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Report of the Working Group on the Allocation of
Fishing Rights to the Contracting Parties of NAFO

March 26-27, 2003
Miami, Florida, USA

NAFO
Dartmouth, N.S., Canada
2003

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**Report of the Working Group on the Allocation of Fishing Rights
to the Contracting Parties of NAFO**

**26-27 March 2003
Miami, Florida, USA**

The Working Group on Allocation of Fishing Rights to Contracting Parties of NAFO met in accordance with the decision taken by the General Council at the 23rd Annual Meeting, September 2002.

1. Opening of the Meeting

The meeting was called to order by the Chairman, Mr. H. Koster (European Union), who welcomed the delegates to Miami. A list of participants is attached (Annex 1).

The delegations of Canada, the European Union (EU), Korea, the Russian Federation, Ukraine and the United States (U.S.) made brief opening statements (Annexes 2-7)

2. Appointment of Rapporteur

Ms. Jennifer Anderson (U.S.) was elected as Rapporteur.

3. Adoption of Agenda

The agenda, as attached (Annex 8), was adopted.

**4. Development of Options Whose Terms are Explicit and Predictable for
Allocation to Contracting Parties**

**Allocation of fishing opportunities for stocks not currently
allocated (qualification and allocation criteria)**

The Chair presented an overview of the previous meetings of the Allocation Working Group and noted that papers regarding allocation had been distributed in advance of the meeting. The first paper, submitted by the U.S. (Allocation Working Group W.P. 03/1) (Annex 9), was modeled on principles previously adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The paper proposed the adoption of a broad set of guidelines that could be used to advise the Fisheries Commission on all aspects of future allocation discussions. The second paper, distributed by Norway (Report of the Norway-FAO Expert Consultation on the Management of Shared Stocks), was offered to provide background on the management of straddling and transboundary fish stocks by other RFMO's. The Chair further noted the Chair's interpretive notes from the April 1999 and March 2000 Allocation Working Group Meetings (Allocation Working Group W.P. 00/1) (Annex 10) could be used to help facilitate discussions of the meeting.

Initial deliberations concentrated on whether to move forward with discussions based on the Chair's interpretive paper, and thus focused on criteria specific only to fish stocks not currently allocated, or to concentrate on the broader scope proposed by the U.S. paper. Several Parties noted that there are significant differences between the NAFO and ICCAT organizations and that the ICCAT criteria modified by the U.S. could not easily be applied to NAFO. It was agreed to work from the Chair's interpretive paper, with some consideration given to the U.S. proposal. The Chair further clarified that the ultimate goal of the Working Group would be to provide the Fisheries Commission with a broad, non-binding framework, from which to make allocation decisions.

The Working Group then examined the Chair's interpretive notes. It was agreed that the notes should be titled and developed into a working paper. Several Parties suggested that the new title must make it clear

that the guidelines in the working paper apply only to fish stocks not currently allocated. The delegate from the U.S. expressed concern and noted that any criteria adopted should apply to all stocks.

Discussions then turned to the adaptation of the Chair's interpretive notes into a working paper. Much of these discussions were centered on maintaining consistency throughout the document and the elimination of repetitive text. Further clarifications on points within the Chair's notes were also debated. Parties agreed that the reference to fishing patterns under Section C of the Chair's notes was specific to historical fishing performance during a particular period of time. There was also agreement that any fishing history would be based on legal catches authorized by NAFO.

With regard to the reference in the Chair's paper to Article XI (4) of the NAFO Convention, some Parties were of the opinion that the allocation criteria set forth by Article XI (4) were too narrow, however, no agreement was reached on this matter. After some discussion, there was general agreement that such a detailed account of Article XI (4) was unnecessary and that a more general reference in the working paper would be sufficient. It was further agreed that it was not necessary to include Sections D or E of the Chair's notes in the new paper.

Regarding allocation criteria, the Chair noted that some items in the U.S. proposal were not accounted for by the Chair's initial paper. The Working Group then examined the U.S. proposal. There was general agreement that many of the elements found in the U.S. paper were either covered by the revisions made to the new working paper or unnecessary. However, the Parties did agree to include portions from Sections III (D) and IV of the U.S. proposal in the new working paper.

The Chair then presented a draft of the working paper for discussion by the Group (Allocation W.G. Working Paper 03/3 Draft Guidelines for future allocation of fishing opportunities not currently allocated).

The Working Group reviewed each point of the paper. A brief discussion ensued regarding the title of the working paper. The Representative from the U.S. requested that the title be placed in brackets unless the scope of the paper was expanded to include allocation criteria for all fisheries. Several Parties voiced opposition to the U.S. position and the Chair noted that the Group could not reach consensus regarding the title of the document. The Group also debated whether the reference in the document to the 1995 UN Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks was appropriate. It was agreed by most Parties, with the exception of Latvia and Lithuania, to include the reference with slight modifications.

