

REGIONAL FISHERY BODY SECRETARIATS' NETWORK**Sixth Meeting****Rome, 9 and 15 July 2016****ANALYTICAL COMPILATION OF THE PERFORMANCE REVIEW REPORTS:
METHODS, CONTENT AND THE WAY FORWARD****General Considerations**

1. The UN General Assembly (UNGA) and the Committee on Fisheries (COFI) have urged the importance of conducting performance reviews with some element of independent evaluation to be undertaken for regional fisheries management organizations and Arrangements (RFMOs/As), with the final goal of ensuring the sustainable use and conservation of the fisheries resources, also implementing the ecosystem approach to fisheries (EAF).
2. The Twenty-sixth Session of COFI (2005) recognized that scrutiny by the broader international community by means of independent assessments of the performance of RFMOs could make a contribution in this regard. To date, there is broad support for the performance assessment to be independent, rather than being carried out solely by RFMOs themselves. This was a major shift in what had been originally proposed during the Second Meeting of Regional Fishery Bodies in 2001 (RFB 2) where most of the representatives of the Regional Fishery Bodies (RFBs) "were of the view that evaluation was a matter for the RFB itself"¹.
3. The visibility and usefulness of the performance assessments and their impact on future performance is potentially much higher if this is carried out on behalf of the UNGA or the FAO. This clear shift shows the willingness of States (through the RFB they are member of) to improve and move in the right direction and it is expected that the same spirit will continue in the future application of this very important process of performance reviews which, as noted during the Resumed Review Conference on the UN Fish Stocks Agreement (UNFSA), still requires some adjustments in order to properly secure the final goal of conservation and sustainable use of the marine resources.

¹ FAO Fisheries Report No.645, par.20, available at: <http://www.fao.org/3/a-y0593e.pdf>

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Concerns and issues in conducting performance reviews emerged from FAO Circular No.1108

4. As shown in the FAO Circular No. 1108, “The Implementation of Performance Review Reports by Regional Fishery Bodies, 2004-2014”², it is sometimes difficult to determine what counts as an independent, external performance review.

5. In fact, many of the performance reviews feature “external review” or “independent review” on their title, but the composition of the review panels is more typically mixed, including “internal” members on the panel, such as the chairs of certain committees, or panel members nominated by member States, thus making it difficult to categorize the “internal” or “external” status of a given expert. However, while the composition of panels should include, at least, one fisheries scientist, one international legal expert, and one person with long experience regarding fisheries management or RFBs, the value of having “internal” experts bringing valuable institutional knowledge in the assessment process has also been noted.

6. The recommendations set down by the UNGA call for the use of transparent criteria based on the provisions of relevant instruments, including the best practices of the RFMOs/As and further encourages that such performance reviews include some element of independent evaluation. They call on the need to ensure that the results be made publicly available. Such criteria are also found in some of the legal instruments establishing RFBs, as well as UN Conventions and related binding and non-binding instruments on fisheries.

7. The circular shows that the methodology of performance reviews has stayed relatively stable throughout, thus permitting a collection of RFB best practices to be assembled quite easily to and provides a set of results that are comparable. Moreover, it also notes that the criteria developed in 2007 for the use of said tuna organizations’ reviews (Kobe criteria³) have become the criteria of choice for a large number of RFBs, while certain RFMOs had criteria of a limited scope, such as for the investigation of financial and administrative practices only.

8. Considering each individual RFMO operates in a relatively unique geo-political environment, while there is nevertheless a strong degree of commonality in the factors affecting their performance however, specific factors in each regional context should be taken into consideration and reflected in the criteria applied, aware of the difficulties in finding criteria that will be accepted by all regions.

9. The FAO Circular provides a list of criteria for performance reviews which represents currently accepted global best practices, namely:

- Conservation and management of fish stocks;
- Compliance with and enforcement of international obligations;
- Legal framework, financial affairs, organization;
- Cooperation with other international organizations and non-member States.

