

Contribution of the Northwest Atlantic Fisheries Organization (NAFO) to NAFO input to the report of the Secretary-General on oceans and the law of the sea, as mandated by UNGA resolution 75/239 of 31 December 2020, entitled “Oceans and the law of the sea”

Background

The Northwest Atlantic Fisheries Organization (NAFO) is an intergovernmental fisheries science and management body. NAFO was founded in 1979 as a successor to ICNAF (International Commission for the Northwest Atlantic Fisheries). NAFO has thirteen (13) Contracting Parties, namely four (4) coastal States Canada, United States of America, France (in respect of St. Pierre et Miquelon) and Denmark (in respect of the Faroe Islands and Greenland), as well as Cuba, the European Union, Iceland, Japan, Republic of Korea, Norway, the Russian Federation, Ukraine and the United Kingdom. The international fisheries managed by NAFO take place outside the 200-mile Exclusive Economic Zones (EEZs) of the four coastal State Contracting Parties and Bermuda.

NAFO's constituent bodies are the Commission, Scientific Council and the Secretariat. The NAFO Scientific Council provides scientific advice to the NAFO Commission, which adopts conservation measures for the species under its mandate. NAFO's mandate covers the fishery resources (all fish, molluscs and crustaceans) within the Convention Area excluding (i) sedentary species over which coastal States may exercise sovereign rights consistent with Article 77 of UNCLOS; and (ii) in so far as they are managed under other international treaties, anadromous and catadromous stocks and highly migratory species listed in Annex I of UNCLOS.

In 2007 NAFO amended its Convention to incorporate an ecosystem approach to fisheries management. Consequently, NAFO has implemented a framework for applying the precautionary approach to fisheries management and it has been developing risk-based management approaches for a number of stocks before the amended Convention came into force in 2017. The amendments also streamline NAFO's decision-making process, strengthen the obligations of Contracting Parties, Flag States and Port States, and institute a formal dispute settlement mechanism.

NAFO also has a comprehensive set of regulations to monitor, survey and control the fishery, including a Joint International Scheme of Inspection, a Vessel Monitoring System (VMS) and port State control measures, which have been aligned to the FAO Port State Measures Agreement. In addition, NAFO designated Vulnerable Marine Ecosystem areas (VMEs), including 14 closed areas (sponge, sea pen and corals) and 6 seamount areas where bottom fishing is prohibited, making 275,265 km² (or 10.34%) of the NAFO Regulatory Area closed to bottom fishing. NAFO also maintains a list of vessels presumed to have engaged in illegal, unreported and unregulated (IUU) fishing and shares this list with other regional fishery management organizations (RFMOs).

In 2018 NAFO completed its second performance review, which addressed: conservation and management; compliance and enforcement; governance; science; international cooperation; and financial and administrative issues. The report of this second performance review was adopted by the NAFO Commission at its Annual Meeting in 2018. The NAFO Commission also formed a Working Group to determine how NAFO should address the performance review's recommendations. At the NAFO Annual Meeting in 2019, NAFO established a process for addressing each of the 37 recommendations, which will be reviewed annually at NAFO's Annual Meeting. The previous NAFO performance review took place in 2011, with all of its recommendations having been addressed.

NAFO cooperates extensively with other international organizations, and routinely shares information with other fishery organizations and UN bodies such as FAO and the UN Division for Ocean Affairs and the Law of the Sea (UN-DOALOS).

IV. Peaceful settlement of disputes

Article XIII (1) of the NAFO Convention provides that, as a general rule, decision making within the Commission shall be by consensus. However, if all efforts to reach consensus have been exhausted, then decisions of the Commission shall, except where otherwise provided, be taken by a two-thirds majority.

Article XV (1) establishes the general duty of NAFO Contracting Parties to co-operate to prevent disputes. However, where a dispute arises between two or more Contracting parties, Article XV (2) requires them to settle it by peaceful means of their choice, including, but not limited to, negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or *ad hoc* panel proceedings. Article XV (3) provides that a dispute concerning the interpretation or application of a measure adopted by the Commission may be submitted to non-binding *ad hoc* panel proceedings. The *ad hoc* panel will present a report with recommendations to resolve the dispute. If no settlement has been reached following the recommendations of the *ad hoc* panel, any of the parties to the dispute may submit the dispute to compulsory proceedings entailing binding decisions pursuant to Section 2 of Part XV of UNCLOS or Part VIII of the UNFSA (Article XV (6)). The parties are then required to provisionally apply any recommendation made by the *ad hoc* panel until a court or tribunal renders a decision.

VIII. Maritime safety and security and flag State implementation

Article 29 of the NAFO Conservation and Enforcement Measures allows Contracting Parties the use of the confidential NAFO VMS data for search and rescue purposes or for maritime safety.

