
**PREPARATORY CONFERENCE FOR THE COMMISSION
FOR THE CONSERVATION AND MANAGEMENT OF
HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN
AND CENTRAL PACIFIC**

Fifth session
Rarotonga, Cook Islands
29 September – 3 October 2003

WCPFC/PrepCon/DP.16
6 September 2003

LETTER DATED 29 AUGUST 2003 FROM THE HEAD OF THE DELEGATION OF JAPAN,
MR AKIRA NAKAMAE TO THE HEAD OF THE INTERIM SECRETARIAT

Submitted by the delegation of Japan

29 August 2003

Mr. Michael Lodge
Head of Interim Secretariat
WCPFC

Dear Mr. Lodge,

I would like to present a proposal about fishing capacity control in WCPO to be discussed at PrepCon5 (see Explanatory Note and Draft Resolution attached).

Taking into consideration the SCG2 report responding to the request by PrepCon as mentioned in (a)-(d) of Chairman's Statement para. 4, we believe it necessary to discuss further measure to control the fishing effort and capacity at the coming PrepCon meeting.

I recognize that the PrepCon needs a lot of works to address, but rapid expansion of fishing capacity in WCPO is one of the most serious problems. In fact IATTC showed a great concern over the increase of fishing capacity in WCPO, while FAO is also in process to accelerate implementation of IPOA on capacity to control it in global base. PrepCon should also take further measures on this matter immediately. For your information, I will soon send you background paper that describes increase in fishing efforts by super purse-seiners in the Western and Central Pacific.

With respect to northern committee, I attached herewith the explanatory note and flow chart.

Please circulate this letter and attached papers to all delegates of PrepCon meeting.

Best regards

Akira Nakamae
Councilor, Fisheries Agency
Government of Japan

Annex 1

DRAFT RESOLUTION ON CAPACITY CONTROL

Recalling the resolutions adopted at the Fourth Session of the Multilateral High Level Conference on 19 February 1999, and the third session of the Preparatory Conference for the Establishment of the Commission for the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean on 22 November 2002, in which the participants, *inter alia*, urged all States and other entities concerned to exercise reasonable restraint in respect of any regional expansion of fishing effort and capacity;

Noting that the Food and Agriculture Organization of the United Nations adopted the International Plan of Action for the Management of Fishing Capacity in 1999, and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) in 2001;

Recognizing the need to apply the precautionary approach to fisheries management and the importance, as a precautionary measure, of limiting the expansion of fishing effort in the region prior to the entry into force of the Convention;

Recognizing further that other regional fisheries management organizations have adopted or are considering stringent measures to limit the growth of fishing capacity and eliminate illegal, unreported and unregulated fishing;

Noting with concern that since 1999 fishing effort and catches in the region have continued to increase;

Noting further that some Fishing industries were reported to be still building or have already built a large number of FOC purse seine fishing vessels outside the restraints of the States and entities;

Considering that the Scientific Coordinating Group meeting held in July in Mooloolaba unanimously recommended not to increase the fishing mortalities of both yellowfin and bigeye tunas from the current levels, which means that all the States and entities should take further measures to ensure that fishing of these tunas not be intensified;

Noting existing conservation and management arrangements in the region; and

Taking into account the interests of small island developing States and territories in developing their national fisheries in accordance with their commitments under international law and instruments;

To ensure the effectiveness of the “RESOLUTION OF THE PREPARATORY CONFERENCE RELATING TO ILLEGAL, UNREPORTED AND UNREGULATED FISHING AND LIMITES ON FISHING CAPACITY”, the participants in the fifth session of the Preparatory Conference for the Establishment of the Commission for the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean held at Rarotonga, Cook Islands, from 29 September to 3 October 2003, resolve to:

1. *Request* all States and other entities to take necessary measures not to increase the numbers of their large-scale tuna fishing vessels (vessels larger than 24 metres overall length, hereinafter referred to as “LSTFVs”) authorized to fish for the highly migratory species in the Convention area (hereinafter referred to as “authorized LSTFVs”).
2. *Request* all States and other entities to take effective measures to prevent their residents from building and operating in the Convention area new LSTFVs of foreign flags in addition to the existing numbers of the authorized LSTFVs of their flags.
3. *Confirm* that the above two paragraphs should not be regarded as any restriction over or hindrance to
 - Substitution of an existing authorized LSTFV.
 - Transfer of an existing authorized LSTFV from one member State or other entity to another, particularly that from a developed fishing State to a developing State.
4. *Request* the Forum Fisheries Agency not to accept in its Regional Register LSTFVs newly built against the paragraphs 1 – 3 above.

