

## DRAFT DECISION XX-2018

### ON THE FIRST SPRFMO PERFORMANCE REVIEW – Rev 1

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The Commission of the South Pacific Regional Fisheries Management Organisation (SPRFMO);

*RECALLING* Article 30 (1) of the Convention, which provides that the Commission shall review the effectiveness of the conservation and management measures adopted by the Commission in meeting the objectives of this Convention and the consistency of such measures with the principles and approaches of Article 3 of the Convention. Such reviews may include examination of the effectiveness of the provisions of the Convention itself and shall be undertaken at least every five years;

*BEARING IN MIND* Article 30 (2) of the Convention that such reviews shall include contributions from the subsidiary bodies as appropriate and the participation of persons of recognized competence who are independent of the Commission;

*RECOGNISING* that Article 30 (4) of the Convention provides that the result of any such reviews shall be made publicly available;

*TAKING INTO ACCOUNT* Article 8(p) of the Convention, which provides the Commission with the authority to take any decisions that may be necessary for achieving the objectives of the Convention;

*GIVING EFFECT* to Article 8 of the Convention,

has decided to adopt the following Decision:

1. A performance review of SPRFMO shall be conducted during the 2018 intersessional period.
2. A Review Panel shall be appointed by the Commission. Panel members shall be independent and participate in their personal capacity. Their expertise should cover the relevant areas of science, fisheries and marine ecosystems management and legal matters, including compliance and enforcement issues.
3. The final report and its conclusions, including recommendations, of the Review Panel shall be submitted prior to the 2019 annual meeting of the Commission for its consideration at that meeting. [D1]
4. The terms of reference for the review are listed in Annex I this Decision. The Review Panel may consider adding criteria, if needed.

#### **Panel Composition**

5. The Review Panel shall be composed of four international independent experts as follows:
  - (i) two experts who are nationals of SPRFMO Members with experience in the SPRFMO context and a thorough understanding of the SPRFMO Convention;
  - (ii) two external experts, among whom there is experience in relevant areas of science, fisheries and marine ecosystems management and legal matters, including compliance and enforcement issues.
6. The Review Panel membership should aim to reflect the SPRFMO Membership in terms

of regional balance, fishing and non-fishing nations and developing and developed countries.

## Selection of the Review Panel Members <sup>[...]</sup><sup>[ADGA2]</sup>

7. SPRFMO Members may provide in writing two names, one for each category, to the Chairperson of the Commission, through the Secretariat, by 31 March 2018. The submission will include a CV and a short presentation of each candidate.
8. The Chairperson of the Commission, through the Secretariat, shall provide to Members, by 15 April 2018, two lists containing the names proposed by the Members for the appointment of the four experts.
9. SPRFMO Members shall immediately acknowledge receipt of the communication. Members may respond in writing to the Chairperson of the Commission, through the Secretariat, within 30 days indicating their vote for two persons from each list. In case of a tie between two or more candidates, a vote will be re-run for those ~~two~~ candidates.
10. The Chairperson of the Commission, immediately after the end of the 30-day period shall, through the Secretariat, inform Members of the result of the selection process.
11. Once the persons with the highest votes have been identified, the Secretariat shall write to each person selected by the Members for appointment to the Review Panel, indicating SPRFMO's desire to appoint him or her and seeking their positive response.<sup>[ADGA3]</sup>

## Review Panel function and tasks<sup>[D4]</sup>

12. The Review Panel will appoint a Chairperson amongst its Members by consensus. The Review Panel will meet in Wellington unless a more cost-effective location is identified at a date convenient to all panel members but no later than 31 August 2018. Economy class travel, accommodation and subsistence costs will be available to Review Panel members, if requested, to support their participation. Costs will be borne by the SPRFMO budget either directly or through voluntary contributions.<sup>[D5]</sup>
13. The review shall include a desktop study with questionnaires and interviews carried out by the Review Panel in support of this <sup>work prior to the meeting</sup> <sup>[D6]</sup> of the Review Panel, addressed to all SPRFMO Members, Cooperating non-Contracting Parties (CNCs) and observers. All SPRFMO Members, CNCs and observers are encouraged to participate in the questionnaires and interviews. The replies from the questionnaires will be made available at the private part of the SPRFMO website.
14. The SPRFMO Secretariat shall provide logistical support and information to the Review Panel but shall not form part of this Panel.
15. The Review Panel will adopt the report and its conclusions and recommendations by consensus. In the event consensus cannot be reached, individual members of the Panel may include their views in the Panel's report. The Panel may consider the use in the report of the terminology proposed in Annex 2 of this Decision.

