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

Second session  
Madang, Papua New Guinea  
25 February – 1 March, 2002

WCPFC/PrepCon/BP.10\*  
30 January 2002

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**AGENDA ITEM XI: MECHANISMS TO PROMOTE PARTICIPATION**

Note by the Chairman

1. At the first session of the Preparatory Conference, held in Christchurch, New Zealand, in April 2001, the Conference adopted its agenda (WCPFC/PrepCon/2), which it noted would continue to serve as the basis of its work in future sessions, subject to such amendments as may be necessary as the Conference progressed. The Conference also agreed to add an additional item to the agenda entitled “Mechanisms to promote participation”. Under this agenda item, delegations to the first session agreed to convene an informal two-day meeting prior to the second session to discuss issues to promote participation. Also at the first session, the members of the Forum Fisheries Committee delivered a statement relating to the additional agenda item and the proposed informal meeting (WCPFC/PrepCon/7). Pursuant to the decision of the Conference, time has been set aside for informal consultations, which would be open to all interested delegations, on 21 and 22 February 2002, immediately prior to the second session.

2. On 11 January 2002, the Chairman invited delegations to express their views on the format, agenda and subject-matter for the proposed informal consultations through the Secretariat. Written communications on this matter were received from Chinese Taipei, Republic of Korea, New Zealand and United States of America. The text of the communications received is reproduced in annex I to the present document.

3. In light of the discussions on this matter during the first session and the views expressed subsequently, it is proposed that the framework for the informal consultation will be as follows:

(a) the informal consultations will be convened by the Chairman of the Preparatory Conference and shall be open to all participating delegations;

(b) the framework for discussions will be as set out in annex II. This is intended to promote transparency and to ensure that any relevant issues to promote participation are able to be discussed. The framework as proposed does not prevent any other delegation from raising issues of concern to it;

(c) all discussions or outcomes from the informal consultations will be without prejudice to the position of delegations. The outcomes from the meeting, including any recommendations relating to effective ways of moving forward, will be provided to the Preparatory Conference by way of a written report by the Chairman.

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Annex I

LETTER DATED 22 JANUARY 2002 FROM, FISHERIES ADMINISTRATION, COUNCIL  
OF AGRICULTURE, CHINESE TAIPEI

It is approaching the date of PrepCon2 and the two-day informal consultations prior to PrepCon2 as decided in PrepCon1. We are writing to express our consistent position of support to the Informal Consultation, same as we openly indicated in PrepCon 1.

As same as many other participants in the PrepCon, we have always been concerned about how to create a mechanism to promote participation by all interested parties. In this connection, we exchanged views with the United States last May and our common view was that in order to promote effective operation of conservation and management measures under the WCPFC, it is necessary to urge Japan to become a party to the Convention.

With such view in mind, we sent a delegation to Japan in the end of last May to exchange views with Japanese officials. From our discussions with Japanese officials, we can summarize their concerns as follows:

1. Participation in PrepCon by parties with real interests: Japan considered that at the present stage of PrepCon, such parties as EU and Mexico should be invited for participation and with voting right same as others.
2. Such issues as Convention Area, decision-making process and objection procedure, concerning operation of the Convention, should adequately reflect the interests of fishing States.
3. Such issues as Northern Committee, observer program, VMS, boarding and inspection, concerning implementation of the Convention, should reflect the practicability of fishing States, and the matter of their particular concern is mandatory implementation of boarding and inspection scheme in accordance with UNIA, should the Commission not be able to develop a guideline for the implementation within two years of the establishment of the Commission.

Our views to the issues of concern to Japan are as follows:

1. Participation in Prepcon by Parties with real interest: Since the Convention has already been adopted and in the course of ratification, participation in PrepCon by concerned parties should be guided by the rules as set forth in the Convention and Resolution I. However, it is our thinking that those with real interests should be extensively invited to participate in the PrepCon as observers.
2. As regard to the matters concerning implementation of the Convention, we too are very much concerned about them, in particular there lies a situation in the Convention where the number of coastal States far exceed the number of distant water fishing nations, while considerations of practicality and economic efficiency are very crucial factors to the success of implementation of the Convention and its relevant conservation and management measures. Therefore, it is our view that implementing guidelines should be developed during the process of PrepCon to ensure a fair balance between the two groups.

