Importance and role of Performance Reviews in improving the Conservation and Management of Straddling Stocks and Highly Migratory Fish Stocks

Judith Swan

This presentation briefly traces events during the decade 1995 – 2005 which generated the momentum RFMO/As to embark on a course of undertaking Performance Reviews. It was recognized that the Reviews would be essential to perform the role described in Article 13 of the UNFSA, which called for cooperation to strengthen RFMO/As to improve their effectiveness in establishing and implementing conservation and management measures for the fish stocks. Events since 2005 are described including the elaboration of the role of the Reviews and acceleration by RFMO/As in institutionalizing and regularizing them. The impact of RFMO/A governance on the conservation and management of fish stocks, together with summary examples illustrating the role of performance reviews in identifying progress and challenges for conservation and management, are elaborated and conclusions are offered.
Abstract of SPRFMO’s Performance Review Presentation

SPRFMO Secretariat

1. Introduction

The South Pacific Regional Fisheries Management Organisation (SPRFMO) is an inter-governmental organisation that is committed to the long-term conservation and sustainable use of the fishery resources of the South Pacific Ocean and in doing so safeguarding the marine ecosystems in which the resources occur.

The SPRFMO Convention (entered into force on August 2012) applies to the high seas of the South Pacific, covering about a fourth of the Earth’s high seas areas. Currently, the main commercial resources fished in the SPRFMO Area are Jack mackerel and jumbo flying squid in the Southeast Pacific and, to a much lesser degree, deep-sea species often associated with seamounts in the Southwest Pacific. There are 1 075 authorised vessels and out of those around 420 are active vessels.

The Commission has currently 15 Members from Asia, Europe, the Americas and Oceania: Australia, Chile, China, Cook Islands, Cuba, Ecuador, European Union, Kingdom of Denmark in respect of the Faroe Islands, Korea, New Zealand, Peru, Russian Federation, United States of America, Vanuatu and Chinese Taipei.

2. SPRFMO Convention and the Performance Review (PR)

Article 30 of the Convention provides for a regular review of the effectiveness of the CMMs adopted by the Commission in meeting the objective of the Convention and the consistency of such measures with the principles and approaches found in Article 3. The review include the examination of the effectiveness of the provisions of the Convention itself and shall be undertaken at least every five years. Therefore, in 2018, at its 6th annual meeting, the SPRFMO Commission adopted Decision 06-2018, setting out a process to establish a Panel Review together with criteria for such review, a timeline for the process, and terms of reference that shall guide the Panel’s work.

3. Conduct of the SPRFMO PR

2.1 Tasks, establishment of PR Panel and timelines

The scope of the Performance review focused on 5 main areas: Conservation and Management, Compliance and Enforcement, Decision-making and Dispute settlement, International Cooperation, and Financial and Administrative issues.

Members were called to appoint experts to set up the Panel. After the selection of its members (four international independent experts), the Panel developed a Questionnaire addressed to all SPRFMO Members, Cooperating non-Contracting Parties (CNCPs) and relevant stakeholders. The Panel interviewed the Chairs of the Commission and subsidiary bodies, the staff of the Secretariat, and independent experts receiving 17 responses from 13 Members, 3 CNCPs and 1 observer.

The Report of the Performance Review consists of seven sections. The first two sections provide background information relating to SPRFMO. The following five sections address each of the areas of the Performance Review criteria and include the Panel’s consideration, its assessment and recommendations.

2.2 Best Practices

The level of the recommendations facilitated the guidance on the discussions; the friendly questionnaire helped on achieving a high participation; having an executive summary considering the lengthy report and the robustness of all recommendations assisted on engaging and understanding the content; the participation of the Secretariat not only coordinating but inputting on the PR was also an asset; the Commission at the 2019 annual meeting formed a Working Group to consider all PR recommendations and the outcome was
exceptional providing not only a prioritization but also a timeline for implementation. Finally, to ensure transparency and accountability all documents were made available on the SPRFMO web site, except the responses to the questionnaire that were only available to the Members of the Commission.

2.3 Challenges
The selection of the members of the PR panel aiming at being regionally balanced, including both developed and developing countries, as well as coastal States and distant fishing countries was a difficult exercise; the high number or Recommendations to be assessed together with the timing associated with analysis and implementation was challenging particularly noticing that the 2019 annual meeting was extremely heavy in terms of the topics to be addressed. As per the PR panel Conclusion “Without a further commitment to building the capacity and the resources of the organisation, there is the danger that SPRFMO will stagnate and fail provide meaningful benefits to the fishery resources it manages and its Members”.

