

**REVISED DRAFT RULES OF PROCEDURE OF THE COMMISSION FOR THE  
CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS  
IN THE WESTERN AND CENTRAL PACIFIC**

Prepared by the Secretariat

1. Draft rules of procedure for the Commission, based on standard rules of procedure for international organizations worldwide and taking into account the considerations identified in document WCPFC/PrepCon/BP.3, were prepared by the interim secretariat for the first session of the Preparatory Conference. During the first, second and third sessions of the Conference, the draft rules were considered in informal plenary sessions. At the end of each session, the interim secretariat was requested to prepare a revised draft of the rules taking into account the discussions that had taken place in the informal sessions.
2. During the fourth session, the Conference met in informal session on 7 May 2003 to review the further revised draft rules of procedure for the Commission which had been prepared by the interim secretariat on the basis of discussions during the third session and contained in document WCPFC/PrepCon/WP.1/Rev.3\*. In considering the draft, the Conference focused its attention on those rules where specific problems had been identified, namely rules 1, 14, 15, 23, 24, 30, 31, 34 and 35. While it was possible to resolve the outstanding issues in relation to a number of these provisions, it was noted that considerable differences remained on other provisions. In particular, with respect to the proposal by Japan relating to the Northern Committee (rule 31), it was agreed to defer further discussion on this issue until the next session of the Conference in order to achieve a consensus consistent with the Convention.
3. The Conference agreed to return to the draft rules of procedure at its next session with a view to consideration of the remaining issues. In further revising the draft, the secretariat was requested to include in its explanatory memorandum a note of the issues raised in relation to these outstanding issues.
4. In light of the discussions during the fourth session, a number of specific suggestions and proposals have been incorporated into the further revised draft rules, including minor revisions to rule 1, paragraph 1, rule 15, and rule 35, paragraph 5. During the discussion, no additional comments were made with respect to rules 14 and 30.
5. With respect to rule 23, a proposal had been made by the delegations of Japan, China and Chinese Taipei at the third session to add a footnote to rule 23 stating as follows:

“ ‘Allocation’ includes allocation in terms of the members of the Commission, areas, fisheries and fish sizes.”

The Conference agreed to remove the proposed footnote from the draft rules pending further discussion of the proposal.

6. With respect to rule 34, relating to the participation of territories, the Conference took note of the proposal by the delegations of France, New Zealand and the United States for rules of procedure on the nature and extent of participation by territories. Although several delegations expressed their support for the proposal, some delegations asked for more time to examine the proposal in detail and it was agreed to return to rule 34 at the fifth session.

7. With respect to a proposal introduced at the second session relating to the introduction of procedures for voting by mail, the Conference took note of a possible draft for discussion that had been developed by a number of interested delegations. The draft, and an explanatory note, appear in Appendices I and II. While participants felt that there was merit in considering the use of mail voting for matters of procedure, several delegations felt that the use of the mail vote should be limited to cases of extreme urgency. Other delegations considered that mail voting should be possible on both matters of procedure and of substance. In light of the concerns expressed, the Conference agreed that this issue needed further consideration and should be revisited at the next session.

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## I. SESSIONS

### REGULAR AND SPECIAL SESSIONS

#### *Holding of regular and special sessions*

#### **Rule 1**

1. The Commission shall hold a regular annual session.<sup>1</sup> Before the end of each regular annual session, the Commission shall, if possible, decide on the date of commencement and the approximate duration of the next regular annual session. All meetings of the Commission and its subsidiary bodies shall be held within no more than two sessions per year, unless the Commission decides otherwise.

2. The Executive Director shall notify the members of the Commission,<sup>2</sup> each territory referred to in article 43 of the Convention, and observers referred to in rule 35, of the date and place and provisional agenda of the session as early as possible but at least ninety days in advance of the opening of a regular annual session.

3. In exceptional circumstances, the Commission may hold special sessions in accordance with this paragraph. Any member of the Commission may request the Executive Director to convene a special session of the Commission. The Executive Director shall immediately inform the other members of the Commission of the request and inquire whether they concur with it. If within thirty days of the date of communication by the Executive Director a

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<sup>1</sup> In these rules, unless otherwise stated, ‘regular annual session’ means the annual meeting of the Commission specified in article 9, paragraph 3 of the Convention.

