

PART III

Report of the Standing Committee on Fishing Activities of Non-Contracting Parties in the Regulatory Area (STACFAC)

1. Opening by Chairman

As the Chair Mr. Daniel Silvestre (France – on behalf of St. Pierre et Miquelon) was unable to attend, the Vice-Chair Ms. Nadia Bouffard (Canada) opened the meeting at 10 AM on 13 September 2004. The meeting was attended by representatives from Canada, Denmark (in respect of the Faroe Islands and Greenland), France (on behalf of St. Pierre et Miquelon), Iceland, Japan, Norway, the Russian Federation, and the United States of America (Annex 1).

2. Appointment of Rapporteur

Ms. Nathalie Girouard (Canada) was appointed rapporteur.

3. Adoption of Agenda

The agenda was adopted (Annex 2).

4. Review of 2004 information on activities of Non-Contracting Party vessels in the Regulatory Area

The Chair drew attention to the STACFAC Working Paper 04/7, the compilation of the correspondence with Non-Contracting Parties prepared by the Secretariat, and its addendum, a report from Canada on Non-Contracting Party vessels sighted in the NAFO Regulatory Area.

Canada indicated that the following eight Non-Contracting Party vessels were sighted fishing in Subarea 2 and Division 1F of the NAFO Regulatory Area: Oyra, Ostroe, Okhotino, Olchan, Ostrovets, Ozherelye, Lisa and Pavlosk. The first five of these vessels were sighted engaged in fishing activities in the NAFO Regulatory Area in 2003 flying the flag of Dominica and in 2002, flying the flag of Belize. The vessel Lisa is believed to be the Kadri, which has changed its name and its flag. Canada explained that in attempting to determine the flag and the registration of these vessels, it had encountered conflicting information from Lloyds registry, Cypriot officials and the masters of the 4 vessels that were contacted. Specifically, Okhotino, Orchan, Ostrovets and Ozherelye were initially believed to be registered in Dominican Republic, but during the 2004 annual meeting, the EU was able to confirm that all these vessels are actually flagged by Dominica.

Based on the area in which the vessels were sighted as well of the time of year they were fishing, it may be inferred that they were directing their fishery for oceanic redfish.

It was suggested that the General Council task the Secretariat to reformat the review of information on Non-Contracting Party vessels, including the history of specific Non-Contracting Party vessels fishing from year-to-year in the NAFO Regulatory Area, in a manner similar to that of the International Commission on the Conservation of Atlantic Tunas.

It was further suggested that Contracting Parties be reminded of their obligations to inspect the Non-Contracting Party vessels when they enter Contracting Party ports, and to prohibit landings and transshipment from these Non-Contracting Party vessels, where warranted. Information shall be sent without delay through the Secretariat to all NAFO Contracting Parties, with a view to tracking the activities of these Non-Contracting Party vessels.

5. Review of 2004 information on landings and transshipments of fish caught by Non-Contracting Party vessels in the Regulatory Area

No information on transshipments and landings of fish by Non-Contracting Parties in the NAFO Regulatory Area was presented for 2004.

Iceland noted that the following cargo vessels, though not sighted in the process of transshipping, were seen in the NEAFC Regulatory Area, in the general area of Non-Contracting Party vessels that were later sighted by Canada in the NAFO Regulatory Area (as mentioned in item 4):

| Date | Name | Flag state | Vessel number |
|---------------|----------------------|-------------------|----------------------|
| 26 April 2004 | Razna-ELPI3 | Liberia | 6149N-2918JJ |
| 27 May 2004 | Sunny Jane | Belize | 6147N-3050JJ |
| 10 June 2004 | Caribbean Lady-9HBG7 | Malta | 6208N-3112JJ |

6. Review of information on imports of species regulated by NAFO from Non-Contracting Parties whose vessels have fished in the Regulatory Area

No information on imports was presented for 2004.

