

Northwest Atlantic Fisheries Organization



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

29-31 May 2000  
Copenhagen, Denmark

NAFO  
Dartmouth, N.S. Canada  
2000

## Report of the Working Group on Dispute Settlement Procedures

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

**29-31 May 2000  
Copenhagen, Denmark**

The Working Group met in accordance with the decision taken by the General Council at the 21st Annual Meeting, September 1999 (item 4.8 of the General Council Report, GC Doc. 99/9).

### **1. Opening by the Chairman**

The meeting was opened by the Chairman, Mr. Stein Owe (Norway) at 10.15 on 29 May 2000. He welcomed all delegates and thanked the delegation of Denmark (in respect of the Faroe Islands and Greenland) for hosting the meeting. The following Contracting Parties were represented at the meeting: Canada, Denmark (in respect of Faroe Islands and Greenland), Estonia, European Union, France (in respect of St. Pierre and Miquelon), Iceland, Japan, Latvia, Lithuania, Norway and the United States of America (Annex 1).

In his welcoming remarks, the Chairman anticipated a constructive debate and expressed a wish to finalise the work of the Working Group as soon as possible.

### **2. Appointment of Rapporteur**

Mr. Staffan Ekwall (EU) was appointed Rapporteur.

### **3. Adoption of Agenda**

The Provisional Agenda was adopted (Annex 2).

### **4. Examination of the desirability and, as appropriate, the development of procedures for the settlement of disputes between NAFO Contracting Parties a) by implementing in a NAFO context the 1995 UN Agreement and UNCLOS dispute settlement procedures, and b) by including additional measures if needed.**

- 4.1 The Chairman presented DSP W.G. W.P. 00/1 (Annex 3), which was meant as an attempt to move the discussion forward. He explained that the best way to make progress and to move closer to a quick solution would in his opinion be to abandon the idea of an *ad hoc* Panel Procedure discussed at earlier Working Group meetings. This procedure, in the Chairman's opinion, has created many questions of its own, and considerable work to establish procedural rules would be needed. One objective of a NAFO DSP would be to settle a dispute expeditiously. However, it is not likely that the Panel Procedure would speed up the process since the losing Party, especially in case of serious disputes, will probably not accept the outcome of such proceedings. It would, therefore, be better to stick with the procedures stipulated in the UN Convention on the Law of

the Sea (UNCLOS) and the 1995 UN Agreement on straddling stocks with some modifications, if necessary.

- 4.2 There was a wide-ranging debate on this paper. Some delegations welcomed the paper and expressed a wish to have simple dispute settlement rules or guidelines and to avoid a complex and time consuming negotiation exercise on a completely new DSP applicable only in NAFO. Other delegations appreciated the initiative by the Chairman but stressed that the task of the Working Group was to establish a NAFO DSP in the proper sense in light of recent international developments. Other Regional Fishing Organisations are presently discussing this issue, and in the view of some delegations it would be odd if NAFO remains the only Regional Fishing Organisation without a special DSP. In this context reference was made to the recent "Blue Fin Tuna case", which to some delegations shows the importance of having a NAFO DSP.

Many delegations emphasised a need to have 1) a speedy procedure 2) a binding procedure and 3) a mandatory obligation for an objecting Contracting Party to indicate its post-objection behaviour. Some delegations underlined that a NAFO DSP based on the relevant provisions of UNCLOS and the 1995 UN Agreement could, and should, apply to all Contracting Parties, whether or not they have ratified UNCLOS and the 1995 UN Agreement or only one of these instruments. A view was expressed that the provisions of the 1995 UN Agreement should also apply to disputes on discrete stocks, and that both the declaration of intentions following an objection or notice not to be bound as well as the actual post-objection behavior could be the subject of DSP. Some delegations either had misgivings about an extended application of the 1995 UN Agreement or queried how this could be achieved in practice. The delegate of Japan felt that most disputes will derive from scientific and political decisions and that such disputes can not be resolved by judicial arguments.

- 4.3 The delegation of Denmark (in respect of Faroe Islands and Greenland) introduced Working Paper DSP W.G. W.P. 00/3 (Annex 4) and explained that the paper was an attempt to show some goals that could be achieved by a DSP. Most delegations considered this paper as contributing considerably to a clarification of the questions at hand and thanked the Danish delegation for its effort.
- 4.4 Following the discussions, the Chairman concluded that he did not have sufficient support for his idea of a simplified scheme.

