

**REGIONAL FISHERY BODIES AND GOVERNANCE:
ISSUES, ACTIONS AND FUTURE DIRECTIONS**



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PREPARATION OF THIS CIRCULAR

This Circular was prepared within the framework of the Regular Programme as part of the on-going activities of the FAO International Institutions and Liaison Service (FIPL) aimed at providing information to FAO and non-FAO regional fishery bodies on efforts at improving regional fisheries governance.

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ABSTRACT

More than thirty regional fishery bodies or arrangements (RFBs) have been established during this century, including fourteen since the adoption of the United Nations Convention on the Law of the Sea in 1982. They have been constituted as either an advisory or a regulatory body. There are many other differences among them, including their mandate, functions, powers, budgets and membership. They are well positioned to contribute to the management of a resource which is mobile and requires cooperation and collaboration among States.

However, it is recognized that because of the state of the world's fisheries, in most cases present systems of fisheries governance have failed to ensure resource conservation and economic efficiency.

An increased international focus on governance in regional fishery bodies or arrangements has been emerging since 1997 when the FAO Conference adopted Resolution 13/97, which required a systematic and specific review of each FAO statutory bodies. The review in turn could promote the restructuring of the bodies, revision of the mandate and undertaking of more financial responsibilities by member countries. It would also allow FAO to examine whether the reasons which led to the establishment of the bodies were still valid.

Reviews have been conducted accordingly, and this has led to an ongoing process of reform in FAO RFBs and increased attention to effective governance in all RFBs. A High Level Panel of Fisheries Experts considered fisheries governance in RFBs in 1998, and this led to the convening by FAO of the historic first meeting of FAO and non-FAO RFBs in February 1999. A second meeting will take place in 2000.

This paper reviews the above developments and outlines current issues of governance in RFBs. These issues are then related to specific areas of management – conservation of resources, control of catches and effort, fleet capacity, bycatch and discards, information and data collection, analysis and dissemination, illegal, unreported and unregulated fishing and monitoring, control and surveillance. A questionnaire was sent to RFBs to seek their views on the constraints, if any, to governance and how this affects fisheries management. Their responses are summarized.

Trends in steps which RFBs are taking to address constraints to governance are described, and instructive examples of RFBs' activities are cited. Building on the RFBs' responses to the questionnaire and existing activity, focal points for strengthening the efficiency of RFB governance are suggested.

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List of Acronyms

| | |
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| ACFR | Advisory Committee on Fishery Research |
| COFI | Committee on Fisheries of the FAO |
| CWP | Coordinating Working Party on Fishery Statistics |
| FAO | Food and Agriculture Organization of the United Nations |
| FIGIS | Fisheries Global Information Service |
| IGOs | International Governmental Organizations |
| INGOs | International Non-Government Organizations |
| ISOFISH | International Southern Oceans Longline Fisheries Information Clearing House |
| IUU | Illegal, unreported and unregulated fishing |
| MCS | Monitoring, Control and Surveillance |
| RFB | Regional Fishery Body |
| UNCLOS | United Nations Convention on the Law of the Sea, 1982 |

A list of Regional Fishery Bodies, and their acronyms, appears in Appendix 1.

I. INTRODUCTION

The purpose of this paper is to review the issues of governance in regional fishery bodies or arrangements (RFBs),¹ and the manner in which they have or have not been addressed. Linkages between some key fishery management issues and governance capabilities will be described, and constraints to fisheries governance will be identified. Recommendations will be made as to how these issues can best be addressed by RFBs, and possible areas where RFBs might focus in order to strengthen their efficiency.

Although there are unifying issues and themes in fisheries governance – such as the objective of sustainability of the resource - there is a wide array of differences among RFBs which must be taken into account in this review.

There are almost 30 regional and sub-regional bodies that deal with marine fisheries, with a diverse range of mandates, functions, structure and financial resources.² Major differences are evident between those bodies which were established under the FAO Constitution³ and those were created under international agreements between three or more contracting parties.⁴ Some bodies have regulatory functions, and others advisory. There are clear differences between issues and problems faced by some RFBs consisting mainly of developed countries and those of developing countries.⁵ Fourteen bodies have been established in the period since the 1982 adoption of the United Nations Convention on the Law of the Sea, and most of the others were established since 1950. A list of the bodies subject to this review is in Appendix 1.

These differences do not encourage a “one-size-fits-all” approach to strengthened fisheries governance, because governance issues depend on the mandates and functions of each body. In fact, strength can be found in the fact that in many cases, RFBs were individually crafted, within an international framework, to address specific situations and needs. Therefore, an objective of this review is to provide both the spectrum of issues of governance and the strongest possible common denominators for consideration and use, as appropriate, by RFBs in their process of evaluation and strengthening of their fisheries governance.

¹ For this paper, a regional fishery body refers to a mechanism through which three or more States or international organizations that are parties to an international fishery agreement or arrangement collaboratively engage each other in multilateral management of fishery affairs related to transboundary, straddling, highly or high seas migratory stocks, through the collection and provision of scientific information and data, serving as a technical and policy forum, or taking decisions pertaining to the development and conservation, management and responsible utilization of the resources. See Report of the Meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements, FAO Fisheries Report No. 597, FIPL/R597, para 1, footnote 1.

² For a concise description of the evolution and types of RFBs, and their mandates, structures, operation and dates of establishment, see Text of the Documents prepared for the meeting of the High-Level Panel of External Experts in Fisheries held in Rome, Italy, 26-27 January 1998, pp. 16 – 23. See further Lugten, “A Review of Measures taken by Regional Marine Fishery Bodies to Address Contemporary Fishery Issues”, FAO Fisheries Circular No. 940, April, 1999, and Marashi, “Summary Information on the Role of International Fishery and other Bodies with regard to the Conservation and Management of the Living Resources of the High Seas”, FAO Fisheries Circular No. 908, 1996; Marashi, “The Role of FAO Regional Fishery Bodies in the Conservation and Management of Fisheries”, FAO Fisheries Circular No. 916, 1996, and the Report of the Meeting of FAO and Non-FAO Regional Fishery Bodies, note 1, *supra*.

³ There are nine such bodies.

⁴ There are twenty-four such bodies.

⁵ Report of the Meeting of FAO and Non-FAO Regional Fishery Bodies, note 1, *supra*, page 8.

Fisheries Governance

Fisheries governance is a challenging, and daunting, concept. It sits on the threshold of the new millenium, propelled by globalization, emerging international agreements,⁶ cooperation⁷, technologies,⁸ and above all the recognition that **in most cases, present systems of fisheries governance have failed to ensure resource conservation and economic efficiency.**⁹

What is fisheries governance? An explanation of its components will assist in understanding the context in which RFBs operate.

First, fisheries governance is an emerging concept.¹⁰ It is more than “conservation and management” or “sustainable development” of a mobile resource. It is a process which values the adaptability of RFBs to existing and future needs and challenges.

Second, fisheries governance is a “system”. It is carried out at all levels, and knits into a global network. At one level, international agreements and instruments provide a common framework for regional and national standards, laws, policies and processes. At another level, national governments directly provide for detailed management standards, laws, policies and processes over the fishery resources within their areas of jurisdiction.¹¹

RFBs serve as a gateway in this system between global and national levels of fisheries governance. They may be mandated as an advisory or regulatory body to advise on, or apply internationally agreed standards, laws, policies and processes to the region, sub-region or species concerned. Viewed from the other side of the gate, they are vehicles for harmonizing national standards, laws and policies, and carrying these forward to other RFBs or appropriate international levels.

Third, fisheries governance is “Governance”. The Concise Oxford Dictionary¹² defines governance as the “act or means of governing, the office or function of governing, sway or control.” The report of the Commission on Global Governance describes governance as the sum of the many ways individuals and institutions,

⁶ For a review of relevant international instruments, and their implementation by RFBs See Lugten, *op. cit.* note 2.

⁷ See Marashi, *op. cit.* note 2, and Swan and Satia, “Contribution of the Committee on Fisheries to Global Fisheries Governance, 1977 – 1997”, FAO Fisheries Circular No. 938, 1999.

⁸ Communications and fisheries related-technologies are applicable.

⁹ Report of the Meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements, *op. cit.* note 1, Appendix G. It should be noted that the mandates of RFBs usually include fisheries conservation, but not economic efficiency. However, the latter impacts on resource conservation.

¹⁰ It is related to the concept of global governance. In 1994, the idea of a Commission on Global Governance was first advanced by the Stockholm Initiative and endorsed by leaders around the world. The Commission has since developed the concept of global governance in its 1997 Report (see note 6, *infra.*). For commentary on whether fisheries are governable, see Symes, David “Fisheries Management: in Search of Good Governance”, Fisheries Research 32 (1997) 107 – 114. The latter concludes that fisheries are governable, but in many cases the present systems are inappropriate to an activity prone to short run fluctuations in its fortunes and needful of flexibility and adaptability in its response.

¹¹ It is at national level that shifts in legal frameworks and institutions have been most significant during the last five years, and it is also at this level that the change in rights and responsibilities brought about by the 1982 Convention has had the most significant impact on governance: See Text of the Documents prepared for the meeting of the High-Level Panel of External Experts in Fisheries held in Rome, Italy, 26-27 January 1998, note 1 *supra.*

¹² 8th Edition, 1990

public and private, manage their common affairs. It is a “continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken.”¹³

In this document the working definition for fisheries governance is:

A continuing process through which governments, institutions and stakeholders of the fishery sector – administrators, politicians, fishers and those in affiliated sectors – elaborate, adopt and implement appropriate policies, plans and management strategies to ensure resources are utilized in a sustainable and responsible manner. It could be at global, regional, sub-regional, national or local levels. In the process, conflicting or diverse interests may be accommodated and cooperative action may be taken.

The Commission on Global Governance foreshadows that the creation of adequate governance mechanisms will be complicated because these must be more inclusive and participatory – that is, more democratic – than in the past. They must be flexible enough to respond to new problems and new understanding of old ones. This will involve reforming and strengthening the existing system of intergovernmental institutions, and improving its means of collaboration with private and independent groups.¹⁴

II. FISHERIES GOVERNANCE IN RFBs

Background

Strengthened fisheries governance by RFBs is rapidly emerging as a necessity for the continued sustainability of the global fisheries resources. Recent international instruments concerning fisheries conservation and management – the Code of Conduct for Responsible Fisheries, the Compliance Agreement¹⁵ and the Fish Stocks Agreement¹⁶ - have underlined the need for all RFBs to be strengthened appropriately to deal with new, additional responsibilities.¹⁷ Equally important unifying themes are the state of the resource and pressing need for food security. In some cases, the necessity of adjusting to financial constraints means re-ordering governance priorities to maintain the effectiveness of the RFB.

Important contributions to governance have already been made by some RFBs in the following areas:¹⁸

- promoting the development of national research and management capacity;

¹³ “Our Global Neighbourhood”, the Report of the Commission on Global Governance, 29 September 1997, p. 1. The report notes the shift in governance from the time of the creation of the United Nations when nation states were dominant. The huge global capital market was not foreseen at that time, and the enormous growth in people’s concern for human rights, equity, democracy, meeting basic material needs, environmental protection and demilitarization has produced a multitude of new actors who can contribute to government.

¹⁴ *Ibid.*, p. 2

¹⁵ Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas 1993.

¹⁶ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995.

¹⁷ Report of the Meeting of FAO and Non-FAO Regional Fishery Bodies or Arrangements, *op cit.* note 1.

¹⁸ *Ibid.*, Appendix G

- improving and strengthening data collection, handling and dissemination;
- addressing new issues such as fleet capacity, the effect of the payment of subsidies and by-catch and discards;
- adopting management measures and resolutions relating to such issues as effort reduction, gear type, minimum sizes, mesh sizes, etc;
- adopting rules and procedures for boarding, inspection and enforcement;
- taking measures to enable implementation of recent international legal instruments.

However, the process to strengthen fisheries governance in RFBs must also take into account factors which have undermined the effectiveness of RFBs; the obstacles to overcome and, if possible, dissolve, as new international responsibilities are created.

Factors undermining the effectiveness of regional fisheries governance have been identified as follows:¹⁹

- a failure by some States to accept and implement international instruments central to enhanced fisheries governance such as the UN Fish Stocks Agreement and the Compliance Agreement;
- a lack of willingness by member States to delegate sufficient decision-making powers and responsibility to the regional bodies;
- members of organisations and arrangements not providing complete data and information concerning their fishing operations, as required, in a timely manner and, in some cases, not reporting catches at all;
- outputs of some organisations or arrangements not being operational because of the absence of an appropriate link between the scientific and technical experts on the one hand, and the decision/policy makers and those responsible for implementing decisions/policies, on the other hand;
- poor flag State control both by members and non-members of organizations or arrangements;
- the lack of enforcement of management measures both at the national and regional levels, including:
 - problems arising from many of the regulated stocks being harvested in mixed fisheries where the overall fishing capacity is neither limited or controlled;
 - fishing activities of non-members in the waters covered by a regional organization or arrangement;
- inadequate human and financial resources to enable organizations or arrangements to carry out their mandates satisfactorily;
- the low frequency of meetings of organizations or arrangements.

