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Report of the Standing Committee on Fishing Activity
of Non-Contracting Parties in the Regulatory Area (STACFAC)

4-7 February 1997

NAFO Headquarters, Dartmouth, N.S., Canada

NAFO
Dartmouth, N.S., Canada
1997

**Report of the Standing Committee on Fishing Activity of Non-
Contracting Parties in the Regulatory Area (STACFAC)
4-7 February 1997
Dartmouth, N.S., Canada**

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Report of the Standing Committee on Fishing Activity of Non-Contracting Parties in the Regulatory Area (STACFAC)

Dartmouth, N.S., Canada
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1. Opening by the Chairman

The Meeting was called to order by the Chairman, Dr. J.-P. Plé (USA), who welcomed the delegates to this Meeting.

Delegates from the following Contracting Parties were present: Canada, European Union, France, Iceland, Japan, Norway and the USA. (Annex 1)

In his opening remarks, the Chairman stressed the importance of finding a resolution to the problem of the fishing activities of Non-Contracting Parties (NCPs) in the NAFO Regulatory Area (NRA). Although, as reported at the last Annual Meeting, only six NCP vessels were reported fishing in the NRA -- a considerable decrease from a few years ago -- this activity continues to undermine the conservation efforts adopted by the NAFO Contracting Parties. Moreover, if NAFO does not demonstrate to such NCPs its determination to deal with this problem, the recovery of the stocks in the NRA will likely attract more such NCP vessels. The Chairman stressed that any resolution must be effective, practical and consistent with international law. In this context, the decisions on this issue by the International Commission for the Conservation of Atlantic Tunas (ICCAT), at its 1996 Annual Meeting, sent a strong message to NCPs. The Chairman hoped NAFO will likewise send a strong message to NCPs that fish in the NRA.

2. Appointment of Rapporteur

Mr. Fred Kingston (EU) was appointed rapporteur.

3. Adoption of Agenda

The Agenda was adopted with the understanding that the points in Item 9 were not exhaustive. (Annex.2)

4. Review of 1996 final information on activities of Non-Contracting Party (NCP) vessels in the NAFO Regulatory Area (NRA)

Canada presented a paper on the activities of NCP vessels in the NRA from 1 January 1996 to 31 December 1996 (Annex 3). This paper indicated that seven NCP vessels had fished in the NRA during this time. Total catches were estimated at 5700 tons, of which 900 tons were cod, 4725 tons were redfish and 75 tons were flatfish. One vessel, the DANICA, registered in Honduras, had done most of the fishing, catching about 4150 tons of redfish.

It was noted that there was a decrease in the number of NCP fishing vessels over the same period the previous year (1995) and considerably less than compared with the late 1980's and early 1990's. Contracting Parties considered that this reduction can be attributed to factors such as the poor state of the stocks, certain success of various diplomatic demarches and recent developments, including the UN Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

**5. Review of 1996 final information on landings and transshipments
of fish caught in the NRA by Non-Contracting Parties**

No additional information on landings since the last Annual Meeting was available.

**6. Review of information on imports by Contracting Parties of
groundfish species regulated by NAFO from Non-Contracting
Parties whose vessels have fished in the NRA**

No additional information on imports since the last Annual Meeting was available.

**7. Reports by Contracting Parties on diplomatic contacts with Non-Contracting
Party Governments concerning fishing by their vessels in the NRA**

The Chairman referred to the information from the NAFO Secretariat concerning the disposition of the 1996 NAFO diplomatic demarches. The Chairman noted that at the request of NAFO, the United States was requested to deliver the demarches to Belize and Sierra Leone, on behalf of NAFO, and that Canada was requested to deliver the demarches to Panama and Honduras, on behalf of NAFO. The USA reported that it has so far received no responses to the demarches to Belize and Sierra Leone. Canada reported that it has not yet received a response to the demarche to Panama. Canada had not yet received confirmation that the demarche to Honduras had been delivered.