7. Reports by Contracting Parties on diplomatic contacts with Non-Contracting Party Governments concerning fishing in the Regulatory Area

EU presented further information regarding the diplomatic demarches to Belize, Dominica and Dominican Republic as per the STACFAC Working Paper 04/7. Belize replied and indicated that it had deregistered the vessels in question. The Dominican Republic replied stating that they were not the flag states of the vessels: Seal, Ostroe, Okhotino, Olchan and Ostrovets, which were in fact flying the flag of Dominica when sighted in the NAFO Regulatory Area in 2003. It was noted that a demarche was subsequently delivered to the Commonwealth of Dominica on 23 February 2004. No reply has been received from Dominica.

STACFAC members agreed that another letter should be written to Dominica noting the lack of response to the initial letter of the 23 February 2004. The EU and Canada drafted the letter (Annex 3), which addresses again the concerns of NAFO members with the continuation of illegal fishing activities of these Dominica flagged vessels in the NAFO Regulatory Area. The letter requests Dominica authorities to investigate the reported activities by these Dominica-flagged vessels and to provide NAFO members feedback on the results of the investigation taken, as well on any administrative or legal actions that the Dominican authorities might have taken against these vessels.

The EU suggested that the letter be given to the Dominica representatives in Brussels as a diplomatic demarche. Canada and USA agreed to be part of the delivery of the letter. The EU also encouraged other Parties to participate in the delivery of this letter.

8. Continuation of intersessional discussion on a modification of the Scheme to Promote Compliance by Non-Contracting Party Vessels with the CEM established by NAFO

Noting the significant progress achieved at the June 2004 intersessional meeting of STACFAC in addressing concerns raised previously, the chair suggested that the group begin its work on the EU text (STACFAC Working Paper 04/3, version 4) (Annex 4) by first discussing the remaining bracketed text before proceeding to a clause by clause examination. Japan, who was unable to attend the intersessional meeting, provided additional comments to the text.

Japan requested further precision on Article 6, regarding the scope of the definition of *fish* in the paragraphs 1 and 2. Japan voiced concerns about whether these provisions would also apply to import restriction and asked that wording specify fish under NAFO conservation and enforcement measures. Other Parties felt that this would actually weaken gains of the existing scheme and the brackets remained in Articles 6(1) and 6(2).

In addition, square brackets remain on Articles 2(5), 7(5), 7(6) and 10(1), which relate to the Norwegian proposal regarding the process for the automatic listing of Non-Contracting Party vessels. Some STACFAC members questioned whether automatic listing would jeopardize the rights of Non-Contracting Party vessels to due process if they are listed simply because they have not responded to NAFO's request. It was suggested that transferring vessels from a provisional list to the IUU list should occur only as a result of a decision by the General Council. Several STACFAC members questioned whether an annual process for listing would render the IUU list less effective and provide ample time for vessels to reflag or change ownership. No consensus was reached; therefore, Iceland asked to retain the bracketed text for future discussion on this matter.

Japan has requested that given an IUU list of Non-Contracting Party vessels will be put on the NAFO public website, any similar list of Contracting Party problem vessels should in the future also be on the NAFO public website. Japan indicated that this would be required to prevent discrimination under the World Trade Organization rules.

There was no consensus on the inclusion of provisions relating to trade restricted measures in the revised scheme. Several STACFAC members were concerned that a scheme calling for the imposition of trade measures against Non-Contracting Parties without a similar scheme applicable to Contracting Parties could be inconsistent with World Trade Organization's requirements for fair and non-discriminatory treatment. Canada, supported by Japan, maintains a reservation on the entry into force of the trade provisions of Article 10 until such time as a similar scheme would be adopted for Contracting Parties. One Party believed that such measures are the only means of addressing non-cooperation by Non-Contracting Parties whereas a different mechanism exists in NAFO to address non compliance by its members. This Party expressed the view that the adoption of this scheme without trade measures would render it ineffective and were unable to agree to a text without the measures envisaged in Article 10(3), 10(4) and 10(5).

