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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

13-15 April 1999
Halifax, N.S., Canada

NAFO
Dartmouth, N.S., Canada
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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

Halifax, Nova Scotia, Canada
13-15 April 1999

1. Opening of the Meeting

The Meeting was called to order by the Chairman, Mr. H. Koster (EU), who welcomed delegates to the meeting (Annex 1).

The Chairman recalled the mandate for the Working Group as provided in the terms of reference (Annex 2) for the Working Group by the joint decision of the General Council and the Fisheries Commission at the 19th Annual Meeting, 15-19 September 1997, were still applicable.

The delegations of Canada and the USA offered opening remarks, attached as Annexes 3 and 4.

2. Appointment of Rapporteur

Mr. R. Steinbock (Canada) was elected as rapporteur.

3. Adoption of Agenda

The agenda attached as Annex 5 was adopted.

4. Exploration of the meaning of the term "real interest" in relation to future new members

The Chairman noted that the term "real interest" in relation to new members was discussed in broad terms at the March 1998 Working Group meeting. While the term appears in 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 (UNFA), the term has not been defined in any international instrument. The Representative of the USA introduced Working Paper 99/3 (Annex 6) entitled "Participatory Rights of Prospective New Members of NAFO" and noted that the usage of the term "real interest" implies that states with a real interest in a fishery include relevant coastal states and other states participating in a fishery. The USA stated that NAFO would need to take UNFA Article 11 into account in deciding fishing opportunities for new members.

The Representative of Japan introduced Working Paper 99/4 (Annex 7) entitled "Allocation of Fishing Rights and Chartering" and Japan's interpretation that the meaning of "real interest" is a state's truthful intention to fish and the capacity to actually fish, and with the clear and appropriate record of fishing in the NAFO Regulatory Area. He expressed the view that the UNFA should not be used as a guide for the allocation of fishing rights since this instrument had not yet entered into force. The Representative of Canada expressed the view that the term "real interest" in the UNFA was related solely to the right of states to become members of regional fisheries management organizations (RFMOs) and not in the context of allocation of fishing rights. He concluded that once states become members, then UNFA Article 11 is relevant with respect to quota allocation. The Representative of France (on behalf of Saint Pierre et Miquelon) concurred that UNFA Article 11 provided various criteria which may be used by RFMOs to guide the allocation of fishing rights for its members. The Representatives of Denmark and Norway agreed with the Canadian interpretation that the term "real interest" is linked solely to the right of states to join RFMOs and not for the allocation of fishing rights. After extensive discussions on this issue, the meeting agreed that a common understanding could not be found but that this was not necessary to consider a strategy to guide the expectations of future new members.

5. Consideration of a broad strategy to guide expectations of future new members with regard to fishing opportunities in the NAFO Regulatory Area

The Chairman noted that the NAFO Convention is open for accession by any state wishing to become a member (Article XXII.4). The Representative of the USA referred to Working Paper 99/3 which suggested a strategy to guide the expectations of future new members with regard to fishing opportunities in the NAFO Regulatory Area. He proposed some form of declaration by NAFO that would articulate the limitations to fishing opportunities to future new members in the NRA to the following: exploring any flexibility in the current quota table as well as a broader sharing when regulated stocks recover, and fishing opportunities for stocks not currently managed by NAFO. A number of Contracting Parties proposed that the benefits of recovered stocks should accrue to current NAFO members only in recognition of their restraints and contributions to conservation.

The Representative of Denmark (on behalf of the Faroe Islands and Greenland) submitted Working Papers 99/1 and later 99/5 (Annexes 8 and 9) which related to Agenda items 5, 6 and 7 of the agenda. He introduced this elaboration of proposals in an effort to provide a focus for and facilitate the discussions. He explained that these proposals sought to reflect to a reasonable extent existing NAFO principles whilst also taking into account appropriate changes caused by developments since the NAFO quota sharing system emerged over twenty years ago. The Representative of Japan referred to section A.2 of Working Paper 99/1 regarding preference to coastal states. He stated that Japan did not accept the notion of coastal state preference as it is not provided for in international law. Also in reference to section A.2 - Remarks, the Representative of Denmark (on behalf of the Faroe Islands and Greenland) clarified the concept of "zonal attachment" refers to biological criteria such as the biomass distribution between coastal state waters and the NAFO Regulatory Area and thus the weight of coastal state preference for a coastal state should vary from stock to stock to reflect these biological criteria. The Representative of France (on behalf of Saint Pierre et Miquelon) expressed support to the principles of coastal state preference in the allocation of straddling stocks based on the NAFO Convention, Article XI.4 by taking in due account of coastal communities that are primarily dependent on fishing for NAFO stocks. The Representative of Canada clarified that Article XI.4 refers to only "the Contracting Party", singular - not plural, in reference to Canada's contributions at the time the Convention was negotiated.