<sup>2</sup> In accordance with article 9, paragraph 2, of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (hereafter referred to as “the Convention”), a fishing entity referred to in the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, which has agreed to be bound by the regime established by the Convention in accordance with the provisions of Annex I to the Convention, may participate in the work, including decision-making, of the Commission in accordance with the provisions of article 9 and Annex I and subject to the provisions of article 34, paragraph 4. According to paragraph 2 of Annex I, such fishing entity shall participate in the work of the Commission, including decision-making, and shall comply with the obligations under the Convention. References thereto by the Commission or members of the Commission include, for the purposes of the Convention, such fishing entity as well as Contracting Parties.

majority of the members of the Commission concur in the request, a special session of the Commission shall be convened by the Executive Director and it shall meet no earlier than thirty days and no later than ninety days after the receipt of such concurrence. The Executive Director shall notify the members of the Commission, each territory referred to in article 43 of the Convention, and observers referred to in rule 35, of the date and place and provisional agenda for a special session as early as possible but at least twenty-five days in advance of the special session.

4. The Commission shall meet at the headquarters of the Commission unless it decides otherwise.

## II. AGENDA

### REGULAR SESSIONS

#### *Drawing up of the provisional agenda*

#### **Rule 2**

1. The provisional agenda for a regular session shall be drawn up by the Executive Director, in consultation with the Chairman.
2. The provisional agenda of a regular session shall include:
  - (a) The annual report of the Executive Director on the work of the Commission;
  - (b) Items the inclusion of which has been requested by the Commission at a previous session;
  - (c) Items proposed by any member of the Commission;
  - (d) Items pertaining to the budget for the next financial year, the report on the accounts for the last financial year and the auditors' report;
  - (e) Recommendations of the Scientific Committee and any recommendations of the scientific experts pursuant to article 13 of the Convention;
  - (f) Recommendations of the Technical and Compliance Committee;
  - (g) Recommendations of the committee established pursuant to article 11, paragraph 7, of the Convention;
  - (h) Consideration of the special requirements of developing States pursuant to Part VIII of the Convention; and
  - (i) Items which the Executive Director deems it necessary to put before the Commission.

#### *Supplementary items*

#### **Rule 3**

Any member of the Commission, the Chairman, or the Executive Director may, at least thirty days before the date fixed for the opening of a regular session request the inclusion of supplementary items in the agenda. A request for the inclusion of a supplementary item on the provisional agenda shall be accompanied by a written explanation of the proposed supplementary item. Such items shall be placed on a supplementary list, which shall be communicated to the members of the Commission, to each territory referred to in article 43 of the Convention, and to observers referred to in rule 35 at least twenty days before the opening of the session.

#### SPECIAL SESSIONS

##### *Drawing up of the provisional agenda*

#### **Rule 4**

The provisional agenda for a special session shall include only of those items proposed for consideration in the request for holding the session.

#### REGULAR AND SPECIAL SESSIONS

##### *Adoption of the agenda*

#### **Rule 5**

At the beginning of each session, the Commission shall adopt its agenda for the session on the basis of the provisional agenda. The Commission may, however, in urgent circumstances, place additional items of an important or urgent character on the agenda at any time during a session.

### III. REPRESENTATION

##### *Representation*

#### **Rule 6**

1. Each member of the Commission, and each territory referred to in article 43 of the Convention, shall be represented by designated representatives and such alternate representatives and advisers as may be required by the delegation.
2. Observers referred to in rule 35 shall be represented by designated representatives and by such alternate representatives and advisers as may be required.
3. The names of representatives and the names of alternate representatives and advisers shall be submitted to the Executive Director if possible not later than twenty-four hours after the opening of the session in such standard form of designation as the Executive Director shall establish.

##### *Official contact*

#### **Rule 7**

Each member of the Commission, and each territory referred to in article 43 of the Convention, shall, as soon as possible after the adoption of these rules, notify the Executive Director of one or more Official Contacts who shall, for the purposes of official communications

between the Commission and the member or territory concerned, including all notifications and communications made pursuant to these rules, be the official points of contact.

#### IV. OFFICERS

##### *Elections*

##### **Rule 8**

At its first regular session, and each two years thereafter, the Commission shall elect a Chairman and a Vice-Chairman from among the Contracting Parties to the Convention, who shall be of different nationalities. Except at the first regular session of the Commission, the Chairman and Vice-Chairman shall assume office at the end of the session at which they are elected. Subject to rule 10, they shall hold office for a period of two years and shall be eligible for re-election.

