



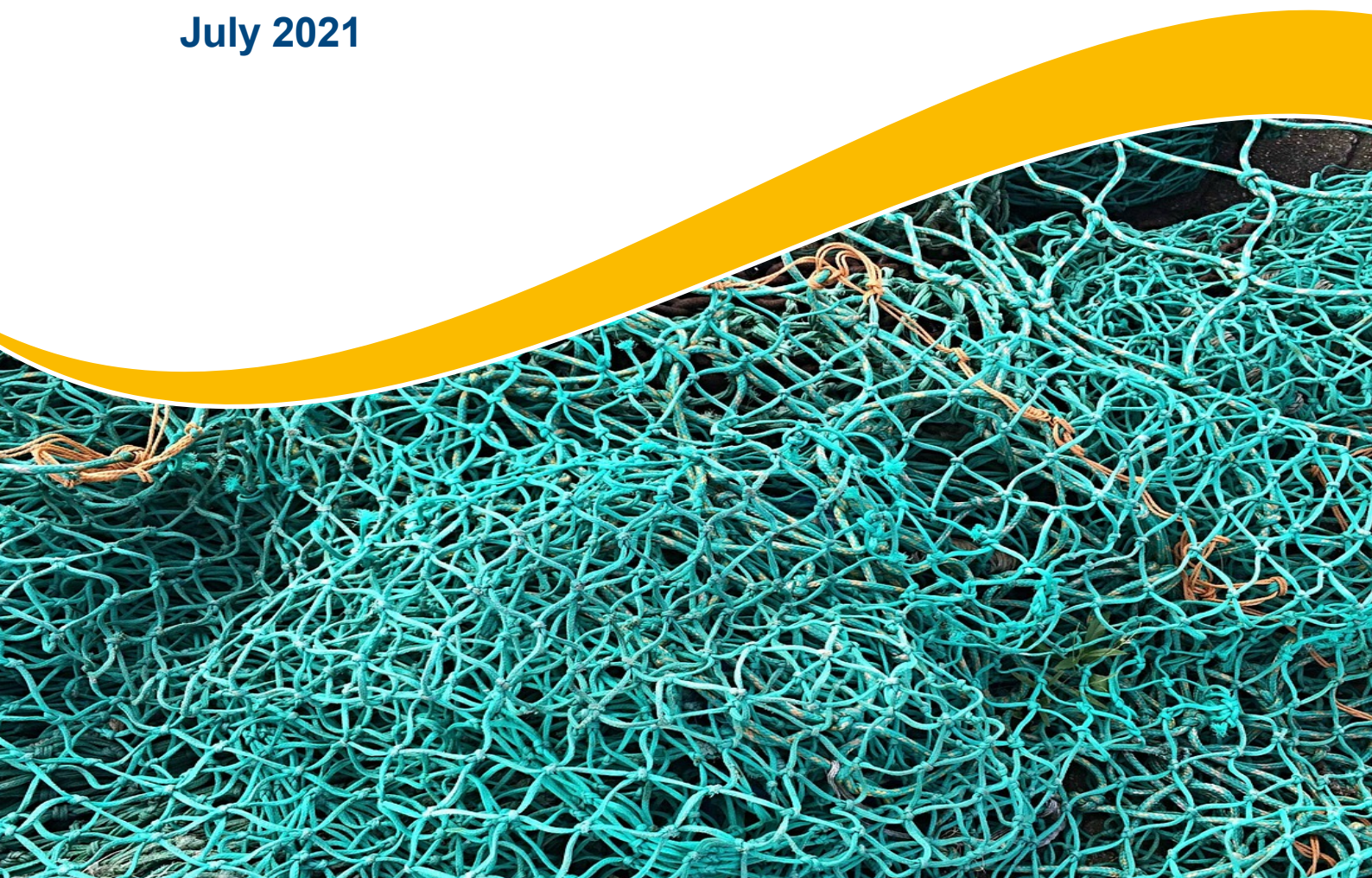
Australian Government

Australian Fisheries Management Authority

Fisheries Management Paper 17: Co-management in Commonwealth fisheries

**Establishing effective co-
management arrangements**

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1 Introduction

AFMA has engaged in co-management with a number of Commonwealth fishery groups since 2008. These co-management arrangements, negotiated between primary stakeholders and AFMA, have been based on work undertaken by the Fisheries Research and Development Corporation's (FRDC) National Working Group on the Fisheries Co-management Initiative – project no. 2006/068 and its report *Co-management: Managing Australia's fisheries through partnership and delegation*.

