



**CARIBBEAN REGIONAL FISHERIES MECHANISM
SECRETARIAT**

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**REPORT OF THE FIRST AD HOC LEGAL WORKING GROUP
ON THE PREPARATION OF A COMMON FISHERIES POLICY AND REGIME
February 20-21, 2006, Turkeyen, Guyana**

February 2006

CHAIRPERSON:

**Ms. Yvonne Joy Crawford
Senior Legal Officer
Ministry of Agriculture
Kingston
Jamaica**

PREPARATION OF THIS DOCUMENT

This report was prepared by Milton Haughton, Deputy Executive Director, Caribbean Regional Fisheries Mechanism Secretariat, Belize City, Belize, based on the presentations and discussions during the First Meeting of the *Ad Hoc* Legal Working Group established by the CRFM to assist with the development of the CARICOM Common Fisheries Policy and Regime.

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CARICOM CAPACITY DEVELOPMENT PROGRAMME (CCDP):
BUILDING CAPACITY IN FISHERIES LAW AND POLICY IN THE
REGION

REPORT OF THE FIRST AD HOC LEGAL WORKING GROUP
ON THE PREPARATION OF A COMMON FISHERIES POLICY
February 20-21, 2006, Turkeyen, Guyana

1. The First Meeting of the Legal working group was held at the CARICOM Secretariat Headquarters, Turkeyen, Guyana from February 20-21, 2006. The meeting was attended by legal officers from Antigua and Barbuda, Barbados, British Virgin Island, Jamaica, Guyana, Trinidad and Tobago, and the Turks and Caicos Islands, and by staff from the CARICOM and CRFM Secretariats. A list of the participants is provided at **Appendix 1**.

2. The Chairman of the Working Group, Ms. Yvonne Joy Crawford welcomed participants and invited them to introduce themselves. She then continued with the agenda for the Working Group Meeting, which is attached at **Appendix 2**.

3. The meeting provided opportunity for the members of the group to:
 - a) Meet, discuss, and clarify its terms of reference and scope of work;

 - b) Develop a common understanding of the background, objectives and process of development of the Common Fisheries Policy and Regime, and thus the context of the assignment;

 - c) Identify, discuss and clarify issues related to the preparation of a Common Fisheries Policy;

 - d) Identify and obtain the legal material and other background documentation needed to understand and prepare recommendations on the CFP&R

- e) Begin review and analysis of CFP&R framework documents and preparation of the report with findings and recommendations
 - e) Agree on sharing of responsibility among the group members and arrangements to maintain communication between meetings.
4. The CARICOM General Counsel, Dr. Winston Anderson, welcomed the participants and provided a brief overview of the process of development of the CFP&R to date. He emphasised the importance of the initiative and the expectations of the Conference of Heads of Government within the context of the recently launched CSME. Dr. Anderson made reference to the discussion on the CFP&R at the Seventeenth Inter-Sessional Meeting of the Conference of Heads of Government of the Caribbean Community which was held in Port of Spain, Trinidad and Tobago, 9-10 February 2006, and underscored the need for the group to work expeditiously and to reinvigorate the process of preparation of the policy, thereby ensuring that the CRFM and CARICOM Secretariats will be in a position to report significant progress when the matter is again considered by the Conference of Heads, possibly in July 2006.
5. The CRFM Secretariat's representative on the Working Group, Milton Haughton, provided an overview of the fisheries situation in the region highlighting the social and economic importance of fisheries globally and in the region, the status of the fish stocks and major issues affecting global and regional fisheries, threats and opportunities, and the international and regional legal framework for fisheries development and management. The CRFM representative also reviewed the process of development of the CFP to date and highlighted the major issues for resolution arising from the various meeting, workshops and consultation, ending with the Meeting of the Executive Committee of the Forum which was held in Turks and Caicos Islands in December 2005. The presentation generated a lot of discussion particularly regarding the present biological situation and future economic opportunities available for enhancing social and economic development through sustainable development and conservation of the fisheries resources.

6. The group then carefully reviewed the mandate given by the Conference of CARICOM Heads of Government at their Fourteenth Inter-Sessional Meeting held in Trinidad and Tobago, in February 2003, to the CARICOM Secretariat to prepare a framework for a Common Fisheries Policy and Regime to strengthen the system of governance to ensure adequate protection and sustainable benefits from the living marine resources. On the basis of the mandate it was agreed that careful attention should be given to the issue of access to resource, the common zone and arrangements for sustainable development and conservation of the aquatic resources within the Community.
7. After reviewing and clarifying the mandate of the Conference of Heads of Government, the group went on to review, discuss and clarify its TORS. A copy of the TOR is attached at **Appendix 4**. The group adopt a broad interpretation of the TOR and agreed that to undertake its work, it had to consider the draft framework document in its entirety taking into account the relevant background document arising from the various workshops and meetings, rather than seek to address the individual items referred to in the TORs in isolation.
8. A quick review the CFP Revised Framework Document was then made, followed by discussion to identify additional background legal documentation needed by the working group members to carry out their work. The group agreed that, in addition to the documents mentioned in the TOR, each member should have copies of the following:
9.
 - Revised Treaty of Charaguamas,
 - UNCLOS and its associated instruments, in particular the Straddling Stocks Agreement,
 - Fisheries case law of the ICJ and LOS Tribunals,
 - The European Union's Common Fisheries Policy and associated regulations,
 - The fisheries case law of the European Court of Justice and Court of First Instance,
 - The OECS Fisheries Surveillance Agreement,