##### *Functions of the Chairman*

##### **Rule 9**

1. In addition to exercising the powers conferred upon him or her elsewhere in these rules or by the Convention, the Chairman shall declare the opening and closing of each plenary meeting of the Commission, direct the discussions in plenary meeting, ensure observance of these rules, accord the right to speak, announce the list of speakers and, with the consent of the Commission, declare the list of speakers closed, put questions and announce decisions. He or she shall rule on points of order and, subject to these rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The Chairman may, in the course of discussion of an item, propose to the Commission the limitation of the time to be allowed to speakers, the limitation of the number of times each representative may speak, the closure of the list of speakers or the closure of the debate. He or she may also propose the suspension or the adjournment of the meeting or the adjournment of the debate on the item under discussion.
2. The Chairman, in the exercise of his or her functions, remains under the authority of the Commission.
3. The Vice-Chairman acting as Chairman shall have the same powers and duties as the Chairman.

##### *Replacement of the Chairman or Vice-Chairman*

##### **Rule 10**

If the Chairman or Vice-Chairman is unable to carry out his or her functions or ceases to be a representative of a Contracting Party, or if a Contracting Party of which he or she is a representative ceases to be a member of the Commission, he or she shall cease to hold office and a new Chairman or Vice-Chairman shall be elected for the unexpired term.

#### V. SECRETARIAT

##### *Duties of the Executive Director*

##### **Rule 11**

1. The Executive Director, as the chief administrative officer of the Commission, shall act in that capacity in all meetings of the Commission and of its subsidiary bodies. The Executive Director may designate an officer of the Secretariat to act as his or her representative. The Executive Director shall discharge such other responsibilities as are assigned to him or her under the Convention or by the Commission in the conduct of its business.
2. The Executive Director shall provide and direct, with due regard to principles of economy and efficiency, the staff required by the Commission and its subsidiary bodies.
3. The Executive Director shall keep the members of the Commission informed of any issues or matters which may be of interest to the Commission.

*Duties of the Secretariat*

**Rule 12**

The Secretariat shall carry out the duties and perform the functions set out in article 15 of the Convention. In particular, the Secretariat shall receive, reproduce and distribute documents, reports and decisions of the Commission and its subsidiary bodies, prepare and circulate summary reports of the meetings of the Commission in accordance with rule 32; have the custody and proper preservation of the documents in the archives of the Commission; distribute all documents of the Commission to the members of the Commission, the territories referred to in article 43 of the Convention, and observers referred to in rule 35; and, generally, perform all other work which the Commission may require.

*Report of the Executive Director on the work of the Commission*

**Rule 13**

The Executive Director shall make an annual report, and such supplementary reports as are necessary, to the Commission at its regular session on the work of the Commission. The Executive Director shall communicate the annual report to the members of the Commission, to each territory referred to in article 43 of the Convention and to observers referred to in rule 35 at least forty-five days before the opening of the regular session.

**VI. CONDUCT OF PLENARY MEETINGS**

*Quorum*

**Rule 14**

The Chairman may declare a meeting of the Commission open and permit the debate to proceed when at least three-fourths of the members of the Commission are present.

*Open and closed meetings*

**Rule 15**

1. The meetings of the Commission shall be open unless the Commission decides that exceptional circumstances require that meetings be held in closed session.

2. All decisions of the Commission taken at a closed session shall be announced at an early open meeting of the Commission. At the end of a closed meeting of a subsidiary body, the Chairman may issue a communiqué through the Executive Director.

*Speeches*

**Rule 16**

No representative may address the Commission without having previously obtained the permission of the Chairman. The Chairman shall call upon speakers in the order in which they signify their desire to speak, except that the Chairman of a subsidiary body may be accorded precedence for the purpose of explaining the conclusions arrived at by that body. The Chairman may call a speaker to order if his or her remarks are not relevant to the subject under discussion.

*Statements by the Secretariat*

**Rule 17**

The Executive Director, or a member of the Secretariat designated by him as his representative, may, at any time with the permission of the Chairman, make either oral or written statements to the Commission concerning any question under consideration by it.

*Points of order*

**Rule 18**

During the discussion of any matter, a member of the Commission may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with these rules of procedure. A member of the Commission may appeal against the ruling of the Chairman. In such a case, the appeal shall be immediately put to the vote, and the Chairman's ruling shall stand unless overruled by a majority of the members of the Commission present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

*Procedural motions*

**Rule 19**

1. Subject to rule 18, a member of the Commission may at any time make any of the following procedural motions. Such motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the item under discussion;
- (d) To close the debate on the item under discussion.

2. Any motion calling for a decision on the competence of the Commission to adopt a proposal submitted to it shall be put to the vote before a vote is taken on the proposal in question.