The suggestion for a prohibition of exports of fishing vessels from Contracting Parties to certain Non-Contracting Parties was considered to be related to trade issues and remains in brackets (10(X)).

Although extensive discussions took place during the meeting and progress was made on a number issues no consensus was reached on the remaining bracketed text during the STACFAC meeting (STACFAC Working Paper 04/10, version 2) (Annex 5).

9. Election of a Chair and Vice-Chair

The Chair brought to the attention of the Committee that the terms of service of both the Chair and the Vice-Chair would soon expire. M s. Nadia Bouffard (Canada) was elected as Chair for the next two years. Mr. Gene S. Martin (USA) was elected as Vice-Chair for the next two years.

10. Report and Recommendations to the General Council

STACFAC recommends to the General Council that:

1. the General Council remind Contracting Parties of their obligations to inspect the Non-Contracting Party vessels when they enter Contracting Party ports, and to prohibit landings and transshipment from these Non-Contracting Party vessels, where warranted. Information shall be sent without delay through the Secretariat to all NAFO Contracting Parties, with a view to tracking the activities of these Non-Contracting Party vessels.
2. the General Council ask the Secretariat to compile a package on the history of Non-Contracting Party fishing vessels using a similar format as is used in the International Commission for the Conservation of Atlantic Tunas, to facilitate discussion at future STACFAC meetings;
3. the letter in response to the sightings of Dominica-flagged vessels engaged in IUU fishing activities be delivered by the EU to the Dominica representative in Brussels as a diplomatic demarche. Canada and USA have consented to participate and other NAFO Parties are encouraged to also be part of this demarche.

4. the General Council mandate STACFAC to review and continue discussions on the Norwegian proposal (STACFAC Working Paper 04/8) on joint NAFO and NEAFC scheme to promote compliance by Non-Contracting Party vessels at the next NAFO annual meeting.
5. the General Council task the Executive Secretary to draft a response to the Belizean letter inserting paragraphs developed by STACFAC regarding the issue of Co-operating Non-Contracting Party status in NAFO as well as availability of quotas.

11. Other Matters

Norway presented a proposal for a joint scheme between NAFO and NEAFC (STACFAC Working Paper 04/8) (Annex 6) for Non-Contracting Party vessels to promote the compliance of these vessels present in both NAFO and NEAFC Regulatory Areas. STACFAC members agreed to communicate any preliminary comments to Norway during the intersessional period. Members agreed to recommend to General Council that STACFAC be mandated to review the proposal for a joint NAFO and NEAFC scheme at the next NAFO annual meeting.

The Chair also drew attention on the STACFAC Working Paper 04/9 (Annex 7), an email sent to NAFO by the International Merchant Marine Registry of Belize (IMMARBE) requesting information on the procedures for becoming a co-operating Non-Contracting Party. The group acknowledged that no such formal mechanism exists in NAFO. Further, it was suggested that a response be drafted and sent to Belize by the President of NAFO. It should acknowledge Belize's willingness to cooperate, fully elaborate the measures with which they must cooperate and invite Belize to join as a member. The current status of fishing opportunities would also be explained.

The US drafted the following text to be included in the response letter that will be sent to IMMARBE:

"At this time, NAFO's rules and regulations do not offer any provision for granting a formal designation of Cooperating Non-Contracting Party. Non-Contracting Parties are not eligible for quotas of NAFO stocks. Nonetheless, NAFO encourages the cooperation and collaboration of non-contracting parties with NAFO's conservation and management regime. Whether flagged to a contracting party or non-contracting party, any vessels fishing for species covered by the NAFO Conservation and Enforcement Measures are expected to observe all applicable requirements. Many of these are elaborated below, but they also include rules regarding catch reporting, observer coverage, and the use of vessel monitoring systems.

Many NAFO stocks are in poor shape, and Contracting Party fishing opportunities for these species are very limited. However, we encourage Belize to consider becoming a contracting party to NAFO if there are Belizean vessels who are interested in fishing in the NAFO Regulatory Area."

