

Contribution from the North East Atlantic Fisheries Commission on the topic of the Performance reviews of regional fisheries management organisations as a focus of the fourteenth round of Informal Consultations of States Parties to the United Nations Fish Stocks Agreement, May 2019

Please see the contribution from the Secretariat of the North-East Atlantic Fisheries Commission (NEAFC), on "Performance reviews of regional fisheries management organizations and arrangements". This is arranged by the areas of interest set out in the invitation letter from the Assistant Secretary General, Office of Legal Affairs.

In Summary NEAFC has carried out two performance reviews, as one of the earliest adopters in 2006 and again in 2013/14. NEAFC plans to continue to carry out reviews of its performance on a ten year cycle, subject to identified needs.

Topics: It is suggested that the contribution could include information on the following areas, as appropriate:

- (i) The scope of performance reviews of regional fisheries management organizations and the importance and role of such reviews for the implementation of the Agreement;

NEAFC has now carried out two Performance Reviews. The first of these was done at the time of an increasing interest globally in such reviews. At the twenty-sixth Session of the Food and Agriculture Organisation of the UN Committee on Fisheries (FAO-COFI) in 2005, the importance of establishing criteria to review the obligations and principles in relevant international instruments and the performance of RFMOs in meeting their objectives was discussed. FAO-COFI encouraged RFMOs to participate in the development of parameters for any such performance review and it was suggested that any evaluation of RFMO performance should be in the form of an independent appraisal.

Given this context, NEAFC decided in November 2005 to carry out a Performance Review, recalling the importance attached to evaluating the RFMOs. The purpose of such a review was to provide for a systematic check of the performance of the organisation and its consistency with the NEAFC Convention, UNSFA and other relevant international agreements and instruments. NEAFC was the first RFMOs to undertake such a performance review process, and established a set of assessment criteria that later became the common standards.

In performing the NEAFC Performance Review, the Panel was mindful that its role was not to review the RFMO framework itself, but rather to discharge its mandate under the terms of reference provided. As part of its remit the panel could advise NEAFC on how to improve its performance within the NEAFC convention framework. The issue of RFMO performance was also subsequently extensively discussed at the Review Conference on the United Nations Fish Stocks Agreement (UNFSA) in 2006, given their key role in implementing the Agreement. As a process, the NEAFC Performance Review of 2006 was considered as setting an international standard, and was already being considered on the agenda of FAO-COFI 27 in 2007.

The second Performance Review of NEAFC was carried out in 2013/14. Its Terms of Reference included to assess the performance of NEAFC since 2006 against the objectives set out in the Convention as well as those in the amendments to the Convention adopted by NEAFC in 2006. Other relevant international instruments addressing the conservation and management of living marine resources were also taken into account. Consideration was also be given to the developments in fisheries and ocean management that have taken place during the period covered by the review. Given the 2006 review, one of the purposes of the second review was to measure progress in the eight years since the previous evaluation, and to comment on progress in areas previously considered deficient or in need of strengthening.

More specific criteria looked at by the second review included:

Area	Criteria
<i>The NEAFC Convention</i>	<ul style="list-style-type: none"> • Effectiveness in meeting the objective of the Convention
<i>Conservation and management</i>	<ul style="list-style-type: none"> • Status of living marine resources • Ecosystem approach • Data collection and sharing • Quality and provision of scientific advice • Adoption of conservation and management measures • Capacity management
<i>Compliance and enforcement</i>	<ul style="list-style-type: none"> • Flag State duties • Port State measures • Monitoring, control and surveillance (MCS) • Follow-up on infringements • Cooperative mechanisms to detect and deter noncompliance • Market-related Measures
<i>Decision-making and dispute settlement</i>	<ul style="list-style-type: none"> • Decision-making • Dispute settlement
<i>International cooperation</i>	<ul style="list-style-type: none"> • Transparency • Relationship with non-Contracting Parties • Cooperation with other international organisations • Special requirements of developing States
<i>Financial and administrative issues</i>	<ul style="list-style-type: none"> • Availability of resources for activities
	<ul style="list-style-type: none"> • Efficiency and cost effectiveness

(ii) the process and structure of performance reviews of regional fisheries management organizations, including in relation to independent evaluation, participation, transparency, accountability and periodicity;

The first NEAFC Performance Review Panel, established in 2006, aimed to carry out a comprehensive review. The panel consisted of three external experts: a fisheries management expert appointed by the Fisheries Division of FAO; a legal expert appointed by the UN Division for Oceans Affairs and Law of the Sea; and a marine scientific expert from a non-NEAFC Contracting Party (Canada). In addition, two expert NEAFC officials (chairpersons of NEAFC permanent committees) as well as the NEAFC Secretary participated in the Panel.

