

Informal consultations of State Parties (ICSP) to the UN Fish Stocks Agreement

Contribution from the North East Atlantic Fisheries Commission on the topic of the ecosystem approach to fisheries management as a focus of the fifteenth round of Informal Consultations of States Parties to the United Nations Fish Stocks Agreement, March 2021 (delayed from 2020).

Introduction

The North East Atlantic Fisheries Commission (NEAFC) is the Regional Fisheries Management Organisation (RFMO) for the North East Atlantic, one of the most abundant fishing areas in the world. The area covered by the NEAFC Convention stretches from the North Pole south to Portugal and from the southern tip of Greenland east to the Barents Sea.

Recommendations adopted by NEAFC are legally binding.

NEAFC's objective is to ensure the long-term conservation and optimum utilisation of the fishery resources in the Convention Area, providing sustainable economic, environmental and social benefits. Historically, NEAFC focused on the target species of the fisheries being managed, and bycatches of other economically important species. From the 1990s, there has been a development of an increasing focus on the effects of fisheries on the other parts of the marine ecosystem and on the protection of biodiversity. Therefore, while NEAFC adopts management and control measures for various fish stocks it also adopts measures to protect other parts of the marine ecosystem (including biodiversity) from potential negative impacts of fisheries.

NEAFC fisheries include both pelagic fisheries and deep sea fisheries. Three pelagic species, herring, mackerel and blue whiting make up a very large part of the overall catch, adding up to a catch of over 3 million tonnes per year. In more recent years some 20% of this catch has been in the high seas, while for deep sea fisheries, the catch is largely taken within national jurisdiction. Noting the importance in ecosystems of such wide-ranging pelagic forage species and the uniqueness of environments available for fishing deep sea species, NEAFC recognises its important role in actively managing impacts to stocks and biodiversity to deliver sustainability.

NEAFC Science-Policy separation

In carrying out its objectives, NEAFC does not undertake any scientific work but rather relies on the International Council for the Exploration of the Sea (ICES) for scientific advice.

Following its most recent Performance Review, the NEAFC Commission agreed in 2015 "that the clear separation between the scientific role of ICES and the policy and management role of NEAFC should be maintained. NEAFC should not take any action that would blur this separation, such as carrying out its own scientific work or doing its own assessment of the scientific advice from ICES." It was also agreed at that time that steps should be taken to

improve cooperation between NEAFC and ICES. This included setting up regular meetings with ICES to discuss long-term development, such as multispecies advice, climate effects and other ecosystem considerations. ICES is thus enabled to develop appropriate research programs to meet longer-term issues raised by NEAFC, and take these issues into account in presenting its advice to NEAFC. Complementary changes were also made to the Terms of Reference of NEAFC's Permanent Committee on Management and Science. The 2019 update to the Memorandum of Understanding between ICES and NEAFC builds in these wider ecosystem considerations.

ICES has integrated ecosystem aspects in its fisheries advice for many years, for instance by developing its (sub-regional) ecosystem overviews from 2013 and its fisheries overviews a few years later. Nevertheless, there remain major challenges in translating an understanding of wider ecosystem changes and other pressures (including their cumulative aspects) into practical and specific advice on the total allowable catch of a particular stock or mix of stocks. Stock-specific advice therefore remains the primary tool for management of fisheries under NEAFC. ICES has implicitly recognised this, as highlighted in its 2019 Science Plan, including science priorities focused on delivering marine ecosystem and sustainability science for the 2020s and beyond. Included in the seven interrelated priorities are science: to understand the structure, function, and dynamics of marine ecosystems; to measure and project the effects of human activities on ecosystems and ecosystem services; to describe present and future states of natural and social systems and; to track changes in the environment and ecosystems. This science aims to underpin the ICES Advisory Plan which commits ICES to providing advice that supports ecosystem-based decision-making and contributes towards the effective application of an ecosystem approach. This plan includes a priority to develop an ecosystem advice framework which includes: management of human activities; consideration of collective pressures; achievement of a good environmental status; sustainable use; optimization of benefits among diverse societal goals; regionalisation; trade-offs and; stewardship for future generations.

In summary, ICES scientific advice which is firmly ecosystem based, is fundamental to management decisions that NEAFC takes in all aspects of fisheries and conservation.

Delivering on management. Technical Measures, Monitoring, Control, Surveillance and Compliance.