8. Discussion on the openness of NAFO

The Chairman noted that the mandate of the STACFAC is to address the problems arising from the fishing activities of NCPs in the NRA, including the issue of reflagging. However, in previous meetings of STACFAC, discussions took place which seemed to link the consideration given to a State to joining NAFO with that State's record of fishing activities in the NRA as a Non-Contracting Party. The Chairman recognized how some Parties may see linkage of these two issues, but noted that STACFAC does not have the authority to address issues associated with new membership.

Instead, all issues of membership in NAFO should be discussed by the General Council. The Chairman added further that STACFAC should recommend that the General Council address this specific issue in light of the work by STACFAC to develop a scheme to deal with NCP fishing activities in the NRA; this view was accepted by STACFAC.

STACFAC therefore recommended, without prejudice to the views of any Contracting Party participating in STACFAC, and in light of the work within STACFAC to develop a scheme to deal with Non-Contracting Party fishing activities in the NAFO Regulatory Area, that the General Council should examine what consideration should be given to any Non-Contracting Party fishing activities in the NRA by a State which seeks to join NAFO.

9. Discussion on the specific elements of a scheme to deal with fishing vessels from Non-Contracting Parties fishing in the NRA

a) What are the relevant legal basis to support a NAFO scheme to deal with NCP fishing in the NRA

Concerning the relevant legal basis, reference was made to the UN Convention on the Law of the Sea (UNCLOS), the UN Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Agreement), the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the FAO Code of Conduct for Responsible Fisheries, the NAFO Convention, the 1994 General Agreement on Tariffs and Trade (GATT), particularly Article XX(g), under the World Trade Organization (WTO), and general principles of international law, particularly the "due regard" principle.

The EU drew a distinction between the legal obligations for NAFO members, such as the NAFO Convention, and the legal obligations for NCPs, such as the "due regard" principle.

b) Should measures be directed at a State or vessel

In discussing this topic, it was noted that whether a measure is directed at a State or vessel depends upon the type of measure to be used. Certain Contracting Parties (Canada, USA) expressed a preference for open language to allow flexibility for the most practical and effective result. Other Contracting Parties (EU, Norway, Iceland, France) expressed a preference for a vessel-by-vessel approach. In this context, Iceland distributed a copy of its proposed new Fishing Outside Iceland's Jurisdiction Act, of which Article 10 implements a vessel-by-vessel approach.

There appeared to be agreement that the NAFO scheme should adopt a vessel by vessel approach.

The EU also presented a paper (Annex 4) outlining a broad strategy to be considered for a possible NAFO Scheme to deal with NCP fishing vessels. This paper was a focus of some of the discussion under the remaining points of this agenda item.

c) What criteria and procedures should be used to designate a vessel flying the flag from a NCP as "non-cooperative":

- sightings in the NRA
- diplomatic demarches
- courtesy boardings
- port State inspection

There was extensive discussion on this item, focusing on the issue of how to identify a non-cooperative vessel, the purpose of which was to determine the necessary conditions to be fulfilled in order to apply appropriate remedial measures. Proposed elements of this could include the sighting and identification of a NCP vessel fishing in the NRA and/or a diplomatic demarche to the flag State. Certain delegations (Canada, Norway, USA) expressed the view that a sighting was a sufficient condition for action, while others (EU, Japan) indicated that further steps were required as noted above.

Concerning the sighting and identification of a NCP vessel fishing in the NRA, Canada noted that it conducts extensive surveillance of the NRA. Consequently it would be unlikely to miss such a vessel particularly if it has been there for some time. Certain delegations also expressed the need for a second sighting of the NCP vessel in question before remedial measures can be taken.

Concerning diplomatic demarches, certain delegations (EU, Norway, USA) indicated that it was a means to communicate the sighting of a NCP fishing vessel in the NRA to the Flag State. Some delegations (EU, USA) also saw it as an opportunity to induce cooperation from the NCP. Canada mentioned the need for an expedited procedure for such demarches.

