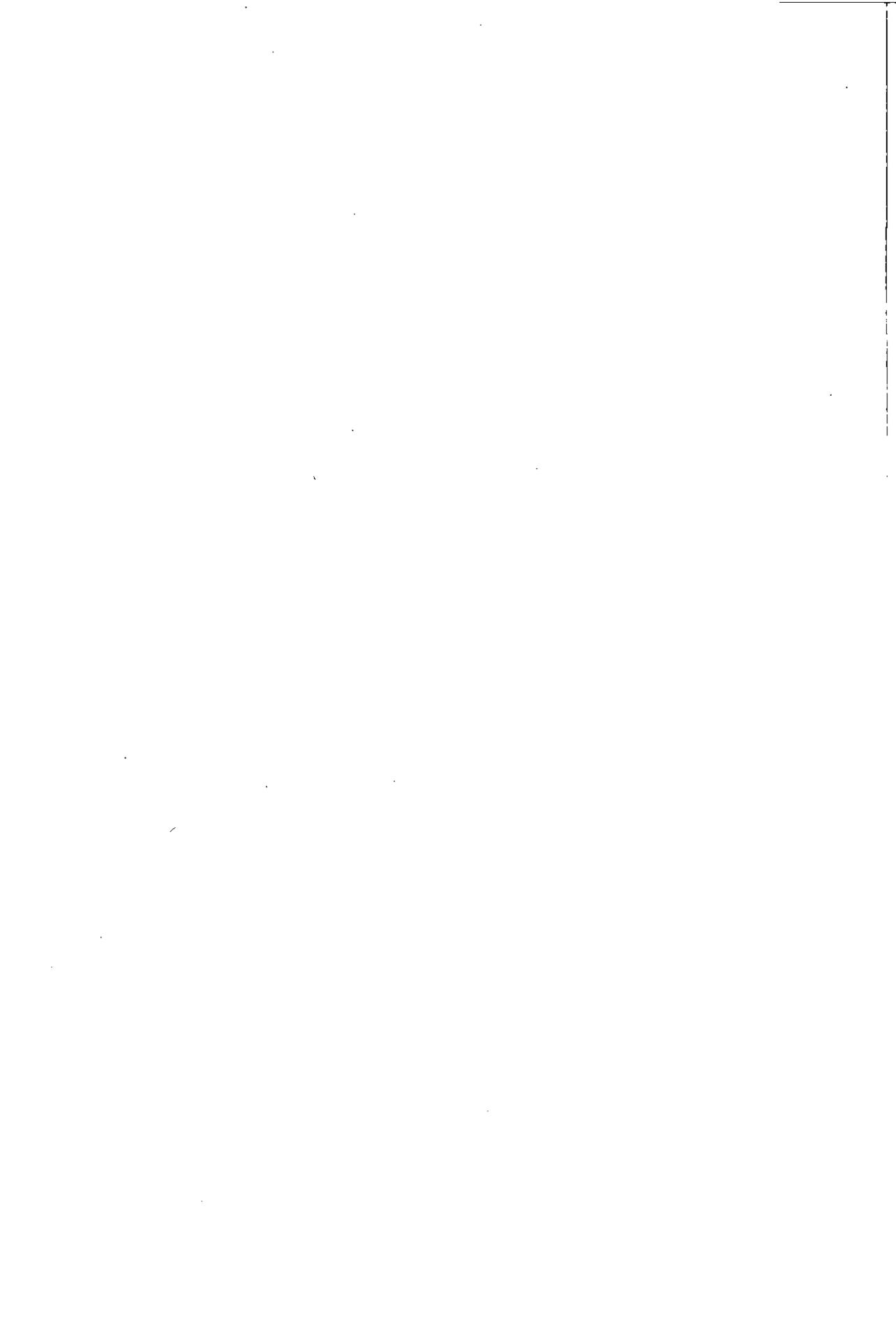


SECTION I

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Report of the Meeting of the Standing Committee on Fishing Activities by non-Contracting Parties in the Regulatory Area (STACFAC) 22-24 May 1996 Brussels, Belgium

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Report of the Meeting of STACFAC

(GC Doc. 96/5)

22-24 May 1996
Brussels, Belgium

This intersessional meeting was held in accordance with the decision by the General Council (GC Doc. 95/5, Part I, items 4.2-4.3) to call a STACFAC Meeting in Spring 1996.

