

Submission by the European Union

Fourteenth round of informal consultations of States parties to the 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

Performance reviews of regional fisheries management organisations and arrangements

1. Introduction

The European Union (EU) is an active participant in the vast majority of existing regional fisheries management organisations and arrangements (RFMO/As) and regional fisheries bodies (RFB)¹. As such, the EU has gained useful experience through its participation in different performance review (PR) exercises undertaken in these RFMOs.

The EU considers that, as mandated by the UN Convention on the Law of the Sea and further elaborated by the 1995 UN Fish Stocks Agreement, RFMO/As are key instruments to ensure the States can meet their obligations under international law regarding cooperation for the conservation and sustainable management of shared stocks. In this regard, RFMO/As are an essential part of the international legal architecture to ensure the long-term conservation and sustainable management of highly migratory and straddling fish stocks as well as associated and dependent species. In addition, beyond their primary role, they are also crucial in their contribution for example to deliver on food security objectives. Their role in the management of fisheries has also been recognised in the BBNJ negotiations where there is agreement that, in line with their mandates, they are the competent body responsible to propose and subsequently implement any measures concerning the impacts of fisheries in particular in the context of marine protected areas adopted under the future BBNJ Treaty.

¹ The EU, represented by the European Commission, plays an active role in 6 tuna organisations and 11 non-tuna organisations as follows:

A) tuna: the International Commission for the Conservation of Atlantic Tunas (ICCAT); the Indian Ocean Tuna Commission (IOTC); the Western and Central Pacific Fisheries Commission (WCPFC); the Inter-American Tropical Tuna Commission (IATTC), the Agreement on the International Dolphin Conservation Programme (AIDCP); the Commission for the Conservation of Southern Bluefin Tuna (CCSBT).

B) non-tuna: the Convention on Conservation of Antarctic Marine Living Resources (CCAMLR); the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (CCBSP); the North-East Atlantic Fisheries Commission (NEAFC); the Northwest Atlantic Fisheries Organization (NAFO); the North Atlantic Salmon Conservation Organisation (NASCO); the South-East Atlantic Fisheries Organisation (SEAFO); the South Indian Ocean Fisheries Agreement (SIOFA); the South Pacific Regional Fisheries Management Organisation (SPRFMO); the General Fisheries Commission for the Mediterranean (GFCM); (Regional Fisheries Bodies) the Western Central Atlantic Fisheries Commission (WECAFC) and the Fisheries Committee for the Eastern Central Atlantic (CECAF).

The EU's contribution will focus on topics (iii) the implementation of the performance review recommendations and other follow up, and (iv) lessons learned and best practices from past performance reviews of RFMOs from the list of topics proposed by the UN Division for Ocean Affairs and the Law of the Sea in its note of 28 December 2018.

The EU would also like to make some practical suggestions and propose lessons learnt on how to better support and facilitate the tasks of RFMO/As when they are required to address PR recommendations, notably their assessment and implementation.

2. Performance Reviews: from 'new in town' to 'established practice'

Until recently, 'performance review' was still a new concept for many RFMO/As, as demonstrated by the fact that, in 2006, the Review Conference of the 1995 UN Fish Stocks Agreement was still 'urging' RFMO/As 'to undergo performance reviews on an urgent basis'. This provides an indication of the timid steps RFMO/As had undertaken so far with regard to engaging in PR exercises.

Nowadays, 13 years later, regular performance reviews have become an intrinsic part of current practice for most, if not all, RFMO/As. After the performance review undertaken by the Inter-American Tropical Tuna Commission (IATTC) in 2016 and the recently concluded performance review of the South Pacific Regional Fisheries Management Organisation (SPRFMO), it is possible to affirm that all tuna and non-tuna RFMOs have undergone at least one performance review.

Furthermore, an increasing number of RFMO/As have already completed their second performance review, including the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC) and the South East Atlantic Fisheries Organisation (SEAFO), and the Northwest Atlantic Fisheries Organization (NAFO) amongst others.

Moreover, recommendations prompting regular PRs have become common in both international and national fora. This is the case for the UNGA Resolutions on fisheries and the Kobe process for tuna-RFMOs. Since 2011, the UNGA Resolution on Sustainable Fisheries has regularly called for regular PR processes in RFMOs notably by encouraging regional fisheries management organisations and arrangements to make the results of those performance reviews publicly available and to discuss the results jointly and furthermore to consider undertaking performance reviews on a regular basis.

In their deliberations on whether to proceed with regular PRs, RFMO/As Contracting parties usually refer to the UNGA Resolution to encourage period independent PRs in RFMO/As, as they are a powerful tool to further enhance the functioning of the organisations and promote the achievement of their objectives.

The promotion of **periodic independent** PRs in RFMO/As to improve their performance is also one of the key policy objectives of the external dimension of the EU's common fisheries policy (CFP)² and the Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy and the Commission on *International ocean governance: an agenda for the future of oceans*.³ The EU therefore participates actively in PRs, including by providing panelists and financial resources, and by implementing resulting recommendations⁴.

