MEMORANDUM FOR: Conrad C. Lautenbacher Jr.,
Vice Admiral, U.S. Navy (Ret.)
Under Secretary of Commerce for
Oceans and Atmosphere

FROM: William T. Hogarth, Ph.D.

SUBJECT: Northwest Atlantic Fisheries Convention Act
Annual Report to Congress

Name(s) of Person(s) Requesting Action/Correspondent: None

Subject/Issues Raised by Person(s) Requesting Action(s)/Correspondent None

Major Points in the Response:

- Section 212 and Section 213(b) of the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.) require that the Secretary of Commerce prepare an annual report to Congress on the activities of the Northwest Atlantic Fisheries Organization (NAFO) General Council, Fisheries Commission, Scientific Council, and the U.S. Consultative Committee established under Section 208 of the Act.
- The functions assigned to the Secretary of Commerce under this Act have been delegated to the Under Secretary for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration.

Potential Controversy: None

Other Pertinent Information: None

Coordination: Other than GC coordination, indicate all NOAA Line/Staff Offices consulted:

NMFS	NWS	NOS	OAR	NESDIS	PPI	NMAO	PA&E	PCIA	LA	IA	CFO	CAO	CIO	OED	AGO	WFMO	COS	DUS	AS	UNSEC

Clearance Official(s)/Line Office(s)/Date of Clearance(s): None

Contact Person: Patrick Moran, NMFS Office of International Affairs, 713-2276

Attachments

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Madam Speaker:

I am pleased to submit the enclosed information regarding the activities of the Northwest Atlantic Fisheries Organization for 2006, as required by the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.).

Sincerely,

Conrad C. Lautenbacher Jr.,
Vice Admiral, U.S. Navy (Ret.)
Under Secretary of Commerce for
Oceans and Atmosphere

Enclosure

IDENTICAL LETTERS TO:

The Honorable Richard B. Cheney
President of the United States Senate
Washington, D.C. 20510

Dear Mr. President:

The Honorable Nick J. Rahall, II
Chairman, Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Honorable Don Young
Ranking Member
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Representative Young:

The Honorable Daniel K. Inouye
Chairman, Committee on Commerce,
Science and Transportation
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Honorable Ted Stevens
Vice-Chairman
Committee on Commerce,
Science, and Transportation
United States Senate
Washington, D.C. 20510

Dear Senator Stevens:

NORTHWEST ATLANTIC FISHERIES CONVENTION ACT
2006 ANNUAL REPORT

I. Legislative Requirements:

Section 212 of the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.) requires the Secretary of Commerce prepare an annual report for Congress on the activities of the Northwest Atlantic Fisheries Organization (NAFO) Fisheries Commission, the General Council, the Scientific Council, and the Consultative Committee established under Section 208 of the Act. The functions assigned to the Secretary of Commerce under the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.) have been delegated to the Under Secretary for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration.

Section 213(a) of the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.) requires the Secretary of Commerce, acting through the Secretary of State, promptly seek to establish a new practice for allocating quotas under the Convention that–

(1) is predictable and transparent;

(2) provides fishing opportunities for all members of the Organization; and

(3) is consistent with the Straddling Stocks Agreement.

Section 213(b) of the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.) requires the Secretary of Commerce include in annual reports under Section 212–

(1) a description of the results of negotiations held pursuant to subsection (a);

(2) an identification of barriers to achieving such an allocation practice; and

(3) recommendations for any further legislation that is necessary to achieve such a new practice.

II. Report of the 2006 Activities of NAFO Bodies and the Consultative Committee :

Pursuant to Section 212 of title 16 U.S.C. 5601, this section contains details of the 2006 activities of the Northwest Atlantic Fisheries Organization (NAFO) Fisheries Commission, the General Council, the Scientific Council, and the NAFO Consultative Committee established under Section 208 of the Act.

(1) 2006 Activities of NAFO Bodies: The majority of the 2006 activities of NAFO bodies are summarized in the Reports of the General Council and Fisheries Commission from the 28th NAFO Annual Meeting, held in Dartmouth, Nova Scotia, Canada, September 18-22, 2006. The reports from this meeting are attached as **APPENDIX 1.** Due to the size of the June 2006 NAFO Scientific Council Meeting Report, it is not included as an appendix. This report is available online at: <http://www.nafo.int/about/frames/activities.html>.