After extensive discussions and at the request of the Chair, the Representative of the USA submitted Working Paper 99/7 (Annex 10) entitled "Draft General Council Resolution to Guide the Expectations of Future New Members with Regard to Fishing Opportunities in the NAFO Regulatory Area". This resolution is aimed at providing an objective statement of facts - that NAFO is an open organization under the NAFO Convention Article XXII.4, that all Contracting Parties are members of the General Council, and that should new NAFO members obtain membership in the Fisheries Commission, they should be aware that presently, and for the foreseeable future, fishing opportunities are likely to be limited to new fisheries and the "Others" category of the NAFO quota allocation table. All Contracting Parties agreed in principle with the proposed draft however the Representative of the EU withheld its support and requested the opportunity to consult further internally on some technical issues. The Chair proposed that the proposed resolution would be presented to the General Council in September 1999.

6. Development of a broad strategy of allocating future fishing opportunities for stocks not currently allocated

7. Exploration of possible margins to accommodate requests for fishing opportunities in connection with the stocks under TACs

In reference to Working Papers 99/1 and 99/5, the meeting considered possible criteria for allocating future fishing opportunities of stocks not currently allocated by NAFO as well as possible margins for allocation in regard to stocks currently under TAC/effort limits. The Representative of Norway expressed the view that discussion of model 4b in W.P. 99/1 was inappropriate according to the agenda of the meeting. Contracting Parties advanced proposals for initial eligibility to fishing rights and then various criteria that should be

considered in the allocation of future fishing opportunities of stocks not currently allocated. After extensive discussions, the Chairman submitted Working Paper 99/8 (later revised) (Annex 11) entitled "Interpretative notes by the Chair attempting to clarify discussions on Agenda points 6 and 7" - which aimed to provide an inclusive "shopping list" of criteria for Contracting Parties to qualify for fishing rights and secondly considerations for the allocation of fishing rights, as well as an agreed list of the NAFO-managed stocks indicating, respectively, whether they have been allocated and whether they are currently subject to a moratorium. The Chairman emphasized that the criteria presented were without any evaluation - they carried no qualification as to weighting or importance. He noted that the lists were without prejudice to future discussions and that they may be considered at some point for possible future discussions depending on the General Council.

A number of ideas were also advanced for possible further consideration with respect to possible margins for allocation in regard to stocks currently under TAC. These included reallocation of unused and underutilized quotas, reallocation of quotas when the abundance of stocks exceeds a reference level to be identified, the possibility for wider sharing among Contracting Parties, allocation of the "Others" quota and the allocation of the Block quotas.

8. Consideration of the chartering of fishing vessels which are flying the flag of the chartering Contracting Party during the charter period

9. Consideration and development of rules for chartering of fishing vessels flying the flag of a Contracting Party, which are duly authorized to exploit fishing rights of the chartering NAFO Contracting Party, in the following terms:

- **notification and approval procedures**
- **criteria**
- **recording and reporting rules**
- **effective control**

The meeting agreed that flag-state or "bare-boat" charters were not of concern and could continue to take place by Contracting Parties. At Japan's request, the meeting agreed that Contracting Parties should report such charters to NAFO for purposes of transparency.

With respect to non-flag state charters, France (on behalf of Saint Pierre et Miquelon) pursued the need for a charter policy in order that a Contracting Party without secure fishing capacity might still benefit economically from its NAFO fishing rights. The Representative of France introduced Working Papers 99/2 (Annex 12) and subsequently 99/6 (Annex 13) which provide draft resolutions concerning the chartering of vessels flying the flag of a Contracting Party in the Regulatory Area. He explained the basic principles of the proposed chartering policy - that charter operations would be limited in scope and restricted to vessels flying the flag of NAFO Contracting Parties, that any chartering operation would be subject to an Agreement between the Contracting Parties concerned, that the charter would be limited in time and would not exceed the capacity of (one) vessel a year and would be approved by a majority of the Contracting Parties through a mail vote according to NAFO rules, and that the Contracting Party granted the allocation remained responsible for its management to NAFO. He also explained the general terms of the agreement between Contracting Parties including the proviso that in case of non-compliance with NAFO rules, the Contracting Party of the chartered vessel would take appropriate sanctions in accordance with international law and the charter would be cancelled.

The Representative of the EU provided an analysis of some of the legal concerns associated with non flag-state charters with the conclusion that the flag-state has sole responsibility to ensure compliance of the vessel on the high seas. The Representative of Japan referred to its Working Paper 99/4 and explained its position that strict provisions should be established for charter operations and they should be limited to the substitution of domestic fishing vessels and to supplying fish products domestically. He felt that if chartering operations are used mainly to fulfil a gap between the current fishing capacity and the allocation

of quota to a Contracting Party, NAFO should not approve the charter. He also concurred with the need for Fisheries Commission approval of any proposed charter. The Representative of Canada raised the issue that the "others" quota as well as the 100 effort days equivalent in the 3M shrimp fishery should not be available for charter as the others quota does not belong to any one Contracting Party and the 100 effort days in the 3M shrimp fishery were serving an equivalent purpose. He expressed the view that the flag state had to be accountable and take full responsibility for control and reporting of the chartered vessel. He echoed the concern expressed by Japan and questioned the benefits of permitting charters on a long-term basis, recommending that they not be approved for more than two years, with a possibility, if appropriate, for a one year extension. The Representative of Norway agreed with Canada that the "100 effort-days equivalent" should not be available for charter. A number of other Contracting Parties also expressed reservations to the idea of what appeared from the situation described by the Representative of France as a recurring charter operation year to year. Most Contracting Parties concurred that if charters were permitted, they should be under very limited conditions with a stipulation for a bilateral agreement between the Contracting Parties involved to address the enforcement and reporting responsibilities and other conditions.

