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y la
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GENERAL FISHERIES COMMISSION FOR THE MEDITERRANEAN

EXTRAORDINARY SESSION

St Julians, Malta, 19-23 July 2004

ISSUES CONNECTED WITH THE FUNCTIONING OF THE GENERAL FISHERIES COMMISSION FOR THE MEDITERRANEAN

1. This document, of a preliminary nature, deals with a number of practical, institutional and legal issues regarding the functioning of the General Fisheries Commission for the Mediterranean (GFCM). Some of these issues have been identified over the years, either by the Commission itself or by its Members, as matters requiring clarification. Some of them could be handled through appropriate decisions of the Commission or adjustments to practices followed by the Commission. Others might involve changes to the Rules of Procedure of the Commission.
2. This document aims at identifying those issues for preliminary review by the Commission. It is expected that, on the basis of related discussions, the Commission would make a preliminary assessment of the extent to which the questions under review require a particular treatment.

IMPLICATIONS OF THE ABOLITION OF THE EXECUTIVE COMMITTEE

3. Until 1997, the Commission used to hold biennial sessions. At that time, the Commission included an Executive Committee. The Committee consisted of the Chairperson, two Vice-Chairpersons and not more than four Members selected by the Commission at the end of each regular session. In selecting the Members, the Commission was required to take into account the need for the various sub-regions and fisheries interests to be represented in the Executive Committee. The Chairperson of the Commission was the Chairperson of the Executive Committee and the Secretary of the Commission was the Secretary of the Executive Committee. The Executive Committee was required to meet at least once between regular sessions of the Commission and performed a number of functions. It was required, *inter alia*, to conduct the

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business of the Commission between sessions; to formulate draft resolutions to be submitted to the Commission; to prepare estimates of expenditures for the next financial period to the Commission for submission to the Organization, in light of the provisions of Article IX, paragraph 2 of the Agreement and; to coordinate the work of the committees and working parties and to function as an editorial and publications committee.

4. In parallel to the decision that the Commission should hold annual sessions, the decision was taken to abolish the Executive Committee as it was generally considered that the increase in the number and frequency of sessions of the Commission would allow it to deal with matters which hitherto were dealt with by the Executive Committee. Therefore, the revised GFCM Agreement, which came into force in 1997, did not make provision for an Executive Committee. However, experience gained in the operation of the Commission in the course of the past few years has shown that there has been an overall increase in all activities of the Commission. It appeared that there are a number of administrative and executive issues that may arise during the inter-sessional period and which the Secretary may not be able to handle on his own. Informal proposals have been made by the Commission that terms of reference be developed for the Chairperson and Vice-Chairpersons, with particular reference to functions to be carried out during that inter-sessional period of the nature of those that used to be performed by the Executive Committee.

5. The Commission may wish to provide guidance on this matter taking into account two possible options. Under one of the options, a form of Executive Committee could be re-established formally under the terms of Article VII of the GFCM Agreement. Such Committee could consist of the Chairperson, the Vice-Chairperson and a limited number of Members, selected on the basis of criteria which the Commission would establish. However, there might not be a need for such a formal approach and, therefore, another option could be considered. Under this option the Chairperson and the Vice-Chairpersons would act as an informal Steering Committee of the Commission. This is done, in fact, on an informal basis in connection with a number of technical committees of FAO. Prior to considering implementing any of these options the Commission would need to assess whether there is an actual need for that, including its budgetary implications.

6. Perhaps more than in connection with the Commission itself, the need for specific arrangements of this nature has been underlined in respect of the activities of the Scientific Advisory Committee. This Committee is required, *inter alia*, to provide independent advice on the technical and scientific basis for decisions concerning fisheries conservation and management, including biological, social and economic aspects related thereto and which plays therefore a critical role, especially in relation to the formulation of fisheries management measures and there would seem to be a need for the preparation of its work during the inter-sessional period. An informal "*coordinating committee of the Sub-committees*" has been operating for the past few years", acting as an Executive Bureau of SAC. The question arises as to whether it should be established formally. A subsidiary body of the Scientific Advisory Committee could be established either by the Commission, or the Committee itself on the basis of Rule X, paragraph 2 (a) of the Rules of Procedure.

