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

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**CHINESE TAIPEI'S PROPOSAL FOR THE ESTABLISHMENT OF AN AD HOC
DAMAGES REVIEW PANEL AND SUGGESTED PROVISIONS**

Submitted by the delegation of Chinese Taipei

I. BACKGROUND AND REASONS

1. It is a prevailing principle among civilized societies that where there is damage, there should be a remedy. And the implementation of this boarding and inspection scheme as envisaged, by nature of things, might result in actions that are unlawful or exceed that reasonable required in the light of available information. Accordingly, Para. (42)(bis) of this scheme provides that "Members of the Commission shall be liable for damage or loss attributable to them from action in violation of these procedures." (Para.42 of WCPFC/PrepCon/WP.14/Rev.1 of 10 September 2003).

2. It is noteworthy that those who are the most vulnerable to unjustified, unreasonable or abusive boarding or inspection are those fishing vessels as well as their crew. Moreover, the dispute settlement provisions as contained in Article 31 of the Convention and paragraph 3 of Annex I are complex and time-consuming. Generally, unjustifiably boarded or inspected vessels or their crew do not have the time needed and financial resources to stand such long procedures. As we all known, a delayed justice is not a justice. Accordingly, for the purposes of addressing the possible plight as faced by those unjustifiably interfered fishermen, it is of great need to establish a prompt and efficient remedy procedure as distinct from that contained in the Convention and Annex I for, and only for, the purpose for addressing the damage and loss suffered by those fishing vessels and their crew.

3. As a result, it is preferable to establish an ad hoc panel specifically designated only for the purposes of addressing damages issues arising from the implementation of this scheme and awarding the damages to those who are unjustifiably suffered.

II. SUGGESTED ADDED PARAGRAPH

42 (bis).

1. In the event of a dispute concerning liability for damage or loss arising from para. (42), the Members in dispute shall consult in an attempt to resolve the disagreement.

2. If the dispute remains unresolved within (45) days from the beginning of consultation, at the request of any concerned Commission Member to the dispute, an Ad Hoc Damages Review Panel consisting of three members shall be established within (90) days.

3. (a) The party instituting the proceeding shall appoint one member, who may be its national, to the Panel.

(b) The other party to the dispute shall appoint one member, who may be its national, to the Panel.

(c) The other member to the Panel shall be appointed by agreement between the members concerned and shall be preferable from the nationals of other Commission Members not in dispute unless the members to the dispute otherwise agree.

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