



**9<sup>th</sup> Meeting of the Parties (MoP9)**

**Reunion Island, 4–8 July 2022**

**MOP-09-20**

**Performance Review of SIOFA**

Delegations of the European Union and the Cook Islands

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<b>Abstract</b>	
<p>2022 will mark the 10th anniversary of the entry into force of the SIOFA Agreement and therefore ten years of operation of SIOFA. It is appropriate to assess the performance of the organisation to ensure that it achieves the objectives set out in Article 2 of the Agreement.</p> <p>It is proposed that the Meeting of the Parties approve terms of reference for the first Performance Review of SIOFA, to be conducted in the 2022-2023 intersessional period.</p>	

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<sup>2</sup> Documents available only to members invited to closed sessions as per SIOFA RoP 20.



**Recommendations**

- MoP to approve the terms of reference for the first Performance Review of SIOFA

## TERMS OF REFERENCE

### Performance Review of SIOFA

Article 13 of the 1995 United Nations Fish Stocks Agreement (UNFSA) provides that “*States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks*”.

United Nations General Assembly (UNGA) Resolution 61/105 of 8 December 2006 called for performance reviews to be undertaken of all Regional Fisheries Management Organisations and arrangements. Performance reviews have also been called for in the UNFSA Review Conferences in 2006 and 2010 and the 14<sup>th</sup> round of informal consultations of States Parties to the UNFSA, where performance reviews were a dedicated topic.

More recently, UNGA Resolution 76/71 recognises that performance reviews have proven to be an effective tool for strengthening performance of regional fisheries management organizations and arrangements, and calls for those organisations that have not done so to undertake performance reviews as a matter of urgency.

As 2022 will mark the 10<sup>th</sup> anniversary of the entry into force of the SIOFA Agreement and therefore ten years of operation of SIOFA, it is appropriate to assess the performance of the organisation to ensure that it achieves the objectives set out in Article 2 of the Agreement, notably to ensure the long-term conservation and sustainable use of the fishery resources in the Area through cooperation among the Contracting Parties, and to promote the sustainable development of fisheries in the Area, taking into account the needs of developing States bordering the Area that are Contracting Parties to the Agreement, and in particular the least developed among them and small-island developing States.

These Terms of Reference set out the process for conducting the first performance review of SIOFA.

#### Performance review

1. A performance review of SIOFA shall be conducted during the 2022-2023 intersessional period and the final report shall be submitted prior to the 10<sup>th</sup> Meeting of the Parties for its consideration at that meeting.
2. An independent Performance Review Panel (Review Panel) shall be appointed in accordance with the procedures set out in points 4 to 9 below to carry out the performance review. Panel members shall be independent and participate in their personal capacity. Their expertise should cover collectively the relevant areas of science, fisheries and marine ecosystems management and international legal and governance matters, including compliance and enforcement issues and combatting illegal, unreported and unregulated (IUU) fishing.
3. The review shall be carried out on the basis of the list of criteria in Annex 1. The Review Panel may consider adding criteria, if needed.

#### Performance Review Panel composition and Chair

4. The Review Panel shall be composed of four persons as follows:
  - a. Two experts who are nationals of SIOFA Contracting Parties or Participating Fishing Entities with experience in the SIOFA context and a thorough understanding of the SIOFA Agreement and Conservation and Management Measures (CMMs).
  - b. Two external experts, among whom there is experience in relevant areas of science, fisheries and marine ecosystems management and international legal and governance matters, including compliance and enforcement issues and combatting IUU fishing. The external experts shall not be officers or officials of

SIOFA, or be directly involved in SIOFA matters on behalf of CCP authorities to SIOFA at the time of appointment or while the performance review is being conducted.