STRUCTURE OF THE COMMISSION AND RELATIONSHIP WITH ITS SUBSIDIARY BODIES

7. The GFCM Agreement makes provision for the establishment of subsidiary bodies (Article VII refers). It provides that the Commission may establish temporary, special or standing committees to study and report on matters pertaining to the purposes of the Commission and working parties to study and recommend on specific technical problems. The committees and working parties are convened by the Chairperson of the Commission at such times and places as are determined by the Chairperson in consultation with the Director-General of the Organization as appropriate. The establishment of committees and working parties and the recruitment and

appointment of specialists are subject to the availability of the necessary funds in the relevant chapter of the approved budget of the Commission. Before taking any decision involving expenditures in connection with the establishment of committees and working parties and the recruitment or appointment of specialists, the Commission needs to have before it a report from the Secretary of the Commission on the administration and financial implications of that decision.

8. In the course of the past few years a number of issues have been raised in relation to the terminology used by the Agreement. Thus in practice, the Commission includes two subsidiary Committees, i.e. the Scientific Advisory Committee (SAC) and the Committee on Aquaculture, and, in turn these include Sub-Committees, established under Rule X of the Rules of Procedure. The Scientific Advisory Committee consists of the following Sub-Committees: the Sub-Committee on Stock-Assessment (SCSA); the Sub-Committee on Economic and Social Sciences (CESS); the Sub-Committee on Marine Environment and Ecosystems (SCMEE); the Sub-Committee on Statistics and Information (SCSI). After the abolition of the Working Party of Statistics and Economics the designation of "Working Party" is no longer used by the Commission, except occasionally in respect of ad hoc working parties of an informal nature or in the case of the GFCM/ICCAT Working Party on Large Pelagics¹. The Commission may wish to recommend precise criteria for the designation of its subsidiary bodies to be followed strictly by those subsidiary bodies. On a related and important manner, a better, more precise definition of the mandate and statutory responsibilities of the Committee on Aquaculture would seem to be required.

9. It is noted in this connection that, over the past few years, the designations have deviated from the actual wording of GFCM Agreement which refers only to committees and working parties. It could be considered that the purpose of this Article is to set forth a framework for the establishment of subsidiary bodies of the Commission irrespective of their actual designation. Accordingly, the Commission could continue with the present practice and the terminology, provided however that the practice followed by the Commission and all its subsidiary bodies be consistent and uniform.

10. In line with recommendations made by the Commission and its Committees, it would seem necessary that the reporting lines of all subsidiary bodies be defined better. However, consideration should be given to the fact that too rigid reporting lines might prevent synergies between those subsidiary bodies. This applies mainly to the Commission and its Committees, Sub-Committees and the Networks of the Committee on Aquaculture (CAQ). The Commission may wish to provide guidance on this matter.

RELATIONSHIP BETWEEN THE COMMISSION AND ITS SUBSIDIARY BODIES AND NETWORKS AND PROJECTS

11. The issue of the relationship between the existing networks and collaborative projects, has been raised on a number of occasions. There are a number of regional networks and projects which function under the general framework of the Commission, with particular reference to CopeMed, AdriaMed, MedSudMed and MedFisis. Another project, EastMed is in the process of being formulated. The Commission may wish to offer its views on the broad issue of the relationship between the Commission and these projects and activities.

