1. Opening of the meeting by the Chair

The Chair Vidar Landmark, Norway, opened the meeting and welcomed delegates.

Contracting Parties present were Denmark (in respect of the Faroe Islands and Greenland), the European Union, Iceland and Norway. The Chair noted that it was very important for Russian Federation to attend the meetings of the Working Group for it to make good progress.

The list of participants, document WG-VME 2018-02-02 is Annex 1 to this report.

2. Adoption of the agenda and appointment of rapporteur

The agenda was agreed as circulated in document WG-VME 2018-02-01.

The Chair reminded the participants of the Terms of Reference for the Working Group and that the topics for the discussions at this meeting had been agreed at the last meeting of the Working Group. The Secretary was appointed as rapporteur.

3. Discussion of Topics Identified at the first VME meeting (WG VME-02-02) and any further items.

The Chair introduced the topics paper, focusing the group on the first section of items.

In starting the discussion Norway explained that the aim of the Norwegian-Russian proposal presented at the 2017 Annual Meeting had been to bring the NEAFC Recommendation on VMEs fully into line with UNCLOS, in particular the rights and obligations of coastal States with regard to the continental shelf. Norway stated that the sovereign rights of the coastal State to explore and exploit the resources on its continental shelf also include the right to prevent significant adverse impacts on such resources, as long as this does not constitute “unjustifiable interference” with the rights and freedoms of other States, as provided for in the Law of the Sea Convention. Norway pointed out that the exclusive right to exploit a resource implicitly involves the right not to exploit it. A State that has sovereign rights over resources must also have the right to manage those resources consistently with its policy and
international law obligations. Norway stated that it would withdraw from the recommendation, pursuant to art 13 of the NEAFC convention, unless the recommendation was amended to clarify the rights and obligations of the coastal States to protect VMES on their continental shelf.

Other Contracting Parties explained that they noted the rights set out in UNCLOS regarding coastal States but did not necessarily share as Norway’s view that NEAFC Recommendation was not aligned to UNCLOS in this regard. Some Parties pointed out their view that the NEAFC Recommendation already had a sufficient disclaimer in Article 1.3 in recognition of the rights of coastal States and that the sovereign rights of coastal States over the continental shelf were not affected by the Recommendation, but this view was not shared by all Parties.

In discussing the implications of the drafting of the Recommendation, it was noted that Coastal States did have sovereign rights under UNCLOS for the purpose of exploring and exploiting the natural resources of their continental shelf, but that these could not infringe, or result in unjustified interference, with the rights and freedoms of other States in the high seas above the shelf. Several parties noted their view that coastal States did not have the right to manage high seas fisheries. High seas fisheries management was a task for regional fisheries management organisations and arrangements, which had to take full account of the rights of coastal States.

The meeting then agreed that, rather than focusing the discussion on the list of topics set out in the document WG VME 2018-02-03, any drafting would need to meet Parties views on the balance in the legitimate role of NEAFC to manage High Seas fisheries but also to take into account the Coastal State’s rights on the continental shelf.

There were some differences expressed by the delegates on how the regime related to the continental shelf beyond or within 200 nautical miles are different. One Party expressed the view that the continental shelf must be considered as one entity, subject to the same regulations within and beyond 200 nautical miles. There was also a difference of opinion on whether the general obligations of states to protect the marine environment, as set out in article 192 of UNCLOS, had a specific relevance to the continental shelf.

Given the differences in understanding of the how best to address an explicit recognition of the rights of Coastal States, the Chair suggested to look at the Norwegian-Russian proposal from the 2017 annual meeting. Norway explained the amendments that had been proposed in order to limit the NEAFC Recommendation only to those continental shelf areas that were agreed by explicit consent from the Coastal States and to recognise that compatible national measures would be established, with appropriate notification processes.

The Chair noted a fruitful discussion on understanding the positions of the Parties, and that each State’s understanding of UNCLOS was onto itself, rather than being set out by NEAFC.

Following a meeting of Heads of Delegation, Denmark (in respect of Faroes and Greenland) presented a draft amendment of Recommendation 19:2014, as requested by the Chair in the Heads meeting (Working document 1).

The aim of the draft was to define the term Regulatory Area for the purposes of Recommendation 19:2014. This draft referred to the relevant provisions of UNCLOS and focused on clarifying the geographical scope of the Recommendation. It was hoped this drafting could help resolve the balance in setting out legal competence of NEAFC and the rights of coastal states.
Contracting Parties thanked Denmark (in respect of Faroes and Greenland) for its helpful and constructive effort. Nevertheless, while some parties were in a position to pursue the work on the basis of the draft amendment, further coordination was needed at national level for other parties in order to assess the suggested text, including the involvement of the Russian Federation. It was noted that the implications of any new definition of the Regulatory Area developed within the Recommendation, the implications on the NEAFC Scheme of Control and Enforcement, as well as implications for other NEAFC Recommendations should be assessed.

The Chair concluded that delegations should consult on the working document with their colleagues in national administrations. Contracting Parties were invited to circulate any thoughts to other Contracting Parties and/or the Chair before the next meeting of the working group. He hoped that national positions would be clarified in time for the next meeting, in order to be able to take the work forward.

4. Any other business
4.1 Identification of final documents

It was agreed that there were no sufficiently mature documents to be identified as final documents at this meeting.

5. Report of the meeting

The draft report was circulated on 8 March 2018. The final report was adopted through correspondence on 29 March 2018.

6. Closing of the meeting

The Chair noted that the next meeting dates remained 15 and 16 May 2018.

Contracting Parties were reminded to register their delegation for the next meeting well in advance of the meeting date to facilitate the work of the Secretariat.

The Chair thanked participants and the Secretariat for their active participation and wished all a safe journey back home.