The following NAFO meetings were held during 2006:

a) NAFO Working Group on Reform
Montreal, Quebec, Canada, April 25-28, 2006;

b) STACTIC Intersessional Meeting
Copenhagen, Denmark, June 12-15, 2006;

c) Scientific Council Meeting
Dartmouth, Nova Scotia, Canada, June 1-15, 2006;

d) NAFO Working Group on Reform
Oak Island, Nova Scotia, Canada, September 12-15, 2006;

e) 28th NAFO Annual Meeting
Dartmouth, Nova Scotia, Canada, September 18-22, 2006;

f) Scientific Council Annual Meeting
Dartmouth, Nova Scotia, Canada, September 18-22, 2006;

g) Scientific Council Shrimp Assessment Meeting
Dartmouth, Nova Scotia, Canada, October 24- November 1, 2006.

Reports of all NAFO meetings are available from the NOAA Office of Legislative Affairs (202-482-4981). In addition, many NAFO reports are available online at: <http://www.nafo.int>.

(2) Report of the 2006 Activities of the NAFO Consultative Committee (NCC): During early 2006, there were a number of informal staff and interagency meetings relating to U.S. participation in the NAFO reform process as well as other key areas of U.S. concern in NAFO. In addition, there were a number of consultations among the U.S. Commissioners to NAFO and with NCC members on these issues. The first formal meeting of the NCC occurred via teleconference on April 11, 2006, (see attached Agenda at **APPENDIX 2)**. The purpose of this

meeting was to: 1) review the events of the 2005 NAFO Annual Meeting; 2) update NCC members and Commissioners on U.S. progress to secure an allocation of NAFO yellowtail flounder; 3) discuss preparations for intersessional meetings of STACTIC and the NAFO Scientific Council; and 4) discuss U.S. participation and goals for the NAFO reform process initiated at the 2005 annual meeting. The reform process would begin with an intersessional working group meeting to be held in Montreal during April 25-28, 2006. A second meeting of the working group would then be held in Oak Island, Nova Scotia, Canada during September 12-15, 2006 (the week immediately preceding the NAFO Annual Meeting).

During NCC discussions on NAFO reform, it was agreed the United States should participate fully in the working group deliberations. There was general agreement the United States should focus its efforts in the working group on ensuring a thorough review and updating of the NAFO Convention and the Organization itself to reflect modern fisheries conservation and management principles and initiatives (such as found in the UN Fish Stocks Agreement). Discussions in this area focused on (among other things): 1) how to encourage implementation of the ecosystem approach to fisheries management in NAFO; 2) how to strengthen NAFO Monitoring Control and Surveillance (MCS); and 3) how to ensure fisheries management decisions are consistent with the advice provided by the NAFO Scientific Council. Relative to the Organization, there was NCC support for a streamlining of NAFO bodies to increase efficiency and reduce costs.

There was also general agreement the United States should specifically engage in efforts to ensure changes to amend the NAFO Convention text relating to dispute settlement, decision making (particularly regarding allocations), and member dues assessments properly reflect the interests of all NAFO Parties. The current dues formula links 60 percent of each member's total annual dues to catches of NAFO-recognized species within the NAFO Convention Area (which includes a portion of the U.S. EEZ). Thus, the United States (which has no catches in the NAFO Regulatory Area) pays the second highest dues in the Organization. There was also general support for the majority of the comments already provided to the working group Chair by the NAFO Scientific Council. In addition, there was an initial discussion on the relationship between U.S. efforts in the reform process, and on-going bilateral efforts with Canada to secure an allocation of NAFO Division 3LNO yellowtail flounder.

In preparation for the first reform meeting, a "Chair's Working Paper" was distributed to all Contracting Parties. This paper represented the working group Chair's effort at re-drafting the NAFO Convention to reflect current international fisheries instruments, practice, and initiatives. The NCC agreed the United States should provide comments to the Chair's Working Paper reflecting U.S. views on key issues. In addition, there was support for the development of proposals to specifically address issues relating to allocations and dues assessments.