12. In this connection, the Commission may wish to note that the Rules of Procedure of Committee on Aquaculture provide that the Committees shall "*oversee and guide work of the four networks created as a result of the activities of MEDRAP II and in particular by monitoring the progress, evaluating the proposed programmes of the various networks, and directing the work of the SIPAM network through the FAO Secretariat*" and to "*seek additional support to complement*

¹ The status of the GFCM/ICCAT Working Party on Large Pelagics within the Commission and in the context of the overall relationship between GFCM and ICCAT would need further clarification and formalization.

the contribution of the institutions which support the established networks, namely, CIHEAM, MAP-PAP/RAC and FAO and to enhance the work of the four networks". The Commission may wish to review these provisions in light of recent developments and all pertinent considerations, including the temporary nature of projects, and to offer its views on the possibility of a more generic wording on the matter. Some of these activities are carried out, to a large extent, under the authority of national institutions. The Commission may wish to offer its views on whether, in view of its supervisory and oversight functions in respect of those programmes, there is any risk of liabilities for the Commission arising from the functioning of those programmes and networks, whose legal nature is at times unclear and over which activities the Commission has very limited control.

CORRESPONDENTS OR FOCAL POINTS

13. In their day-to-day functioning, the Committees and Sub-Committees of the Commission rely to a substantial extent on national "*correspondents*" or "*focal points*" and on "*coordinator of Sub-Committee*". The Commission may wish to provide guidance on the issue of whether more formal decisions on this and related matters are desirable especially from the point of view of their responsibilities.

BUDGETARY AND FINANCIAL MATTERS

14. In the course of the current session, the Commission is considering a number of items and documents on budgetary and financial matters. Without prejudging the outcome of the discussions held this matter, it would appear that Rule XI of the Rules of Procedure may need to be reconsidered in light of the decisions taken under the relevant agenda item².

RECORDS, REPORTS AND RECOMMENDATIONS

15. In recent sessions of the Commission, references have been made to the need to ensure better coherence in the designation of the various decisions or documents adopted by the Commission. The Commission may wish to consider having a general discussion and exchange of information on this matter with a view to identifying possible criteria that could be followed in future.

16. In this regard, it may be of interest to point out that the GFCM Agreement contains the generic designation of "*recommendations*". However, Article III, paragraph 1(b) refers to recommendations on management measures to which a special procedure, set out in Article V of the GFCM Agreement, applies. These recommendations are adopted by a two-thirds majority of the Members of the Commission present and voting. The text of such recommendations is to be communicated by the Chairperson of the Commission to each Member. The Members of the Commission undertake to give effect to any recommendations made by the Commission under Article III, paragraph 1(b), from the date determined by the Commission, which may not be before the following period for objection. Any Member of the Commission may, within one

² Rule XI of the Rules of Procedure, reads as follows: "*1. Except as otherwise provided in these Rules, the Financial Regulations of the Organization, as amplified by the Administrative Manual and memoranda and the procedures based thereon, shall apply to the Commission. 2. A proposed budget of the Commission for the next succeeding financial period consisting of proposed expenses of the Secretariat, including publications and communications, the proposed travel expenditures of the Chairman and Vice-Chairmen, when engaged in the work of the Commission between the sessions, and the expense, if any, of the committees, shall after approval by the Commission, be submitted to the Director-General for consideration in preparation of the general budget estimates of the Organization. 3. When adopted by the Conference as part of the general budget of the Organization, the budget of the Commission shall constitute the limits within which funds may be committed for purposes approved by the Conference. 4. All cooperative projects shall be submitted to the Council or the Conference prior to implementation*".

hundred and twenty days from the date of a recommendation, object to it and in that event shall not be under obligation to give effect to that recommendation. In the event of an objection being made within the one hundred and twenty days period any other Member may similarly object at any time within a further period of sixty days. A Member may also, at any time, withdraw its objection and give effect to a recommendation. If objections to a recommendation are made by more than one-third of the Members of the Commission, the other Members shall be relieved forthwith of any obligation to give effect to that recommendation. However, any or all of them may agree upon themselves to give effect to that recommendation.

