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The Sharing of Mackerel in the North East Atlantic

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Resumé

Denne kandidatafhandling omhandler fordelingen af makrelkvoter mellem kystlandene i Nordøst Atlanterhavet. Siden 2009 har det ikke lykkedes kystlandene, EU, Norge, Færøerne og Island at komme til enighed om fordelingen af makrelkvoterne. Dog blev EU og Norge enige om en indbyrdes kvotefordeling i 2010, som gælder for de næste 10 år. Den manglende brede enighed mellem alle kystlandene har resulteret i, at kystlandenes kvoter i årene 2010 og 2011 er blevet tilskrevet med tanke på hvad der er bedst for kystlandene selv, og ikke på hvad der er bedst for det fælles gode. Fordelingen af makrelkvoter i 2010 og 2011 overstiger langt hvad ICES har anbefalet.

Færøerne befinder sig i en kompliceret situation for så vidt angår juridisk kompetence på det udenrigspolitiske område. Færøsk deltagelse i internationale organisationer, indgåelse af internationale handelsaftaler eller fiskeriaftaler bærer præg af at Færøerne, som en del af Rigsfællesskabet, ikke har en afklaret juridisk status på det udenrigspolitiske område. Der vil i denne kandidatafhandling blive redegjort for hvordan internationale reguleringer påvirker Færøerne i dets søgen efter den optimale udnyttelse af makrellen i Nordøst Atlanterhavet.

Makrellen i Nordøst Atlanterhavet er en fælles fiskebestand, der migrerer gennem internationalt farvand og i farvandene hos alle kystlandene. Der vil i denne kandidatafhandling blive redegjort for kvotefordelingen og makrelfangsten gennem de seneste 10 år, og derudover vil nogle spilteoretiske modeller blive brugt til at underbygge en anbefaling om hvad der er den optimale andel af makrelkvoter for Færøerne.

Preface

This thesis is the final dissertation of the Master of the Science in Business Administration and Commercial Law study at the Copenhagen Business School. The primary emphasis is on Faroe Islands' role in the sharing of mackerel in the North East Atlantic. The Faroese economy is very dependent on fisheries and vulnerable to changes in the mackerel fisheries industry. Faroe Islands is thereby facing legal and economic challenges that can influence the Faroese economy significantly in the future. The thesis is 79.9 standard pages of 2.275 characters including spaces in length.

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First and foremost I would like to thank my supervisors, the legal supervisor, Jens Fejø, and the economic supervisor, Cédric Schneider, for a dedicated collaboration throughout the thesis writing process. I would also like to thank Bjørn Kunoy, Jan Arge, Andrass Kristiansen, Jannit Michelsen, Ole Poulsen and Henry Damsgaard Lanng for their cooperative effort in helping me gather essential data and information regarding the sharing of mackerel in the North East Atlantic. Without their help it would be impossible to gather such relevant literature as I have been able to do. Additionally I would also like to thank Hans Ellefsen for helping and providing me with relevant and yet unpublished research on the use of game theory on the sharing of pelagic fisheries in the North East Atlantic. At last, but not least, I would like to thank Rógvi Absalonsen for linguistic guidance, and Holgar Johannesen for support and helping with the graphical layout.

Abbreviations:

CFP: *Common Fisheries Policy*

COFI: *Committee on Fisheries*

CCRF: *FAO Code of Conduct for Responsible Fisheries*

DSB: *Dispute Settlement Body*

DSU: *Dispute Settlement Understanding*

DWFN: *Distant Water Fishing Nations*

EEA: *European Economic Area*

EEC: *European Economic Community*

EEZ: *Exclusive Economic Zone*

EFTA: *European Free Trade Association*

EU: *European Union*

FAO: *Food and Agriculture Organization*

GATT: *General Agreement on Tariffs and Trade*

IQ: *Individual Quota*

ICES: *International Council for the Exploration of the Sea*

IPOA – IUU: *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*

ITP: *Individual Tradable Permit*

ITQ: *Individual Trade Quota*

IUU: *Illegal, Unreported and Unregulated*

MSC: *Marine Stewardship Council*

NAFO: *Northwest Atlantic Fisheries Organization*

NEA: *North East Atlantic*

NEAFC: *North East Atlantic Fisheries Commission*

RFMO: *Regional Fisheries Management Organizations*

TAC: *Total Allowable Catch*

UNCLOS: *United Nations Convention on the Law of the Sea*

UNFSA: *United Nations Fish Stocks Agreement*

WTO: *World Trade Organization*

Faroe Islands is in general both called *Faroe Islands* and the *Faroes*. I will use both names in this thesis.

The Faroese government has had various names in English over the years, but the most common, which are also used in this thesis are the *Home Rule* or the *Home Government*.

The Danish government is in this thesis just called the *Government*.

Table of contents

Chapter 1

1.1 Introduction

The mackerel fisheries in the North East Atlantic, NEA, have been a well established industry since the 1960s. Until Faroe Islands entered the mackerel fisheries in the late 1990s, it was EU and Norway that accounted for the main part of this industry. The quota shares were stable and ongoing between these three coastal states until Iceland entered the mackerel fisheries. Even though Iceland was not recognised as a coastal state until 2009, the mackerel catches made by Iceland in the Icelandic Exclusive Economic Zone, EEZ, from 2006 became more and more significant. In the years 2010 and 2011, after Iceland had entered the negotiations on mackerel quotas in NEA with EU, Norway and Faroe Islands, the coastal states have not yet reached an agreement that has included all parties. The disagreements are essentially based on the size of quotas for each coastal state.

Disputes on the sharing of fisheries quotas are common and widespread. In NEA there have been many disputes over the years, but for the past few years the mackerel fisheries have been subject to severe disagreements and conflicts between the coastal states. The mackerel in NEA is a straddling fish stock which migrates between the EEZs of the coastal states. In the past few years the migration pattern has changed so the mackerel now migrates further to the north and west, and it is the change of migration pattern that appears to be the main reason for the disagreements and conflicts between the coastal states.

It is widely recognized that the Faroese economy is highly dependent on fisheries. During the negotiation rounds on mackerel quotas between the coastal states, Faroese officials have frequently said that Faroe Islands' right to catch much more mackerel than in the past has been scientifically proven. In a press statement in August 2010, the Faroese Minister of Fisheries urged for an international cooperation on the joint management of the mackerel in NEA by stating that, "*this is not, however, an issue the Faroe Islands can resolve alone…it requires sincere effort and cooperation on the part of all four coastal States to reach agreement on a new arrangement for the allocation of this shared resource that can provide*

us all with a workable basis for the long-term sustainable management of our respective mackerel fisheries."[1]

For the time being the sales value of mackerel is high and the quota shares which the coastal states are disagreeing on have a high value. Naturally, none of the coastal states are eager to give a value of several hundred million DKK aside without further consideration. It will be interesting to see how the so-called *mackerel war* will be solved in the future. The potential outcomes are many and they have varying character. However, before being able to assess the future outcome, there is a need to analyse what has happened in the past few years.

1.2 Topic

The topic of this thesis will be the sharing of mackerel quotas between the coastal states in the NEA. There have been many complications over the past years with the result that there has not been consensus on an agreement between the coastal states in the years 2010 and 2011. Consequently the mackerel stocks in NEA have suffered from overfishing by the coastal states, compared to the recommendation by ICES. Additionally, there have been legal tensions between the coastal states on who has the rights to the mackerel in NEA.

1.3 Case

Studies show that the migration pattern of the mackerel in NEA has changed much in the last five to ten years. The mackerel is migrating much further to the north and to the west than it did a few years ago, and we can observe much larger stocks of mackerel in Faroese and Icelandic waters. These studies, among other factors, have led to countermeasures by the Faroese representatives in the negotiations between the coastal states on mackerel quotas in NEA. The present situation, with the lack of a broad agreement between the coastal states, is the reason for many disputes, which have been visible in the public debate in the coastal states in the past few years.

[1] Annex I – Press release from the Faroese Ministry of Fisheries about the mackerel – August 2010.

1.4 Problem definition

I have chosen to analyse the issue of why the coastal states have not reached an agreement on the sharing of mackerel quotas in NEA in the years 2010 and 2011. Furthermore I will try to find out what solution would be the best for Faroe Islands. To answer this it will be necessary to take into account the legal aspects regarding the Faroese foreign policy, by studying international regulations regarding the Faroese position on the international scene. This leads to the legal problem definition:

How are international regulations affecting Faroe Islands in the effort to reach the most efficient exploitation of mackerel in the North East Atlantic?

To answer this legal problem definition I will explain for the jurisdictional bonds between Faroe Islands and Denmark to get a clarification of which authority the Faroese Home Government has in foreign policy matters. Afterwards I will clarify which international treaties and agreements are in effect that influence this matter. I will also study whether or not the actions taken by some of the coastal states in this case have been in accordance with the existing regulations. Finally I will evaluate the possibilities of taking measurements and legal action on the international scene.

I will also focus on the issue of Faroe Islands' optimal share in the sharing of mackerel quotas in NEA. There are presumably many factors affecting the quota demands by the coastal states and therefore it may be hard to find a specific reason for the lack of an agreement on the sharing of mackerel quotas. However in this thesis I will try to uncover the optimal share for Faroe Islands, and therefore the economic problem definition is:

Analyse the sharing of mackerel quotas between the coastal states in the North East Atlantic in the years from 2000 to 2011, and suggest what the optimal share for Faroe Islands is.

To answer this economic problem definition I will first explain why there is a need of quotas on fisheries management. In finding out the optimal situation for Faroe Islands in this respect it is necessary to find the optimal share in the long term and restrict the analysis only to include realistic situations. This limitation is done through the application of game theory in

fisheries management. Based on this I will study and analyse the quota shares and the catches in the past few years and use a game theoretic model to approach a realistic guidance solution to the optimal share for Faroe Islands.

1.5 Focus area

In this thesis I will focus on the sharing of mackerel quotas in the NEA between the coastal states, EU, Norway, Faroe Islands and Iceland. The circumstances and relevant facts surrounding the negotiations will be in focus as well, but there will mainly just be focusing on what is directly or indirectly relevant for Faroe Islands.

Furthermore focus will be on the unique relationship between Faroe Islands and Denmark with special regard to fisheries inside and outside Faroese waters, and on the jurisdictional situation for Faroe Islands in international relations. Even though the mackerel fisheries in the NEA have existed for many decades, this thesis will only focus on the years since 2000.

1.6 Delimitation

The Atlantic mackerel, *scomber scombrus*,[2] is a pelagic species that is usually being fished by the same type of pelagic trawlers that are fishing other pelagic species, such as herring and blue whiting. This thesis is built up around the disagreements regarding the sharing of mackerel quotas in the NEA, and therefore other species than mackerel will be delimitated from this thesis.

Since this thesis focuses on the international jurisdictional relations regarding Faroe Islands and negotiations about the mackerel quotas in the NEA, it will not go into detail about the Icelandic, Norwegian and EU jurisdictional situation, unless it is directly or indirectly influencing Faroese matters. In addition EU has had a major discard problem over the past many years as a result of the Common Fisheries Policy, CFP, so unless it has a direct effect on the sharing of the mackerel quotas, discard problems will be delimitated from this thesis.

[2] Annex II – Description of the Atlantic Mackerel – *Scomber Scombrus.*

It is obvious that the negotiations on the mackerel quotas are characterized by politics. Every negotiators agenda is set by the responsible ministry and every ministry's demands are reflecting the domestic governments desire to reach an as good as possible international agreement with the other coastal states. This thesis is mainly focusing on how Faroe Islands can reach the most efficient exploitation possible of mackerel and there will therefore be delimitated as much as possible from political opinions, argumentations and actions, unless it has substantial importance in answering the problem definition in this thesis.

Since this thesis has a focus on the relationship between the coastal states it will not cover the domestic distribution of mackerel quotas. Since the sharing of mackerel quotas in international waters is managed by North East Atlantic Fisheries Commission, NEAFC, I will not take this sharing into account. Even though Russia is also catching mackerel in NEA, Russia is not an acknowledged coastal state and mainly catches mackerel in international waters or in the EEZs of the coastal states by trading quotas with them. Russia will therefore be delimitated from this thesis, unless it has a direct influence on the sharing of the quotas between the other coastal states.

1.7 Choice of theories

1.7.1 Legal

The analysis method in the legal section will be the legal dogmatic method. By using this method it will be possible to analyze the relevant international laws and regulations in a structured and practical way. The conditions surrounding the Faroese relationship with Denmark are complex with respect to the foreign policy area, in which especially the High Court Attorney in 1950, Edvard Mitens, and the professor in political science, Poul Meyer, had contradictive interpretations of the Home Rule Act. Also the international relations between Faroe Islands and the other coastal states are in some ways simple and in other ways complex. Until the conclusion of the Act on Conclusion of Agreements under International

Law[3] in 2005, it was uncertain which specific authority Faroe Islands actually has in foreign policy. By using the legal dogmatic method it will be possible to analyse the complex conditions in a structured and orderly way.

Given the circumstances of the topic chosen for this thesis, the focus will mainly be on state law and international law. The negotiations on mackerel quotas between the coastal states have international character and therefore it is necessary to analyze international laws and regulations, such as UNCLOS[4] and UNFSA[5], and analyse how the regulations in organisations such as WTO[6] and FAO[7] are affecting Faroe Islands. Additionally I analyse how relevant international agreements are influencing Faroese relations. The legal areas that will be touched on in this thesis are state law, international law, administrative law and EU law.

In this thesis the possibilities of measures and actions by the relevant coastal states will be examined by using the legal dogmatic method to analyse the authority of the international courts, such as ITLOS[8], ICJ[9], arbitrational tribunals and other dispute settlement bodies. Relevant rulings by the international courts will be analysed and compared to the case in this thesis. In this way we can get a clear picture of the present legal situation regarding the sharing of mackerel quotas between the coastal states, and in this way we can clarify which possibilities the coastal states have to apply measures or take action in order to change the present situation.

1.7.2 Economic

The theories and methods used in this thesis are within the framework of classic microeconomics and economic game theories based on *The New Industrial Organizations*,

[3] Act on Conclusion of Agreements under International Law. Act No. 80 of 14/5/05 in Faroe Islands and Act No. 579 of 26/06/05 in Denmark.
[4] United Nations Convention on the Law of the Sea.
[5] United Nations Fish Stocks Agreement.
[6] World Trade Organization. www.wto.org.
[7] Food and Agriculture Organisation. www.fao.org.
[8] International Tribunal for the Law of the Sea.
[9] International Court of Justice.

since game theory is based on a strategic rationality concept and focuses on studies of situations with little anonymity and great independence for the players. The relevance of the choice of game theory in this thesis can be explained by the formulation of the economist Kreps: "*The great successes of game theory in economics have arisen in large measure because game theory gives us a language for modelling and techniques for analyzing specific dynamic competitive interactions.*" [10]

Quotas on the mackerel fisheries are at the very core of this thesis and before an analysis of the sharing of quotas on mackerel in the North East Atlantic will be done, it is necessary first to point out why there is a need of quotas on fisheries at all. To point this out the theories *Tragedy of the Commons*[11] and the theory *Governing the Commons*[12] will be clarified and used because these are basic theories in the field of management of a common good and they give a clear indication of the need for management regulations on fisheries.

This thesis is mainly based on empirical data, such as actual quota shares and actual mackerel catches, but to enable the approach of finding the optimal quota share for Faroe Islands theoretical data will be applied. To analyse the current sharing of mackerel quotas in the NEA I will move onto the field of game theory and use it to analyse the coalitions between the coastal states in NEA in the past ten years or so. The basic theories of game theory *cooperative game theory*[13], *non-cooperative game theory*[14] and *the coalition theory*[15] will be used to analyse the situation over the past years, whilst the present situation and an indicative model of a possible future turnout will be set up in a game theoretic model.

The area of fisheries management in a game theoretic context is well known, but when regarding management of straddling fish stocks it is very rare. Because of the complexity and the fact that it is beyond the scope of this thesis to make its own calculations and models, I

[10] Kreps, 1990, p. 41.
[11] Hardin, 1968.
[12] Ostrom, 1990.
[13] Nash, 1953.
[14] Nash, 1951.
[15] Bailey, 2009.

have chosen to use a theoretic model from the PhD dissertation by Hans Ellefsen (currently a work in progress) in order to set up some game theoretic examples of how the payoffs changes according to which players cooperate or do not cooperate. Ellefsen, as well as most other bio-economists, has based his calculations on the basic biological Schaefer model. The purpose of using the models by Ellefsen in this thesis is to show a tendency in the payoffs of the various coastal states depending on who they cooperate with, and also to evaluate possible future coalitions between the coastal states.[16]

By using the cooperative, non-cooperative and the coalition theory, a number of possible scenarios of distribution of the mackerel quotas will be highlighted and demonstrated. This way the scenarios will be as politically unattached as possible and it will be possible to demonstrate how the quotas on the catch of mackerel in the North East Atlantic can be distributed most efficiently.[17]

[16] Ellefsen, 2011.
[17] Knudsen, 1997.

Chapter 2 - Introduction

2.1 An historical description of mackerel in the North East Atlantic

The actual mackerel discussed in this thesis is the Atlantic mackerel or *scomber scombrus* in Latin.[18] It is spread out all the way from the African waters off Morocco to northern Norway and from history we know that mackerel has migrated in NEA. Even back in the 18th century, a French admiral declared that his men had seen mackerel in the bays of the Greenland coast. It is very rare to see mackerel in the bays of Greenland nowadays, but there has been plenty of mackerel further south and east closer to the North Sea, throughout the 19th and the 20th century.[19]

There has been knowledge of the presence of mackerel in NEA for ages, and there has been a regular catch of mackerel at least throughout the past century, but there has not been much knowledge about the mackerel fish stock sizes and migration patterns. Early in the past century Norwegian biologists began to make tagging of experiments of mackerel specimens, but it was not until after World War II, that tagging experiments of mackerel specimens in NEA were made, especially in the Norwegian Sea and in the North Sea. Thus, the migration pattern of mackerel became better known.[20]

2.2 The regulation of fishery rights

Theoretically the fish resource is a common good that is recognized by two conditions. Firstly, there is no property right on the fish stocks, so it is non-exclusive and secondly, when someone is fishing he reduces the fish stocks for the others, which makes every fisher, trawler or nation a rival to the others.[21] This assumption is confirmed by the gradually more efficient fishing fleets, which consequently would exploit the fish stocks more and more, if it had the opportunity to do so.

[18] Annex II – A description of the Atlantic Mackerel, scomber scombrus.
[19] Iversen, 2002.
[20] Iversen, 2002.
[21] Jensen, 1995.

The regulation of fisheries resources were first introduced by quotas in the 1950s. In the 1960s most states issued licenses to a limited number of qualified fishers. The first Individual Trade Quotas, ITQ, were introduced in the 1970s and was meant to regulate the fishery resources by privatizing the right to fish. For the ITQs to work there is a need for certain functions, such as Total Allowable Catches, TACs, initial allocation of ITQs, rules for trading with ITQs, how to decide the legal nature of quotas, how to upkeep monitoring procedures and how to upkeep an enforcement.[22]

Meanwhile, in the whole period between World War II and 1973, there were huge disagreements on the issue of making an EEZ for all coastal states. Large fishing vessels were roaming far from their native shores and fish stocks began to show signs of depletion. Consequently coastal states became more and more dissatisfied about this development. Late in the sixties a trend of a 12 mile territorial sea had wide acceptance around the world, but there was still a large group of states that claimed the rights to an EEZ of up to 200 nautical miles from the shore. The South American states Peru, Chile and Ecuador claimed a 200 mile offshore sovereignty as early as in the late 1940s. In the early 1970s there were many cod conflicts between states and the most famous in our region, is the conflict between Iceland and the United Kingdom on the right to fish close to the Icelandic shores. The so-called *Cod War* resulted in clashes between British Navy ships and Icelandic coast guard vessels.[23]

In 1982 the parties of United Nations signed the *Convention on the Law of the Sea*, also called UNCLOS.[24] In UNCLOS the parties agreed on a 200 nautical mile EEZ for every coastal state and it is defined in part V of the UNCLOS. When the UN agreed to set an EEZ for every coastal state in the world, it was a consequent result of the growing pressure from countries that experienced their own fish stocks being exploited and reduced by foreign vessels.[25]

[22] Louka, 2006.
[23] History of the UNCLOS. UN homepage: http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm
[24] The United Nations Convention on the Law of the Sea.
[25] Louka, 2006.

There are a number of relevant organisations that include fisheries of mackerel in the NEA in their area of interest. Some of them have been operating for decades and others for only for a few years. The main purpose of these organisations mentioned below varies, but they have in common that they are relevant for the mackerel fisheries in the NEA.

2.2.1 The International Council for the Exploration of the Sea

The International Council for the Exploration of the Sea, ICES, is an international body which promotes and coordinates marine research. ICES consists of 20 contracting states, all of whom are coastal states to the North Atlantic and the Baltic Sea. ICES has a network of more than 1600 scientists who are linked by the ICES Convention[26], which is an intergovernmental agreement. The scientists gather information about the marine ecosystem in their respective countries and pass them on to ICES. Once every year ICES reports back to the contracting states with its annual non-political advice.[27]

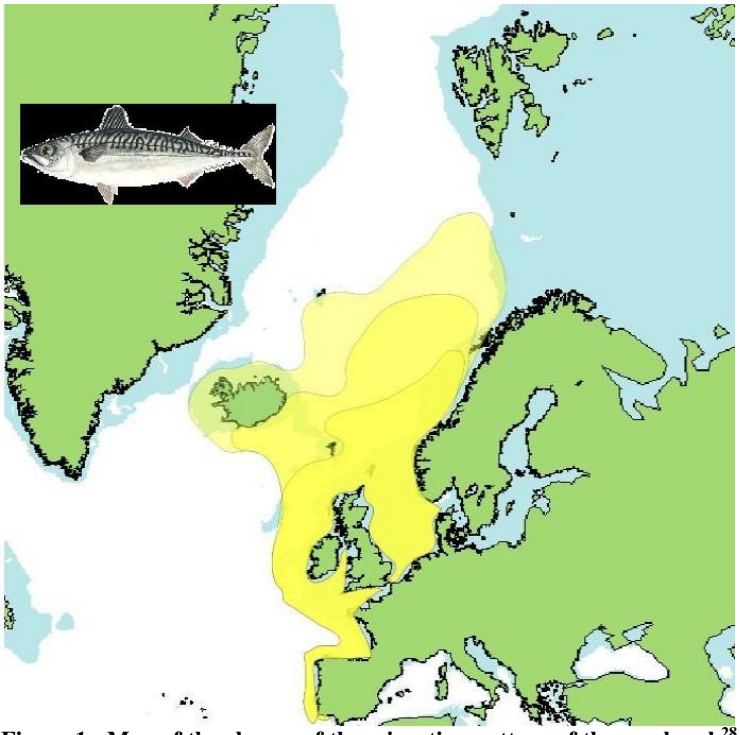

Figure 1 - Map of the change of the migration pattern of the mackerel.[28]

ICES started investigations of the mackerel on both sides of the Atlantic, after a suggestion by a representative of the United States in 1910. In 1974 the *ICES Mackerel Working Group* was established because of the drastic decline of the mackerel stock size in the North Sea. This

[26] The Convention for the International Council for the Exploration of the Sea. 12. Sept. 1964.
[27] ICES homepage: www.ices.dk.
[28] Ellefsen, 2011.

group was replaced in 1992 by the *Working Group on the Assesment of Mackerel, Horse Mackerel, Sardine and Anchovy,* WGHMSA. The WGHMSA has since 1995 combined mackerel from different areas into a single NEA mackerel stock. In this stock are included three spawning populations or components. They are named after their areas, the Southern area, the Western area and the North Sea area.[29]

2.2.2 North East Atlantic Fisheries Commission

The North East Atlantic Fisheries Commission, NEAFC, is one of the oldest regional instruments for the regulation of fisheries. It started with conferences in the 1930s and after many changes during the past decades, it ended up with the current form in November 1982. The commission is comprised by 5 contracting states, EU, Norway, Iceland, Russian Federation and Denmark in respect of Faroe Islands and Greenland. In addition to the contracting states there is a number of cooperating non-contracting parties. The contracting parties signed the Convention on Multilateral Cooperation in North East Atlantic Fisheries, which came into force in November 1982. The head of the Commission is the President who is selected by the contracting states.[30]

The regulatory area of NEAFC includes three large areas of international waters, of which the main catch of mackerel in the international waters is in the area in the Norwegian Sea. The rest of the sea is divided into EEZs within two hundred nautical miles of the coastlines.[31] The NEAFC only regulates fisheries in international waters, so it will not be involved in this thesis unless it has a direct influence on the sharing of the mackerel quotas between the coastal states.[32]

2.2.3 The Nordic Council

The Nordic Council was formed in 1952 and has 87 elected members from Iceland, Finland, Sweden, Norway and Denmark as well as from the autonomous territories, Faroe Islands,

[29] Iversen, 2002.
[30] Louka, 2006.
[31] Annex III – Map of the NEAFC Regulatory Area.
[32] Louka, 2006.

Greenland and Åland. The Nordic Council plays no specific role in the mackerel crisis, but since many of the member parties of the council are affected of the mackerel crisis, the council has made reports and arranged a conference in the summer 2010 called *The Pelagic Complex in the Northeast Atlantic Ocean*. A part of this conference was the publication of a comprehensive report which analyzes the various factors of the mackerel crisis.[33]

2.3 The catch of mackerel in the North East Atlantic

After World War II the catch of mackerel in NEA was relatively stable until the mid 1960s, when the total catch of mackerel grew rapidly. It was especially in the North Sea and Skagerak that the catch increased much. In the 1970s the catch in the North Sea and Skagerak fell back to a lower level, but in the Western area, which is the area west of Great Britain, the catch grew higher and ultimately lead to a higher average total catch of mackerel. As it is shown in Figure 2, we can see that the catch of mackerel has mainly been in the sea territory belonging to Norway and EU.

[33] Nordic Councils homepage, June 2011. www.norden.org

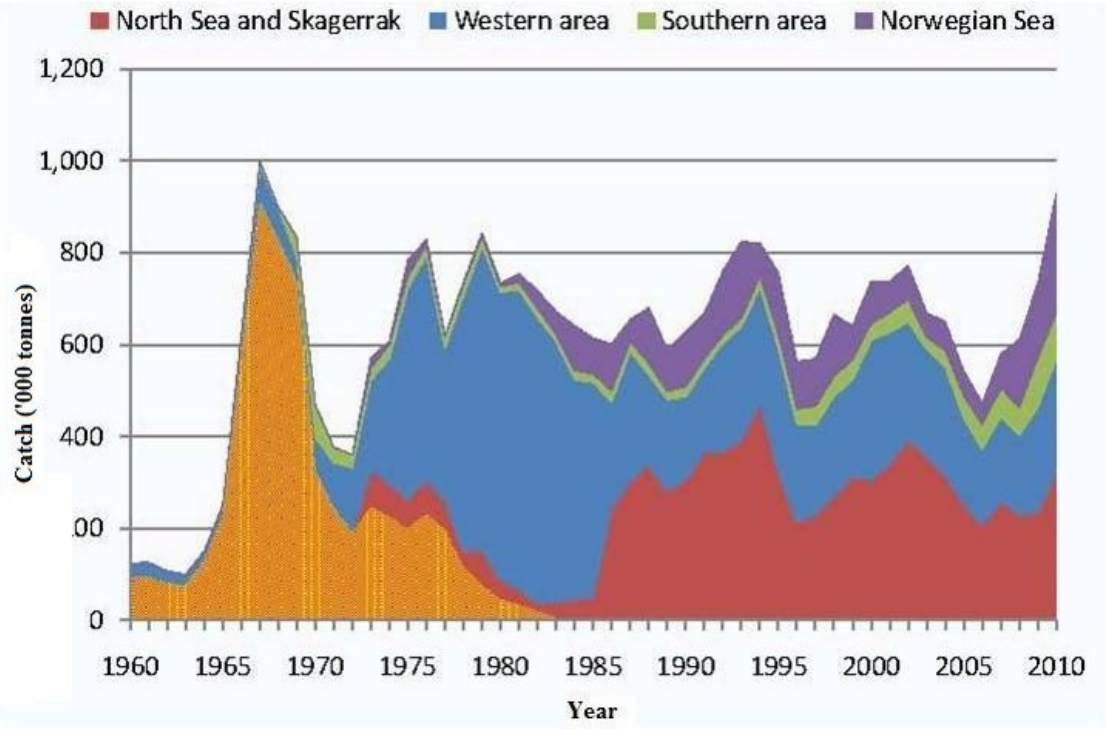

Figure 2 - The development of mackerel catches by area, 1960 – 2010.[34]

Until the late nineties it was mainly Norway and EU that stood for the catch of mackerel, but Russia was also catching mackerel as a bycatch in the Norwegian Sea and in Faroese waters during the 1980s and 1990s. The mackerel has no swimbladder, unlike for example herring, which makes it difficult to detect mackerel by using echosounding systems and it is because of this that it has been difficult to be precise about how large the mackerel stocks are.[35]

It was because of the Russian catch of mackerel in international waters and Faroese waters that NEAFC in 1996 asked ICES to describe the distribution of mackerel in the area around and north of Faroe Islands. During the nineties bycatches and research showed that the mackerel was in the area around Faroe Islands from May to September, but mainly in the summer months, June, July and August. There were also significant catches in the western

[34] Ellefsen, 2011.
[35] Belikov, 1998.

part of Faroese waters close to the Icelandic waters. This indicated that the migration pattern of mackerel in NEA had changed and was maybe about to change even more.[36]

Since the mid 1960s until today the total catch of mackerel in NEA has been between approximately 400.000 and 950.000 tonnes, but the average total catch has been about 700.000 tonnes. The large fluctuations from the average total catch may have been due to many different reasons which will not be analysed in this thesis.[37]

2.4 Faroe Islands becomes a coastal state

Until 1999 it was only Norway and EU that were recognized mackerel coastal states, but Faroe Islands became recognised as a mackerel coastal state by Norway and EU in 1999. The recognition came consequently after Faroe Islands and Russia during the nineties had demonstrated that there was no doubt that mackerel migrates through Faroese waters. The mackerel quotas for 2000 were agreed and established trilaterally and the distribution of quotas on catch of mackerel in NEA was 65/30/5, which is 65 percent to EU, 30 percent to Norway and 5 percent to Faroe Islands. This sharing agreement between these three coastal states became an ongoing agreement until 2010.[38] [39]

2.5 Iceland becomes a coastal state

The authorities in Iceland tried from 1999 to be recognized as a coastal state by the other coastal states at the time, claiming that Iceland had legal rights to be invited to share the fisheries, cf. art. 8, s. 3 UNFSA, but it was not until 2009 that Iceland was recognized as a coastal state by the other coastal states, Norway, EU and Faroe Islands. This happened subsequently to the rapidly increasing catch of mackerel by Icelandic vessels in the Icelandic

[36] Belikov, 1998.
[37] ICES Advice 2010, Book 9.
[38] Iversen, 2002.
[39] Norden, 2010.

EEZ. By determining their own quotas in the Icelandic EEZ they could show whoever was in doubt that the mackerel stock had become much larger in the Icelandic EEZ.[40]

2.6 The sharing of mackerel quotas for 2010

After being recognized as a mackerel coastal state, Iceland joined the annual negotiations in 2009 on the allocation of the TAC of mackerel in NEA in 2010. These negotiations went on for many rounds of meetings without an agreement, and at the beginning of 2010 the parties had not yet reached an agreement.

According to ICES annual advice book 2009 the TAC recommendation for 2010 was between 527.000 and 572.000 ton.[41] At the end of January 2010 Norway and EU signed a ten-year agreement where their relative quota shares were at fixed levels.[42] EU and Norway set the TAC of mackerel in 2010 including inter-annual quota transfers and paybacks from 2009 at about 606.000 tonnes. See more details in the *Economic Section*.

In advance of Iceland entering the annual negotiations of the TAC of mackerel for 2010, the Icelandic Ministry of Fisheries and Agriculture published an Information Memorandum[43] where they state that Iceland is a coastal state with respect to the mackerel stock. They emphasize the fact that Iceland has requested to participate in the coastal state negotiations for many years and have therefore been forced to object, in accordance with the NEAFC convention. Nevertheless it is emphasized in the Information Memorandum that Iceland as a coastal state is in its full right to utilize mackerel.

After the signing of the previously mentioned ten-year agreement between Norway and EU and after the coastal states failed to reach an agreement on the TAC of mackerel in 2010,

[40] The Icelandic Ministry of Fisheries and Agriculture's homepage: http://eng.sjavarutvegsraduneyti.is/
[41] ICES Advice 2009, Book 9.
[42] Annex IV – Ten year Agreement between the European Union and Norway. Brussels, 26 January 2010.
[43] Annex V – Information Memorandum from the Icelandic Ministry of Fisheries and Agriculture. April 2009.

Iceland set the TAC in the Icelandic EEZ to 130.000 tonnes, which is about 23 percent of the TAC recommendation from ICES.[44]

During the summer of 2010, whilst the other coastal states had set their TAC, the Ministry of Fisheries in the Faroe Islands first set a temporary TAC in the Faroese EEZ to 14.000 tonnes but later adjusted it to 85.000 tonnes, which is about 15 percent of the TAC recommendation made by ICES, claiming that changes in the distribution and migration pattern of the mackerel are evident and prove that the mackerel has moved more to the north-western areas.[45]

In total the catch of mackerel in NEA in 2010 was estimated to be 930.002 tonnes by ICES. This means that the estimated catch in 2010 was about 40 percent higher than the TAC recommendation by ICES. So we can assume that there has occurred an overfishing by approximately 40 percent in NEA. As a consequence of the total overfishing and the lack of a sharing agreement between the coastal states, there has been a lot of debate about the subject amongst the coastal states, both in the media and by government statements.

At the end of July 2010 the Ministry of Fisheries and Coastal Affairs in Norway set a ban against Faroese and Icelandic vessels landing mackerel in Norwegian ports, but made an exception for Faroese vessels to land the 2.000 ton of mackerel that they could catch in the Norwegian EEZ.[46]

Subsequently the Norwegian Minister of Fisheries and Coastal Affairs claimed in a letter to the Faroese Minister of Fisheries, that the Norwegians where in their full rights to do so. The Norwegian Minister justified the ban on landings by claiming that the ban is a consequence of the provision in the Norwegian IUU-regulation.[47] The Ministry of Fisheries in Faroe Islands responded to the action by sending a *note verbale*[48] to the Norwegian minister, where the

[44] ICES Advice 2010, Book 9.
[45] Annex I – Press Release from the Faroese Ministry of Fisheries about the mackerel. August 2010.
[46] Annex VI – Norwegian ban on landings of mackerel against Faroese and Icelandic vessels. July 2010.
[47] Annex VII – Response from Westberg to Vestergaard. August 2010.
[48] Annex VIII – Note Verbale. August 2010.

Faroese minister underlined 4 main reasons why the coastal states did not reach an agreement for 2010 and emphasized that all of the coastal states where a part of the reason.

In September the European Commissioner for Maritime Affairs and Fisheries publicly stated that the initiatives made by Iceland and Faroe Islands were "*…nothing short of unacceptable*" and that "*These actions also defy all the hard efforts of our own industry to protect this stock.*" [49] In response the Icelandic authorities did not hesitate to reject the allegations and threats by the EU regarding mackerel fisheries by stating, that Iceland has been working in good faith towards a solution on the sharing of the mackerel and that Iceland had the full right to set the TAC at the given level.[50] The Faroese authorities responded with an information memorandum, explaining how the Faroese TAC is based on reliable scientific marine research by Faroese, Norwegian and Icelandic institutes in the past few years. The Faroese authorities also stated in the information memorandum that Faroe Islands is economically overwhelmingly dependent on fisheries. Thereby the management of the mackerel fisheries is considered with the utmost seriousness, and the Faroese authorities are committed to finding a more balanced and transparent new management arrangement of the mackerel in NEA with the other coastal states.[51]

2.7 The sharing of mackerel quotas for 2011

The excitement was high amongst the media and the affected parties of the mackerel conflict, when the negotiations on the sharing of mackerel quotas for 2011 began in autumn 2010. The circumstances for these negotiations were very similar to the negotiations on the sharing of mackerel quotas for 2010, except for the fact that Norway and EU already had an ongoing ten-year agreement. After many rounds of negotiations the parties failed to reach an agreement ultimately resulting in a similar situation as in 2010.

[49] Annex IX – Speech from the European Commissioner of Maritime Affairs and Fisheries. September 2010.
[50] Annex X – Response from Iceland to the European Commissioner. October 2010.
[51] Annex XI – Information Memorandum from Faroe Islands. October 2010.

In October 2010 ICES advised the TAC for 2011 to be somewhere between 592.000 and 646.000 tonnes. In December 2010 EU and Norway set their quotas at 583.882 tonnes.[52] A few days later Iceland set its quota at 146.818 tonnes.[53] Thus the advised TAC was already exceeded before Faroe Islands had set its quota. In March 2011 Faroe Islands set its quota at 150.000 tonnes.[54] The TAC of mackerel set was thereby 881.000 tonnes, more than fifty percent above ICES' advice.