5. The Chairperson of the Review Panel shall be a Review Panel member selected by the Review Panel.

#### Selection of the Review Panel members

6. SIOFA Contracting Parties and Participating Fishing Entities may provide in writing two names, one for each category, to the Chairperson of the Meeting of the Parties, through the Secretariat, by 31 July 2022. [Contracting Parties and Participating Fishing Entities should confirm the availability of their nominees before they are proposed](#). The submission shall include a CV and a short presentation of each candidate.
7. The Chairperson of the Meeting of the Parties, through the Secretariat, shall provide to the Contracting Parties and Participating Fishing Entities, by 15 August 2022, two lists containing the names proposed for the appointment of the four experts.
8. SIOFA Contracting Parties and Participating Fishing Entities shall immediately acknowledge receipt of the communication. Contracting Parties and Participating Fishing Entities may respond in writing to the Chairperson of the ~~Commission~~[Meeting of the Parties](#), through the Secretariat, within 30 days indicating their vote for two persons from each list. In case of a tie between two or more candidates from the same list, a run-off shall immediately be run for those candidates. SIOFA Contracting Parties and Participating Fishing Entities shall reply to the communication from the Chairperson of the Meeting of the Parties with the list of tied candidates within 15 days indicating their vote for one person from the list/s.
9. The Chairperson of the Meeting of the Parties, immediately after the end of the 30-day period, or the additional 15-day period in case of a run-off, shall, through the Secretariat, inform SIOFA Contracting Parties and Participating Fishing Entities of the result of the selection process.
10. Once the persons with the highest votes have been identified, the Secretariat shall write to each person selected for appointment to the Review Panel, indicating SIOFA's desire to appoint them, requesting their commitment to comply with these Terms of Reference and seeking their positive response within 10 days.
11. The Secretariat shall inform Contracting Parties and Participating Fishing Entities of the final composition of the Review Panel.

#### Review Panel functions and tasks

12. At the latest by 15 October 2022, the Review Panel shall appoint a Chairperson among its members by consensus.
13. The Review Panel shall conduct its work in English. The Review Panel may conduct its work in-person and virtually and shall meet at least once in person in La Réunion, France, unless a more cost-effective location is identified at a date convenient to all Panel members. If the international sanitary situation makes it impossible to meet in person, the Review Panel meetings shall take place in virtual format.
14. The Review Panel shall determine its own mode of operation for conducting the performance review and for preparing its report, noting that the review shall include a desktop study with questionnaires and interviews, carried out in support of this work, addressed to all SIOFA CCPs, and those international organisations and non-governmental organisations that have participated in the Meetings of the Parties as observers. All CCPs and observers are encouraged to participate in the questionnaires and interviews.
15. The Review Panel shall decide by consensus including the adoption of the report. In the event consensus cannot be reached, individual members of the Panel may include their views in the

Panel's report. The Panel may consider the use in the report of the terminology proposed in Annex 2.

16. The report including the recommendations of the Performance Review shall be communicated by the Panel Chairperson, through the Secretariat, to SIOFA CCPs, the Chairperson of the Meeting of the Parties and the Secretariat no less than 60 days in advance of the 10<sup>th</sup> Meeting of the Parties.
17. The Chairperson of the Review Panel shall present the Panel's report to the 10<sup>th</sup> Meeting of the Parties and respond to questions from CCPs concerning the report.
18. The final report and the conclusions of the Meeting of the Parties shall be placed on the public part of the SIOFA website.
19. The SIOFA Secretariat shall provide logistical support and information to the Review Panel but shall not form part of the Panel.

#### Report of the Performance Review

20. The report of the Review Panel shall be a concise, well-structured and easy to read document that:
  - a. Describes the process and steps taken to conduct the review (e.g. documents examined, individuals and organisations consulted etc.);
  - b. Presents the outcomes of the review;
  - c. Provides recommendations from the Review Panel on improvements to SIOFA's performance with respect to the review criteria; and
  - d. Prioritises the recommendations from the perspective of the Panel.