¹⁹ *Ibid.* and Report of the High-Level Panel of External Experts in Fisheries held in Rome, Italy, 26-27 January 1998, Committee on Fisheries document COFI/99/Inf.11, para. 28.

International Review of Fisheries Governance in RFBs

These obstacles, together with new responsibilities, have contributed to the rapidly emerging prominence of fisheries governance on the agendas of a series of international meetings since 1997. They include the FAO Committee on Fisheries (COFI), the High Level Panel of External Experts in Fisheries (High Level Panel) and the Meeting of FAO and Non-FAO Bodies and Arrangements, described below.

Discussions in these fora have helped to focus the past, present and future roles and responsibilities of RFBs. They mark a new phase in the evolution of fisheries governance by RFBs, and an historic turning-point in global cooperation among them.

1. COFI - Review of FAO RFBs

At its Twenty-second Session in 1997, the Committee on Fisheries agreed that all FAO RFBs be reviewed and evaluated by their members to determine measures to be taken to strengthen each body, as appropriate.²⁰ This directive was reinforced by Resolution 13/97, entitled "Review of FAO Statutory Bodies".²¹ The basis for this Resolution was financial – the Conference encouraged bodies to seek extra-budgetary funding²² or to provide their own financial resources.²³

It was recognized that implementation of Resolution 13/97 would require a systematic and specific review of each statutory body, which in turn could promote the restructuring of the bodies, revision of the mandate, and undertaking of more financial responsibilities by member countries. It would also allow FAO to examine whether the reasons which led to the establishment of the bodies were still valid.

COFI considered a Progress Report on the implementation of Resolution 13/97 and the strengthening of FAO regional fishery bodies at its Twenty-third Session in 1999.²⁴ It reported that eight of the nine existing FAO RFBs had considered actions required to strengthen their functions and responsibilities.²⁵ These included the following five RFBs forming part of this review. Also shown are the results of the Western Central Atlantic Fishery Commission (WECAFC) review, which took place later in the year, and details of the establishment of the Regional Commission of Fisheries (RECOFI).

The General Fisheries Council for the Mediterranean (GFCM) opted for its strengthening through amendments of the Agreement establishing it and its Rules of Procedure. There was agreement in principle of an autonomous budget, and most members agreed to a scheme and scale of members

²⁰ Report of the Twenty-second Session of COFI, Rome, 17-20 March 1997, para. 31.

²¹ Adopted by the Conference of FAO at its Twenty-ninth session in November 1997. In this resolution, the Conference emphasized the need to "move towards increased self-financing for Statutory bodies that have regional focus ... in a time of financial challenge". This means that FAO bodies established under Article VI of the FAO Constitution, thus forming an integral part of FAO are financed by the Regular Programme funded by assessed contributions of FAO Member Nations. However, statutory bodies established under Article XIV have an autonomous status and may, if the parties decide, be financed by assessed mandatory contributions from their members. This is the case of the Indian Ocean Tuna Commission and the General Fisheries Commission for the Mediterranean.

²² For Article VI bodies.

²³ For Article XIV bodies.

²⁴ COFI/99/4.

²⁵ *Ibid.*, para. 2, including the inland fishery bodies not covered by this review.

contributions.²⁶ The main session of the Commission will meet annually instead of biennially.

The Asia-Pacific Fishery Commission (APFIC). Amendments to the Agreement and Rules of Procedure were approved by the FAO Council in 1997. The amendments aimed to take into account recent changes in world fisheries, and to equip APFIC to play a role in the implementation of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and promotion of the Code of Conduct. It agreed to abolish its four working parties and that future programmes should be more specific and pragmatic, assisting members to move closer towards self-reliance in sustainable fisheries development and management. It decided to convene an *ad hoc* legal and financial working group. The Bay of Bengal Committee of IOFC was merged with APFIC.

The Fishery Committee for the Eastern Central Atlantic (CECAF) opted to maintain its status a body under Article VI of the FAO Constitution. It abolished its four subsidiary bodies and agreed to have a simpler structure. The Committee agreed to progressively work towards the upgrading of the body to a Commission level under Article XIV of the FAO Commission.

The Indian Ocean Fishery Commission (IOFC) By Resolution 1/116, the FAO Council in June 1999 abolished IOFC together with all its subsidiary bodies, approved the absorption of the functions of the Bay of Bengal Committee by APFIC and authorized the Director General to complete the process of establishing as Article XIV bodies the former Committee for the Development and Management of Fisheries in the Gulfs (the Gulfs Committee) and the former Committee for the Development and Management of Fisheries in the Southwest Indian Ocean.

The Regional Commission for Fisheries (RECOFI) By Resolution /117, the FAO Council approved the Agreement for the Establishment of the Regional Commission for Fisheries, which replaces the Gulfs Committee of IOFC. An Article XIV body, RECOFI's functions include recommending measures for the conservation and management of living marine resources, keep under review the economic and social aspects of the fishing industry and recommend any measures aimed at its development, training, research, information, and aquaculture and fisheries enhancement.

The Indian Ocean Tuna Commission (IOTC) became operational in 1996, and its Rules of Procedure and Financial Regulations have been adopted. It operates on an autonomous budget, based on an agreed scale and scheme for members' contributions.

Western Central Atlantic Fishery Commission (WECAFC) The Commission recommended this be maintained as an Article VI body, and abolished the two Working Parties. It agreed to have a simple structure, consisting of the Secretariat, a Scientific Advisory Group which will act as advisory body to the Commission and *ad hoc* working groups with clearly

²⁶ *Ibid.*, para 4. The contributions would consist of a basic fee, a charge related to national wealth and fish production (capture fisheries and marine aquaculture) from the region covered by the GFCM agreement. The Commission could not reach a consensus on the weights that should be attributed to the three components at that time.

defined terms of reference and time bound clauses, established as and when required. Action needed to enhance the effectiveness in providing fisheries management advice was identified, and implications of Resolution 13/97 identified.²⁷

The Progress Report also noted that there has not been a formal working relationship between COFI and non-FAO RFBs, but there is a need for effective regional fishery organizations and arrangements. There have been significant improvements in performance of RFBs in the last decade, but many factors hinder these bodies from being more effective.

Two years later, at its twenty-third session, COFI expressed its satisfaction with the outcome of the implementation of Resolution 13/97, and urged FAO to continue the systematic analysis of these bodies, especially concerning their institutional and financial arrangements, the strategies used to implement decisions and the recommendations and measures taken to address current international fishery issues.²⁸

2. FAO High Level Panel of Fisheries Experts

The FAO High Level Panel considered, at its meeting in January, 1998, *inter alia*, future challenges in fisheries governance and whether there are effective alternatives to regional fishery bodies.²⁹

Regarding governance, the High Level Panel recommended that FAO could work with national and regional fishery bodies to promote objective self evaluation of governance performance including the development of performance indicators appropriate to governance.³⁰

The High Level Panel recognized that RFBs were essential in reinforcing regional cooperation, and that recent events concerning the conservation and management of fisheries required that these bodies be strengthened to cope with new and additional responsibilities, including the provisions of Agenda 21, the UN Fish Stocks Agreement and the Code of Conduct.³¹

It expressed the opinion that the last 30 years were essential to collect information and gain experience on the functioning of RFBs and that the next ten years would be to implement and enforce decisions so that world fisheries resources could be exploited and utilized in a responsible manner.³² It recognized that NGOs can make contributions to all types of operations by providing expertise and creating awareness.³³

The High Level Panel made some recommendations concerning FAO's role in working to encourage more coherent management approaches among RFBs, and

²⁷ These are: convening and coordinating an increased number of meetings; maintenance of the increased data and information requirements, partnership arrangements and liaison with other organizations; and seeking additional financial support.

²⁸ Report of the twenty-third session of the Committee on Fisheries, Rome, Italy, 15-19 February 1999, FAO Fisheries Report No. 595, para 81.

²⁹ Report of the High-Level Panel of External Experts in Fisheries held in Rome, Italy, *op. cit.* note 19.

³⁰ *Ibid.*, para. 24.

³¹ *Ibid.*, para. 26.

³² *Ibid.*, para. 27.

³³ *Ibid.*, para. 30.

continuing its systematic analysis of FAO RFBs. It also recommended the following actions:³⁴

- FAO should convene a special meeting of FAO and non-FAO bodies to identify and address common problems and constraints, identify and develop strategies and mechanisms to address constraints, share experiences and lessons learned, and improve the effectiveness of the bodies;
- RFBs should explore the possibility through which a number of them could receive scientific advice from an independent arrangement, the membership of which would include a sufficient number of competent, independent scientists who were not directly involved in management, as is presently the case with ICES; and
- RFBs and governments should recognize the collection of reliable data and information, and routine stock assessment based on these, as a primary responsibility.

3. First Meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements

At the first meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements convened in February, 1999 as a result of the recommendation of the High Level Panel, participants considered the role of RFBs as vehicles for good fisheries governance.³⁵

Two background papers were prepared for consideration by the meeting: (a) Major Issues Affecting the Performance of RFBs; and (b) RFBs as Vehicles for Good Fisheries Governance. Some key areas of these papers relevant to this review are described below, followed by a summary of discussions and conclusions of the meeting.

(a) Background – Major Issues Affecting the Performance of RFBs

A paper was prepared for consideration by the meeting which identified a series of issues which constrain the efficient operation of RFBs, and grouped them into four categories as follows.³⁶

(i) Expectations of the International Community

The outcomes of global conferences in the '90s³⁷ have impacted on fisheries governance requirements. International legal instruments concluded as a result of

³⁴ *Ibid.*, para. 34.

³⁵ Report of the Meeting of FAO and Non-FAO Regional Fishery Bodies or Arrangements, Rome, Italy, 11-12 February 1999, FAO Fisheries Report No. 597

³⁶ Report of the Meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements, *op. cit.* note 1, Appendix E.

³⁷ International Conference on Responsible Fishing, Cancun, Mexico (Cancun Declaration on Responsible Fishing) 1992; United Nations Conference on Environment and Development, 1992; the 1993–95 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement); Ministerial Conference on Fisheries (Rome Consensus on World Fisheries) 1995; Kyoto Conference on Sustainable Contribution of Fisheries to Food Security (The Kyoto Declaration and Plan of Action), 1995; World Food Summit (Rome Declaration on World Food Security and World Food Summit Plan of Action), 1996.

those conferences³⁸ refer to the important role of RFBs, and the requirement of States to participate in the work, and/or comply with their requirements. Provisions including the precautionary approach, transparency and observer or other rights of non-governmental organizations are included.

The international community expects RFBs to play a central role in ensuring that the provisions of these instruments are implemented, particularly in light of issues which characterize the current world fisheries situation:³⁹

- overfishing, over-capacity and overcapitalization of the sector;
- high rate of discarding in some fisheries/areas;
- illegal, unreported and unregulated (IUU) fishing;
- emergence of environmental values in fishery resource use;
- globalization in almost all aspects of fisheries (in particular trade);
- changes in consumption patterns and perceptions;
- transparency, accountability, partnership and good governance.

(ii) Issues related to the mandate and/or functions of the body

Issues related to the mandate and/or functions of the body vary for those bodies with advisory functions, and those with regulatory functions.

Advisory functions in RFBs are related to issues of scientific research, compilation and analysis of data, formulation of conservation and management measures, determination of total allowable catch and quota allocation, and precautionary approach.

In general, constraints are grounded in the absence of independent research, the need for rapid improvement in statistics and updating, political nature of decisions and implications for RFBs of the precautionary approach,⁴⁰ and the consensus nature of decision making.

Regulatory functions of RFBs relate to the decision making process, implementation of decisions and dispute settlement.⁴¹

The decision-making process is complicated by its various elements – technical, political, enforcement and national and international implications. The tendency of many RFBs to take decisions by consensus leads to decisions on minimum-common denominator and “too little too late” syndrome emphasized by many analysts in the last two decades. An important ingredient for decision making is suggested⁴² - involving policy makers in the process and not merely the technicians in the fisheries departments.

Implementation and enforcement of decisions is uneven, depending on the mandate of the RFB to make binding decisions or recommendations, and to enforce.

³⁸ Code of Conduct, Compliance Agreement and UN Fish Stocks Agreement.

³⁹ Report of the Meeting of FAO and Non-FAO Regional Fishery Bodies or Arrangements, *op. cit.* note 1, Appendix E, paras 12 and 13, IUU fishing added.

⁴⁰ For example, better data is needed, uncertainty should be systematically investigated, outputs should be identified corresponding to objectives, target and limit reference points should be established, methods used for assessment need to be revised, robustness of management regime to overfishing and environmental change should be assessed, and contingency plans should be developed; *ibid.*, para 23.

⁴¹ *Ibid.*, paras 26 – 32.

⁴² *Ibid.* para 27.

Although agreements establishing RFBs usually contain dispute settlement procedures, these are seldom used. It is believed important by some States that dispute settlement procedures exist to cater to issues between members, or between a member and the RFB. However, even though it is common knowledge that fishing vessels of members and non-members undermine conservation and management measures of RFBs, these procedures are not usually used to address such situations. It becomes complicated when a non-member vessel is involved.