It was agreed that the General Council recommend the insertion of these two paragraphs in the reply letter that will be prepared by the Executive Secretary.

12. Adjournment

The Committee adjourned at 2100 hrs on 15 September 2004.

Annex 1. List of Participants

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|--|--|
| Canada | Nadia Bouffard Nathalie Girouard Heather Olsen Kym Purchase |
| Denmark (in respect of Faroe Islands and Greenland) | Dorthe Lillelund Emanuel Rosing |
| European Union | Fuensanta Candela Castillo Monica Martinez-Castañeda |
| France (in respect of St. Pierre et Miquelon) | Alice Rozié |
| Iceland | Kolbeinn Arnason Gudridur Kristjansdottir |
| Japan | Miwako Takase |
| Norway | Jan Pieter Groenhof |
| Russia | Alexander Okhanov |
| USA | Deirdre Warner-Kramer Gene Martin |

Annex 2. Agenda

1. Opening by Chairman, Daniel Silvestre (France-SPM)
2. Appointment of Rapporteur
3. Adoption of Agenda
4. Review of 2004 information on activities of non-Contracting Party vessels in the Regulatory Area
5. Review of 2004 information on landings and transshipments of fish caught by non-Contracting Party vessels in the Regulatory Area
6. Review of information on imports of species regulated by NAFO from non-Contracting Parties whose vessels have fished in the Regulatory Area
7. Reports by Contracting Parties on diplomatic contacts with non-Contracting Party Governments concerning fishing in the Regulatory Area
8. Continuation of intersessional discussion on a modification of the Scheme to Promote Compliance by Non-Contracting Party Vessels with the CEM established by NAFO
9. Election of Chair and Vice-Chair
10. Report and Recommendations to the General Council
11. Other Matters
12. Adjournment

Annex 3. Letter to Dominica

Mr Osbourne Riviere.
Minister for Foreign Affaires, Trade and Marketing
Government Headquarter, Kennedy Avenue
Roseau
Commonwealth of Dominica

Dear Mr. Minister:

I refer to my letter dated 24 February 2004 (attached in Annex 1) on the matter of certain vessels which have been sighted while engaging in fishing activities in the Regulatory Area of the Northwest Atlantic Fisheries Organization (NAFO), and which, according to available information, are flagged to Dominica. I have once again been mandated by the members of NAFO to draw your attention to these activities.

In my previous letter, I referred to diverse reports that identified the vessels Seal, Oyra, Okhatino, Ostrovets, Olchan and Ostroe as sighted while engaging in fishing activities in the NAFO Regulatory Area during 2003. Reports concerning the vessel Kadri were also communicated. Relevant information regarding such reports was sent in attachment for your reference. Further, concern was expressed that these vessels were continuing their illegal fishing activities in the NAFO Regulatory Area under the flag of Dominica, thereby undermining the effectiveness of Conservation and Management Measures established by NAFO.

I wish to convey to you my displeasure and that of the NAFO Membership on account of the fact that your administration has not yet replied to my letter, in particular since our concerns have proven well-founded and new evidence pointing at the continuation of the illegal activities of Dominica-flagged vessels has been received and examined by NAFO during its 25th Annual Meeting held in Dartmouth, Canada, 13 to 17 September 2004.

In this respect, during the 2004 fishing season, a total of 8 vessels, which according to enquiries led by NAFO Members, are flagged to Dominica, were sighted while engaging in fishing activities in the NAFO Regulatory Area. The list of these vessels includes Oyra, Okhatino, Ostrovets, Olchan, Ostroe and Kadri, the latter under a new name, Lisa, all of which were reported last year, plus two further vessels, Pavlovsk and Ozherelye. Each of them was sighted at least twice in NAFO Division 1F during a period spanning July 27 to September 1 this year. Data retrieved from the Registry of Dominica internet site (Greece branch) identify all these vessels as flagged to Dominica, information effective May 2004. Information pertaining to these sightings and the registration data source is attached (Annex 2) for your convenience.