4.5 *EU Revised Paper*

The Chairman therefore suggested to take as a point of departure for the further discussions the revised EU paper presented at the last Working Group meeting in Bergen, Norway, 1999 (Annex 5).

The EU delegation presented DSP W.G. W.P. 00/2 (Annex 6) as an attempt to clarify the different procedural options available under the procedures laid down in the aforementioned revised EU paper. The main idea was to provide for a voluntary *ad hoc* Panel which would offer a much more swift and cost effective process for disputes over conservation measures and which would help to resolve these very disputes within NAFO. In the event that a dispute should not be resolved at this stage and one of the parties to the dispute should have recourse to the general binding procedures, the recommendation of the panel should nevertheless apply as a provisional measure pending the definitive and binding settlement of the dispute. The parties to the dispute would remain the 'masters of the game' at this stage as well because it would be in their hands to either agree otherwise or request the competent court or tribunal to prescribe other provisional measures. Many delegations welcomed the Working Paper as a clarification of the procedures proposed by the EU.

- i) On the first point in the revised EU Paper, many delegations felt that a Contracting Party must fulfil three obligations when making an objection or notice of intention not to be bound by a measure, namely 1) state the reasons for the objection or notice, 2) state its intentions following the objection or notice and 3) give a description of the possible autonomous measures to be taken. Some delegations underlined that this description should include relevant control and enforcement measures.

One delegation stated that it should be possible to initiate a DSP as well on the basis of the stated intentions as on the actual post-objection behaviour. A new text (DSP W.G. W.P. 00/4 - Annex 7) was presented to capture these possibilities. Some delegations expressed concern that a possibility to initiate a DSP already on the basis of the declaration of intentions might lead to a limitation of the right to object. It was emphasised that an objection itself cannot form the matter of a dispute. It was added that the objecting Party might not always be able to give the requested information at such an early stage.

- ii) On the second point in the revised EU Paper, some delegations pointed out that some Contracting Parties have not ratified UNCLOS and/or the 1995 UN Agreement. A reference to these instruments might be seen as implying an indirect acceptance by these Parties of the relevant instruments. Other delegations pointed out that the intention was never to make a Contracting Party bound to international instruments outside the NAFO context. The intention was only to 'import' the procedures laid down in these instruments and, thus, take advantage of a legal technique which has been used frequently and which would make already existing rules available for the purposes of settling disputes within NAFO. A view was also expressed that there should be a level playing field: all Contracting Parties should be bound by the same rules and those rules should reflect the most modern standards (i.e. UNCLOS

and the 1995 UN Agreement) and apply equally to NAFO straddling and discrete stocks. Annex 9 was based on that approach.

- iii) On the third point in the revised EU paper, most delegations preferred to focus the discussion on the concept of having an *ad hoc* Panel and, if this would be the case, adopt procedural rules at a later stage. Some delegations stressed that the Panel Procedure must in any case be voluntary. Parties should not be constrained from resorting directly to the binding procedures. Other delegations stressed the need to have an established NAFO dispute settlement mechanism that the Parties to the dispute are encouraged to use. This would in their view speed up the process, since the Parties to the dispute otherwise must first agree on all procedural matters. One delegation asked for a mechanism that would avoid repeated disputes on exactly the same issue and inquired, if such a mechanism was not possible to foresee, who should pay the cost for such repetitious exercises.
- iv) On the fourth point in the revised EU Paper, the EU delegation explained that the Parties to the dispute, when agreeing to choose the Panel Procedure, also agree to apply the recommendation from the Panel provisionally. The main aim was to bridge the gap of time between the delivery of the recommendation and the final binding settlement of the dispute. Some delegations supported this approach. Other delegations, however, disagreed with a provisional application of the panel recommendation. They stressed that the Parties to the dispute must have the right to choose, at the time when the recommendation is given, if it should apply provisionally or not.

One delegation indicated that the Parties to a dispute should take such a decision already when they agree on a Panel Procedure. As a compromise, this delegation suggested that two different Panel Procedures could be established, one where the Parties to the dispute agree to the provisional application of the recommendation when they agree on a panel procedure, and another where no such automatic application will occur.

- v) On the fifth point in the revised EU paper, the Latvian and the Japanese delegations once again expressed their concerns that a reference to UNCLOS and the 1995 UN Agreement could constitute an indirect "ratification" by those Contracting Parties who have not ratified these instruments. Those delegations requested their reservations on this subject be recorded in the minutes of the Meeting. The Lithuanian and Estonian delegations shared the view of Latvia and Japan. More neutral wordings were proposed by some delegations.

