

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 (New York, 2 to 3 May 2019)

Performance Reviews of Regional Fisheries Management Organizations and Arrangements: Contribution from the Secretariat of the Western and Central Pacific Fisheries Commission

Introduction

The Western and Central Pacific Fisheries Commission (WCPFC) was established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention). The WCPFC Convention entered into force in 2004 following a decade of negotiations. Its provisions largely reflect the 1995 Agreement for Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10th December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA) as well as the special political, socio-economic, geographical and environmental characteristics of the western and central Pacific Ocean (WCPO) region.

WCPFC has 26 Members, seven Cooperating Non-Members, and makes special provision for the participation by seven Pacific territories in the work of the Commission. WCPFC is responsible for the conservation and management of highly migratory species over a geographical area which extends from the western edge of the Pacific Ocean to the 130° W longitude (see Figure 1).

2012 WCPFC Performance Review

At the first joint meeting of tuna RFMOs, held in Kobe, Japan from 22-26 January 2007, a commitment was made to review the performance of the five tuna RFMOs using common criteria and methodology. In response a proposal for a review of the performance of WCPFC was tabled at the Fourth Regular Session of the Commission (WCPFC4) in December 2007, but it was considered premature at that time. WCPFC5 agreed to the development of recommendations for a structure and budget so that an independent performance review of the Commission could be conducted in 2010. The performance review was deferred in 2010 due to lack of funding but it was agreed at WCPFC7 that the performance review would be undertaken in 2011. The Performance Review Panel undertook its work in the second half of 2011 and presented its report of 28 February 2012 to the WCPFC8 in March 2012 (WCPFC-2012/11).

The Performance Review Panel comprised four external experts and three internal members from the European Union, Nauru, and the Philippines. This was in line with the Commission's views that the review team should include independent experts and Commission members including SIDS representation.

The performance review focused on the effectiveness of the Commission to fulfil its mandate under the WCPFC Convention and assessed WCPFC's performance against certain criteria. These criteria were based on those recommended by the Kobe meeting in 2007, and amended to reflect the WCPFC's mandate and membership. The criteria encompassed six areas: conservation and management, compliance and enforcement, decision-making and dispute settlement, the role and performance of subsidiary bodies, international cooperation and financial and administrative issues. The review team was to provide advice to Members on areas where and how improvement could be made to the Commission's operations.

The performance review methodology was based on interviews and desk study of available WCPFC documents, as well as consultation with WCPFC Members, Cooperating Non-Members and Participating Territories. Although only one Member replied to the request for input conveyed through the WCPFC Secretariat, some consultations were also held in the margins of other regional and international meetings.

The Performance Review Report was presented to WCPFC8 in March 2012. The Report contained 79 recommendations on how to improve WCPFC performance in line with the review criteria. In general, WCPFC8 considered the review to be useful and the recommendations to be valuable and comprehensive. It tasked with WCPFC Secretariat with preparing a matrix of recommendations for further consideration. Progress against the recommendations was tracked at WCPFC9 and WCPFC10. Many of the performance review recommendations were addressed and completed during the ongoing work of the Commission and its subsidiary bodies. While there were a small number of recommendations that remained to be addressed, the Commission has not discussed the performance review recommendations since December 2013.

Lessons Learned from the WCPFC Performance Review

The WCPFC Performance Review process was useful in ensuring an independent evaluation of the effectiveness of the WCPFC in meeting the objectives set out in the WCPFC Convention. Nevertheless, there are a number of issues which the WCPFC performance review process revealed that merit addressing in future.

There is a question of how to ensure that the performance review process is transparent and based on broad input from participants in the RFMO. The WCPFC Review Team sought input from Members, but received only one written response. Small fisheries administrations, particularly those in Small Island Developing States and Territories, are likely to find it difficult to respond to open-ended invitations to convey detailed views on the performance of an RFMO. Questionnaires, especially if survey-based and targeted, can be a more useful method of seeking a views from a range of participants, not only members of the RFMO. However, such questionnaires may not illicit views of sufficient depth from all participants to be helpful in assessing the performance of a RFMO. Supplementing these with interviews of key participants in the RFMO is an effective way to illicit views of members. Interviews with key players in the RFMO, such as Chairs and Vice-Chairs of the Commission and subsidiary bodies, can efficiently be undertaken at RFMO meetings or via video conference.