To sum it up the mackerel fisheries started again in late spring of 2011 and the Norwegian ban on landings against Iceland and Faroe Islands still applies. The European Commission is working on the frameworks of how to take actions against Iceland and Faroe Islands by sanctions or restrictions.

[52] Annex XII – Bilateral Agreement on the Management of mackerel between the European Union and Norway. December 2010.
[53] Annex XIII – Press Release: Iceland's mackerel quotas for 2011. December 2010.
[54] Annex XIV – Press Release: Faroese Mackerel Fisheries in 2011.

Chapter 3 - Legal Section

3.1 Faroe Islands and the Kingdom of Denmark

The legal relationship between Faroe Islands and Denmark is quite complex. Before World War II Faroe Islands had legal status as a county within Denmark, but still with a parliament and the authority to determine certain local issues. During World War II Faroe Islands was occupied by the United Kingdom and the existing laws of governance were replaced with a temporary governance settlement. After the war the relationship between Faroe Islands and Denmark became a subject of debate. A growing nationalism amongst the Faroese population had resulted in a movement that wanted independence from the Kingdom of Denmark.

In 1946 a referendum was held where the population of Faroe Islands could choose between independence from Denmark or reforming the governmental law. The referendum was very close and resulted in a narrow 1.5 percent majority for independence, a result subsequently backed up by the majority of the Faroese parliament. However, right after the Faroese parliament had recognised the result, the Danish government claimed that the vote had been illegal and finally the result was denounced by King Christian X of Denmark, who subsequently dissolved the Faroese parliament. In the following two years the Government of Denmark and the Home Government in Faroe Islands reached an agreement for a permanent *Home Rule Act*[55].[56] [57]

In the Home Rule Act the areas of practice are divided in two lists, list A and B, cf. § 2 - 3. Under the A list are the special Faroese areas of practice and most of those areas are now regulated by Faroese laws. The areas of practice under the B list are areas where further negotiation with the Danish government is necessary before the current laws can be replaced by Faroese laws and sovereign Faroese administration.

[55] Act No. 137 of 23/03/1948. *"The Home Rule Act" is the constitutional act which gives the Faroese people partial sovereignty regarding Faroese affairs.*
[56] Karnov, 2010.
[57] Spiermann, 2007.

3.1.1 The authority of the Home Rule Act

There are different interpretations of which constitutional rights and what authority the Home Rule Act gives to Faroe Islands. The High Court Attorney in 1950, Edvard Mitens, interpreted the Faroese rights not as a sovereign state, but as a country with partial sovereign state qualities. He also expressed the idea that the Home Rule Act gave authority to Faroe Islands to act as a partial state within the *federal* state. Contrary to this interpretation the professor in political science, Poul Meyer, argues that the Home Rule Act is subject to the *Danish Constitution*[58]. With this interpretation the Faroe Islands is more like an autonomous territory within the Kingdom of Denmark. In any event, the Home Rule Act is inconsistent with the Danish Constitution, but still constitutionally valid. The schemes are inconsistent to s. 3, first sentence, of the Danish Constitution, where the legislative authority is assigned to the king and parliament conjointly.[59] [60]

These two main interpretations of the constitutional authority of the Home Rule Act indicate that there have been varying interpretations ever since the act was approved 63 years ago. Given the fact that justice is relative it cannot be determined which interpretation is the right one, because legally they are both right. It is noteworthy that two so incompatible perceptions can be recognized for such a long time. To understand it fully it is necessary to address the many disputes over time between the Faroese independence movement and those within the Danish government who want the Faroes to stay as a part of the Kingdom.[61] [62]

3.1.2 The foreign policy authority of the Home Rule Act in Faroe Islands

Within the Home Rule Act the competence of Faroese officials when regarding foreign policy relations is stated in s. 5 in the Home Rule Act. It states that the Home Government is subject to the limitations of international treaties and other international rights and existing obligations, and that in matters concerning foreign relations of the State, the State Authorities

[58] Act No. 169 of 05/06/1953. *"Grundloven"* or *"The Constitution Act"*
[59] Spiermann, 2007.
[60] Petersen & Janussen, 1998.
[61] Harhoff, 1993.
[62] Petersen & Janussen, 1998.

decide.[63] The basis for s. 5 in the Home Rule Act is s. 19 in the Danish Constitution, which states that foreign policy is a sovereign Danish matter.

According to the Home Rule Act Commission, the basic meaning of s. 5 in the Home Rule Act is that the authority of the Danish Government to apply international agreements on behalf of the Kingdom of Denmark cannot be limited, cf. s. 19 in the Constitution. In other words the commission focused on the ability of the Home Government in Faroe Islands to commit the Kingdom to agreement with third parties. Given this thinking the commission assumed that as long as Faroe Islands represented an integrated and assimilated part of the Kingdom, decisions on behalf of the Kingdom could only be made by the Government. If this assumption changed so that Faroe Islands represented an autonomous territory of Denmark, the authority of the Home Government in Faroe Islands would change as well. These were the terms at the time when the Home Rule Act was agreed in 1948.[64] [65]

3.1.3 The foreign policy authority of Faroe Islands after the Home Rule Act was concluded

As it is mentioned the Faroese Home Government did not have any authority over foreign policy, except when regarding affairs with special Faroese interest, cf. s. 8, fourth sentence in the Home Rule Act. The actual situation though in the following years was that Faroese authorities had the intention to negotiate international agreements on their own behalf. To ensure a smooth cooperation in the foreign policy area, the Government gradually involved the Home Government more in foreign policy negotiations when it has regarded Faroese affairs, but it has in general been unclear precisely how the sharing of the authority is done. For example, Faroe Islands signed an international agreement on fish landings with West Germany in 1964. The agreement was signed by the Faroese Prime Minister and the Ministry of Fisheries in West Germany. Faroe Islands has also made a few international agreements with Iceland and Norway amongst others during the 1960s and after, where negotiations and

[63] Act No. 11 of 31/03/1948. The Home Rule Act.
[64] Harhoff, 1993.
[65] Spiermann, 2007.

the signing is done by the Faroese Prime Minister or other Faroese Ministers with or without Danish officials present. In 1967 Faroe Islands followed Denmark and entered the EFTA, but left it again in 1973 when Denmark entered into the EEC and became a part of the EEA. After this the Faroese EEZ was expanded to 200 nautical miles, which created an extended need for Faroese engagement in international collaboration.[66]

To sum it up, Faroese Home Government officials do act independently to some extent, which reveals the ambivalence relating to the sharing of foreign policy issues, despite the relative clear laws in the Home Rule Act and in the Constitution. The agreements made by the Faroe Islands have not had the characteristics of a government acting on behalf of a sovereign state, and for every international agreement made, the Government has been well informed about the details of the negotiations and agreements, without interfering at any time. It is clear, however, that every international agreement made by Faroe Islands has had a limited scope and has been made with culturally and geographically similar countries.

As we can see, the Home Rule Act gives the Faroese Home Government limited authority on foreign policy, except when it relates to issues with special Faroese interest. Otherwise Danish officials have to be present to approve the negotiations or agreements.[67] [68]

3.1.4 The Act on Conclusion of Agreements under International Law

Ever since the Home Rule Act was enforced there have been disagreements on what authority Faroe Islands has when regarding international treaties. From the sixties and onwards there are examples where the Faroese Home Government has made agreements with other states. After many decades of uncertainty around the subject of the Faroese right to international negotiation, an Act was agreed between the Home Government of the Faroes and the Government of Denmark in 2005.[69] The main issue of the Act is what authority the Home

[66] Spiermann, 2007.
[67] Harhoff, 1993.
[68] Olafsson, 1996.
[69] Act on Conclusion of Agreements under International Law. In Faroe Islands it is the Act No. 80 of 14/05/05 and in Denmark it is the Act No. 579 of 26/06/05.

Government of the Faroes shall have regarding international treaties and agreements. The main issue is the same as it was when the Home Rule Act was adopted, and the main issue at that time was which legislative authority the Home Rule Act should give to the Faroese Home Government.[70]

The outcome was that the Government of the Faroes can only conclude international treaties on behalf of the *Kingdom of Denmark in respect of the Faroes*, and in such cases in cooperation with the Government of Denmark. On the other hand, the Home Government of the Faroes can of their own accord enter into negotiations with foreign states and international organisations in all areas of exclusive competence and it can now be done without requesting a negotiating mandate from a Danish minister of foreign affairs, cf. s. 1, subsection 1 in the Act on Conclusion of Agreements. By exclusive competence it is understood that Faroe Islands can make governmental agreements and administrative agreements with other governments and administrations, such as ministries. If the Government of the Faroes makes a governmental agreement, the agreement shall be signed as *Government of the Faroes*, and if the Ministry of Fisheries in the Faroes makes an administrative agreement it shall be signed as *Minister for Fisheries of the Government of the Faroes*.[71]

This remedy does not render the s. 8, subsection 4 in the Home Rule Act meaningless, but the clause still applies in areas which are not under the jurisdiction of the Faroese Authorities. If the coastal states conclude an agreement on mackerel quotas between the coastal states, it is not a state law agreement that is being concluded, but an administrative agreement between the ministries of fisheries in the respective coastal states. So in relation to international negotiations on mackerel quotas, the Ministry of Fisheries in Faroe Islands has the authority over fisheries and international negotiations of mackerel quotas with the ministries of the other respective coastal states, cf. s. 1, subsection 1 in the Act on Conclusion of Agreements.

[70] Spiermann, 2007.
[71] Annex XV – Circular to art. 2, s. 2 in the Act of Conclusion of Agreements under International Law.

3.1.5 The authority of Faroe Islands in international negotiations

To sum it up, Faroe Islands is a self-governing nation within the Danish State, cf. s. 1 in the Home Rule Act. The legislative authority in Faroe Islands is the Faroese Home Government and the fishing rights to fish stocks in the Faroese EEZ lies with the Faroese people, cf. art. 56, s. 1 UNCLOS. When regarding straddling fish stocks migrating between various EEZs, the main regulation is found in art. 63 UNCLOS.

The Faroese Home Government has the authority to enter into negotiations on the sharing of mackerel quotas with the coastal states. This is because the agreements on the sharing of mackerel quotas between the coastal states are administrative agreements between ministries which relate entirely to matters under the jurisdiction of the Authorities of the Faroes, cf. s. 1, subsection 1 in the Act on Conclusion of Agreements.

Faroe Islands is not subject to the duty of loyalty to EU, since they chose to remain outside of the EEC when Denmark entered the EEC in 1973. Thus, the Faroes is neither in the EEA nor covered by the EU treaties, cf. art. 355, s. 5 in the Lisbon treaty.[72]

3.2 The international relationships with Iceland and Norway

Both Iceland and Norway are sovereign states with independent negotiability authority. Neither of the countries are members of EU, but they are both members of the European Free Trade Association, EFTA. Some of the EFTA member states, therein Norway and Iceland are part of the European Economic Area, EEA, which includes every member of EU. The EEA unites the 27 EU member states and three of the EFTA member states in a single market, also called the *internal market*. Every new member of EU shall apply to become a party to the EEA according to the EEA Agreement art. 128.[73] The membership of the EEA Agreement includes the four freedoms, the free movement of goods, services, persons and capital.[74]

[72] The Lisbon Treaty is latter renamed to Treaty on the Functioning of the European Union.
[73] Agreement on the European Economic Area – Final Act – Joint Declarations – Declarations by the Governments of the Member States of the Community and the EFTA States. OJ L 1, 3.1.1994, p. 3 – 36.
[74] European Free Trade Associations homepage, June 2011. www.efta.int

Regarding the negotiations on mackerel quotas in NEA, the membership of Iceland and Norway in EFTA is basically irrelevant, but it plays a minor role with respect to the Norwegian actions against Faroese and Icelandic fishing vessels, when the Norwegian Minister of Fisheries declared a ban on landings of mackerel from Faroese and Icelandic vessels in Norwegian ports. See discussion of the possible effects on Faroe Islands, given the fact that it is not a member of the EEA later in the Legal Section.[75]

3.3 The European Union – The Common Fisheries Policy

In the European Union the *Common Fisheries Policy*, CFP,[76] has been the fisheries management policy since 1983. In the drafting and making of the CFP during the seventies, focus was put on the importance of *equal access* between the member states as a consequence of requirements in the Treaty of Rome[77] of equal access. The CFP has four main policy areas, a) conservation and limitation of the environmental impact of fisheries, b) structures and fleet management, c) common organisation of the market and d) relations with third countries.[78]

The CFP was agreed in 1983 and the principle of *relative stability* became the cornerstone in the conservation policy and EU fisheries management. The CFP was last reformed in 2002. Within this policy a TAC system has been built up in such a way that approximately the same percentage of TAC was allocated to the member states every year. This TAC system should remain constant over time. However the actual situation is that very complex practices such as quota swaps between member states and the addition of fishing effort management targets has blurred the picture during the past 25 years or so, leaving a considerable discrepancy between the allocated quotas and the actual need and size of the fleet of the member states. It is fair to say that relative stability no longer guarantees that fishing rights remain with their fishing communities. The principle also reduces the flexibility to manage the CFP in at least three different ways. Firstly, the fishing sector has reduced flexibility to make efficient use of its

[75] Annex VI – Norwegian ban on landings of mackerel against Faroese and Icelandic vessels. July 2010.
[76] For a full description of the CFP see http://ec.europa.eu/fisheries/cfp
[77] The Treaty of Rome of 25th March 1957.
[78] Raakjær, 2009.

resources. Secondly, it is the key reason for the focus on increasing TACs at the expense of other longer-term considerations. Thirdly, it contributes to discards, because it puts pressure on the national fleets to exhaust their quotas which consequently will lead to discards of species that they are not allowed to catch.[79]

It seems like no one is disagreeing that the present CFP must be reformed. Given the circumstance that 88 percent of the fish stocks are being overexploited, the fishing industry in general has neglected efforts on conserving fish stocks at its own peril. Ultimately it can be stated that the CFP does not meet its objectives and needs a reform which is planned to be effective from 2013.[80]

The Commission has set a few priorities for the reform with wishes to see a new prosperity for the fisheries sector by returning to the exploitation of healthy and abundant stocks. To reach this goal the new policy must for example put an end to the overcapacity of the fleet and the CFP's main objective must be refocused to maintain healthy, sustainable and abundant stocks. The most apparent reform will without doubt be the decentralization of the fisheries governance. The centralised control by the Council of Fisheries Ministers, which adopts all decisions, will be replaced by a more regionalised implementation of principles.[81]

It seems like EU with the reform of the CFP and with regard to its external fisheries policy tries to realize that compliance with UNCLOS and UNFSA are fundamental in preserving its fishing rights in areas of high seas. Compliance with UNCLOS and UNFSA has been urged by the European Commission.[82]

3.4 International negotiations and agreements for Faroe Islands

In general when Denmark is ratifying international conventions, it is acting on behalf of the whole Kingdom of Denmark. However the Faroese and the Danish interests in international

[79] COM (2009) 163 final.
[80] Raakjær, 2009.
[81] COM (2009) 163 final.
[82] Louka, 2006.

affairs are not always mutual, consequently giving the Faroese authorities the opportunity to take an independent position. There are a number of current international treaties where Denmark is an obligating party and is also representing Faroe Islands, amongst others WTO[83] and NAFO[84]. On the other hand there are some examples where Faroe Islands has its own delegation as a part of the Danish delegation, such as in NEAFC[85] and in the Nordic Council[86]. In addition Faroe Islands also has an associated membership in the FAO[87]. In the following sections it will be explained which relevant international agreements Faroe Islands has with EU and Norway.[88]

3.4.1 Agreements between Faroe Islands, Denmark and the European Union

Following the third United Nations Conference on the Law of the Sea, the European Economic Community, now EU, adopted the establishment of EEZs within 200 native miles from the coasts of the coastal states in EEC. The resolution was agreed in November 1976 and subsequently the Council expressed that the fishing rights for EEC fishermen in the EEZs of third countries must be obtained and preserved by appropriate Community Agreements.

Following this a three party agreement was made between the EEC, the Government of Denmark and the Home Government of the Faroe Islands on 27 June 1980.[89] This agreement is one of two bilateral agreements between EU and Faroe Islands that governs the relationship between them. The agreement establishes protocols for future agreements such as setting TACs in accordance with the best scientific material available, cf. art. 2. The parties also undertake a duty to cooperate towards an appropriate regulation and conservation of marine resources, especially fish stocks that migrate through multiple EEZ, cf. art. 6. This agreement

[83] World Trade Organization. www.wto.org
[84] Northwest Atlantic Fisheries Organization. www.nafo.int
[85] North East Atlantic Fisheries Commission. www.neafc.org
[86] Nordic Council. www.norden.org
[87] Food and Agriculture Organisation. www.fao.org
[88] Spiermann, 2007.
[89] Annex XVI – Agreement on fisheries between the European Economic Community and Faroe Islands. June 1980.

has had the function of being a protocol agreement for future agreements on fisheries between EU and Faroe Islands.

Even after the agreement between EEC, Denmark and Faroe Islands from 1980, an understanding was made in Brussels in 1986 between a Commission delegation and a Danish delegation in respect of Faroe Islands and Greenland on *International Fisheries Relations*.[90] This understanding stated that the two delegations agree to consult closely in the future with the objective of further cooperation and reaching a common point of view wherever possible. It was also agreed that the delegations shall support each other in pursuit of their specific interests and that both delegations shall avoid taking positions which could jeopardize the other Party's possibilities for pursuing its interests. This understanding is, without need for further interpretation, a clear statement from both delegations to dedicate themselves to active cooperation and to support each other in pursuing their interests, even where the opposite interests do not allow establishing a common viewpoint.

The other bilateral agreement that governs the relationship between EU and Faroe Islands is the free trade agreement from 1991, which was last revised in 1998.[91] The main aim of this agreement is to promote reciprocal harmonious development of economic relations between EU and Faroe Islands by up-holding a free and fair trade within the area of the two contracting parties. In addition, both parties commit themselves not to apply new restrictions against each other, cf. art. 13 and the parties affirm their commitment to grant each other the most-favoured-nation treatment in accordance with GATT 1994, cf. art. 19.

3.4.2 Free trade agreement between Faroe Islands and Norway

During 1992 a free trade agreement was made between the Government of Norway on the one hand and the Government of Denmark and the Home Government of the Faroe Islands on the other.[92] This agreement is based on the fact that Faroe Islands earlier was a part of the EEA

[90] Annex XVII – Understanding between a Commission delegation and a Danish delegation in respect of Faroe Islands and Greenland. Brussels, 4 December 1986.
[91] Annex XVIII – Free Trade Agreement the European Community and Faroe Islands. February 1997.
[92] Annex XIX – Free Trade Agreement between the Faroe Islands and Norway. September 1992.

through Denmark's membership in EFTA. When Denmark entered into the EEC in 1973, Faroe Islands left the EEA as a consequence of not joining EEC or EFTA. Standing outside the EEA, there was a desire for the Faroes and Norway to make a free trade agreement to consolidate and extend the economic relations between the two countries. The main objective of the agreement is to uphold a free and fair trading relationship.

In the agreement it is stated that no new quantitative restrictions on imports and exports or measures having equivalent effect shall be introduced in trade between Norway and Faroe Islands, cf. art. 5. However, there is an exception to this rule by the existence of a similar restriction on domestic production or consumption, cf. art. 11. No provisions in this agreement may be interpreted in a way so the two Contracting Parties are exempted from their obligations under other international agreements. All in all the agreement makes the framework of a free trading area between Norway and Faroe Islands.[93]

3.5 United Nations Convention on the Law of the Sea

After World War II the oceans were being exploited as never seen before with larger and more effective fishing vessels, and nations all over the world began to claim rights to the natural resources close to their own coasts. In 1967, the Maltese Ambassador in the United Nations, Arvid Pardo, spoke in the General Assembly in the UN where he asked the nations of the world to cooperate towards a solution to the many conflicts that had arisen because of the rights to the resources in the oceans. The speech was a wake-up call for the nations and six years later, in 1973, the Third United Nations Conference on the Law of the Sea was held with the objective to write a comprehensive treaty for the oceans. The UNCLOS was finally adopted in its full form in 1982. All of the coastal states in NEA are members of the UNCLOS.[94]

The EEZs are mentioned in Part V of the Convention and the EEZs is one of the most notable features of the Convention. The claim of a 200 nautical mile offshore sovereignty was first

[93] Annex XIX – Free Trade Agreement between the Faroe Islands and Norway. September 1992.
[94] History of the UNCLOS. UN homepage: www.un.org

made by Peru, Chile and Ecuador in the late 1940s, and was soon recognised by the neighbouring countries. The breadth of the EEZ is also set to 200 nautical miles in the UNCLOS, cf. art. 57, and the coastal state with the EEZs has sovereign rights to explore and exploit, conserve and manage the natural resources within its EEZ, cf. art. 56.

A straddling fish stock is a stock that migrates between two or several EEZs. The mackerel in NEA is a straddling fish stock that migrates in the EEZs of Iceland, Faroe Islands, Norway and the European Union, and also in the international waters to the north and to the west. It is stated in art. 63, subsection 1, that the coastal states whose EEZ contains straddling fish stocks "*...shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part*." In other words the coastal states in the NEA are assigned to the management of the marine resources by the Convention.[95]

3.5.1 United Nations Fish Stocks Agreement

The management of straddling fish stocks has been a difficult area to agree upon for various coastal states and distant water fishing states. Consequently an agreement, UNFSA[96], was adopted in 1995 to give more instruments and methods to coastal states to deal with this problem. Basically the agreement only applies to straddling stocks in international waters outside of the EEZs, cf. art. 3, s. 1. Art. 7 of the agreement involves the issue of conservation and management of straddling fish stocks that migrate through high seas and the EEZs of coastal states, and the rules are clear about the measures taken in areas under national jurisdiction shall be compatible with the rules regarding measures taken in high seas. Nothing in UNFSA shall prejudice the rights, jurisdiction and duties under UNCLOS, cf. art. 4, and there are general principles about which measures the coastal states shall apply in order to

[95] Louka, 2006.
[96] Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10th of December 1982 Relating the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 4th of December, 1995.

conserve and manage straddling fish stocks, cf. art. 5. The coastal states *shall seek to agree upon the measures necessary*, cf. art. 7, s. 1 and the states are obliged to ensure that fish stocks will not be overfished and harmed as a whole, cf. art. 7, s. 2. In other words the UNFSA has effectively mandated the management of straddling fish stocks to be carried out through Regional Fisheries Management Organizations, RFMOs, such as NEAFC and NAFO. The RFMOs only apply to fisheries in international waters. It is acknowledged in the UNFSA that all states with a real interest in fisheries of a particular straddling fish stock, which is relevant for the state, may become a member of relevant RFMOs or enter into other arrangements that may be arranged by the present coastal states or distant water fishing nations, cf. art. 8, s. 3.[97] [98]

3.5.2 International courts

There are a number of international courts, but when it comes to disputes related to the UNCLOS, it is Part XV and Annex VI of the UNCLOS that regulates how two or more state parties can settle different kinds of disputes. The Convention provides four alternative means for the settlement of disputes, and a State party is free to choose one or more of these four means by a written declaration, cf. art. 287. The four means are the *International Tribunal for the Law of the Sea*, the *International Court of Justice*, an *arbitral tribunal* constituted in accordance with Annex VII in the Convention, and a *special arbitral tribunal* constituted in accordance with Annex VIII in the Convention.[99]

The International Court of Justice, ICJ, was established in 1945 and it includes a wide range of areas. It is limited to states only and is therefore not authorised to settle disputes involving private parties or international organisations. Amongst the various other issues, the ICJ has also considered cases of maritime delimitation and interpretation of treaties.[100]

[97] Louka, 2006.
[98] Bailey, 2006.
[99] Louka, 2006.
[100] MacKenzie, 2010.

When regarding maritime issues, the ICJ is secondary to the International Tribunal for the Law of the Sea, ITLOS. Even though the ITLOS is established on the basis of UNCLOS from 1982, it only became operational in 1996. The ITLOS exercises compulsory jurisdiction for certain types of disputes, its jurisdiction extends beyond states and it is also authorised to include private parties and international organisations, such as NEAFC. All of the state parties of UNCLOS are obligated to settle disputes by peaceful means, cf. art. 279 UNCLOS and state parties may settle any dispute between them at any time by any peaceful means of their own choice, without involving the ITLOS, cf. art. 280. In general Part XV in UNCLOS only applies, when state parties fail to settle a dispute, cf. art. 281, and when a dispute arises between state parties the involved state parties are obliged to exchange views, cf. art. 283. The Tribunal decides cases before it in accordance with the substansive provisions of UNCLOS and in accordance with other international laws that are not incompatible with the UNCLOS. If needed, the parties can agree that the Tribunal can decide a case *ex aequo et bono*, which means that a case can be decided according to what the Tribunal finds to be *according to the right and good* or *from equity and conscience*, cf. art. 293. Decisions made by the Tribunal are binding and final, and shall be complied with by all state parties to the dispute, cf. art. 296. There is no appellate structure to the ITLOS.[101] [102]

The Tribunal is governed by its statute, which is found in Annex VI to the UNCLOS. The statute explains the structure of the Tribunal and so on. The Tribunal is a composed body of 21 independent members who are "…*elected from amongst person enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea…*", cf. art. 2, section 1 in the statute. The jurisdiction of the Tribunal, *ratione personae*, gives authority to both state parties and private parties, which may be involved in a dispute, to raise cases before the Tribunal, cf. art. 20. A quorum of 11 elected members is required to constitute the Tribunal, cf. art. 13, but special chambers can be formed, composed

[101] MacKenzie, 2010.
[102] Merrills, 2005.

of three or more elected members, cf. art. 15. As it is mentioned above, all decisions made by the Tribunal are binding and final, cf. art. 33, cf. art. 296 UNCLOS.

3.6 The World Trade Organization

Because of the rapidly growing international trade after World War II, there was a need for a set of international standards for tariffs and trade. In 1947 an agreement was made between 27 state parties called the General Agreement on Tariffs and Trade, GATT.[103] The World Trade Organization, WTO, is not an organ under the United Nations or any other organisation, but it is a global international organisation dealing with trading rules between nations and it is being upheld by WTO agreements, such as GATT. The main idea behind GATT was to make a set of rules based on the principles of non-discrimination and reciprocity between the state parties. The Agreement was replaced by the WTO in 1994, but the GATT is now a part of the legal apparatus of WTO.[104]

All of the coastal states became members of WTO in January 1995, but Faroe Islands does not hold a full membership. Neither does it have separate membership or observer status in WTO. However, it is apparently covered by the WTO legal framework, because of the fact that it constitutes an autonomous territory within the Kingdom of Denmark. When Denmark joined the WTO, Denmark did not reserve any special territory reservations regarding Faroe Islands, so it seems as if it is not a member of WTO, but is covered by the WTO legal framework.[105] [106]

3.6.1 Settlements of disputes concerning the World Trade Organization

Together with the establishing agreement of the WTO a Dispute Settlement Understanding, DSU, came into force as Annex 2 to the agreement.[107] In the DSU, a Dispute Settlement Body, DSB, is established to administer the rules and procedures in the DSU, and an

[103] General Agreement on Tariffs and Trade was replaced by the World Trade Organization. www.wto.org
[104] World Trade Organization's home page. www.wto.org
[105] Vergano, 2011.
[106] Merrills, 2005.
[107] Annex XX – WTO Annex 2 – Dispute Settlement Understanding.

Appellate Body was established under the DSB. The Appellate Body's role is to hear appeals from panel cases. The Appellate Body consists of 7 members, whereof 3 members serve for each case. When the Appellate Body has made its report on the concerned case, it will be submitted to the DSB and unconditionally accepted by the parties to the dispute if not the DSB within thirty days decides by consensus not to adopt it, cf. art. 17, s. 14 DSU. If a panel or the Appellate Body concludes that a measure is inconsistent with the covered agreement, they shall recommend the member concerned to get the measure consistent with the covered agreement and they may suggest ways to do so, cf. art. 19. It is possible for members involved in a dispute to establish an expeditious arbitration within the WTO which is subject to the mutual agreements of the parties.[108]

3.7 The Food and Agriculture Organisation

In 1945 the Food and Agriculture Organisation, FAO, was established as a specialized agency under the United Nations. The FAO acts as a general actor, while the Committee on Fisheries, COFI, acts on behalf of fisheries. The purpose of COFI is to serve and help both developing and developed countries to modernize and improve fisheries practices and ensure good nutrition for all. The FAO acts as a neutral forum where all the member states can share knowledge and opinions. The FAO adopted the FAO Code of Conduct for Responsible Fisheries[109], CCRF, in 1995, almost at the same time when the UNFSA was agreed. In the CCRF it is required from the flag states to have an effective control over vessels fishing within their EEZ and flag states shall maintain records of vessels that carry their flag. All fishing vessels are required to have a Certificate of Registry before they are allowed to fish in high seas or in the EEZs of other states.[110] [111]

All of the coastal states in NEA are members of the FAO, but Faroe Islands has an associated membership. At the annual meeting in Rome in 2007, Faroe Islands applied for an associated

[108] Merrills, 2005.
[109] FAO Code of Conduct for Responsible Fisheries, adopted by the 28th session of the FAO Conference, 31. Oct, 1995. Available online at www.fao.org
[110] Louka, 2006.
[111] Food and Agriculture Organisations homepage. www.fao.org

membership and argued that as an associated member, it will aim to develop a more active collaboration through COFI with counterparts from all around the world.[112] As an associated member the Faroes does not have voting rights as the regular members do have, but they do have the right to speak and be heard in the FAO. The permission to be included as an associated member in the FAO is in accordance with the regulations in art. 2 of the FAO Constitution. The application to the FAO was sent by the Danish Foreign Minister on behalf of the Faroes, cf. art. 3, s. 4 in the Act on Conclusion of Agreements. The regulation states that if Denmark is a member of an international organisation, the Home Government of the Faroes can not apply for membership in that organisation on their own behalf. It has to be done, so Denmark hands in the application on behalf of the Faroes.[113]

3.7.1 Illegal, Unreported and Unregulated fisheries

According to the FAO only 40 percent of all fisheries in 2006 are still present scope for further development and the other 60 percent are either fully exploited or being overfished. Consequently this has led the FAO to publish an International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, IPOA – IUU, in 2002.[114] In November 2009 an agreement, IUU, was made on which port state measures shall be made by the member states.[115] The agreement is an instrument according to art. XIV of the FAO constitution[116], which states that a majority by at least two thirds of the membership of the Council of FAO may approve agreements concerning food and agriculture questions, such as illegal, unreported and unregulated fishing. By this agreement, the adoption and implementation of effective port state measures is being highlighted, to meet the purpose of this agreement, and thereby ensuring the long-term conservation and sustainable use of living

[112] Annex XXI – FAO Committee on Fisheries – 27th Session, Rome, 5 – 9 March 2007. Statement by the Faroe Islands.
[113] Annex XXII – Application for associated membership for Faroe Islands in the FAO. June 2007.
[114] Louka, 2006.
[115] Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. 22 November 2009.
[116] Annex XXIII – Art. XIV of the Constitution of the Food and Agriculture Organisation of the United Nations.

marine resources, cf. art. 2 IUU. The agreement sets guidelines for which measures the port states shall take when dealing with IUU fisheries.

There is nothing in IUU that shall prejudice the rights, jurisdiction and duties of parties under international law, cf. art. 4 and each party shall to the greatest extent possible integrate and coordinate at the national level, cf. art. 5. The parties are also obliged to cooperate and exchange information with other party states, cf. art. 6. A state party shall deny port entry to a vessel, if the party has sufficient proof that the vessel has engaged in IUU fishing or the vessel is included in the IUU list over vessels having engaged in IUU fishing, cf. art. 9. If a dispute comes between two parties the parties may seek consultation with other parties of the IUU agreement, but if the consultations do not result in a settlement of the dispute, the parties shall seek to settle the dispute by any peaceful means possible, such as by negotiation, inquiry, mediation, conciliation, arbitration or judicial settlement. When a dispute is not settled by any of the means mentioned above, the parties shall seek a settlement by referring to the International Court of Justice, the International Tribunal of the Law of the Sea or to arbitration, cf. art. 22.

The main purpose of IUU is to make the consequences harder for illegal fisheries, for example by having open international registers where fishing vessels that have been caught fishing illegally will be registered. This method may have ruinous consequences for vessels and ship owners if they are caught involved in illegal fisheries.

3.8 Ten year agreement between Norway and the European Union

Following the lack of an agreement between the coastal states on the sharing of mackerel quotas for 2010, EU and Norway made a ten-year agreement in January 2010.[117] The objectives of the agreement is to manage the mackerel fish stock in NEA in a sustainable manner in accordance with the long-term management plan made by the coastal states in 2008, cf. art. 3, s. 1. The two parties agreed that all fisheries of mackerel shall be managed jointly, cf. art. 3, s. 2 and in the case where no agreement is reached by the coastal states, the

[117] Annex IV – Ten year Agreement between the European Union and Norway. January 2010.

two parties will endeavour to reach an agreement with as many coastal states as possible, cf. art. 3, s. 4. The parties of the agreement also agreed that there is a need to intensify the cooperation to maintain effective control of the fishery throughout the migratory range of the mackerel, cf. art. 7, s. 2.

The most obvious question regarding this agreement is whether or not it shall be understood as an alliance between the two coastal states when regarding negotiations on mackerel quotas in NEA. Ceteris paribus does art. 3, s. 2 in the agreement indicate that this is a kind of alliance between EU and Norway. The two parties agree that all fisheries of mackerel in NEA shall be managed jointly. In addition the parties have committed themselves to this joint management for ten years from 2010, and that is long-term planning when it comes to fisheries management.

Art. 3, s. 1 clearly states that the parties have committed themselves to manage the mackerel fish stock in accordance with the long-term management plan that was made in 2008. Still, EU and Norway were the first coastal states to set quotas for 2010 and 2011, and the TAC for 2010 was set to about 110 percent and in 2011 to about 90 percent of the TAC advised by ICES for all the coastal states in NEA. Nevertheless when the fact that whatever quota Iceland and Faroe Islands set they will cause the TAC to exceed the advice from ICES, you can say that the quotas set by EU and Norway does not indicate a commitment to manage the mackerel fish stock in a sustainable manner.

If the situation occurs that the annual coastal state agreement between all of the coastal states is not reached, EU and Norway will endeavour to reach an agreement with as many coastal states as possible, cf. art. 3, s. 4. Whether or not EU and Norway have tried to reach an agreement with the other coastal states, Faroe Islands and Iceland, is doubtful when it is taken into consideration, that the quotas set by EU and Norway for 2010 and 2011 do not leave much for Faroe Islands and Iceland to share, if the intention is to keep the total catch of mackerel below the TAC advice from ICES. In fact the quotas leave nothing for Faroe Islands and Iceland to share and that cannot be defined as an attempt to reach a fair and sustainable agreement.

3.9 Actions against Faroe Islands and Iceland

As it is mentioned earlier in this thesis, the disagreement on the mackerel issue has lead to tensions between the coastal states, perhaps with the exception of the relationship between EU and Norway. Consequently, in July 2010, this led to the Norwegian ban against Faroese and Icelandic vessels to land mackerel in Norwegian ports.[118] No other coastal state or non-coastal state has taken such significant actions yet, but many eyes have been focusing on whether or not EU will take significant action against Iceland or the Faroes in the time to come, since EU and Norway have a common position in the dispute.

In a speech by the European Commissioner in Maritime Affairs and Fisheries, it is expressed in strong terms that the actions by Iceland and Faroe Islands of setting their own quotas are *nothing short of unacceptable*.[119] The Commissioner also acknowledges that the migration pattern of the mackerel in the NEA has changed and has to be taken into account when the coastal states seek a long term sharing agreement. Nevertheless the Commissioner also clearly states that EU will not seek an agreement with the coastal states at any cost. This statement by the Commissioner is in line with the bilateral ten-year agreement between Norway and EU, where the parties agree to intensify the cooperation in order to maintain effective control of the mackerel throughout its migratory range, cf. art. 7, s. 2.[120]

3.9.1 The legality of the ban on landings of mackerel in Norwegian ports

The ban on landings of mackerel in Norwegian ports against Faroese and Icelandic vessels consequently made the Faroese Representation in Denmark send a verbal note to the Royal Norwegian Embassy with a reminder that this ban is a violation of both the free trade agreement between the countries and a violation of the regulations in GATT, and urged Norway to revoke these measures.[121]

[118] Annex VI – Norwegian ban on landings of mackerel against Faroese and Icelandic vessels. July 2010.
[119] Annex IX – Speech from the European Commissioner for Maritime Affairs and Fisheries. September 2010.
[120] Annex IV – Ten year Agreement between the European Union and Norway. January 2010.
[121] Annex VIII – Note Verbale. August 2010.