- 4.6 The Japanese delegation presented DSP W.G. W.P. 00/8 (Annex 8) containing an alternative DSP specially designed for NAFO. The main idea was to have a compulsory but non-binding *ad hoc* Panel Procedure with a final resolving of the dispute by the Fisheries Commission if the Parties to the dispute do not accept the

*ad hoc* Panel recommendation. This proposal was welcomed for giving new ideas. However, the proposal was not discussed in detail since it was already clear from the earlier debate that the Working Group could not agree on a binding DSP in this form.

- 4.7 As an attempt to summarise the outcome of the first round of discussions, the Chairman presented DSP W.G. W.P. 00/09 (Annex 11). This paper was later revised following the discussions in the Working Group. DSP W.G. W.P. 00/10-Revised (Annex 12) which contains text and alternatives in brackets, reflects the current level of agreement and views expressed to-date in the Working Group.

## **5. Report to the General Council**

Following the extensive discussion which took place during the meeting, the Working Group agreed to submit the Consolidated Text (Annex 12) to the General Council together with its report.

The Group discussed the possibility to meet again on Monday, 18 September 2000 in connection with the Annual Meeting.

## **6. Other matters**

No other matters were discussed.

## **7. Adjournment**

The meeting was adjourned at 17.30 on 31 May 2000.

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**Annex 2. Agenda**

1. Opening by Chairman, S. Owe (Norway)
2. Appointment of Rapporteur
3. Adoption of Agenda
4. Examination of the desirability and, as appropriate, the development of procedures for the settlement of disputes between NAFO Contracting Parties:
  - a) by implementing in a NAFO context the 1995 UN Agreement and UNCLOS dispute settlement procedures, and
  - b) by including additional measures if needed.
5. Report to the General Council
6. Other Matters
7. Adjournment

### **Annex 3. NAFO Dispute Settlement Procedures - A Possible Way Forward** (Paper presented by the Chairman - DSP W.G. W.P. 00/1)

In our deliberations in the DSP Working Group we seem to have run into considerable difficulties in reaching consensus and even in moving ahead with our work. I have tried to think of ways to break this situation and hopefully conclude our endeavours in the near future. In this paper I would like to present some suggestions in this regard to the Working Group.

The main idea would be to simplify our scheme, even if this means settling for something that would not be regarded as ideal by all (and may be not by any) of the Contracting Parties. As I see it, the simplification is probably necessary to avoid some complicated issues that as such generate disagreement and to arrive at a speedy finalisation of our work.

A certain simplification also seems to be supported by the changes that were made to our terms of reference at the last annual meeting. The relevant parts now read:

“Examine the desirability and, as appropriate, the development of procedures for the settlement of disputes between NAFO Contracting Parties

- by implementing in a NAFO context the 1995 UN Agreement and UNCLOS dispute settlement procedures, and
- by including additional measures if needed;”

My understanding of the changes that were made is that we are to focus to a larger degree on the thoroughly developed system for dispute settlement which is found in the UN Agreement and UNCLOS.

We have in our discussions identified four main reasons for establishing separate NAFO DSP:

1. The UN Agreement, and thus its provisions on dispute settlement, has not yet entered into force.
2. Even when it enters into force it is not certain that all NAFO Contracting Parties will become parties to the agreement and thus bound by its provisions. The same applies to UNCLOS.
3. A NAFO DSP gives the possibility to include disputes regarding discrete stocks, which is also found in the NAFO Regulatory Area.
4. Finally, it makes it possible to create more expeditious procedures.

Many Contracting Parties have regarded this last element as rather important. Much effort has gone into designing rules that could lead to settlement of disputes as quickly as possible within the given fishing season. However, this is an area where we have encountered considerable problems as well. The dispute settlement process should be compulsory and lead to binding results. It does not seem feasible to have such dispute settlement by a specially designed body such as the ad hoc panel we have discussed. This being the case, we have entered into rather complex deliberations on the possible role and use of such a panel, including the option of keeping it out of a concrete dispute all together. It has been argued that since it is not likely that both parties to a dispute will accept the recommendation of the panel, this procedure is actually just delaying the final settlement of the dispute that will have to be brought before the bodies in the UN Agreement/UNCLOS system anyway.

It would greatly simplify our work if we leave the idea of establishing a specific body like the ad hoc panel in a NAFO scheme. The procedure itself will be much more straightforward and many

of the questions we have dwelt on in our last meetings will lose their relevance. Furthermore, we would not have to deal with the issues contained in the annex on establishment of an ad hoc panel or the rules of procedure for panel proceedings.