*Proposals and amendments*

**Rule 20**

Proposals and amendments shall normally be circulated in writing to the Executive Director, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Commission unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The Chairman may, however, permit the discussion and consideration of amendments, or of motions as to procedure, even though such amendments and motions have not been circulated or have only been circulated the same day.

VII. DECISION-MAKING

*Voting rights*

**Rule 21**

Each member of the Commission shall have one vote, unless otherwise provided in the Convention.

*Decision-making*

**Rule 22**

1. As a general rule, decision-making in the Commission shall be by consensus. For the purposes of these rules, “consensus” means the absence of any formal objection made at the time the decision was taken.
2. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Commission on questions of procedure shall be taken by a majority of those present and voting. Decisions on questions of substance shall be taken by a three-fourths majority of those present and voting provided that such majority includes a three-fourths majority of the members of the South Pacific Forum Fisheries Agency present and voting and a three-fourths majority of non-members of the South Pacific Forum Fisheries Agency present and voting and provided further that in no circumstances shall a proposal be defeated by two or fewer votes in either chamber. When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance unless otherwise decided by the Commission by consensus or by the majority required for decisions on questions of substance.
3. If it appears to the Chairman that all efforts to reach a decision by consensus have been exhausted, the Chairman shall fix a time during that session of the Commission for taking the decision by a vote. At the request of any member, the Commission may, by a majority of those present and voting, defer the taking of a decision until such time during the same session as the Commission may decide. At that time, the Commission shall take a vote on the deferred question. This rule may be applied only once to any question.
4. Elections of individuals shall be conducted in accordance with article 20 of the Convention. In the event of a vote, notwithstanding the provisions of rule 24, the election shall be conducted by secret ballot. If no candidate obtains in the first ballot the necessary majorities of the votes cast, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the balloting shall be continued until one candidate secures the necessary majorities of the votes cast.

5. For the purposes of these rules, the phrase “those present and voting” means members of the Commission present and casting an affirmative or negative vote. Members of the Commission who abstain from voting shall be considered as not voting.

*Decisions requiring a consensus*

**Rule 23**

Decisions on questions of substance arising under the following provisions of the Convention shall be taken by consensus: article 9, paragraph 8 (adoption, and amendment, of rules of procedure), article 10, paragraph 4 (decisions relating to the allocation of total allowable catch or the total level of fishing effort), article 17, paragraph 2 (adoption of financial regulations), article 18, paragraphs 1 and 2 (adoption of the budget and a scheme for assessment of contributions to the budget), and article 40 (amendments to the Convention).

*Method of voting*

**Rule 24**

The Commission shall vote by show of hands or by standing, but any member of the Commission may request a roll-call. The roll-call shall be taken in the alphabetical order of the names of the members of the Commission participating in that session, beginning with the member whose name is drawn by lot by the Chairman. The name of each member of the Commission shall be called in any roll-call, and one of its representatives shall reply “yes”, “no” or “abstention”. The result of the voting shall be inserted in the record in the alphabetical order of the names of the members.<sup>3</sup>

*Conduct during voting*

**Rule 25**

After the Chairman has announced the commencement of voting, no member of the Commission may interrupt the voting, except that members of the Commission may interrupt on a point of order in connection with the actual conduct of voting.

*Explanation of vote*

**Rule 26**

Members of the Commission may make brief statements consisting solely of explanations of their votes before the voting has commenced or after the voting has been completed. The Chairman may limit the time to be allowed for such statements. A member of the Commission sponsoring a proposal or motion shall not speak in explanation of vote thereon, except if it has been amended.

*Division of proposals and amendments*

**Rule 27**

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<sup>3</sup> A procedure for voting by mail or forms of electronic communication was proposed by some delegations, but was not acceptable to others. Further discussion of this matter is needed. The appendices to the present paper discusses some possible options for mail voting procedures.

A member of the Commission may move that parts of a proposal or of an amendment should be voted on separately. If objection is made to the request for a division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are approved shall then be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

*Order of voting on amendments*

**Rule 28**

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Commission shall first vote on the amendment furthest removed in substance from the original proposal and then on to the amendment next furthest removed therefrom and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it adds to, deletes from or revises part of the proposal.

*Order of voting on proposals*

**Rule 29**

If two or more proposals relate to the same question, the Commission shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The Commission may, after each vote on a proposal, decide whether to vote on the next proposal.