The Chair noted that the final draft of the paper, Allocation W.G. Working Paper 03/3 – Revision 3 (Annex 11) is a reflection of the Working Group's progress. Further, the paper will be put forward to the Fisheries Commission as an Annex to the report of the meeting. Because Contracting Parties are not in agreement on the paper's scope and the reference to the UN Agreement, it was agreed not to make specific recommendations on the adoption of the guidelines to the Fisheries Commission

**Fisheries regulated or to be regulated and allocated
in terms other than quotas (effort limits)**

The Chair asked the Contracting Parties if it could be agreed to apply the guidelines developed in Working Paper 03/3 to effort allocations. Several Parties were of the opinion that the guidelines developed in Working Paper 03/3 should not be linked with effort allocations. Some Contracting Parties also noted that the allocation of fishing opportunities was the result of regulating fishing mortality, either by quantitative catch restrictions or fishing effort. It was agreed to use the term "fishing opportunities" covering both options. The Chair concluded that for the allocation of future fishing effort only, the guidelines developed by the group could be applied, should the Fisheries Commission chose to do so.

Allocation of fishing opportunities for stocks currently managed and allocated by TAC and quota

“Others” Quota

The Contracting Parties only briefly discussed allocation of the others quota. The Chair provided the following summary of discussions from the previous working group meetings: The size of the others quota (for example, between 0 and 15% of the quota allocation) should be left up to the discretion of the Fisheries Commission; in the future, the possible allocation of the others quota(s) will not be excluded; and new members, having demonstrated the capacity to build up a stable fishing pattern in accordance with NAFO rules, may participate in the allocation of the others quota, provided the Fisheries Commission has approved of this matter.

All Parties were very reluctant to enter into discussions on these suggestions. However, none of the Parties rejected these ideas from the outset. The Chair noted that the Parties appeared to be flexible with regard to the discussion of the others quota. He further requested that the Fisheries Commission provide additional direction and a mandate for the Group to explore the use of the others quota in the future.

“Block” Quota

The Chair requested a status update from the Contracting Parties involved in the block quota discussions (Latvia, Lithuania, Estonia and Russia). Several delegates reported that progress had been made during recent negotiations but that no agreement had been reached. The Chair urged the Parties involved to resolve the block quota issue quickly. It was agreed that the Parties would meet in Russia by the end of May 2003, to finalize discussions. The Delegate from the Ukraine requested that the Ukraine be included in these discussions. The Chair noted that the organization of the meeting, including the extension of invitations to Contracting Parties, would be left up to the Russian Federation. Furthermore, the Chair requested that the Fisheries Commission be duly informed on the outcome of the meeting. Parties agreed that, in accordance with the NAFO Convention, the Fisheries Commission may proceed with the allocation of the block quota, should no resolution be reached during the block quota discussions.

5. Report to the Fisheries Commission

The Representative from the U.S. referred the Working Group to the terms of reference for the Working Group on the Allocation of Fishing Rights (FC Working Paper 02/30-Revised). He noted that the Working Group had not addressed many of the issues that were requested by the Fisheries Commission and asked if the Group would consider reconvening in Halifax, Nova Scotia. Several Parties were of the opinion that the Group had made significant progress and that it was necessary to have additional ideas tabled prior to convening another Working Group meeting. The Chair noted that the Group had not exhausted all of its responsibilities as a Working Group but that it was not possible to make further progress at this meeting. The Working Group made no recommendations to the Fisheries Commission.

6. Other Matters

There were no other matters.

7. Adjournment

The Chair adjourned the meeting at 5:00 pm on 27 March 2003.

Annex 1. List of Participants

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Annex 2. Opening Statement by Canada

Mr. Chairman, distinguished delegates, it is a pleasure for Canada to participate in this Working Group Meeting on the Allocation of Fishing Rights.

We would like to thank the US Government for hosting the meeting in a warm place such as Miami as it offers us a much welcomed respite from the winter months we have gone through in Canada. We also extend our appreciation to the NAFO Secretariat for providing the usual high level of logistical support for the meeting.

Mr. Chairman, this will be the fourth time that NAFO delegates meet to address matters related to allocation of fish stocks in the NAFO Regulatory Area. Back in 1999, you provided delegates with interpretative notes on qualifying and allocation criteria for stocks not allocated. In 2000, you elaborated further on these criteria. Here we are today to continue our work on these issues. For Canada it will be important to build on key ideas from these previous discussions.

