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Serial No. N2921

NAFO/GC Doc. 97/3

Northwest Atlantic Fisheries Organization



Report of the Working Group on Dispute
Settlement Procedures (DSP)

14-16 April 1997
NAFO Headquarters, Dartmouth, N.S., Canada

NAFO
Dartmouth, N.S., Canada
1997

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Report of the Working Group on Dispute Settlement Procedures (DSP)

**14-16 April 1997
NAFO Headquarters, Dartmouth, N.S., Canada**

1. Opening by the Executive Secretary

The Meeting was opened by the Executive Secretary, L. I. Chepel, who welcomed all delegates. The following Contracting Parties were represented at the Meeting: Canada, Denmark (in respect of Faroe Islands and Greenland), European Union, France (in respect of St. Pierre et Miquelon), Iceland, Japan, Latvia, Lithuania, Norway and the United States of America (Annex 1).

2. Election of the Chairman

Mr. Dag Mjaaland (Norway) was elected Chairman.

3. Appointment of Rapporteur

Mr. Fred Kingston (EU) was appointed Rapporteur.

4. Adoption of the Agenda

The Agenda was adopted as amended. (Annex 2)

5. Examination of the desirability and, as appropriate, of the development of DSP

The Working Group had an extensive and wide-ranging discussion on these matters.

Concerning the issue of **whether NAFO DSP were desirable**, delegates either declared that such procedures were *desirable* or were prepared to keep the issue open for future consideration. On this basis, without prejudice to any such final decision in this regard, the Working Group agreed to proceed with an examination of possible elements on the development of DSPs.

During the discussion on this issue, concerns raised included the importance of dispute prevention; whether it is desirable to shift decision-making "from the political arena to lawyers" because of DSP; and whether there is an urgent need to establish NAFO DSP.

Concerning the development of such DSP, the following issues were raised:

- the **type of dispute** to be covered under any DSP. This coverage could be limited solely to the use of the objection procedure under Article XII of the NAFO Convention, or broadened to cover disputes concerning certain management and conservation measures or all types of disputes.

Concerning the **objection procedure**, certain delegates noted that its use has been the source of major recent conflicts within NAFO and, consequently needs to be addressed on an urgent basis. Other types of disputes can be dealt with in the context of the DSP within the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks opened for signature in New York on December 4, 1995 ("UN Agreement") and the United Nations Convention on the Law of the Sea, done at Montego Bay on December 10, 1982 ("UNCLOS"). Other delegates stated that the objection procedure is part of the balance negotiated in the NAFO Convention, as a means to maintain consensus in NAFO's decision-making process, and therefore, should not be limited. Instead, any DSP should address subsequent action by the objecting party rather than use the procedure itself. It was pointed out that the objection procedure is a conventional right and certain delegates questioned whether the assertion of such a right could give rise to a dispute in the proper sense. In this context it was also noted that the concept of an "abuse of right" is recognized under international law, for instance in Article 300 of UNCLOS. Some delegates observed that the UN Agreement itself might provide a basis for scrutiny of objections.

- whether NAFO needs to develop its own DSP or are the procedures laid down in the UN Agreement and/or UNCLOS sufficient? Certain delegates noted that the UN Agreement is not yet in force, may not be applicable to all NAFO Contracting Parties, does not apply to discrete stocks and does not provide for timely decisions. Other delegates argued that the existing procedures in the UN Agreement and/or UNCLOS can be adapted by NAFO to address these concerns;
- whether any decision arising out of any DSP be binding;
- whether NAFO should incorporate its DSP by an **amendment to the NAFO Convention or by a Protocol**. Most delegates, in principle, were in favour of an amendment, since it would apply equally to all Contracting Parties, including new participants. However, a Protocol would make any DSP easier to put into effect, since, under Article XXI of the NAFO Convention, just one Contracting Party could block an amendment. Certain delegates, while expressing a desire to incorporate a DSP into NAFO by way of an amendment, suggested that the Protocol route be used in a situation in which a very small minority of the NAFO Contracting Parties would most likely block an amendment;
- which Party has the initial **burden of proof** in any possible NAFO DSP;
- whether a Panellist needs to have an **arms-length relationship** with the disputing Parties; and
- the **qualifications** of any Panellist - does one need to be a "NAFO expert"?

