

**5<sup>th</sup> Meeting of the Commission  
Adelaide, Australia, 18 to 22 January 2017**

**COMM 5 – DOC 03  
Regular Review  
Prepared by the Secretariat**

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## 1. INTRODUCTION

Article 30 of the Convention provides for a regular review of the effectiveness of the conservation and management measures adopted by the Commission in meeting the objective of the Convention and the consistency of such measures with the principles and approaches in Article 3. Such reviews may include examination of the effectiveness of the provisions of the Convention itself and shall be undertaken at least every five years.

The Convention came into force in August 2012 and the first Commission Meeting was in January 2013. Thus, in accordance with Article 30(1), the first review is due to be initiated in 2017 and presented to the Commission at its meeting in 2018.

### *Actions required by the Commission*

The Secretariat notes that, in accordance with Article 30(2) of the Convention, the Commission is required to set the criteria for the review, guided by best international practices, and to include the participation of at least one independent person. In particular, at the present meeting, the Commission is expected to consider the terms of reference for the Review Panel, including

- the criteria for the review,
- the composition of the Review Panel,
- main methods and approaches to be used for the review,
- a time frame for the review, and
- the allocation of a budget.

### *Purpose of this document*

The present document was prepared to assist the Commission in its consideration of this matter and summarises the experiences gained and procedures followed by other RFMOs.

The Secretariat would like to underline that the document is only intended for information purposes and not as a recommendation to the Commission.

SPRFMO is a very young organisation and still in the process of developing key components of its management regime. Thus, it could be viewed as premature to address all aspects normally included in the performance review of a RFMO, and the Commission might find it useful to adjust the practices followed by others to best suit the SPRFMO requirements at this point in time.

## 2. SPRFMO CONVENTION

### Article 30. REVIEWS

1. *The Commission shall review the effectiveness of the conservation and management measures adopted by the Commission in meeting the objective of this Convention and the consistency of such measures with the principles and approaches in Article 3. Such reviews may include examination of the effectiveness of the provisions of the Convention itself and shall be undertaken at least every five years.*
2. *The Commission shall determine the terms of reference and methodology of such reviews which shall be carried out in accordance with criteria set by the Commission which shall be guided by best international practices and shall include contributions from the subsidiary bodies as appropriate and the participation of a person or persons of recognised competence who is independent of the Commission.*
3. *The Commission shall take account of the recommendations arising from any such review, including through the appropriate amendment of its conservation and management measures and the mechanisms for their implementation. Any proposals for amendment to the provisions of this Convention arising from any such review shall be dealt with in accordance with Article 35.*
4. *The results of any such review shall be made publicly available following its submission to the Commission.*

## 3. THE PRACTICE OF PERFORMANCE REVIEWS OF RFMOS

Since 2005, the UNGA has called for performance reviews of RFMOs (see Annex 1 for the relevant paragraphs of the most recent UNGA Resolutions [69/109](#) and [70/75](#)). Until 2016, all RFMOs established prior to 2010 have conducted at least one comprehensive performance review, in particular<sup>1</sup>:

[CCAMLR \(2008\)](#), CCSBT (2008 [Part 1](#), [Part 2](#), and [2016](#)) [GFCM \(2011\)](#), [IATTC \(2016\)](#), [IOTC \(2009, 2016\)](#), [ICCAT \(2009\)](#), [NAFO \(2011\)](#), NASCO ([2005](#), [2012](#)), NEAFC ([2006](#), [2014](#)), [SEAFO \(2010, 2016\)](#) and [WCPFC \(2012\)](#). The bilateral (Canada and USA) [IPHC \(2014\)](#) and PSC (2012, report no longer publicly available) only reviewed financial and administrative practices.

FAO has published two Circulars (2012<sup>2</sup> and 2015<sup>3</sup>) which address performance reviews of RFBs.

- The first of these two (Ceo *et al* 2012) provides executive summaries of seven performance reviews and concludes with a synopsis of relevant recommendations given in the performance reviews of these seven RFBs.
- The second FAO publication (from 2015) summarises the performance reviews of 19 RFBs as well as the actions taken by the RFBs in response to their reviews; it also offers an overview of the evolution of independent performance reviews and best practices.