17. These provisions were introduced as a result of an amendment adopted by the GFCM in 1976. However, for many years recommendations were never adopted specifically under and in accordance with the procedure set forth in Article V of the GFCM Agreement. The matter was the subject of some discussion at past sessions of the Commission, where Members regretted that this procedure was not implemented adequately. The Commission adopted since 1997 a series of recommendations under the terms of this provision. Aside from the issue of increased recourse to such recommendations, where possible, it is recommended that such recommendations be clearly identified as recommendations adopted under Article V of the GFCM Agreement.

CREDENTIALS

18. Under Rule III of the Rules of Procedure, at each session the Secretary is required to receive the credentials of delegations and observers. Such credentials must conform to the standard form set by the Secretariat. The Secretariat is required to examine such credentials and report to the Commission.

19. In the GFCM, at least in the past few years, there has not been a practice whereby delegates have been required to submit credentials, which, in FAO practice is the case only for the Conference. Delegates are required to register only. It does not seem that there is a need for this provision which the Commission could consider recommending that it be deleted and, perhaps, replaced by a reference to the registration of delegates.

FUNCTIONS OF THE SECRETARIAT

20. Rule V of the Rules of Procedure defines in general, broad terms, the functions of the Secretariat of the Commission. The question arises as to whether there is a need to revise these provisions to bring them into line with the functions of the Secretary, as defined for instance, in the document on the procedures for the selection and appointment of the Secretary. Another alternative would be to leave the provisions in question as they stand, with their current broad formulation, on the understanding that the functions of the Secretary as defined in the document on the procedures for the selection and appointment of the Secretary are not inconsistent with the current wording of Rule V.

AMENDMENT TO THE RULES OF PROCEDURE CONSEQUENTIAL TO THE ENTRY INTO FORCE OF THE AMENDMENTS INVOLVING NEW OBLIGATIONS FOR THE PARTIES ADOPTED IN 1997

21. With the entry into force of the amendments to the GFCM Agreement adopted in 1997, which involve additional obligations for the Members, there may be a need to amend a number of Rules of Procedure. It is the case for instance with Rule XVI, which makes reference to Article X of the GFCM Agreement as it stood prior to the amendment of 1997.

LANGUAGES OF THE COMMISSION

22. Rule XVIII of the Rules of Procedure deals with the “official languages” of the Commission³. The issue of the languages of the Commission is a very important one which has been raised and discussed on several occasions from a number of perspectives. It may be of interest to mention in this regard that in 1997, the FAO Committee on Constitutional and Legal Matters examined an amendment to the Rules of Procedure of another Commission established by agreement concluded under Article XIV of the FAO Constitution to the effect that a particular language only be considered the “official language” of that Commission. At that time the CCLM “was of the opinion that the best solution would be to recommend that the official languages remain English and French with the possibility for the Commission to decide on the working language or languages to be used at each of its sessions” or documents⁴. The possibility of effecting a distinction between official and working languages, either through an amendment to the Rules of Procedure or through decisions of the Commission, may be considered.

23. The Commission may wish to provide such guidance on this matter as appropriate.

SUGGESTED ACTION BY THE COMMISSION

24. The Commission is invited to review this document and provide such guidance as appropriate, including by raising any related issues as may not have been identified in the document.

25. The Commission is invited in particular to indicate whether revised Rules of Procedure dealing with some of the above or related issues be prepared as appropriate.

³ This Rule, entitled “official languages” reads as follows: “1. The official languages of the Commission shall be such languages of the Organization as the Commission itself may decide. The delegations may use any one of these languages at sessions and for their reports and communications. A delegation using a non-official language shall provide for interpretation into one of the official languages. 2. During the meetings, interpretation in one or more of the official languages will be provided by the Secretariat when requested by one of the delegates present. 3. Publications of reports and communications shall be in the language in which they are submitted and, when required by the Commission. Abstracts in translation may be published”.

⁴ Document CL112/8, paragraph 11.