

PART I

Report of STACFAC Meeting

(GC Doc. 04/2)

**15, 16, and 18 June 2004
Copenhagen, Denmark**

1. Opening of the Meeting

STACFAC Chair Daniel Silvestre was not available. Therefore, Vice-Chair Nadia Bouffard chaired and opened the meeting. Contracting Parties represented at the meeting were: Canada, Denmark (in respect of Faroe Islands and Greenland), European Union, Iceland, Norway and the USA. (Annex 1)

2. Appointment of Rapporteur

The Executive Secretary, Johanne Fischer, was appointed Rapporteur.

3. Adoption of Agenda

The proposed agenda was adopted. (Annex 2)

4. Modification of Scheme to promote compliance by non-Contracting Party vessels with the Conservation and Enforcement Measures established by NAFO (GC Doc. 03/3, Part III-Report of STACFAC, Annex 6)

All present CPs agreed to use as a basis for the discussion the proposal tabled by the European Union at the STACFAC meeting held September 15-18, 2003 (Annex 6 of GC Doc. 03/3, Part III – Report of STACFAC). This report summarizes the key matters discussed during the meeting. CPs supported the need to effectively address IUU fishing by non-Contracting Party (NCP) vessels in the NAFO Regulatory Area and as such, were favourable to considering improvements to the current NAFO NCP scheme. Concern was expressed, particularly by those NAFO CPs who are also party to the Northeast Atlantic Fisheries Commission, that an increasing number of NCP vessels were targeting oceanic redfish in NEAFC and following the fish into the NAFO Regulatory Area in the later months of the summer and Fall. In their discussions, Contracting Parties considered similar measures adopted by other regional fisheries management organisations with a view to exploring approaches employed by other Regional Fisheries Management Organizations. Some CPs supported the concept of harmonizing NCP schemes, in particular the NAFO NCP scheme and the NCP scheme developed by the Northeast Atlantic Fisheries Commission (NEAFC).

Canada introduced STACFAC Working Paper 04/1 (Annex 3) proposing changes to the EU text and explained that these were meant to improve fairness and transparency in the procedures outlined in the EU text and overall clarity.

Participants agreed on a number of changes to the EU text which have been reflected in STACFAC WP 04/3, version 4 (Annex 4). Though progress was made on addressing comments and concerns with the EU draft text, square brackets remain for further discussion. CPs agreed to insert footnotes to the draft text which explain the outstanding issues in the text reflected by brackets in order to facilitate preparation and participation at the 2004 annual meeting by the CPs unable to attend the intersessional meeting. It was noted that the text should be read and drafted using definitions and terminology consistent with the NAFO Conservation and Enforcement Measures, as the draft text, once adopted, would be included in the NAFO measures. Key definitions in the latter apply to the NCP scheme and assisted in interpreting the draft text.

Contracting Parties discussed the scope of the scheme. There was general agreement that the scheme should cover IUU fishing and related activities by non-contracting parties involving stocks regulated by NAFO. This would therefore include fishing and related activities that occur in the NRA, but as well those that occur outside the NRA, including in CP's waters or ports. Therefore the scheme would apply, for instance to transshipment activities of NAFO regulated stocks, which occur outside the NRA, inside a CP port or inside CPs' exclusive economic zones. The purpose clause (Article 1) of the text was amended to reflect this discussion and the wording remains bracketed.

There was discussion on the need to expand the scheme to better cover transshipment activities between NCP vessels and CP vessels which were seen as activities which support IUU fishing. There was general support for this idea, though concern was expressed that such measures not be too broad, covering transshipments by all forms of ships, including cargo vessels, as this was seen by some CPs as going beyond the mandate of NAFO. It was recognized at the 2003 Annual Meeting that such discussions involving potential implications for CPs required the involvement of STACTIC. As a result a recommendation was made by STACFAC to the General Council in the report of the 2003 Annual Meeting that “STACTIC and STACFAC meet intersessionally in joint session to consider implementation of the IPOA on IUU, the development of a trade-tracking system and the elaboration of a Scheme for Contracting Parties with content similar to that of the Scheme for Non-Contracting Parties. These discussions were held in the second portion of the intersessional meeting jointly with STACTIC.

As had been reflected in the current NCP scheme, Contracting Parties also agreed that any revised NCP scheme adopted by NAFO would not affect CPs’ sovereign rights to impose additional or stronger measures, consistent with international law. It was also recognized that the scheme should be interpreted in a manner that is consistent with international law, including WTO requirements.

Participants agreed to the concept of establishing a list of NCP vessels considered to be involved in IUU fishing, which, once on the list, could trigger sanctions for the vessel and/or the flag State. There was extensive discussion on whether and how to establish a preliminary or interim list, and whether a process should be put in place to finalize the outcome of the list through a mail voting procedure, to avoid delays from waiting for the annual STACFAC and General Council meetings to finalize the list and to make determinations accordingly. Participants felt there was need to address IUU fishing in a timely manner, while ensuring that the process was fair, open and transparent and hence consistent with WTO requirements. In the end, participants agreed that the Secretariat be tasked with establishing a preliminary list of NCP vessels from information from broad sources, to inform the flag States and seek additional information regarding the activity of the NCP vessel in time for the annual STACFAC meeting. At this meeting, STACFAC would consider all facts and determine whether the vessel should be on the final list of NCP vessels and recommend a course of action to the General Council.

