

**FINAL PREPARATORY CONFERENCE TO ESTABLISH THE WESTERN AND CENTRAL
PACIFIC FISHERIES COMMISSION
AND
THE INAUGURAL WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION
MEETING**

**6-7 and 9-10 December 2004
Pohnpei, Federated States of Micronesia**

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The Final Preparatory Conference to Establish the Western and Central Pacific Fisheries Commission and the Inaugural Western and Central Pacific Fisheries Commission meeting were respectively held in Pohnpei, Federated States of Micronesia (FSM) on 6 – 7 and 9 – 10 December 2004. Members of the Commission and participating territories that attended are: Australia, China, Cook Islands, Fiji, FSM, Kiribati, Korea, Marshall Islands, Nauru, New Zealand, Niue, Papua New Guinea, Samoa, Solomon Islands, Chinese Taipei, Tokelau, Tonga and Tuvalu. Canada, the European Community, France, French Polynesia, Indonesia, Japan, New Caledonia, Palau, Philippines, USA, Vanuatu and Wallis and Futuna attended as observers. Observer status was extended to the Forum Fisheries Agency (FFA), Food and Agriculture Organisation of the United Nations (FAO), Forum Secretariat, Inter-American Tropical Tuna Commission, Secretariat of the Pacific Community, Secretariat of the Pacific Regional Environment Programme and the University of the South Pacific.

This was an historic event for the Pacific Islands region, Distant Water Fishing States, fishing entities and interests. After four years of negotiations through the Multilateral High Level Conferences, the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention) was opened for signature on 5 September 2000^[1]. Between 2001 and 2004, six Preparatory Conferences (PrepCon) were convened to lay the foundation for the work of the Commission culminating in the final PrepCon before the inaugural Commission meeting. The Commission will have far-reaching impacts on the conservation and management of fisheries within and beyond areas of national jurisdiction. Implications on national and regional fisheries law are vast. In addition to summarizing the sessions, this report includes my observations on the impacts of decisions and resolutions of the meetings on fisheries law and policy in the Pacific Islands region^[2].

PREPCON7 AND FINAL SESSION (PREPCON7), 6-7 DECEMBER 2004

The final session of the PrepCon process was opened with a statement from the host Federated States of Micronesia and the Chair of the Forum Fisheries Committee. The Chair of the PrepCon process Mr. Michael Powles (New Zealand) then considered reports from each of the three working groups in plenary.

Working Group I (WG I) was responsible for providing advice to the PrepCon on the organizational structure of the Commission, its budget and assess financial contributions. WG I Chair Ambassador Lucy Bogari (PNG) presented the report and as expected the issues that attracted the most discussion were the methodology for determining the budget, financial contributions to the budget, and the draft financial

regulations.

Working Group II advised the PrepCon on the scientific structure of the Commission as well as providing interim scientific advice. Dr. John Kalish (Australia), Chair of WG II, presented the report. Discussions focused on the recommendations concerning bigeye tuna stocks and the need for management measures to be decided by the Commission at its first meeting. Scientists recommended that 'as a minimum measure, there be no further increase in fishing mortality for bigeye tuna' from the existing catch levels^[3].

In addition to bigeye stocks, some attention was also placed on yellowfin stocks that they were 'probably not being over-fished' but that 'the stock is likely to be nearing full exploitation and any further increases in fishing mortality would not result in any long-term increase in yield and may move the yellowfin stock to an over-fished state.' For yellowfin tuna, scientists recommended that to reduce the risk of the yellowfin stock becoming over-fished increases particularly in juvenile yellowfin catch be avoided.

A management measures informal working group chaired by the US to consider urgent management measures was agreed for the purpose of exploring options for management and reporting to the Chair of the PrepCon.

