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Report of the  
NAFO Working Group on Non-Contracting Party Fishing Activity  
27-29 March 1990, Dartmouth, Canada

Introduction

The Chairman welcomed the participants (see Appendix I) and hoped that the results of the Working Group would provide a list of options which would suggest solutions to the problems confronting the group with respect to fishing activities of Non-Contracting Parties within the NAFO Regulatory Area.

The mandate as approved by the General Council for the Working Group is appended as Appendix II. In addition the Chairman's opening remarks are attached as Appendix III.

Background

The delegates from Canada and the EEC each presented background papers providing information on Non-Contracting Party fishing activity within the Regulatory Area including an estimate of total catches and effort by Non-Contracting Parties. It was agreed that there appeared to be no contradiction between the estimates provided in each paper with respect to catch and effort by Non-Contracting Parties. The need for more complete and reliable data was reiterated. The background papers as revised were accepted by the Working Group (see NAFO/GC Docs. 90/1 and 90/2).

Proposals and Discussions

Suggested options for consideration by Contracting Parties were presented for discussion by the Working Group (see GC Docs. 90/3 and 90/4).

While no unanimity could be arrived at by the Working Group, with respect to the options offered, each of the Contracting Parties representatives to the Working Group commented on them. A summary of the comments made by each Contracting Party follows:

EEC

In introducing its comments, the EEC Delegation emphasized that in its view fishing activities of vessels of Non-Contracting Parties in the NAFO Regulatory Area should not be characterized as "flag of convenience" activities. The term was clearly defined in the United Nations Convention on the Law of the Sea in a way which did not correspond to such activities and implied a discriminatory connotation in certain contexts. The Working Group would be advised to stick to the mandate established by the General Council.

- It must be recognized that the activities of Non-Contracting Parties could not be viewed as illegal as the Law of the Sea Convention spelled out the right of all States to engage in fishing on the high seas, as reflected in the NAFO Convention.
- Based on the principle that access to fishing on the high seas was supported not only within the Convention of the Law of the Sea but as well within the NAFO Convention, the EEC considered that the solution to the problem lay within the management scheme of NAFO.
- The legal rights and obligations of Non-Contracting Parties as outlined in the Law of the Sea Convention would have to be taken into account in any representations to such Parties.
- In substance, the EEC delegation shared the concerns of the other Contracting Parties regarding the problems arising from Non-Contracting Parties' fishing activities in the NAFO Regulatory Area. It did not however consider that the approach envisaged in the Canadian options paper was the appropriate way to address the situation.
- It was unrealistic to believe that the fishing activities of Non-Contracting Parties could be totally stopped. Experience had shown that Non-Contracting Parties did not intend to stop fishing within the Regulatory Area. However, NAFO should endeavour to try to bring those activities within the framework of the Organization.
- While most of the options provided by the Working Group had political connotations, it must be remembered that the task of the Working Group was to provide options for the General Council to consider. That had been accomplished by the Working Group.
- In those circumstances, it would appear unproductive at the meeting to go into a detailed discussion of each of the options presented in the Canadian paper, but the EEC delegation would recommend that both the Canadian and EEC options be appended in their entirety to the Working Group's Report to the General Council.
- Because Contracting Parties have shown a reluctance to provide quotas for Non-Contracting Parties who might request entry into NAFO, a solution to be considered might be to include all or a portion of the quantity of fish presently being taken by Non-Contracting Parties into NAFO allocations for those Non-Contracting Parties who elect to join NAFO. That might mean the reassessment of the F<sub>0.1</sub> management option as had been advocated by the EEC on numerous occasions.
- It should be noted that the response by the USA to the Executive Secretary for the USA to become a Contracting Party indicated that they were unable to join NAFO because there was no guarantee of adequate quota allocations<sup>1</sup>. That response pointed out that incentives must be offered, namely quotas, for potential new members to join NAFO.
- Canada made reference in its comments that no fish was available for Non-Contracting Parties in support of the EEC option for incentives for those Parties to join NAFO. However, Non-Contracting Parties were presently taking fish out of the Regulatory Area and would

continue to do so. Therefore in effect the fish being removed by Non-Contracting Parties should be recognized.