6. Review of papers and proposals on DSP

The Working Group reviewed two papers on DSP, namely the Canadian proposal entitled "Proposed Canadian Protocol on the Settlement of Disputes under NAFO Convention Article XII" (GC Working Group W.P. 97/1 - Annex 3), along with an "Explanatory Note" (GC Working Group W.P. 97/2 - Annex 4), and an EU paper entitled "Broad Strategy to be Considered for a Possible NAFO Dispute Settlement Mechanism" (GC Working Group W.P. 97/3 - Annex 5).

(i) Canadian Proposal

As an introduction, Canada stated that its objective is not to eliminate the right of NAFO members to object but to prevent the abusive use of the objection procedure by a procedure which seeks to ensure that an objection can only be made on clear, justifiable grounds and that this will be subject to review before a panel of experts. The Canadian proposal has been revised from earlier proposals. It is in the form of a Protocol targeted only to the use of the objection procedure. Its main elements are:

- a party which objects must be able to justify its objection;
- the establishment of an expert panel to consider any challenged objection, the procedure of which is modelled on the DSP of the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA);
- participation by other Parties; and
- rapid time-lines to ensure that disputes are resolved during an ongoing fishing season.

According to Canada, the principal advantages of its proposal are its tight time-frame and its applicability to discrete high sea stocks.

The Working Group then examined in detail the Canadian proposal. Issues raised included its compatibility with the systems established under the UN Agreement and UNCLOS; the extent to which an objecting Party has to justify its objection (e.g. filing a management plan with its objection); the competence of the Panel; burden of proof; whether there ought to be an arms-length relationship between Panellists and NAFO Contracting Parties; qualifications of Panellists; costs; time lines (approximately 3 months); and the consequences on the original NAFO decision if an objection is upheld or partially upheld.

(ii) EU Paper

The EU stated that its paper was a reflection paper, setting out certain elements for a possible NAFO dispute settlement mechanism. It proposes that NAFO could incorporate, by an amendment to the NAFO Convention, the existing DSP set out in Part XV of UNCLOS.

The Working Group then examined the EU paper. Points raised included:

- the use of the NAFO objection procedure would **not itself constitute a dispute** under this proposal, but rather, for example, any subsequent failure to adopt the necessary conservation measures;
- Article 30(5) of the UN Agreement could be used as the substantive law to be applied;
- reference was made only to UNCLOS because the UN Agreement does not cover discrete stocks;
- a decision of an *ad hoc* expert panel could be applied as a provisional measure. Such a decision could be rendered within a tight time-frame; and
- the issue of the competency of any panel established needs to be addressed.

On the basis of the discussion, the EU agreed to prepare a more detailed paper for consideration at the next NAFO Annual Meeting.

7. Review of relevant instruments, including the UN Agreement on Straddling and Highly Migratory Fish Stocks, UNCLOS

The Working Group examined in detail various instruments to determine whether a DSP should be and could be established either by a Protocol or an amendment to the NAFO Convention. These instruments included:

- the NAFO Convention;
- the UN Agreement, in particular Articles 10(k), 27-32 and 44 thereof;
- UNCLOS, in particular Part XV thereof; and
- the 1969 Vienna Convention on the Law of Treaties, in particular Article 41 thereof.

It was **concluded** that the NAFO Contracting Parties are free to agree to establish their own particular DSP for NAFO, whether through an amendment to the NAFO Convention or through a Protocol between some Contracting Parties.

8. Report to the General Council

The Working Group on Dispute Settlement Procedures **recommended** that, on the basis of the discussion at this meeting, the General Council should examine the issue of a possible NAFO DSP at the next NAFO Annual Meeting.

Furthermore, the Working Group on Dispute Settlement Procedures **recommended** that the General Council authorize it to continue its work and to convene a meeting shortly after the end of the NAFO Annual Meeting. In this regard, matters for particular attention include the issue of the desirability of a NAFO DSP, further consideration of the approaches in the Canadian and EU papers, including a possible combination of the two approaches and the competence of any panel which could be established under such approaches, including the type of "disputes" to be covered and the applicable law.

