

**REPORT OF THE MEETING OF THE WORKING GROUP ON THE
FUTURE OF THE NORTH-EAST ATLANTIC FISHERIES COMMISSION
8-9 April 2002**

At NEAFC headquarters - 22 Berners Street, London W1T 3DY

1. Opening of the meeting

The Chairman opened the meeting at 10:20. All Contracting Parties were present, except Poland. The Chairman expressed the hope that progress would be made on the items on the agenda. He then invited opening statements from delegations present. The EU welcomed the new Chairman and wished him every success in his task.

2. Adoption of the agenda

The annotated agenda had been circulated well in advance of the meeting and was adopted. The Secretariat was asked to act as rapporteur.

3. Rules of Procedure - dispute settlement

The Chairman noted that the Working Group had been requested by NEAFC to develop detailed rules of procedures for panels.

After lengthy and detailed discussions in the Working Group, it was agreed to recommend revised draft rules concerning the panel procedure in dispute settlements in NEAFC (Annex 1). In the discussions, speed, expertise and flexibility were stressed, giving guidelines for standard panel procedures but, at the same time, allowing parties to a dispute to make arrangements they could agree upon.

There was agreement that the whole panel should be set up by the parties involved; there would be a NEAFC list from which to choose panellists. Speed is essential and 4-5 months seem to be what is needed for completing a panel procedure. The costs should be shared by those parties involved. For those experts on the list set up by NEAFC, the level of fees and remunerations would be decided by the Commission. There should be only one panel for each subject matter and preferably only one spokesman for each side. The first step should be that disputing parties would notify their intention to submit a dispute to an ad hoc panel, the next the constitution of the panel. The two stage process would allow other parties to seek to become parties to the dispute and join the process of constituting the panel.

<p>Actions arising: The Working Group recommends to the Commission at the Extraordinary Meeting 10-12 April 2002 to adopt the revised draft rules concerning panel procedure in Annex 1</p>
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4. IUU - illegal, unreported and unregulated - fishing

The Chairman drew attention to the detailed paper submitted by Norway for the 20th Annual Meeting on the International Plan of Action (IPOA) on IUU fishing. Three topics were highlighted

1. Port State Control. This matter has been mandated to PECCOE
2. The exchange of the information between NARFMOs
3. New entrants

The meeting found that it was not necessary to implement all parts of the IPOA on IUU. The situation in the North Atlantic should be kept in mind and form the basis for moving forward. Those elements relevant to the North Atlantic should be selected.

Port State Control

Norway and EU were asked to draft a recommendation for a mandate to PECCOE on port state control (Annex 2).

The proposal was adopted and will be forwarded to the Extraordinary Meeting 2002 for decision.

It was agreed that two items should be put into NEAFC's work programme, called for by the IPOA on IUU fishing: the development of a list of IUU vessels and their activities and a list of countries of flags of convenience. These lists may be taken up at a later meeting of PECCOE in 2002 reporting to the 21st Annual Meeting.

The identification of IUU vessels and how to draw up list of these was seen as part of port state control. What are the criteria for placing vessels on the list and removing them from the list?

The forthcoming Annual Meeting should deal with *inter alia* the outcome of the meeting of ICCAT on IUU Fishing (27-28 May 2002 in Tokyo), which will cover these issues.

Actions arising: The Working Group recommends to the Commission at the Extraordinary Meeting 10-12 April 2002 to mandate PECCOE at its meeting in May 2002 to develop a harmonised system for port state control by NEAFC's Contracting Parties in accordance with Annex 2. Lists of IUU vessels and states of flags of convenience should be developed by PECCOE later in 2002 and be on the agenda of the 21st Annual Meeting

Exchange of information between NARFMOs

The initiative taken by the Secretariat on regional cooperation was positively received by the Parties and it was considered important to develop it. Other organisations have dealt with this and Spain will host a conference on IUU matters in late November. This was confirmed by the EU, which circulated information about this meeting.

Actions arising: The Working Group recommends to the Commission at the Extraordinary Meeting 10-12 April 2002 that cooperation between NARFMOs be developed and a report on this should be on the agenda of the 21st Annual Meeting

Admission of new entrants

Some main points of view were presented. The EU felt that Article 20 of the NEAFC Convention and the rules overall were too restrictive and not in line with more recent developments in international law. The obligation to cooperate makes it necessary to have the possibility of joining NEAFC. Iceland felt that countries with a real interest should be allowed to enter, but it did not see it as a problem of the Convention but rather possible future problems in the practice under the Convention. It did not see this as having caused problems to date. Denmark (in respect of the Faroe Islands and Greenland) felt that the structure of NEAFC may be a barrier to new entrants. It referred to the Iceland's proposal in 1997 to change the structure of NEAFC into a "NASCO structure". Such a structure may make the problem of new entrants easier. The Russian Federation did not see the need for any rules in addition to the rules in the Convention for allowing new entrants. The meeting could not agree on how to define real interest.

