

PART II

Report of Joint STACFAC-STACTIC Meeting

(GC Doc. 04/2)

**17-18 June 2004
Copenhagen, Denmark**

1. Opening by the Chairs

The combined STACFAC/STACTIC meeting was opened by Co-chairs Nadia Bouffard (Vice-Chair of STACFAC) and Martin Newman (Chair of STACTIC).

2. Appointment of Rapporteur

The Executive Secretary, Johanne Fischer, continued as Rapporteur.

3. Adoption of Agenda

The new participants (Annex 1) adopted agenda items 5 to 7 of the draft Agenda (Annex 2). At the Chairs' suggestion, participants agreed that recommendations from this joint meeting would be submitted to both General Council and the Fisheries Commission at the NAFO annual meeting in September 2004, and that each body would make decisions in areas falling under their respective mandate. It was recognized that STACFAC and STACTIC may need to continue the work begun during this intersessional joint meeting and that General Council and Fisheries Commission would respectively be recommended by this joint meeting to task STACFAC and STACTIC in this respect.

5. Elaboration of a Scheme for Contracting Parties with content similar to that of Scheme for NCPs

To help generate discussion, the Chairs circulated a working paper (STACFAC W.P. 04/4) entitled "Chairs proposed matters for discussion under Agenda item 5". The discussion centered on the following topics:

Rationale of a NAFO CP scheme: The need for a CP scheme was explained with obligations resulting from international agreements (WTO, FAO IPOA on IUU) that stipulate a non-discriminatory treatment of all fishing vessels. The EU proposal to revise the current NCP scheme seeks to address IUU fishing by NCPs in the NRA. It is comprehensive and lays out consequences of undermining the NAFO measures up to and including trade measures. However, concern was expressed that adopting a scheme with possible trade measures for NCPs without consistent consequences for CPs could constitute discriminatory actions under WTO rules. A consistent scheme for CPs, though not necessarily identical, would be necessary to conform to WTO rules. This view was not shared by all participants. Some remarked that NAFO Member vessels are subject to a strict control and enforcement system that contains precise obligations falling on flag States to impose sanctions on vessels that commit infringements to the NAFO CEM, as well as to provide follow-up to the Organisation on procedures applied to such effect. Therefore, as far as CP vessels are concerned, the NAFO rules already establish a basis for sanctioning vessel behaviour that responds to the definition of IUU fishing, although in NAFO, the matter is dealt with under the concept of compliance. It was indicated, in this respect, that other RFMOs had sought to introduce such a system by means of an IUU scheme rather than by rules on Member compliance. This represents a mere difference in approach to attain similar objectives

Definition of IUU fishing (Illegal, Unreported, Unregulated fishing) and scope of CP scheme: The relevant text (Article 3) of the FAO IPOA on IUU fishing containing the definition of "IUU fishing" was circulated. There was consensus that the term "unregulated" was irrelevant in the context of a discussion regarding fishing activities by vessels of Contracting Parties to an RFMO. In addition, Article 80.11 of the IPOA "*definition of circumstances in which vessels will be presumed to have engaged in or to have supported IUU fishing*" was felt to have relevance for the discussion as well as the NAFO CEM Article 32 ("*Serious Infringements*"). It was acknowledged that traditionally there was an understanding in NAFO that IUU fishing applied to NCPs only [it hadn't been discussed in this context] whereas in the case of Contracting Parties the term "non-compliance" applied. There was consensus, however, that NAFO CP vessels can by definition be engaged in illegal and unreported (IU) fishing. The idea was

introduced that if there are a high frequency of serious infringements by a vessel or a significant number of vessels of a Contracting Party, this could constitute IUU (or IU) fishing by a CP.

Information required to determine IUU fishing of CPs: Participants agreed that NAFO control measures (e.g. at-sea and port inspection reports) could be used as objective sources of information to determine IUU fishing by CP vessels. In addition, certain participants were of the view that other sources such as observer reports and information obtained from VMS and other monitoring sources could also constitute valid sources of information to determine IUU fishing by CP vessels. Some participants expressed that the need for follow-up actions by a CP flag state regarding such vessels should be considered when establishing an IUU list for NAFO CP vessels. CPs agreed that any new measures for CPs should be considered within the context of the existing NCEM. The annual Report on infringements (CEM Article 35) was perceived as being a relevant source of information for establishing a CP IUU list. This Report consists of tables listing the various infringements discovered at sea or at ports and the actions taken by the flag states. It was highlighted that these tables had not been kept up to date with the latest information on actions taken by flag States nor the level of details required by Article 35 and participants were encouraged to update the tables on an annual basis at STACTIC.