9. Other Matters

There were no other matters for discussion.

10. Adjournment

The Meeting adjourned at 1300 hrs on 16 April 1997.

Annex 1. List of Participants

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Head of Delegation

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SECRETARIAT

L. I. Chepel, Executive Secretary
T. Amaratunga, Assistant Executive Secretary
B. J. Cruikshank, Senior Secretary

Annex 2. Agenda

1. Opening by the Executive Secretary, L. Chepel
2. Election of the Chairman
3. Appointment of the Rapporteur
4. Adoption of the Agenda
5. Examination of the desirability and, as appropriate, of the development of DSP
6. Review of papers and proposals on DSP
7. Review of relevant instruments, including the UN Agreement on Straddling and Highly Migratory Fish Stocks, UNCLOS
8. Report to the General Council
9. Other matters
10. Adjournment

Annex 3. Proposed Canadian Protocol on the Settlement of Disputes Under NAFO Convention Article XII

Background:

At the 1996 NAFO Annual Meeting in St. Petersburg, Canada circulated a proposal for the adoption of a dispute settlement mechanism to deal with objections under the NAFO Convention (GC Working Paper 96/3). This proposal is intended to address a problem identified in NAFO as long ago as 1988.

In 1988 the General Council recognized that the inappropriate use of the NAFO objection procedure *"may lead to damage of the living resources of the Northwest Atlantic"* and called on Contracting Parties to *"avoid excessive or inappropriate use of the objection procedure against the regulatory measures adopted by the Fisheries Commission"* (GC Doc. 88/8).

In 1989 the General Council developed this theme further by calling for *"compliance with the NAFO management framework in place since 1979, and compliance with NAFO decisions in order to provide for conservation and maintain the traditional spirit of cooperation and mutual understanding in the Organization"* (Resolution found at GC Doc. 89/4, Appendix 10).

Canada first proposed the creation of a dispute settlement mechanism in NAFO at the 1992 NAFO Annual Meeting (GC Working Paper 92/6). Canada's 1992 proposal called for the creation of a dispute settlement mechanism as an amendment to the NAFO Convention. The current Canadian proposal, which supersedes the 1992 proposal, calls for the establishment of a Protocol to provide for dispute settlement with respect to the objection procedure.

Canada's Proposed Protocol:

Canada wishes to make it clear that it is not the purpose of the proposed Protocol to override or to eliminate the NAFO objection procedure. The Protocol is aimed at enhancing the long-term conservation and sustainable use of the fishery resources of the NAFO Regulatory Area ("NRA"). The Protocol therefore reflects the objectives of the NAFO Convention, which was established to implement the clear desire of NAFO Parties to conserve fish stocks in the NRA. It builds upon the conservation objectives of both the 1982 *United Nations Convention on the Law of the Sea* ("UNCLOS") and the 1994 *Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (commonly referred to as the UN Fish Agreement or "UNFA").

It was never the intention of the NAFO Convention to allow a Party to object arbitrarily to a proposal of, or a measure adopted by, the Fisheries Commission. The Canadian Protocol therefore seeks to ensure the responsible use of the objection procedure in situations where a Party considers that a proposal of, or a measure adopted by, the Fisheries Commission:

- (a) is inconsistent with the provisions of the NAFO Convention or UNFA;
- (b) unjustifiably discriminates in form or in fact against the Objecting Party; or
- (c) does not adequately take into consideration the provisions of Article XI(3) and (4) of the NAFO Convention with respect to quotas in the Regulatory Area.

Other key features of the Canadian Protocol are:

- the establishment of expert Panels to resolve disputes concerning the validity of specific objections;
- provision for the participation in the dispute settlement proceedings by third Parties (i.e. other Parties to the Protocol) and non-Parties (i.e. NAFO members that are not Parties to the Protocol);
- rapid timelines for the presentation of written and oral argument before the Panel and for the rendering of a decision, in order to ensure that disputes are resolved during a current fishing season; and
- the expert Panels must consider the interests of all NAFO Contracting Parties, including those that are not Parties to the Protocol.

The Protocol would be binding only on those NAFO Contracting Parties that have accepted it.