#### Process for consideration and implementation of Performance Review recommendations

21. The performance review report including recommendations shall be considered firstly by the Scientific Committee and the Compliance Committee and then by the Meeting of the Parties for discussion and action, if needed.
22. The Scientific Committee and the Compliance Committee shall report to the Meeting of the Parties the results of their discussions including plans for addressing any of the recommendations made by the Review Panel and tracking process in that regard.
23. Taking into consideration the discussions by the Scientific Committee and the Compliance Committee, the 10<sup>th</sup> Meeting of the Parties shall consider the report and any recommendations and decide whether there are any urgent recommendations that require early implementation.
24. A standing item shall be placed on the agenda of future Meetings of the Parties to follow up on progress made against the implementation plan.

#### Funding

25. The costs of the performance review shall be borne preferably through voluntary contributions. In the event that there are outstanding costs, these shall be borne by the SIOFA budget. These costs may include:
  - a. Fees to Panel members for their work, if required;
  - b. Reimbursement of economy-class travel and subsistence costs, if requested, for to Panel members their participation in a Review Panel meeting and to the Panel Chairperson for their participation in the 10<sup>th</sup> Meeting of the Parties; and
  - c. Hire of any necessary meeting venue(s), equipment and other costs associated with the performance review.

### Annex 1: Criteria for reviewing the performance of SIOFA

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

Area	General criteria	Detailed criteria
1. Conservation and management	Status of fisheries resources	<ul style="list-style-type: none"> <li>Status of fisheries resources under the purview of SIOFA</li> </ul>
		<ul style="list-style-type: none"> <li>Trends in the status of those resources</li> </ul>
		<ul style="list-style-type: none"> <li>Status of species that belong to the same ecosystems as, or are associated with or dependent upon, targeted fisheries resources</li> </ul>
	Ecosystem approach	<ul style="list-style-type: none"> <li>Extent to which SIOFA decisions take account of and incorporate an ecosystem approach to fisheries management</li> </ul>
	Data collection and sharing	<ul style="list-style-type: none"> <li>Extent to which SIOFA has agreed formats, specifications and timeframes for data submissions</li> </ul>
		<ul style="list-style-type: none"> <li>Extent to which SIOFA CCPs, individually or through SIOFA, collect and share complete and accurate data concerning fishery resources and other relevant data in a timely manner</li> </ul>
		<ul style="list-style-type: none"> <li>Extent to which fishing and research data and fishing vessel and research vessel data are gathered by SIOFA and shared among CCPs</li> </ul>
		<ul style="list-style-type: none"> <li>Extent to which SIOFA is addressing any gaps in the collection and sharing of data as required</li> </ul>
	Quality and provision of scientific advice	<ul style="list-style-type: none"> <li>Extent to which SIOFA receives and acts on the basis of the best scientific advice relevant to the fisheries resources under its purview, as well as to the effects of harvesting, research, conservation and associated activities on the marine ecosystem</li> <li>Extent to which the structure, processes, procedures and expertise of the Scientific Committee and the Secretariat meet the needs and resources of SIOFA and the data and technical requirements of the most recent modelling platforms</li> </ul>
	Adoption of conservation and management measures	<ul style="list-style-type: none"> <li>Extent to which SIOFA has adopted Conservation and Management Measures (CMMs) for fisheries resources that ensure the long-term</li> </ul>

