

Call for submissions to the thematic report of the Special Rapporteur on Freedom of Opinion and Expression to the UN Human Rights Council: “Freedom of Opinion and Expression and Sustainable Development - Why Voice Matters”

[Accountability.Fish](#) (Accountability “Dot” Fish) would like to take this opportunity to address the following two questions as provided in the guide for making submissions to the Special Rapporteur on Freedom of Opinion and Expression to the UN Human Rights Council:

- Are there restrictions or other challenges to freedom of expression or access to information that affect the delivery of public services and achievement of economic, social and cultural rights in your country? Which groups of people are most affected by these restrictions and in what ways? What measures would you recommend to address their problems?

- What laws, policies and practices exist in your country to facilitate public participation and access to information and data relating to sustainable development? Where have there been successes, or conversely challenges, with facilitating access to information and data relating to sustainable development in relation to a) governments and b) companies?.

Accountability.Fish believes that transparency and accountability within the Regional Fisheries Management Organisations (RFMOs) regime needs to be brought in line with other environmental fora in order to meet minimum standards on the right of people to be informed and consulted on public policy and to debate, discuss and participate fully, equally and meaningfully in decisions that affect their lives and livelihoods. In particular, we believe that these public participation access rights should be applied universally across all 18 RFMOs which manage of 80% of the world’s oceans combined.

RFMOs are the international organisations regulating regional fishing activities in the high seas. Most RFMOs have management powers to set catch and fishing effort limits, technical measures, and control obligations within a given geographical area. Decisions made by RFMOs have far reaching consequences for stakeholders around the world, be they consumers, workers, retailers, or the general public.

The specific context for considering the rules and practices relating to the participation of non-governmental organisations (NGOs) in RFMOs is important: Overfishing and illegal fishing remains a serious problem globally and as RFMOs play a key role in managing fish stocks, we believe they require more civic participation and more transparency and accountability in decision-making and broader stakeholder participation, including small scale fishermen and women, trade and retail stakeholders in the supply chain, the media, small local NGOs and other stakeholders with relevant expertise, in line with other environmental fora that are outlined below.

The correct application of access rights within the RFMO framework can advance the Agenda for Sustainable Development and related issues, especially in the context of the international legal and policy frameworks and current gaps in the implementation of all relevant instruments in these fora, as a means of enhancing transparency and accountability of governments and companies.

Accountability.Fish is working to develop the first set of principles, the Equal Access Principles, for observers at RFMOs (see attachment), which argues the need to integrate Principle 10 of the Rio Declaration, the standards for political observer status operated by ECOSOC, the Aarhus and Escazu Conventions, the environmental objectives of the RFMO agreements as well as relevant provisions within the CBD and UNFCCC, and the language of the Antigua Convention, into all RFMOs

resolutions relating to the participation of observers, in order to assure the full enjoyment of participation and access to information rights.

Relevant to the question of whether RFMOs facilitate 'just, balanced, effective and genuine involvement' lies in the different access rights observers are granted at these meetings, and whether their status as observers allows for the full realisation of these applicable rights. Whilst the express provisions of Aarhus and Escazu only bind parties to those agreements, the standards for participation at international fora are laid down in these two regional agreements can be argued to reflect those implicit in Principle 10 of the Rio Declaration to which all states participating in RFMOs have already signed up to. Indeed, a legal analysis conducted by Accountability.Fish outlines all political observer transparency standards that states have agreed to in certain other international fora, including CITES and the Montreal Protocol, but which are not being observed at RFMOs (see attached document).

Numerous independent studies over the years have highlighted how RFMOs often do not follow scientific advice when setting quotas for key species, including tuna, in whole or in part. This is of great concern since, when management policies follow the recommendations of the scientists, fisheries stocks do better than when policies ignore or do not fully implement those recommendations. NGOs which meet the current RFMO-set criteria that enable them to gain observer status participate at most of the meetings of RFMOs, often highlighting during these commission meetings the need to follow scientific advice as well as other issues including highlighting cases of non-compliance and illegal fishing activities by member states.

In the context of considering relationships between the various standards on political observers under RFMOs, it can be argued that the inconsistency of practice across RFMOs, together with more limited participation than is provided in other environmental fora and under international rules and norms is a key but underreported Freedom of Expression and Right to Information concern, requiring more formal intervention from UN bodies operating outside of the ocean governance sector.

The Treatment and Status of Political Observers within RFMOs.

The standards for NGO participation within RFMOs vary, perhaps in part because of the fact that some were adopted some time ago and others are far more recent. Key areas of difference include:

- The presence in the parent Convention of express language on transparency and on the participation of NGO observers (IATTC, WCPFC) as compared to silence as to the principle of transparency (IOTC, ICCAT) and reference merely to 'attendance' at meetings (IOTC);
- The need for a positive decision by the relevant Commission for NGO observers to be able to attend meetings of subsidiary bodies, including scientific committees (IOTC);
- Guidance or rules providing for NGOs with relevant/demonstrated interest to be able to participate in all Commission meetings (except for extraordinary meetings) (ICCAT);
- Specific provision in the rules requiring Commission to grant permission to NGO observers for the making of oral statements/written submissions (IOTC)
- Express provision for partnership agreements with NGOs.