2.4 Opportunities
A proper budget to consider engaging potential consultants as part of the panel; encouraging participation of Observers (considering the low input on this PR exercise), aiming at having a qualitative approach on the questionnaire and therefore on the answers providing not only and assessment but also a forward looking approach of the organisation; assessing how best practices of similar RFMOs have been considered and implemented together with the already running annual follow up of the implementation have been identified as the opportunities to consider in the future.
Fourteenth round of informal consultations of States Parties to the Agreement, focusing on the topic “Performance reviews of regional fisheries management organizations and arrangements”

2-3 May 2019 – UN Headquarters, New York City

Discussion panel on “Performance reviews of regional fisheries management organizations and arrangements” -- Segment 2: Structure and conduct of performance reviews: experiences, best practices, challenges and opportunities

Abstract of the presentation of Mr. Fred Kingston, Executive Secretary, Northwest Atlantic Fisheries Organization (NAFO)

NAFO is a regional fisheries management organization (RFMO) charged with managing most of the fisheries in the international waters of the Northwest Atlantic. This presentation describes NAFO’s experience with undergoing a performance review. NAFO has undertaken two (2) performance reviews – the first in 2011 and the second in 2018. This presentation will focus on NAFO’s second performance review. Following a brief general description of NAFO, the presentation will outline key components of the Terms of Reference to NAFO’s 2018 performance review, including its objectives, composition of the review Panel and work schedule. It will then indicate the process in which the Panel itself decided to undertake its work. The main findings of the Panel will then be briefly outlined, as well as NAFO’s plan to address the Panel’s recommendations. Finally, the presentation will conclude with some reflections on the process itself, including resource implications. In general, NAFO’s experience with performance reviews has been positive both regarding the process and the results.
ABSTRACT

Segment 2 – Structure and conduct of performance reviews: experiences, best practices, challenges and opportunities

UN SCP-14, New York, 2-3 May 2019

Title: The EU fisheries stakeholders’ perspective on the present and future role of RFMOs in the international ocean governance: views from the LDAC

Author: Alexandre Rodriguez (LDAC Executive Secretary)

The Long Distance Fleet Advisory Council (LDAC) was established in May 2007 and is recognized by the EU Common Fisheries Policy as an organisation aiming for a European interest. Its mission is to provide evidence-based advice to the European Commission and EU Member States on matters pertaining to the External Dimension of the Common Fisheries Policy, namely Fisheries Agreements with Third Countries, relations with Regional Fisheries Management Organizations and Arrangements (RFMO/As) in which the EU is a contracting party, and international ocean governance issues discussed by international organizations (UN/FAO).

The geographical coverage and competencies of the LDAC are enshrined in the Regulation (EU) 1380/2013. It represents a balanced mix of stakeholders (60% fishing industry and 40% OIG/NGOs) of the fisheries value chain from 13 EU coastal MS, with predominance of the EU long distance fleet/capture sector. More information: www.ldac.eu

In relation to the RFMOs, the LDAC is the recognised EU consultative body entrusted with providing technical advice and feedback on conservation and management proposals for fish stocks, in order to assist the European Commission and MS in the preparation of negotiations for Annual Meetings of NAFO, ICCAT and IOTC. It has also participated recently in the NAFO performance review process via the EU.

The LDAC supports the opening statement made by the European Union on its contribution to the ICSP-14 that “the 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”.

The LDAC welcomes the fact that performance review has become a well-established practice since 2006 onwards, following the plea made to RFMOs to undergo PR on an urgent basis, as stated in the Review Conference of the 1995 UN Fish Stocks Agreement. To date, all 6 tuna and 11 non-tuna RFMOs have carried out at least one performance review, with many already completed their second performance review (CSBT, ICCAT, SEAFO, NAFO...).
The LDAC issued advice on December 2018 regarding the role of the EU within the context of international ocean governance. It contains a number of recommendations linked to the performance and functioning of the RFMOs following the mandate given by UNCLOS and developed by the 1995 UNFSA. The recommendations can be summarized as follows:

**Conduct and structure of performance reviews:**

- RFMOs must be an example of good governance and ensure adequate and meaningful participation of key fisheries stakeholders in their PR through effective consultation procedures and informal technical coordination meetings. In terms of legitimacy and openness, it shall also aim for public access to information of CPCs proposals and presence in annual plenary meetings under the CPCs delegations or in observer capacity to foster transparency of the decision making process.