- This initiative will contribute to the timely preparation and application of the legal framework document on the Common Fisheries Policy and Regime.
9. The CARICOM Secretariat provided the members of the group with copies of the Revised Treaty. The group made a quick reviewed of the Treaty, in particular, the Principles (Chapter 1), and the provisions regarding Agricultural Policy (Chapter 4, Part 2) which include fisheries. After the meeting, the CRFM Secretariat provided members of the group with copies of the other legal documents mentioned at 8 above, including, *inter alia*, selected case summaries and full judgments of the ECJ, ICJ and the UK courts highlighting the reception of EC fisheries law in the UK Common law jurisdiction.
 10. The group observed from the reports available, including the Revised Framework Document and working group reports, that some of the issues being debated, were in fact settled law to which the governments have already committed themselves either through the Revised Treaty or other international legal instruments. For example there, are provisions in the Revised Treaty which speak directly to certain fisheries issues (Chapter 4 Part 2), and other provisions, which though they did not speak specifically of fisheries, were nonetheless applicable to fisheries, in that they addressed broader social and economic policies such as movement of good, services, freedom of establishment and non-discrimination of community nationals.
 11. The group agreed that the Revised CFP Framework Document was the key document for improvement at this time. This would be followed by the 2002 CRFM Agreement. The group was of the opinion that from a legal perspective there is no reason why the CRFM, with the necessary changes, should not be the body authorised to implement the policy.
 12. In respect of the Revised Framework Document, It was agreed that the group would collectively review each section and provide recommendations in square brackets below the existing text, without modifying the existing text. Additionally,

commentaries and/or explanatory notes would also be provided where considered necessary to clarify proposed recommendations made by the group.

13. Significant time was spent reviewing, analysing and discussing the substantive text of the Revised CFP Framework Document. Recommendations for improvements were documented on the text itself. Several areas of deficiencies and issues within the competence of the Legal Working Group requiring further examination and elaboration were identified and highlighted.
14. By the end of the 2nd day of the 2-day meeting, the group was able to go through the entire Revised Framework document and made preliminary observation and recommendation and identify areas for improvement. (See **Appendix 5** for a copy of the Revised Framework Document with notes made by the Working Group).
15. The group is of the opinion that improvements are needed both in respect of the existing provisions that have been elaborated, those specifically identified within the TORs, and the need for inclusion of additional provisions on subject matters that have not been addressed but should be, given the overall objectives which have been agreed upon, and the recommendations of the TCI Meeting of the Executive Committee of the Forum which was held in December 2005.
16. In order to continue its work, the group agreed that each member would be assigned different sections of the document for further review and analysis, and preparation/elaboration of recommendations during the period between the 1st and 2nd Meetings. A copy of the assignment of responsibility is provided at **Appendix 3**.
16. The group agreed that the 2nd Meeting should be scheduled for the end of the 1st week of April 2006, that is, prior to the next meeting of the CRFM Forum scheduled for April 10-12, 2006.

Other Observations:

1. Most members of the working group are new to international and domestic fisheries law. It will therefore take time for the members to familiarise themselves with the significant body of principles and rules of international and domestic fisheries laws.
2. The members of the group have embraced the assignment with enthusiasm, so that at the end of the process the region will have a cadre of experts in fisheries law and policy capable of providing specialist opinion to the Member States and regional bodies on the development and application of the CFP&R and other supporting legislation and assist with international negotiations related to fisheries.
3. The major constraint experienced was the short time available during the 2 days to carry out the assignment.
4. Nevertheless, the group was able to complete its agenda satisfactorily, though not completely, and agreed on a plan for continuing the assignment in a manner that will ensure updates are available for the upcoming series of meetings including the Forum in April, the COTED in May and the Conference of Heads of Governments in June/July 2006.
5. The legal issues involved are significant and complex. The Group should therefore continue to meet after the initial two meetings to continue assisting with the process of developing the legal, policy and institutional arrangements needed to finalize and implement the CFP&R.

APPENDIX 1: LIST OF PARTICIPANTS

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APPENDIX 2: AGENDA

DAY 1

- ITEM 1: Introduction and Opening Remarks 9:00a.m. – 9:10a.m.
- ITEM 2: Background presentation on the Common Fisheries
And Regime 9:10a.m. – 10:30a.m.
- C O F F E E B R E A K 10:30a.m. – 10:45a.m.
- ITEM 3: Discussion and Clarification of the Terms of Reference 10:45a.m. – 12:30p.m.
- L U N C H 12:30p.m. – 1:30p.m.
- ITEM 4: Identification and discussion of legal issues arising
implementing agency for the CRP&R 1:30 – 3:00p.m.
- C O F F E E B R E A K 3:00p.m. – 3:15p.m.
- Identification and discussion of legal issues arising
from CRFM as the implementing agency for the
CFP&R (Cont'd) 3:15p.m. – 4:00p.m.
- ITEM 5: Identification and discussion of legal issues
arising from the CRFM as an RFMO 4:00a.m. – 5:00p.m.