There seemed to be consensus that a category of cooperating non-Contracting Party could be established defined by clearer criteria. This could be in the form of a recommendation by the Commission, where non-Contracting Parties would be invited to apply for formal status as a cooperating non-Contracting Party. Those who were granted this status would have obligations, binding under international law, to meet the conditions set by the Commission. It was also suggested that non-Contracting Parties should be involved in developing this idea. It was suggested that a special subsidiary body should be established to look into this matter, but most delegations felt that it should be left to the Commission to decide which subsidiary body should take up this matter.

It was agreed to reflect this discussion in the body of the report and give it further deliberation and recommend to the Extraordinary Meeting that this was made a priority item in NEAFC's work plan. It was agreed to recommend to the Commission that the item of new entrants should be on the agenda of the 21st Annual Meeting.

Actions arising: The Working Group recommends to the Commission at the Extraordinary Meeting 10-12 April 2002 that the topic of new entrants should be on the agenda of the 21st Annual Meeting and that it give a subsidiary body the task of formulating a draft recommendation on rules for a cooperating non-Contracting Party, preferably with the involvement of interested non-Contracting Parties.

5. Preparing and issuing indications to guide the expectations of interested non-Contracting Parties

The Chairman introduced the item and drew the attention to WGFuture 02-06, which contained earlier discussions on this topic in the Working Group, and also the resolution on guidelines from NAFO of 1999. Noting that all NEAFC members were also members of NAFO, he asked whether we could use this as a basis for a NEAFC resolution.

It was argued that the situation in NEAFC was much more complicated and the NAFO guidelines were not appropriate for NEAFC. Some parties thought there was no strong need for guidelines, whilst others felt they were necessary to guide countries interested in acceding to NEAFC and also guide Contracting Parties in making decisions on application for accession.

After lengthy and detailed discussions, it was agreed that Denmark (in respect of the Faroe Islands and Greenland) would outline its points of view in this important matter in a document to be tabled at the 21st Annual Meeting, where it could be discussed further by the Commission.

Actions arising: The Working Group asked Denmark (in respect of the Faroe Islands and Greenland) to produce a paper on indications to guide the expectations of interested non-Contracting Parties and that this item should be on the agenda of the 21st Annual Meeting

6. Precautionary approach in the context of NEAFC

The Secretary presented to WGFuture a note on the precautionary approach and how it may affect the negotiations of a Memorandum of Understanding for 2003 and onwards with ICES.

It was noted that it was important to understand the reasons for the variability of TAC estimates and all ideas be taken up in the process of negotiating a new MoU during this year. The involvement of fishermen in the advisory process and ICES's possibilities of delivering were also discussed.

The Chairman summarised that, at this stage, ideas were presented which could play a part in the discussion of the MoU this year to better tailor the ICES advice to NEAFC's needs.

7. Proposal for rules of procedure for postal votes

The Secretariat had proposed establishing rules of procedure for postal votes, primarily regulating the voting period. In the discussion it was noted that postal votes should be the exception and only used in an emergency; decisions should be made at meetings of the Commission. It was clarified that a party should actively indicate that they would not participate in voting. The meeting wanted the postal vote possibility to cover all decisions, not only recommendations on management measures. The expiry of the voting period should be given in postal votes and measures to ensure that all recipients had received communications from the Secretariat should be in place. The text was amended accordingly.

The Russian Federation initially had difficulties with the proposal and presented an amendment proposing to restrict postal votes to a list of topics and specific objection procedures for postal votes. After changes had been made and in the light of discussion which followed, the Russian Federation withdrew its proposal.

The proposal, as amended, was then adopted and forwarded to the Commission for decision.

Actions arising: The Working Group recommends to the Commission at the Extraordinary Meeting 10-12 April 2002 adopting the proposal for rules for postal votes in Annex 3

8. Future meetings

The Group agreed to propose to the 21st Annual Meeting that a Meeting of the Group should be arranged in 2003.

9. The report of the meeting

A report of the meeting was reviewed and amended at a meeting on 10 April and finally approved for presentation to the Commission

10. Any other business

Under this agenda item, the President of NEAFC presented a discussion paper on an alternative model to allocate fish stocks regulated by NEAFC. The paper presents a theoretical model, which calls for much political will and willingness to change domestic regulations. It is always interesting to look at alternative ways, assuming that there is political will. The President then went through the paper, detailing the role of NEAFC and of the coastal states in the process of allocation. The TAC is the starting point, much as it is now. Instead of allocating in the usual way, it has been suggested that fishing rights should be auctioned to holders of licences under domestic regulations. The model has five elements that can be applied in two general systems which differ from, and are more flexible, than the present system.

