

## **Terms of Reference for the Performance Review of the Western and Central Pacific Fisheries Commission**

### **Background**

At WCPFC7 the Commission took the following decision to review the performance of the Commission.

*436. WCPFC7 agreed that a performance review of the Commission would be undertaken in 2011, and tasked the Executive Director with (i) developing criteria for the review based on input received from members, and reflective of characteristics of the WCPFC; and (ii) proposing a review panel to members for their approval that reflects the input received.*

The discussion prior to the decision and reflected in the Commission record (para 435) noted that the review team should include independent experts and Commission members including SIDS representation. The criteria for the review have been developed as determined by the decision of the Commission, are based on the established Kobe principles, and amended to reflect the WCPFC's mandate and membership.

The review will take place in 2011 and focus on the effectiveness of the Commission to fulfill its mandate under the Convention and in line with the review criteria. The review will consider the Convention texts and supporting structure developed and adopted by the Commission and will include the science processes and status of the stocks, and the Conservation and Management Measures adopted by the Commission and the role of the Committees. The review is to be transparent and objective and provide advice to members on areas where and how improvement could be made to the Commissions operations. It is suggested that the structure and reports from the other Tuna RFMOs be used to guide the final report structure of the review panel.

### **Objective**

The objective of the work to be carried out by the review team shall be to submit a report presenting:

1. A review of the WCPFC Convention Basic Texts in terms of the framework they provide to meet the objective of the Convention and the work of the Commission.
2. An assessment of the achievement of WCPFC's objectives against the attached criteria (i.e. are there measures, processes or procedures in place to achieve WCPFC's objectives?)
3. Recommendations on how to improve WCPFC performance.

### **Methodology**

In consultation with the Executive Director, the review team shall determine the review process and methodology using as a basis the criteria contained in Annex 1. The timing of the review has

been structured to allow the Consultants to meet with members of the Commission during the Kobe 3 meeting in July 2011 in California.

## **Criteria**

The criteria attached were developed through the Kobe process and have been modified to reflect the WCPFC Convention as determined by the decision of the Commission. The review team is invited to consider the criteria as a basis for their evaluation.

## **Work Schedule**

The work estimate is based on 30 working days for the completion of the review. Depending on the availability of the review team it is proposed to commence this process so that the report can be available for consideration by the Annual meeting of the WCPFC in December 2011.

### **1 Consultation**

Consultation with members can occur by way of a questionnaire, email or during the Kobe 3 meeting in July 2011 in California. The review team may also take an opportunity to meet with members at other regional meetings as appropriate.

### **2 Provisional Report**

The provisional report will contain the evaluation and the assessment. This report will be sent to the WCPFC Secretariat before 30 September 2011.

### **3 Revision of the Provisional report**

The Chair and Vice Chair along with the Executive Director will review the report and provide any comments to the review team in order for them to finalize their report to the WCPFC.

### **4 Final Report**

The final report will contain the evaluation, the assessment and the recommendations. This final report will be:

- Sent to the WCPFC Secretariat before 21<sup>st</sup> October 2011.
- Immediately distributed to WCPFC CCMs so that it can be considered at the 8th Annual meeting of WCPFC in Palau 2011.
- Discussed at the annual meeting and the Commission will decide on those recommendations it wishes to progress and the process for doing this.

The Panel Review Coordinator will attend the 8th Annual Meeting of WCPFC.

