



Agenda item 5.6
For information

Council

CNL(19)18

***Consideration of the Process for Arranging a
Third Performance Review in 2021***

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Introduction

NASCO was the first Regional Fishery Body to institute a performance review process, entitled 'Next Steps', in 2004, for NASCO's twentieth anniversary. Next Steps was an internal review, involving both representatives of NASCO's Parties and its stakeholders (mostly NGOs), working out a review over the course of four meetings in 2004–05. The principal challenges that Next Steps found were related to: the fairness and efficiency of managing distant-water salmon fisheries and fisheries beyond the NASCO regulatory area; the social and economic aspects of salmon fishing; funding for the research of salmon at sea; the protection and restoration of riverine salmon habitats; the prevention of parasitic and genetic transfers from farmed salmon to wild salmon; and working out a strategy for endangered salmon.

Next Steps formulated 20 recommendations. The most important ones were for the Parties / jurisdictions to formulate Implementation Plans, and for reporting on these to take place in Special Sessions that are open to NGOs. Most of these recommendations were implemented immediately by the NASCO Council and, in light of these findings, in 2005 the Council adopted a Strategic Approach for NASCO's Next Steps. For the rest, NASCO created a Task Force to examine implementation possibilities. The Task Force returned its report in April 2006, and the Council reviewed the implementation of all recommendations at the same time.

NASCO saw fit to reinspect the Next Steps process in 2010, both creating a Next Steps Review Group and drafting the Terms of Reference (ToRs) of an external performance review (EPR). The NASCO Council agreed to the ToRs, and agreed the review panel members, at its Twenty-Eighth Annual Meeting in June 2011.

The 2012 performance review formulated 74 recommendations, the major one recommending Convention change, and NASCO received and considered these at its Twenty-Ninth Annual Meeting in June 2012, while also reviewing the report of the Working Group on the Next Steps programme, particularly the continued scrutiny of the Implementation Plans. The Council decided that a Plan of Action to address the recommendations from both processes should be produced during an inter-sessional meeting. This Plan of Action was discussed and agreed at NASCO's Thirtieth Annual Meeting in June 2013, and NASCO agreed that its priorities had not changed much in the seven years between Performance Reviews: 'It was agreed that the vision, challenges and goals identified in the Strategic Approach for NASCO's 'Next Steps' remain the priority areas for NASCO.' With respect to the suggested revision of the NASCO Convention, the Council noted that: 'While it had been recognised that NASCO's Convention reflects the situation and circumstances at the time of its drafting, in practice the language had not constrained the Parties from incorporating modern fisheries management principles and addressing a broad range of impacts to the salmon and its habitat.' NASCO thus decided to focus its resources on areas that would have a direct benefit for Atlantic salmon, and not to redraft its Convention.

The Plan of Action demonstrated that the overwhelming majority of the EPR's recommendations, as well as the Next Steps internal performance review's recommendations, were being implemented by NASCO. During the 2014 Annual Meeting, the Council seemed satisfied with actions taken to date, and instructed the Secretariat to provide further updates in 2015. Updates have been provided annually since then in a paper entitled 'Report on Progress

in Implementing the ‘Action Plan for taking forward the recommendations of the External Performance Review and the review of the ‘Next Steps’ for NASCO’, CNL(13)38’.

Best Practice

United Nations General Assembly resolution 61/105, 2006, contained specific recommendations to: urge further efforts by RFMOs to strengthen and modernise their mandates and measures adopted to implement modern approaches to fisheries management; urge RFMOs to improve transparency and ensure that their decision-making processes were fair and transparent, rely on the best scientific information available and incorporate the precautionary and ecosystem approaches; and urge States, through their participation in RFMOs, to undertake performance reviews of those RFMOs using transparent criteria.

In 2016, the Resumed Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks recommended that States and regional economic integration organizations individually and collectively through regional fisheries management organizations and arrangements:

- a) undertake regular performance reviews which include some element of independent evaluation, while seeking relevant information from all stakeholders;
- b) develop best practice guidelines for conducting performance reviews and implementing their results, inter alia, where appropriate, through the use of Kobe-like processes by other RFMOs, while ensuring consistency and harmonisation to the extent possible;
- c) establish mechanisms for follow-up actions in response to performance reviews, including the implementation of the recommendations, when necessary, in a timely manner, including such facets as transparency, publicity and accountability, and ensure that information on actions taken to implement the recommendations emanating from performance reviews are made publicly available.

