



Council

CNL(20)15

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

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Consideration of the Process for Arranging NASCO's Third Performance Review

Purpose

The purpose of this paper is to propose a process to allow NASCO to conduct its third performance review and to set out the decisions required to implement the review.

Decisions

Council may wish to discuss and agree the following:

- that a Working Group be convened to draw up the options to recommend a process for NASCO's third performance review;
- that Parties / NGOs nominate representatives to sit on the Working Group;
- that the timetable proposed is suitable, or, in light of the uncertainty created by the Covid-19 pandemic, to propose an alternative timetable;
- that the Terms of Reference proposed for the Working Group are suitable and can be adopted;
- that the recommendations from the Working Group will be agreed by Council inter-sessionally, by correspondence, both for the review and its follow-up;
- that the budget for the third performance review would be funded either from the Working Capital Fund or through extra contributions from the Parties; and
- that the overall budget provided by the Secretary is acceptable.

Background

United Nations General Assembly resolution 61/105, 2006, contained a recommendation to urge States, through their participation in RFMOs, to undertake performance reviews of those RFMOs using transparent criteria (see Annex 1 for further information).

In 2018, NASCO's Council agreed that the process to consider conducting the third performance review of NASCO should commence in 2019, with a view to holding the review in 2021 ([CNL\(18\)45](#)).

In 2019, Council agreed that the President would develop a process for arranging NASCO's next Performance Review in 2021 such that it could be discussed and agreed by the Parties inter-sessionally. This item was due to be discussed at the Heads of Delegation inter-sessional meeting planned for March 2020. However, that meeting was cancelled due to the Covid-19 pandemic. During the Covid-19 contingency planning, the Parties agreed to postpone this item until the autumn Inter-Sessional Council Meeting.

NASCO has previously conducted two performance reviews as follows:

- in 2004 / 2005 NASCO conducted an internal performance review, called 'Next Steps for NASCO' ([CNL\(05\)14](#)); and
- in 2012 NASCO conducted an external performance review ([CNL\(12\)11](#)).

A full background document 'Consideration of the Process for Arranging a Third Performance Review in 2021' was prepared for the 2019 Annual Meeting ([CNL\(19\)18](#)). In addition to

providing a background to NASCO's previous performance reviews and highlighting current thinking on best practice for RFMO performance reviews, it detailed the four main areas in which decisions need to be made by Council with respect to the process for NASCO's third performance review, namely:

- 1) the Review Panel;
- 2) the Review Criteria;
- 3) the Terms of Reference for the Review Panel; and
- 4) the recommendations, including follow-up mechanisms.

Process for the Second Performance Review

To inform its second performance review, NASCO created a 'Next Steps' Review Group to, among other things, review the 'Next Steps' process, identify any additional areas that might need to be addressed by NASCO and develop proposals for consideration by the Council on Terms of Reference, criteria and a budget for the external review.

The final Terms of Reference were broad, as follows:

- *'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'; and*
- *'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'.*

Process for the Third Performance Review

Document [CNL\(19\)18](#) highlighted the discussion in the United Nations Meeting in May 2019 on 'Performance reviews of regional fisheries management organizations and arrangements', 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.

These conversations have not yet been had in NASCO for the third performance review. Nor is there anything like the 'Next Steps' review to inform the process at this stage. Council may wish to discuss and agree these aspects to inform the Terms of Reference for NASCO's third performance review. Alternatively, it could decide to establish a Working Group to develop proposals for consideration by the Council, likely inter-sessionally, in relation to the third

performance review.

Composition of a Working Group

Should it be agreed that a Working Group is required, one option might be that it comprises:

- (a) one or two representatives from each NASCO Party; and
- (b) two representatives from the accredited NGOs (preferably one from Europe and one from North America).

Key Issues to Guide a Working Group

Council may wish to agree a position in four main areas to guide such a Working Group. Alternatively, it could ask the Working Group to make recommendations to Council for subsequent agreement; this would be accomplished inter-sessionally, via correspondence.

In proposing a Review Panel, Council may wish to ask the Working Group to propose a hybrid panel of internal and external experts which includes expertise in (i) fisheries science, (ii) resource management and (iii) international law. Council may wish the Working Group to propose experts or, as NAFO did for its second performance review (Annex 2), decide on a process to choose the experts from a list nominated by the Parties.

