable future for any species of the SEAFO species list.” This conclusion can be challenged by redefining the scope of the assessments at least for some of the resources.

Mindful that the Scientific Committee suggested in 2005 that its advice be guided by the precautionary approach because of the lack of information, the SSC should, in cooperation with appropriate partners including national institutes and CCAMLR, address the status of the fishery resources as soon as possible.

Panel Analysis

The scientific basis for advice on fisheries exploitation is weak. The reports of the SCC and the Scientific Committee are not very informative in identifying the bases for recommendations on a TAC.

Recommendations on the management of Patagonian toothfish in the Convention Area are made consistent with the management in the CCAMLR Area (FAO Area 48.6). However, it is not clear whether CCAMLR reciprocates and includes in its assessment the management measures in the SEAFO Convention Area (FAO Area 47.D1).

The basis for the advice on the TAC for red crab refers to “... the absence of information on the current size of the resource and levels of fishing mortality...” It is apparently assumed that this level corresponds to a low fishing mortality. It would be useful to see this advice in the context of the assessment and management of the red crab in Namibian waters, similar to the approach taken for Patagonian toothfish to manage the fish consistently across maritime boundaries.

The Scientific Committee has presented summaries of available VMS data for vessels fishing for SEAFO species but it is unclear how these data are used in the assessments and advice.

Identification of the status of an ecosystem, or more specifically a fish stock, requires estimates of the abundance and exploitation pressure as well as criteria for good environmental status, usually discussed under the heading of reference points. The Scientific Committee has undertaken a useful analysis by classifying the species according to vulnerability. The conclusion was that most species on the SEAFO list have low productivity and extended longevity and by implication are stocks that can only sustain very

low fishing mortality. In addition, there are other species such as alfonsino that are not long-lived and slow growing but are vulnerable to fishing because they form dense aggregations that are easy fishery targets.

The species profiles provided by the Scientific Committee are a useful basis to update and extract key information related to the target species that could be used in assessment models. However, there is no indication of the exploitation pressure to which these stocks are exposed or of an acceptable exploitation level.

The suggestion by the Scientific Committee in 2005 that its advice be guided by the precautionary approach may undermine its credibility. It is essential for the Committee to present the information and its analysis clearly isolated from its advice, and to explain the basis for the advice. The Commission may decide to apply a precautionary approach in the absence of information from The Scientific Committee.

There is a substantial repetition of material in the reports of the SSC and the Scientific Committee, indicating a duplication of work. The rules on the roles of the Scientific Committee and SSC do not make their respective roles entirely clear.

The assessments have been confined to updating some simple graphs of Catch per Unit effort (CPUE) series. The Secretariat may be better placed to carry out such technical work.

Panel Recommendations

8. The basis for the Scientific Committee advice should be transparent and clear to all involved. In this regard, the report of the Scientific Committee should clearly describe the information on which its advice is based and the report of the SSC should document all assessments relevant to such advice.
9. The Scientific Committee should have a clear set of scientific criteria on which to formulate its advice. Such criteria should be based on those in international fisheries instruments as agreed by the Commission, for example the objective to maintain or restore stocks to levels that can produce the maximum sustainable yield (MSY) with the aim of achieving these goals for depleted stocks on an urgent basis and where possible not later than 2015 as stated in the 2002 Johannesburg Plan of Implementation.

10. When there is no scientific basis, the Commission should provide clear instructions to the Scientific Committee on the interpretation and implementation of the precautionary approach.
11. The Commission should provide explicit guidance for the Scientific Committee on priorities for its advice. Consideration of such priorities might be facilitated through a modification of the structure of the Scientific Committee, such as more extensive use of focused expert groups working either by correspondence or at meetings.
12. The structure of the Scientific Committee report and the readership of the various scientific reports should be analysed and the reports be redesigned to be fit for purpose taking the following considerations into account.
 - a. The Scientific Committee report should be an advisory report, with the Commission and highly interested stakeholders as its primary readership. It should include a summary of the scientific information that underpins the advice.
 - b. The SSC report should present the technical assessments that form the basis for the deliberations by the Scientific Committee. The readership of that report is the Scientific Committee and the wider science community.
 - c. There should be similar technical reports available as background analysis for other topics that require review by the Scientific Committee.
 - d. The Secretariat should create a series of working papers, or research documents, which should be coded and a copy kept for future reference. Papers that are not properly coded may be discarded after the meeting.
13. The roles and functions of the Scientific Committee and SSC should be clarified, duplication of work avoided and decision-making clarified as described in section 4.3.1.
14. A review should be undertaken to explore arrangements for giving the Secretariat the responsibility to compile data and produce working papers for the Scientific Committee and SSC, with a view to attaining a smooth workflow. The review should also identify the role of the coordinating scientists in this regard.

15. The Contracting Parties should support the scientific coordinators to allow efficient use of meeting time at the Scientific Committee.

4.1.5 Adoption of conservation and management measures

SEAFO Contracting Parties have a mandate under article 3 of the Convention to adopt measures for living marine resources that ensure the long-term conservation and sustainable use of those resources and are based on the best scientific evidence available. Contracting Parties are also bound to apply the precautionary approach, take due account of the impact of fishing operations on ecologically related species and ensure that practices and measures take due account of the need to minimise harmful impacts on living marine resources as a whole and protect biodiversity in the marine environment.

The conservation and management measures shown in Figure 3 have been in force since December 2007 and were adopted in accordance with the SEAFO Convention.

Figure 3
SEAFO Conservation Measures

Conservation Measure 04/06	On the Conservation of Sharks Caught in Association with Fisheries Managed by SEAFO
Conservation Measure 06/06	On the Management Of Vulnerable Deep Water Habitats And Ecosystems In The SEAFO Convention Area
Conservation Measure 07/06	Relating to Interim Measures to Amend the Interim Arrangement of the SEAFO Convention
Conservation Measure 08/06	Establishing a List Of Vessels Presumed to have Carried Out IUU Fishing Activities in the SEAFO Convention Area
Conservation Measure 09/07	Consolidating Port State Measures
Conservation Measure 11/07	Conditions for the resumption of closed fisheries
Conservation Measure 13/09	On an Interim Prohibition of Transshipments-at-Sea in the SEAFO Convention Area and to Regulate Transshipments in Port
Conservation Measure 14/09	To Reduce Sea Turtle Mortality in SEAFO Fishing Operations
Conservation Measure 15/09	On Reducing Incidental By-catch of Seabirds in the SEAFO Convention Area
Conservation Measure 16/09	On TACs and related conditions for Patagonian toothfish, orange roughy, alfonsino and deep-sea red crab in the SEAFO Convention Area in 2010
Conservation Measure 17/09	On Bottom Fishing Activities in the SEAFO Convention Area

The Commission, following the advice of the Scientific Committee, has consistently applied a precautionary approach in the adoption of conservation and management measures. As

noted above in section 4.1.4, in 2005 the Scientific Committee recommended to the Commission that, as an interim measure and taking into account the precautionary approach, the fishing effort should not be allowed to increase above the current levels for fisheries in the Convention Area in 2006. In order to allow for implementation of the transitional arrangements, the Commission deferred discussion until the following year when the Scientific Committee indicated that due to the lack of sufficient data for stock assessments, it had not been possible to give specific management advice for any of the species harvested in the SEAFO Area. As an interim measure, and taking into account the precautionary approach, the Scientific Committee therefore recommended the following.

- For existing fisheries, the fishing pressure should be reduced considerably and should only be allowed to expand again very slowly if and when reliable assessments indicate that increased harvests are sustainable.
- When new fisheries develop or existing fisheries expand into new areas, relevant indicators of the status of the stocks and fishing pressure should be established on the basis of small exploratory fisheries. These fisheries should only be allowed to expand very slowly if and when reliable assessments indicate that increased harvests are sustainable. Precautionary catch limits or effort limitations should be introduced.

The Scientific Committee attempted to identify reference points for all species in 2007. The only data available for use were CPUE data and these were sparse for most species and were considered unreliable especially where species were taken as by-catch. An alternative option available was to develop reference points based on catch thresholds. However, while there was agreement that these should be precautionary it was not possible to agree thresholds for all species.

Given the vulnerability to fishing of some of the remaining species, the paucity of data available for assessments and the likely impact of trawls on vulnerable habitats on seamounts that remain open to fishing and elsewhere in the SEAFO Area, the Scientific Committee agreed to take a precautionary view and to recommend a ban on all forms of trawling in the SEAFO Area. These views have continued during the 2008 and 2009 Scientific Committee meetings as well.

As a consequence of advice of the Scientific Committee, the Commission closed certain sea mount areas to fishing in 2006 and the following year discussed the issue of trawling and its effect on vulnerable habitats. To ensure a precautionary approach in re-opening any

seamount areas then subject to closure endorsed that mapping be a condition for the resumption of fishing in those areas.