Co-management is an arrangement where responsibilities and obligations for sustainable fisheries management are negotiated and shared between AFMA and a primary stakeholder.

Following the FRDC initiative, AFMA and FRDC undertook co-management trials with three fishery groups between 2008 and 2012. The trials followed an approach influenced by each respective industry group and were developed in collaboration with AFMA. This allowed different approaches to be tested.

Co-management arrangements between fishery groups (primary stakeholder) and AFMA have continued to develop, building on the lessons learned from the trial experience and increasing the understanding of what can be achieved under co-management. This has led to successful partnerships between these fishery groups and AFMA, with demonstrable benefits for each. While co-management is not essential for achieving good fisheries management, the approach can add value to both industry and AFMA under the right circumstances.

AFMA recognises co-management as an important process tool for pursuing its legislated objectives and supports sharing responsibilities for delivering AFMA powers and undertaking AFMA functions and/or related activities under co-management arrangements with Commonwealth fishing industry groups.

This policy provides a framework for engaging in co-management and provides guidelines for fishery groups in Commonwealth fisheries and AFMA managers to use in considering and negotiating co-management arrangements in the management of a fishery.

Fishery groups are usually peak fishery bodies, but could be other groups that represent the majority of fishers in a fishery. For example, with the support of fishers, a fish cooperative could engage in co-management activities with AFMA.

Similarly, it is feasible that the SFR holders in a fishery with only few operators could engage in co-management activities with AFMA through a nominated representative.

2 Objectives

The objectives of this policy are to:

- a) provide a framework for establishing co-management arrangements between fishery groups and AFMA in the management of Commonwealth fisheries; and
- b) provide guidance for achieving an effective outcome when negotiating co-management arrangements within the management of Commonwealth fisheries.

3 Need

This policy ensures all fishery groups are aware that co-management is a process tool available to them.

This policy ensures all fishery groups have relevant information about co-management and can understand the pathway to participating in co-management should they wish to engage.

4 Legal structure of co-management

AFMA's *Fisheries Administration Act 1991* (FAA) provides the necessary powers to undertake co-management. AFMA can only enter into a co-management arrangement if it is in pursuit of its legislative objectives in the FAA (section 7) and *Fisheries Management Act 1991* (section 3).

Section 88 of the FAA provides that AFMA may enter into a co-management arrangement with stakeholders in a fishery under which the stakeholders assist AFMA to perform its functions and powers for the sustainable management of the fishery.

Under this policy, co-management is sharing roles and responsibilities for the ecologically and economically sustainable management of fisheries with primary stakeholders. Section 4 of the FAA defines a primary stakeholder to be:

primary stakeholder in relation to a fishery means:

- (a) the holder of a fishing concession in the fishery; or
- (b) an incorporated body that represents those holders (including a peak body, for example); or
- (c) a person prescribed by the regulations.

A simple co-management arrangement can be implemented through a documented agreement that is negotiated between the fishery group and AFMA. Under this type of arrangement, a fishery group can have responsibility for undertaking a range of fishery management-related activities.

Where a co-management arrangement with a fishery group involves undertaking a legislated power or function, a formal sub-delegation by the AFMA Chief Executive Officer (CEO) can be made (section 92(3)(f) of the FAA). Delegation for co-management can also be given effect through a contract, and a contract is essential if funding is involved in the arrangement.

Consultation is an important aspect of undertaking AFMA's powers and functions. Consultation not only affords procedural fairness it is also commonly a statutory requirement for AFMA. A fishery group undertaking these sub-delegated powers and functions would need to be able to demonstrate to AFMA that they have fulfilled statutory requirements for consultation with the fishery members, relevant committees and in some cases, the public. This would also include fishery participants that are not active members of the fishery group.

The exercise of AFMA's powers and functions is a serious matter and consequently a co-management arrangement embodies significant trust.

A fishery group exercising an AFMA power or function must understand the associated consequences of exercising the powers or functions, and in most cases must become familiar with legislation and policies that support the exercise of those powers or functions.

AFMA can assist a fishery group with specific training where it is needed to ensure powers and functions are undertaken properly and with due care.