Participants felt that the scope of the current scheme may have been a little too narrow and agreed that the source of information to trigger a listing of an NCP vessel should not be limited to those vessels sighted in the NRA.

Participants discussed the possible approaches and considerations regarding publication of the provisional and IUU lists. Concerns were expressed with respect to publicizing the provisional list as well as the need to protect certain confidential/personal information, in keeping with national legislation of CPs, when disclosing such a list. It was agreed that publication of the following details should pose no problem to NAFO CPs: Flag State, vessel name, letters and numbers of registration, and other identifying features of the vessel as set out in Annex XII of the NAFO CEM.

CPs then discussed the consequences (sanctions) triggered by vessels being put on the IUU list. The EU text proposed sanctions, including trade sanctions, be imposed on individual vessels put on the list, and sanctions on their flag States. Some CPs raised concerns with the fact that the inclusion of trade sanctions in the NCP scheme discussed earlier in the meeting should not lead to NAFO discriminating between vessels of NCPs and vessels of CPs, imposing more severe consequences for IUU fishing on NCP vessels than those imposed on CPs. These CPs believe that such discrimination could result in a breach of WTO requirements. Hence these CPs believed that a scheme providing for sanctions for CPs and their vessels, consistent, but not necessarily the same, for NCPs and their vessels was necessary to meet this WTO requirement. Many parties did not believe that NAFO currently has a sanctions regime for IUU fishing by CP vessels, while others believed that, by virtue of the fact they were parties to NAFO and were bound by the provisions of the NAFO Convention and its Conservation and Enforcement Measures, including compliance and control measures, NAFO Parties have alternative means of addressing IUU fishing by their vessels – hence not necessitating a NAFO scheme with specific sanctions, including trade measures for the vessels and their flag Contracting Parties. Canada proposed a clause to be added to the EU text, which 1) reflects discussion and commitment among the group to further explore the elaboration of a mechanism to address IUU fishing by CPs; and 2) seeks to prevent inconsistency with WTO rules by agreeing that trade sanctions envisaged in Article 10(3) of the EU draft text are not implemented until equivalent measures are in place for CPs that engage in IUU fishing. (STACFAC W.P. 04/6) (Annex 5). The Canadian proposal sets a timeframe of 2 years

to adopt such measures for CP vessels. Some CPs expressed concern that this timeframe may be too short for elaborating a CP scheme, and many CPs expressed concern with not adopting a final revised NCP scheme until a CP scheme was adopted.

10. Adjournment

The meeting broke to be continued on Thursday, 17 June, in a joint session with STACTIC.

The STACFAC portion of the meeting was finally closed on June 18, with consensus by participants to recommend to General Council that STACFAC be asked to continue the review and discussions of the revised draft text in September 2004 at the annual NAFO meeting, with a view to eliminating brackets and propose a revised NCP scheme for adoption by General Council.

Annex 1. List of Participants

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Annex 2. Agenda

1. Opening by the Chair
2. Appointment of Rapporteur
3. Adoption of Agenda
4. Modification of Scheme to promote compliance by Non-Contracting Party vessels with the Conservation and Enforcement Measures established by NAFO (GC Doc. 03/3, Part III-Report of STACFAC, Annex 6)
5. Elaboration of a Scheme for Contracting Parties with content similar to that of Scheme for NCPs
6. Development of trade-tracking system
7. Implementation of the IPOA on IUU in NAFO
8. Other Matters
9. Adoption of Report
10. Adjournment

15-16 June – STACFAC – re item 4

17-19 June – Joint session with STACTIC re items 5-7 (see **Part II of this Section, page)**

Annex 3. Working Paper presented by Canada on Modification of the NCP Scheme
(STACFAC W.P. 04/1)

Suggested Changes – Canada

**SCHEME TO PROMOTE COMPLIANCE BY NON-CONTRACTING PARTY
VESSELS WITH RECOMMENDATIONS ESTABLISHED BY NAFO**

(These amendments are intended to replace Chapter VI of the CEM Overhaul, pending the final adoption of that document. Numbering of articles in this section would thus need to be corrected.)

Article 1
Scope and Objectives

1. The measures contained in this Scheme are applicable to non-Contracting Party vessels engaged in fishing activities in the Regulatory Area of NAFO.
2. The purpose of the Scheme is to ensure the effectiveness of the Conservation and Enforcement measures established by the Organization.
3. Nothing in this Scheme shall affect the exercise by Contracting Parties of their sovereignty over the ports in their territory in accordance with international law.
4. This Scheme shall be interpreted in a manner consistent with international law, including the principles, rights and obligations in WTO agreements, and be implemented in a fair, transparent, and non-discriminatory manner.

