

## SECTION VI

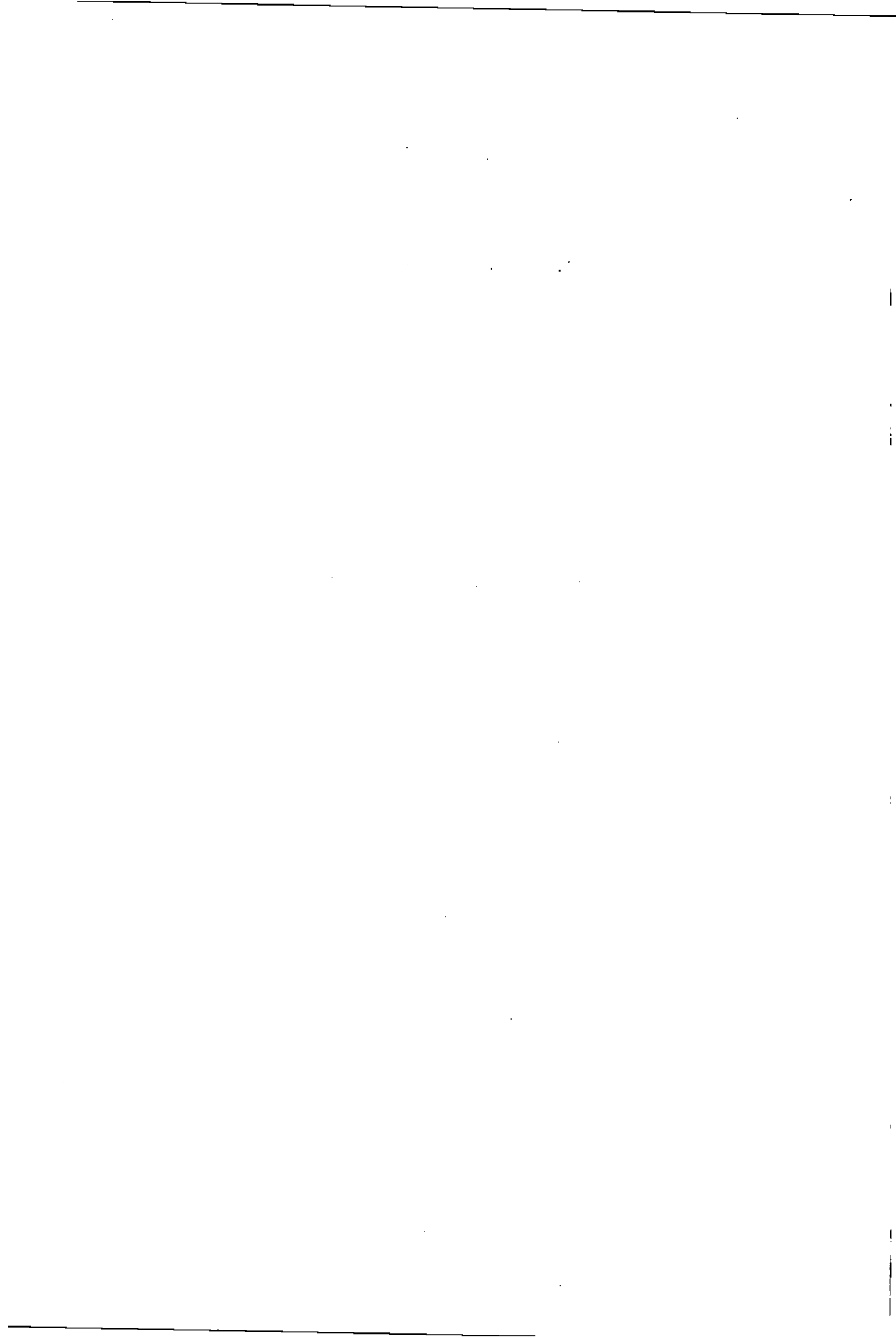
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### Report of the Working Group on Dispute Settlement Procedures (DSP)

12-14 June 2001

Dartmouth, N.S., Canada

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**Report of the Working Group on Dispute  
Settlement Procedures (DSP)**  
(GC Doc. 01/4)

**12-14 June 2001  
Dartmouth, N.S., Canada**

The Working Group met in accordance with the decision taken by the General Council at the 22<sup>nd</sup> Annual Meeting, September 2000 (GC Doc. 00/7, Part I, item 4.7).