The Chairman summarized the discussions that the meeting did not oppose a pragmatic solution in principle if it were based on the premise that charters would be limited to extraordinary circumstances and in time to no more than two and possibly three years and that a bilateral agreement between the Contracting Parties would address the enforcement responsibilities between the parties involved. The Working Group recommended that Working Paper 99/6 be referred to STACTIC to review the enforcement and reporting responsibilities that need to be reflected in such a bilateral agreement.

10. Other Business

There was no other business.

11. Adjournment

The Chairman adjourned the meeting at 11.20 am on 15 April 1999.

Disposition of Report

The Report was considered by the General Council at the 21st Annual Meeting, September 1999.

Annex 1. List of Participants

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**Annex 2. 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 3. Opening Statement by the Representative of Canada

Canada would first like to welcome all delegations to the beautiful port city of Halifax. We would also like to thank the NAFO Secretariat for making the arrangements and providing logistical support for this meeting.

Canada has a direct interest in the discussions of this working group.

There is no doubt that the issues before us are challenging. The March 1998 meeting of the working group highlighted the complexity and sensitivity of some of these issues. Last year we explored some of the broad principles of international fisheries law.

Through the Chairman's Working Paper, the group managed to provide a focus to our discussions this week with respect to some key issues. It was agreed that allocations to future members of NAFO needed to be examined as a distinct issue. The Chairman made it clear that any strategy to be developed under this item will not affect existing fishing rights of Contracting Parties. Canada believes that the working group can make progress on this particular issue at this meeting.

Developing consensus on a broad strategy to allocate future fishing opportunities for stocks not currently allocated raise several questions. Is there a set of universal criteria or is each situation unique? The agenda item on possible margins in the current quota table to accommodating requests for fishing opportunities may be even more complex. There are various proposals for reallocation of existing quotas based on some concept of "use it or lose it". These proposals raise substantive issues of equity as well as questions as to the real reasons for quota underutilization. These questions need to be looked at carefully.

Last year's meeting also considered the issues relevant to the chartering of fishing vessels between NAFO Contracting Parties. It was agreed that there were non-transferable obligations required of the flag state such as for monitoring, control and reporting. Any charter policy and rules that are adopted need to be effective in addressing these responsibilities.

Canada also continues to share the concerns expressed by others that these discussions could have the potential to adversely affect the stability of the Organization. I am confident that the Parties will be sensitive to these concerns and find the way to develop solutions through open, constructive dialogue.

The Canadian delegation looks forward to examining these questions and the basic principles underlying the issues of fishing rights of members and vessel chartering.

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

Thank you, Mr. Chairman.

My delegation is happy to be meeting in this beautiful location, and we are grateful to the Executive Secretary, his staff, and the Government of Canada for providing such fine arrangements. Dr. Rosenberg sends his regrets that he is unable to attend this meeting, but this is the very week that my successor, the new Director of the National Marine Fisheries Service, reports for duty. Lest there be no misunderstanding of the importance of this meeting to the United States, I am happy to join you, at least for today, during my first week of service as the Deputy Assistant Secretary for International Affairs, National Oceanic and Atmospheric Administration.

We appreciate the participation of all present and your willingness to strive for progress on our terms of reference which include issues that are very important to the United States, other Contracting Parties, and the Organization as a whole. Many of these issues relate back to the need for NAFO to have an allocation process that meets the needs of its members as well as the Organization. The process must be clear and transparent; it must recognize all the legitimate needs and interests of its members; and it must serve our present needs as well as those we can predict into the future.

We are fully prepared to work with our colleagues around the table and with you, Mr. Chairman, to make progress on our agenda during the next three days. Anticipating our work, let me make some initial comments. First, we are circulating a working paper on the meaning of the term "real interests" in relation to future new members. We hope that delegations find it useful. Second, we believe that it may be possible to draft a document, perhaps in the form of a General Council resolution, to guide expectations of future new members with regard to fishing opportunities in the NAFO Regulatory Area. Third, we are grateful to the Danish Delegation, in respect of the Faroe Islands and Greenland, for its working paper which relates to most of the agenda items dealing with quota allocation. Finally, we are prepared to conclude our consideration of the chartering of fishing vessels on the basis of the duties and responsibilities of both the flag State and the chartering State.

My delegation looks forward to an open, productive discussion and real progress on an allocation process that will work today and tomorrow and a resolution of the chartering question. Unfortunately, many NAFO-managed stocks are not subject to directed fishing in light of the status of those stocks. We are all working toward the recovery of these resources and looking forward to a brighter future with healthier marine resources. Resolving allocation issues now can only strengthen the future of NAFO.

