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Report of the Working Group on Transparency

27-29 May 1998
Washington, D.C., USA

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1998

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Report of the Working Group	3
1. Opening by the Chairman.....	3
2. Appointment of Rapporteur.....	3
3. Adoption of Agenda	3
4. Presentation of Papers by Delegates for Discussion.....	3
5. Consideration of Concrete Requirements and Rules for Participation of Observers at NAFO Meetings.....	3
6. Report and Recommendations to the General Council.....	4
7. Other Matters	4
8. Adjournment	4
Annex 1. List of Participants.....	5
Annex 2. Agenda	7
Annex 3. Paper Presented by the United States	8
Annex 4. Paper Presented by Denmark (in respect of Faroe Islands and Greenland).....	10
Annex 5. Chairman's Draft – Procedures for Observers	11

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1. Opening by the Chairman

The Chairman, D. Swanson (USA), opened the meeting and welcomed delegates to Washington, D.C. Representatives from the following Contracting Parties were present: Canada, Denmark (in respect of the Faroe Islands and Greenland), European Union, France (in respect of St. Pierre et Miquelon), Iceland, Japan, Republic of Korea, Norway, Poland, Russia and the United States (Annex 1).

Opening remarks were made by the representatives of the USA, Canada, Iceland, Denmark (in respect of Faroe Islands and Greenland), European Union, France (in respect of St. Pierre et Miquelon), Japan, Norway, Korea, Russian Federation and Poland.

2. Appointment of Rapporteur

P. Moran (USA) was appointed Rapporteur.

3. Adoption of Agenda

The provisional agenda, as circulated, was adopted (Annex 2).

4. Presentation of Papers by Delegates for Discussion

The Chairman reviewed the papers which had been circulated long in advance of the Meeting. In addition, there were three new papers by Denmark (in respect of Faroe Islands and Greenland) and one from the United States. The primary papers (Transparency W.G. Working Paper 98/1 and 98/2) dealing with the work of this Working Group are attached as Annexes 3 and 4. After considering both primary papers, it was agreed that the Meeting should move point by point through the issues using the agenda as a guide to discussion.

5. Consideration of Concrete Requirements and Rules for Participation of Observers at NAFO Meetings

a) (i) Intergovernmental Organization and Non-member Government Observers

Regarding this agenda item, it was agreed that discussion would be deferred until the Working Group had focused on agenda item 5(a)(ii). This discussion is reflected in the body of the Chairman's Paper (Annex 5).

(ii) Non-Governmental Organizations

The Working Group discussed issues relating to eligibility, selection, participation, costs and other provisions regarding NGO's. Many different views were expressed on these topics by the delegates. This discussion is reflected in the Chairman's Paper.

- b) Other access to and distribution of information on the work and decisions of NAFO in light of the Organization's relations with relevant interest groups and the general public.

The Executive Secretary summarized the current NAFO system of distribution of information noting that NAFO provides documents from the General Council, Fisheries Commission and Scientific Council to major fisheries organizations in North America and Europe. Information is also distributed to the United Nations, FAO and interested libraries in this region. Enquiries from the press of a Contracting Party are generally referred to the government of that Party. All other enquiries from the public are provided with condensed versions of NAFO activities. Furthermore, NAFO has developed an internet website which is currently being expanded.

Working Group delegates congratulated the Executive Secretary on the work of the Secretariat to increase NAFO's interaction with the public. Some delegates noted that perhaps this level of transparency was sufficient. Others expressed the view that Article XII of the UN Convention on Straddling Stocks identifies two elements to transparency - (1) the sharing of information and (2) access of observers to the decision-making procedure.

Regarding access of the press to NAFO meetings, the Executive Secretary clarified that the item "Publicity" is on the agenda of the General Council and Fisheries Commission each year.

Standard practice has been that no statements to the press may be made during the meeting. At the end of the meeting, the Chairs of the General Council, Fisheries Commission and Scientific Council in cooperation with the Executive Secretary draft a press release which is adopted by the General Council and released.

Discussion of the Working Group on access of the press focused on concerns relating to how information should be released to the public, what information should be released, and the relationship between observer and press participation. It was generally agreed that the Working Group should not attempt at this meeting to draft recommendations to the General Council on this issue.