Previously unregulated fisheries, including new and exploratory fisheries, have been exploited with caution through the application of the precautionary approach. The Scientific Committee has advised that when new fisheries develop or existing fisheries expand into new areas, relevant indicators of the status of the stocks and fishing pressure should be established on the basis of small exploratory fisheries. These fisheries should only be allowed to expand very slowly if and when reliable assessments indicate that increased harvests are sustainable.

Other decisions taken by the Commission that apply the precautionary approach have included in 2007 setting TACs for Patagonian toothfish and red crab, in 2008 setting TACs for orange roughy and alfonsino as well as closing areas for bottom fishing to protect VMEs and in 2009 reducing threshold levels for corals and sponges in accordance with recent developments in CCAMLR and the North-west Atlantic Fisheries Organization (NAFO).

SEAFO has taken due account of the need to conserve marine biological diversity and minimise harmful impacts of harvesting, research, conservation and associated activities on marine living resources and marine ecosystems. It has also devoted considerable time to the minimization of pollution, waste, discards, catch by lost or abandoned gear, catch of non-target marine living resources, and impacts on associated or dependent species through measures including the development and use of selective, environmentally safe and cost-effective fishing gear and techniques. This is evident in the following advice, recommendations and decisions of the Organisation.

- At its second meeting in 2005, the Commission tasked the Scientific Committee to address and make recommendations on the wider ecosystem impacts of the fisheries activities such as over-exploitation, by-catch depletion and dumping, gear effects such as habitat destruction, and furthermore linkages and impacts on adjacent EEZ areas. It directed that pollution caused by fishing activities (e.g. bunker oil spillages, dumping of garbage, fishing gear) may also be addressed by the Scientific Committee.
- Two decisions adopted by the Commission in 2006 in relation to the catch of non-target marine living resources and impacts on associated or dependent species have since been repealed and revised to meet emerging standards. The voluntary Resolution 01/06 to reduce sea turtle mortality in SEAFO fishing operations Conservation Measures has

been replaced by the binding Conservation Measure 14/09, which strengthened the provisions relating to information and data on interactions with and by-catch of sea turtles to be collected, provided to the Secretariat and exchanged with other Contracting Parties.

- Conservation Measure 05/06 on reducing incidental by-catch of seabirds in the SEAFO Convention Area has been replaced by Conservation Measure 15/09 on the same topic in light of the latest CCAMLR regulations and information and advice provided by Birdlife International. The revised text introduces measures to address seabird losses in trawl gears. Warp collisions have been recognised as a significant problem in trawl fisheries. Mitigation measures have been applied in South African trawl fisheries and in the CCAMLR area.
- In 2008 SEAFO introduced mandatory sampling forms for catches and other fishing details (including discards/benthos/seabirds/mammals) to be recorded by observers and also an observer summary form. This required the recording of detailed by-catch data at a species level on a set-by-set basis. The Scientific Committee recognized that 2009 was the first year that the sampling forms have been in use and acknowledged that Contracting Parties and fishing nations have reaffirmed their commitment to fully comply.
- The Commission approved the use of the revised Spanish identification key for corals and sponges in the SEAFO Convention Area in 2009, and a turtle identification key is planned. They are in a form suitable for use at sea by observers.

Regarding the impact of lost gear on habitat and biodiversity, the Scientific Committee's response referred solely to the impacts of mitigation and curative measures relating to abandoned, lost or otherwise discarded fishing gear (ALDFG). It did not have sufficient information available to evaluate the effects of lost gear on habitat and biodiversity. The only fisheries that posed potential ALDFG problems were longline fisheries for Patagonian toothfish and trap fisheries for deep-water red crab.

Gillnets are important contributors to ALDFG problems including ghost-fishing. This fishing method has been banned in the CCAMLR area and in 2009 the Commission approved a ban for gillnets in the Convention Area until such time as more information became available.

Consistent with recommendations by the Scientific Committee to the Commission that a database be compiled of all SEAFO fish species (target and non-target species) the Commission approved in 2009 an investment by the Secretariat in a suitable access

database that can accommodate all SEAFO data requirements. The Commission accepted the offer from Namibia to assist with the development of such a database.

Panel analysis

Before SEAFO was established the Convention Area was an open access regime where unregulated fishing took place. Given the uncertainty of the status of the resource in the Convention Area, the Commission's decision to initially set a low level of effort was therefore wise at that time.

The Commission has adopted robust measures to protect biological diversity through habitat safety and regulation of fishers when it comes to prevention of their exploitation harming the resource base.

The Commission has adopted prudent measures to minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target marine living resources, and impacts on associated or dependent species through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.

Panel recommendations

16. Effort should be placed in collection of data and information in order to build up time series for usage in the assessment of the resources in the Convention Area.
17. The Commission is encouraged to continue with the initiatives of collecting relevant data through scientific observers onboard fishing vessels as adopted through conservation measures since 2005.
18. The Commission should continue its policy that ensures that the fisheries should not be allowed to expand faster than acquisition of information necessary to provide a basis for sustainable utilization.
19. In the presence of a high level of uncertainty regarding stock dynamics in the Convention Area it is recommended that the Commission's major management approach continue to be based on precaution in order to avert potential risks linked with unsustainable resources exploitation, while accumulating sufficient and essential

data and information for stock management. A suitable prototype for the SEAFO to use is the CCAMLR's new exploratory fisheries approach and regulatory framework as it was developed for a situation associated with large levels of uncertainty, incomplete knowledge of stock potential and distribution, large geographical area from which data was to be collected under limited fishing.

20. The conservation and management measures should be supported by an effective implementation regime and a robust enforcement mechanism in order for them to have the desired effect.

4.1.6 Capacity management

In 2006, the Commission adopted Conservation Measure 07/06 relating to Interim Measures to amend the Interim Arrangement of the SEAFO Convention. This measure established a SEAFO record of authorised vessels. Fishing vessels not entered into the record are deemed not to be authorised to fish for, retain on board, tranship or land species covered by the Convention, and therefore are considered to be conducting IUU fishing.

Since the establishment of SEAFO, the following fleets have been operating in the Convention Area:

- pole and line and purse seiners (tuna and tuna like species, pelagic sharks);
- longliners (toothfish, pelagic sharks);
- pot fisheries (red crab); and
- bottom trawl fisheries (deepwater species – orange roughy, alfonsinos, deepwater sharks).

Tuna fleets are operating in the Area under ICCAT management.

The bottom trawl fishery ceased in 2007 because of dwindling resources. However, before that time 10-15 vessels operated each year in this fishery.

Sharks are subject to the FAO IPOA-Sharks, a voluntary instrument, and SEAFO Conservation Measure 04/06 on the Conservation of Sharks Caught in Association with Fisheries Managed by SEAFO. The latter applies only to sharks caught in association with fisheries for species covered by the Convention.

In 2009 only two trap fishing vessels and two longliners were operating under SEAFO measures. The 2010 TAC for deep water species (orange roughy and alfonsino) was set at 250 tonnes.

Panel analysis

The actual fishing capacity in 2009 was only four vessels but the list of authorised vessels included about 35 vessels, hence the potential capacity was much larger than the actual capacity. Obviously, considering the relevant TACs available for the fisheries (850 tonnes in 2010), allowing all authorised vessels onto the fishing grounds would create a high pressure on the resources, could potentially destroy the resources and would increase the risk of IUU fishing. The Commission has taken no actions to prevent or eliminate such potential excess fishing capacity.

However, SEAFO monitors the levels of fishing effort, including taking into account annual notifications of participation in the fisheries by Contracting Parties, and the compliance with this requirement is good.

Current actual fishing capacity is very low and overcapacity thus negligent.

Panel Recommendations

21. The Commission should establish rules that assure that the list of authorised vessels better reflects the actual capacity deployed in the Convention Area.

4.2 Compliance and Enforcement

4.2.1 Flag State Duties

Article 14 of the SEAFO Convention sets out the general flag State responsibilities of the parties, drawing heavily on articles 18 and 19 of the UNFSA. In addition Article 16 of the Convention obliges the parties to establish a system of observation, inspection, compliance and enforcement in order to strengthen the effective exercise of the flag State duties, both under the SEAFO Convention and the UNFSA.

Specific duties apply when parties to the FAO Agreement on Port State Measures act as a flag State. Its vessels shall be required to cooperate during inspections and it shall request inspections or other measures to be taken by another port State if there are clear grounds to believe that one of its vessels has engaged in IUU fishing. A flag State shall furthermore encourage its vessels to use only ports which act consistently with the Agreement, and parties to the Agreement are encouraged to develop international procedures for identifying States which do not act in accordance or in a manner consistent with it. A flag State is also obliged to investigate and take appropriate enforcement actions if it receives an inspection report indicating clear grounds to believe that one of its vessels has engaged in IUU fishing, and shall report to other parties and relevant organisations on actions taken in this regard.