Although no conclusions were reached on this point, participants discussed the need to allow a reasonable opportunity for the flag State to act upon non-compliant behavior by its flagged vessels before NAFO's scheme entered into force and sanctions are contemplated by the Organization. Some CPs believed that if according to the Article 35 report, no action or an unsatisfactory action had been taken by the flag state within a reasonable period of time a follow-up action taken by the Organization could be justified. It was also pointed out that a NAFO Compliance Report (to be elaborated by STACTIC this year for the first time) could play a role in elaborating an IUU listing process for CP vessels. Some participants felt that the identification of a NAFO CP IUU vessel should be based mainly on its actions and not on the follow-up actions of the flag state, especially when this involved second guessing the legal system of a flag state. The rationale of a CP scheme would be best understood as allowing for collective sanctioning action against recidivist vessels to reinforce the action taken by the flag state. It was proposed that the effectiveness of the sanctions imposed by a flag state could be assessed based on their effectiveness in deterring the IUU activities in the NRA by a specific vessel or fleet.

In the context of this discussion, it was emphasized that CPs may, by virtue of their NAFO membership and their obligation to enforce the Organization's CEM, apply a presumption of innocence to vessels cited for an apparent infringement until appropriate procedures have confirmed or not the existence of a violation. However, since NCP flag states are not bound by the NAFO CEM, their vessels can hardly benefit from a presumption of compliance with the NAFO conservation measures when found fishing in the NAFO RA and can be presumed to be undermining the effectiveness of the NAFO CEM thus resulting in a lower standard of proof of IUU activities by NCP vessels. Some participants felt that this distinction is inevitable, and that it justifies a different regime and treatment to be applied to, respectively, CP and NCP vessels under any IUU scheme. In the case of NAFO CP vessels, it is ultimately the responsibility of the flag state to determine whether an infringement has actually occurred and then take the necessary action within their legal possibilities.

Sanctions: Participants stated that the most powerful means to fight IUU fishing was to prevent fishermen to profit from their illegal activities. The elaboration of an IUU list met with concern by some participants, especially any automatism that would lead to placing vessels on such a list and it was suggested to instead operate by consensus and discuss the placement of vessels on a case by case basis looking at the seriousness and frequency of infringements. It was pointed out that a provisional list alone (without further sanctions) based on a NAFO Compliance Report and using the provisions of Article 35 could ensure a negative visibility of a vessel with repetitive offending patterns. A method by which STACTIC would develop such a provisional list could be devised.

Canada submitted a proposed text for a CP scheme based on the provisions of the proposed NCP Scheme, incorporating the discussions to date during the meeting (STACFAC/STACTIC W.P. 04/5) (Annex 3). Participants remarked that the proposal represented a good basis for discussion. Some participants expressed the desire to see more specific sanctions spelled out in the text, particularly with respect to individual vessels and suggested a list of sanctions similar to Article 9 of the NCP scheme. Some CPs expressed concern that a "name and shame" list would be inappropriate and could backfire or be counter-productive. One CP questioned the appropriateness of listing vessels and reprimanding flag states and instead, suggested that a system be devised to sanction individuals, i.e. captains or vessel owners.

Participants agreed to postpone the discussion to the September 2004 annual meeting of NAFO and recommended that the Fisheries Commission mandate STACTIC to include this matter on their agenda for further discussion. Canada was further invited to revise its paper to reflect the discussion and comments provided at the meeting and circulate it at the September 2004 STACTIC meeting.

6. Development of trade-tracking system.

A general summary of such systems was provided. They are used in some RFMOs and involve documents being issued/certified by the flag State of vessels which identify the product and where it was caught and is required to follow the fish to its destined market. It was mentioned that the purpose of the tracking system is not to impose trade sanctions but rather to improve catch statistics, however, these documents are used as relevant information in the process of imposing trade sanctions, particularly on individual vessels. General concern was voiced that implementing a tracking system within NAFO would be complicated and work intensive (posing an additional burden on vessels of Contracting Parties) and that in a processed at sea, mixed fishery such as NAFO, reliable documentation would be difficult to achieve. Most participants questioned whether NAFO needed such a scheme and it was agreed that there was no appetite for developing such a scheme in NAFO.

