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Report of the Working Group on Allocation
of Fishing Rights to Contracting Parties of NAFO
and Chartering of Vessels Between Contracting Parties

4-6 March 1998
Brussels, Belgium

NAFO
Dartmouth, N.S., Canada
1998

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of Fishing Rights to Contracting Parties of NAFO
and Chartering of Vessels Between Contracting Parties**

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The Working Group was organized in accordance with the joint decision by the General Council and Fisheries Commission at the 19th Annual Meeting, 15-19 September 1997 (item 4.14 of the General Council Report, GC Doc. 97/8).

1. Opening of the Meeting

The Meeting was called to order by the Chairman, H. Koster (EU), who drew the attention of delegates to the terms of reference (Annex 1) charged to the working group by the General Council regarding chartering and the Fisheries Commission regarding the allocation of fishing rights.

The head of the EU delegation, E. Mastracchio, welcomed participants on behalf of the host government. A list of participants is attached as Annex 2. Several delegations offered opening remarks, attached as Annexes 3-7.

2. Appointment of Rapporteur

Dr. D. Swanson (USA) was elected as rapporteur.

3. Adoption of Agenda

The agenda attached as Annex 8 was adopted.

4. Consideration of the current allocation practice within NAFO, including developments since the establishment of NAFO, the interests of Contracting Parties, relevant provisions of the NAFO Convention and applicable international agreements

The discussion of the current allocation practice within NAFO, its origins and use since 1979, and its relationship to the NAFO Convention and other relevant international agreements elicited differing points of view. Some delegations thought that the NAFO allocation practice was not adequately specified, was not transparent or consistently applied through time, and did not adequately take into account the interests of all Contracting Parties. Other delegations thought that NAFO's allocation of fishing rights was clear and consistent in its application over time and that experience had also shown that the stability of NAFO's allocation practice lies at the heart of the Organization's stability. Yet other delegations could imagine the possibility of changes to the practice that would not threaten stability.

All delegations agreed that rules should be written regarding how NAFO would deal with future new members in terms of allocations, but they were not able to agree on whether the current allocation practice should be changed as to how it deals with current members, both long-standing and more recently joined.

5. Consideration of general rules affecting allocations

In addition to Article XI(4) of the NAFO Convention, all delegations agreed that a variety of instruments of established or emerging international law as well as recent international declarations gave guidance on participatory rights within organizations such as NAFO.

These include, *inter alia*,

- the United Nations Convention on the Law of the Sea, 1982;
- 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, 1995 (UNIA);
- the Code of Conduct for Responsible Fisheries, 1995;
- Kyoto Declaration and Plan of Action, 1995; and,
- relevant international customary law (e.g. the due regard principle).

All delegations agreed that the NAFO Convention is the legal framework within which quota allocation must be dealt (Article XI).

6. Consideration of methods for setting quota allocations

Some delegations found it difficult to contemplate discussing alternatives to the current NAFO allocation practice without affecting current allocations while others felt the discussion was necessary to ensure that the interests of all Contracting Parties were taken into account.

Delegations agreed that obstacles to making progress could be overcome by splitting up the substantive topics as given in Annex 9.

In fact, several tasks were identified. In the first place, it should be explored how to deal with future members of NAFO. Although all Contracting Parties accepted that NAFO is an open organization of which all members are the same, allocations to future new members needed to be examined. Such examination could also draw on UNIA and applicable international law, although the NAFO Convention is the legal framework for any NAFO policies as strategies.

As regards point 3, the Chairman made it clear that any strategy to be developed under this point will not affect existing fishing rights of Contracting Parties whilst point 4 envisages to explore any flexibility in the current quota table for accommodating any requests for fishing opportunities as well as a broader sharing when regulated stocks were so abundant that they were under exploited.

7. Consideration of the NAFO Convention and chartering operations

Delegations agreed that, although nothing in the NAFO Convention and associated rules expressly prohibits the chartering of a fishing vessel within one Contracting Party to harvest fish allocated to another Contracting Party, there were non-transferable obligations required of the flag state such as for monitoring, control, and reporting.

For some delegations, this was the reason to prohibit chartering in principle and to examine each derogation to this principle, whilst other delegations considered that chartering is an economic activity for which NAFO only could establish measures based on conservation and enforcement measures to regulate such operations.