6. Report and Recommendations to the General Council

After considerable discussion it was decided that the Working Group should recommend that the General Council authorize it to continue its work. The Working Group further recommended that Contracting Parties continue their consultations regarding issues discussed at this meeting. Finally, the Working Group requested that the Executive Secretary provide estimates of costs for observer participation at NAFO meetings.

The Working Group adopted the Report of its meeting.

7. Other Matters

There were no other matters.

8. Adjournment

The Meeting adjourned at 1155 hrs, Friday, 29 May 1998.

Annex 1. List of Participants

CANADA

Head of Delegation

R. Steinbock, Senior Advisor, Multilateral Relations Div., International Directorate, Dept. of Fisheries and Oceans, 200 Kent Street, Ottawa, Ontario K1A 0E6

Advisers

P. Charlton, Second Secretary, Fisheries and Environment, Embassy of Canada, 501 Pennsylvania Ave., Washington, D.C. 20008

DENMARK (in respect of Faroes and Greenland)

Head of Delegation

E. Lemche, Director, Grønlands Hjemmestyre, Pilestræde 52, Box 2151, Copenhagen, Denmark

Alternate

M. H. Pedersen, Royal Danish Ministry of Foreign Affairs, 2 Asiatick Plads, 1448 Copenhagen K, Denmark

EUROPEAN UNION (EU)

Head of Delegation

F. Wieland, European Commission, Directorate General for Fisheries, Rue de la Loi 200, B-1049 Brussels, Belgium

Advisers

F. Florindo, General Secretariat of the Council, 175 Rue de la Loi, B-1048 Brussels, Belgium
 G. Taylor, Ministry of Agriculture, Fisheries & Food, Nobel House, 17 Smith Square, London SW1P 3JR
 S. Feldthaus, Ministry of Food, Agriculture and Fisheries, Holbergsgade 2, 1057 Copenhagen K, Denmark
 C. Le Villain, Ministère de l'Agriculture et de la Pêche, Direction des Pêches Maritimes, 3 Place de Fontenoy, 75007 Paris, France
 H.-C. von Heydebrand, Bundesministerium für Ernährung, Landwirtschaft und Forsten, Rochusstr. 1, D-53123 Bonn, Germany
 C. Domínguez, Secretaría General de Pesca Marítima, Jose Ortega y Gasset, 57, 28006 Madrid, Spain
 R. Akesson, Ministry of Agriculture, 10333 Stockholm, Sweden

FRANCE (in respect of St. Pierre et Miquelon)

Head of Delegation

D. Silvestre, Secretariat General de la Mer, 16 Boulevard Raspail, 75007 Paris, France

ICELAND

Head of Delegation

S. Björnsson, Embassy of Iceland, 1156 15th Street, Washington, D.C.

JAPAN**Head of Delegation**

S. Ota, Embassy of Japan, 2520 Massachusetts Ave., NW, Washington, D.C. 20008

REPUBLIC OF KOREA**Head of Delegation**

Y. Jung, First Secretary for Maritime Affairs & Fisheries, Embassy of the Republic of Korea, 2450 Massachusetts Ave., NW, Washington, D.C. 20008

NORWAY**Head of Delegation**

S. Owe, Fisheries Counselor, Royal Norwegian Embassy, 2720 34th St. NW, Washington, D.C. 20008

POLAND**Head of Delegation**

J. L. Kleniewski, Consul, Consulate General of Poland, 233 Madison Avenue, New York, NY 11360

RUSSIA**Head of Delegation**

V. Fedorenko, Embassy of the Russian Federation, 1609 Decatur St. NW, Washington, D.C. 20011

UNITED STATES OF AMERICA**Head of Delegation**

D. Swanson, Chief, International Fisheries Div., F/SF4, National Marine Fisheries Service, U.S. Dept. of Commerce, 1315 East-West Highway, Silver Spring, MD 20910

Advisers

P. Moran, International Fisheries Div., F/SF4, National Marine Fisheries Service, U.S. Dept. of Commerce, 1315 East-West Highway, Silver Spring, MD 20910

J. P. Plé, Senior Atlantic Affairs Officer, Office of Marine Conservation, Dept. of State, 2201 C St. NW, Room 5806, Washington, DC 20520