NAFO and its members note with concern that their efforts to ensure sustainable management of the fisheries resources placed under NAFO competence in the Northwest Atlantic are jeopardized by continued illegal, unreported and unregulated fishing activities (IUU fishing) carried out by vessels which do not submit to the Organization's rules. Under the current provisions of the Scheme to Promote Compliance by Non-Contracting Party Vessels with the Conservation and Management Measures established by NAFO, it is required that instances such as those reported in relation to the vessels referred to above be brought to the attention of the flag state.

It is therefore with the utmost urgency that I once again ask of the Commonwealth of the Dominica to recognize the request of NAFO and its members to investigate the reported activities by Dominica-flagged vessels and to provide feedback on the results of such enquiries and investigations as well on any administrative or legal action the Dominica authorities might have taken to ensure that these vessels cease and desist from fishing activities that undermine the effectiveness of the NAFO Conservation and Management Measures.

In this respect, I would draw your attention, as in my previous letter, to the fact that the international community has recognized that global cooperation is needed to prevent, deter and eliminate IUU fishing and has committed that states not party to regional fisheries management organizations are not discharged from their obligation to cooperate with those organizations. To discharge this obligation to cooperate, states have agreed to apply the conservation and management measures adopted by the organization or adopt measures consistent with those conservation and management measures and should ensure that vessels entitled to fly their flag do not undermine such measures.

Integral to these undertakings is the need for flag states to be responsible for their vessels and to ensure that appropriate enforcement action is taken against vessels that do undermine conservation and management measures adopted by regional fisheries management organizations. While this may mean deregistration of vessels, it is vital that other appropriate measures on the vessels' activity be considered. These include prosecution, withdrawal of licenses to fish and sanctions that are adequate in severity to be effective in securing compliance, discouraging violations and depriving offenders of the benefits accruing from those activities.

There are tools available to assist responsible flag states in pursuing the global approach needed to ensure sustainable fisheries. For example, in doing the checks necessary to ensure that a flag state is not registering a vessel previously registered elsewhere and found to be engaged in IUU fishing, the International Network for the Cooperation and Coordination of Fisheries-Related Monitoring, Control and Surveillance Activities (International MCS Network) can be helpful. NAFO members would encourage Dominica to become a member of the International MCS Network and designate a contact for it. You can find information on the International MCS Network in the FAO Technical Guidelines on the Implementation of the IPOA on IUU (pages 17-20 and Appendix II) and online at <http://www.imcsnet.org>.

It is essential that all flag states take steps such as those noted above to avoid registration of IUU vessels and to act responsibly in enforcement matters if flag-hopping – the repeated and rapid changes of a vessel's flag for the purposes of circumventing conservation and management measures – is to be successfully combatted.

All of NAFO's Conservation and Enforcement Measures as well as additional information about the Organization may be found on the NAFO's web site at: <http://www.nafo.int>. [I would particularly draw your attention to the text of the Scheme to Promote Compliance by Non-Contracting Party Vessels with the Conservation and Management Measures established by NAFO as amended by the Organization during its 25th Annual meeting. The amended scheme will enter into force (---) and will as of then provide a basis for the establishment of a listing of vessels flying the flag of Non-Contracting Parties to NAFO that have been identified as engaging in IUU fishing in the NAFO Regulatory Area. Under these recently adopted provisions, NAFO Contracting Parties are called to take appropriate measures in respect of vessels included in the IUU list which may include, among others, refusal of landing, transshipment, refueling and re-supply and other operations in their ports, refusal of licenses to fish in waters under their jurisdiction and prohibition of chartering and re-flagging. Appearance on the list may result in trade restrictive measures in respect of the flag state. Finally, information relative to such vessels is shared with other Regional Fisheries Management Organizations for the purposes – as appropriate – of the implementation of similar Schemes that many among these other Organizations have also adopted.]