Annex 5. Agenda

1. Opening by the Chairman, H. Koster (EU)
2. Appointment of Rapporteur
3. Adoption of Agenda
4. Exploration of the meaning of the term "real interests" in relation to future new members
5. Consideration of a broad strategy to guide expectations of future new members with regard to fishing opportunities in the NAFO Regulatory Area
6. Development of a broad strategy of allocation future fishing opportunities for stocks not currently allocated
7. Exploration of possible margins to accommodate requests for fishing opportunities in connection with the stocks under TACs
8. Consideration of the chartering of fishing vessels which are flying the flag of the chartering Contracting Party during the charter period
9. Consideration and development of rules for chartering of fishing vessels flying the flag of a Contracting Party, which are duly authorized to exploit fishing rights of the chartering NAFO Contracting Party, in the following terms:
 - notification and approval procedures
 - criteria
 - recording and reporting rules
 - effective control
10. Other Business
11. Adjournment

Annex 6. Participatory Rights of Prospective New Members of NAFO (Working Paper 99/3 - Presented by the United States)

Summary

This paper explores the meaning of the term “real interest” in relation to future new members and sketches a strategy to guide the expectations of future new members with regard to fishing opportunities in the NAFO Regulatory Area. It suggests the following strategy:

In light of the real interest of present Contracting Parties of NAFO in the fisheries and fishery resources under the Organization’s purview as well as the work of the Organization, accommodation of the fishing interests of any additional Contracting Parties will be limited to, at most:

1. Exploring in connection with stocks under TACs or effort controls possible “margins” to accommodate additional fishing opportunities, i.e., explore any flexibility in the current quota table as well as a broader sharing when regulated stocks recover and
2. Fishing opportunities for stocks not currently managed by NAFO.

Background

Several Articles of 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, hereinafter referred to as the Fish Stock Agreement (FSA), are relevant to how NAFO might treat any future new members with regard to fishing rights, even though the FSA is not yet in force. NAFO Parties will be obliged to “agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort” (FSA Article 10(b)). They will also be obliged to “agree on means by which the fishing interests of new members of the organization...will be accommodated” (FSA Article 10(i)). However, in making the distinction between existing and prospective new members, these articles do not rule out recognizing differing claims on fish allocations, just as the NAFO Convention establishes the basis for recognizing differing claims on fish allocations among existing NAFO Parties (see NAFO Convention Article XI (4)).

FSA Article 11 is devoted to the nature and extent of participatory rights to be accorded to new members of an organization like NAFO, at least with respect to straddling stocks. States shall take into account, inter alia:

- (a) the status of the straddling fish stocks ... and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members...;
- (c) the respective contributions of new and existing members... to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;
- (e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and
- (f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

FSA Article 11 establishes that, in meeting their obligation to agree on fish allocation policies regarding new members, parties to regional fisheries management organization such as NAFO may consider the interests of new members on a case-by-case basis and should take into account, but are not limited to, the foregoing considerations.

The Working Group on Allocation of Fishing Rights to Contracting Parties of NAFO and Chartering of Vessels Between Contracting Parties, which met in Brussels, March 4-6, 1998, agreed that rules should be developed regarding how NAFO would deal with future new members in terms of allocations. The Chairman's Working Paper, in setting out proposed guidelines for future discussions, suggested that participants "explore the meaning of the term 'real interest' in relation to future new members."

Real Interest

The term "real interest" is introduced and used in Article 8 and used again in Article 9 of FSA. Although it is never expressly defined, its usage implies that states with a real interest in a fishery include relevant coastal states and other states participating in the fishery. In Article 8 (3), with regard to existing organizations such as NAFO, it is said that "States fishing for the [straddling] stocks on the high seas and relevant coastal states shall give effect to their duty to cooperate by becoming members of such organization ...or by agreeing to apply the conservation and management measures established by such organization.... States having a real interest in the fisheries concerned may become members of such organization.... The terms of participation in such organization shall not preclude such states from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned."

Based on the provisions of FSA Article 8 (3), one can infer that states with a real interest in a fishery managed under the auspices of an organization like NAFO, assuming that interest is in participating in such fishery, include those states presently fishing in the fishery and relevant coastal states. A state could in principle have a real interest in a managed fishery that did not include a direct fishing interest, such as concern for a bycatch species or for the environmental effects of using a particular fishing gear.

FSA Article 8 (4) establishes that states need not join an existing organization such as NAFO, but in order to have access to the fishery resources managed by the organization, they must either join or agree to apply its conservation and management measures. The living resources of the high seas are no longer open to harvesting at will. If an organization such as NAFO has set rules to regulate high seas fishing, only those States whose vessels abide by the rules may participate in the relevant fisheries. Because NAFO's management regime involves the allocation of all allowable catches or effort limits for managed stocks to its members, it may not be possible for a state to remain outside of NAFO while its flag vessels fish for NAFO-managed stocks, yet agree to apply its conservation and management measures.