Article 2
Definitions

(These definitions would be inserted in Article 2 of the CEM Overhaul, where those of ‘Fishing activities’ and ‘Inspectors’ are already included, pending final adoption of the Overhaul.)

1. “non-Contracting Party vessel” means any vessel not flagged ~~in~~ to a Contracting Party of NAFO or to a member state of a Regional Economic Integration Organization that is a Contracting Party of NAFO, including vessels for which there are reasonable grounds for suspecting them to be without nationality.
2. “Fishing activities” means fishing, fish processing operations, the transshipment of fish or fish products and any other activity in preparation for or related to fishing in the Regulatory Area.
3. “Inspector” means an inspector of the fishery control services of the Contracting Parties assigned to the Scheme of Joint International Inspection and Surveillance.
4. “IUU fishing” means activities as defined in paragraph 3 of the FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing that occur within the NAFO Regulatory Area.
5. “IUU List” means the list, established pursuant to Article 9 of Chapter VI, containing the particulars of vessels that have been found by the General Council to have engaged in IUU fishing.
6. “Provisional List” means the list, established pursuant to Article 9 of Chapter VI, containing the particulars of vessels that have been identified as having engaged in fishing activities in the Regulatory Area, according to information received pursuant to Articles 3 to 5 (to 6 if trade tracking implemented) or information received in reports pursuant to Article 8 of Chapter VI.

Article 3

Sightings of non Contracting Party vessels

1. A non-Contracting Party vessel ~~which that~~ has been sighted engaging in fishing activities in the Regulatory Area ~~for which has been denied port access, landing or transshipment pursuant to Article 6~~ is presumed to be undermining the effectiveness of Conservation and Enforcement Measures. In the case of any transshipment activities involving a sighted non-Contracting Party vessel, inside or outside the Regulatory Area, the presumption of undermining Conservation and Enforcement Measures applies to any other non-Contracting Party vessel ~~that which~~ has engaged in such activities with that vessel.
2. Information regarding such sightings ~~or denials of [port access,] landings or transshipments~~ shall be immediately transmitted to the Secretariat. For sightings, the Surveillance Report provided in Annex XII shall be used. The Secretariat shall then transmit this information to all Contracting Parties and other relevant Regional Fisheries Management Organizations within one business day of receiving this information, and to the Flag State as soon as possible.
3. The Contracting Party shall attempt to inform the vessel that it has been sighted engaging in fishing activities, ~~or that it is being denied [port access,] landing or transshipment,~~ and is accordingly presumed to be undermining the Conservation and Enforcement Measures, and that this information will be distributed to all Contracting Parties, other Regional Fisheries Management Organizations and to the Flag State of the vessel.

Article 4

Inspections at sea

1. NAFO inspectors shall, if appropriate, request permission to board non-Contracting Party vessels ~~that are sighted as being engaged~~ in fishing activities in the Regulatory Area. If the vessel consents to be boarded the inspectors' findings shall be transmitted to the Secretariat without delay. The Secretariat shall transmit this information to all Contracting Parties and other relevant Regional Fisheries Management Organizations within one business day of receiving this information, and to the Flag State as soon as possible. The non-Contracting Party vessel ~~that which~~ is boarded shall be provided with a copy of the findings of the NAFO inspectors.
2. Where evidence so warrants, a Contracting Party may take such action as may be appropriate in accordance with international law. Contracting Parties are encouraged to examine the appropriateness of domestic measures to exercise jurisdiction over such vessels.

Article 5

Inspections in port

1. When a non-Contracting Party vessel referred to in Article 3(1) enters a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials knowledgeable of the Conservation and Enforcement Measures (and this Scheme), and shall not be allowed to land or tranship any fish until this inspection has taken place. Such inspections shall include the vessel's documents, log books, fishing gear, catch onboard and any other matter relating to the vessel's activities in the Regulatory Area.
2. Information on the results of all inspections of non-Contracting Party vessels conducted in the ports of Contracting Parties, and any subsequent action, shall immediately be transmitted to all Contracting Parties and other relevant Regional Fisheries Management Organizations through the NAFO Secretariat, and as soon as possible to the relevant Flag State(s).
3. ~~Nothing in this Scheme shall affect the exercise by Contracting Parties of their sovereignty over the ports in their territory in accordance with international law.~~

Article 6

Landings, transshipments and joint fishing activities operations

1. ~~Contracting Parties shall ensure that their vessels do not receive transshipments of fish from a non-Contracting Party vessel [referred to in Article 3] or engage in joint fishing operations with such vessels. Contracting Parties shall ensure that their vessels do not engage in fishing activities with the vessels of non-Contracting Parties.]~~
- [2. Landings and transshipments of all fish from a non-Contracting Party vessel to which this Scheme applies shall be prohibited in all Contracting Party ports if the vessel has on board any species listed in Annex XIX, unless:
 - a) The vessel establishes that the fish were caught outside the Regulatory Area; or
 - b) The vessel establishes that it has applied all relevant Conservation and Enforcement Measures, in particular Part IV.]
3. **Contracting Parties denying landings or transshipments shall inform the vessel, the flag State of the vessel and the NAFO Secretariat of this decision.**