We hope the matters of concern to Japan as indicated above, in particular matters concerning implementation of the Convention can be adequately discussed during the informal consultations, and it is also hoped that the outcome of the meeting will enable us to achieve the objective of developing a mechanism to promote participation by important player like Japan.

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LETTER DATED 22 JANUARY 2002 FROM MR HAK-HAING CHO, DIRECTOR,  
INTERNATIONAL COOPERATION OFFICE, MINISTRY OF MARITIME AFFAIRS AND  
FISHERIES, REPUBLIC OF KOREA

In response to your request, please find attached the Republic of Korea's Draft of Preliminary Agenda on the two-day informal meeting and our views regarding the MHLC Convention. It would be appreciated if you could circulate our format and contents to participants so that they may have ample time to consider our positions.

In closing, Korea looks forward to having the opportunity to express our concerns at the meeting and therefore leading to more fruitful results at the PrepCon II.

Proposed Agenda for the Two-day Informal Consultation (Under the PrepCon Agenda,  
"Mechanisms to Promote Participation")

1. Opening of the meeting
2. Organisation of the meeting
  - (a) Election of the chair
  - (b) Adoption of the agenda
3. Potential concerns on the current WCPFC system
  - (a) General concerns proposed by the MHLC participants
  - (b) Requirements for the functional fulfillment of the WCPFC system
    - (i) Financial structure
    - (ii) Scientific structure
    - (iii) Participation of the legitimate fishing players
  - (c) Detailed concerns proposed by the MHLC participants
    - (i) Decision making
    - (ii) Duplicity
    - (iii) Vessel Monitoring System
    - (iv) Observer Program
    - (v) Boarding and Inspection
    - (vi) Precautionary Approach
    - (vii) Reference to the UN Fish Stock Agreement
    - (viii) Catches Appertaining to Quota Allocation and Contribution
    - (ix) Mechanisms to Promote Participation
4. Discussion session
  - (a) Approaches to resolve concerns to the MHLC participants
  - (b) Potential mechanisms to promote participation
5. Other business
  - (a) Necessity of further consultation meeting
6. Next meeting, if necessary
7. Adoption of the report

## 8. Close of the Meeting

### Views Of The Republic Of Korea On The MHLC Convention

1. Korea considers the two-day informal meeting prior to the PrepCon II will render a precious opportunity for dismantling the obstacles to the signing of the current Convention text by major fishing countries. Korea stresses that substantial steps must be taken to ameliorate the defective parts of the current Convention, especially those which will result in severe infringement of the national sovereign rights and/or jurisdiction of member states.

#### Decision Making

2. The original principle of a two chamber voting system attempts to balance and reflect pluralistic views of its participants. The current decision-making procedure, however, has an extreme and evident bias in this context. This bias can be found specifically in the Non-FFA chamber since it lacks neither the size nor the unicoloured nature found in the FFA chamber, and thus it is virtually unattainable to defeat a proposal with  $\frac{3}{4}$  majority. Considering that the FFA chamber is weighed more heavily against its Non-FFA counterpart, the current MHLC decision-making procedure must remove this unbalanced and undermining source of bias to fully restore the concept of chambered voting.

3. Most international fisheries conventions apply the consensus system or the majority voting system with an objection procedure, which are the two internationally accepted decision-making procedures that respect the sovereign rights of states. CCAMLR, NPAFC, CCSBT and SEAFO use the consensus system, and IOTC, IATTC, IWC, NAFO NEAFC and so forth use the majority voting system allowing objections. The logical background of the two systems is that rights of regional fisheries organizations shall not supercede the sovereignty of individual states.

4. More details on this issue will be addressed at the meeting.

#### Overlapping with other international regimes

5. Korea would like to stress that harmonized cooperation is needed between the Commission and neighbouring regional fishery organizations to avoid duplication of jurisdictional coverage. In the case of the southern bluefin tuna, Korea underscores that the CCSBT should have full authority over all management measures on the stocks.

#### Vessel Monitoring System

6. The flag state has full authority over its fishing vessels operating on the high seas. However, the current Convention text on VMS has blurred the authority of state governments in this area and has created chaotic relations among Contracting Parties, their vessels and the Commission. Korea would like to remind the participants of the MHLC that the draft of the Convention has reflected relevant international laws and individual participants' position until MHLC 5:

*Draft text until MHLC 5:*

The Commission, directly, or through the flag State where the flag State so requires, or through such other organization designated by the Commission, shall receive information

from the vessel monitoring system in accordance with the procedures determined by the Commission.