(iii) Issues related to the structure of the bodies⁴³

Issues related to the structure of the bodies are geographical area of competence and species covered, membership, participation and subsidiary bodies.

Most RFBs cover either a specific geographical area or species.⁴⁴ In both cases the precautionary approach, based in part on ecosystem management, is applicable. This brings into play governance issues such as data collection, collaboration among RFBs, and the role of observers and other participants in the process.

Membership conditions vary from being open to States which may not even be fishing in the area, to imposing some form of restriction.⁴⁵ Membership is voluntary, and some RFBs are actively making efforts to secure participation by non-coastal fishing countries, to give further effect to its capacity for governance. Otherwise, the work of a RFB may be jeopardized by non-members.

Almost all instruments establishing RFBs provide for the participation of observers. Provision, and practice, for the participation of regional economic integration organizations and NGOs is uneven among RFBs, and could be considered as a governance issue in future.

Most RFBs have subsidiary bodies in the form of scientific or technical committees, or *ad hoc* working groups. Their effectiveness depends largely on a range of factors in their constitution and procedures,⁴⁶ adequate financial resources and expertise, and the balance between the technical/ political basis for decision or recommendation.

(iv) Budgetary levels and financing

The financial implications of RFB membership include expenses for attendance at meetings, and for operational costs of the body. For most FAO

⁴³ *Ibid.*, paras 33 – 41. “structure” is used to describe the various components of a RFB, including the geographical area of competence and species covered, membership and subsidiary bodies.

⁴⁴ Only the International Whaling Commission covers the resource in all oceans where it occurs, and most RFBs are mandated to deal with all or most of the commercial species in its geographical area.

⁴⁵ For example, for several FAO bodies, membership is open to all Members and Associate Members of the Organization with interests in the fisheries of the region concerned.

⁴⁶ These include composition of membership, degree to which all participants must or should reflect a national stance, clarity of its terms of reference, powers of the chair, working language and degree to which members can express their views clearly in the working language, power to make decisions/recommendations and the decision making process. Report of FAO and Non-FAO Regional Fishery Bodies and Arrangements, *op. cit.* note 1, para 41.

bodies⁴⁷ the expenses for attendance are almost entirely provided by FAO Regular Programme Budget, but for other bodies it is the members' responsibility. Contributions to the RFB's operating expenses are assessed according to different schemes, which could incorporate elements including a basic membership fee, fish production, fishing activity and national wealth.

Extra-budgetary funding is sometimes provided, and contribution by members for specific projects. However, there is a danger in the latter case that the projects may benefit the donor member rather than the RFB's general membership.

(b) Background – RFBs as Vehicles for Good Fisheries Governance⁴⁸

A paper prepared for the meeting describing RFBs as vehicles for good fisheries governance is optimistic. It concludes that despite past difficulties that RFBs have experienced in their efforts to secure more effective fisheries management, they have the potential to be vehicles for sound fisheries governance provided that they have realistic mandates, the required political backing, and the financial and human capacity to function as they are intended.

However, to ensure efficiency and promote the type of governance called for in relevant international instruments, individual and collective action by States is necessary to:⁴⁹

- devolve the necessary powers transparently to RFBs to enable them to undertake the functions for which they were established;
- adopt a pro-active stance with respect to management and attempt to anticipate crises which may confront organizations or arrangements from time to time;
- promote the full and equitable participation by members in organizations or arrangements, including greater participation in determining and funding work programmes, and greater participation in inter-sessional activities;
- ensure that the organizations or arrangements have adequate financial and human resources to execute their mandates;
- act in good faith recognizing that the regional governance needs might not always be precisely congruent with national aspirations and goals. In this connection it should be further recognized that many of the problems that confront regional organizations or arrangements arise from the non-compliance activities of members rather than from non-members. When such non-compliance occurs there is often a reluctance on the part of the organization or arrangement to publicize the transgression for fear of creating embarrassment for the member concerned. However, the power of public disclosure should be recognized and used in support of improving regional governance;
- faithfully abide by decisions made by organizations or arrangements and be prepared to exercise effective flag State control in all situations;

⁴⁷ Except the Indian Ocean Tuna Commission (IOTC).

⁴⁸ Report of FAO and Non-FAO Regional Fishery Bodies or Arrangements, *op. cit.*, note 1, Appendix G.

⁴⁹ *Ibid.*, para 21, also see Lugten, *op. cit.*, note 2, p.66.

- improve cooperation, via transparent manner, between organizations or arrangements, private sector interests and non-governmental organizations so that real effect can be given to the need to broaden stakeholder participation;
- enhance coordination between organizations or arrangements, as well as with relevant regional bodies responsible for environmental management;
- promote maritime boundary delimitation which is essential for fisheries management and resource allocation and as a means of resolving disputes; and
- recognize that developing countries face financial, human and technical constraints that can inhibit their capacity to meet their regional obligations fully.

(c) Report and Conclusions of Meeting

The meeting's agenda addressed two major areas affecting the performance of regional fishery bodies: (i) a multifaceted approach to fishery status and trends reporting; and (ii) RFBs or arrangements as vehicles for good fisheries governance. These are described below, followed by (iii) a summary of the meeting's conclusions.

The opening discussions concentrated, *inter alia*, on the following items, the first two of which relate to international instruments and standards and the remaining three which focus on the exchange of information and collaboration.⁵⁰ Summary discussion on the items appears in italics.

- Ways for RFBs to promote the implementation of the recent series of international instruments and initiatives.

RFBs reported new strategies and special actions being taken, with widespread agreement on importance stakeholder involvement and precautionary approach.

- Improved means of promoting the precautionary approach to fisheries management.

RFBs held differing views on the relative importance of socio-economic considerations when determining precautionary policies.⁵¹

- Better mechanisms for the exchange of information among RFBs and between RFBs and FAO.

Some RFBs described steps being taken to collaborate with other, often adjacent, RFBs and to exchange information and experiences.

- The prospects for closer collaboration between RFBs on a geographic or species basis and means to improve such collaboration.

It was suggested that RFB managers should meet regularly and exchange experience and coordinate efforts as appropriate.

⁵⁰ *Ibid.*, text of report, paras 6 - 11.

⁵¹ *Ibid.*, para 8, where FAO RFBs particularly drew attention to the importance of small-scale artisanal fisheries in their areas of competence, and to the very complex issues such RFBs often faced in dealing with tropical multispecies fisheries.

- Mechanisms to promote further the global coordination of the activities of RFBs.

Participants recommended that FAO should be the focal point in convening future meetings of RFBs.

(i) A Multifaceted Approach to Fishery Status and Trends Reporting

This agenda item relates to the need for information and data as a basis for good fisheries governance, and the meeting considered a number of mechanisms to improve fishery status and trends reporting. In particular, the Advisory Committee on Fishery Research (ACFR) proposed a multifaceted approach to strengthen global reviews by using more comprehensive data in conjunction with RFBs and independent experts through a cooperative global partnership. It was suggested that the ACFR Working Party should carry the work forward through developing priorities, and concentrate on the most comprehensive way of assembling and presenting the information, not on reviewing stock assessment methods.

The work of the Coordinating Working Party on Fishery Statistics (CWP) was also reviewed, together with the development of the Fisheries Global Information System (FIGIS) as a tool for assembling fishery status and trends reports.

Participants expressed wide interest in receiving more information from FAO, specifically on a harmonized format for the eventual supply of confidential data and information by RFBs.

(ii) RFBs as Vehicles for Good Fisheries Governance⁵²

The meeting noted the differences among RFBS, and hence the uneven applicability of governance issues such as overfishing, failure to implement international instruments, lack of willingness to delegate sufficient responsibility to regional organizations and lack of enforcement of management measures at national and regional levels.

In particular, the differences in the issues and problems between FAO and non-FAO bodies were demonstrated in discussions. Problems faced by FAO bodies reviewed at the meeting include:⁵³

- funding for FAO bodies which are not autonomously funded;
- in general the member countries of FAO bodies had not accepted ownership of and responsibility for the FAO regional bodies and saw them as being FAO organizations, hence the levels of commitment and delegation of authority are low, and functions advisory;
- importance of small-scale, multispecies fisheries within the mandated areas of FAO bodies, for which community-based management approaches, and definition of functional stock boundaries may be required.

The mandates of non-FAO bodies generally include management functions, and their tasks and functions tend to be clearly defined. The problems encountered by these bodies were similar and included those associated with:⁵⁴

⁵² *Ibid.*, paras 27 – 40.

⁵³ *Ibid.*, paras 29 – 31.

- flags of convenience;
- over-capacity;
- methods for reaching agreement and dispute settlement.

In addressing the importance of adequate MCS, several RFBs reported on the implementation of observer systems and satellite tracking systems.

Some common problems were considered, and possible solutions suggested as follows.⁵⁵

“Flags of convenience” – Cooperation between RFBs against vessels carrying “flags of convenience”.⁵⁶

Overcapacity, and migration of excess capacity to migrate between regions – Must address problems of increases in efficiency of individual vessels.

Decision making – Where decisions are advisory, there could be merit in agreeing on an implementation timetable.

Revising constitutive instrument, including implementing international instruments – Adopt changes on a provisional basis to accelerate pace.

Performance Indicators – RFBs must measure their success by results in the form of favorable trends in or status of stocks and human benefits.

Ecosystem Considerations – Some RFBs are beginning to examine bycatch, but are experiencing difficulties in implementing ecosystem management. A subsequent meeting of RFBs could consider relevant themes such as pollution and environmental degradation, aquaculture, and the introduction of foreign and transgenic species on fisheries and fisheries management.

(iii) Conclusions of Meeting⁵⁷

The meeting’s conclusions recognized the clear differences between the issues and problems faced by developed/developing country RFBs.⁵⁸ On the international front, it called for RFBs to continue to implement the precautionary approach, and continue to:

review and adapt, where appropriate, their mandates, structures and strategies in order to better play their increasingly important roles in the process of achieving sustainable fisheries development and to discharge their responsibilities in implementing the recent series of international instruments concerned with fisheries...”.⁵⁹

⁵⁴ *Ibid.*, para 32.

⁵⁵ *Ibid.*, paras 34 – 40.

⁵⁶ Some RFBs are compiling lists of vessels flying “flags of convenience” in their waters; *ibid.*, para 34.

⁵⁷ *Ibid.*, para 41.

⁵⁸ Particularly in the levels of financial support and the complex issues involved in small-scale, multispecies fisheries, *ibid.*, subpara xi.

⁵⁹ It also called for attention to be drawn to the need for States to more widely participate in these instruments, *ibid.*, subpara vi.

Strengthened collaboration figured highly among many of the conclusions, with various partners and entities – between RFBs and stakeholders in the development of management measures; among RFBs to resolve “flags of convenience” problems; and between RFBs and ACFR members of their continuing mutual collaboration.

The meeting also concluded that further improvements are needed in monitoring and enforcement of fisheries management issues, and that the management of capacity remains an issue of serious concern.⁶⁰

Subsequent meetings of RFBs should address extrinsic factors outside the control of fisheries management agencies, such as pollution and environmental degradation, the introduction of foreign and transgenic species, etc.

Most important for continuing progress on these issues, the meeting concluded that further meetings of RFBs should be held, preferably prior to the regular sessions of COFI, and that FAO should serve as the focal point for such meetings, and also act as a channel for the exchange and synthesis of information and experiences among RFBs.

This was reinforced at The Twenty-third session of COFI, held after the meeting of FAO and non-FAO Regional Fishery Bodies and Arrangements. COFI commended FAO for convening that meeting and recommended that such meetings be held on a regular basis.⁶¹

III. CURRENT ISSUES OF GOVERNANCE IN RFBs

A synthesis of the issues of fisheries governance is provided below, taking into account developments and discussions described above. These issues are broadly based, and indicative of current concern and practice within RFBs. There may be other issues of concern to an RFB, and not all issues noted below will apply to any given RFB.

However, they can provide a common foundation for reviewing the manner in which RFBs have or have not addressed these issues, and for identifying constraints to governance. They can also serve as a basis for discussion among or within RFBs to further define and prioritise issues of fisheries governance.

Some questions which might be asked to indicate the performance of an RFB are identified, together with commentary which summarises some contemporary concerns in relation to each issue. This framework will provide the basis for relating governance issues with the success, or otherwise, of specified management measures in Part IV and for identifying existing constraints to governance and steps taken to overcome them in Part V.

Adequate mandate and functions to carry out objectives Do members entrust the RFB with adequate power in its mandate and functions to carry out the stated objectives in the constitutive instrument? This could include, for example,

⁶⁰ Note that the International Plan of Action for the Management of Fishing Capacity adopted at the Twenty-third session of COFI calls on RFBs to be strengthened for improved management of fishing capacity. Report of the twenty-third session of the Committee on Fisheries, Rome, Italy, 15-19 February 1999, FAO Fisheries Report No. 595 Appendix E.3

⁶¹ *Ibid.*, text of report, para 82.

mandates in relation to information collection⁶² and enforcement, finance and budget and implementing international instruments.

Are members willing to delegate sufficient decision-making powers and responsibilities to RFBs?