Particular interest was on the significance of recruitment of tuna by domestic fishers in Indonesia and the Philippines. The meeting was informed of the Indonesia and Philippine Data Collection Program (IPDCP) to determine the impact of domestic fishers in both countries to the overall stock in the Western and Central Pacific Ocean region. The IPDCP is timely and essential to improving knowledge and understanding of the volume and impact of catches in these two countries on stock assessments in the Convention area.

The report of Working Group III charged with advising the PrepCon on monitoring, control and surveillance issues including boarding and inspection rules was tabled by its chair Mr. William Gibbons-Fly (US) on the second day of PrepCon 7. WG III was the last working group to be formed during the PrepCon process and its duties included deliberating over compliance and enforcement provisions, the regional observer programme and transshipments, as well as terms and conditions for fishing in the Convention area.^[4] The report visited the outcomes of the working group from PrepCon 3 to PrepCon 7. At PrepCon 7 work focused on the Commission's record of vessels and fishing authorizations, agreement on a future work programme, and issues relating to cooperating non-contracting parties (the term was later changed to cooperating non-members).

The obligations of cooperating non-members attracted some discussion in the working group. Canada, a cooperating non-member for instance, requested that cooperating non-members meet reasonable requirements prescribed by the Commission rather than 'any requirement'. While the division between rights and obligations of members and cooperating non-members was herein slightly modified, cooperating non-members play a critical role in the Commission.

Cooperating non-members can influence the success or failure of the Commission. Collectively catching about half of the total tonnage caught within the Convention area, their willingness to participate and adhere to the conservation and management measures will promote the success of the Commission. Without the cooperation of non-members, the Commission will face challenges in the monitoring and enforcement of management measures. Recognition by the Chair and members of the role of cooperating non-members allowed for their participation in major decisions at the Commission meeting including making recommendations on the appointment of the Executive Director.

After recommending to the Commission the reports of all three working groups, PrepCon 7 proposed the draft rules of procedure and among other things, the final report of the Preparatory Conferences.

WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION INAUGURAL SESSION, 9-10 DECEMBER 2004

The first session of the Commission was opened by H.E President Joseph J. Urusemal, President of the FSM. President Urusemal said that the inauguration of the Commission represented the final culmination of a legal and institutional development process begun 37 years earlier when Ambassador Arvid Pardo of Malta called on the United Nations General Assembly to consider the resources of the ocean beyond national jurisdiction as being the common heritage of mankind.

After the opening address, members elected by acclamation Mr. Glen Hurry (Australia) as the Chair of the Western and Central Pacific Fisheries Commission. Mr. Hurry on acceptance remarked "my loyalty to the Pacific is something that I cannot change" and that he will carry out his responsibilities and ensure the Commission works. In order to accommodate distant water fishing States interests and to have some form of balance, it was fitting to elect a representative from a major distant water fishing State. Mr. Liu Xiaobing (China) was elected as Vice-chairman. Mr. Michael Lodge the interim head of the Commission secretariat was appointed the new Executive Director.

Members decided to invite the European Community to accede to the Convention. The invitation from the Chair marked the end of European Community efforts throughout the PrepCon process to be recognised as having a 'real interest' in the fishery. Membership of the EC, a relative newcomer, at the second Commission meeting will change the political landscape in the Commission. While the majority of traditional fishing nations in the region - China, Korea and Chinese Taipei are already members, the arrival of the EC will, among other things, raise access fees charged per vessel and promises attractive benefits to FFA members in terms of trade opportunities and capacity building of fisheries personnel and infrastructure. With the EC aboard, competition among distant water fishing nations for access to national waters of FFA members will intensify.

The Russian Federation was invited to participate as an observer and indicated that they would apply to accede to the Convention. Greenpeace and the International Game Fishing Association were the two non-governmental organisations granted observer status.

Observership aside, a budget of USD\$975,000 was agreed for the first year subject to amendments proposed. According to the procedure for financial contributions to the budget of the Commission, 10% of the budget will be divided among all Commission members and cooperating non-members and this is the base fee, 20% of the budget is calculated from the national wealth component, while the remaining 70% of the budget is calculated from the catch component. Thus the assessed contribution of distant water fishing nations constitutes a major share of the budget of the Commission.