A ban on landings can be considered a quantitative restriction or measure with an equivalent effect and according to the free trade agreement between Norway and Faroe Islands such a measure is prohibited and should be abolished, cf. art. 5. The general exception in the free trade agreement is that the agreement shall not preclude prohibitions or restrictions on import, if they are made effective in conjunction with other restrictions on domestic production or consumption, and thereto shall such prohibitions or restrictions not constitute arbitrary discrimination of the other contracting state, cf. art. 11. Regarding the ban on landings against Faroe Islands and Iceland, the discussion of whether or not the ban is covered under the general exception relies on whether the ban also exists for domestic vessels. Since that is not the case in the given scenario, I can only conclude that the ban on landings is a violation of art. 5.[122]

In the Note Verbale the Faroese Representation argues that the ban on landings is inconsistent and is a violation of the regulations in GATT in WTO. The violated regulation in GATT is art. XI, s. 1[123] and the ban on landings is also inconsistent with art. V[124] and art. XIII, s. 1.[125] No kind of restrictions, such as measures against the exportation of a specific product from one contracting party to another contracting party shall be instituted or maintained by any contracting party, cf. art. XI, s. 1. No contracting parties to the GATT shall prevent another contracting party transit of goods through its territory and no distinction shall be made based on the flag of the vessels, cf. art. V, and no prohibitions or restrictions shall be applied by any contracting state unless a similar or harder prohibition or restriction is used on similar products from third countries, cf. art. XIII, s. 1.

The above-mentioned regulations do not apply if the contracting party that applies restrictions or measures can justify them as being covered by the general exceptions in art. XX.[126]Amongst the relevant exceptions is the issue of whether or not the measures are applied

[122] Annex XIX – Free Trade Agreement between Faroe Islands and Norway. September 1992.
[123] Annex XXIV – General Agreement on Tariffs and Trade, art. XI, s. 1.
[124] Annex XXV – General Agreement on Tariffs and Trade, art. V.
[125] Annex XXVI – General Agreement on Tariffs and Trade, art. XIII, s. 1.
[126] Annex XXVII – General Agreement on Tariffs and Trade, art. XX.

in order to protect animal life, such as the mackerel in NEA, cf. art. XX, s. b), but before Norway can argue that this measure is applied in order to protect animal life, they have to acknowledge that Faroe Islands and Iceland bear the main responsibility for the significant overfishing of mackerel in the NEA. Since a wide disagreement exists between both the coastal states and scientists about how and why the mackerel has changed its migration pattern, the burden cannot be placed on one or two independent coastal states alone that have their claims based on scientific data and facts.

Another exception that might be relevant is in art. XX, s. g), which is similar to art. 11 in the free trade agreement between Norway and Faroe Islands, and therefore this exception cannot be applied because Norway does not have similar measures on domestic production.

The exception in art. XX, s. g) is a general exception in order to maintain the conservation of exhaustible natural resources. For example in the *U.S. – Shrimp* case[127] the dispute was about the U.S. regulations on imposing an importation ban on shrimps harvested in a contradictive way compared to the U.S. regulations on how to capture shrimps and avoid affecting sea turtles. The dispute on whether or not the importation ban could be justified in the exception in art. XX, s. g) turned against the United States by the WTO Dispute Settlement panel, claiming that the U.S. regulations would pose a threat to the multilateral trading system. The Appellate Body upheld the decision by the panel, but made a more structured analysis of art. XX as it had done in the *Gasoline* case.[128]

In the Gasoline case the United States did not give the same individual baselines to domestic refiners and to foreign refiners and argued that it was because it would be too difficult for the United States' Environmental Protection Agency, EPA, to monitor and enforce such baselines. The outcome of the Gasoline case was that the WTO Dispute Settlement panel held that the U.S. regulations could not be justified by art. XX and the Appellate Body supported

[127] Report of the Appellate Body, United-States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, Oct. 12, 1998.
[128] Report of the Panel, United States-Standards for Reformulated and Conventional Gasoline, WT/DS2/R, Jan. 29, 1996.

the panel's decision and stated that the U.S. regulations were incompatible with the chapeau of art. XX.

In the U.S. Shrimp case the Appellate body repeated a two-tiered analysis of art. XX. First it examined whether or not the adopted measure fell within the ambit of art. XX, s. g), and then it examined whether or not the measure violated the chapeau of art. XX. There are two main requirements that must not be violated by the applied measure. The first requirement is that the measure must not be an *arbitrary or unjustifiable discrimination between countries where the same conditions prevail* and the second requirement is that it must not be *a disguised restriction on international trade*.[129]

Whether the Norwegian landing ban against Faroe Islands and Iceland can be justified by art. XX, s. g) is doubtful, but it remains to be tested by either Faroe Islands or Iceland at the WTO Dispute Settlement panel and subsequently maybe at the Appellate Body. From the discussion above we can say that the Norwegian ban on landings is not consistent with the two requirements in art. XX, s. g) as it was set up by the Appellate Body in the Gasoline case and the Shrimp case.

According to art. 5, s. a) and h) UNFSA port states can adopt measures to ensure long-term sustainability and to prevent or eliminate overfishing of straddling fish stocks. The port state might even set a ban against landings in accordance with international law and without discriminating in any form, if it can be established that the catch has been taken in a manner which undermines the effectiveness of regional conservation and management measures on the high seas, cf. art. 23 UNFSA. The catches of mackerel by Iceland and Faroe Islands were only made in the domestic EEZs, and since UNFSA refers to fisheries in international waters Norway cannot rely on UNFSA regulations.

In the ten-year agreement between Norway and EU both parties commit themselves to intensify the cooperation to maintain effective control of the mackerel fishery throughout its

[129] Louka, 2006.

migratory range, cf. art. 7, s. 2.[130] Throughout its migratory range is not defined precisely in the agreement, but it can be understood as regarding the whole North East Atlantic where the mackerel migrates. Given this interpretation we can say that the ten-year agreement supports the actions taken by Norway, but still the agreement is subject to current international laws.

In a letter[131] from the Norwegian Minister of Fisheries and Agriculture to the Faroese Minister of Fisheries the Norwegian ban on landings is justified by the provisions in the Norwegian IUU-regulation.[132] According to the provisions in this regulation the Norwegian authorities can apply a ban against landings from foreign vessels, if the foreign vessels have fished from shared fish stocks, on which there is no joint management agreement. Whether the Norwegian IUU-regulation is in violation of the regulations in UNCLOS or not is a matter of many disagreeing opinions, but it remains to be seen what an international court decides on this matter.

3.9.2 Possible ban on landings of mackerel in the European Union

In the aftermath of the Norwegian ban on landings, there has been tension around the issue of whether EU will issue a similar ban on landings of mackerel against Faroese and Icelandic vessels, or even issue a trading ban against Faroe Islands and Iceland, since EU and Norway have a common position in the dispute. Within the ten-year agreement between EU and Norway on the management of mackerel in NEA, the two contracting parties stated that there is a need to intensify the cooperation between EU and Norway in order to maintain effective control of the mackerel fishery throughout its migratory range, cf. art. 7, s. 2. Whether *maintain effective control* refers to control within the two contracting parties, such as intensifying the control against discards, or if it refers to control over all of the NEA, where a ban against landings is a possible measure, is not clarified in the agreement. But it is likely to

[130] Annex IV – Ten year Agreement between the European Union and Norway. January 2010.
[131] Annex VII – Response from Westberg to Vestergaard. August 2010.
[132] Regulation No. 802 of 6th August 1993 on ban against landings on fish from illegal, unreported or unregulated fisheries. Commenced by the Ministry of Fisheries and Agriculture with authority in law No. 19 the 17th June 1966, cf. Royal resolution No. 813 the 20th August 1993.

assume that a ban against landings is a possible action in the attempt to maintain effective control.

The mackerel fisheries represent about a third of the value of the whole Scottish fishing industry, and especially Scottish fishermen have called for EU to apply sanctions against Iceland and Faroe Islands. Sanctions against Iceland are possible according to art. 5 of protocol 9 in the EEA Agreement,[133] where it is stated that a contracting party may refuse landings of fish from a fish stock of common interest over the management of which there is serious disagreement. On the other hand, it is very limited how much mackerel Iceland lands in EU ports. In the past years Iceland has landed less than one percent of their total catch in EU, so a ban on landings against Iceland would be of more symbolic value than effective value.[134]

Faroe Islands, on the other hand land more significant amounts of mackerel in EU ports. Faroese vessels have landed between one and five percent of their total catch of mackerel in EU ports in the past few years. As it is mentioned earlier in this thesis, the Faroe Islands is neither a member of EU nor EFTA, and is therefore not covered by EU treaties, cf. art. 355, s. 5 in the Lisbon treaty. Thus, it appears that EU cannot apply measures or sanctions against the Faroes according to the same regulations in art. 5 of protocol 9 in the EEA Agreement.[135]

In addition, it is clearly stated in the free trade agreement between EU and Faroe Islands,[136] that no new restrictions shall be introduced, cf. art. 13. The parties also affirmed their commitment in the agreement to grant each other the most-favoured-nation treatment in accordance with GATT 1994, cf. art. 19. Thereby the Faroes' current international status being outside the EEA as well as the bilateral agreements between EU and Faroe Islands prevent EU from applying sanctions against Faroe Islands.

[133] The Agreement on the European Economic Area, Protocol 9 on trade in fish and other marine products.
[134] Vergano, 2011.
[135] Vergano, 2011.
[136] Annex XVIII – Free Trade Agreement between the European Community and Faroe Islands. February 1997.

3.9.3 Incentives to seek an agreement

It is mentioned earlier in this thesis that according to most of the relevant international laws the coastal states are obliged to seek agreement with other coastal states, especially in UNCLOS and UNFSA, which are the basic laws. In UNCLOS it is stated that the coastal states *shall seek…to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks…,* cf. art. 63, s. 1. Nevertheless, it is also clearly stated in UNFSA that the coastal states should seek to agree upon the measures necessary and the coastal states are obliged to ensure the sustainability of the fish stocks, cf. art. 7.

There is a widely recognised certificate on fish products from commercial fisheries attractive for most countries with a commercial fishing industry. The certificate is called the Marine Stewardship Council, MSC, and is provided by the independent, accredited inspection and certification body Food Certification International Ltd.[137] Holders of this MSC certificate can sell their fish products at a higher price than those without. The exact price advantage varies, but it is significant enough to make it very attractive and by and large it can play an important role. The MSC certification sets high demands to applying states, and the mackerel crisis in NEA is the reason that Faroe Islands does not have the MSC certification at the present, while Norway is on the brink of losing its certification because of the lack of an agreement on the management of mackerel quotas in NEA for 2010 and 2011.[138] Ceteris paribus this should be an incentive for all of the coastal states to seek an agreement instead of settling with unacceptable circumstances.

3.10 Possible actions by Faroe Islands

We have seen which action Norway has taken in this mackerel crisis and we have evaluated other possible actions, but what actions are possible and sensible for Faroe Islands to take? The Faroese rights are clear. Faroe Islands has sovereign rights to explore and exploit, conserve and manage the natural resources within the domestic EEZ, cf. art. 56, s. 1. It is

[137] Food Certification Internationals homepage, June 2011. www.foodcertint.com
[138] Annex XXVIII – Article in a Norwegian Fisheries News Portal, June 2011. www.fish.no

Faroe Islands that shall determine the allowable catch of mackerel within the Faroese EEZ, but with the obligation to ensure that the maintenance of the mackerel fish stock is not endangered by over-exploitation, cf. art. 61. This obligation to ensure the maintenance of the mackerel fish stock inclines the coastal states to a due diligence obligation towards the other coastal states.

By the general provision in UNCLOS all state parties are obliged to exercise the rights, jurisdiction and freedoms in the convention in good faith, cf. art. 300. Given this *bona fide* rule the Faroes shall seek an agreement with the other coastal states, cf. art. 63, s. 1. We can say that the coastal states have a kind of behavioural obligation or commitment to at least make a genuine attempt to resolve the dispute over the sharing of mackerel, thereby leading them to have meaningful negotiations with other coastal states with an open mind to contemplating modifications in comparison with the present situation. Does this mean that the coastal states are obliged to reach an agreement? Not necessarily, but the obligation lies in the genuine effort to seek a sustainable management agreement on the mackerel fisheries in compliance with the other coastal states. When Faroe Islands are setting the quotas within the Faroese EEZ they are still obliged, as well as the other coastal states, to have due regard to the rights of the other coastal states, cf. art. 56, s. 2.[139]

At the present, in the summer of 2011, it seems that all attempts are made by the coastal states to reach an agreement with the other states without a result. Additionally, Norway has taken measures against Faroe Islands, and EU is contemplating similar measures. This sets Faroe Islands in a situation where all possible measures against it must be evaluated in order to resist ending up in a situation where contradictory action is not possible.

As mentioned earlier trade bans and measures, such as ban on landings, are difficult to apply against Faroese mackerel fish products in accordance with the rules of WTO. Still, it would be difficult to prevent a coastal state from applying such measures, if they are justified as a sustainability measure taken in order to maintain the conservation and management of the

[139] Louka, 2006.

straddling mackerel fish stocks in the NEA. If the affected coastal state, in this case Faroe Islands, assumes that the measures cannot be justified, then the burden lies with Faroe Islands to prove that the measures are contrary to the WTO. In order to prove that the measures are contrary to the WTO, Faroe Islands can bring the dispute before the WTO Dispute Settlements panel to seek a clarification on whether the ban on landings of mackerel can be justified as a sustainability measure in accordance with art. XX, s. g) GATT, or if the ban violates this regulation.

Faroe Islands may also, as a coastal state, bring the dispute before the ICJ or the ITLOS with regard to having a clarification of whether the ban on landings of mackerel is a violation of art. 56, s. 1 UNCLOS. If seeking an international court to settle the dispute on the landing ban, Faroe Islands cannot bring a case before the ICJ or the ITLOS, since it is not a sovereign entity with regard to international law, but an autonomous territory within the Danish State, cf. s. 1 in the Home Rule Act. At a potential judicial proceedings Denmark in respect of Faroe Islands has to lead the case. Denmark has chosen the ICJ as their default international court and so has Norway, so if there was to be brought judicial proceedings against Norway it should be before the ICJ or an arbitral tribunal in accordance with art. 287 UNCLOS. If two states seek an international court to settle disputes regarding the law of the sea, but do not have the same default court, then the default procedures in Annex VII to the UNCLOS shall be followed, cf. art. 287.

In addition it is thinkable that Faroe Islands could support their claims by the regulations in art. 297, s. 3, ss. a), which states that settlements of disputes shall be in accordance with section 2 of the UNCLOS: "*…a coastal state shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations*." The claims by Faroe Islands could also be supported by the regulations in art. 300, also called the *bona fide*, where it is stated that the coastal states shall exercise

their rights, jurisdiction and freedoms in good faith and in a manner which does not constitute an abuse of rights.

The ITLOS policy seems yet to be restrictive and the court has been reluctant to allow intervention on the few occasions when tried upon by entities, but it is still relatively untried and the question remains whether or not ITLOS achieves its purpose.[140] [141]

[140] Merrills, 2005.
[141] Mackenzie, 2010.

Chapter 4 - Economic Section

4.1 How to find the optimal solution for Faroe Islands

The mackerel crisis in NEA originates from the disagreements regarding the sharing of the mackerel quotas between the coastal states. There have been made numerous attempts by the coastal states to solve this issue on the sharing of mackerel quotas, but the attempts have been unsuccessful in the past two years. There are many ways to solve such issues, but this thesis will rely mainly on basic microeconomic theory and game theory. Is the present share of quotas between the coastal states fair and has there been a fair share of the quotas in the past years? These are the basic underlying questions for the analysis in this section aimed at finding the optimal share of mackerel quotas for Faroe Islands.

Classic microeconomic theory and game theory are common tools used to explain and analyse problems such as the present one concerning the sharing of mackerel quotas. Game theory is particularly applicable to this study of the mackerel in NEA, since the coastal states get various payoffs depending on who they cooperate with. The strategic interaction, by the coastal states and the consequent payoffs for those states are essential in order to conclude how to achieve the optimal quota share.

The mackerel in NEA is a resource in a common pool because it migrates across the EEZs of various coastal states, that are unable to control the migration patterns. In general, shared fisheries resources can be divided into four main categories:

1. *Domestic shared stocks*, where the stock is fished within the EEZ of a coastal state.
2. *Transboundary resources*, where the stock is occurring in the EEZ of two coastal states or more.
3. *Straddling stocks*, where the stocks are occurring in the EEZ of at least one coastal state and in the high seas.

4. *Discrete high seas stocks*, where the stocks are only occurring in the high seas.[142]

According to the FAO the shared fisheries resources are only divided into three categories: Transboundary fish stocks, Straddling fish stocks and Discrete fish stocks. In this thesis we are dealing with straddling stocks, because the mackerel in NEA is occurring in the EEZ of Iceland, Faroe Islands, Norway, EU and in the high seas north of the Norwegian Sea.[143]

4.2 Is there a need for quotas?

Fisheries resources are theoretically defined as a common good. It has two main characteristics; one is that it is non-exclusive and the other is that it has rivalry consumption. By being non-exclusive no one is being excluded if someone exploits fisheries resources and by having rivalry consumption one's exploitation of the fisheries resources decreases the fish stocks so rivals have less quantity of fish resources to catch.[144]

To avoid overfishing on an international level, there have traditionally been used two methods to solve the rivalry of fish stocks. The first method has been to set a framework of joint game rules to avoid unwanted equilibriums. The second method has been to make an international agreement on the exclusive economic zones of 200 nautical miles and thereby making the fisheries resources exclusive in the way that the limitations set are to prevent free access to the exclusive economic zones.[145]

4.2.1 The tragedy of the commons

The main problem in this thesis is based on fishery quotas, but why do we have quotas on fisheries? The basic reason is because of *the tragedy of the commons*[146]. Hardin formulates the tragedy of the commons by using an example of a pasture that is open to all. Every herdsman is expected to keep as many cattle as possible on the commons and such an

[142] Bailey, 2009.
[143] Munro, 2007.
[144] Jensen, 1995.
[145] Jensen, 1995.
[146] Hardin, 1968.

arrangement may work for centuries because of tribal wars, poaching and disease keep the numbers of both animals and men below the carrying capacity of the land. However, everything changes on the day when social stability becomes reality. The inherent logic of the commons generates a tragedy.

The herdsmen are considered to be rational beings, who seek to maximize their gains. Every utility has one positive and one negative component. The positive component is a function of the utility received from an additional animal and it is nearly + 1, whilst the negative component is the function of overgrazing of the additional animal and it is only a fraction of – 1. Given the rational mind of the herdsman he will conclude from the component partial utilities, that the most sensible thing to do is to add another animal, and another, and another. At the end every rational herdsman has made this conclusion and therein lies the tragedy. In other words, freedom in a commons brings ruin to all. Hardin uses this as the basic example, but uses it on a number of other issues, such as fisheries and the philosophy of the *freedom of the seas*.[147] It is notable that Hardin wrote this article in 1968 and the conventions in UNCLOS were not agreed upon until during the seventies and finally in 1982. The UNCLOS seeks to solve the problematic that follow the philosophy of the freedom of the seas.

It is necessary to acknowledge that according to the FAO only 40 percent of all fisheries in 2006 are still in present scope for further development. The other 60 percent are either fully exploited or being overfished. These facts indicate that a tragedy of commons, when regarding fish stocks, is not an unrealistic threat.[148]

4.2.2 Governing the commons

There is a well known, but yet to be acknowledged and recognised alternative theory about the commons, which is the theory of *governing the commons.*[149] This theory clashes with the classical tragedy of commons theory on how to govern the commons. Ostrom received the

[147] Hardin, 1968.
[148] Louka, 2006.
[149] Ostrom, 1990.

Nobel Prize in Economic Science in 2009 for providing evidence on the rules and enforcement mechanisms that are governing the exploitation of common pools by associations of users.[150]

Based on numerous empirical studies Ostrom has concluded that common property is often surprisingly well managed. For example she refers to the management of the grasslands in the area where the borders of China, Russia and Mongolia meet. Traditionally this large area of grasslands has been managed by wandering nomads on a seasonal basis, resulting in the land being very productive. In the early years of the 20th century the regimes in Russia and China changed resulting in the central government to impose state-owned agricultural collectives, and most of them were permanent. This consequently led to a heavy degradation of the lands in both China and Russia, whilst Mongolia kept having productive lands because of their traditional upkeep of the lands. In the 1980s China made an attempt to reverse the degradation by dissolving the state-owned agricultural collectives and privatizing the rights to cultivate the grasslands. This led private households to gain the ownership of the lands and they cultivated the lands, but since they also were settled permanently instead of being pastorally wandering, the productivity of the grasslands degraded again as a result. This is a good example which shows that when managing a common good, both extremes of state-owned and private-owned had worse outcomes than the outcome of the traditional group-based governance.[151]

There are many other examples that Ostrom refers to, but what is important with this theory is that when rules are imposed from the outside or unilaterally dictated by powerful insiders, the rules have less legitimacy and are more likely to be violated. In addition, it works better when monitoring and enforcement is being conducted by insiders rather than outsiders. The principles in this theory stand in contrast to the classic common view where the state has the responsibility for monitoring and sanctioning.[152]

[150] The Prize in Economic Sciences 2009. Information for the public by the Royal Swedish Academy of Sciences.
[151] Ostrom, 1990.
[152] Ostrom, 1990.

One may imagine what it would be like if the quotas not were negotiated between the governments of the coastal states, but governed by large groups of interested mackerel catchers. There are of course many things that cannot be ignored, such as international laws and international agreements, but the current conditions are presumably not perfect and can make good use of adjustments, so we can assume that this theory of governing the commons will be more visible in the future.

4.2.3 International distribution of quotas

As it is mentioned above action has been taken to avoid a general international spread of overfishing by introducing the UNCLOS, but how should the rights to access to the common good of fisheries be distributed?

To maintain sustainable fish stocks in the oceans, there are several options according to Hardin. These options are all the reasonable possibilities and they are all objectionable. The rights could be sold as private property, so it would become a matter of property rights. They might also be kept as public property and the rights to enter them be allocated, but an allocation of the rights would cause issues on which allocation method would be the best. Allocation might be based on wealth by using an auction system. It might be based on merit as it is defined in some agreed-upon standards. It might be based on lottery, or it might be based on a first-come, first-served basis, where it is administered to long queues.[153]

Turning it into private property rights would create other issues, and maybe it does already, since it is very rare that a fish stock does not migrate through different areas or regions. Keeping the property rights public and then allocating the rights to them is the most common method, but a completely fair and optimal allocation of the rights to fish is a great challenge. The allocation of rights is problematic, but the most common way is either by using an auction system and letting the free market decide the entry costs, or it is by allocating them on the basis of merit.

[153] Hardin, 1968.

Since this subject is mainly relevant for domestic allocation of quotas for the respective coastal states, I will not go further into the subject of domestic allocation of rights to fisheries in this thesis, but solely focus on the international allocation of the rights to fisheries of straddling fish stocks. The main international framework for the management of straddling fish stocks is found in art. 63 UNCLOS and in UNFSA, as described earlier in this thesis, where the frames on how the rights shall be allocated are determined in order to maintain a sustainable exploitation of the straddling fish stocks.

4.3 The application of game theory in fisheries management

Game theory is a tool used to explain and analyse strategic problems. It especially predicts what rational players do when faced with conflicts of common interest. The game theoretic framework is well suited to problems regarding management of fisheries. John Nash expanded game theory to cover cooperative[154] and non-cooperative[155] solutions, for which he was awarded the Nobel Prize in Economic Science in 1994. Later it has become more common to include coalition theory in the management of fisheries when there are more than two players in the game.[156]

One of the first to analyze fisheries in a game-theoretic context was Gordon Munro in 1979. He argued that the increased jurisdiction, which is the EEZ, would lead to increased management of fisheries by the individual coastal states. Nevertheless he pointed out that the management of transboundary fish stocks requires a joint approach by the coastal states where the EEZs are being crossed.[157] The UNCLOS was agreed in 1982 and in art. 63 it is stated that coastal states are obliged to seek an agreement on coordinating and ensuring the conservation and development of straddling fish stocks. This allows for the idea that non-cooperation is the default option and it is often referred to as the Prisoner's Dilemma, where the players, the coastal states, are driven to adopt sub-optimal strategies. It can in some cases give a better

[154] Nash, 1953.
[155] Nash, 1951.
[156] Bailey, 2009.
[157] Munro, 1979.

payoff not to cooperate and in other cases the opposite, but the point is that the optimal payoff can be reached both by non-cooperation and by cooperation.[158]

4.3.1 Grand Coalition and Singletons

If we have a game with several players where there is no cooperation between any of the players, then every player is a singleton and will set their own payoff to the optimal, but it may consequently lead to a less than optimal payoff for the group. On the other hand, if we take the same game with several players, but with the difference that in this game everyone is cooperating, then we have a grand coalition where the payoff will be optimal with respect to the group, but for some players the payoff may be less than optimal.[159] Some economists argue that minor players get more than what their zonal attachment gives, because they have less interest in conserving the stock than major players. In this way it is easier for the bigger players to maintain a sustainable management of fisheries in cooperation with the smaller players.[160]

4.3.2 Coalitions and Free Riding

In between singletons and grand coalitions the players have the choice of free riding or to make coalitions. Coalitions are understood as everything between singletons and grand coalitions.[161] When regarding highly migratory straddling fish stocks, it is a challenge for every coastal state to cooperate with the other coastal states on the management and upkeep of sustainable fisheries. In 1995 UNFSA effectively mandated the management of straddling fish stocks to be carried out by RFMOs in order to tackle the most pressing fisheries management issue, which is the management of straddling fish stocks. The RFMOs still only operate in international waters and do not deal with fish stocks that are straddling between different

[158] Bailey, 2009.
[159] Kronbak & Lindroos, 2010.
[160] Hannesson, 2006.
[161] Kronbak & Lindroos, 2010.

EEZs. It was not until the mid of the 1990s when the literature about coalition games emerged.[162]

The coalition game computes the payoff of every potential coalition and then compares the payoffs with the payoff from the grand coalition. Ceteris paribus will the total payoff be optimal in the grand coalition, whilst the total payoff in any coalition will be less than optimal. For every single player, though, the payoff can be optimal in both the non-cooperative, the cooperative and in a coalition game. Traditionally there are three different methods used to assign sharing rules in fisheries and they are the Shapley value[163], the nucleolus[164] and the Nash bargaining solution[165]. The Shapley value weights players on their contributions by examining the potential change in the worth of the coalition by joining or leaving it. The nucleolus maximizes the benefits of the least satisfied coalition and minimizes the dissatisfaction of the most dissatisfied coalition. The Nash bargaining solution assumes that all the players in the coalition are equally important, because the grand coalition would not succeed without them. In this thesis the sharing rules will be based on the Nash bargaining solution, since we are dealing with trilateral and quadrilateral negotiations between the coastal states in NEA, where the coastal states are equally important.[166]

As it is mentioned in the section above the payoff for every player in a coalition is not necessarily a good payoff for that player. In these cases the player may stick to the possibility of becoming a singleton or to free-ride. Nevertheless the player will have incentives to free ride, because of the problems of a joint agreement. For example we can regard a joint agreement such as a grand coalition and if the value of the free riding does not exceed the value of the grand coalition, then it is possible to find an allocation of quotas that gives the players a greater incentive to join the grand coalition than to free ride.[167]

[162] Bailey, 2009.
[163] Shapley, 1953.
[164] Schmeidler, 1969.
[165] Nash, 1950.
[166] Bailey, 2009.
[167] Kronbak & Lindroos, 2010.

NEAFC was established with the purpose to maintain a preservation policy, but since it had no jurisdictional competence the classical free-rider problem arose, until the EEZs were introduced and the UNCLOS was agreed. None of the countries were willing to take the economic losses of a conservational policy and therefore it was not possible to reach agreements on conservation measures on fisheries.[168]

4.4 The sharing of the mackerel quotas in the North East Atlantic

It is shown earlier in this thesis that the straddling stocks of mackerel in NEA migrate amongst the EEZs of EU, Norway, Faroe Islands and Iceland. Consequently this thesis only includes the relevant coastal states, so the development of how the coastal states have shared the quotas in the years since 2000 will be analysed in the forthcoming sections. The period is split up in four periods. The first period includes the years from 2000 to 2006, the second period the years from 2007 to 2009, the third period includes the year 2010 and the fourth period is the year 2011. The quota shares and the catch shares will then be analysed and discussed continuously.

4.4.1 The years from 2000 to 2006

In the years from 2000 to 2006 there were three acknowledged coastal states, Norway, Faroe Islands and EU, even though Icelandic officials continuously sought acknowledgement from the other coastal states, see section *2.5 Iceland becomes a coastal state*. The three acknowledged coastal states had an ongoing proportional sharing agreement of the mackerel TACs in NEA from the year 2000 and all the way to 2009. The agreements did not apply to quotas in international waters, because the sharing of quotas in unregulated area is made by NEAFC. Below are tables with data from the quota shares and the catch shares in the regulated areas.

The sharing of mackerel quotas between the coastal states in the NEA from 2000 – 2006.

	European Union	Norway	Faroe Islands	Iceland*	Russia**	Total

[168] Jensen, 1995.

Mackerel	60%	35%	5%	0%	0%	100%

* Iceland was first recognized as a coastal state in 2009.
** Russia got mackerel quotas by trading other species with the coastal states. Russia also caught mackerel as a bycatch.

Table 1 - The sharing of mackerel quotas between the coastal states in the NEA from 2000 to 2006[169]

This ongoing sharing agreement of mackerel quotas was first agreed in the year 2000 and the agreement was renewed every year with the same sharing allocation. According to data on mackerel fisheries in NEA, the catch did not correspond with the quota shares. This can, for example, be because of quota trading between a coastal state and a distant water fishing nation, such as Russia, with an interest in catching mackerel in NEA.[170]

Catch of mackerel in NEA in thousand tonnes.

Year:	Total Catch EU	Total Catch NO	Total Catch FO	Total catch*
2000	406	174	21	601
2001	420	180	24	624
2002	441	184	20	645
2003	383	163	14	560
2004	374	157	13	544
2005	340	119	10	469
2006	276	121	12	409

Table 2 - Catch of mackerel in NEA in the years from 2000 to 2006.[171]

By using the data from Table 2 above, it is straightforward to calculate the total average share of the catch of mackerel in the North East Atlantic. The share of catch does not take into account that the coastal states may have traded some of their mackerel quotas with each other or with other DWFNs. The average share of catch is shown in percentages in Table 3 below.

Average share of the catch between EU, Norway and Faroe Islands in the years 2000 - 2006:

Coalition Structure	Avg Share EU	Avg Share NO	Avg Share FO	Total Share*
(EU, NO, FO)	68.62%	28.46%	2.91%	100.00%

*The total share is the total average share of the coastal states for the period 2000 – 2006.

Table 3 - Average share between EU, Norway and Faroe Islands for the years from 2000 to 2006.[172]

[169] Norden, 2010.
[170] ICES, 2010.
[171] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.

As it is mentioned earlier, Iceland was not recognised as a coastal state until 2009, but it is worth mentioning that Iceland began to catch significant amounts of mackerel in 2006. The Icelandic catch of mackerel in 2006 was approximately 4.000 tonnes which is about one percent of the TAC advice by ICES, and the whole catch was made in the Icelandic EEZ.[173]

Iceland is excluded from the tables in this section, because of their lack of activity and because 2006 was the first year with significant catches by Iceland. The acknowledged coastal states to mackerel in NEA, EU, Norway and Faroe Islands had an ongoing agreement in the years from 2000 to 2006. All the players were actively engaged in the management and sharing of the TAC of mackerel in NEA. With this ongoing agreement it is fair to say that this is a perfect scenario of a grand coalition in a cooperative game.[174] With the TAC being regulated every year according to the annual advice from ICES and the proportional sharing between the coastal states staying the same every year, it can be said that this has been a stable grand coalition.[175]

4.4.2 The years from 2007 to 2009

In the years from 2007 to 2009 the coastal states, EU, Norway and Faroe Islands annually prolonged the trilateral agreement between them with the same shares as they had in the years before. In addition to the catch of mackerel by the coastal states, Iceland had begun to catch more and more mackerel in the Icelandic EEZ, while continuously seeking acknowledgement as a coastal state by the EU, Norway and Faroe Islands.[176]

Catch of mackerel in NEA in thousand tonnes:

Year:	Total Catch EU	Total Catch NO	Total Catch FO	Total catch*	Total Catch IS	Total catch**
2007	341	132	13	486	37	523
2008	305	122	11	438	112	550
2009	272	121	14	407	116	523

[172] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.
[173] Ices, 2010.
[174] Nash, 1953.
[175] Kronbak, 2010.
[176] Annex V – Information Memorandum from the Icelandic Ministry of Fisheries and Agriculture. April 2009.

* Total catch by EU, Norway and Faroe Islands.

** Total catch by EU, Norway, Faroe Islands and Iceland.

Table 4 - Catch of mackerel in NEA in the years from 2007 to 2009.[177]

As we can see in Table 4, the catch share between EU, Norway and Faroe Islands was very stable during these years, even though EU began to add an over-quota of about nine percent in addition to the already existing quota. This over-quota was first set in 2007 in the southern component, which is the region west of France, Spain and Portugal.[178] Consequently Faroe Islands and Norway both set an over-quota in the northern component in 2009. The over-quota was set to about relatively the same as the one set by EU in the southern component.[179]

The individual sharing of the catch of mackerel between the coastal states is set up in Table 5. Notice that the share is not calculated from the overall total catch, but from the total catch by these three coastal states whereof reported discards are excluded.

Average share of the catch between EU, Norway and Faroe Islands in the years 2007 - 2009:

Coalition Structure	Avg share EU	Avg share NO	Avg share FO	Total share*
(EU, NO, FO)	68.88%	28.25%	2.88%	100.00%

*The total share is the total average share of the coastal states for the period 2007 – 2009

Table 5 - Average share between EU, Norway and Faroe Islands for the years 2007 to 2009.[180]

There is not much difference in the average share in the years 2000 to 2006 and the average share in the years 2007 to 2009. Thus, it is fair to say that the cooperating game between EU, Norway and Faroe Islands has been a stable coalition in the years from 2000 until 2009. Notice however that the average share of catch is not accurate with the quota shares, which gave EU 60 percent, Norway 35 percent and Faroe Islands 5 percent. The reason for this may for example be quotas traded with other distant water fishing nations, trading with side-payments and overfishing.

[177] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.
[178] ICES, 2008.
[179] Norden, 2010.
[180] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.

While the acknowledged coastal states reached a very similar agreement every year since 2000, the new, but not acknowledged coastal state, Iceland, had a steadily growing catch of mackerel in the EEZ of Iceland. The catch became so significant, that in the years 2008 and 2009 it was about 18 percent of the total catch of mackerel in the North East Atlantic.[181] Consequently the total catch of mackerel in NEA was significantly higher than the recommended TAC by ICES. The mackerel fish stocks became increasingly overfished during these years, and Iceland thereby substantiated their claims to be acknowledged as a coastal state, see the section *2.5 Iceland becomes a coastal state*. Ultimately Iceland was invited to join the negotiations in 2009 for the sharing of mackerel quotas for 2010. Below in Table 6 Iceland is included in the sharing of catch. Be aware that the total share excludes other distant water fishing nations and reported discards.

Average share between EU, Norway, Faroe Islands and Iceland for the years 2007 - 2009:

Coalition Structure	Avg share EU	Avg share NO	Avg share FO	Avg share IS	Total share*
(EU, NO, FO)(IS)	57.55%	23.52%	2.39%	16.54%	100.00%

*The total share is the total average share of the catches made by EU, NO, FO and IS.

Table 6 - Average share between EU, Norway, Faroe Islands and Iceland for the years from 2007 to 2009.[182]

If we analyse Table 6 - Average share between EU, Norway, Faroe Islands and Iceland for the years from 2007 to 2009., we can see that the entry of a new fishing nation or coastal state reduces the share of the existing coastal states. Relatively, the share of the coastal states are reduced equally, but numerically the greatest effect has been on the larger coastal states, such as EU, where the average share of the total catch was reduced from 68 percent to mere 58 percent, which is a significant reduction of shares. The least effect has been on the small coastal state, Faroe Islands, which had a reduction in the share of catch from about 2.8 percent to about 2.3 percent.

To sum it up we can say that in this period from 2007 to 2009 there has been a cooperating game between EU, Norway and Faroe Islands, whilst Iceland has been free riding alongside

[181] ICES, 2009.
[182] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.

the coastal states. As we can see from the tables above, the cooperation between the coastal states has been very stable and the shares between the coastal states have been very similar to the shares in the years from 2000 to 2006. The entry of Iceland into the mackerel fisheries does not in itself lead to overfishing of the mackerel fish stocks, but the catches made by Iceland in these years were significant and grew from a humble catch of about 4.000 tonnes in 2006 to a significant catch of 116.000 tonnes of mackerel in 2009. These circumstances and the absence of an agreement between the coastal states which includes Iceland resulted in an overfishing of the mackerel fish stock in this period.