**1. Opening of the Meeting**

The Executive Secretary of NAFO opened the meeting at 11:00 June 12, 2001 by welcoming all delegations to Dartmouth, Nova Scotia. The following Contracting Parties were represented at the meeting: Canada, Denmark in respect of the Faroe Islands and Greenland, Estonia, the European Union, Iceland, Japan, Latvia, Lithuania, Norway and Russia (Annex 1).

**2. Election of Chairman**

The Executive Secretary of NAFO recalled that Mr. Stein Owe of Norway had resigned from his position as Chairman of the NAFO Working Group on Dispute Settlement Procedures at the 22<sup>nd</sup> Annual Meeting in September 2000, and submitted the matter of electing a new Chairman for discussion by the Working Group. A proposal was made for Friedrich Wieland of the European Union to act as Chairman at this session of the Working Group. This was supported by all present. It was suggested that the Working Group may wish to consider the election of Mr. E. Lemche of Denmark to chair future sessions of the Working Group, should such sessions be agreed.

**3. Appointment of Rapporteur**

Ms. Nadia Bouffard of Canada was appointed as Rapporteur.

**4. Adoption of Agenda**

The provisional Agenda was adopted (Annex 2).

**5. Contracting Parties' ideas and presentations on NAFO DSP**

The Chairman invited delegations to submit new ideas and make presentations on new developments relevant to Dispute Settlement Procedures in NAFO. The European Union tabled two working documents: the first was an abstract from the recommendations coming out of the Working Group on the Future of NEAFC (DSP W.G. W.P. 01/1)(Annex 3); the second was an abstract from the new SEAFO Convention (DSP W.G. W.P. 01/2) (Annex 4). The European Union presented the first paper by describing the successful outcome of discussions that took place in NEAFC in April 2001 to develop dispute settlement procedures for that organization. The European Union pointed out that NEAFC benefited from discussions of the NAFO Working Group on Dispute Settlement Procedures and the resulting NEAFC text was based in great part on the Consolidated Text of the NAFO Working Group on DSP. The European Union and other NEAFC Contracting Parties responded to questions on the NEAFC text.

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

The Working Group agreed to use as a basis for its discussions the Consolidated Text (DSP W.G. W.P.00/10-Revised) (Annex 5) submitted to General Council during the 22<sup>nd</sup> Annual Meeting by the Working Group as Annex 12 to its Report of last year's meeting (G.C. Doc.00/4) The Chairman invited delegations to provide comments on the Consolidated Text on a clause by clause basis.

**Motivation of objections**

Delegations first agreed to renumber the existing paragraph 4 of Article XII of the NAFO Convention to paragraph 5, as a new paragraph 4 was proposed by the Text. They also agreed that the new paragraph 5 should be amended to add to the list of matters that the NAFO Executive Secretary must notify to other Contracting Parties the receipt of the statement of the reasons for the objection or notice and the receipt of the declaration of intent following the objection.

Discussion proceeded on whether the requirement to file a statement of reasons for the objection or notice and the declaration of intent following the objection should be triggered only upon request of a Contracting Party or whether it should be an automatic requirement when lodging an objection. While most delegations supported an automatic requirement as reflecting current practice in NAFO, both options were left in brackets in the final text pending an agreement on the whole paragraph. Most delegations also agreed that the statement and the declaration should be submitted at the same time as when lodging the objection under Article XII of the NAFO Convention, but an option permitting a delay was retained in square brackets pending an agreement on the whole paragraph.