Advisory functions in RFBs can be related to issues of scientific research, compilation and analysis of data, formulation of conservation and management measures, determination of total allowable catch and quota allocation, and precautionary approach.

Regulatory functions of RFBs can relate, in addition, to the decision making process, implementation of decisions and dispute settlement.⁶³

In many cases, the mandate and functions do not extend to obligations relating to new management concepts such as ecosystem management and other extrinsic factors, for example pollution, environmental degradation and introduction of transgenic species. Nor do they extend to issues currently problematic, such as IUU fishing, by-catch and discards, and fleet capacity.

Institutional Arrangements for carrying out its mandate Are institutional arrangements adequate for carrying out the RFB's mandate? For example, can relevant management measures, research, implementation of decisions, MCS be carried out properly?

This can apply to a secretariat and subsidiary bodies, as well as reliance on external agencies such as research institutions.

Membership Does the RFB membership include all relevant coastal and fishing States as members, and any other States with a real interest in the fishery?

Constraints in many RFBs include unregulated fishing by non-members, or non-members declining to join. However, some non-members participate in RFBs as observers and comply with management measures. Some RFBs open membership to States which may not have a current interest in the fishery.

Attendance by members at meetings, including intersessional activities, is also an important factor.

Decision making Powers Is the RFB vested with decision making powers over a range of issues broad enough to successfully carry out its mandate and functions?

The decision-making process is complicated by its various elements – technical, political, enforcement and national and international implications. The tendency of many RFBs to take decisions by consensus leads to decisions on minimum-common denominator and “too little too late” syndrome stressed by many analysts in the last two decades. An important ingredient for decision making has been suggested⁶⁴ - involving policy makers in the process and not merely the technicians in the fisheries departments.

⁶² From members, other organisations, independent bodies, non-member fishing States, etc.

⁶³ *op cit.*, note 61, paras 26 – 32.

⁶⁴ *Ibid.* para 27.

Implementation and enforcement of decisions can be uneven, depending on the mandate of the RFB to make binding, enforceable decisions or recommendations.

Decision making Process Is the decision making process effective? This is the cornerstone to the success of fisheries management in RFBs. A weak decision making process will favour the interests of some individual members – which in most cases is economic – over the interests of the well-being of the resource.

In bodies with regulatory authority, is there sufficient linkage between the scientific and technical experts on the one hand, and the decision/policy makers and those responsible for implementing decisions/policies, on the other? When decisions are advisory, there could be merit in agreeing on an implementation timetable.

Decision making in subsidiary bodies – whose function is often to make recommendations – can allow for minority opinions if consensus is not reached.

Another approach to decision making in RFBs with regulatory powers is to agree on conditions – for example elements of a precautionary approach – which, when fulfilled, will trigger conservation measures. However, there must first be agreement on the basic elements of the approach and the conservation measures.

There are many advantages and disadvantages, recognized by RFBs, to agreement by consensus, voting by majority and using objection procedures. The optimum process should ensure that decisions are timely and apply to all parties.

Some ways of promoting this are to agree on a two-tiered system of decision making (e.g. consensus, with a fallback vote), impose a timeframe for decision, and allow an appeal process in stated circumstances⁶⁵ and time period rather than an opt-out objection.

Some distant water fishing nations have national policies which support consensus decision making without voting as a fallback. This could have the effect of delays or frustration of the decision making process, since it allows the objecting member to defeat any decision, including those which propose that conservation measures be taken.

Transparency of the decision making process is emerging as an important objective for RFBs.

Provision of timely and accurate data and information by members Do members provide complete data and information concerning their fishing operations, as required, in a timely manner or at all?

It is acknowledged that this is one of the most difficult problems of governance; it affects management measures across the board – conservation, control of catches and effort, fleet capacity, bycatch and discards, IUU fishing and MCS.

Data needs are expanding, with the inclusion of ecosystem, social and economic considerations in addition to those of fishing capacity and fisheries

⁶⁵ e.g. the conservation measure agreed is discriminatory, or not within the mandate of the RFB.

governance. In many circumstances data collection cannot satisfactorily meet traditional demands, let alone be extended to those additional aspects.⁶⁶

Are RFBs active in implementing modern methods of data collection, such as satellite tracking systems? An associated issue is confidentiality of information and data, for which RFBs should adopt rules and procedures.

The Advisory Committee on Fisheries Research, considering status and trends reporting and the constraints experienced in several RFBs,⁶⁷ has concluded that many of the problems experienced are the same as at the global level, including missing or incomplete catch data and very poor species catch composition information. It identified a major need to create an awareness of the need to monitor fisheries and resources.⁶⁸

There is a need for rapid improvement in statistics and updating and willingness of industry to provide information. There are implications for RFBs in securing such information for use in developing a precautionary approach.⁶⁹

In addition, the work of ACFR and CWP, and development of FIGIS, relies on comprehensive data which can be transmitted by RFBs.

Budget and Finance Are budget and finance adequate at the operational level to carry out the mandate and functions, is the contribution scheme appropriate for members, are extra-budgetary funds or voluntary contributions required and accessible? Is it appropriate to consider funding members' attendance at meetings?

Have a range of components for contribution schemes been considered, including membership, fishing activity, fish production, per capita and national wealth?

Is there funding on a project basis, and if so does it affect fishery management if the donor is a major beneficiary?

Does the budget contain any cost-recovery principles, such as for observer programmes?

Have partnerships been established to access independent expert advice without cost to the RFB?

In the effort to consider and implement Resolution 13/97 of the Conference of FAO, these matters have taken on added importance, and caused, to some extent, the restructuring of the RFB.

⁶⁶ See Advisory Committee on Fisheries Research, Report of the Working Party on Status and Trends of Fisheries, Second Session, Rome, Italy 6-9 December 1999, ACFR/99/2, para. 18.

⁶⁷ APFIC, CCAMLR, CPPS, GFCM, ICCAT, ICES, IOTC, NAFO, SPC AND WECAFC.

⁶⁸ Advisory Committee on Fisheries Research, Report of the Working Party on Status and Trends of Fisheries, *op. cit.*, note 66 para 17.

⁶⁹ For example, better data is needed, uncertainty should be systematically investigated, outputs should be identified corresponding to objectives, target and limit reference points should be established, methods used for assessment need to be revised, robustness of management regime to overfishing and environmental change should be assessed, and contingency plans should be developed; *ibid.*, para 23.

Capacity – human resources, research Are there adequate human resources and research capacity to execute the mandate of the RFB? If not, should the RFB be restructured or should research be done by independent institutions?

Recent measures to implement Resolution 13/97, which have included downsizing of the RFBs, have involved restructuring so the work could be carried out with minimal human resources and research by the RFB, for example by moving towards an umbrella organization with *ad hoc* working groups.

Enforcement mechanisms for conservation and management measures

How effective are enforcement mechanisms for conservation and management measures? This will depend on many factors, including whether the RFB's mandate is in areas under national jurisdiction and/or the high seas, the extent to which members are cooperating in enforcement and, where applicable, implementing the Compliance Agreement, Code of Conduct and Fish Stocks Agreement, and the agreed enforcement mechanisms.⁷⁰

Some tools for effective enforcement include technical compliance committees, comprehensive rules for boarding and inspection, and flag State enforcement requirements. Observers, even though their functions may be only scientific, may contribute to enforcement mechanisms by providing appropriate information.

Enforcement mechanisms or related procedures regarding IUU fishing are important in appropriate circumstances.

Undermining conservation and management measures by non-parties

Are there adequate measures and authority to deter, or enforce against, non-parties undermining conservation and management measures?

This is ancillary to enforcement authority and procedures, and can involve such measures as trade sanctions and prohibition of transshipment or landings. It could also involve approaches to the non-parties to adhere to the Compliance Agreement, and assist in addressing problems relating to with overcapacity and IUU fishing.

Cooperative management Is cooperative management possible under the mandate and functions of the RFB? This could be effected on a species basis, or on the basis of a larger geographic area.

This is a positive step towards harmonization of many elements in the management process which has proved successful in some regions.

Partnership/stakeholder participation How extensive is partnership/stakeholder participation in meetings and ongoing work of RFBs? As noted in the Introduction to this paper, this constitutes a central feature of governance. Its implementation is also called for in the recent international instruments.

⁷⁰ e.g., boarding and inspection, satellite tracking, timely information collection and dissemination on vessels fishing in the area, extending measures to other areas, such as trade and prohibition of landings, etc.

The participation of partners and stakeholders, including International Government Organizations (IGOs), International Non-Government Organizations (INGOs) and industry and other representatives, should be governed by clear terms, procedures and other relevant factors.

Collaboration with other RFBs Is there collaboration with other RFBs on a regional, species or international level?

The research-oriented RFBs such as ICES and PICES collaborate with other RFBs on an advisory basis, but collaboration among RFBs with management mandates could be effected for many reasons, including exchange of information, harmonization of management measures,⁷¹ dispute settlement and transparency.

Collaboration on the international level⁷² can result in prioritizing areas of focus for RFBs, and strengthening fisheries governance.

Political will of member countries to implement decisions Is the political will of member countries sufficient to implement decisions of RFBs? Do non-member countries demonstrate political will to take flag State compliance measures or otherwise assist RFBs discharge their functions?

Combined with a reluctance by many member countries to delegate sufficient authority to RFBs, reluctance or failure to implement decisions may be one of the most difficult constraints to effective governance. In particular, implementation of decisions relating to provision of information, fleet capacity and MCS require political commitment from members, but this is often not forthcoming.

Acceptance/Implementation by members of relevant international instruments Are members of RFBs accepting, implementing – or complying with – relevant international instruments, and in implementing their provisions to the extent possible through the RFBs?

A comprehensive study of this has been carried out,⁷³ noting that many RFBs are actively developing criteria for application of these provisions, whether or not their members have formally become parties. The pace is very slow: one reason is that technical agreement must be reached on complex matters such as the precautionary approach and ecosystem management, and even on relevant definitions underlying some of the concepts.

However, these instruments themselves took some time to be agreed, in response to dramatic collapse of fisheries due to overfishing. To avoid further delays, it has been suggested that the reforms be adopted on a provisional basis wherever possible.

Dispute Settlement Mechanisms Does the RFB have a dispute settlement mechanism which is binding, cost-effective and timely?

One of the most important components of an RFB is a workable dispute settlement mechanism. It complements the decision making process, and especially assists to resolve actions in the context of MCS operations.

⁷¹ Including enforcement and joint meetings.

⁷² At the 1999 meeting of FAO and non-FAO RFBs.

⁷³ Lugten, *op. cit.* note 2.

Depending on the instrument establishing the RFB, dispute settlement may apply to disputes between members, or between a member and the RFB.⁷⁴ There could be different rules for disputes of a technical nature, and those relating to final management decisions or other substantive matters. It is important that the rules and procedures are clearly established.

IV. FISHERY MANAGEMENT ISSUES AND CONSTRAINTS TO EFFECTIVE GOVERNANCE

The governance issues described above have a practical application. They are examined in the context of the degree of success RFBs have, or have not, had in implementing management measures in the following key areas of fisheries management:⁷⁵

- conservation of resources
- control of catches and effort
- fleet capacity
- by-catch and discards
- data and information collection, dissemination and distribution
- IUU fishing
- monitoring, control and surveillance (MCS)

These troublesome areas have been identified to date in RFBs and other fora, including those described above. There is, unfortunately, no global, independent scientific analysis correlating the success of the management measures of each RFB with each issue.

Input was sought from RFBs in the form of a questionnaire (Appendix 2). RFBs were asked whether they have a mandate in relation to conservation and management measures, if those measures are effective, if there are constraints to effective governance, and if so to indicate the governance issues that are problematic.

They were then invited to describe steps which had been taken or are needed, to deal with the constraints, and responses to this appear in Part V. Their responses, neither conclusive nor official, offer indications of current practice and perceptions.

The input from the fourteen responding RFBs⁷⁶ is summarized below. It is supplemented by information from official reports of responding and non-responding RFBs as indicated. The same caution that applies to issues of governance also holds true for management issues – the mandates and priorities of RFBs vary, and not all issues are applicable to any given body.

⁷⁴ It could also be useful to agree on procedures for dispute settlement with non-members, but the non-member would not be bound by them unless it acquiesced.

⁷⁵ It is recognized that there are other management issues, but these provide a reasonably basic common denominator.

⁷⁶ The following RFBs responded to the questionnaire, which was sent to all marine RFBs: CCAMLR, CECAF, GFCM, IATTC, IBSFC, ICES, IOTC, PHC, IWC, FFA, NASCO, NEAFC, NPFAC, WECAFC. NAFO advised it had no comment.

Mandate, Effectiveness of Management Measures, Constraints to Governance

RFBs were asked three questions in relation to the above management measures:

- (1) Do they have a mandate;
- (2) Are management measures effective; and
- (3) Are there constraints to effective governance in those areas.

All responding RFBs have a **mandate** for conservation of resources and data collection. One does *not* have a mandate for catch and effort control, and four for each of MCS and by-catch and discards. Five do not have full mandates for IUU fishing, and seven do not have mandates for fleet capacity.