This scenario cannot be defined as a coalition game since Iceland was not an acknowledged coastal state and therefore did not take part in the negotiations on the sharing of the mackerel quotas. Therefore this scenario can be defined as a grand coalition between all the players in the game, EU, Norway and Faroe Islands, whilst Iceland has been free riding.

4.4.3 The shares of mackerel quotas in the North East Atlantic in 2010

In the following years, 2010 and 2011, the conditions for reaching an agreement on mackerel quotas changed much. Iceland was now being invited to the negotiations on the mackerel quotas in NEA as a coastal state. As it is mentioned in section *2.6 The sharing of mackerel quotas for 2010*, Iceland had demands that were higher than what they had caught in the past few years, which had been about 18 percent of the total catch in NEA. Faroe Islands set a demand of about 15 percent of the TAC in NEA, which is about three times as high as what they had agreed to in the past ten years or so.

ICES advised that the TAC in NEA should be between 527.000 tonnes and 572.000 tonnes in 2010.[183] The precise amounts of catch of mackerel in 2010 are not yet published, but the quotas that were set are considered as the estimated catch and are put in Table 7.[184]

Estimated catch of mackerel in NEA in 2010 in thousand tonnes.

Year:	Quota	Quota	Quota	Quota	Others*	Total	ICES	EU, NO, FO, IS

[183] ICES, 2009.
[184] ICES, 2010.

	EU*	NO**	FO	IS	**	quotas	Advice	Total
2010	356	250	85	130	109	930	572	821

* Incl. inter-annual quota transfers.

** Incl. inter-annual quota transfers.

*** Russian quota, discards and expected over-catch.

Table 7 - Estimated catch of mackerel in NEA in 2010.[185]

As we can see in Table 7 - Estimated catch of mackerel in NEA in 2010., the estimated total catch of mackerel in 2010 is much higher than what ICES advised. The data in the table above is based on the estimated catch by ICES and the analysis in this section will be based on this data.

Within the EU and the Norwegian quotas are included inter-annual quota transfers and paybacks from 2009, and these quotas constitute about 58.000 tonnes of mackerel. These 58.000 tonnes correspond to 4.2 percent of the TAC advice by ICES. Within the *others* are included discards, the expected over-catch of about 7 to 10 percents and the Russian quota. The Russian quota is mainly going to be fished in the international waters north of Norway and Faroe Islands, which has been agreed through the annual negotiations in NEAFC. In Table 8 the quota shares are compared to the TAC advice by ICES for 2010.

Quota shares between EU, Norway, Faroe Islands and Iceland compared to the TAC advice by ICES for 2010.

Coalition Structure	Share EU	Share NO	Share FO	Share IS	Others*	Total Share
(EU, NO) (FO) (IS)	62.24%	43.71%	14.86%	22.73%	19.06%	162.59%

* Russian quota, discards and expected overcatch.

Table 8 - Quota shares between the coastal states for 2010 compared to the TAC advice by ICES.[186]

From the quota shares in Table 8 we can see that the mackerel fish stock was expected to suffer from significant overfishing of about 60 percent in 2010, even though the quotas that were set by the coastal states were only about 40 percent higher than the announced TAC. This expected overfishing of 60 percent is the main reason for the turbulence in the media and between the coastal state governments. Who is responsible for this overfishing?

[185] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.
[186] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.

The increased quota demands from Faroe Islands of about 10 percent and the demands from the new coastal state Iceland of about 23 percent constitute 33 percent in total. By adding the 19 percent from *others* it gives 52 percent in total, which leaves the quota shares of EU and Norway at 105 percent compared to the advice from ICES and that is not including the expected over-catch of about 7 percent. As we know from earlier in this thesis, EU and Norway made a ten-year agreement in January 2010 for the individual relative quota shares between these two coastal states.[187] In other words this agreement means that neither EU nor Norway can make an agreement with one of the other coastal states, unless both of the parties are included in the agreement. So EU and Norway are in a way negotiating together as if there is an alliance between these two coastal states. All in all, the outcome of the mackerel quota sharing negotiations was that only one international agreement was made and that was the ten-year agreement between EU and Norway.

Regarding the total quota shares for EU and Norway, they constitute about 5 percent more than the TAC advice by ICES, and even though we exclude the inter-annual quota transfers and notice that the expected over-catch of about 7 percent is not included, they still exceed the TAC advice by about 6 percent. This indicates that the willingness to reach an agreement with the other coastal states, Iceland and Faroe Islands, and the willingness to maintain a sustainable management of the mackerel fish stock in NEA, according to the management plan from 2008, has not been the least bit convincing. Even though an agreement would be made on paper between the three coastal states except Iceland, with the same shares as for the past ten years, it would in reality result in a significant over-catch of the mackerel fish stock.

As an outside observer, it is notable how unlikely it is that an agreement could be reached with the high demands from all of the coastal states. Even though Iceland was finally invited to join the negotiations, it is hard to see willingness from the other coastal states to give Iceland a significant share. The individual quota shares for every coastal state, if we calculate from a pool of the total quotas set for the four coastal states, are shown in Table 9.

[187] Annex IV – Ten year Agreement between the European Union and Norway. January 2010.

Quota share between EU, Norway, Faroe Islands and Iceland for 2010.

Coalition Structure	Share EU	Share NO	Share FO	Share IS	Total Share*
(EU, NO) (FO) (IS)	43.36%	30.45%	10.35%	15.83%	100.00%

* The total of the four coastal states.

Table 9 - Quota shares between EU, Norway, Faroe Islands and Iceland for 2010.[188]

To sum up we can say that in a game theoretical sense, the game for 2010 has been played out in a way where the four coastal states were all non-cooperating with each other in the beginning, until EU and Norway made a ten-year agreement. Because of this agreement we may call this a coalition game, where EU and Norway were cooperating, while Faroe Islands and Iceland were acting as singletons.

The result of the coalition game was an expected over-catch of about 60 percent, instead of according to the ICES advice from October 2010, decreasing the total catch with about 30 percent in accordance with the management plan from 2008.[189]

4.4.4 The shares of mackerel quotas in the North East Atlantic in 2011

In 2011 the situation around the management of mackerel quotas was similar to the situation in 2010. The coastal states met in several negotiation rounds during 2010 and the beginning of 2011, but they failed to reach an agreement on the sharing of mackerel quotas, see section *2.7 The sharing of mackerel quotas for 2011*.

The outcome was that EU and Norway set their own quotas for 2011 in December 2010 to 583.882 tonnes,[190] and in December 2010 Iceland announced that the Icelandic quota for fisheries in the Icelandic EEZ for 2011 should be 146.818 tonnes.[191] Finally Faroe Islands set their quota in March 2011 to 150.000 tonnes for fisheries in the Faroese EEZ.[192]

Quotas on catch of mackerel in NEA in 2011.

[188] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.
[189] ICES Advice, 2010.
[190] Annex XII – Bilateral Agreement on the Management of mackerel between the European Union. and Norway. December 2010.
[191] Annex XIII – Press Release: Iceland's mackerel quotas for 2011. December 2010.
[192] Annex XIV – Press Release: Faroese mackerel fisheries in 2011. March 2011.

Year:	Quota EU	Quota NO	Quota FO	Quota IS	Total quotas*	ICES TAC Advice
2011	401	183	150	147	881	646

* Total quotas do not include expected over-catch, dispatches nor the Russian quota.

Table 10 - Quotas on catch of mackerel in NEA in 2011.[193]

In a game theoretic sense the game turned out more or less in the same way as it did for 2010 and the result was that we had a coalition game between the four coastal states. EU and Norway cooperated and made an agreement, whilst Faroe Islands and Iceland were non-cooperating and acted as singletons. The quota shares between the coastal states in 2011 compared to the TAC advice by ICES are shown in Table 11.

Quota shares between EU, Norway, Faroe Islands and Iceland compared to the TAC advice by ICES for 2011.

Coalition Structure	Share EU	Share NO	Share FO	Share IS	Total Share
(EU, NO) (FO) (IS)	62.07%	28.33%	23.22%	22.76%	136.38%

* Russian quota, discards and expected overcatch.

Table 11 - Quota shares between the coastal states for 2011 compared to the TAC advice by ICES.[194]

As we can see in Table 11, the total quota shares for 2011 exceed the TAC advice by ICES with about 36 percent, without including the expected over-catch, dispatches or the Russian quota. The EU and Norwegian are about 90 percents of the TAC advice by ICES, so the unwillingness to give Iceland and Faroe Islands a fair share of the TAC repeated itself for 2011, unless a share of 10 percent to Faroe Islands and Iceland to share is rated as a fair share. Iceland set the quota share higher than in 2010, at about 23 percent.

The Faroe Islands increased their demand significantly, from 15 percent in 2010 to almost 25 percent in 2011 of the TAC advice by ICES. The significant increase in the demand by Faroe Islands from mere 5 percent in the years from 2000 to 2009, to almost 25 percent in 2011 gives us an indication that the Faroese authorities rely heavily on the idea that these rights can be justified by the change in the migration pattern of the mackerel. The individual sharing of the quotas between the coastal states in 2011 is shown in Table 12.

Quota shares between EU, Norway, Faroe Islands and Iceland for 2011.

[193] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.
[194] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.

Coalition Structure	Share EU	Share NO	Share FO	Share IS	Total Share*
(EU, NO) (FO) (IS)	45.52%	20.77%	17.03%	16.69%	100.00%

* The total of the four coastal states.

Table 12 - Quota shares between EU, Norway, Faroe Islands and Iceland for 2011.[195]

It is interesting to compare the average shares between the coastal states in the years from 2000 to 2011 when EU, Norway and Faroe Islands had an ongoing agreement for many years, while Iceland gradually entered the fisheries, first by free riding alongside and then by acting as a singleton in a coalition game. See the comparison in Table 13 below. Notice that the shares from 2000 to 2009 are not the quota shares, but the catch shares.

Comparing the average shares of catch between the coastal states in the years 2000 – 2011.

Year:	Avg share of catch EU	Avg share of catch NO	Avg share of catch FO	Avg share of catch IS	Total Avg Catch
2000 - 06	68.62%	28.46%	2.91%	0.00%	99.99%
2007 - 09	57.55%	23.52%	2.39%	16.54%	100.00%
2010 - 11	44.44%	25.61%	13.69%	16.26%	100.00%

Table 13 - Comparing the average shares between the coastal states in the years 2000 - 2011.[196]

Even though the percentages in Table 13 are only indicative, we can observe an interesting development in the average percentage share between the coastal states. It seems it is only EU that has lost significant relative shares to the other coastal states while Faroe Islands and Iceland has taken much larger shares of the total catch.

For future negotiations it could be interesting to see if the basic stand point to future games could be based on a share that is similar to the average percentage share between the coastal states in the years 2010 and 2011. There is no doubt that it is a lot for EU and Norway to give, if they shall give about 20 to 30 percent of the total share away to Iceland and Faroe Islands, but if there are to be any hopes for a grand coalition agreement between all of the coastal states, then we cannot ignore the fact that EU and Norway have to give away significant parts of their share.

[195] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.
[196] Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.

4.5 A game theoretic model

As it is mentioned earlier in the economic section, game theory is basically a tool used to explaining and analyse various strategic problems. Therefore it is highly applicable to this study of the mackerel in NEA. It is mentioned earlier in this thesis that Gordon Munro was one of the first to analyse fisheries in a game-theoretic context, and he based his models on the basic biological Schaefer model. This model has later been used by several marine economists and is very well known as a basic model for a game-theoretic model of fisheries.[197]

There is not much literature about fisheries of straddling fish stocks in a game-theoretic context. In other words you can say that the lack of literature on this subject demonstrates that this is a relatively untouched and un-researched area. Especially for mackerel fisheries in NEA there have only been a few studies.

It is beyond the scope of this thesis to make studies based on its own calculations and matrixes to find the payoffs for the respective coastal states in a game-theoretic model. I have therefore chosen to use a few models and matrixes from the studies by Hans Ellefsen, author of the PhD dissertation on *Strategic Management of Shared Fish Stocks Applied to the Pelagic Complex in the North East Atlantic Ocean*. His study will be used as a reliable source and the models are from the forthcoming article *Stability of Fishing Agreements with Entry: The North East Mackerel*.[198]

To derive and explain the equations and functions that are used by Ellefsen is of such size, that it would be a thesis in itself to do so fully. I have therefore chosen not to elaborate on all of the equations and functions in this application of game theory into the fisheries management. Instead I will briefly explain the most basic and important equations and functions in order to give the reader an idea of how Ellefsen has reached to his results.

[197] Munro, 1979.
[198] Ellefsen, 2011.

Thereby I will focus on some of the results that Ellefsen has reached and that are shown in the forthcoming tables. All of the results are from the calculations by Ellefsen.

I will briefly explain the most important equations and functions in the studies by Ellefsen. The variables used in these functions are: ***t*** is time, ***i*** is a generic country of ***n*** countries, ***R*** is the growth of the stock, ***k*** is the carrying capacity of the stock, ***H*** is the harvest, ***c*** is the cost, ***p*** is the price, ***E*** is the effort and ***q*** is the catchability coefficient. Basically all of the models and calculations that are used by Ellefsen, are based on the bio-economic Gordon-Schaefer model:

$$\frac{dX}{dt} = G(X) - \sum_{i=1}^{n} H_i$$

which states that the growth in the stock X is depending on the natural growth minus the harvest. This relationship between the growth function and the harvest function determines the size of the stock in the future. The growth function is a classical logistic growth function:

$$G(X) = RX\left(1 - \frac{X}{k}\right)$$

The harvest function depends on the fishing effort and the stock, multiplied by the catchability coefficient. The effort is determined by the fishing activity, such as how many days each coastal state spends fishing.

$$H_i = qE_iX$$

From traditional microeconomic theory we know that profit or payoff is determined from revenue minus costs. In this case it is set up like this:

$$\max_{\mathrm{E}_1,\ldots,\mathrm{E}_\mathrm{n}} \pi = \sum_i \mathrm{TR} - \sum_i \mathrm{TC}$$

Here the max π is the profit or the payoff for the exact coastal state is found from the sum of the total revenue minus the sum of the total cost. The total revenue is given by:

$$TR_i = pqE_i k(1 - \frac{qE_{tot}}{R})$$

And the total cost is given by:

$$TC_i = c_i * E_i^2$$

These are the basic functions that have been used to calculate the payoffs for the coastal states. To simplify the calculations all parameters that are common to all players are set to 1, so p=q=k=R=1. The profit function for the different values of c then looks like this:

$$\pi_i = E_i(1 - E_{tot}) - c_i E_i^2$$

By using the profit function above and the cost parameter mentioned below, many interesting results will be found as we can see in the tables in the forthcoming sections. Russia is not included in any of the game models since Russia is not acknowledged as a coastal state and therefore only participates in the coastal states negotiation rounds as an observer.[199]

4.5.1 The three player game

In the three player game with EU, Norway and Faroe Islands the cost parameters follow the 60/35/5 sharing agreement. From these shares we get that the Norwegian cost is $\frac{12}{7}$ of the EU cost, whilst the Faroese cost is twelve times the EU cost. This concurs in main characteristics with the economies of scale which is good favour for EU compared to Faroe Islands, since EU has the capacity to catch significantly larger amounts of mackerel with their present fleet of fishing vessels.

In the grand coalition where all the players are playing cooperatively, there is naturally no difference from the 60/35/5 sharing. But when there is a non-cooperative game or a coalition game, the results are interesting as we see in the table below. Notice that in these calculations the sale prices are assumed to be the same for every player and all the values are numerical.

[199] Ellefsen, 2011.

The payoffs in a three player game with similar prices.

Coalition	Payoffs EU	Payoffs NO	Payoffs FO	Total
(EU),(NO),(FO)	99.1	66.6	10.9	176.6
(EU,NO),(FO)	109.3	63.8	14.5	187.6
(EU,FO),(NO)	102.3	70.7	8.5	181.5
(NO,FO),(EU)	103.9	67.9	9.7	181.4
(EU,NO,FO)	115.4	67.3	9.6	192.3

Table 14 – The payoffs in a three player game with similar prices.[200]

In the table above we can see that for EU the best payoff is reached by a grand coalition, whilst the smaller players, Norway and Faroe Islands, achieve the best payoff by playing non-cooperatively. The model for the years from 2000 to 2009 has been that these three coastal states have played cooperatively in a grand coalition.

The circumstances around the prices are that mackerel caught in Icelandic and Faroese waters during the summer is about half the price of the mackerel fished in EU or Norwegian waters in the late summer or autumn. This means that if the Faroes stand outside an agreement between EU and Norway, the prices in the model are assumed to be the half of the prices as if they were a part of the agreement. Given these circumstances the payoffs in the three player model change a lot as we can see in Table 15.

The payoffs in a three player game with heterogenerous prices.

Coalition	Payoffs EU	Payoffs NO	Payoffs FO	Total
(EU),(NO),(FO)	103.0	69.2	8.3	180.5
(EU,NO),(FO)	114.3	66.7	11.1	192.0
(EU,FO),(NO)	102.3	70.7	8.5	181.5
(NO,FO),(EU)	103.9	67.9	9.7	181.4
(EU,NO,FO)	115.4	67.3	9.6	192.3

Table 15 - The payoffs in a three player game with heterogenerous prices.[201]

The best payoff for EU is no longer in a grand coalition, but just by playing cooperatively with Norway and non-cooperatively with the Faroes, whilst the Faroes get the best payoff by

[200] Ellefsen, 2011.
[201] Ellefsen, 2011.

playing cooperatively. The payoffs for Norway are relatively stable, but their best payoff is when all the players are singletons. In addition it is worth mentioning that these two tables above are calculated from the given shares of 60/35/5.

4.5.2 The four player game

In this section we focus on the payoffs after Iceland has entered the game. During the years 2008 and 2009 Iceland had a catch of about twenty percent of the total catch of mackerel in NEA. When there was no sharing agreement in 2010, the Icelandic catch was about 7 percent higher than the Faroese catch, but Ellefsen has chosen to set the cost parameters of Iceland to ten times more than the cost parameter of EU, which is slightly less than the Faroese cost parameter. With this being the Icelandic cost parameter, the sharing of the proceeds in a four player grand coalition is: (EU, NO, FO, IS) = (56.6 %, 33.0 %, 4.7 %, 5.7 %).

The payoffs for the coastal states when having a non-cooperative game or coalition game are notable. In the first table the prices are assumed to be the same for every coastal state and all of the values in the table are numerical.

The payoffs in a four player game with similar prices.

Coalition	Payoffs EU	Payoffs NO	Payoffs FO	Payoffs IS	Total
(EU),(NO),(FO),(IS)	90.4	60.8	10.0	12.0	173.2
(EU,NO,FO),(IS)	103.5	60.4	8.6	16.8	189.3
(EU,NO),(FO),(IS)	98.4	57.4	13.1	15.6	184.6
(EU,NO,FO,IS)	110.3	64.3	9.2	11.0	194.9

Table 16 - The payoffs in a four player game.[202]

According to Table 16 we see again that the big players, EU and Norway, get a higher payoff by playing cooperatively, while the smaller players, Faroe Islands and Iceland, get a low payoff by playing cooperatively, but a high payoff by playing non-cooperatively. Given the present situation where EU and Norway are cooperating, while Faroe Islands and Iceland are

[202] Ellefsen, 2011.

playing non-cooperatively, Table 16 shows that the smaller players have no need to cooperate, since they can do better outside a coalition.

It is notable that the payoffs are higher in the four player game, even though the new entry, Iceland, is a less efficient player than the big players and has higher average costs. The explanation is that Iceland has lower marginal costs and thereby can fish cheaper than the other players in the game. The calculations show that the payoffs in a cooperative game are larger with four players than with three players, which supports the claims of several theories.[203]

In Table 17 the calculations are based on various prices as it was done in the section with three players. The prices for Iceland and Faroe Islands when they are not in a coalition with EU and Norway are only half of what they are in a coalition with EU and Norway.

The payoffs in a four player game with heterogeneous prices

Coalition	Payoffs EU	Payoffs NO	Payoffs FO	Payoffs IS	Total
(EU),(NO),(FO),(IS)	98.2	65.9	7.9	9.5	181.3
(EU,NO),(FO),(IS)	108.0	63.0	10.5	12.5	194.0
(EU,NO,FO),(IS)	108.9	63.5	9.1	13.0	194.5
(EU,NO,FO,IS)	110.3	64.3	9.2	11.0	194.9

Table 17 - The payoffs in a four player game with heterogenerous prices.[204]

The payoffs in this table are slightly lower for the small players than for the large players. With the given shares used in these calculations and the heterogeneous prices it appears that Faroe Islands and Iceland gain more by cooperating in a four player game. In particular the payoffs for Iceland are reduced significantly if they play non-cooperatively with the other players.

In a coalition game like the ones above every payoff will be compared to the total payoff from the grand coalition. This way we will see which coalition gives the best payoff for the players. By comparing these values with the ones in the three player game we see that the overall

[203] Ellefsen, 2011.
[204] Ellefsen, 2011.

payoff is higher with four players, but the three coastal states have to be satisfied with a lower payoff if Iceland enters the cooperation.

4.5.3 The stand alone stability of the games

According to Pintassilgo a cooperative agreement can be considered to be stable if the free-rider payoffs are smaller than the cooperative payoffs. Nevertheless it is emphasized that the likelihood of stability decreases as more players enter the game. The free-rider payoff is found by adding the values of the coastal states outside of the coalition.[205]

In the three player game with similar prices we see that the free-rider payoffs are 189.1 compared to 192.3, which is slightly less than the total payoff. In the three player game with heterogeneous prices the free rider payoffs are 185.7 compared to 192.3. The three player game is in both cases stand alone stable, so the coastal states would rather seek to find side-payments to satisfy all the players instead of free-riding.

The four player game has a higher total payoff than the three player game. The free-rider payoff in the game with similar prices is 202.4 compared to 194.9, so the game is not stand alone stable. We can also see in Table 16 - The payoffs in a four player game.that Faroe Islands and Iceland get significant higher payoffs by free-riding. With heterogeneous prices the free-rider payoff is only 193.2 compared to 194.9. Thereby we can state that the four player game with heterogeneous prices is stand alone stable and as we can see, the term of stand alone stability by Pintassilgo is verified in the models by Ellefsen, since the games become more unstable the more players participate.

4.5.4 The payoffs for Faroe Islands

The game theoretic models with similar prices indicate that Faroe Islands get the best payoff by free-riding, but the models do not take into account that when Faroe Islands is free-riding the mackerel quotas will be set higher by the Faroes than when they are in a coalition. The models are based on the assumption that the Faroese shares are 5 percent in the three player

[205] Pintassilgo, 2003.

game and 4.7 percents in the four player game. If we consider the fact that Faroe Islands has been free riding with higher quotas for the past two years, then we can state that the payoff achieved must have been much higher by free-riding. This model is made with similar prices, so it is more indicative to consider the payoffs from the models with heterogeneous prices.

In the models with heterogeneous prices the best payoff Faroe Islands can get in the three player game is by free riding. In the four player game the best payoff is clearly by cooperating with EU and Norway or by cooperating in a grand coalition. In the model we can also see that Faroe Islands gain more payoff by cooperating with EU and Norway, compared to if they were free-riding alongside. The reason for the significant increase in the Faroese payoff when cooperating with EU and Norway is because Faroese vessels will catch the mackerel in their EEZs if they can, as they traditionally have been doing when there existed a grand coalition between the coastal states. As it is mentioned earlier in this thesis, the quality of the mackerel in the Norwegian EEZ is higher and its average sales price is about twice as much as the mackerel from the Faroese and the Icelandic EEZs, and that explains the significant increase in the difference between the payoffs when cooperating with EU and Norway and when not cooperating with them.

The Faroese share in this four player game with heterogeneous prices is 4.7 percent, but we know that the Faroese share has been almost 15 percent of the total share in the last two years. Thereby we can assume that the payoffs in the game with heterogeneous prices would be significantly higher if the model was calculated on the basis of the actual average shares in the years 2010 and 2011, (EU, NO, FO, IS) = (44%, 26%, 14%, 16%).

4.6 How Faroe Islands can gain a fair share of the mackerel quotas

We have seen above that Faroe Islands gain the highest payoff in the mackerel fisheries by free riding, but there are other factors affecting future payoffs as well. The sustainability of the mackerel stock is a crucial factor which cannot be ignored. As well as learning from the game theoretic models that the Faroes gain the highest payoff by free-riding, we do know that the mackerel fish stock has been heavily overfished in the past few years. The overfishing has been about 50 percent above the TAC advice by ICES in the past two years, which may have

catastrophic consequences for the mackerel fisheries in the future. If the overfishing continues we can experience a tragedy of the commons with regard to the mackerel fish stocks in NEA.

Additionally there is always the uncertainty surrounding the price of mackerel and the migration pattern in the future. Even though the mackerel has changed migration pattern to the favour of Faroe Islands and Iceland in the past few years, there is no guarantee that it will remain for a long time. Marine biologists are not unanimous on the issue of why the mackerel has changed its migration pattern in the first place. If the change of the migration pattern is based on the heating in the ocean of NEA, then the migration pattern could easily change back to the initial or eventually to quite a different pattern within only a few years. This only substantiates the lack of knowledge about the migration pattern of the mackerel in NEA.

Nevertheless it will be a necessity for Faroe Islands to negotiate and make agreements with EU and Norway in the future, both regarding mackerel fisheries, but also when it comes to every other possible species. As a consequence of the lack of an agreement between Faroe Islands, Norway and EU, neither Norway nor EU wanted to negotiate with Faroe Islands on almost all other fish species, even though these two coastal states have traded fishery quotas with Faroe Islands for decades. For the time being it pays for Faroe Islands to give up other quota trades with Norway and EU, and instead stick to the mackerel fisheries in the Faroese EEZ, because of the significant amount of mackerel in the Faroese EEZ and the good sales price for mackerel.

In short, there are many uncertain conditions attached to the mackerel fisheries that can be detrimental to the whole mackerel fisheries industry in Faroe Islands. In the short term it appears that Faroe Islands can stand firm by its demands and play non-cooperatively towards the other coastal states, but the Faroes are playing with high stakes if we consider that quota trading with Norway and EU for almost all fish species are obsolete and there is a possibility that EU will apply measures against Faroe Islands in the near future. If the sales prices fall, if the migration pattern rapidly changes against Faroese favour or if the mackerel fish stocks in NEA rapidly decline and the sustainability of the stocks are threatened by overfishing, then

there is a great chance that Faroe Islands will suffer severely because of the lack of mackerel and the lack of agreements with Norway and EU on quotas on other species.

In the long term it could both be either a bad move or a good move by Faroe Islands to stand by its demands in the negotiations on mackerel quotas, because it is easier for the Faroes to back now and settle with lower quotas than demanded, since the mackerel quota shares ceteris paribus will be higher than the initial quota shares in the years from 2000 to 2009. By using this strategy Faroe Islands may be in a position to settle with a significantly higher share of the mackerel quotas than initially and in addition renew the quota trades on other fish species with Norway and EU. However, if the Faroes do not manage to fish the quotas for 2011 for some reason, for example if the mackerel fish stocks have decreased or if the migration pattern changes again, then it will turn out to be a bad move to stand by their relatively high demands in the negotiations on mackerel quotas.

So we can conclude that it appears as if Faroe Islands plays with high stakes in their way to handle the mackerel crisis. Whether the Faroese strategy is viewed as courageous or foolhardy depends on the turnout in the forthcoming years. If Faroe Islands manages to settle with a significantly better agreement than the initial one with the other coastal states on the sharing of mackerel for 2012 before any of the above-mentioned factors manages to spoil the mackerel fishery industry for Faroe Islands, it can be argued that Faroe Islands did well to maintain their high demands. But the opposite turnout is also a probability.

4.7 What is a fair share of mackerel quotas for Faroe Islands?

The initial game of sharing of mackerel quotas in NEA between the coastal states EU, Norway and Faroe Islands has changed much from year 2000 to 2011, especially after Iceland entered the game. The new entry, Iceland, has demanded about 20 percent of the TAC and Faroe Islands has upgraded its demands from initial five percent to about 25 percent of the TAC in 2011. The other two coastal states, EU and Norway, have refused to decrease their shares of the TACs, but instead kept stable shares, maybe in order to signal reluctance towards the aggressive behaviour by Faroe Islands and Iceland.

The use of game theoretic models gives us a tool to explain some of the strategic problems that Faroe Islands faces in its quest to achieve a larger mackerel quota share. It appears from the models that it pays best off for Faroe Islands to free ride, but when all the surrounding factors that may affect the mackerel fisheries industry are taken into account, it appears as a good strategy in the short term, but risky in the long term.

Then what is the most optimal share of mackerel quotas for Faroe Islands in NEA? The most optimal share cannot be easily defined, since there are many factors crossing and affecting an agreement between the coastal states. Given the scenario where Faroe Islands is outside an agreement between the other coastal states, the most optimal share is achieved by following the advice from ICES and the domestic Faroe Marine Research Institute[206]. Thereby Faroe Islands can catch as much mackerel as possible in the circumstances and the mackerel fish stocks may still remain sustainable.

Within an agreement between the coastal states the most optimal share for Faroe Islands cannot be deterred easily, but the Faroese demand of about 25 percent of the TAC requires a very dedicated approach by EU and Norway to get fulfilled. In addition we should have in mind that Iceland needs to have a significant share of the TAC as well, if Iceland shall join an agreement with the other coastal states. The gap between the initial Faroese share and the present share is maybe too large.

When the analysis on the sharing of mackerel quotas are taken into account, the average shares between the coastal states during the years 2010 and 2011, which are shown in Table 13, might be considered realistic advice for future shares. Based on the average shares in Table 13 and the analysis, it is my opinion that these shares can be used as a realistic guidance for sharing agreements in the forthcoming years, (EU, NO, FO, IS) = (50%, 25%, 10%, 15%), but the fact remains that at the end of the day, most of it depends on politics. We must also keep in mind that EU and Norway have a ten-year agreement with approximate shares of 65/35 and have kept a stable continuation of the fishing capacity, while Faroe Islands and

[206] Faroe Marine Research Institute homepage, July 2011. www.frs.fo

Iceland have initiated and expanded the mackerel fishing fleet significantly in order to exploit the mackerel efficiently.

Chapter 5 - Conclusion

In the legal section it was clarified that Faroe Islands is not a sovereign state, but an autonomous territory within the Kingdom of Denmark with a self-governing Home Government, cf. art. 1 in the Home Rule Act. Thereby Faroe Islands is not a sovereign entity with regards to international law. Still the Faroes have authority to enter into negotiations and conclude agreements with foreign states and international organisations when matters are entirely related to Faroe Islands, cf. art. 1, s. 1 in the Act on Conclusion of Agreements. Faroe Islands can thereby not conclude state law agreements, but they can conclude governmental and administrative agreements on behalf of *the Kingdom of Denmark in respect of the Faroes*.

Faroe Islands left the EEA in 1973 and are still outside the EEA, which includes all of the EU member states and most of the EFTA member states. Norway and Iceland are members of the EEA through their membership in EFTA. Of relevant international organisations, Faroe Islands has its own delegation as a part of the Danish delegation in NEAFC and in the Nordic Council. The Faroes are covered by the legal framework of WTO through the membership of Denmark. In the FAO the Faroes have an associated membership with speaking and hearing rights, but not with voting rights.

Faroe Islands has a free trade agreement and a fisheries agreement with EU, through Denmark, which states that both parties commit themselves to cooperate towards appropriate cooperation, especially with respect to straddling fish stocks such as the mackerel. Additionally the parties are committed not to apply new restriction against each other and to grant each other the most-favoured-nation treatment in accordance with GATT 1994, cf. art. 13 and art. 19 in the free trade agreement. Norway and Faroe Islands do also have a free trade agreement, in order to maintain a free and fair trading relationship between the two countries. In this agreement it is stated that no new quantitative restrictions on imports and exports shall be introduced, cf. art. 5.

The EEZs were introduced by UNCLOS, whereof all of the coastal states have signed the UNCLOS and are therefore subject to the regulations within the convention. The coastal states shall seek an agreement with the other coastal states to ensure the conservation and

development of straddling fish stocks, cf. art. 63, s. 1 UNCLOS. Within the EEZs the coastal states have sovereign rights to explore and exploit the living natural resources within it, but with an obligation to have due regard to the rights and duties of other coastal states, cf. art. 56. Additionally the coastal states shall ensure that the living resources are not endangered by over-exploitation, cf. art. 62.

The Norwegian ban on landings against Faroe Islands and Iceland is in accordance with the Norwegian IUU regulations, but it is uncertain whether or not the ban is in accordance with international law. The Faroese authorities claim that the landing ban is a violation of the bilateral free trade agreement and GATT art. XI, s. 1, and cannot fall under the exception in art. XX.

EU is hindered from applying a possible ban against Faroe Islands, since Faroe Islands is not a member of the EEA and because of the free trade agreement. However EU is working on procedures of how to apply measures or sanctions, such as landing bans against Faroe Islands. It seems that the procedures will be ready in the forthcoming future.

From the analysis in this thesis it is my conclusion that the Norwegian landing ban against Faroe Islands cannot be justified by the Norwegian IUU regulation, since it is a clear violation of the bilateral free trade agreement and a violation of art. XI, s. 1 GATT. Additionally Faroe Islands have complied with the regulations in UNCLOS by seeking an agreement with the other coastal states and in the end setting quotas in the Faroese EEZ, cf. art. 63, art. 56 and art. 61 UNCLOS. The ten-year agreement between Norway and EU is a clear indication of a kind of alliance between these two coastal states, and is thereby not a commitment to seek an agreement with *all* of the coastal states. Thereby the ten-year agreement is in some ways inconsistent with art. 63 and the bona fide rule in art. 300, which commits the members to act in good faith and not constitute an abuse of rights. However, the only way to get a final statement on whether we are dealing with a violation or not, is to bring the dispute before either the WTO Dispute Settlement panel or before the ICJ or an arbitrational tribunal. In either case, Denmark must lead the case on behalf of Faroe Islands. These procedures have tradition of taking a long time before a decision is made, so Faroe Islands first need to

evaluate if there is a catch for Faroe Islands, given the long procedures and the magnitude of the gain.

From the economic section we know that the reason why there is a need for quotas in fisheries management is because the philosophy of the *freedom of the seas* was a widespread perception of how the natural resources in the oceans should be managed until the post World War II period. In this period fishing vessels became rapidly more efficient and were able to fish right up to the shores of other nations. The theory of the *tragedy of the commons* illustrates how a common pool of resources is exposed to face a tragedy if it is not managed and exploited in a sustainable manner. However the theory of *governing the commons* illustrates that the best management for a common pool is when monitoring and enforcement is conducted by insiders rather than outsiders. With regards to the management of the mackerel fisheries in NEA, the EEZs make it possible for the coastal states to manage sustainable fish stocks in any way they may prefer, as long as the exploitation is not endangering the fish stocks.

The application of game theory is useful in mackerel fisheries management. By using the cooperative, the non-cooperative and the coalition theory we can find out how much payoff the various coalitions or cooperation's give and thereby conclude which payoff is the most efficient. The best payoff can be reached both by cooperation and by non-cooperation.

Between 2000 and 2011 the first six years were stable with an ongoing sharing agreement between EU, Norway and Faroe Islands. Because of the change of the migration pattern of the mackerel, Iceland entered the mackerel fisheries in 2006. Thereafter the mackerel fish stock became increasingly overfished due to the lack of an agreement between the previous coastal states and Iceland. Consequently Iceland was acknowledged as a coastal state in 2009 and their mackerel catches became more significant by the years. Faroe Islands followed due by setting significantly higher quota demands like Iceland, but Norway and EU would not give such significant shares of their quotas and thus there has not been an agreement between the four coastal states in the past two years. With the lack of an agreement and the present

overfishing of the mackerel fish stocks of about 50 percent, the coastal states are risking a tragedy of the commons.

By using some game theoretic models by Ellefsen we see that with similar prices Faroe Islands get the best payoff by free riding. However we know that if Faroe Islands does not have an agreement with Norway, the average sales prices are lower, and the models by Ellefsen indicate that with heterogeneous prices it pays better off to cooperate with the larger coastal states. Then again, we must take into account that the quota shares for Faroe Islands used in the models are about five percent compared to their actual relative share of about 15 percent. I can thereby conclude that the actual payoff for Faroe Islands is good compared to the initial payoff.

In the short term Faroe Islands gain the best payoff by free riding, but there are many factors that can put a stop to the present gold rush in the Faroese mackerel industry. The factors that can affect the whole situation are a decline in sales prices, a decline in the mackerel fish stocks or a change in the migration pattern of the mackerel against Faroe Islands' favour. Thus the present situation is fragile and unstable for Faroe Islands in the long term. If Faroe Islands does not manage to come to an agreement with EU and Norway on the sharing of mackerel quotas, any of the above-mentioned factors may have serious consequences to the Faroese fishing industry. However, if Faroe Islands manages to reach an agreement with EU and Norway that gives the Faroes a higher share of the quotas than the initial agreements, the Faroe Islands will be better off in the long term because of their actions.