3. Not that easy

Undertaking a PR is a rather complex exercise. The establishment and operation of any RFMO/A PR Panel brings together a number of intellectual, technical and logistic challenges. The Panel usually carries out its work according to a set deadline and budget and following terms of reference that can vary in terms of detail. In fulfilling its mandate, the PR Panel often assesses a significant quantity of information and undertakes consultations with the RFMO/A's Contracting Parties and observers. After the initial phase of individual research, the PR Panel will very likely meet physically to deliberate and draft what may end up to be a rather lengthy report containing their assessment of the functioning of the RFMO/A against the terms of reference of the PR Panel and their recommendations for tackling any identified issues, as well as the strengths of the organisation. The final PR report usually comprises a substantial number of recommendations.

Once the PR report is completed, the first step is to identify which of the RFMO/A's subsidiary bodies should take the lead in examining the recommendations and responding to them. Then the Panel's recommendations are presented for discussion to the main body of the RFMO/A (Commission, Council or Meeting of the Parties) and/or its subsidiary bodies (scientific, compliance, and finance and administration committees) during the annual meetings and a follow-up road map is developed with a timeline for implementation and assigned responsibilities to the Commission and/or its concerned subsidiary bodies.

4. Avoiding lost opportunities

Performance Reviews can play different roles in RFMO/As. They provide an accurate description of the RFMO/A at a given moment in time (snapshot) which can help stakeholders understand their set-up and functioning. PRs also provide a temporary forum where Contracting Parties and observers can brainstorm about their performance and the challenges ahead, lessons learned from the past and the vision for the future. They can also identify and facilitate exchanges on possible 'elephants in the room' or bring back dormant issues for which action is needed, for example to ensure that the organisation has the proper

² Article 28.2 (f) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC. OJ L 354, 28.12.2013, p. 22–61.

³ JOIN(2016) 49 final, 10.11.2016.

⁴ The EU provided specific funding for the recent PRs undertaken by the IATTC and CCAMLR. The EU has also committed financial resources to accompany the implementation of the CCAMLR PR recommendations.

financial means to deliver, to propose procedures to facilitate the decision-making process, or to encourage the participation in the works of the organisation of fleets fishing for the resources managed by the RFMO/As. PRs can also provide Contracting Parties or the Secretariat with sound arguments to promote/undertake actions to achieve certain shared goals. If properly addressed, PRs undoubtedly can play a powerful role in shaping and improving the functioning of RFMO/As.

However, the number of PR recommendations can be very high. The assessment undertaken in the context of a PR is often more complex than simply answering 'yes' or 'no' to any given question. Contracting Parties are usually asked to agree or disagree on a recommendation, assign a degree of priority, identify a suitable follow-up, indicate the body in the RFMO/A responsible for follow up and, finally, provide a timetable for implementation. The assessment of each individual recommendation by the Commission/Meeting of the Parties and its subsidiary bodies can become quite time consuming and can easily become a rather monotonous procedure where only a few Contracting Parties intervene in the discussions and the others follow the exchanges silently.

Because of this complexity and the number of recommendations involved, it can sometimes prove challenging to complete the assessment of the PR recommendations during one single annual meeting. The problem is compounded by the fact that advice from subsidiary bodies may be needed on certain recommendations, but such bodies do not always meet back-to-back with the main RFMO/A body. As a result, the assessment of PR recommendations is often deferred to intersessional discussions within a small working group and subsequently reassessed by the main RFMO/A body the following year. This way of proceeding means that it can be difficult to maintain the momentum and push for the adoption of recommendations beyond the annual meeting where the PR is first discussed.

There can therefore be a temptation from some quarters to rush through the PR recommendations together with the other items on the agenda, thereby turning a significant moment of reflection on these recommendations into a lost opportunity to address the most important challenges of the organisation. In rare cases, it might be even the case that RFMO/As do not even have time to discuss at all the PR recommendations during the annual meeting in which they are presented.

5. EU lessons learnt

There are certainly many similarities between the recommendations from the different PRs undertaken by RFMO/As to date. Some common recommendations deal with the adoption and implementation management strategy evaluations (MSEs), better interface between scientist and managers, stronger IUU policies, the reinforcement of control on transshipments, sound country-by-country compliance assessments, the importance of ensuring that financial commitments are met, etc. All those recommendations can make a very substantial contribution to identifying the 'ideal RFMO/A' and provide guidance to existing RFMO/As on milestones to achieve.

