



# Australian submission

14<sup>th</sup> Round of the 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* (the Agreement) focus on '*Performance Reviews of regional fisheries management organizations and arrangements*'.

## **(i) The scope of performance reviews of RMFO/As and importance and role of such review for the implementation of the Agreement**

Performance reviews have an important role in identifying any weaknesses and gaps which may impede the effective and efficient functioning of the relevant Regional Fisheries Management Organisation/Arrangement (RMFO/A) and prevent the RMFO/A from fully achieving its objectives. As the major implementation mechanism for the Agreement, and in the absence of any regular governance body overseeing the Agreement, the performance of RFMO/As is critical to achieving the constituent treaty's objectives.

RFMO/As have drawn from each other in terms of identifying scope and criteria. Some RFMO/As have been influenced by the performance review scope of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), as well as the Kobe process. We note for some RMFO/As, (for example, the Indian Ocean Tuna Commission) performance review criteria have been based on the performance criteria developed as a result of the joint meeting of the Tuna RMFO/As in January 2007 (Kobe I) and adapted, as appropriate, to the requirements of the specific RMFO/A. This unintended uniformity has been useful. We agree common criteria can be useful for reviews, if they are well targeted and lead to genuine assessment of performance, and outcomes that can be compared across RMFO/As, as required.

Performance reviews must examine the full performance of the RMFO/A in question in a way that examines performance against the objectives of the relevant treaty and is appropriately targeted for the maturity of the RFMOs – ‘young’ RFMOs are likely to have achieved less than an older RFMO, but may also be free from challenges that can frustrate older RFMOs. The scope of reviews should examine actual efficiency and effectiveness, and not be limited to narrow criteria or limited presence/absence criteria.

There could be more in-depth review of RMFO/A secretariats as these are a significant cost to RMFO/A members and often critical in assisting RMFO/A members meet their responsibilities. However, rather than include a more detailed review of a secretariat within the review of an RMFO/A, it may be more efficient and effective to have standalone review(s) targeted simultaneously at multiple secretariats with a view to ensuring that secretariats are well supported to carry out their functions and effectively coordinate between each other to the benefit of their membership. Such reviews could help identify best practice for secretariats and benefit RMFO/As by identifying potential improvements for the secretariats. The mechanism for doing this remains unclear, and it is possible that such an approach would need to be agreed by the RFMO/As involved, in the absence of an existing coordinating mechanism.



## **(ii) The process and structure of performance reviews of RMFO/As including in relation to independent evaluation, participation, transparency, accountability and periodicity**

The performance review panel must include independent expert(s) to ensure that the review is both robust and credible. The panel should also include experts from within the RMFO/A so that there is sufficient expertise and diversity within the panel to ensure that its recommendations are relevant and practical for the particular RMFO/A. Experts should, as much as practicable, be drawn from a diverse pool and include non-governmental observers. Inclusion of internal experts is also important for the RMFO/A to take ownership and act on the recommendations.

A review should include interviews from officials of the RMFO/A such as representatives of member states, Chairs of subsidiary bodies, the Executive Secretary/Director and senior secretariat staff where relevant. To gain a wider range of views, it would be worthwhile for the performance review panel to call for expressions of interest from stakeholders (e.g. industry, NGOs) to provide stakeholders an opportunity to share their views on the performance of the RMFO/A. However, for large RMFO/As, this is likely to dramatically increase the task of the performance review panel. Thought should be given to spreading conduct of performance reviews over a two-year period (instead of the usual one year) to provide time to produce a more robust review, particularly if stakeholder participation is included. This also provides an opportunity for a Panel to observe relevant meetings.

The outcomes of performance reviews should be public documents and should be generally available to the public from the RMFO/A's website, except where confidential or sensitive information is involved. Submissions to the performance review panel would not necessarily be publicly available, but could be made public subject to appropriate checks and balances, and the agreement of those making submissions.

The frequency of performance reviews should be flexible. RMFO/As should have the ability to decide on the timing of their next performance review to suit their needs and work schedule, and in the context of concurrent activity. Arbitrary timing for reviews would not be useful for example if significant management changes were expected in the relevant RFMO/A in the near future. Given that, a period of approximately five years between the first and second performance review would seem to be reasonable. For subsequent reviews, it is suggested that anywhere from five to 10 years between reviews would be appropriate.