8. Consideration of relevant provisions to be incorporated in a NAFO policy dealing with chartering operations

Issues raised that were considered relevant to a NAFO policy on chartering included:

- ensuring effective monitoring, control, and reporting;
- notification of or approval by NAFO according to established procedures and criteria;
- use of effort or "others" quota allocation by chartering arrangements;
- whether a charter might be a discrete or continuing arrangement; and,
- whether the chartered vessel would acquire registration from the Contracting Party allocated the relevant quota.

Delegations agreed on the guidelines for future discussions on the chartering of vessels given in Annex 9.

Most delegations believed that the charters contemplated under point one, sometimes called "bare boat" charters, did not require any attention by NAFO, but this view was not unanimous. However, in the opinion of the majority, those charters cannot be held in abeyance under the decision of the General Council.

Recommendations to the General Council and Fisheries Commission

As the outcome of the discussions on all substantial issues through items 4-8 of the Agenda, the Working Group recommended to the General Council and the Fisheries Commission for follow-up action in accordance with the Chairman's Working Paper, and the following ideas were presented from some delegations:

Some delegations suggested to recommend that certain issues should be referred to STACFAC whilst other could be referred to STACTIC. In this way, NAFO could ensure that progress is made in implementing the Chairman's Working Paper. Russia reiterated its proposal to recommend the establishment of a smaller group which could operate as a standing committee of experts designated by all Contracting Parties. Several Contracting Parties could support the creation of a standing committee on quota allocation whilst others would carefully reflect on any future steps regarding these complicated issues which they felt were somehow interlinked.

Finally, all delegations present agreed on a recommendation to the General Council and the Fisheries Commission in order to provide for a second meeting of the Working Group to be convened in the framework of the next annual NAFO meeting in Lisbon. Obviously the existing terms of reference remain valid as they have been adopted by the General Council and the Fisheries Commission respectively. Any change in this situation must be decided in these bodies.

9. Other Business

There was no other business.

10. Adjournment

The Chairman adjourned the meeting at 12:30 p.m. on 6 March 1998.

**Annex 1. Terms of Reference for the Working Group on the
Allocation of Fishing Rights* to Contracting Parties
of NAFO and Chartering**

The Fisheries Commission requests:

1. interested Contracting Parties to participate in the Working Group named above with senior-level participation;
2. the Working Group to meet by March 1, 1998, under the Chairmanship of H. Koster (EU);
3. the Working Group to:
 - a. consider the issue of allocating fishing rights within NAFO and, if necessary, develop appropriate options, taking into account the current allocation practice within NAFO, the interests of all Contracting Parties, the relevant provisions of the NAFO Convention, and any other applicable international agreements as well as the need for NAFO to function effectively;
 - b. develop options whose terms are explicit and predictable for allocation to Contracting Parties from current fisheries with NAFO TACs, fisheries previously not subject to NAFO TACs, new fisheries, closed fisheries being reopened, and fisheries for which fishing rights are or will be allocated in terms other than quotas (e.g., effort limits); and
 - c. examine and clarify rules applicable to the chartering of fishing vessels to fish on allocated fishing rights.
4. the report of the Working Group by June 30, 1998, in order to be considered at the 20th Annual Meeting of the Fisheries Commission.

*Allocation of fishing rights includes allocation of quotas as well as, e.g., effort limitations.

Annex 2. List of Participants

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L. I. Chepel, Executive Secretary

B. J. Cruikshank, Senior Secretary

**Annex 3. Opening Statement by Mr. Emilio Mastracchio
On behalf of the European Community**

Mr. Chairman, Distinguished Delegates,

I would like to welcome you here to Brussels on behalf of the European Community and to this particular venue on behalf of the European Commission. It gives me great pleasure to see you all here today and, in particular, to see a number of the faces familiar to me from my last NAFO venture in St. John's last year.

Over the next three days, we have a number of important tasks, which have to be examined. It was at last year's annual meeting that the initiative was taken to hold this working group.

From the Community side, we are aware that there is not full satisfaction from all Contracting Parties with the long-established allocation practice within NAFO. However, we must all recall that the delicate balance reached between the Parties in their allocation practice is of the utmost importance. I would therefore not like to see an unnecessary discontinuation of this established practice.