7. Implementation of the IPOA on IUU in NAFO

STACFAC was mandated by GC to look into the implementation by NAFO of the FAO International Plan of Action on IUU fishing. A paper elaborated by Norway on this topic was introduced (GC W.P. 02/1). Participants felt that, on the basis of the Norwegian Paper, NAFO had made significant progress in implementing the provisions of the IPOA. Participants agreed that Norway's analysis should serve as a basis for a work plan for NAFO and noted two areas for further work by NAFO in the future: 1) the need to review the NAFO CEM regarding support of IUU fishing activities, such as transshipments, fuelling and provisioning of IUU vessels, and 2) improved cooperation and information sharing between NAFO and other institutions and RFMOs regarding IUU fishing. On the first point, participants agreed that STACTIC should be mandated by the Fisheries Commission to consider reviewing the provisions of the CEM to determine whether changes would be needed to more effectively deal with vessels that aid in IUU fishing activities. In respect of improved cooperation it was recommended that the Secretariat be requested that all information on the NAFO NCP scheme be publicized on the NAFO public website and that relevant IUU information should be place on an easy access place on the protected NAFO member pages. Finally, it was recommended that the Secretariat be requested to report regularly on progress of implementing international agreements in NAFO.

8. Other Matters

The possibility of a common NAFO/NEAFC NCP scheme was discussed. The desirability of such an approach was emphasized and it was remarked that, as all NEAFC members are also members in NAFO this should not be a difficult goal to achieve.

9. Adoption of Report

It was decided to adopt the report of both the STACFAC meeting and the joint STACFAC/STACTIC meetings through the mail. This was done on 19 August 2004.

10. Adjournment

The meeting was adjourned on Friday, 18 June at 3:30 p.m.

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 (**see Part I of this Section, page 159**)
17-19 June – Joint session with STACTIC re items 5-7

Annex 3. Working Paper Presented by Canada
(STACFAC/STACTIC W.P. 04/5)

TEXT TO ENHANCE COMPLIANCE BY CONTRACTING PARTIES WITH NAFO MEASURES

(These amendments are intended to follow Article 35 of Chapter IV)

Article 35.1
Establishment of CP “Problem Vessel” List

1. Each year, STACTIC shall examine the reports submitted pursuant to Article 35, together with any other information received, and any other information provided to it during its meeting.
2. STACTIC shall review the information referred to in paragraph 1 and shall identify those vessels in respect of which no effective action has been taken in response to infringements that have been notified.
3. Following this review, STACTIC shall submit to Fisheries Commission for approval a proposed CP “Problem Vessel” List (hereinafter “CPPV List”).
4. On approval of the CPPV list, Fisheries Commission shall request Contracting Parties whose vessels appear thereon to take effective action in respect of these vessels, including:
 - a) immediately and fully investigating the infringement and reporting back to STACTIC on the progress and outcome of the investigation;
 - b) where applicable, prosecuting and imposing sanctions adequate in severity to be effective in securing compliance and depriving the offending vessel of the benefits accruing from its non-compliant behaviour;
 - c) where applicable, seizure of illegal catch and/or gear; and,
 - d) where applicable, withdrawing or suspending the vessel’s fishing license.
5. The Secretariat shall place the CPPV List on a secure section of the NAFO website. The list shall include the name and flag state of the vessel and the radio call sign.

Article 35.2
Annual Review of the CPPV List

1. STACTIC shall undertake a review of the existing CPPV List each year and, as appropriate, recommend to the Fisheries Commission that vessels are maintained thereon or removed. STACTIC shall recommend that the Fisheries Commission remove a vessel from the CPPV List if:
 - a) the flag state of the vessel concerned provides satisfactory information to establish that:
 - i) it has taken effective action pursuant to paragraph 4 of Article 35.1;
 - ii) 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 the flag state is satisfied that the new owner will not engage in non-compliant fishing activity; or,
 - iii) the vessel did not commit the infringement reported pursuant to Article 35; or,
 - b) STACTIC otherwise determines that the vessel should be recommended for removal.

2. The Fisheries Commission shall review the recommendations made by STACTIC pursuant to this Article and shall amend the composition of the CPPV List as appropriate.

Article 35.3
Actions vis-a-vis Flag States

1. Fisheries Commission identify, at subsequent annual meetings, as appropriate, those Contracting Parties that have repeatedly not taken effective action in respect of their vessels on the CPPV List.
2. Fisheries Commission may, in respect of those Contracting Parties whose vessels are identified pursuant to paragraph 2, recommend any other measures to ensure that effective action is taken.
3. Where Fisheries Commission determines that no effective action has been taken, and the Flag State has received notice of the consequences of its failure to take such action, Fisheries Commission may recommend that Contracting Parties adopt trade restrictive measures against the Flag State in question, consistent with their international obligations.
4. STACTIC shall review each year all trade restrictive measures that have been adopted and, where circumstances warrant, submit for the approval of Fisheries Commission, recommendations for the lifting of the measures.
5. This Article 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 35.4
Additional Measures by Contracting Parties

Nothing in Articles 35.1 to 35.3 shall affect the sovereign rights of Contracting Parties to impose additional measures in accordance with international law.