DAY 2

- ITEM 5: Identification and discussion of legal issues
arising from the CRFM as an RFMO (Cont'd) 9:00a.m. – 10:30a.m.
- C O F F E E B R E A K 10:30a.m. – 10:45a.m.
- ITEM 6: Discussion on Draft Frame work Document
On the CFP&R 10:45a.m. – 12:30p.m.
- L U N C H 12:30p.m.–1:30p.m.
- ITEM 7: Plan for division of work among working group
Members, for further analysis of issues and
Preparation of report 1:30p.m. -3:00p.m.
- C O F F E E B R E A K 3:00p.m. – 3:15p.m.
- ITEM 8: Any other business 3:15p.m. – 5:00p.m.

END OF SESSION

APPENDIX 3: PRELIMINARY ASSIGNMENT OF RESPONSIBILITY

	NAME	TASK 1. Review and prepare recommendations to improve CFP framework document
1	Carla Brookes-Harris carlabharris@yahoo.com	1. Section 1.Preamble; 2. Section 2.1.8 Dispute Settlement 3. New Subsection (2.1.3.5) on Intellectual property 4. Section 2.1.7 Representational Right of Implementation Agency
2	Donna K. Brathwaite dbrathwaite@oag.gov.bb	5. Section 2.1.1 Vision, goal... – 6. Section 2.1.2 Fundamental principles; 7. Section 2.1.4 The common zone; 8. Sub-sections 2.1.3.1 Access to fisheries resources
3	Charmaine Rosan missrosan2000@yahoo.co.uk	9. A new subsection on Human Resource development and public education/awareness; 10. Sub-section 2.1.3.2 Management of the use of fisheries 11. Section 2.1.6 Membership/Participation..
4	Yvonne Joy Crawford: yjcrawford@moa.gov.jm	12. Sub-section 2.1.3.1 Access to fisheries resource 13. Sub-section 2.1.3.2 Management of the use of fisheries 14. Sub-sections 2.1.3.3 Data Collection 15. Section 2.1.4 The Common Fisheries Zone
5	Andrew Rahaman andrewrahaman@hotmail.com	16. Sub-section 2.1.3.3 Data Collection 17. Sub-section 2.1.3.4 Marketing 18. Section 2.1.6 Membership/Participation.. 19. New Subsection (2.1.3.5) on Intellectual property
6	Elizabeth Hinds elizabethkhanhinds@yahoo.com	20. Section 2.1.7 Representational Right of Implementation Agency 21. Section 2.1.5.1 Species for consideration 22. Section 2.1.5.2. Powers of the Implementing Agency
7	Denzil L. Roberts/Cecil Seepersaud d_robertsapcu@yahoo.com cecilseepersaud@yahoo.com	23. Section 2.1.8 Dispute settlement; 24. Section 2.1.9 Entry into force; 25. Section 2.1.10 Accession; 26. Section 2.1.11 Withdrawal; and 27. Section 2.1.12 Amendments (new subsection)
8	Milton Haughton miltonhaughton@hotmail.com	28. Section 2.1.3 Scope of Policies 29. Section 2.1.5 Implementation

APPENDIX 4: TERMS OF REFERENCE OF THE AN HOC LEGAL WORKING GROUP

1.0 Introduction

The Conference of CARICOM Heads of Government at their Fourteenth Inter-Sessional Meeting held in Trinidad and Tobago from February 14th – 15th, 2003, considered and endorsed the proposals from the Government of Barbados on '*the imperative of elaborating a Common Fisheries Regime*' and mandated the CARICOM Secretariat (CARISEC) to undertake the necessary consultations and propose a framework for consideration at the Twenty-Fourth Meeting in July 2003.

The Caribbean Fisheries Forum at its first meeting in Belize on March 27th, 2003 acknowledged that the mandate of the Conference of Heads of Government demonstrated the highest level of commitment by CARICOM Governments to the management and conservation of the region's fisheries resources. As such, it was determined that the Caribbean Fisheries Forum / CRFM, being the regional fisheries body established by CARICOM, would establish a Working Group, under Rule 11, to implement the mandate from the CARICOM Heads of Government and report to them through the Ministerial Council.

The CARICOM Heads of Government at their Fifteenth Inter-Sessional Meeting in St. Kitts and Nevis in March 2004 decided that the elaboration of the Common Fisheries Policy and Regime would be independent and separate from and without prejudice to the settlement of maritime boundary disputes between and among Member States and Third Parties. Additionally, they reaffirmed the continuation of the mandate to CARISEC to propose a framework for the exploitation and conservation of the regional fisheries resources, and considered and approved the Working Group's Plan of Action for the establishment of the CFP&R, which had been developed at the first meeting of the Group in Trinidad and Tobago from June 5th – 6th, 2003.

In keeping with the reaffirmation given to CARISEC and the approval of the Working Group's Plan of Action for the Establishment of the CFP&R, the CRFM Secretariat, in collaboration with the CARICOM Secretariat, convened the Second and Third Meetings of the Working Group, and a Regional Multidisciplinary Workshop on the Common Fisheries Policy and Regime, in Guyana, during the periods June 9th – 10th, 2004, in St. Vincent and the Grenadines, November 29th – 30th, 2004, and in St. Kitts and Nevis, April 18th – 19th, 2005, respectively.

At the Regional Multidisciplinary workshop, held April 18th – 19th, 2005 in St. Kitts and Nevis the Member States highlighted the need for consideration of the legal issues in any discussion on the CFP&R. They also indicated that the Agreement Establishing the CRFM should be reviewed and the legal implications for the CRFM taking on the role of the implementing mechanism for the CFP&R and / or carrying out the role and functions of a Regional Fisheries Management Organization (RFMO) be identified and elaborated. These recommendations arose out of further consideration of CRFM Secretariat discussion papers:

1. Implementing Mechanism for the Common Fisheries Policy and Regime; and
2. (a) An Overview of the regional fishery body, with emphasis on the type serving as a regional fishery management organization.