- The RFMOs should make the results of their PR publicly available and be willing to articulate mechanisms for discussing the results and presenting the outcomes accompanied by a follow-up road map with a timeline for implementation and assigned responsibilities to each of the competent bodies. Also, a methodology should be developed to measure progress on the achievement of the recommendations made.

- Performance reviews must be periodic in time and independent (undertaken by external experts), in line with the UNGA Resolutions of Sustainable Fishing, and implemented regionally, e.g. as a policy objective of the EU CFP external dimension.

**Opportunities and challenges for the functioning of the RFMOs:**

- RFMOs are the competent body responsible to propose and subsequently implement any measures concerning the impacts of fisheries in the high sea and as such they should be fully included in the negotiation process of the future BBNJ Treaty, particularly in the context of marine protected areas.

- RFMOs need to become fundamental actors for implementing SDGs targets 2-8-10-12-13-14 linked to food security (zero hunger), decent work and economic growth, reduced inequality, responsible consumption and production, climate action, and life below water.

- RFMOs must strive to adopt any recommendations related to management of fish stocks and habitats on the basis of robust scientific advice rooted on a peer reviewed process. The LDAC supports the reinforcement of capacity and resources for the development of scientific knowledge and advice in accordance with Article 30 of EU CFP Regulation.

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– It is crucial to allocate resources to develop knowledge and expertise on Environmental Impact Assessment for fisheries management measures, as recommended in several performance reviews of individual RFMOs. This can also be used to inform or extrapolate initiatives to assess impacts of other human marine activities within the scope of RFMOs Regulatory Areas.

– The RFMOs shall contribute to establish a coherent network of Marine Protected Areas and Vulnerable Marine Ecosystems in the high seas in line with the Ecosystem Based Approach to Fisheries.

– RFMOs should foster dialogue and work towards harmonization of Access Agreement Conditions between Coastal States and Flag States in the management and resource allocation of straddling stocks.

– Coordination mechanisms, based on dynamic exchange of information in the spirit of the Kobe process for tuna RFMOs, must be set up to ensure consistency of applicability of measures related to cross-cutting issues such as scientific research, measurement and control of fishing capacity, management of FADs, MCS and fight against IUU fishing, etc. within the limit of their respective regulatory frameworks.

– RFMOs are the best “testing laboratory” to promote a regional approach to MCS, through regional observer programmes at sea (such as the one for BFT in ICCAT…) and port control and inspections schemes (for example, NAFO resolution supporting implementation of FAO PSMA).

– Reinforcing mechanisms to fight against IUU fishing, such as collaborative work on information exchange regarding IUU vessels lists, requirements to join to the Global Record of Fishing Vessels or the compulsory registration of IMO Number for Distant Water Fleets, amongst others.
**ICCAT Performance Review Process**

**Experience and assessment**

**New York ICSP UNCLOS 14th Round 2-3 May 2019**

Stefaan Depypere, First Vice Chair of ICCAT

**History**

When meeting jointly for the first time in January 2007 in Kobe, Japan, the tuna Regional Fishery Management Organisations (further t-RFMOs) agreed on common criteria for Performance Reviews (further: PR). They saw these PR as an important tool for strengthening the efficiency of their organisations.

At its annual meeting of November 2007, the International Commission for the Conservation of Atlantic Tunas (further: ICCAT), agreed to conduct an independent review of its performance against its objectives. It appointed a team composed of a manager (Mr Glenn Hurry), a lawyer (Professor Moritaka Hayashi) and a scientist (Dr Jean Jacques Maguire). The PR was carried out in 2008.

The assessment was not favourable. The most salient conclusion was that ICCAT did not meet its objectives for several species under its purview. The focus, however, was on Bluefin Tuna (Further BFT) and the performance of ICCAT was called an international disgrace. The experts argued that the international community would judge ICCAT on the basis of its performance in managing BFT.

In their report, the experts made numerous suggestions for improvement, the most important ones probably being the need to modernise the Convention text and to improve its management practices and the compliance record. With this striding criticism as a background, ICCAT started working on the recommendations. Structural work was launched on modifying the Convention and very practical work was done on improving the management of the fisheries –with a focus on BFT- and on control measures and compliance.