The fourteenth round of Informal Consultations of States Parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Agreement) took place in New York from 2-3 May 2019. The informal consultations focused on the topic ‘Performance reviews of regional fisheries management organizations and arrangements’, in accordance with paragraph 55 of UN resolution 72/72 of 5 December 2017 and reiterated in paragraph 60 of resolution 73/125, with a view to understanding, sharing experiences and identifying best practices for the consideration of States parties to the Agreement.

Participants at the fourteenth round of Informal Consultations noted the following points:

- effective performance of RFMOs is key to the effective management of the resources managed under the RFMOs;
- performance reviews should be ambitious and effective and have an organized follow-up;
- an independent performance review process has been one of the most positive things to strengthen RFMOs.

NASCO’s Third Performance Review Adhering to Best Practice

There are four main areas in which decisions need to be made by Council with respect to the process for NASCO’s third performance review, as follows:

1) the panel; 2) the criteria; 3) the Terms of Reference; and 4) the recommendations, including follow-up mechanisms.

1) *The panel.*

In the fourteenth round of Informal Consultations, participants discussed the composition of a review panel, and noted three main options:

- a) fully internal (as NASCO's first performance review);
- b) fully external (as NASCO's second performance review);
- c) a hybrid panel.

The hybrid panel seemed to bring a number of advantages, in particular, allowing the special characteristics and expertise / knowledge of the RFMO to be taken into account as well as bringing in external expertise. The internal experts are intimately familiar with how the RFMO operates, know the real challenges their RFMOs are facing, and have institutional memory. This can give a level of ownership of the performance review that might otherwise be missing with a panel comprising only external experts. Additionally, it reduces the time for external experts to understand the workings of the organization.

In a hybrid panel it is considered to be important that the expertise should be balanced, with a counterpart of the internal and external experts. Three areas of fisheries expertise were recommended: (i) science, (ii) resource management and (iii) international law. In some of the recent hybrid panel reviews, the internal panellists were not currently involved with the RFMO but had been involved actively with its work in the past.

2) *The criteria.*

The set of criteria provided for NASCO's second performance review, the Kobe criteria (Annex 1), have been used widely across RFMOs in their performance reviews and are considered to be very important to create a broad and consistent baseline for review and for comparison between RFMOs.

However, the point was raised that there may be gains in making the criteria more focused on the real concerns of the organization at that time and that non-critical/non-relevant criteria should be removed. An alternative viewpoint was that the criteria should not be too limited/specific as that might lead to issues of importance to the RFMO being missed by the review panel.

3) *The Terms of Reference.*

The Terms of Reference (ToRs) for NASCO's second performance review were broad, as follows:

- 1) The Council agrees to conduct an external review of NASCO's work with the purpose of assessing the performance of NASCO since its establishment in 1984 against the objectives set out in its Convention and other relevant international instruments addressing the conservation and management of aquatic living resources. This review should take into account, *inter alia*, the NASCO 'Next Steps' process, the recommendations concerning the performance of RFMOs contained in UN Resolution 61/105, and other subsequent resolutions on sustainable fisheries, and the criteria attached, as appropriate.
- 2) This review will be undertaken by a Review Panel comprising three internationally recognised experts: nominees from the Food and Agriculture Organisation of the United Nations and the United Nations Division of Ocean Affairs and the Law of the Sea (DOALAS), together with a fisheries scientist with management experience, appointed by

the Council at its Twenty-Eighth Annual Meeting. NASCO Parties and NASCO's accredited NGOs will not serve on the Review Panel nor will the NASCO Secretariat which will, however, provide logistical support to the panel.

Strong ToRs are essential to a good performance review as they provide the clear guidance to focus the attention of the review panel given that it cannot address everything in a timely manner. Nevertheless, in the fourteenth round of Informal Consultations, Participants noted that it is sensible to build in some room for flexibility by the panel so they can stray from the ToRs if needs be.

It was also noted at the meeting that as more performance reviews of any particular RFMO are carried out, it might be better to focus on more specific aspects of that RFMO, which may include new and emerging issues. In general, the first review covers all aspects of the RFMO's work and the second review at the very least follows up on the recommendations from the first performance review and addresses progress made since the first performance review. For subsequent reviews, an RFMO might want to look for weaknesses in its performance or management to help identify the focus for its third performance review. Or, it might want only to focus on those recommendations that have not really been dealt with between performance reviews. An alternative view was that the panel should be able to assess the degree to which previous recommendations have been implemented. The participants in the fourteenth round of Informal Consultations also discussed that there should be no limit to the focus of the panel. Specifically, the panel should be able to assess the full suite of regulatory measures and their effectiveness for the fishery and ecosystem to give a better sense of whether the measures work.