Measures dealing with lost and abandoned gears stipulated in Article 13.10-14 of the NAFO Conservation and Enforcement Measures came into force in 2013.

These measures outline basic protocol when the gears are entangled, lost or abandoned. Fishing masters are required to immediately report the incident, indicating the location and the circumstances to the flag State Contacting Party. The fishing masters must also include in the report their efforts in retrieving the fishing gear. Contracting Parties are required to notify the NAFO Secretariat about the incident. The Secretariat posts the information on the secure part of the NAFO website.

IX. Marine environment and marine resources

The NAFO Scientific Council has a Standing Committee of Fisheries Environment (STACFEN) whose tasks are to:

- develop and recommend to the Scientific Council policies and procedures for the collection, compilation and dissemination of environmental information from oceanographic investigations;
- provide reviews of environmental conditions and advise the Scientific Council on the effects of the environment on fish stocks and fisheries in the Convention Area; and

- encourage and promote cooperation among Contracting Parties in scientific research designed to fill the gaps in knowledge pertaining to the effects of the environment on fish stocks and fisheries as identified by the Scientific Council.

STACFEN climate summaries are presented annually to scientific meetings where stock assessment is being undertaken. Scientific advice and management decisions use both the adopted precautionary approach and the ecosystem approach to fisheries management.

In 2014, the NAFO Commission and Scientific Council established a joint working group on risk-based management strategies, *inter alia*, to further enhance the development and application of the Precautionary Approach Framework to fisheries management in line with Annex II of the 1995 UN Fish Stock Agreement. This joint working group developed the management strategy evaluation (MSE) to the Greenland halibut stock, which is currently under application, and will be considering an MSE on an important redfish stock.

In 2014, the NAFO Fisheries Commission and Scientific Council established a joint working group on its ecosystem approach framework to fisheries management to, *inter alia*, promote the understanding of the functioning and dynamics of NAFO marine ecosystems including species interactions. This Working Group, supported by advice from the Scientific Council developed through the ongoing work of its Working Group on Ecosystem Science Assessment (WG-ESA), provides the primary guidance and recommendations to the Commission regarding the implementation of an Ecosystem Approach to the management of fisheries. The Working Group's responsibilities include the development and application of the Ecosystems Approach to Fisheries (EAF) Roadmap and recommendations on mitigation strategies and measures to avoid significant adverse impacts of bottom fishing activities on vulnerable marine ecosystems, including the evaluation of associated risks.

NAFO also has a Standing Committee on Research Coordination (STACREC) whose activities include:

- develop and recommend to the Scientific Council policies and procedures for the collection, compilation, and dissemination of statistical and sampling information on the living resources and fisheries in the Convention Area;
- coordinate the compilation and maintenance of statistics and records and their dissemination, including liaison with Coastal States in the Convention Area;
- coordinate the planning and execution of international cooperative research in cooperation with Coastal States in the Convention Area;
- encourage and promote cooperation among the Contracting Parties in scientific research designed to fill gaps in knowledge pertaining to fisheries matters identified by the Scientific Council; and
- review and evaluate data and information and advising the Scientific Council on advances in knowledge of biology relevant to the Convention Area.

In recent years, the NEREIDA expedition, a multinational project, conducted multidisciplinary research on sensitive habitats and fishing activities, as well as providing analysis of the fishing resources, in the NAFO Regulatory Area. The surveys have been taking place since 2009. Data collected on these surveys are now being analyzed by Contracting Party scientists and this work is

being used to provide valuable scientific advice for the study and protection of vulnerable marine ecosystems.

NAFO is one of the active RFMO collaborating partners in the development of the FAO Vulnerable Marine Ecosystem Database project which was established in response to the UN General Assembly Resolution 61/105.

A 2008 Resolution that was agreed to by Contracting Parties, follows the 2007 amendments to the NAFO Convention, which came into force on 18 May 2017. This Resolution calls on Contracting Parties to *“take due account of the impact of fisheries on other species and marine ecosystems, and in doing so adopt measures to minimize harmful impacts on living marine resources and marine ecosystems; and take due account of the need to preserve marine biological diversity”*.

NAFO also has adopted an Action Plan in the Management and Minimization of Bycatch and Discards in 2017. The Action Plan will ensure that there is a systematic consideration of the overarching objectives set out below across NAFO bodies. The Action Plan has the following overarching objectives:

1. Effective management and the minimization of by-catch and discards, and improvement of selectivity, in fisheries of the NRA.
2. Accurate reporting of target, non-target and incidental catch.
3. Account for total catch (retained and non-retained) in scientific assessments and management measures.
4. Management measures are adaptive and address changing fishery conditions over time, or differences among areas and fleets.
5. Management measures reflect the precautionary and ecosystem approaches to fisheries management.
6. Identify priority areas for by-catch management, in particular areas where there is a risk of causing serious harm to by-catch species.
7. Ensure linkage to other NAFO bodies doing work related to by-catch management.

