



North East Atlantic Fisheries Commission
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19 January 2009

Ms Patricia O'Brien
Under-Secretary- General for Legal Affairs
The Legal Counsel
United Nations
New York, NY 10017
USA

Dear Ms O'Brien

In response to your letter of 10 December, I have pleasure in submitting some points of view of the NEAFC Secretariat on the impact of the Consultative Process, major developments relating to the implementation of the outcomes of the Consultative Process" and in general the usefulness of the Consultative Process.

Yours sincerely

Kjartan Hoydal
Secretary



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Reply to UN Legal Counsel with reference to LOS/ICP/2009 10 December 2008

1 Introduction

The NEAFC Secretariat has participated as an observer to ICP-6, 7 and 8. The Secretariat has followed developments from 2000 – 2004 by reading the Reports and Panel presentations at those meetings.

At ICP-6 the NEAFC Secretariat was asked to report on the outcome of the fourth meeting of Regional Fishery Bodies, which took place in Rome in March 2005. Some general points were made, which have a bearing on the discussion of the “impact of the Consultative Process and major developments relating to the implementation of the outcomes of the Consultative Process” and in general the usefulness of the Consultative Process, and are repeated below.

2 Tasks Facing Regional Fisheries Bodies

RFBs, RFMOs and RAs¹ face the same tasks – and problems - as states trying to establish sustainable fisheries. Sustainability is the key word, it takes precedence and encompasses every other objective. The RFMOs attempt to establish fisheries management systems compatible with systems in waters under national jurisdiction. The general principle of subsidiarity should mean that regional and local management has a better chance of succeeding than global initiatives.

Fisheries managers have to plan, develop and manage fisheries in ways that address the multiple needs and desires of society and maximise the flow of benefits over time from marine resources. At the same time, the management framework should reduce the risk of impacts leading to irreversible or avoidable changes to ecosystems. Fishing is the only major human activity in the oceans that depends totally on healthy ecosystems and clean oceans.

Fisheries cannot avoid having an impact on the marine ecosystems in the process of producing healthy seafood from healthy fisheries. Fishing communities and societies

¹ Regional Fishery Bodies, Regional Fishery Management Organisations and Regional Arrangements



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must be allowed to pursue their legitimate business of establishing economic development that meets the needs of the present generation without compromising the ability of future generations to meet their needs.

The important role of RFBs, RFMOs and RAs has been stressed in international law and instruments and UNGA resolutions.

The increased responsibilities laid on the doorstep of the RFBs have not been much discussed within these bodies. This is because RFBs are set up in such a way that they cannot be more than what their Contracting Parties want them to be. Very rarely are the RFBs or their Secretariats in a position to express policy views.

Differences in scope in RFBs is demonstrated by the following list:

- Poverty alleviation
- Food security
- Economic basis for settlement in coastal areas
- Profitability in fishing industries
- Fair and equitable sharing of resources
- Integration of environmental concerns

There is also great diversity between the RFBs in the network with respect to their mandate:

- Fisheries management organisation or cooperative arrangements
- Convention based or FAO bodies
- Dealing with highly migratory pelagic stocks or demersal and pelagic straddling stocks or anadromous stocks
- Inland or marine
- Single or few fish species or multispecies
- Addressing artisanal, small scale fisheries or high technological, capital intensive, large scale fisheries

At meetings of Regional Fisheries Bodies issues coming out of the discussions in FAO COFI and other issues of relevance have been discussed by more than 30 Regional Fishery Bodies Secretariats, RAs and RFMOs. FAO initiated these meeting in 1999 and they have since been biennial. They are now organised by the RFBs themselves and have developed into the “RFB Secretariats Network”.



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Examples of the issues reviewed by the RFBs at their biennial meetings following the FAO COFI Meetings are:

- The Role of Regional Fishery Bodies
- External Factors Affecting Fisheries Management,
- Global fisheries governance
- IUU fishing
- Overcapacity
- Incorporating ecosystem considerations into management by RFBs
- Relations Between RFBs And The United Nations Environment Programme (UNEP) and with CITES
- The Status of the Fisheries Resources Monitoring System (FIRMS)

The wide variety of mandates and competences shared between different RFBs should be noted and probably should be seen as an asset. In a time when the implementation of pre-existing international instruments are of essence, RFBs are central.

In discussions it has emerged that problems in Fisheries Management experienced by RFMOs are basically the same as those experienced by states:

- Getting the science right to assess the status of resources and impact of fisheries
- Integrating social and economic concerns, thus creating the basis for addressing the main objectives on a sustainable basis
- Addressing misconceptions based on misunderstood or badly researched science

At the ICP 6 meeting attention was also drawn to misconceptions on the deep sea bottom fishery in the high seas of the North Atlantic presented in panel discussions at ICP-5. It was pointed out that the information on high sea bottom trawling was disproportionate and quite misleading.

3 Review of RFMO Performance?

Since 2006 some RFMOs have undertaken, or are in the process of undertaking, performance reviews which are in the public domain.

4 Assessing Anthropogenic Impact on Marine Ecosystems

Although it is clear that ICP has discussed and made presentations on a number of issues relevant to Oceans and the Law of the Sea, there is a feeling that the focus has



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been on fisheries and especially deep sea fisheries and not on challenges from other uses of the sea.

Many states invest heavily in marine research and large numbers of scientists are involved in assessing stock status in order to provide a scientific basis for fisheries management. RFMOs have their own scientific committees or receive independent scientific advice from, for example, the International Council for the Exploration of the Sea. In spite of this, none of the real practitioners of stock assessments and providers of scientific advice to states and RFMOs have been invited to make presentations to the ICP.

It is felt that the scientific information and documentation is biased towards evidence supporting campaigning, rather than independent scientific evidence. This can be seen in the choice of panelists especially in the first half of the decade. There is too much advocacy and belief that closing large areas of the ocean to fisheries is the panacea for all problems.

5 Representation

The representation of RFBs at the ICP has been patchy. This could be because RFBs see the discussions in ICP as duplication of discussions that have already taken place in COFI and the biennial RFB meetings. Effective communication of the discussions in FAO COFI and the RFB meetings communicated efficiently should form the basis for discussions in ICP.

There is also a problem with the representation of civil society. The stakeholders that will have to shoulder the consequences of any measures discussed in ICP have not been represented at the meetings. It is quite difficult to involve stakeholders in global discussions for a number of reasons. Regional and local discussions have a better chance of reaching the correct balance in decision processes. The big international NGOs have had a strong presence at ICP but, as has been noted in other forums, the connection between civil society and NGOs can be quite weak

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