5 General benefits of co-management

The experience of co-management in Commonwealth fisheries points to a range of benefits for the fishing industry and AFMA. Developing a better working relationship and building mutual trust and respect within that relationship is a key product of co-management. Meaningful collaboration tends to promote other benefits, including, for example:

- raised awareness of the roles of government and industry (understanding the business objectives of each);
- greater involvement of the industry in the management of the fishery;
- better policy and regulatory outcomes;
- utilisation of industry expertise in finding solutions to difficult problems;
- increased unity and support for the representing body;
- greater stability in the management of the fishery; and
- an increased appetite for risk that can support innovation.

While there is potential to lower management costs through co-management, it is not always the case. However, other benefits, such as those listed above support efficient and cost-effective fishery management and deliver value to industry, AFMA and the public.

The fishing industry has a range of expertise that does not necessarily exist broadly in government. That expertise can be used to undertake certain functions efficiently and effectively and can lead to better outcomes than if undertaken by government alone. Importantly, industry-managed activities are likely to be more widely accepted and supported by members of the industry, and can be implemented more fluidly than a legislated action by the regulator. This can have a positive effect on compliance, to the benefit of the industry as a whole and allow AFMA to better pursue its legislative objectives.

Examples of where the fishing industry can be more efficient and effective than government are encouraging fishers to collect high quality fishery information and finding ways to improve fishing techniques to minimise bycatch (the unwanted catch taken in the course of commercial fishing).

6 General challenges of co-management

There are a number of challenges and risks that co-management can pose, or can be deemed to pose that need to be carefully considered and built into any arrangement, for example:

- Ensuring that robustness of the arrangement can be easily demonstrated to government and the wider community. Devolving functions or activities typically undertaken by government will rightly lead to a need to demonstrate that there is no loss of effectiveness or reduction in the standard of management;
- Ensuring that assigning functions or activities to a key stakeholder does not reduce AFMA's understanding or exposure to key fishery issues;
- Ensuring that there is no perception of regulatory capture, whereby commercial interests have an undue influence on the actions taken by AFMA or by the co-management partner; and
- The need to ensure that both parties clearly understand each other's expectations of to avoid conflict that could arise where one takes actions not expected by the other.

7 Scope of co-management arrangements

Co-management arrangements can range from covering just one or two aspects of the fishery management process through to covering numerous roles, responsibilities, powers and functions. A co-management arrangement is negotiated between a fishery group and AFMA, can evolve as the group and AFMA discover what works well in the partnership, or what is perhaps not suitable in a particular case. The arrangement can be amended on agreement between the parties.

Each fishery group will have preferences and skill-sets that will influence the types of activities or functions subject to co-management. The experience of co-management demonstrates there is no 'one size fits all' model, and consequently, co-management arrangements will invariably look different across fisheries.

While most of AFMA's powers and functions are exercisable through co-management, some are not appropriate for fishery groups to undertake. For example, surveillance, investigation and enforcement are not activities suitable for the fishing industry to manage. Therefore, it is unlikely the CEO of AFMA would sub-delegate such functions.

Similarly, some aspects of a function may present a conflict of interest for the industry concerned, which could lead to negative public perception and may not benefit the fishery group or the fishery. The fishery group must take steps to properly manage any perceived or actual conflicts of interest. Foundational governance of issues will be explored in the process of negotiating a co-management arrangement.

Co-management arrangements can exist through sub-delegation, under contract or under a simple agreement between AFMA and the fishery group.

The CEO may sub-delegate (to a fishery group under a co-management arrangement) any of the powers or functions of the Authority that have been delegated to the CEO by the Commission.

There are certain functions that are unlikely to be sub-delegated under any circumstance.

8 Funding co-management arrangements

The activities, roles, powers or functions within co-management arrangements will give rise to cost. All fishery management activities involve resources.

Commonwealth fisheries management activities are funded partly by the fishing industry and partly by government based on the Cost Recovery Implementation Statement (CRIS). The sharing of costs under the CRIS should be a consideration in the context of forming co-management arrangements.

The source of funding for co-management arrangements would depend on the services and activities being undertaken. How a co-management arrangement is funded is part of the negotiation process.

Co-management activities are those activities necessary for managing the fishery and as such would normally be part of or wholly an AFMA function or be part of or wholly an execution of an AFMA power. Activities or services not normally delivered by AFMA (that is, activities or services that fall outside AFMA's powers and functions) cannot be funded by AFMA. Activities normally carried out, for example, by a fishery peak body, in serving its members, such as marketing, commercial advisory and advocacy services, are not AFMA functions.