VIII. RULES OF PROCEDURE OF SUBSIDIARY BODIES

*Rules of procedure*

**Rule 30**

1. Subject to the provisions of the Convention, each subsidiary body of the Commission may formulate and submit to the Commission for approval such rules as may be necessary for the efficient conduct of its functions.
2. Pending the approval of such rules, and except as otherwise provided in the Convention, these rules of procedure apply, mutatis mutandis, to the proceedings of subsidiary bodies, including the Scientific Committee and the Technical and Compliance Committee.

*The Northern Committee*

**Rule 31**

Notwithstanding all other provisions of these Rules, the committee established pursuant to article 11, paragraph 7, of the Convention, shall function in accordance with the procedures set out in Annex I.

## IX. REPORTS OF MEETINGS

### *Reports of meetings*

#### **Rule 32**

1. Summary reports of the sessions of the Commission shall be maintained in such form as the Commission shall decide. As a general rule, such reports shall be circulated as soon as possible, to all representatives, who shall inform the Secretariat within thirty working days after the circulation of the summary report of any changes they wish to have made.
2. The Executive Director shall communicate the text of all decisions adopted by the Commission pursuant to article 20 of the Convention to all members of the Commission and to each territory referred to in article 43 of the Convention, and to observers referred to in rule 35, within seven working days following the adoption of such decision.

## X. SUSPENSION OF RIGHTS

### *Suspension of the exercise of voting rights*

#### **Rule 33**

A contributor to the budget of the Commission which is in arrears in the payment of its financial contributions to the Commission shall not participate in the taking of decisions by the Commission if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Commission may, nevertheless, permit such a contributor to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the contributor.

## XI. PARTICIPATION BY TERRITORIES

### *Participation by territories*

#### **Rule 34**

Notwithstanding all other provisions of these Rules, pursuant to article 43 of the Convention, the nature and extent of the participation of the territories listed in article 43, paragraph 1, of the Convention, shall be governed by the rules set out in Annex II.

## XI. OBSERVERS

### *Observers*

#### **Rule 35**

1. The following may participate as observers in the Commission:
  - (a) States, entities and fishing entities that participated in the Multilateral High Level Conference on the Conservation and Management of the Highly Migratory Fish Stocks, which are not members of the Commission;

(b) Any entity referred to in article 305, paragraph 1, subparagraphs (c), (d) and (e) of the 1982 United Nations Convention on the Law of the Sea which is situated in the Convention Area, which is not a member of the Commission;

(c) Other States and fishing entities with an interest in the work of the Commission, invited by the Commission, which are not members of the Commission;

(d) The Food and Agriculture Organization of the United Nations and other relevant intergovernmental organizations and South Pacific regional organizations invited by the Commission;

(e) Non-governmental organizations concerned with matters relevant to the implementation of the Convention admitted by the Commission pursuant to paragraph 4 of this rule which have demonstrated their interest in matters under consideration by the Commission.

2. Observers referred to in paragraph 1 (a), (b) and (c) of this rule may participate subject to the provisions of these rules in the deliberations of the Commission and its subsidiary bodies but shall not be entitled to participate in the taking of decisions. Written statements submitted by such observers shall be distributed by the Secretariat to the members of the Commission.

3. Observers referred to in paragraph 1 (d) of this rule may participate in the deliberations of the Commission and its subsidiary bodies upon the invitation of the Chairman on questions within the scope of their competence, but shall not be entitled to participate in the taking of decisions. Written statements submitted by such observers shall be distributed by the Secretariat to the members of the Commission.

4. A non-governmental organization desiring to participate as an observer shall notify the Executive Director in writing of its desire to participate at least fifty days in advance of the session. The Executive Director shall notify the members of the Commission of such request at least 45 days prior to the opening of the session at which the request is to be considered. Non-governmental organizations that have made such notification to the Executive Director shall be invited to participate in the session as observers unless a majority of the members of the Commission objects to the request in writing at least twenty days before the opening of the session. Such observer status shall remain in effect for future sessions unless the Commission decides otherwise.

5. Observers referred to in paragraph 1 (e) of this rule may sit at meetings of the Commission and its subsidiary bodies and upon the invitation of the Chairman and subject to the approval of the Commission or the relevant subsidiary body may make oral statements on matters within the scope of their activities. Written statements submitted by observers referred to in paragraph 1 (e) of this rule within the scope of their activities which are relevant to the work of the Commission may, subject to the approval of the Chairman, be distributed at meetings of the Commission and its subsidiary bodies.

6. The Executive Director may require observers referred to in paragraph 1 (e) of this rule to pay reasonable fees to cover the administrative costs attributable to their attendance at meetings of the Commission.