The Advantages of Dispute Settlement Protocol:

The intention of the Canadian proposal is to minimize conflicts by providing an objective third party mechanism to resolve disagreements which can lead to overfishing and confrontation. The Protocol thus supports cooperation and mutual understanding within NAFO.

UNFA provides for binding dispute settlement related to straddling stocks and highly migratory stocks (Article 30). The Canadian proposal is not intended to supplant the procedures provided for in UNFA. However, the principal advantages of the proposed specific dispute settlement mechanism under the NAFO Convention over the more general dispute settlement procedures under UNFA are:

- a tight time-frame which is intended to provide decisions before excessive fishing can affect NAFO-managed stocks; and
- applicability to discrete high seas stocks in the Flemish Cap which are not subject to UNFA.

As noted above, the objective of the current Canadian proposal is not to eliminate the objection procedure under Article XII of the NAFO Convention, but to establish clear guidelines for its use. Canada is of the view that the excessive or inappropriate use of the objection procedure should be open to challenge, and that it is in the interest of all Contracting Parties to have disputes resolved through a quick and effective binding dispute settlement process designed specifically for NAFO.

Annex 4. Explanatory Note to the Canadian Proposal for a Protocol on the Settlement of Disputes Under Article XII of the Convention

Canada is proposing the establishment of a Protocol to the NAFO Convention to provide for dispute settlement with respect to the "objection procedure" under Article XII of the Convention. The purpose of the Protocol is to prevent abuse of the objection procedure by seeking to ensure that objections are made only on clear, justifiable grounds. This will enhance the long-term conservation and sustainable use of the fishery resources of the NAFO Convention Area, an objective shared by all NAFO Contracting Parties.

The main features of the Canadian draft Protocol are as follows:

- ☐ an agreement by the Parties to the Protocol to limit their use of the objection procedure to the grounds set out in the Protocol;
- ☐ the establishment of expert panels to resolve disputes over the use of the objection procedure;
- ☐ rapid timelines for the presentation of written and oral argument before the panel and for the rendering of a decision, to ensure that disputes are resolved during a current fishing season;
- ☐ provision for the participation in the dispute settlement proceedings by Third Parties and non-Parties; and
- ☐ affirmation that the Protocol is without prejudice to the rights of the Parties under the 1982 Law of the Sea Convention or the 1994 U.N. Fish Agreement.

Canada first proposed the creation of a dispute settlement mechanism in NAFO at the 1992 annual meeting. *The attached text is intended to supersede Canada's 1992 proposal (GC Working Paper 92/6).*

CANADIAN PROPOSAL

**PROTOCOL ON THE SETTLEMENT OF DISPUTES
UNDER ARTICLE XII OF THE CONVENTION**

THE PARTIES TO THIS PROTOCOL,

RECOGNIZING the importance of achieving the conservation and management objectives of the Northwest Atlantic Fisheries Organization (NAFO),

TAKING INTO ACCOUNT the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* opened for signature in New York on December 4, 1995, in particular the Agreement's provisions on compulsory and binding settlement of disputes, its provisions obligating States to pursue cooperation either directly or through appropriate fisheries management organizations or arrangements, and its provisions obligating States to cooperate to strengthen existing organizations and arrangements to improve their effectiveness for the conservation and management of the stocks subject to their authority,

RECOGNIZING that disputes may arise from time to time regarding the use of the objection procedure provided in Article XII of the NAFO Convention, and that it is in the interest of conservation, and of all NAFO Contracting Parties, to have such disputes resolved through a quick and effective compulsory and binding dispute settlement process designed specifically for NAFO,

HAVE AGREED as follows:

ARTICLE I: DEFINITIONS

In this Protocol:

NAFO Convention means the *Convention of Future Multilateral Co-operation in the Northwest Atlantic Fisheries*, done at Ottawa on October 24, 1978;

Party means a Party to this Protocol;

Objection means:

- (i) an objection by a Party to a proposal of the Fisheries Commission, pursuant to Article XII(1) of the NAFO Convention; or
- (ii) a notice by a Party of its intention not to be bound by a measure adopted by the Fisheries Commission, pursuant to Article XII(3) of the NAFO Convention.