Services delivered by a fishery group under a funded arrangement must be procured by AFMA consistent with the Commonwealth Procurement Rules made under section 105B(1) established under the *Public Governance, Performance and Accountability Act 2013* to ensure the expenditure represents the best outcome for the use of public resources.

If a fishery group is undertaking a funded co-management activity, a contract is needed to support the co-management arrangement. The terms of the co-management arrangement (that is, the roles and responsibilities in undertaking the services) would be negotiated and documented within the contract, which would form the basis of the co-management arrangement.

9 Expectations about co-management

Co-management, like any partnership, does not guarantee agreement on every issue, but should facilitate a more genuine dialogue, and increase the likelihood of achieving mutual outcomes. It is beneficial if parties acknowledge that problems may arise in the arrangement from time to time, and understand that in such cases, efforts may be required to resolve conflict.

The motivation for co-management may be driven by a desire of industry to lower the costs of management. While cost-effectiveness is an achievable, mutual objective, there is no certainty that costs will be significantly lower under co-management. Fishery groups should consider the wider benefits and costs of co-management before committing to a co-management arrangement.

Experience has shown that the co-management partnerships evolve and consequently the benefits become more apparent over time.

AFMA is bound by its legislation, other relevant legislation, such as the *Environment Protection and Biodiversity Conservation Act 1999*, and government policies. In some cases, the legislative and regulatory framework may pose challenges for some parties in a co-management arrangement. However, it is essential that solutions are found within this framework.

Co-management embraces improvements made in the management of Commonwealth fisheries, including Government policies on bycatch and harvest strategies, principles for scientific information, third party accreditation and greater levels of accountability across all aspects of commercial fisheries management. However, as the regulator, AFMA always bears responsibility for fishery management outcomes, even where a fishery group is carrying out a fishery management activity under co-management. In particular, where a power or function is exercised under a co-management arrangement, the person exercising the power or function is subject to the direction of the CEO and the power or function is taken as being exercised by AFMA. Direction from the CEO could be exercised for a number of reasons, such as in emergency circumstances, where government policy changes, or if a problem arose that would put the fishery management under risk of failure.

AFMA has a positive attitude towards co-management and is prepared to support co-management across a broad range of powers and functions with fishery groups that demonstrate sound business practice and capacity to accept responsibility. If there are challenges in relation to certain co-management activities, AFMA will work with fishery groups to overcome these where it is feasible and cost-effective to do so.

It is imperative that fishery groups and AFMA thoroughly consider the costs, benefits, risks and mitigation measures associated with any co-management arrangement during the negotiation process and when developing a business case.

10 Documenting the co-management arrangement

As noted in section 7 of this document, any co-management arrangement that requires funding through the AFMA levy-base will need to sit under an AFMA agency contract. In this case the co-management arrangement is normally fully captured within schedules in that contract. This would normally also include the performance-monitoring framework covered in section 12 of this document.

11 Readiness to engage in co-management

AFMA's experience and case studies indicate that the presence of certain characteristics and attributes support the potential for successful co-management. These characteristics/attributes include:

- Willingness by AFMA to explore and accept alternative management approaches involving shared responsibility;
- Fisher groups that have membership representing a significant proportion of participants in the fishery;
- Fisher groups with a significant proportion of members wanting co-management;
- Identified industry leaders who can negotiate effectively with AFMA and build organisational ownership;
- An effective fishery organisational structure with:
 - evidence of good governance;
 - ability to communicate with members and other stakeholders; and
 - sufficient resources and skills to implement and deliver services;
- Capacity and willingness to commit to legally binding undertakings if AFMA funding or formal sub-delegation of powers is needed to facilitate co-management; and
- Agreement on a process for conflict resolution.

Not all characteristics/attributes listed above need to be present for certain powers and functions to be sub-delegated to a fishery group. Attainment of key characteristics/attributes will influence the difficulty or ease with which co-management may be undertaken.

It is not efficient or cost-effective for AFMA to consult with all members of a fishery individually on co-management matters. Co-management can only be successful where there is demonstrable unity within the members of the fishery and broad support for co-management from the members. Some fisheries establish an incorporated peak body to generate unity and serve the members. It is more conducive for AFMA to deal directly with a peak body under co-management arrangements but in some circumstances, it may not be essential. Alternative examples may include a fish cooperative or a fishery with very few operators.