Other documents of interest are described under section 3 “Annotated Bibliography”.

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<sup>1</sup> Links to these performance reviews will also be available on the SPRFMO meeting webpage

<sup>2</sup> [Ceo, M.; Fagnani, S.; Swan, J.; Tamada, K.; and Watanabe, H. 2012](#). Performance Reviews by Regional Fishery Bodies: Introduction, summaries, synthesis and best practices, Volume I: CCAMLR, CCSBT, ICCAT, IOTC, NAFO, NASCO, NEAFC. FAO Fisheries and Aquaculture Circular. No.1072. FAO, Rome, Italy

<sup>3</sup> [FAO, 2015](#). The implementation of performance review reports by regional fishery bodies, 2004 – 2014, by Peter D. Sziget and Gail L. Lugten. FAO Fisheries and Aquaculture Circular No. 1108. Rome, Italy

## *Criteria*

Comprehensive criteria for performance reviews of RFMOs are provided by [Lodge \*et al\*](#) in their widely acknowledged 2007 report on “*Recommended Best Practices for Regional Fisheries Management Organizations*”.

In 2007, as a follow-up to the first joint tuna-RFMO meeting in Kobe (Japan), the US Ambassador David Balton<sup>4</sup> proposed five criteria for RFMOs (the full sub-itemised list is shown in ANNEX 2); these are based on the criteria developed by NEAFC in 2006 and have subsequently been commonly used, with minor modifications, in performance reviews of RFMOs:

### **1. Conservation and management**

- *Status of living marine resources*
- *Data collection and sharing*
- *Quality and provision of scientific advice*
- *Adoption of conservation and management measures*

### **2. Compliance and enforcement**

- *Flag State Duties*
- *Port State measures*
- *Monitoring, control and surveillance (MCS)*
- *Follow-up on infringements*
- *Cooperative mechanisms to detect and deter non-compliance*
- *Market-related measures*

### **3. Decision-making and dispute settlement**

- *Decision-making*
- *Dispute settlement*

### **4. International cooperation**

- *Transparency*
- *Relationship to cooperating non-members*
- *Relationship to non-cooperating non-members*
- *Cooperation with other RFMOs*
- *Special requirements of developing States*

### **5. Financial and administrative issues**

- *Availability of resources for RFMO activities*
- *Efficiency and cost-effectiveness*

## *Panel Composition*

The SPRFMO Convention requires the inclusion of at least one independent expert in the Review Panel. Most review panels so far have been composed of 6 to 9 persons but about a third had only 3 or 4<sup>5</sup>. Also, the practice in most performance reviews by RFMOs has been to include internal and external experts in about equal proportion (FAO 2015). FAO (2015) states that “*at least one fisheries scientist, one international legal expert, and one person with long experience regarding fisheries management or RFBs are included on panels.*”

Often, panel experts, both internal and external, are proposed by Commission Members and then selected by the Commission following an agreed procedure.

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<sup>4</sup> IATTC. 2008. Performance Reviews of Tuna Regional Fisheries Management Organisations. IATTC-78-15, Annex C.

<sup>5</sup> FAO (2015) notes that only two RFBs (both FAO bodies) have so far engaged single experts for the preparation of their reviews: the Regional Committee for Fisheries (RECOFI, Gulf & Sea of Oman), in 2011; and the Fishery Committee for the Eastern Central Atlantic (CECAF, areas off West Africa).

It is considered good practice that Members and stakeholders are encouraged to provide their views or comments in relation to the performance in respect of the various criteria (FAO 2015).

**Internal experts** of review panels typically are experienced representatives (e.g. chairpersons) from Members and CNCs. The Secretariat serves as a resource to the Panel (Ceo *et al* [FAO] 2012).

**External experts** in general are highly qualified persons from academia or other relevant intergovernmental organisations (UN, FAO, RFBs) with a respected international reputation. FAO (2015, Appendix 1) contains the names of all panellists involved in RFB performance reviews until 2014, a useful resource for RFMOs when planning their performance review.