## XII. AMENDMENTS

### *Method of amendment*

#### **Rule 36**

These rules of procedure may be amended by a decision of the Commission, taken by consensus.

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Annex I

**Rules of procedure relating to the Northern Committee as proposed by the delegation of Japan**

1. The committee established under article 11, paragraph 7, of the Convention shall be called the Northern Committee. It shall consist of the members situated in the Convention area north of 20° north parallel and the members fishing in that area. Any member of the Commission not represented on the Committee may send a representative to participate in the deliberations of the Committee as an observer.
2. The Northern Committee shall, by consensus, make recommendations on the formulation of conservation and management measures in respect of stocks which occur mostly in the area north of 20° north parallel. Such recommendations shall be consistent with the general policies and measures adopted by the Commission in respect of the stocks or species in question and with the principles and measures for conservation and management set out in the Convention. The Commission shall not take a decision with regard to any such measure without a recommendation concerning such measure from the Northern Committee.
3. The Northern Committee shall, by consensus, make recommendations on the implementation for the area north of 20° north parallel of such conservation and management measures as may be adopted by the Commission. Such recommendations shall be consistent with the general policies and measures adopted by the Commission in respect of the stocks or species in question and with the principles and measures for conservation and management set out in the Convention.
4. A recommendation of the Northern Committee shall be adopted by the Commission unless the Commission, by the rules of procedure for decision-making on matters of substance, decides to return the recommendation back to the Northern Committee on the grounds that it is not consistent with the general policies and measures adopted by the Commission in respect of the stocks or species in question and with the principles and measures for conservation and management set out in the Convention.

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## Annex II

### **Rules of procedure on the nature and extent of participation of territories**

1. Territories listed in article 43 of the Convention would be “Participating Territories” once they have the relevant authorization. Such authorization shall be in the form of a declaration, filed with the depositary, by the Contracting Party having responsibility for the international affairs of such Participating Territory.
2. The Declaration would describe the distribution of the Territory’s competencies and the extent of its responsibilities. The Declaration should be updated appropriately as the Participating Territory’s capacities evolve.
3. Participating Territories have the right to be present and to speak at the meetings of the Commission and its subsidiary bodies and to receive all communications in respect of those meetings. Participating Territories would not have rights which are inconsistent with their territorial status (such as being elected Chair or being counted towards a quorum).
4. In relation to matters over which a Participating Territory has competence, such Territory may make proposals and offer amendments.
5. In relation to matters over which a Participating Territory does not have competence, it may, with the specific authorization of the Contracting Party having responsibility for that Territory’s international affairs, make proposals and offer amendments.
6. Additional rights and restrictions on rights shall be determined by the Contracting Parties in rules of procedure, as necessary, consistent with Article 43.
7. In accordance with article 20, of the Convention, the Commission will make all efforts to reach decisions by consensus. Consistent with their full participation in the work of the Commission, all Participating Territories would participate in the Commission’s deliberations to reach consensus. Participating Territories’ views would be properly considered and taken into account in reaching any decision. Seeking a consensus will be especially important in decisions of economic significance to Participating Territories such as:
  - (a) decisions on allocation, where a Participating Territory is responsible for the conservation and management of resources in its waters;
  - (b) decisions on the scale of assessments, where a Participating Territory makes independent and voluntary contributions to the Commission’s budget.
8. Where a consensus could be reached but for the views of a Participating Territory that has full competence over the resources in its waters (in decisions on allocation) or a Participating Territory that contributes to the Commission’s budget (in decisions on budget and the scale of assessments), such a Participating Territory may request an additional period of time of up to twelve hours on the affected agenda item for consultation. Notwithstanding this, a Participating Territory could not block consensus on a proposal.
9. A Participating Territory would need to meet a predetermined standard in order to acquire or exercise the right to vote within the Commission. The standards and the process and criteria for assessing whether the standards have been met would need further discussion and elaboration by the Contracting Parties.

## Appendix I

### **The Use of Mail Voting Procedures by Regional Fisheries Management Organizations**

#### **Introduction**

1. Many international organizations with living marine resource conservation and management responsibilities have the authority to make decisions intersessionally by use of the mail vote, or other means of communication. This authority has historically been used to deal with urgent conservation and management needs and to avoid the expense to the organization and its members of holding an intersessional meeting.
2. The MHLC Convention as well as the Preparatory Conference have addressed the principles of efficiency and cost-effectiveness and the desire for the Commission to operate as economically as possible. It is consistent with these principles to examine the possibility of providing for a decision-making mechanism that could operate without the need to convene a meeting of the Commission. At the same time, the use of mail voting procedures virtually eliminates the discussion and other valuable interaction that occurs at meetings. That being the case, it is appropriate that their use be delimited.
3. An examination of mail voting procedures should include a review of the experiences of other organizations, particularly with a mind to desirable safeguards against the abuse of such procedures. Although resort to such procedures should not affect in any way the decision-making provisions in the Convention, a procedure should clearly specify roles and responsibilities, the determination of a quorum, need for adequate prior notice and other matters of timing, etc.