Article 7

Notification of presumed IUU activities

1. ~~When transmitting the information received in accordance with Articles 3 to 5 to the Flag State concerned, the Secretariat shall, in consultation with the chairman of the General Council, request that it take measures in accordance with its applicable legislation to ensure that the vessel or vessels in question desist from any activities that undermine the effectiveness of Conservation and Enforcement Measures, including if necessary, the withdrawal of the registration or of the fishing licences of these vessels.~~
2. ~~The Secretariat shall request the Flag State(s) to report back to NAFO on the results of enquiries and/or on the measures it has taken in respect of the vessel or vessels concerned. The Secretariat shall also provide the Flag State with a copy of this Scheme, advise of the dates when STACFAC will be considering the composition of the IUU List and encourage the Flag State to communicate any relevant information to the Secretariat in an expeditious manner. The Secretariat shall promptly distribute any information received to all Contracting Parties.~~

Article 8

Reports on IUU fishing activities

1. Each Contracting Party shall report to the Executive Secretary by 1 March each year for the previous calendar year:
 - a) the number of inspections of non-Contracting Party vessels it conducted under this Scheme at sea or in its ports, the names of the vessels inspected and their respective Flag State, the dates and as appropriate, the ports where the inspection was conducted, and the results of such inspections; and
 - b) where fish are landed or transhipped following an inspection pursuant to this Scheme, the report shall also include the evidence presented pursuant to Article 6(2).
2. In addition to sighting reports and information on sea or port inspections, Contracting Parties may at any time submit to the Secretariat any further information, which might be relevant for the identification of non-Contracting Party vessels that might be carrying out IUU fishing activities in the Regulatory Area.
3. The Executive Secretary shall prepare a report by 1 April each year, for the period corresponding to the previous calendar year, based on the reports and information received from the Contracting Parties as called for in this Scheme.

Article 9
IUU vessel-lists and notification to NCP Flag States

1. [By 1 April each year,] The Secretariat shall establish a Provisional List containing the name and flag state of place on a provisional list of IUU vessels (hereinafter referred to as 'the Provisional ') the non-Contracting Party vessel or vessels identified as ~~being~~ having engaged in fishing activities in the Regulatory Area, according to information received pursuant to Articles 3 to 5 (to 6 if trade tracking implemented) and the reports mentioned in Article 8. The Secretariat shall also place the Provisional List on a secure section of the NAFO website.

2. By 1 April each year, [The Secretariat shall advise relevant non-Contracting Parties of the vessels flying their flag that have been included in the Provisional list. The Secretariat shall also place the Provisional List on a secure section of the NAFO website and, in consultation with the chairman of the General Council STACFAC, provide the following information to the non-contracting Party:
 - a) the reasons for the inclusion on the Provisional list and all relevant evidence upon which inclusion of the vessel on the list is based;
 - b) a copy of the NAFO Conservation and Enforcement Measures, including this Scheme;
 - c) a request to the flag state to take measures in accordance with its applicable legislation to ensure that the vessel or vessels in question desist from activities that undermine the effectiveness of the NAFO Conservation and Enforcement Measures;
 - d) a reminder that trade restrictive measures may be imposed if the Flag State does not take effective measures to ensure that the vessel or vessels in question desist from activities that undermine the effectiveness of the NAFO Conservation and Enforcement Measures;
 - e) a request to report back to NAFO on the results of enquiries and/or measures it has taken in respect of the vessel or vessels concerned, and a reasonable deadline by which a reply is required; and,
 - f) the dates when STACFAC will be considering recommendations with respect to the composition of the IUU List, and an invitation to the non-Contracting Party to attend the meeting of STACFAC as an observer.

- 2bis. The Secretariat shall promptly distribute to Contracting Parties any information received pursuant to Article 9(2)(e)

3. On the basis of the reports drawn up pursuant to Article 8(3), the information received from Flag States in response to notice sent pursuant to Article 7(2) 9(2)(e) , as well as any other relevant information submitted by Contracting Parties or Flag States which might be relevant for the identification of non-Contracting Party vessels that might be carrying out IUU fishing activities in the Regulatory Area, the Standing Committee on Fishing Activities of non-Contracting Parties in the NAFO Regulatory Area (STACFAC) shall consider the Provisional List and as appropriate recommend to the General Council that the vessels either:
 - a) be removed ~~therefrom~~ from the list of;
 - b) be retained on the list pending the receipt of further information; or,
 - c) be ~~or~~ otherwise transferred to ~~the confirmed~~ IUU List hereinafter referred to as 'the IUU List').

4. At the same time STACFAC shall undertake a review of the current IUU List and as appropriate recommend to the General Council that vessels are maintained therein or removed. STACFAC shall only recommend that the General Council remove a vessel from either the Provisional or IUU list if the Flag State of the vessel concerned provides satisfactory information to establish that ~~satisfies the General Council that:~~
 - a) it has taken effective action in response to the IUU fishing activities in question, including prosecution and imposition of sanctions of adequate severity; ~~or~~

- b) it has taken measures to ensure the granting of the right to the vessel to fly its flag will not result in IUU fishing; ~~or;~~
- c) the vessel has changed ownership and ~~that~~ the new owner can establish the previous owner no longer has any legal, financial, or real interests in the vessel, or exercises control over it and that the new owner has not participated in IUU fishing; ~~or;~~
- d) the vessel did not take part in IUU fishing activities.