**Criteria for Reviewing the Performance of Regional Fisheries Management Organizations (RFMOs)**

	<i>Area</i>	<i>General criteria and convention consistency</i>	<i>Detailed criteria</i>
<b>1</b>	<i>Conservation and management</i>	Status of living marine resources	<ul style="list-style-type: none"> <li>• Status of major fish stocks under the purview of the RFMO in relation to maximum sustainable yield or other relevant biological standards.</li> <li>• Trends in the status of those stocks.</li> <li>• Status of species that belong to the same ecosystems as, or are associated with or dependent upon, the major target stocks (hereinafter “non-target species”).</li> <li>• Trends in the status of those species.</li> </ul>
		Data collection and sharing  WCPFC Article 10 (1(d)), 5 (i), 10(1(e), 5 (j).apply	<ul style="list-style-type: none"> <li>• Extent to which the RFMO has adopted standards for collection, verification and reporting of data on fisheries for highly migratory fish stocks in the Convention Area in accordance with the UN Fish Stocks Agreement, including, agreed formats, specifications and timeframes for data submission, taking into account UNFSA Annex I.</li> <li>• Extent to which RFMO members and cooperating non-members, individually or through the RFMO, collect and share complete and accurate data concerning vessel position, fishing activities (and catches of) target stocks and non-target species and fishing effort, as well as other relevant data in a timely manner.</li> <li>• Extent to which the RFMO has access to accurate and complete statistical data to ensure that the best scientific information is available, while maintaining confidentiality, where appropriate</li> <li>• Extent to which the RFMO has adopted standards for exchange of data concerning fishing activities and fishing vessel data among members and with other RFMOs.</li> <li>• Extent to which the RFMO is addressing any gaps in the collection and sharing of data as required.</li> <li>• Extent to which the RFMO obtains and evaluates economic and other fisheries –related data and information relevant to the work of the Commission.</li> </ul>
		Quality and provision of scientific advice  WCPFC Articles 5(e) , 10(1(f))	<ul style="list-style-type: none"> <li>• Extent to which the RFMO receives and/or produces the best scientific advice relevant to the highly migratory fish stocks and other living marine resources under its purview, as well as to the impacts of fishing on the marine environment.</li> <li>• Extend to which the RFMO obtains and evaluates scientific advice, reviews the status of the stocks, promotes the conduct of relevant scientific research and disseminates the results thereof.</li> </ul>

		<p>Adoption of conservation and management measures</p> <p>WCPFC Articles 5(f), 5(e) 10(1(h)) 5(b) and 30 (2)</p>	<ul style="list-style-type: none"> <li>• Extent to which the RFMO has adopted conservation and management measures for both target stocks and non-target species that ensures the long-term sustainability of such stocks and species and are based on the best scientific evidence available.</li> <li>• Extent to which the RFMO has implemented the precautionary approach in accordance with WCPF Convention Articles 5(c) and 6 and as set forth in UNFSA Article 6 and the Code of Conduct for Responsible Fisheries Article 7.5, including the application of precautionary reference points.</li> <li>• Extent to which the RFMO has adopted and is implementing effective rebuilding plans for depleted or overfished stocks.</li> <li>• Extent to which the RFMO has moved toward the adoption of conservation and management measures for previously unregulated fisheries, including new and exploratory fisheries.</li> <li>• Extent to which the RFMO has taken due account of the need to conserve and protect marine biological diversity and the marine environment and minimize harmful impacts of fisheries on living marine resources and marine ecosystems.</li> <li>• Extent to which the RFMO has adopted measures to minimize pollution originating from fishing vessels, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.</li> <li>• Extent to which the RFMO has adopted generally recommended international minimum standards for the responsible conduct of fishing operations.</li> <li>• Extent to which the RFMO has taken into account the special requirements of developing States, and territories in the establishment of conservation and management measures (CMM's)</li> </ul>
		<p>Capacity management</p> <p>WCPFC Articles 5(g), and Article 2.</p>	<ul style="list-style-type: none"> <li>• Extent to which the RFMO has identified fishing capacity levels commensurate with long-term conservation and sustainable use to support the optimum utilization of the fisheries resource. <i>(note Kobe 2 workshops agreed to adopt the FAO definition of capacity in the medium term... "The amount of fish (or fishing effort) that can be produced over a period of time (e.g. year or a fishing season) by a vessel or a fleet if fully utilized and for a given resource condition".</i> These were adopted by the WCPFC.</li> <li>• Extent to which the RFMO has taken actions to prevent or eliminate overfishing and excess fishing capacity and effort, and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of the resources.</li> </ul>
		<p>Compatibility of Conservation and Management Measures</p> <p>WCPFC Article 10(1(b))</p>	<ul style="list-style-type: none"> <li>• Extent to which compatible measures have been: <ol style="list-style-type: none"> <li>1 adopted as reflected in UNFSA Article 7 and,</li> <li>2 established in accordance with WCPF Convention Article 8.</li> </ol> </li> </ul>