### *Methods and Approaches, Timeframes, Costs*

FAO (2015) notes that performance review panels usually meet once in person, and conduct most of their tasks via electronic correspondence.

The following methods and approaches have been widely used by Review Panels (FAO 2015):

1. Analysis of official records and foundational documents of the RFB in comparison with relevant international law and soft-law instruments<sup>6</sup>
2. Interviews of officials working for the RFB
3. Questionnaires sent to the members

For the evaluation of the effectiveness of conservation and management measures the Review Panel may

- refer to the scientific advice and official catch statistics
- interview scientists and data managers involved in the work of the RFMO

#### Publication of Information

As required by SPRFMO and requested by the UNGA, most performance reviews are publicly available on the organisation's website.

It is common practice that individual responses to interviews and questionnaires are kept confidential. However, summary results and the methodology used (e.g. questionnaires) are available as part of the report of the Review Panel.

#### Timeframes and Costs

On average, a Review Panel requires about half a year to conclude its work after its inception/first meeting.

The costs of performance reviews should at a minimum include the fees and travel expenses of external experts. It should be discussed, however, how internal panellists will be funded, giving due consideration to special requirements of developing States Members.

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<sup>6</sup>Relevant international law: UNCLOS (1982), FAO Compliance Agreement (1993), UNFSA (1995) and the Port State Measures Agreement (2009). Soft law instruments are e.g. the FAO Code of Conduct and its IPOAs.

#### 4. ANNOTATED BIBLIOGRAPHY

The following contains a number of publications (and a summary description of their content) that provide guidance and summaries of review processes by RFBs and that the Secretariat finds useful in the context of a SPRFMO performance review.

**FAO. 2005.** Report of the twenty-sixth session of the Committee on Fisheries. Rome, 7–11 March 2005. FAO Fisheries Report. No. 780. Rome, FAO. 2005.

The 26<sup>th</sup> COFI discussed the “importance of establishing principles to review the performance of RFMOs in meeting their objectives and the obligations and principles set forth in relevant international instruments.” “Many Members agreed that the process could be shaped by consultations among RFMOs, ...”. COFI also “expressed strong support” for a joint meeting of the Secretariats of the tuna RFMOs and their members with the objective to review their current management measures as well as the effectiveness of their current system, and to develop processes to share vessel records and IUU fishing lists.

**Willock, A. and Lack, M. 2006.** Follow the leader: Learning from experience and best practice in regional fisheries management organisations. WWF International and TRAFFIC International.

This document summarises experiences and best practices in RFMOs with the objective to guide the process of improving RFMO performance. The authors make 19 recommendations that address “political will and capacity” (in particular related to the ratification of international law and capacity development of developing states), “precautionary and ecosystem approaches (including transparent allocation of fishing opportunities, arbitrated negotiation and independent external advice on allocation options), “collaboration” (proposing co-operative RFMO mechanisms and strengthening the role of secretariats), and “transparency and accountability” (e.g. access to information and regular performance reviews).

**Report of the Joint Meeting of Tuna RFMOs,** 22-26 January 2007. Kobe, Japan.

In February 2007, the tuna RFMOs initiated a process of cooperation with their famous meeting in Kobe, Japan. An important outcome of this meeting was the adoption of a “Course of Actions” which included the commitment of performance reviews in accordance with a common methodology and a common set of criteria. As a follow-up to this meeting, the US Ambassador David Balton proposed a list of harmonised criteria for tuna RFMOs ([IATTC-78-15, Annex C](#)), based on the criteria developed by NEAFC in 2006 (see ANNEX 2 and IATTC-78-15, Annex C). These criteria have subsequently been widely used in performance reviews of all kinds of RFMOs.

**FAO. 2007.** Strengthening Regional Fishery Management Organizations (RFMOs) and their performances including the outcome of the 2007 Tuna RFMOs Meeting. COFI/2007/9 Rev.1

The 27<sup>th</sup> COFI stated the importance of conducting performance reviews of RFMOs and RFBs and the need to develop common criteria for the evaluation of core functions and obligations, while recognizing that flexibility was needed for each RFMO or RFB to decide independently upon the methodology, criteria and frequency of reviews. The Committee also noted that review processes should be transparent with some Members recommending a mixed panel of experts consisting of both external and internal participants.