#### **Other Organizations**

4. Of the existing tuna commissions, the Inter-American Tropical Tuna Commission (IATTC), the Commission for the Conservation of Atlantic Tuna (ICCAT), and the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) have mail voting procedures, while the Indian Ocean Tuna Commission (IOTC) does not. Other regional fisheries management organizations that have mail voting procedures include: the Northwest Atlantic Fisheries Organization (NAFO); the North Atlantic Salmon Conservation Organization (NASCO); the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR); and the North Pacific Anadromous Fish Commission (NPAFC). Although most bilateral arrangements find it unnecessary to have mail voting procedures, the Pacific Salmon Commission (PSC) does have them. Another observation is that the more recently written mail voting provisions in rules of procedure tend to be more detailed.
5. In the IATTC, the mail voting provision can be invoked either at will or in an emergency. It reads “between meetings of the Commission or in case of emergency, a vote of the High Contracting Parties may be obtained by mail, or other means of communication.” The IATTC uses the consensus decision rule and has used a mail vote on occasions when a voting member did not attend a meeting but the Commission needed its approval for actions to go forward. The IATTC also relies on a large number of permanent and ad hoc subgroups, which always consist of representatives of all members. There have been many occasions when the subgroups have reached an agreement, but that agreement cannot become binding until the Commission formally approves it. When such agreements cannot or should not wait for implementation until the annual meeting occurs, they have been put to a mail vote. The main value of the mail vote is to avoid

calling for a special meeting, which often is difficult to arrange in a timely manner and is always logistically difficult and expensive.

6. The ICCAT provision is more narrow: “Between meetings of the Commission, in case of special necessity, votes may be taken by mail or other means of communication. Such votes shall be transmitted to the Chairman of the Commission by the correspondent of each member country.” The most recent use of this procedure occurred when the 2001 annual meeting was unable to complete its business and a variety of decisions, including some catch limits, in various stages of development, were not brought forward for final adoption. As an alternative to staging another meeting, and desiring at least in some cases to avoid an absence of catch limits, ICCAT employed its mail voting procedure. This experience suggests that it should always be possible to utilize a mail voting procedure if an annual or special meeting of the Commission so decides.

7. The CCSBT provision reads, “Where necessary when the Commission is not in session, decisions of the Commission shall be taken by a unanimous vote of the Members effected by post or other means of textual communication including facsimile. In circumstances where the Chair is satisfied that a Member has received a proposal, and that Member has not responded within 21 days to the proposal, the Member shall be taken to have responded to that proposal in the affirmative.” Apparently, CCSBT has not used this provision.

8. NAFO has used its mail voting procedures very recently. They are more elaborate than most others examined in this paper, specifying to whom the Executive Secretary directs the request for vote, the duration of the voting period, responsibilities of Contracting Parties under the procedures, and the determination of a quorum under the procedures. The standard for invoking these procedures is “in case of emergency between meetings,” and the vote may be taken “by mail or other means of communication.” NAFO also has a long-standing practice of quota transfers between Contracting Parties, which is always carried out through mail voting. The 2001 annual meeting of NAFO was scheduled to take place less than 2 weeks after the September terrorist attacks in the United States and was therefore cancelled. In light of the fact that the scientific advice relevant to conservation measures expected to have been decided for 2002 was unchanged from the previous year, NAFO used its mail voting authority to “roll-over” its applicable conservation measures from 2001 to 2002. It then held a truncated special meeting to conduct its other business.

9. NASCO also invokes the “special necessity” standard as the main condition of mail voting but introduces the discretion of the head elected officer. For its General Council, NASCO’s rule reads: “Between meetings of the Council and in case of special necessity to be determined by the President, votes may be taken by mail or by other means of textual communication. Such votes shall be considered as roll call votes. The Secretary shall immediately notify the members of the Council of the results of such votes.” There is no recent history of NASCO using its mail voting procedures.