4bis. The General Council shall review the recommendations made by STACFAC pursuant to this Article, and shall determine the composition of the IUU List.

5. The Secretariat shall [place the IUU ~~list~~ List on a secure section of the NAFO website. This list shall include the name and flag state of the vessel and, where available, the previous name, the previous flag state, the radio call sign, and the name and address of the owner of the vessel. ~~the following information...~~]

6. The Secretariat shall provide to relevant flag states the names of vessels on the IUU List flagged to that state.

Article 10 Follow-up action

1. ~~Contracting Parties shall take all the necessary measures, under their applicable legislation, in order that:~~

- ~~a)1.~~ vessels appearing on the IUU ~~list~~ List are not authorised to land or tranship in their ports or waters under their jurisdiction ~~but are inspected in accordance with the provisions of Article 5;~~
- ~~b)2.~~ fishing vessels, including support vessels, refueling vessels, the mother-ships and cargo vessels flying their flag do not in any way assist, or participate in ~~any transshipments or joint~~ fishing activities with, vessels appearing on the IUU ~~list~~ List.
- ~~c)3.~~ the issuing of licenses to vessels appearing on the IUU ~~list~~ List to fish in waters under their fisheries jurisdiction is prohibited;
- ~~d)4.~~ the chartering of vessels appearing on the IUU ~~list~~ List is prohibited;
- ~~e)5.~~ the granting of their flag to vessels appearing on the IUU ~~list~~ List is refused;
- ~~f)6.~~ importers, transporters and other sectors concerned are encouraged to refrain from negotiating with and from transshipping fish caught by vessels appearing on the IUU ~~list~~ List;
- ~~g)7.~~ appropriate information regarding vessels appearing on the IUU ~~list~~ List is collected and exchanged with other Contracting Parties or non-Contracting Parties with the aim of detecting, controlling and preventing false import/export certificates regarding fish from such vessels subject to confidentiality requirements of States.

~~[2. Notwithstanding the provisions of Article 6, paragraph 2, the General Council will recommend appropriate measures and, if necessary, trade restrictive measures to prevent vessels of non Contracting Parties appearing on the IUU list from continuing the fishing activities in the Convention Area. Any trade measures under this paragraph will be import restrictions on the catch from these vessels and consistent with each Party's international obligations. The trade measures will be of such duration and under such conditions as the General Council may determine.]~~

Article 11 Action vis-à-vis Flag States

1. Contracting Parties shall jointly and/or individually request non-Contracting Parties whose vessels appear on the IUU ~~list~~ List to co-operate fully with the ~~Organization~~ in order to avoid undermining the effectiveness of the Conservation and Enforcement Measures adopted pursuant to the Convention.

2. The General Council shall review, at subsequent annual meetings as appropriate, actions taken by such non-Contracting Parties and identify those ~~which~~ that have not rectified their fishing activities.
- ~~[3. The General Council shall decide appropriate measures to be taken in respect of non Contracting Parties identified under paragraph 2. In this respect, Contracting Parties may co operate to adopt appropriate multilaterally agreed trade related measures, consistent with the World Trade Organisation (WTO) that may be necessary to prevent, deter, and eliminate the IUU fishing activities identified by the General Council. Multilateral trade measures may be used to support co operative efforts to ensure that trade of fishing products from the Regulatory Area does not in any way encourage IUU fishing or otherwise undermine the effectiveness of NAFO Conservation and Enforcement Measures which are consistent with the United Nations convention on the Law of the Sea 1982.]~~
3. Where the Flag State of a vessel identified in paragraph 2 has:
 - (a) failed or refused to exercise effective control over the vessel flying its flag so as to ensure that the vessel desists from undermining the effectiveness of the NAFO Conservation and Enforcement Measures; and,
 - (b) received reasonable notice of the consequences of its failure to take effective control and has been provided with an opportunity to respond;the General Council may, where no other reasonable means are available to compel the Flag State to exercise effective control over the vessel, recommend that Contracting Parties adopt appropriate non-discriminatory trade restrictive measures against the Flag State in question, consistent with their international obligations
4. Where trade measures are recommended pursuant to paragraph 3, the chairman of the General Council shall inform the Flag State in question of the recommendation and again request the Flag State to exercise effective control over the vessel or vessels.
5. STACFAC shall review each year all trade restrictive measures that have been adopted and, where circumstances warrant, shall submit for the approval of the General Council, recommendations for the lifting of the measures.

Article 12

Entry Into Force

This Scheme shall not enter into force prior to the entry into force of a similar scheme to promote compliance by Contracting Parties with NAFO conservation and management measures.