Responding to the question **whether management measures are effective**, all but one answered “yes” for each of the following categories: conservation of resources, control of catches and effort, and data collection.⁷⁷

At the other end of the spectrum is IUU fishing - only one “yes” and one “somewhat” were received to indicate effective measures.

By-catch and discards was also at the low end, with two “yes”, but two more “somewhat effective” opinions.

Respondents were split as to whether measures for MCS and fleet capacity were effective, on the one hand, or ineffective or only somewhat effective on the other.

Responding to the question **whether there are constraints to effective governance**, five respondents said yes to each of conservation measures, bycatch and discards, and IUU fishing.⁷⁸ Four respondents indicated constraints in control of catches and fishing effort.

Three respondents for each of the categories of fleet capacity, data collection and MCS declared constraints to effective governance.

Recognizing that the responses are informal, and do not represent all RFBs,⁷⁹ the general indications point towards the areas of fleet capacity, bycatch and discards and IUU fishing as primary areas of focus for eliminating constraints and strengthening fisheries governance. Conservation measures, data collection and MCS were also of concern to respondents.

Governance Issues Constraining Fisheries Management Measures

Respondents were requested to link specific governance issues with the management measures, indicating constraints. Only six RFBs responded to this part of the questionnaire,⁸⁰ but the pattern of response is clearly indicative of some troublesome areas, and reinforces responses to other parts of the questionnaire.

⁷⁷ However, one – IOTC – noted that no measures have been in force long enough to assess results. Note the difficulties described by RFBs in subsequent responses in obtaining information from members and non-members, and the obstacles this causes for effective management measures.

⁷⁸ i.e., four in each category.

⁷⁹ All relevant RFBs were polled, but some did not respond.

⁸⁰ CCAMLR, CECAF, GFCM, IOTC, IPHC, NASCO.

Figure 1 shows the areas indicated by the respondents; the darker the shading, the more responses and consequently deeper the concern.

The three governance issues which cause concern to most respondents, and cut across all management categories, are data provision by members, undermining of measures by non-parties and political will to implement decisions.

The management issue of most concern, in terms of the number of governance constraints, is conservation of resources. This is followed by MCS, IUU fishing, bycatch and discards and data collection.

The specific problems causing concern to most respondents are: IUU fishing in relation to both enforcement mechanisms and non-parties undermining of measures; and data provision by members.

Figure 1
Questionnaire Responses
Governance Issues Affecting Management

| Governance | M a n a g e m e n t | | | | | | |
|--|-----------------------------------|-----------------------------------|---------------------------|----------------------------|-----------------------------|---|---|
| | Conserva- tion of Resources | Control of Catches & Effort | Fleet Capacity, etc | Bycatch and Discards | Data Collection, etc. | Illegal, Unregu- lated & Unreported Fishing | Monitoring, Control and Sur- veillance |
| 1. Institutional Arrangements | | | | | | | |
| 2. Mandate & Functions | | | | | | | |
| 3. Membership | | | | | | | |
| 4. Decision-making Powers | | | | | | | |
| 5. Decision-making Process | | | | | | | |
| 6. Members' Data Provision | | | | | | | |
| 7. Budget and Finance | | | | | | | |
| 8. Capacity | | | | | | | |
| 9. Enforcement Mechanisms | | | | | | | |
| 10. NonParties Undermining Measures | | | | | | | |
| 11. Cooperative Management | | | | | | | |
| 12. Partnership /Stakeholder Participation | | | | | | | |
| 13. Collabora-tion with other RFBs | | | | | | | |
| 14. Political Will to Implement Decisions | | | | | | | |
| 15. Acceptance of International Instruments: | | | | | | | |
| 16. Dispute Settlement Mechanisms | | | | | | | |

The darker the shading, the greater the number of responses. White indicates no respondent identified this as an area of concern.

Steps Taken/Needed by RFBs to Deal with Constraints to Management

RFBs were invited to describe the steps taken, and steps needed, to deal with management constraints. In general, the steps needed were identified as a shift from voluntary compliance to mandatory, inclusion of management powers in mandate, improvement of statistical systems and capacity strengthening in member countries, improved data collection and processing, better collaboration with other RFBs and national agencies, improved funding mechanisms and improved control of non-contracting parties. There is a strong focus on MCS by many RFBs. The responses are summarised below for each management issue.

Conservation of Resources Steps taken for the conservation of resources include: identification of cooperative programmes on assessment of fish stocks and trends in production; management of transboundary stocks; MCS; legal assistance; create a “collaborating party” status; prevention of marine pollution; recommendations to members, or resolutions, at sessions; identifying measures to improve implementation of resolutions;⁸¹ strengthening of RFBs; improvement of national statistical systems; assistance in data collection and processing; resolution on port state control measures; working with contracting parties to improve static funding.

One respondent stated that steps are needed to implement appropriate legal and statutory institutional and capacity building, as well as administrative and/or procedural measures which will ensure increased management powers. Also needed are mandatory compliance, rather than voluntary, a wider mandate to include associated and dependent species; mechanisms for the enforcement of adopted resolutions and dispute settlement, and increased cooperation between fisheries management organizations.

Control of Catches and Effort Steps are being taken by RFBs according to their mandates to control catches and effort, usually by recommendations to members or other decision, including in one case a port State control resolution. Some RFBs believe that there is scope for improvement of the national statistical systems, assistance in data collection and processing, and for developing integrated systems for reporting to strive towards online/ real time reporting. Coverage of all associated and dependent species is needed.

Control of fishing by non-contracting parties is a major constraint, and steps needed or being taken to counter this include diplomatic action, create a “collaborating party” status, measures to improve surveillance and a range of related actions such as trade and prohibition of landings.

Fleet Capacity Many RFBs do not have fleet capacity within their mandates, and therefore had no comment. However, steps taken include cooperation with other RFBs, a resolution on port State control measures and calling on members to provide a list of fishing boats from each of their ports. Action needed is better coordination and cooperation at all levels, and periodic review of incentives provided by members to the sector. In one RFB, an agreement needs to be adopted and a working group is currently operating in this realm. Some RFBs believe that full lists of fishing fleets in the region should be maintained.

Bycatch and Discards Studies are underway to highlight this problem and recommend measures in one case, and in another the Commission works with agencies of contracting parties to improve adherence to goals identified by the Commission. Improvement of data collection and processing, creation of “collaborating party” status, training, port State control measures and adoption of an agreement are activities reported by other RFBs. A needed step identified by one RFB is to extend its mandate to manage on an ecosystem basis.

Data and Information Collection, Analysis and Distribution For this troublesome area, respondents indicated that a strengthening of members’ capacity and timely submission to data is in order. A stronger political commitment of

⁸¹ In one case this involves improved reporting formats.

members is needed as well as greater emphasis on data collected by scientists and research institutions. Software development, training, establishment of sampling in key ports and data revision by the Secretariat were reported as steps taken by one RFB. To reduce discrepancies in returns, improved reporting formats are being developed by some RFBs.

Illegal, Unregulated and Unreported Fishing Some RFBs are actively dealing with IUU fishing through studies and reports, inviting non-contracting parties to become members or otherwise seeking their assistance through flag or port State controls, and taking trade-related measures. Measures being taken by parties to further reduce IUU fishing are becoming the subject of regularised reports in some RFBs, and it is recognised that more effort must be made at the national level. Others recommend the need for enforcement of decisions adopted by COFI and the RFB, and improvement of control of transshipments and activities of non-contracting parties. One RFB reports the establishment of a register of longliners from contracting and non-contracting parties.

Monitoring, Control and Surveillance RFBs are demonstrating their goal to strengthen MCS through a variety of means, including subregional collaboration and joint MCS implementation recommended at sessions, and working with national agencies to coordinate and improve funding for surveillance and enforcement. A system for satellite tracking is being developed by some RFBs, and measures to counteract non-contracting party fishing are being agreed.⁸² Observer coverage,⁸³ exchanges of inspectors and elaboration of a uniform control form are further tools reported for MCS. Checks on landings, control and surveillance are often left up to member governments, with one RFB reporting that this is good but there is probably room for improvement. If monitoring and control are the responsibilities of contracting parties, reports are made to the RFB of actions taken.⁸⁴

V. TRENDS IN STEPS BEING TAKEN BY RFBS TO ADDRESS GOVERNANCE CONSTRAINTS

RFBs are taking steps to deal with many of the governance constraints which are hampering management. One RFB⁸⁵ describes the “new dawn” emerging through recent international instruments, which led to its taking management responsibility for additional stocks of fish. However, as noted above, it is time for RFBs to move towards a proactive strategy in their governance.

By questionnaire, RFBs were invited to describe steps which had been taken to deal with the constraints to governance. Their responses to this Part offer indications of current priorities, together with information taken from official reports of a range of RFBs.

⁸² NEAFC serves as an example of an RFB which is incorporating many of these elements in its operations. It reported that agreement reached in 1999 on a new scheme on control and enforcement to be applied in waters outside national jurisdiction. It permits the mutual inspection of Contracting Party (CP) vessels, and CPs are required to notify the Secretariat of vessels authorised to fish in international waters and report catches in these areas. CPs agreed that by 1 Jan 2000, they require satellite tracking of all vessels fishing outside areas of national jurisdiction in the NE Atlantic, and the Secretariat shall supply CPs with an inspection presence in the area with up to date information about ongoing fishing activities. CPs have agreed measures to counteract non-CP fishing in the area; for example, prohibitions of landings of catches taken contrary to NEAFC recommendations

⁸³ IATTC reports 100% observer coverage on large purse seine vessels (carrying capacity over 363 metric tons) is required.

⁸⁴ For example, NASCO receives such reports.

⁸⁵ NEAFC, in an official description of its history.

Responses of most RFBs focused on areas of enforcement, membership and consolidation/cooperation with other RFBs, national agencies and other organisations, and improving cooperation with the private sector and NGOs. Review of the budget and legal/statutory instruments was indicated as important by FAO RFBs.

Mandate and Functions

The FAO RFBs have been reviewing their mandate and functions, as described above. As a result, many have agreed upon simplification of structure and areas of focus, and functions which would renew the interest and support by members by delivering specific benefits and integrating the programmes into national level. In addition, avoidance of duplication of functions by cooperation and coordination with other international and regional organizations, and conflict resolution figured prominently in recent recommendations of the RFBs' governing bodies.

For example, WECAFC agreed that it is in a unique position to serve as an umbrella organization. Agreement was reached on simplification of structure and a new mode of operation through *ad hoc* working groups. The programme of each working group is to reflect national priorities, and should be internalized by the participating countries and included in the work programme and budget of the national fisheries management agency.⁸⁶

APFIC, a much larger umbrella organization whose canopy extends over a vast area rich in fish production and fisheries networks,⁸⁷ celebrated its 50th anniversary in 1998. The Commission agreed in that year that programmes of action should be more specific and pragmatic with clear objectives, taking into consideration sub-regional needs.⁸⁸ The APFIC Secretariat has prepared three regional cooperative projects for consideration by the Commission: an APFIC information network, fisheries management frameworks in the Bay of Bengal and the status of fishery resources and their exploitation in the Yellow Sea.⁸⁹ The possible role of APFIC in conflict resolution in the region has been suggested.

Similarly, CECAF's Committee recognized that in order to enhance its effectiveness and ensure that its recommendations – especially those relating to fisheries management – were enforced, it needed to limit its activities to a few key areas that would be supported, with emphasis on shared and transboundary stocks. Other functions incorporated members' interests, with some emphasis on a regional level: working with members to develop national and regional capacity in international fisheries management, negotiation and conflict resolutions; instituting networking mechanisms to encourage complementarity; undertaking joint project or activities and

⁸⁶ Draft Report of the Ninth Session of the Western Central Atlantic Fisheries Commission (WECAFC), St. Lucia, 27-30 September 1999.

⁸⁷ There are more than 20 intergovernmental organizations and NGOs which are engaged in promoting cooperation and collaboration between the Asia-Pacific countries in fisheries research, development and management. Menasveta, Deb, "APFIC: Its Evolution, Achievements and Future Direction, 50th Anniversary Asia-Pacific Fishery Commission, RAP Publication: 1998/15, p. 61.

⁸⁸ Report of the Twenty-sixth session of the Asia-Pacific Fishery Commission (APFIC), 24-30 September 1998, RAP Publication 1998/23, para 36.

⁸⁹ *Ibid.*, para 52.

increasing efforts in securing external funding.⁹⁰ A review of its legal and statutory instruments is ongoing.

GFCM has decentralized management, and now relies on scientific input from its member countries. It has identified the need to improve national statistical systems (noting that members now include the EU and Japan). A major concern is that there are no tools to oblige countries to implement recommendations of the Commission. Without such a mandate, a process or procedures need to be accepted to increase the Commission's effectiveness. At its Twenty-fourth session in 1999, the Commission reviewed seven management resolutions adopted by the two previous sessions and included that they were still valid but not fully complied with. It called for monitoring of progress in implementation.⁹¹

Moral pressure is exerted on countries to implement resolutions, but there are no tools to oblige countries to implement recommendations of the Commission; a process or way to be more involved in the implementation of GFCM resolutions must be found.