My suggestion is that in order for Faroe Islands to get the optimal share in the long term, it should aim at settling with the other coastal states, even though the Faroese share might not be as large as what Faroese officials claim the right to. The Faroese economy depends heavily on the fishing industry and therefore it is vital to renew the fisheries agreements on other fish species with EU and Norway for future stability. Based on the analysis in this thesis, it is my conclusion that the shares (EU, NO, FO, IS) = (50%, 25%, 10%, 15%) could be used as realistic guidance for future shares.

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List of annexes:

Annex I – Press Release from the Faroese Ministry of Fisheries about the Mackerel. August 2010.

Annex II – A description of the Atlantic mackerel, scomber scombrus.

Annex III – Map of the NEAFC Regulatory Area.

Annex IV – Ten year Agreement between the European Union and Norway. January 2010.

Annex V – Information Memorandum from the Icelandic Ministry of Fisheries and Agriculture. April 2009.

Annex VI – Norwegian ban on landings of mackerel against Faroese and Icelandic vessels. July 2010.

Annex VII – Response from Westberg to Vestergaard. August 2010.

Annex VIII – Note Verbale. August 2010.

Annex IX – Speech from the European Commissioner of Maritime Affairs and Fisheries. September 2010.

Annex X – Response from Iceland to the European Commissioner. October 2010.

Annex XI – Information Memorandum from Faroe Islands. October 2010.

Annex XII – Bilateral Agreement on the Management of mackerel between the European Union. and Norway. December 2010.

Annex XIII – Press Release: Iceland's mackerel quotas for 2011. December 2010.

Annex XIV – Press Release: Faroese mackerel fisheries in 2011. March 2011.

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Annex XXVIII – Article in a Norwegian Fisheries News Portal, June 2011. www.fish.no

Annex XXIX – Press Release about Iceland's Mackerel Fisheries in 2011. November 2010.

Annex XXX – Catch of mackerel in NEA in the years from 2000 to 2011.

Annex I – Press release from the Faroese Ministry of Fisheries about the mackerel – August 2010.

Press release about the mackerel **11-08-2010**

Faroese Fisheries Minister urges continued international cooperation on the joint management of Northeast Atlantic mackerel

Fisheries Minister Jacob Vestergaard underlined today the continued commitment of the Faroe Islands to finding a new and lasting solution for joint management of the Northeast Atlantic mackerel stock. "This is not, however, an issue the Faroe Islands can resolve alone", Minister Vestergaard said. "It requires sincere effort and cooperation on the part of all four coastal States to reach agreement on a new arrangement for the allocation of this shared resource that can provide us all with a workable basis for the long-term sustainable management of our respective mackerel fisheries".

Minister Vestergaard stressed that for the Faroe Islands, pelagic fisheries in the Northeast Atlantic have enormous significance in terms of the overall national economy. Cooperation on the sustainable management of all shared stocks in the region, including the mackerel stock, is therefore crucial.

"Responsible management of mackerel in the Northeast Atlantic must be based on the realities of the fishery today, taking into account the ecological role and fluctuations in distribution of the mackerel stock in the region," said Minister Vestergaard. "Changes in the distribution and migration pattern of mackerel are evident, showing a more pronounced north western distribution of both juvenile and adult mackerel, and this needs to be reflected in a new sharing arrangement covering the entire fishery."

With no agreed multilateral management arrangement for Northeast Atlantic mackerel in 2010, the Ministry of Fisheries has decided to limit Faroese mackerel fisheries to 85,000 tonnes. This includes quotas transferred to Iceland, the EU, Norway and Russia through bilateral agreements, as well as an amount set aside for dedicated scientific research on mackerel abundance and distribution in Faroese waters.

The other coastal States, Norway, the EU and Iceland, as well as the Russian Federation, have also set what they believe to be appropriate limits for their respective fisheries in 2010, without an agreed coastal states arrangement as a basis.

"The current situation with aggregated unilateral quotas far exceeding the Total Allowable Catch (TAC) advised by ICES is of serious concern. But it is certainly not a situation for which the Faroe Islands are solely responsible" said Minister Vestergaard. Total unilateral mackerel quotas for 2010 were already some 40% above the TAC recommended by ICES, prior to any quota set by the Faroe Islands, with the unilateral quotas set by the EU and Norway alone exceeding the recommended TAC.

Minister Vestergaard expressed his concern that the recent ban announced by Norway on mackerel landings from Faroese and Icelandic vessels, as well as calls from industry organisations in the EU and Norway for trade sanctions and other measures targeting the Faroe Islands in particular, run counter to the need for cooperation on all sides to bring joint management of mackerel back on track.

"With an important round of four-party consultations scheduled for October 2010, the time has come for all coastal States to take a constructive approach to the challenges we face in adapting joint management of mackerel to new realities in the fisheries, in order to find a sustainable solution, not just for 2011, but for the long-term," said Jacob Vestergaard.

Source: http://fisk.fo/Default.aspx?ID=2402&M=News&PID=7032&NewsID=3206

Annex II – A description of the atlantic mackerel, scomber scombrus.

Atlantic mackerel

a.k.a. *Scomber scombrus*, common mackerel, Boston mackerel, caballa

Health Details

- Adults and children can safely eat 4 or more meals per month
- Low contaminants

More about seafood and health »

Eco Details

- Mackerel are fast growing and highly migratory. These traits help them withstand fishing pressure.
- Strong management helped Atlantic mackerel populations rebound after they collapsed in the late 1970s.
- U.S. fleets primarily use purse seines, a type of net that results in relatively low bycatch.

Nutritional Information

Serving = 100 g of raw edible food, wild species.

	Amount per serving
Calories	205 g
Total Fat	13.8 g
Total Protein	18.6 g
Omega-3	2.45 g
Cholesterol	70 mg
Sodium	90 mg

Source: USDA

More About Atlantic mackerel

A relative of the tuna, the Atlantic mackerel is found in the Atlantic's cold temperate waters. It forms large schools and can live up to 17 years. It grows to a maximum of 2 feet (61 cm).

Commercial Sources

Atlantic mackerel are found in the North Atlantic Ocean. In the eastern Atlantic, they range from the southern Baltic Sea and Iceland to northern Africa, including the Mediterranean and Black Seas. In the western Atlantic, they range from Labrador to Cape Lookout in North Carolina.

Capture Methods

Atlantic mackerel come from marine fisheries, not fish farms. They are primarily caught with purse seines and trawls. Additional types of fishing gear include gillnets, pound nets, beach seines, traps and hooks-and-lines.

Buying & Eating Guide

Flavor and Texture

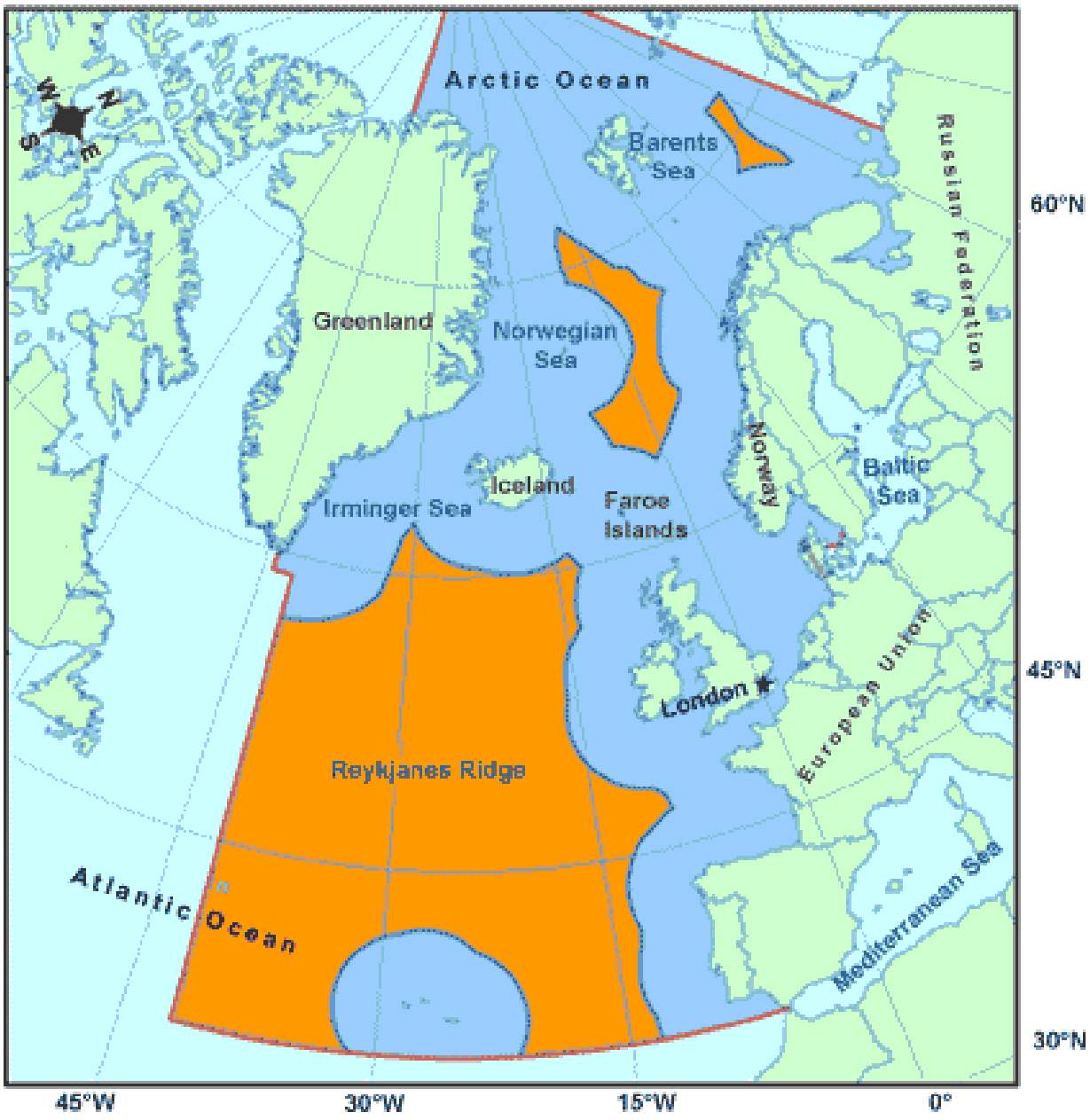
Mackerel has high-fat, firm flesh with a savory, strong flavor.

Buying Tips

Atlantic mackerel is sold whole, or cut into fillets or steaks; either fresh, frozen, smoked or salted.

Source: http://www.edf.org/page.cfm?tagID=15834

Annex III – Map of the NEAFC Regulatory Area.



Source: NEAFC homepage, June 2011. www.neafc.org

AGREED RECORD OF CONCLUSIONS OF FISHERIES CONSULTATIONS BETWEEN THE EUROPEAN UNION AND NORWAY ON THE MANAGEMENT OF MACKEREL IN THE NORTH-EAST ATLANTIC

BRUSSELS, 26 JANUARY 2010

1. A European Union Delegation headed by Mr John SPENCER and a Norwegian Delegation headed by Ms Ann Kristin WESTBERG met in Brussels from 18 to 26 January 2010 to consult on the management of mackerel in the North-East Atlantic. The meeting was a continuation of previous meetings held in Clonakilty, Bergen, Edinburgh and Brussels.

2. The Heads of Delegation agreed to recommend to their respective authorities the following arrangements on bilateral cooperation on mackerel management.

3. **Management objectives**

   3.1. The Delegations agreed that the Parties would commit themselves to managing the North-East Atlantic mackerel stock in a sustainable manner in line with the current long-term management plan adopted by the Coastal States in 2008 (Annex I) and any subsequent long-term management plans agreed by the Coastal States.

   3.2. The Delegations agreed that all fisheries of North East Atlantic mackerel should be jointly managed and consequently be covered within a total catch limitation covering all fisheries

   3.3. To that end, the Delegations reaffirmed their commitment to the adoption of a Coastal State agreement, on an annual basis, covering the entire mackerel stock in the North-East Atlantic and including all

fisheries. In that regard, the Delegations agreed that they would consult in advance of such Coastal State consultations.

3.4. In the event that an annual Coastal State agreement is not reached, the Delegations agreed that the EU and Norway would endeavour to reach agreement on effective management arrangements with as many Coastal States as possible.

3.5. The Delegations agreed that the Parties would develop, on an annual basis and in cooperation with other parties to a Coastal State Agreement, a joint proposal for NEAFC regulatory measures for the mackerel stock covering the NEAFC Regulatory Area.

4. **Relative quota shares**

4.1. The Delegations agreed that the EU and Norway would maintain throughout the period of application of these arrangements their relative quota shares at the levels established for 2008, EU: 68.65%, Norway: 31.35 %.

4.2. The southern component fishery (ICES Divisions VIIIc and IXa) will be integrated over no more than three years into the mackerel sharing arrangements. Any part that is integrated will be allocated to the EU and Norway in proportion to their relative shares mentioned in point 4.1.

4.3. The Delegations agreed that the integration of the southern component fishery would commence in 2011 and would coincide with a corresponding proportionate phasing out of the corresponding quota that Norway has established.

4.4. In the event that it is necessary to adjust the shares of other Parties to the Coastal State agreement and/or in the context where new shares have to be established for new Coastal States, the Delegations agreed to maintain their relative shares as set out in point 4.1 above.

4.5. In the event that a Party to a Coastal State agreement, other than Norway, accedes to the EU, the Delegations agreed that the quota share of that Party would be added to the EU share. This will mean a corresponding adjustment to the relative shares of the EU and Norway set out in point 4.1.

5. Access arrangements

5.1. The fishery conducted under the access arrangement shall be conducted in accordance with the technical regulations (including opening and closing dates) applicable to the waters of the Party granting the access.

5.2. The Delegations agreed that the EU and Norway would continue to have full access to fish their respective shares of the North Sea TAC in the waters of the other Party in ICES Division IVa. This mutual access regime and TAC is set out in Table 1 of the annual Agreed Record of Conclusions of Fisheries Consultations between the European Union and Norway.

5.3. The EU shall within the sharing arrangement mentioned under 5.2 be allocated an additional fixed component of 1,865 tonnes which may be fished in ICES Division IVa and IIIa, including Norwegian waters.

5.4. The Delegations agreed that for 2010, Norway shall transfer a quota of 11,626 tonnes of the Norwegian Sea TAC to the EU for fishing in ICES Divisions IIa and IVa, and that the EU shall transfer a quota of 11,626 tonnes to Norway for fishing in ICES Divisions IIa, VIa (north of 56°30'N), VII d, e, f, h and IVa.

For 2011 and subsequent years, the Delegations agreed that Norway shall transfer annually a quota equivalent to 10.8 % of the Norwegian Sea TAC to the EU for fishing in ICES Divisions IIa and IVa, and that the EU shall transfer annually a quota of identical volume to Norway for fishing in ICES Divisions IIa, VIa (north of 56°30'N), VII d, e, f, h and IVa.

5.5. For 2010, the Delegations agreed that there would be reciprocal access of 115,000 tonnes in each other's waters of ICES Division IVa. This amount includes the full access for the quotas referred to in points 5.2, 5.3 and 5.4.

5.6. The EU and Norway shall have the following access arrangements for 2011 and subsequent years of these arrangements, subject to the conclusion of the annual EU/Norway bilateral fisheries arrangements, as well as a Coastal State Agreement or a bilateral EU/Norway agreement on mackerel:

For the EU:

a) Full access to Norwegian waters of ICES Division IVa for the mackerel quotas that the EU authorises to be fished in its own waters of ICES Division IVa.
b) Access to Norwegian waters of ICES Division IIa for a tonnage equivalent to 20% of the tonnage permitted in point (a) above. Deducted from this quantity is any catch taken in ICES Division IIa under the reciprocal exchange of quotas mentioned in point 5.4

For Norway:

c) Full access to EU waters of ICES Division IVa for mackerel quotas that Norway authorises to be fished in its own waters of ICES Division IVa.

d) Access to ICES Division VI a (north of 56°30'N) for a tonnage equivalent to 20 % of the tonnage permitted in point (c) above. Deducted from this quantity is any catch taken in ICES Division VIa under the reciprocal exchange of quotas mentioned in point 5.4.

6. Inter-annual quota flexibility

6.1. The Delegations agreed that a system of inter-annual quota flexibility on this stock should be introduced with effect from 1 January 2011 in the following manner:

a) Each Party may transfer to the following year unutilised quantities of up to 10 % of the quota allocated to it. The quantity transferred shall be in addition to the quota allocated to the Party concerned in the following year. This quantity cannot be transferred further to the quotas for subsequent years.

b) Each Party may authorise fishing by its vessels of up to 10 % beyond the quota allocated. All quantities fished beyond the allocated quota for one year shall be deducted from the Party's quota allocated for the following year.

7. Control and enforcement

7.1. The Delegations agreed that control and enforcement is an integrated part of management of the North-East Atlantic mackerel stock and therefore should be an integrated part of this agreement. To this end, the Delegations agreed that the EU and Norway should continue to monitor

the implementation of agreed measures and address new outstanding issues on control and enforcement.

7.2. Whilst noting that considerable progress has been made in addressing outstanding issues on control and enforcement, in particular at the time when mackerel is landed, the Delegations agreed on the need to intensify the cooperation of the EU and Norway in order to maintain effective control of the mackerel fishery throughout its migratory range. In that regard, they particularly commended the continuing work of the Working Group of Control Experts.

7.3. The Delegations recognised that slipping, discards and high grading remain issues to be addressed in the mackerel fishery, since these practices constitute a considerable waste of resources. The European Union Delegation stated that the objective should be to minimise and, through effective regulation, eradicate discards, including the consideration to a discard ban in the context of the review of the Common Fishery Policy to be finalised in 2012.

8. Duration and mid term review of the arrangements

The Delegations agreed that the arrangements laid down in this Agreed Record should apply for a period of 10 years from 26 January 2010. The Parties shall undertake a mid term review in 2015 of the functioning of the arrangements, and where appropriate, make the necessary adjustments.

Brussels, 26 January 2010

For the European Union Delegation

John SPENCER

For the Norwegian Delegation

Ann Kristin WESTBERG

ANNEX I

ARRANGEMENT ON THE LONG-TERM MANAGEMENT FOR THE MACKEREL STOCK IN THE NORTH-EAST ATLANTIC

The Delegations agreed to implement a long-term management plan for the mackerel stock in the North-East Atlantic for 2010 and subsequent years, which is consistent with a precautionary approach and designed to provide for sustainable fisheries and a greater potential yield. The long-term management plan shall consist of the following elements:

1. For the purpose of this long-term management plan, "SSB" means the estimate according to ICES of the spawning stock biomass at spawning time in the year in which the TAC applies, taking account of the expected catch.

2. When the SSB is above 2,200,000 tonnes, the TAC shall be fixed according to the expected landings, as advised by ICES, on fishing the stock consistent with a fishing mortality rate in the range of 0.20 to 0.22 for appropriate age groups as defined by ICES.

3. When the SSB is lower than 2,200,000 tonnes, the TAC shall be fixed according to the expected landings, as advised by ICES, on fishing the stock at a fishing mortality rate determined by the following:

   Fishing mortality F = 0.22 * SSB/2,200,000

4. Notwithstanding paragraph 2, the TAC shall not be changed by more than 20% from one year to the next, including from 2009 to 2010.

5. In the event that the ICES estimate of SSB is less than 1,670,000 tonnes, the Parties shall decide on a TAC which is less than that arising from the application of paragraphs 2 to 4.

6. The Parties may decide on a TAC that is lower than that determined by paragraphs 2 to 4.

7. The Parties shall, as appropriate, review and revise these management measures and strategies on the basis of any new advice provided by ICES.

Annex V – Information Memorandum from the Ministry of Fisheries and agriculture in Iceland, April 2009.

Information Memorandum 7.4.2009

Regarding Icelandic Mackerel Fisheries in 2009

Iceland, a nation so depended on fisheries, is fully aware of the importance of responsible and sustainable fisheries and has been an active advocate for these principles at many different international forums.

Iceland is a coastal State with respect to the mackerel stock. Historic fishing patterns, including extensive mackerel fisheries on the border of the Icelandic exclusive economic zone, demonstrate that mackerel has consistently been in some abundance in waters under our national jurisdiction. In recent years the fisheries for mackerel has increased within Icelandic jurisdiction. In 2008 Icelandic vessels caught 112,000 tons of mackerel.

The management of mackerel in the North East Atlantic is in two steps, on one hand it is based on a coastal States agreement which comprises the fisheries inside the jurisdiction of the coastal States and on the other hand on a management agreed within the framework of the North East Atlantic Fisheries Commission (NEAFC) which regulates the fisheries in international waters.

For a number of years, Iceland has requested to participate in the coastal State consultations on the management of mackerel, which is the appropriate forum for Iceland to take part in responsible management on this valuable stock. Iceland has been rejected by the other coastal States which have excluded Iceland from negotiations on the annual total allowable catch and its allocation. Consequently, Iceland has been forced to object, in accordance with the NEAFC Convention; to the management measures for mackerel established within the NEAFC framework and have therefore not been bound by that agreement.

Icelandic authorities are contributing to the conservation and management of the mackerel stock by setting a management measures, including limit of total allowable catch for Icelandic vessels fishing mackerel. As in all commercial fisheries in Iceland, vessels in the mackerel fishery must have commercial fishing permit that is issued by the Directorate of Fisheries and all landings are reported and registered.

Iceland is in full right as a coastal State to utilize mackerel; however the right to use a shared stock comes with an obligation to cooperate with other coastal States according to the UN Convention of the Law of the Sea. Iceland has for years sought to cooperate with the other coastal States for this purpose but have so far been rejected. The conservation and management of the mackerel stock is the collective responsibility of all the coastal States and it is paradox that at the same time as Iceland is accused of not being responsible it is excluded from the management consultations by the other coastal States.

Iceland has invited the other coastal States to a meeting in Reykjavik in mid-april on future management of the mackerel in the northeast Atlantic.

Source: http://eng.sjavarutvegsraduneyti.is/news-and-articles/nr/9633

Annex VI: Norwegian ban on landings of mackerel from Faroese and Icelandic vessels. July 2010.

Press release , 29.07.2010

No.: 44/2010

Ban on landings of mackerel from Faroese and Icelandic vessels

- The irresponsible fishing for mackerel which Iceland and the Faroe Islands have initiated as an attempt to secure future quota shares is a serious threat to the mackerel stock, and undermines the cooperation to secure the necessary conservation measures. I consider this situation very seriously, and it has been the topic of discussions between myself and the European Commissioner for Fisheries and Maritime Affairs, Norwegian Minister of Fisheries and Coastal Affairs Lisbeth Berg-Hansen says in a comment.

Catches of mackerel from Faroese and Icelandic vessels are, according to Norwegian legislation, not allowed to be landed in Norwegian ports. An exemption is made for the 2000 tons of mackerel which the Faroe Islands are entitled to catch in Norwegian waters as part of the fisheries agreement for 2010 between the Faroe Islands and Norway.

Source: http://www.regjeringen.no/en/dep/fkd/Press-Centre/Press-releases/2010/Ban-on-landings-of-mackerel-from-Faroese-and-Icelandic-vessels.html?id=611793

DET KONGELIGE
FISKERI- OG KYSTDEPARTEMENT

Fiskeriminister Jacob Vestergaard
Fiskeriministeriet
Heykavegur 6
Postboks 347
FO-110 Tórshavn
Færøyene

Deres ref	Vår ref 201000171	Dato
		12.08.2010

Landingsforbud

Takk for brevet av 3. august vedrørende forbudet mot landing av makrell fra Færøyske fartøy i norske havner. I brevet ditt tar du opp en rekke forhold som jeg har behov for å kommentere.

La meg starte med de legale forholdene knyttet til selve landingsforbudet.

I vår forskrift av 6. august 1993 nr. 802 om forbud mot landing av fisk og andre særskilte tiltak mot ulovlig, urapportert og uregulert fiske, er det i § 2 fastsatt et forbud mot å føre i land fisk fanget med utenlandske fartøy i farvann utenfor norsk fiskerijurisdiksjon dersom fisken er fra *"fiskebestander av felles interesse med andre stater som ikke er gjenstand for omforent bestandsregulering, eller som er underlagt norsk regulering,"* jf. § 1.

Likeledes er det i andre ledd fastsatt forbud mot å føre i land fangst tatt med utenlandske fartøy i område under norsk fiskerijurisdiksjon *"dersom fangsten består av fisk fra fiskebestand av felles interesse med andre stater, og fangsten ikke er tatt på grunnlag av fiskeriavtale mellom Norge og flaggstaten,"* jf. § 1.

Denne reguleringen medfører at hverken islandske eller færøyske fartøy på det nåværende tidspunkt kan lande makrell i norske havner. Forbudet gjelder for øvrig også for andre stater som ikke har fiskeriavtale med Norge.

Sett i lys av den bilaterale fiskeriavtalen mellom Færøyene og Norge for 2010, vil vi imidlertid tillate færøyske fartøy å lande inntil 2000 tonn makrell, som tilsvarer

Færøyenes makrellkvote i kvotebytteavtalen.

Med andre ord, landingsforbudet er ikke spesielt rettet mot Færøyene. Videre er bruk av landingsforbud i tilfeller hvor det ikke foreligger en omforent avtale en etablert praksis i Norge. For eksempel ble dette tiltaket benyttet i en periode mellom 2004 og 2006 før den nåværende kyststatsavtalen om forvaltning av NVG-sild ble inngått.

Vi deler ikke ditt syn på årsaken til at vi nå ikke lenger har en trepartsavtale om forvaltning av makrell. Både Norge og EU ønsket begge å få med Færøyene i et fortsatt samarbeide om forvaltning av makrell. Den bilaterale avtalen mellom Norge og EU fra januar 2010 er ikke til hinder for dette. Tvert imot åpner avtalen eksplisitt opp for å inkludere flere parter. Årsaken til at vi nå ikke har en trepartsavtale skyldes i all hovedsak at Færøyene har insistert på en tredobling av sin kvoteandel.

Den islandske og nå færøyske "fiske til seg kvoteandeler" strategien representerer en alvorlig trussel mot makrellbestanden. Det er for meg meget bekymringsfullt.

Jeg vil oppfordre Færøyene til å være mer ansvarlig og å begrense sitt makrellfiske til et nivå som kan gi grunnlag for konstruktive forhandlinger til høsten, hvor det felles siktemålet må være å få på plass et heldekkende regime for forvaltning og fordeling av vår felles makrellbestand.

Med hilsen

Lisbeth Berg-Hansen

SENDISTOVA FÖROYA
Færøernes Repræsentation · Representation of the Faroes

NOTE VERBALE

The Faroese Representation to Denmark presents its compliments to the Royal Norwegian Embassy and, acting upon instruction from the Government of the Faroes, has the honour to refer to the administrative decision of *Det Kongelige Fiskeri- og Kystdepartement* on 29 July 2010. The Faroese Government notes with regret that pursuant to the above-mentioned administrative decision, vessels flying the flag of *inter alia* the Faroe Islands, are prohibited to unload mackerel in the ports of Norway, except the allocation of a quota which Faroese vessels are entitled to fish in waters under Norwegian jurisdiction, according to the annual bilateral agreement between the Faroes and Norway.

According to the United Nations Convention on the Law of the Sea (UNCLOS), coastal States have sovereign rights to explore and exploit *inter alia* living resources in maritime areas under their jurisdiction. Nevertheless, pursuant to UNCLOS and the United Nations Straddling Fish Stocks Agreement, where the same fish stock occurs in the waters of two or more coastal States, coastal States shall seek to agree upon management measures for such straddling fish stocks. This is an *obligation de moyens*, not *de résultat.* The Faroe Islands have participated constructively in consultations with the other coastal States with a view to agreeing on management measures for the Northeast Atlantic mackerel stock. These consultations have unfortunately not yet resulted in agreement.

The general prohibition to unload mackerel in Norwegian ports constitutes a restriction on importation in violation of Article XI:1 of the General Agreement on Tariffs and Trade (GATT) and Article 5 of the bilateral agreement on free trade of goods between Denmark together with the Faroes and Norway, from 1992. The above-mentioned administrative decision is also inconsistent with Article XIII:1 and V GATT and cannot be seen to fall within the realm of either of the general exceptions under Article XX GATT. The Government of the Faroes regrets that Norway has enforced such measures, inconsistent with its international commitments, on vessels flying the flag of the Faroe Islands and urges Norway to revoke these measures.

The Representation of the Faroes avails itself of this opportunity to renew to the Royal Norwegian Embassy the assurances of its highest consideration.

Copenhagen 11 August 2010,

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A copy of this Note Verbale has been sent to the Royal Danish Ministry of Foreign Affairs.

SPEECH/10/483

Maria Damanaki

European Commissioner for Maritime Affairs and Fisheries

Speaking points for the press conference

Agriculture and Fisheries Council

Brussels, 27 September 2010

I would like to thank Minister President Kris Peeters for the excellent way in which he chaired the Council this morning and led us to the productive conclusions he just presented.

Allow me to make some additional remarks from my side.

I have taken the initiative to discuss with the ministers today the mackerel quota sharing dispute between the Coastal States in the North East Atlantic, an issue of extreme importance for our mackerel fishing industry.

The actions by Iceland and the Faroe Islands in setting unilateral quotas for themselves is nothing short of unacceptable. The EU and Norway have built up the stock in the North East Atlantic to a good and sustainable level. The amount of mackerel which Icelandic and Faroese vessels have taken out of the sea this year goes way beyond what they have ever fished before. These actions also defy all the hard efforts of our own industry in trying to protect this stock.

We concluded today that we want to resolve this untenable situation, to avoid that our fishermen would be even worse off in the future.

The Commission has ensured the continuation of the dialogue with the Faroe Islands and Iceland over recent weeks and this process will continue while we are discussing the way ahead with Norway.

We must get the best for our fishing industry while preserving sustainable fish stocks. The Commission considers that we should seek a balanced and fair result for all parties concerned in the form of a long term sharing agreement on mackerel between all Coastal States. In such a long term sharing agreement we should take the migration of mackerel into more northern waters into account. Such an arrangement would have the advantage of delivering stability and certainty on future fishing possibilities for the Union's mackerel industry, because without an agreement we don't know what be situation may be next year.

But we will not seek an agreement at any cost. If we are met with continuing exaggerated quota expectations from either Faroe Islands or Iceland, then the EU will to be ready to act, in particular, in relation to our annual fisheries arrangements with those countries.

Now we have to focus on results, on finding a long term agreement on quota shares between the Coastal States that can deliver a good and sustainable outcome.

Reykjavik, 8 October 2010

Ms. Maria Damanaki, Commissioner on Fisheries and Maritime Affairs
Mr. Stefan Füle, Commissioner on Enlargement and European Neighbourhood Policy
Mr. Karel De Gucht, Commissioner on Trade
European Commission
Bruxelles
Belgium

Dear Commissioners,

With reference to your letter of 7 October last, we would like to make the following comments.

Iceland has been working in good faith towards a solution to the mackerel issue. We have expressed our willingness to contribute to an agreement on the understanding that the other parties will do the same. Recently, in preparation for the forthcoming coastal States consultations in London from 12-14 October 2010, Iceland hosted a bilateral meeting with the EU in Reykjavik which both parties considered very constructive.

We are therefore disappointed with the allegations in your letter that Iceland carries the main responsibility for the fact that the aggregated unilateral mackerel quotas of the four parties exceed the sustainability limits for the stock. Clearly, the four coastal States carry a joint responsibility in this regard.

We strongly oppose to your proposition that the mackerel issue "transcends the purely fishery management domain". Indeed, this would be a dangerous precedent to set for fisheries managment negotiations in general.

We are of course keenly aware of the importance of this issue for all four coastal states. As we have already stated, Iceland will do its utmost to reach an agreement. This will require flexibility and realism from all parties if we are to reach a balanced solution.

Yours sincerely,

Jón Bjarnason
Minister of Fisheries and Agriculture

Össur Skarphéðinsson
Minister for Foreign Affairs

FISKIMÁLARÁÐIÐ

Information Memorandum **October 2010**

International Management of Northeast Atlantic Mackerel

For the Faroe Islands, with an economy overwhelmingly dependent on fisheries, mackerel and other pelagic fish stocks in the Northeast Atlantic have vital importance. To ensure the long-term sustainability of the fisheries, effective international cooperation on the management of all shared stocks in the region, including the mackerel, is crucial.

The Faroe Islands contribute actively to regional cooperation on the management of shared fish stocks in the Northeast Atlantic. This cooperation includes participation in management arrangements with neighbouring countries and through the Northeast Atlantic Fisheries Commission (NEAFC), as well as the contribution to scientific research and coordination of inspection and control in the region.

The Faroese fisheries zone is centrally located in the migration and distribution of major pelagic fish stocks in the Northeast Atlantic, giving the Faroe Islands an important stake in the sustainable utilisation and joint international management of these valuable resources.

The Government of the Faroes is therefore committed to reaching a new and effective multilateral arrangement for the joint management of the Northeast Atlantic mackerel stock in 2011 and beyond, in cooperation with the EU, Norway and Iceland. Such an arrangement will also provide a basis for measures to regulate mackerel fisheries in international waters through NEAFC, in cooperation between the coastal states and the Russian Federation.

- **A new multilateral mackerel arrangement necessary**

Responsible management of mackerel in the Northeast Atlantic must take into account the ecological role and changes in distribution of the mackerel stock in the region. It is evident that there is a more pronounced north-western distribution and abundance of both juvenile and adult mackerel, which should be reflected in a new sharing arrangement covering the entire fishery.

The first Coastal States agreement on mackerel was concluded between the EU, the Faroe Islands and Norway for 2000 as an *ad hoc* management arrangement. For each year up to and including 2009, the arrangement was agreed on an *ad hoc* basis. Under that arrangement, the total Faroese share was only around 5% of the Total Allowable Catch (TAC).

The joint ecosystem survey carried out by the Faroe Marine Research Institute and marine research institutes in Norway and Iceland in July and August 2010 has confirmed that the distribution and abundance of mackerel is further west and north than previously measured, with a high density in the Faroese zone. Results from the 2010 egg survey, in which the Faroe Islands participated, confirm that mackerel also spawns in Faroese waters. This was already indicated by the results from the last egg survey in 2007.

It is with this basis that the Faroe Islands are seeking a larger share in a new multilateral management arrangement for mackerel.

Ministry of Fisheries
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Other aspects of the former *ad hoc* arrangement have also been unsatisfactory to the Faroe Islands, including the unilateral allocation by the EU of a so-called "southern component", to which the Faroe Islands and Norway consistently objected.

In addition, the former *ad hoc* arrangement has unfortunately not ensured that Parties have respected their allocated shares. Indeed, in some years, over-fishing by vessels of EU member states has been at levels far greater than the entire allocation of mackerel to the Faroe Islands. Some cases have been dealt with effectively, but the continued level of reported over-fishing and estimates of unreported catches and discards are still of considerable concern to the Faroe Islands.

A new and more transparent management arrangement for mackerel should apply to the entire fishery on the stock, and should also promote more effective control and enforcement measures.

- **Mackerel fisheries in 2010**

In the absence of an agreed arrangement between Coastal States for mackerel in 2010, the Faroe Islands decided in July to limit mackerel fisheries by the Faroese fleet to 85,000 tonnes, a level consistent with what the Faroe Islands consider to be a fair share of the recommended TAC. Part of this quota is exchanged with other nations through bilateral fisheries agreements with the EU, Norwary, Iceland and the Russian Federation, and an amount was also set aside for dedicated research on mackerel in Faroese waters.

The Faroese mackerel quota in 2010 has been fished in the space of a little over two months. In general the fishery has been very good, with over half of total catches landed at Faroese facilities or produced on board vessels for human consumption, and the rest landed for production of fish meal at the Faroese fish meal facility.

The EU, Norway and Iceland, as well as the Russian Federation also set their own quotas for their respective mackerel fisheries in 2010. Together these unilateral fishing limits far exceed the total catch level recommended by ICES (the International Council for the Exploration of the Sea).

- **Sustainability a joint responsibility**

The latest advice from ICES indicates that the mackerel stock is in good shape and can sustain a total catch in the coming year of well over 600,000 tonnes. The continued growth in the mackerel stock is encouraging. But an agreed arrangement between the Coastal States for its joint management is necessary if all nations with a stake in this valuable resource are to benefit from sustainable mackerel fisheries in the future.

As one of four coastal States to the mackerel consultations that are now under way for 2011, the Faroe Islands are committed to finding a more balanced and transparent new arrangement for the management of mackerel in the Northeast Atlantic. The Government of the Faroe Islands takes seriously its obligations under the UN Law of the Sea Convention and the UN Fish Stocks Agreement for coastal states to seek agreement on the joint management of shared fish stocks.