10. CCAMLR has relatively elaborate provisions for mail voting. Between meetings, the taking of decisions and votes on any proposal may be carried out “when necessary.” Either a member or the Chairman can request a mail vote, and the proposer recommends which of CCAMLR’s two decision-making rules should apply to the substance of the proposal (consensus on matters of substance and a simple majority of members present and voting on all other matters). The provisions specify roles and responsibilities for the Chairman, Executive Secretary, and members; timelines; and separate tracks depending on the applicable decision rule. If the proposal requires consensus for adoption, there are provisions for members to request additional time for consideration or to take the position that it is not necessary for a decision to be taken in

the period between meetings. CCAMLR's provisions for conducting mail votes reflect a number of similarities with the MHLC situation and concerns that have been expressed during the Preparatory Conference. These provisions have never been used for mail votes on substantive matters.

11. The NPAFC's mail voting procedures are very simple: "Between meetings of the Commission, votes may be taken by mail or other means of communication. Such votes shall be transmitted to the Commission by the Point of Contact or the head of delegation of each Party." NPAFC has never used these procedures.

12. The PSC mail voting procedures provide that: "Between meetings of the Commission, and in cases of special necessity determined by the Chair in consultation with the Vice-Chair, a decision may be taken by mail, other means of textual communication or telephone conference. The Executive Secretary shall promptly notify the Commissioners and Alternate Commissioners of the results of the decisions." The PSC has used this authority to take decisions by telephone in the period between meetings.

### **Conclusion**

13. Most international tuna conservation and management organizations and a large number of other regional fisheries management organizations possess the authority to take decisions intersessionally by mail voting procedures. Generally, this is set out in rules of procedure. The use of these authorities is predicated on the existence of an emergency or special necessity for taking action and the desire or necessity to avoid calling a special session of the organization.

14. Based on the mail voting procedures of existing regional fisheries management organizations, and their experience in using them, it would be possible to construct a mail voting procedure for MHLC purposes that was transparent, provided a cost-effective alternative format for taking pressing decisions, yet also provided adequate protections for the rights and obligations of Commission members. Such a procedure should give due consideration to:

- roles and responsibilities of members, the Chairman, and the Executive Secretary;
- determination of a quorum;
- determination of appropriate circumstances for conducting a mail vote and who makes this determination, including a threshold for the determination, e.g., urgency or special necessity, and incentives for all decisions to be taken at meetings, if possible; and
- an explicit timeline(s) extending from the emergence of a proposal to implementation of the decision, if appropriate, including all intervening steps to be followed unless decided otherwise. It likely would be appropriate to develop two timelines tailored to the two decision rules provided for in Article 20 of the Convention, such as CCAMLR has done to meet its needs.

## Appendix II

### **Draft rule on mail voting procedures**

#### **Rule 29 bis**

When necessary, a matter may be decided during the period between meetings by mail or other means of communication (mail vote).

1. The Chairman, or a member by contacting the Chairman, may move adoption of a proposal by mail vote. The Chairman, in consultation with the Vice-Chairman, shall concur on the necessity of considering the proposal intersessionally and confirm which decision rule is applicable.
2. In any case in which the Chairman determines that it is not necessary to consider a motion proposed by a member intersessionally, the Chairman shall promptly so inform that member of such determination and the reasons therefor, at which time the proposer may request a mail vote on the Chairman's determination, to be subject to the majority decision rule for questions of procedure set forth in the Convention.
3. In cases in which the Chairman has concurred on the necessity of considering a proposal moved by a member intersessionally, the Executive Director shall transmit the proposal and both determinations made by the Chairman under rule 29 bis (1) to members via the official contacts provided for in rule 7, requesting that responses be returned within 30 days.
4. Members shall promptly acknowledge receipt of any request for a mail vote. If no acknowledgment is received within 10 days of the date of transmittal, the Executive Director shall retransmit the request and shall use all additional means available to ensure that the request has been received.
5. Members shall respond within 30 days of the date of transmittal of a proposal, indicating whether they cast an affirmative vote, cast a negative vote, or abstain from voting.
6. If no reply from a member is received within 30 days of transmittal, that member shall be recorded as having abstained.
7. The result of a decision taken by mail vote shall be ascertained by the Executive Director at the end of the voting period and promptly announced to all members. If any explanations of votes are received, these shall also be transmitted to all members. Subject to paragraphs 6 and 7 of article 20 of the Convention, if the proposal is adopted, it shall become binding 60 days after its adoption.
8. No proposal transmitted by the Executive Director for a mail vote shall be subject to amendment during the voting period.
9. A proposal that has been rejected shall not be reconsidered by way of a mail vote until after the following meeting of the Commission, but may be reconsidered at that meeting.