Panel Analysis

SEAFO Contracting Parties operate under strong and detailed flag State duties, contained in the Convention itself. There are also specific duties on Contracting Parties as flag States in many of the conservation measures. Because SEAFO has not established a comprehensive system of observation, inspection, compliance and enforcement, it is of fundamental importance that the SEAFO Contracting Parties discharge their obligations as flag States.

The Panel notes that the Compliance Committee in 2008 expressed concern about the lack of fisheries data such as catch, effort, biological sampling data, observer reports, port inspection reports and VMS data. Despite these concerns, the Panel is not aware of specific incidents where parties have not fulfilled their flag State duties as set out in the Convention and accompanying conservation measures.

Panel Recommendations

22. SEAFO should investigate whether its Contracting Parties comply with their obligations as flag States, and if not, take steps to ensure that flag States provide the data required in relevant conservation measures.

4.2.2 Port State Measures

Article 15 of the SEAFO Convention reflects the duties of SEAFO Contracting Parties as port States. It incorporates article 23 of the UNFSA with the addition of reporting and information requirements if a vessel of a flag State Contracting Party is found by a port State Contracting Party to have violated SEAFO measures. Furthermore SEAFO has in Conservation Measure

09/07 established specific and more detailed port State measures, taking due note of the FAO Model Scheme on Port State Measures. This measure contains provisions on designation of ports, register of ports, port entry requirements, prohibition on landings and transshipments, port inspection procedures and the content of an inspection report.

Panel Analysis

The Compliance Committee has expressed concern on the implementation of the port State inspection scheme as no inspection reports have been available to the Committee concerning vessels landing catch from the SEAFO Convention Area. The Panel shares this concern as it is known that landings takes place in SEAFO Contracting Parties' ports.

SEAFO Conservation Measure 09/07 on port State measures was based on the FAO Model Scheme, which has since been superceded by the adoption of the FAO Agreement on Port State Measures, described in section 3.3.4, above. The Agreement is also based on the FAO Model Scheme, but as a binding agreement its provisions are more elaborate and significantly stronger.

The Agreement was signed in November, 2009 and there has not yet been an opportunity for SEAFO Contracting Parties to review the SEAFO port State measures with a view to updating them in order to fully implement the Agreement.

Panel Recommendations

23. The Panel recommends that SEAFO investigate whether Contracting Parties comply with their obligations as port States.

24. The Panel recommends that the implications of the FAO Agreement on Port State Measures for the current SEAFO port State measures be examined and the latter measures amended as appropriate.

4.2.3 Monitoring, Control and Surveillance

SEAFO has adopted four conservation measures concerning MCS:

- Conservation Measure 09/07 on port State measures;

- Conservation Measure 08/06 on the establishment of an IUU vessel list;
- Conservation Measure 13/09 on transshipments; and
- Conservation Measure 07/06 relating to interim measures to amend the interim arrangement of the SEAFO Convention.

The last measure, with this rather cryptic title, is in fact an amendment of the annex to the Convention on the interim arrangements concerning authorisation and notification, vessel requirements, reporting obligations as well as scientific observation and collection of data.

These interim arrangements were adopted together with the Convention in order to have some MCS measures in place before the organisation became fully operational. The later amendments in essence are related to the introduction of a VMS in SEAFO as well as establishment of a comprehensive record of vessels authorised to fish in the SEAFO Convention Area.

Panel Analysis

The Panel is not aware of violations of these MCS measures by any SEAFO Contracting Party. However, it expressed concern relating to the cooperating non-Contracting Parties Japan and the Republic of Korea, as described in section 4.4.2, below.

As noted under section 4.2.1, above, the Compliance Committee has expressed concern about the lack of fisheries data and reports. There is, however, no information available indicating that compliance issues cause the lack of data.

Article 16 of the Convention obliges Contracting Parties to establish a system of observation, inspection, compliance and enforcement. SEAFO has not established a “system” per se, but has adopted various conservation measures implementing many of the requirements contained in Article 16 of the Convention.

There are, however, elements missing in the adopted measures compared to those envisaged in Article 16, such as inspection programme at sea, including procedures for boarding and inspection of vessels on a reciprocal basis, an observer programme which includes arrangements for placing of observers by a Contracting Party on vessels flying the flag of another Contracting Party and reporting obligations regarding infringements as well as procedures for follow-up on infringements.

One of the functions of the Compliance Committee is to define, develop and make recommendations to the Commission concerning the phased development and implementation of the SEAFO Control and Inspection Scheme. This task has so far not been taken up by the Compliance Committee.

With the rather limited fishing activity in the Convention Area, it is a question whether it currently is worthwhile to establish a comprehensive at sea inspection system as set out in the Convention. The Panel finds that the measures already adopted by SEAFO to a large extent seem to be sufficient for monitoring the fisheries activities of Contracting Parties. Consideration should, however, be given to the implementation of an observer programme for compliance purposes.

As mentioned above, MCS issues are addressed in four different conservation measures. An alternative would be to merge these provisions into one conservation measure and facilitate a more coherent system, although without provisions for at sea inspections.

Panel Recommendations

25. SEAFO should examine the pros and cons of implementing the provisions on observer programmes set out in Article 16(3)(c) of the Convention.

26. The current MCS conservation measures should be merged into one single conservation measure on MCS.

4.2.4. Follow-up on Infringements

Pursuant to article 13(4) of the Convention, each Contracting Party must transmit to the Commission an annual statement of compliance measures it has implemented, including the imposition of sanctions for any violation. Furthermore article 14(3)(a) requires flag States to take measures to ensure that they investigate immediately and report fully on actions taken in response to an alleged violation by a vessel flying its flag.

Procedures must be established for follow-up on infringements detected under a system of observation, inspection, compliance and enforcement that includes standards of investigation, reporting procedures, notification of proceedings, sanctions and other enforcement actions, pursuant to In Article 16 (3)(d) of the Convention. As noted under section 4.2.3, below such a system has yet to be established.

The functions of the Compliance Committee, unless otherwise decided by the Commission, are to provide the Commission with information, advice and recommendations on the implementation of, and compliance with, conservation and management measures. These functions are elaborated in the Committee's terms of reference in article 9 of the Convention, but do not include any additional guidance on how to follow up on infringements.

Panel Analysis

Although the SEAFO Convention contains obligations for its Contracting Parties to follow up alleged infringements, it seems that the work of the Compliance Committee would benefit from having a more detailed and precise description of those duties to implement Article 16 (3) of the Convention.

The description of duties could include providing the date of submission of the report of infringements and requiring the report to contain an indication of the current status of the case (e.g. case pending, under appeal, still under investigation). Any sanctions or penalties imposed should be described in specific terms (e.g. level of fines, value of forfeited fish and/or gear, written warning) and should include an explanation if no action has been taken.

Panel Recommendations

27. More detailed provisions on procedures and requirements for follow-up actions to alleged infringements should be developed.

4.2.5 Cooperative mechanisms to detect and deter non-compliance

SEAFO Contracting Parties are to adopt measures in respect of vessels flying their flag that permit access by observers from other Contracting Parties to carry out functions as agreed by the Commission, pursuant to article 14(3)(g) of the Convention. The Panel is not aware of any Contracting Party that has implemented this provision.

A similar approach is taken under article 16(3)(c) where the Commission is mandated to establish a System for observation, inspection, compliance and enforcement, including an observer programme with arrangements for placing observers by a Contracting Party on vessels flying the flag of another Contracting Party with the latter's consent. The Commission has not adopted measures to this effect.

Article 22 of the SEAFO Convention addresses non-parties and contains obligations and options for Contracting Parties to deter non-compliance by non-parties, including the exchange of information between Contracting Parties and with other RFMOs as well as to take measures to deter activities which undermine the effectiveness of conservation and management measures adopted by the Commission.

RFMOs have established specific schemes designed to combat IUU fishing, which include the listing of vessels found to be involved in such activities within the relevant RFMO's area of competence, so-called negative lists. The schemes set out procedures for the establishment and maintenance of lists of fishing vessels found to have engaged in fishing activities in a manner that has diminished the effectiveness of conservation measures.

SEAFO has such a scheme in place, cf. Conservation Measure 08/06 on establishing a list of vessels presumed to have carried out IUU fishing activities. The scheme sets out activities that should be taken into account when a vessel is considered for the inclusion on a list, procedures for listing and de-listing, measures to be taken against listed vessels as well as recognition of IUU vessel lists established by CCAMLR, NAFO and the North-East Atlantic Fisheries Commission (NEAFC). It should be noted that NAFO and NEAFC recognise the SEAFO IUU Vessel List, available on the SEAFO website.

The newly adopted FAO Agreement on Port State Measures establishes a step by step process for the port State to allow or deny the entry and the use of its port, as described in section 3.3.4 and 4.2.2, above. Advance notification must be required before access to port is granted. Based on the notification as well as other information it may require to determine whether the vessel has engaged in IUU fishing, the port State shall decide whether to authorise or to deny entry into its port. A port State shall, however, deny access if it has sufficient proof that a vessel has engaged in IUU fishing, and in this regard in particular if the vessel is on an IUU vessel list established by an RFMO. In this manner the Agreement indirectly establishes a global IUU vessel list.