Since the majority of distant water fishing nations are cooperating non-members, the financial contribution of cooperating non-members accounts for approximately 50% of the total budget. Japan, with the largest assessed contribution, needs to pay 23.90% of the total budget. Cooperating non-members therefore are important not only from a conservation and management perspective but have a direct bearing on the operation and financial viability of the Commission.

Once the budget, financial contributions and financial regulations had been agreed, the Commission then addressed science issues. After noting the report of the Scientific Coordinating Group, the Commission convened the Scientific Committee of the Commission in order to elect its Chair. Dr. Sung Kwon Soh of Korea was elected by acclamation.

The Commission then deliberated over recommendations relating to monitoring, control and surveillance and adopted: a) the procedures for the Commission's record of fishing vessels and authorizations to fish; b) the specifications for the marking and identification of fishing vessels; and c) the procedures for

Cooperating non-members. Pending membership, all of the States that participated in the MHLC process and Preparatory Conferences were designated Cooperating non-members. The States are: Canada, France, Indonesia, Japan, Palau, Philippines, United States of America and Vanuatu. The Commission then convened the Technical and Compliance Committee and elected by acclamation Mr. Apolosi Turaganivalu of Fiji as Chair.

Consideration of Management Options

Agreement on conservation and management was perhaps the most contentious issue for the first Commission meeting. The meeting saw two parallel approaches on management options that begun during PrepCon 7 – the first was coordinated by the United States and involved cooperating non-members and some FFA members while the second was led by Papua New Guinea within the Forum Fisheries Committee. Lack of agreement on key issues in the content of the Forum Fisheries proposal among FFA members allowed for more influence by cooperating non-members on the adopted Resolution on Conservation and Management Measures.^[5] The resolution is broad in scope and details the work of the Scientific Committee and the Technical and Compliance Committee for 2005. The Commission is obligated also to adopt in accordance with article 5 of the Convention conservation and management measures at its second meeting.

In determining conservation and management measures, there are five broad layers for consideration: a) Article 61 of the 1982 UN Convention on the Law of the Sea; b) Relevant articles in the 1995 UN Fish Stocks Agreement^[6]; c) Articles in the Convention; d) Existing regional and sub-regional arrangements; and e) National laws, policy and priorities. Given compatibility requirements in article 8 of the Convention and national industry priorities, protracted negotiations on conservation and management measures are foreseeable in future meetings.

Commission members have a duty to cooperate and establish compatible conservation and management measures for highly migratory fish stocks in the region. The existence of sub-regional fisheries arrangements such as the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery – Management Scheme may influence the management regime of the Commission with respect to managing fishing effort.

CONCLUSION

The final Preparatory Conference and the inaugural Commission meeting in December 2004 was an historic event for the Pacific Islands region. Through the Commission, conservation and management of fisheries in areas within national jurisdiction and beyond will be strengthened. In laying the foundation for the work of the Commission, the first meeting also encountered complex discussions particularly relating to management options. While management measures were deferred to the second meeting, its content and vigour depends largely on existing arrangements and their appropriateness in addressing sustainability concerns. The impetus is therefore on all members and cooperative non-members to ensure that the Commission sets benchmarks in fisheries management for the rest of the world.

[*] Marine Affairs Programme, University of the South Pacific. The author wishes to acknowledge the Marine Affairs Programme for financial support to attend the meetings.

[1] The Convention entered into force on 19 June 2004 in accordance with requirements under Article 36.

[2] For further information, see the PrepCon website www.ocean-affairs.com.

[3] WCPFC/PrepCon/41, 16 September 2004.

[4] See Parts VI, VII, Annex III and Article 14.

[5] Annex II, WCPFC/Comm.1/8, 10 December 2004.

[6] 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. 34 *ILM* 1542 (1995).

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