You will recall Mr. Chairman that it was generally agreed at these meetings that Article XI of the NAFO Convention provided the primary basis for both qualifying and allocation criteria. Many contracting parties supported the need for stability of allocations, recognizing the possibility of modest, gradual changes over time when stocks have rebuilt. Other important principles were “zonal attachment”, and reference fishing patterns during a representative fishing period. This should form the base of our discussions over the next few days. Any significant departure from current NAFO sharing arrangements would not be conducive to achieving results for the September Fisheries Commission meeting.

For Canada, conservation and sustainable fisheries are the overarching objectives that will guide our considerations at this meeting. NAFO has a responsibility to ensure stocks in the NAFO Regulatory Area are not overfished and that effective management measures are in place. In this respect there are a number of stocks that are currently unregulated and where the absence of catch limits and quotas are problematic for effective conservation. For Canada, achieving results on unregulated stocks would be an important priority for discussion at this meeting.

The delegations of both the United States and Norway have submitted papers for the deliberations at this Working Group. While we would prefer to focus the discussion on items on the agenda, these papers, in addition to the Chair’s Interpretative Notes, will provide guidance and useful references during our discussions.

Mr. Chairman, previous meeting of the Working Group have shown that the issues we are about to tackle are complex and sensitive. Developing a shared understanding as well as a report for the September Fisheries Commission’ meeting over the next few days will be challenging. Mr. Chairman, Canada looks forward to working with all parties at this table to find practical solutions to these important issues for NAFO.

Annex 3. Opening Statement by the European Union

The Community would like to thank the US Administration for the excellent conditions in which we will be working over the next three days. We also thank the Executive Secretary and her staff and indeed welcome the Executive Secretary to this first meeting. I'm sure it will be an eye-opener to her as regards to how NAFO operates and a good run-in for the Annual Meeting and the STACTIC meeting later in the year. Chairman, we also would like to thank you for your willingness to guide us in this process on the difficult issue of allocation criteria.

We are of the view that the topics for discussion this week are extremely important ones. We feel they are important because we are conscious that NAFO has the need to ensure a certain stability and balance and to respect traditional fishing patterns but on the same level it must also recognise the interests of all the Parties to NAFO and in particular to those who have joined NAFO in recent times. Not to take account of those interests would in our view risk undermining the functioning of this organisation and therefore, as in the ICCAT process, the Community approaches its work in this group with an open mind as regards to what will be the ultimate outcome.

There are a number of documents on the table which merit consideration during our three days and for us it is important that the work that has already been undertaken under your chairmanship over the last three sessions is acknowledged fully and therefore your working document from session three is in our view the essential basis for our work here. That having been said, we, like the US and other Parties around the table, participated very fully in the ICCAT exercise and therefore will be interested to hear from the USA how it sees some of the issues on the agenda addressed through its paper. I don't think either the conditions or the reality within ICCAT are quite the same as within NAFO but I think we have to be open enough in our consideration of all these issues to be able to take on board new elements that might be brought to the floor during our discussions so we look forward to hearing from the US as regards to how they see their paper as meshing in and fitting in with our work which has been accomplished to-date.

In terms of our general objective from this meeting, I think we need after three sessions to give careful consideration as regards what should be the outcome of this session. The allocation debate is by definition a dynamic one and is not one fixed in time and therefore I think that the Commission requires from us some guidelines which will structure its work in relation to allocation in the forthcoming Annual Meeting but also in subsequent Annual Meetings. So once again Chairman let me underline that we approach this exercise with an open mind. I think you should also reflect upon the fact that the allocation debate over a range of regional fisheries organisations tends to concentrate on different aspects. There is no uniform approach to the allocation criteria within organisations and just like ICCAT has its own specificity, its own special characteristics, so too we feel that NAFO has its own characteristics that need to be taken into account in our work.

Thank-you Chairman.

Annex 4. Opening Statement by the Republic of Korea

Mr. Chairman, Distinguished Delegates.

It is a great honor for me to participate in this working group meeting. On behalf of the Korean Government, I would like to thank the Chairman, the Secretariat of NAFO and US delegation for organizing and preparing this meeting.

Being a responsible fishing nation, the Republic of Korea has been actively participating in the international efforts, and the Republic of Korea joined NAFO in 1993 for conservation and management of fisheries resources in NAFO waters.

As you know, historically NAFO waters were very important fishing ground for Korea, but Korean Government made their fishing vessels withdraw from NAFO waters on the ground that appropriate quota would be allocated to them as a Contracting Party.

However, it has passed 10 years after becoming Contracting Party and implementing NAFO rules without sufficient quota to work again even one fishing vessel. And I think it has been time to consider Korea as historical fishing country in NAFO waters to be able to work again through appropriate quota allocation.

I hope that fishing quotas can be allocated in the most satisfactory manner due to this working group meeting.

Thank-you.

Annex 5. Opening Statement by the Russian Federation

Mr. Chairman, Distinguished Delegates, Ladies and Gentlemen,

First of all the Russian Federation would like to thank Mr. Chairman and the host of this event for their spadework for and organization of this meeting and to greet all the people sitting around this table.