While much of this submission is focused on the biodiversity and ecosystem aspects of NEAFC's work, it must not be forgotten that the ability to licence and monitor fishing activities and deal with control and compliance issues is essential to the ability of an RFMO in delivering an ecosystem based approach to fisheries. This is fundamental to the binding nature of regulations under an RFMO such as NEAFC. Without detailing too much in this document, NEAFC's Scheme of Control and Enforcement (the Scheme) sets out the rules and means by which NEAFC Contracting Party and Cooperating Non-Contracting Party vessels are

managed. This includes publicly accessible fisheries statistics and annual compliance reports as well as the NEAFC vessel register. In addition to at sea monitoring and potential inspections, NEAFC has a system of controls at ports of its Contracting Parties aligned with the FAO Port States Measures Agreement. This system is innovative in that it also includes electronic exchange of information to support inspections.

These control measures have been a successful instrument to combat illegal, unreported or unregulated (IUU) in the NEAFC regulatory area. NEAFC nevertheless continues to cooperate with its sister RFMOs through the sharing and publication of IUU lists.

The most current development in NEAFC with regard to monitoring of fisheries activity is the ongoing implementation of a new Electronic Reporting System. This system, which enables reporting of electronic logbook data, will be able to enhance aspects of fisheries information, such as bycatch, which could significantly enhance the ability of science to support an ecosystem based approach.

Additional technical measures should be noted as a contribution to reducing impacts on marine ecosystems. NEAFC has in place limits on net mesh size, a ban on the use of gill nets in water deeper than 200m, the use of sorting grids to allow fish to escape shrimp nets, and bans on shark finning and bans on discarding as some of its older regulations. In addition, regulations on lost abandoned and discarded fishing nets aim not only to reduce marine pollution but address the problem of ghost fishing.

The Ecosystem Approach; wider considerations on Ecosystems and Biodiversity in NEAFC

In setting out information on the application of the ecosystem approach to fisheries management in NEAFC it should be noted that NEAFC was one of the early adopters of the approach; conservation elements were included in the amendment of the Convention in 2006¹. Consideration of biodiversity has been integrated into NEAFC's activities for many years, indeed with NEAFC playing a pioneering role amongst its peers. In NEAFC, the issue of deep sea fisheries was raised more prominently in the late 1990s, with a specific agenda item in NEAFC Annual Meeting on deep sea species since 1999.

Global bodies such as the UN General Assembly and FAO were still a few years away from adopting their resolutions and guidelines. NEAFC therefore had to find its own way in developing its approach. Nevertheless, the developments under NEAFC over the years, as set out in the sections below, led to ecosystem based focus related to fisheries restrictions to benefit specific ecosystems or particularly vulnerable deep-sea stocks and sharks.

NEAFC's attention in this context moved from a stock focus to efforts to prevent significant adverse impacts (on vulnerable marine ecosystems (VMEs), or for some areas simply the protection of VMEs on the seafloor of the high seas of the North-East Atlantic. This to some extent reflected the increase in the attention given to deep sea fisheries and their effects on

¹ See Article 4, paragraphs 2 c) and d) of the NEAFC Convention.

deep sea fish stocks and the associated marine ecosystems in the late 1990s, and into the 2000s.

Developments in deep sea fishing regulations:

Deep sea stocks are generally recognised as needing careful fisheries management in view of low productivity in some cases and often unique environments. In 2016 the Commission adopted the NEAFC approach to deep-sea fisheries conservation and management (and a related Recommendation). This document enabled NEAFC to place individual species/stocks into one of four categories requiring different character and level of regulations. These categories included stocks with specific measures, stocks in which directed fisheries are not authorised, others which were currently unexploited or lightly exploited, as well as stocks primarily in EEZ. Building on this, NEAFC in 2018 adopted a new/updated Recommendation on deep-sea fisheries. This moved the approach from one based only on effort limitation related to previous years' maximum effort to one based on the precautionary approach. This requires Contracting Parties to effectively manage the deep-sea fisheries stocks not subject to other conservation and management measures established by NEAFC (such as specific catch limits). Requirements include ensuring that these fisheries only expand gradually and that any new or expanding fisheries provide relevant data to assess sustainability, based on best available scientific information. To support this process the Secretariat is also required to provide an up to date overview each year of catches of deep-sea species in the Regulatory Area to enable the NEAFC Management and Science Committee (PECMAS) to consider catches over a period of years.

ICES, as NEAFC's independent scientific adviser is also required to take into account the 2016 NEAFC approach, also categorises its advice according to the four NEAFC deep sea stock categories. It also is required to include information on new and rapidly expanding fisheries, even if no stock-specific advice can be provided. This is in addition to ICES' own assessment of the data-limited stocks which determines the level of conservative approach it applies to its precautionary advice. Taking account of all the above inputs, PECMAS is able to formulate proposals for precautionary stock specific conservation and management measures for deep-sea species/stocks where appropriate.