- The implementation of the EEC approach should be gradual and NAFO should first consider inviting Non-Contracting Parties to participate as observers in annual meetings of NAFO and then decide at a later date regarding permanent membership.
- The NAFO Executive Secretary should continue as in the past to seek catch and other statistics from Non-Contracting Parties whose vessels fish in the NAFO Regulatory Area.
- The EEC would continue to forward information on Non-Contracting Parties activities within the Regulatory Area as it became available. However, as regards non-Community ports, that information would not be available from Community sources. The EEC would however encourage the provision of such information.
- It was the EEC's view that a trade-related approach could have adverse legal and political implications and in any case might have limited effectiveness. Any measure of that kind, as far as the EEC was concerned, would have to be consistent with its international obligations, such as the EEC-ACP Lome Convention.

#### DENMARK

- It was suggested by the Danish delegation that the Canadian options be grouped into three headings for discussions:
  - Diplomatic Action
  - Retaliatory Measures
  - Internal Initiatives
- A further suggested heading for discussion was Possible Incentives.
- While the representative of Denmark agreed that Article 116 of the Law of the Sea was important, he stated that Article 118 of the Law of the Sea should also be considered.
- The representative of Denmark agreed that it was unrealistic to try to stop all Non-Contracting Parties from fishing in the NAFO Regulatory Area.
- And that a distinction must be made between "genuine states" fishing in the Regulatory Area and vessels fishing under flags of convenience. While it might be possible to deal with "genuine states" flying their respective flags it would be difficult to deal with vessels flying flags of convenience as those could change to suit the situation. Different situations should be met with different means.
- In fact the question of providing incentives would only be raised in the case of genuine states such as the United States.

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<sup>1</sup> Letter of the Embassy of the United States of America to the Executive Secretary of NAFO, dated Ottawa, July 29, 1988.

The Danish delegation defended furthermore that:

- It was important, when looking at incentives for Non-Contracting Parties, that present Non-Fishing Contracting Parties were also considered, for it would be unfair if such Parties were put in a worst situation than new Parties.
- Consideration should be given to increasing the "Others" quota and allow new Parties and present Non-Fishing Contracting Parties to fish on the increased "Others" quota.
- The idea of additional quotas being available in the future should not be discarded as that was the aim of the management programs within NAFO. Some options for increased quota availability might be from increased TAC's, individual Contracting Parties giving up some of their allocated quotas, or a combination.
- It should be noted that one of the reasons given within NAFO to maintain the use of  $F_{0.1}$  as the criterion for management of stocks was the amount of fishing carried out by Non-Contracting Parties within the Regulatory Area.

#### CUBA

- The Cuban representative sympathized with the Canadian efforts to stop Non-Contracting Parties from fishing in the NAFO Regulatory Area, but stated that he would have difficulty in supporting any extreme measures to accomplish that goal.
- In respect to the EEC proposal again he could not offer his support for an option that might mean giving away fish that was not available.
- Nonetheless he would like to remind the Working Group that when Cuba entered ICNAF she stated that developing nations would have her support for entry into the Commission and that Cuba would be willing to make sacrifices if necessary to accommodate their needs. However Cuba could not support the allocation of quotas to new members without guarantees that it would satisfy a legitimate need and really strengthen the goals and objectives of NAFO.

#### USSR

- It was recognized that the fishing by Non-Contracting Parties in the Regulatory Area was a difficult problem to resolve.
- The USSR representative would recommend that the Working Group should review each of the options and should separate options into those that could be supported by the Working Group and those that could not.
- It was agreed that, as stated by the EEC, the Working Group should not discuss proposals that were outside NAFO jurisdiction.

- With regard to the Canadian options paper the USSR representative shared the Canadian point of view that the fishing of Non-Contracting Parties should be stopped or reduced, but at the moment could only support the option with regard to the diplomatic approach. The remainder of the options were outside the authority of the USSR representative to the Working Group.

#### CANADA

- The representative of Canada felt it would be beneficial to focus on some of the differences between the two submitted papers on options.
- The representative of Canada stressed that implementation by Contracting Parties of the options proposed in its paper would have to be in accordance with their domestic law and international obligations.
- The representative of Canada then referred to the serious threat outlined in the resolution for the establishment of the Working Group, which was proposed by the EEC.
- The Canadian paper outlined options to stop or reduce the fishing of Non-Contracting Parties while the EEC paper proposed incentives for Non-Contracting Parties to join NAFO, indicating a fundamental difference of approach.
- The representative of Canada indicated that NAFO had no such incentives to offer Non-Contracting Parties (no excess fish).
- In fact to accommodate those incentives would require member nations to reduce their already inadequate allocations.

