

Input for the NASCO Special Session Performance Reviews of Regional Fisheries Management Organisations and Arrangements (RFMO / As) – An NGO Reviewer’s Perspective

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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.

(1) Ensuring Independence and Transparency

1. Promoting 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), and for

some RFMOs that have specific characteristics or unique procedures having internal participants on the Panel can be important and valuable. However, there are also additional mechanisms that could be used to strengthen the objectivity of the recommendations or provide alternative perspectives and additional input to inform the RFMO as part of the performance review process. 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.

2. It is critical that RFMO/A performance reviews include, to the greatest extent possible, representation from, or input from if representation on the panel is not 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.
3. 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.
4. 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.

(2) Scope of the Assessment of RFMO/A

5. 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.
6. 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 internally and in practice. However, such panels 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 or innovations in other RFMOs or fisheries. Alternatively, a very 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.

7. The range of issues discussed in the performance review will be guided by the specific terms of reference (ToR). The degree of investigation and review is directly related 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, 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.

(3) Processes for Actioning Recommendations from RFMO/A Performance Reviews

8. 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, the Commission, a subsidiary body, and/or the Secretariat, etc.).
9. 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. 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).

10. 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.
11. 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

12. 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 shared fisheries resources.
13. Key to this continual improvement is, first, to increase the level of independence and transparency of the performance review itself. Several options for how to do this are provided in this paper. 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.
14. Finally, ensure that any recommendations stemming from the performance review are specific, measurable, that there is sufficient accountability so that there is an enabling environment for progressing them in a timely manner.