1. Opening of the Meeting (items 1-3 of Agenda)

- 1.1 The meeting was opened by the Chairman, C. C. Southgate (EU) at 1015, 22 May 1996. Sessions were held through 24 May 1996.
- 1.2 The following Contracting Parties were present: Canada, Denmark (in respect of Faroe Islands and Greenland), European Union, Iceland, Japan, Lithuania, Norway, Poland and USA (Annex 1).
- 1.3 Mr Wieland (EU) was appointed Rapporteur.
- 1.4 Dr M. Windsor was admitted as observer from NASCO. He presented his statement to the Meeting with thanks to being a participant of these discussions.
- 1.5 The Agenda was adopted as presented (Annex 2).

2. Information on Activities of non-Contracting Parties and Diplomatic Contacts by Contracting Parties (items 4-5)

- 2.1 The Representative of Canada presented its substantial summary report on non-Contracting Parties activities for the period January-December 1995 (Working Paper 96/2) indicating a decrease of the number of non-member vessels fishing in the Regulatory Area (RA). There were 12 vessels (7-Belize, 2-Honduras, 1-Panama, 2-Sierra Leone) in 1995 against 27 vessels in 1994 and up to 47 vessels back to 1989. Groundfish catches by non-Contracting Party vessels in 1995 were estimated at 10 950 tons, about 70% redfish.
- 2.2 The Representative of the European Union introduced the report on landings by non-Contracting Parties in the EU ports. The total landings were approximately 3 850 tons, mostly cod delivered to Portugal by Sierra Leone vessels (approximately 2 900 tons) (Working Paper 96/3).
- 2.3 The Representative of Japan explained its Working Paper 96/1 re Japanese import of 5 species from non-Contracting Parties in 1995. Those figures were in the range of 700 tons of different species.
- 2.4 The Chairman summarized all reports with optimistic view that the non-Contracting Parties activities are on the decline in the Regulatory Area (RA). However, he emphasized that this activity is still high and unacceptable, and therefore the Contracting

Parties should continue to explore all means for the curtailment of the *unregulated* fishing. He invited the delegates to present their reports on diplomatic contacts with non-Contracting Parties.

- 2.5 The Representative of Canada informed that Canada has had a number of diplomatic contacts with non-Contracting Parties governments on the subject. Nevertheless, non-Contracting Parties vessels are continuing to fish in the Regulatory Area.
- 2.6 The Chairman presented the reply from New Zealand on the 1995 diplomatic demarche (from the General Council) which stated that according to the *interpretation* by New Zealand on the factual and legal issues concerning the activities of their vessel, there were in fact no conservation or management measures in place for the targeted stock (shrimp). Therefore, New Zealand understood that the vessel was not fishing in contravention of any NAFO regulations.

The Chairman noted there were no other replies to the NAFO diplomatic demarches 1995 (to: Belize, Honduras, Sierra Leone).

3. Consideration of Measures to Discourage Activities by non-Contracting Parties in the NAFO Regulatory Area (items 7 to 9)

- 3.1 The Chairman introduced an idea to consider items 7 to 9 of the agenda as one complex issue on discouragement of non-Contracting Parties through the combination of several joint actions like diplomatic demarches, refusal of landings of fish, and denial of port access. To his opinion, the diplomatic demarches alone could not resolve the problem.
- 3.2 The Representatives of Contracting Parties agreed in principle with this approach. The European Union representative was very *supportive* to develop and consider a whole scope of new ideas around the items 7-9 of the Agenda, in a "brain storming" session at the current meeting. At the same time, he asked to put on record that "the European Union delegation was very disappointed that there were not all Contracting Parties present at the current so important meeting, which was scheduled long ago and well in advance (in September 1995)."

Further, he stated that at this stage, STACFAC should be committed to discussions of uncommitted ideas which should be both effective to deprive the non-Contracting Parties vessel operators *concerned* of the economic benefits of fishing in the Regulatory Area and be fully consistent with the relevant international law. The ideas developed at this meeting will be then introduced to Contracting Parties at the September Annual Meeting, (in St. Petersburg 1996).

- 3.3 The USA representative expressed his compliments to the work of this Standing Committee, STACFAC. He emphasized that one possible option could be to urge the Contracting Parties to sign and ratify the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks. The Representative of Canada noted her support with the USA statement.

The Chairman said that ratification of both the UN Agreement and the "FAO Compliance Agreement" would make things more easy and urged the delegates to bring this message to all Contracting Parties.

- 3.4 The Representative of Denmark (in respect of Faroe Islands and Greenland) supported the statements of the previous speakers regarding the ratification of both the UN Agreement and the FAO agreement. However, he noted that most importantly would be to remember that the implementation and execution of any measures will be rested with a regional international body. He noted that certain countries were establishing unilaterally their own rules of denial of port entries as an instrument. However, NAFO should be in the forefront with its own legal procedures based on the international law.
- 3.5 The observer for NASCO introduced a paper (Annex 3) explaining the NASCO experience in non-Contracting Parties problem.