Along with the other Contracting Parties Russia has a longstanding experience in fisheries and scientific research in the NAFO Convention Area. In recent years the interest to this area has largely increased.

Since the last Working Group meeting issues have amassed which require sensible, equitable and timely solution with due regard for interests of all Contracting Parties.

At present in NAFO certain balance is reached at which a part of the fishable stocks has already been allocated among the traditional fishing Contracting Parties and should not be subject to a revision in the nearest future. The other stocks are presently under moratorium and allocation of fishing rights for these stocks may be considered for each stock separately after their recovery.

Fisheries statistics on shrimp in Div. 3M is being accumulated with the purpose of future change-over from regulation by effort to the use of TAC.

Some stocks are not currently regulated although they are fished and a number of interested Contracting Parties are being increased.

Russia recognizes that the present situation is pretty delicate and hopes for judicious approach of all Contracting Parties in solution of issues constituting the substance of the present meeting.

Thank you.

Annex 6. Opening Statement by Ukraine

Mr. Chairman, distinguished Delegates.

First of all let me join to words of thanks expressed here before to the US Government for hosting this Meeting.

As far as we realize, every Regional Fisheries Management Organization strives to keep solved two closely interrelated main tasks: to conserve the stocks of the area and to establish and maintain the appropriate regime of their utilization.

As it was stressed at the October 2002 Norway-FAO Expert Consultations, any cooperative Arrangement can be succeed only if each and every participant expected to receive the anticipated benefits which led him to that Arrangement.

Let me also recall the Korean opening statement at the Sautiago 2002 NAFO meeting, where it was stated that this country was enforced to stop its fishing activities after NAFO accession in 1993, owing to very small fisheries opportunities obtained.

Unfortunately Ukraine also cannot enjoy its participation in NAFO since accession in 1999 and just on the same reason, despite of our historical catches in North West Atlantic since 70-th as well as of participation in development of some special fisheries of the area and of a great dependance of our 50-million population on the ocean fish resources.

Being the responsible fishing nation, the participant of number of the most important International Agreements and member of some Regional Fisheries Management Organizations and bilateral Agreements, Ukraine is striving to use all legal ways to obtain the appropriate fishing opportunities. May I suppose this our meeting will essentially contribute to the NAFO Allocation practice, to improvement of the arrangements and scheme available making them more explicit and fair, and by this way to increase the stability of that Organization.

Thank you.

Annex 7. Opening Statement by the United States

Mr. Chairman, distinguished Representatives, members of the Secretariat, the United States would like to welcome you to Miami, Florida for this meeting of the NAFO Working Group on Allocation of Fishing Rights. We would also like to take this opportunity to thank the Secretariat for their work in planning and executing this meeting.

As many of you are aware, the United States has been a vocal proponent of an allocation process within NAFO that considers the needs of all Contracting Parties. In order to ensure effective conservation and management of the fisheries resources under its purview, NAFO needs to ensure that its Contracting Parties adhere to the duties associated with membership. At the same time, the Organization must take steps to meet the needs of its membership. The current system of allocation in the Organization, sad to say, does not achieve this and, it is thus a barrier to the future success of the Organization. We know that we are not alone in this opinion.

The United States strongly supported the creation of this working group and has been an active participant in all of its meetings. Past meetings of the working group have explored a myriad of complex issues surrounding allocation decision-making in NAFO. It is true that we have not yet seen consensus on options thus far identified for such decisions. But the United States continues to believe that the work done by this group can be of great benefit to all members of NAFO and will enhance the overall effectiveness of the Organization.

This working group meeting comes at a time when there have been significant developments, involving many of the Contracting Parties represented here today, in international principle and practice relating to allocations in Regional Fisheries Management Organizations (RFMOs). Two new agreements -- the convention establishing SEAFO and that establishing a new body to manage highly-migratory stocks in the Western and Central Pacific -- have already articulated general principles to guide allocations decisions. Now, existing older organizations are looking to adopt the same. ICCAT, in particular, has developed and effectively implemented allocation criteria in extremely contentious and complex fisheries. After much discussion, the ICCAT membership recognized the difficulties associated with developing a "black box" approach to allocation, where specific allocation criteria are designed to be applied to specific stocks. Instead, they focused their efforts on sharpening the general principles of allocation and creating a broad list of qualifying and allocation criteria that addresses the concerns and claims of all members of the Organization. These criteria are unweighted and have no specific application to any concrete stock. This provides for a "level playing field" in all allocation discussions, with no parties disadvantaged before stock-specific negotiations begin.