		<p>conservation and sustainable use of those resources and are based on the best scientific evidence available</p> <ul style="list-style-type: none"> <li>• Extent to which SIOFA has applied precautionary approach as set forth in Article 4(c) of the Convention and the Code of Conduct of Responsible Fisheries Article 7.5, including the application of precautionary reference points</li> <li>• Extent to which SIOFA has followed the criteria established under Article 6(2)-(4) of the Agreement, in the adoption of measures for the allocation of total allowable catch or total allowable fishing effort</li> <li>• Extent to which SIOFA has moved towards the adoption of CMMs for previously unregulated fisheries, including new and exploratory fisheries</li> <li>• Extent to which SIOFA applies uniform principles and procedures to all fisheries resources under its purview</li> <li>• Extent to which SIOFA has taken due account of the need to conserve marine biological diversity and minimise adverse impacts of harvesting, research, conservation and associated activities on fishery resources and its marine ecosystems</li> <li>• Extent to which SIOFA has adopted measures to minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target fishery resources, and impacts on associated or dependent species through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques</li> </ul>
	Capacity management	<ul style="list-style-type: none"> <li>• Extent to which SIOFA has identified fishing capacity levels commensurate with the long-term conservation and sustainable use of fishery resources</li> <li>• Extent to which SIOFA has taken actions to prevent or eliminate excess fishing capacity and effort</li> <li>• Extent to which SIOFA monitors the levels of fishing effort</li> </ul>

	Reporting Requirements	<ul style="list-style-type: none"> <li>Analysis of SIOFA’s reporting requirements to improve efficiency, avoid redundancy and reduce unnecessary burden to CCPs</li> </ul>
2. Compliance and enforcement	Flag State duties	<ul style="list-style-type: none"> <li>Extent to which SIOFA CCPs are fulfilling their duties as flag States under Article 11 of the Agreement, pursuant to CMMs adopted by SIOFA and under other international instruments, including, inter alia, the 1982 Law of the Sea Convention, the 1995 Agreement and the 1993 FAO Compliance Agreement, as applicable</li> </ul>
	Port State measures	<ul style="list-style-type: none"> <li>Extent to which SIOFA has adopted measures relating to the exercise of the rights and duties of its CCPs as port States, including under Article 12 of the Agreement, the Code of Conduct for Responsible Fisheries and the FAO Port States Measures Agreement, as applicable</li> </ul>
		<ul style="list-style-type: none"> <li>Extent to which these measures are effectively implemented</li> </ul>
	Monitoring, control and surveillance	<ul style="list-style-type: none"> <li>Extent to which SIOFA has adopted integrated Monitoring, Control and Surveillance (MCS) measures (e.g. record of vessels, VMS, inspections in port and at sea, regulation of transshipment, market-related measures, fight against IUU fishing, etc.)</li> </ul>
		<ul style="list-style-type: none"> <li>Extent to which these MCS measures are effectively implemented</li> </ul>
	Follow-up on infringements	<ul style="list-style-type: none"> <li>Extent to which SIOFA and its CCPs follow up on non-compliance with CMMs</li> </ul>
	Cooperative mechanisms to detect and deter non-compliance	<ul style="list-style-type: none"> <li>Extent to which SIOFA has established adequate cooperative mechanisms to monitor compliance, detect and deter non-compliance, and remedy compliance issues (e.g. compliance committees, IUU vessel lists, sharing of information about non-compliance)</li> </ul>
		<ul style="list-style-type: none"> <li>Extent to which these mechanisms are being utilised effectively</li> </ul>
	Market-related measures	<ul style="list-style-type: none"> <li>Extent to which SIOFA has adopted measures relating to the exercise of the rights and duties of CCPs as market States for SIOFA fishery resources</li> </ul>
Reporting Requirements	<ul style="list-style-type: none"> <li>Analysis of SIOFA’s reporting requirements to improve efficiency,</li> </ul>	