AFMA considers the following key attributes most suitable for a co-management arrangement to be successful:

- ***The fishery is predominantly represented by an effective peak body (or other organisational structure)***
- ***The organisational structure demonstrates***
 - ***a good governance structure***

- *ability to communicate/consult with members and other stakeholders*
- *sufficient resources and skills to implement and deliver services*
- *A significant proportion of the fishery members want some form of co-management*
- *There is an identified leader who can negotiate effectively with AFMA and build organisational ownership.*

12 Guidelines for developing a co-management arrangement

Once a fishery group has considered the key attributes for successful co-management and has determined it is a candidate, it should then undertake internal considerations of the type of co-management arrangement it wants to pursue. The fishery group is then encouraged to discuss the development of a business case for undertaking co-management with the fishery manager. Should the fishery group believe it almost meets the key attributes, AFMA may still consider a business case and work with the primary stakeholder to consider a co-management arrangement. This should be discussed with the fishery manager in the first instance.

Steps in developing a co-management arrangement

Once AFMA is satisfied the fishery group is a candidate for a co-management arrangement, it will take the following five steps:

1. Ideas for functions and activities that can be shared

Having initial ideas for functions and activities that can be co-managed may be the first step for a primary stakeholder with an interest in looking at co-management with AFMA. It is likely at this stage the fishery group has already given some preliminary thought to how it can engage more actively in the management of the fishery. Examples include, managing fishery surveys or monitoring programs; collecting additional, specific fishery information for stock assessment and other fishery management purposes; undertaking relevant research projects; or managing a program that contributes to the management strategy for the fishery, such as developing the fishery bycatch strategy. Alternatively, a fishery group may prefer to collaborate with the AFMA fishery manager to investigate ideas, options and mechanisms for underpinning a co-management arrangement. Either way, AFMA can assist a primary stakeholder in these considerations.

2. Developing a business case

A fishery group would be responsible for scoping and developing a business case for co-management and AFMA can assist if needed.

The AFMA CEO will consider a business case for co-management from a primary stakeholder. This step is needed to ensure proper consideration has been given to resourcing requirements, that the proposed

activities can be effectively delivered, any adjustments within AFMA resourcing that could be efficiently made and identification of risks and mitigation strategies.

The business case should demonstrate the extent of the attributes of the fishery group and its capacity to undertake the proposed activities. It should provide details of the proposed activities, including timing, resources and the costs involved.

The following list can be used to guide preparation of a co-management business case:

- Identify
 - a. the key characteristics and attributes detailed in Section 9 of this paper that exist within the fishery and fishery group, and if gaps exist, consider how they might be addressed;
 - b. ideas for activities/functions that are of interest to the group and where the group believes it has capacity - this could include a workshop with AFMA; and
 - c. resourcing needed to undertake the activity.
- Consider whether the activity has any timing or reporting requirements and how these can be met;
- Prepare a draft business case;
- Work with AFMA to consider and determine the best mechanism to underpin the arrangement, for example, contract, a simple, documented arrangement or formal delegation/s;
- Share and refine the business case (AFMA and industry);
- Seek consideration of the business by AFMA;
- CEO approves business case;
- Develop the underpinning arrangement, including, key performance indicators and milestones, reporting requirements, funding arrangements and other relevant components to develop a complete arrangement; and
- Finalise any required documentation, including contract if being used.

A co-management arrangement business case must be developed by the fishery group and along with the co-management arrangement, be approved by AFMA.

3. Preparing the co-management documentation

A co-management arrangement must be documented. If it entails funding, the responsibilities of each party will be documented in an agency contract, supplied and drafted by AFMA, for agreement between the parties. If the co-management activity entails managing a research project, this is also likely to sit within a contract.

If the primary stakeholder is undertaking activities that do not require funding, then a simple document can be used to set out the responsibilities of each party.

If the co-management arrangement entails a fishery group undertaking a legislated AFMA function, this may require delegation by the CEO and this would be done in writing. This type of activity may still be documented in either of the two forms above, depending on how it would be funded.

It is important that the documentation provides adequate information about the arrangement so the parties are clear about responsibilities and this should include the monitoring framework covered below.

4. Monitoring a co-management arrangement

All co-management arrangements, irrespective of the implementation mechanism (whether by delegation, a contract or simple agreement), will contain a performance monitoring framework, preferably with quantifiable metrics, on which the success of the arrangement can be measured.