The United States supports the work done in ICCAT to address allocation issues. Thus, we have distributed a white paper that, for this meeting builds upon the ICCAT lists of qualifying and allocation criteria for potential use in NAFO. It is our hope that this paper might be helpful as a platform for further discussion by this working group. We would further suggest that, at this meeting, instead of addressing unallocated fisheries, allocated fisheries, and effort fisheries separately, the working group should consider the criteria identified in the white paper for application to all allocation discussions in NAFO. Of course, the list of criteria in the paper only represents a starting point. We recognize that ICCAT and NAFO are different organizations working under different circumstances. Still, it is our hope to generate thought and discussion that might result in a list suitable for use in NAFO.

Mr. Chairman, it is important to understand allocation issues in context. The majority of NAFO-managed stocks are under moratoria. These stocks have enormous potential which can be realized if they are permitted to recover. All NAFO parties have the potential to benefit from such stock recovery. We must not lose our focus on rebuilding, eliminating overfishing, and minimizing bycatch.

Much remains to be done to develop an allocation process within NAFO that considers the needs of all Contracting Parties. The next three days provide us with an opportunity to lay the foundation for such a process. Progress in this regard can only improve the Organization as a whole, and without it, the long-term welfare of it will suffer.

Mr. Chairman, again, I would like welcome all delegations and thank you in advance for your continuing commitment to this working group and hard work at this meeting.

Annex 8. Agenda

1. Opening by Chairman (H. Koster, EU)
2. Appointment of Rapporteur
3. Adoption of Agenda
4. Development of options whose terms are explicit and predictable for allocation to Contracting Parties for the following situations:
 - Allocation of fishing opportunities for stocks not currently allocated
 - Qualifying criteria
 - Allocation criteria
 - Fisheries regulated or to be regulated and allocated in terms other than quotas (e.g. “effort limits”)
 - Allocation of fishing opportunities for stocks currently managed and allocated by TAC and quota
 - “others” quota
 - “block” quota
5. Report to the Fisheries Commission
6. Other matters
7. Adjournment

Annex 9. U.S. White Paper on NAFO Allocation (Allocation W.G. Working Paper 03/1)

Allocation of fishing rights to NAFO Contracting Parties has been a source of longstanding discussion within the Organization. This paper seeks to provide a foundation for further development of the NAFO allocation process by identifying general principles that may be applied to all future allocative decisions within the Organization.

NAFO Allocation Discussions

At the 1997 NAFO Annual Meeting, the Fisheries Commission formed the Working Group on the Allocation of Fishing Rights to Contracting Parties of NAFO. The Terms of Reference for this working group provided guidance for the development of appropriate options for allocation. These options were to take into account such considerations as: current NAFO allocations practices, the needs of Contracting Parties, relevant provisions of the NAFO Convention and other applicable international agreements, as well as the need for NAFO to function effectively. The Working Group was further directed that allocation options should include terms that were explicit and predictable for allocation to Contracting Parties from: current fisheries with NAFO TACs, fisheries not previously subject to NAFO TACs, new fisheries, closed fisheries being reopened, and fisheries for which fishing rights were or would be allocated in terms other than quotas (e.g., effort limits).

Although the Allocation Working Group met intersessionally during 1998-2000, progress has been slow and has been marked by a lack of consensus on key issues. Initial discussions within the working group focused on broad issues relating to access to fishing opportunities. While attempts by the group to define “real interest” were never fully resolved, the Organization was able to adopt a resolution to guide the expectations of future new members to the Organization as a result of these discussions. In addition, the Working Group began looking at qualifying criteria for allocations, as well as allocation criteria. Possible scenarios for re-utilization of allocated quota and re-allocation of fishing opportunities were also examined.

A number of Contracting Parties submitted working papers during this period attempting to give practical application to the broader discussions of principle. Many of these proposals contained allocation templates for the specific types of fisheries identified in the Working Group Terms of Reference. However, when it became clear that broad discussions on a comprehensive strategy for allocations within the Organization were not resulting in consensus, it was agreed that allocation issues should be addressed in a stepped approach, based on fishery type, with first consideration given to fisheries not previously subject to NAFO TACs and fisheries for which fishing rights were or would be allocated in terms other than quotas (e.g., effort limits). The necessity of this focused approach was underlined by on-going questions relating to allocation in new and developing fisheries (e.g., Div. 3M and 3L shrimp).

During its most recent meeting in March 2000, the Working Group focused on continued development of a broad strategy for allocation of future fishing opportunities for stocks not currently allocated. The Working Group attempted to create non-exhaustive, non-prioritized “shopping lists” relating to both qualifying criteria and allocation criteria with regard to such opportunities. In addition, the Working Group examined possible options for fishing opportunities on the margins of stocks currently managed under TAC. Much of this discussion related to the possible creation of an “others” quota. However there was no agreement regarding possible sources for such a quota, nor was it determined who should have access to the fish contained therein.