		Fishing allocations and opportunities  WCPFC Articles 10(1(a)), 10(1(g)); 32(4), 30 and 30(2),	<ul style="list-style-type: none"> <li>• Extent to which the RFMO agrees on the allocation of allowable catch or levels of fishing effort, including taking into account requests for participation from new members or participants as reflected in UNFSA Article 11.</li> <li>• Extent to which the RFMO has developed, where determined necessary, criteria for the allocation for the TAC or the total level of fishing effort for highly migratory fish stocks in the convention area.</li> <li>• Extent to which the RFMO has a process for taking into account requests for participation from non parties as reflected in Article 32 of the WCPF Convention.</li> <li>• Extent to which the RFMO takes into account the special requirements of developing States, in particular small island developing States and Territories, in the establishment of conservation and management measures.</li> </ul>
2	<i>Compliance and enforcement</i>	Flag State duties	<ul style="list-style-type: none"> <li>• Extent to which RFMO members are fulfilling their duties as flag States under the treaty establishing the RFMO, pursuant to measures adopted by the RFMO, and under other international instruments, including, inter alia, the 1982 Law of the Sea Convention, the UNFSA and the 1993 FAO Compliance Agreement, as applicable.</li> </ul>
		Port State Measures	<ul style="list-style-type: none"> <li>• Extent to which the RFMO has adopted and implemented measures relating to the exercise of the rights and duties of its members as port States, as reflected in UNFSA article 23, and the Code of Conduct for Responsible fisheries -Article 8.3 and in WCPF Convention Article 27.</li> </ul>
		Monitoring, control and surveillance (MCS)  WCPFC Articles 10(1(i)); 5(j).	<ul style="list-style-type: none"> <li>• Extent to which the RFMO has adopted integrated MCS measures including conservation and management measures, for effective monitoring, control, surveillance and enforcement, a vessel monitoring system (Article 24(8)), High Seas Boarding and Inspection Scheme (Article 26), Regional Observer Programme (Article 28), and Transshipment Verification and Regulation (Article 29)), and other standards for verification of fisheries data (Article 10(1(d)).</li> <li>• Extent to which RFMO members implement such measures effectively.</li> </ul>
		Other enforcement-related issues, including follow up on infringements	<ul style="list-style-type: none"> <li>• Extent to which the RFMO, its Members and Cooperating Non-Members follow up on infringements to conservation and management measures, and other decisions of the Commission.</li> </ul>
		Cooperative mechanisms to detect and deter non-compliance	<ul style="list-style-type: none"> <li>• Extent to which the RFMO has established adequate cooperative mechanisms to both monitor compliance and detect and deter non-compliance (e.g., compliance committees, vessel lists, sharing of information about non-compliance, market-related measures).</li> <li>• Extent to which these mechanisms are being effectively utilized.</li> </ul>