SEAFO Contracting Parties are further obliged to report on any sighting of fishing vessels flying the flag of a non-Contracting Party operating in the Convention Area, cf. numbers 25 and 26 of Conservation Measure 07/06.

Panel Analysis

SEAFO seems to have in place adequate mechanisms for detecting and deterring IUU fishing. These mechanisms could, however, be further improved by taking on board, on a

regular basis, global initiatives in the fight to combat IUU fishing, the latest being the relevant provisions of the FAO Agreement on Port State Measures.

Currently the fishing activities in the Convention Area are monitored by reporting requirements, VMS and a ban against at sea transshipments. This situation might be improved by placing observers on board fishing vessels.

Panel Recommendations

28. SEAFO should adopt measures for observation to give effect to Article 14(3)(g) and article 16(3)(c) of the SEAFO Convention.

29. SEAFO should consider amending Conservation Measure 08/06 in order to recognise IUU vessel lists of all relevant RFMOs, which are probably those responsible for managing discrete high seas fish stocks, straddling fish stocks and highly migratory fish stocks.

4.2.6 Market Related Measures

At the annual meeting in 2009 the Commission discussed the possible introduction of a Catch Documentation Scheme (CDS) for *Dissostichus* spp (Patagonian toothfish) in a SEAFO context, similar to that established by CCAMLR. The CDS is designed to track the landings and trade flows of Patagonian toothfish, and to restrict access to markets for toothfish from IUU fishing. This enables the Commission to identify the origin of toothfish entering the markets of all parties to the scheme, and helps determine whether the fish are caught in a manner consistent with CCAMLR's measures.

The system requires specific control by port States. A fishing vessel must provide a prior notification, including a declaration that they have not been engaged in IUU fishing, which also must be confirmed by the flag State of the vessel. Fishing vessels failing to make such a declaration shall be denied port access. If there is evidence that the vessel has fished in contravention of CCAMLR conservation measures, the catch shall not be allowed to be landed or transhipped.

Mindful that all SEAFO Contracting Parties, except for Angola, are also Contracting Parties of CCAMLR, the SEAFO Commission noted in 2009 that for those Contracting Parties there is no need for a specific SEAFO scheme. The Commission encouraged Angola to cooperate with CCAMLR if Patagonian toothfish are landed in its ports or enter its market.

Panel Analysis

The Panel notes the Commission's discussion in 2009, and concludes that there seems to be no need currently to establish specific marked related measures for species managed by SEAFO.

Panel Recommendations

The Panel has no recommendations.

4.3 Decision-making and dispute settlement

4.3.1 Decision-making

The decision-making process in the SEAFO Convention encompasses two elements: a procedure for the taking of decisions in article 17 and a procedure for the implementation of conservation and management and control measures adopted by the Commission in article 23. In each case, the Convention provides for effective decision-making procedures that encourage full initial agreement and prevent Contracting Parties from unilaterally "opting out" of a binding decision. The Rules of Procedure elaborate these processes in Part II.

In particular, article 17 requires decisions of the Commission on matters of substance to be taken by consensus of the Contracting Parties present, and other decisions by simple majority. This approach fosters clearer and deeper general agreement at the outset, as opposed to the majority decision-making approach in many RFMOs where Contracting Parties may vote against the decision and then simply opt out of implementing it.

Article 23 describes the process where conservation and management and control measures become binding within sixty days. It also elaborates an opting out procedure requiring the Contracting Party that does not wish to be bound by the measure to notify the Commission that it is unable to accept the measure, its reasons and proposals for alternative measures which it will implement. Where this happens, any Contracting Party may request a meeting of the Commission to review the measure, and Contracting Parties have the right to declare that they are no longer bound by the measures within thirty days following such meeting. Pending the outcomes of the meeting, any Contracting Party may request an *ad hoc* expert panel to be convened to recommend interim measures which are binding in specified circumstances.

The Commission is functioning smoothly under consensus decision-making for conservation and management and control measures, and article 23 has not been invoked. While a consensus approach to decision-making may effectively weaken the final outcome in some cases, this has not been apparent in SEAFO practice.

The Rules of Procedure for the Scientific Committee, Compliance Committee and the Committee on Administration and Finance clearly and comprehensively elaborate decision-making procedures for those subsidiary bodies.

However, there is an area of concern for an aspect of the work of the Scientific Committee. The functions of this Committee include providing the Commission with scientific advice and recommendations for the formulation of conservation and management measures and it may seek expert advice as required on an *ad hoc* basis pursuant to article 10 of the Convention. The Rules of Procedure are unclear as to how the Committee may take decisions to generate the information it needs to use as a basis for such advice. It is not a matter of substance but, at the same time, a decision by majority vote would not seem appropriate.

The Rules of Procedure for the Scientific Committee are comprehensive and adequate for advice formulation. However, the system is rigid and unlikely to be the most effective in the preparatory work that is necessary for the Committee to decide on appropriate advice. Rule 37 allows the Committee to establish subsidiary bodies, with the approval of the Commission. These bodies would then be subject to the same Rules of Procedure unless the Scientific Committee decides otherwise.

This system may be too formalized for tasks such as the generation of data and technical assessment, and consequently the Rules of Procedure may be too rigid. It should be considered whether these and similar tasks could be done more efficiently by an informal working group, the Secretariat or by outsourcing them. In any case, the Scientific Committee should review the outcomes of application of the Rules of Procedure to such tasks.

In a related situation, decision-making by a subsidiary body of the Scientific Committee does not appear to be effective. The SSC was established in 2006 to carry out, among other things, analysis of existing fisheries data for the review and approval of the Scientific Committee. It was intended to be a forum for (1) collating data and (2) assessing the fish stocks in the SEAFO area. As noted in section 4.1.4 above, the SSC allows more meeting time but it is not demonstrated that this additional time has led to improved assessments. It

appears that the SSC functions simply as an extension of the Scientific Committee, increasing the meeting time by three days.

Panel Analysis

The decision-making provisions in the Convention are robust and no Contracting Party has opted out of a measure adopted by consensus. There is no possibility under the Convention of unilaterally opting out of a binding decision for no reason. The process is fair and balanced and potentially could involve significant expense, time and human resources of all Contracting Parties and the Commission as they consider the reasons for opting out and proposed alternative measures. It supports the objective of the Convention and has served as precedent for decision-making processes of other bodies.

However, there is a need for clarification of the procedures governing Scientific Committee decisions and benefits of establishing the SSC or the use of other mechanisms for the purpose of generating or updating data, assessments and analyses.

Panel Recommendations

30. The Commission should undertake a review of the Scientific Committee Rules of Procedure in respect of the establishment of subsidiary bodies and decision-making for the generation and update of data, assessments and analyses.

4.3.2 Dispute settlement

A compulsory dispute settlement process is described in article 24 of the Convention which generally incorporates requirements of articles 28, 29 and 30 of the UNFSA. It obliges the Contracting Parties to cooperate to prevent disputes as a first step, then to consult with a view to resolving the dispute. It establishes a process relating to technical disputes, which are to be referred to an *ad hoc* expert panel to be established in accordance with procedures adopted by the Commission at its first meeting. Where a dispute has not been resolved within a reasonable time, it must be submitted for binding decision at the request of any Contracting Party in accordance with Part XV of the 1982 Convention or, for disputes relating to straddling stocks, Part VIII of the 1995 Agreement, whether or not the parties to the dispute are parties to those instruments.

There have been no disputes between Contracting Parties of SEAFO.

Panel Analysis

The dispute resolution process adequately implements international instruments. However, the *ad hoc* expert panel has not been established, nor have procedures for its establishment been adopted. The Panel does not foresee disputes in the near future, but believes it is essential to have this mechanism in place before any dispute may arise. Such arrangements will avoid possible intensification and continuation of a dispute and make possible its speedy and effective resolution.

Panel Recommendations

31. Procedures for the establishment and operation of the *ad hoc* expert panel should be adopted to implement article 24(3) of the SEAFO Convention.

4.4 International Cooperation

4.4.1 Transparency

Transparency in the functioning of RFMOs promotes objectivity and implementation of modern principles, science and other considerations for fisheries management and in so doing leads to stronger and more informed fisheries governance. The best practices of organisations ensure transparency in such activities as attendance at meetings, decision-making procedures, partnerships, research, website content and operation and publications. Among other things, the benefits of transparency include maximization of benefits to both the RFMO and observer through the communication, potential coordination and crossover between their areas of work. At the same time, it is recognized that confidentiality must be maintained for certain information.