Finally, while FSA Article 8 (3) introduced the concept of a state having "a real interest in the fisheries concerned," FSA Article 9 (2) contemplates a situation in which states are forming a fisheries management organization and must "inform other States which they are aware have a real interest in the work of the proposed organization...." Thus, it is possible to have a real interest in fisheries or in the work of a fisheries management organization or both.

NAFO already makes a distinction between Contracting Parties with a real interest in the work of the Organization and those with a real interest in the fisheries managed by NAFO. In the Convention, Article IV(1) provides that each Contracting Party shall be a member of the General Council whereas Article XIII(1) reserves membership in the Fisheries Commission to:

- a) each Contracting Party which participates in the fisheries of the Regulatory Area and
- b) any Contracting Party which has provided evidence satisfactory to the General Council that it expects to participate in the fisheries of the Regulatory Area during the year of that annual meeting or during the following calendar year."

A Strategy on New Member Fishing Opportunities

The situation in NAFO is that all relevant coastal states have become Contracting Parties, and all other states or entities with a significant fishing history in the NAFO Convention Area have also become Contracting Parties. Nevertheless, NAFO Convention Article XXII (4) states that “any party which has not signed this Convention may accede thereto by a notification in writing to the Depositary.”

The class of states or entities that could join NAFO in the future consists of states with no history of fishing in the NAFO Regulatory Area (NRA) and states whose flag vessels have fished in the NRA while remaining non-contracting parties of NAFO.

In either case, NAFO would have to take into account the provisions of FSA Article 11 in deciding what, if any, fishing opportunities such new members would have. However, given the status of many NAFO-managed stocks; the existing level of fishing effort; the respective interests, fishing patterns, and fishing practices of new and existing members; and the contributions (or lack thereof) made to the conservation and management of the stocks, to the collection and provision of accurate data, and to the conduct of scientific research on the stocks, among other considerations, future new members of NAFO cannot make strong claims for fishing opportunities for the foreseeable future.

How might NAFO choose to accommodate the fishing interests of new members in the future? It could articulate a strategy to be applied to such a situation as follows:

In light of the real interest of present Contracting Parties of NAFO in the fisheries and fishery resources under the Organization’s purview as well as in the work of the Organization, accommodation of the fishing interests of any additional Contracting parties will be limited to, at most:

1. exploring in connection with stocks under TACs or effort controls possible “margins” to accommodate additional fishing opportunities*, i.e., explore any flexibility in the current quota table as well as a broader sharing when regulated stocks recover and
2. fishing opportunities for stocks not currently managed by NAFO.

*This language is taken from the report of the working group mentioned earlier and refers to allocating quotas in an ad hoc manner, not according to a quota share.

Annex 7. Allocation of Fishing Rights and Chartering (Working Paper 99/4 - Presented by Japan)

Allocation of Fishing Rights and Chartering

1. Allocation of Fishing Rights

(1) Basic position

Japan supports NAFO's effort to review the current allocation system of fishing rights (allocation of TACs and fishing efforts) in order to facilitate effective utilization of the fishing right. Japan considers that the current situation that considerable amount of fishing quotas are allocated to some Contracting Parties but such Contracting Parties did not utilize even a small portion of the allocation whereas the other Contracting Parties could receive the allocation to fully utilize should be urgently rectified.

(2) Meaning of the term "real interests" in relation to future new members

Japan interprets that the meaning of "real interest" is the state's truthful intention to fish and the capacity to actually fish, and with the clear and appropriate record of fishing in the NAFO Regulatory Area.

However, NAFO may consider the allocation of fishing right to a new Contracting Party when factors such as research and enforcement are substantially contributing to the achievement of aims and objectives of NAFO.

(3) Consideration of a broad strategy to guide expectations of future new members with regard to fishing opportunities in the NAFO Regulatory Area

(a) fisheries with TACs

Japan can not accept "three-step approach" proposed by the US last March, which prioritizes quota allocations for coastal states because no provision is exist in any international agreements to grant such priority to coastal states.

However, Japan can consider a part of the US proposal, namely,

"If a Contracting Party with a quota allocation in a fishery with a TAC does not utilize more than a certain percentage (e.g. 60-70%) of its allocation share for a period of three consecutive years, then such Contracting Party shall receive an allocation equal to the three year period average for the next year. The extra amount of the quota generated by the above measure shall be reallocated, taking into account necessary factors such as fishing capacities of Contracting Parties requesting to fish"

(b) fisheries previously not subject to TACs and new fisheries

Allocations of quotas in fisheries previously not subject to TACs and new fisheries should, in principle, be made equally to Contracting Parties requesting to fish, taking into account necessary factors such as fishing capacities of the Parties.

Japan would like to reiterate that it is not appropriate that TACs and allocations system are introduced to the fisheries resources which their abundance is very high and do not need any catch limitation measures at present. Introduction of TACs and allocations as resource management measures should be considered in the light of their actual need based on scientific evidence.

(c) closed fisheries

When deciding on reopening of any fisheries which has been previously subject to closure, prudent and profound consideration on the past causes of such closures should be given so as not to repeat the same or similar mismanagement which may cause re-closure of the fisheries.