(b) A preliminary examination of the issues pertaining to establishment of a regional fishery management organization in the Caribbean region.

It was therefore agreed that an ad-hoc Legal Working Group would be formed to address the recommendations, with the members of the Group being comprised of representatives from Antigua and Barbuda, Barbados, British Virgin Islands, Guyana, Jamaica, Trinidad and Tobago, and Turks and Caicos Islands. It was also agreed that the Working Group would report through the CRFM Secretariat, to the General Counsel, CARICOM Secretariat. The CRFM and OECS Secretariat would provide support (resource persons).

2.0 OBJECTIVE

The objectives of the study are as follows:

- to review the Agreement Establishing the CRFM with a view to determining and elaborating on the legal implications of the CRFM becoming the implementing mechanism for the CFP&R, and / or carrying out the role and functions of an RFMO, and make recommendations to address these matters;
- to provide legal advice in relation to sections 2.1.6 Membership / Participation in the Implementing Agency, 2.1.7 Representational Rights of Implementing Agency, 2.1.8 Dispute Settlement, 2.1.9 Entry into Force, 2.1.10 Accession and 2.1.11 Withdrawal, of the refined Draft Framework for a Common Fisheries Policy and Regime, coming out of the Regional Multidisciplinary Workshop on the Common Fisheries Policy and Regime; and
- to review the Agreement Establishing the CRFM with a view recommending, if necessary, additional sanctions for failure to make contributions.

3.0 APPROACH

Under the general direction of the Executive Director, the representatives / Legal Experts identified from the Member States mentioned above will undertake the study and prepare the necessary reports. Literature research, electronic and workshop discussions and report preparations will take place during the period, November 8th, 2005 – February 15th, 2006.

The Team of Legal Experts will work in close collaboration with the Deputy Executive Director of the CRFM Secretariat, Directors and staff of the Fisheries Departments to conduct the assignment. Although the Legal Experts will work in close collaboration with the above-mentioned personnel, it is understood that they are responsible for producing the outputs of this assignment.

During the Study, the Team of Legal Experts will undertake the following tasks:

Literature Review: Review available documentation, including the Revised Treaty of Chaguaramas, 1982 United Nations Convention on the Law of the Sea (UNCLOS), 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1995 Code of Conduct for Responsible Fisheries, and resulting IPOAs, 1995 United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks, 1991 OECS Common Fisheries Surveillance Zones Agreement, 1993 Draft OECS Agreement on Common Fisheries Zones for Vessels of Member States of the Southern Zone of the OECS, Agreement Establishing the CRFM, Strategic and Medium Term Plans of the CRFM, background and discussion papers prepared by the CRFM and CARISEC on the CFP&R, the Issues Document from the 2003 CFP&R Workshop, refined Draft Framework for a Common Fisheries Policy and Regime, reports from the National Consultations on the CFP&R and any other relevant documents.

Workshop: Following on the documentation review, the Team of Legal Experts supported by resource persons from the CRFM and OECS Secretariats will meet in a workshop setting for a period of 1 - 2 days to elaborate on the legal implications for the CRFM becoming the implementing mechanism of the CFP&R and / or carrying out the role and functions of an RFMO and make recommendations for addressing these matters as well as providing legal advice in relation to sections 2.1.6 Membership / Participation in the Implementing Agency, 2.1.7 Representational Rights of Implementing Agency, 2.1.8 Dispute Settlement, 2.1.9 Entry into Force, 2.1.10 Accession and 2.1.11 Withdrawal, of the refined Draft Framework for a Common Fisheries Policy and Regime, coming out of the Regional Multidisciplinary Workshop on the Common Fisheries Policy and Regime.

4.0 EXPECTED OUTPUTS

The Expected Outputs of the Study will be as follows:

- (a) Identification and elaboration of the legal implications for the CRFM becoming the implementing mechanism for the CFP&R and / or carrying out the role and functions of an RFMO, with recommendations for addressing these matters.
- (b) Provision of legal advice in relation to sections 2.1.6 Membership / Participation in the Implementing Agency, 2.1.7 Representational Rights of Implementing Agency, 2.1.8 Dispute Settlement, 2.1.9 Entry into Force, 2.1.10 Accession and 2.1.11 Withdrawal, of the refined Draft Framework for a Common Fisheries Policy and Regime, coming out of the Regional Multidisciplinary Workshop on the Common Fisheries Policy and Regime.

5.0 TIME ALLOTMENT

The study will be conducted between November 8th, 2005 – February 15th, 2006.

APPENDIX 5: REVISED FRAMEWORK - COMMON FISHERIES POLICY

A Common Fisheries Regime and Policy - Revised Framework

1.0 Background

The objective of establishing a Common Fisheries Policy and/or a Common Fisheries Regime in the Caribbean has had a long history, both at the CARICOM and the OECS levels. Initiatives at the CARICOM level included the draft Inter-Governmental Agreement for Coordinating and Harmonising the Management of Fisheries Resources in 198...

At the OECS level the initiatives included a Draft OECS Agreement on Common Fisheries Surveillance Zones for Vessels of Member States of the OECS in 198...