Due to the limited substantive progress of the working group and the large number of intersessional meetings on the 2001 schedule, it was agreed at the 2000 NAFO Annual Meeting that work should be suspended until the 2001 annual meeting. The 2001 Annual Meeting was subsequently cancelled. At the 2002 Annual Meeting, the Fisheries Commission agreed that the Working Group should meet during the 2003 intersessional period.

Other Issues for Consideration

To a large degree the inability of the Allocation Working Group to agree on a comprehensive strategy for allocation of fishing opportunities in NAFO can be traced to a basic difference in perspective between the older and newer members of the Organization. Due to the stressed status of many of the fisheries resources under the purview of NAFO, a number of the valuable stocks once available to the NAFO membership are now under moratoria or have only very limited TACs. NAFO Parties that once enjoyed national quotas for these stocks are of the opinion that, should any of these resources recover, those Parties with historical fisheries within the Organization should retain fishing rights under the percentage shares in place when the stocks were healthy. This fishing history argument is supported by the early allocative activities of NAFO, as well as by the practices of many other Regional Fisheries Management Organizations (RFMOs). Along with Coastal State status, fishing history has in the past been the primary vehicle for those members wishing to pursue quotas in any given fishery (new or otherwise). Provisions identifying these considerations in allocative decisions can be found in Article XI of the NAFO Convention, and are also present in the Convention texts and in practice in many other RFMOs. No other allocative guidance is present within the NAFO Convention.

It should be noted that, despite past practice within NAFO (and some other RFMOs) of allocation based solely on Coastal State status and fishing history, circumstances both within and outside of the Organization have changed considerably in recent years. Within the Organization, fishing moratoria are in place for a number of NAFO's most valuable and important stocks. The impact of this reduction in historic fishing opportunities is complicated by calls for fishing opportunities from new NAFO members. This difficult situation has led to somewhat of a departure from the allocative template of the past, and NAFO has shown some flexibility and creativity in dealing its current circumstances.

In recent years, new stocks have come under NAFO management and new fishing opportunities have become available to Contracting Parties. NAFO's attempts to deal with the allocative questions associated with these opportunities have departed considerably from past practices. In attempting to address not only the concerns of Coastal States and members with a fishing history, but of *all of its membership*, NAFO has embarked on a new path. These actions to some degree reflect a broad change in international perspective relating to the rights of all RFMO members. NAFO is not the only one of the older RFMOs experiencing this shift in perspective among its membership.

Outside of NAFO, international law pertaining to fishing management has developed in such a way as to actively encourage States (and fishing entities) to join RFMOs and other fishing arrangements. International instruments such as the UN Fish Stocks Agreement, while not detailing how allocation should take place, do provide guidance as to determining the nature and extent of participatory rights in RFMOs. This guidance includes considerations such as: coastal State status, fishing history, contributions of new and existing members (to conservation and management, science, etc.), dependence on the stocks in question, and developing State status.

Furthermore, a number of new and existing RFMOs have taken positive steps to embrace a more all-inclusive approach to allocation. Negotiations of new instruments, such as the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, have considered allocative issues and integrated appropriate guidance into their Convention texts. Other RFMOs, such as the International Commission for the Conservation of Atlantic Tunas (ICCAT), have taken steps to ensure that allocative decisions are made in such a way as to consider the needs of all Parties.

While the NAFO Allocation Working Group has taken some steps to identify qualifying and allocative criteria, there is a need to finalize these considerations. The United States is of the opinion that the relatively successful efforts of other RFMOs in this regard should be considered for application in NAFO. Therefore, the United States has adapted the criteria agreed by ICCAT for application to NAFO allocation decisions. They are attached to this paper for discussion purposes by the Working Group.

CRITERIA FOR THE ALLOCATION OF FISHING POSSIBILITIES

I Qualifying Criteria

Participants will qualify to receive possible quota allocations within the framework of NAFO in accordance with the following criteria:

1. They must be a Contracting Party.
2. They must have the ability to apply the conservation and management measures of NAFO, to collect and to provide accurate data for the relevant resources and, taking into account their respective capacities, to conduct scientific research on those resources.

II Stocks to Which the Criteria Would be Applied

These criteria should apply to all stocks when allocated by NAFO.

III Allocation Criteria

A. Criteria Relating to Past/Present Fishing Activity of Qualifying Participants

1. Historical catches of qualifying participants.
2. The interests, fishing patterns and fishing practices of qualifying participants.

B. Criteria Relating the Status of the Stock(s) to be Allocated and the Fisheries

1. Status of the stock(s) to be allocated in relation to maximum sustainable yield, or in the absence of maximum sustainable yield an agreed biological reference point, and the existing level of fishing effort in the fishery taking into account the contributions to conservation made by qualifying participants necessary to conserve, manage, restore or rebuild fish stocks in accordance with the objective of the Convention.
2. The distribution and biological characteristics of the stock(s), including the occurrence of the stock(s) in areas under national jurisdiction and on the high seas.