The Panel based its work on the obligations set out in relevant international instruments, in particular UNFSA, and the agreed approaches for effective fisheries management as outlined in the FAO Code of Conduct for Responsible Fishing, the supporting guidelines, as well as other relevant technical reports. This involved looking for evidence of robust systems under NEAFC as well as effective processes and governance when evaluating each of the review criteria. The Panel carried out the review during three workshops. To support the review, the Panel conducted some early analysis of the processes and systems then current in NEAFC. With all the background in mind, the Panel followed a fairly strict procedure of reviewing information, seeking clarification and agreeing statements of facts before moving on to making comments about performance in a brief main report.

The second Performance Review of NEAFC was carried out in 2013/14. As before, the Review Panel was composed of three external experts in fisheries and oceans management, fisheries science, and law of the sea matters, as proposed by FAO, ICES and UNDOALOS, respectively. These experts had not participated in the work of NEAFC nor were they nationals of any NEAFC Contracting Party. For this second review the Secretary of NEAFC was to act as a resource person to the Panel.

The Panel's deliberations were aided by the provision of 23 working papers by the NEAFC Secretariat, spelling out how the organisation worked, and updating scientific advice and management procedures followed by NEAFC. National delegations and the chairs of various standing and ad hoc committees were also interviewed, including on how the committees worked and offering suggestions for strengthening the organization. The Reviewers noted an openness to confront the issues faced by the Commission head-on and the valuable suggestions offered for improving effectiveness.

(iii) implementation of the recommendations of, and other follow-up to, performance reviews of regional fisheries management organizations;

The 2006 Performance Review Report was presented to the 2006 NEAFC Commission meeting. This was followed by more detailed consideration by a Working Group on the Future of NEAFC which proposed follow-up action to an extraordinary meeting of the NEAFC Commission in June 2007. The detailed recommendations which were acted on included on enhancing the effectiveness of communication/cooperation between science and management in the consideration of ICES scientific advice by the Commission. Data transfer was also to be improved. The Review had proposed improvements to the relationship between coastal States

discussions and the allocations in the Regulatory area. The NEAFC Control and Enforcement Committee was mandated to address the Review conclusions in their on-going work. One issue in which major changes initiated was concerning the distinct role of coastal States arrangements. Contracting Parties noted that these would continue as the basis for NEAFC measures on straddling stocks, given the high proportion of the relevant catches were taken in waters under the national jurisdiction of Contracting Parties.

Other resultant improvements adopted included the increase in transparency of Commission meeting documents via the NEAFC website, participation by NGOs, the development of an MOU with OSPAR, more active cooperation with other RFMOs, in particular NAFO, as well as further clarifying of the status and role of Cooperating Non-Contracting Party. NEAFC had already adopted a comprehensive Port State Control Scheme shortly after the Panel concluded its report.

The Report of the 2014 Performance Review was considered at a 2015 Extraordinary Meeting of the Commission. The report noted NEAFC's position in the world as a premier RFMO, as reflected by the many positive aspects brought to light in the review. It noted that in many cases there has been considerable progress since the 2006 review of NEAFC, particularly with respect to addressing impacts of fisheries on marine ecosystems, combatting IUU fishing, and strengthening the legal and institutional bases for effective fisheries management.

The report nevertheless raised a number of issues which all received attention. Some issues were acted on while for others, as alternative means were in place, a decision for no further action was made. The issues on which no further action was agreed included: management of fishing capacity, introduction of an observer scheme and introduction of trade-tracking schemes. On a proposal of explicitly reflecting in NEAFC rules all relevant obligations under international law, it was agreed to not take any action given the Contracting Parties are bound by such obligations regardless of NEAFC rules.