The text under discussion contained two further groups of words in brackets. The first group related to the question of whether to include 'control and enforcement measures' as autonomous measures, which the objecting Contracting Party intends to take for the conservation and management of the fish stock concerned and for which it must provide a description in its declaration of intent. While some delegations believed that this terminology was redundant as being included in the terms "conservation and management measures", the point was made that these two sets of terms were inconsistently used in international fisheries instruments, including in the NAFO Convention, and that for greater certainty they should be included in the text, without brackets. The final draft text includes the words "including control and enforcement measures" without the brackets.

The second group of bracketed text relates to the question of whether to subject expressly the statement of reasons, the declaration of intent as well as the post objection behavior to the dispute settlement procedures. It was argued that the matters dealt with under the terms "disputes concerning the interpretation and application of this Convention" as used in paragraphs 2, 3 and 5 of the Consolidated text, include disputes relating to the post-objection behavior and thus it was redundant to make this express link. Some felt that an opposite argument could be made and instead of taking a risk, an express link should be made, by explicitly subjecting the statement, the declaration and the post objection behavior to dispute settlement procedures. While in the end, the text was left in brackets as some delegations did not agree with the bracketed text, most delegations indicated that should the explicit link be eventually maintained, it could be moved from this part of the text to the body of the dispute settlement procedures as being the better place for it. A Canadian proposal was tabled in this regard (DSP W.G. W.P. 01/5) (Annex 6),

suggesting moving this provision into paragraph 1 of the Dispute Settlement Procedures. The proposal generated a lot of discussion, particularly as regards the scope of disputes which may be covered by the mechanism under discussion. As no conclusions could be reached on the wording of the text that would be transferred to the body of the dispute settlement provisions and in which paragraph this text would be incorporated, the text was left as it was on this point, in brackets and under Article XII (4).

## **Dispute Settlement Procedures**

### **Paragraph 1 – General principle – Cooperation to prevent disputes**

This provision requires Contracting Parties to cooperate in order to prevent disputes. The provision received general consensus among participants.

### **Paragraph 2 – Means of settling disputes**

This provision outlines the various means available to Contracting Parties to settle disputes. A proposal was made to amend paragraph 2 to better reflect the text of the 1982 UN Convention on the Law of the Sea and the 1995 UN Fish Agreement and help prevent any abuse of the consultative process. The text was revised accordingly.

### **Paragraph 3 – Ad hoc panel**

Paragraph 3 provides a process to resolve disputes through an optional ad hoc panel. The procedural details, such as timelines for submitting the panel report, were removed from paragraph 3(1) and (2). It was agreed that such details should be reflected in procedures for the ad hoc panel process, to be discussed and attached to the text at a later stage.

### **Paragraph 4 – Provisional measures**

Paragraph 4 deals with provisional measures that would apply, prior to and after the ad hoc panel process, pending the final resolution of the dispute. It was generally agreed that the parties to a dispute could agree to provisionally apply the Fisheries Commission's proposal that is the subject of the dispute, pending the outcome of the ad hoc panel process. It was further clarified that the panel outcome would consist of recommendations, and not of a report, as had previously been envisaged. The text was also amended to clarify that the parties to the dispute remain the masters of the process and can, at any time, halt the process by settling the dispute by other means.

The more contentious discussion on this paragraph concerned the provisional measures applicable after the ad hoc panel issues its recommendations. Two options were on the table for discussion from the last meeting. The first was for automatic provisional application of panel recommendations. The second allowed the parties to the dispute to agree to apply the panel recommendations on a provisional basis. Two proposals were tabled during the discussions: the first by Latvia (DSP W.G. W.P. 01/3) (Annex 7) and, drawing upon the former, a second one by the EU (DSP W.G. W.P. 01/6 which was further revised) (Annexes 8 and 9). Latvia proposed a third option, which provided for the agreement on provisional application of panel recommendations to be reached at the time of submitting the dispute to the panel.

Some delegations preferred automatic application of the panel recommendation on a provisional basis, as they viewed the voluntary application of the ad hoc panel recommendations as leading to abusive uses of the ad hoc panel process to stall resolution of disputes and causing costly delays. They stressed that the flexibility in the panel process existed in the requirement for an agreement

to use the panel process and that once Contracting Parties choose to use the ad hoc panel process, they should be bound to the panel's findings, at least on a provisional basis, until the resolution of the dispute through binding dispute settlement procedures.