It might be said that we would lose the opportunity of having the disputes settled expeditiously and within the fishing season. However, as has been mentioned it does not seem likely that the parties to a dispute both (or all) will accept the recommendation of the panel. One or more of the parties will probably exercise the right to take the dispute to binding settlement. At least in cases that are regarded as important this presumption seems reasonable. The reality might thus be that such disputes would not in any case be solved expeditiously. In less important cases the attitude might be different. But if the parties so wish, they would still have at their disposal the general possibility to try non-binding solution of the dispute through any peaceful means of their own choice.

Another aspect of leaving the idea of a specific NAFO body would be that there would be no recommendation by such a body that can be used as an immediate provisional measure if the dispute is pursued. However, as has been pointed out both the UN Agreement and UNCLOS contain provisions on provisional measures. It may take some time to have these measures established. Nevertheless, provisional measures may take effect earlier in the handling of a dispute than if an ad hoc panel process is the first stage. This is due to difficulties in finding anything that could be suitable and acceptable as provisional measures during a panel process. In general it does not seem possible to avoid any risk of a dispute leading to some damage to NAFO stocks.

We should be able to establish rules that comprise the other main reasons for having separate NAFO DSP. The goal of having DSP that is binding on all NAFO Contracting Parties whether or not they are also parties to the UN Agreement or UNCLOS seems to favour aiming for incorporation of these new rules in the NAFO Convention. As part of the amendments we should include an obligation to give reasons for an objection or notice of intention not to be bound by a management measure in force, as well as information on the relevant Commission member's intentions following the objection or such a notice. This information should include a description of the conservation and management measures that are planned or already taken. It seems to be agreed that such a provision would be important, not at least to assess whether there is reason to initiate DSP.

As a point of departure it seems natural that NAFO DSP cover all possible disputes within the organisation. Thus disputes concerning discrete stocks will be included. (What rules shall be applicable to such disputes is a different question.)

**Annex 4. Working Paper Presented by Denmark**  
**(in respect of Faroe Islands and Greenland)**  
(DSP W.G. W.P. 00/3)

In the attached Scheme we try to illustrate how possible goals could be achieved through different dispute settlement measures.

	UNCLOS DSP	UN Agreement DSP	NAFO DSP only referring to UNCLOS & UN Agreement DSP	FULL NAFO DSP	Other Means
All NAFO Parties may participate	Only when ratified	Only when ratified	yes	yes	yes
Straddling stocks and discrete stocks	yes	no	yes	yes	Maybe
Speed (dispute settled within the fishing season)	no	no	no	yes	Maybe
Decision by people who are familiar with NAFO	no	no	no	yes	Maybe
Decision binding (at least provisionally)	yes	yes	yes	yes	Maybe



**Annex 5. Working Paper Presented by the European Union**  
(DSP W.G. W.P. 99/4)

*[obligation to cooperate]*

1. Contracting Parties shall cooperate in order to prevent disputes.

In particular, any Contracting Party may invite a Commission Member that has objected to a proposal of the Commission or has given notice of its intention not to be bound by a measure of the Commission to state the reasons for its objection or its notice of intention, as well as to describe the conservation and management measures it has taken or intends to take for the fishery resource in question.

*[1<sup>st</sup> sentence from Chairman's paper; voluntary declaration of intent added]*

*[binding dispute settlement procedure]*

2. Without prejudice to para. 3 a Contracting Party may refer any dispute concerning the interpretation or application of the Convention to DSP.

Such procedures shall be governed mutatis mutandis by the provisions relating to the settlement of disputes set out in Part XV of UNCLOS or, where the dispute concerns one or more straddling stocks, by the provisions set out in Part VIII of the UN Agreement.

The relevant parts of UNCLOS and the UN Agreement shall apply whether or not the Parties to the dispute are also State Parties to these instruments.

*[rephrase of No. 2 of Chairman's paper to make text simpler.]*

*[ad hoc panel procedure]*

3. Where the dispute concerns the interpretation or application of a proposal adopted by the Commission pursuant to Article XI or matters related thereto Parties to the dispute shall within x days after the notification of the dispute to the Executive Secretary proceed to an exchange of views regarding its settlement through an *ad hoc* panel procedure. When the Parties do not agree to such a procedure or to any other peaceful means to resolve the dispute, the dispute shall be referred, if one of the Parties concerned so requests, to a binding DSP as provided in para. 2.