The non-FAO RFBs are not as actively engaged in reviewing the statutory authority, mandate and functions of their organizations. By and large, those RFBs established in the post-UNCLOS era have broadly-based mandates. Internal reviews tend to dwell on the functions allowed under the existing statutory instrument for the RFB. For example, NEAFC, has reviewed its functions to accommodate recent developments in the legal framework for high seas fishing.⁹² On the other hand, because some members of the IWC no longer accept the provisions of its constitutive treaty, others believe a review would be in order.

Institutional and Capacity Building Measures

The FAO RFBs have included institutional and capacity building measures in their recent reviews; as noted above, the trend is to play a role in building capacity at the national and regional levels. However, across-the-board budgetary constraints mean that institutional-strengthening measures for RFBs relate more to identifying work programmes which maximize benefits to members through their participation and implementation.

Major movement in this area in non-FAO RFBs is evidenced by the agreement among NEAFC's contracting parties to strengthen the organisation by establishing an independent secretariat in London.

Decision Making Powers and Procedures, Procedural Measures

RFBs, on the whole, do not appear to be concerned about reviewing their decision making powers and procedures as a matter for consideration at annual meetings or in working groups. In fact, it may be difficult to reach agreement for such a review if members with interests in the status quo are able to defeat any proposed action under existing procedures.

⁹⁰ Report of the Fourteenth Session of the Fishery Committee of the Eastern Central Atlantic, 1998, FAO Fisheries Report No. 591, para 66.

⁹¹ General Fisheries Commission for the Mediterranean, Report of the Twentieth Session, Spain, 12-15 July 1999, GFCM Report 24.

⁹² A Working Group established to examine NEAFC's future in light of recent developments in the legal framework for fishing in waters outside national jurisdiction resulted in NEAFC taking responsibility for managing several stocks in this area.

However, for RFBs with regulatory powers, effective decision making is vital for effective conservation and management measures. As noted above, it is the cornerstone of sound fisheries management.

The complexity of the issue has emerged over the past two years during the negotiation of conventions for two new RFBs in the South-East Atlantic and the Western Central Pacific. Much attention has been given to the decision making process in each case, and successful implementation of these texts will depend on how well the proposed processes operate.

Many RFBs are currently reviewing the precautionary approach, which could circumvent, to some extent, debate in regulatory RFBs on whether conservation and management measures should be imposed; it would be a question of agreeing on reference points and other conditions, adequate scientific information and data, and when, not whether, to impose the measures.

Because this seems to be a powerful, yet neglected area, it could benefit future governance by RFBs if a review and analysis were undertaken of the decision making process.

Budget and Finance

Budgetary matters and finance are the subject of ongoing review in many RFBs. It is acknowledged that strengthening their role depends on the availability of funds, which can be difficult for those RFBs with developing States as members. As noted above, FAO RFBs are reviewing budgetary mechanisms pursuant to FAO Conference Resolution 13/97, with a view to seeking extra-budgetary funding or devising autonomous budgets.

There is a trend to set up multi-source schemes for financing the operations which are equitable and realistic. Funds for voluntary contributions are being implemented, and special funds are being created to assist developing countries to implement the RFB's convention and measures, including human resource development, capacity building and attendance at meetings.⁹³ Sharing the cost of intersessional meetings also figures in plans.⁹⁴ However, cost-recovery for specific activities is not generally included in the scheme.

APFIC recently considered budgetary and finance reform. The Executive Committee, in reviewing APFIC's achievements over the past fifty years of its existence, noted that it could have accomplished more had it not been constrained by a number of factors, including, *inter alia*, the lack of funding support and the reluctance to make additional financial contributions to the Commission by its members.⁹⁵ This could be said of many RFBs.

At the 1998 APFIC session, many members expressed support in principle for voluntary contributions to a trust fund for implementing specific projects, and provision of travel expenses by the members for their representatives at sessions of

⁹³ For example, these concepts are included in the Revised Draft Convention on the Conservation and Management of Highly Migratory Fish Stocks for the Central and Western Pacific, of September 1999.

⁹⁴ For example, the 1999 WECAFC Action Plan.

⁹⁵ Menasveta, Deb, "APFIC: Its Evolution, Achievements and Future Direction, 50th Anniversary Asia-Pacific Fishery Commission, RAF Publication: 1998/15, p. 46.

APFIC Committees and working parties/groups. The Commission agreed to establish an *ad hoc* Legal and Financial Working Group. It agreed further that the Working Group should develop a self-sustaining financial mechanism under which APFIC would operate and manage its affairs more effectively, taking into account the economic conditions of the members. The Working Groups should recommend the possible scheme and scale of contributions, legal and institutional arrangements, financial regulations of APFIC and priority programmes that respond to the needs of the members and do not duplicate the work of other fishery bodies in the region.⁹⁶

IOTC has a contribution scheme which is complex and equitable. Its scale of contributions determines the percentage of contributions of its members, based on the level of budget. The scale of contributions has the following elements: base payment and operation, contribution by catch averaged over a three year period indexed to the OECD status, and shares indexed to GNP.

GFCM has devised a scale of contributions and a budget under the general review by FAO RFBs, but procedures require two-thirds of the members to deposit instruments of acceptance of the amendments relating to an autonomous budget to the Agreement of GFCM. The Twenty-fourth session in 1999 could therefore not formally adopt them, but could agree on the substance and pave the way for later adoption.⁹⁷ This means that the contributions would be effective for members which had accepted the relevant amendments, but not the others, thereby compromising effective operation of the Commission.

Procedures and Requirements for Data and Information Collection, Analysis and Distribution⁹⁸

Most RFBs report that subsidiary bodies, *ad hoc* working groups or collaboration with independent experts are concerned with data and information collection, analysis and distribution. However, a major bottleneck is provision of the statistics by industry and/or member countries.

Data collection from members remains a real problem in most RFBs. They have established procedures and requirements, but implementation can be uneven. For example, IATTC reports that data collection for longliners is not as comprehensive or timely as for the surface vessels.⁹⁹

Many RFBs are taking concerted action by working with national agencies of their members to promote better data provision, exerting moral pressure as appropriate, and collaborating with research institutes, other relevant agencies and international research bodies.

Some RFBs are concerned about the political commitment or the capacity of members to supply data, and are working to address this.¹⁰⁰

While many RFBs depend on the provision of data and analysis by national agencies, IATTC maintains an independent scientific staff and offices in major fishing

⁹⁶ Asia-Pacific Fishery Commission, Report of the Twenty-sixth Session, Beijing, 24-30 September 1998, RAP Publication 1998/23.

⁹⁷ General Fisheries Commission for the Mediterranean, Report of the Twenty-fourth Session, Alicante, Spain, 12 – 15 July 1000, GFCM Report 24.

⁹⁸ For a report of data supply and disclosure practices in each RFB, see Lugten, *op. cit.*, note 2.

⁹⁹ By response to questionnaire.

¹⁰⁰ By response to questionnaire.

ports to collect information directly from vessels, managers and processing facilities, in addition to obtaining some information from national agencies.

Timely, accurate and comprehensive data and information is fundamental to all aspects of fisheries management, but is becoming particularly significant in taking measures to combat IUU fishing. Adoption by CCAMLR of a Catch Documentation Scheme¹⁰¹ for toothfish¹⁰² offers an example of the kinds of information needed for that purpose, and documentation required. The purposes of the Catch Documentation Scheme are to: monitor the international trade in toothfish; identify the origins of toothfish imported into or exported from the territories of contracting parties and determine whether they were caught in a manner consistent with CCAMLR conservation measures;¹⁰³ and gather catch data for the scientific evaluation of the stocks. To meet these purposes, all landings, transshipments and importations of toothfish into the territories of Contracting Parties must be accompanied by a completed Catch Document containing information relating to the volume and location of catch, and the name and flag State of the vessel.

Some RFBs are paying considerable attention to Vessel Monitoring Systems as a source of information for MCS and other management purposes.¹⁰⁴ It is clearly an area of growing focus: the twenty-seven participants in the Multilateral High Level Conference process to establish an RFB in the Western Central Pacific have agreed on requirements for a Vessel Monitoring System.

Cooperation among RFBs in the exchange of information and data is growing, with a view to management and enforcement. ACFR and CWP provide support in organisation and analysis of the data, and ISOFISH,¹⁰⁵ an NGO, was formed following the 1997 meetings of CCAMLR to collect, collate, analyse, verify and disseminate data, information and reports on longline fishing in the southern oceans.

Enforcement Mechanisms

Enforcement mechanisms are relevant to regulatory RFBs, and they can be relevant to the regulatory measures of the RFB and, where mandated, in-zone requirements. They must address a range of situations, such as in-zone enforcement, high seas enforcement, flag State enforcement and compliance and cooperative or joint enforcement.

Among other things, these mechanisms are especially important for enforcement against IUU fishing and ensuring applicable flag State compliance.

RFBs employ many tools for enforcement. They include boarding and inspection procedures,¹⁰⁶ flag State compliance measures, Port State control, fishing

¹⁰¹ In November, 1999.

¹⁰² (*Dissostichus* spp.)

¹⁰³ If caught in the Convention Area.

¹⁰⁴ e.g., IBSFC and NEAFC are implementing satellite tracking systems.

¹⁰⁵ The International Southern Oceans Longline Fisheries Information Clearing House. A joint venture between conservation organisations and licensed fishing companies, its mission is to assist governments in preventing IUU fishing and the incidental mortality of albatrosses and other seabirds in these fisheries. It estimates that illegal catch rates of patagonian toothfish, is probably in excess of 100,000 tonnes in the last year. At this level of unlicensed overfishing, regulated fish stocks can be expected to start crashing to commercial extinction within three to five years.

¹⁰⁶ Among the most elaborate boarding and inspection procedures are those adopted by NAFO.

vessel registers,¹⁰⁷ blacklisting and measures such as trade embargoes¹⁰⁸ or prohibitions on transshipments or landings. Other means which are used to contribute to enforcement are verification, catch/trade/import documentation measures,¹⁰⁹ ensuring product codes and customs classifications are clear so as to detect IUU fishing; monitoring,¹¹⁰ port sampling and inspection, observers and satellite tracking systems. Sanctions can apply as appropriate to countries, vessels, companies and nationals known to have been in breach of any RFB regulations.

Many RFBs are active in this area, and have subsidiary bodies, standing committees or other mechanisms which deal with technical and compliance matters. For example, NAFO adopted a Scheme to Promote Compliance by Non-Contracting Party Vessels with the Conservation and Enforcement Measures Established by NAFO.¹¹¹ Among other things, the Scheme established a Standing Committee on Fishing Activities of Non-Contracting Parties in the NAFO Regulatory Area (STAFAC). Its mandate is to review annually the information compiled, actions taken under the agreed Scheme and the operation of the Scheme, and where necessary, recommend to the General Council new measures to enhance the observance of NAFO Conservation and Enforcement Measures by Non-Contracting Parties and new procedures to enhance the implementation of the Scheme by Contracting Parties.

The IBSFC has embarked on an ambitious programme of action to strengthen its enforcement measures. The Working Group on Control and Enforcement was established, with its first meeting held in January 1999. It adopted the following Baltic Sea Strategy, which contains many elements being implemented in other RFBs.¹¹²

Baltic Sea Control Strategy

- At national level, elaborate specific objectives and strategies for controlling the cod, sprat, herring and salmon fisheries considering all types of vessels, fishing gear and geographic parameters such as the amount of landing places; set targets for landing control, sea control and back/forwards cross-checking.
- Specify appropriate means to achieve this strategy/targets such as human resources, equipment (including new technologies such as satellite tracking) and budget and strive towards a clear distribution of tasks/responsibilities in case several authorities are involved.
- Ensure that effective and equitable enforcement systems are put in place and strive towards their gradual harmonization and equitable prosecution of infringements.
- Gradually develop integrated systems for reporting, striving towards online/real time reporting.

¹⁰⁷ Such as the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency.

¹⁰⁸ e.g. ICCAT's active consideration of such trade measures.

¹⁰⁹ For example, CCAMLR's Catch Documentation Scheme.

¹¹⁰ IWC notes that before there can be a resumption of commercial whaling, the opponents of such an action require cast iron verification and monitoring systems to be in place.

¹¹¹ At the 19th Annual Meeting, September 1997, NAFO/GC doc.97/6.

¹¹² Information provided by IBSFC.

Short term improvements (1-2 years)

- Improve collaboration including internal collaboration between neighbouring States – exchange of inspectors including coordinated inspection actions.
- Consider amending vessel list of cod and the establishment of a full fleet register.
- Revise current hail system and integrate it with satellite tracking and associated electronic network providing the appropriate financial means are available.
- Control of non-contracting parties (Faroes Islands, Norway).
- Control of transshipments.
- Control officials to participate in the formulation of strategies for commercial species cod, herring and sprat.
- Stock-specific strategies.

Medium Term improvements (3-5 years)

- Electronic network (data links between contracting parties).
- Assessment of the efficiency of implemented measures.
- Computerization, cross checking and harmonization of logbooks.
- Uniform inspection form.
- Studies to improve control.
- Computerized data exchange.
- Necessary control of markets and structures.