Annex 2

EXPLANATORY NOTE ON THE DRAFT RESOLUTION ON CAPACITY CONTROL

At the fourth session of the Multilateral High Level Conference on 19 February 1999, and the PrepCon 3 on 22 November 2002, the participants adopted the resolutions urging all States and other entities to restrain the expansion of fishing effort and capacity in the Convention Area. Some Fishing industries such as Taiwanese, however, were reported to be still building or have already built a large number of FOC purse seine fishing vessels outside the restraints of the States and entities.

On the other hand, the Scientific Coordinating Group meeting held in July in Mooloolaba unanimously recommended not to increase the fishing mortalities of both yellowfin and bigeye tunas from the current levels. In this sense, too, all the States and entities should take further measures to ensure that fishing of these tunas not be intensified.

In view of these serious situations, Japan drafted a resolution for consideration by the PrepCon 5. The scope of application of this draft resolution is limited to large-scale tuna fishing vessels (LSTFVs). The measures should be focused upon industrialized fishing vessels with high fishing abilities and productivities, not the small fishing vessels of coastal nations. The first paragraph of the resolution is reinforcement of the previous resolutions. All the States and entities should at least restrain the numbers of LSTFVs authorized to fish in the Convention area. The second paragraph is dealing with the problem of unrestricted increase of FOC LSTFVs of the Taiwanese industry and others. Japan has no intention in this draft resolution to restrict either legitimate substitution of the existing licensed vessels or sound fishery development of coastal developing nations through receiving LSTLVs from developed fishing nations. That is why the third paragraph was added to clarify this point.

Japan would like to request thorough consideration of this proposal and its quick adoption by the PrepCon 5 since both the unrestricted increase of FOC purse seiners and the current serious stock conditions in the Convention area do not allow further delay in taking proper conservation measures. It sincerely hopes that the participants understand the urgency of this matter and support the draft resolution.

Annex 3

EXPLANATORY NOTE ON THE RULES OF PROCEDURES ON THE NORTHERN COMMITTEE PROPOSED BY JAPAN

1. This proposal was not intended to amend any part of the Convention but to clarify its provisions.
2. The first paragraph specifies the name and the members of the Committee in accordance with the Article 11, paragraph 7, of the Convention.
3. The following is the explanation on the decision-making process of conservation measures for stocks which mostly occur in the area north of 20°N (northern stocks).

- (1) The latter part of Article 11 paragraph 7 provides,

“If the Commission, in accordance with the rules of procedure for decision-making on matters of substance, does not accept the recommendation of the committee on any matter, it shall return the matter to the committee for further consideration.” In light of this provision, it is clear that the Commission has no alternative but returning the recommendation to the northern committee in case the Commission does not accept the recommendation. The Commission cannot, in its decision, amend the substance of the recommendation or add a new element to it.

- (2) However, the middle part of this paragraph also provides,

“In adopting measures in relation to particular stocks and species in such area, the decision of the Commission shall be based on any recommendations of the committee.” If one reads just this part, the phrase “based on” might cause misinterpretation of the provision, while the paragraph including the part described in (1) above has to be read and interpreted as a whole. Namely, there is a possibility of misinterpretation that the Commission can decide to amend the substance of the recommendation without returning it to the northern committee.

- (3) According to the Article 20, paragraph 2, one or two members of the non-FFA countries, which are considered to be most of the northern committee members, cannot block a Commission’s decision by voting. This means that in case of the above misinterpretation of the provision, the Commission might proceed to a decision by voting to amend the recommendation even with opposition of two members of the northern committee. Although the possibility of this case is minimal, it is a very serious and politically sensitive matter for Japan, the largest fishing and coastal state in the northern committee.

- (4) To eliminate the possibility of misinterpretation described above, the second and fourth paragraphs of the proposed rules of procedures were formulated. The process was shown in the attached figure.