AGREED RECORD OF CONCLUSIONS OF FISHERIES CONSULTATIONS BETWEEN THE EUROPEAN UNION AND NORWAY ON THE MANAGEMENT OF MACKEREL IN THE NORTH-EAST ATLANTIC FOR 2011

COPENHAGEN, 10 DECEMBER 2010

1. A Delegation from the European Union headed by Mr John SPENCER and a Delegation from Norway headed by Mrs Ann Kristin WESTBERG, met in Copenhagen on 10 December 2010 to consult on the management of mackerel in the North-East Atlantic.

2. The Delegations exchanged views on the management of North-East Atlantic mackerel and, in particular, on the Coastal State consultations held between the European Union, the Faroe Islands, Iceland and Norway during 2010. They expressed their disappointment that the Coastal States were unable to conclude these consultations. Furthermore, they considered that the lack of a fully-fledged Coastal State agreement could undermine the status of the stock and stated that all fisheries of North-East Atlantic mackerel should be jointly managed and consequently be covered within a total catch limitation covering all fisheries.

3. In this context, the Delegations recalled the Agreed Record of Conclusions of Fisheries Consultations between the European Union and Norway on the management of mackerel in the North-East Atlantic, signed on 26 January 2010, as well as the Agreed Record of Fisheries Consultations between Norway and the European Union for 2011, signed in Bergen on 4 December 2010.

4. The Delegations agreed to recommend to their respective authorities the arrangements for the management of mackerel in 2011, as set out in Annexes I to III to this Agreed Record.

Copenhagen, 10 December 2010

For the European Union Delegation

John SPENCER

For the Delegation of Norway

Ann Kristin WESTBERG

ANNEX I

ARRANGEMENT FOR THE REGULATION OF THE FISHERIES OF MACKEREL IN 2011

1. In accordance with the arrangement on the long-term management of mackerel stock set out in Annex III, the Delegations agreed to recommend the following catch limits for 2011:

European Union	400,813 tonnes
Norway	183,069 tonnes

2. In accordance with the Agreed Record of Conclusions of Fisheries Consultations between the European Union and Norway on the management of mackerel in the North-East Atlantic, signed on 26 January 2010, the southern component fishery (ICES Divisions VIIIc and IXa) is fully integrated into the mackerel sharing arrangement for 2011. Consequently, with the integration of the southern component fishery, the Norwegian Delegation informed the EU Delegation that the corresponding quota established by Norway would no longer be established.

3. Each Party may transfer to the following year unutilised quantities of up to 10 % of the quota allocated to it. The quantity transferred shall be in addition to the quota allocated to the Party concerned in the following year. This quantity cannot be transferred further to the quotas for subsequent years.

4. Each Party may authorise fishing by its vessels of up to 10 % beyond the quota allocated. All quantities fished beyond the allocated quota for one year shall be deducted from the Party's quota allocated for the following year.

5. The Parties may fish mackerel within the catch limits laid down in paragraph 1 in their respective zones of fisheries jurisdiction and in international waters.

6. The Delegations agreed that Norway may transfer an unutilised quantity of 14,500 tonnes from 2010 to 2011 and that the European Union may transfer an unutilised quantity of 2,000 tonnes from 2010 to 2011.

   The quantities transferred shall be in addition to the quotas allocated to the respective Parties in 2011 and cannot be transferred further to the quotas for subsequent years. Furthermore, they shall be fished in the Parties' own waters, and shall not be counted in respect of any access or transfer arrangements as set out in Annex II of this Agreed Record.

aKW

ANNEX II

ACCESS AND TRANSFER ARRANGEMENTS FOR THE FISHERIES OF MACKEREL IN 2011

The following arrangement between the European Union and Norway shall be applied in 2011:

1. The fishery conducted under the access arrangement shall be conducted in accordance with the technical regulations (including opening and closing dates) applicable to the waters of the Party granting the access.

2. The EU and Norway shall have full access to fish their respective shares of the North Sea TAC in the waters of the other Party in ICES Division IVa. The mutual access regime and TAC is set out in Table 1 of this Agreed Record.

3. The EU shall, within the sharing arrangement mentioned under point 2, be allocated an additional fixed component of 1,865 tonnes, which may be fished in ICES Division IVa and IIIa, including the Norwegian Economic Zone of those areas.

4. Norway shall transfer a quota of 14,050 tonnes, equivalent to 10.8 % of the Norwegian catch limit in the Norwegian Sea[1], to the EU for fishing in ICES Divisions IIa and IVa.

5. The EU shall transfer a quota of 14,050 tonnes, identical to the quota specified under point 4, to Norway for fishing in EU waters of ICES Divisions IIa, VIa (north of 56°30'N), VII d, e, f, h and IVa.

6. The following access arrangements shall apply for 2011:

   For the EU:

   6.1. Full access to the Norwegian Economic Zone of ICES Division IVa for the mackerel quotas that the EU authorises to be fished in its own waters of ICES Division IVa.

   6.2. Access to the Norwegian Economic Zone of ICES Division IIa for a tonnage equivalent to 20% of the tonnage permitted under point 6.1 above. Deducted from this quantity is any catch taken in ICES Division IIa under the reciprocal exchange of quotas mentioned in point 4.

   For Norway:

   6.3. Full access to the EU Zone of ICES Division IVa for mackerel quotas that Norway authorises to be fished in the Norwegian Economic Zone of ICES Division IVa.

   6.4. Access to the European Union Zone of ICES Division VIa (north of 56°30'N) for a tonnage equivalent to 20 % of the tonnage permitted in point 6.3 above. Deducted from this quantity is any catch taken in ICES Division VIa under the reciprocal exchange of quotas mentioned in point 5.

7. Licence arrangements shall be agreed upon at a later stage.

[1] Norwegian Sea TAC – 130,097 tonnes

ARRANGEMENTS ON THE LONG-TERM MANAGEMENT OF THE MACKEREL STOCK

The Delegations agreed to implement a long-term management plan for the mackerel stock in the North-East Atlantic for 2011 and subsequent years, which is consistent with a precautionary approach and designed to provide for sustainable fisheries and a greater potential yield. The long-term management plan shall consist of the following elements:

1. For the purpose of this long-term management plan, SSB means the estimate according to ICES of the spawning stock biomass at spawning time in the year in which the TAC applies, taking account of the expected catch.

2. When the SSB is above 2,200,000 tonnes, the TAC shall be fixed according to the expected landings, as advised by ICES, on fishing the stock consistent with a fishing mortality rate in the range of 0.20 to 0.22 for appropriate age groups as defined by ICES.

3. When the SSB is lower than 2,200,000 tonnes, the TAC shall be fixed according to the expected landings, as advised by ICES, on fishing the stock at a fishing mortality rate determined by the following:

   Fishing mortality F = 0.22 * SSB/2,200,000

4. Notwithstanding paragraph 2, the TAC shall not be changed by more than 20% from one year to the next, including from 2010 to 2011.

5. In the event that the ICES estimate of SSB is less than 1,670,000 tonnes, the Parties shall decide on a TAC which is less than that arising from the application of paragraphs 2 to 4.

6. The Parties may decide on a TAC that is lower than that determined by paragraphs 2 to 4.

7. The Parties shall, as appropriate, review and revise these management measures and strategies on the basis of any new advice provided by ICES.

TABLE 1

JOINT STOCK QUOTAS IN THE NORTH SEA FOR 2011

Species and ICES Area	TAC	Zonal Attachment		Transfer from Norway to European Union	Transfer from EU to Norway	Quota to Norway		Quota to European Union	
		Norway	European Union			Total	EU Zone (1)	Total	Norwegian Zone (1)
		Tonnes	Tonnes						
Mackerel IV, IIIa	71,957 (2)	47,197	24,760(2)	-------	-------	47,197 (3)	47,197 (3)	24,760 (4)	24,760(4)

(1) Any part of this allocation not taken may be added to the allocation in the Party's own zone.
(2) Includes a fixed component of 1,865 tonnes
(3) May be fished in ICES Division IVa only, except for 3,000 tonnes, which may be fished in ICES Division IIIa.
(4) Of which no more than 6,000 tonnes may be fished in ICES Divisions IVb, IVc and IIIa.

Annex XIII – Press Release: Iceland's mackerel quotas for 2011.

Press Release - Decision on Iceland´s Share in Mackerel Fisheries in 2011

20.12.2010

In the Ministry´s Press Release of 30 November 2010, it was announced that Mr. Jón Bjarnason, Minister of Fisheries and Agriculture, had decided that Iceland would have an unchanged share in mackerel fisheries in 2011, taking into account the increase in the total allowable catch recommended by the International Council for the Exploration of the Sea (ICES). ICES had recommended that next year´s total allowable catch should be up to 646,000 tons. The advice for this year was up to 572,000 tons. The Minister encouraged the other coastal States to take Iceland´s share into account in their quota decisions with the view that the total mackerel fisheries would not exceed the recommended level.

The EU and Norway have now decided their mackerel quotas for next year. In total they amount to 583,882 tons or more than 90% of the recommended total allowable catch. Obviously, these parties have disregarded the legitimate interests of the other coastal States, Iceland and the Faroe Islands, and of Russia. The quota decision of the EU and Norway is in fact a decision that the total mackerel fishery next year will exceed the recommended total allowable catch and these parties bear full responsibility for that.

In accordance with the aforementioned, the Minister of Fisheries and Agriculture has decided that Iceland´s mackerel quota in 2011 shall be 146,818 tons. This year´s quota is 130,000 tons.

Reykjavik, 17 November 2010,

Ministry of Fisheries and Agriculture

Source: http://eng.sjavarutvegsraduneyti.is/news-and-articles/nr/10322

Annex XIV – Press Release: Faroese Mackerel Fisheries in 2011.

16-03-2011 | Faroese Mackerel Fisheries in 2011

Following yet another unsuccessful attempt to reach an agreement on multilateral management measures for mackerel for 2011, the Minister of Fisheries, Jacob Vestergaard, has announced a total catch limit for mackerel fisheries in Faroese waters in 2011 of 150,000 tonnes. This catch limit includes quotas exchanged with the Russian Federation and Iceland in bilateral fisheries agreements, as well as an amount set aside for dedicated scientific research on mackerel in Faroese waters.

Minister Vestergaard underlined that the total catch level for 2011 is a clear reflection of the status and legitimate interests of the Faroe Islands as a major stakeholder in the Northeast Atlantic mackerel stock. The Faroese fisheries zone is centrally located in the migration and distribution of mackerel and its abundance in Faroese waters, which is an important feeding area for mackerel, has increased substantially in recent years.

Minister Vestergaard also expressed his concern about the continued lack of agreement between the coastal states on a new four-party arrangement for the management of mackerel in the Northeast Atlantic.

"The economy of the Faroe Islands is overwhelmingly dependent on fisheries. The migratory pelagic stocks of mackerel, herring and blue whiting have long played a major part in total Faroese fisheries. As such, the Faroe Islands have an important stake in the sustainable utilisation and joint regional management of these valuable resources", said Mr Vestergaard.

In the absence of a multilateral management agreement for 2011, the other mackerel coastal states, the EU, Iceland and Norway, announced in December their respective unilateral quotas for 2011, which together are well in excess of the total catch of 646,000 recommended by ICES as sustainable.

In 2010 the Faroe Islands set a mackerel quota far lower quota than those set by the other coastal states. Fisheries Minister Vestergaard expressed his grave disappointment at the approach taken by other mackerel coastal states so far in response to the continued lack of an agreed joint management arrangement.

"The restraint exercised by the Faroe Islands compared with other mackerel fishing states in 2010, together with our genuine efforts to encourage an open and active dialogue with other parties on the issue, have been met by landing bans and blockades and a refusal by the EU and Norway to renew long-standing bilateral fisheries agreements for 2011. This is certainly no way to cooperate on finding a fair solution to mackerel management, for which we are all responsible", said Mr Vestergaard.

According to the UN Convention on the Law of the Sea, coastal States have exclusive and sovereign rights to exploit, conserve and manage living natural resources in maritime areas within their jurisdictions. For shared fish stocks, such as the mackerel stock in the Northeast Atlantic, states are also obliged under international law to seek to agree upon the measures necessary to coordinate and ensure the conservation and development of these stocks.

"The obligation shared by the coastal states to seek consensus on mackerel management must be approached by all parties on an equal footing, with a clear recognition of the changes in the distribution of the mackerel stock," said Mr Vestergaard.

Minister Vestergaard urged all relevant States to ensure that further consultations focus clearly and constructively on the need for a forward-looking approach to the future sustainable management of the Northeast Atlantic mackerel in 2012 and beyond.

For further information, contact Mr Andras Kristiansen, Head of Department.

Source: http://fisk.fo/Default.aspx?ID=2402&M=News&PID=7032&NewsID=3552

Annex XV - circular to art. 2, s. 2 in the Act of Conclusion of Agreements

CIR nr 126 af 26/09/2005 Gældende
Offentliggørelsesdato: 07-01-2006
Udenrigsministeriet

Oversigt (indholdsfortegnelse)

Den fulde tekst

Fastlæggelse af nærmere rammer for samarbejdet mellem den danske regering og Færøernes landsstyre i henhold til § 2, stk. 2, i lov nr. 579 af 24. juni 2005 om Færøernes landsstyres indgåelse af folkeretlige aftaler, herefter benævnt "loven"

I medfør af § 2, stk. 2, 2. pkt. i loven kan det fastlægges, hvilke betegnelser som kan anvendes på aftaler, der skal fremtræde som indgået på regerings- eller forvaltningsniveau, og hvor betegnelsen "Kongeriget Danmark for så vidt angår Færøerne/Kingdom of Denmark in respect of the Faroes" derfor ikke kan anvendes.

Under henvisning hertil fastlægges, at aftaler:

– som efter deres form ikke fremtræder som aftaler mellem stater, men mellem regeringer (regeringsaftaler), betegnes som aftaler indgået af: "Færøernes landsstyre/Government of the Faroes". I en præambulær bestemmelse angives følgende: "Henset til, at Færøernes landsstyre i medfør af lov om Færøernes landsstyres indgåelse af folkeretlige aftaler indgår nærværende aftale på Kongeriget Danmarks vegne/Considering that the Government of the Faroes concludes this agreement on behalf of the Kingdom of Denmark pursuant to Act on the Conclusion of Agreements under International Law by the Government of the Faroes".

– som er af teknisk karakter, og som indgås mellem forvaltningsmyndigheder (forvaltningsaftaler) betegnes som aftaler indgået af: "Landsstyremedlem for xxxx/Minister for xxxx of the Government of the Faroes". I en præambulær bestemmelse angives følgende: "Henset til, at Færøernes landsstyre i medfør af lov om Færøernes landsstyres indgåelse af folkeretlige aftaler indgår nærværende aftale på Kongeriget Danmarks vegne/Considering that the Government of the Faroes concludes this agreement on behalf of the Kingdom of Denmark pursuant to Act on the Conclusion of Agreements under International Law by the Government of the Faroes".

2. Samarbejde inden for loven.

Efter praksis mødes udenrigsministeren mindst én gang årligt med lagmanden til drøftelse af løbende udenrigspolitiske spørgsmål. Udenrigsministeriets direktør og Lagmandens Kontors direktør mødes ligeledes normalt én gang årligt med henblik på drøftelse af løbende sager. Forvaltningen af loven bør fremover være et fast punkt på dagsordenen for disse møder.

Kontaktpunkter for den løbende underretning i henhold til loven er Lagmandens Kontors Udenrigsafdeling og Udenrigsministeriets Kontor for Norden, Færøerne og Grønland.

Forud for forhandlingsforløbet af de enkelte aftaler fremsendes oplysninger om, hvilket land eller hvilken international organisation der påtænkes indledt forhandlinger med, om hvilket emne og på hvilket niveau forhandlingerne skal foregå, samt om der evt. ønskes bistand fra Udenrigstjenesten i denne forbindelse.

Af hensyn til det bedst mulige samarbejde mellem Lagmandens Kontor og Udenrigsministeriet henstilles, at eventuelle tvivlsspørgsmål om lovens anvendelse i forbindelse med påtænkte forhandlinger forelægges Udenrigsministeriet tidligst muligt.

Når en aftale i henhold til loven er færdigforhandlet, men inden den indgås, sender Udenrigsafdelingen aftaleudkastet og de yderligere informationer, som måtte være påkrævet, pr. e-post til Kontoret for Norden, Færøerne og Grønland med kopi til Udenrigsministeriets rådgiver vedrørende Færøerne. Når underretning på denne måde er givet, kan den pågældende aftale indgås, med mindre Udenrigsministeriet har meddelt andet inden to uger fra modtagelsen af underretningen.

3. Observatørstatus for Udenrigsministeriets rådgiver vedr. Færøerne

Udenrigsministeriets rådgiver vedr. Færøerne kan deltage som observatør i forhandlinger i medfør af lovens § 2. For at muliggøre denne deltagelse, bør rådgiveren modtage underretning om påtænkte forhandlinger tidligst muligt.

Udenrigsministeriet, den 26. september 2005

Per Stig Møller

Bilingual display

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BG CS DA DE EL EN ES ET FI FR HU IT LT LV MT NL PL PT RO SK SL SV	BG CS DA DE EL EN ES ET FI FR HU IT LT LV MT NL PL PT RO SK SL SV
en	**da**
COUNCIL REGULATION (EEC) No 2211/80 of 27 June 1980 on the conclusion of the Agreement on fisheries between the European Economic Community and the Government of Denmark and the Home Government of the Faroe Islands	++++
	RAADETS FORORDNING (EOEF) Nr . 2211/80
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	af 27 . juni 1980
Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,	om indgaaelse af en fiskeriaftale mellem Det europaeiske oekonomiske Faellesskab , den danske regering og det faeroeske landsstyre
Having regard to the proposal from the Commission,	RAADET FOR DE EUROPAEISKE FAELLESSKABER HAR -
Having regard to the opinion of the European Parliament [1],	under henvisning til traktaten om oprettelse af Det europaeiske oekonomiske Faellesskab , saerlig artikel 43 ,
[1]OJ No C 182, 31.7.1978, p. 55.	under henvisning til forslag fra Kommissionen ,
Whereas by its resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fisheries zone in the Community with effect from 1 January 1977, the Council agreed that fishing rights for Community fishermen in the waters of third countries must be obtained and preserved by appropriate Community Agreements;	under henvisning til udtalelse fra Europa-Parlamentet (1) , og
Whereas the Agreement on fisheries between the Community and the Government of Denmark and the Home Government of the Faroe Islands signed on 15 March 1977 should be concluded,	ud fra foelgende betragtninger :
HAS ADOPTED THIS REGULATION:	Ved sin resolution af 3 . november 1976 vedroerende visse eksterne aspekter i forbindelse med oprettelsen af en fiskerizone paa 200 soemil i Faellesskabet fra den 1 . januar 1977 gav Raadet udtryk for , at Faellesskabets fiskeres ret til at fiske i tredjelandes farvande maa opnaas og bevares ved hjaelp af passende faellesskabsaftaler ;
Article 1	den fiskeriaftale mellem Faellesskabet , den danske regering og det faeroeske landsstyre , der undertegnedes den 15 . marts 1977 , boer indgaas -
The Agreement on fisheries between the European Economic Community and the Government of Denmark and the Home Government of the Faroe Islands is hereby approved on behalf of the Community.	UDSTEDT FOELGENDE FORORDNING :
The text of the Agreement is annexed to this Regulation.	Artikel 1
Article 2	Fiskeriaftalen mellem Det europaeiske oekonomiske Faellesskab , den danske regering og det faeroeske landsstyre godkendes herved paa Faellesskabets vegne .
The President of the Council shall give the notification provided for in Article 11 of the Agreement [2].	Teksten til aftalen er knyttet som bilag til denne forordning .
[2]The date of entry into force of the Agreement will be published in the Official Journal of the European Communities by the General Secretariat of the Council.	Artikel 2
Article 3	Formanden for Raadet foranstalter den deponering af akter , der er omhandlet i artikel 11 i aftalen (2) .
This Regulation shall enter into force on the day following its publication in the Official Journal of the European Communities.	Artikel 3

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 June 1980.

For the Council

The President

A. SARTI

Denne forordning traeder i kraft dagen efter offentliggoerelsen i De Europaeiske Faellesskabers Tidende .

Denne forordning er bindende i alle enkeltheder og gaelder umiddelbart i hver medlemsstat .

Udfaerdiget i Bruxelles , den 27 . juni 1980 .

Paa Raadets vegne

A . SARTI

Formand

(1) EFT nr . C 182 af 31 . 7 . 1978 , s . 55 .

(2) Datoen for aftalens ikrafttraeden vil blive offentliggjort i De Europaeiske Faellesskabers Tidende paa foranledning af Generalsekretariatet for Raadet .

FISKERIAFTALE

mellem Det europaeiske oekonomiske Faellesskab paa den ene side og den danske regering og det faeroeske landsstyre paa den anden side

DET EUROPAEISKE OEKONOMISKE FAELLESSKAB (herefter benaevnt Faellesskabet)

paa den ene side , og

DEN DANSKE REGERING OG DET FAEROESKE LANDSSTYRE

paa den anden side ,

SOM HENVISER til Faeroeernes status som selvstyrende integrerende del af en af Faellesskabets medlemsstater ;

SOM HENVISER til Raadets resolution af 4 . februar 1974 om Faeroeernes problemer ;

SOM TAGER I BETRAGTNING , at fiskeriet er af vital betydning for Faeroeerne , og at det er deres vaesentligste oekonomiske virksomhed ;

SOM TAGER deres faelles oenske om at sikre bevaring og en hensigtsmaessig regulering af fiskebestandene i havet ud for deres kyster i betragtning ;

SOM TAGER HENSYN TIL , at en del af de biologiske ressourcer i visse omraader af deres respektive fiskerizoner udgoeres af indbyrdes staerkt afhaengige bestande , som udnyttes af begge parters fiskere ;

SOM ERKENDER , at udvidelsen af fiskerizonerne i det atlantiske omraade kan medfoere en overfoersel af fiskeriindsats , som kan faa en ugunstig virkning for disse ressourcer ;

SOM ERKENDER , at kyststaterne i dette omraade under disse omstaendigheder har stor interesse i at sikre bevaring og en hensigtsmaessig regulering af de biologiske ressourcer ved passende foranstaltninger ;

SOM TAGER arbejdet paa De forenede Nationers tredje havretskonference i betragtning ;

SOM BEKRAEFTER , at kyststaterne ved udvidelsen af omraaderne under deres jurisdiktion over de biologiske ressourcer og ved udoevelsen af deres suveraene rettigheder i disse omraader med henblik paa udforskning , udnyttelse , bevaring og regulering af disse ressourcer skal henholde sig til og handle i overensstemmelse med de folkeretlige grundsaetninger ;

SOM TAGER HENSYN TIL , at det er blevet besluttet fra 1 . januar 1977 at oprette en fiskerizone omkring Faeroeerne paa indtil 200 soemil fra kysten , inden for hvilken Faeroeerne vil udoeve suveraene rettigheder med henblik paa udforskning , udnyttelse , bevaring og regulering af de biologiske ressourcer , samt til at Faellesskabet har vedtaget en udvidelse af graenserne for medlemsstaternes fiskerizoner (herefter benaevnt Faellesskabets

fiskerijurisdiktionsomraade) paa indtil 200 soemil , idet fiskeriet inden for disse graenser er undergivet Faellesskabets faelles fiskeripolitik ;

SOM OENSKER , at der fastsaettes bestemmelser og betingelser for fiskeri af faelles interesse ;

ER BLEVET ENIGE OM FOELGENDE :

Artikel 1

Hver part skal give den anden parts fiskefartoejer adgang til at fiske i det omraade , der er undergivet dens fiskerijurisidktion i overensstemmelse med bestemmelserne i det foelgende .

Artikel 2

Hver part skal , i det omfang det er hensigtsmaessigt , én gang om aaret for det omraade , der er undergivet dens fiskerijurisdiktion , med forbehold af eventuelle tilpasninger til imoedegaaelse af uforudsete omstaendigheder og ud fra behovet for en hensigtsmaessig regulering af de biologiske ressourcer :

a) fastlaegge den totale tilladte fangst for enkelte bestande eller for grupper af bestande , idet der tages hensyn til det bedste videnskabelige materiale , som den har til raadighed , bestandenes indbyrdes afhaengighed , arbejdet i egnede internationale organisationer samt andre relevante faktorer :

b) efter passende konsultationer fastlaegge fangstmaengderne for den anden parts fiskefartoejer samt angive , inden for hvilke omraader disse maengder kan fiskes . Begge parter skal tage sigte paa at tilvejebringe en tilfredsstillende ligevaegt mellem fiskemulighederne i deres respektive fiskerizoner . Ved fastlaeggelsen af fiskemulighederne skal hver part tage hensyn til ;

i) parternes saedvanlige fangster ;

ii) noedvendigheden af at afhjaelpe vanskelighederne for begge parter mest muligt , saafremt fiskemulighederne indskraenkes ;

iii) alle andre relevante faktorer .

De foranstaltninger til regulering af fiskeriet , som hver part traeffer med henblik paa at opretholde eller genoprette fiskebestandene paa et niveau , der giver det stoerst mulige vedvarende udbytte , maa ikke vaere af en saadan art , at de er til hinder for den fulde udoevelse af fiskerettighederne i henhold til aftalen .

Artikel 3

Hver part kan kraeve , at fiskeri , der drives af den anden parts fiskefartoejer i omraader undergivet dens fiskerijurisdisktion , betinges af licens . Hver parts kompetente myndigheder skal paa passende maade og i rette tid meddele den anden part navn , registreringsnummer og andre relevante oplysninger om de fiskefartoejer , der er berettiget til at fiske i det omraade , der er undergivet den anden parts fiskerijurisdiktion . Derefter udsteder den anden part licenser i overensstemmelse med de i artikel 2 b) fastsatte fiskemuligheder .

Artikel 4

1 . Hver parts fiskefartoejer skal , naar de fisker inden for et omraade , der er undergivet den anden parts fiskerijurisdiktion , overholde de af denne part fastsatte bevaringsforanstaltninger og oevrige regler og betingelser , samt denne parts retsforskrifter og bestemmelser vedroerende fiskeri .

2 . Der skal ske passende forudgaaende underretning om nye regler , betingelser , love eller bestemmelser .

Artikel 5

1 . Hver part traeffer de noedvendige foranstaltninger for at sikre , at dens fiskefartoejer overholder bestemmelserne i denne aftale samt andre relevante bestemmelser .

2 . Hver part kan - i overensstemmelse med de folkeretlige bestemmelser - for det omraade , der er undergivet dens fiskerijurisdiktion , traeffe saadanne foranstaltninger , som skoennes noedvendige for at sikre , at den anden parts fiskefartoejer overholder bestemmelserne i denne aftale .

Artikel 6

Parterne forpligter sig til at samarbejde for at sikre en hensigtsmaessig regulering og bevaring af havets biologiske ressourcer og til at fremme den noedvendige videnskabelige forskning i denne forbindelse , isaer for saa vidt angaar

a) bestande , der findes i omraader undergivet begge parters fiskerijurisdiktion , med henblik paa - i det omfang det er muligt - at samordne foranstaltninger til regulering af fiskeriet efter disse bestande ;

b) bestande af faelles interesse , der findes inden for omraader undergivet begge parters fiskerijurisdiktion samt i omraader , der ligger udenfor , men graenser op til disse omraader .

Artikel 7

Parterne vedtager at konsultere hinanden om spoergsmaalet vedroerende anvendelsen af aftalen , og om hvorledes denne fungerer .

Saafremt der opstaar strid om fortolkningen eller anvendelsen af denne aftale , skal en saadan strid goeres til genstand for konsultationer mellem parterne .

Artikel 8

Intet i denne aftale indvirker paa eller foregriber paa nogen maade parternes synspunkter vedroerende noget spoergsmaal i forbindelse med havret .

Artikel 9

Denne aftale anfaegter ikke de rettigheder , som danske statsborgere , der er bosiddende paa Faeroeerne , har i kongeriget Danmark .

Artikel 10

Denne aftale gaelder dels for de omraader , hvor traktaten om oprettelse af Det europaeiske oekonomiske Faellesskab finder anvendelse og paa de i den naevnte traktat fastsatte betingelser , dels for Faeroeerne .

Artikel 11

Denne aftale traeder i kraft den dato , paa hvilken de kontraherende parter giver hinanden meddelelse om , at de hertil noedvendige procedurer er afsluttet . Indtil ikrafttraedelsen anvendes aftalen midlertidigt fra 1 . januar 1977 at regne .

Artikel 12

Denne aftale gaelder i en foerste periode paa ti aar efter datoen for dens ikrafttraedelse . Saafremt aftalen ikke bringes til ophoer af nogen af parterne gennem opsigelse med et varsel paa mindst ni maaneder inden denne periodes udloeb , forbliver den i kraft i yderligere perioder paa seks aar , medmindre den er opsagt mindst seks maaneder foer udloebet af en saadan periode .

Artikel 13

Parterne vedtager at tage denne aftale op til fornyet behandling i forbindelse med afslutningen af forhandlingerne om en multilateral traktat som foelge af De forenede Nationers tredje havretskonference .

	Artikel 14 Denne aftale er udfaerdiget i to eksemplarer paa dansk , engelsk , fransk , italiensk , nederlandsk , tysk og faeroesk , idet disse tekster har samme gyldighed . TIL BEKRAEFTELSE HERAF har undertegnede , der er behoerigt befuldmaegtiget hertil , undertegnet denne aftale . Udfaerdiget i Bruxelles , den femtende marts nitten hundrede og syvoghalvfjerds . Geschehen zu Bruessel am fuenfzehnten Maerz neunzehnhundertsiebenundsiebzig . Done at Brussels on the fifteenth day of March in the year one thousand nine hundred and seventy-seven . Fait à Bruxelles , le quinze mars mil neuf cent soixante-dix-sept . Fatto a Bruxelles , addi quindici marzo millenovecentosettantasette . Gedaan te Brussel , de vijftiende maart negentienhonderd zevenenzeventig . Skriva i Bruxelles , tann fimtandi mars 1977 . For Raadet for De europaeiske Faellesskaber Fuer den Rat der Europaeischen Gemeinschaften For the Council of the European Communities Pour le Conseil des Communautés européennes Per il Consiglio delle Comunità europee Voor de Raad van de Europese Gemeenschappen Fyri Europeiska Buskaparliga Felagsskapin For den danske regering og det faeroeske landsstyre Fuer die Regierung von Daenemark und die Landesregierung der Faeroeer For the Government of Denmark and the Home Government of the Faroe Islands Pour le gouvernement du Danemark et le gouvernement local des îles Féroé Per il governo danese e il governo locale delle isole Faeroeer Voor de Regering van Denemarken en de plaatselijke Regering van de Faeroeer Fyri Donsku stjornina og Foeroye Landsstyri

Top

Understanding
between a Commission delegation headed by Mr H. SCHMIEGELOW and a Danish delegation in respect of the Faroe Islands and Greenland, headed by Mr F. HEDEGAARD on

INTERNATIONAL FISHERIES RELATIONS

Brussels 4 December 1986

With respect to meetings in international fisheries organizations, the two delegations agreed to consult closely in the future with the objective of furthering cooperation and with the specific aim of :

- reaching a common point of view wherever possible;

- supporting each other in the pursuit of their specific interests;

- ~~abstaining from~~ avoiding taking positions which could jeopardise the other Party's possibilities for pursuing its interests.

In matters where opposite interests do not allow the establishment of a common view point, the Parties will give each other the opportunity to reach a high degree of understanding for the position of the other Party.

Annex XVIII – Free Trade Agreement between the European Community and Faroe Islands.

Agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part

Official Journal L 053 , 22/02/1997 P. 0002 – 0135

AGREEMENT between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part

THE EUROPEAN COMMUNITY,

of the one part, and

THE GOVERNMENT OF DENMARK AND THE HOME GOVERNMENT OF THE FAROE ISLANDS,

of the other part,

RECALLING the status of the Faeroes as a self-governing integral part of one of the Member States of the Community;

RECALLING the resolution of the Council of 4 February 1974 on the problems of the Faeroes;

CONSIDERING the vital importance for the Faeroes of fisheries, which constitute their essential economic activity, fish and fishery products being their main export articles;

CONSIDERING the importance of the fisheries relationship laid down in the Agreement on fisheries between the Contracting Parties, who confirm that the trade aspects of this Agreement should not affect the functioning of the Fisheries Agreement and that, consequently, the volume of the mutual fisheries possibilities under that Agreement should continue to be maintained at a satisfactory level;

DESIRING to consolidate and to extend the economic relations existing between the Community and the Faeroes and to ensure, with due regard for fair conditions of competition, the harmonious development of their commerce for the purpose of contributing to the work of constructing Europe;

RESOLVED progressively to eliminate the obstacles to substantially all their trade, in accordance with the provisions of the General Agreement on Tariffs and Trade (GATT) 1994 concerning the establishment of free trade areas;

DECLARING their readiness to examine, in the light of any relevant factor, and in particular of developments in the Community, the possibility of developing and deepening their relations where

it would appear to be useful in the interests of their economies to extend them to fields not covered by this Agreement;

CONSIDERING that, to this end, an Agreement between the European Economic Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part (hereafter referred to as the 'initial Agreement`) was signed on 2 December 1991;

CONSIDERING that an Agreement in the form of an Exchange of Letters between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part, amending Tables I and II of the Annex to Protocol 1 of the initial Agreement (hereafter referred to as the 'Agreement in the form of an Exchange of Letters`) was signed on 8 March 1995;

CONSIDERING that, pursuant to the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union on 1 January 1995, the arrangements applicable to trade in fish and fishery products between the Faeroes and the Community should be adjusted in order to maintain trade flows between the Faeroes, on the one hand, and the new Member States, on the other;

CONSIDERING that, as a result of the adoption by the Community of a common definition of origin for petroleum products, it is necessary to make adjustments to the provisions affecting these products;

CONSIDERING that, in order to take account of certain developments in trade between the Community and the Member States of EFTA, it is necessary to make adjustments to the provisions concerning the definition of the concept of 'originating products` and methods of administrative cooperation;

CONSIDERING that, in order to take account of the specific production of fish feed on the Faeroes, it is necessary to make adjustments to the provisions applicable to imports of certain agricultural products;

CONSIDERING that, in order to help ensure its correct functioning, a Protocol on mutual administrative assistance in customs matters should be incorporated into this Agreement;

CONSIDERING that, in order to conform with certain modifications to the nomenclature of the customs tariffs of the Contracting Parties affecting products referred to in the initial Agreement, it is necessary to update the tariff nomenclature of these products;

CONSIDERING that, in order to provide for more flexibility, it is appropriate to empower the Joint Committee to decide on amendments to the provisions of the Protocols to this Agreement;

CONSIDERING that, for the sake of clarity, the initial Agreement and the Agreement in the form of an Exchange of Letters should be replaced by a composite new text in the form of this Agreement;

TAKING INTO ACCOUNT that the bilateral trade Agreements between Finland and Sweden and the Faeroes cease to be in force on the entry into force of this Agreement;

HAVE DECIDED, in pursuit of these objectives and considering that no provisions of this Agreement may be interpreted as exempting the Contracting Parties from the obligations which are incumbent on them under other international agreements,

TO CONCLUDE THIS AGREEMENT:

Article 1

The aim of this Agreement is:

(a) to promote through the expansion of reciprocal trade the harmonious development of economic relations between the Community and the Faeroes and thus to foster in the Community and in the Faeroes the advance of economic activity, the improvement of living and employment conditions, and increased productivity and financial stability,

(b) to provide fair conditions of competition for trade between the Contracting Parties,

(c) to contribute in this way, by the removal of barriers to trade, to the harmonious development and expansion of world trade.

Article 2

This Agreement shall apply to products originating in the Community or the Faeroes:

(i) which fall within Chapters 25 to 97 of the Harmonized System, other than those listed in Annex II to the Treaty establishing the European Community, and other than those listed in Annex I to this Agreement;

(ii) which are specified in Protocols 1, 2 and 4 to this Agreement, with due regard to the arrangements provided for in those Protocols.

Article 3

No new customs duty on imports shall be introduced in trade between the Community and the Faeroes.

Article 4

1. The Community shall abolish customs duties on imports from the Faeroes.

2. The Faeroes shall abolish customs duties on imports from the Community: to this end Annex II sets out the provisions contained in the customs and fiscal legislation of the Faeroes.

Article 5

The provisions concerning the abolition of customs duties on imports shall apply also to import duties of a fiscal nature.

The Faeroes may replace an import duty of a fiscal nature or the fiscal element of an import duty by an internal tax.

Article 6

No new charge having an effect equivalent to a customs duty shall be introduced in trade between the Community and the Faeroes.

Charges having an effect equivalent to customs duties on imports in trade between the Community and the Faeroes shall be abolished.

Article 7

No customs duty on exports or charge having equivalent effect shall be introduced in trade between the Community and the Faeroes.

Customs duties on exports and charges having equivalent effect shall be abolished.

Article 8

Protocol 1 lays down the tariff treatment and arrangements applicable to certain fish and fishery products released for free circulation in the Community or imported into the Faeroes.