As indicated above, this paper focuses on the practicalities relating to the discussion of PR reports in RFMO/As with the aim of providing some lessons learnt that could facilitate the work of the main and subsidiary RFMO/A bodies when assessing PR recommendations to avoid that discussion of those recommendations turns into a purely bureaucratic exercise:

1. PR recommendations should **focus on a limited number of essential points**. A performance review might involve a large number of recommendations. However, where possible, together with presenting the entire list of recommendations, panels should highlight a limited number of recommendations that they consider particularly important or urgent, or both, ideally one or two per field (i.e. science, compliance and IUU, administration and finances, Secretariat performance) up to a maximum of 10 essential recommendations. Those essential recommendations should be identified in accordance with the terms of reference of the PR, and could also refer, amongst others, to the main gaps in the implementation of the UNFSA and the FAO guidelines and agreements in the area of the RFMO/As. The most important recommendations should be clearly highlighted, and separated from the rest of the recommendations. This would allow RFMO/As to focus their discussions on the more crucial issues when the recommendations are presented during their annual meetings.
2. **PR recommendations should be as specific and concrete as possible** to facilitate their assessment and implementation. While general statements or policy orientations are not to be discouraged, when possible, they should be accompanied by specific indications on what exactly is to be achieved and possible recommendations on how this could best be done, by whom and when. In its subsequent analysis, the RFMO/A could then decide a different implementation method or priority, but the more concrete the recommendations are from the Panel the better.
3. Where possible **financial issues linked to the implementation of recommendations should be identified**. When RFMO/As discuss recommendations, it is very likely that their endorsement and implementation will be subject to the existence of the appropriate financial means. For example, the PR might recommend the recruitment of additional staff in the Secretariat, or to undertake certain technical or scientific assessments. Although it would be difficult for the Panel to come up with concrete figures, providing cost estimates could clearly help RFMO/As in their discussions.
4. The **participation of the RFMO/A Secretariat** as an observer to the work of the Panel can be useful in providing relevant advice to the Panel based on their knowledge of the body. In particular this could concern technical, legal, financial or human resources aspects related to the assessment of the issue and, more importantly, to the implementation of the recommendations. Without guidance provided by the Secretariat, there is the possibility that the Panel could make recommendations that are not realistic, cannot be implemented within a given time-frame or are outside the legal scope of the RFMO/A. Obviously, the Panel discussions on the Secretariat's performance should take place without the involvement of the Secretariat in the discussions.

5. **Avoid reinventing the wheel.** Each RFMO/A has completed a PR at least once and some RFMO/As are already embarking upon their second PR. In view of the similarities that exist between recommendations issuing from different PRs, RFMO/As may consider using as a basis, to the extent possible, the recommendations from previous panels and related follow-up as inspiration and guidance for their own PRs.
6. **But also dare to think outside the box.** A performance review should not turn into an exercise that provides the same answers to the same questions over and over again, notably for RFMO/As which have already completed their first performance review. There is a certain level of expectation amongst Contracting Parties that the PR recommendations should provide solutions both to existing problems and to new issues, which may require innovative approaches.
7. **Provide options.** When dealing with sensitive issues for which consensus is unlikely, it can be difficult to put forward a one-size-fits-all recommendation. In those cases, the Panel could play a key role by putting forward different options for the consideration of the RFMO/A. The options could deal with a phase-in approach to implementing certain policies or indicate to the RFMO/A the minimum essential elements that should be put in place concerning a given issue, leaving to the consideration of the Contracting Parties when to step up their implementation of that matter.
8. The **right timing** is important. It is advisable to **undertake PR in years where the RFMO/A could devote additional time to the consideration of the recommendations.** Conversely, PR discussions should avoid years where there are potentially controversial issues for discussion such as allocation criteria, adoption or major revision of conservation and management measures. Otherwise, there is a risk that discussion of the PR recommendations need to be postponed, causing frustration among Contracting Parties and possible delays in addressing other issues. Having said this, on the other hand PR discussions could also present the perfect opportunity and timing to create consensus around potentially controversial issues. Thus, it will be necessary to consider the political opportunity of raising issues on case-by-case basis.
9. **PR recommendations, and their follow up, should be part of the regular work programme** of the RFMO/A. An agenda item on performance review and its follow up should be included in the agenda of each annual meeting in order to assess progress in its implementation and allow for the discussion of proposals and ideas on how to move forward on pending items. It is important to avoid the temptation to limit the discussions on the PR recommendations to once every five years.
10. **New challenges and opportunities.** In accordance with their mandates, the RFMO/As have successfully managed to establish and consolidate rules and procedures to ensure improved ocean governance. This covers the long-term management of the stocks on the basis of the best scientific advice, the precautionary principle and the ecosystem approach

amongst others. RFMOs are also in the front line regarding the protection of vulnerable marine ecosystems (VMEs), compliance control mechanisms and scientific cooperation. In the future, RFMO/As will be called to be more involved in the identification of appropriate measures in the context of MPAs and other area-based management tools for the protection of biodiversity as part of the ecosystem approach to fisheries management.

11. Regarding the **periodicity of subsequent PRs** after the completion of the first one, it is probably appropriate to reflect on the need to have longer periods covered by the PR instead of having a fix time of say, 5 years. In any event, there is no fit-for-all solution and each RFMO/A is different.
12. The performance review process and its follow up should be **public, transparent and stakeholder inclusive**. The PR recommendations and their consideration and follow-up by the RFMO/A should be open to the general public and posted in the publicly accessible part of the RFMO/A website.

In conclusion, the EU considers that although there is room for improving how Performance Reviews and their recommendations are assessed and implemented, PRs have already shown their added value. Consequently, the EU therefore continues to promote and support the regular undertaking of PR exercises in RFMO/As to further improving their performance.