Other delegations expressed the view that the panel procedure must remain voluntary and its outcome non-binding, as it would leave maximum flexibility and discretion to the parties who remain masters of the process, and thus would facilitate and encourage the use of the ad hoc panel process. A panel process that has a binding outcome would discourage Parties to revert to the panel process to resolve disputes.

Some delegations queried the implications of provisional application of the panel recommendations for proposals of the Fisheries Commission and ensuing rights of several NAFO Contracting Parties, some of which may not be parties to the dispute. It was felt that a process should provide for endorsement of the panel recommendations by all Members to the Fisheries Commission and this would preclude provisional application of the panel recommendations. Other delegations felt that discussions on this issue went beyond the mandate provided by General Council to the DSP Working Group.

The final text juxtaposes the three options for provisional measures pending final resolution of disputes through binding dispute settlement procedures. The first provides for automatic provisional application of panel recommendations unless the parties to the dispute otherwise agree or, at the request of one party, a court or tribunal prescribes other provisional measures. The second leaves it entirely at the discretion of the parties what applies on a provisional basis and this can be agreed at any stage of the process. The third provides that, at the time of the choice of the panel process, the parties may agree to apply the panel outcome on a provisional basis. Once the choice is made, parties are locked in. Finally, there was general consensus that provisional measures would cease to have effect when the court or tribunal to which the dispute has been referred to has taken a decision, whether final or provisional, or in any case, at the expiration of the Fisheries Commissions' proposal.

**Paragraph 5 – Binding dispute settlement procedures  
and Paragraph 6 – Applicable Law**

Discussions on paragraphs 5 and 6 were inter-linked and vivid. Paragraph 5 outlines binding procedures, to which NAFO Contracting Parties may revert to resolve disputes. This is a compulsory process in that one party may trigger it. The outcome is binding on all parties to the dispute. Paragraph 6 indicates which law may be applied by a court, tribunal or other binding mechanism chosen under paragraph 5 to resolve the dispute.

The former text of paragraph 5 consisted of an import of the provisions related to dispute settlement procedures spelled out in Part XV of the 1982 UN Convention on the Law of the Sea and Part VIII of the 1995 UN Fish Agreement. The text of paragraph 6 referred to, as the applicable law, the relevant provisions of the NAFO Convention, the 1982 UN Convention on the Law of the Sea, the 1995 UN Fish Agreement as well as other generally accepted standards.

As Japan and Latvia are not parties to the 1995 UN Fish Agreement, these delegations re-stated their general reservations to having cross-references to this treaty in paragraphs 5 and 6. For the same reason, the delegations of Estonia, Latvia and Lithuania opposed references to the 1982 UN Convention on the Law of the Sea and the 1995 UN Fish Agreement. One of them indicated that any NAFO Dispute Settlement Procedures text that contained references to UNCLOS and the 1995 UN Fish Agreement would likely not be ratified by their government.

The Canadian delegation reiterated its earlier proposal (DSP W.G. W.P. 00/6 ) for a provisional application of the 1995 UN Fish Agreement to all NAFO Contracting Parties and to all NAFO stocks. The Canadian proposal was based on the objective of finding a mechanism which deals with the disputes in a comprehensive way, by developing procedures that would apply to all NAFO Contracting Parties on the same footing, to disputes concerning all NAFO stocks, and which would reflect the highest standards developed by the international community. The Canadian delegation stressed that UNCLOS and the 1995 UN Fish Agreement could not be broken up by cherry picking parts out, such as the dispute settlement procedures. These treaties were drafted as a whole, including the dispute settlement procedures, and they should be applied as a whole. It was further pointed out that while some experts are of the view that by cross-referencing the dispute settlement procedures of the 1995 UN Fish Agreement, it could be construed as bringing in the rest of the provisions of the Agreement, the opposite view also exists. The Canadian proposal sought to make it clear that the entire Agreement would apply to NAFO disputes. Among those delegations present at the meeting, there was not support for the Canadian proposal, which in the view of many delegations, went beyond the mandate of the Working Group.