Article 9

Protocol 2 lays down the tariff treatment and arrangements applicable to certain products obtained by processing agricultural products.

Article 10

1. In the event of specific rules being established as a result of the implementation of its agricultural policy or of any alteration of the current rules, the Contracting Party in question may adapt the arrangements resulting from this Agreement in respect of the products which are the subject of those rules or alterations.

2. In such cases the Contracting Party in question shall take due account of the interests of the other Contracting Party. To this end the Contracting Parties may consult each other within the Joint Committee established by Article 31.

Article 11

Protocol 3 lays down the definition of the concept of 'originating products` and methods of administrative cooperation.

Article 12

A Contracting Party which is considering the reduction of the effective level of its duties or charges having equivalent effect applicable to third countries benefiting from most-favoured-nation

treatment, or which is considering the suspension of their application, shall, as far as may be practicable, notify the Joint Committee not less than 30 days before such reduction or suspension comes into effect. It shall take note of any representations by the other Contracting Party regarding any distortions which might result therefrom.

Article 13

1. No new quantitative restriction on imports or measures having equivalent effect shall be introduced in trade between the Community and the Faeroes.

2. The Contracting Parties shall abolish quantitative restrictions on imports and any measures having an effect equivalent to quantitative restrictions on imports.

Article 14

1. The Community reserves the right to modify the arrangements applicable to the petroleum products falling within headings Nos 2710, 2711, ex 2712 (excluding ozokerite, lignite wax and peat wax) and 2713 of the combined nomenclature on adoption of decisions under the common commercial policy for petroleum products or on establishment of a common energy policy.

In this event, the Community shall take due account of the interests of the Faeroes; to this end it shall inform the Joint Committee, which shall meet under the conditions set out in Article 33 (2).

2. The Faeroes reserves the right to take similar action should it be faced with like situations.

3. Subject to paragraphs 1 and 2, this Agreement shall not prejudice the non-tariff rules applied to imports of petroleum products.

Article 15

1. The Contracting Parties declare their readiness to foster, so far as their agricultural policies allow, the harmonious development of trade in agricultural products to which this Agreement does not apply.

2. The Contracting Parties shall apply their rules in veterinary, health and plant health matters in a non-discriminatory fashion and shall not introduce any new measures that have the effect of unduly obstructing trade.

3. The Contracting Parties shall examine, under the conditions set out in Article 35, any difficulties that might arise in their trade in agricultural products and shall endeavour to seek appropriate solutions.

Article 16

The Home Government of the Faroe Islands shall take the necessary control measures to ensure the correct application of the reference price fixed or to be fixed by the Community, referred to in Article 2 of Protocol 1.

The Contracting Parties shall ensure the correct application of the definition of the concept of 'originating products` and methods of administrative cooperation, laid down in Protocol 3.

Article 17

Protocol 4 lays down the special provisions applicable to imports of certain agricultural products other than those listed in Protocol 1.

Article 18

Protocol 5 lays down the provisions on mutual assistance between administrative authorities in customs matters.

Article 19

The Contracting Parties reaffirm their commitment to grant each other the most-favoured-nation treatment in accordance with the GATT 1994.

This Agreement shall not preclude the maintenance or establishment of customs unions, free trade areas or arrangements for frontier trade, except in so far as they alter the trade arrangements provided for in this Agreement, in particular the provisions concerning rules of origin.

Article 20

The Contracting Parties shall refrain from any measure or practice of an internal fiscal nature which, whether directly of indirectly, discriminates between the products of one Contracting Party and like products originating in the territory of the other Contracting Party.

Products exported to the territory of one of the Contracting Parties may not benefit from repayment of internal taxation in excess of the amount of direct or indirect taxation imposed on them.

Article 21

Payments relating to trade in goods and the transfer of such payments to the Member State of the Community in which the creditor is resident or to the Faeroes shall be free from any restrictions.

Article 22

This Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, law and order or public security, the protection of life and health of humans, animals or plants, the protection of national treasures of artistic, historic or archaeological value, the protection of industrial and commercial property, or rules relating to gold or silver.

Such prohibitions or restrictions must not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties.

Article 23

Nothing in this Agreement shall prevent a Contracting Party from taking any measures:

(a) which it considers necessary to prevent the disclosure of information contrary to its essential security interests;

(b) which relate to trade in arms, munitions or war materials or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;

(c) which it considers essential to its own security in time of war or serious international tension.

Article 24

1. The Contracting Parties shall refrain from any measure likely to jeopardize the fulfilment of the objectives of this Agreement.

2. They shall take any general or specific measures required to fulfil their obligations under this Agreement.

If either Contracting Party considers that the other Contracting Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 29.

Article 25

1. The following are incompatible with the proper functioning of this Agreement in so far as they may affect trade between the Community and the Faeroes:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as regards the production of or trade in goods;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Contracting Parties as a whole or in a substantial part thereof;

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. Should a Contracting Party consider that a given practice is incompatible with this Article, it may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 29.

Article 26

Where an increase in imports of a given product is or is likely to be seriously detrimental to any production activity carried on in the territory of one of the Contracting Parties and where this increase is due to:

(i) the partial or total reduction in the importing Contracting Party, as provided for in this Agreement, of customs duties and charges having equivalent effect levied on the product in question; and

(ii) the fact that the duties or charges having equivalent effect levied by the exporting Contracting Party on imports of raw materials or intermediate products used in the manufacture of the product in question are significantly lower than the corresponding duties or charges levied by the importing Contracting Party:

the Contracting Party concerned may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 29.

Article 27

If one of the Contracting Parties finds that dumping is taking place in trade with the other Contracting Party, it may take appropriate measures against this practice in accordance with the Agreement on Implementation of Article VI of the GATT 1994, under the conditions and in accordance with the procedures laid down in Article 29.

Article 28

If serious disturbances arise in any sector of the economy or if difficulties arise which could bring about serious deterioration in the economic situation of a region, the Contracting Party concerned may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 29.

Article 29

1. In the event of a Contracting Party subjecting imports of products liable to give rise to the difficulties referred to in Articles 26 and 28 to an administrative procedure, the purpose of which is to provide rapid information on the trend of trade flows, it shall inform the other Contracting Party.

2. In the cases specified in Articles 24 to 28, before taking the measures provided for therein or, in cases to which paragraph 3 (d) of this Article applies, as soon as possible, the Contracting Party in question shall supply the Joint Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Contracting Parties.

In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement.

The safeguard measures shall be notified immediately to the Joint Committee and shall be the subject of periodical consultations within the Committee, particularly with a view to their abolition as soon as circumstances permit.

3. For the implementation of paragraph 2, the following provisions shall apply:

(a) as regards Article 25, either Contracting Party may refer the matter to the Joint Committee if it considers that a given practice is incompatible with the proper functioning of this Agreement within the meaning of Article 25 (1).

The Contracting Parties shall provide the Joint Committee with all relevant information and shall give it the assistance it requires in order to examine the case and, where appropriate, to eliminate the practice objected to.

If the Contracting Party in question fails to put an end to the practice objected to within the period fixed by the Joint Committee, or in the absence of agreement in the Joint Committee within three months of the matter being referred to it, the Contracting Party concerned may adopt any safeguard measures it considers necessary to deal with the serious difficulties resulting from the practices in question; in particular it may withdraw tariff concessions;

(b) as regards Article 26, the difficulties arising from the situation referred to in that Article shall be referred for examination to the Joint Committee, which may take any decision needed to put an end to such difficulties.

If the Joint Committee or the exporting Contracting Party has not taken a decision putting an end to the difficulties within 30 days of the matter being referred, the importing Contracting Party is authorized to levy a compensatory charge on the product imported.

The compensatory charge shall be calculated according to the incidence on the value of the goods in question of the tariff disparities in respect of the raw materials or intermediate products incorporated therein;

(c) as regards Article 27, consultation in the Joint Committee shall take place before the Contracting Party concerned takes the appropriate measures;

(d) where exceptional circumstances requiring immediate action make prior examination impossible, the Contracting Party concerned may, in the situations specified in Articles 26, 27 and 28 and also in the case of export aids having a direct and immediate incidence on trade, apply forthwith the precautionary measures strictly necessary to remedy the situation.

Article 30

Where one or more Member States of the Community or the Faeroes is in difficulties or is seriously threatened with difficulties as regards its balance of payments, the Contracting Party concerned may take the necessary safeguard measures. It shall inform the other Contracting Party forthwith.

Article 31

1. A Joint Committee is hereby established which shall be responsible for the administration of this Agreement and shall ensure its proper implementation. For this purpose, it shall make recommendations and take decisions in the cases provided for in this Agreement. These decisions shall be put into effect by the Contracting Parties in accordance with their own rules.

2. For the purpose of the proper implementation of this Agreement the Contracting Parties shall exchange information and, at the request of either Party, shall hold consultations within the Joint Committee.

3. The Joint Committee shall adopt its own rules of procedure.

Article 32

1. The Joint Committee shall consist of representatives of the Contracting Parties.

2. The Joint Committee shall act by mutual agreement.

Article 33

1. Each Contracting Party shall preside in turn over the Joint Committee, in accordance with the arrangements to be laid down in its rules of procedure.

2. The Chairman shall convene meetings of the Joint Committee at least once a year in order to review the general functioning of this Agreement.

The Joint Committee shall, in addition, meet whenever special circumstances so require, at the request of either Contracting Party, in accordance with the conditions to be laid down in its rules of procedure.

3. The Joint Committee may decide to set up any working party that can assist it in carrying out its duties.

Article 34

1. The Joint Committee may amend the provisions of the Protocols to this Agreement.

2. In the event of modifications of the nomenclature of the customs tariffs of the Contracting Parties affecting products referred to in this Agreement, the Joint Committee may adapt the tariff nomenclature of these products to conform with such modifications.

Article 35

1. Where a Contracting Party considers that it would be useful in the common interest of both Contracting Parties to develop the relations established by this Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the other Contracting Party.

The Contracting Parties may instruct the Joint Committee to examine this request and, where appropriate, to make recommendations to them, particularly with a view to opening negotiations.

2. The agreements resulting from the negotiations referred to in paragraph 1 will be subject to ratification or approval by the Contracting Parties in accordance with their own procedures.

Article 36

At the request of the Faeroes, the Community will consider

- improving the access possibilities for specific products,

- extending its tariff concessions for Faeroese fishery products to include new fish species caught by Faeroese fishing vessels based and operating in the North Atlantic, or to include fishery products pertaining thereto not currently produced by the Faeroese fishing industry. These new fish species or fishery products could be imported free of duty into the Community, subject to the necessary quantitative limitations should the new fish species or fishery products be of a sensitive nature in the Community.

Article 37

The Annexes and Protocols to this Agreement shall form an integral part thereof.

Article 38

Either Contracting Party may denounce this Agreement by notifying the other Contracting Party. This Agreement shall cease to be in force 12 months after the date of such notification.

Article 39

This Agreement shall apply, on the one hand, to the territories to which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of the Faeroes.

Article 40

1. This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Faeroese languages, each of these texts being equally authentic.

2. It will be approved by the Contracting Parties in accordance with their own procedures.

3. It shall enter into force on 1 January 1997, provided that the Contracting Parties have notified each other before that date that the procedures necessary to this end have been completed. After this date, this Agreement shall enter into force on the first day of the third month following such notification.

4. The provisions of the following Agreements shall cease to be in force on the entry into force of this Agreement:

- the Agreement between the European Economic Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part, signed on 2 December 1991,

- the Agreement in the form of an exchange of letters between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other

part, amending Tables I and II of the Annex to Protocol 1 of the abovementioned Agreement, signed on 8 March 1995,

- the bilateral trade agreements between Finland and Sweden and the Faeroes.

Hecho en Bruselas, el seis de diciembre de mil novecientos noventa y seis.

Udfærdiget i Bruxelles den sjette december nitten hundrede og seks og halvfems.

Geschehen zu Brüssel am sechsten Dezember neunzehnhundertsechsundneunzig.

¸ãéíå óôéò ÂñõîÝëëåò, óôéò Ýîé Äåêåìâñßïõ ÷ßëéá åíïéáêüóéá åíåíÞíôá Ýîé.

Done at Brussels on the sixth day of December in the year one thousand nine hundred and ninety-six.

Fait à Bruxelles, le six décembre mil neuf cent quatre-vingt-seize.

Fatto a Bruxelles, addì sei dicembre millenovecentonovantasei.

Gedaan te Brussel, de zesde december negentienhonderd zesennegentig.

Feito em Bruxelas, em seis de Dezembro de mil novecentos e noventa a seis.

Tehty Brysselissä kuudentena päivänä joulukuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäkuusi.

Som skedde i Bryssel den sjätte december nittonhundranittiosex.

Gjørdur í Brússel, sætta desembur nítjanhundra s og n´ytiseks.

Por la Comunidad Europea

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Ãéá ôçí Åõñùðáúêþ Êïéíüôçôá

For the European Community

Pour la Communauté européenne

Per la Comunità europea

Voor de Europese Gemeenschap

Pela Comunidade Europeia

Euroopan yhteisön puolesta

På Europeiska gemenskapens vägnar

Fyri Europeiska Felagsskapin

>REFERENCE TO A GRAPHIC>

Por el Gobierno de Dinamarca y el Gobierno local de las Islas Feroe

For Danmarks regering og Færøernes landsstyre

Für die Regierung von Dänemark und die Landesregierung der Färöer

Ãéá ôçí êõâÝñíçóç ôçò Äáíßáò êáé ôçí ôïðéêÞ êõâÝñíçóç ôùí ÍÞóùí Öåñüå

For the Government of Denmark and the Home Government of the Faroe Islands

Pour le gouvernement du Danemark et le gouvernement local des îles Féroé

Per il governo della Danimarca e per il governo locale delle isole Færøer

Voor de Regering van Denemarken en de Landsregering van de Faeröer

Pelo Governo da Dinamarca e pelo Governo Regional das Ilhas Faroé

Tanskan hallituksen ja Färsaarten paikallishallituksen puolesta

På Danmarks regerings och Färöarnas landsstyres vägnar

Fyri ríkisstjórn Danmarkar og Føroya landsst´yri

FREE TRADE AGREEMENT BETWEEN THE FAROE ISLANDS AND NORWAY

AGREEMENT BETWEEN THE GOVERNMENT OF NORWAY, OF THE ONE PART, AND THE GOVERNMENT OF DENMARK AND THE HOME GOVERNMENT OF THE FAROE ISLANDS, OF THE OTHER PART, ON FREE TRADE BETWEEN NORWAY AND THE FAROE ISLANDS

THE GOVERNMENT OF NORWAY,

of the one part, and

THE GOVERNMENT OF DENMARK AND *THE HOME GOVERNMENT OF THE FAROE ISLANDS,*

of the other part,

HEREINAFTER referred to as the Contracting Parties,

RECALLING the status of the Faroe Islands as a self-governing part of Denmark;

CONSIDERING the fact that the Faroe Islands earlier were part of the European Free Trade Association (EFTA) through Denmark's membership of that Organization, but are not included in Denmark's membership of the European Communities;

CONSIDERING the vital importance for both the Faroe Islands of fisheries, which constitute their essential economic activity, fish and fishery products being their main export articles;

CONSIDERING the vital importance of fisheries for Norway and for Norwegian coastal communities,

DESIRING to consolidate and to extend the economic relations existing between Norway and the Faroe Islands and to ensure, with due regard for fair conditions of competition, the harmonious development of their mutual trade in the context of European co-operation;

RESOLVED to this end to eliminate progressively the obstacles to substantially all their trade, in accordance with the provisions of the General Agreement on Tariffs and Trade concerning the establishment of free-trade areas;

DECLARING their readiness to examine, in the light of any relevant factor, and in particular of developments in European co-operation, the possibility of developing and deepening their relations in order to extend them to fields not covered by this Agreement;

HAVE DECIDED, in pursuit of these objectives and considering that no provisions of this Agreement may be interpreted as exempting the Contracting Parties from their obligations under other international agreements,

TO CONCLUDE THIS AGREEMENT:

Article 1

Objectives

The Contracting Parties shall establish a free-trade area, comprising Norway and the Faroe Islands, in accordance with the provisions of the present Agreement.

The objectives of this Agreement are:

(a) to promote, through the expansion of reciprocal trade, the harmonious development of economic relations between Norway and the Faroe Islands and thus to foster the advance of economic activity, the improvement of living and employment conditions, and increased productivity and financial stability;

(b) to provide fair conditions of competition for trade between Norway and the Faroe Islands;

(c) to contribute in this way, by the removal of barriers to trade, to the harmonious development and expansion of world trade.

Article 2

Scope

This Agreement shall apply:

(a) to products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System excluding the products listed in Annex 1;

(b) to fish and other marine products as provided for in Annex 2,

originating in Norway or the Faroe Islands.

Article 3

Rules of Origin and Administrative Co-operation

1. Annex 3 lays down the rules of origin.

2. Annex 4 refers to the rules and methods of administrative co-operation in customs matters.

Article 4

Prohibition and Abolition of Customs Duties and Charges having Equivalent Effect

1. No new customs duties on imports and exports or charges having equivalent effect shall be introduced in trade between Norway and the Faroe Islands.

2. Customs duties on imports and exports and charges having equivalent effect shall be abolished upon the entry into force of this Agreement.

3. Annex 5 contains provisions for the abolition of customs duties of a fiscal nature in the Faroe Islands from 1 January 1993.

Article 5

Prohibition and Abolition of Quantitative Restrictions and Measures having Equivalent Effect

1. No new quantitative restrictions on imports and exports or measures having equivalent effect shall be introduced in trade between Norway and the Faroe Islands.

2. Quantitative restrictions on imports and exports and measures having equivalent effect shall be abolished upon the entry into force of this Agreement except as provided for in Annex 6.

Article 6

Trade in Petroleum Products

The Contracting Parties reserve their rights to take special measures regarding trade in petroleum products.

Article 7

Trade in Agricultural Products

1. The Contracting Parties declare their readiness to foster, in so far as their agricultural policies allow, harmonious development of trade in agricultural products.

2. In pursuance of this objective, the Contracting Parties simultaneously conclude an Arrangement providing for measures to facilitate trade in agricultural products between Norway and the Faroe Islands.

3. The Contracting Parties shall apply their regulations in veterinary, health and plant health matters in a non-discriminatory fashion and shall not introduce any new measures that have the effect of unduly obstructing trade.

Article 8

Customs Unions, Free-Trade Areas and Frontier Trade

This Agreement shall not prevent the maintenance or establishment of customs unions, free-trade areas or arrangements for frontier trade, to the extent that these do not negatively affect the trade regimes provided for by this Agreement, in particular the provisions concerning rules of origin.

Article 9

Internal Taxation

1. The Contracting Parties shall refrain from any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between products originating in Norway and like products originating in the Faroe Islands.

2. Products originating in Norway exported to the Faroe Islands or products originating in the Faroe Islands exported to Norway may not benefit from repayment of internal taxation in excess of the amount of direct or indirect taxation imposed on them.

Article 10

Payments

Payments relating to trade and the transfer of such payments to Norway or to the Faroe Islands, depending on where the creditor resides, shall be free from any restrictions.

Article 11

General Exceptions

This Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants and the environment; the protection of national treasures possessing artistic, historic or archaeological value; the protection of intellectual property; or rules relating to gold or silver; or conservation of exhaustible natural resources, if such measures are made effective in conjunction with restrictions on domestic production or consumption. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties.

Article 12

Security Exceptions

Nothing in this Agreement shall prevent a Contracting Party from taking any measures which it considers necessary:

(a) to prevent the disclosure of information contrary to its essential security interests;

(b) to the protection of its essential security interests or for the implementation of international obligations or national policies

(i) relating to the traffic in arms, ammunition and implements of war, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes, and to traffic in other goods, materials and services as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(ii) relating to the non-proliferation of biological and chemical weapons, nuclear weapons or other nuclear explosive devices; or

(iii) taken in time of war or other serious international tension.

Article 13

Fulfilment of Obligations

1. The Contracting Parties shall refrain from any measure likely to jeopardize the fulfilment of the objectives of this Agreement.

2. They shall take all general or specific measures to ensure the fulfilment of their obligations under this Agreement.

If either Contracting Party considers that the other Contracting Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures under the conditions and in accordance with the procedure laid down in Article 23.

Article 14

Rules of Competition

1. The following are incompatible with the proper functioning of this Agreement in so far as they may affect trade between Norway and the Faroe Islands:

(a) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as regards the production of, or trade in, goods;

(b) abuse by one or more undertakings of a dominant position in the territories of Norway or of the Faroe Islands as a whole or in a substantial part thereof.

2. If a Contracting Party considers that a given practice is incompatible with the provisions of paragraph 1, it may take appropriate measures after consultations with the other Party or after thirty days following referral for such consultations.

Article 15

Public Monopolies

The Contracting Parties shall ensure that any public monopoly of a commercial character in Norway and in the Faroe Islands be adjusted so that no discrimination regarding the conditions under which goods are procured and marketed will exist between residents of Norway and the Faroe Islands.

Article 16

Public Aid

1. Any aid granted by one Contracting Party or through public resources in any form which distorts or threatens to distort competition by favouring certain undertakings or the production of certain

goods shall in so far as it may affect trade between Norway and the Faroe Islands, be incompatible with the proper functioning of this Agreement.

2. Any practices contrary to paragraph 1 should be assessed on the basis of the criteria set out in Annex 7.

3. The Contracting Parties shall ensure transparency of public aid measures by exchanging information as provided for in paragraph 4 of Annex 7.

4. If a Contracting Party considers that a given practice is incompatible with the provisions of paragraph 1, it may take appropriate measures against this practice, which shall not be in excess of the injury caused by the practice, under the conditions and in accordance with the procedures laid down in Article 23.

Article 17

Protection of Intellectual Property

1. The Contracting Parties shall co-operate with the aim of gradually improving the non-discriminatory protection of intellectual property rights, including measures for the grant and enforcement of such rights. Rules between the Contracting Parties concerning the protection of intellectual property rights shall be elaborated. These rules shall ensure a level of protection similar to that prevailing in the member states of the European Communities and in the member states of the European Free Trade Association.

2. With respect to paragraph 1, intellectual property rights shall include, in particular, protection of copyrights, comprising computer programmes, data bases and neighbouring rights; trade marks; geographical indications; industrial design; patents; topographies of integrated circuits; as well as undisclosed information on know-how.

Article 18

Public Procurement

1. The Contracting Parties consider the effective liberalization of their respective public procurement markets as a desirable and important objective of this Agreement.

2. As of the entry into force of this Agreement, the Contracting Parties shall grant each others' companies access to contract award procedures on their respective public procurement markets according to the Agreement on Government Procurement of 12 April 1979, as amended by a Protocol of Amendments of 2 February 1987, negotiated under the auspices of the General Agreement on Tariffs and Trade.

3. The Contracting Parties shall progressively develop and adjust the rules, conditions and practices governing the participation in public procurement contracts awarded by public authorities and public undertakings, and by private undertakings which have been granted special or exclusive rights, so as to ensure free access and transparency, and that there is no discrimination between potential suppliers from the Contracting Parties.

4. The Contracting Parties shall further recommend or agree, as appropriate, the practical modalities for this development, including i.a. scope, timetable and rules to be applied.

Article 19

Dumping

If one of the Contracting Parties finds that dumping within the meaning of Article VI of the General Agreement on Tariffs and Trade is taking place in trade with the other Contracting Party, it may take the appropriate measures against this practice in accordance with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade and with the procedures laid down in Article 23.

Article 20

Emergency Action on Imports of Particular Products

Where any product is being imported in such increased quantities and under such conditions as to cause, or threaten to cause:

(a) serious injury to domestic producers of like or directly competitive products in Norway or in the Faroe Islands; or

(b) serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region,

the Contracting Party concerned may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 23.

Article 21

Re-export and Serious Shortage

Where compliance with the provisions of Articles 4 and 5 lead to

(a) re-export towards a third country against which the exporting Contracting Party maintains, for the product concerned, quantitative export restrictions, export duties or measures or charges having equivalent effect; or

(b) a serious shortage, or threat thereof, of a product essential to the exporting Contracting Party,

and where the situations referred to above give rise or are likely to give rise to major difficulties for the exporting Contracting Party, that Contracting Party may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 23.

Article 22

Balance of Payments Difficulties

In case of serious balance of payments difficulties or imminent threat thereof for Norway or the Faroe Islands, the Contracting Party concerned may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 23.

Article 23

Procedures for the Application of Safeguard Measures

1. Before initiating the procedures for the application of safeguard measures set out in this Article, the Contracting Parties shall endeavour to solve any differences between them through direct consultations.

2. Without prejudice to paragraph 6 of this Article the Contracting Party which considers resorting to safeguard measures shall promptly notify the other Contracting Party thereof and supply all relevant information. Consultations between the Contracting Parties shall take place without delay with a view to finding a mutually acceptable solution.

3. For the application of paragraph 2 the following provisions apply:

(a) As regards Articles 16 (Public Aid), and Article 18 (Public Procurement), the Contracting Party concerned shall give to the other Contracting Party all the assistance required for the examination of the case and shall, where appropriate, eliminate the practice objected to. If the Contracting Party in question fails to put an end to the practice objected to within a period agreed upon between the Contracting Parties or in the absence of such an agreement, within three months of the matter being referred to it, the Contracting Party concerned may adopt the appropriate measures to deal with the difficulties resulting from the practice in question.

(b) As regards Articles 19 (Dumping), 20 (Emergency Action on Imports of Particular Products), and 21 (Re-export and Serious Shortage), the Contracting Parties shall examine the situation and may take any decision needed to put an end to the difficulties notified by the Contracting Party concerned. In the absence of such decisions within thirty days of the matter being raised, the Contracting Party concerned may adopt the measures necessary in order to remedy the situation.

(c) As regards Article 13 (Fulfilment of Obligations), the Contracting Party concerned may take appropriate measures after the consultations have been concluded or a period of three months has elapsed from the date of notification.

4. The safeguard measures taken shall be notified immediately to the other Contracting Party. They shall be restricted with regard to their extent and to their duration to what is strictly necessary in order to rectify the situation giving rise to their application and shall not be in excess of the injury caused by the practice or the difficulty in question. Priority shall be given to such measures as will least disturb the functioning of the Agreement.

5. The safeguard measures taken shall be the object of regular consultations between the Contracting Parties with a view to their relaxation, substitution or abolition as soon as possible.

6. Where exceptional circumstances requiring immediate action make prior examination impossible, the Contracting Party concerned may, in the cases of Articles 19 (Dumping), 20 (Emergency Action in Imports of Particular Products), and 21 (Re-export and Serious Shortage), apply forthwith the precautionary measures strictly necessary to remedy the situation. The measures shall be notified without delay, and consultations between the Contracting Parties shall take place as soon as possible.

Article 24

Consultation Mechanisms

1. For the purpose of the proper implementation of this Agreement, the Contracting Parties shall, whenever necessary, exchange information and, at the request of either Contracting Party, hold consultations.

2. The Contracting Parties agree that the implementation of this Agreement shall be supervised and administered by a Joint Committee consisting of representatives of the Contracting Parties. For this purpose, the following shall apply:

(a) The exchange of information and the consultations referred to in paragraph 1, and especially the consultations and decisions referred to in Article 23, shall, when appropriate, take place in the Joint Committee.

(b) The Joint Committee may take decisions in cases provided for in this Agreement. On other matters the Joint Committee may make recommendations.

(c) For the purpose of the proper implementation of this Agreement the Joint Committee shall meet whenever necessary. Each Party to this Agreement may request that a meeting be held.

(d) The Joint Committee shall act by common agreement.

(e) The Joint Committee shall lay down its own rules of procedure.

(f) The Joint Committee may decide to set up such sub-committees and working parties as it considers necessary to assist it in accomplishing its tasks.

(g) The Joint Committee may decide to amend the Annexes.

Article 25

Evolutionary Clause

1. Where a Contracting Party considers that it would be useful in the interest of the Contracting Parties to develop the relations established by this Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the other Contracting Party.

2. Agreements resulting from the procedure referred to in paragraph 1 will be subject to ratification or approval by the Contracting Parties in accordance with their own procedures.

Article 26

Annexes

The Annexes to this Agreement are an integral part of it.

Article 27

Territorial Application

The Agreement shall apply, on the one hand, to Norway, and, on the other hand, to the Faroe Islands.

Article 28

Denunciation

Either Contracting Party may denounce this Agreement by notification to the other Contracting Party. The Agreement shall cease to be in force twelve months after the date of which such notification was received by the other Contracting Party.

Article 29

Entry into Force

This Agreement is drawn up in triplicate in the Norwegian, Danish and Faroese languages, each of these texts being equally authentic.

This Agreement will be approved by the Contracting Parties in accordance with their own procedures. It shall enter into force on the first day of the month following the day on which the Contracting Parties have notified each other through diplomatic channels that their respective requirements for the entry into force of this Agreement have been fulfilled.

Pending the entry into force it shall apply provisionally from 1 September 1992.

ANNEX 2

UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Members hereby *agree* as follows:

Article 1

Coverage and Application

1. The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the "covered agreements"). The rules and procedures of this Understanding shall also apply to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization (referred to in this Understanding as the "WTO Agreement") and of this Understanding taken in isolation or in combination with any other covered agreement.

2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special or additional rules and procedures of such agreements under review, and where the parties to the dispute cannot agree on rules and procedures within 20 days of the establishment of the panel, the Chairman of the Dispute Settlement Body provided for in paragraph 1 of Article 2 (referred to in this Understanding as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within 10 days after a request by either Member. The Chairman shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict.

Article 2

Administration

1. The Dispute Settlement Body is hereby established to administer these rules and procedures and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. With respect to disputes arising under a covered agreement which is a Plurilateral Trade Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a Plurilateral Trade Agreement, only those Members that are parties to that Agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

2. The DSB shall inform the relevant WTO Councils and Committees of any developments in disputes related to provisions of the respective covered agreements.

3. The DSB shall meet as often as necessary to carry out its functions within the time-frames provided in this Understanding.

4. Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus.[1]

Article 3

General Provisions

1. Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of GATT 1947, and the rules and procedures as further elaborated and modified herein.

2. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

3. The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.

4. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of the matter in accordance with the rights and obligations under this Understanding and under the covered agreements.

5. All solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements, including arbitration awards, shall be consistent with those agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements.

6. Mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified to the DSB and the relevant Councils and Committees, where any Member may raise any point relating thereto.

7. Before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. In the absence of a mutually agreed solution,

[1] The DSB shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision.

the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement. The last resort which this Understanding provides to the Member invoking the dispute settlement procedures is the possibility of suspending the application of concessions or other obligations under the covered agreements on a discriminatory basis vis-à-vis the other Member, subject to authorization by the DSB of such measures.

8. In cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. This means that there is normally a presumption that a breach of the rules has an adverse impact on other Members parties to that covered agreement, and in such cases, it shall be up to the Member against whom the complaint has been brought to rebut the charge.

9. The provisions of this Understanding are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered agreement through decision-making under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement.

10. It is understood that requests for conciliation and the use of the dispute settlement procedures should not be intended or considered as contentious acts and that, if a dispute arises, all Members will engage in these procedures in good faith in an effort to resolve the dispute. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

11. This Understanding shall be applied only with respect to new requests for consultations under the consultation provisions of the covered agreements made on or after the date of entry into force of the WTO Agreement. With respect to disputes for which the request for consultations was made under GATT 1947 or under any other predecessor agreement to the covered agreements before the date of entry into force of the WTO Agreement, the relevant dispute settlement rules and procedures in effect immediately prior to the date of entry into force of the WTO Agreement shall continue to apply.[2]

12. Notwithstanding paragraph 11, if a complaint based on any of the covered agreements is brought by a developing country Member against a developed country Member, the complaining party shall have the right to invoke, as an alternative to the provisions contained in Articles 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of 5 April 1966 (BISD 14S/18), except that where the Panel considers that the time-frame provided for in paragraph 7 of that Decision is insufficient to provide its report and with the agreement of the complaining party, that time-frame may be extended. To the extent that there is a difference between the rules and procedures of Articles 4, 5, 6 and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.

Article 4

Consultations

1. Members affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members.

[2] This paragraph shall also be applied to disputes on which panel reports have not been adopted or fully implemented.

2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former.[3]

3. If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Member does not respond within 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a panel.

4. All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

5. In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.

6. Consultations shall be confidential, and without prejudice to the rights of any Member in any further proceedings.

7. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute.

8. In cases of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the complaining party may request the establishment of a panel.

9. In cases of urgency, including those which concern perishable goods, the parties to the dispute, panels and the Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.

10. During consultations Members should give special attention to the particular problems and interests of developing country Members.

11. Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements[4],

[3] Where the provisions of any other covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such other covered agreement shall prevail.

[4] The corresponding consultation provisions in the covered agreements are listed hereunder: Agreement on Agriculture, Article 19; Agreement on the Application of Sanitary and Phytosanitary Measures, paragraph 1 of Article 11; Agreement on Textiles and Clothing, paragraph 4 of Article 8; Agreement on Technical Barriers to Trade, paragraph 1 of Article 14; Agreement on Trade-Related Investment Measures, Article 8; Agreement on Implementation of Article VI of GATT 1994, paragraph 2 of Article 17; Agreement

such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.

Article 5

Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential, and without prejudice to the rights of either party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.

4. When good offices, conciliation or mediation are entered into within 60 days after the date of receipt of a request for consultations, the complaining party must allow a period of 60 days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the 60-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

5. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.

6. The Director-General may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

Article 6

Establishment of Panels

on Implementation of Article VII of GATT 1994, paragraph 2 of Article 19; Agreement on Preshipment Inspection, Article 7; Agreement on Rules of Origin, Article 7; Agreement on Import Licensing Procedures, Article 6; Agreement on Subsidies and Countervailing Measures, Article 30; Agreement on Safeguards, Article 14; Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 64.1; and any corresponding consultation provisions in Plurilateral Trade Agreements as determined by the competent bodies of each Agreement and as notified to the DSB.

1. If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.[5]

2. The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

Article 7

Terms of Reference of Panels

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel:

> "To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement(s)."

2. Panels shall address the relevant provisions in any covered agreement or agreements cited by the parties to the dispute.

3. In establishing a panel, the DSB may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all Members. If other than standard terms of reference are agreed upon, any Member may raise any point relating thereto in the DSB.

Article 8

Composition of Panels

1. Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.

2. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

3. Citizens of Members whose governments[6] are parties to the dispute or third parties as defined in paragraph 2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

[5] If the complaining party so requests, a meeting of the DSB shall be convened for this purpose within 15 days of the request, provided that at least 10 days' advance notice of the meeting is given.

[6] In the case where customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.

4. To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.

5. Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.

6. The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.

7. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.

8. Members shall undertake, as a general rule, to permit their officials to serve as panelists.

9. Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

10. When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

11. Panelists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Article 9

Procedures for Multiple Complainants

1. Where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Members concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel shall organize its examination and present its findings to the DSB in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its views to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

Article 10

Third Parties

1. The interests of the parties to a dispute and those of other Members under a covered agreement at issue in the dispute shall be fully taken into account during the panel process.

2. Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. Third parties shall receive the submissions of the parties to the dispute to the first meeting of the panel.

4. If a third party considers that a measure already the subject of a panel proceeding nullifies or impairs benefits accruing to it under any covered agreement, that Member may have recourse to normal dispute settlement procedures under this Understanding. Such a dispute shall be referred to the original panel wherever possible.

Article 11

Function of Panels

The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

Article 12

Panel Procedures

1. Panels shall follow the Working Procedures in Appendix 3 unless the panel decides otherwise after consulting the parties to the dispute.

2. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

3. After consulting the parties to the dispute, the panelists shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process, taking into account the provisions of paragraph 9 of Article 4, if relevant.

4. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

5. Panels should set precise deadlines for written submissions by the parties and the parties should respect those deadlines.

6. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in paragraph 3 and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time-period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

7. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

8. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to issue its report to the parties to the dispute within three months.

9. When the panel considers that it cannot issue its report within six months, or within three months in cases of urgency, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months.

10. In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing country Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.

11. Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

12. The panel may suspend its work at any time at the request of the complaining party for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 8 and 9 of this Article, paragraph 1 of Article 20, and paragraph 4 of Article 21 shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse.

Article 13

Right to Seek Information

1. Each panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member. A Member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided shall not be revealed without formal authorization from the individual, body, or authorities of the Member providing the information.

2. Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 4.

Article 14

Confidentiality

1. Panel deliberations shall be confidential.

2. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.

3. Opinions expressed in the panel report by individual panelists shall be anonymous.

Article 15

Interim Review Stage

1. Following the consideration of rebuttal submissions and oral arguments, the panel shall issue the descriptive (factual and argument) sections of its draft report to the parties to the dispute. Within a period of time set by the panel, the parties shall submit their comments in writing.

2. Following the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties, including both the descriptive sections and the panel's findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further

meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.

3. The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall be conducted within the time-period set out in paragraph 8 of Article 12.