		Market-related measures	<ul style="list-style-type: none"> <li>• Extent to which the RFMO has adopted measures relating to the exercise of the rights and duties of its members as market States.</li> <li>• Extent to which these market-related measures are effectively implemented.</li> </ul>
3	<i>Decision-making and dispute settlement</i>	Decision-making	<ul style="list-style-type: none"> <li>• Extent to which the RFMO has transparent and consistent decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner.</li> </ul>
		Dispute settlement	<ul style="list-style-type: none"> <li>• Extent to which the RFMO has established adequate mechanisms for resolving disputes.</li> </ul>
	<i>The role and performance of Subsidiary bodies</i>	Enhancing the work performance of the Commission	<ul style="list-style-type: none"> <li>• .Extent to which the subsidiary bodies contribute to the performance of the Commission</li> <li>• Is the structure of the subsidiary bodies of the Commission correct, or are there other bodies that should be considered.</li> <li>• Could they have an improved or enhanced role in decision making</li> </ul>
4	<i>International cooperation</i>	Transparency	<ul style="list-style-type: none"> <li>• Extent to which the RFMO is operating in accordance with the transparency provisions of Article 21 of the WCPFC Convention, Article 12 of the UNFSA, and the Code of Conduct for Responsible Fisheries Article 7.1.9.</li> <li>• Extent to which RFMO decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.</li> </ul>
		Relationship to cooperating non members WCPFC Article 32	<ul style="list-style-type: none"> <li>• Extent to which the RFMO facilitates cooperation between members and non members, including through the adoption and implementation of procedures for granting cooperating status.</li> </ul>
		Relationship to non-cooperating non-members WCPFC Article 32	<ul style="list-style-type: none"> <li>• Extent of fishing activity by vessels of non-members that are not cooperating with the RFMO, as well as measures to deter such activities.</li> </ul>
		Cooperation with other RFMOs  WCPFC Article 22(2); 22(3); and 22 (3 and 4).	<ul style="list-style-type: none"> <li>• Extent to which the RFMO cooperates with other RFMOs, particularly those which have related objectives and which can contribute to the attainment of the objective of the Convention, including through the network of Regional Fishery Body Secretariats.</li> <li>• Extent to which the RFMO cooperates with the IATTC to ensure that the objective of the Convention (Article 2) is reached. In particular the extent to which the RFMO has consulted with the IATTC with a view to reaching agreement on a consistent set of conservation and management measures, including MCS, for fish stocks that occur in the Convention Areas of both organizations, and to avoid duplication of measures in respect of species in the area which are regulated by both organizations.</li> </ul>

		<p>Special requirements of developing States</p> <p>WCPFC Article 30(1); 30(2), 30(3) and 30(4)</p>	<ul style="list-style-type: none"> <li>• Extent to which the RFMO gives full recognition to the special requirements of developing States which are Parties to the Convention, in particular small island developing States and Territories, in relation to conservation and management of highly migratory fish stocks in the Convention Area and development of fisheries for such stocks including with respect to fishing allocations or opportunities, taking into account UNFSA Articles 24 and 25, and the Code of Conduct of Responsible Fisheries Article 5.</li> <li>• Extent to which the Conservation and Management Measures adopted by the RFMO take into account the special requirements of developing States in particular small island developing States and Territories.</li> <li>• Extent to which the RFMO has funds to facilitate the effective participation of developing States, particularly small island developing States and Territories in the work of the Commission, including its meetings and those of subsidiary bodies.</li> <li>• Extent to which RFMO members, individually or through the RFMO, establish mechanisms for cooperation with developing States and Territories, which may include provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology including through joint venture arrangements, and advisory and consultative services. These may be delivered on a bilateral basis with developing States and Territories, or through WCPFC Special Requirements or other funds established for this purpose.</li> </ul>
		<p>Participation</p> <p>WCPFC Article 35</p>	<ul style="list-style-type: none"> <li>• Number of member coastal States/number of cooperating non-member coastal States/total number of coastal States.</li> <li>• Number of member countries/number of cooperating non-member countries/total number of countries.</li> </ul>
<b>5</b>	<i>Financial and Administrative Issues</i>	<p>Availability of resources for RFMO activities</p>	<ul style="list-style-type: none"> <li>• Extent to which financial and other resources are made available to achieve the aims of the RFMO and to implement the RFMO's decisions.</li> </ul>
		<p>Efficiency and cost-effectiveness</p> <p>WCPFC Article 15(5).</p>	<ul style="list-style-type: none"> <li>• Extent to which the RFMO is efficiently and effectively managing its human and financial resources, including those of the Secretariat.</li> <li>• Extent to which, and as appropriate, the Secretariat is utilizing the capacity of existing regional institutions to perform certain technical secretariat functions.</li> </ul>