The protection of key fish species.

In considering the impacts on wider biodiversity of fisheries in the Regulatory Area, NEAFC has not only been active in protection of deep sea species by stock management measures but also in protection by bans on fisheries on certain fish species as part of the ecosystem. NEAFC's current regulations include Recommendations prohibiting directed fisheries at basking shark, porbeagle, spurdog, deep sea sharks, rays and chimaeras. In addition, information gleaned from any incidental catches (and releases where possible) are to be provided to ICES for scientific purposes. The NEAFC approach to conservation and

management of deep-sea species and categorization of deep-sea species/stocks has been already been covered above.

Vulnerable Marine Ecosystems

The first significant step under the VME agenda was NEAFC agreement in 2004 to close three areas to “bottom trawling and fishing with static gear” for an initial period from 2005-2007. The early actions within NEAFC somewhat pre-empted the UN General Assembly resolutions (most prominently resolution 61/105, in 2006) and UN FAO Guidelines for the Management of Deep-sea Fisheries in the High Seas (in 2008). Nevertheless, the progress at regional and global levels at that time should be seen as an iterative process, each influencing the other as the issue developed towards resolutions/regulation.

NEAFC adopted its general approach to the protection of VMEs in 2006, when four additional areas were closed to bottom fisheries. PECMAS was given an important role in considering new proposals in light of scientific advice from ICES and making recommendations to the NEAFC Annual Meeting. At the same time the NEAFC Convention was amended to clarify it had a legal mandate to adopt conservation and management measures that were not aimed at the fish stocks or bycatches of fish, but rather aimed at minimising harmful impacts on other parts of the marine ecosystem and at conserving marine biodiversity. The 2006 amendments to the Convention entered into force in 2013).

In 2008, NEAFC adopted a new Recommendation on bottom fishing which was a comprehensive measure, incorporating all the relevant elements from the UN General Assembly resolution, and the work within FAO. This remains NEAFC’s general approach to the protection of VMEs, although further improvements have been implemented since. The 2008 Recommendation included a rule that regular bottom fisheries could only take place in areas that are defined as “existing bottom fishing areas”, on the basis of actual fishing taking place there within a specific reference period (1987-2007). Outside these areas, only exploratory bottom fisheries can be authorised, and these are subject to severe restrictions.

Area closures remain as the major conservation tool. Bottom fisheries closures may be based on identification of specific VMEs, with borders drawn around them or otherwise cover areas where VMEs occur or are considered likely to occur. These closures are found both within and outside “existing bottom fishing areas” so preventing ‘existing’ bottom fishing in some cases and preventing exploratory fisheries in other cases – which can be seen as a precautionary tool. In general, the aim is that regular bottom fishing operations are only taking place in areas where VMEs are not considered likely to occur.

The 2008 Recommendation included a conclusion on the conditions for exploratory bottom fishing outside “existing bottom fishing areas”. The general approach also included encounter protocols, to ensure that bottom fishing does not continue in cases where a fishing vessel unexpectedly encounters a VME.

A new comprehensive and consolidated Recommendation on the protection of VMEs entered into force in 2014. This included all the general rules regarding the protection of VMEs, coordinates of existing bottom fishing areas and areas closed to bottom fishing. The network of closed areas now included very large areas on the Mid Atlantic Ridge. The Recommendation also included annexes on VME Data Collection Protocol, rules for the Assessment of Exploratory Bottom Fishing Activities as well as on VME Indicator Species.

See: https://www.neafc.org/system/files/Rec_19-2014_as_amended_by_09_2015_fulltext_0.pdf

The above developments mean that effectively all the Regulatory Area has been closed to bottom fishing by NEAFC in areas where the best available scientific advice indicates that vulnerable marine ecosystems occur, or are likely to occur. The development of measures to protect VMEs based on scientific advice from ICES continuing, as set out below.

The 2018 Renewals of VME protection areas.

Apart from an annual ICES advice process, the VME Recommendation includes a requirement to renew the closed areas every 5 years. The last time this occurred was in the update to the Recommendation in 2018, the closures being due to end by 31 December 2017. ICES in 2017 had advised NEAFC to renew all the closures as the need for protection of the VMEs in the areas remained valid. The 2017 Annual Meeting therefore renewed to 31 December 2022 all closures under the Recommendation. At the same time one of the areas, “Area (I) Hatton–Rockall Basin” was significantly enlarged following advice from ICES to extend it to encompass new records of deep-sea sponge aggregations found at 1200 metres.

The 2019 Review of the VME Recommendation.