C. Criteria Relating to the Status of the Qualifying Participants

1. The needs of the coastal fishing communities which are dependent mainly on fishing for the stocks.
2. The needs of the coastal States of the region whose economies are overwhelmingly dependent on the exploitation of living marine resources, including those regulated by NAFO.
3. The socio-economic contributions of the fisheries for stocks regulated by NAFO to the developing States, especially small island developing States and developing territories(*) from the region.
4. The respective dependence on the stock(s) of the coastal States, and of the other States that fish species regulated by NAFO.
5. The economic and/or social importance of the fishery for qualifying participants whose fishing vessels have habitually participated in the fishery in the Convention Area.
6. The contribution of the fisheries for the stocks regulated by NAFO to the national food security/needs, domestic consumption, income resulting from exports, and employment of qualifying participants.
7. The right of qualified participants to engage in fishing on the high seas for the stocks to be allocated.

D. Criteria Relating to Compliance/Data Submission/Scientific Research by Qualifying Participants

1. The record of compliance or cooperation by qualifying participants with NAFO's conservation and management measures.
2. The exercise of responsibilities concerning the vessels under the jurisdiction of qualifying participants.
3. The contribution of qualifying participants to conservation and management of the stocks, to the collection and provision of accurate data required by NAFO and, taking into account their respective capacities, to the conduct of scientific research on the stocks.

IV. Conditions for Applying Allocation Criteria

1. Allocation criteria should be applied in a fair and equitable manner with the goal of ensuring opportunities for all qualifying participants.
2. Allocation criteria should be applied by the Fisheries Commission on a stock-by-stock basis.
3. Allocation criteria should be applied to all stocks in a gradual manner, over a period of time to be determined by the Fisheries Commission, in order to address the economic needs of all parties concerned, including the need to minimize economic dislocation.
4. The application of the allocation criteria should take into account the contributions to conservation made by qualifying participants necessary to conserve, manage, restore or rebuild fish stocks in accordance with the objectives of the Convention.
5. The allocation criteria should be applied consistent with international instruments and in a manner that encourages efforts to prevent and eliminate over-fishing and excess fishing capacity and ensures that levels of fishing effort are commensurate with NAFO objectives.
6. The allocation criteria should be applied so as not to legitimize illegal, unregulated and unreported catches and shall promote the prevention, deterrence and elimination of illegal, unregulated and unreported fishing, particularly fishing by flag of convenience vessels.
7. The allocation criteria should be applied in a manner that encourages cooperating non-Contracting Parties to become Contracting Parties, where they are eligible to do so.
8. The allocation criteria should be applied to encourage cooperation between the developing States of the region and other fishing States for the sustainable use of the stocks managed by NAFO and in accordance with relevant international instruments.

(*) For the purposes of this document, the term "territories" refers only to the territories of those States that are Contracting Parties to the Convention in respect of those territories alone.

**Annex 10. Chair's interpretive notes from the April 1999 and March 2000
Allocation Working Group Meetings** (Allocation Working Group W.P. 00/1)

Agenda point 4:

Development of a broad strategy of allocation of future fishing opportunities for stocks not currently allocated (see Annex 11 of NAFO/GC Doc. 99/4" interpretative notes by the chair attempting to clarify discussions on Agenda points 6 and 7", and Annex 2 of NAFO/GC Doc. 99/4, "Terms of Reference").

- Qualifying criteria
- Allocation criteria

When allocating fishing opportunities, the Fisheries Commission will proceed in accordance with the following points:

- A. The Commission will identify the Contracting Parties which are eligible for and interested in the allocation of the relevant fishing opportunities. Contracting Parties who are members of the Fisheries Commission and may exercise the right to vote, will be considered eligible for allocation. The Fisheries Commission will consider Contracting Parties which fulfill one or more of the following criteria as interested in the allocation:
 - Where appropriate (straddling stocks) the relevant coastal state.
 - Contracting Parties whose vessels have traditionally fished the relevant resources.
 - Contracting Parties who have undertaken extensive efforts to ensure the conservation of such stocks in particular by providing surveillance and inspection of international fisheries under the international scheme of joint enforcement.
 - Contracting Parties who have undertaken significant substantial contribution to research and data collection for the relevant resources.
 - Contracting Parties whose economy is overwhelmingly dependent on fisheries.
 - Contracting Parties hosting small coastal communities which are dependent mainly on fishing for the stocks regulated by NAFO.
- B. The Commission will determine, in taking into account any relevant information or advice provided to it by the Scientific Council, the fishable stock(s) or, where appropriate, the portion of the fishable stock(s) in the Regulatory Area to be allocated to Contracting Parties who are eligible and interested in the allocation.
- C. The Commission may take into account the following criteria for the determination of the size of the fishing opportunities to be allocated to Contracting Parties who are eligible and interested in the allocation.