The results of the work under this Action Plan are expected to be reviewed by NAFO in 2022.

X. Marine biodiversity

Since 2008, NAFO has been closing areas to bottom fishing to protect, corals, sponges, sea pens and seamount ecosystem. In total, 20 areas have been closed. In addition, work is on-going to review other potential areas and all closed areas will be reviewed in 2021. NAFO has also developed a comprehensive list of VME indicator species. The FAO Guidelines were used extensively in the identification of candidate areas of vulnerable marine ecosystems. They are also being used in the assessment of Significant Adverse Impacts (SAI) of bottom fisheries on VMEs.

The *“Roadmap for Developing an Ecosystem Approach to Fisheries for NAFO”* lays out the organizing framework to develop an Ecosystem Approach Framework. The *“Roadmap”* is proceeding but there are still gaps that need to be addressed. An extensive agenda along with limited human and resource

capacity will require a practical and effective implementation based on priorities and short, medium and long-term objectives.

Work is also on-going by NAFO on the development by NAFO's Scientific Council of ecosystem summary sheets as part of its advice to inform fisheries management decisions.

In 2018, NAFO continued its commitment to the conservation of marine biodiversity in NAFO waters by implementing measures to prohibit the directed fishing of Greenland shark and for Contracting Parties to report on efforts to minimize incidental catches and mortalities.

XI. Marine science

NAFO Contracting Parties continue to collaborate to try to improve understanding and knowledge of the oceans and the deep sea, including the extent and vulnerability of deep-sea biodiversity and ecosystems, by increasing their marine scientific research activities. Many NAFO Contracting Parties take part in scientific research and analyses of fisheries data through various NAFO Committees. NAFO has established a framework to manage a fund to continue to support research on Vulnerable Marine Ecosystems (VMEs) in the NAFO Regulatory Area (NAFO Potential Vulnerable Marine Ecosystems-Impacts of Deep-sea Fisheries — NEREIDA).

In respect to human-related threats, NAFO is an international fisheries management organization with a remit to ensure the long-term conservation and sustainable use of the fishery resources in its Convention Area and, in so doing, to safeguard the marine ecosystems in which these resources are found. As a result, the harmful effects of plastic debris, particularly discarded fishing gears, is a cause for concern. NAFO has implemented measures (Articles 13.10 to 13.14 of NAFO's Conservation and Enforcement Measures) requiring vessels to make efforts to retrieve lost gears and report any which cannot be recovered to the Secretariat.

NAFO has implemented an "*ecosystem approach to fisheries management*" in support of UN General Assembly Resolution 61/105, under which consideration is given to activities, other than fishing, which may impact upon commercial fish stocks of the northwest Atlantic. In 2013, NAFO's Scientific Council made some steps to consider the impact of microplastics, however these were judged to be of minor significance at present, relative to other anthropogenic impacts.

Additionally in 2018, NAFO continued its efforts towards further developing its ecosystem approach to fisheries management by requesting that the NAFO Scientific Council develop a 3-to-5-year workplan to ensure its prioritization and support. In this context, NAFO looks to further progress in the implementation of its Ecosystem Approach Roadmap.

XV. Coordination and cooperation

NAFO cooperates in general with UN and FAO and their consultative processes (e.g. CWP, ASFA, FIRMS, COFI), Regional Fishery Body Secretariats Network (RSN), other RFMO meetings in an observer capacity, conducts joint scientific Symposia and has recently established a joint working group with its sister organization, Northeast Atlantic Fisheries Commission (NEAFC) on data management.

NAFO was a partner in the five-year ABNJ Deep Seas Project, led by FAO and UNEP-WCMC, which ended in 2019, with a significant in-kind contribution over the course of the initiative. Currently NAFO is considering a similar commitment to the next phase of this Project (ABNJ Deep Sea Fisheries

Project). NAFO has also been exploring mechanisms for dialogue and engagement with other international organizations that may have interests in the northwest Atlantic. NAFO has also been involved, in an observer capacity, in the discussions under UNCLOS to develop an internationally legally binding agreement on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) and participates in the Informal Consultations under the UN Fish Stocks Agreement organized by the UN Division for Ocean Affairs and the Law of the SEA (UN-DOALOS).

The NAFO Secretariat continued its involvement in the Sustainable Ocean Initiative (SOI) Global Dialogue with Regional Seas Organizations and Regional Fishery Bodies on Accelerating Progress Towards the Aichi Biodiversity Targets and Sustainable Development Goals, organized by the Secretariat of the Convention on Biological Diversity (CBD).