Performance reviews and the evaluation/implementation of recommendations involves significant effort and expense. Having the reviews too frequently can therefore act to reduce the performance of an RMFO/A, particularly as there is likely to be diminishing returns with each subsequent performance review. The performance review itself could give some guidance on an appropriate period before the next performance review of the specific RMFO/A within the five to 10 year time period.

## **(iii) Implementation of the recommendations of, and other follow-up to, performance reviews of RMFO/As and arrangements**

We consider the key to gaining maximum benefit from a performance review is a thorough evaluation of the review's recommendations followed by effective implementation of relevant recommendations. It is therefore important to set guidelines in relation to the process for implementing recommendations from performance reviews. One possible process is as follows:



- a) Recommendations should be referred to appropriate subsidiary bodies and officials of the RMFO/A for expert internal evaluation of those recommendations with respect to the importance and priority of those recommendations.
- b) Following "a", RMFO/As should develop a formal response to each and every recommendation so that it is clear to what degree each recommendation will be addressed and why. It would be valuable to also keep a formal record of progress towards achieving recommendations with related metadata (e.g. date, subject, achievements, current status, etc.).
- c) RMFO/As should then develop an implementation plan.
- d) Prior to the next performance review, RMFO/As should produce a document that describes the degree to which each recommendation was implemented. This document, together with the formal statement of opinion from "b" should be presented to the next performance review for evaluation. (As an example, although not an RFMO, CCAMLR has included discussion of previous performance reviews as a standing agenda item as a means to continue momentum against recommendations.)

RFMOs should be encouraged to prioritise implementation of recommendations, which will promote effective implementation. Additionally, as was the case in the SPRFMO performance reviews, Review Panels can assist in this process by identifying priorities or desirable timeframes to provide guidance to the RFMO.

#### **(iv) Lessons learned and best practices from past performance reviews of RMFOs and arrangements**

Australian experience is that the most important lessons learned in past RMFO/A performance reviews can be summarised as:

- a) Performance reviews should evaluate actual outcomes and achievements, rather than process aspects of relevant organisations. It is not enough for an RMFO/A to have a measure in place if it is not being complied with or achieving the desired outcome.
- b) There needs to be internal experts on any performance review panel to ensure recommendations are relevant and that the RMFO/A takes ownership of the recommendations.
- c) Broad regional representation on a review panel is an advantage for perspective, balance and buy-in of conclusions or recommendations.
- d) The RMFO/A should develop a formal response for each and every recommendation from a performance review, along with a timeframe for implementation where relevant.
- e) Performance review reports should be brief and to the point to allow better understanding and take-up of recommendations.
- f) Timing of performance reviews should be flexible enough to ensure they are effective and informative, but not so frequent that they interfere with the routine work of the RFMO/A, or add unnecessary cost to the organisation.



## **(v) Actions needed to further strengthen the effectiveness of the performance review process, including through capacity-building**

There is merit to having a common set of criteria to be evaluated for performance reviews of RMFO/As. However, not all criteria will be equally relevant to all RMFO/As. To make most effective use of reviewers' time, it is therefore important for RMFO/As to prioritise the criteria that the review should address.

The prioritisation process should include reasons for assigning differing priorities to different criteria. For example, some RFMO/As manage by allocation of a global total allowable catch, so capacity management is not a high priority for these organisations. Similarly, in some RFMO/As most Members are highly developed States and there are no Small Island Developing States, so capacity building is not as important for these RFMO/As as for others.

It is important that the report of the performance review be a well-structured document that is concise and to the point with minimal repetition. People tend not to thoroughly examine and understand overly wordy and lengthy documents. Such documents reduce the effectiveness, understanding and implementation of a performance review, particularly for people whose native language differs from that of the performance review document.

Consideration could be given to a two-year process which enables some of the panel members to attend actual RFMO/A meetings and meet with members and observers which may better contextualise the review and subsequent recommendations.

Finally, ensuring RFMO budgets make appropriate provision to fund panel member costs and time will help attract quality members and result in better outcomes.