Over the following years, a recovery plan for Eastern BFT\(^1\) was adopted and carried out and an agreement was found on a new Convention text (after long painful negotiations). The recovery plan was very comprehensive. Apart from reducing the Total Allowable Catch (further TAC) to a minimum of 12,900 tonnes in 2011 and 2012, it featured capacity reductions, minimum harvest size, a limitation of the fishing season and drastic control and compliance measures. By 2013, the scientists saw the first evidence of a recovery of the stock. Since then this recovery has continued. The TAC has been slowly increased but the other measures have largely remained.

At its annual meeting in November 2015, ICCAT decided to conduct a second PR. Again it contracted a manager (John Spencer), a lawyer (Professor Molenaar) and a scientist (Dr Jean Jacques Maguire, again).

The PR was presented at the annual meeting in November 2016. This time, the list of positive assessments was far longer than the negative list but most importantly, unlike the first report, the PR did not feature any devastating comment. It did contain a list of 131 detailed recommendations.

\(^{1}\) There are two stocks of Atlantic BFT: eastern and western. The focus has been largely on the larger eastern stock.
The Commission decided to set up an ad hoc working group with the task to follow up. This group containing representatives from the contracting parties, a fishing entity and from non-governmental organisations, met in June 2017 in Madrid. During this meeting it managed to structure the 131 recommendations in terms of time horizon for action and actor concerned. There are 14 actors (or group of actors)\(^2\) and 7 time horizons.\(^3\)

During the next annual meeting in November 2017, this assignment list was discussed and approved and it was agreed that progress would be reviewed every year until action had been taken in respect to all recommendations considered necessary.

Comment

ICCAT benefited from the method of selecting three qualified experts to carry out the PR covering three dimensions (management, science, legal aspects). This approach can be recommended. In ICCAT it was preferred over other approaches like selecting only one expert or –to the contrary- setting up a large panel of representative stakeholders. The small multidisciplinary panel of three produced timely and balanced work of excellent quality. The experts need to receive enough resources and access to the data and actors to do their work. Their mandate must be to give an honest view, however painful that may be. Then, for the RFMO, receiving the PR is not enough to produce organisational change. There must be an internal drive to act upon the results. The PR needs to be systematically followed up by an action plan and regular further review. The three main groups of actors (the contracting parties, the governance board, the executive secretary and his/her staff) must act in concert.

The outcome of the first PR was very negative for ICCAT. It contained two major challenges yet ICCAT managed to find appropriate responses. The outcome in the eastern BFT case shows that dire situations can be reversed when proper timely action is taken.

The second PR was far more positive. Nevertheless it contained a long list of recommendations. By introducing structure in this list, ICCAT managed to reduce the list to manageable proportions and to assign a clear responsibility for progress. The annual review mechanism enforces a very useful discipline on the responsible actors. The PR process has introduced a spirit of total quality management in the organisation. It is important to repeat that no result is acquired forever. Working on the performance must be a systematic effort but when it is done properly the efforts pay off.

The PR process undertaken by the t-RFMOs is rather unique. Many other international organisations refrain from engaging in such an effort. Arguably, by following this practice systematically, the t-RFMO will set a standard of good governance. Ultimately, we expect that all international organisations involved in parts of ocean governance will be called upon to adopt similar good practices.

\(^2\) The Commission, one of the subsidiary bodies or ad hoc groups, the Secretariat, the Contracting Parties.

\(^3\) “Done already”, 5 horizons from “very short term” to “very long term”, “no action needed.”
UN RFMO Review Abstract

Gerald Leape

Pew Charitable Trusts

In 2006, 2010, and 2016, the Parties to the UN Fish Stocks Agreement urged each regional fisheries management body (RFMO) to conduct regular independent performance reviews to evaluate their work, suggest improvements, and identify best practices, and all of the major tuna RFMOs have followed suit. The Pew Charitable Trusts has long supported the review process because its independent nature provides a vital contribution to the regular business of each RFMO. Unfortunately, these bodies have not done a sufficient job of implementing the recommendations of their review panels, particularly to end and prevent overfishing and to rebuild depleted stocks. Examples where ICCAT, IATTC, and WCPFC have been unable or unwilling to adopt conservation and management measures that implement reviewers’ recommendations are highlighted. In order for the Parties to the UNFSA to do a better job of meeting the terms of the agreement and promoting sustainable fisheries management, States members must do a better job of incorporating the independent reviewers’ recommendations into their management strategies. To do so will require strong Chairs who can recommend specific measures that should incorporate new provisions based on the review; internal leadership groups that meet regularly on this topic; annual self or independent audits; and a commitment from RFMO Chairs to report on these efforts at the next Resumed Review Conference on UNFSA Implementation. By implementing these recommendations, the RFMOs can show that these independent panel reviews strengthen their ability to fulfill their obligations to conserve and manage the species under their jurisdiction.
Performance Reviews of Regional Fisheries Management Organisations and Arrangements (RFMO/As)