Membership

The issue of membership is a lively one among RFBs. It has across-the-board implications for all management areas from conservation measures to MCS. There are two prongs to this issue – the first is to work towards a full membership which incorporates all relevant States: coastal, fishing and those with a research interest in the area or species. For RFBs with a regulatory function, this could extend to the application of measures by non-members.

The second is to promote full participation of the members in the meetings and intersessional activities of the RFBs, including linkages with national agencies. This also has implications for determining and funding work programmes, and acceptance of relevant international instruments.

Some examples of expansion of membership are found in CCAMLR, where possible extension of membership to a number of non-contracting parties with fisheries and research interests in the Convention Area is under review, and NPAFC which annually sends formal invitations to other States of origin in an effort to persuade them to accede to the Convention.¹¹³ There has been no positive movement from these States to date.

IWC provides an example of an RFB of 40 member States of which some 35 are active. It is believed that a wider representation of the global community, particularly of coastal States, would be good for the effectiveness of the organization.

¹¹³ These are the Peoples' Republic of China and the Republic of Korea.

Where it is not possible to secure full or expanded membership, some RFBs undertake proactive strategies to cooperate with non-members. For example, CCAMLR has adopted a policy to enhance cooperation with non-contracting parties, including encouraging the latter to accede to the Convention. The objective of the policy is to ensure the effectiveness of conservation measures and eliminate IUU fishing.¹¹⁴

Implementation by members' national agencies of conservation measures adopted by RFBs is essential for the effectiveness of those measures. For regulatory RFBs, IPHC provides an example: while adherence is generally positive, contracting parties adhere to catch limitations but provisions for ancillary controls (e.g. bycatch reduction) can be hampered by conflicts internal to the contracting parties' management processes for non-target species.

As noted above, GFCM is an example of an advisory body which has had difficulty in ensuring that its members implement resolutions. Development of process and procedures for this, including working with national agencies, could be useful.

Coordination with other RFBs

For the most part, RFBs have entered an era of consolidated outreach to each other. This builds upon good relations established among RFBs, but is becoming more methodical. There is generally cooperation with other RFBs having similar interests based either in geography or species. The objectives include exchange of information, improved enforcement, dispute settlements and transparency.

Scientific advisory bodies such as ICES, PICES and ACFR carry out their mandates by coordination with other RFBs.

Regulatory bodies tend to cooperate with all RFBs having jurisdiction in adjacent waters or the same species – for example, CCAMLR cooperates with bodies which have a mandate in the waters to the north of their Convention Area. A joint meeting of the regional fishery commissions of the North Atlantic and Adjacent Seas is planned for the year 2000. NEAFC has indicated its readiness to convene the meeting to strengthen cooperation and exchange experience. It will include NEAFC for the North-East Atlantic, NAFO for the North-West Atlantic and IBSFC for the Baltic Sea.

For NEAFC, cooperation between fisheries management organisations is an aim with respect to the issues of dispute settlement and transparency of the work of the organization.¹¹⁵

Many RFBs include collaboration with other RFBs in their work programmes. For example, WECAFC's 1999 action plan includes an item expressing the need to

¹¹⁴ In the policy, non-parties are also invited to attend meetings as observers, participate in their catch documentation scheme, prevent their flag vessels from fishing in the Convention Area in a manner which undermines the effectiveness of CCAMLR's conservation measures, request information on activities of vessels flying their flag, seek assistance in investigating and inspecting such vessels, request reports on landings and transshipment, and deny such activities for fish taken illegally from CCAMLR's waters.

¹¹⁵ Press notice, 26 November 1999.

provide avenues for other RFBs working in the area to report on their activities to the Commission, strengthen partnerships and arrangements with the other regional and international organisations.

Cooperation with the Private Sector and NGOs

Transparency has become a frontline issue for many RFBs in the post-UNCED era. In the past, some RFBs had adopted measures or practices to discourage cooperation with private sector or NGO interests, such as limiting observers to annual meetings or charging them onerous registration fees for observer status.

Events of the past decade have paved the way for improved cooperation. In some countries, governments have begun to forge partnerships with industry for fisheries management, and to devolve some aspects of management responsibility to them. NGOs and other research institutes have carried out valuable research, encouraged proactive approaches and raised public awareness about issues such as destructive fishing practices.

The legal basis and responsibility for cooperation has been consolidated and strengthened in the international legal instruments, and appears in the draft texts of conventions in the stages of final negotiation which will establish two new RFBs.¹¹⁶

With the increasing recognition of the contributions that the private sector and NGOs are making, many RFBs – especially those with a regulatory mandate – are either routinely or actively keeping the matter under review.

For example, IBSFC established a Working Group on Transparency at its 25th Session in September, 1999. Its mandate, which embraces a balancing of interests, is to:

- assess all relevant implications of the access to and distribution of information on the proceedings and decisions of IBSFC with respect to relevant interest groups and the general public;
- consider the terms, conditions, procedures and other relevant factors for the participation of International Governmental Organizations (IGOs) and Non-Governmental Organizations (NGOs) in meetings of IBSFC bodies as observers or otherwise;

bearing in mind at the same time that the integrity of IBSFC objectives and its effective functioning must be ensured.

NASCO is exemplary in its work to further improve cooperation with the salmon farming industry.

Acceptance of International Instruments

A recent review of measures taken by regional marine fishery bodies to address contemporary fishery issues describes attempts by some RFBs to improve conservation and management of world marine capture fisheries. A focal point of the

¹¹⁶ These are the subject of the processes in the SouthEast Atlantic and Western Central Pacific oceans.

review is active consideration or implementation by RFBs of the Code of Conduct, Compliance Agreement and Fish Stocks Agreement.¹¹⁷ These instruments contain obligations applying to RFBs and their members, and the former are well positioned to influence implementation throughout the region.

An impressive number of RFBs¹¹⁸ are effectively setting regional standards for their members to follow in giving some definition to concepts embodied in some or all those instruments, especially the precautionary approach. Significant progress is reported. RFBs are also encouraging their members to become party to the international instruments, especially in the context of controlling IUU fishing.¹¹⁹

However, the pace is slow. While most RFBs are investigating and reviewing, through appropriately constituted working groups how best to address the relevant issues, very few RFBs have actually taken concrete steps towards implementing the desired regime. The issues are complex, and the RFBs are the only realistic option for the conservation and management of shared stocks.¹²⁰

One option could be to adopt provisional measures, as appropriate, as formal solutions are being developed.

Maritime Boundary Delimitation

It is evident that maritime boundary delimitation leads to reduced disputes and improved political will to negotiate and coordinate agreements for shared fisheries resources. Promoting maritime boundary delimitation has been included in a checklist for attention of RFBs,¹²¹ but in practice does not appear to be the subject of attention in RFBs. The reasons for this relate to the mandate of the RFB, which does not include maritime boundary delimitation, and the potential political volatility.

One RFB where in-depth work on maritime boundary delimitation was done is FFA, which has sixteen member States with a geographic area covering about 1/12 of the earth's surface. The ignition point for this initiative was the Treaty on Fisheries concluded between all 16 FFA member States on the one hand, and the United States government on the other. The Treaty provided for an annual lump sum payment from the US for one regional license, and the FFA member States agreed to divide this among themselves into two sums: 15% in equal shares to all parties, and 85% according to where the fish were caught.

In order to apportion the latter, member States agreed in principle with the concept of drawing "Provisional Treaty Lines", based on the equidistance principle. A multi-year programme was then established in the Secretariat to give technical advice to member countries on boundary delimitation.

Dispute Settlement Mechanisms

Dispute settlement mechanisms in RFBs have been the subject of a recent survey.¹²² Many RFBs report that there is no mechanism, except a binding vote.

¹¹⁷ Lugten, *op. cit.*, note 2.

¹¹⁸ They include NASCO, IPHC, GFCM, NAFO, ICES, CECAF, WECAFC, IWC, APFIC, NPAFC, NEAFC, CCSBT, OLDEPESCA, IBSFC, ICCAT, IATTC, FFA, SPPC, IOTC, and CCAMLR.

¹¹⁹ For example, ICCAT is considering a resolution to this effect at its 1999 Commission Meeting.

¹²⁰ Lugten, *op. cit.*, note 2, p. 95.

¹²¹ *Ibid.*, p 67.

¹²² *Ibid.*, Part III.

Some – especially advisory bodies - reported no need for such a mechanism either because their mandate is advisory only, or because disputes do not arise in the course of their activities.¹²³

However, there are detailed provisions for appeals from decision and dispute settlement mechanisms being written into the draft legal instruments establishing new RFBs in the South-East Atlantic and Western Central Pacific. The dispute settlement procedures are based on provisions in the 1982 United Nations Convention on the Law of the Sea and the 1995 Fish Stocks Agreement.

In particular, the appeal from a decision on technical grounds is being considered. This could be useful as the precautionary approach takes root in the operations of many RFBs.

Dispute settlement, like decision making, is an area which does not usually appear in agendas of RFB's proceedings. Yet they are closely linked and vital to effective fisheries governance. It may be appropriate for RFBs to review these areas together if they are relevant to the success of their operations.

Although dispute settlement mechanisms do not figure prominently on current RFBs shopping lists, some FAO bodies noted above are considering a different spin to the issue: conflict resolution among their members, or becoming advisors to regional political bodies thus deflecting conflict at that level through early harmonized advice. These would, of course, relate to fisheries management issues outside the mandate of the RFB, but the outcome could be beneficial for the resource over which it has responsibility.

VI. THE FUTURE: FOCUS FOR STRENGTHENED EFFICIENCY OF RFB GOVERNANCE

Governance is never easy. As various interests weave themselves into an intricate form, it takes wisdom to understand the form. Then, when time and the tides bring changes to our world, it takes careful stewardship to adapt it to a new environment without allowing it to unravel, or worse, become irrelevant or extinct.

Many RFBs were established in another era, when resources were abundant and laws were not. It seems that almost overnight – or at least in the last decade of the millenium – this situation has reversed, and everything became global, including governance.

RFBs are a beacon of hope for the future. They are the only bodies that are positioned to address all the global issues of the day for the benefit of a resource that knows no political boundaries. Many are beginning to re-weave themselves into a new form, giving a new dimension to the concepts of “integration”, “participation”, “collaboration” and “communication.” Others, responding to fiscal restraint, are concerned with devising innovations to be able to serve their members in the best way possible.

But, recalling some of the compelling issues of the day, below, the question is how fast the weaver must work, and what must the priorities be:

- overfishing, over-capacity and overcapitalization of the sector;

¹²³ Similar lack of interest in this area was evidenced in the responses to the questionnaire.

- high rate of discarding in some fisheries/areas;
- IUU fishing;
- emergence of environmental values in fishery resource use;
- globalization in almost all aspects of fisheries (in particular trade);
- changes in consumption patterns and perceptions;
- transparency, accountability, partnership and good governance.

Of the many constraints to good governance identified by RFBs,¹²⁴ there are two sets of issues that are particularly troublesome. The first set transcends regional differences, and are set apart from all the internal governance issues of the RFB, such as structure, mandate, and budget. These are information and political will.

Information encompasses data collection, analysis and distribution at all levels; political will encompasses the will of members and non-members whose activities affect the relevant fishery. Globalization of governance and Information Age technology compel fisheries managers to respond to these constraints in a concerted and methodical manner at the international level.

It is recognized that the trend to identify common global solutions needs to continue, accelerate and expand. An International Plan of Action to advance status and trends reporting on world fisheries¹²⁵ and FAO's development of FIGIS¹²⁶ are recommendations of the December, 1999 ACFR Working Party which affect RFBs. The Second session of the Committee welcomed the suggestion to develop the International Plan of Action for presentation to the next session and for endorsement by COFI. It also recommended further support to the Fisheries Department for the development of FIGIS.

Development of international information systems for improved governance should not be confined to the subject-matter of fisheries alone. Databases will need to expand to cater to a whole new world – one which hosts ecosystem management, development of the precautionary approach, innovative technologies, the increasing use of trade as a tool for fisheries management, and the suggestion that the performance of RFBs should be measured by economic effectiveness and social/human benefits.

This line of thinking takes a giant leap from some current realities – problems with capacity, industry cooperation, political resistance, the ongoing failure by members to comply with information requests or resolutions of the RFB, and the absence of mandate in many RFB's to require information, leaving it with "moralsuasion" as a last resort.

¹²⁴ In responses to the questionnaire.

¹²⁵ ACFR, Report of the Working Party on Status and Trends of Fisheries, *op. cit.*, note 66, para 50. It suggests that the following should be considered in the preparation of such an action plan: steps to complete development of a status and trends information database; capacity building and arrangements for using FIGIS; development of cost-effective methods for acquiring and validating information on the status and trends of small-scale fisheries and multispecies fisheries; an inventory of world fisheries and stocks; priority for expanding the scope of status and trends reporting; appropriate partnership arrangements with existing regional bodies and other entities, that specify roles and responsibilities; identification of needs and opportunities for new regional arrangements where appropriate arrangements do not exist; practical guidelines for quality assurance incorporating peer review processes, with objective non-governmental scientific experts, into a system for status and trends reporting; and the role of local, regional, and global scientific working parties as a vehicle for Status and Trend reporting, capacity building and quality assurance.