H. Koehler, International Affairs Intern, Office of Marine Conservation, Dept. of State, 2201 C St. NW, Room 5806, Washington, DC 20520

L. Speer, Senior Policy Analyst, Natural Resources Defense Council, 40W 20th St., New York, NY 10011

M. Testa, Special Counsel, National Audubon Society, 32 Wildwood Dr, Great Neck, NY 11024

SECRETARIAT

L. I. Chepel, Executive Secretary

B. J. Cruikshank, Senior Secretary

Annex 2. Agenda

1. Opening by Chairman, D. Swanson (USA)
2. Appointment of Rapporteur
3. Adoption of Agenda
4. Presentation of papers by Delegates for discussion
5. Consideration of concrete requirements and rules for participation of observers at NAFO meetings:
 - a) terms, conditions, procedures, and other relevant factors for participation in meetings of NAFO bodies as observers or otherwise, as appropriate, with respect to:
 - (i) IGO's
 - (ii) NGO's
 - eligibility
 - selection
 - participation
 - cost
 - other provisions, and
 - b) other access to and distribution of information on the work and decisions of NAFO in light of the Organization's relations with relevant interest groups and the general public.
6. Report and recommendations to the General Council
7. Other matters
8. Adjournment.

Annex 3. Paper presented by the United States

Introduction

The Nineteenth Annual Meeting of the General Council "asked the USA delegation to prepare its paper to the next Working Group Meeting [on transparency] and decided to call an intersessional Working Group Meeting in May 1998 (in USA)."

The Principle of Transparency

The United States supports improved levels of transparency in the decision-making processes of multilateral fisheries management organizations and arrangements. We note that the level of participation by NGOs in multilateral negotiations has increased for some time and that the United Nations recognizes this role in Article 71 of its Charter. Unprecedented levels of access and participation by NGOs in meetings of the UN Conference on Environment and Development (UNCED) and the UN Fish stocks Conference are further testament to the growing recognition of the useful contribution that these organizations can make in multilateral fora. Forward-looking multilateral fisheries organizations and arrangements should seek to embrace the benefits provided from such participation, and this is already happening.

On March 3, 1998, representatives of the Governments of Belize, Colombia, Costa Rica, Ecuador, El Salvador, France, Honduras, Japan, Mexico, Panama, Papua New Guinea, Spain, the United States, and Venezuela, meeting in La Jolla, California, reached the Agreement on the International Dolphin Conservation Program, which contains in Article XVII and Annex X significant provisions for the admission of observers, using sensible procedures and conditions, at meetings of the parties. This language has since been circulated to all NAFO Contracting Parties by the NAFO Executive Secretary.

Transparency in NAFO

The United States strongly encourages NAFO to take concrete steps to ensure appropriate participation by IGOs and NGOs in meetings of the General Council, the Fisheries Commission, and the Scientific Council. New rules of procedure should afford IGOs and NGOs a meaningful opportunity to take part in meetings of the NAFO General Council, the Fisheries Commission and the Scientific Council while at the same time ensuring the integrity of NAFO objectives and processes. The new rules should cover, among other things, the manner in which representatives of IGOs and NGOs may present information and views at such meetings and should provide for timely access of IGOs and NGOs to appropriate NAFO records and reports. They should include safeguards to prevent any disruption of NAFO meetings or any diminution of NAFO's effectiveness as an organization.

At the Nineteenth Annual Meeting of NAFO, the United States circulated a paper (GC Working Paper 97/4, Revised) setting forth a proposal to accomplish the objectives discussed above. The text of that paper is attached.

U.S. Proposal on Transparency

Delete 1.2 of the Rules of Procedure for the General Council and for the Fisheries Commission and 1.3 of the Rules of Procedure for the Scientific Council, substituting, in each case, the following:

Rule 2. Admission of Observers

- 2.1. In exercising his or her responsibilities, the Executive Secretary, acting on behalf of Chairman of the General Council/Fisheries Commission/Scientific Council, shall grant observer status to:
 - * intergovernmental organizations that have regular contacts with NAFO as regards fisheries matters or whose work is of interest to NAFO or vice versa; and
 - * non-Member governments or entities identified as harvesting species to which the NAFO Convention is applicable in the Convention Area.
- 2.2. All non-governmental organizations (NGOs) with a demonstrated interest in the species under the purview of the Organization should be eligible to participate as an observer in all meetings of the General Council, Fisheries Commission, and Scientific Council, and, with permission of the presiding officer, any subsidiary body thereof, except extraordinary meetings held in executive session or meetings of Heads of Delegation.
- 2.3. Any eligible NGO desiring to participate as an observer in a meeting of the Organization or its subsidiary bodies shall notify the Secretariat of its desire to participate not less than 50 days in advance of the meeting. The Executive Secretary shall notify NAFO Contracting Parties of the names of NGOs desiring to participate as an observer in a specified meeting at least 45 days prior to the beginning of the meeting.
- 2.4. Any eligible NGO expressing a desire to participate as an observer may do so unless a majority of NAFO Contracting Parties formally objects for cause in writing at least 30 days prior to the beginning of the meeting, and in this case, the Executive Secretary shall notify the NGO and Contracting Parties accordingly.
- 2.5. Any eligible NGO admitted to a meeting may:
 - * attend meetings, as set forth above, as an observer, but may not vote;
 - * make oral statements during the meeting upon the invitation of the presiding officer;
 - * distribute information relevant to proceedings at meetings; and
 - * engage in other activities, as appropriate and as approved by the presiding officer.
- 2.6. NGO observers shall pay the marginal costs associated with their participation in meetings, but shall be assessed no fee in excess of such costs.
- 2.7. All observers admitted to a meeting shall be sent or otherwise receive the same documentation generally available to delegates.
- 2.8. All observers admitted to a meeting shall comply with these and all other rules and procedures applicable to other participants in the meeting.

Renumber remaining Rules accordingly.

Annex 4. Paper presented by Denmark (in respect of Faroe Islands and Greenland)

1. All non-member governments and intergovernmental organizations may participate as observers in Plenary sessions of NAFO's General Council and Fisheries Commission.
2. Applications for NGO observer status should be accompanied by a memorandum setting out relevant information including
 - a description of the NGO's ability to contribute to the work of NAFO,
 - the purpose of the NGO, including a copy of its annual report,
 - a description of the organization's activities and information of the organization's governance and the total number members,
 - up to date information about the organization's relevant activities.

(Note: these requirements correspond to those agreed to in Arctic Council).
3. NAFO's decision on each NGO application should be taken by consensus.

(Note: this also corresponds to Arctic Council).
4. Renewed decision on participation of each NGO should be taken regularly (e.g. every second year).

Any observer that engages in activities which are at odds with the principles and objectives of the NAFO Convention should have its status as observer suspended.
5. NAFO fora in which NGO observers may participate: Plenary sessions of the General Council and Fisheries Commission. Observer status in Scientific Council should be decided by SC, cf. Rules of Procedure 1.3 for the Scientific Council.
6. NGO's may make only written reports. No films, videos, tapes, etc.
7. NGO's should cover all expenses connected with their participation (room, documents, etc.).
8. Press should have same access as NGO's to NAFO meetings and documents.

(Note: This is the case in NASCO and IWC).
9. When a NGO publishes articles etc. on NAFO matters in which a Contracting Party is mentioned by name, the NGO should be obliged to forward the article to the Contracting Party in that Party's language.
10. The outlined regime on NGO observers should be implemented as a pilot project. NAFO should take final decision after [five] years.

Annex 5. Chairman's Draft – Procedures for Observers

Observers from Inter-governmental Organizations and Non-Contracting Parties

The Working Group agreed that, at present, there was no need to be concerned about the eligibility criteria for such observers. Contracting Parties should continue to be notified in advance of such measures. The costs of participation by non-member governments should be assessed consistent with those assessed to NGOs, while any costs assessed to IGOs should also aim at recovering the additional costs of their participation to NAFO, taking into account any reciprocal arrangements and reserving appropriate flexibility. IGO and Non-Contracting Party observers must agree in writing to comply with the Rules of Procedure and other rules applicable to other participants in the meeting.