The representative of Canada argued further that:

- It was already agreed that Non-Contracting Parties were taking an estimated 30-35000 tonnes of fish within the Regulatory Area and that by even going to Fmax there would be insufficient fish to meet the requirements of Non-Contracting Parties.
- To accept the EEC approach would mean continuation of the status quo. It would also constitute a reward for Non-Contracting Parties' vessels fishing in the Regulatory Area and an invitation for other Non-Contracting Parties to begin fishing within NAFO Regulatory Area.
- Some Non-Contracting Parties provided information on their fishing activity within the Regulatory Area and that should be pursued with all Non-Contracting Parties.
- With regard to flags of convenience the chances were remote that those nations would provide information to NAFO or be willing to join NAFO. It was a question in some Non-Contracting Parties, for instance Panama, of a "flag of convenience industry" rather than a fishing industry and it was doubtful whether the authorities had any information whatsoever on the fishing activity of vessels flying their flags. That was supported from the responses the Executive

Secretary had obtained from his correspondence with those nations. However Canada continued to support the present approach by the Executive Secretary to Non-Contracting Parties regarding fishing in the Regulatory Area.

- The representative of Canada challenged the EEC view that past attempts to solve the problem of Non-Contracting Party fishing in the NAFO Regulatory Area had failed, pointing out that Canada was the only Contracting Party that had taken sustained action to stop those fisheries by closing ports to Non-Contracting Parties' fishing vessels. Canada would continue that action. Canada was unaware of any action other Contracting Parties had taken to reduce the fishing of Non-Contracting Parties within the Regulatory Area.

The representative of Canada also pointed out that:

- References had been made to Article 116 of the Law of the Sea and Canada agreed that all states had a right to fish on the high seas. However one must take into account that that right was subject to certain conditions outlined in that Article. The attention of the Working Group should also be drawn to Article 118 of the Law of the Sea which called for the cooperation of states in the management and conservation of the living resources.
- And also to the fact that Article 87 defined the freedom of the high seas but again stated it was subject to the conditions of Section 2 (Articles 116-120).
- The representative of Canada made reference to the EEC document (GC Doc. 90/5) in which it indicated information and action that would be beneficial to NAFO concerning Non-Contracting Parties' fishing activities:
  - List of type of vessels involved
  - Gather data on their tonnages, capacity, etc.
  - Explore the possibilities of gathering landing data, by contacting the Non-Contracting Parties involved, or from States where the landings and/or transshipments might take place.

Canada would continue to provide information on Non-Contracting Parties fishing in the Regulatory Area. The Canadian representative in particular requested the EEC to seek from France information on landings and transshipments in St. Pierre & Miquelon.

- Other Contracting Parties not represented at the Working Group should be requested to provide information on landings made by Non-Contracting Parties at their ports.

**CONCLUSION**

In conclusion, while it was not possible for the Working Group to agree on the options presented in the Working Papers, the Working Group agreed that additional relevant information was required on the fishing activities of Non-Contracting Parties in the NAFO Regulatory Area. The Working Group agreed that Contracting Parties where possible should provide information that included details on the type, flag and name of vessels and reported or estimated catches by species and area. In addition, available information on landings, re-export and transshipments by Non-Contracting Parties in Contracting Parties' ports should be provided to NAFO. If possible that information should include the name and flag of the vessels and quantities by species landed, re-exported or transshipped.

The Working Group suggested that the General Council establish a standing Working Group to compile all the information provided by the Contracting Parties and present a report for consideration at each annual General Council meeting.

Furthermore it is suggested that the General Council continue to examine any possible options to address that serious threat to the objectives and goals of the Organization. Also, it was requested that the Executive Secretary continue to request Non-Contracting Parties to provide to NAFO relevant statistics of their vessel activities and catches within the Regulatory Area.

APPENDIX INAFO Working Group on Non-Member Fishing Activities - March 1990LIST OF PARTICIPANTS

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APPENDIX II

Proposal for the Delegation of the EEC  
for the Establishment by the General Council  
of a Working Group to Examine the Fishing Activities  
of Non-Contracting Parties

There has been a significant increase in the non-member activity within the Regulatory Area over the past five years. Information from inspections and sightings by vessels and aircraft of Contracting Parties show that the number of non-member vessels has increased from eleven vessels (11) in 1984 to forty-one (41) in 1988. This is approximately 20% of activity by all Contracting Parties.

Estimates on catches for non-member activity indicate that those vessels could have taken approximately 30,000 t of groundfish in 1988; this represents 30% of the total quotas allocated by NAFO to Contracting Parties.

Whereas the non-member activity is having an increasingly negative effect on both fishing opportunities for Contracting Parties and the various stocks affected.