I thank you in advance for your earliest possible attention to these matters and I look forward to your prompt reply on any information you have with regard to the activities of the vessels mentioned above as well as any appropriate actions taken vis à vis these vessels.

Sincerely,

David Bevan
President of NAFO

cc: Caribbean Community (CARICOM)

**Annex 4. Working Paper presented by the EU on Modification of the NCP Scheme
at STACFAC Meeting, June 2004 (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.

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

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 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 transshipments 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 transshipments 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.
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.

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

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

⁴Deadline 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.

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

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.

⁵ Reservations expressed with respect to automatic listing.

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.

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;
- 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;*

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

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

**[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 of the Contracting Party mechanism pursuant to 11(1).1].

⁹ Not yet discussed by the Committee.

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. Revisions on the EU Modification of the NCP Scheme Agreed
during the 2004 NAFO Annual Meeting
(STACFAC W.P. 04/10, Revision 2)**

**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 promote compliance by non-Contracting Party vessels with recommendations established by NAFO and 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.
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 right of port access in case of force majeure or distress in accordance with the United Nations Convention on the Law of the Sea, and 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 8 of Chapter VI] or [Article 7 and 8 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 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.

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 authorized 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 or deliver transshipments of **[fish]** to or from a non-Contracting Party vessel referred to in Article 3 or engage in joint fishing operations with such vessels.
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, unless:

- a) The vessel establishes that the fish subject to the NAFO convention were caught outside the Regulatory Area; or
- b) The vessel establishes that it has applied all relevant Conservation and Enforcement Measures.

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 information submitted from Contracting Parties pursuant to Articles 3 to 6, 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.

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 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.]

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.

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 does not have any legal, financial or real interest in, or exercise control over, a vessel that is on the IUU list or any equivalent type of list established by other Regional Fisheries Management Organizations; 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;
- 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 Organizations 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] or [have been placed or retained on the IUU list by the General Council in accordance with Article 8]** 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 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.]

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 nondiscriminatory 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. Contracting Parties shall, to the extent possible in accordance with their applicable [laws] [legislation], prohibit the export and transfer of fishing vessels to non-Contracting Parties identified pursuant to paragraph 2.]

[Article 11
Entry Into Force

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).]

**Annex 6. Paper presented by Norway – Issues connected to a possible
Joint NAFO/NEAFC scheme to promote compliance by non-contracting
party vessels: An informal evaluation (STACFAC W.P. 04/8)**

1. Rationale and initial premises for evaluation

As a means of consolidating legal framework and furthering cooperation between RFMOs, the question is put whether it is possible for NAFO and NEAFC to adopt joint schemes, hereunder in particular a joint scheme to promote compliance by non-contracting party vessels. Such joint schemes could contribute to recognition of the role of RFMOs under the Law of the Sea, and could also be conducive towards furthering broader adoption of such schemes in other international bodies.

We will therefore investigate whether it is feasible within the existing legal framework to adopt such a joint scheme to apply for both Regulatory Areas. The merger of NAFO and NEAFC in terms of international law is well beyond the scope of this exercise, as are any changes that can not be accomplished within the framework of the Conventions.

The primary idea is to provide for a joint meeting of the General Council of NAFO and the NEAFC Commission and establish a joint scheme. An alternative would be to establish a Memorandum of Understanding between the two organizations for the purpose of interaction and mutual recognition or application of elements in the schemes. The joint scheme meeting is considered first and is the primary consideration of this paper. The MOU option has been added as an afterthought, and has not been given as much consideration. However, this may be equally feasible.

It is emphasised that this evaluation attempts to make a neutral analysis of the legal implications, and is not based on political or national preference for either outcome.