**Lodge, M.W., D. Anderson, T. Lobach, G Munro, K. Sainsbury and A. Willock. 2007.** Recommended Best Practices for Regional Fisheries Management Organizations. Report of an independent panel to develop a model for improved governance by Regional Fisheries Management Organisation. Published by the Royal Institute of International Affairs, Chatham House, UK.

This report proposed a “model” for improved governance by RFMOs elaborated by an independent panel of experts and with participation of FAO, RFMO, stakeholders and the public. The “model RFMO” was intended to provide direction for performance reviews and to outline how RFMOs could make improvements based on best practices. The authors distinguish between a “review of mandates”, relevant in particular for older RFMOs, and a “review of performance” which evaluates how well an RFMO meets its objectives. They recommend a three-stage approach for reviews:

- *A periodic independent review of scientific advice;*
- *A periodic review of RFMO performance against baselines and objectives, for example rebuilding targets; and*
- *A global review across RFMOs dealing with similar areas or species.*

The report is divided into 12 chapters, organized thematically. Chapters 1 and 2 deal with the legal and economic theory behind the cooperative management of shared fishery resources. The key message of these chapters is that if an RFMO is to be stable over time, then the core issues of intra-RFMO compliance, coping with unregulated fishing and accommodating new entrants must be resolved. Chapters 3 to 11 deal with specific aspects of fisheries management by RFMOs. Chapter 12, designed for use as a stand-alone document if required, consists of a summary of recommended best practices drawn from Chapters 1–11. The Report concludes that there is clearly scope for more effective cooperation between members of RFMOs and between RFMOs themselves, particularly in the area of compliance and enforcement. Immediate practical steps that could be taken without changing existing paradigms include, for example, standardizing and sharing or consolidating vessel registers and information from vessel monitoring systems, as well as compiling and assessing scientific data on a global basis.”

**United Nations, General Assembly. 2010.** Report submitted to the resumed Review Conference in accordance with paragraph 32 of General Assembly resolution 63/112 to assist it in discharging its mandate under article 36, paragraph 2, of the Agreement. Report of the Secretary General. A/CONF.210/2010/1 (4 January 2010).

Under section III.B.3 this report provides an overview of performance reviews conducted in regional fisheries management organisations.

**Ceo, M.; Fagnani, S.; Swan, J.; Tamada, K.; and Watanabe, H. 2012.** Performance Reviews by Regional Fishery Bodies: Introduction, summaries, synthesis and best practices, Volume I: CCAMLR, CCSBT, ICCAT, IOTC, NAFO, NASCO, NEAFC. FAO Fisheries and Aquaculture Circular. No.1072. Rome, FAO. 2012. 92 pp.

This publication includes executive summaries of seven performance reviews (CCAMLR, CCSBT, ICCAT, IOTC, NAFO, NASCO and NEAFC). It is followed by the synthesis of performance reviews and recommendations, which could be shared as potential best practices for future based on the experience of all performance reviews covered in this volume.

**FAO, 2015.** The implementation of performance review reports by regional fishery bodies, 2004 – 2014, by Peter D. Szigeti and Gail L. Lugten. FAO Fisheries and Aquaculture Circular No. 1108. Rome, Italy.

The first part of this circular offers an overview of the evolution of independent performance reviews in international fisheries management. It describes the spread of the practice among RFBs, the typical composition of performance review panels, their average timetables, cost and methodology. It also describes the criteria to which fisheries bodies are held in the reviews.

In the second part, the circular studies performance reviews completed by the 19 RFBs that, at the time of publication, had engaged in the performance review process. The report gives basic information about each RFB, and then summarizes the factual findings and recommendations of the reviews. Finally, the report recounts the efforts that each RFB has made in order to implement the recommendations of its performance reviews.

**United Nations, General Assembly. 2016.** Report submitted to the resumed Review Conference in accordance with paragraph 41 of General Assembly resolution 69/109 to assist it in discharging its mandate under article 36, paragraph 2, of the Agreement. Report of the Secretary General. A/CONF.210/2016/1 (1 March 2016)

Under Section B.1, the Report has a chapter on “*Undertaking performance reviews and promoting best practices*” (page 33-35) which provides a brief summary on the progress made since the last report.