It is resolved that a Working Group be established by the General Council of experts nominated by the Contracting Parties, to examine any possible options to address this serious threat to the objectives and goals of the Organization.

A full report of the Committee deliberations will be presented to the General Council at the next annual NAFO meeting.

NAFO Working Group on Non-Contracting Parties Fishing Activities - March 1990

## Opening Statement

by

O. Muniz, Chairman

Ladies and Gentlemen:

It is my pleasure to welcome you to the NAFO Headquarters for the meeting of this Working Group which was established at the last annual meeting of the General Council for the purpose of examining the fishing activities of Non-Contracting Parties in the NAFO Regulatory Area.

As you all know, information obtained from inspections and sightings by vessels and aircraft of Contracting Parties had shown that the number of non-member vessels had increased from 11 vessels in 1984 to 41 in 1988 and was still growing after it had reached what had been estimated as some 20% of the activity by all Contracting Parties.

In fact, in terms of catch, it was estimated that non-member activity represented by 1988 approximately 30% of the quotas allocated by NAFO to Contracting Parties.

It is this serious situation that dictates our duty to present to the General Council at its next annual meeting, in a full report of our deliberations, our proposals to remedy the situation.

Our task is not an easy one, but we should realize that we must arrive at the proposed solutions at this very meeting. Moreover, given the pressure of the threat which is developing rapidly and the difficulties NAFO has in affording and organizing new meetings at short notice, we should not postpone decisions at the present time.

Towards this goal the Contracting Parties have been requested in NAFO letter GF/9-236 of October 1989 to gather and bring to this meeting all available material, updated information or data and pertinent positions regarding the problem. Specifically, members were requested to provide:

1. All values and characteristics of fishing effort applied by the various Non-Members, since the beginning of NAFO.
2. Data on Non-Member flags involved, number of vessels, nationality of master and crews, past or present relations with ICNAF/NAFO.
3. Criteria the Contracting Parties apply, or are ready to consider, for possible application of Article XIX of the NAFO Convention. In addition, to consider also any applicable Articles of the Law of the Sea, taking into account the position of the Contracting Parties and the known Non-Members regarding the approval and application of the final text of that Law.

The Chair hopes that papers with data referring to 1989 will be presented at this meeting, and also looks forward to the presentation by some Contracting Parties of papers suggesting solutions to the problem confronting this Group. I would like to stress that every paper will be taken into consideration, even if support for its ideas might seem improbable at the start. I feel that this point is important, because this Group has no powers to decide, but only to advise the General Council which should come to a decision.

It should be remembered that this Working Group was formed under the terms of Article XIX of the NAFO Convention. I would like also to refer to Articles 116 to 119 of the Informal Composite Negotiating Text of the United Nations Third Conference on the Law of the Sea. I refer to this text because to some countries this document is just a text, and not the Law of the Sea. However, the international conduct of many nations in the world has already been guided by this text, and therefore we do not think we can disregard it as being of little value. In fact, in the preamble to the NAFO Convention there are two important points to bear in mind. One stipulates that the 200 nautical miles coastal states jurisdiction is understood as being in accordance with relevant principles of international law. The other emphasizes that the work of the Third United Nations Conference on the Law of the Sea in the field of fisheries has been taken into account.

I also believe that there are two widely accepted principles to be remembered at all times:

1. The right of any country to fish on the high seas, and
2. That in any zone of the high seas all states have the duty to adopt, or to cooperate with other states in adopting, all measures necessary for the conservation of the living resources of the high seas.

I would like to suggest that we are now in the position to establish our Work Program.

My proposal of an "Agenda-Work Program" looks forward to:

- 1st - Review of reports
  - Analysis of data
  - Discussion
- 2nd - Receive proposals
  - Discuss proposals

The above with the idea to prepare an agreed to paper by all Working Group members that will be presented for consideration at the NAFO General Council in September 1990.

It is my intention, if you agree, to forward this completed paper through the Executive Secretary to all Contracting Parties to facilitate discussions at the next annual meeting. Therefore, it is essential that we have an agreed to paper prior to the end of our present meeting.

In our view, the Final Report should cover the following points:

- Introduction
- Background
- Proposals and Discussion
- Recommendations

Before I close these opening remarks, I would like to ask you to allow me to also act as the Representative from Cuba as well as Chairman of this Group. Obviously any time I would wish to speak for Cuba I will take off my hat of Chairman and will call your attention to my situation as Representative from Cuba.

It is now only necessary to wish us all a good meeting and a useful report to solve the serious problem we are facing.

Thank-you.