Abstract for the ICSP-14 Panel Session Three – Recommendations of and mechanisms for follow-up to performance reviews: experiences, best practices, challenges and opportunities

Holly Koehler, Vice President for Policy and Outreach, ISSF
Claire van der Geest, Strategic Policy Advisor for Indian and Pacific Oceans, ISSF

Background: The International Seafood Sustainability Foundation (ISSF) is a non-governmental organisation established in 2009 by leading tuna scientists, NGOs and tuna processors with the objective of undertaking and facilitating science-based initiatives for the long-term conservation and sustainable use of global tuna stocks, reducing bycatch and promoting tuna ecosystem health. ISSF Staff and Consultants have a range of scientific and policy expertise that has been utilised in conducting RFMO/A performance reviews. ISSF experts have participated in the following RFMO/A performance reviews:

- Indian Ocean Tuna Commission (IOTC) – independent scientific review of the IOTC in its First and Second Performance reviews;
- IOTC – one of two NGO representatives on the Second performance review panel;
- Commission for the Conservation of Southern Bluefin Tuna (CCSBT) – independent performance review panellist; and
- Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) – independent performance review panellist and co-chair.

Summary
Based on ISSF’s experience as an NGO or independent representative on four RFMO/A performance review panels, there are three elements that are essential for successful performance reviews:

1. Ensuring independent evaluation in or of the performance review;
2. Including an assessment of RFMO member implementation of the conservation measures or decisions of the RFMO/A and their effectiveness for the status of the fishery and ecosystem in the review terms of reference to ensure more comprehensive the evaluation of the performance of the RFMO/A; and
3. Clear recommendations and articulation of the process and work plan needed to address the identified areas in need of improvement, including by whom.

These three elements will be the focus of the ISSF presentation to the May 2019 meeting of the Informal Consultations of States Parties to the UNFSA.
Ensuring Independence and Transparency

Requiring more independent assessments of RFMO/As would support effective implementation of performance review panels and provide a greater level of transparency if the independent assessment is made public. As noted below, an RFMO/A performance review need not be fully independent (i.e., composed of only external experts), but it could include additional mechanisms that strengthen the objectivity of the recommendations or provide alternative perspectives and additional input. For example, an independent panel or set of outside experts could be brought in to review an RFMO/A’s self-assessment (as was done in CCSBT in 2008) to offer suggestions and recommendations. A second option is the establishment of independent panels to consider specific aspects of RFMO/A performance, such as related to the effectiveness of conservation and management measures, its monitoring, control and surveillance (MCS) tools or compliance assessment processes. The Western and Central Pacific Fisheries Commission (WCPFC) employed such an Independent Review Panel in 2017/2018 to review the WCPFC Compliance Monitoring Scheme.

It is critical that RFMO/A performance reviews include representation from, to the greatest extent possible, all components of the fisheries supply chain and from civil society. Historically RFMO/As have focused primarily on the catching sector from the member States. For example, in the IOTC, States with an interest in catching and/or processing have been on the performance review panel (e.g., the Seychelles, Mauritius, Maldives, European Union and Japan). However, there is increasing engagement from the processing sector that takes place in RFMO/A non-member States, which should be considered in the review of the performance of an RFMO/A, as well as the design and adoption of effective conservation and management arrangements.

Although RFMO/As have utilised civil society representation in performance reviews, this relationship can be further strengthened. There are opportunities for RFMO/A members to draw upon the skills and expertise of civil society to support the development, adoption and implementation of strengthened conservation and management arrangements through seeking the input of such stakeholders throughout the implementation of performance review recommendations.

In relation to transparency, all documents prepared in association with the performance review, for example summary reports and analyses, should be made publicly available. At minimum, these documents should be public at the conclusion of the performance review; recognizing the need to be consistent with the confidentiality policies of the relevant RFMO/A (e.g., not disclosing any specific vessel level information). The overarching objective should be to publish as much information as possible related to the performance of the RFMO/A so that the methodology, questionnaires, documents examined, and criteria used are available for analysis by all interested parties.