Where a dispute has been submitted to the *ad hoc* panel procedure, the panel constituted as provided in Annex ... to this Convention shall at the earliest possible opportunity confer with the Parties concerned and shall endeavour to resolve the dispute expeditiously. Within x weeks after being constituted the panel shall present a report to the Parties concerned. The report shall as far as possible include any recommendations which the panel considers appropriate to resolve the dispute.

Where a dispute has not been resolved through agreement between the Parties following an *ad hoc* panel procedure it shall be referred, if one of the Parties concerned so requests, to a binding DSP as provided in para. 2.

*[text of yesterday's paper slightly modified to take into account comments from delegations]*

*[provisional application during and after ad hoc panel procedure]*

4. Where the Parties to a dispute have agreed to submit the dispute to the *ad hoc* panel procedure, they may agree at the same time to apply provisionally the relevant proposal adopted by the Commission until the report of the panel or the dispute is resolved, whichever occurs first.

Pending the settlement of disputes according to para. 2 the Parties to the dispute shall apply provisionally any recommendation made by a panel where the Parties had agreed an *ad hoc* panel procedure. That provisional application shall cease when the Parties agree on arrangements of equivalent effect, when a court or tribunal to which the dispute has been submitted in accordance with para 2 has taken a provisional or definitive decision or, in any case, at the end of the calendar year in which the report of the panel has been presented.

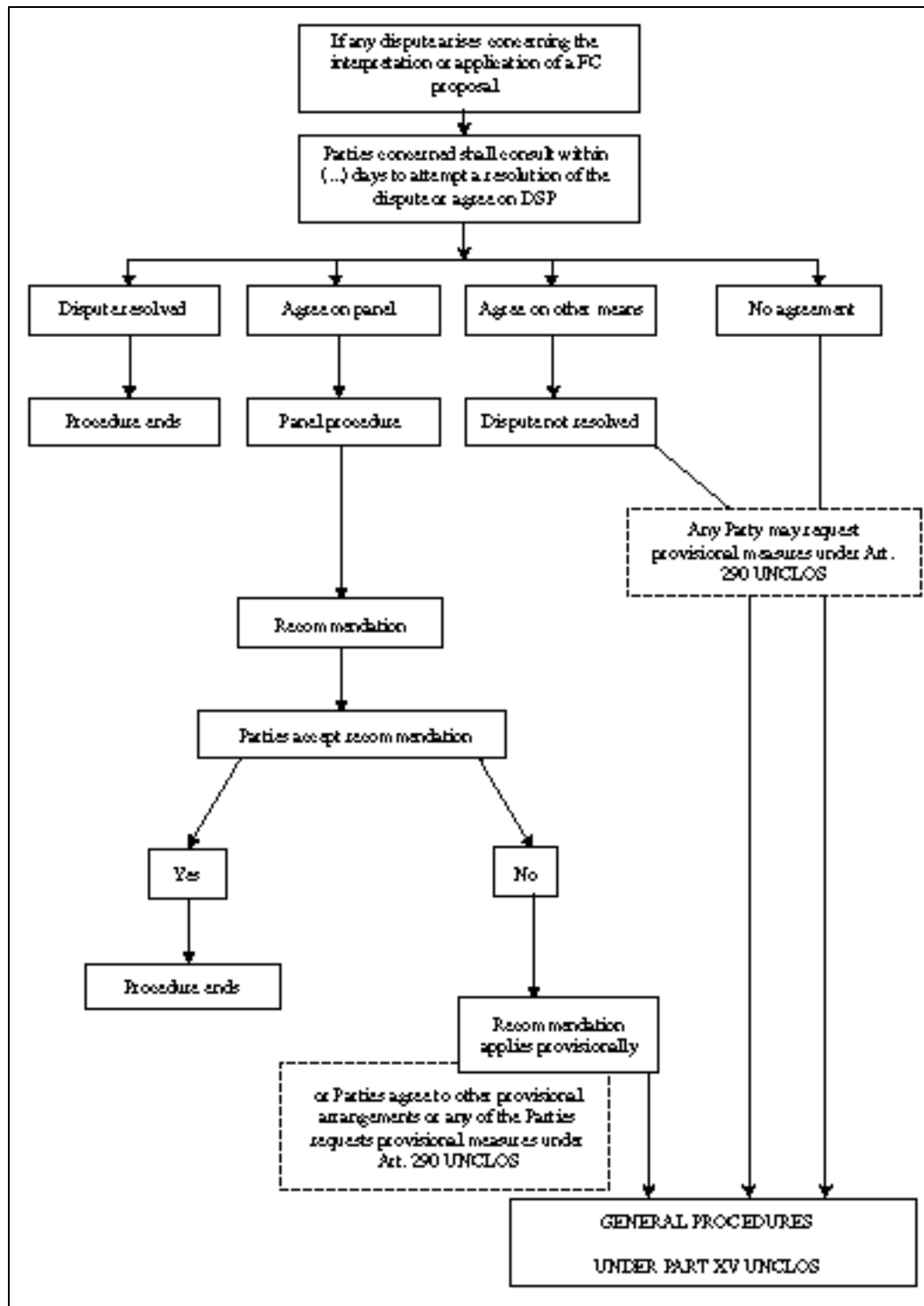
*[text of the Chairman's paper adapted to the new subpara. 3]*