To this presentation, the Chairman noted a principle difference between NAFO and NASCO problems as NASCO deals with anadromous (Salmon Salar) species, which are already well protected by the 1982 UN Law of the Sea Convention.

- 3.6 The representatives of Contracting Parties agreed to the idea of contemplating all possible options in a "brainstorming exercise". The view was expressed that it would be appropriate to draw up a "Resolution concerning Action Plan to ensure effectiveness of the conservation and management measures of NAFO regulated species in the NAFO Regulatory Area" (Annex 4). The view was also expressed that in order to facilitate discussions, it would be appropriate to table "discussion papers" reflecting relevant principles and possible courses of action.

The Chairman received five "discussion papers" (Annexes 5 to 9) which were then discussed in numerical order.

- 3.7 The Representative of Canada observed that none of the discussion papers mentioned the UN Agreement.

The Chairman said that a number of stocks occurring in the NAFO Regulatory Area were not straddling fish stocks but agreed that it would be pertinent to cite the UN Agreement as well as other relevant international instruments.

The Representative of the European Union laid emphasis on four basic principles for the implementation of measures to be applied to non-Contracting Parties which fail to cooperate. He explained the meanings of openness of the regional fishing organizations, common measures against non-Contracting Parties, relevance to the International Law and the importance of cooperation of obligations. In this context, the USA Representative indicated the US is studying the ICCAT made mechanisms with a view to their application in the NAFO context.

The NASCO observer noted on horizontal coherence with other international bodies which would be very helpful as the principles are the same regardless different goals of international bodies.

- 3.8 Through the discussions, the Representative of Iceland and the USA made an introduction to their national legislations re denial port access for the vessels fishing in contravention to their national legislation. The USA has fisheries legislation which allows the denial of port privileges to vessels identified to have circumvented regional

conservation and management measures. The Icelandic Representative provided a copy of national law which prohibited port calls for foreign vessels fishing "exploitable marine stocks either within or outside Iceland's EEZ...". Canada noted that non-Contracting Parties fishing vessels that fish in the Regulatory Area denied access to Canadian ports, except in cases of force majeure.

The very profound debates then developed around landing rights, port closure, etc., and the delegates exchanged many views and ideas.

3.9 The Chairman summarized all discussions that all Contracting Parties were willing to discuss and develop acceptable ideas on landing rights and port access for their implementation (by NAFO). The most important question would be around the interpretation of relevant provisions of international law and the provisions of GATT/WTO.

3.10 The major topics were described in several scenarios/options which the Contracting Parties might envisage apply to the fishing by non-Contracting Parties in the Regulatory Area. The debates were extremely rich and profound with great contributions from all delegates.

Based on these discussions, the consensus was established that the Chairman should develop his summary presentation to this meeting.

3.11 The Chairman introduced his paper as instructed by the Meeting (Annex 10). He further explained that based on this paper NAFO should develop and introduce a comprehensive system to tackle the non-Contracting Parties problem. In summary, the following ideas and thoughts were expressed by the Delegates:

- i) To item 1 of the Chairman's paper - "Cooperation/non-Cooperation of States", the EU Representative noted the very important task would be to identify those states who are unwilling to discharge their obligation to cooperate by either joining NAFO or agreeing to apply NAFO conservation and management measures.

The Representative of Denmark supported the EU comments and explained re "joining the Organization" that we cannot invite the states to join if those states were interested in granting flags of convenience only. He further considered the issue of cooperation/non-cooperation as very sensitive and difficult noting that states will cooperate in the way they can cooperate. Therefore, in addition to diplomatic demarches, there should be more practical steps agreed by NAFO. The Representative of the USA explained that there would be two (2) major approaches to identify cooperation/non-cooperation - diplomatic demarches to the flag state requesting deregistration and individual owners of the vessels which were fishing in contravention of the NAFO regulations by denying the landing and trade of the products.

The Representative of Canada considered that third States should be to some extent qualified to joining NAFO if they respond in a positive way on diplomatic demarches and that those States should demonstrate a real interest by cooperating first with NAFO, before being invited to join NAFO. She noted

that non-Contracting Parties should not be rewarded with membership in NAFO, which would be an inappropriate signal to other states of registry.

She noted that the four (4) principles introduced by the EU Representative would require some theoretical modification and possibly redrafting.

- ii) Item 2 of the Chairman's paper - "Openess of the Organization" was discussed in the context of the previous debates with emphases on the criteria of joining NAFO.

The Chairman said that too theoretical a discussion on openess of regional fisheries organizations should be avoided.