## Timeline

16. The final report and its conclusions, including recommendations, of the Review Panel shall be communicated by the Panel Chairperson to SPRFMO Members and CNCs and to the Chairpersons of the Scientific Committee (SC), the Compliance and Technical Committee (CTC) and the Finance and Administration Committee (FAC) no less than 50 days in advance of the dates fixed for the opening of the 2019 annual meeting for their consideration at that meeting.<sup>[SAA7]</sup>
17. The SC, CTC and FAC shall consider the final report during their meetings and report to the Commission the results of their discussions including plans for addressing any of

the recommendations made by the performance review and tracking progress in that regard. Noting that the SC will not meet until after the final report has been communicated in accordance with paragraph 16, the SC will report its discussions to the 2020 annual Commission meeting.

18. The final report and the conclusions of the Commission and each of its subsidiary bodies shall be placed on the SPRFMO website.
19. Following this performance review, subsequent reviews may be conducted at least every five years in accordance with Article 30 (1) of the SPRFMO Convention.

## Annex I

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

Area	General criteria	Detailed criteria
1. <i>Conservation and management</i>	Status of fishery resources	• Status of fishery resources under the purview of SPRFMO.
		• 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 fishery resources.
		• Trends in the status of those species.
	Ecosystem approach	• Extent to which SPRFMO decisions take account of and incorporate an ecosystem approach to fisheries management in accordance with Article 3 (2) of the Convention.
	Data collection	• Extent to which SPRFMO has agreed formats specifications and timeframes for data submissions.
		• Extent to which SPRFMO Members and CNCPs, individually or through SPRFMO, collect and share complete and accurate data concerning fishery resources and other relevant data in a timely manner.
		• Extent to which fishing and research data and fishing vessel and research vessel data are gathered by SPRFMO and shared among Members and CNCPs.
		• Extent to which SPRFMO collect accurate and complete data to facilitate effective stock assessment and ensure that the provision of the best scientific advice is enabled, according with Article 23 (b).
		• Extent to which SPRFMO is addressing any gaps in the collection and sharing of data as required.
• Extent to which SPRFMO has established an observer programme in accordance with Article 28 (1) of the Convention.		
• Extent to which SPRFMO receives and acts on the basis of the best scientific advice relevant to the fishery resources under its purview, as well as to the effects of harvesting, research, conservation and associated activities on the marine ecosystem.		
Adoption of conservation and management measures	• Extent to which SPRFMO has adopted conservation and management measures (CMMs) for fishery resources that ensure the long-term conservation and sustainable use of those resources and are based on the best scientific evidence available.	
	• Extent to which SPRFMO has applied a precautionary approach including as set forth in Article 3 (2) of the Convention and the Code of Conduct for Responsible Fisheries, including the application of precautionary reference points as called for in Article 20 (2) of the Convention.	

		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has followed the criteria established under Article 21 (1) of the Convention, in the adoption of measures to the allocation of the total allowable catch or total allowable fishing effort</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has moved toward the adoption of CMMs for previously unregulated fisheries, including new and exploratory fisheries.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has taken due account of the need to conserve marine biological diversity and minimise adverse impacts of harvesting, research, conservation and associated activities on fishery resources and its marine ecosystems.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has adopted measures to minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target fishery resources, and impacts on associated or dependent species through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.</li> </ul>
	Capacity management	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has identified fishing capacity levels commensurate with the long-term conservation and sustainable use of fishery resources.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has taken actions to prevent or eliminate excess fishing capacity and effort.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO monitors the levels of fishing effort, including taking into account annual notifications for participation by Members and CNCPs.</li> </ul>
2. Compliance and enforcement	Flag State duties	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO Members and CNCPs are fulfilling their duties as flag States under Article 25 of the Convention, pursuant to CMMs adopted by SPRFMO and under other international instruments, including, <i>inter alia</i>, the 1982 Law of the Sea Convention, the 1995 Agreement and the 1993 FAO Compliance Agreement, as applicable.</li> </ul>
	Port State measures	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has adopted measures relating to the exercise of the rights and duties of its Members and CNCPs as port States, including under Article 26 of the Convention, the Code of Conduct for Responsible Fisheries and the FAO Port States Measures Agreement.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which these measures are effectively implemented.</li> </ul>
	Monitoring, control and surveillance	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has adopted integrated Monitoring, Control and Surveillance measures (e.g. record of vessels, VMS, inspections in port and at sea, regulation of transshipment, market-related measures, compliance, fight against IUU fishing, etc.) including under Article 27 of the Convention as well as other relevant treaties. [SAA8]</li> </ul>
<ul style="list-style-type: none"> <li>• Extent to which these MCS measures are effectively implemented.</li> </ul>		
	Follow-up on infringements	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO, its Members and CNCPs follow up on infringements to CMMs.</li> </ul>