*[law to be applied by court, tribunal or panel]*

5. A court, tribunal or panel to which any dispute has been submitted under this Article shall apply the relevant provisions of this Convention, of the 1982 UN Convention, of the 1995 UN Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the 1982 UN Convention and the 1995 UN Agreement, with a view to ensuring the conservation of the fish stocks concerned.

*[same text as the Chairman's paper]*

**Annex 6. Working Paper Presented by the European Union**  
(DSP W.G. W.P. 00/2)



**Annex 7. Working Paper Presented by Canada**  
(DSP W.G. W.P. 00/4)

An objection according to paragraph 1 and a notice of objection not to be bound by a measure according to paragraph 3 shall be accompanied by a declaration setting out the autonomous conservation and management measures (including control and enforcement measures) to be established and the rationale for the objection and the autonomous measure. The declaration and post-objection behaviour may be challenged through dispute settlement procedures.

**Annex 8. Working Paper Presented by Japan**  
(DSP W.G. W.P. 00/8)

1. Contracting Parties should cooperate in order to prevent disputes.
2. Where the dispute concerns the interpretation or application of a proposal adopted by the Fisheries Commission pursuant to Article XI or matters related thereto, any Party may request the other Parties concerned in the dispute to have consultations to resolve the dispute with a written notice. Parties to the dispute should, with X days from the receipt of the notice, proceed to an exchange of views with a view to resolving the dispute as soon as possible.
3. If the dispute is not resolved within X weeks after the written notice mentioned in paragraph 2 is given, any Party to the dispute may request the dispute to be submitted to an *ad hoc* panel of experts. The *ad hoc* panel is established by the General Council in accordance with Article IV paragraph 6, and constituted in accordance with the Annex to this proposal.
4. The Panel should at the earliest possible opportunity confer with the Parties concerned and should endeavour to resolve the dispute expeditiously. The Panel should issue recommendations for resolving the dispute as necessary. The Parties should cooperate with the members of the Panel and should endeavour to resolve the dispute as faithfully as possible.
5. If the dispute is not resolved with the involvement of the Panel after X weeks from the request referred to in paragraph 3, any Party to the dispute may request the Panel to submit the recommendation to the Fisheries Commission. The Fisheries Commission may consider such recommendations as proposals prescribed in Article XI paragraph 2 and adopt them. Article XII applies to the adoption of such recommendations by the Fisheries Commission.

Annex  
(to proposal by Japan)

1. The Executive Secretary will prepare a list of experts on fisheries matters whose competence in scientific or technical aspects of fisheries matters is established and generally recognized and who enjoy the highest reputation for fairness and integrity. Each Party may nominate, at any time, two experts for this list and the persons so nominated will constitute this list of experts.
2. The *ad hoc* panel of experts will be constituted from three experts which should be chosen from the list of experts prepared by the Executive Secretary referred to in paragraph 1.
3. Each Party to the dispute should choose one expert to be a member of the panel. The third member should be appointed jointly by the Parties to the dispute. If the Parties to the dispute cannot agree on the third expert, any Party to the dispute may request the Chairman of the General Council to make the appointment from the list of experts referred to in paragraph 1.

**Annex 9. Working Paper Presented by Canada**  
(DSP W.G. W.P. 00/6)

2. A Contracting Party may refer any dispute concerning the interpretation or application of the Convention to DSP.

The Contracting Parties agree to apply the 1995 UN Agreement provisionally both to straddling stocks and discrete stocks that occur in the NAFO Regulatory Area, whether or not the Contracting Parties are party to the Agreement.