During this meeting, we will also be addressing the issue of private vessel charters. This practice is worrying for the Community due to the uncertainties about who is in control of the vessels and who ensures that the vessels fish in accordance with NAFO rules. Furthermore, we are of the opinion that this issue must be treated directly along with the issue of the quota allocation practices.

The issues ahead of us are of such importance that we must not rush our work. We should therefore be realistic with regard to what can be achieved during this meeting.

Mr. Chairman, I would like to thank you for all the work you have done in preparing this meeting and note that your retirement from the Fisheries Commission of NAFO has not meant your entire retirement from NAFO affairs. I know that you will easily meet the challenge of the next three days. I look forward to working with you and with all our partners from the other Contracting Parties. Thank you.

**Annex 4. Opening Statement by the Representative of the
United States of America**

Thank you Mr. Chairman.

The United States appreciates the willingness of NAFO Contracting Parties to engage in this important discussion of our quota allocation procedures. The United States advocates the use of a clear, transparent process for allocation which deals fairly with the needs of all member states, recognizes coastal states prerogatives, and recognizes historical participation. We believe we should build on the principles of the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks. I look forward to an open, productive discussion and real progress towards improving the NAFO allocation process. While many stocks managed by NAFO are currently in poor condition resulting in many fisheries under moratorium, we all look forward to a brighter future with healthier marine resources. Resolving allocation issues now can only strengthen the future of NAFO.

Annex 5. Opening Statement by the Representative of Korea

Mr. Chairman, Distinguished Delegates, Ladies and Gentlemen,

It is a great honour for me to participate in this Workshop. On behalf of the Korean government, I would like to thank the Chairman, and the Secretariat of NAFO for organizing and preparing this meeting.

Being a responsible fishing nation, the Republic of Korea has been actively participating in the international efforts to establish responsible fishing regimes. It has been co-operating with other countries in the conservation and management of fisheries resources. It has also established bilateral fishery agreements with 13 coastal states and has become a member of 12 international fisheries organizations.

In this context, Korea joined NAFO in December of 1993. And it has cooperated and will continue to cooperate with member countries of NAFO for conservation and management of fishery resources.

As you know, historically NAFO waters were very important fishing grounds for Korea, where our fishing vessels caught mainly cod, redfish, and flatfish.

I remember that when Korea joined the NAFO, member countries promised to support Korea for obtaining reasonable quota. And Korean government persuaded Korean fishermen to withdraw their fishing vessels from NAFO waters on the ground that appropriate quota would be allocated to them with the support of member countries. However, unfortunately even though Korea has been a member of NAFO, it has never obtained appropriate quota.

Korean fishermen are now complaining that even though Korea has contributed for the conservation and management of fishery resources through implementation of moratorium and financial assistance as a NAFO member nation, it has never obtained sufficient quotas to justify sending out even one fishing vessel since it became a member of NAFO in December of 1993.

I am afraid that if my government is not able to obtain more reasonable quotas in the near future, Korean fishermen may call on Korean government to withdraw from NAFO. I hope member countries will consider the Korean government's difficult position.

In addition, as the United States already pointed out, "NAFO does not have a process to make allocation to Contracting Parties that recently joined, yet it continues to allocate fishing rights to states that no longer fish in the Regulatory Area and do not meet their obligations of membership". In order to enhance the conservation and management of NAFO stocks, member countries should cooperate with each other, and recently joined member countries should be permitted to obtain appropriate quota.

To accomplish this end, a quota should be allocated fairly on a basis such as historical fishing activity among member countries. Moreover, incentives for quota allocation should be provided to non-member countries so that they may join NAFO for the conservation of fish stocks.

I think that the current quota allocation system is no longer applicable to the present reality. I suggest that the system be carefully reviewed and modified.

I hope that fishing quotas will be allocated in the most satisfactory manner possible in the near future. Thank you.

**Annex 6. Opening Statement by the Representative of France
On behalf of St. Pierre et Miquelon**

Mr. Chairman,

First I would like to greet all delegations to this important meeting on possibilities of quota allocation to newcomers and vessel chartering.

France on behalf of St. Pierre et Miquelon has been a member of NAFO for two years only.