## ANNEX 1.

### UNGA Resolutions

Since 2005, the UNGA has called for performance reviews of RFMOs. The most recent UNGA Resolutions [69/109](#) and [70/75](#) (both adopted in 2015) contain the following paragraphs to this regard:

**UNGA, 2015, Resolution 69 (A/RES/69/109) on Sustainable Fisheries, paragraph 142ff and UNGA, 2015, Resolution 70 (A/RES/70/75) on Sustainable Fisheries, paragraph 149ff**

142/149. *Welcomes the fact that a number of regional fisheries management organizations and arrangements have completed performance reviews, and encourages the implementation, as appropriate, of the recommendations of their respective reviews as a matter of priority;*

143/150. *Urges States, through their participation in regional fisheries management organizations and arrangements that have not done so, to undertake, on an urgent basis, performance reviews of those regional fisheries management organizations and arrangements, initiated either by the organization or arrangement itself or with external partners, including in cooperation with the Food and Agriculture Organization of the United Nations, using transparent criteria based on the provisions of the Agreement and other relevant instruments, and taking into account the best practices of regional fisheries management organizations or arrangements and, as appropriate, any set of criteria developed by States or other regional fisheries management organizations or arrangements, and encourages that such performance reviews include some element of independent evaluation and propose means for improving the functioning of the regional fisheries management organization or arrangement, as appropriate;*

144/151. *Calls upon States, through their participation in regional fisheries management organizations and arrangements, to undertake performance reviews of those regional fisheries management organizations and arrangements on a regular basis, and to make the results publicly available, to implement the recommendations of such reviews and to strengthen the comprehensiveness of those reviews over time, as necessary;*

145/152. *Recalls that in “The future we want”, States recognized the need for transparency and accountability in fisheries management by regional fisheries management organizations and the efforts already made by those regional fisheries management organizations that had undertaken independent performance reviews, called upon all regional fisheries management organizations to regularly undertake such reviews and make the results publicly available, encouraged implementation of the recommendations of such reviews and recommended that the comprehensiveness of those reviews be strengthened over time, as necessary;*

146/153. *Urges States to cooperate, taking into account those performance reviews, to develop best-practice guidelines for regional fisheries management organizations and arrangements and to apply, to the extent possible, those guidelines to organizations and arrangements in which they participate;*

## ANNEX 2.

### Harmonised criteria for performance reviews of RFMOs

These criteria were proposed by David Balton (2007)<sup>7</sup> and have been commonly used, with minor modifications, in performance reviews of RFMOs

#### 1. Conservation and management

- **Status of living marine resources**
  - ✓ *in relation to MSY or other relevant biological criteria*
  - ✓ *Trends in the status of those stocks*
- **Data collection and sharing**
  - ✓ *Extent to which the RFMO has agreed formats, specifications and timeframes for data submission, taking into account UNFSA Annex I.*
  - ✓ *Extent to which RFMO members and cooperating non-members, individually or through the RFMO, collect and share complete and accurate fisheries data concerning target stocks and non-target species and other relevant data in a timely manner.*
  - ✓ *Extent to which fishing data and fishing vessel data are gathered by the RFMO and shared among members and other RFMOs.*
  - ✓ *Extent to which the RFMO is addressing any gaps in the collection and sharing of data as required.*
- **Quality and provision of scientific advice**
  - ✓ *Extent to which the RFMO receives and/or produces the best scientific advice relevant to the fish stocks and other living marine resources under its purview, as well as to the effects of fishing on the marine environment*
- **Adoption of conservation and management measures**
  - ✓ *Extent to which the RFMO has adopted conservation and management measures for both target stocks and non-target species that ensures the long-term sustainability of such stocks and species and are based on the best scientific evidence available.*
  - ✓ *Extent to which the RFMO has applied the precautionary approach as set forth in UNFSA Article 6 and the Code of Conduct for Responsible Fisheries Article 7.5, including the application of precautionary reference points.*
  - ✓ *Extent to which the RFMO has adopted and is implementing effective rebuilding plans for depleted or overfished stocks.*
  - ✓ *Extent to which the RFMO has moved toward the adoption of conservation and management measures for previously unregulated fisheries, including new and exploratory fisheries.*
  - ✓ *Extent to which the RFMO has taken due account of the need to conserve marine biological diversity and minimize harmful impacts of fisheries on living marine resources and marine ecosystems.*
  - ✓ *Extent to which the RFMO has adopted measures to minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.*