- iii) The item 3, "Courtesy Boardings" generated discussions around the ideas of more effective inspection. The Representative of Canada, the EU and USA supported the views of more expanded and efficient inspections at sea as well as in ports. The EU representative said that possible measures against non-Contracting Parties could be based only on the results of the inspections in port. The USA Representative stated that "a compulsory boarding" was not an early implementation of the UN Agreement but this is already an international practice.

- iv) To the item 4 - "Measures directed at State or vessel", the Representative of Denmark commented that the UN Agreement, Article 19 contains major provisions on the flag state duties. Therefore, our task would be to introduce practical steps.

The delegates agreed on the general idea to develop a list of non-cooperative states, or so called "black list" of individual vessels for NAFO actions. The question from USA was how long will we maintain the vessels on the list? Other practical problems were raised, such as re-flagging.

The Chairman underlined that full objective information on non-Contracting Parties activities in the Regulatory Area would be crucial for this aim.

- v) On the item 5 - "NAFO Measures as Minimum Standards or Common Rules", the delegates observed that the requirement of NAFO common agreed rules would be most important to this task. The EU Representative supported by Denmark stressed the importance of consistency of the rules with World Trade Organization (WTO) and other international bodies. Therefore, any unilateral actions should be excluded in our business.

The Representative of Canada agreed in principle with the idea of common NAFO rules but reaffirmed its position that there should be a way for an individual Contracting Party to exercise its own interpretation of its rights and duties under international law. In this case Canada reserves its position.

The Chairman summarized all debates as a general consensus to recommend for NAFO to develop its own comprehensive scheme, and to this idea, there should not be any contradictions with the right of a state to introduce its own law.

- vi) The other items of the Chairman's paper (6 to 8) were reviewed by the delegates on the principles of the previous discussions re denial of landings and port access.

The Chairman stressed the importance to tackle a main problem - landings by individual vessels and, as requested by the US Representative, transshipments.

The Representative of Lithuania noted that appropriate documentation and labels should be one of the methods to monitor transshipments. However, it is not easy.

The delegates considered that the most difficult task would be the identification of individual transshipments.

The general consideration was that all fish caught in contravention of NAFO regulations (quotas, fish size, mesh size, moratorium, etc.) should be denied for landing. There remained differing views as to whether a possible scheme should also consist of denial of access to ports.

At the final stage of discussions on the Chairman's paper, the delegates agreed to refer the paper for further discussions to the September Annual Meeting, 1996 (in St. Petersburg, Russia). The outcome of the Annual Meeting discussions in STACFAC will be presented as a final recommendation to the General Council.

4. Other Matters (item 10)

- 4.1 There were no other matters or ideas for discussions.

5. Adjournment (item 11)

- 5.1 The Meeting adjourned at 1300 on May 24, 1996

Annex 1. List of Participants

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O. Loewe (rep. of Denmark in respect of Faroes and Greenland), North-East Atlantic Fisheries Commission (NEAFC)

SECRETARIAT

L. I. Chepel, Executive Secretary
B. J. Cruikshank, Senior Secretary

Annex 2. Agenda

1. Opening by the Chairman, C. C. Southgate (EU)
2. Appointment of Rapporteur
3. Adoption of Agenda
4. Admission of Observers
5. Review of available information on activities of non-Contracting Party vessels in the Regulatory Area in 1995-1996.
6. Reports by Contracting Parties on diplomatic contacts with non-Contracting Party governments concerning fishing activities by their vessels in the Regulatory Area.
7. Consideration of measures to discourage non-Contracting Party vessels from fishing activities which undermine NAFO's conservation and enforcement measures for the Regulatory Area.
8. Consideration of a scheme to prevent landings of fish caught in the Regulatory Area by identified non-Contracting Party vessels.
9. Discussion of the implications of a NAFO system of denial of port facilities to fishing vessels from non-Contracting Parties which fail to cooperate.
10. Other Matters
11. Adjournment

Annex 3. Fishing for Salmon in International Waters within the NASCO Convention Area (by Dr. Malcolm Windsor)

The North Atlantic Salmon Conservation Organization (NASCO, estab. 1984) has the objectives of the conservation, restoration, enhancement and rational management of salmon stocks in the North Atlantic. Under Article 2 of the NASCO Convention, fishing of salmon is prohibited beyond areas of fisheries jurisdiction of coastal States.

However, during early 1990 NASCO received reports that a small number of vessels with experience of long-lining in the former Northern Norwegian Sea fishery had re-registered to countries which are not parties to the NASCO Convention (Panama and Poland) in order to avoid the provisions of the Convention. Sightings from Norwegian and Icelandic airborne patrols showed that these vessels were operating in the area of international waters north of the Faroe Islands.