Scope of the Assessment of RFMO/A

The RFMO/A performance reviews that ISSF Staff or ISSF Consultants, either as independent experts or as NGO representatives, have participated in have been constructed in one of two ways: (1) as a fully independent assessment of the performance of the RFMO/A; or (2) as a committee-like structure composed of RFMO members (States), sometimes representatives of the RFMO Secretariat and representatives as NGOs accredited to the RFMO/A or external experts (e.g., scientists or legal). Both options have pros and cons, as how the review is conducted impacts the scope, rigour, including perceived rigour, and the ultimate recommendations from the performance review process.

For example, based on the agreed terms of reference, both IOTC performance reviews were conducted with panels consisting of four IOTC member States (two developing and two developed, including a...
balance of coastal and distant water fishing nations), two approved observer organisations and independent legal and scientific expertise. In our experience, performance reviews using this format had high levels of understanding of how the RFMO/A works. However, they were not always best placed to provide independent advice regarding flag State or RFMO member-level performance and/or recommendations based on international best practice. Similarly, some of the members of the panel may only have experience with the workings of a single RFMO/A, and so may not be able to provide recommendations based on globally accepted best practices or advances in other RFMOs or fisheries. Alternatively, a regional focus may result in recommendations that are specific to only a certain RFMO/A experience. A recommendation of the IOTC’s second performance review regarding the FAO’s support of the IOTC and its implications for the membership is one such example where the recommendation from the panel took account, to some degree, of expert knowledge of the sensitivity of that specific situation.

The range of issues discussed in the performance review will be guided by the specific terms of reference (ToRs). The degree of investigation and review is directly proportional to the ToR agreed by the relevant RFMO/A. The full performance of an RFMO/A can only be truly assessed if the Review Panel is able to assess or review the degree of implementation of the decisions and conservation measures by the RFMO/A membership, including with respect to any previous performance reviews, and their effectiveness (to the extent possible). In both IOTC performance reviews, the ToR were broad and consistent with the original UN recommendation. All aspects of the IOTC performance were up for review including related to the science, compliance and enforcement, decision making, international cooperation, the FAO financial and administrative issues and conservation and management measures. There was only one exclusion from the IOTCs’ performance review: an independent audit of the finances of the Commission. The 2017 Performance Review of CCAMLR made recommendations regarding improving the CCAMLR Compliance Evaluation Procedure and other measures to better manage fishing activity in the Convention Area. Further, the 2014 Independent Performance Review of the CCSBT evaluated the management system of the RFMO/A and the state of its resources and ecosystem (i.e., southern Bluefin tuna and ecologically-related species and habitats). This Panel also compared the performance of CCSBT to modern tuna RFMO governance standards.

Processes for Actioning Recommendations from RFMO/A Performance Reviews

RFMO/A performance reviews make numerous and often quite detailed recommendations. In our experience, it is essential that recommendations are specific and measurable, and have clearly articulated responsibilities assigned to ensure accountability (i.e., each recommendation is clearly directed to the RFMO members, a subsidiary body, and/or the Secretariat, etc.). It is also important to ensure there is sufficient specificity in the recommendations to ensure the broader RFMO/A membership understands the action required to fulfil the recommendation. This may include breaking the recommendation down into component parts to provide the enabling environment in which change can occur. For example, the number one recommendation from the first IOTC performance review was for the IOTC members to update the IOTC Agreement text providing consistency with the United Nations Convention on the Law of the Sea (LOSC) and the UN Fish Stocks Agreement (UNFSA). In the six years between the first and second IOTC performance reviews, there was no action on this recommendation. Hence, the ISSF participant on the second performance review panel sought to ensure that there were clear steps to be taken to support addressing this longstanding recommendation. The second performance review recommendation first noted the original recommendation and the lack of progress and then recommended the formation of a Working Party to develop and recommend amendments to the IOTC treaty text. In the two years since the completion of the second performance
review, a Working Party has been established and it has met on two occasions. Structuring performance review recommendations in this way also provides clear criteria for assessing progress and accountability (e.g., has the working party been established, has it met and how is that work progressing).

The experience of ISSF Staff and Consultants is that performance review recommendations that involve more substantial investment and change, for example amending the RFMO treaty or management measures, establishing MCS tools (e.g., regional observer programs or a centralized VMS), implementing allocation schemes or addressing critical data gaps, have not always been progressed with the same vigour. Noting again that RFMO/As are composed of nation States, which have diverse interests and objectives, without clear steps for how the recommendation is to be addressed there is a greater probability of inaction. This not only affects the timely implementation of performance review recommendations, but also the pace of adoption of other needed conservation measures even when there is significant scientific advice to support the proposed action.