		avoid redundancy and reduce unnecessary burden to CCPs.
<i>3. Decision-making and dispute settlement</i>	Decision-making	<ul style="list-style-type: none"> <li>• Efficiency of Meetings of the Parties, meetings of its subsidiary bodies and working groups (including intersessional working groups) in addressing critical issues in a timely and effective manner</li> <li>• Extent to which SIOFA has transparent and consistent decision-making procedures that facilitate the adoption of CMMs and decisions in a timely and effective manner</li> <li>• Existence of an informal mechanism of cooperation between CCPs based on reciprocities</li> </ul>
	Dispute settlement	<ul style="list-style-type: none"> <li>• Extent to which SIOFA has established adequate mechanisms for resolving disputes</li> </ul>
<i>4. International cooperation</i>	Transparency	<ul style="list-style-type: none"> <li>• Extent to which SIOFA is operating in a transparent manner, taking into account Article 14 of the Agreement and the Code of Conduct for Responsible Fisheries</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which SIOFA decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion</li> </ul>
	Relationship with CNCPs	<ul style="list-style-type: none"> <li>• Extent to which SIOFA facilitates cooperation between Contracting Parties and CNCPs including through encouraging CNCPs to become Contracting Parties or to implement voluntarily SIOFA CMMs</li> </ul>
	Relationship with non-CCPs undermining the objectives of the Agreement	<ul style="list-style-type: none"> <li>• Extent to which SIOFA provides for action in accordance with international law against non-CCPs undermining the objectives of the Agreement, as well as measures to deter such activities, as well as encouraging them to become Contracting Parties and CNCPs or to implement voluntarily SIOFA CMMs</li> </ul>
	Cooperation with international organisations	<ul style="list-style-type: none"> <li>• Extent to which SIOFA cooperates with other international organisations, including under Article 16 of the Agreement</li> </ul>
	Special requirements of developing States	<ul style="list-style-type: none"> <li>• Extent to which SIOFA recognises the special requirements of developing States, in particular the least development among and small island developing States, and pursues forms of cooperation with</li> </ul>

		<p>developing States, including under Article 13 of the Agreement and the Code of Conduct for Responsible Fisheries</p> <ul style="list-style-type: none"> <li>• Extent to which SIOFA CCPs, individually or through the Meeting of the Parties, provide relevant assistance to developing States</li> </ul>
5. <i>Financial and administrative issues</i>	Availability of resources for activities	<ul style="list-style-type: none"> <li>• Extent to which financial and other resources are made available to achieve the aims of SIOFA and to implement SIOFA's decisions</li> </ul>
	Efficiency and cost-effectiveness	<ul style="list-style-type: none"> <li>• Extent to which SIOFA is efficiently and effectively managing its human and financial resources, including those of the Secretariat</li> </ul>
		<ul style="list-style-type: none"> <li>• Extent to which the schedule and organisation of the meetings could be improved</li> </ul>

## **Annex 2: Terms and associated definitions for reviewing the performance of SIOFA**

This annex provides terms and associated definitions proposed as guidance for the Meeting of the Parties and subsidiary bodies' discussions to avoid ambiguity surrounding how particular paragraphs of the Panel's report should be interpreted.

Level 1: **RECOMMENDED, RECOMMENDATION** (formal); **REQUESTED, REQUEST** (informal): A conclusion for an action to be undertaken by the Meeting of the Parties, a subsidiary (advisory) body and/or the Secretariat. Note: Subsidiary (advisory) bodies must have their Recommendations and Requests formally provided to and accepted by the Meeting of the Parties. The intention is that the higher body will consider the action for endorsement under its own mandate, if the subsidiary body does not already have the required mandate. Ideally, this should be task-specific and contain a timeframe for completion.

Level 2: **AGREED**: Any point of discussion from a meeting, which the Meeting of the Parties or relevant subsidiary body considers to be an agreed course of action covered by its mandate, which has not already been dealt with under Level 1 above; a general point of agreement among delegations/participants of a meeting which does not need to be elevated in the Meeting of the Parties' reporting structure.

Level 3: **NOTED/NOTING; CONSIDERED; URGED; ACKNOWLEDGED**: General terms to be used for consistency. Any point of discussion from a meeting, which the Panel considers to be important enough to record in a meeting report for future reference. Any other term may be used to highlight the importance of the relevant paragraph to the reader of a SIOFA report. Other terms may be used but will be considered for explanatory/informational purposes only and shall have no higher rating within the reporting terminology hierarchy than Level 3.