All of the sightings of activity in international waters received by NASCO were obtained from maritime patrol flights by the Icelandic and Norwegian coastguards. The Icelandic patrols are by Fokker F-27-200 aircraft based in Reykjavik. The patrols of the eastern boundary of the 200 nautical mile EEZ take the aircraft into the south-western corner of the area of international waters but diversions further east may be made when vessels are detected by radar. The information obtained by airborne surveillance is restricted to the vessels' position, name and registration number (if displayed) and the type of gear in use. To date, there have been sightings of six vessels with unconfirmed reports that two other vessels have been involved.

Estimated catches by non-Contracting Parties were maximum 180-350t in 1989/90 and then decreased to the range of 25-100t annually in 1991-1995.

Actions taken by NASCO were the following:

- 1) In 1990 the Council of NASCO adopted a resolution which called for the Organization and the individual contracting Parties to take action through diplomatic channels to end the fishery. As a result of these actions the Panamanian authorities issued a Resolution requiring compliance with NASCO's prohibitions and as far as we can tell from the surveillance information the Polish-registered vessels ceased to participate in the fishery.
- 2) In 1992 the Council adopted a Protocol to the NASCO Convention, which extends the prohibitions contained in the Convention to those States which sign it.
- 3) While NASCO's main approach to the problem has been diplomatic measures, NASCO has also been able to alert those countries whose ports might have been used to land the salmon and sought their cooperation in denying their port facilities to the vessels concerned.
- 4) The following recommendations were endorsed by the Council of NASCO: - there should be a cooperative salmon fishery surveillance project utilizing all available resources designed so as to assess the extent of the problem at the time of the project. This project was conducted during 1995/96; - a specific effort should be made to improve the extent of salmon related surveillance throughout the year; - the possibility of obtaining surveillance information from military sources should be examined including information from AWACS flights; - efforts should be made to increase awareness of the problem among coastal communities and port authorities; - procedures should be agreed for communication of information; - advances in satellite technology should be kept under review.

While it is likely that the various fishery Commissions will take different approaches to dealing with the problem in their respective areas, there would appear to be potential benefits from closer cooperation between these organizations. This cooperation might take the form of a regular exchange of information on the nature of the problem and the actions that are being taken. We have already started this process of cooperation with NEAFC and ICCAT and we welcome the opportunity to develop similar cooperation with NAFO.

Annex 4. Draft Resolution

RESOLUTION BY NAFO

CONCERNING ACTION PLAN TO ENSURE EFFECTIVENESS OF THE CONSERVATION AND MANAGEMENT MEASURES OF NAFO REGULATED SPECIES IN THE NAFO REGULATORY AREA

Recognizing that the goal of NAFO is to maintain populations of regulated species in the Regulatory Area at levels which will permit harvesting maximum sustainable yield;

Being aware that the link between trade and environment is being addressed in other international fora;

Considering the continuing need for action to ensure the effectiveness of the NAFO conservation and management measures of regulated species;

Recognizing that a significant number of vessels registered to nations which are non-Contracting Parties to NAFO are catching regulated species in the Regulatory Area;

Noting that NAFO's ability to manage regulated species in the Regulatory Area on a sustainable basis is diminished by harvesting contrary to NAFO recommendations and recognizing the need to take further strenuous measures to ensure the effectiveness of the NAFO conservation and management measures;

The Northwest Atlantic Fisheries Organization (NAFO) resolves that:

- a) STACFAC shall review on an annual basis the implementation by each Contracting Party of accepted NAFO recommendations. NAFO shall decide annually any necessary new measures to ensure compliance by Contracting Parties.
- b) STACFAC shall identify annually these non-Contracting Party whose vessels have been fishing for regulated species in the Regulatory Area in a manner which diminishes the effectiveness of the relative conservation and management recommendations of the Fisheries Commission, based on the catch data compiled by NAFO, the trade information obtained through national statistics and other information obtained in ports and at the fishing grounds.
- c) NAFO shall request those Parties identified in paragraph (b) to rectify their fishing activities so as not to diminish the effectiveness of NAFO conservation and management measures and to advise to NAFO of actions taken in this regard.
- d) The Contracting Parties shall jointly and individually request that non-Contracting Parties fishing for regulated species in the Regulatory Area cooperate fully with NAFO in implementing the NAFO conservation and management program.
- e) STACFAC shall review annually the actions by those Parties identified and requested in paragraphs (b), (c), and (d), and identify Parties which have not rectified their fishing activities.
- f) To ensure the effectiveness of NAFO conservation and management measures, NAFO will recommend the Contracting Parties to take non-discriminatory trade restrictive measures, consistent with their international obligations, on regulated species products in any form, from the Parties identified in paragraph (e).