Annex 4. Working Paper presented by the EU on Modification of the NCP Scheme
(STACFAC W.P. 04/3, Version 4)

**SCHEME TO PROMOTE COMPLIANCE BY NON-CONTRACTING PARTY
VESSELS WITH RECOMMENDATIONS ESTABLISHED BY NAFO**

(These amendments are intended to replace Chapter VI of the CEM Overhaul, pending the final adoption of that document. Numbering of articles in this section would thus need to be corrected.)

Article 1

Scope and Objectives

- [1. The purpose of this Scheme is to prevent, deter and eliminate fishing activities by non-Contracting Party vessels that undermine the effectiveness of the Conservation and Enforcement measures established by the Organization.]¹
2. Nothing in this scheme shall affect the sovereign rights of Contracting Parties to impose additional measures to promote compliance by NCP vessels, in accordance with international law.
3. This Scheme shall be interpreted in a manner consistent with international law, including the principles, rights and obligations in WTO agreements, and be implemented in a fair and transparent manner.

Article 2

Definitions

(These definitions would be inserted in Article 2 of the CEM Overhaul, where those of ‘Fishing activities’ and ‘Inspectors’ are already included, pending final adoption of the Overhaul.)

1. “non-Contracting Party vessel” means any vessel not flagged to a Contracting Party, including vessels for which there are reasonable grounds for suspecting them to be without nationality.

TO BE DELETED AS ALREADY IN CEM

2. “Fishing activities” means fishing, fish processing operations, the transshipment of fish or fish products and any other activity in preparation for or related to fishing in the Regulatory Area.
3. “Inspector” means an inspector of the fishery control services of the Contracting Parties assigned to the Scheme of Joint International Inspection and Surveillance.
4. “IUU fishing” means activities as defined in paragraph 3 of the FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing.
5. “IUU List” means the list, established pursuant to Article 7 of Chapter VI, containing the particulars of vessels that have been found by the General Council to have engaged in IUU fishing.
6. “Provisional List” means the list, established pursuant to Article 7 of Chapter VI, containing the particulars of vessels that have been identified as having engaged in fishing activities, according to information received pursuant to Articles 3 to 6 or information received in reports pursuant to Article 8 of Chapter VI.

Article 3

Sightings and identifications of non Contracting Party vessels / Presumption of NCP vessels undermining NAFO Conservation and Enforcement Measures

1. A non-Contracting Party vessel that has been sighted or by other means identified by a Contracting Party as engaging in fishing activities in the Regulatory Area is presumed to be undermining the effectiveness of Conservation and Enforcement Measures. In the case of any transshipment activities involving a sighted non-Contracting Party vessel, inside or outside the Regulatory Area, the presumption of undermining Conservation

¹ Draft proposed by the Chair, not yet discussed by the Committee.

and Enforcement Measures applies to any other non-Contracting Party vessel that has engaged in such activities with that vessel.

2. Information regarding such sightings or identifications shall be immediately transmitted to the Secretariat. For sightings, the Surveillance Report provided in Annex XII shall be used. The Secretariat shall then transmit this information to all Contracting Parties and other relevant Regional Fisheries Management Organizations within one business day of receiving this information, and to the flag State as soon as possible.
3. The Contracting Party shall attempt to inform the vessel that it has been sighted or identified engaging in fishing activities, and is accordingly presumed to be undermining the Conservation and Enforcement Measures, and that this information will be distributed to all Contracting Parties, other Regional Fisheries Management Organizations and to the flag State of the vessel.

Article 4 **Inspections at sea**

1. NAFO inspectors shall, if appropriate, request permission to board non-Contracting Party vessels that are sighted engaging in fishing activities in the Regulatory Area. If the vessel consents to be boarded the inspectors' findings shall be transmitted to the Secretariat without delay. The Secretariat shall transmit this information to all Contracting Parties and other relevant Regional Fisheries Management Organizations within one business day of receiving this information, and to the Flag State as soon as possible. The non-Contracting Party vessel that is boarded shall be provided with a copy of the findings of the NAFO inspectors.
2. Where evidence so warrants, a Contracting Party may take such action as may be appropriate in accordance with international law. Contracting Parties are encouraged to examine the appropriateness of domestic measures to exercise jurisdiction over such vessels.

Article 5 **Inspections in port**

1. When a non-Contracting Party vessel referred to in Article 3(1) enters a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials knowledgeable of the Conservation and Enforcement Measures (and this Scheme), and shall not be allowed to land or tranship any fish until this inspection has taken place. Such inspections shall include the vessel's documents, log books, fishing gear, catch onboard and any other matter relating to the vessel's activities in the Regulatory Area.
2. Information on the results of all inspections of non-Contracting Party vessels conducted in the ports of Contracting Parties, and any subsequent action, shall immediately be transmitted to all Contracting Parties and other relevant Regional Fisheries Management Organizations through the NAFO Secretariat, and as soon as possible to the relevant flag State(s).