The cost to the RFMO of undertaking a comprehensive performance review process may deter regular performance reviews. In the case of WCPFC the performance review had to be deferred for a year because no budgetary provision had been made for the review, which cost over USD 100,000. There is a balance that has to be struck between ensuring the independence of the review panel through the involvement of external experts and ensuring the cost-effectiveness of the performance review. There is also a balance to be struck between ensuring the full range of expertise and Member representation on the review panel, and ensuring that the review panel is not so large that it is difficult for it to complete its work in a timely manner.

The process for considering and implementing the recommendations of the performance review panel was a continuing issue for WCPFC. Given the importance of ongoing work, there is often insufficient time available at meetings of a Commission and subsidiary bodies for in-depth consideration of a review panel's recommendations. This is especially the case where the recommendations are numerous and far-reaching, or where they seek to address issues with which there is no consensus among members over the need to

address. Nevertheless, the review panel's recommendations can serve as a benchmark against which to assess best practice and may provide the basis for ongoing work of the Commission and its subsidiary bodies.

The difficulty of systematically addressing the recommendations of a performance review panel may relate to the comprehensiveness of the recommendations, which are usually based on criteria recommended during the Kobe process. Although these assessment criteria were amended to some extent to reflect the WCPFC's mandate and membership, greater consideration could be given to whether the full range of criteria are appropriate for every RFMO and for every performance review. The effectiveness of the performance review process could be strengthened by the use of discreet reviews to improve the performance of the RFMO in particular areas. These may prove to be more suitable and cost-effective for some RFMOs than regular performance reviews based on the Kobe criteria.

By way of example, WCPFC has recently completed a review of its Compliance Monitoring Scheme (CMS). At WCPFC13 in December 2016, the Commission approved the terms of reference for a Review of the CMS with the objective of assisting Members, Cooperating Non-Members and Participating Territories to improve compliance with the WCPF Convention and conservation and management measures. The review sought to be forward looking and provide clear recommendations on how best to implement the CMS.

The terms of reference required that the CMS Review Panel comprise three independent experts who together would provide a balance of experiences which would be relevant to the membership of the Commission, and at least one of whom should have a sound knowledge and understanding of the strength and weaknesses of Small Island Developing States. The Review Panel was appointed in April 2017 and undertook consultations with members through a questionnaire, some phone/Skype interviews, and attendance at a meeting of the WCPFC Technical and Compliance Committee. A substantive report was presented by the CMS Review Panel at WCPFC14 in December 2017 and the final report was issued in March 2018.

WCPFC14 established an Intersessional Working Group on the Review of the Compliance Monitoring Scheme (CMS IWG) with the tasks of facilitating consideration of the Report from the Independent Review of the CMS and developing a proposed conservation and management measure for the Compliance Monitoring Scheme for consideration at WCPFC15 in December 2018. The CMS IWG presented a summary of its views on the Independent Review Report and a proposed conservation and management measure on the CMS which took into account the recommendations of the Review Panel. WCPFC15 adopted a Conservation and Management Measure for Compliance Monitoring Scheme, included follow-up tasks in the work plan for the Technical and Compliance Committee, made budgetary provision for CMS work, and agreed that the recommendations of the Review Panel would serve as a reference for the Commission's consideration of future work to enhance the Compliance Monitoring Scheme.

This example demonstrates that a performance review process can be highly effective when it is targeted to the needs of the particular RFMO, has maximum engagement of the membership of the RFMO including Small Island Developing States, involves a process for considering and acting on the recommendations of the review, and entails a commitment of the membership of the RFMO to strengthen its performance in a particular area.

Figure 1