Objecting Party means a Party that has presented an Objection;

Contesting Party means a Party, including an Objecting Party, that requests the establishment of a Panel to determine the validity of an Objection;

UNFA means the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* opened for signature in New York on December 4, 1995; and

UNCLOS Convention means the United Nations Convention on the Law of the Sea, done at Montego Bay on December 10, 1982.

ARTICLE II: OBJECTIVES

The objectives of this Protocol, as elaborated more specifically through its provisions, are to:

- (a) enhance the long-term conservation and sustainable use of the fishery resources of the NAFO Convention Area; and
- (b) provide for a prompt and effective method to resolve disputes arising under Article XII of the NAFO Convention.

ARTICLE III: LIMITS ON THE RIGHT TO PRESENT OBJECTIONS

1. A Party may present an Objection only if it considers that a proposal of, or a measure adopted by, the Fisheries Commission:
 - (a) is inconsistent with the provisions of the NAFO Convention or the UNFA;
 - (b) unjustifiably discriminates in form or in fact against the Objecting Party; or
 - (c) does not adequately take into consideration the provisions of Article XI, paragraphs 3 and 4, of the NAFO Convention with respect to quotas established in the Regulatory Area.

ARTICLE IV: ROSTER

1. The Executive Secretary shall establish by _____, and maintain a roster of individuals who are willing and able to serve as Panelists. Each Party may submit up to five nominees for inclusion in the roster, and shall describe the relevant qualifications and experience of each of its nominees.
2. Roster members shall have expertise or experience in fisheries conservation or management, international law, other areas covered by the NAFO Convention or the resolution of disputes arising under international agreements, and shall be chosen on the basis of objectivity, reliability and sound judgement.

ARTICLE V: REQUEST FOR A PANEL

1. Following receipt by the Executive Secretary of an Objection, a Contesting Party may request in writing the establishment of a Panel to determine the validity of the Objection. The Contesting Party shall deliver the request to the Chairman of the General Council. The Chairman of the General Council shall promptly transmit a copy of the request, through the Executive Secretary of NAFO, to each NAFO Contracting Party.
2. Where more than one Contesting Party requests the establishment of a Panel related to the same Objection, a single Panel shall be established.

ARTICLE VI: PANEL SELECTION

1. Except as provided elsewhere in this Protocol, the procedures set out in this Article shall apply to Panel selection.

2. Where a Contesting Party requests the establishment of a Panel:
 - (a) The Panel shall comprise three members.
 - (b) Within ten days of the date on which the request for a Panel is transmitted to the NAFO Contracting Parties pursuant to Article V, the Contesting Party and the Objecting Party shall each select one Panelist from the roster.
 - (c) Within twenty days of the date on which the request for a Panel is transmitted to the NAFO Contracting Parties pursuant to Article V, the Contesting Party and the Objecting Party shall agree on the selection of the third Panelist, who shall serve as Chair of the Panel. If the Contesting Party and the Objecting Party cannot agree on the Chair, they shall decide by lot which of them shall select the Chair from the roster. The Chair shall not be a citizen of either the Contesting Party or the Objecting Party.
3. Where there is more than one Contesting Party, the Contesting Parties shall seek to agree on the selection of a single Panelist. If the Contesting Parties are unable to agree, the Chairman of the General Council shall, within five days of the end of the ten day period specified in paragraph 1, select a Panelist from the roster on behalf of such Contesting Parties.
4. Where there is more than one Objecting Party, the Objecting Parties shall seek to agree on the selection of a single Panelist. If the Objecting Parties are unable to agree, the Chairman of the General Council shall, within five days of the end of the ten day period specified in paragraph 1, select a Panelist from the roster on behalf of such Objecting Parties.
5. Where an Objecting Party alone requests the establishment of a Panel, that Party shall select one Panelist from the roster and notify the Chairman of the General Council of its choice within ten days of the date on which the request for a Panel is transmitted to the NAFO Contracting Parties pursuant to Article V. The Chairman of the General Council shall, within five days of the end of the ten day period, select a second Panelist from the roster. Within twenty days of the date on which the request for a Panel is transmitted to the NAFO Contracting Parties pursuant to Article V, the two Panelists shall appoint a third Panelist who shall serve as Chair.