We are here with the willingness to work in a constructive way and with the concern to protect and carefully manage stocks.

We are also here because St. Pierre et Miquelon's economic history has been closely linked with fishing for more than five centuries and because we are a coastal state.

A lot of countries represented around this table know this. We have continuous relationships with our Canadian neighbours and St. Pierre harbour has often accommodated friends from Europe, Portuguese and Spaniards, among others, and also Japanese, Russian and Korean vessels.

To a certain extent, we had already been a member of this Organization before we joined. We have been participating in all working meetings for 2 years and France is taking part in scientific research.

Destabilizing the Organization is therefore not going to be our objective. Once again we are here to work in a constructive way.

And we are also here to stand for our economic interests as a coastal state which wants to fish.

I know that quota allocation to new members and chartering of vessels are difficult matters but we shall have to tackle these in a constructive way because they are fundamental problems.

And we shall have to address them in line with the principles I have just outlined.

This is the message I wanted to convey.

Annex 7. Opening Statement by the Representative of Canada

Canada would first like to thank the European Community for its hospitality in hosting this important meeting in Brussels. This working group meeting will be challenging in view of the complex and sensitive issues before us. Canada, as the coastal state in Article XI of the NAFO Convention, has a direct interest in these important discussions.

We have heard some expressions of dissatisfaction about the current NAFO allocation practice. Some claim it does not meet the "needs" of NAFO members. This raises several questions:

- 1) What are the legitimate "needs" of new NAFO members?
- 2) What are the legitimate "needs" of long-standing NAFO members?
- 3) What are the criteria for meeting those needs?
- 4) Are the needs of long-standing NAFO members more legitimate than those of new entrants?
- 5) Are any past fishing activities outside the NAFO framework by new or recent members on NAFO stocks which were fully subscribed at the time, now a legitimate basis for setting fishing rights?

International fisheries law, and in particular the NAFO Convention, should provide the framework for our discussions. The U.N. Agreement on Straddling and Highly Migratory Fish Stocks, and in particular Article 11, should also provide some basis on the factors to be taken into account in determining the nature and extent of participatory rights for new members.

Canada also shares the concerns expressed by others that these discussions could have the potential to adversely affect the stability of the Organization. NAFO has faced numerous difficult challenges in recent years and Parties have found the way to develop solutions through open, transparent dialogue.

Canada looks forward to exploring these questions and the basic principles underlying the issues of fishing rights of members and vessel chartering. We also see these two issues as being inter-related.

Annex 8. Agenda

1. Opening by the Chairman, H. Koster (EU)
2. Appointment of Rapporteur
3. Adoption of Agenda
4. Consideration of the current allocation practice within NAFO, including developments since the establishment of NAFO, the interests of Contracting Parties, relevant provisions of the NAFO Convention and applicable international agreements
5. Consideration of general rules affecting allocations
6. Consideration of methods for setting quota allocations:
 - (a) current fisheries with TACs
 - (b) fisheries previously not subject to TAC
 - (c) new fisheries
 - (d) closed fisheries
7. Consideration of the NAFO Convention and chartering operations
8. Consideration of relevant provisions to be incorporated in a NAFO policy dealing with chartering operations
 - (a) flag-State responsibility
 - (b) notification/approval of other NAFO Contracting Parties to chartering operations
 - (c) Non-Contracting Party involvement in chartering operations
9. Other Business
10. Adjournment

Annex 9. Chairman' Working Paper**Guidelines for future discussions:****on Allocation of Fishing Rights**

1. Explore the meaning of the term "real interest" in relation to future new members.
2. Consider adopting a broad strategy to guide expectation of future new members with regard to fishing opportunities in the NAFO Regulatory Area.
3. Develop a broad strategy to allocate future fishing opportunities for stocks not currently allocated.
4. Explore in connection with stocks under TACs possible margins to accommodate requests for fishing opportunities.

on Chartering of Vessels

1. Consider chartering of fishing vessels which during the charter period are flying the flag of the chartering NAFO Contracting Party.
2. Consider and develop rules for chartering of fishing vessels flying the flag of a NAFO Contracting Party, which are duly authorized to exploit fishing rights of the chartering NAFO Contracting Party:
 - notification and approval procedures
 - criteria
 - recording and reporting rules
 - effective control