Annex 5. Discussion Paper No. 1

Scenario

Fishing by Non-Contracting Parties in International Waters

- Principle It is the responsibility of the flag state and vessel to cooperate with international conservation measures (Article 63, 117, 118 UNCLOS), not the duty of port states or Contracting Parties to assume such responsibility.
- Effect A state which allows its vessels to fish in the NAFO Regulatory Area without seeking to join NAFO or otherwise cooperate is prima facie non-cooperative. A vessel from a non-Contracting State, which fishes in the area is prima facie in breach of NAFO conservation measures.
- Consequence The onus is on such a vessel, seeking to land its catch into the port of a Contracting Party, to demonstrate that, despite the prima facie evidence, its catch has not been taken contrary to NAFO conservation measures. In principle, landing rights are denied without convincing logbook or other evidence.
- Resolution "Reaffirming the openness of NAFO to new participants and the duty of states to cooperate in the conservation and management of the living resources of the high seas, NAFO Contracting Parties resolve that they will not permit landings into their ports of fish prima facie taken contrary to the NAFO conservation rules by vessels from non-Contracting Parties."
- Mechanism The Executive Secretary notifies each Contracting Party [fortnightly] of the names, flags and dates of sightings of non-Contracting Party vessels. If a vessel on the current or recent list seeks to land into a Contracting Party port can either be denied port access or advised that catches from the Regulatory Area may not be landed and documentation and catch examined by the port state.

Annex 6. Discussion Paper No. 2

Scenario

Fishing by Non-Contracting Parties in International Waters

It would seem to be advantageous that any action on this matter is applicable to a number of fisheries commissions such as NAFO, NASCO, ICATT, NEAFC, etc. Thus would show an international coherence which would benefit all organizations.

A two-stage process might be universally acceptable though the details might vary slightly from organization to organization. The two stages would consist of defining whether a non-Contracting Party is in a state of non-cooperation with international organizations and then, if it is, bringing in graduated responses.

- (A) A non-Contracting Party might be defined as being in a state of non-cooperation with an international organization or organization if
- it does not respond positively to diplomatic initiatives by the member parties;
 - it does not give a commitment to cooperate with the organization(s);
 - it does not accept an invitation to join the Organization [if it is appropriate to issue one]
- (B) If the non-Contracting Party is defined by the Council of the appropriate international organization as being in a state of 'non-cooperation' as defined in (A) above the following responses, in order, would be applied to fishing vessels of that Party
- (i) Prohibition of landing of catches of the species concerned
 - (ii) Prohibition of landing of any fish species or fish product
- (under (i) and (ii) the vessels would have access to port facilities fuel, water, supplies, etc.).
- (iii) Prohibition of access to port facilities of any kind
- (under (iii) there would be an exception made in the case of injury or other emergency).

Within item (B) there is the sub-option of applying the measure *only* to the vessel(s) which are acting in contravention of the measures adopted by the international body concerned. However, the sanctions are probably more appropriate and more effective if applied to the flag state. This would automatically include the vessel(s) concerned.

Annex 7. Discussion Paper No. 3

Scenarios/Options

EVIDENCE

1. In order to obtain evidentiary facts that vessels of non-Contracting Parties are operating contrary to the NAFO conservation and management measures, NAFO inspectors should attempt to conduct consensual/courtesy boarding on all non-Contracting Party vessels suspected of harvesting regulated species in the Regulatory Area. Reports of these boardings and inspection should be forwarded to STACFAC.
2. For vessels of non-Contracting Parties suspected of harvesting regulated species in the Regulatory Area which deny consensual/courtesy boardings by NAFO Inspectors, NAFO working through the government of the inspectors Party, should immediately approach the Government of the non-Contracting Party to coordinate a registration check and an ad hoc special arrangement seeking flag-State authority to board and inspect the vessel. Reports of these boardings and inspections should be forwarded to STACFAC.
3. For vessel of non-Contracting Parties suspected of harvesting regulated species in the Regulatory Area, Contracting Parties shall inspect documents, fishing gear and catch on board these non-Contracting fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

PROCEDURES

4. When vessels of non-Contracting Parties are determined to harvest regulated species in the Regulatory Area, NAFO and all Contracting Parties should provide the non-Contracting Party with diplomatic demarches noting the activity of the vessel and calling for the cessation of this activity by the vessel and/or de-registering of the vessel.
5. Contracting Parties should adopt regulations empowering the relevant national authorities to prohibit landing and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of NAFO conservation and management measures. When the vessels of the non-Contracting Party engage in repeated and flagrant fishing operations in the Regulatory Area which seriously threaten the NAFO conservation and management measures, Contracting Parties shall implement national legislation to prohibit the entry of fish in any form of species suspected of being harvested contrary to the NAFO conservation and management measures from the non-Contracting Party.
6. Contracting Parties should adopt a resolution concerning an action plan to ensure the effectiveness of the conservation and management measures of NAFO regulated species in the NAFO Regulatory Area. The Resolution includes specific reference to the use and potential effectiveness of multilateral trade measures on non-Contracting Parties who repeatedly ignore diplomatic approach regarding this activity.