ARTICLE VII: PARTICIPATION BY THIRD PARTIES

Any Party that is not a Contesting Party or an Objecting Party, on delivery of a written notice to the Chairman of the General Council, shall be entitled to attend all hearings of the Panel, to make written and oral submissions to the Panel, and to receive written submissions of each Contesting and Objecting Party.

ARTICLE VIII: PARTICIPATION BY NON-PARTIES

Any NAFO Contracting Party that is not a Party to this Protocol, on delivery of a written notice to the Chairman of the General Council, may attend all hearings of the Panel, make written and oral submissions to the Panel, and receive written submissions of each Contesting and Objecting Party, provided that the Contesting and Objecting Parties so agree.

ARTICLE IX: ROLE OF EXPERTS

On request of a Contesting or Objecting Party, or on its own initiative, the Panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Contesting and Objecting Parties so agree.

ARTICLE X: DECISION OF THE PANEL

1. Unless the Contesting and Objecting Parties otherwise agree, the Panel shall, within fifteen days of the conclusion of the hearing, present its decision to the Chairman of the General Council, through the Executive Secretary. Decisions of a Panel shall be by majority.
2. If the Panel determines that the Objection does not meet the criteria of Article III, it shall declare the Objection to be invalid. If the Panel determines that the Objection meets the criteria of Article III, it shall declare the Objection to be valid.
3. If the Panel determines the Objection to be invalid:
 - (i) on the expiration of ten days following the date of the decision, or on such date as may be specified in the decision, the proposal of the Fisheries Commission shall become a binding measure on the Objecting Party; or
 - (ii) the measure adopted by the Fisheries Commission shall continue to be binding on the Objecting Party.
4. If the Panel determines the Objection to be valid:
 - (i) the proposal shall not become a binding measure on the Objecting Party, pursuant to Article XII(1) of the NAFO Convention; or
 - (ii) the measure shall cease to be binding on the Objecting Party, pursuant to Article XII(3) of the NAFO Convention.
5. In making its determination, the Panel shall consider the interests of all NAFO Contracting Parties, including those that are not Parties to this Protocol.

ARTICLE XI: RELATION TO OTHER AGREEMENTS

This Protocol shall be without prejudice to the rights and obligations of Parties under the UNFA Agreement or the UNCLOS Convention.

ARTICLE XII: RULES OF PROCEDURE

The Panel proceedings shall be conducted in accordance with the Rules of Procedure set out in the Annex. The Panel may adopt such additional rules of procedure, consistent with the NAFO Convention and this Protocol, as it deems necessary.

ARTICLE XIII: ACCEPTANCE

Any Contracting Party to the NAFO Convention may become a Party to this Protocol by written notification of acceptance to the Depositary.

ARTICLE XIV: DEPOSITARY

The Government of Canada shall be the Depositary.

ARTICLE XV: ENTRY INTO FORCE

This Protocol shall enter into force on the date of receipt by the Depositary of the notification of acceptance which brings the number of notifications of acceptances to _____.

ARTICLE XVI: WITHDRAWAL

1. Any Party may withdraw from this Protocol on December 31 of any year by giving notice to the Depositary on or before the preceding June 30.
2. Any other Party may withdraw from this Protocol on the same December 31 by giving notice to the Depositary within one month of the receipt of a copy of a notice of withdrawal given pursuant to paragraph 1.

ARTICLE XVII: NOTIFICATION

The Depositary shall promptly notify the Executive Secretary in writing of the receipt of each notification of acceptance or withdrawal. The Executive Secretary shall thereupon transmit the information to all Contracting Parties to the NAFO Convention.

ARTICLE XVIII: RESERVATIONS

This Protocol shall not be subject to reservations.

ANNEX: RULES OF PROCEDURE

OPERATION OF PANELS

1. The Chair of the Panel shall preside at all of its meetings. A Panel may delegate to the Chair authority to make administrative and procedural decisions.
2. Except as otherwise provided in these rules, the Panel may conduct its business by any means, including by telephone, facsimile transmission or computer links.
3. If a Panelist dies, withdraws or is removed, a replacement shall be selected as expeditiously as possible in accordance with the selection procedure followed to select the Panelist.
4. Any time period applicable to the Panel proceeding shall be suspended for a period beginning on the date the Panelist dies, withdraws or is removed and ending on the date the replacement is selected.