In 2019 NEAFC reviewed the binding Recommendation on the protection of Vulnerable Marine Ecosystems. The 5-yearly requirement and the objectives for such a review is set out in Article 10 of the Recommendation itself. The Scope of the review is clearly stated as on the effectiveness of the Recommendation in protecting VMEs [from bottom fisheries activities]. In assessing how effective the Recommendation is in preventing [new] damage to the VMEs by fishing activity since 2014, the 2019 review examined if any bottom fisheries had occurred in the closed areas since 2014, and what information NEAFC had on likely/actual damage if any activities had occurred. Information on the effectiveness of the elements of the Recommendation relating to VMEs in the existing fisheries areas or in exploratory fisheries areas outside the closed areas was also in scope. NEAFC’s monitoring and compliance committee, the Secretariat and ICES provided evidence on these questions. Analysis indicated that the vast majority of incidences of apparent illegal activity in the 5-year period were in fact false positives, although two apparent infringements had occurred and been followed up by

NEAFC compliance reporting.

An ICES review of its advice indicated no reductions in protections to the closed areas. Over the last 5 years ICES had recommended one increase in coverage to the current closed areas, which had been accordingly been extended (see above). ICES advice also highlighted the ongoing issue false positive signals which would be alleviated by more up-to-date information on the gear used at the time of the activity (as offered by the future NEAFC Electronic Reporting System).

From a combination of information from Contracting Parties on national enforcement activities, from the NEAFC Secretariat on alerts on potential bottom fisheries activities, and from ICES analysis of fishing activity, PECMAS advised the Commission that compliance with the closures had been effective. The vast majority of bottom fishing activity had been carried out inside existing bottom fishing areas.

While PECMAS believed the review of the information presented to it indicated the Recommendation was effective in its aim to protect VMEs as well as areas outside defined existing fishing areas in the Regulatory Area from bottom fisheries. Nevertheless, the performance of the Recommendation could be improved and therefore several actions (below) were suggested to improve performance of the Recommendation.

2020 Actions on VMEs:

The 2019 NEAFC Commission agreed the following actions:

- NEAFC's Management and Science Committee (PECMAS) would consider the outcomes of the UNGA 2020 review of implementation of Resolution 61/105 and subsequent resolutions (bottom fisheries/VME protection). It would furthermore, consider UNGA resolution 71/123 on further actions on management of bottom fisheries impacts on VMEs. In addition PECMAS would revisit the earlier ICES advice on closures which had not been acted on by NEAFC. PECMAS would report back on the progress to the 2020 NEAFC Annual Meeting.
- NEAFC's Monitoring and Compliance Committee (PECMAC) would consider further options for Contracting Parties to improve transparency of investigations into the (mostly false positive) alerts on bottom fishing outside existing bottom fishing areas and also to address more effective gear identification. In addition, it would assess if reporting on encounters with VMEs is functioning effectively. PECMAC would report back on the progress to the 2020 NEAFC Annual Meeting. Following the implementation in due course of the new NEAFC Electronic Reporting Systems across all of the Contracting Parties, PECMAC would investigate all opportunities to enhance monitoring of compliance with Recommendation 19:2014.
- The NEAFC Secretariat is continuing to work on reducing the number of false positives alerts. It is also continuing to monitor and analyse bottom fishing activity in the

Regulatory Area to support Contracting Parties as requested following NEAFC's performance review in 2014. The Secretariat is also working with the ICES Secretariat to address data issues to ensure common understanding of bottom fishing activity.

- In terms of scientific advice, ICES will be informing NEAFC on progress on improving the use of VME indicators to develop management advice. ICES is also being invited to consider completeness of VME habitats and indicators in the ICES database. NEAFC had already in 2018 noted that, while the effect of the Rockall haddock box closure had been useful in protecting VMEs in the area, it was in fact created for protection of juvenile haddock. Thus the risk existed that if ICES were to change its advice on the haddock, future decisions only based on this would affect the VMEs. Thus VME advice on the Rockall haddock box area was requested, including on likely impact of different gears (such as long lines) on sensitive habitats.

Cooperation with organisations focused on the environment.

Applying an ecosystem based management approach to oceans, taking into account the different impacts on ecosystems, implies that all organisations involved in regulation/management of human activities in the marine environment are cooperating and coordinating actions under their different legal mandates. While NEAFC has become involved in considering the effects of fisheries on the other parts of the marine ecosystem and on biodiversity, NEAFC's legal competence remains limited to managing fisheries. The fact that the vulnerable marine ecosystems that NEAFC is making efforts to protect can be affected by human activities other than fishing led NEAFC to work with other organisations, with complementary legal competences. One key cooperation is between NEAFC and OSPAR (the Commission for the protection of the marine environment of the North East Atlantic). This developed following initial contacts in the early 2000s, with an MOU agreed in 2004 that allowed for increased cooperation through attendance at key meetings. Two significant developments as a result of this cooperation are set out below.