RESOLUTION BY NAFO

CONCERNING ACTION PLAN TO ENSURE EFFECTIVENESS OF THE
CONSERVATION AND MANAGEMENT MEASURES OF NAFO REGULATED
SPECIES IN THE NAFO REGULATORY AREA

Recognizing that the goal of NAFO is to maintain populations of regulated species in the Regulatory Area at levels which will permit harvesting maximum sustainable yield;

Being aware that the link between trade and environment is being addressed in other international fora;

Considering the continuing need for action to ensure the effectiveness of the NAFO conservation and management measures of regulated species;

Recognizing that a significant number of vessels registered to nations which are non-Contracting Parties to NAFO are catching regulated species in the Regulatory Area;

Noting that NAFO's ability to manage regulated species in the Regulatory Area on a sustainable basis is diminished by harvesting contrary to NAFO recommendations and recognizing the need to take further strenuous measures to ensure the effectiveness of the NAFO conservation and management measures;

The Northwest Atlantic Fisheries Organization (NAFO) resolves that:

- a) STACFAC shall review on an annual basis the implementation by each Contracting Party of accepted NAFO recommendations. NAFO shall decide annually any necessary new measures to ensure compliance by Contracting Parties.
- b) STACFAC shall identify annually these non-Contracting Party whose vessels have been fishing for regulated species in the Regulatory Area in a manner which diminishes the effectiveness of the relative conservation and management recommendations of the Fisheries Commission, based on the catch data compiled by NAFO, the trade information obtained through national statistics and other information obtained in ports and at the fishing grounds.
- c) NAFO shall request those Parties identified in paragraph (b) to rectify their fishing activities so as not to diminish the effectiveness of NAFO conservation and management measures and to advise to NAFO of actions taken in this regard.
- d) The Contracting Parties shall jointly and individually request that non-Contracting Parties fishing for regulated species in the Regulatory Area cooperate fully with NAFO in implementing the NAFO conservation and management program.
- e) STACFAC shall review annually the actions by those Parties identified and requested in paragraphs (b), (c), and (d), and identify Parties which have not rectified their fishing activities.
- f) To ensure the effectiveness of NAFO conservation and management measures, NAFO will recommend the Contracting Parties to take non-discriminatory trade restrictive measures, consistent with their international obligations, on regulated species products in any form, from the Parties identified in paragraph (e).

Annex 8. Discussion Paper No. 4

Basic principles for the implementation of measures to be applied to non-Contracting Parties to Regional Fisheries Organizations, which fail to cooperate

1. Regional fisheries organizations should be open on a non-discriminating basis to accepting as contracting parties States with a real interest in the fisheries.
2. Measures against non-Contracting Parties should be agreed and implemented on a multilateral basis.
3. Such measures should be multilaterally acceptable and in principle could be implemented by other regional fisheries organizations; they should be in full accordance with international law.
4. The measures should only be implemented when all other measures to encourage cooperation by non-Contracting Parties have been exhausted.

Annex 9. Discussion Paper No. 5

I. Definition of non-cooperation

Criteria

1. Diplomatic demarches for cooperation have not had a positive result.
2. Invitation to accede to a regional fisheries organization has not received a positive reaction.
3. Invitation to specifically agree to cooperate on conservation and management measures established by the organization has no positive effect.

II. Consequences of non-cooperation

1. All fishing vessels flying the flag of that State and fishing in contravention of applicable conservation and management measures may be prohibited from landing or making transshipments in Contracting Party ports.
2. In case of continuous sightings and repeated and flagrant fishing operations which are contrary to applicable conservation and management measures, vessels fishing in area of regional fisheries organization may be denied access to ports.