Informal consultations with U.S. Commissioners and NCC members continued throughout the 2006 intersessional period to provide updates and solicit input, particularly relative to the reform process. A second formal NCC meeting was held August 17, 2006, via teleconference (see agenda also attached as **APPENDIX 2)**. Although the agenda for this meeting was quite comprehensive, discussions focused primarily on: 1) the NAFO reform process; 2) the status of

on-going bilateral efforts with Canada on yellowtail flounder; and 3) potential U.S. proposals for the 2006 annual meeting.

Relative to NAFO reform, U.S. Federal Commissioner Dean Swanson provided an update on the outcomes of the April 2006 reform working group meeting. He noted that much of the meeting focused on a line-by-line review of the Chair's Working Paper. This working paper attempted to address, through re-drafting, a great number of issues that remained unresolved despite specific NAFO initiatives to address them. Discussions relating to MCS, decision-making and objections, and dispute settlement were particularly intense. The result was some progress in almost every area of the text. However, there were also statements from Parties around the table clarifying the Chair's working paper was not an official document and had no official status. It was also noted an effort to re-negotiate the NAFO Convention would take quite some time and each Contracting Party would have to go through a domestic ratification process that could add additional years to the process. Canada secured some support for revisions to the current allocation text. However, these changes did not address the U.S. concerns relating to NAFO allocations. The United States also tabled some initial draft language (and a supporting document) on amendment of the dues assessment procedure. Although there was some support for the underlying principles of the U.S. proposal, working group representatives could not commit to any changes at this meeting. The Working Group was scheduled to meet again during September 12-15, 2006, and would report its progress and seek further guidance at the NAFO Annual Meeting, September 18-22, 2006.

Dr. Swanson also provided a brief update relative to on-going bilateral consultations between the United States and Canada relative to NAFO Division 3LNO yellowtail flounder. Although there had been a number of interactions with Canada on this issue during the intersessional period, the United States had not yet secured the necessary Canadian support for such an allocation. During the July 2006 bilateral consultations, the United States restated that the basic link between allocation of yellowtail flounder, reform of the dues assessment process, and U.S. participation in NAFO was still a key consideration for the United States. During this bilateral meeting, the United States also noted it was developing proposals for the 2006 NAFO Annual Meeting addressing: NAFO dues assessments; management and allocation of yellowtail flounder; and NAFO implementation of the FAO sea turtle guidelines. Dr. Swanson provided a brief description of the basic elements of each of these draft proposals to the Canadians, and promised to share them in advance of the annual meeting. A summary report of the July 2006 U.S.-Canada Bilateral Fisheries Consultations is available from the NOAA Office of Legislative Affairs (202-482-4981). More detailed information on the U.S. dialogue with Canada relative to NAFO yellowtail flounder is contained below.

NCC members and staff then reviewed and commented on draft U.S. proposals for the 2006 NAFO Annual Meeting addressing: NAFO dues assessments; management and allocation of yellowtail flounder; and NAFO implementation of the FAO sea turtle guidelines. There was general support for these proposals, and it was agreed they should be shared with NAFO Contracting Parties in advance of the annual meeting.

III. Report of Issues Relating to the NAFO Quota Allocation Practice:

The goals set out in Section 213(a) of title 16 U.S.C. 5601 require the Secretary of Commerce, acting through the Secretary of State, promptly seek to establish a new practice for allocating quotas under the Convention that: 1) is predictable and transparent; 2) provides fishing opportunities for all members of the Organization; and 3) is consistent with the Straddling Stocks Agreement. These goals have not yet been achieved.

Section 213(b) of title 16 U.S.C. 5601 requires the Secretary of Commerce include in annual reports under Section 212: 1) a description of the results of negotiations held pursuant to subsection (a); 2) an identification of barriers to achieving such an allocation practice; and 3) recommendations for any further legislation necessary to achieve such a new practice. This information is contained below.

(1) Negotiations relating to the NAFO quota allocation process during 2006:

Historic allocations: For over 20 years, NAFO Division 3LNO yellowtail flounder was allocated exclusively to two Contracting Parties (Canada and the European Union), with a very small amount allocated to the "others" category—available to member countries that do not have a specific national allocation. In 2005, the European Union (EU) agreed to forgo its allocation so it could be given to France (on behalf of St. Pierre and Miquelon). Canada still receives the majority (over 97 percent) of the allocations.