The following issues raised by the 2014 review were taken up by the Commission. One key issue was the earlier failures to agree on comprehensive management measures for several of the fish stocks of which a portion is managed by NEAFC. This included associated aspects such as fishing beyond levels advised by ICES; the decision-making process; the relationship with the coastal States fora and the criteria used for allocation. Working groups on a framework for negotiations and on allocation criteria were set up in response. The former concluded its work in 2017, followed by the adoption by the Commission Guidelines for Coastal State Consultations in the North East Atlantic and a Model Framework Arrangement, but the latter group on allocation has not yet reached a conclusion. While the Review had suggested increasing the scientific capacity within the NEAFC Commission, it was agreed that NEAFC should not take any action that would blur the clear separation between the scientific role of ICES and the policy and management role of NEAFC. Nevertheless proposals for improvements to the cooperation between NEAFC and ICES were agreed, including on the set-up of bilateral meetings and the inclusion of multispecies advice, possible climate change effects and other ecosystem considerations in scientific advice.

On monitoring and compliance, it was proposed that working within existing resources, the Secretariat should play a more proactive role in monitoring the activities of fishing vessels in the Regulatory Area. In addition the committee on control and enforcement was given a more

explicit role on compliance evaluation as a newly constituted Permanent Committee on Monitoring and Compliance (PECMAC). In addition, the work on developing a NEAFC Electronic Reporting System would be intensified. On deep sea species, it was agreed that formal guidelines should be formulated and that management measures for individual deep sea species should be adopted.

Regarding the issue of NEAFC's role in development cooperation, while no developing State is a Contracting Party to NEAFC, the organization committed to continue to take part in projects aimed at sharing NEAFC's experience and expertise, with a priority on working with the FAO, regional fisheries management organisations and other regional fisheries bodies; and/or regional seas conventions/agreements.

[\(iv\) lessons learned and best practices from past performance reviews of regional fisheries management organizations;](#)

For the 2006 Review it was considered that the approach taken had allowed the Review Panel to use their limited time for assessment rather than establishing facts. The three "internal" members had the detailed knowledge that allowed the Panel to focus on evaluation. They also made sure that comments of the panel were efficiently brought to the attention of the NEAFC and its Contracting Parties so NEAFC and assumed "ownership" of the Review, without affecting the independence of Review. The three independent members reported that "overall the Panel found that the approach adopted was effective and the outputs unbiased by the construct and conduct of Panel members. It advised that the inclusion of both internal and external Panel members was a successful approach that could be adopted in future exercises of this kind, particularly where resources are limited". NEAFC considered the process had been efficient and achieved its objectives in a credible way.

A 2012 FAO report on performance reviews by RFMOS (Circular no 1072) highlighted that the NEAFC performance review in 2006 established a leading example for others to follow. The FAO report noted that the 2007 Kobe meeting of Joint Tuna Organizations, had endorsed the NEAFC criteria and CCAMLR, ICCAT, CCSBT and IOTC had conducted their performance reviews in 2008 and 2009 in line with the NEAFC method using internal and external experts.

One issue considered by the 2011 NEAFC Commission meeting was whether to merge a review of the implementation of the NEAFC bottom fisheries regulations with a prospective Performance Review. While considered by some parties as a more efficient process, in the final analysis it was felt more useful to focus the review solely on the effectiveness of the bottom fishing regulations and not limit the Performance Review in any way. The Commission meeting therefore agreed the timeline for the Performance review for 2013 as a separate exercise from the 2012 review of bottom fisheries regulations. Further discussion at the 2012 NEAFC Commission meeting agreed not to separate out the issue of coastal States mechanisms verses NEAFC decisions and further clarified the final reporting date of the Review to the Commission as 2014.

In considering the 2014 Performance Review report Contracting Parties noted the thoroughness, time and expert resource needed to deliver the report. The usefulness of the report included the look at the considerable progress made since the 2006 Performance Review as much as the assessment of opportunities for ongoing improvement. Parties agreed that an adequate

response by NEAFC was required to the issues raised by the panel by the Commission itself, even if other ways could be found for developing some of solutions.

The 2018 NEAFC Commission meeting considered the timing of regular performance reviews, noting the last review had reported in 2014. It was agreed that NEAFC Performance Reviews should be carried out at intervals of a decade. This reflected the need for the required processes of implementation of the previous Performance Review and the related decisions. Nevertheless it was also noted that some flexibility should be built into such a timeline to allow for changes in internal practice or external circumstances to prompt a shorter interval for a Performance Review.

In considering the practical issues in setting up a Performance Review, the costs of consultancies expenses and honorariums will also need to be planned for. For NEAFC these costs were in the region of £50,000 to £70,000. Other resource costs will be the substantial input needed by Secretariat staff as well as the time needed for Contracting Party input and review including through additional meetings such as Extraordinary Commission meetings.