Further criteria in some performance reviews also include the socio-economic aspects of fishing, the duties of RFBs towards developing countries, and the possible effects of fleet modernization.

10. While reiterating the difficulties in having well-accepted and valuable criteria that are able to capture the specific context in which a regional body is operating, it would be important to ensure the

² Available at <http://www.fao.org/3/a-i4869e.pdf>

³ Appendix 4, FAO Circular No. 1108.

performance be translatable into correspondingly holistic accounting measures so that management is able to track their performance. It is clear that a universalization of the criteria may seem improbable due to the geographical, socio-cultural and economical difference between RFBs and their members, however some criteria could be tailored to the specific needs and difficulties of each regional context.

11. The Circular also shows that Panels rely primarily on official documents of the RFB, interviews of officials working for the RFB who are nationals of the members of the RFB, and questionnaires sent to their members. Moreover, it also notes that performance reviews include analysis of the foundational texts of the RFB, which are examined vis-à-vis the international conventions and soft-law fishery instruments.

12. However, the circular also shows that no panel annexes the full record of data used to create its report, and the vague language normally used creates the impression that a deliberate effort is being made not to mention members by name, thus making confidentiality a prerequisite for the interviews.

13. The low response rate of Members to the questionnaires, the anonymity of the answers which does not allow it to be linked to other data about member States' fishing capacities, fish consumption and other relevant statistics, and the lack of clarity in the costs/funds spent, are other issues found in this methodology of conducting performance reviews.

Outcome of the resumed Review Conference on the UNFSA

14. RFBs and their performance were discussed during the Resumed Review Conference on the UNFSA held from 23 to 27 May 2016. The Conference agreed, among other things, on the need to undertake regular performance reviews of RFMOs and develop best practice guidelines for conducting performance reviews and implementing their results.

15. The following criteria and elements have been mentioned/suggested by several parties during the Conference, such as:

- Enhancing performance review consistency;
- Making performance review of RFMOs mandatory;
- The need for performance assessments of RFMO members;
- Stepwise approach and follow-up mechanism for implementing performance review recommendations;
- An adaptive, independent and regular review exercise;
- Ensuring the principle of accountability, transparency and participation from civil society;
- Time-bound implementation of recommendations;
- Ensuring regular RFMO performance reviews that include some element of independent evaluation, seeking information from all stakeholders;
- Establishing mechanisms to follow-up actions and implementation of performance review recommendations, when necessary, in a timely manner, including transparency and accountability.

Future reviews of Performance Reviews

16. The willingness and capacity of both the RFMO as a whole, as well as its individual member States, is perhaps the most crucial element in improving performance. This is why there has been an increased focus on performance assessment and review. Overall, it should be noted that both the structure of these regional fishery bodies as well as the way (and elements) in which their performance review are conducted are characterized by a high degree of heterogeneity.

17. The outcome of the Resumed Review Conference on the UNFSA, clearly indicates the need to adjust, or in some other cases include, new elements and criteria to be considered when conducting performance reviews, so as to ensure a complete and clear picture of how the RFBs are performing. The attention given by the international community to the issue of performance of RFBs is thus making clear the need of tailoring the forthcoming performance reviews to the above-mentioned principles and elements. At the same time, this momentum may also call for the need of producing another similar circular to those published by FAO in 2012 and 2015.

18. FAO, as the UN specialized agency dealing with fisheries and aquaculture-related issues, and also providing technical and administrative assistance to several RFBs (FAO and non-FAO), produced the circular “The Implementation of Performance Review Reports by Regional Fishery Bodies, 2004-2014” in 2015 and it is now in the process of looking at possible modalities and criteria for the development of another similar document. In the process leading to the development of such a circular providing an analytical compilation of RFBs performance reviews, it is envisaged that inputs and views from Secretaries of RFBs, based on the key findings that came out of Circular No. 1108, be taken into consideration so as to guarantee a constructive consultative process.