2. General Issues connected to any joint NAFO/NEAFC scheme

Competence of NAFO and NEAFC decision-making authorities

The competence of the decision-making authorities of NAFO and NEAFC is limited by convention frameworks. Thus, the adoption of a joint scheme can not lead to extension of authority beyond the scope of application. For instance, even if a joint scheme were to be adopted, the NEAFC secretariat would not have a mandate to concern itself with activities in the NAFO Regulatory Area, unless such a mandate was expressly granted by the NAFO parties. The implication is also that even if a joint scheme were adopted, both NAFO and NEAFC would *in principle* be free to change the substance of the scheme with regard to application under the respective conventions, in the ordinary manner those conventions prescribe. Neither NAFO nor NEAFC would *in principle* be tied to the scheme until such a time that a new joint meeting would change the substance.

It is difficult to see how a joint scheme formally could contain a requirement for both organizations not to change the substance of the joint scheme "unilaterally", without changing the substance of the conventions as such. Such a "clause of no return" would limit the competence of the decision-making bodies of both organizations, and this is outside our established intentions.

However, it is likely that a joint scheme, if adopted, would be respected in practice by parties to both organizations, and that requests for revision would be put to a new joint meeting rather than be changed "unilaterally" by one organization.

Scope of application – geographical and by species

NAFO and NEAFC scopes of application, geographically and by species, are defined in the respective conventions. It is expected that this would remain unchanged at the outset, however, depending on the substance of the scheme, some involvement beyond this could be envisaged. For instance, could inspectors from NAFO report to NEAFC on

transhipments of NEAFC species in the NAFO area and vice versa? And could this information be applied by the other organization? This would of course require the consent of both organizations.

Some NAFO parties are not party to the NEAFC convention.

Definitions

Special consideration must be used when employing specific definitions in a joint scheme.

In some cases definitions may be different in NAFO and NEAFC. In such cases definitions must be specified in a joint scheme to clarify the content of the scheme. In principle, definitions could be interpreted differently under the different conventions, but this would undermine the underlying idea of a joint scheme and should be avoided if possible.

In other cases, definitions may carry a different substance within the term. For instance, the term "non-contracting party vessel" in a joint non-contracting party scheme would be interpreted differently in the NAFO and the NEAFC area. A vessel from a contracting NAFO member state could therefore be a non-contracting party vessel in the NEAFC area. Particular care must then be taken when applying joint schemes, for instance with respect to joint redfish stocks.

An additional complicating element is that NEAFC recognizes cooperating non-contracting parties, and NAFO does not.

Chair

In principle, under the NEAFC convention, the chair should be elected from the NEAFC members, and this could in the strictest sense be taken to mean that a NEAFC member must chair the joint meeting. However, it is hard to imagine that this matter would be pressed by any of the NEAFC members.

Voting and Adoption

It follows from the basic premises in the introduction that adoption of a joint scheme must satisfy both the required majorities within the NAFO *and* the NEAFC conventions.

Any voting must therefore satisfy the requirements of both decision-making bodies.

The Rules of Procedure for voting differ in that the NEAFC Commission decides by a majority vote the method of voting (by show of hands, roll call etc.), whereas the NAFO Chair decides. This provides for a challenge in such a case that a majority of the NEAFC states require one specific method of voting and the NAFO Chair disagrees. Such an instance could occur, but is not likely, and could hopefully find its solution through a coffee break.

An objection placed by a member to one organization would not entail that the scheme would be invalidated for application in the other organization. However, it might well happen that the substance of a joint scheme does presume that the scheme is applied by both organizations, for instance in the case of some presupposed interaction.

Observers

Provisions for observer presence, participation and (not) voting are similar for NAFO and NEAFC. However, the rules of procedure for the General Council of NAFO provides that observers must have an interest in the NAFO species and *vice versa* for the NEAFC Commission. The NAFO General Council rules of procedure do not provide that observers that only have an interest in NEAFC species may be present at a General Council meeting. However, this could be alleviated if parties could agree to a liberal interpretation of what constitutes a relevant interest in case of a joint meeting, and would only pose a problem if any state were to object to the inclusion of a specific observer delegation.

Revision

In practice, a joint scheme would likely not be revised by either party until such a time that a new joint meeting could be held. This means that the need for new joint meetings could be necessary. A joint scheme should therefore not be undertaken lightly. It is possible to consider simplified rules of decision making, including electronic voting.