Another mechanism for strengthening the effectiveness of performance reviews is through the development of, or strengthened implementation of, a rigorous systems-based approach to responding to non-implementation and/or non-compliance by RFMO members, in accordance with international law. A systems-based approach that enables the RFMO/A to evaluate and respond to gaps in implementation provides a stronger basis on which the performance of the RFMO/A and its systems can be assessed. Additionally, such systems need to support and take account of the special requirements of developing States and small Islands Developing States.

Conclusions

In general, based on our experiences, RFMO/A performance review processes have delivered as intended, but there are always opportunities for continual improvement and to strengthen the outcomes; thus ensuring robust arrangements for the effective long-term management of highly migratory and straddling fisheries resources.

Key to this continual improvement is, first, to increase the level of independence and transparency of the performance review itself. Second, ensure that the performance review also considers the effectiveness of the measures (e.g., by evaluating the state of relevant fisheries resources and ecosystems) and the level implementation by member States with the agreed conservation and management and MCS measures (e.g., what is the degree of compliance/implementation and how does the RFMO assess this). Given the importance of these measures to achieving the objective of RFMO/As, it is fundamental that performance reviews consider whether these measures will provide the framework to meet this outcome, and are actually doing so.

Finally, ensure that any recommendations stemming from the performance review are specific, measurable, that there is sufficient accountability and that they are actioned in a timely manner. This can be strengthened if RFMO/As have a systems-based approach of responding to RFMO member non-compliance or gaps in implementation.
Abstract:

Recommendations of and mechanisms for follow-up to performance reviews: experiences, best practices, challenges and opportunities under the North East Atlantic Fisheries Commission (NEAFC).

Dr Darius Campbell, Secretary.

The presentation will outline how the North-East Atlantic Fisheries Commission has responded to its two performance reviews carried out over the last 13 years or so. The presentation will include how the focus and conclusions of the reviews have enabled the response by the Commission. The process for the Commission’s response will be covered including the consideration of which advice was acted on and which was ultimately decided as not suitable for uptake by NEAFC. Ongoing developments within NEAFC relating to the most recent performance review (2014/15) will be described. The presentation will also reflect how NEAFC reacts to broader regional and global developments and challenges in considering how to update its approaches in delivering the objectives of its convention.

It is hoped this description of the process within NEAFC will usefully inform discussions in the final panel segment on further enhancing the effectiveness of performance reviews.
Abstract:

Canada's presentation aims to spark discussion on how to enhance the effectiveness of performance reviews, and provides an overview based on Canada's past experience dating back to the adoption in 1923 of what is considered the first regional fisheries body. It will speak to considerations that should be taken into account for a review process, including timing, cost, composition of review teams, implementation of recommended outcomes, and the importance of a consensus-based approach.
Abstract


Sri Lanka did not have legal provisions for high seas fishing before 2013 due to lack of exposure to the developments of the fishery related management provisions of the Agreement. At present Sri Lanka supports long-term conservation and sustainable use of living marine resources through effective implementation of the provisions of the United Nations Straddling fish stocks and Highly Migratory Fish Stock Agreement. This has been achieved mainly by complying with the Conservation and Management Measures and the recommendations of the IOTC.

The contracting parties are annually assessed, within the framework of the IOTC, for the implementation of conservation and management measures and the feedback is produced according to the assessment. This improves the management systems of the contracting parties. Sri Lanka as a developing state and still lacks in sophisticated fisheries management systems and therefore, need assistance in the areas of human resource development through training, and technology transfer, infrastructure to conduct scientific stock assessment and research, domestic implementation of compliance and enforcement measures. Further, funding assistances are very important for the effective participation of annual sessions of Regional Fishery Management Organization (RFMO), joint Tuna RFMO meetings and the United Nations fisheries related meetings which are conducted by the Division for Ocean Affairs and the Law of the Sea.

It is understood that a mix of experts need to be involved in the RFMO activities, a legal expert, a fisheries manager and other relevant technical expert which Sri Lanka feels lack. Precautionary measures and ecosystem based fishery management measures are operating under the frame work of IOTC. Decisions derived from the scientific based research do not fit to all the nations equally.

Enforcement of conservation and management measures in a legally-binding manner within a short period of time, matters upon creating social issues. It is very important to ensure that the conservation and management measures do not result in transfer directly or indirectly, a disproportionate burden onto developing States. Therefore, the consideration of socio-economic factors in Tuna fisheries is emphasized. IOTC has initiated integrating socio-economic elements with Tuna fisheries.