2. Chartering

Japan thinks that it is necessary for management of chartering to establish strict provisions and such chartering operation should be limited for substitution of domestic fishing vessel(s) or for domestic supply of fish products. If chartering operations are mainly used to fulfill the gap between the current fishing capacity and allocation of fishing capacity/quota to a Contracting Party, regardless of vessels' flagship and the amount of domestic supply, NAFO can not improve fairly the current situation mentioned above item 1. (1).

Regarding decision-making rules, a majority of votes of all Contracting Parties should be necessary for any chartering operations, as any transfers of fishing quota are.

Annex 8. Paper Presented by Denmark (in respect of Faroe Islands & Greenland)
(Working Paper 99/1)

This Working Paper relates to items 5, 6 and 7 of the Agenda.

The Working Paper is inspired by the U.S.A. paper "Proposal by the U.S.A. for a Northwest Atlantic Fisheries Organization Policy on Allocation of Quotas" (Working Group W.P. 98/6).

The attachment to this Working Paper is divided into 3 sections: "Questions to be Addressed", "Suggested Solutions" and "Remarks". We consider that such a division will facilitate discussion. Delegations might agree with the "Questions to be Addressed" while not agreeing with the "Suggested Solutions".

Denmark (in respect of Faroe Islands and Greenland) considers that any quota mechanism should contain an element of stability. However, stability should not be interpreted as unchangeability. Hence, the proposal in the Attachment should not have a duration of more than 5-10 years.

We also are aware of the risk that any new mechanism for setting TAC's or quotas might be applied so strictly that the role of the Fisheries Commission would evaporate. Therefore the proposal in the Attachment should be regarded as "Principal Guidelines", from which exemptions can be made if concrete circumstances so warrant.

The proposal in the Attachment seeks to reflect – to a reasonable extent – existing NAFO principles, whilst also taking into account appropriate changes caused by developments since the existing quota sharing system was taken over by NAFO twenty years ago.

(Attachment to W.G. Working Paper 99/1)

QUESTIONS TO BE ADDRESSED	SUGGESTED SOLUTIONS	REMARKS
<p>A: ALLOCATION BETWEEN PRESENT NAFO MEMBERS</p> <p>1. Should the receiver of allocations be "in good standing"?</p> <p>2. Should preference be given to Coastal States?</p> <p>3. Should allocation only take place when the allocation has a certain minimum size?</p> <p>4a. Current fisheries with TAC's.</p>	<p>Yes</p> <p>Yes, with respect to straddling stocks.</p> <p>Yes, but the minimum size may vary from stock to stock.</p> <p>If an amount to be allocated under 4a-d falls short of the minimum size, the amount should be transferred to the "others" quota.</p> <p>TAC's up to traditional levels: should be allocated corresponding to NAFO's present allocation key.</p>	<p>Same as U.S.A. proposal.</p> <p>The weight of the preference should vary from stock to stock, and reflect the different zonal attachments.</p> <p>An allocation should, as a minimum, enable the Contracting Party to conduct an economically meaningful fishery (e.g. one full hold for one vessel).</p> <p>Minimum sizes should be fixed for each stock, and may vary from year to year.</p> <p>In 1999 only four NAFO TAC's are bigger than 0: 3M redfish, 3LNO yellowtail, 3LMNO Greenland halibut and 3+4 squid.</p> <p>"Traditional levels" = highest TAC's within the period [1980-1990].</p>

QUESTIONS TO BE ADDRESSED	SUGGESTED SOLUTIONS	REMARKS
<p>4b. Fisheries previously regulated by effort limitation.</p> <p>4c. New fisheries</p> <p>4d. Closed fisheries</p>	<p>Increases of TAC's beyond traditional levels should be split in three parts: one should be allocated corresponding to NAFO's present allocation key; one should be allocated to present Contracting Parties whose economies are overwhelmingly dependent on the exploitation of living marine resources; one should be transferred to the "others" quota.</p> <p>[70] percent of the TAC should be allocated proportional to catches in a relevant period. [20] percent of the TAC should be allocated proportional to the present allocation of fishing days. [10] percent should be set aside for the "others" quota.</p> <p>[90] percent of the TAC should be allocated proportional to fisheries in the latest [3] years. [10] percent of the TAC should be set aside for the "others" quota.</p> <p>Upon reopening: TAC's up to traditional levels:</p> <p>[90] percent of the TAC should be allocated to previous quota receivers, corresponding to the latest NAFO allocation key before the fishery was closed. [10] percent should be set aside for the "others" quota.</p> <p>Increases of TAC's beyond traditional levels should be allocated as in 4a.</p>	<p>The suggested solution should not be considered as a proposal to establish a TAC/quota system for 3M shrimps.</p> <p>The suggested solution should not apply if the fishery has been closed for less than [5] years or more than [15] years.</p>