Stock recovery and subsequent allocations: The NAFO Scientific Council provides advice on the status of the 3LNO yellowtail flounder stock biennially. This advice has resulted in a series of NAFO Fisheries Commission increases to the total allowable catch (TAC) for this stock (from 13,000mt in 2002 to 15,000 mt in 2005-2006). During its 2006 meeting, the Scientific Council once again indicated a TAC increase to 15,500 mt each year for the 2007-2008 management period would be scientifically acceptable. In response to a U.S. request for advice, the Scientific Council also indicated the current harvest rate for the stock could be increased from F=65 percent msy to F=75 percent msy (or even F=85 percent msy) with only a slight decrease in catch biomass over the next 10 years (but generating a greater accumulated harvest). The risk of the stock exceeding buffer limits for this stock under the precautionary approach at any of these harvest rates was miniscule.

US Proposals in NAFO: In response to each of the TAC increases to this stock, the United States has tabled proposals for a (first time) national allocation based on: the relative (and increasing) good health of the stock; a demonstrated U.S. history of fishing for this stock in the NAFO Regulatory Area; and the principle the agreed increase in TAC for this stock should be shared among all those with a history in the fishery. In all instances, although TAC increases were adopted, U.S. proposals for a share received little support.

Bilateral efforts: In addition to its efforts to secure a useable share of Division 3LNO yellowtail flounder "at the table" within NAFO, the United States has engaged in repeated bilateral meetings with Canadian government and fishing industry representatives. Although an early

attempt was made to set up an industry-to-industry arrangement within the Canadian EEZ, the Canadian Government has been consistently unwilling to support the United States in NAFO on this issue. Over the years, U.S. efforts to secure this support have included: bilateral meetings, diplomatic communications, an official visit by Department of State and National Marine Fisheries Service (NMFS) officials with key Canadian Members of Parliament in Ottawa, and similar consultations between senior NMFS, NOAA, and Canadian Department of Fisheries and Oceans officials (including the Canadian Minister of Fisheries). Although the Canadian Government has continually expressed its understanding of the U.S. position on NAFO yellowtail flounder, the Canadian fishing industry (particularly in Newfoundland and Nova Scotia) are not in favor of creating any new allocations within any existing Grand Banks fisheries. Specifically, they do not support the addition of another Party to the NAFO allocation key for yellowtail flounder, even if the TAC is increased such that there is no loss of fish for Canadian vessels/processors.

During 2006, the United States communicated repeatedly with the Canadian Government on the issue of NAFO yellowtail flounder. These consultations ranged from dedicated bilateral meetings to discussions on the sidelines of unrelated multilateral meetings. In bilateral consultations immediately preceding the 2006 NAFO Annual Meeting, the United States shared yet another draft NAFO proposal with the Canadians on yellowtail. This proposal increased the harvest rate for the stock from F=65 percent msy to F=75 percent msy, resulting in a TAC of 17,200 mt for each year of the 2-year management period. From this increased TAC, the U.S. allocation would be 14,000mt. The Canadians indicated concern over both the increased harvest rate and the change to the allocation key, but promised to engage the U.S. delegation at the NAFO Annual Meeting.

The 2006 Annual Meeting and the new U.S. proposal: The United States tabled its yellowtail flounder proposal in advance of the 2006 Annual Meeting. Upon arrival at the meeting, bilateral consultations were initiated with Canada, and it appeared they might support a scenario in which Canada would permanently transfer some amount of the 2007 Canadian yellowtail allocation to the United States, thus creating a U.S. spot on the allocation key with no change to the harvest rate. However, they noted it would be necessary to negotiate internally with industry representatives on their delegation regarding the amount to be transferred.

In the days that followed, Canadian and the United States continued their discussions, but little further progress was made. The United States then submitted a new proposal to NAFO supplementing the original one with a new allocation key for 3LNO yellowtail flounder. This key included allocations (from the increase) for the United States, St. Pierre, Russia, and Ukraine. In the closed Heads of Delegation meeting Canada announced it opposed amending the harvest rate and it would not discuss changing the allocation key for the stock. Ultimately, the U.S. delegation chose to leave its proposal on the table (i.e., not withdraw) and allowed interim measures to be set for 3LNO yellowtail with the TAC suggested by the Scientific Council (15,500mt) at the current harvest level and with the allocation key unchanged. The U.S. proposal can be re-tabled at the 2007 meeting and the United States will consult with like-minded NAFO Parties during the intersessional period to build support for next year.