Stock assessments are not feasible due to lack of reliable data and provision of substandard data. Lenient compliance assessments have led some stocks to be overexploited in the Indian Ocean. Currently IOTC Agreement is being amended to include the terminology of modern fisheries management principles. And more stringent measures will be incorporated into the compliance. Occurrence of multispecies, multi-gear, multi landing centers and the small-scale artisanal nature of the fishery have complicated the collection of coastal data in Sri Lanka. Science–policy interface sessions should be simplified in order to understand even by the non-science background community.

The informal consultation of State parties to the agreement is an important forum to share experiences and challenges, and to study to means to further strengthen the implementation of the Agreement in smooth manner. Further the resumed review conference on the Convention and Agreement is good opportunity for States to reflect the obligations under the Agreement.
Abstract

The presentation provides the perspectives of the Western and Central Pacific Fisheries Commission (WCPFC) on potential areas where enhancements to performance reviews of RFMOs could be made. It suggests that in order to enhance their effectiveness, performance reviews should be targeted at the needs of the particular RFMO. Related to this is the need to adapt assessment criteria of a performance review to the requirements of a RFMO. This may require greater attention to particular issues, such as recognition of the special requirements of developing States and territories in a RFMO with a large majority of developing State members, or a review targeted towards a particular need, such as an independent review of science or compliance. The presentation also suggests that a performance review process should be transparent and based on broad participation of all RFMO Members and stakeholders, without which the recommendations will not be relevant or politically acceptable. Performance reviews come at a cost and the benefits of a review must outweigh these costs, including the cost of time and resources required to adequately consider the recommendations of a performance review panel. To this end it is suggested that a RFMO should develop a process to ensure appropriate consideration of a panel’s recommendations. The presentation also considers the potential role of the Resumed Review Conference on the UN Fish Stocks Agreement and other international processes in achieving enhancements to performance reviews of RFMOs through setting out best practice and identifying the needs of global oceans’ conservation and management. Such international processes can assist in guiding the future direction of RFMO performance reviews, but ultimately the review must be RFMO specific.
Three ways the new instrument for marine biodiversity beyond national jurisdiction could further enhance the effectiveness of RFMO performance reviews

Abstract by Kristina M. Gjerde, Senior High Seas Advisor, IUCN Global Marine and Polar Programme

Amongst the many challenges faced by regional fisheries management organizations (RFMOs) today, areas of common concern relate to implementing ecosystem-approaches to fisheries management, including measures for protecting biodiversity in the marine environment.\(^1\) While some RFMOs have made significant advances, uneven progress can hinder efforts to maintain healthy, productive and resilient marine ecosystems in the face of increasing global stressors from climate change.

For the purpose of this panel on “further enhancing the effectiveness of performance reviews through the resumed Review Conference and other intergovernmental processes”, this presentation focuses on the possible role of “other intergovernmental processes”. It suggests that the emerging international legally binding instrument for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (ABNJ) could play a helpful role in at least three ways.\(^2\)

First, similar to the UN Fish Stocks Agreement, the new instrument could set forth principles and obligations for States Parties to strengthen the governance of sectoral bodies and to adopt measures to protect biodiversity in the marine environment. This could be through global standards, criteria and procedures for environmental assessments as well as obligations to adopt area-based management tools to conserve ecosystems, natural habitats and species both inside and outside of protected areas. Similar to the Convention on Biological Diversity, the instrument could also call for the development of sectoral and cross-sectoral strategies and action plans for the conservation and sustainable use of marine biodiversity in ABNJ to expedite implementation of ecosystem-based management by all.

Second, a Conference of Parties to the new instrument could serve as a global forum to discuss shared challenges and look at how competent bodies, including RFMOs, could improve their implementation of biodiversity objectives. Progress assessments could help stimulate a sense of global responsibility for developing and implementing joint solutions to proactively protect marine biodiversity and reduce cumulative and sector-related impacts.

Third, a global scientific body under the new instrument could enhance multi-disciplinary and cross-sectoral cooperation to share data and knowledge, build research capacity, and develop and transfer technologies. Such efforts could ensure equal access to tools and technologies to understand, predict and respond to the impacts of global ocean change on marine biodiversity and ecosystems. Together such actions could foster greater resilience of marine species and ecosystems in a face of accelerating climate risks as well as support long-term conservation and sustainable use of global fish stocks.