The current effort to establish a Common Fisheries Policy and Regime at the CARICOM level was initiated at the Fourteenth Inter-Sessional Meeting of the Conference of Heads of Government in Trinidad and Tobago, 14-15 February, 2003. The Heads of Government -

“Noted and endorsed the proposals submitted by the Government of Barbados on the imperative of elaborating a Common Fisheries Regime;

Urged that the research also take cognisance of the need to develop international standards for the export of fishery products”.

The Conference returned to the issue at its Fifteenth Inter-Sessional Meeting in St. Kitts and Nevis, March 25-26, 2004 but in a context where certain intra-CARICOM disputes relating to maritime boundaries had been referred for third party resolution. This Meeting of the Conference, specifically -

“Recognised that the disputes relating to maritime boundaries between Barbados and Trinidad and Tobago, and between Guyana and Suriname have been referred to the United Nations under the 1982 UN Convention on the Law of the Sea (UNCLOS) for resolution”.

“Decided that the elaboration of the Common Fisheries Regime would be independent and separate from and without prejudice to the settlement of maritime boundary disputes between and among Member States and Third Parties;

Reaffirmed the continuation of the mandate to the CARICOM Secretariat to propose a framework for the exploitation and conservation of regional fisheries resources at the Fourteenth Inter-Sessional Meeting of the Conference;

Also requested the Secretariat to provide a Report on the development of the Common Fisheries Regime to its Twenty-Fifth Meeting in July 2004”.

The Caribbean Fisheries Forum, established in the framework of the Caribbean Regional Fisheries Mechanism inaugurated on 26 March 2003 considered the issue at its First Meeting on 27 March, 2003 and, *inter alia* -

“Also noted that over the years fisheries officers and fishing authorities of the Region have posited a common approach to the management of the fisheries of the Region;

Agreed that the CRFM, which was formally inaugurated on 26 March 2003, is now in a position to provide regional leadership with regard to this mandate of the Heads of Government;

Proposed that the articulation of the vision, framework and guidelines for a Common Fisheries Regime, by the CRFM, should encompass, inter alia –

- (i) The initiatives that have commenced in the OECS Region;*
- (ii) Inputs from all stakeholders at both the national and regional levels;*
- (iii) The identification of the challenges that might preclude the implementation of a Common Fisheries Regime; and*
- (iv) Recommendations for the overcoming of such challenges.*

Also agreed that the Forum will establish a Working Group, under Rule 11 of the Rules of Procedure of the CRFM to develop a draft position on this matter, for reporting to the Heads of Government through the Ministerial Council and Community Council by 30 June 2003”.

(The text of the decision of the Forum is at **Appendix I to this Attachment**).

As part of the preparatory process prior to reporting to the Conference of Heads of Government through the Ministerial Council, a Regional Multi-Disciplinary Workshop on the Common Fisheries Policy and Regime (CFP&R) was convened on St Kitts and Nevis on April 18th and 19th, 2005. This Workshop, inter alia, received reports on the national consultative process and refined the Draft Framework for the Regional Fisheries Policy and Regime that emanated from a June 2004 Regional Workshop.

While the material presented herein represents an update from the June 2004 Regional Workshop, it would be observed that there is still lack of consensus on some of the issues. This therefore should be considered still to be a work in progress requiring policy guidance in some areas and legal input in others.

2.0 **Preamble**

Mindful of the relevant provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS); the 1990 Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean; the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; the 1994 Barbados Programme of Action for the Sustainable Development of Small Island Developing States (BPoA); the 1995 Food and Agriculture Organisation of the United Nations (FAO) Code of Conduct for Responsible Fisheries; and the 1995 United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks;

Deeply conscious of the need to promote sustainable use of living marine and other aquatic resources through the efficient development, management and conservation of such resources;

Aware that certain living marine resources, which are of interest to the peoples of the Caribbean region, are highly migratory, straddle national boundaries and are harvested by third states;

Noting that Article 60 of the Revised Treaty of Chaguaramas provides that the Community, in collaboration with competent national, regional and international agencies and organisations, shall promote the development, management and conservation of the fisheries resources in and among Member States on a sustainable basis.

Further Noting that article 4(a) of the CRFM Agreement focuses on the efficient management and sustainable development of marine and other aquatic resources within the jurisdictions of Member States:

Recalled the UN Resolution being Convinced that the concept of the Caribbean Sea as a special area for Sustainable development can *inter alia* be given effect through a Common Fisheries Regime.

The Multidisciplinary Workshop considered various elements of the Common Fisheries Policy and Regime hereunder, within the context of the key issues contained in the reports on the consultative process being undertaken in the Member States as summarised in the attachment to this Draft Policy Framework Document.

[N. B. A DEFINITIONS' SECTION NEEDS TO BE ADDED, e.g. "fisheries management", perhaps the UNCLOS DEFINITION?, "artisanal fisheries, small-scale fisheries and subsistence fisheries as well as industrial fisheries?]

2.1 Common Fisheries Policy and Regime

2.1.1 Vision, Goals and Objectives

Vision: Sustainable use and management of the living marine resources and ecosystems of the Caribbean through increased cooperation and collaboration among CARICOM Member States and Third States for the improved welfare of their peoples.