(2) Identification of barriers to achieving a new quota allocation practice in NAFO: The barriers to achieving a new quota allocation practice were clearly identified in the 2003 Report of the Working Group on Allocation of Fishing Rights to Contracting Parties (see the 2003 Report to Congress for details). Because the Working Group has not convened since 2003, the United States has focused its efforts on getting a usable quota allocation of yellowtail flounder.

During 2006, the United States made a strong case for a change in the allocation process within the context of the NAFO reform process. The reform process underway in NAFO during 2006 provided an opportunity for a greater degree of transparency and inclusiveness to be introduced into this process, but the United States is still concerned that decisions are made outside of the formal process. Although the United States attempted to reopen the issue of allocation criteria, in the context of potential changes to the NAFO Convention relating to decision making, there was little support among key Contracting Parties (e.g., Canada and the European Union) for such changes.

Throughout the two 2006 reform working group meetings and the subsequent 2006 annual meeting, the United States spoke out in support of amendments to the NAFO Convention relative to the decision making process (particularly as it pertains allocations) and the dues assessment process. We have made it clear these key issues will continue to be priorities for the United States and will have a major impact on U.S. participation in NAFO in the future. At the 2006 NAFO Annual Meeting, it was agreed the NAFO reform process would resume during the 2007 intersessional period. The United States will continue to work for a fair and equitable allocation process at this time.

(3) Recommendations for any further legislation that is necessary to achieve such a new practice:

No recommendations at this time.

APPENDIX 1

REPORTS OF THE ACTIVITIES OF THE NAFO GENERAL COUNCIL AND FISHERIES COMMISSION AT THE 28TH NAFO ANNUAL MEETING

DARTMOUTH, NOVA SCOTIA, CANADA, SEPTEMBER 18-22, 2006.

APPENDIX 2: NCC Agendas

April 11, 2006
NAFO Consultative Committee Meeting

Agenda

I. Recent Developments

- Highlights of 2005 Annual Meeting
- Relevant bilateral meetings
- Other relevant international meetings

II. Upcoming Events

- NAFO Reform Working Group (April 25-28 / Montreal)
  -U.S. participation
  -U.S. positions/approaches

- STACTIC intersessional meeting (June 12-15 / Copenhagen)
  -U.S. participation
  -key issues

- Scientific Council Meeting (June 1-15 / Dartmouth)
  -key issues

- Scientific Council Symposium on Environmental and Ecosystem Histories in the North Atlantic (September 13-15 / Dartmouth, N.S., Canada)
  -brief update

- NAFO Annual Meeting (September 18-22 / Dartmouth, N.S., Canada)
  -U.S. participation

III. Yellowtail flounder

- Potential U.S. allocations and associated U.S. and NAFO requirements

IV. Follow-up / Assignments

V. Other

Thursday, August 17, 2006
NAFO Consultative Committee Meeting

Agenda

I. Intersessional Developments

- NAFO Reform Working Group (April 25-28 / Montreal)
- Scientific Council Meeting (June 1-15 / Dartmouth)
- STACTIC intersessional meeting (June 12-15 / Copenhagen)
- Relevant bilateral meetings
- Other

II. Upcoming Events

- Scientific Council Symposium on Environmental and Ecosystem Histories in the North Atlantic (September 13-15 / Dartmouth, N.S., Canada)

- 2nd NAFO Reform Working Group (Sept. 12-15 / Oak Island, NS)
  - -Agenda
  - -Key issues for the United States
  - -Next steps

- NAFO Annual Meeting (September 18-22 / Dartmouth, N.S., Canada)
  - -U.S. participation
  - -Agenda
  - -Key issues for the United States (YTF, turtle, dues, and other proposals)

- Potential U.S. allocations and associated U.S. and NAFO requirements

III. Follow-up / Assignments

IV. Other