QUESTIONS TO BE ADDRESSED	SUGGESTED SOLUTIONS	REMARKS
<p>5. Should transfers be allowed?</p> <p>6. Should underutilization of quotas imply consequences for future allocations?</p> <p>B: PARTICULARS WITH RESPECT TO FUTURE NEW MEMBERS.</p> <p>1. From which TACs may future new members receive allocations?</p> <p>2. How much may future new members fish?</p>	<p>Yes, on the same conditions as today.</p> <p>Yes. Repeated underutilization of a Contracting Party's quota should imply that [part of] the unutilized quota is transferred to the "others" quota.</p> <p>TAC's mentioned under A 4c, <u>not</u> TAC's mentioned under A 4a, b and d.</p> <p>Future new members participate on equal footing with present Contracting Parties in allocations mentioned in A 4c.</p> <p>In addition, future new members may fish under the "others" quotas mentioned in A 4a-d.</p>	<p>Transfers should be regarded as under-utilization by the original quota receiver.</p> <p>This proposal takes no stand on the question of eventual future conditions for NAFO's approval of applications from new members ("real interest").</p>

Annex 9. Explanation of Various Points in Working Paper 99/1
(Working Paper 99/5 – Presented by Denmark in respect of Faroe Islands and Greenland)

The following examples are given to illustrate some of the suggestions in Working Paper 99/1.

Re A, 4b: Fisheries previously regulated by effort limitation.

Assumption: NAFO FC has decided to establish a TAC of 100,000 tons for 3M shrimp.

Allocation:

70,000 tons (= 70%) should be allocated between present Contracting Parties proportional to their catches – as reported to NAFO – in a “relevant period”. This period should be decided by NAFO Fisheries Commission. – A specific problem to be solved is how to deal with catches taken under objection.

20,000 tons (= 20%) should be allocated between present Contracting Parties proportional to their present fishing days, as circulated by the NAFO Secretariat (latest circulation is GF/98-617 of 4 December 1998. A specific problem to be solved is how to deal with Contracting Parties who because of objection has no allocation of fishing days in that list.

10,000 tons (= 10%) should be set aside for the “Others” quota.

Re A, 4c: New fisheries

Assumption: NAFO Fisheries Commission has decided to establish a TAC for a stock, which at present is unregulated, e.g. a TAC of 20,000 tons for skates.

Assumption: Through the latest [3] years the fishery for skates has been as follows: Japan 6,000 tons, USA 2,000 tons, Mexico 1,000 tons.

Assumption: Mexico is now a member of the NAFO Fisheries Commission.

Allocation:

18,000 tons (= 90%) should be allocated proportional to fisheries in the latest [3] years, as follows: Japan 12,000 tons, USA 4,000 tons, Mexico 2,000 tons (cf. Section B1).

2,000 tons (= 10%) should be set aside for the “Others” quota.

**Annex 10. Draft General Council Resolution to Guide the Expectations
of Future New Members with Regard to Fishing Opportunities
in the NAFO Regulatory Area**

(Working Paper 99/7 Revised – Presented by the USA)

The Contracting Parties,

NOTING that in accordance with relevant principles of international law, the Northwest Atlantic Fisheries Organization (NAFO) is the competent regional fishery management organization, and in accordance with the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (hereafter, the “Convention”), it has implemented conservation and management measures for particular stocks in the Convention Area;

NOTING Article 11 of the UN Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; and

DESIRING to guide the expectations of future new members with regard to fishing opportunities in the NAFO Regulatory Area;

HAVE AGREED to the following guidance:

1. NAFO is an open organization. States and fishing entities not presently members of the organization may join NAFO by depositing an instrument of accession in accordance with Article XXII of the Convention. In accordance with Article IV of the Convention, all Contracting Parties are members of the General Council.
2. Should any new member of NAFO obtain membership in the Fisheries Commission, in accordance with Article XIII (1) of the Convention, such new members should be aware that presently and the foreseeable future, stocks managed by NAFO are fully allocated, and fishing opportunities for new members are likely to be limited, for instance, to new fisheries (stocks not currently allocated by TAC/quota or effort control), and the “Others” category under the NAFO Quota Allocation Table.

**Annex 11. Interpretative notes by the Chair attempting to
clarify discussions on Agenda points 6 and 7**
(Working Paper 99/8 Revised)

Agenda point 6

"Development of a broad strategy of allocation future fishing opportunities for stocks not currently allocated"

Ideas identified for possible further consideration (if to be considered further definition to be elaborated):

A. Qualifying criteria:

- Contracting Parties "in good standing"
- "Interested" Contracting Parties:
 - where appropriate (straddling stocks) relevant Coastal State;
 - whose vessels have traditionally fished relevant resources;
 - undertaken extensive efforts to ensure the conservation of such stocks, in particular, by providing surveillance and inspection of international fisheries under the international scheme of joint enforcement;
 - undertaken significant substantial contribution to research and data collection for relevant resources;
 - whose economy is overwhelmingly dependent on fisheries.
- Other Contracting Parties
- Future new members "in good standing" (cooperative in accordance with relevant international agreements such as UNCLOS and UNFA and consistency with NAFO measures)

B. Allocation criteria:

- Reference fishing pattern during a representative period
- Where appropriate for Coastal State (straddling stocks), reference fishing pattern during a representative period and/or zonal attachment (biological criteria)
- "Others" lump sum
- Article II (4) of the NAFO Convention
- Minimum allocation