Latvia submitted a new proposal for paragraphs 5 and 6 (DSP W.G. W.P. 01/4) (Annex 10), which was revised twice during the discussions. The proposal reflected Latvia's earlier suggestion that, in order to circumvent problems, which mere cross-references to UNCLOS and the 1995 UN Fish Agreement might cause for some Contracting Parties, provisions relating to the settlement of disputes set out in these treaties should be fully reproduced in a specific annex. This was the technique chosen for the final version of paragraph 5.

Discussion also took place on the bracketed text contained within paragraphs 5 and 6. One delegation requested both the deletion of the last sentence of paragraph 5, which indicates that the provisions set out in the two treaties referred therein apply to parties to the dispute whether they are parties to the treaties or not, as well as the addition of the term "if applicable" to paragraph 6 so as to reflect that these provisions should only apply to those States that have ratified these treaties. Most delegations opposed the suggested addition in paragraph 6. The Canadian delegation made the point that application of the two treaties in paragraph 5 and 6 should be cumulative and that this should be reflected by replacing the word "or" with "and". As this suggestion did not receive consensus, the words "or" and "and" were put in brackets. Finally, most delegations moved that the brackets be removed from the text in paragraph 6 to include as an objective for a court, tribunal or other binding mechanism assigned to resolve a dispute to consider the "optimum utilization" of the fish stocks concerned together with the conservation of such stocks. There was no consensus and the terms "optimum utilization" remained in brackets.

The final text contains a new paragraph 5, which specifies in a separate annex some of the dispute settlement procedures set out in Part XV of UNCLOS and in Part VIII of the 1995 UN Fish Agreement. The text of the annex (DSP W.G. W.P. 01/9) (Annex 11) was circulated at the end of the meeting but was not discussed. Paragraph 6 remains essentially the same as the previous version, except for explicit quotation of the exact titles of UNCLOS and the 1995 UN Fish Agreement. Both paragraphs remain in brackets, as does the Canadian proposal, which was included as an option to replace both paragraphs 5 and 6.

Delegations agreed to postpone discussions regarding the form of adoption of the text to a later stage. Some delegations indicated that the adoption of the text through an amendment to the NAFO Convention would be problematic. It was agreed that the reference to the form of adoption of the text that had been included at the beginning of the former text created some confusion and that, therefore, it was best left to a footnote for now.

As an attempt to summarise the outcome of the first round of discussions, the Chairman presented DSP W.G. W.P. 01/7. This draft text was later revised twice following the discussions in the Working Group. The final version of the text entitled "**Consolidated Text 2001**" (DSP W.G. W.P. 01/7 Revision 2) (Annex 12) contains text and alternatives in brackets and reflects the current state of agreement and views expressed within the Working Group to date.

At the end of the discussions, the European Union submitted its own version of a Dispute Settlement Procedures Text (DSP W.G. W.P. 01/10) (Annex 13). There were no discussions of this text. The European Union indicated that it may table this version as a possible compromise solution at the General Council Meeting during the NAFO Annual Meeting in September 2001.

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

Following the extensive discussions at this meeting, the Working Group agreed to recommend to the General Council that

- (a) it consider the Report of the Working Group;
- (b) it consider the Consolidated Text 2001 (Annex 12); and
- (c) it consider, as appropriate, possible future work in this field (including, if need be, the question of form and the issue of procedures concerning the constitution of the ad hoc panel).

### **8. Other Matters**

No other matters were discussed.

### **9. Adjournment**

The meeting was adjourned at 13:00 on June 14, 2001.



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**Annex 2. Agenda**

1. Opening of the Meeting (Executive Secretary)
2. Election of Chairman
3. Appointment of Rapporteur
4. Adoption of Agenda
5. Contracting Parties' ideas and presentations on NAFO DSP
6. 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.
7. Report to the General Council
8. Other Matters
9. Adjournment

**Annex 3. Abstract from the recommendation coming out of the  
Working Group on the future of NEAFC (not yet adopted by NEAFC)  
(DSP W.G. W.P. 01/1-Revised)**

**Requirement to motivate objections**

On request of any other Contracting Party, a Contracting Party which has presented an objection to a recommendation in accordance with Article 12 or given notice of its intention not to be bound by a measure in accordance with Article 13, 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 alternative conservation and management measures which the Contracting Party intends to take or has already taken.