Goal Sustainable use of the living marine resources and ecosystems of the Caribbean Community, through the implementation of efficient and effective management, within the context of the revised treaty of Chaguaramas, and in accordance with international obligations, with a view to maximizing the present and future social and economic benefits of the people of the Community.

[N. B. VISION AND GOAL SEEM TO BE SAYING THE SAME THING. RECOMMEND THAT GOAL BE REWORDED AND GIVEN MORE CLARITY]

Objectives

[The objective of the Common Fisheries Policy and Regime shall be:

- (i) improved income and employment opportunities, food security and poverty alleviation in the Community;*
- (ii) the transformation of the fisheries sector towards market oriented, internationally competitive and environmentally sustainable harvesting and production of fish and fishery products;*
- (iii) increased production and diversification of primary fish production and value-added, processed fisheries products;*
- (iv) an enlarged share of world markets for fish and fishery products]¹*
- (v) To manage and develop** [develop and manage] the living marine resources and ecosystems of the region to ensure social and economic benefits to present and future generations of the people of the region.
- (vi) To sustain** fisheries resource use through harmonised regional management of shared resources.
- (vii) To strengthen** cooperation and collaboration and development of harmonised positions on fisheries management issues for presentation and discussions at international fora.

¹ These 4 objectives are taken from the Revised Treaty, Part 2, Art. 56 on Agriculture.

- (viii) **To promote** a viable fishing industry with particular attention to subsistence and artisanal fishers.
- (ix) **To strengthen** the shared fisheries information base.
- (x) **To promote** research in support of fisheries resource assessment and management.
- (xi) [*To promote aquaculture research and development in the region*] (Reservations entered by Barbados and Belize);
- (xii) **[A catch-all objective]**
- (xiii) **[Monitoring, Control and Surveillance including the establishment of vessel monitoring system as well as the elimination, deterrence and prevention of illegal, unreported and unregulated (IUU) fishing; (Should this be in the objectives section?)] N. B. WORDING NEEDS TO CHANGE**

2.1.2 Fundamental Principles

It is proposed that the following fundamental principles should guide the operationalisation of the Common Fisheries Policy and Regime:

- (a) Consistency with applicable international legal instruments and agreements;
- (b) Use of the best available scientific evidence to support long term conservation and sustainable use of fishery resources;
- (c) Non-prejudicial to subsistence fisheries, artisanal fisheries, small scale fisheries and **traditional fishing rights**;
- (d) Application of the precautionary approach;
- (e) Protection of biodiversity in the marine environment; **(To what extent does this include the protection and rehabilitation of critical habitat?)**
- (f) Adoption of species-specific conservation and management measures within the broad context of ecosystems based management systems;
- (g) Advancement of social and economic development;
- (h) Increased levels of Food Security;
- (i) Consideration of the special needs of artisanal and small scale fisheries;
- (j) Collaboration with Regional and International Agencies on fisheries matters;
- (k) Institutional and Human Resources capacity building;
- (l) Recognition of the rights of Member States and Associate Member States of CARICOM under this regime shall not be prejudiced by their political/sovereign status;

- (m) Stakeholder participation and consultation;
- (n) Integrated and collaborative approach to fisheries management;
- (o) Minimisation of intra and inter sectoral conflicts;
- (p) The promotion of good governance through transparency and accountability.

2.1.3 Scope of Policies

[For the achievement of the goal set out

The scope of the suite of policies conceived necessary to guide the formulation and implementation of the CFP&R includes:

2.1.3.1 Re: Access to fisheries resources

- (i) Basis for access by CARICOM States and Non-CARICOM States;

Any possible access by CARICOM States and non-CARICOM States will be within the framework of the revised Treaty of Chaguaramas, 2001, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS). **(Article 62.2 and 62.4 of UNCLOS and other related agreements)**

2.1.3.2 Management of the Use of fisheries resources:

- (i) Use of appropriate harmonised fisheries management tools and approaches;
- (ii) Updating and enactment of appropriate harmonised management and food quality assurance legislation and policy;
- (iii) Monitoring, Control and Surveillance including the establishment of vessel monitoring system as well as the elimination, deterrence and prevention of illegal, unreported and unregulated (IUU) fishing; **(This should also be in the objectives section)**
- (iv) Mitigating the impact of Climate Change on the fisheries sector;
- (v) Cooperation with Regional Fisheries Management Organisations in the management of shared resources. **[Should be used either as an objective or a guiding principle as well]**

2.1.3.3 Data Collection and Research

- (i) Sustainable Fisheries and Data and Information System:
 - (a) Harmonised regional and national data and information systems including data sharing and access by all stakeholders.
 - (b) Social and economic data collection and analysis.
- (ii) National and Regional capacity for maintaining these activities over time;

- (iii) Research: Responsibilities and Protocol. **[TO BE DEVELOPED/AMPLIFIED BY THE BODY RESPONSIBLE – BE IT BY THE CRFM, FORUM, OR MINISTERIAL COUNCIL]**

[Another article to be added as to ownership of the data. Should this be owned by CARICOM and individual states in particular dependent on the particular fishery? To be determined by IP experts/existing CARICOM policy on related matters]

2.1.3.4 Marketing and Trade of the Fisheries Resources

- 1) Promotion and facilitation of the region's market and economic competitiveness;
- 2) Harmonisation of standards for quality assurance and food safety;
- 3) Participation in negotiating arena on fisheries issues, for example at the WTO, FTAA;
- 4) Subsidies, market access and trade;
- 5) Improved market intelligence.