The EU asked for clarification on paragraph 2 on legal entities. Does this also include public entities? The President said the answer was yes. The EU found it was innovative, perhaps too innovative, so it was more science fiction than reality. The models were conceivable, but probably not feasible. The setting up of the auctions was not a simple task. It suggested that a paper should be presented to Contracting Parties to see what transpires. Iceland did not find this venue the right place to make comments to the proposal. Norway found the paper interesting, but the model was far ahead of anything contemplated in Norway at present. The business of determining ownership was very difficult. It also suggested placing this document before the Extraordinary Meeting 2002. The Russian Federation objected to the use of auctions in NEAFC practice and proposed that the Working Group on the Future of NEAFC thoroughly considers this question and prepares a relevant document for further discussion.

The President thanked the meeting for its comments and inferred that auctioning was technically possible, with more specification of who could take part. As NEAFC did not have a WG for Science Fiction, he had chosen to present his paper to WGFuture. He would be willing to present it also to the Extraordinary Meeting. Russia stated that it doubted the technical feasibility of auctions.

11. Closure of the meeting

The meeting closed at 6:15 pm. Denmark (in respect of the Faroe Islands and Greenland) thanked the Chairman for leading the meeting through difficult and complicated topics. The EU concurred and was pleased to see the WG in the Chairman's able hands.

Annex 1

Revised DRAFT RULES CONCERNING THE PANEL PROCEDURE

1. The Secretary shall establish and maintain a list of experts who are willing and able to serve as panellists. Each Contracting Party shall be entitled to nominate up to five experts whose competence in the legal, scientific or technical aspects of fisheries covered by the Convention is established. The nominating Party shall provide information on relevant qualifications and experience of each of its nominees.
2. The Parties to the dispute shall notify the Secretary of their intention to submit a dispute to an ad hoc panel. The notification shall be accompanied by a statement of the claim and the grounds on which it is based. The Secretary shall promptly transmit a copy of the notification to all Contracting Parties.
3. Where another Contracting Party wishes to become Party to a dispute, it may join the process of constituting a panel, unless the original Parties to the dispute disagree.
4. No sooner than two weeks and no later than four weeks after the notification referred to in paragraph 2, the Parties to the dispute shall notify the Secretary of the constitution of the panel, including the names of the panellists and the time schedule for its work. Unless the Parties agree otherwise, the following shall apply:
 - a) the panel shall consist of three members;
 - b) the Parties to the dispute shall each select one panellist and agree on the third panellist;
 - c) the third panellist shall chair the panel;
 - d) the third panellist shall not be a national of either Party and shall not be of the same nationality as either of the first two panellists; and
 - e) in case of a dispute between more than two Contracting Parties, Parties of the same interest shall select one panellist jointly.

The Secretary shall promptly transmit a copy of the notification to all Contracting Parties

5. Any Contracting Party, which is not a Party to the dispute, may attend all hearings of the panel, make written and oral submissions to the panel and receive the submissions of each Party to the dispute.
6. At the request of a Party to the dispute, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties to the dispute so agree.

7. Unless the Parties to the dispute otherwise agree, the panel shall, within 3 months from the constitution of the panel, make its report referred to in paragraph 3 of Article 18 (bis) of the Convention. The report shall be confined to the subject matter of the dispute and state the reasons on which it is based. The report shall be communicated promptly, through the Secretary, to all Contracting Parties.
8. The panel shall aim at reaching a consensus in its conclusions. If this is not possible the panel shall reach its conclusions by a majority of its members, who may not abstain from voting.
9. The panel may adopt any rules of procedure, which it deems necessary to accelerate the proceedings.
10. Costs of the panel shall be borne by the Parties to the dispute in equal parts. The level of fees and remunerations of panellists on the list established according to paragraph 1 shall be decided by the Commission at the Annual Meetings.

Annex 2

PORT STATE CONTROL

The Working Group on the Future of NEAFC has examined the FAO International Plan of Action (IPOA) to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing and recognised that appropriate port state measures may constitute important elements in combating IUU fishing.

The Working Group notes that port state measures have not yet been established in NEAFC. The Working Group further notes that PECCOE is mandated to elaborate procedures for informing the NEAFC Secretariat on port inspections. However, the Working Group would recommend to the Extraordinary Meeting that PECCOE be mandated to have a wider approach to port state control and that it should develop a harmonized system for Contracting Parties of NEAFC. Such a system should include minimum requirements for inspections in port, guidelines for reactions against vessels found to be in non-compliance and reporting requirements for port states.

Annex 3

PROPOSAL FOR RULES FOR POSTAL VOTES

In the RULES OF PROCEDURE, *Chapter 6 – Voting*, paragraph 27 at present reads:

A vote may in an emergency be taken by post or other means of written communication.

It is suggested that the following should be added:

The issue to be put to a vote and the closing date of the voting period of 30 days shall be communicated to all Contracting Parties. The Secretariat shall ensure that the communication has been received by all Contracting Parties. The outcome of the vote shall be communicated immediately to all Contracting Parties, if applicable, starting the objection period as set out in Article 12 of the Convention.

If a Contracting Party fails to reply within the voting period, it will be recorded as having abstained and be considered part of the relevant quorum for voting purposes.