**Annex 10. Working Paper Presented by Canada**  
(DSP W.G. W.P. 00/7)

3. Where the dispute concerns the interpretation or application of a proposal adopted by the Commission pursuant to Article XI or matters related thereto, a party to the dispute may invite the other party to submit the dispute to a panel. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.



## Annex 11. Settlement of Disputes within NAFO

### COMPILATION OF PROPOSALS

(DSP W.G. W.P. 00/9)

*New Paragraph 4 of Article XII (If NAFO Dispute Settlement Procedures are not incorporated as amendments to the NAFO Convention this provision may possibly be adopted in another form.)*

An objection according to paragraph 1 and a notice of intention not to be bound by a measure according to paragraph 3, shall be accompanied by a statement of the relevant Commission member's reasons for the objection or notice of intention as well as a declaration of its intentions following the objection or such notice, including a description of any conservation and management measures[, including control and enforcement measures,] it has taken or intends to take. [The declaration and post-objection behaviour may be challenged through dispute settlement procedures.]

*(New) Article...*

1. Contracting Parties shall cooperate in order to prevent disputes.
2. If any dispute arises between two or more Contracting Parties concerning the interpretation or application of this Convention, those Contracting Parties shall consult among themselves with a view to resolving the dispute, or to having the dispute resolved by negotiation, inquiry, mediation, conciliation, *ad hoc* panel procedures, arbitration, judicial settlement or other peaceful means of their own choice.

[3. A Contracting Party may refer any dispute concerning the interpretation or application of the Convention to DSP.

The Contracting Parties agree to apply the 1995 UN Agreement provisionally both to straddling stocks and discrete stocks that occur in the NAFO Regulatory Area, whether or not the Contracting Parties are party to the Agreement.]

[3. Where a dispute concerns the interpretation or application of a proposal adopted by the Commission pursuant to Article XI or matters related thereto parties to the dispute shall within x days after the notification of the dispute to the Executive Secretary proceed to an exchange of views regarding its settlement through *ad hoc* panel procedures.

Where a dispute has been submitted to *ad hoc* panel procedures, the panel constituted in accordance with provisions adopted by the General Council shall at the earliest possible opportunity confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously. Within x weeks after being constituted the panel shall present a report to the Contracting Parties concerned and through the Executive Secretary to the other Contracting Parties. The report shall as far as possible include any recommendations which the panel considers appropriate to resolve the dispute.

Where a dispute has not been resolved through agreement between the Contracting Parties following the recommendations of the *ad hoc* panel it may be referred, on request of one of the Contracting Parties, to a binding DSP as provided in para. 5.]

[4. Where a dispute concerns the interpretation or application of a proposal adopted by the Commission pursuant to Article XI or matters related thereto, a party to the dispute may invite the other party to submit the dispute to a panel. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.]

4(or 5). Where the parties to a dispute have agreed to submit the dispute to *ad hoc* panel procedures, they [may agree at the same time to] [shall] apply provisionally the relevant proposal adopted by the Commission until the report of the panel is presented or the dispute is resolved, whichever occurs first.

[Pending the settlement of a dispute according to para. 5 the parties to the dispute shall, if one of these Contracting Parties so desire, apply provisionally any recommendation made by a panel where the Contracting Parties had agreed an *ad hoc* panel procedure.] [The parties to a dispute may agree to apply provisionally any recommendation made by a panel pending the settlement of the dispute according to para 5.] That provisional application shall cease when the Contracting Parties agree on arrangements of equivalent effect, when a court or tribunal to which the dispute has been submitted in accordance with para 5 has taken a provisional or definitive decision or, in any case, at the date of expiration, if applicable, of the proposal of the Fisheries Commission.

[5. If the Contracting Parties do not agree to any other peaceful means to resolve a dispute, or no settlement has been reached by recourse to these means, the dispute shall be referred, if one of the Contracting Parties concerned so requests, to binding dispute settlement procedures. Such procedures concerning the interpretation and application of this Convention shall be governed mutatis mutandis by the provisions relating to the settlement of disputes set out in Part XV of United Nations Convention on the Law of the Sea of 10 December 1982 (1982 UN Convention) or[, where the dispute concerns one or more straddling stocks,] by the provisions set out in Part VIII of the United Nations 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 of 4 August 1995 (1995 UN Agreement)[, whether or not the parties to the dispute are also State parties to these instruments].]

[6. A court, tribunal or panel to which any dispute has been submitted under this Article shall apply the relevant provisions of this Convention, of the instruments referred to in para. 2, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the said instruments, with a view to ensuring the conservation [and optimum utilization] of the fish stocks concerned.]