Transparency in meetings of the Commission is addressed in article 8(6)–(9) of the Convention, which provides for the participation as observers by representatives from non-parties, inter-governmental organisations and non-governmental organisations. This provision is generally based on Article 12 of the UNFSA. The Commission is to adopt rules of procedure to govern such participation and provide for transparency in the activities of the Organisation. Article 8(9) provides that the “rules shall not be unduly restrictive and shall provide for timely access to records and reports of the Organisation, subject to the procedural rules on access to them. The Commission shall adopt such rules of procedure as soon as possible.”

In order that transparency can take effect at an early time, the Convention provides in article 8(10) that non-parties and intergovernmental organisations may be invited to participate as observers until the rules regarding such participation are adopted by the Commission.

Part VI of the Rules of Procedure (Rules 33-38) governs observers, and are clear and transparent themselves. They provide that observers may be invited to attend meetings of the Commission from signatories of the Convention, non-Contracting Parties, FAO and inter-governmental organisations. (Rule 33 (a) and (b)) Non-governmental organisations may also be invited unless the majority of Contracting Parties object. (Rule 33(c)) Where Contracting Parties had not considered inviting an observer for its next meeting, the Executive Secretary may draw the Contracting Parties' attention to his view that the work would be facilitated at the meeting by the attendance of an observer and a decision may be taken in accordance with the Rules. (Rule 34)

The Rules regarding attendance at public and private sessions of the Commission are clear and open, allowing attendance unless otherwise restricted by Contracting Parties. (Rule 35) The Chair may invite observers to address the Commission unless there is an objection (Rule 36) and the submission of information documents to Contracting Parties on matters under consideration in the Commission is permitted. Observers must be granted timely access to documents subject to confidentiality rules of the Commission, and a clear process for the issuance of invitations to observers is provided in Rule 38.

In practice, attendance at annual meetings by observers has been increasing from none in 2004 and 2005 to four organisations in each of 2008 and 2009. Over the years, they have represented the Benguela Current Commission (BCC), Current Commission, FAO, the Namibia Fisheries Observer Agency, the SADC Secretariat, Taiyo A & B Co Ltd and World Wide Fund. Several States have also attended as observers, but this status is not noted in the List of Participants. They have included Japan and South Africa prior to their becoming Contracting Parties of SEAFO, as well as Iceland, the Republic of Korea, the United Kingdom and the United States of America.

The Rules of Procedure for the Scientific Committee are comprehensive, as noted in section 4.3.1, above. They provide for transparency similar to procedures for Commission meetings in Parts relating to the taking of decisions (Part II), preparation for meetings (Part IV), the conduct of business at meetings (Part V) and observers (Part VI). What is not clear in either the Convention or Rules of Procedure for the Scientific Committee are the responsibility and

process for commissioning independent studies to update stock assessments and other analyses.

The Rules of Procedure for the Committee on Administration and Finance are the same as those of the Scientific Committee, except that they do not allow for observers due to the fact that the subject matter is particular to Contracting Parties.

A different approach was taken for the Compliance Committee, where the Commission's general Rules of Procedure were simply applied *mutatis mutandis* to its business.

The transparency of decision-making procedures of the Commission is indicated in section 4.3.1 above, and interaction with other organisations is addressed in section 4.4.4 below.

The Commission's website is comprehensive and generally up-to-date, and enhances the transparency of its procedures. As with other RFMOs, there is a "Contracting Parties Only" link, used very sparingly for information that is confidential to Contracting Parties. The website includes information on the following: SEAFO, basic documents, the Commission, Scientific Committee, Compliance Committee, Committee on Administration and Finance, Conservation and Management Measures, Meetings, Publications, Press Releases, Catch Information, IUU Vessel List, Authorised Vessels, Authorised Ports, Performance Review and Special Requirement Fund.

Meeting documents are posted on the website prior to the commencement of the meeting. All documents and reports from the meeting are posted after it takes place.

Maintenance of the website is outsourced and requires considerable time and input of the Secretariat to ensure it is kept accurate and up to date.

Panel Analysis

The Convention, Rules of Procedure and practice of the Commission and its subsidiary bodies all provide for and apply transparency to the functioning of the organisation in a satisfactory manner that reflects the best practices of RFBs. The challenges of keeping the website up to date through outsourcing its maintenance are well handled given that there do not seem to be other reasonable alternatives.

Panel Recommendations

32. The Panel endorses a continuation of the transparency in SEAFO administration and operations and has no recommendations.

4.4.2 Relationship to non-Contracting Parties cooperating with SEAFO

Cooperation with non-parties is governed by Article 22 of the Convention, which generally implements Part V of the UNFSA. It generally obliges the Contracting Parties to request non-parties whose vessels fish in the Convention Area to cooperate fully with the Organisation either by becoming party to or by agreeing to apply the conservation and management measures. It encourages the exchange of information and take measures to deter fishing activities by fishing vessels of non-parties which undermine the effectiveness of the Commission's conservation and management measures. The Commission is empowered to invite non-parties to send observers to its meetings, or to the meetings of any subsidiary bodies of the Organisation.

Some States that participated in the negotiations to establish SEAFO have not become Contracting Parties of the Organisation. They are States that have signed the Convention but not taken further steps to ratify it, notably the coastal State of the United Kingdom, as well as Iceland and the United States.

The non-Contracting Parties with vessels engaged in fishing in the Convention Area that cooperate with SEAFO measures have been Japan and the Republic of Korea. Japan took part in the negotiation of the SEAFO Convention, and has attended four of the six annual Commission meetings as observer (except for 2004 and 2006). The Republic of Korea attended the last two Commission meetings in 2008 and 2009. In 2009, there were two Japanese and two Korean vessels fishing for species subject to SEAFO conservation and management measures.

Japan has been providing data for its fishing vessels for the crab fishery (usually not more than two vessels in any year) since the second meeting of the Commission in 2005, and in that year requested to be a cooperating non-party to SEAFO. However, the Commission did not envisage the introduction of such a mechanism, and all Contracting Parties urged Japan to become a party to SEAFO.

In 2007, the two vessels flagged by the Republic of Korea, a non-Contracting Party of SEAFO, were sighted in the Convention Area targeting Patagonian toothfish, and had failed to comply with SEAFO VMS requirements. When contacted by SEAFO, the Republic of Korea admitted that the vessels were undermining measures adopted by SEAFO. Later, the Republic of Korea requested SEAFO to include the vessels, and three additional longliners, on the authorized vessel list. However, the Commission declined the request at its meeting in 2008. Contracting Parties of the Compliance Committee in 2008 had also expressed concerns on the difference of catch reported and landed weight of Patagonian toothfish by one of the Korean flagged vessels. In addition, they also expressed concern about the lack of VMS linkage to the Secretariat by the Korean flagged vessel, and recommended that the Commission urge this linkage to be established without further delay.

In 2008 the Compliance Committee also reviewed the activities of the Japanese flagged vessel that was found to be fishing in a SEAFO closed area. The Government of Japan regretted the situation and promised to take action to ensure that it would not happen again.

At the fourth meeting of the Commission in 2006 the Commission decided to send a strong message to both countries requesting their full cooperation in providing fisheries data, to fully comply with SEAFO measures and to join the organisation no later than 2009. If they didn't take concrete steps to ratify the Convention, their vessels would be included in the SEAFO IUU Vessel List. Both Japan and the Republic of Korea attended the fifth meeting of the Commission in 2008, and reported they were taking concrete steps to become party to the Convention. At its second session in 2008, the SEAFO Compliance Committee expressed satisfaction that the Japanese and Korean fishing vessels had responded to the concerns previously expressed and were complying with SEAFO conservation measures.

The Commission decided to uphold the decision that only vessels from Contracting Parties will be listed in the SEAFO Authorised Vessel List.

In 2009, the only countries that provided landings data for the SEAFO Area were Japan and the Republic of Korea and available VMS data suggest that these vessels were the only ones fishing in the Area in accordance with SEAFO measures.

As noted above, there have been strong and repeated calls by the Commission and subsequent communications from the Chairperson for both Japan and the Republic of Korea to become parties to SEAFO. In 2009 at the sixth meeting of the Commission, the Chairperson reported on the outcome of contacts made intersessionally with the authorities

of Japan and the Republic of Korea in respect of ratification. Both countries undertook to complete the ratification process during 2010, and Japan became a Contracting Party of SEAFO in January 2010

Panel Analysis

Relations with Japan and the Republic of Korea, as non-Contracting Parties cooperating with SEAFO measures, have been a cause of concern of the SEAFO Contracting Parties, and hampered the work of the Commission. Recently, however, it appears that relations have improved and Japan's membership in SEAFO is a welcome development.

As noted in section 1.1, other States, including those that participated in the negotiations to establish SEAFO and those that attend SEAFO meetings as observers, have not become Contracting Parties, including the United Kingdom, Iceland and the United States. Their accession to the Convention would strengthen the Organisation and its performance.

Panel Recommendations

33. The Commission should as a priority continue its efforts to encourage the Republic of Korea to complete the ratification process to become a Contracting Party, and in addition efforts should be made to encourage other relevant States to accede to the Convention.