Article 6 **Fishing activities**

- [1. Contracting Parties shall ensure that their vessels do not receive transhipments of fish from a non-Contracting Party vessel [referred to in Article 3] or engage in joint fishing operations with such vessels.]²
2. Landings and transhipments of all fish from a non-Contracting Party vessel to which this Scheme applies shall be prohibited in all Contracting Party ports, unless:
 - a) The vessel establishes that the fish were caught outside the Regulatory Area; or
 - b) The vessel establishes that it has applied all relevant Conservation and Enforcement Measures.

² Language bracketed pending outcome of discussions on a) the possibility of prohibiting at sea transhipment from all NCP vessels (not just those sighted etc) and b) the possibility that a proposal is made to the Organisation to prohibit all transhipments at sea.

3. Contracting Parties denying landings or transshipments shall inform the vessel, the flag State of the vessel and the NAFO Secretariat of this decision.

Article 7

Notification of presumed IUU activities and establishment of a Provisional List

1. Upon receipt of information from Contracting Parties pursuant to Articles 3 to 6, the secretariat shall enter the flag State, vessel name and letters and numbers of registration, and other identifying features of the vessel as available, on a Provisional List. The Secretariat shall place the Provisional List on a secure section of the NAFO website.

[In addition to sighting reports and information on sea or port inspections, Contracting Parties may at any time submit to the Secretariat any further information, which might be relevant for the identification of non-Contracting Party vessels that might be carrying out IUU fishing in the Regulatory Area.]³

2. At the same time, the Secretariat shall, in consultation with the Chair of STACFAC, advise relevant non-Contracting Parties of the vessels flying their flag that have been included in the Provisional List and provide the following information to the non-Contracting party:
 - a. the reasons for the inclusion on the Provisional List and all relevant evidence upon which inclusion of the vessel on the list is based;
 - b. a copy of the NAFO Conservation and Enforcement Measures, including this Scheme;
 - c. request that it take measures in accordance with its applicable legislation to ensure that the vessel or vessels in question desist from any activities that undermine the effectiveness of Conservation and Enforcement Measures;
 - d. a reminder that trade restrictive measures may be imposed if the flag State does not take effective measures to ensure that the vessel or vessels in question desist from activities that undermine the effectiveness of the NAFO Conservation and Enforcement Measures;
 - e. a request to report back to NAFO [within 30 days from the date the letter is sent]⁴ on the results of enquiries and/or measures it has taken in respect of the vessel or vessels concerned.; and,
 - f. the dates when STACFAC and the General Council will be considering recommendations with respect to the composition of the IUU List, and an invitation to the non-Contracting Party to attend the meeting of STACFAC and the General Council as an observer, with the opportunity to further respond to the request specified in sub-paragraph e).
3. The Secretariat shall promptly provide non-Contracting Parties concerned with any additional information received pursuant to Articles 3 to 6 in respect of vessels flying their flag that have already been included on the Provisional List.
4. The Secretariat shall promptly distribute any information received from non-Contracting Parties to all Contracting Parties.
5. [If a non-Contracting Party that has received information regarding one of the vessels entitled to fly its flag pursuant to paragraph 2 does not object to a listing by the deadline established under paragraph 2, subparagraph e), the vessel concerned shall be transferred from the Provisional List to the IUU List.
6. Vessels that have been transferred from the Provisional List to the IUU List in this manner shall be retransferred to the Provisional List if the flag State at any date prior to X days before the Annual Meeting of STACFAC reacts in writing to the information received. If the vessel is retransferred to the Provisional List in this manner the decision whether to put the vessel on the IUU List shall be referred to STACFAC.]⁵

³ The Committee agreed on the substance of this paragraph – Article 8(2) of the initial proposal. Language not yet discussed.

⁴ Deadline subject to the outcome of discussion on the general cycling of the listing procedure and the cutoff date established in Article 8.2, still to be decided. Cf. footnote 5.

⁵ Reservations expressed with respect to automatic listing.

Article 8

Establishment of the IUU list

1. STACFAC shall consider the Provisional List and as appropriate recommend to the General Council that the vessels either:
 - a) be removed from the Provisional List;
 - b) be retained on the Provisional List pending the receipt of further information; or,
 - c) be transferred to the IUU List.
2. [STACFAC shall only consider vessels for inclusion on the IUU list if the period referred to in Article 7.2.e) has elapsed.]⁶
3. STACFAC shall undertake a review of the current IUU List and as appropriate recommend to the General Council that vessels are maintained thereon or removed. STACFAC shall only recommend that the General Council remove a vessel from either the Provisional or IUU list if the flag State of the vessel concerned provides satisfactory information to establish that:
 - a) it has taken effective action in response to the IUU fishing in question, including prosecution and imposition of sanctions of adequate severity;
 - b) it has taken measures to ensure the granting of the right to the vessel to fly its flag will not result in IUU fishing;
 - c) the vessel has changed ownership and the new owner can establish the previous owner no longer has any legal, financial, or real interests in the vessel, or exercises control over it [and that the new owner has not participated in IUU fishing]⁷; or,
 - d) the vessel did not take part in IUU fishing.
4. The General Council shall review the recommendations made by STACFAC pursuant to this Article, and shall determine the composition of the IUU List.
5. The Secretariat shall place the IUU List on the NAFO website. This list shall include the name and flag state of the vessel and, where available, the previous name (s), the previous flag state (s), the radio call sign.
6. The Secretariat shall provide to relevant flag States the names of vessels on the IUU List flagged to that state.