*Draft text at MHLC 6 and MHLC 7*

The Commission, directly, and simultaneously with the flag State where the flag State so requires, or through such other organization designated by the Commission, shall receive information from the vessel monitoring system in accordance with the procedures adopted by the Commission.

7. The above phrase concerning “the direct and simultaneous reception of VMS information by the Commission” seems to reflect concerns of some participants raised at MHLC 6 and 7 that position data of fishing vessels could be manipulated [by the government of the Flag State] prior to the Commission’s reception. Korea could not accept this provoking implication of the current text. In addition, it should be the flag state government or its designated authority that controls the VMS information for its vessels. In order to collect the information, the Commission should cooperate with the corresponding governments. The Commission should not have direct control over the vessels. As an international and not a super-national organization, functions and activities of a regional fisheries organization should be based on their members’ cooperation.

Observer Program

8. The MHLC Convention shows good contrast explicitly describing the authority and rights of onboard observers, while keeping silence about the related authority or rights of masters and officers on such vessels. This provision could mislead that observers are entitled to infringe the authority and rights levied upon the masters and officers by international laws. In this context, Korea proposes the codification of the relevant regulation that confirms authority of masters to overrule excessive interference by the observers.

Boarding and Inspection

9. Korea notes that an agreement was reached in MHLC 7 that the participants should establish an adequate boarding and inspection procedure within two years after the entry into force of the Convention. Having in mind that the boarding and inspection procedure on the high seas is one of the most crucial and problematic issues, Korea reiterates that a region-specific rule should be designed, and participants should make their best efforts to avoid negligence of letting the UNFSA apply directly to the vessels in the Convention area.

Precautionary Approach

10. Korea strongly supports the philosophy behind the precautionary approach in fisheries management, and will fully cooperate with the adequate measures taken as a precautionary approach on the conservation and management of marine resources, since the sustainable maintenance of fishery resources is also the utmost concern of Korea, being one of responsible fishing states.

11. However, there should be a safeguard to prevent the provisions in Article 6 paragraph 1 (a) from blocking the maintenance of the legitimate fishing operations without any definite anticipatory evidence of an immediate crisis. Adequate attention should be paid to avoid any sudden shock to fishery structures in this region caused by unnecessarily restrictive and conservative measures associated with precautionary approach. To prevent the sources of dispute

in determining the reference points in advance and for a more effective quota allocation, the determination of TAC should reflect experiences and positions of all participants.

#### Reference to the UN Fish Stocks Agreement

12. As repeatedly raised by some participants, the Convention should not be an instrument to implement the UN Fish Stock Agreement to the non-Member countries of the Agreement.

#### Catches Appertaining to Quota Allocation and Contribution

13. During the last stage of MHLC negotiations, Korea pointed out the asymmetry between catches appertaining to quota allocation and to the estimation of national contribution to the Commission. To avoid any unfair situation among the member states, Korea proposes the application of the consistent principle to any appertaining of catch.

#### Mechanisms to Promote Participation

14. Korea highlights that full participation of all fishing states is inevitable for effective achievement of the MHLC goal.

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#### COMMUNICATION RECEIVED ON 25 JANUARY 2002 FROM NEW ZEALAND

New Zealand thanks the Interim Secretariat for its invitation to contribute views on the informal consultations to be held prior to the second Preparatory Conference. New Zealand intends to participate as fully and as constructively as possible in the forthcoming informal consultations and submits the following views in response to the Interim Secretariat's invitation.

As a general point, New Zealand fully supports the Statement made by members of the Forum Fisheries Agency at the first Preparatory Conference in Christchurch last year on the resolution "Mechanisms to promote participation" and on the informal consultations envisaged. We consider the agenda should be an open one that promotes the discussion of issues relevant to promoting participation and that does not preclude the raising of any such issue. We consider that it may be possible to draw up the agenda prior to the meeting or on the basis of opening statements at the meeting or in other possible ways that allow the Chair flexibility to manage discussions effectively.