4.4.3 Relationship to non-cooperating non-Contracting Parties

At its sixth meeting in 2009, the Commission agreed that a SEAFO IUU vessel list be compiled incorporating the IUU vessel lists established by NAFO, NEAFC and CCAMLR following the procedures set out in Paragraph 18 and 19 of Conservation Measure 08/06. The Secretariat has done so and placed the SEAFO IUU vessel list on the SEAFO webpage.

At the first meeting of the Compliance Committee in 2008, the fishing activities of Togolese flagged vessels in the Convention Area and subsequent correspondence between the Togolese Government and Chairperson of the Commission were reviewed. The Committee recommended that the Secretariat send a strong letter to the Togolese Authority urging Togo to join SEAFO and to adhere to its conservation and management measures, and to notify Togo that any Togolese vessel undermining SEAFO conservation and management

measures would be declared an IUU fishing vessel. This was sent in June 2009 and no further response has been received from Togo authorities.

The Commission has noted that many fishing vessels in the Convention Area are fishing for species that are not under the SEAFO mandate.

Panel Analysis

Fishing by vessels from non-cooperating non-Contracting Parties in the Convention Area does not appear to be a major problem. Where it occurs, the Secretariat takes action as directed by the Commission, and the IUU vessel list effectively serves as a deterrent to undermine conservation and management measures.

Panel Recommendation

34. SEAFO should continue to monitor any future fishing activities by vessels from non-cooperating non-Contracting Parties in the Convention Area that may take place, and take action as appropriate.

4.4.4 Cooperation with other international organisations

The Organisation is mandated by article 18 of the Convention to cooperate, as appropriate, with the FAO and with other specialised agencies and organisations on matters of mutual interest. It must also seek to develop cooperative working relationships with other inter-governmental organisations which can contribute to their work and which have an interest in ensuring the long-term conservation and sustainable use of living marine resources in the Convention Area. The Commission is empowered to enter into agreements with these other organisations and invite them to send observers to its meetings, or to the meetings of any subsidiary bodies of the Organisation. Further, cooperation is encouraged with other relevant fisheries management organisations.

The Commission cooperates with international and regional organisations in a structured and methodical manner. The agenda for Commission meetings routinely contains an item relating to such cooperation, where Contracting Parties are nominated to represent SEAFO at the upcoming meetings of regional or international organisations and those previously nominated report on the meetings attended during the preceding year. This is an economical and practical approach, and takes into account the human and budgetary constraints that do

not allow the Secretariat to attend such meetings. Cooperation in this manner has occurred in recent years with the following organisations:

International: Meetings, workshops and other fora of FAO¹ and the UN system in general²

RFMOs: CCAMLR, ICCAT, NAFO, NEAFC, Regional Fishery Body Secretariats
Network

Others: BCC, Meeting of the Agreement on the Conservation of Albatrosses and
Petrels and the SADC Ministerial Conference

There is direct cooperation between the SEAFO Secretariat and the BCC. The latter sends observers to SEAFO Commission meetings and SEAFO attends the BCC Management Board as an observer.

A full range of issues relevant to SEAFO is reported from the above meetings, and the Secretariat follows up to strengthen cooperation as appropriate. In addition, there is ongoing communication and cooperation with relevant RFBs through exchanging information on VMS reports, fishing activities and lists of IUU and authorized fishing vessels.

The SEAFO webpage shows links to the following organisations, apparently reflecting (but not stating) their relevance to the SEAFO mandate and operations: FAO, the Pacific Islands Forum Fisheries Agency (FFA), CCAMLR, ICCAT, NEAFC, NAFO, the North Atlantic Marine Mammal Commission (NAMMCO) and the North Atlantic Salmon Conservation Organization (NASCO).

There are currently no formal Memoranda of Understanding or agreements between SEAFO and other organisations.

Panel Analysis

The current method of liaising with other organisations, and identification of the target organisations, are satisfactory given the current human and financial resources of the SEAFO Secretariat, existing fishing activities in the Convention Area and the standard forms of cooperation among RFMOs.

¹ Including the COFI, Technical Consultation to develop an Agreement on Port State Measures, the Coordinated Working Party on Fisheries Statistics and Workshops on Ecosystem Approach to Fisheries Management, Port State Measures to combat IUU fishing.

² For example, SEAFO responded fully to the questionnaire for the Secretary-General's Report for the May, 2010 Resumed Review Conference on the UN UNFSA.

It is not considered necessary at this time to enter into formal agreements with other organisations, since liaison and cooperation are carried out on a sound and regular basis.

The outcomes of the liaison with other organisations are evident from the annual reports of Commission meetings, but there is no clear description on the SEAFO website of important areas of cooperation. For example, the reasons for including FFA, NAMMCO and NASCO as linkages are not evident, and the BCC is not referenced.

Panel Recommendations

35. The current means of liaison with other international and regional organisations is satisfactory. However, for greater clarity, it would be useful to update the linkages site on the SEAFO webpage to reflect important areas of cooperation with other organisations (such as the sharing of IUU vessel lists and the cooperation with BCC) and to ensure that the list is complete and reflects all organisations with which SEAFO cooperates or which are important to its work.

4.4.5 Special requirements of developing States

Special requirements of developing States have been addressed by SEAFO in its Convention, and by activities to secure funding through the UN Special Assistance Fund and most recently by establishing a Special Requirements Fund and adopting principles, guidelines and operational procedures for the Fund.

Article 21 of the SEAFO Convention addresses the recognition of the special requirements of developing States in the region. It requires Contracting Parties to give full recognition to the special requirements of developing States in the region in relation to conservation and management of fishery resources and the development of such resources, and has comprehensive provisions based generally on Articles 24 and 25 of the UNFSA.

In particular, Article 21(4) provides that cooperation with developing States in the region is to include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, and activities directed specifically towards:

- improved conservation and management of the fishery resources covered by this Convention through collection, reporting, verification, exchange and analysis of fisheries data and related information;
- stock assessment and scientific research; and
- MCS, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

Assistance to developing coastal States was first considered under a separate agenda item at the third meeting of the Commission in 2006, where the States were encouraged to take advantage of the Part VII Special Assistance Fund under the UNFSA. The Commission commended the Secretariat for its initiative of sourcing support from the Fund for participants from Namibia and South Africa to attend SEAFO Annual Meetings.

The Commission further encouraged coastal developing States party to SEAFO to take advantage of the funds available under the Global Environmental Facility - Strategic Partnership for Sustainable Fisheries Investment Fund in Sub-Saharan Africa and endorsed SEAFO's Contracting Parties to participate in the Regional Advisory Committee for the Strategic Partnership for Sustainable Investment Fund in Sub-Saharan Africa on the understanding that the Fund would be responsible for expenses related to such participation. Similar consideration was given to the issue in 2007, noting that the Part VII Fund had provided financial support to representatives from South African and Namibia to attend annual SEAFO meetings.

In 2008, developing Contracting Party States expressed their concerns in respect of fulfilling their responsibilities and duties in the implementation of the Convention. They requested SEAFO to consider providing assistance in line with Article 21 of the Convention, and in 2009 a Special Requirements Fund was established and principles, guidelines and operational procedures for the Fund were adopted. At that meeting, the head of the Norwegian delegation indicated that Norway would be in position to contribute N\$ 100,000.00 towards the Special Requirements Fund in 2010, and that the European Union would examine the possibility of providing a similar amount.

The principles on which the Fund is based include the development of technical capacity, filling gaps in programmes, ease of administration, equity, sustainable interventions, extended participation, partnerships with existing regional organisations and accountability. Guidelines and operational procedures are provided, as well as criteria for selection and evaluation by the Secretariat.

Panel Analysis

SEAFO has addressed the issues relating to the special requirements of developing States in a realistic and proactive manner that meets the objectives and requirements of the Convention, as well as the practical needs of developing State Contracting Parties to ensure their active participation in and support of the work of SEAFO. SEAFO acts both as catalyst to encourage its Contracting Parties to apply for available support from other sources, and as a source for supporting specified activities. The principles, guidelines and operational procedures for the Fund are comprehensive and well constructed.