Observers from Non-governmental Organizations

1. Eligibility

- A. Representatives from [international] non-governmental organizations (NGO's) [with a qualified interest in][with an ability to contribute to] [concerned with] the work of NAFO, and supportive of the optimum utilization, rational management and conservation of the fishery resources of the NAFO Convention Area, shall be eligible to participate in meetings described in 4(A) below.
- B. [NGO's referred to in paragraph 1A shall be international with offices in at least two Contracting Parties]

2. Application

Any NGO desiring to participate as an observer in meetings described in 4(A) below shall notify the NAFO Secretariat of its desire to participate at least [60] days in advance of the beginning of the meeting and shall specify in the body of a memorandum:

- A. a description of the NGO's [concern with] [ability to contribute to] [interest in] the work of NAFO;
- B. the purpose of the NGO, [including a copy of its annual report];
- C. description of the NGO's activities, including observership granted by other fisheries management organizations, [funding sources,] and [information of its governance and] the total number of members;
- D. a statement that the NGO supports the optimum utilization, rational management and conservation of the fishery resources of the NAFO Convention Area.
- E. a statement agreeing to comply with the Rules of Procedure and other rules applicable to other participants in the meeting.
- [F. a statement of the location of the NGO's offices in at least two Contracting Parties.]

3. Selection

- A. Notification: The Executive Secretary shall notify NAFO Contracting Parties of the names of NGOs desiring to participate as observers and shall forward copies of the documents in paragraph 2 to Contracting Parties at least [50] days prior to the beginning of the meeting.
- B. Selection:

[any eligible NGO that has applied consistent with 2 above to participate as an observer may do so unless a majority of NAFO Contracting Parties formally objects for cause in writing at least [30] days prior to the beginning of the meeting, and in this case, the Executive Secretary shall notify the NGO and Contracting Parties accordingly]

[the decision on each NGO application should be taken by consensus]

[any eligible NGO that has applied consistent with 2 above to participate as an observer may do so provided that a majority of NAFO Contracting Parties eligible to vote supports the application through a vote conducted by mail under Rule 2 of the applicable rules of procedure as a matter of course. Contracting Parties shall have [30] days to cast their votes [, and any votes opposing the application shall be accompanied by an explanation].

[Applicants shall be notified of the results of the voting within 10 days[, including, in the case of the denial of the application, the explanations for any votes opposing the application.]

C. Duration:

Decisions approving an application of an NGO will be effective for two years.

[Any observer that engages in activities which are at odds with the principles and objectives of the NAFO Convention should have its status as observer suspended.]

4. Participation

A. Meetings open to NGOs: NGOs shall be admitted to meetings of

[the General Council]

[the General Council and the Fisheries Commission]

[the General Council, the Fisheries Commission, and the Scientific Council]

[the General Council, the Fisheries Commission, and the Scientific Council and, with the permission of the presiding officer, any subsidiary body thereof, except extraordinary meetings held in executive session or meetings of Heads of Delegations.]

B. Forms of participation: NGOs may:

i. not vote

ii. not use films, videos, tape-recording devices, etc. to record meeting proceedings

iii. [attend meetings and distribute documents.]

[attend meetings, distribute documents and make oral statements:

[[at the discretion of the presiding officer]]

[[at the discretion of the presiding officer and subject to objection by any Party]]

[attend meetings, distribute documents, and make oral statements at fixed times, at the discretion of the presiding officer]

iv. [engage in other activities as appropriate and at the discretion of the presiding officer and subject to objection by any Party]

v. [each NGO may send not more than two representatives to meetings]

[All observers admitted to a meeting shall be sent or otherwise receive the same documentation generally available to delegates.]

C. Conditions of Participation

NGO's must agree in writing to comply with the rules of procedure and other rules applicable to other participants in the meeting. Failure to adhere to these rules of procedure can result in revocation of observer status.

5. Costs

NGOs shall bear the costs, including copying and mailing of documents prior to the meeting, of their participation.

(Note: A lump sum fee designed to meet these costs shall be established for the first applicable meeting and reviewed regularly thereafter by STACFAD.)

6. Other

- A. [the Press should have the same access to NAFO and under the same conditions and procedures as NGOs, except for paying a fee.]
- B. [When an NGO publishes an article on NAFO matters in which a Contracting Party is mentioned by name, the NGO shall forward a copy of the article to that Contracting Party [in that Party's language][in English]].
- C. Procedures and rules applicable to NGO observers should be implemented [as a pilot project for five years] [subject to review after five years] [subject to review at any time]. A general evaluation of the regime should be undertaken after five years.