¹²⁶ *Ibid.*, para. 51.

A methodical approach needs to be taken on a global level to address these issues. Collaboration is increasing, and its value is accepted by RFBs,¹²⁷ but much of it tends to be *ad hoc* or consensual, rather than proactive.

RFBs are well positioned to contribute to setting the priorities for information needs. Identifying an expanded, and futuristic, array of information uses, needs and cost-effective mechanisms to address the needs, could be an agenda item for annual in-house meetings and collaboration among RFBs, and for meetings of FAO and non-FAO RFBs.

Political will is a more difficult realm to enter. RFBs are working to secure favourable political will among member countries, as well as non-members, but it remains a significant constraint. Even though this realm is based on relations rather than the official mandate and functions of the body, possible approaches to strengthen political relations and secure public support should not remain unexplored.

One approach is to promote greater interaction between the RFB and political bodies as appropriate at national, regional and international levels, with a view to strengthening relations and developing more positive political will. The RFB could play an advisory role and fisheries issues could benefit from being included on political agendas.

Securing cooperation of non-members at the political level is vital in the efforts to implement flag State compliance measures and reduce IUU fishing. Although some RFBs are active in this regard,¹²⁸ strengthened collaboration and collective action by RFBs could have positive results.

To the extent that political will reflects the interests of the public, it could also be useful for RFBs to take note of the success of some responsible NGOs in raising public awareness of fisheries governance issues. They have the capacity to develop informed education or public relations programmes which take into account international or regional interests. Their participation in important fora – including as observers in RFBs and United Nations Conferences - and liaison with bodies such as FAO allow them a clear and current appreciation of pressing issues.

The second set of issues, internal to each RFB but having commonalities with other RFBs, covers institutional arrangements, mandate and function, membership, transparency, collaboration, budget, acceptance of international instruments, decision making and dispute resolution.

The High Level Panel, having noted that the next ten years should be an era in which RFBs implement and enforce decisions, concluded that RFBs should:

“review and adapt, where appropriate, their mandates, structures and strategies in order to better play their increasingly important roles in the process of achieving sustainable fisheries development and to discharge their responsibilities in implementing the recent series of international instruments concerned with fisheries...”¹²⁹

¹²⁷ Strengthened collaboration figured highly among many of the conclusions of the 1999 meeting of FAO and non-FAO RFBs.

¹²⁸ For example, CCAMLR, NAFO.

¹²⁹ It also called for attention to be drawn to the need for States to more widely participate in these instruments, *ibid.*, subpara vi.

This is a tall order, and is bound to vary with each RFB. To that extent, the suggestion that RFBs develop performance indicators for self-evaluation has merit. These indicators might be generic, and a framework could be developed on a global basis with input from RFBs. The FAO RFBs which have already undertaken self-evaluation, provide some useful examples.

The indicators could take into account first the overall performance of the RFB in accordance with its constitution, and how successfully it is addressing an agreed list of current compelling fisheries issues, such as those noted above, including the state of the fish stocks. The indicators might also evaluate whether its constitution is adequate, and the RFB's performance in relation to factors external to the mandate of the RFB. Some measurements which have been suggested - human and social benefits and economic effectiveness¹³⁰ – might form part of the formula, if this can be done in a reasonably straightforward manner.

Second, the indicators could encourage a review of all the other governance issues. In particular, the decision making and dispute settlement areas, which currently are not the focus of attention in many RFBs as noted above, could benefit from an informed review comparing the success or otherwise of various formulae if it is a problem.

Other types of performance to be evaluated could relate to the implementation of international instruments, and collaboration and cooperation with all other international, regional, and national agencies, stakeholders and independent experts.

The performance evaluation could include a separate report on suggested future steps for the RFB. In addition to recommending steps to strengthen weaknesses identified by performance indicators, it could be reform-oriented and proactive in its outlook. What new mandates can the RFB be given to do its job more effectively? Should it be taking into account extrinsic factors outside the control of fisheries management agencies, such as pollution and environmental degradation, the introduction of foreign and transgenic species? What are some financial reforms? Could there usefully be a focus on developing procedures for conflict resolution and on improvement of the decision making process?

Most RFBs already have full agendas, and developing performance indicators for self-evaluation would add to their considerable workload. However, current issues described above need to be confronted head-on by improved governance.

As RFBs continue the momentum generated by the events described in this paper and increase their collaborative activities, the opportunity to revive the state of the world's fisheries through revitalization of fisheries governance is materializing. Continued concerted and methodical action by RFBs, coordinated as appropriate by FAO and reviewed by COFI, will provide the basis for combatting the current problems surrounding information needs and political will, and considering a workable framework for developing and applying performance indicators. This would allow RFBs to move towards a new era of governance and a revival of the resource. The human benefits would follow.

¹³⁰ See above, Part II.

List of Regional Fishery Bodies or Arrangements

FAO Bodies

Asia-Pacific Fisheries Commission (APFIC)
Fishery Committee for the Eastern Central Atlantic (CECAF)
General Fisheries Commission for the Mediterranean (GFCM)
Indian Ocean Fishery Commission (IOFC)
Indian Ocean Tuna Commission (IOTC)
Regional Commission for Fisheries (RECOFI)
Western Central Atlantic Fishery Commission (WECAFC)

Non-FAO Bodies

Comité régional des pêches du Golfe de Guinée (COREP)
Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)
Commission for the Conservation of Southern Bluefin Tuna (CCSBT)
Commission Sous-régionale des pêches (CSRP)
Inter-American Tropical Tuna Commission (IATTC)
International Baltic Sea Fishery Commission (IBSFC)
International Council for the Exploration of the Sea (ICES)
International Commission for the Conservation of Atlantic Tuna (ICCAT)
International Pacific Halibut Commission (IPHC)
International Whaling Commission (IWC)
Latin American Organization for the Development of Fisheries (OLDEPESCA)
Northwest Atlantic Fisheries Organization (NAFO)
North Atlantic Marine Mammal Commission (NAMMCO)
North Atlantic Salmon Conservation Organization (NASCO)
North-East Atlantic Fisheries Commission (NEAFC)
North Pacific Anadromous Fish Commission (NPAFC)
North Pacific Marine Science Organization (PICES)
Pacific Salmon Commission
South Pacific Forum Fisheries Agency (FFA)
South Pacific Commission
South Pacific Permanent Commission (CPPS)

**QUESTIONNAIRE
REVIEW OF ISSUES OF GOVERNANCE IN REGIONAL FISHERY BODIES**

A review is being undertaken of the issues of governance in all regional fishery bodies (RFBs), and the manner in which they have or have not been addressed.

This is being done under the direction of the International Fisheries Institutions and Liaison Service, in the Fisheries Policy and Planning Division of FAO. The output will be an FIPL fisheries circular that will be used as a working document at the next meeting of FAO and non-FAO regional fishery bodies, and as an information paper for the 24th session of the Committee on Fisheries (COFI).

To enable a general review of the linkages between some key fisheries management issues and governance capabilities, and identification of important constraints to governance, a brief questionnaire is attached for your review and completion.

Your cooperation is kindly requested so that your experience and views may be integrated in summary form into the final document. We would be grateful for your views by November 25, 1999.

You are invited to provide more detail than requested on the questionnaire.

I. BACKGROUND

Strengthened governance by RFBs is emerging as a necessity for the continued sustainability of the global fisheries resources. The urgency is demonstrated by a number of important actions, including:

- COFI's agreement in 1997 that all FAO RFBs be reviewed and evaluated by their members to determine measures to be taken to strengthen each body;¹³¹
- the prominence of the issue in the agenda of the 1998 FAO High Level Panel of Fisheries Experts;
- the resulting special meeting of FAO and non-FAO RFBs; and
- COFI's recommendation that such meetings should be continued.¹³²

At the meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements held in Rome, 11-12 February 1999, participants considered the role of RFBs as vehicles for good fishery governance. A great range of differences among RFBs was acknowledged in terms of mandates, structures, strategies, membership, finance, monitoring and enforcement, and related issues.

Despite these differences, there was no real recipe for success - background documents indicated that **in most cases, present systems of fisheries governance have failed to ensure resource conservation and economic**

¹³¹ This directive was reinforced by Resolution 13/97 adopted by the FAO Conference at its twenty-ninth session in November 1997.

¹³² Report of the twenty-third session of the Committee on Fisheries, 15-19 February 1999, FAO Fisheries Report No. 595, FIPL/R595, para. 82.

efficiency.¹³³ It is recognized, however, that some important contributions have been made by RFBs to governance in such areas as research, data collection, and adopting effective management measures in some areas. It has also been recognized that RFBs are subject to events beyond their control.

The meeting emphasized that RFBs must “**measure their success by results in the form of favourable trends in, or status of, stocks and human benefits.**”¹³⁴ It concluded that:

“regional fishery bodies should continue to review and adapt, where appropriate, their mandates, structures and strategies in order to better play their increasingly important roles in the process of achieving sustainable fisheries development and to discharge their responsibilities in implementing the recent series of international instruments concerned with fisheries...”

II. QUESTIONNAIRE

Effective fishery management measures depend on effective fishery governance. If success in governance is to be measured in terms of “favourable trends in, or status of, stocks and human benefits”, a linkage must be established between successful (or unsuccessful) management measures, and applicable governance.

The objective of the attached questionnaire is to identify linkages between fishery governance and management measures, constraints in fishery governance and steps being taken to deal with the constraints.

Building on the progress already made on these issues, it will form the basis for recommendations as to how issues of governance can best be addressed by RFBs and identification of possible areas where RFBs might focus to strengthen their efficiency.

The issues are complex and many are difficult to summarize. If you wish to provide some detailed views or experiences for specific areas, which may be helpful to other RFBs in the global community, these would be most welcome.

The Questionnaire constitutes two parts,

- Part I – Review of Issues of Governance in Regional Fishery Bodies
- Part II – Potential Areas for Focus to Strengthen Regional Fishery Bodies

Annual reports of RFBs will also be used to prepare the report. The report will focus on the experience of the RFB over the past three years.

Sincere thanks for your time and effort. You may return the questionnaire to me at this email address, or by fax at 1 902 860 0390, by November 25, 1999.

¹³³ Report of the Meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements, FAO Fisheries Report No. 597, FIPL/R597, Appendix G.

¹³⁴ *ibid.*, para. 38.

PART I - REVIEW OF ISSUES OF GOVERNANCE IN REGIONAL FISHERY BODIES

| Management Measures | Mandate Y Yes N No | Are measures effective, based on state of stocks and social benefits Y Yes N No S Somewhat | Are there constraints to effective governance Y Yes N No | Please Indicate constraints from governance issues listed below, using relevant number Or describe other governance constraints | Please describe steps taken to deal with constraints, if any. | Please describe steps needed to strengthen RFB governance on this issue, if applicable. |
|--|------------------------------|---|--|--|---|---|
| Conservation of Resources | | | | | | |
| Control of catches and fishing effort | | | | | | |
| Fleet capacity and associated problems | | | | | | |
| By-catch and discards | | | | | | |
| Data collection, handling and dissemination | | | | | | |
| Illegal, Unreported and Unregulated Fishing | | | | | | |
| Monitoring, Control and Surveillance | | | | | | |

Governance Issues

- 1. Institutional Arrangements for management measures, research, legislation, MCS, etc.**
- 2. Adequate Mandate and Functions – for either regulatory or advisory RFBs**
- 3. Membership**
- 4. Decision making Powers**
- 5. Decision making Process, including linkages between technical and management decisions and voting/consensus/objection procedures**
- 6. Provision of timely and accurate data and information by members**
- 7. Budget and finance**
- 8. Capacity – human resources, research**
- 9. Enforcement mechanisms for conservation and management measures**
- 10. Undermining of conservation and management measures by non-parties**
- 11. Cooperative management**
- 12. Partnership/stakeholder participation**
- 13. Collaboration with other RFBs**
- 14. Political will of member countries to implement decisions**
- 15. Acceptance/Implementation by members of relevant international instruments**
- 16. Dispute Settlement Mechanisms**

PART II – POTENTIAL AREAS FOR FOCUS TO STRENGTHEN EFFICIENCY OF RFBs

Please indicate which of the following areas either is currently, or could usefully be a focus for strengthening the efficiency of your RFB. You are invited to provide comment, if appropriate, or indicate N/A if it is not applicable.

1. Review of legal and statutory instruments, including mandate and functions.
2. Review of institutional and capacity building measures.
3. Review of decision making powers and procedures.
4. Review of procedural measures.
5. Review of budget and finance matters, including capacity – related matters.
6. Review of procedures and requirements for data and information collection, analysis and distribution.
7. Review of enforcement and management measures.
8. Membership – review of membership, promoting full participation by members in meetings, intersessional activities, determining and funding work programmes, acceptance of relevant international instruments.
9. Consolidation and coordination with other RFBs.
10. Enhancing coordination with other economic groupings and regional bodies responsible for environmental management.
11. Improving cooperation with the private sector and NGOs in the work of RFBs.
12. Promoting maritime boundary delimitation to reduce disputes and improve political will to negotiate and coordinate agreements for shared fisheries resources.
13. Review of dispute settlement mechanisms.
14. Other.