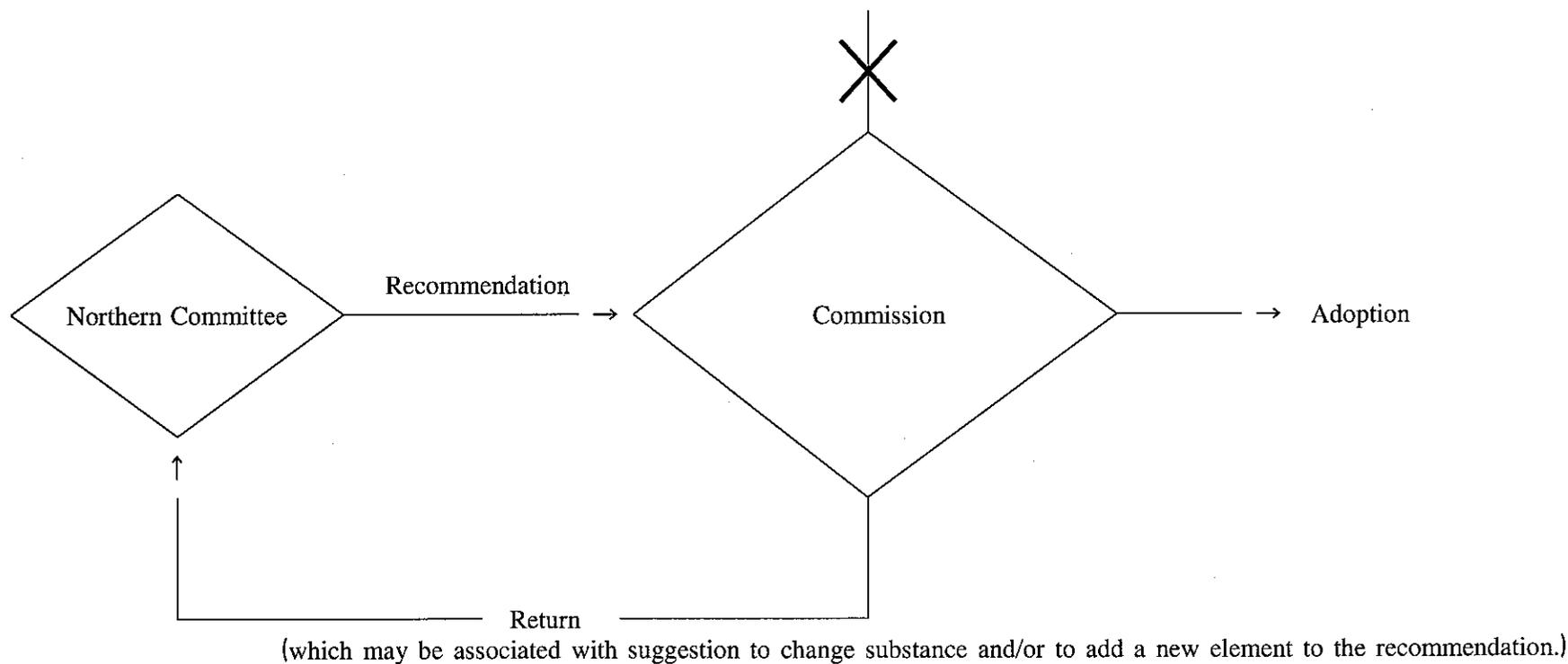
- (5) The Convention, however, does not prevent the Commission from making suggestions or producing a general policy on conservation and management measures for those northern stocks. If the Commission wishes to change substance of the recommendation on the species, it can send its suggestion of that effect to the northern committee when returning the recommendation. Then the northern committee has to reconsider and appropriately amend the recommendation and send it back to the Commission. This is the proper process of decision

making in relation to the northern stocks. The last sentence of the Article 11, paragraph 7, clearly stipulates this point as provided “If the Commission, in accordance with the rules of procedure for decision-making on matters of substance, does not accept the recommendation of the committee on any matter, it shall return the matter to the committee for further consideration. The committee shall reconsider the matter in the light of the views expressed by the Commission.”

4. With respect to other stocks than the northern stocks, the Commission establishes conservation and management measures first. Then the northern committee works out a recommendation on implementation of those measures. To reflect this difference, the third paragraph was written in a different way from the second paragraph.

Decision making process on the conservation and management measures in respect of stocks which occur mostly in Northern Pacific

*Voting decision in misinterpretation of the convention = Recommendation + substantial amendment or addition of a new element



* Note : Although there is a small possibility, this wrong decision might be made despite opposition of one or two members of the northern committee