
**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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PARTICIPATION OF TERRITORIES

Submitted by New Zealand

Article 43

1. Article 43 of the Western and Central Pacific Fisheries Convention provides for the participation, with the appropriate authorisation of the Contracting Party having responsibility for its international affairs, to each of the named seven territories in the Pacific region. It goes on to provide:

(2) The nature and extent of such participation shall be provided for by the Contracting Parties in separate rules of procedure of the Commission, taking into account international law, the distribution of competence on matters covered by this Convention and the evolution in the capacity of such territory to exercise rights and responsibilities under this Convention.

2. Notwithstanding this, however, in Article 43(3) the Convention provides a framework for the participation of territories in the work of the Commission:

- Territories are entitled to participate fully in the work of the Commission and its subsidiary bodies, including the right to be present and to speak at relevant meetings;
- The Commission is to take into account the interests of all participants, including territories, in the performance of its functions and in taking decisions.

Principles for developing Rules of Procedure

3. There are certain primary principles to be recognised in developing separate Rules of Procedure of the Commission to deal with the nature and extent of participation by territories.

- The framework already provided by Article 43 of the Convention. The explanation of the nature and extent of participation by territories needs to be consistent with Article 43 and there cannot be any changes to the Convention text.
- Full participation in the work of the Commission by territories with the appropriate authorisation, as provided in Article 43.
- The distribution of competence on matters covered by this Convention particular to each territory.
- The evolution in capacity of each territory to exercise rights and responsibilities under the Convention.
- International law.

Considerations for developing Rules of Procedure

4. Considerations relevant to the development of Rules of Procedure include:
- The practice in Pacific regional organisations, specifically the Pacific Community and the South Pacific Regional Environment Programme (SPREP), where territories participate in their own right at meetings, and participate in taking decisions by consensus;
 - The provisions of Article 305 of the United Nations Law of the Sea Convention which allow certain territories to become parties to that Convention, and Article 35 of the WCPFC Convention which allows such territories to accede to it;
 - The practical reality in the Pacific where some competencies are distributed between a metropolitan power and a territory;
 - The evolving nature of the capacity to exercise rights and responsibilities under the Convention, and the different stages of constitutional development of the Pacific territories;
 - The desirability of recognising such evolving capacities in a non-discriminatory manner.

Key elements of Rules of Procedure

5. The following would therefore be key elements of draft rules of procedure on the participation of territories:
- All territories referred to in Article 43 would be “participating territories”, provided they have the relevant authorisation. An authorisation would describe the distribution of a territory’s competencies and the extent of its responsibilities. The authorisation should be updated as the territory’s capacities evolve.
 - All participating territories would 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. The participating territories would not have rights which are inconsistent with territorial status in the Convention (such as being elected Chair, hosting meetings and being counted as a quorum).
 - In relation to matters over which a territory has competence and with the authorisation of the Contracting Party having responsibility for its international affairs, a territory could exercise procedural rights accorded to Members in respect of a particular matter.
 - In accordance with Article 20, the Commission will make all efforts to reach decisions by consensus. Consistent with their full participation in the work of the Commission, all territories would participate in the Commission’s deliberations to reach consensus. Territories’ views would be properly considered and taken into account in reaching any decision.
 - Reaching a consensus will be especially important in decisions of economic significance to territories, such as:
 - decisions on allocation, where a territory is responsible for the conservation and management of resources in its waters;
 - decisions on the scale of assessments, where a territory makes independent contributions to the Commission’s budget.
 - Where a consensus could be reached but for the views of a territory that has full competency over the resources in its waters (in decisions on allocation) or a territory that contributes to the Commission’s budget (in decisions on budget and the scale of assessments), the Chair of the Commission would commence a formal consultation process in order to provide an opportunity for the territory to present its views and to ensure that its views are properly considered. Notwithstanding this, a territory could not block consensus on a proposal.

- A territory would need to meet a pre-determined standard in order to acquire the right to vote within the Commission. The process for determining standards and criteria would need further discussion and development.

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