Agenda point 7

"Exploration of possible margins to accommodate requests for fishing opportunities in connection with the stocks under TAC"

Ideas identified for possible further consideration:

- Possible future approaches for re-utilization of allocated quota/re-allocation
 - A. re-utilization of allocated quota
 - unused quota
 - underutilized quota

B. re-allocation of fishing opportunities

- when abundance of stocks exceeds reference level to be identified, possibility for wider sharing among other interested Contracting Parties
- allocation "Others" quota

C. allocation of block quota

Stocks	Managed*)	Allocated	Moratorium
I. Fish Stocks in R.A.			
- Cod in Div. 3M	yes	yes ¹⁾	yes
- Redfish in Div. 3M	yes	yes ¹⁾	no
- A. Plaice in Div. 3M	yes	yes ¹⁾	yes
- Shrimp in Div. 3M	yes	yes ²⁾	no
II. Fish Stocks Straddling National Fishing Limits			
- Cod in Div. 3NO	yes	yes ¹⁾	yes
- Redfish in Div. 3LN	yes	yes ¹⁾	yes
- A. Plaice in Div. 3LNO	yes	yes	yes
- Yellowtail flounder in Div. 3LNO	yes	yes	no
- Witch flounder in Div. 3NO	yes	yes ¹⁾	yes
- Capelin in Div. 3NO	yes	yes ¹⁾	yes
- Squid (<i>Illex</i>) in Subareas 3 and 4	yes	yes ¹⁾	no
- Shrimp in Div. 3LNO	yes	no	yes
- Greenland halibut in Div. 3LMNO	yes	yes	no
- if available in the RA:			
i) Cod in Div. 2J3KL	yes	yes ¹⁾	yes
ii) Witch flounder in Div. 2J3KL	yes	no	yes

*) NAFO Conservation and Enforcement Measures, PART I Management; points

A. Quotas, E, F and G.

¹⁾ Block quotas not allocated

²⁾ Effort allocation

Annex 12. Draft resolution concerning the chartering by an operator of a Contracting Party of vessels flying the flag of another Contracting Party to conduct fishing operations in the NAFO regulated area

(Working Paper 99/2 [former GC W.P. 98/6] - Presented by France on behalf of Saint-Pierre and Miquelon)

Any chartering by an operator of a Contracting Party of vessels flying the flag of another Contracting Party to exploit fishing possibilities opened to that Party under NAFO rules shall comply with the following procedure :

1. The NAFO Secretariat and other Contracting Parties shall be notified of the chartering operation. Such notification shall be made by the authorities of the Contracting Party of the operator.
2. The Authorities of the Contracting Party of the operator and the Authorities of the Contracting Party of the chartered vessel shall enter into a bilateral agreement (i.e. exchange of letter) specifying the general terms of the chartering operation namely notification, reporting, monitoring and control requirements.
3. The Contracting Party of the operator shall be responsible for the recording and reporting of catches as well as notifications concerning the beginning of the fishery. An observer of the said Contracting Party shall be present on board the chartered vessel.
4. In case of non compliance with NAFO regulations (Scheme of Joint International Inspection and Surveillance of the Conservation and Enforcement Measures), the inspector shall forward his report to the Contracting Party of the chartered vessel and the Contracting Party of the operator. The Contracting Party of the chartered vessel shall take appropriate sanctions pursuant to point 17 of the scheme and shall notify the Authorities of the Contracting Party of the operator and the NAFO Secretariat accordingly.

**Annex 13. Draft Resolution Concerning the Chartering of Vessels
Flying the Flag of a Contracting Party in the Regulatory Area**
(Working Paper 99/6 - Presented by France on behalf of Saint-Pierre and Miquelon)

BASIC PRINCIPLE

1. Chartering operations of vessels shall be restricted to vessels flying the flag of NAFO Contracting Parties.
2. Any chartering operation by an operator of a Contracting Party to fish allocations granted to it by NAFO in the Regulatory Area by means of a vessel flying the flag of another Contracting Party shall be subject to an Agreement between the Contracting Parties concerned.
3. Such chartering operations:
 - shall be limited in time and shall not exceed the capacity of [one] vessel a year;
 - shall be approved by the majority of Contracting Parties through a mail vote according to NAFO Rules.
4. The Contracting Party granted with the allocation remains responsible of its management towards NAFO.

GENERAL TERMS OF THE AGREEMENT BETWEEN CONTRACTING PARTIES

1. The chart shall be agreed by the Contracting Parties concerned (the Contracting Party granted with the allocation and the Contracting Party of the chartered vessel).
2. The Contracting Party of the chartered vessel shall comply with NAFO Rules in respect of the fishery of the allocation. Notification and procedures shall take place on behalf of the Contracting Party granted with the allocation.
3. In case of non compliance with NAFO Rules concerning the allocation:
 - the Contracting Party of the chartered vessel shall take appropriate sanctions in accordance with its national law;
 - the chart shall be cancelled.