[N. B. ALL THESE SUB ARTICLES NEED TO BE FLESHED OUT]

2.1.4 The Common Fisheries Zone

[Options to be considered in establishing the limits of the Zone include:

- 1) Definition of a Common Fisheries Zone without prejudice to delimitations of boundaries among Member States;
- 2) Applied to CARICOM jurisdictions only;
- 3) Setting of the exclusion zones under CARICOM jurisdictions.]

[N. B. THE WORKING GROUP RECOMMENDS THAT THE BRACKETS BE REMOVED AND THE TEXT KEPT AND ELABORATED ON. THE RULES REGARDING OPERATING WITHIN THE ZONE NEED TO BE DEVELOPED. – LOOK AT THE EU MODEL]

The bracketed text was proposed by Barbados but not supported by the other States present.

2.1.5 Implementation of the CFP&R

At the Third Working Group Meeting on the Common Fisheries Policy and Regime, 29th – 30th November, 2004 it had been agreed that countries be given more time to consider the elements of this section. Countries were to submit comments to the CRFM Secretariat by February 28, 2005. Notwithstanding any comments still to be submitted, the Multidisciplinary Workshop made proposals as indicated hereunder:

[N. B. IT IS RECOMMENDED THAT THIS SECTION BE REMOVED]

Depending on the nature of the CFP&R, the approaches to implementing the Policy and Regime may include consideration of the functions under:

[N. B. IT IS RECOMMENDED THAT THIS BE RE-PHRASED]

- 1) The CRFM as currently constituted; **[DELETION RECOMMENDED]**
- 2) A Regional Fisheries Management Organisation; **[Description of options: (a) The traditional RFMO with competence to manage the species in question. In reality, this would mean having all the countries that share the resource or participate in the fishery involved in the decision-making process. The challenge would be to find a way of including these countries without losing our control over those issues and subject matters that are really for our benefit. OR (b) The CRFM as the regional body to manage the resources within community waters (that is waters under the jurisdiction of the Member States of the Community). In reality, we would not be in charge of the management of the resources that extend beyond community waters and, in consequence, we would have to collaborate with competent fishery management bodies, such as ICCAT, CITES or others that might be established to manage the regional resources. This regional body would have to have a seat or represent the Community and the competent fisheries management bodies. OPTION (B) is recommended.]**
- 3) A Strengthened CRFM;
- 4) The Relationship to National Fisheries Authorities.

2.1.5.1 Species for consideration under the CFP&R [We recommend that this section be entitled “Living marine resources for consideration under the CFP&R]

[All living marine resources within Community waters]

Shared, straddling and highly migratory fisheries resources including those species for consideration of the CFP&R. **[This sentence needs to be reworded to convey that all species are included in the Policy but the listed resources require specialized management. The species should be identified in a schedule which would be updated from time to time.]**

2.1.5.2 Powers of the Implementing Agency

For the purposes of managing the Zone effectively the Agency should have the power to:

- 1) Formulate rules and regulations for compliance with and controlling of the fisheries operations [within the Zone], including vessel registration, vessel mesh and gear size; **[Brackets should be removed]**
- 2) Design and manage licence and quota systems that ensure sustainable harvesting;
- 3) Develop systems and procedures for monitoring and the documentation of trade procedures related to fisheries operations;
- 4) Formulate regulations relating to compliance with rules of operation [within the Zone]. **[Brackets should be removed]**

(The bracketed text was preferred for inclusion by Barbados only.)

Some pertinent issues relating to possible delegation of powers are:

- 1) Authority for promulgating regulations;
- 2) Authority for granting access licensing to third countries to fish in the zone;
- 3) The relationship **among** the implementing agency, the Coast Guard and Customs and other relevant bodies in relation to issues such as security and compliance;
- 4) Responsibility for developing technical standards and best practices consistent with international standards for fisheries products;
- 5) The monitoring of relevant marketing and trade operations.

[WE NEED SOME ADDITIONAL PROVISIONS TO ADDRESS THE SOCIAL AND ECONOMIC DEVELOPMENT ASPECTS OF THE POLICY]

2.1.6 Membership / Participation in the Implementing Agency

In accordance with the rule of International Law full membership / participation by:

- 1) CARICOM Member and Associate Member States (to be expanded later); ***["to be expanded later" to be deleted]***
- 2) Non CARICOM Caribbean States;
- 3) Non-Caribbean States.

[Consider how we deal with each category of state in respect of the different options for the Agency. Look at EU Model]

2.1.7 Representational Rights of Implementing Agency

In relation to International Management Fora including ICCAT, CITES, IWC and other relevant international bodies, the options presented for the Implementing Agency representation are, *inter-alia*:

- 1) Provide advice and coordinate position of CARICOM Member and Associate Member States where possible, but with individual national representation;
- 2) Provide advice and coordinate position of CARICOM and non-CARICOM Member States where possible, but with individual national representation.

- 3) ***[Provide advice and coordinate position of CARICOM Member, Associate Member and Non-CARICOM Member States and be the representatives of the States].***

(If the Implementing Agency is not a Regional Fisheries Management Organisation (RFMO) this section 2.1.7 may not be applicable)

[N. B. The above sentence in brackets should be deleted]

2.1.8 Dispute Settlement

In accordance with Articles 7 (3) f and 29-34 of the CRFM Agreement / Option to petition CCJ depending on the scope of the CFP&R.