Concerning courtesy boardings, Canada presented a paper (Annex 5) indicating its courtesy boardings on NCP vessels in the NRA from 1 January 1996 to 31 December 1996. The EU noted that if a NCP vessel allows such a boarding, it is an indication of a willingness to cooperate. On the other hand, France pointed out that a refusal to allow such a boarding is evidence of non-cooperation.

d) What measures should be incorporated in the scheme

- port closures
- denial of landings in the ports of NAFO Contracting Parties
- trade measures

There was again extensive discussion on this item. Much of the discussion focused on whether port closures or denial of services should be incorporated into the scheme. Certain delegations (Norway, Canada, USA) were in favour of such a measure. Norway suggested that port closures should extend to vessels which support or supply any NCP fishing vessel from a non-cooperative NCP. Other delegations (EU, France) expressed opposition to incorporating port closures into the scheme. The EU also noted that port closures may be contrary to WTO rules, not falling under the exception of GATT Article XXIV.

Concerning denial of landings, the EU noted that the inspection of the NCP fishing vessel in question, in order to determine whether to deny landings under its proposal, could also be considered a "measure" under this scheme.

The Chairman noted that trade measures should be considered, but there was little discussion on this topic. The EU expressed the opinion that trade measures would be contrary to WTO rules.

e) If denial of landings adopted, what fish would be affected, how should the scheme deal with fish caught outside of the NRA

There was discussion that if NAFO regulated species are found as a result of a port inspection of a NCP fishing vessel from a non-cooperating NCP, then the entire catch will be denied landing.

- f) If port closures adopted, with the exception of cases of force majeure, how restrictive would such closures be

Since there was no consensus on whether port closures should be adopted, this issue was not discussed.

- g) Should a "black list" of "non-cooperative vessels" be established. If yes, how and when are such vessels added to the list, and how are they removed from the list.

Contracting Parties were hesitant about the use of the term "black list". Contracting Parties did agree that the scheme needs to address when remedial measures would no longer be applicable to a particular vessel.

- h) Should the measures under the scheme distinguish between cooperative NCP and non-cooperative NCP vessels, if yes how

The Chairman noted that a cooperative NCP may be considered one which responds favourably to a NAFO demarche and takes action against its vessel(s), while a non-cooperative NCP would be one which does not. During the course of the discussion, reference was made to the introduction of the concept of a "cooperating party" in a recent ICCAT resolution, the practice under the North-East Atlantic Fisheries Convention (NEAFC) to allocate shares of certain TACs to non-members, and Article 17 of the UN Agreement concerning non-members of organizations and non-participants in arrangements. Certain delegations (EU, France) questioned the relevance of making such a distinction, since any scheme should target fishing vessels of non-cooperative NCPs. France suggested instead that the concept of a non-cooperative vessel is more practical, since certain NCPs may not have effective control over their vessels and it could help to address the problem of reflagging. The USA, on the other hand, found merit in identifying cooperative NCPs, assuming there are commercial fisheries for unregulated species in the NRA.

- i) How should the scheme deal with vessels engaged in transshipment which receive fish caught by a "non-cooperative" NCP fishing vessel

The discussion focused on the problem of transshipments at sea from NCP fishing vessel to a cargo vessel. Japan noted difficulties in imposing any type of measure on such cargo vessels, because its domestic legislation does not consider such vessels as fishing vessels and its location could make the enforcement impracticable. Certain delegations (Norway, Iceland, Canada) wanted the problem addressed in any scheme. In this context, Norway considered that transshipment to cargo vessels of NAFO Contracting Parties could at least be prohibited. Iceland noted that this issue is addressed in its domestic legislation. It was also noted that the UN Agreement Article 23(3) also permits a port State to prohibit certain transshipments. Some delegations (Iceland and Norway) pointed out that vessels which receive catches taken in the NRA by "non-cooperative" vessels should be treated in the same way as the vessels fishing in the NRA.

- j) Should the measures represent minimum standards or a common rule

The Chairman stated that the issue to be addressed under this item is whether a NAFO Contracting Party would have discretion to take additional measures unilaterally in this regard.

Canada expressed a preference for minimum standards, noting Canada's different perspective on the NRA as a coastal state and the need for flexibility. Norway stated that only if the measures agreed were effective enough, the measures could be common rules. The EU preferred common rules, noting that the mention of minimum standards could be perceived by NCPs as indicating some disagreement amongst NAFO members. The USA recognized the need for common rules, but added that there should be some flexibility to impose tighter measures, consistent with international law.