Concerns have also been raised about the impact of the covid pandemic on the participation of NGOs at RFMO meetings. Although there is some evidence to suggest that virtual meetings have been positive in terms of cost efficiency and accessibility for observers and smaller and/or less well-resourced delegations, a recent paper notes that 'in most circumstances the net impact on decision-

making appears detrimental¹.’ and concerns have been raised as to how observer organisations are included in virtual decision-making. NGOs have made recommendations for effective and transparent virtual decision-making, including publishing clear procedures and producing pre-meeting discussion documents and making them available to accredited observers in real time, to allow adequate time for information gathering and negotiations.

Specific RFMO Regimes case studies: ICCAT and WCPFC

WCPFC: The Western and Central Pacific Fisheries Commission (WCPFC) was established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention) which entered into force on 19 June 2004.²

The language of the WCPF Convention appears more progressive than that of ICCAT, as might be expected from a more recent instrument:

- Article 21 of the Convention deals with transparency and provides: The Commission shall promote transparency in its decision-making processes and other activities. Representatives from intergovernmental organizations and non-governmental organizations concerned with matters relevant to the implementation of this Convention shall be afforded the opportunity to participate in the meetings of the Commission and its subsidiary bodies as observers or otherwise as appropriate. The rules of procedure of the Commission shall provide for such participation. The procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall be given timely access to pertinent information subject to the rules and procedures which the Commission may adopt. (Emphasis added)
- This express provision is important in underling the link between transparency as a general principle and the participation for NGOs as well as INGOs in meetings of the Commission
- Under rule 36(4) of the rules of procedure³: A [n NGO] desiring to participate as an observer shall notify the Executive Director in writing of its desire to participate at least fifty days in advance of the session. The Executive Director shall notify the members of the Commission of such request at least 45 days prior to the opening of the session at which the request is to be considered. [NGOs] that have made such notification to the Executive Director shall be invited to participate in the session as observers unless a majority of the members of the Commission objects to the request in writing at least twenty days before the opening of the session. Such observer status shall remain in effect for future sessions unless the Commission decides otherwise.
- Observer status will be automatically revoked unless that observer has participated in at least one (1) session of any of the Commission or its subsidiary bodies in the preceding three (3) years, with the three years being a rolling three-year period (rule 36(5)). An NGO observer can reapply for observer status at any time (rule 36(6)).
- At the 18th regular meeting of the Commission in 2021, the Chair noted the Secretariat’s updated report on observer status (WCPFC18-2021-06 List of Observers) which noted that no state or NGO observers were removed in 2021 under the requirements of Rule 36 of the Rules of Procedure. The Executive Director confirmed that the paper was included in the WCPFC18 ODF as Topic D, but no comments were received.

¹ Regional fisheries management: COVID-19 calendars and decision making Bianca Haas a,*, Ruth Davis b, Brooke Campbell b, Quentin Hanich Marine Policy 128 (2021) 104474, page 2.

² [Home | WCPFC](#)

³ file:///C:/Users/kcook/Downloads/WCPFC%20Rules_of_Procedure%20Dec%202019_0.pdf.

- NGO Observers may sit at meetings of the Commission and its subsidiary bodies and upon the invitation of the Chairman and, subject to the approval of the Commission or the relevant subsidiary body, may make oral statements on matters within the scope of their activities. Written statements submitted by NGO observers within the scope of their activities which are relevant to the work of the Commission may, subject to the approval of the Chairman, be distributed at meetings of the Commission and its subsidiary bodies (rule 36(7)).⁴

It could be argued that these rules are somewhat more restrictive (and are therefore ‘unduly restrictive’) than the approach laid down in Article 21 of the Convention, in particular as regards automatic revocation and or for the making of statements and distribution of written statements.

ICCAT: The International Convention for the Conservation of Atlantic Tuna (ICCAT), which was adopted in 1966, establishes the International Commission for the Conservation of Atlantic Tunas (the Commission), Article III.1 as well as a Council to perform such functions as are assigned to it by the Convention or are designated by the Commission.