*[could be introduced as a as new Article after Articles 12 and 13].*

**Settlement of disputes**

*[New Article x]*

1. Contracting Parties shall co-operate 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 expeditiously 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 recommendation adopted by the Commission pursuant to Articles 5, 6, 8 and 9 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 Commission. The panel shall at the earliest possible opportunity confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously. To this end, the panel shall present a report to the Parties concerned and through the Secretary to the other Contracting Parties. The report shall as far as possible describe any measures which the panel considers appropriate to resolve the dispute.

Where a dispute has not been resolved by way of the *ad hoc* panel procedure, it may be referred, on request of one of the Parties concerned, to a binding dispute settlement procedure as provided in paragraph 5.

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 recommendation 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 in accordance with paragraph 5, the Parties to the dispute shall apply provisionally any measure described by the panel pursuant to paragraph 3. That provisional application shall cease when the Parties to the dispute agree on arrangements of equivalent effect, when a court or tribunal to which the dispute has been referred in accordance with paragraph 5 has taken a provisional or definitive decision or, in any case, at the date of expiration of the recommendation of the Commission at issue.

5. Where a dispute has not been resolved by recourse to the means set out in paragraphs 2 and 3 within a reasonable time, one of the Parties to the dispute may refer the dispute to binding dispute settlement procedures. Such procedures shall be governed *mutatis mutandis* by the provisions relating to the settlement of disputes set out in Part XV of the 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 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 Agreement). The relevant parts of the 1982 UN Convention and the 1995 Agreement shall apply whether or not the Parties to the dispute are also 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 1982 UN Convention, of the 1995 Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law compatible with the said instruments, with a view to ensuring the conservation and optimum utilisation of the fish stocks concerned.

**Annex 4. Abstract from SEAFO Convention**  
(DSP W.G. W.P. 01/2)

**Article 23. DISPUTE SETTLEMENT**

1. The Contracting Parties shall cooperate in order to prevent disputes.
2. If any dispute arises between two or more Contracting Parties concerning the interpretation or implementation 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, arbitration, judicial settlement or other peaceful means of their own choice.
3. In cases where a dispute between two or more Contracting Parties is of a technical nature, and the Contracting Parties are unable to resolve the dispute among themselves, they may refer the dispute to an ad hoc expert panel established in accordance with procedures adopted by the Commission at its first meeting. The panel shall confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.
4. Where a dispute is not referred for settlement within a reasonable time of the consultations referred to in paragraph 1 above, or where a dispute is not resolved by recourse to other means referred to in this Article within a reasonable time, such dispute shall, at the request of any party to the dispute, be submitted for binding decision in accordance with procedures for the settlement of disputes provided in Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, by provisions set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the Parties to the dispute are also State Parties to these instruments.
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 Convention, of the 1995 Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law, compatible with the 1982 Convention and the 1995 Agreement, with a view to ensuring the conservation of the fish stocks concerned.

## Annex 5. Settlement of Disputes within NAFO

### CONSOLIDATED TEXT-2000 (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.]

**Annex 6. Working Paper by Canada**  
(DSP W.G. W. P. 01/5)

Add to paragraph 1:

“For greater certainty, in this Article, disputes include disputes concerning the statement, declaration and post-objection behaviour referred to in Paragraph (4) of Article XII of the NAFO Convention.”

**Annex 7. Proposal by Latvia**  
(DSP W.G. W.P. 01/3)

Re item 4 of CONSOLIDATED TEXT  
(DSP W.G. W.P. 00/10-Revised)

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:
  - 4.1 the relevant proposal adopted by the Commission until the recommendations of the panel are presented and the dispute is resolved by applying these recommendations.
  - 4.2 the recommendations made by a panel pending the settlement of a 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.