In suggesting criteria for the review, Council may wish to ask the Working Group to take into account the Kobe criteria used in several RFMO performance reviews, being mindful of the discussion at the United Nations Meeting in May 2019 where 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. However, 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.

Based on best practice highlighted at the UN meeting on RFMO performance reviews in May 2019, in developing Terms of Reference for the third performance review, Council may wish to ask the Working Group to focus on one main area of NASCO's work, such as the IP / APR process, whilst allowing some flexibility.

In consideration of follow-up mechanisms, Council may wish to ask the Working Group to issue appropriate instructions to the Review Panel regarding follow-up and make recommendations to Council regarding a follow-up process.

Additionally, Council may wish to agree a timetable to schedule the work and the report of the Review Panel or ask the Working Group to propose a schedule for agreement inter-sessionally.

Proposed Terms of Reference for the Third Performance Review Working Group

Council may wish to discuss the following as a basis for the Terms of Reference for a third performance review (PR 3) Working Group, should Council agree that one is required.

The Third Performance Review Working Group will work in winter 2020 / 2021 to make recommendations to Council on options for the third performance review in the following areas to determine:

- *the type of Review Panel, its engagement with NASCO and how to populate it.* The experts could be chosen / recommended by the WG; alternatively, experts could be proposed by each of the Parties and a method devised to select the successful candidates;
- *the review criteria* (these could be the standard Kobe criteria used in many RFMO performance reviews or reduced criteria, depending on the business reviewed);

- *the Terms of Reference for the PR 3 Review Panel* (an examination of a single issue of fundamental importance to the functioning of NASCO such as the IP / APR reporting cycle versus more a general review, always following best practice);
- *follow-up mechanisms for the PR 3* (including what to include in the review ToRs to ensure best practice is adhered to);
- *an appropriate budget and how this should be drawn from NASCO's funds; and*
- *the timing and process for the review.*

Annex 2 documents what was agreed for the second performance review of the Northwest Atlantic Fisheries Organization (NAFO) for your information. Annex 3 illustrates a budget proposal based on budgets for recent performance reviews in 2018 (NAFO and NAMMCO) and comments from external advisers on current consulting fees.

Timetable for the Third Performance Review

As mentioned above, Council agreed in 2018 that the process to consider conducting the third performance review of NASCO should commence in 2019, with a view to holding the review in 2021. Given that there was not sufficient time to discuss and consider fully the performance review process at the 2019 NASCO Annual Meeting, the following timetable is proposed. This is for illustration only. We think it sets out a reasonable expectation of when the various parts of the process can be completed, while still enabling the review to take place in 2021, as agreed originally by Council.

Autumn Inter-Sessional Council Meeting.	Council agrees to set up a Working Group to oversee the third performance review (PR 3). Council agrees the Terms of Reference for the Working Group. Parties / NGOs nominate representatives for the PR 3 Working Group.
Winter 2020 / 21	Working Group meets to make recommendations on: <ul style="list-style-type: none"> • the type of Review Panel, and how to populate it; • the review criteria (Kobe criteria or reduced criteria); • the Terms of Reference for the PR 3 Review Panel (single issue versus more general review); • follow-up mechanisms for the PR 3 (what to include in the review ToRs to ensure best practice); • the detailed budget; and • the timing and process for the review.
Spring 2021	Council approves Working Group recommendations inter-sessionally, by correspondence.
Spring 2021	Secretariat invites experts to participate on the PR 3 Review Panel and invites them (or just the Review Panel Chair) to attend the 2021 NASCO Annual Meeting.
June 2021 Annual Meeting	Chair of the PR 3 Review Panel attends Annual Meeting.
December 2021 and	Review Panel conducts the Performance Review through a

early 2022	mixture of physical meeting and correspondence and writes Draft Report.
Spring 2022	Secretariat and Working Group Chair to work with Review Panel to finalise PR 3 Report.
April 2022	PR 3 Final Report included in Council papers for the 2022 Annual Meeting Working Group recommendations on follow-up process included in Council papers for the 2022 Annual Meeting
June 2022 Annual Meeting	Chair of PR 3 Panel invited to 2022 Annual Meeting to present findings. Possible Special Session on the report and its recommendations.
Summer 2022	Working Group meets to propose a follow-up process to take forward the recommendations of the PR 3, if they are accepted by Council.
Inter-sessionally	Council sets up a process for follow-up guided by recommendations of the PR 3 Working Group.