Amendment to allow Non-CARICOM Member States to use the dispute procedures.

[Recommend that Article 188 and 211 of The Revised Treaty of Chaguaramas which include recourse to the CCJ be considered. Consideration should be given to whether these provisions give rights to individuals/entities]

2.1.9 Entry Into Force

[N. B. Look at relevant article of CRFM Agreement and the Revised Treaty of Chaguaramas]

2.1.10 Accession

[N. B. Look at relevant article of CRFM Agreement and the Revised Treaty of Chaguaramas]

2.1.11 Withdrawal

[N. B. Look at relevant article of CRFM Agreement and the Revised Treaty of Chaguaramas]

(The General Counsel of CARICOM Secretariat is to advise on sections 2.1.8, 2.1.9, 2.1.10 and 2.1.11 based upon consultation of: the Revised Treaty of Chaguaramas, the Agreement Establishing the CRFM and a RFMO Model.)

[PLEASE NOTE THAT PROVISION SHOULD BE MADE FOR PUBLIC EDUCATION AWARENESS PROGRAMMES AND AMENDMENT TO THE POLICY AND REGIME AND MATTERS RAISED IN "SOME THOUGHTS ON HAMMERING OUT A COMMON FISHERIES POLICY AND REGIME", AS WELL SANCTIONS.]

3.0 Way Forward

The following activities are proposed for implementation by June 2005:

- 1) Deliberations of the Working Group on Socioeconomic Issues as per the scope of work indicated in the Terms of Reference at Attachment 2². The deliberations and report to be completed by June 30th 2005.
- 2) Deliberations of an Ad-Hoc Legal Working Group on identified legal issues as per the scope of work indicated in the Terms of Reference at Attachment 3³. The deliberations and report also to be completed by June 30th 2005 ;
- 3) The updated Framework Document together with a summary of the comments from the Multidisciplinary Workshop are to be circulated to the Executive Committee by the CRFM Secretariat by 27th April , 2005, requesting feedback;
- 4) A report for transmission to the Council for Trade and Economic Development (COTED) is to be submitted to the CARICOM Secretariat by April 29th 2005.
- 5) The conduct of a Cost / Benefit analysis of the implementation of the CFP&R on the assumption that the CRFM will be assuming the role of the implementing agency. It was agreed that this Cost/Benefit analysis would be best undertaken after the development and elaboration of the CFP&R has been well advanced in order that the socioeconomic and linkage issues as well as the legal and administrative implications can be better assessed.

² Working Group Members are Dr Patrick Mc Conney (Barbados), Mr. Peter A Murray (OECS/EDSU), Dr Arthur Potts (Trinidad and Tobago) and Dr David Brown (CRFM Secretariat).

³ Members from Antigua and Barbuda, Barbados, British Dependent Territories, Guyana and Jamaica.

Attachment

Issues and Achievements Pertaining to the Common Fisheries Policy and Regime

- 1) The Consultative Process has been initiated in several Member States, namely: Anguilla, Antigua and Barbuda, Barbados, Belize, British Virgin Islands, Jamaica, St Lucia, St Kitts and Nevis, Trinidad and Tobago, and Turks and Caicos Islands. Guyana was challenged with respect to the holding of consultations on account of the recent natural disaster that was experienced. Guyana undertook to initiate consultations shortly and duly report.
- 2) Some Member States advised of their having sought and received technical assistance from the CRFM Secretariat in the conduct of national consultations, while others indicated the need for similar assistance in the future;
- 3) The issue of sovereignty over their living marine resources, and the granting of access thereto, was one over which few States were prepared to cede their rights;
- 4) All States were adamant that their respective Territorial Seas and or Archipelagic Waters would be excluded from access by non-nationals as well as any collective policies and collaborative management regimes;
- 5) A minority of States were also adamant that, notwithstanding access conditions that might be determined in the future, access to their Exclusive Economic Zones (EEZ's) would also be excluded for non-nationals, unless robust scientific evidence is provided to support utilization of the target fisheries resources at a higher level without detriment to the welfare of nationals;
- 6) The time frame initially established by the Conference of Heads of Government for the establishment of a Common Fisheries Policy and Regime seemed highly impractical in light of the nature of the living resources of the region as well as similar experiences elsewhere. In this latter regard it was noted that the European Union laboured for some 13 years before establishing the EU's Common Fisheries Policy, and still faced many amendments thereto, despite having extensively studied fisheries existing in well defined diverse stocks. Further, it is instructive to note that the EU recently undertook a revision of their Common Fisheries Policy in 2003. Likewise the South Pacific Forum Fisheries Agency spent in excess of 7 years to establish the common fisheries policy being implemented by the FFA, in respect of an extensive stock of tunas, also well defined. These compare with the very diverse and scattered stocks of fisheries resources across the Caribbean that are to be addressed by the CFP&R.
- 7) That in light of some of the sensitivity experienced with respect to some of the issues in some countries, during the consultative process, the Heads of Government should be advised that, while there is overwhelming technical merit to the proposal to establish a CFP&R the pursuit of the goal seemed to require considerable delicacy in order to avoid political fallout.
- 8) In the above regard, a phased approach that accords a higher priority to issues such as collaborative research and management and international representation, and a

lower priority to those such as access to non-national marine space, may be advisable;

- 9) The estimation of the projected costs and benefits would be invaluable in securing buy-in for the process.