**Annex 8. Proposal by the European Union**  
(DSP W.G. W.P. 01/6)

**Re item 4 of Consolidated Text**

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 recommendations of the panel are presented and the dispute is resolved following these recommendations or the dispute is resolved by other means, whichever occurs first.

Pending the settlement of a dispute in accordance with paragraph 5, the parties to the dispute shall apply provisionally any recommendation made by the panel pursuant to paragraph 3. 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 referred in accordance with paragraph 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.

**Annex 9. Proposal by the European Union**  
(DSP W.G. W.P. 01/6-Revision 1)

**Re item 4 of Consolidated Text**

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 recommendations of the panel are presented or the dispute is resolved by other means, whichever occurs first.

Pending the settlement of a dispute in accordance with paragraph 5, the parties to the dispute shall apply provisionally any recommendation made by the panel pursuant to paragraph 3. 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 referred in accordance with paragraph 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.

**Annex 10. Proposal by Latvia**  
(DSP W.G. W.P. 01/4, Revision 2)

Re items 5 and 6 of CONSOLIDATED TEXT  
(DSP W.G. W.P. 00/10-Revised)

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 specified in the Annex ... to this Convention.

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 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,] 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), 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 11. Annex ... to the Convention**  
(DSP W.G. W.P. 01/9)

For the purpose of the dispute settlement procedures referred to in Article ..., paragraph 5, of this Convention, the following extracts apply:

- I. From the United Nations Convention on the Law of the Sea of 10 December 1982:

SECTION 2. COMPUSLORY PROCEDURES ENTAILING BINDING  
DECISIONS

*Article 286*

*Application of procedures under this section*

Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

*Article 287*

*Choice of procedure*

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
- (b) the International Court of Justice;
- (c) an arbitral tribunal constituted in accordance with Annex VII;
- (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

2. A declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, section 5.

3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.

4. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.

5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.

6. A declaration made under paragraph 1 shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations.

7. A new declaration, a notice of revocation or the expiry of a declaration does not in any way affect proceedings pending before a court or tribunal having jurisdiction under this article, unless the parties otherwise agree.

8. Declarations and notices referred to in this article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

#### *Article 288 Jurisdiction*

1. A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.

2. A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.

3. The Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea established in accordance with Annex VI, and any other chamber or arbitral tribunal referred to in Part XI, section 5, shall have jurisdiction in any matter which is submitted to it in accordance therewith.

4. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.

#### *Article 289 Experts*

In any dispute involving scientific or technical matters, a court or tribunal exercising jurisdiction under this section may, at the request of a party or *proprio motu*, select in consultation with the parties no fewer than two scientific or technical experts chosen preferably from the relevant list prepared in accordance with Annex VIII, article 2, to sit with the court or tribunal but without the right to vote.

#### *Article 290 Provisional measures*

1. If a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.

2. Provisional measures may be modified or revoked as soon as the circumstances justifying them have changed or ceased to exist.



3. Provisional measures may be prescribed, modified or revoked under this article only at the request of a party to the dispute and after the parties have been given an opportunity to be heard.

4. The court or tribunal shall forthwith give notice to the parties to the dispute, and to such other States Parties as it considers appropriate, of the prescription, modification or revocation of provisional measures.

5. Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea or, with respect to activities in the Area, the Sea-Bed Disputes Chamber, may prescribe, modify or revoke provisional measures in accordance with this article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.

6. The parties to the dispute shall comply promptly with any provisional measures prescribed under this article.

#### *Article 291*

##### *Access*

1. All the dispute settlement procedures specified in this Part shall be open to States Parties.

2. The dispute settlement procedures specified in this Part shall be open to entities other than States Parties only as specifically provided for in this Convention.

#### *Article 292*

##### *Prompt release of vessels and crews*

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

*Article 293*  
*Applicable law*

1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.

2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono*, if the parties so agree.