Budget

A sum of £50,500 was included in the forecast budget for 2021 for the third performance review. This was based on the budget for NASCO's second performance review and information available in a 2015 [FAO](#) publication listing the approximate costs of performance reviews from 2005 to 2011. The total payment (based on a daily consulting fee and travel and subsistence required) provided to the external Review Panel members will vary depending on the number of experts engaged and the time taken for them to do their work. In discussion with other RFMOs (NAFO and NAMMCO) that have undergone review in recent years, and with some experienced reviewers, it is clear that costs have increased substantially. Annex 3 illustrates a budget proposal based on those discussions.

Secretariat
Edinburgh
29 April 2020

United Nations General Assembly resolution 61/105, 2006

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; and
- 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. The report is available [here](#).

Second Performance Review of NAFO – REVISED Terms of Reference

Northwest Atlantic



Fisheries Organization

Serial No. N6754

NAFO/COM Doc. 17-21
[Adopted]

39th ANNUAL MEETING OF NAFO - SEPTEMBER 2017

Second Performance Review of NAFO – REVISED Terms of Reference

1. Scope and objectives

The scope and objectives of the work to be carried out by the Review Panel shall be:

1. To evaluate how NAFO has responded to the outcome of 2011 NAFO Performance Review (PR 1), taking into consideration the work and practices of NAFO's bodies, subsidiary bodies and working groups to date, and also the implementation of the action plan resulting from the recommendations of the 2011 NAFO Performance Review.
2. To identify areas where improvements are needed to strengthen the organization in order to advance the objectives of the NAFO Convention and the subsequent 2007 amendments.
3. To assess the functioning and efficiency of all NAFO bodies, subsidiary bodies and working groups, taking into account, among other:
 - a. The cooperation between Commission and Scientific Council in the context of the joint COM-SC working groups.
 - b. The findings mentioned in the Fisheries Commission's paper on "Improving Efficiency of NAFO Working Group Process" (FC Doc. 15-18).

2. Criteria

Within the scope and objectives outlined above, the review shall be performed on the basis of seven groups of criteria provided in the Annex, in no order of preference, which should be used to point both to achievements and to areas which could be improved:

- Follow-up to the 2011 NAFO Performance Review.
- Conservation and management.
- Compliance and enforcement.
- Governance including decision-making, dispute settlement, transparency and confidentiality.
- Science.
- International cooperation.
- Financial and administrative issues.

3. Review Panel composition

The Review Panel shall be composed of six (6) experts; three (3) external experts and three (3) internal experts.



NASCO's Third Performance Review Draft Proposed Budget

Costs include: one 5-day face-to-face meeting at NASCO HQ in Edinburgh; a maximum of 30 days to complete the review, including the production of the report; Review Panel Chair to attend the whole 2021 NASCO Annual Meeting to observe its business proceedings and two days at the 2022 Annual Meeting to present the Performance Review report

	Budget £
Number of external experts	3
30 days per expert*	30
Daily consulting fee**	650
Total daily consulting fee	58,500
Travel costs per expert at HQ Mtg	
Airfare	3,000
Hotel & subsistence	450
Number of external experts	3
Total costs to attend 5 day meeting	18,450
No proposed meetings	1
Total travel costs	18,450
Chair to attend Ann Mtg	
Airfare	3,000
Hotel & subsistence & daily consulting fee	1,100
Number of days at Ann Mtg 1 - 2021	5
Ann Mtg 1 Costs	10,700
Number of days at Ann Mtg 2 - 2022	2
Ann Mtg 2 Costs	7,400
Total Chair costs	18,100
Secretariat costs	2,500
Total proposed costs	97,550

*NAMMCO set the consulting fee budget and gave the Review Panel members the discretion to allocate the remuneration between themselves to reflect the time spent by each Review Panel

**Current daily consulting fee as advised by external expert \$700 to \$1000 per day. Equivalent to £550 to £750 approx per day