	Cooperative mechanisms to detect and deter non-compliance	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has established adequate cooperative mechanisms to monitor compliance, detect and deter non-compliance and remedy compliance issues (e.g. compliance committees, IUU vessel lists, sharing of information about non-compliance).</li> <li>• Extent to which these mechanisms are being effectively utilised.</li> </ul>
	Market-related measures	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has adopted measures relating to the exercise of the rights and duties of its Members and CNCPs as market States for fishery resources.</li> </ul>
3. <i>Decision-making and dispute settlement</i>	Decision-making	<ul style="list-style-type: none"> <li>• Efficiency of Commission meetings, meetings of its subsidiary bodies and working groups (including intersessional working groups) in addressing critical issues in a timely and effective manner.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO has transparent and consistent decision-making procedures that facilitate the adoption of Decisions in a timely and effective manner.</li> </ul>
	Dispute settlement	<ul style="list-style-type: none"> <li>• Existence of an informal mechanism of cooperation between Members and CNCPs based on reciprocities.</li> <li>• Extent to which SPRFMO has established adequate mechanisms for resolving disputes.</li> </ul>
4. <i>International cooperation</i>	Transparency	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO is operating in a transparent manner, taking into account Article 18 of the Convention and the Code of Conduct for Responsible Fisheries.</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SPRFMO decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.</li> </ul>
	Relationship with CNCPs	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO facilitates cooperation between Members and CNCPs including through encouraging CNCPs to become Members or to implement voluntarily SPRFMO CMMs.</li> </ul>
	Relationship with non-Members or non-CNCP undermining the objectives of the Convention	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO provides for action in accordance with international law against non-Members or non-CNCPs undermining the objective of the Convention, as well as measures to deter such activities, as well as encouraging them to become Members and CNCPs or to implement voluntarily SPRFMO CMMs.</li> </ul>
	Cooperation with international organisations	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO cooperates with other international organisations, including under Article 31 of the Convention.</li> </ul>
	Special requirements of developing States	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO recognises the special needs of developing States and pursues forms of cooperation with Developing States, including under Article 19 of the Convention and the Code of Conduct for Responsible Fisheries .</li> </ul>
<ul style="list-style-type: none"> <li>• Extent to which SPRFMO Members and CNCPs, individually or through the Commission, provide relevant assistance to developing States.</li> </ul>		
5. <i>Financial and administrative</i>	Availability of resources for	<ul style="list-style-type: none"> <li>• Extent to which financial and other resources are made available to achieve the aims of SPRFMO and</li> </ul>

<i>issues</i>	activities	to implement SPRFMO's decisions.
	Efficiency and cost-effectiveness	<ul style="list-style-type: none"> <li>• Extent to which SPRFMO is efficiently and effectively managing its human and financial resources, including those of the Secretariat.</li> <li>• Extent to which the schedule and organisation of the meetings could be improved.</li> </ul>

## ANNEX II

The following terms and associated definitions are proposed as guidance in report preparation so as to remove ambiguity surrounding how particular paragraphs should be interpreted.

- Level 1: **RECOMMENDED; RECOMMENDATION** (formal); **REQUESTED** (informal): A conclusion for an action to be undertaken, by the Commission, a Contracting Party, a subsidiary (advisory) body of the Commission and/or the Secretariat. Note: Subsidiary (advisory) bodies of the Commission must have their Recommendations and Requests formally provided to the next level in the structure of the Commission for its consideration/endorsement. The intention is that the higher body will consider the action for endorsement under its own mandate, if the subsidiary body does not already have the required mandate. Ideally, this should be task-specific and contain a timeframe for completion.<sup>[SAA9]</sup>
- Level 2: **AGREED**: Any point of discussion from a meeting, which the SPRFMO body considers to be an agreed course of action covered by its mandate, which has not already been dealt with under Level 1 above; a general point of agreement among delegations/participants of a meeting which does not need to be elevated in the Commission's reporting structure.
- Level 3: **NOTED/NOTING; CONSIDERED; URGED; ACKNOWLEDGED**: General terms to be used for consistency. Any point of discussion from a meeting, which the reviewers consider to be important enough to record in a meeting report for future reference. Any other term may be used to highlight to the reader of a SPRFMO report, the importance of the relevant paragraph. Other terms may be used but will be considered for explanatory/informational purposes only and shall have no higher rating within the reporting terminology hierarchy than Level 3.