Article 9

Follow-up action

CPs shall take all necessary measures to the extent possible in accordance with their applicable legislation, in order that:

- a) vessels appearing in the IUU List are not authorised to land, tranship, refuel or re-supply, engage in fish processing operations or in any other activity in preparation for or related to fishing in their ports or waters under their jurisdiction;
- b) fishing vessels, including support vessels, refuel vessels, the mother ships and cargo vessels flying their flag do not in any way assist, or participate in transshipment or any other activity in preparation for or related to fishing or joint fishing activities with vessels appearing on the IUU List;
- c) the issuing of licences to vessels appearing on the IUU List to fish in waters under their fisheries jurisdiction is prohibited;
- d) the chartering of vessels appearing on the IUU List is prohibited;
- e) the granting of their flag to vessels appearing on the IUU List is prohibited;

⁶ Cutoff date to be determined and subject to the outcome of discussions on the general cycling of the procedure. Cf. footnote 3.

⁷ Reservations expressed on preferences for more specific language.

- f) importers, transporters and other sectors concerned are encouraged to refrain from negotiating with and from transshipping fish caught by vessels appearing on the IUU List.
- g) appropriate information regarding vessels appearing on the IUU List is collected and exchanged with other Contracting Parties, non-Contracting Parties and other Regional Fisheries management Organisations with the aim of detecting, controlling and preventing false import/export certificates regarding fish from such vessels.

Article 10

Actions vis-a-vis Flag States

1. Contracting Parties shall jointly and/or individually request non-Contracting Parties whose vessels appear on the IUU List to co-operate fully with the Organisation in order to avoid undermining the effectiveness of the Conservation and Enforcement Measures adopted pursuant to the Convention.
2. The General Council shall review, at subsequent annual meetings as appropriate, actions taken by such non-Contracting Parties and identify those that have not rectified their fishing activities.
3. ⁸*[The General Council shall decide appropriate measures to be taken in respect of non-Contracting Parties identified under paragraph 2. In this respect, Contracting Parties may co-operate to adopt appropriate multilaterally agreed trade related measures, consistent with the World Trade Organisation (WTO) that may be necessary to prevent, deter, and eliminate the IUU fishing activities identified by the General Council. Multilateral trade measures may be used to support co-operative efforts to ensure that trade of fishing products from the Regulatory Area does not in any way encourage IUU fishing or otherwise undermine the effectiveness of NAFO Conservation and Enforcement Measures which are consistent with the United Nations convention on the Law of the Sea 1982.]*

OR:

3. *[Where the Flag State of a vessel identified in paragraph 2 has:*
 - (a) *failed or refused to exercise effective control over the vessel flying its flag so as to ensure that the vessel desists from undermining the effectiveness of the NAFO Conservation and Enforcement Measures; and,*
 - (b) *received reasonable notice of the consequences of its failure to take effective control and has been provided with an opportunity to respond;**the General Council may, where no other reasonable means are available to compel the Flag State to exercise effective control over the vessel, recommend that Contracting Parties adopt appropriate non-discriminatory trade restrictive measures against the Flag State in question, consistent with their international obligations*
4. *Where trade measures are recommended pursuant to paragraph 3, the Chairman of the General Council shall inform the Flag State in question of the recommendation and again request the Flag State to exercise effective control over the vessel or vessels.*
5. *STACFAC shall review each year all trade restrictive measures that have been adopted and, where circumstances warrant, shall submit for the approval of the General Council, recommendations for the lifting of the measures.]*

[X. Where the flag State of a vessel identified in paragraph 2 has failed or refused to exercise control over the vessel entitled to fly its flag, Contracting Parties shall develop ways to ensure that the export and transfer of fishing vessels to such an identified flag State is prohibited.]⁹

⁸ Two alternative languages proposed. In addition, reservations on the concept of trade sanctions against NCPs being included in the Scheme.

⁹ Not yet discussed by the Committee.

**[Article 11
Entry Into Force¹⁰**

1. Contracting Parties shall adopt a comparable mechanism by no later than the close of the 2006 annual meeting of NAFO that includes additional measures to ensure that Contracting Parties fulfill their obligations not to undermine the NAFO Conservation and Enforcement Measures.
2. Article 10(3) of this Scheme shall not enter into force before the entry into force before the entry into force of the Contracting Party mechanism pursuant to 11(1).I]

¹⁰ Reservations expressed as to the inclusion of this provision in the Scheme. Paragraph 2 linked to the outcome of discussions on Article 10(3), bracketed.

Annex 5. Working Paper presented by Canada
(STACFAC W.P. 04/6)

Article 11 – Entry into Force

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2. Article 10(3) of this Scheme shall not enter into force before the entry into force of the Contracting Party mechanism pursuant to 11(1).