- The Convention makes no express provision for the participation of NGOs. Article XI (3) provides:
The Commission may invite any appropriate international organization and any Government which is a member of the United Nations or of any Specialized Agency of the United Nations and which is not a member of the Commission, to send observers to meetings of the Commission and its subsidiary bodies.
- Rule 5 of the ICCAT Rules of Procedure accordingly provides:
- *The Commission may invite international organizations and any Government which is a Member of the United Nations or of any Specialized Agency of the United Nations and which is not a member of the Commission, to send observers to its meetings. Observers may, with the authorization of the Chairman, address the meeting to which they are invited and otherwise participate in its work, but without the right to vote.*
- The participation of non-governmental observers is addressed in the Guidelines and Criteria for Observers originally adopted in 1998 and amended in 2005 (05-12). Paragraph 2 provides
- *All ... (NGOs) which support the objectives of ICCAT and with a demonstrated interest in the species under the purview of ICCAT should be eligible to participate as an observer in all meetings of the organization and its subsidiary bodies, except extraordinary meetings held in executive sessions or meetings of Heads of Delegations.*
- The Guidelines also provide for the application process for participation, withdrawal of accreditation and the possibility of seating limitations and so on. Those participating may attend meetings, as set forth in the Guidelines, but may not vote; may make oral statements during the meeting upon the invitation of the presiding officer; distribute documents at meetings through the secretariat; and engage in other activities, as appropriate and as approved by the presiding officer. Paragraph 6 states that Observers will be required to pay a fee for their participation at the meetings of the Organization, which will contribute to the additional expenses generated by their participation, as determined annually by the Executive Secretary.

⁴ As decided at WCPFC13, a fee applies for NGO participation at Commission meetings. For WCPFC18 the fee for the first two representatives of an NGO delegation is set at US \$250 and US \$150 for each subsequent representative. (current it is @ \$500)

Overall, Accountability.Fish believes that Principle 10 of the Rio Declaration, the standards for political observer status operated by ECOSOC, the Aarhus and Escazu Conventions, the environmental objectives of the RFMO agreements as well as relevant provisions of MEAs including the CBD and UNFCCC, are not being uniformly applied across RFMOs.

The groups of people most affected by these restrictions are NGO observers who cannot afford the participation fees or the frequent remoteness of annual meetings; media; local NGOs which do not meet the criteria of observer status; small scale fishing organisations in coastal communities; and women fisherfolk rights groups.

Because of the restrictive approach to the presence of media, being limited only to a press conference at the closure of a plenary meeting, after all the decisions have already been taken, Accountability.Fish argues that the public is limited in how they can witness their own nations speaking on their behalf. The lack of media presence hinders citizens' ability to form opinions, understand national stances, and be meaningful voices in their national processes. While observers are an extension of civil society, many are not unbiased reporters, thus creating an information vacuum that ensures poor governance and consistently subpar environmental and economic outcomes.

Furthermore, RFMO with observer status (NGOs) are frequently subjected to:

- Rules on accreditation and participation of NGO observers at RFMOs that do not ensure the just, balanced, effective and genuine involvement of NGOs from all regions and areas of the world;
- NGO observers do not always enjoy the right to make oral statements at meetings in accordance with the rules of the organisation concerned, due to unduly, unpredictable or restrictive rules;
- Contributions made by NGO observers are not taken into account in some decision-making process with potential impacts on the environment and or subsistence fishing – including for example a lack of results of RFMOs on illegal fishing and compliance issues, ecosystem impact and fair allocation of fishing opportunities amongst countries;
- Observer status is sometimes withdrawn by reason of non-attendance to meetings;
- Lack of parity of treatment between NGOs and other stakeholders including those representing the private sector, market stakeholders as well as government delegations, bearing in mind that under Agenda 21: 29 *Any policies, definitions or rules affecting access to and participation by non-governmental organizations in the work of United Nations institutions or agencies associated with the implementation of Agenda 21 must apply equally to all major groups.*
- Plenary meetings and general meetings are not always open to the participation of NGO observers;
- The media wishing to cover RFMOs, outside of the opening and closing plenary statement are not granted any access rights to the rest of the meetings. This is further compounded by the fact that access to the commission meetings tends to be increasingly held in areas outside the main capital, which further diminishes media attendance at the plenary. Closing sessions are not always held or accessible.

Equal Access Principles

To help ensure that RFMO decision making reflects the interests – and input – of all stakeholders, not just industrial fishers, we propose these Equal Access Principles be adopted, implemented, and enforced in all global RFMOs.:

- Mandate parity of treatment between stakeholders—NGOs, markets, producers and guarantee access to be heard by the delegations as well at national coordination, plenary, and subsidiary meetings.
- Open plenary and general meetings, including media
- Permit approved observers at all subsidiary meetings
- Mandate the use of all RFMO official languages in subsidiary meetings
- Make meeting locations and participation fees appropriate and reasonable for all participants
- Enact inclusive accreditation and participation rules to enable diverse stakeholder involvement, standardized across all RFMOs
- Implement clear and open guidelines for submitting written testimony and materials, free of any content-review process
- Remove undue restrictions on the rights of observers to make oral statements during the deliberation process rather than afterwards
- Recognize and include contributions made by stakeholder observers in any decision with potential impacts on the environment
- Promote partnership and joint activities with stakeholders with relevant expertise and/or local knowledge;
- Sustain stakeholders' observer status even if one meeting is skipped
- Interpret all rules relating to stakeholder observers and participation so as to ensure open and inclusive participation.