- k) In the event the measures under the scheme prove ineffective in deterring NCP fishing in the NRA, what subsequent measures can be taken

Contracting Parties agreed that any scheme can be reviewed and revised.

10. Preparation and distribution for comment/revision a Chairman's Provisional Draft NAFO Scheme to Deal with NCP Fishing in the NRA

On the basis of the previous discussion, the Chairman prepared and circulated a Draft of General Principles to be reflected in any scheme to deal with NCP fishing activities in the NRA (Annex 6).

11. Report and Recommendations to the General Council

STACFAC recommends, without prejudice to the views of any Contracting Party participating in STACFAC, and in light of the work within STACFAC to develop a scheme to deal with Non-Contracting Party fishing activities in the NAFO Regulatory Area, that the General Council should examine what consideration should be given to any Non-Contracting Party fishing activities in the NRA by a State which seeks to join NAFO.

12. Other Matters

STACFAC decided that another intersessional meeting was required before the next Annual Meeting, noting that the General Council at its 18th Annual Meeting had recognized the possible need for a second intersessional meeting of STACFAC. The EU proposed to host such a meeting 15-16 May 1997 in Brussels, Belgium. It was agreed that this meeting will continue work toward developing a scheme to deal with Non-Contracting Party fishing activities in the NRA.

13. Adjournment

The meeting adjourned at 1100 hrs on 7 February 1997.

Disposition of the Report

The Report was reviewed by the Representatives of the General Council during 12 March - 12 April 1997. Having presented and incorporated several editorial comments, the Report was adopted by the General Council.

Annex 1. List of Participants

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SECRETARIAT

- 1. I. Chepel, Executive Secretary
- 3. I. Crunkshank, Senior Secretary

Annex 2. Agenda

1. Opening by the Chairman, J. -P. Plé (USA)
2. Appointment of Rapporteur
3. Adoption of Agenda
4. Review of 1996 final information on activities of non-Contracting Party (NCP) vessels in the NAFO Regulatory Area (NRA)
5. Review of 1996 final information on landings and transshipments of fish caught in the NRA by non-Contracting Parties
6. Review of information on imports by Contracting Parties of groundfish species regulated by NAFO from non-Contracting Parties whose vessels have fished in the NRA
7. Reports by Contracting Parties on diplomatic contacts with non-Contracting Party Governments concerning fishing by their vessels in the NRA
8. Discussion on the openness of NAFO
9. Discussion on the specific elements of a scheme to deal with fishing vessels from non-Contracting Parties fishing in the NRA
 - a) What are the relevant legal basis to support a NAFO scheme to deal with NCP fishing in the NRA
 - b) Should measures be directed at a State or vessel
 - c) What criteria and procedures should be used to designate a vessel flying the flag from a NCP as "non-cooperative":
 - sightings in the NRA
 - diplomatic demarches
 - courtesy boardings
 - port State inspection
 - d) What measures should be incorporated in the scheme
 - port closures
 - denial of landings in the ports of NAFO Contracting Parties
 - trade measures
 - e) If denial of landings adopted, what fish would be affected, how should the scheme deal with fish caught outside of the NRA
 - f) If port closures adopted, with the exception of cases of force majeure, how restrictive would such closures be

- g) Should a "black list" of "non-cooperative vessels" be established. If yes, how and when are such vessels added to the list, and how are they removed from the list?
 - h) Should the measures under the scheme distinguish between cooperative NCP and non-cooperative NCP vessels, if yes how?
 - i) How should the scheme deal with vessels engaged in transshipment which receive fish caught by a "non-cooperative" NCP fishing vessel while fishing in the NRA?
 - j) Should the measures represent minimum standards or a common rule?
 - k) In the event the measures under the scheme prove ineffective in deterring NCP fishing in the NRA, what subsequent measures can be taken?
10. Preparation and distribution for comment/revision a Chairman's Provisional Draft NAFO Scheme to Deal with NCP Fishing in the NRA
 11. Report and Recommendations to the General Council
 12. Other Matters
 13. Adjournment

Annex 3. Paper Presented by Canadian Delegation

PRELIMINARY

Non-Contracting Party Fishing Activity in the
Regulatory Area

January 01 - December 31, 1996

Table 2 provides a list of NCP vessels that fished in the NAFO Regulatory Area in 1996. Nations of registry are identified.