Ecologically or Biologically Significant Areas (EBSAs) (Convention on Biological Diversity (CBD))

The 10th Conference of Parties of CBD invited Regional Fisheries Management Organisations and Regional Seas Organisations to establish processes to describe EBSAs in the marine environment. It should be noted that such EBSAs are scientific descriptions and have no management measures associated with them. In the context of increased cooperation related to the MoU and in response to the COP 10 call, NEAFC and OSPAR held a workshop with CBD in 2011 which developed 10 EBSA proposals for the North East Atlantic (NEA). These 10 proposals were then subjected to an ICES review process that led to a refined suite of 4 proposals being presented to NEAFC and OSPAR in 2013. Due to other circumstances, the process had stalled until 2018, when OSPAR and NEAFC (following a decision at the AM

2018 for NEAFC) jointly requested CBD to establish a new process in 2019 in line with other regional EBSA workshops, but inviting it also to include consideration of the 2013 proposals in its deliberations. The outcome of the technical process was a series of descriptions of 17 areas meeting the EBSA criteria, which integrated earlier data with more recent evidence submitted at the 2019 CBD workshop. The workshop output was approved by the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) in the autumn of 2019 and recommended for adoption by CBD COP15 in 2020.

OSPAR (the Commission for the protection of the marine environment of the North East Atlantic)

Another example of cooperation between NEAFC and OSPAR is the “collective arrangement” on area-based management in areas beyond national jurisdiction. The collective arrangement was finalised between NEAFC and OSPAR in 2014, with the aim of widening the cooperation to other competent international organisations operating in areas beyond national jurisdiction, such as the International Maritime Organisation and the International Seabed Authority. This cooperation is not aimed at joint decision or management. Its aim is to ensure that all the organisations are aware of what the others are doing in areas beyond national jurisdiction, and to support actions which are complementary. Thus, actions to promote biodiversity such as the protection of VMEs by NEAFC should not be undermined by other human activity. Such regional cooperation has already had the effect of also improving coordination between ministries at the national level as well as improving the understanding of NEAFC and OSPAR’s respective activities. The meetings have been attended by regional and global intergovernmental organisations as observers. After five annual meetings under the collective arrangement, more specific cooperation has been agreed. This includes a joint request to ICES for scientific advice on deep sea sharks, rays and chimaeras, which may lead to better protections for these species. The ICES response to the request is expected to be ready autumn 2020. In addition, the meetings have been the basis for detailed consultation by OSPAR on a proposed High-Seas seabird focused marine protected area.

Social and Economic Aspects

While the FAO has set out, in its Technical Guidelines for Responsible Fisheries on the Ecosystem Approach to Fisheries, that such approaches must include social and economic aspects, NEAFC has no common regionally agreed objectives on these aspects. The Convention does not provide for common social or economic objectives at the regional level. Thus economic and social aspects are assumed to be considered at the Contracting Party level rather than at the NEAFC level. Rather, Contracting Parties are expected to include social and economic aspects in their assessments at the national level and reflect this implicitly in their negotiation positions.

Ongoing work

The Ecosystem approach to fisheries management will continue to be an important topic for NEAFC in the coming years, including focus on better understanding of changes to the marine ecosystem(s) and practical implications for NEAFC. A major initiative taken by the 2019 Annual Meeting was to revitalise the Working Group on the Future of NEAFC, which had not met since 2013. The aim of the group is to further strengthen NEAFC and ensure that it remains a modern and effective Regional Fisheries Management Organisation. This is in the context of the many developments on a more integrated ocean governance ongoing internationally. The updated Terms of Reference for the group include to identify challenges and relevant international developments in order for the Commission to fulfil NEAFC's objective. This includes examining developments related to the 2019 UNGA sustainable fisheries resolution; the draft UN 'BBNJ' instrument – future roles of NEAFC and ICES; the Informal Consultations of State Parties to UNFSA (in 2020 on the ecosystem approach to fisheries management); the preparations for the 2020 UN Workshop on bottom fishing; and other international developments.

The NEAFC Permanent Committee on Management and Science will also be able to take into account in its own thinking: a) developments in sister organisations such as the North-West Atlantic Fisheries Organization on Ecosystem Approach Framework to Fisheries Management (which is considering options in which the ecosystem can be operationally integrated into fisheries advice and management measures through consideration of the risks of damage or deterioration); b) the ICES Advisory Framework and; c) the outcomes of any relevant discussions at the ICSP.