*Article 294*  
*Preliminary proceedings*

1. A court or tribunal provided for in article 287 to which an application is made in respect of a dispute referred to in article 297 shall determine at the request of a party, or may determine *proprio motu*, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded. If the court or tribunal determines that the claim constitutes an abuse of legal process or its *prima facie* unfounded, it shall take no further action in the case.

2. Upon receipt of the application, the court or tribunal shall immediately notify the other party or parties of the application, and shall fix a reasonable time-limit within which they may request it to make a determination in accordance with paragraph 1.

3. Nothing in this article affects the right of any party to a dispute to make preliminary objections in accordance with the applicable rules of procedure.

*Article 295*  
*Exhaustion of local remedies*

Any dispute between States Parties concerning the interpretation or application of this Convention may be submitted to the procedures provided for in this section only after local remedies have been exhausted where this is required by international law.

*Article 296*  
*Finality and binding force of decisions*

1. Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.

2. Any such decision shall have no binding force except between the parties and in respect of that particular dispute.

- II. From 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 :

### Article 30

#### Procedures for the settlement of disputes

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.
2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.
3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.
4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.
5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries 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 Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

**Annex 12. Consolidated Text 2001**  
(DSP W.G. W.P. 01/7-Revision 2)

***Motivation of objections***

*New Paragraph 4 of Article XII*

[On request of any Contracting Party, a] [Any] Commission member which has presented an objection to a proposal under paragraph 1 or given notice of its intention not to be bound by a measure under paragraph 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 statement, declaration and post-objection behaviour may be challenged through dispute settlement procedures.]

*Existing paragraph 4 will become paragraph 5 with the following insertion:*

- d) the receipt of each statement and declaration under paragraph 4

**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 have the obligation to settle their dispute 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.

Where a dispute has been submitted to *ad hoc* panel procedures, the panel shall at the earliest possible opportunity confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously. 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 dispute settlement procedure as provided in paragraph 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 recommendations of the panel are presented, unless the parties have settled the dispute beforehand by other means.

[Pending the settlement of a dispute in accordance with paragraph 5, the parties to the dispute shall apply provisionally any recommendation made by the panel pursuant to paragraph 3.] *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 paragraph 5.] *or* [When submitting the dispute to an *ad hoc* panel, the parties to the dispute may agree at the same time to apply provisionally any recommendation made by the panel pending the settlement of the dispute according to paragraph 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 paragraph 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 specified in the Annex ... to this Convention.]

[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 United Nations Convention on the Law of the Sea of 10 December 1982 [or, where the dispute concerns one or more straddling stocks,] [and] 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, 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.]

***Note:*** *The question of the form, by way of which these texts can be introduced, e.g. by way of an amendment to the NAFO Convention or any other suitable instrument including a protocol, is still to be determined.*

### **Annex 13. Proposal by the European Union** (DSP W.G. W.P. 01/10)

#### **Motivation of objections**

##### *New Paragraph 4 of Article XII*

Any Commission member which has presented an objection to a proposal in accordance with paragraph 1 or given notice of its intention not to be bound by a measure in accordance with paragraph 3, shall 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.

*Existing paragraph 4 will become paragraph 5 with the following insertion:*

- d) the receipt of each statement and declaration under paragraph 4.

#### **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, including the statement, declaration and measures referred to in paragraph 4 of Article XII, 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, including the statement, declaration and measures referred to in paragraph 4 of Article XII, the parties to the dispute may submit the dispute to an *ad hoc* panel constituted in accordance with procedures adopted by the General Council.

Where a dispute has been submitted to *ad hoc* panel procedures, the panel shall at the earliest possible opportunity confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously. 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 dispute settlement procedure as provided in paragraph 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 recommendations of the panel are presented, unless the parties have settled the dispute beforehand by other means.

Pending the settlement of a dispute in accordance with paragraph 5, the parties to the dispute shall apply provisionally any recommendation made by the panel pursuant to paragraph 3. 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 referred in accordance with paragraph 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 specified in the Annex ... to this Convention.

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 United Nations Convention on the Law of the Sea of 10 December 1982 or, where the dispute concerns one or more straddling stocks, 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, 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.