The elements of the performance monitoring framework should be linked to milestones in the arrangement and milestone payments if the arrangement sits within a contract. This can take the form of defining the nature of each activity, what is expected to be delivered by the activity and by when and whether that expectation was met. Some activities will naturally lend themselves to specific metrics and this can make monitoring performance relatively simple.

For example, if the industry agreed to collect 500 fish samples during the fishing season for genetic testing, the metric is '500 samples were collected in accordance with the sampling protocol and the samples were provided to the research agency in the form specified'.

Having a well-constructed performance monitoring framework is ideal for both the fishery group and AFMA because it provides confidence in the arrangement and provides the basis for continual improvement. It also demonstrates accountability and transparency to government and the wider community.

Where a performance measure is not met, the reason can be recorded against the activity and steps taken to make changes to the activity, the performance measure, or simply acknowledge that there was an unforeseen problem. Failure to meet all performance measures does not mean the arrangement is a failure – it may just mean something needs adjustment to support delivery. AFMA can assist primary stakeholders to design a co-management performance-monitoring framework.

An outline of a simple performance-monitoring framework is at Annex 1.

All co-management arrangements will include a performance-monitoring framework.

5. Review and reporting on a co-management arrangement

It is important to review the co-management arrangement annually. This is a necessary step to facilitate continuation of the arrangement and/or making amendments to it. The review will include:

- consideration of the performance of each activity within the arrangement in line with the monitoring framework;
- consideration of lessons learned by both parties in undertaking the arrangement; and
- consideration of any improvements that can be made based on lessons learned before commencing a new arrangement.

Co-management can evolve and become more comprehensive over time, particularly as both parties become familiar with the arrangement and/or the industry group increases its capacity and desire to engage in further fishery management functions. The review process is needed to support the evolution of co-management in the fishery and more broadly.

The fishery group should prepare a brief annual report on the co-management arrangement for the AFMA CEO. This report can also be used by AFMA as an input for its legislated annual reporting obligations.

Co-management arrangements will be reviewed annually with respect to performance indicators, lessons learned and improvements to be made, and then review outcomes are to be reported.

13 Annex 1 – Performance Monitoring Framework

A simple performance-monitoring framework includes the following four steps:

1. Identify and describe the action/function

This step provides a general understanding of the nature of the action or function that the fishery stakeholder will be undertaking.

Using the example of managing a fishery independent survey, describe what a good survey outcome looks like:

‘The survey is undertaken during February each season, operating against a survey design with fixed sites, gear design, using a boat obtained from within the fishery by limited tender. The survey is a research project funded through the fishery levy base at around \$0.5m annually. The survey leader is a scientist from the company undertaking the research. A good survey will entail an experienced operator with a fit-for-purpose boat responding to and meeting the tender specifications. All of the sites are fished in February with all required data collected and documented within the parameters of the research contract’.

2. Define the actual tasks and their outputs

Each task and its output should be comprehensively described to avoid misunderstanding. The outputs are the results of the tasks being undertaken. For example:

Activity: Manage the Fishery Independent survey	
Task	Output
Procure a survey boat	<ul style="list-style-type: none"> a. Tender process is undertaken, consistent with the government procurement rules b. Appropriate boat contracted for the survey – (boat name)
Facilitate workshops between skippers and survey design team	<ul style="list-style-type: none"> c. Crew of survey boat have full understanding of roles responsibilities and requirements
Monitor progress of survey vessels	<ul style="list-style-type: none"> d. Survey starts and finishes according to plan (dates) e. All survey sites are covered in the survey (specific number) f. All required data is collected (describe) g. All required samples are collected (describe)
Receive and process FIS data	<ul style="list-style-type: none"> h. FIS database containing stock assessment-ready information
General oversight	<ul style="list-style-type: none"> i. Survey comes in within planned cost (\$) j. Any contingency/mitigation changes are documented

Table 1. Example of tasks and outputs

There might be several outputs in the co-management arrangement – each should be monitored, evaluated and reported on separately.

3. Set the outcome indicators

Depending on the nature of the activity or function, the outcome indicators may reflect the task outputs (such as in this example), or may need to be based on additional metrics in more complex arrangements.

4. Measure the outcome

This is simply a process of checking off the above indicators and documenting the outcome.