Annex 10. Chairman's Paper

Fishing by Non-Contracting Parties in the NAFO Regulatory Area: Elements for Discussion

1. Cooperation/Non Cooperation of States

- What is the sequence of steps to be taken vis-a-vis Non-Contracting States before we move to denial of landings/port access on other measures (see below)?
 - diplomatic demarches
 - invitation to join NAFO? (see 2 below)
 - invitation to cooperate in respecting NAFO conservation regime?
- Have we done all these things in respect of Non-Contracting States?
- Do we have to identify a particular state as non-cooperative?
 - on what basis, using what criteria?
 - how often do we meet to decide (annually, by postal vote...)
 - what timetable for determining that cooperation is so inadequate as to constitute non-cooperation (vessel still fishing after six months?)
 - how do we notify a state of its non-cooperative status? Is there room for an appeal or explanation?
- Is denial of landings/port access the final stage in dealing with non-cooperative states, in NAFO and other fisheries organizations?
 - not necessarily. It may become the final stage where the Contracting Parties are the principal market (as, apparently, with NAFO-regulated stocks at present and as with bluefin tuna in ICCAT). In effect a non-Contracting Party takes part of NAFO's fish and offers to sell it back to a Contracting Party which refuses to buy (denies landings) or even refuses to assist the non-Contracting Party with its fishery (denies access to ports).
 - if the non-Contracting Party lands the fish other than into a Contracting Party, NAFO would still protest that the fishery was undermining the NAFO conservation regime and would eventually be forced to seek redress other than through denial of landings or port access. This redress would be the regime of the UN Agreement on Straddling Stocks.

2. Openness of Organization

- Do we take the initiative to invite the state to join NAFO?
 - on what basis? (it has demonstrated a "real interest" by fishing outside NAFO?)
 - is it entitled to quotas? which?

- Should we leave it to the state to apply to join NAFO and argue its own case for a "real interest"? If it wants a quota only of over-subscribed and depleted resources can we decline to accept its "real interest"?
- Is the Organization to be so "open" that any state can join, without quotas, and participate in decision-making?

3. Courtesy Boardings

- Is information obtained from courtesy boardings essential for a NAFO measure? (eg to demonstrate use of illegal gear, catch, etc., or to demonstrate beyond question that the vessel did indeed undermine NAFO conservation). Or is sighting and inspection by port state sufficient?
- If a vessel declines a courtesy boarding, do we seek flag state authority to board and inspect (see Discussion Paper No. 3, para 2; this would constitute an early implementation of elements of the UN Agreement on Straddling Stocks).

4. Measures Directed at State or Vessel?

a) State

- Having defined a state as non-cooperative, do we inform that state that any of its vessels fishing (see below) in the Regulatory Area are liable to a ban on landings etc., or that all its vessels are banned from ports etc.?
- What if the vessels take new flags of convenience (see 1 above)?

b) Vessel

- Do we establish a blacklist of vessels? Can we prove they have undermined the effectiveness of NAFO conservation? Do we differentiate between one fishing trip and "repeated and flagrant undermining"?
- What if the vessel changes name or ownership or no longer fishes in the Regulatory Area? Does it come off the blacklist?
- Do we declare that all non-Contracting Party vessels giving rise to reasonable suspicion of undermining NAFO conservation (on the basis of fishing, or of courtesy boarding, or of reasonable evidence from surveillance?) should be checked in port and landings (of regulated species, of undersized fish?) denied?

5. NAFO Measures as Minimum Standards or Common Rules?

- If there is a multilaterally-agreed NAFO measure can some Contracting Parties apply tougher measures (eg denial of port access, liability to arrest under national laws, trade bans)?
- or must be NAFO scheme applied without variation by all Contracting Parties?

6. Should we take measures to restrict landings or trade?

Do we restrict landings of fish caught in the Regulatory Area by vessels from a non-cooperative state or do we ban imports of fish products transhipped? (If the latter, how can we confirm that the fish products were caught in the Regulatory Area?)

7. Which fish should be denied landing?

- NAFO regulated stocks (subject to TAC, moratorium, etc.)
- Undersized fish?
- By-catches of fish demonstrably caught alongside regulated stocks?
- Fish of unknown provenance (inadequate logbook, etc.)?
- Fish taken with one-net rule or 130mm mesh size not respected (how do we know, other than by courtesy boarding)?
- All fish from a country identified as non-cooperative?
- Are NAFO conservation rules so comprehensive by stock, gear type, etc. that we can state that any fishing by non-Contracting Parties is prima facie undermining the conservation regime (subject to investigation by port state)?

8. Denial of Landing or Closure of Ports?

- Should we close our ports for all purposes to non-cooperative vessels? (except for force majeure, no entry into the EEZ, no taking on of supplies, etc.)
- or should we allow free access to ports, subject to the warning that specified types of fish (see above) may not be landed?

9. What are the relevant legal bases to cite in support of any measure?

- UNCLOS (which Articles? including 116?)
- UN Agreement on Straddling Stocks?
- FAO "Compliance" Agreement?
- FAO Code of Conduct on Responsible Fisheries?
- GATT (especially XXg)?