Panel Recommendations

36. The Panel encourages further contributions to be made to the Special Requirements Fund.

4.5 Financial and Administrative Issues

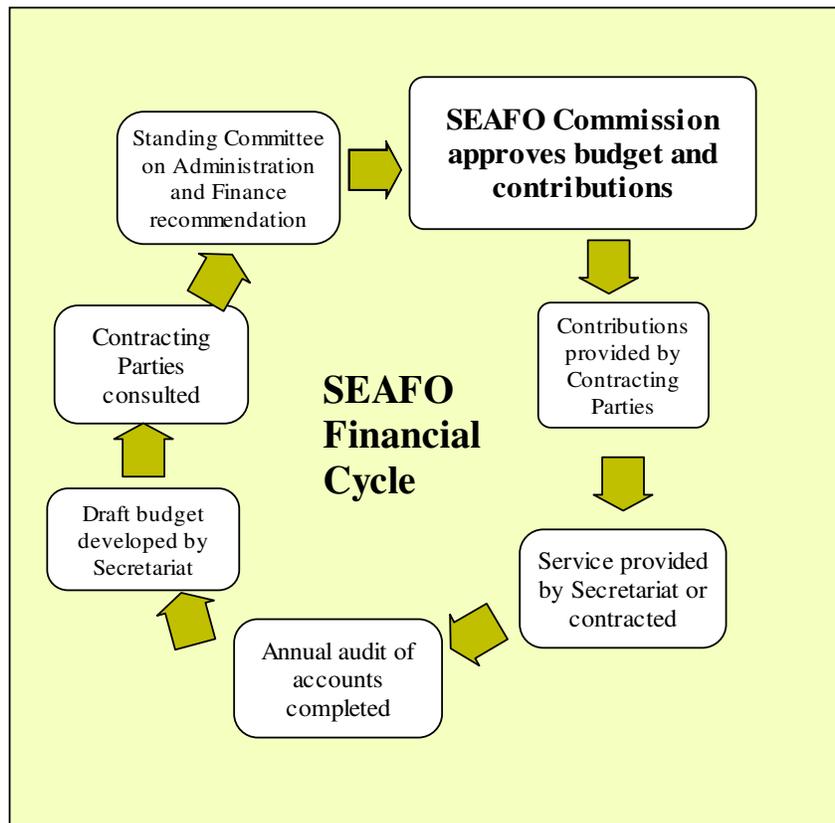
4.5.1 Availability of resources for activities

The Financial Regulation governs the financial administration of the Commission. The Secretariat prepares annually the draft budget accompanied by a statement for the ensuing financial year. The draft budget is accompanied by details both of the appropriations made for the previous year and estimated expenditure against those appropriations, together with such information annexure as may be required by Contracting Parties of the Commission or deemed necessary or desirable by the Executive Secretary.

The Executive Secretary submits the draft budget to all Contracting Parties of the Commission at least 60 days prior to the annual meeting of the Commission, pursuant to article 12 (2) of the Convention. At the same time, and in the same format as the draft budget, the Secretariat prepares and submits to all Contracting Parties of the Commission a forecast budget for the subsequent financial year.

At each annual meeting, the Standing Committee on Administration and Finance will scrutinize the draft budget and draft finale proposals to the Commission. The Commission finally adopts the budget by consensus. The SEAFO financial cycle is shown in Figure 4.

**Figure 4
SEAFO Financial Cycle**



Currently, the budget contribution is divided equally among the Contracting Parties. The Financial Regulations have procedures in place dealing with Contracting Parties whose contributions are in arrears.

The Headquarters Agreement was signed during September 2009 by the Hon. Minister of Fisheries and Marine Resources of Namibia and the Chairperson of SEAFO. It took five years to agree to the content of the Agreement resulting in additional cost to the Organisation with regard to the taxation of staff. Furthermore, the continuous negotiations have constrained the Commission's meetings and have had an impact on the performance of the Commission.

4.5.2 Efficiency and cost- effectiveness

Article 12 of the Convention provides that at each annual meeting, the Commission shall adopt the Organisation's budget and in determining the size of the budget, shall give due consideration to the principle of cost effectiveness. The Commission has therefore contracted PricewaterhouseCoopers to audit the SEAFO accounts annually. The audit report is circulated to the Contracting Parties and tabled at the Standing Committee on Administration and Finance to formulate proposal to the Commission. The reports to date were unqualified and therefore adopted by the Commission.

Although the financial systems have been established as described above, a continuing problem for the Commission is the failure by some Contracting Parties to pay their contributions on time.

Panel Recommendations

37. Contracting Parties should strengthen their efforts to pay their SEAFO contributions on time.

5. A COMPENDIUM OF THE PANEL RECOMMENDATIONS

CONSERVATION AND MANAGEMENT

Status of living marine resources

1. The Scientific Committee should develop a strategy for the development of a status report, including a general overview, of the fishery resources in the Convention Area. The report should include information on the stock structure, total abundance, distribution of the biomass between zones and the fishing pressure by zone. Red crab should be given first priority for such a status report.
2. The transboundary nature of several fishery resources is recognised and scientific cooperation for evaluating of the status of the resources with other organisations should be encouraged, e.g. in the form of joint working groups with the CCAMLR for Patagonian toothfish and with Namibia and Angola for red crab.

Ecosystem approach

3. The Commission should expressly define priorities for the work of the Scientific Committee based on concerns relating to both the ecosystem in general and the fishery resources in particular.
4. While ecosystem-related priorities are highly relevant they should not overshadow other major tasks.

Data collection and sharing

5. The transparency of the scientific data should be improved by providing more information in the report of the Sub-Committee of the Scientific Committee or alternatively, or in addition, by providing this information on the SEAFO website.
6. The Scientific Committee should give a high priority to the completion of identification keys for fish. This is necessary for an observer programme.

7. Emphasis should be placed on extending the database for existing fisheries. The Panel notes that the scientific observers will provide essential data for this database.

Quality and provision of scientific advice

8. The basis for the Scientific Committee advice should be transparent and clear to all involved. In this regard, the report of the Scientific Committee should clearly describe the information on which its advice is based and the report of the SSC should document all assessments relevant to such advice.

9. The Scientific Committee should have a clear set of scientific criteria on which to formulate its advice. Such criteria should be based on those in international fisheries instruments as agreed by the Commission, for example the objective to maintain or restore stocks to levels that can produce the MSY with the aim of achieving these goals for depleted stocks on an urgent basis and where possible not later than 2015 as stated in the 2002 Johannesburg Plan of Implementation.

10. When there is no scientific basis, the Commission should provide clear instructions to the Scientific Committee on the interpretation and implementation of the precautionary approach.

11. The Commission should provide explicit guidance for the Scientific Committee on priorities for its advice. Consideration of such priorities might be facilitated through a modification of the structure of the Scientific Committee, such as more extensive use of focused expert groups working either by correspondence or at meetings.

12. The structure of the Scientific Committee report and the readership of the various scientific reports should be analysed and the reports be redesigned to be fit for purpose taking the following considerations into account.

e. The Scientific Committee report should be an advisory report, with the Commission and highly interested stakeholders as its primary readership. It should include a summary of the scientific information that underpins the advice.

f. The SSC report should present the technical assessments that form the

basis for the deliberations by the Scientific Committee. The readership of that report is the Scientific Committee and the wider science community.

g. There should be similar technical reports available as background analysis for other topics that require review by the Scientific Committee.

h. The Secretariat should create a series of working papers, or research documents, which should be coded and a copy kept for future reference. Papers that are not properly coded may be discarded after the meeting.

13. The roles and functions of the Scientific Committee and SSC should be clarified, duplication of work avoided and decision-making clarified as described in section 4.3.1.

14. A review should be undertaken to explore arrangements for giving the Secretariat the responsibility to compile data and produce working papers for the Scientific Committee and SSC, with a view to attaining a smooth workflow. The review should also identify the role of the coordinating scientists in this regard.

15. The Contracting Parties should support the scientific coordinators to allow efficient use of meeting time at the Scientific Committee.

Adoption of conservation and management measures

16. Effort should be placed in collection of data and information in order to build up time series for usage in the assessment of the resources in the Convention Area.

17. The Commission is encouraged to continue with the initiatives of collecting relevant data through scientific observers onboard fishing vessels as adopted through conservation measures since 2005.

18. The Commission should continue its policy that ensures that the fisheries should not be allowed to expand faster than acquisition of information necessary to provide a basis for sustainable utilization.

19. In the presence of a high level of uncertainty regarding stock dynamics in the Convention Area it is recommended that the Commission's major management

approach continue to be based on precaution in order to avert potential risks linked with unsustainable resources exploitation, while accumulating sufficient and essential data and information for stock management. A suitable prototype for the SEAFO to use is the CCAMLR's new exploratory fisheries approach and regulatory framework as it was developed for a situation associated with large levels of uncertainty, incomplete knowledge of stock potential and distribution, large geographical area from which data was to be collected under limited fishing.

20. The conservation and management measures should be supported by an effective implementation regime and a robust enforcement mechanism in order for them to have the desired effect.

Capacity management

21. The Commission should establish rules that assure that the list of authorised vessels better reflects the actual capacity deployed in the Convention Area

COMPLIANCE AND ENFORCEMENT

Flag State Duties

22. SEAFO should investigate whether its Contracting Parties comply with their obligations as flag States, and if not, take steps to ensure that flag States provide the data required in relevant conservation measures.

Port State Measures

23. The Panel recommends that SEAFO investigate whether Contracting Parties comply with their obligations as port States.
24. The Panel recommends that the implications of the FAO Agreement on Port State Measures for the current SEAFO port State measures be examined and the latter measures amended as appropriate.