PLEADINGS

5. The Objecting Party shall deliver its written submission to the Executive Secretary of NAFO no later than 10 days after the date on which the last Panelist is selected. The Objecting Party shall describe in its submission how the proposal or measure that is subject of the Objection is inconsistent with the provisions of the NAFO Convention or the UNFA Agreement, unjustifiably discriminates in form or in fact against the Objecting Party, or does not adequately take into consideration the provisions of Article XI, paragraphs 3 and 4, of the NAFO Convention with respect to quotas established in the Regulatory Area.
6. The Contesting Party shall deliver its written submission to the Executive Secretary no later than 10 days after the date of delivery of the written submission of the Objecting Party. Each Third Party and non-Party shall deliver its written submission to the Executive Secretary no later than the date on which the submission of the Contesting Party is due.
7. The Executive Secretary shall forward the written submissions immediately upon receipt by the most expeditious means practicable to the other participating Parties and to the members of the Panel.

HEARING

8. The Chair shall fix the date and time of the hearing in consultation with the participating Parties and the other members of the Panel.
9. The hearing shall be convened at the headquarters of NAFO, or at such other place as may be agreed by the Contesting and Objecting Parties, no later than thirty days following the formation of the Panel.
10. The hearing shall be conducted by the Panel in the following manner, ensuring that the Objecting Party or Parties and the Contesting Party or Parties are afforded equal time:
 - (i) Argument of the Objecting Party or Parties;
 - (ii) Argument of the Contesting Party or Parties;
 - (iii) Presentation of the Third Party or Parties; and
 - (iv) Presentation of the non-Party or Parties.

DECISION OF THE PANEL

11. Upon receipt of the decision of the Panel pursuant to Article X, the Chairman of the General Council, through the Executive Secretary, shall forthwith transmit the decision to all NAFO Contracting Parties. Reasons in writing shall be communicated to the Chairman of the General Council within ninety days of the decision. The Chairman of the General Council shall, through the Executive Secretary, promptly transmit such reasons to all Contracting Parties to the NAFO Convention.

CLERK

12. The Executive Secretary of NAFO shall serve as clerk to the Panel and provide for all necessary facilities and arrangements.

EXPENSES, FEES AND COSTS

13. The rules regarding expenses and the level of fees for Panelists and experts shall be established by the General Council.

Annex 5. Broad Strategy to be Considered for a Possible NAFO Dispute Settlement Mechanism

Disputes may arise in situations in which Contracting Parties hold clearly opposite views concerning the question of the performance or non-performance of obligations under the NAFO Convention. Whether there exists a dispute is a matter for objective determination. The mere claim of the existence of a dispute by a Contracting Party does not prove its existence.

The objection procedure under Article XII of the NAFO Convention grants a Contracting Party a conventional right, the assertion of which cannot be construed as giving rise to a dispute in the proper sense.

A possible NAFO dispute settlement mechanism should cover all kinds of disputes, e.g. disputes concerning the conservation and management of both straddling fish stocks and "discrete stocks", enforcement issues, budgetary matters or rights of membership.

A possible NAFO dispute settlement mechanism could consist of an agreement of the Contracting Parties to apply *mutatis mutandis* the provision relating to the compulsory and binding settlement of disputes set out in Part XV of UNCLOS to any dispute arising within NAFO.

With a view to ensuring a timely dispute settlement mechanism for NAFO, consideration might be given to the incorporation of a pre-trial process through an ad hoc expert panel in order to resolve the dispute expeditiously. The decisions of such a panel, while not binding in nature, could form the basis for renewed consideration by the parties concerned of the matter out of which the dispute arose. If, as the result of this procedure the dispute is not settled, the decisions of the panel could be applied as provisional measures, pending the outcome of a final dispute settlement procedure if the parties concerned wish to pursue the matter through recourse to binding procedures for the settlement of disputes under Part XV of UNCLOS.

A possible NAFO dispute settlement mechanism should be applicable to all Contracting Parties, by way of an amendment pursuant to Article XXI of the NAFO Convention.