Table 2 Non-Member Vessels 1996	
	Danica - Honduras
	Austral - Sierra Leone
	High Sierra - Sierra Leone
	Porto Santo - Sierra Leone
	Leone - Sierra Leone
	Leone III - Panama
	Ocean - Belize

Note: High Sierra was identified as having Belize (not Sierra Leone) registry in the January - July report. This was an error. However, this mistake was not reflected in numbers.

Table 3 1996 NCP Total Groundfish Catches				
NATION	Vessels	Effort	Catch	C/R
Belize	1	15	75	5.0
Honduras	1	175	4,150	23.7
Panama	1	50	275	5.5
Sierra Leone	4	180	1,200	6.7
Overall Total	7	420	5,700	13.6

Table 4 1996 NCP Groundfish Catches by Species

	Estimated Catch (Mts)				
	Cod	Redfish	Flounder	Greenland Halibut	Other
	75	---	---	---	---
	---	4,150	---	---	---
	250	---	25	---	---
	575	575	50	---	---
	900	4,725	75	---	---

Low NCP activity and catch for the 1986-1996 period.

Table 5 NCP Fishing Activity 1986 to 1996

# of Different Vessels	Estimated Effort (Days)	Estimated Catch (Mts)	Catch Rate
30	2,030	19,300	9.5
29	2,640	29,400	11.1
41	3,130	35,200	11.2
47	3,290	35,400	10.8
44	4,420	46,800	10.6
34	4,000	47,300	11.8
35	3,775	42,600	11.3
31	3,217	34,200	10.6
27	2,234	22,500	10.1
13	900	10,950	12.2
	420	5,700	13.6

Table 6 NCP Groundfish Catches 1986 to 1996

Year	Estimated Catch (Mts)					
	Cod	Redfish	Flounder	Greenland Halibut	Other ¹	Total
1986	4,500	---	14,600	---	200	19,300
1987	5,400	20,900	3,100	---	---	29,400
1988	7,800	23,500	3,000	---	900	35,200
1989	5,900	24,000	4,500	---	1,000	35,400
1990	15,400	19,400	5,300	3,300	3,400	46,800
1991	11,600	17,050	11,650	6,150	850	47,300
1992	8,600	23,500	5,700	4,300	500	42,600
1993	4,100	9,950	15,900	4,150	100	34,200
1994	9,500	8,100	2,900	1,200	800	22,500
1995	2,250	7,700	1,000	---	---	10,950
1996	900	4,725	75	---	---	5,700

⁽¹⁾ various non-regulated species

Annex 4. Paper Presented by European Union Delegation

GLOBAL STRATEGY TO BE CONSIDERED FOR A POSSIBLE NAFO SCHEME TO DEAL WITH NON CONTRACTING PARTY FISHING VESSELS

Contracting Parties whose vessels fish in the NAFO Regulatory Area shall receive, through the NAFO Secretariat, information, in a way, in which they are invited to either become a member of NAFO or to accept NAFO Conservation Measures.

Contracting Parties shall collect information on the sighting of vessels which fly the flag of a Non-Contracting Party and which fish in the NAFO Regulatory Area. Such information shall be transmitted immediately, through the NAFO Secretariat, to all Contracting Parties including the Non-Contracting Party.

Non-Contracting Party vessel which is sighted fishing in the NAFO Regulatory Area and is found to be undermining the effectiveness of NAFO Conservation Measures

When such a Non-Contracting Party vessel is voluntarily in a port of a Contracting Party, the Contracting Party shall, *inter alia*, inspect its documents, fishing gear and catch on board.

When an inspection establishes that the catch has been taken in contravention of NAFO Conservation Measures, landings and transshipments shall be prohibited. Information on the results and any subsequent action shall be transmitted immediately, through the Secretariat, to all Contracting Parties as well as the relevant Non-Contracting Party.

The Secretariat shall review annually the information compiled and the actions taken in accordance with the above and, where necessary, recommend to the General Council any new measures that may be necessary to enhance the effectiveness of NAFO Conservation Measures.