New Zealand does not envisage placing any specific issues of its own on the agenda at this stage but continues to regard the meeting as an opportunity for those participants with concerns to air them and have them considered by other participants. Accordingly we regard it as important for those participants to identify the specific issues they would like addressed and to provide as much supporting detail or explanation as possible. While we are prepared to consider those issues raised in a constructive spirit at the consultations themselves, it would be helpful to receive this information as far in advance of the consultations as possible in order to allow the maximum opportunity for preparations.

Without prejudice to the wish of any participant to raise specific issues to be considered at the consultations, New Zealand is aware of some issues that have been raised in the past on which further work might be undertaken in the context of future meetings of the Preparatory Conference proper. Two such issues have been boarding and inspection and observers. The Convention provides for the development of a system of high seas boarding and inspection, the nature of which is likely to be of interest to a number of participants. Similarly, the nature, extent and cost of the future Commission's observer programme could be considered within the Preparatory Conference process. It may be possible that work on these issues could begin at an early stage of the Preparatory Conference process, perhaps in the form of a dedicated working group.

Again, whilst seeking a full and adequate opportunity for consideration of the above concerns, we consider that the informal consultations may also provide an opportunity for discussion on how the requests received for full participation in the Preparatory Conference process prior to the first Preparatory Conference might be dealt with. Consideration of this matter might usefully be commenced within the format of the informal consultations in order to facilitate the Preparatory Conference itself, which has a heavy agenda before it.

Finally, on format, New Zealand would prefer to see an open and flexible format adopted for discussions, allowing full opportunity for concerns to be expressed and discussed.

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#### COMMUNICATION RECEIVED ON 20 JANUARY 2002 FROM UNITED STATES OF AMERICA

In response to the January 11, 2002 inquiry by the interim secretariat regarding delegations' views on the format and content of the Informal Consultation to Promote Participation, which is to be held February 21-22, 2002 in Madang, PNG, the United States proposes that the following issues be included on the agenda for the two-day informal consultation: (1) the observer program; (2) provisions on boarding and inspection; and (3) other monitoring, control, and surveillance issues. It is our understanding that some distant water fishing states are concerned about how the provisions of the Convention governing these matters will be implemented which, in turn, presents a potential obstacle to their participation. As a result, a discussion of how these provisions will be implemented in the future Commission will be an important component of promoting and maintaining the participation of these states and entities. In any case, these provisions will need to be elaborated by the participants in the Preparatory Conference before they can be implemented. For these reasons, we believe these are good issues for discussion in the Informal Consultation.

Regarding the format of the Informal Consultation, the United States hopes that one of the outcomes of the two day meeting would be a recommendation to the Preparatory Conference on a course of action that establishes a working group or other such mechanism to examine these, and possibly other, issues in more technical detail. This working group, or other mechanism, should be formally linked with the Preparatory Conference process, to put these issues on a par with the other issues the Preparatory Conference is currently addressing. Based on consultations with some of the other distant water fishing nations, in particular Korea and China, we are aware that such a linkage to the Preparatory Conference process will be critically important to keep these countries constructively engaged in the Preparatory Conference process as it moves forward.

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Annex II

**INFORMAL CONSULTATIONS ON AGENDA ITEM XI: MECHANISMS TO  
PROMOTE PARTICIPATION**

Madang, Papua New Guinea, 21 – 22 February 2002

PROPOSED FRAMEWORK FOR DISCUSSIONS

1. Opening of informal consultations and introduction by the Chairman.
2. Discussion of issues raised by delegations:
  - (a) General concerns proposed by the MHLC participants
  - (b) Requirements for the functional fulfillment of the WCPFC system
    - (i) Financial structure
    - (ii) Scientific structure
    - (iii) Participation of the legitimate fishing players
  - (c) Detailed concerns proposed by the MHLC participants
    - (i) Decision making
    - (ii) Duplicity
    - (iii) Vessel Monitoring System
    - (iv) Observer Program
    - (v) Boarding and Inspection
    - (vi) Precautionary Approach
    - (vii) Reference to the UN Fish Stock Agreement
    - (viii) Catches Appertaining to Quota Allocation and Contribution
  - (d) Approaches to resolve concerns to the MHLC participants
  - (e) Potential mechanisms to promote participation
3. Recommendations relating to further consultations.
4. Other matters.

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