Participants further discussed that Secretariats should also be examined as part of a performance review by asking questions like 'how wisely are the Parties using the resources of the Secretariat?' However, members of the panel should also get feedback from the Secretariat as to how its Parties work with the Secretariat.

The participants acknowledged the resource intensive nature of performance reviews and that those conducting the review should be able to have conversations with members, industry, stakeholders and the Secretariat to assess fully the performance of the RFMO, in addition to seeking written input from the Parties, and possibly also the stakeholders.

4) The recommendations, including follow-up mechanisms.

Participants present at the fourteenth round of Informal Consultations identified a number of common issues:

- the review panel should prioritise its recommendations;
- the review panel could consider breaking the recommendations down into component parts;
- it would be helpful for the review panel to identify clear steps as to how the recommendations could be addressed (which would make it easier to track progress);
- Parties should adopt a simple and fully transparent method (such as a monitoring matrix / action plan) to show whether and how recommendations are addressed;
- Parties should keep the action plan on the agenda of the Annual Meeting until all of the recommendations are dealt with; and
- there needs to be a clear way to identify that recommendations have been addressed.

The first three of these could be specified in the review panel's instruction, possibly as part of the ToRs.

The Process

There are a number of ways in which each of these four main areas can be decided. The appropriate way forward for NASCO's third performance review needs to be decided by Council during its 2019 Annual Meeting.

For its second performance review, NASCO used the 'Next Steps' Review Group (that had already been convened to review the success of the 'Next Steps' process) to develop proposals for consideration by the Council on ToRs, criteria and a budget for the external review. Similarly, one approach could be to establish a Working Group to do the same for the third performance review. To meet the current 2021 timeline for completion of the third performance review, the Working Group would need to conduct its work inter-sessionally (either virtually, in person, or some combination) and present its recommendations to the Council in 2020 for action. Alternatively, a Party might choose to put a proposal on the table for the ToRs and criteria it wishes to see addressed in the third performance review. Ideally, this would be done well in advance of the 2020 NASCO annual meeting to ensure adequate time for consideration.

How, and when, to engage the review panel also needs to be decided, as does the budget. A sum of £50,000 has been included in the forecast budget for 2021 for the review. The payment (or honorarium) provided to panel members will vary depending on the type of panel engaged. Assuming that the ToRs, criteria, budget and proposed panel members are agreed at the Thirty-Seventh Annual Meeting in June 2020, meeting dates and the number of meetings of the panel will need to be established quickly to give the panel ample time to carry out its work and to report sufficiently in advance of the Thirty-Eight Annual Meeting in June 2021.

Timelines for the completion of NASCO's performance reviews:

Year	Date ToRs agreed	1 st panel meeting	Final report date	Time elapsed between decision to review and final report	Time elapsed between first meeting of reviewers and final report
2005	7 June 2004	5-8 October 2004	4 May 2005	11 months	7 months
2012	6 June 2011	30 January 2012	1 April 2012	10 months	2 months

Secretary
Edinburgh
22 May 2019

Kobe Criteria for Reviewing the Performance of RFMOs

	<i>Area</i>	<i>General criteria</i>	<i>Detailed criteria</i>
1	<i>Conservation and management</i>	Status of living marine resources	<ul style="list-style-type: none"> • Status of marine living resources under the purview of NASCO. • Trends in the status of those resources. • Status of species that belong to the same ecosystems as, or are associated with or dependent upon, targeted marine living resources. • Trends in the status of those species.
		Ecosystem approach	<ul style="list-style-type: none"> • Extent to which NASCO decisions take account of and incorporate an ecosystem approach to fisheries management.
		Data collection and sharing	<ul style="list-style-type: none"> • Extent to which NASCO has agreed formats, specifications and timeframes for data submissions. (e.g. as set out in Annex 1 of the 1995 UN Fish Stocks Agreement). • Extent to which NASCO Contracting Parties, individually or through NASCO, collect and share complete and accurate data concerning marine living resources and other relevant data in a timely manner, including analysis of trends in fishing activities over time. • Extent to which fishing and research data and fishing vessel and research vessel data are gathered by NASCO and shared among Parties. • Extent to which NASCO is addressing any gaps in the collection and sharing of data as required.
		Quality and provision of scientific advice	<ul style="list-style-type: none"> • Extent to which NASCO produces or receives the best scientific advice relevant to the marine living resources under its purview, as well as to the effects of harvesting, research, conservation and associated activities, on the marine ecosystem.
		Adoption of conservation and management measures	<ul style="list-style-type: none"> • Extent to which NASCO has adopted measures based on the best scientific advice available to ensure the long-term conservation and sustainable use of marine living resources in the Convention Area. • Extent to which NASCO has applied a Precautionary Approach as set forth in Article 6 of the 1995 UN Fish Stocks Agreement,