Annex 5. Paper Presented by Canadian Delegation

Courtesy Boardings by Canada on Non-Contracting Party Vessels
January 1 - December 31, 1996

<u>Vessel Name</u>	<u>Country of Registry</u>	<u>Side #</u>	<u>Boarding Date</u>
High Sierra	Sierra Leone	3HN3V	February 7, 1996
"	"	"	February 29, 1996
Porto Santo	Sierra Leone	FN940912	February 18, 1996
Leone	Sierra Leone	FN940949	February 18, 1996
Danica	Honduras	HQID4	May 18, 1996
"	"	"	June 26, 1996
"	"	"	November 17, 1996

Annex 6. Chairman's Draft of General Principles

NAFO would deliver a demarche to all flag States notifying them of the NAFO scheme to limit NCP fishing in the NRA and requesting their full cooperation in the conservation of fisheries resources in the NRA.

(against whom are measures directed)

Measures would be directed at vessels.

(Procedures and Criteria for designating NCP fishing vessels)

When a Contracting Party sights a Non-Contracting Party (NCP) vessel engaged in fishing activities in the NAFO Regulatory Area (NRA):

- (a) The Contracting Party which made the sighting shall provide such information to the NAFO Secretariat, which in turn shall notify all other Contracting Parties as well as the flag-State of the NCP fishing vessel. A Non-Contracting Party vessel which is sighted fishing in the NAFO Regulatory Area is presumed to be undermining the effectiveness of NAFO Conservation Measures.

Comments: STACFAC should not preclude the possibility of inspections at sea – further discussion
 Note (CN): – on this point is needed.

(Article 2)

When such a Non-Contracting Party vessel is voluntarily in a port of a Contracting Party, that Contracting Party shall, inter alia, inspect its documents, fishing gear and catch on board.

Where such an inspection establishes that the catch has been taken in contravention of NAFO Conservation Measures, landings and transshipments shall be prohibited. Information on the inspection and any subsequent action shall be transmitted immediately, through the NAFO Secretariat, to all Contracting Parties as well as to the relevant Non-Contracting Party.

View B: In order to uphold the effectiveness of NAFO conservation and management measures, Contracting Parties may deny access to their ports to designated fishing vessels, except in cases of force majeure.

View C: The catches of Non-Contracting Party fishing vessels may not be landed in the port of a Contracting Party if their fishing has been in contravention of NAFO Conservation Measures. In such cases, the relevant vessels will be prohibited from being provided with services within the exclusive economic zones, the territorial waters or (inside the base-lines) the ports of the Contracting Parties.

View D: When a Non-Contracting Party vessel is presumed to be undermining the effectiveness of NAFO Conservation Measures, a Contracting Party may take action consistent with international law against such a vessel in order to prohibit landings.

View E: If any NAFO-regulated species are found on a designated fishing vessel, during the course of an inspection, then the Contracting Party shall prohibit landings of all the fish on such fishing vessel.

CN: To what extent are Non-Contracting Party vessels obliged to comply with NAFO Conservation and Management measures?

(Taking Measures)

4. See point 3 above.

(Scope of fish affected by prohibition on landings)

5. See point 3 above.

(c) (i) (b) (iii)

Measures would cease to have effect once the trip has ended.

- How to determine when a trip has ended?

(d) (i) (b) (iv)

(c) (i) Transshipments in ports - the same prohibitions on landings in ports and transshipments in ports.

(c) (i) Transshipments at sea -

View F - Contracting Party vessels shall not participate in transshipments to or from a sighted vessel.

- The issue of transshipments between one NCP vessel and another NCP vessel was raised as an issue which needs further consideration.

(e) (i) (b) (v) (i) (a) (i) (b) (vi)

STACFAC shall review at least annually the information compiled and the actions taken under this scheme and, where necessary, recommend to the General Council any measures that may be necessary to enhance the effectiveness of the scheme.

(f) (i) (b) (v) (i) (b) (vii)

Treat the scheme as a pilot scheme to be reviewed at a date to be specified and to assess other possible consequences.

• Agreement on how in port inspections of sighted vessels could be

• Agreement on the reports of in-port inspections of sighted vessels.