## Annex 12. Settlement of Disputes within NAFO

### CONSOLIDATED TEXT (DSP W.G. W.P. 00/10-Revised)

*New Paragraph 4 of Article XII (If NAFO Dispute Settlement Procedures are not incorporated as amendments to the NAFO Convention this provision may possibly be adopted in another form.)*

On request of any Contracting Party, a Member of the Fisheries Commission, which has presented an objection to a proposal in accordance with Article XII (1) or given notice of its intention not to be bound by a measure in accordance with Article XII (3), shall within [...] days give a statement of the reasons for its objection or notice and a declaration of its intentions following the objection or notice, including a description of any measures it intends to take or has already taken for the conservation and management [, including control and enforcement measures,] of the fish stock or stocks concerned. [The declaration and post-objection behaviour may be challenged through dispute settlement procedures.]

*(New) Article...*

1. Contracting Parties shall cooperate in order to prevent disputes.
2. If any dispute arises between two or more Contracting Parties concerning the interpretation or application of this Convention, those Contracting Parties shall consult among themselves with a view to resolving the dispute, or to having the dispute resolved by negotiation, inquiry, mediation, conciliation, *ad hoc* panel procedures, arbitration, judicial settlement or other peaceful means of their own choice.
3. Where a dispute concerns the interpretation or application of a proposal adopted by the Fisheries Commission pursuant to Article XI or matters related thereto, the parties to the dispute may submit the dispute to an *ad hoc* panel constituted in accordance with procedures adopted by the General Council. The Contracting Parties that so agree shall within [...] days of the notification of the dispute to the Executive Secretary proceed to an exchange of views concerning the constitution of the panel and the resolution of the dispute through the panel.

Where a dispute has been submitted to *ad hoc* panel procedures, the panel constituted in accordance with provisions adopted by the General Council shall at the earliest possible opportunity confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously. Within x weeks after being constituted the panel shall present a report to the Contracting Parties concerned and through the Executive Secretary to the other Contracting Parties. The report shall as far as possible include any recommendations which the panel considers appropriate to resolve the dispute.

Where a dispute has not been resolved through agreement between the Contracting Parties following the recommendations of the *ad hoc* panel it may be referred, on request of one of the Contracting Parties, to a binding DSP as provided in para. 5.

4. Where the parties to a dispute have agreed to submit the dispute to *ad hoc* panel procedures, they may agree at the same time to apply provisionally the relevant proposal adopted by the Commission until the report of the panel is presented or the dispute is resolved, whichever occurs first.

[Pending the settlement of a dispute according to para. 5 the parties to the dispute shall, if one of these Contracting Parties so desire, apply provisionally any recommendation made by a panel where the Contracting Parties had agreed an *ad hoc* panel procedure.] *or* [The parties to a dispute may agree to apply provisionally any recommendation made by a panel pending the settlement of the dispute according to para 5.] That provisional application shall cease when the Contracting Parties agree on arrangements of equivalent effect, when a court or tribunal to which the dispute has been submitted in accordance with para 5 has taken a provisional or definitive decision or, in any case, at the date of expiration, if applicable, of the proposal of the Fisheries Commission.

[5. If the Contracting Parties do not agree to any other peaceful means to resolve a dispute, or no settlement has been reached by recourse to these means, the dispute shall be referred, if one of the Contracting Parties concerned so requests, to binding dispute settlement procedures. Such procedures concerning the interpretation and application of this Convention shall be governed *mutatis mutandis* by the provisions relating to the settlement of disputes set out in Part XV of United Nations Convention on the Law of the Sea of 10 December 1982 (1982 UN Convention) or[, where the dispute concerns one or more straddling stocks,] by the provisions set out in Part VIII of the United Nations 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 of 4 August 1995 (1995 UN Agreement)[, whether or not the parties to the dispute are also State parties to these instruments].]

[6. A court, tribunal or panel to which any dispute has been submitted under this Article shall apply the relevant provisions of this Convention, of the instruments referred to in para. 5, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the said instruments, with a view to ensuring the conservation [and optimum utilization] of the fish stocks concerned.]

*OR (instead of 5 and 6)*

[ A Contracting Party may refer any dispute concerning the interpretation or application of the Convention to DSP.

The Contracting Parties agree to apply the 1995 UN Agreement provisionally both to straddling stocks and discrete stocks that occur in the NAFO Regulatory Area, whether or not the Contracting Parties are party to the Agreement.]