			<p>including the application of precautionary reference points.</p> <ul style="list-style-type: none"> • Extent to which consistent/compatible management measures have been adopted (e.g. as set out in Article 7 of the 1995 UN Fish Stocks Agreement). • Extent to which NASCO successfully allocates fishing opportunities consistent with the NASCO Convention and Article 11 of the 1995 UN Fish Stocks Agreement. • Extent to which NASCO has moved toward the adoption of conservation and management measures for previously unregulated fisheries, including new and exploratory fisheries. Extent to which NASCO has taken due account of the need to conserve marine biological diversity and minimize harmful impacts of fishing activities and research on living marine resources and marine ecosystems. • Extent to which NASCO and its Parties have adopted and are implementing effective rebuilding plans for depleted or overfished stocks including guidance for stocks under moratoria.
		Capacity management	<ul style="list-style-type: none"> • Extent to which NASCO has taken actions to prevent or eliminate excess fishing capacity and effort. • Extent to which NASCO monitors the levels of fishing effort, including taking into account annual notifications of participation by Parties.
2.	<i>Compliance and enforcement</i>	Flag State duties	<ul style="list-style-type: none"> • Extent to which NASCO Parties are fulfilling their duties as flag States under the NASCO Convention, pursuant to measures adopted by NASCO, and under other international instruments, including, <i>inter alia</i>, the 1982 Law of the Sea Convention, 1995 UN Fish Stocks Agreement and the 1993 FAO Compliance Agreement, as applicable.
		Port State measures	<ul style="list-style-type: none"> • Extent to which NASCO has adopted measures relating to the exercise of the rights and duties of its Parties as port States, as reflected in Article 23 of the 1995 UN Fish Stocks Agreement, as well as the minimum standards set out in the 2009 FAO Agreement on Port State Measures to Combat IUU Fishing. • Extent to which these measures are effectively implemented.
3.	<i>Decision-making and</i>	Decision-making	<ul style="list-style-type: none"> • Efficiency of NASCO in addressing critical issues in a timely and effective manner.

	<i>dispute settlement</i>		<ul style="list-style-type: none"> • Extent to which NASCO has transparent, consistent and adequate decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner.
		Dispute settlement	<ul style="list-style-type: none"> • Extent to which NASCO has established adequate mechanisms for resolving disputes.
4.	<i>International cooperation</i>	Transparency	<ul style="list-style-type: none"> • Extent to which NASCO is operating in a transparent manner, taking into account Article 12 of the 1995 UN Fish Stocks Agreement. • Extent to which NASCO decisions, meeting reports, scientific advice upon which decisions are made, and other relevant materials are made publicly available in a timely fashion.
		Relationship with non-NASCO Parties	<ul style="list-style-type: none"> • Extent to which non-NASCO Parties have undertaken fishing activities in the NASCO Regulatory Area. • Extent to which NASCO facilitates cooperation with non-NASCO Parties, including encouraging non-NASCO Parties to become Parties or to implement NASCO conservation and management measures voluntarily. • Extent to which NASCO provides for action in accordance with international law against non-NASCO Parties undermining the objective of the Convention, as well as measures to deter such activities.
		Cooperation with other international organisations	<ul style="list-style-type: none"> • Extent to which NASCO cooperates with Regional Fisheries Management Organizations and other international organisations.
5.	<i>Financial and administrative issues</i>	Availability of resources for activities	<ul style="list-style-type: none"> • Extent to which financial and other resources are made available to achieve the aims of NASCO and to implement NASCO's decisions. • Extent to which the schedule and organization of the meetings could be improved.
		Efficiency and cost effectiveness	<ul style="list-style-type: none"> • Extent to which NASCO is effectively managing human and financial resources including those of its Secretariat.