#### 2. Compliance and enforcement

- **Flag State Duties**
  - ✓ *Extent to which RFMO members are fulfilling their duties as flag States under the treaty establishing the RFMO, pursuant to measures adopted by the RFMO, and under other international instruments, including, inter alia, the 1982 Law of the Sea Convention, the UNFSA and the 1993 FAO Compliance Agreement, as applicable*
- **Port State measures**
  - ✓ *Extent to which the RFMO has adopted measures relating to the exercise of the*

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<sup>7</sup> IATTC. 2008. Performance Reviews of Tuna Regional Fisheries Management Organisations. IATTC-78-15, Annex C. <https://www.iattc.org/PDFFiles2/IATTC-78-15-Performance-evaluation.pdf>



- ✓ *rights and duties of its members as port States, as reflected in UNFSA Article 23 and the Code of Conduct for Responsible Fisheries Article 8.3.*
  - ✓ *Extent to which these measures are effectively implemented.*
  - **Monitoring, control and surveillance (MCS)**
    - ✓ *Extent to which the RFMO has adopted integrated MCS measures (e.g., required use of VMS, observers, catch documentation and trade tracking schemes, restrictions on transshipment, boarding and inspection schemes).*
    - ✓ *Extent to which these measures are effectively implemented*
  - **Follow-up on infringements**
    - ✓ *Extent to which the RFMO, its members and cooperating non-members follow up on infringements to management measures*
  - **Cooperative mechanisms to detect and deter non-compliance**
    - ✓ *Extent to which the RFMO has established adequate cooperative mechanisms to both monitor compliance and detect and deter non-compliance (e.g., compliance committees, vessel lists, sharing of information about non-compliance).*
    - ✓ *Extent to which these mechanisms are being effectively utilized*
  - **Market-related measures**
- 3. Decision-making and dispute settlement**
- **Decision-making**
    - ✓ *Extent to which RFMO has transparent and consistent decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner.*
  - **Dispute settlement**
    - ✓ *Extent to which the RFMO has established adequate mechanisms for resolving disputes*
- 4. International cooperation**
- **Transparency**
    - ✓ *Extent to which the RFMO is operating in a transparent manner, as reflected in UNFSA Article 12 and the Code of Conduct for Responsible Fisheries Article 7.1.9*
    - ✓ *Extent to which RFMO decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.*
  - **Relationship to cooperating non-members**
    - ✓ *Extent to which the RFMO facilitates cooperation between members and non-members, including through the adoption and implementation of procedures for granting cooperating status*
  - **Relationship to non-cooperating non-members**
    - ✓ *Extent of fishing activity by vessels of non-members that are not cooperating with the RFMO, as well as measures to deter such activities*
  - **Cooperation with other RFMOs**
    - ✓ *Extent to which the RFMO cooperates with other RFMOs, including through the network of Regional Fishery Body Secretariats*
  - **Special requirements of developing States**
    - ✓ *Extent to which the RFMO recognizes the special needs of developing States and pursues forms of cooperation with developing States, including with respect to fishing allocations or opportunities, taking into account UNFSA Articles 24 and 25, and the Code of Conduct for Responsible Fisheries Article 5.*
    - ✓ *Extent to which RFMO members, individually or through the RFMO, provide relevant assistance to developing States, as reflected in UNFSA Article 26.*
- 5. Financial and administrative issues**
- **Availability of resources for RFMO activities**
    - ✓ *Extent to which financial and other resources are made available to achieve the aims of the RFMO and to implement the RFMO's decisions*
  - **Efficiency and cost-effectiveness**
    - ✓ *Extent to which the RFMO is efficiently and effectively managing its human and financial resources, including those of the Secretariat.*