
**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.18
7 September 2003

NORTHERN COMMITTEE PROPOSAL: VIEWS OF THE UNITED STATES

Submitted by the delegation of the United States of America

I. INTRODUCTION

1. This paper provides U.S. views on the proposal on the Northern Committee submitted by Japan at PrepCon 3 in Manila. The United States strongly supports the proposal and views it as an accurate and necessary clarification of the language contained in Article 11(7). The clarification it provides with respect to the competence and the operation of the Northern Committee is of paramount importance both to: 1) the future ability of the Committee and Commission to ensure the effective conservation and management of the stocks that occur mostly in the area north of 20 degrees N latitude; and 2) the resolution of important issues relating to full participation in the Convention, which is clearly a key goal of the PrepCon process. Both of these goals are high priorities for the United States.

II. BACKGROUND

2. During the negotiations on the Convention, a large majority of delegations, both distant water fishing nations and island states, supported a proposal to limit the northern boundary of the Convention Area to 20 degrees north latitude (20 degrees N). At the time, these delegations felt that the area north of 20 degrees N, and the highly migratory fish stocks occurring there, were not of critical interest and should not fall under the purview of the Commission. This was especially true of stocks of northern albacore, northern bluefin tuna and swordfish, which occur mostly in this northern area.

3. Some delegations, including the United States, did not support limiting the Convention Area exclusively to the waters south of 20 degrees N. There were several reasons for this, the most important being that the principal stocks of yellowfin, skipjack and bigeye covered by the Convention also occur in the area north of 20 degrees N. Excluding this area would have prevented the Commission from being able to adopt measures to conserve and manage these stocks throughout their range, thus potentially undermining management efforts. Further, if this area were excluded, a new, separate convention would eventually have been necessary for this area. This would have introduced an unknown and complicating dynamic into the negotiations and in the future work of the Commission. Finally, a northern boundary at 20 degrees north would have bisected the U.S. EEZ around Hawaii.

4. As the negotiations progressed, the dilemma facing the participants became clear. To exclude the area north of 20 degrees N would hamper the ability of the Commission to effectively

conserve and manage several key stocks. At the same time, to include this area meant bringing under the purview of the Commission stocks whose inclusion had not previously been anticipated. This latter prospect gave rise to two sets of concerns among different groups of participants.

5. On the one hand, some countries were concerned that the inclusion of these stocks would divert the Commission's time and resources toward the management of stocks that were of marginal interest to most potential Commission members. At the same time, members located in the area north of 20 degrees N, and those with vessels fishing in this area, were unsure about ceding to the Commission full authority over fish stocks occurring mostly in this area, given that most potential members of the Commission are located far outside the principal migratory range of these stocks. This was especially true in view of the precedent-setting decision-making procedures being discussed, through which the Commission could bind members to decisions to which they did not agree.

6. It was precisely in response to these concerns that the proposal to establish the Northern Committee emerged. Article 11(7) was, in fact, part of a carefully negotiated compromise package that contained several key elements. Its inclusion provided a solution that allowed: 1) the Convention Area to be extended northward to cover the full range of yellowfin, bigeye and skipjack tunas; 2) the adoption of a unique and groundbreaking decision-making process that does not require consensus on most issues, yet binds all members to the outcome of those decisions; and 3) assurances to the members with coasts or that fish north of 20 degrees N that decisions will not be implemented for those stocks found mostly in this area (understood to include northern albacore, northern bluefin tuna and swordfish) without a consensus recommendation from these members. Without a Northern Committee of this nature it is unlikely, at best, that agreement could have been reached on the geographic scope of the Convention or on its decision-making procedures.

III. DISCUSSION

7. The Northern Committee has two primary functions. First, Article 11(7) provides that the Committee shall make recommendations on the implementation of conservation and management measures adopted by the Commission for the area north of 20 degrees N. This provision relates to measures for the stocks of yellowfin, skipjack and bigeye tunas, as well as other stocks found mostly below 20 degrees N, but whose range may also extend north of that line. In the absence of a consensus recommendation from the Northern Committee, implementation of any measure adopted for these stocks would apply equally in the areas north and south of 20 degrees N. This ensures that the interests of all Commission members regarding the principal commercial stocks cited above are protected throughout the Convention Area, both north and south of 20 degrees N.

8. Second, the Committee has the primary responsibility for the formulation and recommendation of conservation and management measures for stocks that occur mostly in the area north of 20 degrees N, provided that such recommendations are consistent with the general measures, policies and principles set out in the Convention. Further, the current proposal clarifies, consistent with the intent of Article 11(7), that the Commission shall not take decisions regarding conservation and management measures for these northern stocks in the absence of a recommendation from the Northern Committee. It is this latter provision that appears to be the source of much of the concern regarding the proposal.

9. Under Article 11(7), the Northern Committee makes consensus recommendations for conservation and management measures for stocks occurring mostly north of 20 degrees N. Commission decisions with respect to conservation and management measures for such stocks, “shall be based on any [such] recommendation.” Thus, to interpret Article 11(7) in any way other than that elaborated in the current proposal would be inconsistent with the plain language of the Convention, and create unnecessary confusion in the operation of the Northern Committee and the Commission as a whole. In fact, any such alternative interpretation would call into serious question the very purpose of the Northern Committee itself.

10. One stated argument against the current proposal is that, if the members of the Northern Committee are unable to reach a consensus on a recommendation, then no measure will be adopted. However, this aspect gives effect to one of the very reasons that the Northern Committee was created, as part of the compromise package as described above. Other regional fishery management organizations have been able to operate effectively with consensus-based decision making. Clearly, the members of the Northern Committee have an obligation, as do all members of the Commission, to operate in good faith and make every effort to reach consensus on recommendations for necessary measures. In our view, an interpretation of Article 11(7) different from that in the current proposal would create a disincentive among the members of the Northern Committee to reach such a consensus and, as a result, would exacerbate rather than mitigate this concern.

11. Finally, while reiterating that we view the proposal, first and foremost, as fundamental to the effective operation of the future Commission, the United States would like to express its views with respect to the role of the proposal in promoting full participation. The United States views participation by all key participants as central to the Commission’s future as a successful and effective organization, and one that will achieve the goals established by the participants at the outset of the MHLC process. The United States is concerned that if the PrepCon is unable to reach agreement on the essential elements of the current proposal, the three-year effort to promote full participation within the PrepCon could stall and further progress on a wide range of issues important to all participants may not be possible. This would have significant implications for the future of the Commission and for the adoption and implementation of conservation and management measures for fisheries resources of the region. The United States finds the possibility of such a scenario particularly troubling, especially given that the key issues within the proposal relate to stocks occurring mostly in an area that a majority of delegations were prepared to exclude altogether from the Convention Area.