Allocation Criteria

- Reference fishing pattern converted in the relative share of the Contracting Parties concerned.
- The setting aside of a lump sum as others quota intended for Contracting Parties who have no record of fishing on the stock concerned.
- Fixing a minimum size for quota to be allocated to Contracting Parties
- Considerations
 - pursuant to Article XI (4) of the NAFO Convention
 - relating to the contribution to research and data collection
 - relating to the needs of small coastal communities
 - relating to the dependency on fisheries

- D. The criteria listed under points A and C are indicative, apply simultaneously and do not represent an order of importance or priority.
- [E. Notwithstanding points A and C, the Fisheries Commission may set aside and regulate certain fishing opportunities available to vessels of parties which are not a Contracting Party to the NAFO Convention, who have signed a protocol on the integral acceptance of the NAFO Conservation and Enforcement Measures, enabling such Party to cooperate with NAFO.]

Annex 11. Draft Guidelines for future allocation of fishing opportunities for the stocks not currently allocated¹⁾

(Allocation W.G. Working Paper 03/3-Rev. 3)

The Fisheries Commission,

RECALLING Article XI(4) of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (hereafter the “Convention”);

NOTING the relevant provisions of the UN Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks;

DETERMINED to ensure the adoption of proposals by a fair and equitable allocation of fishing opportunities in a non-discriminatory manner to Contracting Parties;

ACKNOWLEDGING the need to ensure stable, explicit and predictable relative shares of Contracting Parties in the fishing opportunities established by the Fisheries Commission;

RECOGNIZING the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing;

DESIRING to guide the adoption of proposals in accordance with Article XI(4) of the Convention for future allocation of currently non-allocated fishing opportunities by the adoption of guidelines which are indicative and non-exhaustive, apply simultaneously and do not represent an order of importance or priority;

HAS AGREED to apply the following guidelines when allocating fishing opportunities in accordance with Article XI(4) of the Convention:

Qualification Criteria

1. Each Contracting Party fulfilling the following criteria shall qualify for allocation of fishing opportunities:
 - Be a member of the Fisheries Commission, who:
 - May exercise the right to vote;
 - Collects and provides accurate data for the relevant stocks;
 - Contributes to scientific research on NAFO stocks;
 - Exercises effectively jurisdiction over the vessels flying its flag operating in the Convention Area; and
 - Ensures compliance with the proposals adopted in accordance with Article XI of the Convention and notably the NAFO Conservation and Enforcement Measures; and
 - Have an interest in the allocation of fishing opportunities of the relevant stocks in one or more of the following ways:
 - be a coastal state for relevant straddling stocks;
 - have vessels that have traditionally fished the relevant stocks in accordance with NAFO rules, where applicable;
 - have undertaken extensive efforts to ensure the conservation of such stocks in particular by providing surveillance and inspection of international fisheries under the international scheme of joint enforcement;

- have undertaken significant contribution to research and data collection for the relevant stocks;
- have economies that are overwhelmingly dependent on fisheries; or
- have coastal communities that are dependent on fishing for the stocks regulated by NAFO.

Allocation considerations

2. A part of the fishing opportunities of the fishable stock(s) or, where appropriate, the portion of the fishable stock(s) in the Regulatory Area, may be set aside as an others quota intended for Contracting Parties who have no record of fishing on the stock concerned. Minimum fishing opportunities to be allocated to Contracting Parties may be established for the relevant stock(s).

Allocation Criteria

3. The allocation of the fishing opportunities of the fishable stock(s) or, where appropriate, the portion of the fishable stock(s) in the Regulatory Area, shall be based on the following criteria:
 - historical fishing in accordance with NAFO rules during a representative reference period;
 - contribution to research and data collection on the stock concerned;
 - needs of coastal communities which are dependent on fishing for the stock concerned; and/or
 - contribution to the NAFO Conservation and Enforcement Measures.

¹⁾ Allocated stocks :

- Cod in Div. 3M
- Redfish in Div. 3M
- [Redfish SA2, Div. 1F and 3K]
- A. Plaice in Div. 3M
- Shrimp in Div. 3M
- Cod in Div. 3NO
- Redfish in Div. 3LN
- A. Plaice in Div. 3LNO
- Yellowtail flounder in Div. 3LNO
- Witch flounder in Div. 3NO
- Capelin in Div. 3NO
- Squid (*Illex*) in Subareas 3 and 4
- Shrimp in Div. 3L
- Greenland halibut in Div. 3LMNO
- Cod in Div. 2J3KL