Monitoring, Control and Surveillance

25. SEAFO should examine the pros and cons of implementing the provisions on observer programmes set out in Article 16(3)(c) of the Convention.

26. The current MCS conservation measures should be merged into one single conservation measure on MCS.

Follow-up on Infringements

27. More detailed provisions on procedures and requirements for follow-up actions to alleged infringements should be developed.

Cooperative Mechanisms to Detect and Deter Non-compliance

28. SEAFO should adopt measures for observation to give effect to Article 14(3)(g) and article 16(3)(c) of the SEAFO Convention.

29. SEAFO should consider amending Conservation Measure 08/06 in order to recognise IUU vessel lists of all relevant RFMOs, which are probably those responsible for managing discrete high seas fish stocks, straddling fish stocks and highly migratory fish stocks.

Market Related Measures

The Panel has no recommendations.

DECISION MAKING AND DISPUTE SETTLEMENT**Decision-making**

30. The Commission should undertake a review of the Scientific Committee Rules of Procedure in respect of the establishment of subsidiary bodies and decision-making for the generation and update of data, assessments and analyses.

Dispute settlement

31. Procedures for the establishment and operation of the ad hoc expert panel should be adopted to implement article 24(3) of the SEAFO Convention.

INTERNATIONAL COOPERATION**Transparency**

32. The Panel endorses a continuation of the transparency in SEAFO administration and operations and has no recommendations.

Relationship to non-Contracting Parties cooperating with SEAFO

33. The Commission should as a priority continue its efforts to encourage the Republic of Korea to complete the ratification process to become a Contracting Party, and in addition efforts should be made to encourage other relevant States to accede to the Convention.

Relationship to non-cooperating non-Contracting Parties

34. SEAFO should continue to monitor any future fishing activities by vessels from non-cooperating non-Contracting Parties in the Convention Area that may take place, and take action as appropriate.

Cooperation with other international organisations

35. The current means of liaison with other international and regional organisations is satisfactory. However, for greater clarity, it would be useful to update the linkages site on the SEAFO webpage to reflect important areas of cooperation with other organisations (such as the sharing of IUU vessel lists and the cooperation with BCC) and to ensure that the list is complete and reflects all organisations with which SEAFO cooperates or which are important to its work.

Special requirements of developing States

36. The Panel encourages further contributions to be made to the Special Requirements Fund.

FINANCIAL AND ADMINISTRATIVE ISSUES

Availability of resources for RFMO activities -efficiency and cost-effectiveness

37. Contracting Parties should strengthen their efforts to pay their SEAFO contributions on time.

CRITERIA FOR THE PERFORMANCE REVIEW

Area	General criteria	Detailed criteria
1. <i>Conservation and management</i>	Status of living marine resources	<ul style="list-style-type: none"> • Status of marine living resources under the purview of SEAFO. • Trends in the status of those resources. • Status of species that belong to the same ecosystems as, or are associated with or dependent upon, targeted marine living resources. • Trends in the status of those species.
	Ecosystem approach	<ul style="list-style-type: none"> • Extent to which SEAFO decisions take account of and incorporate an ecosystem approach to management.
	Data collection and sharing	<ul style="list-style-type: none"> • Extent to which SEAFO has agreed formats specifications and time frames for data submissions. • Extent to which SEAFO Contracting Parties, individually or through SEAFO, collect and share complete and accurate data concerning marine living resources and other relevant data in a timely manner. • Extent to which fishing and research data and fishing vessel and research vessel data are gathered by SEAFO and shared among Contracting Parties. • Extent to which SEAFO is addressing any gaps in the collection and sharing of data as required.
	Quality and provision of scientific advice	<ul style="list-style-type: none"> • Extent to which SEAFO receives and acts on the basis of the best scientific advice relevant to the marine living resources under its purview, as well as to the effects of harvesting, research, conservation and associated activities, on the marine ecosystem.
	Adoption of conservation and management measures	<p>Extent to which SEAFO has adopted conservation and management measures for marine living resources that ensure the conservation, including rational use, of those resources and are based on the best scientific evidence available.</p> <ul style="list-style-type: none"> • Extent to which SEAFO has applied a precautionary approach as set forth in the Code of Conduct for Responsible Fisheries Article 7.5, including the application of precautionary reference points. • Extent to which SEAFO has moved toward the adoption of conservation and management measures for previously unregulated fisheries, including new and exploratory fisheries. • Extent to which SEAFO has taken due account of the need to conserve marine biological diversity and minimise harmful impacts of harvesting, research, conservation and associated activities on

		<p>marine living resources and marine ecosystems.</p> <ul style="list-style-type: none"> • Extent to which SEAFO has adopted measures to minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target marine living resources, and impacts on associated or dependent species through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.
	Capacity management	<ul style="list-style-type: none"> • Extent to which SEAFO has identified fishing capacity levels commensurate with the conservation, including rational use, of marine living resources. • Extent to which SEAFO has taken actions to prevent or eliminate excess fishing capacity and effort. • Extent to which SEAFO monitors the levels of fishing effort, including taking into account annual notifications for participation by Contracting Parties.
2. Compliance and enforcement	Flag State duties	<ul style="list-style-type: none"> • Extent to which SEAFO Contracting Parties are fulfilling their duties as Flag States under the Convention establishing SEAFO, pursuant to measures adopted by SEAFO, and under other international instruments, including, <i>inter alia</i>, the 1982 Law of the Sea Convention, 1995 UN UNFSA and the 1993 FAO Compliance Agreement, as applicable.
	Port State measures	<ul style="list-style-type: none"> • Extent to which SEAFO has adopted measures relating to the exercise of the rights and duties of its Contracting Parties as Port States, as reflected in the Code of Conduct for Responsible Fisheries Article 8.3. • Extent to which these measures are effectively implemented.
	Monitoring, control and surveillance	<ul style="list-style-type: none"> • Extent to which SEAFO has adopted integrated MCS measures (e.g. required use of VMS, observers, catch documentation and trade tracking schemes, restrictions on transshipment, boarding and inspection schemes). • Extent to which these measures are effectively implemented.
	Follow-up on infringements	<ul style="list-style-type: none"> • Extent to which SEAFO, its Contracting Parties follow up on infringements to management measures.
	Cooperative mechanisms to detect and deter non-compliance	<ul style="list-style-type: none"> • Extent to which SEAFO 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 utilised.
	Market-related measures	<ul style="list-style-type: none"> • Extent to which SEAFO has adopted measures relating to the exercise of the rights and duties of

		its Contracting Parties as Market States for marine living resources.
3. <i>Decision-making and dispute settlement</i>	Decision-making	<ul style="list-style-type: none"> • Efficiency of Commission meetings and working groups in addressing critical issues in a timely and effective manner. • Extent to which SEAFO has transparent and consistent decision making procedures that facilitate the adoption of conservation measures in a timely and effective manner. • Existence of an informal mechanism of cooperation between Contracting Parties based on reciprocities.
	Dispute settlement	<ul style="list-style-type: none"> • Extent to which SEAFO has Established adequate mechanisms for resolving disputes.
4. <i>International cooperation</i>	Transparency	<ul style="list-style-type: none"> • Extent to which SEAFO is operating in a transparent manner, taking into account the Code of Conduct for Responsible Fisheries Article 7.1.9. • Extent to which SEAFO decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.
	Relationship to non-Contracting Parties cooperating with SEAFO	<ul style="list-style-type: none"> • Extent to which SEAFO facilitates cooperation between Contracting Parties and non-Contracting Parties, including through encouraging non-Contracting Parties to become Contracting Parties or to implement voluntarily SEAFO conservation measures.
	Relationship to non-cooperating non-Contracting Parties	<ul style="list-style-type: none"> • Extent to which SEAFO provides for action in accordance with international law against non-Contracting Parties undermining the objective of the Convention, as well as measures to deter such activities, as well as encouraging them to become Contracting Parties or to implement voluntarily SEAFO conservation measures.
	Cooperation with international organisations	<ul style="list-style-type: none"> • Extent to which SEAFO cooperates with other international organisations.
	Special requirements of Developing States	<ul style="list-style-type: none"> • Extent to which SEAFO recognises the special needs of Developing States and pursues forms of cooperation with Developing States, taking into account the Code of Conduct for Responsible Fisheries Article 5. • Extent to which SEAFO Contracting Parties, individually or through the Commission, provide relevant assistance to Developing States.
5. <i>Financial and administrative issues</i>	Availability of resources for activities	<ul style="list-style-type: none"> • Extent to which financial and other resources are made available to achieve the aims of SEAFO and to implement SEAFO's decisions.
	Efficiency and cost-effectiveness	<ul style="list-style-type: none"> • Extent to which SEAFO is efficiently and effectively managing its human and financial resources, including those of the Secretariat. • Extent to which the schedule and organisation of the meetings could be improved.