Article 16

Adoption of Panel Reports

1. In order to provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after the date they have been circulated to the Members.

2. Members having objections to a panel report shall give written reasons to explain their objections for circulation at least 10 days prior to the DSB meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the DSB, and their views shall be fully recorded.

4. Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting[7] unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to express their views on a panel report.

Article 17

Appellate Review

Standing Appellate Body

1. A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed of seven persons, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

2. The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

3. The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

4. Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 10 may make written submissions to, and be given an opportunity to be heard by, the Appellate Body.

5. As a general rule, the proceedings shall not exceed 60 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report. In fixing its timetable the Appellate Body shall take into account the provisions of paragraph 9 of Article 4, if relevant. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days.

6. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

7. The Appellate Body shall be provided with appropriate administrative and legal support as it requires.

8. The expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Procedures for Appellate Review

9. Working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information.

10. The proceedings of the Appellate Body shall be confidential. The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.

11. Opinions expressed in the Appellate Body report by individuals serving on the Appellate Body shall be anonymous.

12. The Appellate Body shall address each of the issues raised in accordance with paragraph 6 during the appellate proceeding.

13. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel.

Adoption of Appellate Body Reports

14. An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report

[7] If a meeting of the DSB is not scheduled within this period at a time that enables the requirements of paragraphs 1 and 4 of Article 16 to be met, a meeting of the DSB shall be held for this purpose.

within 30 days following its circulation to the Members.[8] This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report.

Article 18

Communications with the Panel or Appellate Body

1. There shall be no *ex parte* communications with the panel or Appellate Body concerning matters under consideration by the panel or Appellate Body.

2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Article 19

Panel and Appellate Body Recommendations

1. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned[9] bring the measure into conformity with that agreement.[10] In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.

2. In accordance with paragraph 2 of Article 3, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

Article 20

Time-frame for DSB Decisions

Unless otherwise agreed to by the parties to the dispute, the period from the date of establishment of the panel by the DSB until the date the DSB considers the panel or appellate report for adoption shall as a general rule not exceed nine months where the panel report is not appealed or 12 months where the report is appealed. Where either the panel or the Appellate Body has acted, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, to extend the time for providing its report, the additional time taken shall be added to the above periods.

Article 21

[8] If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

[9] The "Member concerned" is the party to the dispute to which the panel or Appellate Body recommendations are directed.

[10] With respect to recommendations in cases not involving a violation of GATT 1994 or any other covered agreement, see Article 26.

Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.

2. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.

3. At a DSB meeting held within 30 days[11] after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,

(b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,

(c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings.[12] In such arbitration, a guideline for the arbitrator[13] should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

4. Except where the panel or the Appellate Body has extended, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, the time of providing its report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed 15 months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the 15-month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed 18 months.

5. Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel. The panel shall circulate its report within 90 days after the date of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

6. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting

[11] If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

[12] If the parties cannot agree on an arbitrator within ten days after referring the matter to arbitration, the arbitrator shall be appointed by the Director-General within ten days, after consulting the parties.

[13] The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved. At least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings.

7. If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.

8. If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

Article 22

Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

2. If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time determined pursuant to paragraph 3 of Article 21, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

(a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;

(b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;

(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

(d) in applying the above principles, that party shall take into account:

(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;

(e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;

(f) for purposes of this paragraph, "sector" means:

(i) with respect to goods, all goods;

(ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;[14]

(iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;

(g) for purposes of this paragraph, "agreement" means:

(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;

(ii) with respect to services, the GATS;

(iii) with respect to intellectual property rights, the Agreement on TRIPS.

4. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

5. The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

6. When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator[15] appointed by the Director-General and shall be completed within 60

[14] The list in document MTN.GNS/W/120 identifies eleven sectors.

[15] The expression"arbitrator" shall be interpreted as referring either to an individual or a group.

days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

7. The arbitrator[16] acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

9. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.[17]

Article 23

Strengthening of the Multilateral System

1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall:

(a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

(b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

(c) follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time.

Article 24

Special Procedures Involving Least-Developed Country Members

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.

2. In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.

Article 25

Arbitration

1. Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

2. Except as otherwise provided in this Understanding, resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.

3. Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the DSB and the Council or Committee of any relevant agreement where any Member may raise any point relating thereto.

[16] The expression "arbitrator" shall be interpreted as referring either to an individual or a group or to the members of the original panel when serving in the capacity of arbitrator.

[17] Where the provisions of any covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such covered agreement shall prevail.

4. Articles 21 and 22 of this Understanding shall apply *mutatis mutandis* to arbitration awards.

Article 26

1. *Non-Violation Complaints of the Type Described in Paragraph 1(b) of Article XXIII of GATT 1994*

Where the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel or the Appellate Body may only make rulings and recommendations where a party to the dispute considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the application by a Member of any measure, whether or not it conflicts with the provisions of that Agreement. Where and to the extent that such party considers and a panel or the Appellate Body determines that a case concerns a measure that does not conflict with the provisions of a covered agreement to which the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable, the procedures in this Understanding shall apply, subject to the following:

(a) the complaining party shall present a detailed justification in support of any complaint relating to a measure which does not conflict with the relevant covered agreement;

(b) where a measure has been found to nullify or impair benefits under, or impede the attainment of objectives, of the relevant covered agreement without violation thereof, there is no obligation to withdraw the measure. However, in such cases, the panel or the Appellate Body shall recommend that the Member concerned make a mutually satisfactory adjustment;

(c) notwithstanding the provisions of Article 21, the arbitration provided for in paragraph 3 of Article 21, upon request of either party, may include a determination of the level of benefits which have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute;

(d) notwithstanding the provisions of paragraph 1 of Article 22, compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

2. *Complaints of the Type Described in Paragraph 1(c) of Article XXIII of GATT 1994*

Where the provisions of paragraph 1(c) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel may only make rulings and recommendations where a party considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the existence of any situation other than those to which the provisions of paragraphs 1(a) and 1(b) of Article XXIII of GATT 1994 are applicable. Where and to the extent that such party considers and a panel determines that the matter is covered by this paragraph, the procedures of this Understanding shall apply only up to and including the point in the proceedings where the panel report has been circulated to the Members. The dispute settlement rules and procedures contained in the Decision of 12 April 1989 (BISD 36S/61-67) shall apply to consideration for adoption, and surveillance and implementation of recommendations and rulings. The following shall also apply:

(a) the complaining party shall present a detailed justification in support of any argument made with respect to issues covered under this paragraph;

(b) in cases involving matters covered by this paragraph, if a panel finds that cases also involve dispute settlement matters other than those covered by this paragraph, the panel shall circulate a report to the DSB addressing any such matters and a separate report on matters falling under this paragraph.

Article 27

Responsibilities of the Secretariat

1. The Secretariat shall have the responsibility of assisting panels, especially on the legal, historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support.

2. While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.

3. The Secretariat shall conduct special training courses for interested Members concerning these dispute settlement procedures and practices so as to enable Members' experts to be better informed in this regard.

APPENDIX 1

AGREEMENTS COVERED BY THE UNDERSTANDING

(A) Agreement Establishing the World Trade Organization

(B) Multilateral Trade Agreements

Annex 1A: Multilateral Agreements on Trade in Goods
Annex 1B: General Agreement on Trade in Services
Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes

(C) Plurilateral Trade Agreements

Annex 4: Agreement on Trade in Civil Aircraft
Agreement on Government Procurement
International Dairy Agreement
International Bovine Meat Agreement

The applicability of this Understanding to the Plurilateral Trade Agreements shall be subject to the adoption of a decision by the parties to each agreement setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the DSB.

APPENDIX 2

SPECIAL OR ADDITIONAL RULES AND PROCEDURES
CONTAINED IN THE COVERED AGREEMENTS

Agreement	*Rules and Procedures*
Agreement on the Application of Sanitary and Phytosanitary Measures	11.2
Agreement on Textiles and Clothing	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 through 8.12
Agreement on Technical Barriers to Trade	14.2 through 14.4, Annex 2
Agreement on Implementation of Article VI of GATT 1994	17.4 through 17.7
Agreement on Implementation of Article VII of GATT 1994	19.3 through 19.5, Annex II.2(f), 3, 9, 21
Agreement on Subsidies and Countervailing Measures	4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5, footnote 35, 24.4, 27.7, Annex V
General Agreement on Trade in Services	XXII:3, XXIII:3
Annex on Financial Services	4
Annex on Air Transport Services	4
Decision on Certain Dispute Settlement Procedures for the GATS	1 through 5

The list of rules and procedures in this Appendix includes provisions where only a part of the provision may be relevant in this context.

Any special or additional rules or procedures in the Plurilateral Trade Agreements as determined by the competent bodies of each agreement and as notified to the DSB.

APPENDIX 3

WORKING PROCEDURES

l. In its proceedings the panel shall follow the relevant provisions of this Understanding. In addition, the following working procedures shall apply.

2. The panel shall meet in closed session. The parties to the dispute, and interested parties, shall be present at the meetings only when invited by the panel to appear before it.

3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments.

5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.

6. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.

7. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.

8. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.

9. The parties to the dispute and any third party invited to present its views in accordance with Article 10 shall make available to the panel a written version of their oral statements.

10. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.

11. Any additional procedures specific to the panel.

12. Proposed timetable for panel work:

(a) Receipt of first written submissions of the parties:

(1) complaining Party: _____ 3-6 weeks
(2) Party complained against: _____ 2-3 weeks

(b) Date, time and place of first substantive meeting with the parties; third party session: _____ 1-2 weeks

(c) Receipt of written rebuttals of the parties: _____ 2-3 weeks

(d) Date, time and place of second substantive meeting with the parties: _____ 1-2 weeks

(e) Issuance of descriptive part of the report to the parties:_____ 2-4 weeks

(f) Receipt of comments by the parties on the descriptive part of the report: _____ 2 weeks

(g)	Issuance of the interim report, including the findings and conclusions, to the parties:_____	2-4 weeks	
(h)	Deadline for party to request review of part(s) of report:	_____	1 week
(i)	Period of review by panel, including possible additional meeting with parties:	_____	2 weeks
(j)	Issuance of final report to parties to dispute:	_____	2 weeks
(k)	Circulation of the final report to the Members:	_____	3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the parties shall be scheduled if required.

APPENDIX 4

EXPERT REVIEW GROUPS

The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 2 of Article 13.

1. Expert review groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in expert review groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on an expert review group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before an expert review group.

4. Expert review groups may consult and seek information and technical advice from any source they deem appropriate. Before an expert review group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by an expert review group for such information as the expert review group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to an expert review group, unless it is of a confidential nature. Confidential information provided to the expert review group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the expert review group but release of such information by the expert review group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The expert review group shall submit a draft report to the parties to the dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the panel. The final report of the expert review group shall be advisory only.

FISKIMÁLARÁÐIÐ

FAO Committee on Fisheries - 27th Session, Rome, 5 – 9 March 2007

Statement by the Faroe Islands

The Faroe Islands welcome the opportunity, through the delegation of Denmark, to address the Committee on Fisheries of FAO, here at its 27th session in Rome. The Faroe Islands are an archipelago of 18 islands situated roughly half way between Scotland and Iceland in the Northeast Atlantic, with a total land area of some 1400 km², a sea area of 274,000 k ² and a population of 48,000.

As a self-governing territory under the sovereignty of the Kingdom of Denmark, the Faroe Islands legislate and govern a wide range of areas in accordance with the Home Rule Act of 1948, including the conservation and management of living marine resources within the 200-mile fisheries zone, as well as trade matters. The Faroe Islands have chosen not to be a part of Denmark's membership of the European Union.

The economy of the Faroes is overwhelmingly dependent on the sustainable utilisation of living marine resources and international trade in fisheries products. In addition to having established effective fisheries management in the Faroese fisheries zone, as well as an important aquaculture production, the Faroes have for many years been active players in international cooperation on fisheries conservation and management, both through reciprocal bilateral fisheries agreements with neighbouring countries, and as a coastal state in multilateral arrangements for the management of shared fish stocks in the Northeast Atlantic.

With regard to fisheries in international waters, the Faroes take an active part in regional fisheries management bodies, together with Greenland, such as in particular the Northeast Atlantic Fisheries Commission (NEAFC) and the North-west Atlantic Fisheries Organization (NAFO). As such the Faroes have had an active role in joint efforts to combat IUU fishing, as well as the recent steps taken to modernise the mandates of these organisations so they can take a broader, ecosystem-based approach to fisheries management, including measures to minimise any destructive effects fishing may have on important marine habitats. The Faroes also are a founding member of the North Atlantic Marine Mammal Commission (NAMMCO), a regional body for the conservation, management and study of marine mammals in the North Atlantic.

As a sea-faring nation with long experience in shipping activities, international cooperation on safety in shipping and the protection of the marine environment is a major priority for the Faroes. In 2002, the Faroes became an associated member of the International Maritime Organisation.

The Faroes have a relatively new programme for development assistance which focuses on participating in development projects in co-operation with experienced IGOs and INGOs, with a view to contributing financial as well as technical assistance. We are keen to share our experiences and perspectives as a small island fisheries nation in ways which can benefit developing countries facing challenges on a similar scale.

The Faroese Government, with the approval of the Foreign Affairs Committee of the Faroese Parliament, has recently decided to seek associated membership of the UN Food and Agriculture Organization. The Mission of Denmark to FAO has taken up contact with the FAO Secretariat with a view to preparing a formal application to be lodged on our behalf by the Government of Denmark. The Faroes look forward to a favourable decision on such an application in the formal decision-making body of FAO.

As associated member, the Faroes aim to develop a more active collaboration through COFI with our counterparts from fisheries nations around the world. Although the Faroe Islands are very small in both political and geographical terms, we do know a lot about fish, fisheries management and trade in fish products. We know that we can learn and benefit a great deal from direct participation in the important work going on in COFI to enhance sustainability in fisheries world-wide and thereby ensure their continued contribution to global food security. We also hope that we can contribute our own expertise and experience more directly to this work in the future, including of course full reporting on our implementation of the Code of Conduct for Responsible Fisheries.

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October 2007

منظمة الأغذية والزراعة للأمم المتحدة | 联合国粮食及农业组织 | Food and Agriculture Organization of the United Nations | Organisation des Nations Unies pour l'alimentation et l'agriculture | Organización de las Naciones Unidas para la Agricultura y la Alimentación

CONFERENCE

Thirty-fourth Session

Rome, 17 – 24 November 2007

APPLICATIONS FOR MEMBERSHIP AND ASSOCIATE MEMBERSHIP IN THE ORGANIZATION

1. Rule XIX-2 of the General Rules of the Organization (GRO) provides that any application for membership or associate membership "shall be transmitted immediately by the Director-General to Member Nations and shall be placed on the agenda of the next Conference session which opens not less than 30 days from the receipt of the application".

2. Article II-2 of the Constitution provides that any nation applying for membership shall submit a "declaration made in a formal instrument that it will accept the obligations of the Constitution as in force at the time of admission".

3. Rule XIX-1 GRO provides that this formal instrument may accompany or follow the application, and in the latter case "shall reach the Director-General not later than the opening day of the Conference session at which the admission of the applicant is to be considered".

4. To date the Director-General has received formal application for membership and associate membership from the following countries:

Applications for Membership

The Principality of Andorra

The Director-General received a formal application for membership from the Minister for Foreign Affairs of the Principality of Andorra on 19 October 2005 in the form of a letter dated 18 October 2005 (Appendix A). This application was communicated by circular letter G/CA-11/1 of 9 November 2005 to FAO Member Nations by the Director-General. A formal instrument of acceptance of the relevant obligations of the Constitution of FAO was received on 5 March 2007, jointly signed by the Heads of State and the Prime Minister of the Principality of Andorra in the form of a letter dated 19 January 2006 (Appendix B).

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The Republic of Montenegro

The Director-General received a formal application for membership from the Minister of Foreign Affairs of the Republic of Montenegro on 27 October 2006 in the form of a letter dated 19 October 2006 (Appendix C). This application was communicated by circular letter G/CA-11/1 of 29 November 2006 to FAO Member Nations by the Director-General. A formal instrument of acceptance of the relevant obligations of the Constitution of FAO was received on 27 October 2006, signed by the Minister of Foreign Affairs of the Republic of Montenegro in the form of a note verbale dated 19 October 2006 (Appendix D).

Application for Associate Membership

Faroe Islands

The Director-General received a formal application for associate membership from the Minister of Foreign Affairs of the Kingdom of Denmark on behalf of the Faroe Islands on 25 June 2007 in the form of a letter dated 21 June 2007 which included formal acceptance of the relevant obligations of the Constitution of FAO (Appendix E). This application was communicated by circular letter ref. K/CA 11/7 of 4 September 2007 to FAO Member Nations by the Director-General.

Relevant Texts

5. The following texts are relevant to the procedure for the admission of additional Member Nations and Associate Members of the Organization:

(a) Article II, paragraphs 2 and 11 of the Constitution: the Conference may, by a two-thirds majority of the votes cast, provided that a majority of the Member Nations of the Organization is present, decide to admit additional Members and Associate Members to the Organization.

(b) Rule XII-3 (c) GRO: when a two-thirds majority of the votes cast is required, the total number of affirmative and negative votes cast shall be more than one-half of the Member Nations of the Organization.

(c) Rule XII-10 (a) GRO: admission of additional Member Nations and Associate Members shall be decided by secret ballot.

6. The following provisions are also relevant:

(a) Article XVIII-2 of the Constitution: each Member Nation and Associate Member undertakes to contribute annually to the Organization its share of the Budget, as apportioned by the Conference.

(b) Article XVIII-3 of the Constitution: each Member Nation and Associate Member shall, upon approval of its application, pay as its first contribution a proportion, to be determined by the Conference, of the budget for the current financial period.

(c) Regulation 5.8 of the Financial Regulations: any nation admitted to membership or any territory admitted to associate membership shall pay a contribution to the budget for the financial period in which its membership becomes effective. Such contributions begin with the quarter in which the application was approved. In addition, all new Member Nations shall be required to make advances to the Working Capital Funds in an amount determined by the Conference.

Appendix A

THE MINISTER
OF FOREIGN AFFAIRS
OF THE PRINCIPALITY OF ANDORRA

Andorra la Vella, 18 October 2005

His Excellency
Mr Jacques Diouf
Director-General
Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla
Rome
Italy

Sir,

I have the honour to inform you herewith that the Andorran Government requests that the Principality of Andorra be admitted as a member of the Food and Agriculture Organization of the United Nations, subject to parliamentary approval. In accordance with Rule XIX-2 of the General Rules of the Organization, I should therefore be grateful if you could submit this application for membership to the 33rd session of the Conference of FAO which will be held in Rome in November 2005.

Once parliamentary approval and the instrument of acceptance have been issued, the Andorran Government will be a position to accept the obligations of membership of the Food and Agriculture Organization of the United Nations as defined in the Constitution of FAO and will fulfil those obligations as in force at the time of admission.

Accept, Sir, the assurance of my highest consideration.

[signed]

Juli Minoves Triquell
Minister of Foreign Affairs,
Culture and Cooperation

Appendix B

Government of Andorra
Ministry of Foreign Affairs, Culture
and Cooperation

Joan Enric Vives Sicília **Jacques Chirac**

Co-Princes of Andorra

WHEREAS the Government of the Principality of Andorra has seen and examined the Constitution of the Food and Agriculture Organization of the United Nations (FAO);

WHEREAS, in accordance with the provisions of Article 64.1 of the Constitution of the Principality of Andorra, the *General Council*, at its session of 15 December 2005, approved adhesion to the Constitution of the Food and Agriculture Organization of the United Nations (FAO);

We, the Co-Princes, having seen and examined the said Constitution, grant the consent of the State to comply with the provisions therein and, to such effect, order the dispatch of this Instrument of Adhesion, signed by Us and countersigned by the Head of Government.

Andorra la Vella, 19 January 2006

(Joan Enric Vives Sicília and Jacques Chirac)

Head of Government

(Albert Pintat Santolària)

Appendix C

Republic of Montenegro
Ministry of Foreign Affairs

No: 04/05-1883/6

Podgorica, 19 October 2006.

Sir,

I have the honour to inform you that the Government of the Republic of Montenegro has decided to apply for membership in the Food and Agriculture Organization of the United Nations. I, therefore, request that, in conformity with Rule XIX, paragraph 2, of the General Rules of the Organization, this application be laid before the Conference of the Organization which, I understand, will hold its next Session in Rome in November 2007.

The Government of the Republic of Montenegro hereby formally accepts the obligations of membership in the Food and Agriculture Organization of the United Nations as laid down in the Constitution of that Organization, and solemnly undertakes fully and faithfully to carry out these obligations as in force at the time of admission.

Accept, Sir, the assurance of my highest consideration.

Minister

H.E. Dr. Jacques Diouf
The Director-General
Food and Agriculture Organization
of the United Nations
Rome, Italy

Appendix D

Republika Crna Gora
Ministarstvo inostranih poslova

No: 04/05-1883/4

Podgorica, 19 October 2006.

The Government of the Republic of Montenegro hereby formally accepts the obligations of membership in the Food and Agriculture Organization of the United Nations as laid down in the Constitution of that Organization and solemnly undertakes fully and faithfully to carry out these obligations as in force at the time of admission.

Minister

H.E. Dr. Jacques Diouf
The Director-General
Food and Agriculture Organization
of the United Nations
Rome, Italy

Appendix E

File
8.H.38-3.c.
Enclosure

Date
21 June, 2007

Dear Director-General

I have the honor to inform you that the Government of Denmark hereby applies for the admission of the Faroes to associate membership in the Food and Agriculture Organization of the United Nations, FAO, in accordance with the provisions of Article II[2] of the Constitution of the Food and Agriculture Organization of the United Nations, FAO.

The Government of Denmark will accept on behalf of the Faroes the obligations of the Constitution of the Food and Agriculture Organization of the United Nations, FAO, in force as of the time of admission. The Government of Denmark will assume responsibility for ensuring observance of the following provisions of the Constitution of the Food and Agriculture Organization of the United Nations, FAO, with respect to the Faroe Islands: Article VIII[4] ; Article XVI[1] ; Article XVI[2] ; Article XVIII[2] ; and Article XVIII[3].

I shall be grateful for your assistance in placing this request for associate membership upon the agenda of the next Conference of the Food and Agriculture Organization of the United Nations, FAO.

Yours sincerely

Per Stig Møller

His Excellency
Dr. Jaques Diouf
Director-General
FAO
Viale delle Terme di Caracalla
00100 Rome
Italy

Annex XXIII - Art. XIV of the constitution of the Food and Agriculture Organisation.

Article XIV Conventions and Agreements

1. The Conference may, by a two-thirds majority of the votes cast and in conformity with rules adopted by the Conference, approve and submit to Member Nations conventions and agreements concerning questions relating to food and agriculture.
2. The Council, under rules to be adopted by the Conference, may, by a vote concurred in by at least two thirds of the membership of the Council, approve and submit to Member Nations:

a) agreements concerning questions relating to food and agriculture which are of particular interest to Member Nations of geographical areas specified in such agreements and are designed to apply only to such areas;

b) supplementary conventions or agreements designed to implement any convention or agreement which has come into force under paragraphs 1 or 2 (a).

3. Conventions, agreements, and supplementary conventions and agreements shall:

a) be submitted to the Conference or Council through the Director-General on behalf of a technical meeting or conference comprising Member Nations, which has assisted in drafting the convention or agreement and has suggested that it be submitted to Member Nations concerned for acceptance;

b) contain provisions concerning the Member Nations of the Organization, and such non-member States as are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency, and regional economic integration organizations, including Member Organizations, to which their Member States have transferred competence over matters within the purview of the conventions, agreements, supplementary conventions and agreements, including the power to enter into treaties in respect thereto, which may become parties thereto and the number of acceptances by Member Nations necessary to bring such convention, agreement, supplementary convention or agreement into force, and thus to ensure that it will constitute a real contribution to the achievement of its objectives. In the case of conventions, agreements, supplementary conventions and agreements establishing commissions or committees, participation by non-member States of the Organization that are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency or by regional economic integration organizations other than Member Organizations, shall in addition be subject to prior approval by at least two-thirds of the membership of such commissions or committees. Where any convention, agreement, supplementary convention or agreement provides that a Member Organization or a regional economic integration organization that is not a Member Organization may become a party thereto, the voting rights to be exercised by such organizations and the other terms of participation shall be defined therein. Any such convention, agreement, supplementary convention or agreement shall, where the Member States of the Organization do not participate in that convention, agreement, supplementary convention or agreement, and where other parties exercise one vote only, provide that the organization shall exercise only one vote in any body established by such convention, agreement, supplementary convention or agreement, but shall enjoy equal rights of participation with Member Nations parties to such convention, agreement, supplementary convention or agreement;

c) not entail any financial obligations for Member Nations not parties to it other than their contributions to the Organization provided for in Article XVIII, paragraph 2 of this Constitution.

4. Any convention, agreement, supplementary convention or agreement approved by the Conference or Council for submission to Member Nations shall come into force for each contracting party as the convention, agreement, supplementary convention or agreement may prescribe.
5. As regards an Associate Member, conventions, agreements, supplementary conventions and agreements shall be submitted to the authority having responsibility for the international relations of the Associate Member.
6. The Conference shall make rules laying down the procedure to be followed to secure proper consultation with governments and adequate technical preparations prior to consideration by the Conference or the Council of proposed conventions, agreements, supplementary conventions and agreements.
7. Two copies in the authentic language or languages of any convention, agreement, supplementary convention or agreement approved by the Conference or the Council shall be certified by the Chairperson of the Conference or of the

Council respectively and by the Director-General. One of these copies shall be deposited in the archives of the Organization. The other copy shall be transmitted to the Secretary-General of the United Nations for registration once the convention, agreement, supplementary convention or agreement has come into force as a result of action taken under this Article. In addition, the Director-General shall certify copies of those conventions, agreements, supplementary conventions or agreements and transmit one copy to each Member Nation of the Organization and to such non-member States or regional economic integration organizations as may become parties to the conventions, agreements, supplementary conventions or agreements.

Source: http://www.fao.org/Legal/basic_texts/Basic_Texts_2010_En_23_03.pdf

Annex XXIV – General Agreement on Tariffs and Trade, art. XI, s. 1.

Article XI*

General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

Source: http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

Annex XXV – General Agreement on Tariffs and Trade, art. V.

Article V

Freedom of Transit

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".

2. There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.

3. Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

4. All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.

5. With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.*

6. Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be

free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.

7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

Source: http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

Annex XXVI – General Agreement on Tariffs and Trade, art. XIII, s. 1.

Article XIII*

Non-discriminatory Administration of Quantitative Restrictions

1. No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

Source: http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

Annex XXVII – General Agreement on Tariffs and Trade, art. XX.

Article XX

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(*a*) necessary to protect public morals;

(*b*) necessary to protect human, animal or plant life or health;

(*c*) relating to the importations or exportations of gold or silver;

(*d*) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;

(*e*) relating to the products of prison labour;

(*f*) imposed for the protection of national treasures of artistic, historic or archaeological value;

(*g*) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

(*h*) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;*

(*i*) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

(*j*) essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures,

which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.
The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

Source: http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

Annex XXVIII – Article in a Norwegian Fisheries News Portal, June 2011. www.fish.no

Makrellfisket kan miste miljøgodkjenning

11. juni 2011 21:03

Makrell. (Foto: Jean Gaumy, Eksportutvalget for fisk).

Norsk makrell kan miste MSC-sertifiseringen som miljømerket fisk, dersom det ikke oppnås enighet om forvaltningen av makrellkvoten innen utgangen av juni neste år.

I et brev fra Det norske Veritas, Moody Marine og Food Certification International kommer det fram at godkjenningen av makrell som MCS-sertifisert fisk kan bli trukket tilbake, melder Norges Sildesalgslag.

Dersom det ikke foreligger enighet om et felles forvaltningsregime for makrell innen utgangen av juni 2012, vil alle godkjente sertifikater for makrell trekkes tilbake, heter det i brevet.

I praksis vil dette si at all makrell som er fanget før 30. mars 2012 fortsatt er miljøgodkjent og MSC-sertifisert.

- Ikke overrasket

- Dette er et resultat at vi nå ikke har et felles forvaltningsregime for den delen av makrellbestanden som er miljøsertifisert. Jeg kan derfor si at jeg ikke er overrasket over at dette er konklusjonen, sier salgsdirektør Knut Torgnes i Norges Sildesalgslag.

I vilkårene for MSC-sertifisering er det et klart krav at det skal være enighet omkring forvaltningen av et fiskeri, for at fisket skal kunne godkjennes. Det færøyske fisket etter makrell har fått avslag på sin søknad, som MCS-sertifisering som en direkte følge av manglende enighet om forvaltning.

- Det er svært uheldig for de involverte parter at vi nå er kommet i denne situasjonen. Jeg håper at de som gjennomfører forhandlinger om makrellforvaltningen mellom de ulike nasjonene kan komme til enighet innen den angitte tidsrammen som er skissert, sier Torgnes.

Kelda: http://www.fish.no/fiskeri/4658-makrellfisket-kan-miste-miljogodkjenning.html

Annex XXIX – Press Release from Iceland's Ministry of Fisheries and Agriculture about Mackerel Fisheries in 2011.

Press Release Mackerel Fisheries in 2011

14.12.2010

At the final meeting of the four coastal States conducting mackerel fisheries in the Northeast-Atlantic, it became clear that agreement will not be reached on the share of Iceland in mackerel fisheries next year. The meeting was held in Oslo 25-26 November with the participation of the EU, Norway, the Faroe Islands and Iceland, while Russia attended the meeting as observer.

In the next couple of weeks, bilateral fisheries consultations are planned between the EU and Norway, the EU and the Faroe Islands, and Norway and the Faroe Islands. These three parties have planned a meeting some time in the week after next on the share of the Faroe Islands in the mackerel fisheries. It will then become clear whether an agreement will be reached among these three parties. Presumably, the EU and Norway will not take decisions on their own mackerel fisheries before then.

At an informal meeting between Iceland and Russia in Oslo, the latter informed of its intention to determine a share for next year of 5-6% of the total catch of mackerel, which is similar as this year. Russian vessels have fished for mackerel in international waters and have also had some fishing opportunities within the Faroese zone.

Jón Bjarnason, Minister of Fisheries and Agriculture, has decided that Iceland will have an unchanged share in the mackerel fisheries in 2011, taking into account the increase in the total allowable catch recommended by the International Council for the Exploration of the Sea (ICES). The Icelandic authorities will furthermore encourage the other coastal States to take this into account in their quota decisions with the view that the total mackerel fisheries will not exceed the recommended level.

Once the EU, Norway and the Faroe Islands have negotiated or taken decisions, as the case may be, on their mackerel quotas for next year, the Ministry of Fisheries and Agriculture will issue a regulation determining the Icelandic quota in tons, taking into account the expected total catch from the stock.

The 8,000 tons that were not caught from this year´s quota will be transferred to next year and will not be subtracted from next year´s quota.

Reykjavik, 30 November 2010,

Ministry of Fisheries and Agriculture

Source: http://eng.sjavarutvegsraduneyti.is/news-and-articles/nr/10317

Annex XXX – Catch of mackerel in NEA in the years 2000 to 2011.

2000 – 2006:

Catch of mackerel in NEA in thousand tonnes.

Year:	Total Catch EU	Total Catch NO	Total Catch FO	Total catch*	Total Agreed TAC	Total catch by all
2000	406	174	21	601	612	731
2001	420	180	24	624	670	730
2002	441	184	20	645	683	771
2003	383	163	14	560	583	669
2004	374	157	13	544	532	651
2005	340	119	10	469	422	543
2006	276	121	12	409	444	471

* Total catch by EU, Norway and Faroe Islands in NEA.

Average share of the catches between EU, Norway and Faroe Islands in the years 2000 – 2006.

Year:	Total Avg Catch EU	Total Avg Catch NO	Total Avg Catch FO	Total Avg Catch
2000	67,55%	28,95%	3,49%	100,00%
2001	67,31%	28,85%	3,85%	100,00%
2002	68,37%	28,53%	3,10%	100,00%
2003	68,39%	29,11%	2,50%	100,00%
2004	68,75%	28,86%	2,39%	100,00%
2005	72,49%	25,37%	2,13%	100,00%
2006	67,48%	29,58%	2,93%	100,00%

Average share between EU, Norway and Faroe Islands for the years 2000 – 2006.

Coalition Structure	Avg Share EU	Avg Share NO	Avg Share FO	Total Share*
(EU, NO, FO)	68,62%	28,46%	2,91%	100,00%

*The total share is the total average share of the coastal states for the period 2000 – 2006.

2007 – 2009:

Catch of mackerel in NEA in thousand tonnes:

Year:	Total Catch EU	Total Catch NO	Total Catch FO	Total catch*	Total Catch IS	Total catch**
2007	341	132	13	486	37	523
2008	305	122	11	438	112	550
2009	272	121	14	407	116	523

* Total catch by EU, Norway and Faroe Islands.

** Total catch by EU, Norway, Faroe Islands and Iceland.

Average share of catch between EU, Norway and Faroe Islands for the years 2007 - 2009:

Year	Total Avg Catch EU	Total Avg Catch NO	Total Avg Catch FO	Total Avg Catch
2007	70,16%	27,16%	2,67%	100,00%
2008	69,63%	27,85%	2,51%	100,00%
2009	66,83%	29,73%	3,44%	100,00%

Average share between EU, Norway and Faroe Islands for the years 2007 - 2009:

Coalition Structure	Avg share EU	Avg share NO	Avg share FO	Total share*
(EU, NO, FO)	68,88%	28,25%	2,88%	100,00%

*The total share is the total average share of the coastal states for the period 2007 - 2009

Average share of catch between EU, Norway, Faroe Islands and Iceland for the years 2007 - 2009:

Year:	Avg share of catch EU	Avg share of catch NO	Avg share of catch FO	Avg share of catch IS	Total Avg Catch
2007	65,20%	25,24%	2,49%	7,07%	100,00%
2008	55,45%	22,18%	2,00%	20,36%	100,00%
2009	52,01%	23,14%	2,68%	22,18%	100,00%

Average share between EU, Norway, Faroe Islands and Iceland for the years 2007 - 2009:

Coalition Structure	Avg share EU	Avg share NO	Avg share FO	Avg share IS	Total share*
(EU, NO, FO)(IS)	57,55%	23,52%	2,39%	16,54%	100,00%

*The total share is the total average share of the coastal states and Iceland for the period 2007 - 2009

2010:

Estimated catch of mackerel in 2010 in thousand tonnes.

Year:	Quota EU*	Quota NO*	Quota FO	Quota IS	Others***	Total quotas	ICES Advice	EU, NO, FO, IS Total
2010	356	250	85	130	109	930	572	821

* Incl. inter-annual quota transfers.

** Incl. inter-annual quota transfers.

*** Russian quota, discards and expected overcatch.

Quota shares between EU, Norway, Faroe Islands and Iceland compared to the ICES advice for 2010.

Coalition Structure	Share EU	Share NO	Share FO	Share IS	Others*	Total Share
(EU, NO) (FO) (IS)	62,24%	43,71%	14,86%	22,73%	19,06%	162,59%

* Russian quota, discards and expected overcatch.

Share between EU, Norway, Faroe Islands and Iceland for 2010.

Coalition Structure	Share EU	Share NO	Share FO	Share IS	Total Share*
(EU, NO) (FO) (IS)	43,36%	30,45%	10,35%	15,83%	100,00%

* The total of the four coastal states.

2011:

Quotas on catch of mackerel in 2011 in thousand tonnes.

Year:	Quota EU*	Quota NO*	Quota FO	Quota IS	Total quotas*	ICES TAC Advice
2011	401	183	150	147	881	646

* Total quotas do not include expected over-catch, dispatches nor Russian quota.

Quota shares between EU, Norway, Faroe Islands and Iceland compared to the ICES TAC advice for 2011.

Coalition Structure	Share EU	Share NO	Share FO	Share IS	Total Share*
(EU, NO) (FO) (IS)	62,07%	28,33%	23,22%	22,76%	136,38%

* Russian quota, discards and expected overcatch are not included in this total.

Quota shares between EU, Norway, Faroe Islands and Iceland for 2011.

Coalition Structure	Share EU	Share NO	Share FO	Share IS	Total Share*
(EU, NO) (FO) (IS)	45,52%	20,77%	17,03%	16,69%	100,00%

* The total of the four coastal states.

Average from 2000 to 2011:

Comparing the average shares of catch between the coastal states for the years 2000 – 2011.

Year:	Avg share of catch EU	Avg share of catch NO	Avg share of catch FO	Avg share of catch IS	Total Avg Catch
2000 - 2006	68,62%	28,46%	2,91%	0,00%	99,99%
2007 - 2009	57,55%	23,52%	2,39%	16,54%	100,00%
2010 - 2011	44,44%	25,61%	13,69%	16,26%	100,00%

Sources:

ICES Advice 2008, Book 9.

ICES Advice 2009, Book 9.

ICES Advice 2010, Book 9.