Other business

A solution would have to be found for sharing the burden economically.

3. Issues connected specifically to a NAFO/NEAFC non-contracting party scheme

There could be several advantages to a joint non-contracting party scheme if such a scheme were to be adopted. Some tentative thoughts are presented below.

As stated, a vessel from a contracting NAFO party could constitute a non-contracting party vessel in the NEAFC area. Depending on the substance, a non-contracting party scheme may therefore need to distinguish between non-contracting vessels from parties outside both or outside only one organization. The most feasible solution is perhaps to focus such a scheme primarily on non-contracting party vessels outside both organizations.

Effects of IUU vessel lists

It could be envisaged that a joint scheme could establish a joint IUU vessel list where the effects of being placed on the list would be sanctions from both organizations. There are varying means to do this with varying amount of safeguards involved in the process, either through establishment of a joint IUU vessel list in joint meetings at regular intervals, or through mutual recognition of IUU vessel lists from the other organization.

Fishing activities

Similarly, the provisions of prohibition of landings and transshipment from non-contracting party vessels by contracting party vessels or in contracting party ports, could be applied mutates mutandis by both organization with regard to stocks regulated under each Convention.

Inspectors

It should be feasible to have a scheme involving inspections and/or inspectors from both organizations, if such a joint scheme were adopted by both organizations. Inspector reports from another body could in theory be accepted as evidence of IUU activities of vessels, for instance transshipments of NAFO species in the NEAFC area.

NAFO/NEAFC MOU

As an afterthought, the question was posed whether or not an MOU established between NAFO and NEAFC might not accomplish the same as a joint scheme adopted by both organizations in a joint meeting. If so, this is likely a more economical approach.

The authority to coordinate the external relations of the Organization of NAFO lies with the General Council of NAFO and Commission of NEAFC. It is possible for those bodies to mandate a group of countries or the President to negotiate and/or adopt an MOU. A mandate can be very specific (with the risk of negotiating delegations not being able to reach a joint solution) or very broad (with the risk of producing a result which may be rejected if the MOU is to be adopted by the General Council and the Commission afterwards).

An MOU is in principle not a legally binding instrument. The question leaps to mind whether an MOU is sufficient in itself to provide for the mutual application, communication and recognition that might be desirable, or whether, depending on the substance contained in the MOU, each organization would have to make appropriate adjustments of their legal framework before an MOU could be finalized.

**Annex 7. Inquiry from the Internacional Merchant Marine
Registry of Belize (IMMARBE)**
(STACFAC W.P. 04/9)

From: [Valerie Savery \[valerie@immarbe.com\]](mailto:valerie@immarbe.com) Sent: Fri 8/27/2004 7:08 PM
To: [Johanne Fischer](#)
Cc:
Subject:
Attachments:



**INTERNATIONAL MERCHANT MARINE REGISTRY OF BELIZE
"IMMARBE"**

Marina Towers, Suite 204, Newtown Barracks
Belize City, Belize
tel: 501-223-5026/223-5031
fax: 501-223-5070/223-5048
email: immarbe@btl.net

Dear Johanne:

I refer to your e-mil of July 12, 2004 regarding NAFO membership. You gave a very detailed breakdown on the financial contributions for Contracting party. However, what we require at this time is your confirmation on the following.

1. Information/process on becoming Co-operating Non-Contracting Party.
2. The relative cost of becoming Co-operating Non-Contracting Party and how it is assessed.
3. The types of species regulated by your Commission
4. Closed seasons for each species, if any
5. Are quotas granted to Co-operating Non-contracting parties and Contracting Parties?

We would appreciate receiving an early response by return.

Regards,

Valerie Savery
Fishing Vessels Manager
IMMARBE- Belize
tel: 501-22-35026/35031/35047
fax: 501-22-35070/35048

This email has been scanned at Immarbe Head Office.

